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CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2015-23

AN ORDINANCE

AMENDING THE CAMPAIGN CODE, SECTION 9-2 SFCC 1987 TO MODIFY THE DEFINITIONS OF “CONTRIBUTION” AND “EXPENDITURE” AND CREATE A DEFINITION FOR “COORDINATED EXPENDITURE”; TO MODIFY PROVISIONS RELATED TO INDEPENDENTLY SPONSORED CAMPAIGN COMMUNICATIONS AND REPORTING; TO MODIFY PROVISIONS RELATED TO THE CONTENTS OF CAMPAIGN FINANCE STATEMENTS; AND TO MAKE SUCH OTHER CHANGES AS ARE NECESSARY TO CLARIFY THE PROVISIONS OF THE CAMPAIGN CODE.

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

Section 1. Subsection 9-2.3 SFCC 1987 (being Ord. #1998-41, §3 as amended) is amended to read:

9-2.3 Definitions.

As used in the Campaign Code:

A. *Anonymous contribution* means a contribution for which any of the information required to be recorded or reported by the Campaign Code is unknown to the persons who are required to record or report it.

B. *Ballot proposition* means any measure, amendment or other question submitted to, or proposed for submission to, a popular vote at a Santa Fe election.

C. *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

1 accounts are maintained.

2 D. *Campaign finance statement* means a report of all contributions received and
3 expenditures made according to a form prescribed by the city clerk which, when completed and
4 filed, provides the information required in the sections to follow.

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

9 F. *Campaign treasurer and deputy campaign treasurer* means the individual who is
10 responsible for keeping the financial records of the political committee or candidate (the
11 candidate may be their own campaign treasurer or deputy campaign treasurer).

12 G. *Candidate* means any individual who seeks election to a Santa Fe municipal
13 office. An individual shall be a candidate when they:

- 14 (1) Announce publicly;
15 (2) File for office;
16 (3) When contributions are accepted or expenditures made; or
17 (4) Any activity is held to promote an election campaign of an individual if
18 that activity is endorsed or supported by that person or if the benefits of such activity are later
19 accepted by such person.

20 H. *Charity* means an organization that is exempted from federal taxation by Title 26
21 United States Code, section 501(c)(3).

22 I. *Contribution* means a loan, loan guarantee, gift, advance, pledge, contract,
23 agreement or promise of money or anything of value or other obligation, whether or not these
24 items are legally enforceable, made directly or indirectly, to a candidate or political committee, or
25 to a person obligated to file a report under subsection 9-2.6 SFCC 1987, for the purpose of

1 supporting the election or defeat of any identifiable candidate or the approval or defeat of a ballot
2 proposition.

3 (1) The term "contribution" includes:

4 (a) The transfer of funds or anything of value between political
5 committees;

6 (b) The transfer of anything of value for less than full consideration;

7 (c) Interest, dividends or other income derived from the investment
8 of campaign funds;

9 (d) The payment for the services of an individual serving on behalf
10 of a candidate or political committee, which payments are made by a third party;
11 and

12 (e) The purchase of tickets for fundraising events such as dinners,
13 rallies, raffles, etc. and the proceeds of collections at fundraising events.

14 (f) A coordinated expenditure.

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

18 J. *Contributor* means:

19 (1) *Individual contributor* means an individual who makes a contribution
20 from their personal assets which are not those of a business, corporation, partnership,
21 labor organization, unincorporated association or political committee.

22 (2) *Business or organizational contributor* means an individual who uses the
23 assets of a business, corporation, partnership, labor organization, unincorporated
24 association or political committee as a contribution, or any business, corporation,
25 partnership, labor organization, unincorporated association or political committee which

1 makes a contribution.

2 K. *Coordinated expenditure* means an expenditure made:

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

5 (2) in cooperation, consultation or concert with, or at the request or
6 suggestion of, a candidate, his/her representatives or agents or the candidate's political
7 committee, including but not limited to, the following examples in subsection 9-
8 2.3(K)(2)(a)-(d):

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

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

19 (c) the candidate, candidate's political committee or his/her
20 representatives or agents has solicited funds or engaged in other fundraising
21 activities on behalf of the person or entity making the expenditure during the
22 twelve-month (12) period preceding the date of the expenditure. Fundraising
23 activities include, but are not limited to, exchanging names of potential donors or
24 other lists to be used in engaging in fundraising activity, regardless of whether or
25 not the individual or entity pays fair market value for the names or lists provided;

1 or being a featured guest or speaker at a fundraising event for the benefit of the
2 entity making the expenditure.

