

CITY of ALBUQUERQUE SIXTEENTH COUNCIL

COUNCIL BILL NO. F/S R-05-298 ENACTMENT NO. _____

SPONSORED BY: Eric Griego

1 CHARTER AMENDMENT PROPOSAL
2 TO BE SUBMITTED TO THE VOTERS ON THE ELECTION BALLOT OF THE
3 OCTOBER 4, 2005 REGULAR MUNICIPAL ELECTION, AMENDING ARTICLE XIII
4 OF THE CHARTER OF THE CITY OF ALBUQUERQUE TO PROVIDE FOR
5 PUBLIC CAMPAIGN FINANCING.

6 WHEREAS, a regular municipal election will be held in the City of
7 Albuquerque on October 4, 2005 at which the City's electors will choose
8 whether to approve an amendment to the Charter concerning public campaign
9 financing by enacting the Open and Ethical Elections Code; and

10 WHEREAS, Article VI provides for the Council to propose Charter
11 amendments.

12 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
13 ALBUQUERQUE:

14 Section 1. That the City Clerk shall place the following summary of the
15 proposition on the ballot for the October 4, 2005 regular municipal election,
16 and the City of Albuquerque qualified voters shall be permitted to vote "for" or
17 "against" the following proposition:

18 Proposing an amendment to the Albuquerque City Charter to
19 enact the Open and Ethical Elections Code. This code will
20 establish voluntary limits on campaign spending and equal
21 public financing of campaigns for elections. Participating
22 Candidates for Mayor and Council shall voluntarily limit their
23 campaign spending and receive an equal amount of public
24 financing from the General Fund for each office and shall

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1 agree not to accept or spend private campaign contributions.
2 The City Attorney and City Clerk shall administer this system
3 with strict accountability to assure that all funds are used in
4 the manner for which they are intended.

5 The City Clerk shall cause the full text of the Proposition that follows to be
6 published for four consecutive weeks in English and Spanish, the last
7 publication to be not more than two weeks prior to the election at which time
8 said Proposition shall be submitted to the electors of the City for their
9 approval or rejection. This resolution for special election shall be published
10 once a week for four consecutive weeks with the first publication between fifty
11 and sixty days before the election. The publication of this special election
12 resolution shall contain the summary of the proposition set forth hereafter and
13 such summary shall be on the ballot on the October 4, 2005 election. The full
14 text of the Proposition that follows shall not appear on the ballot.

15 PROPOSITION 1

16 PROPOSING TO AMEND THE ALBUQUERQUE CITY CHARTER TO READ:

17 Section 1. A new article of the Charter is enacted to read:

18 "Sections 1 through 21 of this article may be cited as the "Open and Ethical
19 Elections Code".

20 Section 2. LEGISLATIVE INTENT.

21 The intent of the Open and Ethical Elections Code is to:

22 (A) Avoid both actual undue influence of large campaign donors and the
23 appearance of undue influence in Council and Mayoral elections and decision-
24 making;

25 (B) Diminish the public perception of corruption and strengthen public
26 confidence in the governmental and election process;

27 (C) Provide well-qualified candidates with adequate funding to mount
28 campaigns to encourage competitive Council and Mayoral elections so that
29 the City's residents have more choices about the leadership and direction of
30 the City;

31 (D) Increase the accountability of elected officials to their constituents
32 who elect them, as opposed to the contributors who fund their campaigns;
33 and

1 (E) Insure that the City's Council and Mayoral election process is fair,
2 responsible and ethical.

3 Section 3. DEFINITIONS.

4 As used in the Open and Ethical Elections Code:

5 (A) APPLICANT CANDIDATE. A candidate, but not a write-in candidate,
6 running for a Covered Office and who is seeking to be a Participating
7 Candidate.

8 (B) CLERK. The City Clerk.

9 (C) CONTESTED ELECTION. A regular municipal election in which there
10 is more than one candidate for a City Council or Mayor position.

