

City of Santa Fe, New Mexico

LEGISLATIVE SUMMARY

BILL NO. 2014-7

Campaign Contributions by City Contractors

SPONSOR(S): Calvert

SUMMARY: The bill proposes to amend the Code of Ethics, Section 1-7 SFCC 1987 and the Campaign Code, Section 9-2 SFCC 1987 in the following manner:

1. Broadens the definition of "conflict of interest" in §1-7.5 of the Code of Ethics by including certain additional relationships and lowering to \$250, the threshold amount of campaign contributions that may give rise to such conflicts;
2. Amends §9-2.14 of the Campaign Code alerting campaign contributors to potential conflicts of interest arising from campaign contributions over \$250;
3. Amends §9-2.3(J) of the Campaign Code to eliminate a gap in the definition of "contributor"; and
4. Conforms the above amendment to §9-2.11(A) of the Campaign Code.

PREPARED BY: Melissa Byers, Legislative Liaison

DATE: February 19, 2014

ATTACHMENTS: Bill
FIR
Minutes

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2014-7

3 INTRODUCED BY:

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6 Councilor Chris Calvert

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10 AN ORDINANCE

11 RELATING TO CAMPAIGN CONTRIBUTIONS FROM CITY CONTRACTORS;
12 AMENDING THE CODE OF ETHICS, SECTION 1-7 SFCC 1987 AND THE CAMPAIGN
13 CODE, SECTION 9-2 SFCC 1987 TO REGULATE CONFLICTS OF INTEREST ARISING
14 FROM CAMPAIGN CONTRIBUTIONS FROM CITY CONTRACTORS AND FOR
15 RELATED PURPOSES.

16
17 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

18 Section 1. Subsection 1-7.5 SFCC 1987 (being Ord. #2005-15, §14, as amended) is
19 amended to read:

20 1-7.5 Definitions.

21 As used in the Code of Ethics:

22 *Business* means a corporation, partnership, sole proprietorship, firm, or other profit-making
23 enterprise.

24 *Confidential information* means information which is acquired by a public official or public
25 employee by reason of his or her public office or public employment, which has not previously been

1 made public, and which is not required to be made available to the public under the Inspection of
2 Public Records Act (§§10-15-1 et seq. NMSA 1978).

3 *Conflict of interest* means a specific and identifiable prospect of pecuniary gain or loss, other
4 than a gain or loss that is de minimis in amount or shared with a substantial segment of the general
5 public, to any of the individuals or entities here listed from an official act of any public official or
6 employee:

7 (1) The public official or public employee who is to perform the official act;

8 (2) Any member of his or her family;

9 (3) Any business of which he or she or any member of his or her household is an owner;

10 (4) Any employer, client or customer from whom the public official or public employee
11 knows or reasonably should know that he or she or any member of his or her household or any
12 business of which he or she is an owner has received remuneration of more than five hundred dollars
13 (\$500.00) during the year preceding the official act;

14 (5) Any civic group, labor union, or social, charitable or religious organization of which
15 the public official or public employee or a member of his or her household is an officer or director; or

16 (6) ~~[Any "contributor" who has made "contributions," as those terms are defined in~~
17 ~~subsection 9-2-3G. and H. SFCC 1987,]~~ Any business or any of its owners, if the public official or
18 public employee knows or reasonably should know that the business or any of its owners, has made
19 "contributions" or has directed the making of "contributions," as that term is defined in subsection 9-
20 2.3(I) SFCC 1987, to the public official's or public employee's campaign for elected office in an
21 aggregate amount greater than two hundred fifty dollars (\$250) during the two (2) years preceding the
22 official act [of more than one thousand dollars (\$1,000.) in the aggregate for councilor position and
23 of more than two thousand five hundred dollars (\$2,500.) in the aggregate for mayor position]. A
24 contribution made before [the effective date of this ordinance], shall not be counted toward the
25 aggregate total.

1 *Employer, in the case of a person who is employed by a governmental entity other than the*
2 *city, means the governmental department for which the person works.*

3 *Family of an individual* means members of the individual's household, his or her children,
4 step-children, brothers, sisters, parents, step-parents, domestic partner and all persons claimed as
5 dependents on the individual's latest federal income tax return.

