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CITY OF SANTA FÉ
ETHICS AND CAMPAIGN REVIEW BOARD**

May 20, 2015

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**MINUTES OF THE
CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD
Wednesday, May 20, 2015**

1. PROCEDURES

A. ROLL CALL

A regular meeting of the City of Santa Fe Ethics and Campaign Review Board was called to order by Justin Miller, chair on this date at approximately 3:06 p.m. in the City Council Chambers, 1st floor, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum as follows:

Members Present:

Justin Miller, Chair
Paul Biderman
Ruth Kovnat
Seth McMillan

Members Absent:

Tara Luján [excused]
Kristina Martinez [excused]
One Vacancy

Staff Present:

Zachary Shandler, Assistant City Attorney

Others Present:

Jim Harrington, Common Cause
Vicky Harrison, Common Cause
Karen Heldmeyer, former City Councilor
Jodi Larsen, League of Women Voters
Carl Boaz, Stenographer

B. APPROVAL OF THE AGENDA

Ms. Kovnat moved to approve the agenda. Mr. Biderman seconded the motion and it passed by unanimous voice vote.

C. APPROVAL OF MINUTES

1) April 15, 2015

Ms. Kovnat moved to approve the minutes of April 15, 2015 as presented. Mr. Biderman seconded the motion and it passed by unanimous voice vote.

2) April 27, 2015

Mr. Biderman said he had submitted two typographical corrections by email but didn't have them with him. He noticed on page 10, the language said that the motion to eliminate the alternative "shall place the following disclosure" but it doesn't have that disclosure included.

Mr. Shandler said Ms. Kovnat's motion did not state the disclosure. He said the disclosure would say, "This campaign material is supported, in part, by donations from an organization that is not required to disclose its contributors to the Santa Fe City Clerk."

Mr. Biderman said the Board needs to have that language in the record as having adopted that language.

Chair Miller thanked Mr. Shandler for that disclosure language.

Mr. Biderman asked Mr. Shandler if he had looked at the emailed typographical changes.

Mr. Shandler said he and the City Clerk looked at those and they seemed to be just he to she or things like that and were submitted to the minute taker for those typographical corrections.

Mr. Biderman moved to approve the minutes of April 27, 2015 as amended. Mr. McMillan seconded the motion and it passed by unanimous voice vote.

2. PUBLIC COMMENT

Ms. Heldmeyer provided as a hand out for the Board, a copy of her memo for suggestions that she could talk further about at the second public comment.

Regarding coordination she noted that in the last week there were some interesting discussions about a presidential candidate who misspoke and retracted it immediately. The New York Times article said the reason for that is that until he became a candidate, he could coordinate "until the cows come home." She looked up the definition of candidate in the code. Three things were fairly clear but the fourth thing that said "any activity that is held to promote an election campaign of an individual, if that activity is endorsed or supported by that person or if the benefits of such activity are later accepted by such a person."

She said "You have City Councilors now who are planning to run for Mayor in 2018." She wasn't sure which of their behaviors would fall under #4, but she thought "if that's the peg you are going to hang your hat on in terms of coordination, I think you may have problems because everybody who becomes a candidate... before they become a candidate, goes and talks to people and tells them, 'I am thinking of running. What do you think?' And if that kind of behavior falls under #4, you are going to see a lot more

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.

Mr. Shandler said the staff will compile them and send it under a memo to Councilors. To get through this next election cycle it needs approval by June 10 so we will put it together ASAP and see if a Councilor is interested in picking up the recommendations.

Chair Miller offered to work with distribution.

Mr. Shandler said they could then discuss if the Board wants to have monthly meetings going forward.

Mr. Biderman said he would be out of the country or in court until June 25th.

5. BOARD MATTERS

Ms. Kovnat said the Board needs to have a vacancy filled.

Mr. Shandler clarified that the vacancy was the lawyer position and nominations come from the local bar association and Mr. McMillan is the president of it.

Mr. McMillan asked if he should be soliciting names and not wait for the Mayor.

Mr. Shandler agreed.

Mr. McMillan asked if some of the Board's terms end soon.

Chair Miller asked for clarity on Board terms and what the Board might need to do.