11 (D) COVERED OFFICE. City Council or Mayor.

12 (E) ELECTIONEERING COMMUNICATION. Any communication
13 broadcasted by television or radio, printed in a newspaper or on a billboard,
14 directly mailed or delivered by hand to personal residences or otherwise
15 distributed that:

16 (1) unambiguously refers to any candidate; and

17 (2) is broadcasted, printed, mailed, delivered or distributed within
18 thirty days before a regular municipal election; and

19 (3) is broadcasted to, printed in a newspaper distributed to,
20 mailed to, delivered by hand to or otherwise distributed to an audience that
21 includes members of the electorate for a Covered Office.

22 (4) Electioneering Communication does not include:

23 (a) any news articles, editorial endorsements, opinion or
24 commentary, writings or letters to the editor printed in a newspaper, magazine
25 or other periodical not owned or controlled by a candidate or political party;

26 (b) any editorial endorsements or opinions aired by a
27 broadcast facility not owned or controlled by a candidate or political party;

28 (c) any communication by Persons made in the regular
29 course and scope of their business or any communication made by a
30 membership organization solely to members of such organization and their
31 families; or

32 (d) paid for by a candidate or candidate's campaign
33 committee.

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1 (F) EXPENDITURE. The payment or furnishing of money or anything of
2 value or the incurring or repayment of indebtedness or obligation, by or on
3 behalf of any Person, candidate or political committee in consideration for any
4 services, supplies, equipment or other thing of value performed or furnished
5 for any reason, including support of or opposition to a candidate, political
6 committee or measure for or for reducing the debt of a Participating Candidate
7 for nomination or election to a Covered Office.

8 (G) EXPLORATORY PERIOD.

9 (1) For Mayoral candidates, from January 1 through February 15;
10 and

11 (2) For Council candidates, from March 15 through April 30.

12 (H) EXPRESS ADVOCACY. An Expenditure made by a Person or group,
13 other than a candidate or a candidate's committee, that advocates the election
14 or defeat of a candidate, including all costs of designing, producing or
15 disseminating a communication that contains phrases such as "vote for", "re-
16 elect", "support", "cast your ballot for", "[name of candidate] for [name of
17 office]", "[name of candidate] in [year]", "vote against", "defeat", "reject" or
18 similar phrases.

19 (I) FUND. The Open and Ethical Elections Fund.

20 (J) INDEPENDENT EXPENDITURE. Any funds spent on Express
21 Advocacy or Electioneering Communications that are not coordinated with
22 any candidate's campaign. The Clerk shall adopt regulations to determine
23 whether funds spent on Express Advocacy or Electioneering Communications
24 are coordinated Expenditures. Coordinated Expenditures on Express
25 Advocacy or Electioneering Communications are treated as contributions.

26 (K) IN-KIND CONTRIBUTION. A good or service, other than money,
27 having monetary value not to exceed more than 5% of the annual salary for
28 such office at the time of filing the Declaration of Candidacy, but not including
29 an individual who volunteers his own personal service.

30 (L) NONPARTICIPATING CANDIDATE. A candidate running for a
31 Covered Office who does not choose to participate in the Open and Ethical
32 Elections Code or a candidate running for a Covered Office who declares an

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1 intent to participate in the Open and Ethical Elections Code, but who fails to
2 become a Participating Candidate.

3 (M) OPPOSING FUNDS. Funds spent opposing a Participating
4 Candidate. The amount of Opposing Funds is calculated by determining the
5 opponent of the Participating Candidate who has the highest total of
6 Expenditures and supportive Independent Expenditures; the amount of
7 Opposing Funds is calculated by totaling the Expenditures made by that
8 opponent, the amount spent on Independent Expenditures in support of that
9 opponent and the amount spent on Independent Expenditures in opposition to
10 the Participating Candidate. No Independent Expenditure may be counted as
11 both opposing a Participating Candidate and in support of that candidate's
12 opponent.