6 *Financial benefit* means any money, service, license, permit, contract, loan, travel,
7 entertainment, gratuity or any other thing of monetary value or any promise of any of these.

8 *Governing body* means the mayor and the city council.

9 *Governmental body* means the governing body and any board, commission or committee
10 appointed by the governing body or by the mayor with the advice and consent of the governing body.

11 *Household of an individual* means all persons whose primary residence is in the individual's
12 home, including non-relatives, who are not rent-payers or employees.

13 *Official act* means an official decision, vote including, but not limited to items on a consent
14 calendar, recommendation, approval, disapproval or other action which involves the use of
15 discretionary authority.

16 *Owner of a business* means each of the business's proprietors, partners or holders of more
17 than two percent (2%) of its outstanding stock.

18 *Public employee* means any exempt, classified, probationary, temporary, term or part-time
19 employee of the city of Santa Fe except the municipal judge, the city manager, the city clerk, the city
20 attorney and the members of the governing body.

21 *Public official* means the city manager, the city attorney, the city clerk and any member of a
22 governmental body, including the governing body.

23 *Subordinate of a public official or public employee* means a public employee over whose
24 work for the city the public official or public employee has direction, supervision or control. All
25 public officials and public employees except other members of the governing body are deemed to be

1 subordinates of each member of the governing body.

2 **Section 2. Subsection 9-2.14 SFCC 1987 (being Ord. #1998-41, §13, as amended) is**
3 **amended to read:**

4 **9-2.14 Spending Limitations.**

5 A. A candidate may volunteer, to limit the candidate's expenditures to one dollar (\$1.00)
6 per registered voter in the city for the mayoral or municipal judgeship or one dollar (\$1.00) per
7 registered voter in the applicable district for the city council election.

8 B. A candidate may volunteer to make no contributions to the candidate's own campaign
9 or political committee of personal assets that in aggregate exceeds ten percent (10%) of the applicable
10 expenditure limits for the mayoral or municipal judgeship position. A candidate may volunteer to
11 make no contributions to the candidate's own campaign or political committee of personal assets that
12 in aggregate exceeds twenty-five percent (25%) of the applicable expenditure limits for the city
13 council position.

14 C. No candidate for councilor or municipal judge or the candidate's political committee
15 shall accept contributions from any one individual, entity or organization which in the aggregate
16 exceed one thousand dollars (\$1000.) in any one election.

17 D. No candidate for mayor or the candidate's political committee shall accept
18 contributions from any one individual, entity or organization which in the aggregate exceed two
19 thousand five hundred dollars (\$2,500.) in any one election.

20 E. Contributions from any one individual, entity or organization to any elected official or
21 his or her election campaign, which in the aggregate exceed two hundred fifty dollars (\$250) during
22 the two years preceding any official act of the elected official affecting the financial interest of the
23 contributor, are subject to the conflict-of-interest provisions of subsections 1-7.5 and 1-7.7(L) SFCC
24 1987.

25 **Section 3. Subsection 9-2.3 (J) SFCC 1987 (being Ord. #Ord. #1998-41, §3, as**

1 amended) is amended to read:

2 J. *Contributor* means:

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

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

10 Section 4. Subsection 9-2.11 SFCC 1987 (being Ord. #Ord. #1998-41, §10, as
11 amended) is amended to read:

12 **9-2.11 Campaign Finance Statement; Contents.**

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

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

22 (2) The full name, home address, occupation, name of employer, date of receipt
23 and amount of each contribution received from each individual contributor from whom a
24 contribution in money, goods, materials, services, facilities or anything of value has been
25 received and whether the contribution was received in cash, by check, by credit card, by

1 electronic transfer or otherwise;

2 (3) The full name, type of business, physical address, date of receipt and amount
3 of each contribution for each business or organizational contributor, from whom a
4 contribution in money, goods, materials, services, facilities or anything of value has been
5 received, and whether the contribution was received in cash, by check, by credit card, by
6 electronic transfer or otherwise;