Mr. Shandler agreed to get that for them.

6. PUBLIC COMMENT

Ms. Harrison wanted to thank the Board and wished she could clone this Board in every municipality in the state. She said Common Cause has worked with many groups in the City and will be turning out in droves for Council consideration.

7. ADJOURNMENT

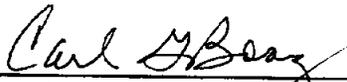
Ms. Kovnat moved to adjourn the meetings. Mr. McMillan seconded the motion and it passed by unanimous voice vote.

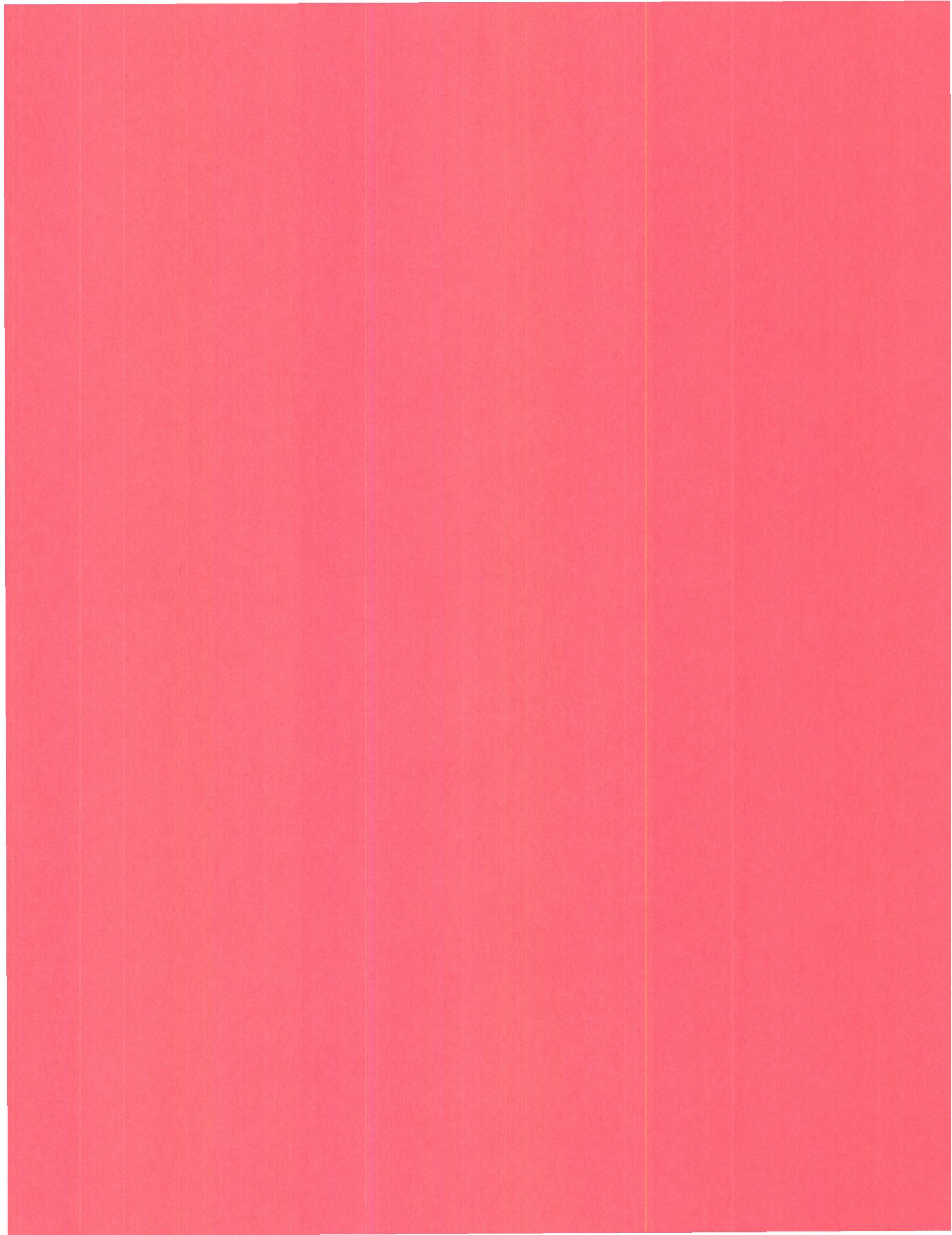
The meeting was adjourned at 4:52 p.m.

