

ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 07/29/2015
ITEM FROM FINANCE COMMITTEE MEETING OF 07/13/2015

ISSUE:

18. Request for Approval of 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. (Councilor Ives) (Zachary Shandler)

Committee Review:

City Council (request to publish) (approved)	06/24/15
Finance Committee (postponed)	06/29/15
City Council (public hearing)	07/29/15

Fiscal Impact – No

FINANCE COMMITTEE ACTION:

Move forward with no recommendation.

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

With amendments.

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	Acting Chair X		
COUNCILOR LINDELL	Excused		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ	Excused		

06/29/2015

Nancy R. Long
Mark E. Komer

Little V. West
Justin W. Miller

 Long, Komer & Associates
Attorneys and
Counselors at Law

May 22, 2015

Via hand delivery

Dear Mayor Gonzales and City Councilors:

I write to you on behalf of the Ethics and Campaign Review Board to inform you that the Board has completed its review of City of Santa Fe campaign ordinances and has developed a number of recommendations for consideration by the governing body.

The Board has worked diligently on the recommendations since the city's most recent municipal elections. The Board has held numerous meetings, drafted and debated various proposals, heard from experts in the field, received testimony from candidates about first hand experiences with the campaign finance laws, and listened to public comment and input from a variety of dedicated citizens.

Broadly speaking, the recommendations address four major areas of concern to the Board and the public: (1) coordination between candidates and independent groups; (2) transparency of campaign financing; (3) revising the process by which a candidate qualifies for public financing; and (4) providing for a matching fund allocation to improve the ability of publicly financed candidates to be competitive with privately financed candidates. The recommendations represent the Board's best effort to suggest ways to improve the City's campaign and public campaign financing system, given the existing legal constraints and practical realities with which we are all confronted.

We hope you will find the recommendations useful. Each Board member stands willing to discuss and explain the work of the Board, in whatever manner that may be helpful to the governing body.

If a councilor would like to sponsor some, or all, of the recommendations as an ordinance change, please contact City Clerk Vigil so your legislation can be introduced at the June 10, 2015 council meeting in order to get it on a timely tract for adoption prior to the commencement of the 2016 campaign season.

Sincerely,



Justin Miller
Chair, ECRB

ECRB Submittal to Finance Committee: June 29, 2015

To: Mayor Gonzales, Councillor Ives, and members of the Finance Committee

From: Ruth Kovnat, Member of ECRB

Re: Items 20 and 21, Consent Calendar, Finance Committee Meeting, June 29, 2015

This is to reiterate the desire and willingness of the members of the Ethics and Campaign Review Board to be available to answer any questions that you may have about the Board's proposed revisions to the Campaign Code and to the Public Finance Code that were adopted by the ECRB at its meeting of May 20 2015.

You have already received a letter from the Board Chair, Justin Miller that describes the work of the Board in developing these proposals. The two bills in your packet represent that work although there are some inconsistencies between what the Board adopted and the materials in the packet you have before you. I will highlight the most important one and of course, we can go over its significance at a more appropriate time. For now, I simply want to alert you to the fact that the ECRB proposal to amend the Public Finance Code deletes the definition of "qualifying period" as shown on page 7, lines 4-7 of submittal identified as item 20 on your consent calendar and it is important to the proper functioning of the system contained in the proposed Public Finance Code that the definition be deleted.

These two bills represent a great deal of work and thought by the ECRB with the able assistance and invaluable help of Zach Shandler and the City Attorney's Office and Yolanda Vigil, the City Clerk. As you know, the Board's duties include review of the Campaign Codes after municipal elections for the purpose of proposing improvements to the Governing Body for its consideration. As you also well know, the municipal elections of 2014 revealed some weaknesses in the current system particularly in the Public Finance Code. Because the City Charter mandates that the City have a publicly financed campaign option, we are obliged to and should correct the weaknesses in the current system.

These bills address those issues. Under the current ordinance, candidates who accept public financing from the city are not permitted to accept private contributions beyond limited amounts needed to provide seed money to enable them to qualify for public financing. Because of U.S. Supreme Court decisions, apart from requiring disclosure of contributions of expenditures to independent spenders, there can be no regulation of the amount of contributions to or expenditures made by independent spenders. This cripples the ability of publicly financed candidates to combat well-financed opposition

by either independent spenders or privately-financed opponents . Only expenditures coordinated with candidates or their agents are subject to regulation. A serious deficiency in our current codes is the lack of clarity in the definition of “coordinated expenditure.” These proposed bills address these problems by clarifying when expenditures made by independent political organizations are made under circumstances that cause them to be “coordinated” with those of candidates as well as describing situations that do not constitute “coordination.” With respect to the requirement of disclosure by independent spenders, the ECRB proposals do two things: They strengthen the current code by expanding the definition of campaign activities engaged in by independent spenders to cover more campaign activities than are currently covered ; they also require more detailed disclosure by independent organizations of the sources of their funds.

The proposed revisions to the Public Finance Code address the disadvantage in the current Code that publicly financed candidates have when they are opposed by candidates who are supported by independent spenders whose uncoordinated spending cannot be regulated or by privately-financed opponents. The revisions are designed to give the publicly financed candidate the resources necessary to combat such opposition so far the Governing Body is able to do so within the limits of the U.S. Constitution. So the proposal to amend the Public Finance Code eliminates the seed money category and allows publicly financed candidates to raise small contributions not exceeding \$100.00 from private donors. Limiting the amount of contributions to \$100.00 from individual private donors is intended to be faithful to the purpose articulated in the current code: “to eliminate the danger of undue influence on elected officials caused by the private financing of campaigns.” The amendment to the Public Finance Code proposes to provide a 4-1 match for such private contributions to meet the purposes stated in the current code of providing candidates with sufficient resources to communicate with voters and reducing officeholders from the need to raise campaign money, “thus allowing them more time to carry out their official duties. The Board is satisfied that the fiscal integrity of the public finance fund is protected by the caps imposed on the amount that a candidate may receive from the fund and in the provisions for pro rata reductions in amounts that are available from the fund if there are large numbers of candidates in any particular electoral race.

We hope that this is helpful to you during your deliberations on the ECRB proposals. Members of the Ethics and Campaign Review Board are present and again will be pleased to respond to any questions that you may have.

City of Santa Fe, New Mexico

LEGISLATIVE SUMMARY

Bill No. 2015-26

Campaign Code

SPONSOR(S): Councilor Ives

SUMMARY: The proposed ordinance to the Campaign Code (Chapter 9-2) does the following:

- modifies the definitions of “contribution” and “expenditure” in Section 9-2.3
- creates a definition for “coordinated expenditure” in Section 9-2.3
- modifies provisions related to independently sponsored campaign communications and reporting in Section 9-2.6
- modifies provisions related to the contents of campaign finance statements in Section 9-2.12

PREPARED BY: Zachary Shandler, Assistant City Attorney

FISCAL IMPACT: No

DATE: June 18, 2015

ATTACHMENTS: Letter from Justin Miller, Chair Ethics and Campaign Review Board
Bill
FIR
Bill with proposed changes incorporated

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2015-26

3 INTRODUCED BY:

4
5 Councilor Peter N. Ives

6
7
8
9
10 AN ORDINANCE

11 AMENDING THE CAMPAIGN CODE, SECTION 9.2 SFCC 1987 TO MODIFY THE
12 DEFINITIONS OF "CONTRIBUTION" AND "EXPENDITURE" AND CREATE A
13 DEFINITION FOR "COORDINATED EXPENDITURE"; TO MODIFY PROVISIONS
14 RELATED TO INDEPENDENTLY SPONSORED CAMPAIGN COMMUNICATIONS AND
15 REPORTING; TO MODIFY PROVISIONS RELATED TO THE CONTENTS OF
16 CAMPAIGN FINANCE STATEMENTS; AND TO MAKE SUCH OTHER CHANGES AS
17 ARE NECESSARY TO CLARIFY THE PROVISIONS OF THE CAMPAIGN CODE.

18
19 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

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

22 9-2.3 Definitions.

23 As used in the Campaign Code:

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

1 required to record or report it.

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

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

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

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

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

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

19 (1) Announce publicly;

20 (2) File for office;

21 (3) When contributions are accepted or expenditures made; or

22 (4) Any activity is held to promote an election campaign of an individual if
23 that activity is endorsed or supported by that person or if the benefits of such activity are later
24 accepted by such person.

25 H. *Charity* means an organization that is exempted from federal taxation by Title 26

1 United States Code, section 501(c)(3).

2 I. *Contribution* means a loan, loan guarantee, gift, advance, pledge, contract,
3 agreement or promise of money or anything of value or other obligation, whether or not these
4 items are legally enforceable, made directly or indirectly, to a candidate or political committee, or
5 to a person obligated to file a report under section 9-2.6 SFCC 1987, for the purpose of
6 ~~[influencing the outcome of a municipal election]~~ supporting the election or defeat of any
7 identifiable candidate or the approval or defeat of a ballot proposition.

8 (1) The term "contribution" includes:

9 (a) The transfer of funds or anything of value between political
10 committees;

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

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

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

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

19 (f) ~~[An expenditure by a person other than a candidate or the~~
20 ~~candidate's political committee that is made in cooperation, consultation or~~
21 ~~concert with, or at the request or suggestion of, a candidate or the candidate's~~
22 ~~political committee.]~~ A coordinated expenditure.

23 (2) The term "contribution" does not include:

24 (a) A volunteer's personal services provided without compensation
25 or the travel or personal expenses of such a campaign worker; and

1 (b) The cost of an event held in honor of or on behalf of a candidate
2 when the total cost of the event amounts to no more than two hundred dollars
3 (\$200.).

4 J. *Contributor* means:

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

8 (2) *Business or organizational contributor* means an individual who uses the
9 assets of a business, corporation, partnership, labor organization, unincorporated
10 association or political committee as a contribution, or any business, corporation,
11 partnership, labor organization, unincorporated association or political committee which
12 makes a contribution.

13 K. *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 9-2.3(K)(2)(a)-(d):

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

25 (b) an entity making the expenditure is directly or indirectly formed

1 or established by or at the request or suggestion of, or with the encouragement of
2 the candidate, candidate's political committee, or his/her representatives or
3 agents;

4 (c) the candidate, candidate's political committee or his/her
5 representatives or agents has solicited funds or engaged in other fundraising
6 activities on behalf of the person or entity making the expenditure during the
7 twelve-month (12) period preceding the date of the expenditure. Fundraising
8 activities include, but are not limited to, exchanging names of potential donors or
9 other lists to be used in engaging in fundraising activity, regardless of whether or
10 not the individual or entity pays fair market value for the names or lists provided;
11 or being a featured guest or speaker at a fundraising event for the benefit of the
12 entity making the expenditure.

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

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

23 (i) the individual or entity and a candidate or candidate's
24 political committee use the same vendor to provide polling services,
25 printing or distribution services or physical space, provided that the

1 vendor has in place prior to the expenditure a firewall to ensure that there
2 is no exchange of information between the individual or entity and the
3 candidate or campaign committee. Evidence of an adequate firewall is a
4 vendor's formal written policy or a contractual agreement with the
5 vendor prohibiting the exchange of information between the individual
6 or entity and the candidate or candidate's political committee, which
7 policy or contract is distributed to all relevant employees, consultants,
8 and clients affected by the policy or contract. The firewall shall be
9 designed and implemented to prohibit the flow of information between
10 employees and consultants providing services to the individual and entity
11 and to those currently or previously providing services to the candidate
12 or candidate's political committee. Coordination will be presumed in the
13 absence of such a firewall; or

14 (ii) the individual or entity making the expenditure
15 interviews a candidate; has endorsed a candidate; has obtained from the
16 candidate a biography of the candidate or a position paper, press release,
17 or similar material about the candidate; has invited the candidate to make
18 an appearance before the person's members, employees or shareholders;
19 or has shared space with a candidate or candidate's political committee
20 for one or more single events of limited duration.

21 [K]L. *Election* means any regular or special Santa Fe municipal election.

22 [L]M. *Expenditure* means a payment or transfer of anything of value in exchange for
23 goods, services, property, facilities or anything of value for the purpose of [~~assisting, benefiting~~
24 ~~or honoring any public official or candidate, or assisting in furthering or opposing any election~~
25 ~~campaign for a]~~ supporting or opposing the election or defeat of any identifiable candidate or the

1 approval or defeat of a ballot proposition. This includes contributions, subscriptions,
2 distributions, loans, advances, deposits, or gifts of money or anything of value, and includes a
3 contract, a promise or agreement, whether or not legally enforceable, to make an expenditure. The
4 term "expenditure" also means the transfer of funds or anything of value between political
5 committees. [~~In determining the dollar value of an expenditure, only that proportion of a payment~~
6 ~~or transfer of anything of value that is directly related to the campaign shall be considered an~~
7 ~~expenditure.~~]

8 [M]N. *Political committee* means any entity formed for the principal purpose of:

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

12 (2) Coordinating or cooperating in efforts to support the election or defeat of
13 any identifiable candidate[s] or of supporting the approval or defeat of any ballot
14 proposition.

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

17 **9-2.5 Identification of Campaign Material.**

18 A. Campaign materials disseminated or communicated by a candidate shall
19 conspicuously identify the name of the candidate and campaign treasurer or deputy campaign
20 treasurer.

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

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

1 [E]D. Written, printed or posted materials shall also show a telephone contact number.

2 **Section 3. Subsection 9-2.6 SFCC 1987 (being Ord. #2005-14, §29, as amended)**

3 **is amended to read:**

4 **9-2.6 Independently Sponsored Campaign ~~[Materials]~~Communications**

5 **And Reporting.**

6 A. Any person or entity that ~~[contracts for or initiates the dissemination of campaign~~
7 ~~materials supporting the election or defeat of any identifiable candidate or of a ballot proposition,~~
8 ~~and that spends in the aggregate]~~ makes expenditures of two hundred fifty dollars (\$250[-]) or
9 more in the aggregate during a single election to pay for any form of public communication
10 including print, broadcast, cable or electronic advertising, billboards, signs, pamphlets, mass
11 mailers, mass electronic mail, recorded phone messages, organized phone-banking or organized
12 precinct-walking, that is disseminated to one-hundred (100) or more eligible voters, and that
13 either expressly advocates the election or defeat of a candidate, or the approval or defeat of a
14 ballot proposition; or refers to a clearly identifiable candidate or ballot proposition within sixty
15 (60) days before an election at which the candidate or proposition is on the ballot, ~~[for such~~
16 purpose] shall thereafter, on each of the days prescribed for the filing of campaign finance
17 statements ~~[of political committees]~~, file with the city clerk a report of all such expenditures
18 made and all contributions received for ~~[such]~~ the purpose of paying for such expenditures on or
19 before the date of the report and which have not been previously reported. Each report shall be
20 submitted on a form prescribed by the city clerk. Contributions shall be specified by date, amount
21 of contribution, name, address and occupation of the person or entity from whom the contribution
22 was made. No contribution shall be reported in the name of a person who is not the actual
23 contributor or who has been or will be reimbursed or compensated for the contribution by another
24 person. The president, chief executive officer or equivalent position shall certify on the filing that
25 its expenditures were or were not made in cooperation, consultation or concert with, or at the

1 request or suggestion of, a candidate, his/her representatives or agents or the candidate's political
2 committee. Expenditures shall be specified by date, the amount of the expenditure, the name and
3 address of the person or entity where an expenditure was made and the purpose of the
4 expenditure. No report is required under this subsection for expenditures made exclusively for
5 communications to the news media, editorials, reports or commentary by the news media,
6 impartial candidate forums or debates or the announcements thereof, or for impartial voter guides
7 allowed by the Internal Revenue Code for Section 501(c)(3) organizations or a communication by
8 a membership organization or corporation to its current members, stockholders or executive or
9 administrative personnel unless the membership organization or corporation is a campaign
10 committee or a political committee.

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

16 C. Contributions shall be specified by date, amount of contribution, name, address
17 and occupation of the person or entity from whom the contribution was made. The name of the
18 president, chief executive officer or equivalent position and the address of the entity shall be
19 stated in the report.

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

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

1 **9-2.9 Campaign Treasurer; Deputy Campaign Treasurer; Duties.**

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

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

8 (1) Receipts reflecting the purpose of each expenditure and the day and
9 method of payment; and

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

11 C. The campaign treasurer or deputy campaign treasurer shall not accept anonymous
12 contributions. Any such contribution received by the campaign treasurer or deputy campaign
13 treasurer shall, within seven (7) days of receipt, be donated to a charity or to the city's general
14 fund. The campaign treasurer or deputy campaign treasurer shall keep a record of the amount and
15 date of receipt of any such contributions and of the disposition that was made of the contribution,
16 including the date when it was donated to the city or to a charity and the identity of the recipient
17 of the donation.

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

23 E. Records kept by the campaign treasurer or deputy campaign treasurer shall be
24 made current not more than seven (7) days after the date of a contribution or of an expenditure.
25 During the eight (8) days immediately preceding the date of any election for which the political

1 committee has received any contributions or made any expenditures, the books of the account
2 shall be kept current within one (1) business day.

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

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

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

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

16 (a) The candidate's personal living expenses or compensation to the
17 candidate;

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

21 (c) An expenditure supporting the election or defeat of [a]any
22 identifiable candidate or the [approval] passage or defeat of a ballot proposition; or

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

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

5 (a) Expenditures of the campaign;

6 (b) Donations to the city's general fund or, in the case of tangible
7 assets, to the city for its use or disposition in accordance with the city's procurement code.
8 Proceeds from such disposition shall be deposited in the city's general fund;

9 (c) Donations to charities; or

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

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

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

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

25 **9-2.11 Campaign Finance Statement; Contents.**

1 A. Each campaign finance statement shall be filed in accordance with subsection 9-
2 2.10 SFCC 1987. The initial statement shall begin with the date of the first contribution or
3 expenditure. Subsequent statements shall begin on the day after the end date of the previous
4 reporting period. Statements shall contain the following information:

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

9 (2) The full name, home address, occupation, name of employer, date of
10 receipt and amount of each contribution received from each individual contributor from whom a
11 contribution in money, goods, materials, services, facilities or anything of value has been
12 received and whether the contribution was received in cash, by check, by credit card, by
13 electronic transfer or otherwise[;]. No contribution shall be reported in the name of a person who
14 is not the actual contributor, or who has been or will be reimbursed or compensated for the
15 contribution by another person.

16 (3) The full name, type of business, physical address, date of receipt and
17 amount of each contribution for each business or organizational contributor, from whom a
18 contribution in money, goods, materials, services, facilities or anything of value has been
19 received, and whether the contribution was received in cash, by check, by credit card, by
20 electronic transfer or otherwise[;]. No contribution shall be reported in the name of a person who
21 is not the actual contributor, or who has been or will be reimbursed or compensated for the
22 contribution by another person.

23 (4) The date of receipt and amount of any anonymous contribution received
24 by the campaign treasurer or deputy campaign treasurer and the disposition that was made of each
25 such contribution pursuant to subsection 9-2.9B SFCC 1987, including the date when it was

1 donated to the city or to a charity and the identity of the recipient of the donation.

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

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

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

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

12 B. Loans of money, property or other things made to a candidate or political
13 committee during the period covered by the campaign finance statement shall be reported
14 separately in the statement, with the following information:

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

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

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

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

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

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

25 **Section 6. Subsection 9-2.12 SFCC 1987 (being Ord. #1998-41, §11, as**

1 amended) is amended to read:

2 **9-2.12 Campaign Finance Statement; Signing.**

3 Each campaign finance statement shall be signed under oath and acknowledged by both
4 the campaign treasurer or deputy campaign treasurer and the candidate and shall contain a
5 statement that:

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

9 B. a candidate or political committee that receives contributions from another entity that
10 does not have to disclose its contributors to the city clerk, shall indicate as such on the
11 campaign finance statement submitted to the city clerk pursuant to existing reporting
12 requirements.

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14 APPROVED AS TO FORM:

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17 KELLEY A. BRENNAN, CITY ATTORNEY

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City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

Section A. General Information

(Check) Bill: X Resolution: _____

(A single FIR may be used for related bills and/or resolutions)

Short Title(s): 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.

Sponsor(s): Councilor Peter Ives

Reviewing Department(s): City Attorney's Office

Persons Completing FIR: Zack Shandler Date: 6/18/15 Phone: 955-6303

Reviewed by City Attorney: Kelley A. Brennan Date: 6/19/15
(Signature)

Reviewed by Finance Director: _____ Date: 6-19-2015
(Signature)

Section B. Summary

Briefly explain the purpose and major provisions of the bill/resolution:

The purpose of the proposed ordinance is to

- modify the definitions of "contribution" and "expenditure" in Section 9-2.3
- create a definition for "coordinated expenditure" in Section 9-2.3
- modify provisions related to independently sponsored campaign communications and reporting in Section 9-2.6
- modify provisions related to the contents of campaign finance statements in Section 9-2.12

Section C. Fiscal Impact

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)*

1. Projected Expenditures:

a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)

b. Indicate: "A" if current budget and level of staffing will absorb the costs
"N" if new, additional, or increased budget or staffing will be required

Finance Director: 

- c. Indicate: "R" – if recurring annual costs
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

X Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected

Personnel*	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Fringe**	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Capital Outlay	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Land/ Building	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Professional Services	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
All Other Operating Costs	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Total:	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____

* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. **For fringe benefits contact the Finance Dept.

2. Revenue Sources:

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY _____	"R" Costs Recurring or "NR" Non-recurring	FY _____	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected

_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
Total:	\$ _____	_____	\$ _____	_____	_____	_____

3. Expenditure/Revenue Narrative:

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

N/A

Section D. General Narrative

1. Conflicts: Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

None

2. Consequences of Not Enacting This Bill/Resolution:

Are there consequences of not enacting this bill/resolution? If so, describe.

Status quo

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

None

4. Community Impact:

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

Since last year's election, the City's ECRB Board has been engaged in an effort to develop recommendations to improve the ordinances. The Board has met monthly, and sometimes twice a month, for the last seven months. The Board has drafted and debated various proposals; invited experts in the field to advise the Board; received testimony from candidates about first hand experiences with the campaign finance laws; and discussed ideas with a variety of dedicated citizens. The Board voted in favor of a final set of recommendations on May 20, 2015. The proposed changes in this bill address one major area of concern to the Board and to the public: (I) coordination between candidates and independent groups.

Form adopted: 01/12/05; revised 8/24/05; revised 4/17/08

c) APPROVAL OF THE MINUTES- December 17, 2014

Ms. Kovnat moved to approve the minutes of December 17, 2014 as presented. Ms. Martinez seconded the motion which passed by unanimous voice vote.

Chair Miller said the Board is charged with making recommendations to the Governing Body to improve the Code of Ethics, the Campaign Code and the Public Finance Campaign Code. The Board anticipates the process will take a few months to address the concerns of Board members, the public and candidates of the last election.

A subcommittee was established at the last meeting to develop ideas and brainstorm how to move forward. The goal is to make thoughtful and coherent recommendations to the Governing Body.

Chair Miller said the Board has identified some obstacles in participating in public financing and will hear from the subcommittee first. He would then invite the public to discuss anything they want to comment on.

2. Participation in Publicly Financed Campaigns (PFCs) under the present Code: removing obstacles and improving participation.

- a. Report from Subcommittee

Ms. Kovnat said the subcommittee that consisted of Mr. Biderman, Ms. Lujan and herself met on December 23, 2014. Mr. Shandler joined them as staff and shared problems he had been presented with during the last municipal election.

She said the subcommittee's initial charge was to identify the issues people would want to comment on and to bring order into the public comment. The big topic is the reform of the Public Finance Code and possibly conforming changes to the Campaign Code. The subcommittee recommended that the focus for the Board.