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

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

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

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

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

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

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

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

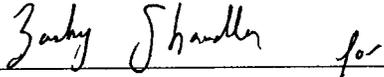
3 (3) The cumulative total value of all loans received; and

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

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

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

9 APPROVED AS TO FORM:

10
11  for _____

12 KELLEY A. BRENNAN, INTERIM CITY ATTORNEY

**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): **AMENDING THE CODE OF ETHICS, THE CAMPAIGN CODE AND THE PUBLIC CAMPAIGN FINANCE CODE FOR THE PURPOSE OF REGULATING CAMPAIGN CONTRIBUTIONS FROM POTENTIAL CITY CONTRACTORS.**

Sponsor(s): Councilor Calvert
 Reviewing Department(s): City Attorney's Office
 Person Completing FIR: Rebecca Seligman Date: 01/23/14 Phone: 955-6501

Reviewed by City Attorney: *Kelley A. Brennan* Date: 1/23/14
 (Signature)

Reviewed by Finance Director: *Desiree Garcia* Date: 1/23/14
 (Signature) *Marcos Tapia*

Section B. Summary

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

The purpose of the bill is to amend the Code of Ethics, the Campaign Code and the Public Campaign Finance Code for the purpose of regulating campaign contributions from potential City contractors. Contributions from any one individual, entity or organization to any elected official or his or her election campaign, which in the aggregate exceed two hundred fifty dollars (\$250) during the two years preceding any official act of the elected official affecting the financial interest of the contributor, are subject to the conflict-of-interest provisions of subsections 1-7.5 and 1-7.7(L) SFCC 1987.

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)

(see #3, on page 3) 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**	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
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	_____	"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.)

Not applicable.

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.

If the bill is adopted, there may be additional staff time required to monitor contracts and contributions.

2. Consequences of Not Enacting This Bill/Resolution:

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

There would not be more stringent regulations on campaign contributions by potential City contractors.

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 that staff is aware of

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.

Amending the Code would regulate campaign contributions made by potential City contractors, therefor establishing transparency and trust in our community.

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

- b) Consideration of an Ordinance Relating to Campaign Contributions from City Contractors; Amending the Code of Ethics, Section 1-7 SFCC 1987 and the Campaign Code, Section 9-2 SFCC 1987 to Regulate Conflicts of Interest Arising from Campaign Contributions from City Contractors and for Related Purposes. (Councilor Calvert)

Chair Miller said he was unclear what the Board was asked to do. He asked Mr. Shandler for clarification.

Mr. Shandler said the Board could look at the language to recommend approval, or amend or deny the language. He said that would be listed on the agenda if the Councilor goes forward and the recommendation would be on the next Council agenda Request to Publish. There would be a public hearing at the evening session of City Council in late February.

Mr. Shandler said the bill #2014 and Councilor Calvert previously talked about a contractor ban and the where the focus should be was discussed. He said Councilor Calvert went back to look at the recommendation from the City Council's perspective and at the Code of Ethics- Conflicts of Interest.

He explained that the first part of the proposal focuses on what the Governing Body looks at in terms of their conflict of interest. A Councilor must recuse if their vote would benefit themselves or any of the people listed on page two. (Businesses or owners that have made a contribution or directed the making of a contribution with an aggregate amount greater than \$250 during the two years preceding the vote)

Mr. Shandler said the last sentence of the new language is the contribution made before the effective date of this ordinance. He said if the plan goes forward and is approved by Council, this would go into effect in time for the next mayoral election in March. The idea is contributions made prior to that date would not be held against the candidate in terms of the aggregate total.

Mr. Shandler noted that the existing code defines contributor as individual or business contributor, but does not capture a labor or unincorporated organization/association. This attempt is to apply not only to business contractors but to organizational contributors, which would now mean labor organizations.

Mr. Shandler summarized the three main parts of the bill: 1) to focus on Councilor conflict of interest if they vote on something where they accepted more than \$250 during the past two years. He said this doesn't stop a business person or union from making donations to their preferred candidates, but they may need to recuse themselves on that contract or act.

