



Agenda

CITY CLERK'S OFFICE

DATE 4/24/15 TIME 1:30p

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ETHICS & CAMPAIGN REVIEW BOARD

Monday, April 27, 2015

3:00 p.m.

City Council Chambers

City Hall

200 Lincoln Avenue

1. PROCEDURES
 - a) Roll Call
 - b) Approval of Agenda
2. PUBLIC COMMENT
3. DISCUSSION AND POSSIBLE ACTION
 - a) Consideration of the Following Amendments:
 - 1) Coordination Between Candidates and/or Their Campaigns and Independent Expenditure Groups or Individuals.
 - 2) Transparency and Independent Expenditures
 - 3) Qualified Small Contribution System
 - 4) Alternative Compliance for Qualification
 - 5) Matching Fund Proposal
 - b) Consideration of Other Issues Raised by the Public and Board.
4. Next Meeting and Topics for Consideration
5. BOARD MATTERS
6. PUBLIC COMMENT
7. ADJOURNMENT

PERSONS WITH DISABILITIES IN NEED OF ACCOMMODATIONS, CONTACT THE CITY CLERK'S OFFICE AT 955-6521, FIVE (5) WORKING DAYS PRIOR TO MEETING DATE.

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CITY OF SANTA FÉ
ETHICS AND CAMPAIGN REVIEW BOARD**

April 27, 2015

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**MINUTES OF THE
CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD**

Wednesday, April 27, 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 3:05 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
Ruth Kovnat
Tara Luján
Kristina Martínez
Seth McMillan

Members Absent:

Paul L. Biderman [excused]
One Vacancy

Staff Present:

Zachary Shandler, Assistant City Attorney

Others Present:

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

Chair Miller announced the resignation of Roderick Thompson.

B. APPROVAL OF THE AGENDA

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

2. PUBLIC COMMENT

Chair Miller invited public comment both before and after the Board considered the possible amendments to the Campaign Code and Public Financing Code. The red-line amendments, entitled "Discussion Draft 4/10/15" are attached to these minutes as Exhibit A.]

Ms. Heldmeyer said the part where it talks about using advertising as coordination or donation needs a lot of work because there is the media exception later on for a different issue. Satirically, people use advertising and other candidates use their opponents' advertising to point out the differences between the two candidates. That needs a lot of work.

The way this is trying to deal with the "Russian dolls" is so counter-intuitive and backward where in certain cases the candidate you give money to has to disclose and in others, the contributor has to disclose. She knew it was in a mess because of the Supreme Court but if there was any way to simplify it that would be a good thing.

Finally, as the Board saw in the draft, the idea that a candidate has to have so many signatures to qualify as a candidate and get the public money, is not in the ordinance and only in the charter. So it needs to be put in the ordinance. In part it is needed because the document refers to it in the Jeff Green amendment but there are also issues coming up where it should refer to that provision where it speaks about electronic signatures. The way it is now, a candidate has to get two sets of signatures, one set to get on the ballot and the other signatures that accompany the money that they raise. At least one of those might be done electronically rather than physically. If those signatures were in the code it would be easier to play around with than just having it in the charter.

Those were her comments for today's discussion. She said she would be suggesting other proposed code amendments on issues not being discussed at this meeting.

Mr. Jim Harrington apologized for sending another long email. [A copy of his email is attached to these minutes as Exhibit B]. He agreed there is a lot of confusion on that issue of signatures and how the funding mechanism works and how one would estimate the costs under this system. The funding mechanism that is still in the Code was set up for a more expensive campaign system with more candidate spending.

He said he and Ms. Kovnat, who was also on the drafting committee with him anticipated that the fund would get run down almost completely after each mayoral election and then it would be restored with \$150,000 a year thereafter. So he had to smile when he saw there was a half million dollars in there. If someone had told him about that balance, he would have told them they were nuts.

That happened because in 2011, the New Mexico Supreme Court prohibited much of the anticipated spending that was supposed to take place under that system.

