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CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2015-22

AN ORDINANCE

AMENDING THE PUBLIC CAMPAIGN FINANCE CODE, SECTION 9-3 SFCC 1987 TO MODIFY THE DEFINITIONS OF “CONTRIBUTION” AND “EXPENDITURE” AND CREATE A DEFINITION FOR “COORDINATED EXPENDITURE”; TO MODIFY PROVISIONS RELATED TO “REPORTS OF EXPENDITURES”; TO EXPAND REPORTING REQUIREMENTS; AND TO MAKE SUCH OTHER CHANGES AS ARE NECESSARY TO CLARIFY THE PROVISIONS OF THE PUBLIC CAMPAIGN FINANCE CODE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE.

Section 1. Subsection 9-3.3 SFCC 1987 (being Ord. #2009-44, §4, as amended)

is amended to read:

9-3.3 Definitions.

As used in this section, the following terms have the following meanings:

A. *Campaign depository* means a bank, mutual savings bank, savings and loan association or credit union doing business in this state under which a campaign account or accounts are maintained.

B. *Campaign materials* means any published communication, electronic or otherwise, disseminated to more than one hundred (100) persons that either supports the election or defeat of any identifiable candidate or candidates or supports the approval or defeat of a ballot proposal, other than communications to, or editorials, reports, or commentary by news media.

1 C. *Candidate* means any individual who seeks election to a Santa Fe municipal
2 office. An individual shall be a candidate when they:

- 3 (1) Announce publicly;
- 4 (2) File for office;
- 5 (3) When contributions are accepted or expenditures made; or when
- 6 (4) Any activity is held to promote an election campaign of an individual if
7 that activity is endorsed or supported by that person or if the benefits of such activity are
8 later accepted by such person.

9 D. *Contested race* means a race in which there are at least two (2) candidates for the
10 office sought.

11 E. *Contribution* means a loan, loan guarantee, gift, advance, pledge, contract,
12 agreement or promise of money or anything of value or other obligation, whether or not legally
13 enforceable, made directly or indirectly, to a candidate or political committee, or to a person
14 obligated to file a report under subsection 9-2.6 SFCC 1987, for the purpose of supporting or
15 opposing the election of a candidate or the approval or defeat of a ballot proposition.

- 16 (1) The term "contribution" includes:
 - 17 (a) The transfer of funds or anything of value between political
18 committees;
 - 19 (b) The transfer of anything of value for less than full consideration;
 - 20 (c) Interest, dividends or other income derived from the investment
21 of campaign funds;
 - 22 (d) The payment for the services of an individual serving on behalf
23 of a candidate or political committee, which payments are made by a third party;
 - 24 (e) The purchase of tickets for fundraising events such as dinners,
25 rallies, raffles, etc. and the proceeds of collections at fundraising events; and

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(f) A coordinated expenditure.

(2) The term "contribution" does not include a volunteer's personal services provided without compensation or the travel or personal expenses of such a campaign worker.

F. *Coordinated expenditure* means an expenditure that is made:

(1) by an individual or entity other than a candidate or the candidate's political committee; and

(2) in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, his/her representatives or agents or the candidate's political committee, including but not limited to, the following examples in subsection 9-3.3(F)(2)(a)-(d):

(a) there has been substantial discussion between the individual or entity and the candidate, candidate's political committee or his/her representatives or agents. Substantial discussion includes, but is not limited to, an exchange of campaign strategies, polling information, voter lists or any other similar information that would facilitate the election or defeat of a candidate;

(b) an entity making an expenditure is directly or indirectly formed or established by or at the request or suggestion of, or with the encouragement of the candidate, candidate's political committee or his/her representatives or agents;

(c) the candidate, candidate's political committee or his/her representatives or agents has solicited funds or engaged in other fundraising activities on behalf of the person or entity making the expenditure during the twelve-month (12) period preceding the date of the expenditure. Fundraising activities, include but are not limited to, exchanging names of potential donors or

1 other lists to be used in engaging in fundraising activity, regardless of whether or
2 not the individual or entity pays fair market value for the names or lists provided;
3 or being a featured guest or speaker at a fundraising event for the benefit of the
4 entity making the expenditures;

5 (d) if the individual or entity making the expenditure has employed,
6 has in a leadership position, or has accepted a donation of the campaign related
7 professional services of any person, who, during the twelve-month (12) period
8 preceding the date of the expenditure, has been an employee of, has advised, or
9 provided or is providing services to the candidate or candidate's political
10 committee. These services include, but are not limited to, any services in support
11 of the candidate's or candidate's political committee's campaign activities, such
12 as advertising, message, strategy or policy services, polling, allocation of
13 resources, fundraising or campaign operations.