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

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

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

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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.

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

M. *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 gifts of money or anything of value, and includes a contract, a promise or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also means the transfer of funds or anything of value between political committees.

N. *Political committee* means any entity formed for the principal purpose of:

(1) Raising or collecting, and expending or contributing money or anything of value for supporting the election or defeat of any identifiable candidate or candidates or for supporting the approval or defeat of ballot propositions; or

(2) Coordinating or cooperating in efforts to support the election or defeat of any identifiable candidate or of supporting the approval or defeat of any ballot proposition.

1 **Section 2. Subsection 9-2.5 of SFCC 1987 (being Ord. #1998-41, §4, as**
2 **amended) is amended to read:**

3 **9-2.5 Identification of Campaign Material.**

4 A. Campaign materials disseminated or communicated by a candidate shall
5 conspicuously identify the name of the candidate and campaign treasurer or deputy campaign
6 treasurer.

7 B. Campaign materials disseminated or communicated by a political committee
8 shall conspicuously identify the name of an officer or other responsible person of the political
9 committee sponsoring such materials.

10 C. Any candidate, or person acting on behalf of a candidate, shall not willfully steal,
11 destroy, or damage another candidate's campaign materials.

12 D. Written, printed or posted materials shall also show a telephone contact number.

13 **Section 3. Subsection 9-2.6 SFCC 1987 (being Ord. #2005-14, §29, as amended)**
14 **is amended to read:**

15 **9-2.6 Independently Sponsored Campaign Communications and**
16 **Reporting.**

17 A. Any person or entity that makes expenditures of two hundred fifty dollars (\$250)
18 or more in the aggregate during a single election to pay for any form of public communication
19 including print, broadcast, cable or electronic advertising, billboards, signs, pamphlets, mass
20 mailers, mass electronic mail, recorded phone messages, organized phone-banking or organized
21 precinct-walking, that is disseminated to one-hundred (100) or more eligible voters, and that
22 either expressly advocates the election or defeat of a candidate, or the approval or defeat of a
23 ballot proposition; or refers to a clearly identifiable candidate or ballot proposition within sixty
24 (60) days before an election at which the candidate or proposition is on the ballot, shall thereafter,
25 on each of the days prescribed for the filing of campaign finance statements, file with the city

1 clerk a report of all such expenditures made and all contributions received for the purpose of
2 paying for such expenditures on or before the date of the report and which have not been
3 previously reported. Each report shall be submitted on a form prescribed by the city clerk.
4 Contributions shall be specified by date, amount of contribution, name, address and occupation of
5 the person or entity from whom the contribution was made. No contribution shall be reported in
6 the name of a person who is not the actual contributor or who has been or will be reimbursed or
7 compensated for the contribution by another person. The president, chief executive officer or
8 equivalent position shall certify on the filing that its expenditures were or were not made in
9 cooperation, consultation or concert with, or at the request or suggestion of, a candidate, his/her
10 representatives or agents or the candidate's political committee. Expenditures shall be specified
11 by date, the amount of the expenditure, the name and address of the person or entity where an
12 expenditure was made and the purpose of the expenditure. No report is required under this
13 subsection for expenditures made exclusively for communications to the news media, editorials,
14 reports or commentary by the news media, impartial candidate forums or debates or the
15 announcements thereof, or for impartial voter guides allowed by the Internal Revenue Code for
16 Section 501(c)(3) organizations or a communication by a membership organization or corporation
17 to its current members, stockholders or executive or administrative personnel unless the
18 membership organization or corporation is a campaign committee or a political committee.

19 B. Any person or entity that has to file under this subsection and receives
20 contributions from another entity that does not have to disclose its contributors to the city clerk,
21 shall place the following visible disclosure on its campaign materials: "This campaign material is
22 supported in part by donations from an organization that is not required to disclose its
23 contributors to the Santa Fe city clerk.

24 C. Contributions shall be specified by date, amount of contribution, name, address
25 and occupation of the person or entity from whom the contribution was made. The name of the

1 president, chief executive officer or equivalent position and the address of the entity shall be
2 stated in the report.

3 D. Expenditures shall be specified by date, the amount of the expenditure, the name
4 and address of the person or entity where an expenditure was made and the purpose of the
5 expenditure. The name of the president, chief executive officer or equivalent position and the
6 address of the entity shall be stated in the report.