Ms. Kovnat noted the agenda listed the items the subcommittee thought people would want to comment on and that the Board would like to hear today:

- i. Lack of clarity in the present code, particularly in the period preceding certification as a publicly financed candidate;
- ii. Disincentives to participation in public financing, such as the ability of independent groups to spend unlimited money in campaigns;
- iii. Uncertainty about what constitutes coordination between campaigns and independent groups;
- iv. Proposals for making public financing attractive to future candidates;
- v. Technical issues: e.g. electronic signature, disclosure requirements, etc.; and
- vi. Additional issues

Ms. Kovnat said the subcommittee discussed inviting all publicly financed candidates to comment on their perceived obstacles or problems. The subcommittee also discussed a timetable for the work of the Board. A summary for the work follows:

- *January*: the meeting would be devoted to public comment on the issues identified above.
- *February*: specific consideration of changes to improve the Public Finance Code; possibly along the lines of Senator Wirth's proposed state legislation; and the corresponding changes needed in the Campaign Code.
- *March*: the coordination question; a determination of what the rules should be; if part of an ordinance or part of a regulation Of the Board.
- *April*: the disclosure issues and other technical issues like electronic signatures.
- *May*: consideration of the proposed changes to the Public Finance Code and the Campaign Code.

Ms. Kovnat said a meeting would be scheduled after May to take final action on changes that would be recommended to the City Council.

She said the subcommittee has offered to work between the ECRB meetings to develop substantive proposals to present to the Board at each meeting. She noted that there may be a need to meet more than once a month near the end.

Ms. Martinez and Mr. McMillan both liked the plan. Mr. Thompson said he is especially interested in the perspective of elected officials and others who ran in the election.

Ms. Kovnat said it would be good to invite candidates and officials to the next meeting. Those who do not want to attend could be invited to submit something in writing.

Chair Miller offered as the chair, to draft and send a letter on behalf of the Board. He said Ms. Kovnat stated, the areas of focus are the public financing of campaigns and areas listed under item 2b on the agenda.

Mr. Biderman pointed out that the Board will go in depth on the issues in subsequent meetings. He suggested it might be sufficient for the public to give an overview at this time.

Chair Miller agreed. He said meetings will be scheduled to allow time for in-depth conversation.

PUBLIC COMMENT

Ms. Jody Larson- 107 Tierra Rica, Santa Fe indicated that her letter has specific items, but she had several concerns during the municipal campaigns last year, mainly on campaign financing. She was dismayed at the amount of dark money brought to bear on the races and the manner in which the PAC financed ads appeared to be closely related to the candidates' platforms.

She said public money financed campaigns that are also supported by outside sources seemed to donate to the PACs instead of, or in addition to the candidates. That issue has to be addressed.

Ms. Larson said she hoped that the Board would meet immediately after the election and was disappointed in the time lag. She said of particular concern is the need for a definition of *coordination* between PACs and candidates' campaigns so the candidates, donors and voters understand what is allowed and prohibited.

She wants requirements for disclosure of donations and expenditures on the PAC side; including the names of donors and those who provide goods and services, whether in cash or in-kind; and enforcement of oversight of those provisions. She said that will mean that a body such as the Board have the ability and the will to audit the campaigns; preferably with a strong budget and subpoena power.

Ms. Larson said finally, unopposed candidates should not receive public funds or small amounts, and their PACs should be subject to the same rules.

Mr. Jim Harrington state chair of Common Cause New Mexico said their view on most of the issues has been spelled out in writing. He said on "provisions that govern the conduct of prospective publicly financed candidates before they apply": he wanted to hear what the Board thought the lack of clarity is in the code. He said Common Cause thought it clear that only seed money could be spent-nothing else.

Mr. Harrington said the only question for the Board is once an expenditure is made from some other source; if that is a violation or can that be corrected by paying that from seed money to level the playing field. He thought the issue was resolved by the Board; however their ruling on the Karen Nix Advisory Opinion left him confused.

Mr. Harrington said Common Cause is still wrestling with coordination. He said Senator Wirth's bill will have valuable guidelines on conduct presumed to be coordination that might guide the Board.

He said finally he thought it necessary to make public financing more attractive. He said although successful in attracting candidates in the last election; the candidates had to make up their minds before they knew the scale of the PAC activity.

Mr. Harrington said the system that had been presented was also a bill of Senator Wirth's. The bill passed the legislature, but was vetoed by the Governor. He explained it does not directly respond to the PAC money, but allows candidates who feel the need, to raise more money. He said the candidates who are not confronted by serious opposition will not bother to raise the hundred dollar contributions to get their match and those confronted with big spending will have that opportunity. He said the hundred dollar limit insures that the system does not reintroduce the evil of big campaign contributors influencing city council. He added that Common Cause also supports 'rank choice' for the city when practicable.

Chair Miller asked Mr. Harrington to explain the idea behind the 4 to1 match.

Mr. Harrington said the point is to give publicly financed candidates a chance to amass additional resources when needed and cannot be done as a direct response to PAC spending. The system keeps

the contribution limits low and this avoids potential influence of donors. A 4 to 1 match is made for every hundred dollars raised. Publicly financed candidates are not allowed to spend their private funds.

Mr. Harrington said that is mostly how things are now, but the candidates could spend the hundred dollar contributions. He said a candidate could also raise those under this proposal and make variations, but under this system they can raise the hundred dollar contribution at any time. A candidate receives their match when they first report those in a Campaign Finance Report.

Chair Miller asked if a qualifying event of some kind has to happen before. Mr. Harrington replied that is essentially the same as now. He said it was drafted that when public funds are applied for, you have to submit \$600 of the contributions; under \$100, but at least five dollars. The contribution limit is \$100 and can be less; a candidate could still raise 600-five dollar contributions.

Mr. Harrington said the problem that arose with Councilors Bushee and Maestes might still occur, because you are not supposed to spend anything except \$100 maximum contribution. He said the Board might answer that on a case-by-case basis, but might want regulations.

Chair Miller asked if this proposal is part of Mr. Harrington's work with Senator Wirth at the legislature.

Mr. Harrington said Senator Wirth has two bills; one is disclosure for independent spenders (including the definition of coordination). The other is the "public financing fix". He said New Mexico had the same system as Arizona, Maine, Santa Fe, Albuquerque; all had matching outside spending that was held as unconstitutional.

Ms. Lujan entered the meeting at 3:40 p.m.

Ms. Kovnat asked Mr. Harrington about the disclosure to independent contributor provisions.

Mr. Harrington said the problem has been the question of coordination and the definition of an independent spender. He said if coordinated it is subject to contribution limits. He said a complicated thing in Senator Wirth's bill is the courts suggestion that you cannot require disclosure of independent spenders unless they are closely election related. That is interpreted to mean that they expressly advocate the election or defeat of a candidate or mention a candidate with an issue a short time before the election.

He said Santa Fe's law is not restricted in that way. He said Senator Wirth's bill has had serious input from the Campaign Legal Center, Democracy 21, and the Brennan Center and former legislators and will be state-of-the-art.

Marilyn Bane at 622 ½ Canyon Road said she is the president of the Neighborhood Network. She said she would be remiss if she failed to mention how many people had concern over this. This topic is everywhere whether people are here or are not here. She said this was a frightening situation during the last election and there were problems that had not been foreseen and seemed not much could be done.

Ms. Bane said she is thrilled that the Board is doing something. She asked that there be an immediate recognition of problems as they arise. She said if something appears from a common sense standpoint of coordination, it could be investigated quickly. She said the Board could be empowered to do something then and there -not after the election. The Board should have more teeth and the ability to give a slap on the wrist or say someone is getting too close; a "watch what you are doing" watchdog situation to prevent more of the abuses. She said she has more to say, but this is not the time.

Rick Lass said he is not a city resident, but was on the 2009 Advisory Committee that helped to draft what became the Public Finance law before it was amended. He was also a candidate under the New Mexico Voter Action Act for the PRC (Public Regulation Commission) and used public financing.

Mr. Lass said he was endorsed by an outside interest group who campaigned on his behalf and has also run against someone who abused the system. He said he would comment on public campaign financing and had sent a letter regarding rank choice voting. He suggested if the Board seeks input from candidates who used public campaign financing, they should also seek input from those candidates who did not.

Mr. Lass said he is angry about the Supreme Court decisions. He urged the Board to be as strict as possible with PACs: full disclosure of all spending and all contributions. Secondly, to put in as much enforcement as possible. He said he ran against a candidate taking public money and illegally spending it who basically only got a slap on the wrist.

He said this year a candidate took public financing and paid himself to be a candidate for the PRC and nothing was done about that. He said he would hate for similar things to come up in city elections when no mechanism for enforcement is written and that the City Clerk/City Attorney/the Board, etc. is not clear on the enforcement.

He thanked the Board for taking up the issue. He said it is important for the future of city and state government to have clean and transparent elections and this method can do that.

Chair Miller said Mr. Lass touched on his candidacy for the PRC and the outside group assistance.

Mr. Lass explained that he received a call from a group a couple of months before the election. The group said they were endorsing him and could no longer talk to him. He was not sure what the group did, but would have liked to suggest how they could have helped him. He does not know what the group did with their endorsement or how they spent money, etc.

Mr. Biderman asked Mr. Lass to describe what he had in mind on rank choice voting.

Mr. Lass said he sent the Board a letter. He pointed out that in the same election that public campaign financing was adopted; rank choice voting was also adopted. He said 65% of voters have said they want it and it is in the city's charter and now is the time to implement it. Vendors are allowed to submit applications to the state voting system certification commission for approval between now and June first. The county owns the machines and Dominion owns the software.

Mr. Lass said he would like the Mayor, City Council, the City Clerk and City Attorney, etc. to get the costs from Dominion and make the county aware. He said the Board could use their positions to push people all the way down the line to make this happen.

Mr. Lass said evidence shows that elections are cleaner and opponents are not "bad-mouthed" as much and PACs don't spend as much to badmouth a candidate. He said a national organization *fairvote.org* has information on their website about why rank choice voting is better.

He said his main message is that the Board should use their power to influence the administration to pursue rank choice voting. He said there should be a written explanation to the voters if that cannot happen in 2016.

Chair Miller asked staff if the city has a perspective on rank choice voting.

Ms. Vigil explained that the software had not been available for the voting machines the city uses. She said Dominion is close to producing compatible software that should be available early this year.

Judy Cleer said she is a resident of Santa Fe and a concerned citizen and she volunteered in many campaigns over the years. She understands that this is a huge task the Board is taking on and is glad they are taking the time to study the issue. She said it would be helpful to know about the meetings (she just found out two days ago) and for the rest of the city to be aware so people can participate.

She said the coordination issue is very important to her. The last mayoral election was a display of a very unlevel playing field and was unfortunate and unfair. The rules need to be more defined as to what is coordination. She knows it is complicated to prove, especially when there is no staff. She said if someone is accused of something like stealing a car, you don't just ask the accused person if they did it; you investigate and try to get more information.

Ms. Cleer said Mr. Harrington's document gave guidelines like a cooling-off requirement for people involved with a campaign when formally an employee of another candidate; and is worth exploring. She said as she understands, the only way issues can be brought up now is the manner in which Mr. Rowe did; a challenge from a member of the public. She said with rules like that, what would be the consequences for someone who does not follow the rules. She said she is reminded of what happened with Councilor Ortiz who had a fine levied against him.

She said she disagrees with the suggestion in Mr. Harrington's materials of giving more money to publicly financed candidates to help those not getting outside money. That is unfair that people who do not get outside money would get one quarter the amount of a person getting outside money. She said that punishes people trying to play by the rules.

Karen Heldmeyer said she would first read a letter from the president of the League of Women Voters from Santa Fe County who was held up by the snow. She noted that the Board had received a copy of the letter. She read the last two paragraphs into record as follows:

"We do know that many citizens of Santa Fe have expressed concern about the relationship between publicly financed campaigns and political committees and other types of independent campaign spending. This seems to be one of the major problems facing the ECRB as it studies the last election, a problem made much more difficult by recent Supreme Court rulings.

The League of Women Voters of Santa Fe County urges the ECRB to consider solutions to that problem that ensure the public's right to know, combat corruption and undue influence, enable candidates to compete more equitably for public office, maximize fiscal accountability and transparency and allow maximum citizen participation in the political process. These solutions may include defining "coordination" between campaigns and outside financial sources and increasing the extent to which there is disclosure of sources of outside funding."

Signed: Donna Reynolds, President of the League of Women Voters of Santa Fe County

Ms. Heldmeyer said she agreed. She said the Board has received a letter from her about problems people incurred. She said people were distressed because there was not an equitable distribution of campaign funds; some candidates had outside money and others did not.

Ms. Heldmeyer said also there was frustration, because often you could not be sure where the outside money came from. She said New Mexico is the only state in the union that does not define political coordination and Santa Fe could take the lead.

Ms. Heldmeyer said secondly is disclosure of where the outside sources come from. She said Jim Harrington suggested giving more money to publicly financed people. She said if in the next election more money is given to publicly financed candidates and one or more still take outside money; people will be even more distressed.

She said also in the last election there were smaller issues she hopes will not be swept under the rug. She said this is the Board's opportunity to do something and in some cases all that would be needed is an advisory opinion. She said an example is the house party exception; the code states house parties can be given up to 200 dollars. She said someone can decide that several people pool the money and have something that is clearly not intended by the code. She said given that, some people have complained and an advisory opinion could be the way to deal with that issue for the next election.

Ms. Heldmeyer said also, after the election campaigns she was approached by someone with evidence of wholesale theft of their written material by another candidate. There is nothing in the code that specifically states that a person cannot steal campaign literature. She said she refers to identifiable interests with identifiable culprits, some of whom are candidates. Voters might want to know about candidates involved in that kind of behavior. She said if someone is publically financed currently they have a finite amount of money. What seems like a small petty theft might be a large chunk out of their bank account and this would put people on notice.

She said the idea of inviting candidates to talk about their experiences is great. She said people appreciate the work the Board does and it is hard, but needs to be done. She said people need to have confidence in the electoral system and in the public financing system.

Mr. Harrington asked to comment on what was said by Ms. Heldmeyer. He said regarding furnishing space for campaign events; the facts were never clear about what happened and it was discussed in the Common Cause memo. He thought it appropriate for some regulation.

He said regarding Mr. Lass' experience: Common Cause was involved in the selection. The Secretary of State fined Mr. Block \$10,000; he could not account for where he had spent his public finance money. The Attorney General prosecuted Mr. Block, but the judge threw it out and on appeal the decision was reversed and all charges were reinstated. He said drug allegations came up at that time and Mr. Block resigned from the PRC and took probation.

Mr. Harrington said amendments to the election code are within the mandate of the Board and they should confer with Ms. Vigil. He said a problem Mr. Lass mentioned with the PRC candidates paying themselves is not a risk; Santa Fe law is clear that cannot be done.

Mr. Harrington said regarding Ms. Heldmeyer's comment about public financing and the risk there could still be PACs; the idea is so the publicly financed candidates feel they can fight back.

Mr. Harrington said he failed to mention that Common Cause's proposal does have the same cost constraints as the original ordinance: only matching funds in the amount of twice the original stipend maximum could be obtained. And secondly, if there is not enough money in the public campaign finance funds when payments are due to candidates; the funds are reduced proportionately.

Jeff Green said he thought of other issues to put on the table. He said when candidates receive public finance and refuse to engage in public forums, many Santa Fe residents were outraged. He said people felt that to receive public financing and refuse to engage was in essence theft of public funds. He suggested there be rules about the behavior of candidates and the use of public finance funds to engage with the public.

He said he did not understand Mr. Harrington's 4 to 1 proposal and would like clarification.

Mr. Green said the issue of outside group spending is a huge issue that is not going away and should be addressed. He said despite that there are significant incentives to use public financing and most candidates attempted to qualify in the last election. He thought that looking at how difficult it is to qualify and the number of candidates who failed in addition to the outside spending; there might be a different assessment of candidates going in that qualifying is not worth it.

He said speaking to that difficulty: a candidate is required to get signatures to qualify for the ballot and at the same time, if not [publicly] financing, get five dollar donations. He said to do both at the same time without an organization to support you is hard. He had to decide to focus on getting the signatures to get him on the ballot.

Mr. Green said going door to door talking to voters, etc., the focus of outreach as a candidate should be to stay on point; introduce yourself and your issues and find out what their issues are. He said when a candidate has to go to the next step and ask for \$5 it is uncomfortable. Also, it is uncomfortable if a person wants to support you, but does not have five dollars.

Mr. Green said the rules state that people cannot give just one dollar, though it sometimes happens. He said it feels like a quid pro quo with a five dollar contribution. People think they are owed a favor because they supported a candidate. He said they try to avoid that with corporate for outside financing and it is still happening on a smaller scale with the public financing.

Mr. Green said a potential solution is to require petition signatures of double/triple the amount; 100 might get you on the ballot and five times the amount gets a candidate public financing. He said that would show the candidate has additional support.

He said there are loop hole issues that make it possible to cheat, but hard to prove. He said in the last election a person helped a candidate get the \$5 donations and after the candidate qualified, the person who helped get the donations was paid. He said difficult to determine was if the person helping was being paid from a source that was not disclosed. What was clear was that the person was listed on the Public Finance Reports as receiving significant consulting fees from the public funds. He said that should have been investigated.

Mr. Green said he would appreciate more forums where candidates can address these issues. He added that he strongly supports (rank ?- inaudible) voting and hopes to see the Mayor, the City Clerk and City Council, etc. take that seriously.

There were no further public comments at this time.

Ms. Kovnat said the subcommittee report suggested the first substantive meeting be devoted to considering whether the Board wanted to alter the Public Finance Code in the direction of Mr. Harrington's proposal. The initial thinking was that major changes in the Public Finance Code would dictate the rest of the process. She asked in light of the interest of the public in the coordination question, if the Board should tackle that first. The issue could be tackled independently of whether there are major structural changes to the Public Finance Code.

Ms. Lujan said she supports that.

Chair Miller said the coordination did seem to be a primary concern. He asked if the Board had additional comments related to the public comments.

Mr. Thompson commented on Mr. Green's statement about the five dollar contribution. He said that is awkward for candidates and he thought it does make more sense to add signatures or do something similar. He said even lowering the amount to one dollar would be a great improvement. He said many people cannot come up with \$5 and their voices should not be silenced based on their lack of resources.

Ms. Martinez said in both the last meeting and this meeting the Board heard the public does not know about the meetings and that is an issue. She said she would like to find a way to have a broader reach to more residents.

Ms. Vigil said the meeting list contains all of the meetings for the week. The list is on the website and the meeting is in the newspaper. The website has a link to each meeting's agenda and the packets for the meetings are posted on the website. She said Mr. Shandler prepared a press release for this meeting and the agenda for the meeting is also posted on the City Hall bulletin board.

Ms. Martinez said those are the things she had in mind. She said there has to be some onus on the public to be informed.

Ms. Kovnat added there was a newspaper account in the New Mexican about today's meeting. Mr. Biderman said it would be helpful if the article could be placed a few days earlier.

Mr. Shandler said item three on the agenda is to set a regular schedule and the schedule could be put on the website so people know the dates and times of the meetings.

Ms. Bane said she was pleased that the city sent a bulletin to everyone, but the bulletin gave the date of January 21 [for the meeting] but not the time of the meeting. She said many people need more than a day's notice for a meeting often it is a hardship to find out at the last minute.

3. Discussion and Possible Action on Setting Direction for Next Meeting(s)

Chair Miller said the subcommittee's idea was to set the direction for the next meeting and have specific proposals to discuss. He asked the Board's thoughts on translating the serious concerns heard into specific proposals.

Ms. Kovnat explained that the subcommittee members had agreed to prepare specific proposals for the Board's consideration at each subsequent meeting and suggest the order in which to tackle the issues. She said that is subject to revision by the Board.

Mr. Biderman suggested the subcommittee provide a list of specific principles and suggestions. He said the Board could decide what concepts to turn into legislation after the public comment and Board actions.

Chair Miller said it is necessary to refine the general ideas and concerns into specific ideas that the Board could discuss in detail. He suggested the focus of the next meeting be related to activities independent of the campaigns and coordination and to determine how to define coordination between the campaigns and the independent groups or expenditures.

Mr. Biderman agreed. He said his concern is to be sure the Board has timely access to examples from other states and their rules about coordination and that the Board's research is complete.

Ms. Kovnat said she would be fine starting with coordination. She noted that Mr. Shandler has already done some research.

campaign" was corrected to : "Mr. Biderman said the US Supreme Court has taken certiorari on a case out..."

Mr. Biderman moved to approve the minutes of February 09, 2015 as amended. Ms. Martinez seconded the motion which passed by unanimous voice vote.

Chair Miller said the meeting on February 9th was productive and the Board heard from four candidates who gave their perspectives on Public Campaign Financing in the last election. Councilors Lindell, Bushee and Dimas and candidate Jeff Green told the Board about their experience with public financing.

He said he thought it worth mentioning that the candidates' areas of concern were similar to what was heard from the public and the Board. In particular the concern about coordination and taking steps to address the concern of coordination between publically financed campaigns, outside groups and the influence of outside groups and what some call "dark money".

Chair Miller said the main subject of this meeting is to address coordination. The subcommittee worked in the interim on that subject and on independent expenditures. He turned the floor over to the Ms. Kovnat to share the subcommittee report.

2. DISCUSSION AND POSSIBLE ACTION

- d) Coordination between Candidates and/or Their Campaigns and Independent Expenditure Groups or Individuals.
 - 1) Subcommittee Report (Commissioner Biderman, Commissioner Lujan and Commissioner Kovnat)
 - 2) Memo re: Coordination and Independent Expenditures.(Zachary Shandler)
 - 3) Proposals to Revise Ordinances.

Ms. Kovnat explained that the subcommittee report was included in the packet and she would summarize the report. A summary of the report follows:

- The subcommittee first wanted to develop rules to define coordination and/or independent expenditures. The rules suggested are not in a final statutory language and come from a combination of sources: House Bill 278 (HB 278); Senator Wirth's bill, which contains definitions of coordinated expenses and expended expenses. The Brennan Center Report was a source for ideas going beyond the proposed HB 278; and other jurisdictions, particularly from Philadelphia ethics. The ideas were put together in the form of proposals.
- Secondly, the subcommittee discussed how the rules should be promulgated; by an amendment to the Campaign Code and Public Finance Code and a recommendation to the Governing body to enact those amendments; or the Board's adoption of rules and regulations. Or promulgated by means of the Board's power to publish in the rules and regulations. The subcommittee asked direction from City Attorney Shandler as to whether the Board has the power to promulgate the rules, rather than by ordinance.
- The third discussion was that the Board should provide guidance and guidance scenarios training that will give further help to potential candidates and the public.

Ms. Kovnat said the report starts with the general definition of coordination: *an expenditure made by a so called independent group that was requested or directed by a campaign*. In addition, a coordination of an expenditure is an expenditure made in cooperation, consultation, concert (existing language in the code) with a campaign.

Ms. Kovnat said the rest of the ideas are intended to flesh out what is meant by cooperation, consultation, and concert and she provided examples. She said the example was used from HB 278: *'substantial includes, but is not limited to, the exchange of campaign strategy or information, etc. that would facilitate the election and the defeat of the identified candidate'*.

She went on to review the report (a) through (g) of the definition of a coordinated expenditure.

Ms. Kovnat said the subcommittee also tried to address a problem raised by the public. They added a proviso that an expenditure would not be considered a coordinated expenditure if the spender of the campaign uses the same vendors, so long as there is a firewall prior to the expenditure. She defined firewall as a formal written policy that is distributed to all relevant people affected by the policy and prohibits the flow of information between the agents of the spender and the agents of the candidate and the campaign. She explained that the candidate has the obligation to ensure such a firewall exists.

She reviewed provisos of things that will not be considered a coordinated expense, including if a person/group introduces or endorses a candidate; obtained a biography, a press release, etc. that is publicly available material about a candidate; or has invited the candidate to make an appearance before the group.

Ms. Kovnat said regarding the problem raised of sharing space; the general rule of sharing a vendor and physical space in the absence of a firewall described previously would constitute coordination. The subcommittee wanted to be clear it is not a coordinated expenditure merely because a candidate and a group shared space for single events of limited duration.

She said the Board left open how the rules to the ordinance should be promulgated, whether by amendment to the ordinance or if the Board has the power to promulgate under their procedural rule-making powers.

Mr. Biderman emphasized that this is just a starting point to get the discussion started.