14 (e) an expenditure is not a coordinated expenditure solely because:

15 (i) the individual or entity and a candidate or candidate's
16 political committee use the same vendor to provide polling services,
17 printing or distribution services or physical space, provided that the
18 vendor has in place prior to the expenditure a firewall to ensure that there
19 is no exchange of information between the individual or entity and the
20 candidate or campaign committee. Evidence of an adequate firewall is a
21 vendor's formal written policy or a contractual agreement with the
22 vendor prohibiting the exchange of information between the individual
23 or entity and the candidate or candidate's political committee, which
24 policy or contract is distributed to all relevant employees, consultants
25 and clients affected by the policy or contract. The firewall shall be

1 designed and implemented to prohibit the flow of information between
2 employees and consultants providing services to the individual and entity
3 and to those currently or previously providing services to the candidate
4 or candidate's political committee. Coordination will be presumed in the
5 absence of such a firewall; or

6 (ii) the individual or entity making the expenditure
7 interviews a candidate; has endorsed a candidate; has obtained from the
8 candidate a biography of the candidate or a position paper, press release,
9 or similar material about the candidate; has invited the candidate to make
10 an appearance before the person's members, employees or shareholders;
11 or has shared space with a candidate or candidate's political committee
12 for one or more single events of limited duration.

13 G. *Election* means any regular or special Santa Fe municipal election.

14 H. *Expenditure* means a payment or transfer of anything of value in exchange for
15 goods, services, property, facilities or anything of value for the purpose of supporting or opposing
16 the election of a candidate or the approval or defeat of a ballot proposition. This includes
17 contributions, subscriptions, distributions, loans, advances, deposits, or gifts of money or
18 anything of value, and includes a contract, a promise or agreement, whether or not legally
19 enforceable, to make an expenditure. The term "expenditure" also means the transfer of funds or
20 anything of value between political committees.

21 I. *Fund* means the public campaign finance fund created by subsection 9-3.4 SFCC
22 1987.

23 J. *Non-participating candidate* means a candidate who is not a participating
24 candidate.

25 K. *Participating candidate* means a candidate who has qualified and has been

1 certified pursuant to subsection 9-3.9 SFCC 1987 as eligible to receive payments from the fund.

2 L. *Qualified elector* means a person who is registered to vote in the City of Santa
3 Fe.

4 M. *Qualifying contribution* means a contribution of no more or no less than five
5 dollars (\$5.00) that is received from a qualified elector during the qualifying period by a
6 candidate seeking to become a participating candidate. A candidate for councilor shall only
7 receive qualifying contributions from qualified electors registered to vote in the council district in
8 which the candidate is running.

9 N. *Qualifying period* means the period during which a candidate seeking to become
10 a participating candidate is permitted to collect qualifying contributions and to apply for
11 certification as a participating candidate. It begins one hundred eighty-three (183) days before the
12 election and ends one hundred six (106) days before the election.

13 O. *Race* means the electoral process in which one (1) or more candidates run and
14 one (1) candidate is elected to the office of mayor, municipal judge or city councilor for a
15 particular district.

16 P. *Seed money contribution* means a contribution of no more than one hundred
17 dollars (\$100.) made and accepted in compliance with the provisions of subsection 9-3.6 SFCC
18 1987 and used exclusively for the purposes specified in that section.

19 Q. *Uncontested race* means a race in which there is only one (1) candidate for the
20 office sought.

21 **Section 2. Subsection 9-3.11 SFCC 1987 (being Ord. #2009-44, §12, as**
22 **amended) is amended to read:**

23 **9-3.11 Use of Payments from the Fund; the Fund as Exclusive Source.**

24 A. All payments received by a participating candidate from the fund shall be
25 deposited in a non-interest-bearing account in the candidate's campaign depository and shall be

1 used exclusively to pay expenses reasonably incurred in furtherance of the candidate's current
2 campaign.

3 B. Payments received from the fund shall not be used for any other purpose,
4 including:

5 (1) The candidate's personal living expenses or compensation to the
6 candidate or the candidate's family;

7 (2) A contribution to another campaign of the candidate or a payment to
8 retire debt from another such campaign;

9 (3) A contribution to the campaign of another candidate or to a political
10 party or political committee or to a campaign supporting or opposing a ballot proposition;

11 (4) An expenditure supporting the election of another candidate or the
12 approval or defeat of a ballot proposition or the defeat of any candidate other than an
13 opponent of the participating candidate;

14 (5) Payment of legal expenses or any fine levied by a court or the ethics and
15 campaign review board.

