1	CITY OF SANTA FE, NEW MEXICO
2	BILL NO. 2018-19
3	INTRODUCED BY:
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5	Councilor Carol Romero-Wirth
6	Councilor Peter N. Ives
7	Councilor Renee D. Villarreal
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10	AN ORDINANCE
11	AMENDING SECTION 9-3 SFCC 1987, THE PUBLIC CAMPAIGN FINANCE CODE,
12	TO INCLUDE A DEFINITION FOR QUALIFIED SMALL CONTRIBUTION;
13	ESTABLISHING A NEW SECTION REGARDING QUALIFIED SMALL
14	CONTRIBUTIONS; ESTABLISHING A NEW SECTION MANDATING MATCHING
15	PAYMENTS BY THE CITY; ESTABLISHING A NEW SECTION REGARDING
16	REPORTING OF QUALIFIED SMALL CONTRIBUTIONS AND MATCHING
17	PAYMENTS; AND REPLACING ALL REFERENCES IN CHAPTER 9 OF MUNICIPAL
18	CLERK TO CITY CLERK.
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20	BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:
21	Section 1. Section 9-3.3 SFCC 1987 (being Ord. No. 2009-44, § 4, as amended) is
22	amended to read:
23	9-3.3 Definitions.
24	As used in this section, the following terms have the following meanings:
25	A. Campaign depository means a bank, mutual savings bank, savings and loan
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1	association or credit union doing business in this state under which a campaign account or
2	accounts are maintained.
3	B. Campaign materials means any published communication, electronic or otherwise.
4	disseminated to more than one hundred (100) persons that either supports the election or defeat of
5	any identifiable candidate or candidates or supports the approval or defeat of a ballot proposal
6	other than communications to, or editorials, reports, or commentary by news media.
7	C. Candidate means any individual who seeks election to a Santa Fe municipal office
8	An individual shall be a candidate when they:
9	(1) Announce publicly;
10	(2) File for office;
11	(3) When contributions are accepted or expenditures made; or when
12	(4) Any activity is held to promote an election campaign of an individual if
13	that activity is endorsed or supported by that person or if the benefits of such activity are
14	later accepted by such person.
15	D. Contested race means a race in which there are at least two (2) candidates for the
16	office sought.
17	E. Contribution means a loan, loan guarantee, gift, advance, pledge, contract,
18	agreement or promise of money or anything of value or other obligation, whether or not these
19	items are legally enforceable, made directly or indirectly, to a candidate or political committee, or
20	to a person obligated to file a report under subsection 9-2.6 SFCC 1987, for the purpose of
21	supporting the election or defeat of any identifiable candidate or the approval or defeat of a ballot
22	proposition.
23	(1) The term "contribution" includes:
24	(a) The transfer of funds or anything of value between political
25	committees;

1	(b) The transfer of anything of value for less than full consideration;
2	(c) Interest, dividends or other income derived from the investment
3	of campaign funds;
4	(d) The payment for the services of an individual serving on behalf
5	of a candidate or political committee, which payments are made by a third party;
6	and
7	(e) The purchase of tickets for fundraising events such as dinners,
8	rallies, raffles, etc. and the proceeds of collections at fundraising events.
9	(f) A coordinated expenditure.
10	(2) The term "contribution" does not include a volunteer's personal services
11	provided without compensation or the travel or personal expenses of such a campaign
12	worker.
13	F. Coordinated expenditure means an expenditure made:
14	(1) by an individual or entity other than a candidate or the candidate's
15	political committee; and
16	(2) in cooperation, consultation or concert with, or at the request or
17	suggestion of, a candidate, his/her representatives or agents or the candidate's political
18	committee, including but not limited to, the following examples in subsection 9-
19	3.3(F)(2)(a)-(d):
20	(a) there has been substantial discussion between the individual or
21	entity making the expenditure and the candidate, candidate's political committee,
22	or his/her representatives or agents. Substantial discussion includes, but is not
23	limited to, an exchange of campaign strategies, polling information, voter lists or
24	any other similar information that would facilitate the election or defeat of a
25	candidate.