7 **Section 4. Subsection 9-2.9 SFCC 1987 (being Ord. #1998-41, §7, as amended)**
8 **is amended to read:**

9 **9-2.9 Campaign Treasurer; Deputy Campaign Treasurer; Duties.**

10 A. The campaign treasurer or deputy campaign treasurer shall keep a true and full
11 record of contributions and expenditures. The record of contributions and expenditures required
12 to be kept under the terms of the Campaign Code and the Public Campaign Finance Code shall
13 reflect the requirements in subsection 9-2.11 SFCC 1987 and Section 9-3 SFCC 1987,
14 respectively.

15 B. The campaign treasurer or deputy campaign treasurer shall maintain:

16 (1) Receipts reflecting the purpose of each expenditure and the day and
17 method of payment; and

18 (2) All campaign bank records, including deposit slips and canceled checks.

19 C. The campaign treasurer or deputy campaign treasurer shall not accept anonymous
20 contributions. Any such contribution received by the campaign treasurer or deputy campaign
21 treasurer shall, within seven (7) days of receipt, be donated to a charity or to the city's general
22 fund. The campaign treasurer or deputy campaign treasurer shall keep a record of the amount and
23 date of receipt of any such contributions and of the disposition that was made of the contribution,
24 including the date when it was donated to the city or to a charity and the identity of the recipient
25 of the donation.

1 D. Records required to be kept by the campaign treasurer or deputy campaign
2 treasurer under the terms of paragraph A of this subsection, shall be filed with the city clerk as
3 part of the public record, shall be provided to the ethics and campaign review board set forth in
4 Section 6-16, SFCC 1987 upon request and may be inspected by the public during usual business
5 hours, Monday through Friday, excluding legal holidays.

6 E. Records kept by the campaign treasurer or deputy campaign treasurer shall be
7 made current not more than seven (7) days after the date of a contribution or of an expenditure.
8 During the eight (8) days immediately preceding the date of any election for which the political
9 committee has received any contributions or made any expenditures, the books of the account
10 shall be kept current within one (1) business day.

11 F. The campaign treasurer or deputy campaign treasurer shall preserve books of
12 accounts, bills, receipts and all other financial records of the campaign or political committee for
13 two (2) calendar years following the year in which the transaction occurred.

14 G. The campaign treasurer or deputy campaign treasurer shall deposit within five (5)
15 business days after receipt all monetary contributions received by a candidate, political
16 committee, campaign treasurer or deputy campaign treasurer in the campaign depository
17 designated for that purpose.

18 H. Campaign funds shall be used and distributed as follows:

19 (1) All contributions received shall be under the custody of the campaign
20 treasurer or deputy campaign treasurer and shall be segregated from, and not be
21 commingled with, the personal funds of an individual, group or political committee.
22 Contributions shall be used exclusively to pay expenses incurred in furtherance of the
23 candidate's campaign, and shall not be used for any other purpose, including:

24 (a) The candidate's personal living expenses or compensation to the
25 candidate;

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

(c) An expenditure supporting the election or defeat of any identifiable candidate or the passage or defeat of a ballot proposition; or

(d) Any gift or transfer for which compensating value is not received, other than a donation or distribution permitted by this subsection at the conclusion of an election.

(2) Any campaign contributions remaining unspent and any tangible assets with an estimated resale value greater than two hundred dollars (\$200.00) that were purchased with such contributions and remain in the possession of the campaign at the conclusion of an election shall be distributed for the following purposes:

(a) Expenditures of the campaign;

(b) Donations to the city's general fund or, in the case of tangible assets, 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 city's general fund;

(c) Donations to charities; or

(d) Disbursements to return unused funds to the contributors.

(3) All unspent campaign contributions shall be distributed within six (6) months following a municipal election, for any of the purposes listed in this subsection 9-2.9H. All candidates and political committees shall file reports listing the date, amount and recipient of each post-election expenditure, donation or disbursement made from campaign funds pursuant to this subsection 9-2.9H. Such report shall be part of the final campaign finance statement that is required by subsection 9-2.10B SFCC 1987.

1 I. A campaign treasurer, deputy campaign treasurer or political committee may
2 invest funds deposited in the campaign account in an account of indebtedness of a financial
3 institution up to the amount of federal deposit insurance; United States bonds or certificates of
4 indebtedness or those of a federal agency; and/or bonds or warrants of the state or any municipal
5 corporation of the state. All interest, dividends, and/or other income derived from the investment
6 and the principal when repaid shall be deposited in the campaign account.