He said part two is the notice and part three includes unions with the businesses. He deferred to Mr. Harrington, who did a lot of the drafting.

Mr. Harrington said the genesis was back in the Charter Commission and a proposal by a Commissioner of a ban on contributions from city contractors. He said recent case law questions the constitutionality of that without a history of corruption.

Mr. Harrington said there is no ban. A contractor could give up to the \$1000 or \$2500 contribution limit, but it creates a conflict for the Councilor. Mr. Harrington said Councilor Calvert apologized for not being

able to attend the meeting. Mr. Harrington said one of the amendments is just to clean up the definition of *contributor*. He said he raised a last-minute concern that the largest contributors to campaigns historically have been the unions. He said after talking with Councilor Calvert, the Councilor asked for the Board's thoughts on whether the language "*or any labor union or its members*" should be added to page 2, line 7 where it states: "any business or its owners." He said otherwise Common Cause supports the bill with that one question.

Mr. Harrington noted that the Ethics Code states if the City is disabled from taking action by a conflict of interest, then the person with the conflict could take action after full disclosure.

Chair Miller asked if they would want to set up that kind of situation. He added that a union member could have a contract with the City, but if the labor union made a contribution; Councilors could vote on the members.

Mr. Harrington said he talked with Councilor Calvert and asked if Council had ever voted on things of a pecuniary benefit to unionized employees that were not a subject of collective bargaining and in the contract. He said Councilor Calvert said "no" it is an unfair labor practice.

Chair Miller said the member could be involved in another endeavor entirely separate from the union.

Ms. Kovnat asked to clarify that Councilor Calvert's proposal before the Board does not include that problem. She said Mr. Harrington was asking the advice of the Board as to whether to broaden the provision. She said speaking for herself; the Board has enough to do to determine whether the proposed changes before them should be recommended to City Council.

Ms. Kovnat congratulated everyone who was involved in the drafting for clarification. She said she appreciates the clarity of the proposal.

Mr. Shandler said the credit goes to Melissa Byers of the Legislative Staff.

Chair Miller asked for questions or comments on the draft.

Mr. Biderman asked if the City is subject to the State Procurement Code. Chair Miller replied "no" the City has a charter and its own public purchasing policy.

Mr. Biderman said his concern was whether that would confuse people because they have the procurement code and where the code doesn't apply. People would have to learn different sets of rules.

Ms. Martinez said the \$250 limit appears that the amount was changed from \$1000 for a councilor and \$2500 for a mayor position. She asked the rationale for lowering the amount. She was concerned they could run into a situation where everyone has to recuse anyway.

Mr. Harrington said the \$1000 and \$2500 was actually the contribution limits. He said at the same time the contribution limits were being installed, the question was raised whether that should be removed. He said it was discussed and the language was put in as a backup. He thought the provision in the

current code redundant. He said no contractor could give contributions over those amounts anyway. Mr. Harrington said the \$250 came from the Ethics Code gift exemption amount.

Chair Miller confirmed the contribution limit is still in place and asked how the current election would be impacted.

Mr. Shandler thought it would not impact the current election. He said the intent was to start the \$250 clock after the election to put people on notice. He said if approved on the 26th [January] this would probably be effective after March first.

Mr. Biderman said it would be helpful to have more time. He said there is enough time at the next meeting to make recommendations on January 22nd and still get their recommendation to City Council. The other Board members agreed.

Ms. Martinez moved to postpone the discussion of this bill until the next meeting. Mr. Biderman seconded the motion.

A roll call vote was taken and the motion passed unanimously with Ms. Kovnat, Ms. Lujan, Mr. McMillan, Ms. Martinez and Mr. Biderman voting to approve. There were no votes against.

c) Presentation by Advisory Committee on Disposition of Campaign Funds

Chair Miller said a request was received from Ms. Nix that asked the Board for advisement on what to do with the check from the #2013-1 Complaint.

Ms. Kovnat asked if it was the Board's view that they had received a sufficient request.

Chair Miller said Ms. Nix also sent a letter. He asked Ms. Vigil to explain the letter.