- (b) an entity making the 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 other lists to be used in engaging in fundraising activity, regardless of whether or not the individual or entity pays fair market value for the names or lists provided; or being a featured guest or speaker at a fundraising event for the benefit of the entity making the expenditure.
- (d) if the individual or entity making the expenditure has employed, has in a leadership position, or has accepted a donation of the campaign related professional services of any person, who, during the twelve-month (12) period preceding the date of the expenditure, has been an employee of, has advised, or provided or is providing services to the candidate or candidate's political committee. These services include, but are not limited to, any services in support of the candidate's or candidate's political committee's campaign activities, such as advertising, message, strategy or policy services, polling, allocation of resources, fundraising or campaign operations.
 - (e) an expenditure is not a coordinated expenditure solely because:
 - (i) the individual or entity and a candidate or candidate's political committee use the same vendor to provide polling services,

printing or distribution services or physical space, provided that the vendor has in place prior to the expenditure a firewall to ensure that there is no exchange of information between the individual or entity and the candidate or campaign committee. Evidence of an adequate firewall is a vendor's formal written policy or a contractual agreement with the vendor prohibiting the exchange of information between the individual or entity and the candidate or candidate's political committee, which policy or contract is distributed to all relevant employees, consultants, and clients affected by the policy or contract. The firewall shall be designed and implemented to prohibit the flow of information between employees and consultants providing services to the individual and entity and to those currently or previously providing services to the candidate or candidate's political committee. Coordination will be presumed in the absence of such a firewall: or

- (ii) the individual or entity making the expenditure interviews a candidate; has endorsed a candidate; has obtained from the candidate a biography of the candidate or a position paper, press release, or similar material about the candidate; has invited the candidate to make an appearance before the person's members, employees or shareholders; or has shared space with a candidate or candidate's political committee for one or more single events of limited duration.
- G. Election means any regular or special Santa Fe municipal election.
- H. Expenditure means a payment or transfer of anything of value in exchange for goods, services, property, facilities or anything of value for the purpose of supporting or opposing the election or defeat of any identifiable candidate or the approval or defeat of a ballot

proposition. This includes contributions, subscriptions, distributions, loans, advances, deposits, or 1 2 gifts of money or anything of value, and includes a contract, a promise or agreement, whether or 3 not legally enforceable, to make an expenditure. The term "expenditure" also means the transfer 4 of funds or anything of value between political committees. 5 Fund means the public campaign finance fund created by subsection 9-3.4 SFCC I. 6 1987. 7 J. Non-participating candidate means a candidate who is not a participating 8 candidate. 9 K. Participating candidate means a candidate who has qualified and has been 10 certified pursuant to subsection 9-3.9 SFCC 1987 as eligible to receive payments from the fund. 11 L. Qualified elector means a person who is registered to vote in the city of Santa Fe. 12 Qualified small contribution means a contribution of no more than one hundred 13 dollars (\$100.00) made and accepted in compliance with the provisions of subsection 9-3.12

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SFCC 1987.

- [M-] N. Qualifying contribution means a contribution of no more [ef] and no less than five dollars (\$5.00) that is received from a qualified elector during the qualifying period by a candidate seeking to become a participating candidate. A candidate for councilor shall only receive qualifying contributions from qualified electors registered to vote in the council district in which the candidate is running.
- [N-] O. Qualifying period means the period during which a candidate seeking to become a participating candidate is permitted to collect qualifying contributions and to apply for certification as a participating candidate. It begins one hundred eighty-three (183) days before the election and ends one hundred six (106) days before the election.
- $[\Theta \cdot]$ \underline{P} . Race means the electoral process in which one (1) or more candidates run and one (1) candidate is elected to the office of mayor, municipal judge or city councilor for a