Chair Miller asked Mr. Shandler for his comments about the Board's authority or powers.

Mr. Shandler said some would think that the subcommittee report has a lot of words to put into the ordinance. He said if that is the case and they want to make a change, changes would have to go through the ordinance process again.

He suggested the Administrative Rule could have less formal language and provide examples; page 7, tab 2b in the state law provides examples of proof that expenditures were made. The following page states that the examples are illustrations. He said it is unusual language for a statute and that language is more commonly found in the Administrative Rules.

Mr. Shandler said the state level has a simple process where the legislature gives a body the power to make rules and there is a formal rule-making process. A branch of state government compiles the rules as the New Mexico Administrative Code and that can be found online.

Mr. Shandler said the City of Santa Fe does not usually grant a body broad rule-making power and Chapter 25 is an example of the process to change the rules to an ordinance.

He pointed out a possible exception in the Board's powers and duties. He read that City Council said: '*or shall establish reasonable rules of practice and procedure and are not in conflict with city code*'. He said an argument could be made that the Board has the powers to establish rules, but a counter argument could be that the power is only for *procedural* rules. He said some could say these are substantive, not procedural rules and the Board might want to do substantive-like rules should they be enshrined in the ordinance.

Ms. Kovnat said as cumbersome as the state language is, it is statutory language. She said the subcommittee could come up with explanatory rules, but she is worried that it is significant enough that it should get a full vetting and go through the governing body.

Mr. Biderman said the section 6-16.2(B) talks about establishing the Board's authority to establish rules of practice and procedure. He said the language after that states that the Board '*can also develop explanatory material designed to educate the public to encourage voluntary compliance and to ensure fair and prompt disposition of alleged violations*'. He thought if the Board is to develop materials to explain that, that authority might be broad enough to say that the Board's rules are setting violations or encouraging voluntary compliance. He said that said; he agrees with Ms. Kovnat anyway.

Ms. Kovnat said the other issue is the confusion about enforcement powers; if simply in the rule and not a part of the ordinance. She agreed there are a lot of words to put in the statute, but had concern about enforcement.

Mr. McMillan said he agrees with Ms. Kovnat's analysis.

Chair Miller said he also agrees. He sees the Board's role as to provide guidance after the Governing Body has put substantive provisions in the code. He said he would hesitate to enact rules or promulgate rules that differ from the code that would be binding on candidates.

Chair Miller asked where this will go in the code.

Ms. Kovnat said she sees this going to the definition of contribution, which is important in both the Public Campaign Finance Code and the Campaign Code. She said there are questions of limitation and of disclosure and this would be relevant to both.

Ms. Martinez asked how the subcommittee developed examples of what would be coordination.

Ms. Kovnat said the subcommittee was aware of the case law that precludes regulation of independent expenditures. Then the subcommittee started to look at the FEC (the Federal Election Commission) federal regulation of the issue and found that the FEC deadlocked on the question of what is coordination.

She said Senator Wirth's proposal is the primary source of the ideas of what constitutes coordination and independent expenditures. The subcommittee then looked at the Brennan Center Report that goes beyond Senator Wirth's proposal and also was guided from proposals from Philadelphia.

Mr. McMillan said the use of the term "firewall" resonates from the Board's deliberations and struggles last year with the complaint filed against now- Mayor Gonzales.

Ms. Kovnat explained that the Brennan Center Report surveyed the state laws and chose the most powerfully enforced laws. They identified the firewall feature as the most present and strongest in the state laws.

Ms. Kovnat said the general idea is that the candidate establishes a PAC, then any expenditures made by that PAC are coordinated. A candidate or an agent of the candidate that requests that a PAC spend money is coordination. She said trickier is the overlap of employees and leaders and that is present in many state laws and is a recommendation of the Brennan Center. She said that is just to limit the use of people who work for a candidate and right away go to a leadership role in the PAC and is where the twelve month period came from; some have shorter periods of one hundred twenty days.

Mr. McMillan asked if the "cooling off" period had been challenged in courts in other states.

Ms. Kovnat said she was not aware of any. She said Mr. Shandler pointed out the Tenth Circuit court King case (*Republican Party v. King*) in his memo and that gives pause, but enough have put that into their systems that the Board should at least think about the cooling off period.

Mr. Biderman said the overall approach taken by the subcommittee was to provide detail and specific examples. He said the problems that have been arising come from different interpretations and different perspectives on the ordinance and in the fast pace of an election, the last thing they want is uncertainty.

He said in this case the subcommittee wants a lot of the detail that gives guidance in advance so people know exactly what to do and not to do. That gives people confidence if they know that they are complying with the explicit rules. He said he would not mind adding more restrictions given the circumstances, because the issue is not helped if resolved after the fact. The issues need to be decided in advance so people are clear about the limits.

Mr. Biderman said since the subcommittee will be looking at what coordination is and is not; if the standard is not precise it will be hard to expect others to make a decision on the fly. The approach the subcommittee is taking is for that reason.

Mr. McMillan agreed. He said having been part of the body that deliberated the complaint against now-Mayor Gonzales; something like this would have been nice to have as they worked through a very tricky issue. He said he appreciated the level of detail and thought more detail is probably better.

Ms. Kovnat said she recalled in a past meeting that Ms. Martinez suggested that training is also part of the Board's responsibilities to ward off problems. She said it is not just to have the provisions enforced, but to have training and provide examples and scenarios that are available to the candidates.

Ms. Kovnat said the problem is that if there is a complaint, the Board is an adjudicatory body and would need to afford people due process. They do not want to interfere with the people's right to choose. She said there is a delicate balance between guarding against violation and unduly affecting an election, instead of letting voters make their decision based on facts.

Chair Miller said that raised a question about the adjudication of a complaint under one of these points. The subcommittee report suggests that it is *presumed* to be coordinated if these conditions prevail. He asked how a public candidate could rebut the presumption if there is a complaint alleging coordination; is this structured as a rebuttable presumption.

Ms. Kovnat said the Connecticut law provides nine rebuttable presumptions of coordination in the definition of independent expenditures. Their general language is already present in Santa Fe's ordinance about expenditures made in 'cooperation, consultation or concert at the request, suggestion or direction of, or pursuant with general or particular understanding' is not a dependent expenditure presumption. She said the subcommittee also thought along those lines.

Chair Miller asked Mr. Shandler to talk about the memo he prepared and the Case Law Authorities.

Mr. Shandler said starting with the memo dated February 12, 2015 in the packet regarding what is coordination. He said the Board was asked to research two issues; 1) should the ECRB be a watchdog body or an investigative body on coordination issues. He said his advice is that he prefers this be a policy decision. He said Ms. Kovnat has talked about policy considerations and perhaps when the Board determines substantively what they want the law to read, they can look at the Administrative Procedures.

He said simple things encountered at the staff level could speed things up, such as when there is a complaint having to file by certified mail rather than email. Small changes could speed up the process, streamline and possibly alleviate the gap of when a complaint is filed and the time that a ruling is made. He deferred to the Board as a policymaking body to decide what they want their role to be.

Mr. Shandler said the second issue was what is coordination. He said he provided examples of when something is considered coordination and when it is not. He also provided a recent newspaper article on a case where someone was criminally convicted of not having a firewall. He said he would point out so the public could trace the thinking that the Brennan Center for Justice on page five of the material, fourth bullet point uses the word "firewall".

Chair Miller said he is struck by the simplicity of the Brennan Report versus the detailed Connecticut approach. He asked if this was the test that the FEC follows to determine under federal law whether candidates are coordinated.

Mr. Shandler said yes, but it is a summarized version of the FEC webpage, which is many pages and equally complex.

Mr. Shandler said on page 13, the Connecticut law is another source of material and has nine examples; and page 17 of the packet is from Philadelphia. The 1.39 (a-f) and the House Bill [278] are sources for the public to read to see how the subcommittee arrived at where they are. He said he also has a handout of relevant Case Law Authorities (Exhibit 1) dealing largely with coordination and a few matching issues.

Mr. Shandler said two cases caught his eye: the *Republican Party v. King* case out of New Mexico, which was largely about New Mexico's law on contributions. He said at the end of the opinion it referenced the overlap of a treasurer of an independent group who was also chairman of the Bernalillo County Republican Party. The court did not rule on whether that was coordination or not.

He said the most recent was the *Democratic Governors Association v. Brandi*, a US District Court case out of Connecticut. The governor was raising money in 2011 for the Democratic Governor Association and in 2014 the Association wanted to use some of the money for expenditures on the governor's behalf. The Connecticut law withstood legal challenge.

Mr. Biderman suggested the Board hear from the public before taking action.

PUBLIC COMMENT

Mr. Jim Harrington said he had a comment that is substantive and complicated. His comment applies to the last paragraph of the first page of the subcommittee's memo describing the kind of communications capable of being coordinated. He said the statement of the standard does not go as far as those cases allow.

He said Citizens United made the contention that since their communications were not unambiguously campaign related they did not have to disclose. He said the Supreme Court rejected their contention and said it is sufficient. He said later the Seventh Circuit departed from all other circuits and said part of Citizens United was confined to broadcast communications and did not apply to newspapers and internet communication, etc. He said there is no suggestion that Citizens United intended to define their communications like that. The Tenth Circuit went the other direction in a different case.

Mr. Harrington said the best case Vermont Right to Life, 2014 Second Circuit opinion discusses the Seventh Circuit case and explains why that was wrong. The case also departs from the Tenth Circuit on whether you can have the same PAC engage in independent spending and coordinated spending. He said with respect to independent expenditures, the law seems to be that you can cover expressed advocacy at any time or electioneering communications; things that mention a candidate.

He said in all those cases establishing limits of whether you can regulate required disclosure, they make clear they are talking about independent expenditures. The scope would be much broader if coordinated. He said when putting together HB 278 a suggestion was made to broaden the definition of coordinated expenditure. He said a coordinated expenditure does not have to expressly advocate.

Mr. Harrington said currently as it stands a candidate would be able to coordinate with a PAC for a publication a week before the election of an ad that said "*Mayor Gonzales is doing a terrible job*", because it does not unambiguously urge people to vote against him or mention the election.

Mr. Harrington suggested the Board look at HB 278 and the definition of coordinated expenditure.

Mr. Fred Rowe said he is speaking as the president of the Neighborhood Law Center. The Center is pleased that the Board and the subcommittee has come forth with concrete proposals that wrestle the primary issue tainting the last election; namely the "double dipping" by candidates taking public funds and benefiting from PAC or other outside private funds and the unfairness that causes competitors.

He said some candidates expressed their concern about the unfairness of the process and lamented the entire public financing process; including the Mayor who was the prime beneficiary of the double expenditures. He said public financing is included in the Santa Fe City Charter and the city is stuck with the system. They must do the best they can to establish a public financing system.

Mr. Rowe said similarly of great concern is the Supreme Court and its tilt under the First Amendment to allow Campaign Financing expenditures that may or may not be prejudicial under the system. He asked the Board to keep in mind that the decision does not specifically address the kind of expenditures being considered to reform the city's existing system.

He said with regard to the reforms, he would suggest that apart from the concept of coordination, the Board should stress more the concept of *concert* as distinct from coordination. He said the word concert permits a broader reach into activities opposed to coordination, which indicates some requirement of affirmative integrities.

Mr. Rowe said likewise there was discussion about the process by which the Board should express its suggestions for reform, whether by rule making or by City Council action. He suggests that the reforms proposed by the Board go to City Council for approval. He said if City Council approval is not sought then during a critical time in the next election campaign at the Board's suggestion of improper activity, some could say the "Council has not decided this". He would advise that the Board seek council approval for its reforms whether expressed by rules approved by the City Council, or in the form of code amendments made by the Council.

He said he would also suggest that the Board consider at the same time a rule that provides 24-7 intervention by the Board the week before the election; lest it be like the last election that was said it was too late and nothing could be done. He said the public would benefit by a fairer process if the Board has a process in place to provide expeditious emergency-type handling of these situations.

Mr. Rowe said finally in addition to the reform indicated by the subcommittee report, he suggests the Board consider the concept incorporated in the proposal made by Councilor Ives: *as a condition for receiving public funds, the candidate should refund any PAC contribution amount by way of giving back part of the sixty thousand dollars.* He said if couched as a voluntary suggestion made by the Board/Council to candidates to voluntarily as they accept public funds; indicate that they do not wish to accept/disapprove of PAC contributions and consider giving back some of the money to the city. He said if done on a voluntary basis this would not offend against the Supreme Court and the candidates, as a matter of public relations to voters, may volunteer as opposed to double dipping.

Ms. Chris Furlanetto Action Advocacy Chairperson for the League of Women Voters in Santa Fe County said the League wrote the Board in January to express their support for publicly financed campaigns. She said she would expand on a couple of those points today.

She said the League has officially supported public financing of campaigns since 1974; however, their position is a general one and does not address the particular problems that occurred with the publicly financed campaigns during the last city election. She said the League is reviewing its positions and hopes to have specific recommendations in a year or two.

Ms. Furlanetto said they support HB 278 and feels it would update current law to comply with recent court rulings and defines *independent expenditure* and *coordination* and increased penalties for violations-all positive changes for the voters. The League encouraged the Board to consider and recommend to the governing body similar legislative remedies to strengthen Santa Fe's Public Campaign Finance Ordinance.

She said the League hopes that Santa Fe will seek stronger ordinance and Campaign Finance rules including increased disclosure; increased penalties for violations and the information up front to candidates regarding what is and what is not allowed. She said the League urges the Board to improve the existing legislation as they move forward.

Ms. Karen Heldmeyer clarified that she is speaking as a citizen. She thanked the Board for including the material on line. She said there are several good reasons for Public Campaign Financing; one is that it allows candidates to run who are not as financially well off as other candidates; and as pointed out by Mr. Green, allows candidates to run whose supporters may not be as financially well off. She said most who voted for the Charter Review Amendment for Public Campaign Financing wanted to take the corrupting influence of money out of the campaign.

Ms. Heldmeyer passed out copies of the Journal editorial (Exhibit 2) from last week that was against public financing and said there is no hope. She said that is also the view of many people she has talked to in the community.

Ms. Heldmeyer said looking at the information provided by Mr. Shandler and in the Brennan Report, there are good ideas, but enforcement may be a problem. She said it is easy to change the nameplates around and have figure heads while others are talking about what is really happening in the back room.

She said a firewall is not a bad idea to remind people of what they should be doing, but again, most of the activity considered coordination would take place in the campaign itself and the backrooms. She said information would probably come mostly from whistleblowers or accidental disclosures. She said it is frightening to her that this might be going on while someone takes public money and also takes a huge chunk of money from others and no one knows.

Ms. Heldmeyer said she would recommend an ordinance, but whatever the Board does should have teeth. She said it is good to put out rules, suggestions and examples, but there must be the threat of enforcement or it will not work.

She thanked the Board for spending time on the issue and for a very thorough subcommittee report. She said she hopes they will get to a place where the public has more faith in the public finance system.

Mr. Harrington said the Journal will publish the Common Cause response to the editorial on Friday. He said the Board is just beginning to determine how to improve the public financing system and address problems with the PAC. He was shocked that the Journal and a former Councilor said that what the Board is undertaking is hopeless and the system is a complete failure and should be repealed.

He said besides being premature, the statement is wrong; what failed in the last election was not public financing. He said that was Santa Fe's unique attempt to do a public financing system in which the publically financed candidates have no means to respond when they found themselves facing serious spending from PACs and other candidates.

He said all full public financing systems were forced into that by Arizona Free Enterprise, but Santa Fe was the only city that tried to do it that way. He said everywhere else addressed the problem by giving candidates a way to get access to additional funds. Common Cause proposes small scale private fundraising and a match from the city.

Mr. Harrington said the important point is that what failed was not public financing.

Judy Klinger said she agreed with Ms. Heldmeyer and she agrees that enforcement is a huge problem. She asked who will be the enforcer and will an entity be assigned to prove this. She said one document on line asked if there would be a proactive investigation or a reaction to a private complaint. She said that is a huge question.

She said the subcommittee report says "evidence of substantial discussion". She asked how do you define or quantify that; that is vague. She asked how you would define "at the request or suggestion of a candidate". She said the "cooling off" period also raises questions for her and she is not sure about the 12 month period either; some states have no time frame.

Ms. Klinger said she has a concern about someone who is actively working for a campaign and his partner was in charge of an entity who was giving the candidate money on the side. She said were they

having discussion; who knows. Ms. Klinger said they were living together and it is hard to believe the two were not coordinating.

Ms. Klinger said she is also concerned about the attitudes of individuals that said that it is “not illegal for PACs to give money”, so it is okay if certain people accept the money. She said that denigrates the entire political process and legal system and it is not playing by the rules. She said it feels “sleazy” and does not make it right just because someone tweaks the rules to meet their own needs.

Ms. Klinger asked when someone is supposedly guilty of coordination; what happens then; what is the timeframe if that happens within an election campaign and how will that be addressed.

Elizabeth West said she is impressed that the Board is attempting this and she personally finds it fascinating. She said when talking with her family about this, it occurred to her that when things are fuzzy the public is forced to do a lot of the work to bring problems to everyone’s attention. She said timing and enforcement are tricky and enforcement is easier if the terms are understandable.

Mr. Thompson entered the meeting at 4:24 p.m.

Ms. West said she wondered about the training and if that would be public. She said when the Board discussed *explicit* rules; that is another word that is tricky. She asked exactly what is “explicit”. She said there is a lot of vagueness. She said Councilor Lindell talked about the need to be ‘very explicit’ about what people have done with their money or who was helping them. She said that would be one avenue she thought would be good to look at.

Mr. Biderman said one thing that came up was to get this before the City Council. He said the Board has already set a June deadline as their goal so City Council would have time to act and ultimately adopt an ordinance. He said this particular item might be so sensitive and difficult it might be worth one more attempt to open up written public comment for suggestions, between now and the next meeting. He said the Board could then come up with a final decision on this at the next meeting and move forward with the other items.

Chair Miller said that is important. He said after hearing a lot of positive feedback on the subcommittee’s report, the next charge of the subcommittee and Mr. Shandler would be to take the ideas and translate them into ordinance language. The discussion could then continue with words on paper that ultimately would have Board recommendations. He said that will allow continued public comment now and also at the next meeting. Mr. Biderman agreed.

Ms. Kovnat thought it would be useful if Mr. Shandler would pick up on Mr. Harrington’s suggestion to broaden the language with respect to communications when putting into statutory language. She said the subcommittee had discussed that and she thought agrees with Mr. Harrington’s comments.

Mr. Shandler said he would be happy to work with his coworker Melissa Byers on the legislative language and have that available with a link for the public to review. He said the idea is that nothing would be written in stone on the language.

Ms. Kovnat said she wanted to respond to public comment. She said they all have the desire and the need for specificity and certainty, but that is not possible to put into a law code in every instance. She said if people are worried that there may be law breakers that is not an argument for having no law; and is an argument for *having* law. She hopes that the Board can combat cynicism by coming up with principles that the public has confidence in within the realm of possibilities.

Mr. Biderman said he has taught Ethics to quite a few public officials; some who really caught on and some who went to jail. He said there will be people who stretch rules as far as they can, but the more rules the Board can put in, especially in this case, the more likely those who want to comply will have guidance on how to comply. The few who want to ignore the advice and break the laws will and should be caught.

He said a number of people appropriately raised questions about enforcement and how to initiate an investigation and inquiries. He said that is not in the list of topics that the subcommittee presented; although it could go into "Additional Issues" at the end.

Chair Miller said the Board could discuss that under Item (c). He said the Board has been focusing on coordination and independent expenditure issues and should bring that to final product. He said they should begin to stagger and develop their work on other issues.

He asked to clarify the direction to the subcommittee and staff: to translate the recommendations from the subcommittee into ordinance language, with consideration to view the definition of expenditures to attempt to bring in Mr. Harrington's suggestions. He asked if there are other points on the subcommittee report that members wanted to tweak, change or provide more direction.

Mr. Biderman said he would like to see options in the draft of what it would look like to talk about coordination and "acting in concert".

Ms. Martinez thanked the subcommittee for the report. She said it was very good and she knew the report was hard work.

b) Update on Status of Campaign Laws at the State Legislature

Mr. Biderman said he looked at the status of some of the bills that stood out in both elections and ethics. He gave a brief status report as follows:

- Senator Wirth's Bill (Senate Bill #58 Campaign Public Financing Changes: received a 'do pass' from Senate Rules as amended and is awaiting hearing in Senate Judiciary.
- House Bill #205 (Representative Garcia) to add legislators to the publicly financed state races (currently 15 judges and 5 PRC Commissioners) has a 'do pass' as amended from House Government Elections and Indian Affairs and is scheduled in the House Judiciary Committee.
- House Bill #278 (Senator Wirth/Jim Smith) on Campaign Finance reform will be getting its first hearing tomorrow in the House Safety and Civil Affairs Committee and then referred to House Government Elections and Indian Affairs followed by the House Judiciary.
- House Bill #115 (Representative Egolf) is a State Ethics Commission bill set for hearing in House Government Elections and Indian Affairs on Friday.
- House Bill #289 (Senator Wirth) public financing of legislative races is in Senate Rules and appears to be the parallel bill to Representative Garcia's bill.

c) Next Meeting and Topics for Consideration

Chair Miller said he thought two issues appropriate to start work on. He said as Mr. Harrington spoke of, there is not an opportunity for publicly financed candidates to have access to further money. He added that the matching issue, disclosure and transparency issues are big issues and the enforcement issue he could see down the road.

Page 3, fourth paragraph should read for clarity: "Ms. Kovnat said the subcommittee also tried to address a problem raised by the public. They added a proviso that an expenditure would not be considered a coordinated expenditure if the spender of the campaign funds uses the same vendors..." The word funds was added.

Mr. Biderman moved to approve the minutes of February 18, 2015 as amended. Ms. Martinez seconded the motion which passed by unanimous voice vote.

2. DISCUSSION AND POSSIBLE ACTION

- a. Coordination Between Candidates and/or Their Campaigns and Independent Expenditure Groups or Individuals.

- 1) Proposals to Revise Ordinances

Ms. Kovnat said the subcommittee report is encompassed in the packet materials. She said she would hit the high spots, but also things that they included in the working draft. The subcommittee would like Board discussion on those items.

She thanked Mr. Shandler and Melissa Byers for putting the draft proposal into workable language. The working draft includes the proposed amendments to both the Campaign Code and the Public Finance Code. The two major purposes for the amendments is one, to clarify the meaning of *coordinated expenditures* operative under the Campaign Code. The coordinated expenditures would have to be reported as contributions. Under the Public Finance Code they would be forbidden if over a certain amount.

The second part of the draft that the proposals for clarifying coordinated expenditures is placed, are amendments to the Public Finance Code. She said first, the subcommittee urged commitment to the continuation of Public Finance. The second thing they identified is that the problem is a publically financed candidate facing either a privately financed candidate, or large expenditures of independent money.

She said independent expenditures cannot be regulated or limited so they can try to capture those that are coordinated. There will still remain the possibility of a publicly financed candidate being opposed by a privately financed candidate who could raise unlimited amounts of money; or another publicly financed candidate with truly independent expenditures made in support of that candidate's election.

Ms. Kovnat said the subcommittee looked at Common Cause's proposal and is grateful for their work. The general proposition is that the Public Finance Code would be amended to allow publicly financed candidates to raise private money in small amounts, thus reducing corruption; no more than 100 dollars. Then provide a match for the purpose to give the publicly financed candidate the resources to combat the opposing expenditures that cannot be regulated.

She said there are a few things included in the draft in which they want to be sure there is a discussion. One is the language that may be too narrow on page 2, line 18 that describes what is captured by campaign materials. Then a major change in the Public Finance Code which eliminates the idea of seed money and allows the publicly financed candidates to raise no more than \$100 from each contributor. The subcommittee left the requirement to qualify for the candidate to collect a certain number of qualifying contributions of no less than five dollars.

Ms. Kovnat said the question of whether the five dollars is useful has been raised. The subcommittee did not take a view of either of those two things, but wants a discussion. She said that Mr. Harrington sent the Board a memo (EXHIBIT 1) suggesting certain changes that she will talk about in more detail.