13 (N) PARTICIPATING CANDIDATE. A candidate running for a Covered
14 Office who chooses to obtain financing pursuant to the Open and Ethical
15 Elections Code and who is certified to participate as an Open and Ethical
16 Elections Code Candidate.

17 (O) PERSON.

18 (1) a City resident;

19 (2) a labor organization, club, association or organization who
20 have members who are City residents; or

21 (3) a corporation, limited liability company, firm, partnership,
22 joint stock company or other entity conducting business in the City.

23 (P) QUALIFYING CONTRIBUTION. A donation of \$5.00 in the form of
24 cash, check, debit card, credit card or money order payable to the Fund in
25 support of an Applicant Candidate that:

26 (1) for the Mayoral race is made by a registered City voter and for
27 a Council race is made by a registered City voter residing in the district in
28 which the Applicant Candidate desires to represent;

29 (2) is made during the designated Qualifying Period and obtained
30 through efforts made with the knowledge and approval of the Applicant
31 Candidate;

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1 (3) is acknowledged by a receipt that identifies the contributor's
2 name and residential address on forms provided by the Clerk and that is
3 signed by the contributor, one copy of which is attached to the list of
4 contributors and sent to the City Clerk; and

5 (4) identifies which Applicant Candidate the City resident
6 supports.

7 (Q) **QUALIFYING PERIOD.**

8 (1) For Mayoral candidates, from February 16 through March 31;
9 and

10 (2) For Council candidates, from May 1 through May 31.

11 (R) **SEED MONEY.** A contribution in support of an Applicant Candidate
12 of no more than \$100 per Person, except for the Applicant Candidate who can
13 contribute up to \$500.00, raised for the primary purpose of enabling Applicant
14 Candidates to collect Qualifying Contributions and petition signatures the
15 aggregate amount of which may not exceed 10% of the applicable spending
16 limit.

17 **Section 4. TERMS OF PARTICIPATION-DECLARATION OF INTENT.**

18 (A) An Applicant Candidate, choosing to obtain financing pursuant to
19 the Open and Ethical Elections Code, shall file a declaration of intent with the
20 Clerk to participate as an Applicant Candidate for a Covered Office. The
21 declaration of intent shall be filed with the Clerk prior to or during the
22 Qualifying Period according to forms and procedures developed by the Clerk.

23 (B) An Applicant Candidate shall submit a declaration of intent prior to
24 collecting any Qualifying Contributions and make explicit in the declaration of
25 intent that the Applicant Candidate has complied with and will continue to
26 comply with the Open and Ethical Code's contribution and Expenditure limits
27 and all other requirements set forth in the Open and Ethical Elections Code.

28 (C) An Applicant Candidate shall file a detailed contribution and
29 Expenditure report regarding Seed Money and In-Kind Contributions with the
30 Clerk at the time of filing a declaration of intent.

1 (D) The declaration of intent shall specify that the Applicant Candidate
2 agrees that any money received from the Fund shall not be used to retire a
3 prior campaign debt from a previous election period.

4 Section 5. QUALIFYING CONTRIBUTIONS.

5 (A) An Applicant Candidate for Mayor shall obtain Qualifying
6 Contributions from a minimum of 1% of registered City voters.

7 (B) An Applicant Candidate for Council shall obtain Qualifying
8 Contributions from a minimum of 1% of the City voters registered in the
9 district that the Applicant Candidate desires to represent.

10 (C) No payment, gift or anything of value shall be given in exchange for
11 a Qualifying Contribution.

12 Section 6. SEED MONEY-IN-KIND CONTRIBUTIONS.

13 (A) An Applicant Candidate may accept Seed Money during the
14 Exploratory Period and Qualifying Period not to exceed \$100 per Person.

15 (B) An Applicant Candidate may contribute up to \$500 from the
16 Applicant Candidate's personal funds for Seed Money.

17 (C) Seed Money that exceeds 10% of the applicable distribution to a
18 Participating Candidate shall be deducted from the revenues distributed to the
19 Applicant Candidate from the Fund.