1	particular district.
2	[P.] Q. Seed money contribution means a contribution of no more than one hundred
3	dollars (\$100.00) made and accepted in compliance with the provisions of subsection 9-3.6 SFCC
4	1987 and used exclusively for the purposes specified in that section.
5	[Q-] R. Uncontested race means a race in which there is only one (1) candidate for
6	the office sought.
7	Section 2. Section 9-3.5 SFCC 1987 (being Ord. No. 2009-44, § 6, as amended) is
8	amended to read:
9	9-3.5 Eligibility as a Participating Candidate.
10	[Beginning with the election of 2012, a] Any candidate for municipal office may qualify
11	as a participating candidate eligible to receive payments from the fund pursuant to subsections 9-
12	3.10 <u>and 9-3.13</u> SFCC 1987 if the candidate:
13	A. Meets the requisites to be listed on the ballot as a certified candidate for municipal
14	office pursuant to the provisions of Section 3-8-27 (B) through (E) NMSA 1978 and Article IV
15	Section 4.03 of the Santa Fe Municipal Charter;
16	B. Has collected the requisite number of qualifying contributions, as follows:
17	(1) For a candidate running for the office of mayor, six hundred (600)
18	qualifying contributions from separate qualified electors;
19	(2) For a candidate running for the office of city councilor, one hundred fifty
20	(150) qualifying contributions from separate qualified electors registered to vote in the
21	council district in which the candidate is running;
22	(3) For a candidate running for the office of municipal judge, one hundred
23	fifty (150) qualifying contributions from separate qualified electors.
24	C. Submits an application for certification pursuant to subsection 9-3.8 SFCC 1987
25	setting forth the agreement and the averments and accompanied by the forms, reports and

payments that are required by that section.

Section 3. Section 9-3.6 SFCC 1987 (being Ord. No. 2009-44, § 7, as amended) is amended to read:

9-3.6 Seed Money Contributions.

- A. A candidate seeking to become a participating candidate may solicit and accept seed money contributions to defray expenses incurred in obtaining qualifying contributions and in seeking certification as a participating candidate.
- B. The aggregate amount of seed money contributions from any one contributor to any one candidate shall not exceed one hundred dollars (\$100.00), and the aggregate amount of seed money contributions accepted by a candidate shall not exceed ten percent (10%) of the amount payable under subsection 9-3.10 SFCC 1987 to a candidate in a contested election for the office sought.
- C. Each seed money contribution shall be accompanied by a form signed by the contributor, which shall include the contributor's name, home address, telephone number, occupation and name of employer. The ethics and campaign review board may, by regulation, permit the use of an electronic signature on such forms.
- D. No person shall knowingly make and no candidate shall knowingly receive a seed money contribution which is not from the person named on the form or for which the person named on the form has been or will be reimbursed or compensated by another person.
- [Đ-] <u>E.</u> All seed money contributions received by a candidate shall be deposited in a non-interest-bearing account in a campaign depository to be established by the candidate before soliciting or accepting any such contributions. All expenditures of seed money shall be made from the campaign depository.
- [E.] F. Seed money contributions shall be used only for the purposes specified in paragraph A. of this subsection, and all seed money contributions that have not been spent or used

for such purposes by the time the candidate applies for certification as a participating candidate or by the end of the qualifying period, whichever is sooner, shall then be paid over to the municipal clerk for deposit in the fund; provided, however, that if payment of all of the candidate's unspent seed money to the [municipal] city clerk would cause the bank account in the campaign depository to be closed, an amount of seed money necessary to keep the account open may be temporarily retained in the account and paid over to the [municipal] city clerk at a later time in compliance with paragraph C of subsection 9-3.10 SFCC 1987.

Section 4. Section 9-3.7 SFCC 1987 (being Ord. No. 2009-44, § 8, as amended) is amended to read:

9-3.7 Qualifying Contributions.

- A. Each qualifying contribution shall be accompanied by a form signed by the contributor, which shall include the contributor's name, registered address and telephone number.