Mr. Biderman suggested the Board discuss also whether the \$100 limit is the appropriate amount. He said the purpose of these additional contributions is that people can raise money to compensate if another candidate is gaining money through private financing or PAC contribution. His concern is whether \$100 can give them that opportunity. He said he does agree with the concept of the limited small contributions to prevent the reality or appearance of corruption.

Mr. McMillan said he wanted to hear from the public on the issue of whether the hundred dollars is appropriate. Ms. Martinez suggested the Board hear from the public on certain issues as they get to those issues.

Ms. Kovnat said the first change is on page two: a proposed amendment to the Campaign Code 9.23; to include a coordinated expenditure within the definition of contribution. The new language is K, line 15 and includes those items talked about at the last meeting. She read the definition of a *Coordinated Expenditure*. She said what is new are the following examples:

- K (1)-defines a coordinated expenditure. She said that is followed by examples of *when* that is presumed to be a coordinated expenditure. She said the subcommittee was urged to broaden the definition starting on line nineteen. The language was capped, but there are other suggestions and language that would be substituted is: "to promote, support, attack or oppose a candidate, or that refers in any way to a candidate and is published within a certain number of days before an election". The source of the subcommittee's language was the Brennan Report and is narrower than the suggested language. She would like the Board to discuss the language.

Ms. Martinez asked if the subcommittee would want to keep the language they selected originally since reading Mr. Harrington's memo, or would they want to add the "promote, supports, attacks, opposes" language.

Ms. Kovnat said it would not be in addition, it would be a substitute for the language. The language is broadening and captures more expenditures than included in the original. She said she personally favors the language, but would like Board discussion.

Mr. Harrington said there is a correction in his email; the Vermont Right to Life is one precedent that requires reporting by independent expenditures that is not for advertising. Ms. Kovnat replied that is on a different point.

He said Common Cause had access to the services of the lawyers of the Campaign Legal Center and he has tried to get views on the best language that will get the most disclosure and restrict coordination, and still avoid a legal challenge. He said he would pass on what the lawyers suggest.

Ms. Kovnat said according to the Brennan Center the language in the working draft would withstand a legal challenge. The language does define the definition of a coordinated expenditure to advocacy, urging the defeat of the election, or voting for or against an identifiable candidate. The other language is broader and might make some comfortable that there are more items being considered coordinated than otherwise would be. She said she would like a legal opinion on the "outer limits" available.

Ms. Stephanie Beninato said she has wanted to come to a meeting and did not know when they were. She is happy the Board is trying to do something about the coordinated expenditures, which she thinks is the only way to deal with the PACs. She said requiring people who contribute to PACs to be revealed is a trend happening. That will help people understand who is backing the PAC and in turn who is backing the candidate that the PAC is backing. She said that is an important inclusion.

She said [there should be] as many activities that can be considered coordinated as possible. The courts will tell them what the outer limits are with local attempts to make PACs accountable.

Ms. Beninato said two things regarding ethics: there is something in the code for public financing and people have ignored that. She said Michael Segura and Marie Campos and others paid their volunteers for gas and food. She said Ms. Campos bought lunch every day for volunteers and gave them gas money and Mr. Segura bought lunch for himself and others every day. She said that meant those people were not volunteers and their time was supposed to be paid for by the campaign.

She thought that is stated in a negative way and wondered if that could be rewritten to be specific and declaratory: "if you pay your volunteers for gas; if you give your volunteers food" they are no longer volunteers and have to be paid out of the public money at the affordable wage.

Ms. Beninato said law is subject to interpretation and when someone says something is 8 inches high and it is actually 22 inches high and that is in a public record and they are the building inspector and should know better; they have just falsified a public record. People who make public records should be held accountable for what they put in them. She said that is a long-term issue and not for the immediate campaign issues.

Mr. Thompson thanked Ms. Beninato. He asked the city clerk how the ECRB meetings are publicized.

Ms. Vigil said all of the meetings are put on a weekly meeting list and the meeting list is then put on the city website and the list also appears in the New Mexican. The complete packets that include the agenda and items under consideration are also on the website and the agenda is posted at city hall. She confirmed that the process for filing a complaint is also on the website.

Ms. Heldmeyer said she quickly read Mr. Harrington's memo and agrees with most of it. She said that her volunteers were bought food from time to time and she listed that as a campaign expense. She said she is not sure if there should be a difference.

She said it is clear the subcommittee tried to do everything possible to show what could be considered coordination and Mr. Harrington's memo on how to broaden, is good. Said she does not agree with raising the reporting obligations from \$250 to \$1000, because they are talking about small municipal campaigns.

Ms. Heldmeyer said the reality is that all of the coordination issues will be difficult to prove and will either be by a whistleblower or a mistake on the part of the campaign. She said the question is whether the speculation alone will be such as to undermine the public's confidence and the Board should keep that in mind. She said that lends credence to the idea to broaden the spectrum of what is considered spending on a campaign that campaigns are now spending money on.

Mr. Shandler said the fulcrum of this issue is that if they say for instance that Ms. Vigil is a publicly funded candidate and can only get \$60,000 and he is ABC Independent expenditure group and he puts out a flyer. He asked what the legal element is- he makes an expenditure; is he "urging the election or

defeating a candidate". Mr. Shandler said the third part is if this falls within one of the six or seven examples.

Mr. Shandler said he needs to research the verb, because the defense would be "my flyer did not expressly urge the election or defeat". Or should it be the broader language: 'promotes, supports, attacks or opposes'. There his defense would be "I didn't urge, but I did support".

Ms. Kovnat said the broadening language includes the phrase "refer to any candidate within a period".

Ms. Martinez said she did not necessarily read '*promotes, supports, attacks*' language as broader than urges. She said urge is susceptible to different meanings and is largely semantics. She said where it is broad is when it says it refers to a candidate. Her question is in the original language it says: *for or against a clearly identified candidate*. She asked if that meant identified by photo or name or ... She said sometimes ads do not name a candidate, but you know who it is about. She said she is in favor of broadening, but is not sure this language accomplishes that.

Ms. Kovnat said the answer is "*the reasonable interpretation*". She said that would be the task of the adjudicator to determine based on the facts.

Mr. Harrington said the classic example of something that could be included in the restrictions on coordination, but might not require reporting, is something not involving any communication with the public, such as polling and opposition research. He said if a publicly financed candidate asked someone to spend \$10,000 on a poll and give them the results; that could be called coordinated and in that case would be prohibited. He thought you could not require reporting on polling and research, if totally independent, because there is no clear way to show that is connected with the election or intended to help the candidate. He said under the coordination section you are clearly not confined to advertising or things that urge people to vote.

Ms. Kovnat asked Mr. Harrington in his example, if the candidate asked someone to spend money for independent polling that is clearly an expenditure made at the request of the candidate. She said that is captured by the general definition of a coordinating expenditure; an "*expenditure that is made in cooperation, consultation or concert or at the request of a candidate or the candidate's political committee, including, but not limited to*". She said the examples given were an attempt for some specificity in the language of *at the request of*. She said his first example would be captured by the general definition of a coordinated expenditure (K).

Mr. Harrington said it would be captured by the general definition, but in 1 (a) '*There has been substantial discussion*', etc. that would not apply to a discussion of polling and opposition research, because paragraph one restricts that to advertising.

Ms. Kovnat said that is the argument for broadening the prefatory language code.

Mr. Biderman said to be clear if talking about referring to a candidate within a certain timeframe; that may start to encroach on real free speech. He said for example if the Sierra Club sends out a notice asking Senator Udall to amend his legislation in a certain way; that is not supporting or opposing reelection of the Senator. That is working on legislation and is an attempt to appeal to the candidate who happens to also be a sitting legislator to change or amend something. He said that is free speech.

Mr. Harrington said the concern of McCain-Feingold was ads that tried to look like an ad that came out right before the election. He said the ad at stake in the *Wisconsin Right to Life* right before an election said the Senate has been blocking President Bush's nominees to court and to "call Senators Kohl and

Feingold and tell them to stop blocking the President's nominees". Mr. Harrington said at issue was the outright ban on corporate spending that was later struck down in Citizens United. He said *Wisconsin Right to Life* said it has to be clearly unambiguously election campaign related.

He said the courts rejected the Citizens United argument and said disclosure laws are different and can be broader and any mention of a candidate in an ad 30 days before a primary/60 days before an election, is subject to reporting.

Ms. Heldmeyer said one thing that should fit this is the question of push polls; calling someone and saying "if you knew that candidate x is beating their wife, would that make a difference in the way you vote for them". She said making that more clear would be good, because is an increase in push polls in city campaigns. She said close as many loopholes as possible. She said this is something the Board needs to anticipate, because it is not just going to happen it *has* happened.

Ms. Martinez said the umbrella of K is the coordinated expenditure definition and then the examples under K (1). She said the examples repeat things that are already included in K, such as something 'made in cooperation, consultation or concert with' and is exactly the same in (b). She said (f) gives an example of what would be a coordinated expenditure. She said K (1) says 'shall be presumed' and K (2) says "these shall not be presumed" almost creating a presumption system. She suggested restructuring that to be more clear and provide actual examples.

She asked if this language came from the Brennan Report.

Ms. Kovnat said this was primarily the Connecticut statute. She said the presumptions were intentional on the part of the subcommittee to list the examples of presumptions and to be sure the examples were not a limited list. She said if the complaint is filed alleging facts that fit into these examples, the Board would presume coordination, unless there was evidence to rebut the presumption. She said it is not possible to write into any code all of the things that someone might come up with.

Ms. Tara Lujan entered at this time.

Ms. Martinez agreed that the general definition is very broad and captures what Mr. Harrington talked about.

Ms. Kovnat thought the preface of K in the general definition would capture most of what Mr. Harrington said. She said examples were commonly expressed in other jurisdictions and were issues in Santa Fe in the last election.

She said the subcommittee thought it viable to specify on questions such as: "does the Sierra Club's invitation to a candidate to a meeting constitute an expenditure". She said that is not.

Ms. Martinez confirmed on K (2) when stating that *an expenditure will not be presumed*; that means that there is no presumption, not that there is a presumption that it is not coordinated. There is no presumption at all.

Ms. Beninato said page 4, (3) (b) *an individual or entity...would not be presumed to be a coordinated expenditure when the individual or entity making the expenditure has endorsed a candidate*. She thought support, endorsement is coordination. She said if not, how can it not be presumed to be an expenditure. She said that does not make sense to her.

Ms. Kovnat said there is free speech. There are many community organizations and organizations that want to support issues and the candidates who are in favor of those issues. She said the fact that there

is that group that endorses a candidate; it serves their purpose. The money that it spends cannot be contributed to the candidate. Ms. Kovnat said that would be a barrier to free speech beyond imagination.

Ms. Lujan said she echoes that; an endorsement is not the same as coordinated, because there is not an exchange of expenditure or money involved.

Ms. Kovnat said coordinated contributions are a big piece and the other big piece is the revision of the Public Finance Code. The purpose of the revision is to give the publically financed candidate some ability to raise funds to combat a privately financed candidate, or the expenditure of a lot of independent money. The current code has a seed money provision and a qualifying provision and all of that is eliminated in the new provision.

The new provision will permit a publically financed candidate to raise contributions of no more than 100 dollars from an individual contributor. A candidate running for the office of mayor would have to qualify by having 600 qualified contributions of no less than \$5 up to \$100 from each of the 600 people. Candidates running for office of City Council would still have to have 150 people that give no less than \$5 dollars but up to 100 dollars.

She said the candidate would then be entitled to a city match for the additional money the candidate is allowed to privately raise. She said the theory is that the money will enable the candidate to run a campaign against a privately financed or independent PAC driven candidate. She said that is the major change.

Mr. Biderman said to explain the rationale as he saw this; if someone is opposed by a PAC supported candidate, it would no longer matter under this approach whether there is a specific amount coming in, or how much. A candidate, who is not getting that support, will have the freedom to raise contributions, but small ones. He said under the current provisions candidates are limited in what they can raise regardless of how much your opponent benefits from PAC contributions. He said this is being tried at the legislature as well. He said previously he raised the question about the \$100 dollar limit and would like to speak to that when appropriate.

Mr. McMillan said he understands the rationale for the qualified small contributions, but was hoping to hear about why the \$5 contributions are required, especially in light of the public 'pushback' on the issue. He asked the roots of that.

Ms. Kovnat the subcommittee left that in with the hope that would be discussed in a public forum. She said initially that was because the city did not want to spend money on people who were not serious candidates. The thought was that the requirement to get \$5 each assured these were serious candidates who had support and should be afforded the benefit of public money.

Ms. Kovnat said the subcommittee discussed alternatives to that, but the idea is to qualify as a publicly financed candidate they need to show they have some support; maybe it is more in petition signatures rather than 5 dollars. She said it was left in the current code, but a substitute needs to be crafted to satisfy the need to assure the seriousness of a candidate.

Mr. McMillan said he assumes that along with the \$5 contribution there is a signature. He asked if the signature is verified and if verification is possible.

Mr. Shandler said currently a certain number of petition signatures is required and verified against the County Clerk database to see if they are qualified electors. He said the publicly funded candidates

have additional paperwork; half sheet papers that people fill out. That is also verified against the county clerk's database.

He said under this proposal a candidate would still have to do petitions, but their campaign reports would be submitted instead of the half sheet papers. A certain number of people who give money must be qualified electors and the campaign reports are used to double-check against the clerk's database.

Mr. McMillan asked if the signatories provide a home address or corroborating information other than a name and signature.

Ms. Vigil explained the nominating petitions require the registered name and registered address and their signature. The phone number is required on the qualifying contribution forms in addition to that.

Mr. Harrington said there would still be a requirement under the proposal for submitting a form with each contribution under 100 dollars.

Ms. Beninato said in terms of the signature and \$5; the fact that people sign the petition means that the person is a serious candidate. She suggested increasing the number of signatures needed. She said getting \$5 from people is extremely awkward, especially in the first round. She thought it may be too much money for some people to give even though they want to support a candidate.

She thought it would be more egalitarian to require more signatures, but no money. She said at some point you have to decide not to deal with the PAC money and "hope people get it" or you will wind up spending all of your time. She said the whole idea of public money is defeated when you then have to get more money, because you are countering a PAC that is spending money.

Ms. Beninato said it is too bad they can't take money away from candidates supported by PACs, because that would be the best solution. She said disclosure is really important; if they knew who is playing the game and one PAC gives to another PAC who gives to a third PAC you cannot trace who is giving what. She would like to know who these people are; is it unions; the conservation groups; the pro-America groups. She said PACs do not have to post their purpose and it is like an anonymous donor. She said the less anonymity in donors is what will help bring light to this and possibly get people to stop using PACs and just support the candidate; or not.

Ms. Kovnat pointed out that tackling disclosures will be the next task of the subcommittee.

Ms. Heldmeyer said she assumes you can initially get \$5 or \$10 and then go back and ask for the other 90 dollars. She said one of the reasons that people supported public financing is so their campaigns would not turn into a campaign-long fundraiser and that means that would be out the window. She said if you need more money you will try to get it and that will shift the focus of campaigns.

She said also on the discussion whether there is enough money, especially in a mayoral year, they are talking about a great deal more money than in the last election. She said if there is not enough money and everyone takes a cut, that makes the PACs that much stronger. She said when people in Santa Fe supported the Charter Amendment for public financing they did it for a couple of reasons; to make the campaigns about issues and not about money. She also heard people say they did not like the smear campaigns or push polls and out of town people knocking on their door several times a week. She said all of those things were bought in the last election.

Ms. Heldmeyer said Common Cause has good intentions, but she is afraid in light of what the Supreme Court has done that people are going to lose faith in public financing because it will not do what people

voted for. Ms. Heldmeyer said some will be even more irritated because more money will be involved. She said that is something the ECRB needs to think.

Ms. Kovnat said Ms. Heldmeyer's comments are spot on. She said speaking as one member of the Board; she thought their responsibility is to do the best they can within the limits of the Supreme Court interpretation of the First Amendment. She agrees that the underlying reason for public financing was to curb the impact of money and campaigns and free candidates from the need to raise money all of the time. She said the Supreme Court has made it impossible for a public body to regulate the amount of money in a campaign, as long as that amount is independent. She said this is an effort to give the publicly financed candidate some ability to combat that.

She said she feels the obligation is to do the best they can. She said this is a small community and Santa Fe might be a model if they can make this work. She said they cannot eliminate money in campaigns anymore.

Mr. Biderman said if we walk away from public financing or choose to do this the easy way and let the PACs do their thing, we are basically rolling over and letting the Supreme Court call the shots. He said one thing lawyers know is that the law changes and the Supreme Court rulings change. He said part of the way that happens is when pressure comes from people that say the Supreme Court got it wrong and we will show you it is wrong by taking every opportunity to challenge what you have done as far as the law allows, without violating the law. He said eventually things do change.

He said if they do not keep the pressure up by sending the signal that we are committed to this as far as this can be done, it would be a big mistake.

Ms. West said she was glad that the Board is wrestling with the issue. She thought when the Board gets to the part about disclosure, revisiting the issue will be easier. She told about a friend of hers who sent a comment in to her newspaper in relation to Senator Wirth's campaign-finance transparency. Her friend said until there is a change in the Supreme Court, the consequences of Citizens United will likely not be revisited; however there are many states where citizens at least have the right to monitor who is giving to whom.

Ms. West said she thought that key and is looking forward to the discussion on how much muscle can be put on disclosure and monitoring.

Mr. Harrington bought that when people think about getting money out of politics, they are thinking about two different things. One is that fundraising takes so much time, and nothing can be done about that. He said the other thing is that some contributors may take large contributions and is inevitable there will be a sense of gratitude and influence over public decisions. He said this law would do something about that.

Ms. Kovnat said it may be that the Board should not come to an action today until the subcommittee works on disclosure.

Mr. Biderman suggested the Board give thought to the \$100 limit. He talked about being impressed by the Oregon Senator Wayne Morris who voluntarily would not take a contribution over a certain limit, because he thought it too likely to be seen as an influence. He said the Senator's limit was 100 dollars.

Mr. Biderman said he wonders if \$100 is an appropriate limit; but on the other hand he realizes the higher they go with the limit, the more they are in fact bringing money back in, fund raising back in and

that starts to take away the value of having public financing. Mr. Biderman said he is not advocating a different limit, but thought it worthy of discussion.

Ms. Kovnat said she likes the \$100 limit and thought it reasonable for this community.

Mr. Harrington said he thought in Santa Fe a \$500 contribution would be in the top 1% of contributors to council candidates. He said that is what they want to avoid.

Ms. Beninato said there was a proposal that when PAC money was spent the city would provide more money to the public candidates who were not publicly financed and did not have PAC support. She said that could get to be quite expensive and unpredictable. She said if they take money out and candidates to not have to raise money, they could look at issues and is part of why they did public financing. She thought there could be other alternatives to give more money if the PACs oppose a candidate that is publicly financed.

She understands that the Supreme Court tied their hands, but likes Mr. Biderman's approach to keep pushing the limit to finally get a court to recognize they made a mistake. She said that will never happen if the courts are not given a case to look at again. She thought it a good idea for the Board to wait before taking action until they look at disclosure and know what part plays which role.

Ms. Heldmeyer said Mr. Harrington may not think that \$100 buys influence, but sometimes people who give \$100 think it does and she has returned the money twice. She said this is not statewide or national campaign; they are talking a small local campaign.

b) Update on Status of Campaign Laws at the State Legislature.

Mr. Biderman said his report last month included two campaign bills carried by Senator Wirth (SB58- a Campaign Public Financing change); SB278 (on Campaign Finance reform) and HB115 (the State Ethics Commission Bill). He said all three are sitting in the House Judiciary Committee.

He said he has real concerns that the bills may not happen. He said 278 passed both House referrals with one dissenting vote out of two committees, but as of today is still not on the House Judiciary agenda and is disturbing.

Mr. Biderman said SB289 (adds legislators to the public financing) is still in the Senate Rules Committee as it was a month ago; HB205 by Representative Garcia also adds legislators to publically financed state races and passed out of the House Judiciary with no recommendation and is now in its third referral to the House Appropriations and Finance Committee.

He said all of the bills except 58 would have to get through another committee and through the floor of the House and then go to the governor. He said SB58 has to go to the floor of the House and SB289 has to get out of its first committee, the Senate Rules Committee.

Ms. Lujan said she was late because she was working on bill SB875 that addresses the truth in political advertising. She said they are looking to create a rating system; a "truth meter" on advertising during campaigns and the bill will go to House Judiciary today. She said there is a stall on this type of bill.

Mr. Harrington said SB278 is a popular issue and polls at 92% in favor of full disclosure of who is supporting candidates and issues. He said no one wants to be seen voting against it or to veto it and are trying to prevent it from getting to that point. Mr. Harrington said the religious conservatives are hostile to disclosure and the lobbyists are working that.

be \$30,000 for a City Council candidate and \$120,000 for a mayoral in addition to the 60,000 qualifying funds.

Mr. Green said, "I agree with a lot of what Ms. Heldmeyer said, but I am concerned this would create a financial arms race with campaigns, especially with candidates raising lots of matching funds." He said the public might be overwhelmed by that. He appreciates the alternative qualification and thought that makes the system more attractive and possibly will have a lot more candidates, which would be great. He said he is not sure the Public Campaign Finance Fund could handle so many funds being dispersed.

Chair Miller said the Board would first look at the changes to Part I, *Coordination and Coordinated Expenditures*.

4. DISCUSSION AND POSSIBLE ACTION

1. Consideration of the Following Amendments:

- 1) Coordination Between Candidates and/or Their Campaigns and Independent Expenditure Groups or Individuals.

Ms. Kovnat said with Mr. Shandler's help, the subcommittee feels they are close to presenting the material on coordination and coordinated expenditures for full discussion and action by the Board. She was satisfied that the law treats coordination, coordinated expenditures, just like contributions and that they are subject to regulations. She agrees that the limitations on page 2 are unnecessary and should be deleted. She said she thought she speaks for the subcommittee in suggesting that page 2 start with line 12, *Coordinated Expenditure means: (1) an expenditure*. She said the subcategories should all be deleted because they are not necessary.

She said she would eliminate a, b and c entirely and is why she confirmed with Mr. Ferguson that the definition of expenditure is adequate. She said that way they know what an expenditure is and that a coordinated expenditure is '*an expenditure made by an individual or entity other than a candidate or the candidate's political committee in cooperation, consultation or concert with*'... and is the main definition. Then (i.) through (v.) are examples of coordinated expenditures. She said the Board will want to discuss the idea to eliminate the presumption piece.

Mr. Biderman said (1) (a, b and c) are only helpful if necessary to keep this legal, which he doesn't think is necessary. Or to compromise for those who are opposed to this, which he also doesn't think is the case. He thought this puts limitations they do not really want.

Chair Miller agreed. Ms. Martinez thought that is clearer and more precise.

Chair Miller confirmed consensus to change the definition as suggested by deleting a, b and c and defining coordinated expenditure as an "*expenditure made by an individual or entity other than a candidate for the candidate's political committee; and in cooperation, consultation or concert etc...*"

The Board discussed their thoughts on presumption.

Mr. Biderman suggested the subparagraphs be consolidated and include examples, but leave out the line about presumption. He said we know these kinds of activities are coordination and the only thing

that needs to be shown is that it happened. The person who is opposed could say that didn't really happen or we are misinterpreting something, but that has nothing to do with the presumption, it has to do with proof.

Mr. Miller was concerned (the bottom of page 3) where the individual or entity disseminates, distributes or republishes an advertisement that could happen with no nexus to a campaign. He said the candidate has no knowledge or connection of that. He asked if that would be a coordinated expenditure.

Mr. Ferguson said the provision should apply only to the outside group that does that and because the candidate did not take any action, they cannot be punished for that outside spending.

Mr. Biderman said if there is a wording problem in the main definition, the Board should address that, but this is to ensure that is the umbrella and that all of the examples are subject to criteria of the umbrella. He added that the Board could count on Mr. Shandler to ensure the umbrella language applies to all of the examples as a common condition.