7 **Section 5. Subsection 9-2.11 SFCC 1987 (being Ord. #1998-41, §10, as**
8 **amended) is amended to read:**

9 **9-2.11 Campaign Finance Statement; Contents.**

10 A. Each campaign finance statement shall be filed in accordance with subsection 9-
11 2.10 SFCC 1987. The initial statement shall begin with the date of the first contribution or
12 expenditure. Subsequent statements shall begin on the day after the end date of the previous
13 reporting period. Statements shall contain the following information:

14 (1) The funds on hand at the beginning of the period. This shall include the
15 cumulative total amount of all contributions and expenditures. This includes, but is not
16 limited to, contributions and expenditures in aid of, or in opposition to, candidates or
17 ballot propositions before they qualify for the ballot and contributions and expenditures
18 following the election;

19 (2) The full name, home address, occupation, name of employer, date of
20 receipt and amount of each contribution received from each individual contributor from
21 whom a contribution in money, goods, materials, services, facilities or anything of value
22 has been received and whether the contribution was received in cash, by check, by credit
23 card, by electronic transfer or otherwise. No contribution shall be reported in the name of
24 a person who is not the actual contributor, or who has been or will be reimbursed or
25 compensated for the contribution by another person.

1 (3) The full name, type of business, physical address, date of receipt and
2 amount of each contribution for each business or organizational contributor, from whom
3 a contribution in money, goods, materials, services, facilities or anything of value has
4 been received, and whether the contribution was received in cash, by check, by credit
5 card, by electronic transfer or otherwise. No contribution shall be reported in the name of
6 a person who is not the actual contributor, or who has been or will be reimbursed or
7 compensated for the contribution by another person.

8 (4) The date of receipt and amount of any anonymous contribution received
9 by the campaign treasurer or deputy campaign treasurer and the disposition that was
10 made of each such contribution pursuant to subsection 9-2.9C SFCC 1987, including the
11 date when it was donated to the city or to a charity and the identity of the recipient of the
12 donation.

13 (5) The full name and complete mailing address of each individual or
14 business to whom an expenditure has been made, the purpose of each campaign
15 expenditure and the date each expenditure was made. This report shall be itemized with
16 the total amount paid to each individual or business for the goods, services or facilities
17 provided;

18 (6) The full name of the candidate or political committee and the full name
19 and complete address of the campaign treasurer or deputy campaign treasurer;

20 (7) For each contributor, the cumulative total of all contributions made; and

21 (8) Where goods, materials, services, facilities or anything of value other
22 than money is contributed or expended, the monetary value thereof shall be reported at
23 the fair market value.

24 B. Loans of money, property or other things made to a candidate or political
25 committee during the period covered by the campaign finance statement shall be reported

1 separately in the statement, with the following information:

2 (1) The total value of all loans received during the period covered by the
3 campaign finance statement;

4 (2) The full name and address of each lender, the date of the loan, the
5 interest rate and the amount of the loan remaining unpaid;

6 (3) The cumulative total value of all loans received; and

7 (4) The total amount of loans remaining unpaid.

8 C. If a loan has been forgiven or paid by a third person, it shall be reported pursuant
9 to this section.

10 D. Investments made with campaign funds under subsection 9-2.9 SFCC 1987 and
11 interest, dividends and/or other income received shall be reported separately in the statement.

12 **Section 6. Subsection 9-2.12 SFCC 1987 (being Ord. #1998-41, §11, as**
13 **amended) is amended to read:**

14 **9-2.12 Campaign Finance Statement; Signing.**

15 Each campaign finance statement shall be signed under oath and acknowledged by both
16 the campaign treasurer or deputy campaign treasurer and the candidate and shall contain a
17 statement that:

18 A. The campaign finance statement has been prepared with all reasonable diligence
19 and that it is true and complete; however, the campaign finance statement of a candidate for
20 municipal judge is not required to be signed or acknowledged by the candidate.

21 B. A candidate or political committee that receives contributions from another entity
22 that does not have to disclose its contributors to the city clerk, shall indicate as such on the
23 campaign finance statement submitted to the city clerk pursuant to existing reporting
24 requirements.

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

JAVIER M. GONZALES, MAYOR

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

KELLEY A. BRENNAN, CITY ATTORNEY