 The ethics and campaign review board may, by regulation, permit the use of an electronic signature on such forms.
- B. No candidate or person acting on a candidate's behalf shall pay to any other person any form of compensation for soliciting or obtaining a qualifying contribution.
- C. No person shall knowingly make and no candidate shall knowingly receive a qualifying contribution which is not from the person named on the form or for which the person named on the form has been or will be reimbursed or compensated by another person.
- D. All qualifying contributions received by a candidate shall be deposited in a non-interest-bearing account in a campaign depository to be established by the candidate before soliciting or accepting any such contributions, and shall be paid over to the [municipal] city clerk for deposit in the fund when the candidate applies for certification as a participating candidate or when the qualifying period ends, whichever is sooner.

Section 5. Section 9-3.8 SFCC 1987 (being Ord. No. 2009-44, § 9, as amended) is

amended to read:

9-3.8 Application for Certification as a Participating Candidate.

- A. A candidate who wishes to be certified as a participating candidate shall, before the end of the qualifying period, file an application for such certification with the [municipal] city clerk on a form prescribed by the [municipal] city clerk.
- B. The application shall identify the candidate and the office that the candidate is seeking, and shall set forth:
 - (1) The candidate's averment under oath that the candidate satisfies the requisites for qualification and certification as a participating candidate prescribed by subsection 9-3.5 SFCC 1987;
 - (2) The candidate's averment under oath that the candidate has accepted no contributions to the candidate's current campaign other than qualifying contributions and seed money contributions solicited and accepted pursuant to subsections 9-3.6 SFCC 1987 and 9-3.7 SFCC 1987:
 - (3) The candidate's averment under oath that the candidate has made no expenditures for his or her current campaign from any source other than seed money contributions; and
 - (4) The candidate's agreement that his or her current campaign will not solicit, direct or accept any further contributions or make any further expenditures from any sources other than payments received from the fund pursuant to subsection 9-3.10 and 9-3.13 SFCC 1987 and qualified small contributions received pursuant to subsection 9-3.12 SFCC 1987.
 - C. The application shall be accompanied by:
 - (1) Reports listing all seed money contributions and qualifying contributions received by the candidate and all expenditures of seed money

contributions made by the candidate, and showing the aggregate amounts of all such contributions and expenditures and the aggregate amounts of all contributions received from each contributor;

- (2) Copies of forms signed by contributors for all seed money contributions and qualifying contributions received by the candidate; and
- (3) A check or checks issued to the city of Santa Fe from the candidate's campaign depository for the amount of all qualifying contributions received by the candidate and all seed money contributions received by the candidate except:
 - (a) Amounts previously spent for the purposes specified in paragraph A of subsection 9-3.6 SFCC 1987; and
 - (b) The amount, if any, that has been temporarily retained by the candidate for the purpose of keeping open the bank account in the campaign depository pursuant to paragraph E of subsection 9-3.6 SFCC 1987.

Section 6. Section 9-3.9 SFCC 1987 (being Ord. No. 2009-44, § 10, as amended) is amended to read:

9-3.9 Certification as a Participating Candidate.

- A. On or before the eighty-ninth (89th) day before the election the [municipal] city clerk shall make a determination whether the candidate's application complies with the requirements of subsection 9-3.8 SFCC 1987 and whether the candidate satisfies the requisites for certification as a participating candidate prescribed by subsection 9-3.5 SFCC 1987, and shall thereupon issue a decision, in accordance with the determination so made, granting or refusing such certification to the candidate.
- B. The [municipal] city clerk may revoke a candidate's certification as a participating candidate for any violation by the candidate of the requirements of this section, and may require that any candidate whose certification has been revoked to pay over to the [municipal] city clerk