20 (D) The aggregate amount of Seed Money received and spent by an
21 Applicant Candidate shall not exceed an amount equal to 10% of the
22 applicable distribution to a Participating Candidate.

23 (E) An Applicant Candidate may accept In-Kind Contributions from the
24 beginning of the Exploratory Period up to the regular municipal election. The
25 value of any In-Kind Contribution shall not count against the applicable limit
26 on Seed Money contributions. The aggregate amount of In-Kind Contributions
27 received by an Applicant Candidate shall not exceed an amount equal to 10%
28 of the applicable spending limit.

29 (F) Volunteer work-hours are non-reportable and shall not count as In-
30 Kind Contributions or against the applicable limit on Seed Money. An
31 individual may volunteer personal services to an Applicant Candidate as long
32 as the volunteer is not compensated. If an individual volunteers during

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1 working hours, paid by a third-party employer or the Applicant Candidate, then
2 that employer makes an In-Kind Contribution to the Applicant Candidate.

3 (G) If a Participating Candidate is defeated or is elected, any unspent
4 Seed Money shall be forfeited to the Fund.

5 Section 7. CERTIFICATION OF PARTICIPATION.

6 (A) Upon receipt of a final submittal of Qualifying Contributions by an
7 Applicant Candidate, the Clerk shall determine whether the Applicant
8 Candidate has:

- 9 (1) signed and filed a declaration of intent to obtain fund revenue;
- 10 (2) submitted the appropriate number of Qualifying Contributions;
- 11 (3) qualified as a candidate pursuant to other applicable City and
12 State election law;
- 13 (4) complied with Seed Money contribution and Expenditure
14 restrictions; and
- 15 (5) otherwise met the requirements for obtaining financing
16 pursuant to the Open and Ethical Elections Code.

17 (B) The Clerk shall certify Applicant Candidates running for Mayor,
18 complying with the requirements of this section, as Participating Candidates
19 on April 1 after final submittal of Qualifying Contributions. The Clerk shall
20 certify Applicant Candidates running for Council, complying with the
21 requirements of this section, as Participating Candidates on June 1 after final
22 submittal of Qualifying Contributions.

23 (C) At the end of the Qualifying Period, an Applicant Candidate shall file
24 Seed Money contribution and Expenditure reports with their application for
25 certification as a Participating Candidate.

26 (D) A Participating Candidate shall comply with all requirements of the
27 Open and Ethical Elections Code and applicable City and state election law
28 after certification as a Participating Candidate and throughout the election
29 cycle.

30 Section 8. GUIDELINES AND RESTRICTIONS FOR CONTRIBUTIONS TO
31 AND EXPENDITURES OF PARTICIPATING CANDIDATES.

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1 (A) All money distributed to a Participating Candidate shall be used for
2 that Participating Candidate's campaign-related purposes in the election year
3 in which the money was distributed.

4 (B) A Participating Candidate shall limit total campaign Expenditures
5 and debts to the amount of money distributed to that Participating Candidate
6 from the Fund plus any collected Seed Money. A Participating Candidate shall
7 not accept contributions or loans from any other source.

8 (C) Within two weeks after the regular municipal election, a Participating
9 Candidate shall return to the Clerk for direct deposit into the Fund any amount
10 that is unspent or unencumbered by the date of the municipal election.

11 (D) A Participating Candidate shall not use revenues from the Fund for
12 personal use including:

13 (1) salary or payment to an individual unless that individual is
14 providing bona fide services to the campaign and is compensated at fair
15 market value;

16 (2) admission to a sporting event, concert, theater or other form
17 of entertainment unless part of a specific campaign activity;

18 (3) dues, fees, parking or gratuities at a country club, health club
19 or other recreational facility unless the costs are part of a specific fundraising
20 event;

21 (4) mortgage, rent or household utility payments for any part of a
22 personal residence;

23 (5) purchases of household food items or supplies; or

24 (6) purchase of clothing, other than items of de minimus value
25 used in the campaign.