Ms. Vigil said the letter has not gone out to Board members yet. She said Ms. Nix sent the letter requesting clarification on what to do with the check. She said it appeared from the last Board meeting minutes that the Board had agreed to issue an advisory opinion and is why the item was on the agenda.

Ms. Kovnat confirmed the members of the Advisory subcommittee (she and Mr. Biderman and Ms. Lujan). She asked Ms. Vigil to send the subcommittee members the letter from Ms. Nix.

4. BOARD MATTERS

There were none.

5. PUBLIC COMMENT

Heard previously

6. ADJOURNMENT

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

c) APPROVAL OF THE MINUTES- January 13, 2014

Ms. Kovnat moved to approve the minutes of January 13, 2014 as presented. Ms. Martinez seconded the motion and it passed by unanimous voice vote.

2. DISCUSSION AND POSSIBLE ACTIONS (Revised Agenda Order)

b) Action on Presentation by Advisory Committee on Disposition of Campaign Funds

Chair Miller said the Advisory Committee has addressed a request by Ms. Tara Nix regarding what to do with a check she received from campaign funds.

Ms. Kovnat said the members of the Advisory Committee (Mr. Biderman, Ms. Lujan and herself) consulted with City Attorney, Zachary Shandler on the question. The question from Ms. Nix was that she held a check paid to her out of Ms. Bushee's seed money account. Ms. Nix had previously received a check from Ms. Bushee prior to Ms. Bushee's decision to be a publicly financed candidate.

Ms. Kovnat said the Committee found there was no violation of the Public Campaign Finance Code (PCFC) as written, but the question of what to do with the second payment remained.

The Advisory Committee concluded that the check issued in November should be treated as unspent seed money contribution and handled according to those procedures and be returned to the City's Public Campaign Finance Fund. The Advisory Committee rationale is that Ms. Nix should not be paid twice for the same work and at this point, the money would be unspent seed money and therefore appropriate to return the money to the taxpayers of the City.

Chair Miller said he reviewed the draft opinion and found the conclusion persuasive and sound. He had no questions or comments.

Mr. Thompson acknowledged the excellent work by the Advisory Committee. Chair Miller agreed and thanked the Advisory Committee and Mr. Shandler.

Mr. Thompson moved to approve the draft opinion of the ECRB Advisory Committee as issued to Ms. Tara Nix. Ms. Martinez seconded the motion and the motion passed unanimously by voice vote.

- c) Consideration of an Ordinance Relating to Campaign Contributions from City Contractors; Amending the Code of Ethics, Section 1-7 SFCC 1987 and the Campaign Code, Section 9-2 SFCC 1987 to Regulate Conflicts of Interest Arising from Campaign Contributions from City Contractors and for Related Purposes. (Councilor Calvert)

Chair Miller said the draft was tabled to be able to give greater consideration to the draft ordinance and an "oral suggestion" on how to deal with unions in the ordinance.

Mr. Biderman requested an explanation from Mr. Shandler to ensure everyone is clear what is involved.

Mr. Shandler said the bill was brought to the Board by Councilor Calvert. The Board could recommend to City Council to proceed or could make a negative recommendation. The item is scheduled on the City Council agenda as a Request to Publish and will be published in the appropriate notices. The item will not be deliberated on or have a public hearing until late February.

Mr. Shandler said the first major provision looks at the Conflict of Interest in the City Code. The elected official's responsibility is to follow the Conflict provision and if a conflict, must recuse themselves from a vote. This Ordinance adds clarification of the Conflict of Interest definition that a Councilor should recuse themselves if they know, or *reasonably* know a contribution was greater than \$250 within the last two years.

Mr. Shandler provided an example using a hypothetical company "Zac's Private Security Company." He said the company makes a contribution to a City Councilor in order to get City business and in the existing code there is an amount in place (\$250) for contributions to City Councilors. This Ordinance allows a vote by the whole Council when "Zac's Security Company contract comes before them, but the Councilor who received the contribution has to recuse. A two-year window of time would be looked at prior to the time of the vote, to determine if a contribution or series of contributions exceeded the allowable amount.