Approved by:

Justin R. Miller, Chair

Submitted by:


Carl Boaz for Carl G. Boaz, Inc.



**INDEX OF
CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD**

September 24, 2015

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1. PROCEDURES		
a) Roll Call	Quorum	1
b) Approval of Agenda	Approved	1
c) Approval of Minutes- May 20, 2015	Postponed	2
2. DISCUSSION AND POSSIBLE ACTION		
a) Information/Communications with Candidates	Discussed	2
1) Status of Candidates and Reporting Requirements		
2) Campaign Code and Public Campaign Finance Code		
a) Requirements, Deadlines and Sanctions	Discussed	2
b) Review of Approved Amendments	Discussed	2-5
c) Review of Advisory Opinions	Discussed	5
3) Campaign Signs-Compliance and Enforcement	Discussed	5
4) Comments and Questions	Discussed	5-7
3. DISCUSSION AND POSSIBLE ACTION		
a) An Ordinance Amending Subsection 1-7.7 SFCC 1987 Delete Language Permitting Non-Pecuniary Gifts by Members of the Governing Body/Public; Prohibiting a Public Official Accepting Employment with City within One (1) Year of Leaving Office. (Councilor Bushee and Councilor Lindell) (Zachary Shandler)	Temporarily Tabled	7-9
b) Appointment of Joint Working Group (ECRB Members & City Councilors)/ Discussion of Amendments to the Campaign Finance Code & Public CFC.	Approved	9-10
4. BOARD MATTERS	Discussed	10
5. PUBLIC COMMENT	Discussed	10-11
7. ADJOURNMENT	Adjourned at 4:32 p.m.	11

**MINUTES OF THE
CITY OF SANTA FE**

ETHICS AND CAMPAIGN REVIEW BOARD

THURSDAY, SEPTEMBER 24, 2015

1. PROCEDURES

a) ROLL CALL

A regular meeting of the City of Santa Fe Ethics and Campaign Review Board was called to order by Justin Miller, chair on this date at approximately 3:00 pm in the City Council Chambers, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum as follows:

Members Present:

Justin Miller, Chair
Paul L. Biderman
Ruth Kovnat
Kristina Martinez
Seth McMillan

One vacancy

Members Absent:

Tara Lujan

Staff Present:

Yolanda Vigil, City Clerk
Zachary Shandler, Assistant City Attorney

Others Present:

Jim Harrington, Common Cause
Michael Harris, Chair Planning Commission
Signe Lindell, City Councilor
Others as identified in Public Comments
Charmaine Clair, Stenographer

b) APPROVAL OF THE AGENDA

Ms. Martinez moved to approve the agenda as published. Ms. Kovnat seconded the motion, which passed by unanimous voice vote.

c) APPROVAL OF THE MINUTES- May 20, 2015

Mr. Biderman said he remembered voting to adopt the proposals to the City Council and doesn't see that in the minutes.

The minutes of May 20, 2015 were postponed until the next meeting to confirm the action taken.

2. DISCUSSION MATTERS

a) Information/Communications with Candidates

1) Status of Candidates and Reporting Requirements

Chair Miller said part of the Board's duties is to advise, train and confer with candidates on the rules on campaign reporting and the Public Campaign Finance Code and Campaign Code, and to assist candidates to ensure compliance. He said they will discuss candidate reporting requirements. There were recent amendments to the Campaign and Public Campaign Finance Codes and the Board will also discuss compliance and enforcement of those.

Santa Fe City Clerk Ms. Yolanda Vigil cited the 10 candidates for the 2016 election who have picked up their packets to date:

District 1: Fred Montano, Kathryn P. Kennedy, Rene Gabaldon and Marie Compos

District 2: Councilor Peter Ives

District 3: Councilor Chris Rivera, Donald Vigil

District 4: Michael A. Harris

Municipal Judge Candidates: Virginia Vigil and Ignacio V. Gallegos

2) Campaign Code and Public Campaign Finance Code

a) Requirements, Deadlines and Sanctions

Ms. Vigil provided the important upcoming deadlines for candidates:

October 14: candidates will receive the number of nominating petitions they are required to file.