1	for deposit in the fund any amounts previously paid to the candidate pursuant to subsections 9-
2	3.10 and 9-3.13 SFCC 1987.
3	Section 7. Section 9-3.11 SFCC 1987 (being Ord. No. 2009-44, § 12, as amended) is
4	amended to read:
5	9-3.11 Use of Payments from the Fund [; the Fund as Exclusive Source].
6	A. All payments received by a participating candidate from the fund shall be
7	deposited in a separate non-interest-bearing account in the candidate's campaign depository and
8	shall be used exclusively to pay expenses reasonably incurred in furtherance of the candidate's
9	current campaign.
10	B. Payments received from the fund shall not be used for any other purpose,
11	including:
12	(1) The candidate's personal living expenses or compensation to the
13	candidate or the candidate's family;
14	(2) A contribution to another campaign of the candidate or a payment to
15	retire debt from another such campaign;
16	(3) A contribution to the campaign of another candidate or to a political
17	party or political committee or to a campaign supporting or opposing a ballot
18	proposition;
19	(4) An expenditure supporting the election of another candidate or the
20	passage or defeat of a ballot proposition or the defeat of any candidate other than an
21	opponent of the participating candidate;
22	(5) Payment of legal expenses or any fine levied by a court or the ethics
23	and campaign review board.
24	(6) Any gift or transfer for which compensating value is not received.
25	C. All payments from the fund received by a participating candidate which have not

been spent or obligated for the purposes specified in paragraph A of this subsection and any electronic, telecommunication or computer tangible assets purchased with such payments remaining in the possession of the campaign as of the date of the election shall be returned by the candidate and shall be conveyed to the [municipal] city clerk within forty-five (45) days after that date. Returned payments shall be deposited in the fund. Tangible assets shall be conveyed to the city for its use or disposition in accordance with the city's procurement code. Proceeds from such disposition shall be deposited in the fund.

D. In accordance with the agreement entered into pursuant to subparagraph B(4) of subsection 9-3.8 SFCC 1987, a candidate who has been certified as a participating candidate shall not thereafter accept any contribution to the candidate's campaign other than payments received from the fund pursuant to subsections 9-3.10 and 9-3.13 SFCC 1987 and qualified small contributions received pursuant to subsection 9-3.12 SFCC 1987, and shall not make any expenditure in support of the candidate's campaign from any source other than payments and contributions so received and previously deposited in the candidate's campaign depository.

Section 8. A new Subsection 9-3.12 SFCC 1987 is ordained to read:

9-3.12 [Reserved.] [NEW MATERIAL] Qualified Small Contributions.

- A. A participating candidate may solicit and accept qualified small contributions beginning on the date on which the candidate is certified as a participating candidate pursuant to subsection 9-3.9(A) SFCC 1987.
- B. The aggregate amount of qualified small contributions from any one contributor to any one candidate shall not exceed one hundred dollars (\$100.00).
- C. Each qualified small contribution shall be accompanied by a form signed by the contributor, which shall include the contributor's name, home address, telephone number, occupation and name of employer. The ethics and campaign review board may, by regulation, permit the use of an electronic signature on such forms.

	<u>D.</u>	No per	son s	hall k	nowing	gly m	<u>ake</u>	and no	candid	ate	shal	l kno	win	gly	receiv	<u>e a</u>
qualifie	d small	contribu	ition	which	is not	from	the	person	named	on	the	form	or f	or v	which	the
person r	named o	n the for	m has	s been	or wil	l be re	imb	ursed o	r compe	ensa	ted b	y and	ther	r pei	rson.	

E. Before soliciting or accepting qualified small contributions, a candidate shall appoint a treasurer and establish a campaign depository in the manner required by subsection 9-2.8 SFCC 1987. All qualified small contributions received by a candidate shall be recorded by the candidate's campaign treasurer, deposited in a separate non-interest-bearing account in the campaign depository and used in the candidate's campaign or disposed of following the election in the manner required by subsection 9-2.9 SFCC 1987. All such contributions shall be timely reported in a campaign finance statement prepared in the manner and filed on the dates required by subsections 9-2.10 through 9-2.12 SFCC 1987. Campaign finance statements reporting the receipt of qualified small contributions shall be accompanied by copies of the forms signed by each contributor pursuant to paragraph C of this subsection.

Section 9. A new Subsection 9-3.13 SFCC 1987 is ordained to read:

9-3.13 [Reserved.] [NEW MATERIAL] Additional Reports of Qualified Small Contributions; Additional Matching Payments from the Fund.