Ms. Martinez had a concern on a goal to identify a set of facts that imply cooperation. She asked if Ms. Kovnat meant cooperation, like putting out a stock photo on the Internet that was intend for use. Ms. Kovnat replied she thought they were trying to identify act patterns that may appear to imply there has been cooperation.

Chair Miller said that example seems differentiated from the other four. He said the other four involve connection or conversation, etc. between the candidate and the outside entity.

Mr. Ferguson said if someone takes a photo off the website etc., clearly the candidate should not be punished. The only time the republication provision should be enforced is when there is fairly strong evidence that the candidate intended the outside group to use it.

Mr. Harrington suggested breaking the first part into categories with the first part "deemed coordinated" and another that would be presumed. Ms. Kovnat added that 1, 2, 3, and 5 would be deemed and #4 would be presumed.

Mr. Biderman suggested (c) 3 say "*unless they thought someone intentionally ...*"

Ms. Martinez asked that page four on the first line: "*material prepared by the candidateclearly with the intent for publication;* to add language that adds the element of intent. She suggested adding after 'agents', "*that is clearly intended for republication or further distribution*".

Mr. Ferguson said that works as applied to the candidate. The language is intended to prevent the candidate from being punished for action taken by the outside group without the candidate's knowledge. He said the Board should be sure that if an outside group takes a candidate's material on their own and republishes that, it will count as a contribution and they will be punished for violating the contribution limits, even if the candidate had no involvement.

Ms. Kovnat said that may mean that the Board should look at the definition of contributions to be sure it would cover that activity. The coordinated expenditure provisions do not capture the outside group; it is the contribution and expenditure provisions that capture them.

The Board discussed the language. Mr. Shandler clarified that the Board liked the language.

Ms. Martinez confirmed that the definition of expenditure had addressed Mr. Ferguson's concern.

Mr. Ferguson said the language would apply to the groups and still is an expenditure, but does not fall under the definition of a contribution and will therefore be limited. He said if they want to limit a group from doing that on its own and treat it as a contribution then that should be changed. He suggested adding to the beginning of the language "if *this subdivision is to be applied to a candidate*", to limit the example to a candidate, before the whole example. He offered to send the Board similar language that was used in Philadelphia.

Chair Miller the revisions are too complex to do in this manner. He asked if there were other concerns than adding references to campaign related professional services on line seven, three and four.

Mr. Biderman suggested that also go back to the subcommittee. Mr. Shandler noted that the same phrase is also in 'a' on page three, line three.

Chair Miller suggested striking the period after agents and strike *substantial discussion includes, but is not limited to...* Mr. Ferguson suggested they say about campaign strategy, "*which includes, but is not limited to....*" Mr. Biderman said the subcommittee could wordsmith that.

Ms. Martinez noted a spelling error on page 4, line 20 that should be *ensure* not *insure*.

2) Transparency and Independent Expenditures

Ms. Kovnat suggested line 14 on the 30 day window be changed to a 60 day window, because Santa Fe has no primary.

Mr. Biderman said he wanted to explore going back a couple of layers of the required disclosure and then let the public know that the Board would not go deeper.

Ms. Kovnat wanted to add language to get another layer of disclosure. She asked Ms. Vigil to let the Board know what problems she might have with that.

Chair Miller suggested on line 19, page 6 to delete "*for the purpose of paying such expenditures*" and require disclosure of all contributions received. He said in Mr. Harrington's email on page 7, paragraph (b) '*the entity must provide the names of their executive officers*' he suggested to change the language to "*the president and CEO*" (chief executive officer).

Chair Miller added that Mr. Ferguson also suggested not deleting the definition of campaign materials, because it appears elsewhere.

Mr. Ferguson said he would add the name of the president or CEO or *equivalent* and he would also ask for their address and contact information to be sure they can contact the contributor.

Mr. Biderman said he would explore the idea of the Russian doll and also go back one more layer to require disclosure, if that is not a burden on the City Clerk's office and a disclosure that the Board would not disclose further than that.

Chair Miller said that items three, four and five are closely related. Mr. Shandler added that three and five were discussed at the last meeting and the only new material is on Section four, page 18.

Ms. Kovnat thought there was not time to talk about the Matching Fund Proposal today, but the Board should know the state of the public fund. She asked Ms. Vigil to provide information that could help the deliberations about the match and those issues.

Mr. Thompson agreed. He said the Matching Fund Proposal should be on the next agenda, especially given the time constraints. He said maybe even beyond item 1 deserves a fresh hearing.

Chair Miller asked if consensus was to wait to discuss items 3-5 until the next meeting.

3) Qualified Small Contribution System and 5) Matching Fund Proposal- Not Discussed

4) Alternative Compliance for Qualification

Mr. Biderman said he had a few points regarding item #4, *Alternative Compliance for Qualification*. He said because of the questions raised, the subcommittee came up with an alternative idea of asking people to come up with the \$5 contributions to qualify a candidate. The point of the five dollar contribution is to create some threshold of credibility so public funds do not go to someone who will not use the money effectively, but rather go to someone who shows they took initiative.

Mr. Biderman said the subcommittee prepared the discussion draft on alternative compliance, which consists of getting more petition signatures and does not involve a five dollar contribution. He said the numbers are very small and it appeared to get another 41 signatures or even another 100, would be easy and would not satisfy the credibility threshold. The subcommittee was not sure whether to go with a higher number [of signatures] or just fall back on the \$5 threshold.

Mr. Jeff Green replied that in practice the candidate has to get double or triple the number of signatures, because many are not valid. He said it takes a lot of work to get 200 -300 signatures to meet the requirement, especially when someone puts down a wrong address or is not registered in the candidate's district. He said he supports additional signatures versus the \$5 contribution.

Mr. Biderman said the concern is as part of the proposal for matching funds that will go before the City Council and that much more public money is at stake, that the more public money invested in the election, the more there will be an expectation that the matching fund contributions will be limited to serious candidates who show the effort. He said thinking about how to sell this to the City Council; his

concern is the signatures would make it too easy. Mr. Biderman said although Mr. Green points out that getting the signatures is not that easy, that may be beside the point.

Mr. Biderman said two members are absent and the Board is putting off other items. He suggested item four also be on the next agenda.

Chair Miller agreed. He asked if Mr. Ferguson had any last thoughts.

Mr. Ferguson said he did not, but he was happy to provide the written resources on all of the discussion and to be involved in any subcommittee meetings or where needed.

5. Next Meeting

The Board decided the next meeting date would be Monday April 27, 2015 from 3-5 p.m.

Ms. Karen Heldmeyer said these were not the only issues brought up at the first meeting. She said a two-page letter was submitted with items. She asked if the other issues would be addressed.

Chair Miller asked Ms. Heldmeyer to check which issues have not been discussed and he would review his notes. He noted that Enforcement is still on the agenda.

Mr. Shandler pointed out that much of Enforcement is in the Board's Procedures in the Rules of Organization and Practice and can be tackled in meetings in September and October. He said the Board needs to get this bill in front of City Council.

Chair Miller said some of the enforcement discussion has to do with resources and the Board's powers. He was not sure they could address the issue independently, but thought they should look at it.

6. BOARD MATTERS-None

7. PUBLIC COMMENT- None

8. ADJOURNMENT

There being no further matters to discuss and the agenda having been completed, the meeting adjourned at 5:14 p.m.

Approved by:

Justin Miller, Chair

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We are lucky to have in place not only the original funding mechanism but also a bonus with such a cushion built up recently in the fund.

During the second part of the analysis there were various scenarios about how many candidates there might be and different spending ratios. But that is the wrong place to look if you are trying to estimate the system because it is all unpredictable. It was for that reason we built into the ordinance a control mechanism that had two parts. One part says you can't give the candidates any more than what is in the fund and secondly, it is specified what appropriation is going into the fund in the four-year cycle. It will always be between \$600,000 and \$900,000. And if there are 20 candidates for mayor, the City is not affected. Who is affected are the candidates. So the formula is already built in and candidates' portion will be prorated. And it doesn't need to be done in advance because the formula already does it for them. He hoped that provided a better understanding of how it would work.

Ms. Helen Ferguson, with Common Cause New Mexico, thanked the Board for all of their work on this issue and to Mr. Harrington for all of his efforts in it. Common Cause wanted to speak on behalf of the funding provision and it looks like there will be enough money to do it. Las Cruces and Albuquerque are also working that direction to recommend to the Council.

There were no other speakers from the public regarding this matter.

3. DISCUSSION AND POSSIBLE ACTION

A. Consideration of the Following Amendments:

1) Coordination Between Candidates and/or Their Campaigns and Independent Expenditure Groups or Individuals

Chair Miller noted that the Board spent a lot of time last meeting on this and it was incorporated into a new discussion draft. He asked for comments from the Board starting with the sub-committee.

Ms. Kovnat said they started with section A-1 and have had substantial discussion. The sub-committee tried to incorporate some changes from the discussion and didn't make decisions on them but highlighted those areas in hopes that the Board can vote on those today.

On page 2, the salient deletion was any limiting language on coordination. There is no need for having limiting language so the recommendation is to delete all limiting language in 1, a, b, and c.

On page 3 under a, the changes are stylistic, eliminating the language of presumption. Section d is an item that the Board might want to discuss further. That is the item Ms. Heldmeyer referred to. It has to do with dissemination, distribution and republishing of an advertisement that is prepared by the candidate, political committee, representative or agent.

Chair Miller pointed out that there is no nexus between candidate and this independent spending. So it is perhaps not fair. She said when the candidate or its committee prepares this material with a purpose, that it would be republished or redistributed.

Ms. Kovnat looked at research and found a number of other places where they had the nexus without this language. The question is whether we should delete it. The subcommittee's view was that it doesn't seem to be much of a problem here but maybe others on the Board or from the public would have a different view. That is the only substantive item on this material of coordinated expenditures.

She asked Mr. Shandler if he thought that was true.

Mr. Shandler said the subcommittee did delete the presumption language in all sections except on page 5, lines 7 and 8, where the presumption was kept.

Chair Miller asked in paragraph e on page 4 whether the Board needs to keep qualifying language of professional services to be campaign related.

Ms. Kovnat said the subcommittee didn't discuss that much. She thought the meaning of professional services was clear because of the language in the second sentence - "include but not be limited to." If the Board feels more modification is needed, the subcommittee wouldn't have strong feelings about that.

Chair Miller suggested they could come back to that but the real area of discussion is probably on b.

Mr. McMillan did not think so. He asked on paragraph d what the proposed limiting language was.

Ms. Kovnat said the language discussed was if the entity or individual disseminates or distributes or republishes an advertisement that contains in whole or any part of any broadcast or any written graphic or other form of campaign material prepared by the candidate with the intention that it be republished or re-advertised.

Chair Miller added the example given from the consultant is that campaigns use stock footage or video to let people use that in promotional materials.

Mr. McMillan asked if it comes from another code somewhere else.

Ms. Kovnat said that clarification is the language of Philadelphia, Maine and Connecticut. She had not seen that additional language anywhere else.

Ms. Martinez asked if in section d there was also some question about distinguishing between the

candidate and then the groups actually doing the publishing. She recalled the discussion with the consultant how he was saying that it could apply differently, depending on what your actions were. She wasn't sure she entirely followed him but remembered that as a point

Ms. Kovnat didn't recall that and noted that the last minutes were not available.

Ms. Martinez opined that this was just an example and they were not limited to these examples so the Board was not constrained by including this.

Ms. Kovnat said the subcommittee concluded that if it is too confusing, that argued for deleting it. Those are the facts in concert with or in coordination. So the subcommittee thought they could be deleted but thought the Board should be given the opportunity to do that.

Chair Miller asked, if it was deleted, that it could still be found to be coordination.

Ms. Martinez agreed, whether we keep it or not. This is the language from Philadelphia and Maine.

Ms. Kovnat said also from Connecticut.

Chair Miller asked Ms. Heldmeyer if this was her concern.

Ms. Heldmeyer agreed. It is probably a little legally messy. There was discussion on intent - the intent to support a candidate. If that is not the intent then no one could call it part of the campaign.

Chair Miller clarified that this is when one campaign takes materials from another campaign.

Ms. Heldmeyer agreed and not just material. In this age, they take terrible faces off the Internet to run with the opponent's ad. Taking pictures or words out of context doesn't help the other candidate. We also see a lot of satirical use. It is more available to pick and choose from it if you are the other side.

Ms. Kovnat said what Ms. Heldmeyer is describing is not coordination but opposition. If an opponent picked it off to use, coordination would never be the intention.

Ms. Heldmeyer pointed out that there are two things here. The original wording doesn't talk about anything other than distribution, etc. but it can also be used with negative and with neutral intent.

She thought they would start seeing TV ads in Santa Fé but if on Facebook, perhaps a news entity might pick it up and run it as a spot. Technically, it is getting a lot more complicated. It is easier to take that stuff for their own use. There is just much more of it now. How legally one talks about intent here is important. That is what you have to focus on rather than the specifics.

Mr. Harrington proposed, before making this turn on someone's subjective intent, to research a 2007 Supreme Court decision called *FEC v. Wisconsin on Right to Life*. That case makes the enforcement of the First Amendment unpredictable as free speech. It might be best to get rid of it until deciding on what to do

about it.

Mr. Shandler commented that his budget was to send the mailers but he liked to have a fourth one so he put up a picture of him with veterans and another group went to his Facebook page, got that picture and captioned it "Zach Shandler stands with Veterans." That became his fourth mailer, essentially. The question as a judicial body is if a complaint is failed and the candidate admits it happened but when confronted, the candidate could say it wasn't what they intended and there is no proof. That might be an additional defense for a candidate.

Ms. Kovnat moved to delete that section. It is not a big enough problem in Santa Fé to have this much confusion when the fact can be captured by intention. .

Ms. Martínez seconded the motion.

Ms. Heldmeyer commented that if all that is in the law is that someone else has picked up material from another campaign and used it in some way themselves, without any discussion of intent, what you could get is the retaliatory effect that a person from the initial campaign could file a complaint and the Board would have to hear it. And it could be argued this is proof of coordination. Candidate 3 would accuse candidate 1 and 2 of being in cahoots. The Board would have to hear it and the Board hates those cases. So it would be better to forestall those than to say deal with it afterward.

The motion passed by majority, 3-1 voice vote with Ms. Luján dissenting.

Chair Miller asked about subsection e. The concern is that a campaign might engage professional services that are not campaign related and might have to defend an allegation that it was coordinated. Ms. Kovnat said the last sentence would help mitigate that circumstance.

Ms. Martínez noted that the last sentence leaves it open (not limited to). So she was in favor of adding "campaign related professional services."

Ms. Martínez moved to add to the last sentence in subsection e, "campaign related" before professional services on line 4. Ms. Kovnat seconded the motion and it passed by unanimous voice vote.

Chair Miller said he would entertain a motion to include part 1 in the Board's recommendations, assuming they could decide part by part to approve a part to recommend to Council, should we move to approve the draft as amended.

Mr. Shandler said that sounds like a good idea.

Ms. Kovnat moved to approve Part 1 as amended today. Ms. Martínez seconded the motion and it passed by unanimous voice vote.

2) Transparency and Independent Expenditures

Ms. Kovnat said the subcommittee had no changes from the draft discussed last time but agreed that in A-2, the reference to a clearly identified candidate about a proposition within 60 days would be the relevant time.

Ms. Martínez added it was the longest they could go safely. Ms. Kovnat agreed.

Ms. Kovnat said for the filing. On line 19 and 20, our guest from the Brennan Center was concerned about that language being too limited and suggested that litigation in the Holland case is in the circuit courts. He suggested that limitation was not necessary as a constitutional matter. She read the case and it turns on a point of administration law. She thought that was optimistic and was sure people have views on this. The subcommittee wanted to leave it in and identify it for discussion purposes.

The other change in Part A was eliminating an explicit waiver for communications on contributions for the purpose of newspaper editorials or reports of commentary by the news media does not need to be reported. There is a tenth circuit case that looked at it under a waiver for Citizen's United. So it was a red flag to have a media exception in the ordinance and most people with the media don't need a statutory exception. The First Amendment provides that. So they just wanted to give full disclosure.

Ms. Kovnat said Part B has a provision the subcommittee eliminated in the draft and was discussed two weeks ago. Now, the subcommittee decided to put it back in for a second layer of disclosure. And if the Board thinks it is too problematic, the subcommittee provided an alternate just as a disclaimer.

Ms. Luján said they just wanted it to be transparent.

Ms. Martínez asked if B was deleted last time.

Ms. Kovnat recalled that Ms. Vigil thought it would be too complicated. Brent Ferguson from Brennan thought the second layer was important.

Ms. Kovnat said Ms. Vigil may still feel that way so the Board needs to discuss it.

Chair Miller didn't think each portion needed its own motion but he would like to get consensus.

On line 14, to change it from 30 to 60 days, he asked for any discussion. There was none.

On line 19 - to leave in paying for such expenditures.

Ms. Kovnat clarified that an entity spending money for campaign expenditures has to report all expenditures and the contributions received for the purpose of paying such expenditures. It does not have to report all of its contributions. She explained that some organizations make contributions and not all are for campaigns.

There was general consensus to leave that language in.

Chair Miller said the next is Line 27-28, to remove the media section.

Mr. McMillan asked if there is a compelling argument for leaving it in.

Ms. Kovnat didn't think there is an argument for it and it is allowed by the First Amendment.

Mr. Harrington recalled some op-ed pieces in the last election about how wonderful the PACS were. Because the other candidates had the media on their side. He wouldn't be surprised that a complaint would be filed on it. There is no expenditure as an Op-Ed. He thought what should happen is to allot some to each of those entities or the Board could develop an editorial form to be filed with City Clerk and it would be a drill. That is how it could go down.

Ms. Kovnat reasoned that people could claim that the New Mexican would have to file what it costs to publish an Op-Ed.

Mr. Harrington concluded that there are bad things either way.

Ms. Heldmeyer agreed with Mr. Harrington. It is an enforcement issue and it all hinges on "expenditure." For the most part, the newspaper doesn't pay you to put it in but if you are paid overall for your job and just throw in the Op-Ed.

Ms. Luján thought they would get some feedback from the media and this is about their First Amendment right to communicate and how they are protected. She hoped the expenditure would be captured there when pros write.

Ms. Heldmeyer clarified she was thinking about ghost writers. She was not comfortable with that.

Ms. Martínez said the subcommittee thinking was that it was overkill and didn't need to be part of the ordinance.

Ms. Luján and Ms. Kovnat agreed. The media has a long-standing exemption.

Mr. McMillan moved to accept the deletion of the media section. Ms. Martínez seconded the motion and it passed by unanimous voice vote.

Ms. Kovnat thought it would be prudent to talk with the media about it so they would understand the Board is not attacking them.

Mr. Shandler agreed to contact them.

Chair Miller went to page 8, Section B or Alternate B.

In Section B, Ms. Kovnat said this would require a second layer of reporting of contributors to entities or people who transfer money to other entities of at least \$250 that the money would be paid to the candidate or if there is a campaign expenditure of \$250 or more and that would be captured by provisions in Section A.

Chair Miller thought the alternate wouldn't be an alternate but an addition to B - that a report would still be required even without disclosure.

Ms. Kovnat said unions are an example that would make such contributions. This provides that they have to report contributions to their funds.

Ms. Luján said they were talking about how this just ballooned out. They have political committees who gather voting information from the members and each member contributes \$5 which all together would exceed \$250 and this would require those members to be identified. So the change would exempt them from that requirement. It might infringe upon their requirements. We don't know how they would feel about that. So she wasn't sure how far the Board wants to take it.

Ms. Kovnat said the change would only affect a person who transfers more than \$250 with the knowledge that it is to support a candidate.

We thought the alternate to be in lieu of A. Mr. Harrington pointed out in the memo that the alternate is not as broad as the original so if we go with the alternate, we should look at that.

Ms. Kovnat said the subcommittee didn't put it in because the Clerk was concerned.

Mr. Harrington said he was concerned when he heard the Clerk had some issues with it. This was proposed by Senator Wirth and it is new ground. It made him nervous and he racked his brain to see what it might be. The issue with unions is a good example. He would like to hear what Ms. Vigil had to say about it. New things sometimes make us nervous and it might get struck down with some example that is unconstitutional.

Mr. Shandler explained that each reporting period has 14 reports coming in and she has to review all of them and put them on the web so this would necessitate many more people reporting including citizens who are not part of the campaign itself and not experienced in reporting like campaign treasurers. And then the Clerk has to prove that individual is actually the one who is reporting.

Mr. Harrington felt not knowing who will be reporting is already a problem under sub section A but she would know somewhat who they are by what is showing up in mail boxes. It is just an enforcement issue.

Ms. Martínez said the last sentence talks about when a report is not required. She asked if the Board could make that so the political committees would have to report those and not have as many people having to make reports nor putting the onus on individuals contributing to PACs (the receiver of the individual contribution).

Ms. Luján said that comes under the transfer.

Mr. Shandler referred to lines 7 - 11 or line 12 where it requires that each individual transferring money has to report the transfer to the City Clerk.

Ms. Martínez asked who would be making the reports that are required by this provision and that Ms. Vigil was concerned about receiving.

Ms. Kovnat said it is the contributor to the PAC that would be captured by this provision.

Ms. Martínez wondered how people would know about this obligation.

Ms. Kovnat said that was why the subcommittee took it out.

Ms. Luján said they would know if they contribute to a PAC, or the treasurer would know. That goes back to the treasurer being required to provide the information to the Clerk's office.

Mr. Shandler spelled out another scenario.

[The meeting was interrupted by the parade outside for the Boston Marathon winner.]

Ms. Kovnat agreed there is no doubt that B uncovers others who contribute who need to report.

Ms. Heldmeyer liked the alternate better because it tells the public the City is doing something about this issue. It also gives the larger Russian dolls issue. She asked if they could just make them all PACs and the answer from Mr. Shandler is no.

Ms. Heldmeyer asked if those who don't report could be issued a subpoena.

Chair Miller asked if there was a consensus.

Ms. Kovnat moved to eliminate B and adopt the alternate to B and expand it to say "any candidate, political committee or entity which has to file under Section 9-2.6 and receives contributions from another entity that does not have to disclose its contributors to the City Clerk shall place the following disclosure. Ms. Martínez seconded the motion and it passed by unanimous voice vote.

Ms. Martínez moved to approve Part 2 as amended for recommendation to City Council. Ms. Luján seconded the motion and it passed by unanimous voice vote.

3) Qualified Small Contribution System

The Board did not consider this item.

4) Alternative Compliance for Qualification

Ms. Kovnat noted this has a requirement for a \$5 contribution to qualify for public financing and the Board was asked to consider an alternative to that. So on page 20, the proposal is that in lieu of the \$5, the potentially publicly financed candidate would submit a supplemental nominating petition containing the same number of signatures from additional voters. Last time, the Board saw that the numbers were pretty small but the subcommittee stayed with the same alternative. The purpose is to make sure candidates that qualify for public money are serious candidates and have enough support to warrant the public funding.

Ms. Martinez asked if most other public financed codes have an alternate compliance or if they all have qualifying contribution provisions.

Ms. Kovnat said they all have a requirement of seriousness and usually it is small amounts of money. The subcommittee has proposed the alternate.

Ms. Martinez asked if the Board could decide to have higher numbers of signatures.

Ms. Kovnat said they talked about that but decided on just requiring doubled numbers of signatures.

Mr. McMillan asked what those numbers were and Mr. Harrington provided a document to him.

Mr. McMillan observed from the document that it would have a high of 84 to a low of 31.

Chair Miller clarified that the alternate numbers would be in addition to the required petition signatures.

Ms. Kovnat agreed.

Ms. Martinez thought it would be easier to get the signatures instead of \$600 so she thought it should be more than just double. And part of her said it should just be the money.

Ms. Kovnat moved to not adopt the alternative and require a certain number of the \$5 contributions for public financing qualification. Ms. Luján seconded the motion.

Chair Miller said the action of the Board would not include Part 4 in their recommendations and leave the ordinance as now stated.