October 30: the last day for candidates to collect signatures on nominating petitions

November 4: candidates are required to turn in the nominating petitions

Nov 16: the date of application for candidates that seek public financing and to turn in all qualifying contributions and the seed money report.

Ms. Vigil said the nominating petitions will be verified by November 16 and the qualifying contributions will hopefully be completed within 10 days.

Chair Miller said he will combine discussion items (b) and (c). He asked Mr. Biderman to review the approved amendments and some of the requirements.

b) Review of Approved Amendments

c) Review of Advisory Opinions

Mr. Biderman said for Campaign Ordinance section 9.2 of the Campaign Code and section 9.3 relating to public financing of campaigns, the Board has had a long time commitment to review and

modify the Campaign and Public Campaign Codes as needed. The need for review and possible changes arose in the 2014 municipal election when there were conflicts. The Board felt the ordinance did not provide enough guidance to take corrective measures or determine compliance or prevent candidates from receiving support that was seen by some as inconsistent with the intent of the public financing ordinance.

Mr. Biderman explained that the Board held about 6 open meetings last fall. A subcommittee (Tara Lujan, Professor Kovnat and Paul Biderman) was appointed and candidates and national experts were invited to participate.

The subcommittee submitted reports with proposed amendments to the ordinances in June that were approved by the full Ethics and Campaign Review Board after modification. The proposals were referred to the Finance Committee and City Council and City Council adopted Ordinance 2015-23 amending the General Campaign Code called 9.2 (with modifications) on July 29, 2015. The City Council acted on Resolution 2015-22 to amend parts of section 9.3 of the Public Financing Code. They removed a portion of the Code and postponed until a working group with ECRB members and City Councilors is jointly assembled. The proposals will not impact the 2016 election.

He said in section 9.3 the changes were those that conform to the definitional changes made in 9.2 to be consistent. Some changes were made to the reporting requirements for publicly financed campaigns and the return of assets bought with public money.

The report sent by the Finance Committee to the City Council regarding Ordinance 2015-23, modifies 9.2 definitions of *contribution* and *expenditures* (9-2.3) and creates a definition of coordinated expenditures. Changes to provisions related to independently sponsored campaign communications and reporting (9-2.6) and provisions to the contents of campaign-finance statements were also made (9-2.12).

Mr. Biderman said the primary purpose of the proposals is to preserve the integrity of our campaign laws using the few opportunities to do so through the Citizens United decisions. The Supreme Court decision in 2010 states that large payments made directly to the candidates or other parties may unduly influence the actions of those politicians after they take office. The Court reasons that as long as an outside political organization acts independent of a candidates' campaign, expenditures cannot be expected to influence a successful candidate's actions.

He said the opportunities left by the Court for entities such as the Board or City Council to regulate expenditures by independent organizations is limited. The Board's amended rules are designed to accomplish within the rulings of the Supreme Court limits, to require disclosure of contributors to the outside organizations and tightening the election rules to define what constitutes coordination.

Mr. Biderman reviewed the modifications to the definitions of contributions and expenditures:
9-2.6 A- broadens the definition of people/entities required to file reports with the City Clerk. Parallel changes were made to the corresponding definitions in the Public Campaign Finance Ordinance 9-3.3 E- a person, including organizations who must file a report with the clerk as to their expenditures will now have to be disclosed so voters know who is supporting a candidate even though the candidate may not have asked for that support.

The rule defines any coordinated expenditure as a contribution to the candidate and is subject to limits on direct contributions to them. City Council redefined contributions (9-2.3 I) and excluded from the definition the cost of holding an event for a candidate with costs up to \$200 to require now that regardless of the amount that must be reported as a contribution.

The new definition of coordinated contributions (9-2.3)(K) provides more details of what a coordinated expenditure is and is not. Contributions made to any independent *'organizations that act in cooperation, consultation or concert with, or at the request/suggestion of a candidate, the candidates' representative/agents or the candidates' political committee'* are now considered coordinated contributions.