A. In addition to the dates specified for the filing of campaign finance statements by subsection 9-2.10 SFCC 1987, a campaign finance statement reporting the receipt of qualified small contributions may also be filed by participating candidates on the fifty-seventh (57th) day preceding the election.

B. Within two (2) business days after the filing of a campaign finance statement by a participating candidate reporting the receipt of qualified small contributions and accompanied by copies of the forms signed by the contributors as required by paragraph C of subsection 9-3.12 SFCC 1987, the city clerk shall disburse to the candidate an additional payment from the fund equal to two (2) times the total amount of the qualified small contributions reported in the

campaign finance statement; provided, however, that no such additional matching payments shall
be made for contributions reported in a campaign finance statement filed after the twenty-fifth
(25th) day preceding the election.
C. Additional payments made to a participating candidate pursuant to paragraph B

of this subsection shall be deposited in the separate account in the candidate's campaign depository that was established by the candidate for the deposit of payments received from the fund pursuant to paragraph A of subsection 9-3.11.

D. The aggregate amount of additional payments made to a participating candidate pursuant to paragraph B of this subsection shall not exceed two hundred percent (200%) of the amount initially paid to the candidate pursuant to subsection 9-3.10 SFCC 1987.

E. If the amounts required to be paid to candidates under paragraph B of this subsection exceed the total amount available in the fund, each payment shall be reduced in proportion to the amount of such excess.

Section 10. Section 9-3.14 SFCC 1987 (being Ord. No. 2009-44, § 15, as amended) is amended to read:

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

- A. A participating candidate shall file with the [municipal] city clerk reports under oath of expenditures made from the payments received from the fund, indicating that the expenditures were made from that source and showing the date and amount of each such expenditure, the name and address of the person or organization to whom it was made, the purpose of the expenditure, the aggregate amount of such expenditures made to each person or organization and the aggregate amount of all such expenditures made by the candidate or by his or her campaign.
- B. The reports required by paragraph A of this subsection shall be filed on each of the days prescribed for the filing of campaign finance statements by subsection 9-2.10 SFCC

1987.

C. A campaign finance statement filed by a participating candidate to report qualified small contributions pursuant to paragraph E of subsection 9-3.12 SFCC 1987 or paragraph A of subsection 9-3.13 SFCC 1987 shall also include a report of all expenditures made during the period covered by the statement from the separate account established by the candidate for the deposit of such contributions pursuant to paragraph E of subsection 9-3.12 SFCC 1987. The statement shall show that the expenditures were made from that source and shall contain all the information concerning the expenditures, account balances and funds on hand that is required for campaign finance statements filed pursuant to subsection 9-2.11 SFCC 1987.

[C:] D. Except as provided in paragraphs A [and B] through C of this subsection [and], paragraph C of subsection 9-3.8 SFCC 1987, paragraph E of subsection 9-3.12 SFCC 1987 and paragraph A of subsection 9-3.13 SFCC 1987, participating candidates are exempt from the requirement to file campaign finance statements imposed by subsections 9-2.10 SFCC 1987 through 9-2.12 SFCC 1987 and from the requirements to file campaign records with the [municipal] city clerk imposed by paragraph C of subsection 9-2.9 SFCC 1987; provided, however, that campaign records shall be maintained in the manner required by the applicable provisions of the Campaign Code (Section 9-2 SFCC 1987) and shall be made available upon request to the [municipal] city clerk and the ethics and campaign review board.

[D-] E. [A] Seed money and qualifying contribution reports, [and an] campaign finance statements and contribution and expenditure reports of a candidate for municipal judge are not required to be signed or acknowledged by the candidate.

Section 11. Editor's Note: Chapter 9 SFCC 1987 (being Ordinance #1985-60, as amnded) is amended to delete all references to "municipal clerk" and insert in lieu thereof "city clerk".

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25	M/Legislation/Bills 2018/Public Campaign Finance Changes