Mr. Harrington agreed with that action. It should be hard to get public financing. He asked the Board to not forget sub section D. He thought it would also be advisable to put the prohibition of a person to make a contribution in the name of another provision in this section.

Ms. Kovnat said it was already there in 9-2.6a.

The motion passed by unanimous voice vote.

Chair Miller noted they were about out of time.

5) Matching Fund Proposal

This item was not considered because of time constraints.

B. Consideration of Other Issues Raised by the Public and Board

Chair Miller noted there were many ideas about changes that needed to be made to the ordinance. The Board has addressed the larger ones. Some of the smaller issues could be handled with more technical cleanups and will be presented at the next meeting and some issues not so pressing to be put in the ordinance for the next election like enforcement will not be addressed.

4. NEXT MEETING AND TOPICS FOR CONSIDERATION

Chair Miller announced the meeting would be on May 20th and is the meeting where the Board expects to take final action on the proposals to the Governing Body so the Board needs to spend time on small contributions and the Matching Fund proposal.

5. BOARD MATTERS

Ms. Luján asked if they would consider appointments and reappointments for next time.

Chair Miller agreed and filling the vacancy by Mr. Thompson's resignation and reappointments.

6. PUBLIC COMMENT

There were no public comments.

7. ADJOURNMENT

Ms. Kovnat moved to adjourn the meeting. Ms. Martínez seconded the motion and it passed by unanimous voice vote.

The meeting was adjourned at 4:45 p.m.

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Ms. Martínez noted that the last sentence leaves it open (not limited to). So she was in favor of adding "campaign related professional services."

Ms. Martínez moved to add to the last sentence in subsection e, "campaign related" before professional services on line 4. Ms. Kovnat seconded the motion and it passed by unanimous voice vote.

Chair Miller said he would entertain a motion to include part 1 in the Board's recommendations, assuming they could decide part by part to approve a part to recommend to Council, should we move to approve the draft as amended.

Mr. Shandler said that sounds like a good idea.

Ms. Kovnat moved to approve Part 1 as amended today. Ms. Martínez seconded the motion and it passed by unanimous voice vote.

2) Transparency and Independent Expenditures

Ms. Kovnat said the subcommittee had no changes from the draft discussed last time but agreed that in A-2, the reference to a clearly identified candidate about a proposition within 60 days would be the relevant time.

Ms. Martínez added it was the longest they could go safely. Ms. Kovnat agreed.

Ms. Kovnat said for the filing. On line 19 and 20, our guest from the Brennan Center was concerned about that language being too limited and suggested that litigation in the Holland case is in the circuit courts. He suggested that limitation was not necessary as a constitutional matter. She read the case and it turns on a point of administration law. She thought that was optimistic and was sure people have views on this. The subcommittee wanted to leave it in and identify it for discussion purposes.

The other change in Part A was eliminating an explicit waiver for communications on contributions for the purpose of newspaper editorials or reports of commentary by the news media does not need to be reported. There is a tenth circuit case that looked at it under a waiver for Citizen's United. So it was a red flag to have a media exception in the ordinance and most people with the media don't need a statutory exception. The First Amendment provides that. So they just wanted to give full disclosure.

Ms. Kovnat said Part B has a provision the subcommittee eliminated in the draft and was discussed two weeks ago. Now, the subcommittee decided to put it back in for a second layer of disclosure. And if the Board thinks it is too problematic, the subcommittee provided an alternate just as a disclaimer.

Ms. Luján said they just wanted it to be transparent.

Ms. Martínez asked if B was deleted last time.

Ms. Kovnat recalled that Ms. Vigil thought it would be too complicated. Brent Ferguson from Brennan thought the second layer was important.

Ms. Kovnat said Ms. Vigil may still feel that way so the Board needs to discuss it.

Chair Miller didn't think each portion needed its own motion but he would like to get consensus.

On line 14, to change it from 30 to 60 days, he asked for any discussion. There was none.

On line 19 - to leave in paying for such expenditures.

Ms. Kovnat clarified that an entity spending money for campaign expenditures has to report all expenditures and the contributions received for the purpose of paying such expenditures. It does not have to report all of its contributions. She explained that some organizations make contributions and not all are for campaigns.

There was general consensus to leave that language in.

Chair Miller said the next is Line 27-28, to remove the media section.

Mr. McMillan asked if there is a compelling argument for leaving it in.

Ms. Kovnat didn't think there is an argument for it and it is allowed by the First Amendment.

Mr. Harrington recalled some op-ed pieces in the last election about how wonderful the PACS were. Because the other candidates had the media on their side. He wouldn't be surprised that a complaint would be filed on it. There is no expenditure as an Op-Ed. He thought what should happen is to allot some to each of those entities or the Board could develop an editorial form to be filed with City Clerk and it would be a drill. That is how it could go down.

Ms. Kovnat reasoned that people could claim that the New Mexican would have to file what it costs to publish an Op-Ed.

Mr. Harrington concluded that there are bad things either way.

Ms. Heldmeyer agreed with Mr. Harrington. It is an enforcement issue and it all hinges on "expenditure." For the most part, the newspaper doesn't pay you to put it in but if you are paid overall for your job and just throw in the Op-Ed.

Ms. Luján thought they would get some feedback from the media and this is about their First Amendment right to communicate and how they are protected. She hoped the expenditure would be captured there when pros write.

Ms. Heldmeyer clarified she was thinking about ghost writers. She was not comfortable with that.

Ms. Martínez said the subcommittee thinking was that it was overkill and didn't need to be part of the ordinance.

Ms. Luján and Ms. Kovnat agreed. The media has a long-standing exemption.

Mr. McMillan moved to accept the deletion of the media section. Ms. Martínez seconded the motion and it passed by unanimous voice vote.

Ms. Kovnat thought it would be prudent to talk with the media about it so they would understand the Board is not attacking them.

Mr. Shandler agreed to contact them.

Chair Miller went to page 8, Section B or Alternate B.

In Section B, Ms. Kovnat said this would require a second layer of reporting of contributors to entities or people who transfer money to other entities of at least \$250 that the money would be paid to the candidate or if there is a campaign expenditure of \$250 or more and that would be captured by provisions in Section A.

Chair Miller thought the alternate wouldn't be an alternate but an addition to B - that a report would still be required even without disclosure.

Ms. Kovnat said unions are an example that would make such contributions. This provides that they have to report contributions to their funds.

Ms. Luján said they were talking about how this just ballooned out. They have political committees who gather voting information from the members and each member contributes \$5 which all together would exceed \$250 and this would require those members to be identified. So the change would exempt them from that requirement. It might infringe upon their requirements. We don't know how they would feel about that. So she wasn't sure how far the Board wants to take it.

Ms. Kovnat said the change would only affect a person who transfers more than \$250 with the knowledge that it is to support a candidate.

We thought the alternate to be in lieu of A. Mr. Harrington pointed out in the memo that the alternate is not as broad as the original so if we go with the alternate, we should look at that.

Ms. Kovnat said the subcommittee didn't put it in because the Clerk was concerned.

Mr. Harrington said he was concerned when he heard the Clerk had some issues with it. This was proposed by Senator Wirth and it is new ground. It made him nervous and he racked his brain to see what it might be. The issue with unions is a good example. He would like to hear what Ms. Vigil had to say about it. New things sometimes make us nervous and it might get struck down with some example that is unconstitutional.

Mr. Shandler explained that each reporting period has 14 reports coming in and she has to review all of them and put them on the web so this would necessitate many more people reporting including citizens who are not part of the campaign itself and not experienced in reporting like campaign treasurers. And then the Clerk has to prove that individual is actually the one who is reporting.

Mr. Harrington felt not knowing who will be reporting is already a problem under sub section A but she would know somewhat who they are by what is showing up in mail boxes. It is just an enforcement issue.

Ms. Martínez said the last sentence talks about when a report is not required. She asked if the Board could make that so the political committees would have to report those and not have as many people having to make reports nor putting the onus on individuals contributing to PACs (the receiver of the individual contribution).

Ms. Luján said that comes under the transfer.

Mr. Shandler referred to lines 7 - 11 or line 12 where it requires that each individual transferring money has to report the transfer to the City Clerk.

Ms. Martínez asked who would be making the reports that are required by this provision and that Ms. Vigil was concerned about receiving.

Ms. Kovnat said it is the contributor to the PAC that would be captured by this provision.

Ms. Martínez wondered how people would know about this obligation.

Ms. Kovnat said that was why the subcommittee took it out.

Ms. Luján said they would know if they contribute to a PAC, or the treasurer would know. That goes back to the treasurer being required to provide the information to the Clerk's office.

Mr. Shandler spelled out another scenario.

[The meeting was interrupted by the parade outside for the Boston Marathon winner.]

Ms. Kovnat agreed there is no doubt that B uncovers others who contribute who need to report.

Ms. Heldmeyer liked the alternate better because it tells the public the City is doing something about this issue. It also gives the larger Russian dolls issue. She asked if they could just make them all PACs and the answer from Mr. Shandler is no.

Ms. Heldmeyer asked if those who don't report could be issued a subpoena.

Chair Miller asked if there was a consensus.

Ms. Kovnat moved to eliminate B and adopt the alternate to B and expand it to say "any candidate, political committee or entity which has to file under Section 9-2.6 and receives contributions from another entity that does not have to disclose its contributors to the City Clerk shall place the following disclosure. Ms. Martínez seconded the motion and it passed by unanimous voice vote.

Ms. Martínez moved to approve Part 2 as amended for recommendation to City Council. Ms. Luján seconded the motion and it passed by unanimous voice vote.

3) Qualified Small Contribution System

The Board did not consider this item.

4) Alternative Compliance for Qualification

Ms. Kovnat noted this has a requirement for a \$5 contribution to qualify for public financing and the Board was asked to consider an alternative to that. So on page 20, the proposal is that in lieu of the \$5, the potentially publicly financed candidate would submit a supplemental nominating petition containing the same number of signatures from additional voters. Last time, the Board saw that the numbers were pretty small but the subcommittee stayed with the same alternative. The purpose is to make sure candidates that qualify for public money are serious candidates and have enough support to warrant the public funding.

Ms. Martínez asked if most other public financed codes have an alternate compliance or if they all have qualifying contribution provisions.

Ms. Kovnat said they all have a requirement of seriousness and usually it is small amounts of money. The subcommittee has proposed the alternate.

Ms. Martínez asked if the Board could decide to have higher numbers of signatures.

Ms. Kovnat said they talked about that but decided on just requiring doubled numbers of signatures.

Mr. McMillan asked what those numbers were and Mr. Harrington provided a document to him.

Mr. McMillan observed from the document that it would have a high of 84 to a low of 31.

Chair Miller clarified that the alternate numbers would be in addition to the required petition signatures.

Ms. Kovnat agreed.

Ms. Martínez thought it would be easier to get the signatures instead of \$600 so she thought it should be more than just double. And part of her said it should just be the money.

Ms. Kovnat moved to not adopt the alternative and require a certain number of the \$5 contributions for public financing qualification. Ms. Luján seconded the motion.

Chair Miller said the action of the Board would not include Part 4 in their recommendations and leave the ordinance as now stated.

Mr. Harrington agreed with that action. It should be hard to get public financing. He asked the Board to not forget sub section D. He thought it would also be advisable to put the prohibition of a person to make a contribution in the name of another provision in this section.

Ms. Kovnat said it was already there in 9-2.6a.

The motion passed by unanimous voice vote.

Chair Miller noted they were about out of time.

5) Matching Fund Proposal

This item was not considered because of time constraints.

B. Consideration of Other Issues Raised by the Public and Board

Chair Miller noted there were many ideas about changes that needed to be made to the ordinance. The Board has addressed the larger ones. Some of the smaller issues could be handled with more technical cleanups and will be presented at the next meeting and some issues not so pressing to be put in the ordinance for the next election like enforcement will not be addressed.

4. NEXT MEETING AND TOPICS FOR CONSIDERATION

Chair Miller announced the meeting would be on May 20th and is the meeting where the Board expects to take final action on the proposals to the Governing Body so the Board needs to spend time on small contributions and the Matching Fund proposal.

5. BOARD MATTERS

Ms. Luján asked if they would consider appointments and reappointments for next time.

Chair Miller agreed and filling the vacancy by Mr. Thompson's resignation and reappointments.

6. PUBLIC COMMENT

There were no public comments.

7. ADJOURNMENT

Ms. Kovnat moved to adjourn the meeting. Ms. Martínez seconded the motion and it passed by unanimous voice vote.

The meeting was adjourned at 4:45 p.m.

about coordination by individuals and, to a lesser extent, of groups.”

Secondly, there is a lot of discussion about the new way of doing public financing is going to cost the City and Mr. Harrington sent out memos that all the City is required to do is what is in the ordinance and that amount of money is the same as the amount of money that has been there in the past. However. There is nothing in the ordinance that says the City cannot add more money, if there are more candidates. So if all 5 councilors ran for mayor in 2018, you might want to approve more money.

The problem for someone running a campaign, early on, they need to have an idea of how much money they would have. And if it is approved the way it is written, there is no more money and especially in mayoral campaigns, many candidates might not want to depend on a pro-rated share. They will want to make sure the money promised to them is there. A lot of work on campaigns are done before being certified as a candidate.

If people are not very sure what they will get from public financing, the City may get people opting out. A goal of this Board is to get more to choose public financing so the Board needs to look at the realities.

Mr. Jeff Green said he thought the Board was making a bad system worse with this change.

There were no other speakers from the public.

3. DISCUSSION AND POSSIBLE ACTION

Chair Miller pointed out that the Board has spent considerable time on the first three already so they would go to #4 first and then comment on 3-B

Mr. Biderman asked when the Board has to recommend to Council.

Chair Miller said they needed to recommend today but if something else is needed, it can be addressed down the road but not in this final recommendation.

Ms. Kovnat was happy to go first to the Matching Fund Proposal but didn't want the Board to forget to deal with Transparency in this meeting.

Chair Miller said his intention is to finish before 5:00.

A. Consideration of the Following Amendments

4) Matching fund Proposal

Chair Miller asked for comments on the drafted language.

Ms. Kovnat said the subcommittee didn't recommend changes on this part. They considered the state of the Fund and thought it was protected with provisions from pro-rated reductions. But the amount of the match is designed to be an incentive to have a public-funded candidate be able to solicit small contributions and could be faced with a privately financed candidate that is financed by a PAC. So they stuck to the 4 to 1 match as the right number for the incentive to engage them sufficiently in small contributions to defend themselves against privately financed candidates.

Mr. Biderman added that this is not an ideal solution but probably all the Board could do for a meaningful attempt to answer the situation where an outside independently financed source funds a candidate. It is the best the Board has been able to come up with national research. The proposal at the State Legislation didn't pass.

Ms. Kovnat said they thought momentarily to increase the small contributions from \$100 to \$200 but were mindful that there are lots of people in Santa Fé for whom \$100 is a maximum contribution. So they stuck with \$100.

Chair Miller understood that the hundred dollar limit also stays well below the maximum contribution under regular campaigns besides the fundraising part of the proposal compared to those running without public financing.

Ms. Kovnat agreed. Private funding has no limits.

Chair Miller thought there was discussion about those who could give more than \$100.

Ms. Kovnat said there wasn't. They were trying to limit the amount of time that must be spent on fund raising but the \$100 is a good limit.

Mr. Biderman said the code provides that no candidate can get more than \$1,000 contributions and the Mayoral candidate is limited to \$2,500.

Chair Miller said the matching proposal should be tailored to the particular jurisdiction and in Santa Fé we want to take into account the maximum for privately funded candidates and the ability of the City to match those funds and all that went into this recommendation.

Ms. Kovnat said the subcommittee talked about a graduated system but it is far too complex.

Chair Miller asked for public comment on this item.

Mr. Harrington thought what Chair Miller referred to is the first level and it is then raised more, we cannot depend on what more means. If it looks like the fund will be short, in current law, they can opt out at an early stage. But when the City hands out the money, there is no opt out. If the fund comes up short, the contribution could be raising in private sources but is still very small.

Chair Miller asked if there is a way for the fund to be increased if that happens. He asked what they could write in to the ordinance to say it could be increased if the fund was insufficient to cover the payments to candidates.

Mr. Shandler said the current law says, "The balance for City and Mayor elections has to be \$600,000. The balance preceding a Council or Judge election is \$300,000." Current code also says "Each fiscal year a sum of \$150,000 is budgeted and deposited into the fund." 9-3.4 is that citation. So on an annual basis, some money has to be in it. Council has obligated itself to replenish the fund and also it sets a minimum floor in the account. Mr. Harrington's reference is to a different section - 9-3.10, for the initial grant of money. It talks about a proportionate reduction if the fund is light. So the Board could add a sentence, "Such other appropriations to the fund as may be made by the Governing Body as necessary to fulfill the requirements of this article." That would be added in 9- 3.4, D-7.

Chair Miller reasoned that would work when the Council was aware that the fund was short and could appropriate money at that time.

Mr. Shandler agreed but pointed out that one lawyer could interpret it, "If there is a shortfall during the election then a supplemental appropriation could be made" (a permissive action). Another could point to the word "necessary" which is a strong word. If the money is not there, that is reality.

Mr. Harrington suggested the language should say at least \$600,000 or at least \$300,000.

Mr. Biderman was concerned in part 3, in taking out the seed money or the qualifying money, to get to the maximum authorized amounts of the fund. He was concerned this could be costly and a self-defeating measure. The City has a lot of other needs. There is just so much money the City has to put in. He thought the Board ought to stick with what they had there now.

There were no other speakers from the public regarding matching funds.

**Mr. Biderman moved to adopt the subcommittee's proposal for matching fund proposal (part 5)
Ms. Kovnat seconded the motion and it passed by unanimous voice vote.**

1) Coordination Between Candidates and /or their Campaigns and Independent Expenditures Groups or Individuals

Chair Miller said the Board has taken action on this recommendation so now is the time to see if anyone on the Board or the public think there are other changes to be made to that proposal.

Ms. Kovnat said the Board was sent suggestions from the Campaign Legal Center and she went through all of them. Mr. Ryan suggested the Board include within the definition as an example for coordination, spending money to republish a candidate's campaign materials. She asked if that would be considered as an in-kind contribution to the candidate. The Board discussed that last time at length and approved to delete that part and she was satisfied that deletion was appropriate and that the Board could

take it up in context of an individual complaint.

Mr. Ryan also recommended modifying 3-A regarding what would or would not be considered on page 3, line 8, what is included in fund-raising activities. He suggested adding "or being a featured guest or speaker at a fund-raising event."

Ms. Kovnat thought it was useful but not necessary. She was agnostic about it.

Chair Miller asked for other members' comments.

Ms. Kovnat suggested it probably is a good idea to include it.

Mr. Shandler had no comment.

Mr. Biderman suggested it be at the end of the list.

Ms. Kovnat said it adds one more item of clarity and direction to candidates.

Mr. Biderman moved to adopt the language after the word 'provided' "or being a featured guest or speaker at a fund-raising event." on page 3, line 12 under 3-A(c). Mr. McMillan seconded the motion and it passed by unanimous voice vote.

Mr. Biderman pointed out a possible conflict with page 5 at F-4 (just an appearance) which Ms. Kovnat didn't think was a conflict.

Chair Miller said merely appearing before members and shareholders is not, in itself, any evidence of coordination.

Ms. Elizabeth West said these are so interconnected and transparency with lots of teeth helps the rest sort of fall into place. People will have fun with this coordination no matter what the Board does. Trying to help people coordinate in an ethical way will bring a chuckle in the future.

2) Transparency and Independent Expenditures

Ms. Kovnat said regarding the possible exemption from reporting, that Mr. Ryan said (on page 7, line 1) the Board needs to clarify what is meant by "membership organization." A group might claim they represent all parents in Santa Fé. He suggested "dues paying organization." She thought about it and would not recommend any change on this section.

She recalled that at the last meeting the Board did vote to eliminate an exemption of the media (page 6, line 24). She had second thoughts about removing the media from this section. She felt its removal would stir serious concern among the media. Some might claim access under this exemption but is only a slight risk compared to the concerns of media and the public if they eliminated the exemption. She wanted

to put the original language back in on page 6, line 24 as it appears in the current code. She read the language.

Mr. Shandler explained that the language she read is not in the current code but in the draft by Common Cause. The media is not mentioned in the code now. It is in the original draft of the Board's amendment.

Mr. Harrington said it actually is expressed in the existing code but only indirectly. Currently 9.26 requires people to report only when they spend a certain minimum amount for campaign materials to disseminate and the definition of campaign materials excludes exactly this language. So by getting rid of the definition of campaign materials that got rid of the media exemption unless the Board adds it back in.

Ms. Kovnat moved to reinsert in 9-2.6.2(H) on line 25 after "No report is required under this subsection for expenditures made exclusively for - communications to or editorials, reports, or commentary by news media, or for impartial candidate forums." Mr. Biderman seconded the motion and it passed by unanimous voice vote.

Ms. Kovnat said on page 7, line 4, it was decided at the last meeting that it was too complex to have exposure of individuals through entities that make contributions but decided to have a disclosure provision and extend it not only to people that file under 9-26 (independent responsive campaign materials) but also the candidates or entities. The way this reads doesn't make sense. The main provision is directed at independent spenders and not directed to candidates and political committees. The way it reads looks as if any candidate, political committee or entity that has to file under 9-2.6. Candidates and political committees don't have to file under 9-26.

Ms. Kovnat proposed to strike the words, "candidate, political committee and just say "any person or entity that is required to file a report under 9.26 or under the subsection and receive contributions." And then to take care of applying this disclosure requirement to candidates or political committees to a new subsection under 9-2.11, add a new provision that says (in F) "a candidate or political committee which receives contributions from another entity that does not have to disclose its contributors to the City Clerk shall place the following visible disclosure on campaign materials."

She read the disclosure statement again.

Mr. Shandler asked if the Board wanted this *Russian doll* language there too. He thought he made an error on that. The *Russian doll language* is in lines 20 - 22.

Mr. Biderman said that was a separate point. That is in E that the reporter should not falsify the source of the contribution - to disguise a contribution as falsely coming from another person.

Mr. Shandler said on page 6, line 20-22 is that identical language and he recalled the Board has asked to make sure that campaign treasurers were aware of this and to put it in the campaign treasurer's section, so he copied that language from page 6, lines 20-22. So now the Board wants a new section F.

Ms. Kovnat agreed; with the same language that puts them on notice, which she repeated for him.

Mr. Shandler then asked for the new language on page 7, line 4 again.

Ms. Kovnat said it was just to strike "any candidate" from it.

Mr. Shandler understood and agreed.

Ms. Kovnat moved to revise the recommendation as stated in discussion including adding a new Section F. Mr. Biderman seconded the motion and it passed by unanimous voice vote.

3) Qualified Small Contribution System

There were no comments on this section.

B. Consideration of Other Issues Raised by the Public and Board

Chair Miller asked first for the Board's comments and then for the public comment.

Ms. Kovnat said the Board has the benefit of a very good memo from Ms. Heldmeyer on other issues not yet addressed by the Board. A few of them are out of the Board's jurisdiction and some of them could be addressed by procedural rules. One that has a lot of merit is adding "polls" to the definition of campaign materials (bottom of page one). She asked if the Board eliminated that definition.

Mr. Shandler said it has been restored as 9-2.3.

Ms. Heldmeyer said Mr. Harrington thinks the Supreme Court would say it is illegal because some polls might not be considered campaign related. This talks about polls as an expense of the campaign. It is not done independently but only those who do it by someone who is participating in a campaign.

Ms. Kovnat thought that might not be a simple matter. That kind of poll is often referred to as a "push poll."

Ms. Heldmeyer said they did enter into those in the past campaigns. When one becomes a participating candidate, it will be the first question that comes up. If a candidate wants to take public money, they can take only up to \$100 contributions.

Ms. Kovnat said they talked about it in the subcommittee. They asked if a person could start raising money now and still be publicly financed. Their opinion was that they could if there was no contribution above \$100.

Ms. Heldmeyer said if it is clear, the Board should issue an advisory opinion for those for whom it is not clear.

Chair Miller agreed. That is a good idea.