16 (6) Any gift or transfer for which compensating value is not received.

17 C. All payments from the fund received by a participating candidate which have not
18 been spent or obligated for the purposes specified in paragraph A of this subsection and any
19 electronic, telecommunication or computer tangible assets purchased with such payments
20 remaining in the possession of the campaign as of the date of the election shall be returned by the
21 candidate and shall be conveyed to the municipal clerk within forty-five (45) days after that date.
22 Returned payments shall be deposited in the fund. Tangible assets shall be conveyed to the city
23 for its use or disposition in accordance with the city's procurement code. Proceeds from such
24 disposition shall be deposited in the fund.

25 D. In accordance with the agreement entered into pursuant to subparagraph B(4) of

1 subsection 9-3.8 SFCC 1987, a candidate who has been certified as a participating candidate shall
2 not thereafter accept any contribution to the candidate's campaign other than payments received
3 from the fund pursuant to subsections 9-3.10 SFCC 1987, and shall not make any expenditure in
4 support of the candidate's campaign from any source other than payments so received and
5 previously deposited in the candidate's campaign depository.

6 **Section 3. Subsection 9-3.14 SFCC 1987 (being Ord. #2009-44, §15, as**
7 **amended) is amended to read:**

8 **9-3.14 Reports of Expenditures; Exemption from Certain Reporting Requirements.**

9 A. A participating candidate shall file with the municipal clerk reports under oath of
10 expenditures made from the payments received from the fund, showing the date and amount of
11 each expenditure, the name and address of the person or organization to whom it was made, the
12 purpose of the expenditure, the aggregate amount of expenditures made to each person or
13 organization and the aggregate amount of all expenditures made by the candidate or by his or her
14 campaign. A copy of each receipt, printed on 8 ½" by 11" paper, shall be filed with the
15 municipal clerk with the reports provided for in this subsection.

16 B. The reports required by paragraph A of this subsection shall be filed on each of
17 the days prescribed for the filing of campaign finance statements by subsection 9-2.10 SFCC
18 1987.

19 C. Except as provided in paragraph A and B of this subsection and paragraph C of
20 subsection 9-3.8 SFCC 1987, participating candidates are exempt from the requirement to file
21 campaign finance statements imposed by subsections 9-2.10 SFCC 1987 through 9-2.12 SFCC
22 1987 and from the requirements to file campaign records with the municipal clerk imposed by
23 paragraph D of subsection 9-2.9 SFCC 1987; provided, however, that campaign records shall be
24 maintained in the manner required by the applicable provisions of the Campaign Code (Section 9-
25 2 SFCC 1987) and shall be made available upon request to the municipal clerk and the ethics and

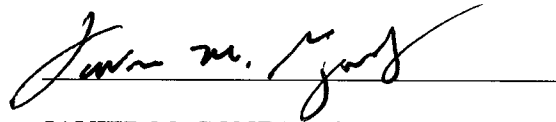
1 campaign review board.

2 D. A seed money and qualifying contribution report and an expenditure report of a
3 candidate for municipal judge are not required to be signed or acknowledged by the candidate.

4 PASSED, APPROVED and ADOPTED this 29th day of July, 2015.

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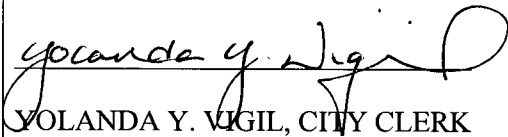
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JAVIER M. GONZALES, MAYOR

8 ATTEST:

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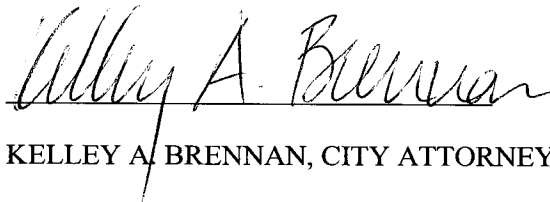
YOLANDA Y. VIGIL, CITY CLERK

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APPROVED AS TO FORM:

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KELLEY A. BRENNAN, CITY ATTORNEY

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Legislation/Ordinances 2015/Campaign Code 9-3.