Mr. Biderman provided examples of coordination given under the rule in 9-2.3(K)(2)(a)-(d) and examples that do not constitute coordination. He said the Board believes with the adoption of these examples it will be clearer as to contributions rendered coordinated and must be declared and contributions that do not need to be declared. The new ordinance also adopts a clear provision against destroying or defacing other candidates' campaign materials.

The new section 9-2.6 clarifies reporting requirements for candidates. Independently sponsored campaign communications requires certification by candidates and outside groups that no outside expenditures were coordinated with the candidates' campaigns. Media is exempt.

Mr. Biderman said to address the situation where an independent political organization supports a candidate and reports its contributions as required, it was added if the outside organization is a contributor who receives a contribution from another organization; the other organizations do not have to disclose the names of their contributors. That thwarts the public's right to know and has become known as the Russian Doll problem.

He said it is impractical to require disclosure by the organizations that contribute to another organization as they could keep going one level deeper than the rule. The Board instead recommended language to the resolution that requires campaign materials of a reasonable size and the candidates' reports to disclose: *"this campaign material is supported by donations from an organization that is not required to disclose its contributors to the Santa Fe City Clerk"*.

Mr. Biderman said to protect the integrity of disclosures throughout the ordinance it is prohibited to report a contribution in the name of a person other than the true source of the contribution.

Mr. Biderman said candidates who are not familiar with the original ordinance should be sure they know the basic code section in addition to the new developments.

Ms. Yolanda Vigil said in the past a publicly financed candidate that had assets or money remaining at the end of their campaign was required to return that to the city. The requirement has been changed and now in addition to money only electronic, telecommunications or computer tangible assets must be returned.

Ms. Vigil noted changes in 9-3.14: when filing expenditure reports public financing candidates will be required to provide a copy of each receipt printed on 8 ½ x 11 paper on all of the candidate's expenditure reports.

Ms. Vigil continued in 9-2.3 (1) (2) the term *contribution* in the past did not include the cost of an event with total costs of not more than \$200 that was held in honor of or on behalf of a candidate. That has been removed and every dollar spent now has to be reported.

Chair Miller said there are penalties for violations of the Campaign Code and Public Finance Code and part of the Board's role is to enforce/assess those. The Board will address complaints that are filed and found in violation. They have the authority to take action, including issuing a public reprimand or imposing a fine not to exceed \$500 per violation and each day or repetition can be subject to an additional \$500 fine. The City Clerk can assess fines of \$100 for late filing (9-2.10) and \$50 for sign regulation violations per sign per day.

The Board can also refer criminal nature complaints to the City Attorney's Office subject to jurisdiction. They can recommend revocation of a publicly financed candidate's certification resulting in forfeiting or repayment of the publically distributed money.

Ms. Kovnat added that the Board has the authority to issue advisory opinions. She urged candidates who have questions to seek the advice of the Board before proceeding. She said it can ward off potential problems with their campaign.

Ms. Kovnat congratulated those running for office and thanked them. Chair Miller said city staff will be invaluable to the candidates in helping them comply and City Clerk Yolanda Vigil is an expert.

(c) Review of Advisory Opinions

Ms. Vigil said the advisory opinions are in the Board packet and the packet is on the city website and all opinions issued to date are included. A hard copy will be provided to candidates October 14, 2015.

3) Campaign Signs-Compliance and Enforcement (Exhibit 1)

Ms. Vigil introduced Ms. Georgia Urioste with Land Use and Therese Estrada to cover the campaign sign system and filing of complaints. Candidates received a memo regarding sign compliance.

Ms. Urioste, the Zoning and Code Enforcement Supervisor in the Land Use Department provided a review of what is allowed in a temporary political sign.

Ms. Urioste introduced Therese Estrada with Constituent Services that can assist with complaints.

Ms. Therese Montoya Estrada said an illegal or a sign in violation can be reported by calling Constituent Services (955-6949) or under Report and Request on the city website (www.sfnm.gov) and the CRM (Citizen Relationship Manager). She explained the process of filling in the form information that provides the concern, the candidate's name, the sign location and phone number and contact listed on the sign. Reports can also be made anonymously.