26 (E) A Participating Candidate shall not use revenues distributed from the
27 Fund to:

28 (1) contribute to any other candidate, political committee or
29 measure;

30 (2) support or oppose any candidate, political committee or
31 measure not in their race;

32 (3) use to repay any loans, debts or penalties;

1 (4) use to pay for consulting services to an individual unless the
2 individual is providing bona fide services to the campaign and is compensated
3 at fair market value; or

4 (5) use for out-of-state travel.

5 Section 9. CANDIDATE REPORTING REQUIREMENTS.

6 (A) The Clerk shall publish guidelines outlining permissible campaign-
7 related Expenditures.

8 (B) Applicant Candidates shall file Qualifying Contributions with the
9 Clerk during the Qualifying Period according to procedures developed by the
10 Clerk. In developing these procedures, the Clerk shall use existing campaign
11 reporting procedures and deadlines whenever practical.

12 (C) Participating Candidates shall also report Expenditures according to
13 the campaign reporting requirements specified in the Election Code.

14 Section 10. FUND CREATION-FUND USE.

15 (A) There is created in the City Treasury the "Open and Ethical Elections
16 Fund" solely for the purposes of:

17 (1) financing the election campaigns of Participating Candidates
18 for Covered Offices;

19 (2) paying administrative and enforcement costs of the Open and
20 Ethical Elections Code; and

21 (3) carrying out all other specified provisions of the Open and
22 Ethical Elections Code.

23 (B) The City Treasurer shall invest the Fund as other City funds are
24 invested and pursuant to Section 4-1-10 ROA 1994, and all income derived
25 from the Fund shall be credited directly to the Fund. Within 30 days after the
26 end of each fiscal year, the City Treasurer shall furnish the Mayor and Council
27 a report of all investment activity of the past year in connection with the
28 administration of the Fund. Remaining balances at the end of a fiscal year
29 shall remain in the Fund and shall not revert to the general Fund.

30 (C) Money received from the following sources shall be deposited
31 directly into the Fund:

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- 1 (1) Qualifying Contributions that have been submitted to the
- 2 Clerk;
- 3 (2) any recurring balance of unspent Fund money distributed to a
- 4 Participating Candidate who does not remain a Participating Candidate
- 5 through the municipal election period for which the money was distributed;
- 6 (3) money that remains unspent or unencumbered by a
- 7 Participating Candidate following the date of the regular municipal election;
- 8 (4) Seed Money that exceeds 10% of the applicable spending
- 9 limit; and
- 10 (5) additional money appropriated by the Council based on
- 11 recommendations received by the Clerk and the City Attorney.

12 (D) One-tenth of 1% of the approved General Fund (Fund 110)

13 appropriation shall be reserved in the Fund to fund Participating Candidates

14 for the 2007 regular municipal election and subsequent regular municipal

15 elections as provided in the Open and Ethical Elections Code.

16 (E) The Fund shall also be funded by voluntary contributions from

17 members of the public. Money in the Fund is appropriated to the Clerk to carry

18 out the purposes of the Open and Ethical Elections Code.

19 Section 11. DETERMINATION OF FUND AMOUNT.

20 (A) Once the Open and Ethical Elections Code is enacted, the Clerk

21 shall prepare and provide to the Mayor and Council an annual report

22 documenting, evaluating and making recommendations relating to the

23 administration, implementation and enforcement of the Open and Ethical

24 Elections Code.

25 (B) In the report, the Clerk shall set out the revenues received to date,

26 the expected costs to the Fund for the next election cycle and the amount of

27 any annual appropriation from the Council that will be required to meet this

28 need.