Mr. Shandler said on page 6 in the Transparency section, as a voter you would want to know who just gave you that poll. Probably most push polls would be by an independent group. Right now the rule says if an independent group makes an expenditure over \$250 - most polls would be over that much.

Then it goes on to say in line 10 that recorded phone messages would document that they contacted more than a hundred people so they would have to report that. There is some capture and it is not instantaneous. He was talking with the City Clerk on how to solve the problem.

Mr. Biderman said the Board has talked about how to provide explanatory material and gotten most of it done.

Ms. Kovnat thought the technology component in Ms. Heldmeyer's memo could be done by procedural rule and the Board is committed to revising the procedural rules. With regard to campaign materials - it already violates the law. She wouldn't have any objection to having that new section also make it a violation of the city's campaign code.

Chair Miller asked if possibly they could add a new section - 9-2.5.

Ms. Kovnat agreed.

Ms. Heldmeyer said in the past some of these have been by identified individuals or campaigns and the police are not interested in enforcement. The amounts are so small. There have been identifiable cases where identifiable people have stolen campaign materials.

Ms. Kovnat suggested maybe the City Attorney could figure out where to put it.

Mr. Biderman said it would be better to put in our code rather than in the courts.

Chair Miller reasoned that, setting aside any criminal conduct, it could be a violation of code. He thought putting it in the campaign material section would be the best place.

Mr. Shandler walked the Board through a violation.

Ms. Heldmeyer said section 6 was where the fines are put.

Ms. Heldmeyer used some personal examples where a person took signs in her car. The ECRB is the group that should tell the violators they violated.

Mr. Shandler asked if “willful” was better than “intentional.”

Mr. Biderman agreed that would be better.

Mr. McMillan tried to imagine holding quasi-criminal proceedings, taking evidence and wondered what the burden of proof would be and if that was somewhere else in the Code.

Ms. Kovnat said the Board has the power to impose a certain limited number of sanctions and they include fines.

Mr. McMillan asked if it would include appearance, cross examinations, and testimony.

Ms. Kovnat said the Board has that authority for a full evidentiary hearing.

Ms. Heldmeyer said the Board could also call them criminal behaviors. The hearing is taken by a subcommittee and then a public hearing.

Mr. Biderman would move to adopt a provision that Mr. Shandler provides.

Mr. Shandler read the proposed language for 9-2.5 (D) as, “Willful theft, destruction or damage of campaign material shall be considered a violation of the City of Santa Fe’s Campaign Code.”

Mr. Biderman asked if that meant anybody or just a candidate or a person who is working on behalf of a candidate. The Board doesn’t have any jurisdiction over someone who is not working in a campaign.

Ms. Kovnat agreed.

Mr. Biderman moved to insert in section 9-2.5 (D), “Any candidate or person who is representing or working on behalf of a candidate shall not willfully steal, destroy or damage campaign materials and if done, shall be in violation of the City of Santa’s Campaign Code.” Ms. Kovnat seconded the motion and it passed by unanimous voice vote, except for Mr. McMillan who abstained.

Ms. Heldmeyer gave one more pitch that the items the Board could clarify with advisory opinions which are not available on-line should be done sooner rather than later. Things clear to attorneys might not be clear to members of the general public.

Ms. Jodi Larsen wanted to clarify on behalf of the League of Women Voters that they put out voters’ guides but sometimes support or oppose propositions on the ballot and usually do it by sending their view to the newspaper, which is free.

But if the LWV put on a forum that advocates for or against a particular proposition on the ballot or took out an ad that the League would have to file if the ad cost more than \$250. They would usually that from their general fund so she asked if they would have to report all of their members and non-member

contributors or just ask for donations from those who want to support that and be willing to have their names disclosed.

The LWV operates as a 501(c) 4 organization except for their 501(c) 3 activities.

Mr. Biderman said Section M in the campaign code 9-2.23 does define political committee to include those who support or oppose propositions at a cost. For those, he thought the campaign code is applicable.

Mr. Shandler said it was on page 6, line 12, 17, so this is under independent groups. They must report expenditures and all contributors. That was taken out and just put back in.

Chair Miller said it is limited to the expenditures for that particular purpose and asked if that was correct.

Mr. Shandler agreed. He remembered Mr. Ferguson talking about this a couple of meetings ago.

Ms. Kovnat said he wanted to take that out and we put it back in. She was missing his point.

Mr. Shandler said he was just pointing out this issue to the Board and was not pointing out an answer to Ms. Larsen. There was back and forth with Mr. Ferguson on it.

Ms. Kovnat said not all contributions have to be disclosed; just those made for the purpose of support or defeat of a proposition.

Mr. Shandler thought the point of Mr. Biderman then was that during the legislature, there are going to be dedicated accounts now that are the wave of the future. But Ms. Larsen might be saying is that perhaps the League is not into those dedicated accounts and the cost, if it comes from their General Fund, do they have to report all members.

Ms. Larsen asked if the League would have to set up a special account. She thought maybe they should just send a letter asking for an opinion.

Ms. Kovnat said the League would probably get a better opinion.

Mr. Biderman said it might be an ordinance at Council.

Ms. Larsen said they would show up there.

4. NEXT MEETING AND RECOMMENDATIONS

Chair Miller said the Board will meet in the near future but didn't need to set a date right now.

Chair Miller asked Mr. Shandler for the next steps.

ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 07/29/2015
ITEM FROM FINANCE COMMITTEE MEETING OF 07/13/2015

ISSUE:

19. Request for Approval of an Ordinance Amending the Public Campaign Finance Code, Section 9-3 SFCC 1987 to Modify the Definitions of "Contribution" and "Expenditure", Delete the Definition of "Qualifying Contribution" and Create a Definition for "Coordinated Expenditure" and "Qualified Small Contribution"; to Modify the Requirements to Qualify as a Participating Candidate; to Delete Provisions Related to "Seed Money Contributions" and "Qualifying Contributions"; to Establish Provisions for Qualified Small Contributions; to Modify Provisions Related to "Reports Of Expenditure" to Expand Reporting Requirements; to Add Provisions for "Additional Reporting of Qualified Small Contributions and Additional Matching Payments From Fund"; and to Make Such Other Changes as are Necessary to Clarify the Provisions of the Public Campaign Finance Code. (Councilor Ives) (Zachary Shandler)

Committee Review:

City Council (request to publish) (approved)	06/24/15
Finance Committee (postponed)	06/29/15
City Council (public hearing)	07/29/15

Fiscal Impact – Possibly - (If the bill is adopted in its entirety, the City Clerk may have to review the additional workload and determine whether temporary workers need to be hired)

FINANCE COMMITTEE ACTION:

Move Forward with no recommendation.

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

With amendments.

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	Acting Chair X		
COUNCILOR LINDELL	Excused		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ	Excused		

06/29/2015

City of Santa Fe, New Mexico

LEGISLATIVE SUMMARY

Bill No. 2015-27

Public Campaign Finance Code

SPONSOR(S): Councilor Ives

SUMMARY: The proposed ordinance to the Public Campaign Finance Code (Chapter 9-3) does the following:

- modifies the definitions of “contribution” and “expenditure” in Section 9-3.3
- creates a definition for “coordinated expenditure” in Section 9-3.3
- deletes the definition of “qualifying contribution” in Section 9-3.3
- creates a definition for “qualified small contribution” in Section 9-3.3
- deletes provisions related to seed money contributions in Sections 9-3.4 to 9-3.11
- establishes provisions for qualified small contributions in Sections 9-3.4 to 9-3.11
- deletes provisions related to qualifying contributions in Sections 9-3.4 to 9-3.11
- modifies provisions related to reports of expenditure in Sections 9-3.4 to 9-3.11
- modifies the requirements to qualify as a participating candidate in Section 9-3.8
- additional matching payments from fund in Section 9-3.12
- adds provisions for additional reporting of qualified small contributions in Section 9-3.14

PREPARED BY: Zachary Shandler, Assistant City Attorney

FISCAL IMPACT: Yes

DATE: June 18, 2015

ATTACHMENTS: Letter from Justin Miller, Chair Ethics and Campaign Review Board
Bill
FIR
Bill with proposed changes incorporated

City Public Campaign Finance Fund CHECKBOOK if Everyone Maxed Out

Year	Event	Credit	Debit	\$ in Fund
Current				\$493,000
	2015-2016 Annual Distribution	+\$150,000		
	<i>Total</i>			= \$643,000
2016 Election	7 council candidates (7 candidates x \$15,000 initial grant= \$105,000 grant money)		-\$105,000	
				=\$538,000
	7 council candidates x \$30,000 per match = \$210,000 in matching funds)		-\$210,000	
				=\$328,000
	2016-2017 Annual Distribution	+\$150,000		
				=\$478,000
	2017-2018 Annual Distribution	+\$150,000		
				=\$628,000
2018 Election	3 mayor candidates (3 candidates x \$60,000 initial grant = \$180,000)		-\$180,000	
				=\$448,000
	7 council candidates (7 candidates x \$15,000 = \$105,000 grant money)		-\$105,000	
				=\$343,000
	3 mayor candidates x \$120,000 per match = \$360,000 in matching funds)		-\$360,000	= Negative Balance—Does Clerk have to proportion out match funds
	7 candidates x \$30,000 per match = \$210,000 in matching funds)		-\$105,000	= Negative Balance—Does Clerk have to proportion out match funds

If 2014 **Mayor** Race Run Under Proposed New Code Section--
4:1 Match

Candidate	Private \$	City Match	City Initial Grant	Cash on Hand
Bushee	\$30,000 *	\$120,000	\$60,000	\$210,000
Dimas	\$30,000 *	\$120,000	\$60,000	\$210,000
Gonzales	\$30,000 *	\$120,000	\$60,000	\$210,000
City Fund Totals		\$360,000	\$180,000	

If 2014 **Mayor** Race Run Under Proposed New Code Section--
2:1 Match

Candidate	Private \$	City Match	City Initial Grant	Cash on Hand
Bushee	\$60,000 *	\$120,000	\$60,000	\$240,000
Dimas	\$60,000 *	\$120,000	\$60,000	\$240,000
Gonzales	\$60,000 *	\$120,000	\$60,000	\$240,000
City Fund Totals		\$360,000	\$180,000	

*This is the amount eligible for the match. A candidate can raise more private money.

Table created by Zack Shandler 7/15/15

**CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO BILL NO. 2015-27
Public Campaign Finance Code**

Mayor and Members of the City Council:

I propose the following amendment(s) to Bill No. 2015-27:

1. On page 4, line 9 after "entity" *insert* "making an expenditure"
2. On page 4, line 19 after "event" *insert* "for the benefit of the entity making the expenditures;"
3. On page 4, line 20 after "entity" *insert* "making the expenditure"

Respectfully submitted,

Peter N. Ives, Councilor

ADOPTED: _____
NOT ADOPTED: _____
DATE: _____

Yolanda Y. Vigil, City Clerk

CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO BILL NO. 2015-27
Public Campaign Finance Code

Mayor and Members of the City Council:

I propose the following amendment(s) to Bill No. 2015-27:

1. On page 7, line 4 *delete* paragraph N in its entirety
2. On page 11, line 2 after "contributions" *insert* "to be used as part of the application as a participating candidate"

Respectfully submitted,

Peter N. Ives, Councilor

ADOPTED: _____
 NOT ADOPTED: _____
 DATE: _____

Yolanda Y. Vigil, City Clerk

**CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO BILL NO. 2015-27
Public Campaign Finance Code**

Mayor and Members of the City Council:

I propose the following amendment(s) to Bill No. 2015-27:

1. On page 6, line 22, through page 19, line19, remove all strikethroughs and underlined material to restore the original language.

Respectfully submitted,

Signe I. Lindell, Councilor

ADOPTED: _____

NOT ADOPTED: _____

DATE: _____

Yolanda Y. Vigil, City Clerk

**CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO BILL NO. 2015-27
Public Campaign Finance Code**

Mayor and Members of the City Council:

I propose the following amendment(s) to Bill No. 2015-27:

1. On page 18, line 21 *insert* the following new sentence: "A copy of each receipt printed on 8½" by 11" paper shall be filed with the municipal clerk with the reports provided for in this subsection."

Respectfully submitted,

Signe I. Lindell, Councilor

ADOPTED: _____

NOT ADOPTED: _____

DATE: _____

Yolanda Y. Vigil, City Clerk

CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO BILL NO. 2015-27
Public Campaign Finance Code

Mayor and Members of the City Council:

I propose the following amendment(s) to Bill No. 2015-27:

1. On page 16, line 14 after "any" *insert* "electronic, telecommunication or computer".
2. On page 17, line 6 after "Fund" *insert*:
"shall submit forms signed by separate qualified electors registered to vote in the district in which the candidate is running, or the city as a whole for mayoral and municipal judge candidates, accompanied by a campaign finance statement."
3. On page 17, line 7 *delete* "may file campaign finance statements" and *insert* in lieu thereof "the participating candidate shall file a campaign finance statement".
4. On page 17, lines 8-9 *delete* "sixty-second (62nd) day preceding the election and the fifteenth (15th) day preceding the election" and *insert* in lieu thereof "fiftieth-seventh (57th) day preceding the election which shall accompany the forms provided for in this subsection".
5. On page 17, line 9 *insert* the following new sentence:
"On or before the forty-second (42nd) day preceding the election, the municipal clerk shall make a determination whether the candidate's application for matching funds complies with the provisions of this section."
6. On page 17, *delete* lines 10-12 and *insert* in lieu thereof "Within three (3) business days of certifying the validity of qualified small contributions for matching funds,"
7. On page 17, line 14 *delete* "four" and *insert* in lieu thereof "two (2)".
8. On page 17, line 14 after the second "the" *insert* in lieu thereof "certified".
9. On page 17, line 14 *delete* the rest of the paragraph beginning with "reported".

Respectfully submitted,

Joseph M. Maestas, Councilor

ADOPTED: _____
NOT ADOPTED: _____
DATE: _____

Yolanda Y. Vigil, City Clerk

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2015-27

3 INTRODUCED BY:

4
5 Councilor Peter Ives

6
7
8
9
10 AN ORDINANCE

11 AMENDING THE PUBLIC CAMPAIGN FINANCE CODE, SECTION 9-3 SFCC 1987 TO
12 MODIFY THE DEFINITIONS OF "CONTRIBUTION" AND "EXPENDITURE", DELETE
13 THE DEFINITION OF "QUALIFYING CONTRIBUTION" AND CREATE A DEFINITION
14 FOR "COORDINATED EXPENDITURE" AND "QUALIFIED SMALL
15 CONTRIBUTION"; TO MODIFY THE REQUIREMENTS TO QUALIFY AS A
16 PARTICIPATING CANDIDATE; TO DELETE PROVISIONS RELATED TO "SEED
17 MONEY CONTRIBUTIONS" AND "QUALIFYING CONTRIBUTIONS"; TO ESTABLISH
18 PROVISIONS FOR QUALIFIED SMALL CONTRIBUTIONS; TO MODIFY PROVISIONS
19 RELATED TO "REPORTS OF EXPENDITURE" TO EXPAND REPORTING
20 REQUIREMENTS; TO ADD PROVISIONS FOR "ADDITIONAL REPORTING OF
21 QUALIFIED SMALL CONTRIBUTIONS AND ADDITIONAL MATCHING PAYMENTS
22 FROM FUND"; AND TO MAKE SUCH OTHER CHANGES AS ARE NECESSARY TO
23 CLARIFY THE PROVISIONS OF THE PUBLIC CAMPAIGN FINANCE CODE.

24
25 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE.

1 **Section 1. Subsection 9-3.3 SFCC 1987 (being Ord. #2009-44, §4, as amended)**
2 **is amended to read:**

3 **9-3.3 Definitions.**

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

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

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

12 C. *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 when
- 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
19 later accepted by such person.

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

22 E. *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 legally
24 enforceable, made directly or indirectly, to a candidate or political committee, or to a person
25 obligated to file a report under section 9-2.6 SFCC 1987, for the purpose of [~~influencing the~~

1 ~~outcome of a municipal election]~~ supporting or opposing the election of a candidate or the
2 approval or defeat of a ballot 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) ~~[An expenditure by a person other than a candidate or the~~
15 ~~candidate's political committee that is made in cooperation, consultation or~~
16 ~~concert with, or at the request or suggestion of, a candidate or the candidate's~~
17 ~~political committee.]~~ Coordinated expenditure.

18 (2) The term "contribution" does not include:

19 (a) A volunteer's personal services provided without compensation
20 or the travel or personal expenses of such a campaign worker; and

21 (b) The cost of an event held in honor of or on behalf of a candidate when the total
22 cost of the event amounts to no more than two hundred dollars (\$200.).

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

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

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

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

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

12 (c) the candidate, candidate's political committee or his/her
13 representatives or agents has solicited funds or engaged in other fundraising
14 activities on behalf of the person or entity making the expenditure during the
15 twelve-month (12) period preceding the date of the expenditure. Fundraising
16 activities, include but are not limited to, exchanging names of potential donors or
17 other lists to be used in engaging in fundraising activity, regardless of whether or
18 not the individual or entity pays fair market value for the names or lists provided;
19 or being a featured guest or speaker at a fundraising event;

20 (d) if the individual or entity has employed, has in a leadership
21 position, or has accepted a donation of the campaign related professional services
22 of any person, who, during the twelve-month (12) period preceding the date of
23 the expenditure, has been an employee of, has advised, or provided or is
24 providing services to the candidate or candidate's political committee. These
25 services include, but are not limited to, any services in support of the candidate's

1 or candidate's political committee's campaign activities, such as advertising,
2 message, strategy or policy services, polling, allocation of resources, fundraising
3 or campaign operations.

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

5 (i) the individual or entity and a candidate or candidate's
6 political committee use the same vendor to provide polling services,
7 printing or distribution services or physical space, provided that the
8 vendor has in place prior to the expenditure a firewall to ensure that there
9 is no exchange of information between the individual or entity and the
10 candidate or campaign committee. Evidence of an adequate firewall is a
11 vendor's formal written policy or a contractual agreement with the
12 vendor prohibiting the exchange of information between the individual
13 or entity and the candidate or candidate's political committee, which
14 policy or contract is distributed to all relevant employees, consultants
15 and clients affected by the policy or contract. The firewall shall be
16 designed and implemented to prohibit the flow of information between
17 employees and consultants providing services to the individual and entity
18 and to those currently or previously providing services to the candidate
19 or candidate's political committee. Coordination will be presumed in the
20 absence of such a firewall.

21 (ii) the individual or entity making the expenditure
22 interviews a candidate; has endorsed a candidate; has obtained from the
23 candidate a biography of the candidate or a position paper, press release,
24 or similar material about the candidate; has invited the candidate to make
25 an appearance before the person's members, employees or shareholders;

1 ~~which the candidate is running.] Qualified small contribution means a contribution of no more~~
2 ~~than one hundred dollars (\$100) made and accepted in compliance with the provisions of~~
3 ~~subsection 9-3.6 SFCC 1987.~~

4 [M]N. *Qualifying period* means the period during which a candidate seeking to become
5 a participating candidate is permitted to collect [qualifying] qualified small contributions and to
6 apply for certification as a participating candidate. It begins one hundred eighty-three (183) days
7 before the election and ends one hundred six (106) days before the election.

8 [N]O. *Race* means the electoral process in which one (1) or more candidates run and
9 one (1) candidate is elected to the office of mayor, municipal judge or city councilor for a
10 particular district.

11 [~~O. — *Seed money contribution* means a contribution of no more than one hundred~~
12 ~~dollars (\$100.) made and accepted in compliance with the provisions of subsection 9-3.6 SFCC~~
13 ~~1987 and used exclusively for the purposes specified in that section.] P. *Uncontested*~~
14 *race* means a race in which there is only one (1) candidate for the office sought.

15 **Section 2. Subsection 9-3.4 SFCC 1987 (being Ord. #2009-44, §5, as amended)**
16 is amended to read:

17 **9-3.4 Public Campaign Finance Fund.**

18 A. A dedicated public campaign finance fund ("the fund") is established to be
19 administered by the [municipal] city clerk for the purpose of providing public financing for the
20 election campaigns of participating candidates. Monies in the fund and disbursed from the fund to
21 participating candidates are public monies entrusted to the candidates to be used solely for the
22 public purposes specified in this Section 9-3 SFCC 1987.

23 B. Beginning with the city budget for fiscal year 2009-2010 and in each fiscal year
24 thereafter, the sum of one hundred fifty thousand dollars (\$150,000.) shall be budgeted for and
25 deposited in the fund.

1 C. Beginning with the election of 2014, the governing body shall appropriate and
2 deposit in the fund such additional sums, if any, as may be necessary to ensure:

3 (1) That the balance in the fund one hundred nineteen (119) days preceding
4 each election for mayor and four (4) council seats is at least six hundred thousand dollars
5 (\$600,000.); and

6 (2) That the balance in the fund one hundred nineteen (119) days preceding
7 each election for municipal judge and four (4) council seats is at least three hundred
8 thousand dollars (\$300,000.).

9 D. In addition to the deposits required by paragraphs B. and C. of this subsection,
10 the following shall also be deposited in the fund:

11 ~~[(1) All seed money contributions received by candidates seeking to become~~
12 ~~certified as participating candidates which remain unspent;~~

13 ~~(2) All qualifying contributions received by candidates seeking to become~~
14 ~~certified as participating candidates;]~~

15 ([3]1) All amounts paid from the fund to participating candidates which have
16 not been spent or obligated as of the date of the election;

17 ([4]2) All fines levied by the ethics and campaign review board or as decreed
18 by a court of competent jurisdiction as a condition of probation;

19 ([5]3) Voluntary donations made to the fund;

20 ([6]4) All interest and other income earned from investment of the fund; and

21 ([7]5) Such other appropriations to the fund as may be made by the governing
22 body as necessary to fulfill the requirements of this Section 9-3 SFCC 1987.

23 **Section 3. Subsection 9-3.5 SFCC 1987 (being Ord. #2009-44, §6, as amended)**
24 **is amended to read:**

25 **9-3.5 Eligibility as a Participating Candidate.**

1 ~~[Beginning with the election of 2012, a]~~ Any candidate for municipal office may qualify
2 as a participating candidate eligible to receive payments from the fund pursuant to subsections 9-
3 3.10 and 9-3.12 SFCC 1987 if the candidate:

4 A. Meets the requisites to be listed on the ballot as a certified candidate for
5 municipal office pursuant to the provisions of Section 3-8-27 (B) through (E) NMSA 1978 and
6 Article IV Section 4.03 of the Santa Fe Municipal Charter;

7 B. Has collected ~~[the requisite number of qualifying contributions, as follows]:~~

8 (1) For a candidate running for the office of mayor, six hundred (600)
9 ~~[qualifying]~~ qualified small contributions of no less than five dollars (\$5.00) from
10 separate qualified electors;

11 (2) For a candidate running for the office of city councilor, one hundred fifty
12 (150) ~~[qualifying]~~ qualified small contributions of no less than five dollars (\$5.00) from
13 separate qualified electors registered to vote in the council district in which the candidate
14 is running;

15 (3) For a candidate running for the office of municipal judge, one hundred
16 fifty (150) ~~[qualifying]~~ qualified small contributions of no less than five dollars (\$5.00)
17 from separate qualified electors.

18 C. Submits an application for certification pursuant to subsection 9-3.8 SFCC 1987
19 setting forth the agreement and the averments and accompanied by the forms~~;~~ and reports ~~[and~~
20 ~~payments]~~ that are required by that section.

21 **Section 4. Subsection 9-3.6 SFCC 1987 (being Ord. #2009-44, §7, as amended)**
22 **is amended to read:**

23 **9-3.6 [Seed Money] Qualified Small Contributions.**

24 A. A participating candidate or a candidate seeking to become a participating
25 candidate may solicit and accept ~~[seed money contributions to defray expenses incurred in~~

1 ~~obtaining qualifying contributions and in seeking certification as a participating candidate]~~
2 qualified small contributions.