4) Comments and Questions

Chair Miller invited those with comments or questions to come forward.

Mr. Frank Montano said it is sad that the City of Santa Fe has made it so difficult for people to run for public office. When he first ran in 1990, *"you had to show up on the filing date two months before the election and show your voter registration from the county"*. There was two months of campaigning and *"may the best man/woman win"*. He said it would have been unheard of in the 1990s to have a race that was uncontested and there been several over the course of the last few elections. He thought that was because the city made it so difficult to run for office.

Mr. Montano said today you have to start campaigning in the middle of the summer prior to the election year and go to the City Clerk's office to pick up an 8-10 inch packet. Back when he ran he would get 50% voter participation, today there are some elections 20% or less. He said even the public participation has gone down since all of the requirements.

Mr. Montano said, "Let's go back to the old days". There were not all these ridiculous rules about public financing and signs in the wrong spot. He said it is incredible the city will accept an anonymous complaint, but he guessed that is the way it works these days. He said it is sad that the city adopted that you can no longer have coffee at your friends house without having to tell how much was spent for a can of coffee or a few doughnuts.

He said this is a local race and it ought to be colorful and fun. There were candidates that weren't so serious, like Tommy Macione and that was fun and great and made things enthusiastic and the campaigns real. He said now everyone is worried about who is supporting who and whose sign is where and that is sad.

Mr. Montano said he will follow regulations, but the city can think about relaxing some of these things in the future and perhaps get people to fill positions and run for every district and get better voter participation.

Ms. Virginia Vigil a candidate for Municipal Judge thanked Yolanda Vigil for her availability and accessibility to all of the candidates.

She said in the August 27 memo of general information for candidates in section 9 on spending limitation/contribution amounts it states that a candidate *'may volunteer to limit their expenditures to \$1 per registered voter'* for municipal judgeship election. She asked for clarification.

Ms. Yolanda Vigil explained that is if a candidate is using private financing. She also confirmed that section B, exceeding 10% is also for private financing.

Ms. Virginia Vigil asked Mr. Biderman if fair to say that most of his references in lay terms would be PACs. She thought most of the amendments made were affecting third party contributors or PACs that are formed and the need to have further disclosure.

Mr. Biderman replied it refers to independent organizations. He explained that most of what he discussed is because the Board was forced to go there by the Supreme Court. He said he thought they might have preferred to eliminate or ban soft money outside contributions, but couldn't. He said this is the next best thing.

Ms. Virginia Vigil said she did not understand the purpose of a Deputy Treasurer.

Ms. Yolanda Vigil said there are a number of reasons to have a Deputy Treasurer; the Treasurer might be out of town or sick when findings are due. This authorizes the Deputy Treasurer to file campaign statements. They could also be the person who prepares reports; it depends on what the candidate decides.

Michael Harris candidate for District 4 asked if there are constraints on a public employee being able to sign a nominating petition or provide contributions to a candidate.

Ms. Yolanda Vigil said part of the City of Santa Fe Personal Rules and Regulations is that an employee should not participate in any political activity during work hours. They should not sign petitions or donate money during work hours. There is also a section regarding City Councilors and a City Council vote in a situation involving employees, etc. as part of the item. The Councilor should make that known and recuse themselves.

Mr. Biderman asked to comment on Councilor Montano's statement. He said the Board held public hearings for many months. They heard from a lot of people and public organizations that feel the old way of candidates taking contributions without much restriction or oversight is no longer a process people want. He said not so much because it was bad, but because money has gotten into politics in a big way. The playing field is different than years ago. He said the Supreme Court is supporting the infusion of huge amounts of money from a small amount of donors. The Board has responded as best they can.

Mr. Harris asked if there will be a debriefing at the end of the process. He thought that would be important and valuable for those involved to provide an honest response on how they see things. He said he already has thoughts about public financing and the Campaign Code.

Chair Miller said part of the Board duties is to provide recommendations to the Governing Body about potential changes to the Campaign and Public Finance Codes. The Board has been engaged for all of 2014 through the summer of 2015 and is only part of the way. They will set up a working group with Board and Council members to consider further recommendations. He invited Mr. Harris to attend the meetings and comment. He said the Board has always welcomed hearing candidates' opinions of how things could be done better once the election is over.