29 Section 12. TIMING AND AMOUNT OF FUND DISTRIBUTION.

30 (A) Beginning with the election cycle that ends with the 2007 regular

31 municipal election, the Clerk shall distribute money from the Fund to

32 Participating Candidates. The Clerk shall distribute revenue as follows:

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1 (1) For Mayoral candidates on April 1 of the year that a regular
2 municipal election is held; and

3 (2) For Council candidates on June 1 of the year that a regular
4 municipal election is held.

5 (B) The Clerk shall distribute the \$1.00 per registered City voter to
6 Mayoral Participating Candidates and \$1.00 per registered City voter residing
7 in the district in which the Participating Candidate desires to represent.

8 (C) The amount of revenue to be distributed to a Participating Candidate
9 shall be reduced by an amount equal to the aggregate amount of Seed Money
10 contributions received by the Participating Candidate during the Exploratory
11 and Qualifying Periods and by Qualifying Contributions received by the
12 Participating Candidate during the applicable Qualifying Period.

13 (D) A Participating Candidate may withdraw as a Participating Candidate
14 by filing a written statement of withdrawal with the Clerk.

15 (E) If the withdrawn Participating Candidate continues to participate in
16 the election as a NonParticipating Candidate then:

17 (1) at the time the statement of withdrawal is filed, the candidate
18 shall deliver to the Clerk an amount of money equal to all monies distributed
19 to the candidate from the Fund after the candidate was certified as a
20 Participating Candidate plus interest of the total amount of monies received at
21 a rate of 12% per annum; and

22 (2) the candidate shall still be required to abide by the spending
23 limits set forth in the Open and Ethical Elections Code.

24 (F) If a Participating Candidate is not certified as a candidate, in
25 accordance with applicable state and other City law, then the candidate shall
26 deliver to the Clerk an amount of money equal to all monies distributed to the
27 candidate from the Fund after the candidate was certified as a Participating
28 Candidate plus interest of the total amount of monies received at a rate of 12%
29 per annum.

30 (G) If a Participating Candidate entirely withdraws from a race for a
31 Covered Office then he shall immediately return any amount to the Fund that

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1 is unspent or unencumbered at the time he ceases to be a Participating
2 Candidate before a regular municipal election.

3 Section 13. INDEPENDENT EXPENDITURE DISCLOSURE REQUIREMENTS.
4 A Person making an Independent Expenditure in an amount of \$100 or more or
5 in an aggregate amount of \$100 or more shall comply with Article XIII, Section
6 4 of the City Charter.

7 Section 14. ADJUSTMENTS TO FUND DISTRIBUTION.

8 (A) Once the certification of participation for Participating Candidates
9 for a regular municipal election has been completed, the Clerk shall calculate
10 the total amount of money to be distributed in the election cycle, based on the
11 number of Participating Candidates and the allocations specified in Section 12
12 of the Open and Ethical Elections Code and shall then distribute the Fund
13 revenue within two business days.

14 (B) If the allocation specified in Subsection A of this section is greater
15 than the total amount available for distribution, then the amounts to be
16 distributed to individual Participating Candidates shall each be reduced by the
17 same percentage as the reduction by which the total amount needed has been
18 reduced relative to the total amount available.

19 Section 15. RUN-OFF ELECTIONS.

20 (A) On the Friday after a municipal election when the election results are
21 certified, the Clerk shall issue Fund revenue to each Participating Candidate
22 involved in a runoff election in the following amounts:

23 (1) for Mayoral candidates \$0.33 per registered City voter; and

24 (2) for Council candidates \$0.33 per registered City voter residing in a
25 Council district.

26 Section 16. MATCHING FUNDS-OPPOSING FUNDS.

27 During the course of a regular municipal election or a run-off election, when a
28 Participating Candidate's Opposing Funds in aggregate amount are greater
29 than the funds distributed plus any Seed Money spent to a Participating
30 Candidate in the same race, then the Participating Candidate is entitled to
31 receive matching funds in the amount that the Opposing Funds exceed the
32 distribution from the Fund plus any Seed Money spent. Total Opposing Funds

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1 to a Participating Candidate in an election are limited to twice the amount
2 originally distributed to that Candidate pursuant to Section 12 of the Open and
3 Ethical Elections Code. If the allocation of Opposing Funds is greater than the
4 total amount available for distribution, then the amounts distributed to a
5 Participating Candidate shall be reduced by the same percentage as the
6 reduction by which the total amount needed has been reduced relative to the
7 total amount available.