Mr. Shandler said finally, it would be unfair to "Zac's" company if he had given contributions to a Councilor, not knowing that the ordinance would change. Language was added to the Ordinance stating that a contribution made before the effective date of the Ordinance shall not be counted toward the running total. There would be no infringement on the right to make contributions.

Mr. Biderman said he appreciated the explanation and that helped clarify the Ordinance. He said the Ordinance is well written and is consistent with the State Procurement Code. He liked that the Ordinance takes a step further and disqualifies the recipient and enhances the consequences.

Mr. Shandler said part two is that language was added to the Campaign Code and notifies a contributor to look at the Conflict of Interest provisions.

Chair Miller asked how a City Councilor would know if someone whose business is before the Council as a business owner, made a contribution.

Mr. Shandler said Councilor Calvert believes the burden should be on the Councilor to track, though City Council might direct the City Clerk, as part of transparency, to put that online.

Chair Miller said the State Procurement Code provision prohibited donations to public officials who had authority over contracts. There were problems knowing who the official was and the legislature placed the burden on the public entities to identify the public officials. He thought there could be problems with that down the road.

Mr. Shandler said Mr. Harrington has suggested the language "knows or reasonably knows" to put the burden on the Councilor.

Mr. Biderman said it was common that Councilors see contributors' names on the agenda. He said by the time the Councilor gets to the meeting they know who not to be involving themselves with.

Mr. Shandler explained that part three defines a business. The current language in the Campaign Code is about an individual and a business contributor. *Business contributor* would be now expanded to include labor organizations and unincorporated associations.

Ms. Kovnat presented a scenario of a labor organization that makes a contribution of more than \$250 to every member of the City Council and as a result of Collective Bargaining; there is a proposed increase for the organization. She asked the consequence of including labor organizations in the definition.

Mr. Shandler said Councilor Calvert rationalizes it should be an even playing field and a business should have the same rules as a union. He said a catchall was discussed and in the Conflict of Interest provision, if everyone/or a majority is recused, the voting status could be restored.

Ms. Kovnat said if the majority of members of City Council had to recuse in her hypothetical; each one had received a contribution that caused a conflict under the definition. She asked how City Council is then able to vote for a benefit to the union that has been achieved through Collective Bargaining.

Mr. Harrington said in the Code of Ethics, 1.7 a "saving clause," states if the City would be disabled from taking action because of conflicts of interest; the person(s) otherwise disqualified, could take action after full disclosure.

Ms. Kovnat thanked Mr. Harrington. She asked on including labor organizations and its members and using the hypothetical Zac's Security; suppose the Company is also a member of the Police Officers Union and the union has made a contribution in excess of the amount; but the owner has not. She asked if that involves a conflict in the owner seeking the contract with the City. She was concerned in terms of labor organizations, with going beyond.

Mr. Shandler said under Section 1, under the concept of "*pay to play*" a Councilor could not vote if it benefits someone who has given them money. He said the union organization would not benefit, it is the members and why language was included to capture that.

Mr. Harrington said the last change was to close a gap in the word *contributor*. He said formerly a business if not profit-making or an individual, could not be a "contributor" although they might be donating money to a candidate. He said this does not address when a labor union gives over \$250 and whether that disqualifies them from voting on a Collective Bargaining contract for employees.

Mr. Biderman said the issue raised has troubled him since the start. On one hand it seems an individual or business may present a contract, or request for variance, etc. and a specific action of benefit to that contributor is defined. Then the Council is taking votes; you don't want people who have contributions to be voting.

He said on the other hand, a Collective Bargaining Agreement (CBA) doesn't seem to fit that concern. He said you expect the unions who represent the employees to negotiate with the City on issues on

behalf of their members. Mr. Biderman asked if there was anything other than a CBA they would ask for a vote on.

Mr. Harrington said Councilor Calvert said the Council doesn't act on matters that would affect the pecuniary interests of employees not part of the CBA.

Mr. Biderman asked if an exception should be made for CBAs. Mr. Harrington replied that the suggested amendment wouldn't apply to anything and would only apply to businesses.