3 B. The aggregate amount of [~~seed money~~] qualified small contributions from any
4 one contributor to any one candidate shall not exceed one hundred dollars (\$100)[~~and the~~
5 ~~aggregate amount of seed money contributions accepted by a candidate shall not exceed ten~~
6 ~~percent (10%) of the amount payable under subsection 9-3.10 SFCC 1987 to a candidate in a~~
7 ~~contested election for the office sought].~~

8 C. Each [~~seed money~~] qualified small contribution shall be accompanied by a form
9 signed by the contributor, which shall include the contributor's name, home address, telephone
10 number, occupation and name of employer. The ethics and campaign review board may, by
11 regulation, permit the use of an electronic signature on such forms.

12 D. [~~All seed money contributions received by a candidate shall be deposited in a~~
13 ~~non-interest-bearing account in a campaign depository to be established by the candidate before~~
14 ~~soliciting or accepting any such contributions. All expenditures of seed money shall be made~~
15 ~~from the campaign depository.] No person shall knowingly make and no candidate shall
16 knowingly receive a qualified small contribution which is not from the person named on the form
17 or for which the person named on the form has been or will be reimbursed or compensated by
18 another person.~~

19 E. Before soliciting or accepting qualified small contributions, a candidate shall
20 appoint a treasurer and establish a campaign depository in the manner required by subsection 9-
21 2.8 SFCC 1987. All qualified small contributions received by a candidate shall be recorded by the
22 candidate's campaign treasurer, deposited in a separate non-interest-bearing account in the
23 campaign depository and used in the candidate's campaign or disposed of following the election
24 in the manner required by subsection 9-2.9 SFCC 1987. All such contributions shall be timely
25 reported in a campaign finance statement prepared in the manner and filed on the dates required

1 by subsections 9-2.10 through 9-2.12 SFCC 1987. Campaign finance statements reporting the
2 receipt of qualified small contributions shall be accompanied by copies of the forms signed by
3 each contributor pursuant to paragraph C of this subsection.

4 ~~[E. — Seed money contributions shall be used only for the purposes specified in~~
5 ~~paragraph A. of this subsection, and all seed money contributions that have not been spent or used~~
6 ~~for such purposes by the time the candidate applies for certification as a participating candidate or~~
7 ~~by the end of the qualifying period, whichever is sooner, shall then be paid over to the municipal~~
8 ~~clerk for deposit in the fund; provided, however, that if payment of all of the candidate's unspent~~
9 ~~seed money to the municipal clerk would cause the bank account in the campaign depository to~~
10 ~~be closed, an amount of seed money necessary to keep the account open may be temporarily~~
11 ~~retained in the account and paid over to the municipal clerk at a later time in compliance with~~
12 ~~paragraph C of subsection 9-3.10 SFCC 1987.]~~

13 **Section 5. Subsection 9-3.7 SFCC 1987 (being Ord. #2009-44, §8, as amended)**
14 **is repealed.**

15 **[REPEAL] -- [9-3.7 — Qualifying Contributions.]**

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

18 ~~B. — No candidate or person acting on a candidate's behalf shall pay to any other~~
19 ~~person any form of compensation for soliciting or obtaining a qualifying contribution.~~

20 ~~C. — No person shall knowingly make and no candidate shall knowingly receive a~~
21 ~~qualifying contribution which is not from the person named on the form or for which the person~~
22 ~~named on the form has been or will be reimbursed or compensated by another person.~~

23 ~~D. — All qualifying contributions received by a candidate shall be deposited in a non-~~
24 ~~interest bearing account in a campaign depository to be established by the candidate before~~
25 ~~soliciting or accepting any such contributions, and shall be paid over to the municipal clerk for~~

1 ~~deposit in the fund when the candidate applies for certification as a participating candidate or~~
2 ~~when the qualifying period ends, whichever is sooner.]~~

3 **9-3.7 Reserved.**

4 **Section 6. Subsection 9-3.8 SFCC 1987 (being Ord. #2009-44, §9, as amended)**
5 **is amended to read:**

6 **9-3.8 Application for Certification as a Participating Candidate.**

7 A. A candidate who wishes to be certified as a participating candidate shall, ~~[before~~
8 ~~the end of the qualifying period]~~ on or before the one hundred and sixth (106th) day preceding the
9 election, file an application for such certification with the municipal clerk on a form prescribed by
10 the ~~[municipal]~~ city clerk.

11 B. The application shall identify the candidate and the office that the candidate is
12 seeking, and shall set forth:

13 (1) The candidate's averment under oath that the candidate satisfies the
14 requisites for qualification and certification as a participating candidate prescribed by
15 subsection 9-3.5 SFCC 1987;

16 (2) The candidate's averment under oath that the candidate has accepted no
17 contributions to the candidate's current campaign other than ~~[qualifying contributions and~~
18 ~~seed money]~~ qualified small contributions solicited and accepted pursuant to subsections
19 9-3.6 SFCC 1987 ~~[and 9-3.7 SFCC 1987];~~

20 (3) The candidate's averment under oath that the candidate has made no
21 expenditures for his or her current campaign from any source other than ~~[seed money]~~
22 qualified small contributions; and

23 (4) The candidate's agreement that his or her current campaign will not
24 solicit, direct, or accept any further contributions other than qualified small contributions
25 or make any further expenditures from any sources other than qualified small

1 contributions and payments received from the fund pursuant to subsections 9-3.10 and 9-
2 3.12 SFCC 1987.

3 C. The application shall be accompanied by:

4 (1) Reports listing all [~~seed money contributions and qualifying~~
5 ~~contributions~~] qualified small contributions received by the candidate [~~and all~~
6 ~~expenditures of seed money contributions made by the candidate,~~] and showing the
7 aggregate amounts of all such contributions [~~and expenditures and the aggregate amounts~~
8 ~~of all contributions received from each contributor~~]; and

9 (2) Copies of forms signed by contributors for all [~~seed money contributions~~
10 ~~and qualifying~~] qualified small contributions received by the candidate. [~~and~~

11 (3) ~~A check or checks issued to the City of Santa Fe from the candidate's~~
12 ~~campaign depository for the amount of all qualifying contributions received by the~~
13 ~~candidate and all seed money contributions received by the candidate except:~~

14 (a) ~~Amounts previously spent for the purposes specified in paragraph A of~~
15 ~~subsection 9-3.6 SFCC 1987; and~~

16 (b) ~~The amount, if any, that has been temporarily retained by the candidate~~
17 ~~for the purpose of keeping open the bank account in the campaign depository pursuant to~~
18 ~~paragraph E of subsection 9-3.6 SFCC 1987.]~~

19 **Section 7. Subsection 9-3.9 SFCC 1987 (being Ord. #2009-44, §10, as amended)**

20 **is amended to read:**

21 **9-3.9 Certification as a Participating Candidate.**

22 A. On or before the eighty-ninth (89th) day before the election the municipal clerk
23 shall make a determination whether the candidate's application complies with the requirements of
24 subsection 9-3.8 SFCC 1987 and whether the candidate satisfies the requisites for certification as
25 a participating candidate prescribed by subsection 9-3.5 SFCC 1987, and shall thereupon issue a

1 decision, in accordance with the determination so made, granting or refusing such certification to
2 the candidate.

3 B. The [~~municipal~~] city clerk may revoke a candidate's certification as a
4 participating candidate for any violation by the candidate of the requirements of this section, and
5 may require that any candidate whose certification has been revoked to pay over to the municipal
6 clerk for deposit in the fund any amounts previously paid to the candidate pursuant to subsection
7 9-3.10 SFCC 1987.

8 C. Qualified small contributions in the campaign depository of a candidate who fails
9 to obtain certification as a participating candidate, whose certification is revoked or who
10 withdraws as a participating candidate may be retained by the candidate to be used in the
11 candidate's campaign and disposed of after the election in the manner required by subsection 9-
12 2.9 SFCC 1987.

13 **Section 8. Subsection 9-3.10 SFCC 1987 (being Ord. #2009-44, §11, as**
14 **amended) is amended to read:**

15 **9-3.10 Payments to Participating Candidates.**

16 A. Within three (3) business days of certifying a candidate as a participating
17 candidate, the municipal clerk shall disburse to the candidate from the fund:

18 (1) Sixty thousand dollars (\$60,000.) for a candidate in a contested race for
19 the office of mayor;

20 (2) Fifteen thousand dollars (\$15,000.) for a candidate in a contested race for
21 the office of city councilor;

22 (3) Fifteen thousand dollars (\$15,000.) for a candidate in a contested race for
23 the office of municipal judge; or

24 (4) For a candidate in an uncontested race, ten percent (10%) of the amount
25 that would be due to a candidate in a contested race for the same office.

1 B. If the amounts required to be paid to candidates under paragraph A of this
2 subsection exceed the total amount available in the fund, each payment shall be reduced in
3 proportion to the amount of such excess. Any such proportionate reduction in the payment due to
4 any candidate under paragraph A of this subsection shall give the candidate the option to reject
5 the payment and to withdraw as a participating candidate. A candidate who withdraws as a
6 participating candidate pursuant to this paragraph shall file an affidavit with the [municipal] city
7 clerk so stating and shall thenceforth be treated for all purposes as a non-participating candidate
8 relieved of all obligations and restrictions and excluded from all benefits and exemptions imposed
9 or conferred on a participating candidate by this Section 9-3 SFCC 1987.

10 ~~[C. — Within five (5) business days of the candidate's receipt of the amount disbursed~~
11 ~~under paragraph A of this subsection or the municipal clerk's refusal to certify the candidate as a~~
12 ~~participating candidate pursuant to paragraph A of subsection 9-3.9 SFCC 1987, whichever is~~
13 ~~sooner, the candidate shall pay over to the municipal clerk for deposit in the fund any amount of~~
14 ~~seed money that has been temporarily retained by the candidate for the purpose of keeping open~~
15 ~~the bank account in the campaign depository pursuant to paragraph E of subsection 9-3.6 SFCC~~
16 ~~1987.]~~

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

19 **9-3.11 Use of Payments from the Fund[; the Fund as Exclusive Source].**

20 A. All payments received by a participating candidate from the fund shall be
21 deposited in a non-interest-bearing account in the candidate's campaign depository and shall be
22 used exclusively to pay expenses reasonably incurred in furtherance of the candidate's current
23 campaign.

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

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

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

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

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

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

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

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

20 D. In accordance with the agreement entered into pursuant to subparagraph B(4) of
21 subsection 9-3.8 SFCC 1987, a candidate who has been certified as a participating candidate shall
22 not thereafter accept any contribution to the candidate's campaign other than payments received
23 from the fund pursuant to subsections 9-3.10 and 9-3.12 SFCC 1987 and qualified small
24 contributions received pursuant to subsection 9-3.6 SFCC 1987, and shall not make any
25 expenditure in support of the candidate's campaign from any source other than payments and

1 contributions so received and previously deposited in the candidate's campaign depository.

2 **Section 10. A new Subsection 9-3.12 SFCC 1987 is ordained to read:**

3 **9-3.12 [Reserved:] [NEW MATERIAL] Additional Reports of Qualified Small**
4 **Contributions; Additional Matching Payments from the Fund.**

5 A. Those participating candidates who wish to submit for matching payments from the
6 Fund, in addition to the dates specified for the filing of campaign finance statements by
7 subsection 9-2.10 SFCC 1987, may file campaign finance statements reporting the receipt of
8 qualified small contributions on the sixty-second (62nd) day preceding the election and the
9 fifteenth (15th) day preceding the election.

10 B. Within two business days after the filing of a campaign finance statement by a
11 participating candidate reporting the receipt of qualified small contributions and accompanied by
12 copies of the forms signed by the contributors as required by paragraph C of subsection 9-3.6
13 SFCC 1987, the municipal clerk shall disburse to the candidate an additional payment from the
14 fund equal to four times the total amount of the qualified small contributions reported in the
15 campaign finance statement; provided, that no such additional matching payments shall be made
16 for contributions reported in a campaign finance statement filed after the Tuesday preceding the
17 election; and provided further that additional matching payments for contributions listed in a
18 report filed with the candidate's application for certification under subsection 9-3.8 SFCC 1987
19 shall not be made until two business days after such contributions have been listed anew in a
20 campaign finance statement filed under paragraph E of subsection 9-3.6 SFCC 1987 or paragraph
21 A of this subsection.

22 C. Additional payments made to a participating candidate pursuant to paragraph B
23 of this subsection shall be deposited in the separate account in the candidate's campaign
24 depository that was established by the candidate for the deposit of payments received from the
25 fund pursuant to paragraph A of subsection 9-3.11.

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

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

7 ~~[(Former subsection 9-3.12, Reports of Expenditures by Non-Participating Candidates~~
8 ~~and Other Persons, previously codified herein and containing portions of Ordinance No. 2009-44,~~
9 ~~was repealed in its entirety by Ordinance No. 2011-28, §17.)]~~

10 **Section 11. Subsection 9-3.14 SFCC 1987 (being Ord. #2009-44, §15, as**
11 **amended) is amended to read:**

12 **9-3.14 Reports of Expenditures[; ~~Exemption from Certain Reporting~~**
13 **Requirements].**

14 A. A participating candidate shall file with the municipal clerk reports under oath of
15 expenditures made from the payments received from the fund, indicating that the expenditures
16 were made from that source and showing the date and amount of each such expenditure, the name
17 and address of the person or organization to whom it was made, the purpose of the such
18 expenditure, the aggregate amount of such expenditures made to each person or organization and
19 the aggregate amount of all expenditures made by the candidate or by his or her campaign.
20 Receipts for all such expenditures shall be preserved for a period of two (2) years from the date of
21 the expenditure.

22 B. The reports required by paragraph A of this subsection shall be filed on each of
23 the days prescribed for the filing of campaign finance statements by subsection 9-2.10 SFCC
24 1987.

25 C. A signed campaign finance statement filed by a participating candidate to report

1 qualified small contributions pursuant to paragraph E of subsection 9-3.6 SFCC 1987 or
2 paragraph A of subsection 9-3.12 SFCC 1987 shall also include a report of all expenditures made
3 during the period covered by the statement from the separate account established by the candidate
4 for the deposit of such contributions pursuant to paragraph D of subsection 9-3. SFCC 1987. The
5 statement shall show that the expenditures were made from that source and shall contain all the
6 information concerning the expenditures, account balances and funds on hand that is required for
7 campaign finance statements filed pursuant to subsection 9-2.11 SFCC 1987. Receipts for all
8 such expenditures shall be preserved for a period of two (2) years from the date of expenditure.

9 [E]D. Except as provided in paragraph A [~~and B~~] through C of this subsection [~~and~~],
10 paragraph E of subsection 9-3.6 SFCC 1987, paragraph C of subsection 9-3.8 SFCC 1987[;]~~and~~
11 paragraph A of subsection 9-3.12 SFCC 1987, participating candidates are exempt from the
12 requirement to file campaign finance statements imposed by subsections 9-2.10 SFCC 1987
13 through 9-2.12 SFCC 1987 and from the requirements to file campaign records with the
14 municipal clerk imposed by paragraph C of subsection 9-2.9 SFCC 1987; provided, however, that
15 campaign records shall be maintained in the manner required by the applicable provisions of the
16 Campaign Code (Section 9-2 SFCC 1987) and shall be made available upon request to the
17 municipal clerk and the ethics and campaign review board.

18 [D]E. [~~A seed money and qualifying contribution report and an~~] Campaign finance
19 statements and contribution and expenditure reports of a candidate for municipal judge are not
20 required to be signed or acknowledged by the candidate.

21 APPROVED AS TO FORM:

22 

23
24 KELLEY A. BRENNAN, CITY ATTORNEY

25 *Legislation/Bills 2015/Campaign Code 9-3 Bill*

City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

Section A. General Information

(Check) Bill: X Resolution:

(A single FIR may be used for related bills and/or resolutions)

Short Title(s): AN ORDINANCE AMENDING THE PUBLIC CAMPAIGN FINANCE CODE, SECTION 9-3 SFCC 1987 TO MODIFY THE DEFINITIONS OF "CONTRIBUTION" AND "EXPENDITURE", DELETE THE DEFINITION OF "QUALIFYING CONTRIBUTION" AND CREATE A DEFINITION FOR "COORDINATED EXPENDITURE" AND "QUALIFIED SMALL CONTRIBUTION"; TO MODIFY THE REQUIREMENTS TO QUALIFY AS A PARTICIPATING CANDIDATE; TO DELETE PROVISIONS RELATED TO SEED MONEY CONTRIBUTIONS AND ESTABLISH PROVISIONS FOR QUALIFIED SMALL CONTRIBUTIONS; TO DELETE PROVISIONS RELATED TO "QUALIFYING CONTRIBUTIONS"; TO MODIFY PROVISIONS RELATED TO "REPORTS OF EXPENDITURE" TO EXPAND REPORTING REQUIREMENTS; TO ADD PROVISIONS FOR "ADDITIONAL REPORTING OF QUALIFIED SMALL CONTRIBUTIONS AND ADDITIONAL MATCHING PAYMENTS FROM FUND"; AND TO MAKE SUCH OTHER CHANGES AS ARE NECESSARY TO CLARIFY THE PROVISIONS OF THE PUBLIC CAMPAIGN FINANCE CODE.

Sponsor(s): Councilor Peter Ives

Reviewing Department(s): City Attorney's Office

Persons Completing FIR: Zack Shandler Date: 6/18/15 Phone: 955-6303

Reviewed by City Attorney: *Valley A. Beaman* Date: 6/19/15
(Signature)

Reviewed by Finance Director: *[Signature]* Date: 6-19-2015
(Signature)

Section B. Summary

Briefly explain the purpose and major provisions of the bill/resolution:

The purpose of the bill is to:

- modify the definitions of "contribution" and "expenditure" in Section 9-3.3
- create a definition for "coordinated expenditure" in Section 9-3.3
- delete the definition of "qualifying contribution" in Section 9-3.3
- create a definition for "qualified small contribution" in Section 9-3.3
- delete provisions related to seed money contributions in Sections 9-3.4 to 9-3.11
- establish provisions for qualified small contributions in Sections 9-3.4 to 9-3.11
- delete provisions related to qualifying contributions in Sections 9-3.4 to 9-3.11
- modify provisions related to reports of expenditure in Sections 9-3.4 to 9-3.11
- modify the requirements to qualify as a participating candidate in Section 9-3.8
- additional matching payments from fund in Section 9-3.12
- add provisions for additional reporting of qualified small contributions in Section 9-3.14

Finance Director: *[Signature]*

Section C. Fiscal Impact

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)*

1. Projected Expenditures:

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate: "A" if current budget and level of staffing will absorb the costs
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" – if recurring annual costs
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

_____ Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
Expenditure Classification	FY 2016	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY 2018	"A" Costs Absorbed or "N" New Budget Required	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected	

Personnel*	\$ TBA <u>(If the bill is adopted in its entirety, the City Clerk may have to review the additional workload and determine whether temporary workers need to be hired)</u>	N	NR	\$ TBA	N	NR	<u>General Fund</u>
Fringe**	\$ _____	_____	_____	\$ _____	_____	_____	_____
Capital Outlay	\$ _____	_____	_____	\$ _____	_____	_____	_____
Land/ Building	\$ _____	_____	_____	\$ _____	_____	_____	_____

Professional Services \$ _____ \$ _____

All Other Operating Costs \$ TBA (See Narrative below) N NR \$ TBA (see narrative below) N NR Public Campaign Finance Fund

Total: \$ _____ \$ _____

* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. **For fringe benefits contact the Finance Dept.

2. Revenue Sources:

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
Type of Revenue	FY 2016	"R" Costs Recurring or "NR" Non-recurring	FY 2018	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected	

_____ \$0 _____ \$ 0 _____

_____ \$ _____ \$ _____

_____ \$ _____ \$ _____

Total: \$ _____ \$ _____

3. Expenditure/Revenue Narrative:

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

***Under a system where a mayoral candidate could raise money and could get a 4 X1 match (capped at 200% of the initial grant)?**

Mayor Candidate A would get \$60,000 in the initial city grant and if they raised \$30,000 in small contributions and they would get a city match of \$120,000.

(The candidate could raise more than \$30,000, but only the first \$30,000 would be eligible for the match).

In 2014, there were three mayor candidates under the public financing system:

2014 cost to the Public Campaign Finance Fund: \$180,000

Under the bill, the cost to the Fund (if they all raised \$30,000 in small contributions): \$540,000 (\$180,000 and \$360,000 in matching funds)

Under a system where council or judge candidates could raise money and could get a 4 X1 match (capped at 200% of the initial grant)?

Candidate A would get \$15,000 in the initial grant, and if they raised \$7,500 in small contributions and get a match of \$30,000.

(The candidate could raise more than \$7,500, but only the first \$7,500 would be eligible for the match).

In 2014, there were 7 council candidates under the public financing system:

2014 cost with 7 candidates to the Fund: \$105,000

Under the bill, the cost to the Fund (if they all seven raised \$7,500 in small contributions): \$315,000 (\$105,000 in grant funds and \$210,000 in matching funds)

Notes:

*The proposed 200% cap on the initial city grant of fund creates a known cap on the city match. For example, Mayoral Candidate A could never get more than \$120,000 in matching funds. A council candidate can never get more than \$30,000 in matching funds.

*There is an annual distribution from the General Fund to the Public Campaign Finance Fund. The current code in Section 9-3.4B provides that "each fiscal year...the sum of one hundred fifty thousand shall be budgeted for and deposited in the fund."

*There is a current floor of the minimum amount of \$ that needs to be in the fund. The current code in Section 9-3.4C provides that "beginning with the election of 2014, the governing body shall appropriate and deposit in the fund such additional sums, if any, as many be necessary to ensure that the balance ... [during a mayoral election year] is at least six hundred thousand dollars...[and] that the balance in the fund ... [during a council and judge year] is at least three hundred thousand dollars...."

*The current balance in the Public Campaign Finance Fund at the end of FY 2015 is \$493,000. The annual distribution from the general fund of \$150,000 is distributed to the fund on a proportional quarterly basis (\$37,500 per quarter). This means the balance of the fund should be \$568,000 at the end of Calendar Year 2015.

*There is a process where unopposed publicly funded candidates get less public money. The current code in Section 9-3.10A4 provides that "a candidate in an uncontested race, ten percent of the amount that would be due to a candidate in a contested race for the same office" shall be disbursed.

*There is a current process that reduces the allotment of funds to candidates to avoid a "run on the bank" scenario. The current code in Section 9-3.10B provides that "if the amount to be paid to candidates ...exceed the total amount available in the fund, each payment shall be reduced in proportion to the amount of such excess. Any such proportionate reduction in the payment due to any candidate ... shall give the candidate the option to reject the payment and to withdraw as a participating candidate."

*In 2014, approximately \$30,000 was replenished back into the Fund by the return of seed money and qualifying contributions. The bill deletes this process.

Section D. General Narrative

1. Conflicts: Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

No

2. Consequences of Not Enacting This Bill/Resolution:

Are there consequences of not enacting this bill/resolution? If so, describe.

Status quo

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

If the City Council wishes to adopt all portions of the bill, then staff may have amendments—i.e. to reconcile dates with the election calendar and dates when election packets are handed out to candidates.

If the City Council adopts only portions of the bill, then staff may have amendments to clarify outstanding issues from the last election (i.e. if the change to qualifying small contributions is not adopted, then Council may need to adopt language instructing the clerk to create a form for candidates to fill out to state when they are going to be publicly funded candidates)

4. Community Impact:

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

Since last year's election, the ECRB has been engaged in an effort to develop recommendations to improve the ordinances. The Board has met monthly, and sometimes twice a month, for the last seven months. The Board has drafted and debated various proposals; invited experts in the field to advise the Board; received testimony from candidates about first hand experiences with the campaign finance laws; and discussed ideas with a variety of dedicated citizens.

The Board voted in favor of a final set of recommendations on May 20, 2015. The proposed changes address four major areas of concern to the Board and to the public: (1) coordination between candidates and independent groups; (2) transparency of campaign financing and independent expenditures; (3) revising the process by which a candidate qualifies for public financing; and (4) providing for a matching fund process regarding the ability of publicly financed candidates to run campaigns.

Form adopted: 01/12/05; revised 8/24/05; revised 4/17/08