Chair Miller thanked everyone for coming and said if there are further questions people could contact the city or the Board. He said the Board understands the effort to run for office and comply with the rules and regulations. He thanked those who are running and wished them good luck.

Ms. Yolanda Vigil said she will be in the back of the room with the form for candidates who are ready to sign acknowledgment that they are familiar with the Campaign Code.

3. DISCUSSION AND POSSIBLE ACTION

- a) An Ordinance Amending Subsection 1-7.7 SFCC 1987 to Delete Language Permitting the Acceptance of Non-Pecuniary Gifts by Members of the Governing Body or Public Employees as it Relates to their Official Duties; and Prohibiting a Public Official from

Accepting Employment with the City of Santa Fe within One (1) Year of Leaving Office.
(Councilor Bushee and Councilor Lindell) (Zachary Shandler)

Chair Miller explained this ordinance has been sponsored by Councilors Lindell and Bushee.

Ms. Kovnat questioned if this is within the Board's jurisdiction to make a recommendation to City Council since this is generated by the members of City Council.

Mr. Shandler said it is within the Board's jurisdiction because it will be placed in the Ethics Ordinance. He said the city is trying to create a more robust legislative framework. The bills introduced by City Councilors will go through a committee process and the Board is seeing this as a recommending body.

Mr. Shandler said there are two main parts of the bill and in paragraph B Councilor Lindell, in consultation with constituents and neighbors has proposed an addition: *'a public official shall not accept paid employment for a period of one year following leaving public office'*.

He said the other portion of the amendment currently public officials and city employees can accept certain gifts with dollar amounts that are tiered from \$50 to \$250. Councilor Bushee would amend the language to allow only \$50 or less and strike any amount above that.

Mr. Biderman asked if there had been consideration that the state allows gifts up to \$250, although they restrict the source. Ms. Martinez added she is curious why the two amendments were proposed.

Mr. Shandler said he understood that Councilor Bushee was invited to the meeting. He said he did not know the rationale for the amendment.

Councilor Lindell said the point is well taken and she would not be surprised if there are amendments or suggested changes. She offered to speak to the first part of the amendment. She said talking with city staff and others, they felt uncomfortable when a councilor leaves their position and becomes part of the city workforce. She also thought there was some fear of abuse of power should a City Councilor create a position for themselves once they leave the office.

Mr. Biderman said a small change could be in order. He suggested after: *"a public official shall not accept paid employment from the city of Santa Fe for a period of one year"* add in the next sentence: *the public official/employees shall not enter into a contract or transaction with the City of Santa Fe.* He said you could call a contract of employment as employment with the city.

Chair Miller said the second sentence has an important qualification that of when the contract or transaction *'is a result of an official act by the public official/employee'*.

Mr. Biderman said he agreed, but you could call employment with a city contract employment or a transaction of becoming employed with the city and have the same circumstance. Employment might be considered as being hired and on the payroll, whereas the contract of employment is not what they want either. He said the contract should be less restrictive because it would be limited to things where the person had a hand in creating the contract. He said a stricter restriction of no employment should include a contract of employment.

Ms. Kovnat was concerned. She said many members of City Council may have strengths that benefit the city as employees. The concern is the corruption problem captured in the existing language. She found it hard to see the concern about corruption if a City Councilor takes employment in an existing job. She said two things worry her; if the city might lose the benefit of a very well-qualified person and that this could be a disincentive to run for City Council.

Councilor Lindell said her hope is that no one would run for City Council on the idea they would get a job with the city once they left. She said she would rather err on the side of being careful.

Mr. Biderman said the problem is the revolving door and the appearance. It might be that the Councilor doesn't talk to anyone about their term ending and being part of someone's team. He said they might not be influenced in making decisions for that department, but the *appearance* is valid. He agreed with the proposal.

Chair Miller said he did not think state law has a similar prohibition.

Mr. Biderman said he recalls that the Governmental Conduct Act has numerous restrictions about employees working for officials, working for contractors of the state. He said you cannot take a job with someone that you have contracted with, but he did not believe there is anything in the Act that simply prohibits this.