Ms. Martinez suggested the Board not make additional amendments if they recommend that City Council proceed on the proposed Ordinance.

Chair Miller opened the floor to Public Comment at this time.

PUBLIC COMMENT

Karen Heldmeyer said anyone running for public office knows who gave them \$250 or more. She donors are required to put the name of their business and profession when donating.

She said secondly, in terms of labor organizations there are several interlocking layers; the local affiliate, above that, like ASCME; there is the local, state and Central Labor Council ASCME, which also may give money. She said the Board is getting into complications about who is giving the money vis-à-vis who is doing the Collective Bargaining.

Mr. Thompson said he is hard pressed to disagree with Ms. Heldmeyer, but has misgivings about how much a candidate knows about a donation. He said if there a lot of employees and company subsidiaries, etc. it seems the law could be used aggressively. He said the consequence of giving more than \$250 is supposed to be that the Councilor would not get to vote. He said he sees so much room for manipulation, etc.

Ms. Kovnat said putting the burden for the Councilor to be aware of the contributions he or she receives, is appropriate in her view. She said it is important to be alert of not being in a conflict in order to keep corruption down and that is the purpose of this. She said anything can be used in a manipulative way, but if the Councilor is responsible; the responsibility lies with the elected officials.

Mr. Thompson voiced concern that candidates wouldn't be able to keep track.

Ms. Kovnat said the Board's responsibility is to look at this from an ethics point of view. The changes pose an ethical responsibility on the Councilor to not vote where there is an actuality or appearance of undue influence. She said it is not the Board's job to think of all of the permutations that could occur.

She said she is in favor, but has concerns about the addition of the labor organizations. She said she trusts that the City Council would struggle with that when considering the Ordinance and doesn't feel the Board should remove the language. She said the Board could express their concerns.

Ms. Lujan said she is concerned about the labor as well and how that would be managed when a contract is asked for, etc. She thought it doesn't make sense to include that in the ordinance.

Mr. Biderman moved that the Board recommend the adoption of the Ordinance to the City Council and express their reservations about the inclusion of the unions given a different status.

Ms. Martinez said her understanding is that the Board could just recommend City Council *proceed* to address the ordinance. She suggested the Board make a list of things their reservations.

Chair Miller clarified that the motion: "to recommend adoption while expressing reservations about including labor organizations."

Ms. Kovnat seconded the motion.

Ms. Martinez suggested language: "that City Council *proceed to consider* the ordinance."

Mr. Biderman said he was open to that. He said if the Board agrees, he wants to express that it is good to put a limit on contributions a Councilor could accept before they recuse themselves.

Chair Miller said it would be helpful to the Council if the Board's opinion is given one way or the other.

Ms. Kovnat clarified the language for Mr. Biderman's motion: **Mr. Biderman moved to recommend the ordinance to the Council and express the Board's reservations about the inclusion of the labor organizations.**

Mr. Biderman agreed.

There was no further discussion.

Chair Miller restated the motion is that the Board would recommend adoption of this bill, while expressing reservations about the inclusions of labor organizations.

The motion to recommend was passed by majority voice vote. Mr. Thompson voted against.

~~Mr. Biderman excused himself from the rest of the meeting as he was recused from Case #2013-2.~~

- ~~a) Case #2013-2. Parties' Presentations on the Merits of Complaint Filed by Jeff E. Green Alleging Violation of "Incomplete Seed Money Expenditure Report, Exceeding \$1,500 in Expenditures, and/or Making Expenditures for His Campaign from Source Other than Seed Money" by Joseph M. Maestas. (The Board May Go Into Executive Session Under NMSA 1978, Section 10-15-1(H)(3) to Deliberate in Connection With an Administrative Adjudicatory Proceeding.)~~

~~Chair Miller said the Board considered the Complaint filed by Jeff Green and at the last meeting, determined that the Complaint was legally sufficient under the provisions of the Ethics and Campaign Finance Code.~~

~~He said this meeting is to determine whether on the substance of the Complaint, there is violation of code and if a violation, whether the Board wishes to impose Sanctions.~~