8 **Section 17. COMMUNICATION OF PARTICIPATION STATUS TO VOTERS.**

9 Once a candidate is certified as a Participating Candidate, the Clerk shall
10 publish a statement on the Internet that the candidate is a Participating
11 Candidate who has agreed to the terms and conditions of the Open and
12 Ethical Elections Code.

13 **Section 18. ADJUSTMENTS FOR INFLATION AND POPULATION GROWTH.**

14 The City Attorney and the Clerk shall review the dollar amounts specified in
15 the Open and Ethical Elections Code periodically. The City Attorney and Clerk
16 shall recommend any necessary adjustments to reflect inflation or population
17 change to the Council and Mayor to consider amendments to the Code.

18 **Section 19. ADMINISTRATION-CLERK--DUTIES.**

19 (A) The Clerk with the assistance of the City Attorney shall adopt
20 rules to insure effective administration of the Open and Ethical Elections
21 Code.

22 (B) The rules shall include procedures for:

- 23 (1) qualifications, certification and disbursement of revenues and
24 return of unspent Fund revenues;
25 (2) obtaining Qualifying Contributions;
26 (3) certification of a candidate's participation;
27 (4) collection of revenues; and
28 (5) return of Fund disbursements and other money to the Fund.

29 (C) The Clerk shall provide the public with educational materials
30 relating to the provisions of the Open and Ethical Elections Code.

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1 Section 20. APPEALS. The procedure for challenging a certification
2 of participation decision or a determination whether a Participating Candidate
3 is eligible for matching Funds by the Clerk is as follows:

4 (A) A Person aggrieved by a certification of participation decision or a
5 decision regarding the distribution of matching Funds may appeal to the Clerk
6 within three days of the decision. The appeal shall be in writing and shall set
7 forth the reasons for appeal;

8 (B) within five days after an appeal is properly made, and after due
9 notice is given to the parties in dispute, the City Hearing Officer shall hold a
10 hearing whereby:

11 (1) the appellant has the burden of providing evidence to
12 demonstrate that the Clerk's decision was improper; and

13 (2) the City Hearing Officer shall rule on the appeal within three
14 days after the completion of the hearing;

15 (C) the parties in dispute may appeal the decision of the City Hearing
16 Officer by commencing an action in district court pursuant to New Mexico
17 Rule of Civil Procedure 1-074; and

18 (D) Participating Candidates whose certification of participation is
19 revoked on appeal may be required to return to the Clerk up to all money
20 distributed from the Fund. If the City Hearing Officer or court finds that an
21 appeal was made frivolously or to result in delay or hardship, the City Hearing
22 Officer or court may sanction the moving party by requiring the party to pay
23 the attorney's fees and court costs of the administrative hearing, the court
24 hearing and the opposing parties.

25 (E) For the purposes of this section, "parties in dispute" includes the
26 City.

27 Section 21. PENALTIES-ENFORCEMENT.

28 (A) Each and every violation of the Open and Ethical Elections Code is a
29 criminal violation subject to the provisions of Section 1-1-99 ROA 1994.

30 (B) The City Attorney shall enforce the Open and Ethical Elections
31 Code."

1 Section 22. SEVERABILITY CLAUSE. If any section, paragraph, word or
2 phrase of this resolution is for any reason held to be invalid or unenforceable
3 by any court of competent jurisdiction, such decision shall not affect the
4 validity of the remaining provisions of this resolution. The Council hereby
5 declares that it would have passed this resolution and each section,
6 paragraph, sentence, clause, word or phrase thereof irrespective of any
7 provision being declared unconstitutional or otherwise invalid.

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