Chair Miller explained the Board's three options: vote to recommend the passing of the ordinance; not recommend the ordinance, or take no action at all.

Mr. Biderman moved to temporarily table the ordinance until the Board could hear more about the limitations on the first part of the amendment. Ms. Martinez seconded the motion.

Ms. Martinez added that she wanted to hear more from staff and Councilor Bushee and more about if the departure from the state had been considered.

The motion to temporarily table the bill until further information was passed by unanimous voice vote.

- b) Appointment of Joint Working Group (ECRB Members and City Councilors) and Discussion of Amendments to the Campaign Finance Code and the Public Campaign Finance Code.

Chair Miller said City Council voted not to approve some of the Board's recommendations and it was suggested the Board and Councilors form a workgroup to consider the discussions, ideas and proposals in the City Council's discussions and recommendations.

He said the Board is to present recommendations to City Council for their consideration by January. He said the working group recommendations should be given to City Council by December, so the Council can hear them in January.

Chair Miller said Councilors Lindell, Bushee and Dominguez volunteered to be part of the working group. The Board thinks that is a positive contribution from City Council and is encouraged.

Chair Miller said with the subcommittee's agreement that prepared the recommendations, he would like them to continue in the working group with some change in members.

The Board discussed the working group. Ms. Kovnat noted her concern that her unavailability until the third week of October might delay the process.

Chair Miller after Board discussion, confirmed the volunteers for the working group as Ms. Martinez, Mr. Biderman and Ms. Kovnat. He said he would wait to hear when the subcommittee has something substantive to bring to the full Board.

4. BOARD MATTERS

Mr. Biderman asked if he was still appointed to the Board.

Chair Miller said everyone is still an active member. He said he understands that Mr. McMillan is working with the city on the membership.

Mr. McMillan said the letter he received from the Mayor has one vacancy and suggested three holdover terms, but they were not identified by name.

Mr. Shandler said there are four lawyer positions and three are the holdovers and one is the vacancy (Mr. Thompson). He explained that the public appointment is by the mayor and the lawyers [positions] have a two step process.

Mr. McMillan said with respect to the lawyer positions, the First Judicial District Bar Association is actively sourcing resumes. Approximately 4 to 8 candidates will be provided to the Mayor shortly.

Chair Miller said the Ethics and Campaign Review Board was given an award. The Board received the Best in Government Municipal Award from Common Cause. The award recognizes ECRB as '*a model for sound and enlightened administration of government ethics and campaign finance laws*'. A press release provided background on the Board established in 2005 and on their current work with the City Council and citizens to strengthen Santa Fe's Public Campaign Finance system and their efforts to ensure that publicly financed candidates have resources to offset heavy spending by privately financed candidates or PACs.

Chair Miller thanked Common Cause. He said the Board is honored and appreciates the award. Mr. Biderman added that he wished this could have been said earlier when more people were present.

5. PUBLIC COMMENT

Mr. Jim Harrington the State Chair of Common Cause congratulated the Board on their award. He expressed hope that Board members could attend the luncheon October 10, 2015.

Mr. Harrington said regarding the bill to amend the Ethics Code by Councilors Bushee and Lindell, Common Cause has no position on the employment ban. They do wholeheartedly support removing the \$250 exemption.

Mr. Harrington said there is a ban on accepting gifts from people with financial interests in official actions and a \$50 non pecuniary exemption in the Ethics Code. Common Cause does not feel the \$50 should have been changed and for unexplained reasons the provision was added to include gifts up to \$250 related to performance of duties. The state allows \$250, but Common Cause has always thought that too high.

Joyce Blalock introduced herself. She said she has applied to be a member of the Board.

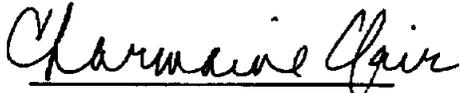
6. ADJOURNMENT

There being no further matters to discuss and the agenda having been completed, the meeting adjourned at 4:32 p.m.

Approved by:

Justin Miller, Chair

Submitted by:


Charmaine Clair, Stenographer