The committee actually considered what to do with the funding mechanism at that point because they anticipated that it was going to be too much. For this "stripped down" system they had been persuaded to go with it. But they left it in place for now, not knowing if the stripped down system would work and wouldn't

know until the next mayoral election. Sure enough, the stripped down system failed the test and the candidates helped us to respond. And now the Board is thinking about a system that would involve expenditures much more like the ones that were originally contemplated.

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

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

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

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

3. DISCUSSION AND POSSIBLE ACTION

A. Consideration of the Following Amendments:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Kovnat said also from Connecticut.

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

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

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

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

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

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

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

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

about it.

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

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

Ms. Martínez seconded the motion.

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

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

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

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

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

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

Mr. Shandler said that sounds like a good idea.

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

2) Transparency and Independent Expenditures

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

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

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

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

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

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

Ms. Martínez asked if B was deleted last time.

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

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

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

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

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

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

There was general consensus to leave that language in.

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Shandler agreed to contact them.

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Luján said that comes under the transfer.

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

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

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

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

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

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

Mr. Shandler spelled out another scenario.

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

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

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

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

Chair Miller asked if there was a consensus.

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

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

3) Qualified Small Contribution System

The Board did not consider this item.

4) Alternative Compliance for Qualification

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

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

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

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

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

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

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

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

Ms. Kovnat agreed.

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

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

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

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

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

The motion passed by unanimous voice vote.

Chair Miller noted they were about out of time.

5) Matching Fund Proposal

This item was not considered because of time constraints.

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

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

4. NEXT MEETING AND TOPICS FOR CONSIDERATION

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

5. BOARD MATTERS

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

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

6. PUBLIC COMMENT

There were no public comments.

7. ADJOURNMENT

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

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

Approved by:



Justin Miller, Chair

Submitted by:



Carl Boaz for Carl G. Boaz, Inc.

**"PART 1: COORDINATION BETWEEN CANDIDATES AND/OR THEIR CAMPAIGNS
AND INDEPENDENT EXPENDITURE GROUPS OR INDIVIDUALS"**

[Note: To be placed into the definition sections of both the Campaign Code and Public Campaign Finance Code]

Contribution means a loan, loan guarantee, gift, advance, pledge, contract, agreement or promise of money or anything of value or other obligation, whether or not these items are legally enforceable, made directly or indirectly, to a candidate or political committee or to a person obligated to file a report under section 9-2.6 SFCC 1987, for the purpose of [influencing the outcome of a municipal election] supporting or opposing the election of a candidate or the passage of a ballot proposition.

(1) The term "contribution" includes:

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

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

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

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

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

(f) Coordinated expenditure. ~~An expenditure by a person other than a candidate or the candidate's political committee that is made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate or the candidate's political committee.~~

1 *Expenditure* means a payment or transfer of anything of value in exchange for goods, services,
2 property, facilities or anything of value for the purpose of ~~[assisting, benefiting or honoring any~~
3 ~~public official or candidate, or assisting in furthering or opposing any election campaign for]~~
4 supporting or opposing the election of a candidate or the passage of a ballot proposition. This includes
5 contributions, subscriptions, distributions, loans, advances, deposits, or gifts of money or anything of
6 value, and includes a contract, a promise or agreement, whether or not legally enforceable, to make an
7 expenditure. The term "expenditure" also means the transfer of funds or anything of value between
8 political committees. ~~[In determining the dollar value of an expenditure, only that proportion of a~~
9 ~~payment or transfer of anything of value that is directly related to the campaign shall be considered an~~
10 ~~expenditure.]~~

11
12 *Coordinated Expenditure* means:

13 (1) an expenditure;

14 (a) that supports or opposes a candidate, or that is susceptible to no other
15 reasonable interpretation than as an appeal to support or oppose a candidate,
16 or an expenditure that refers to a candidate;

17 (b) that can reasonably be expected to be seen or heard by at least one
18 hundred persons eligible to vote for the candidate; and

19 (c) that is made within eighty-nine days, or the date provided in Section 9-
20 3.9, whichever is later, before the municipal election;

21 (2) that is made by an individual or entity other than a candidate or the candidate's
22 political committee; and

23 (3) that is made in cooperation, consultation or concert with, or at the request or
24 suggestion of, a candidate, his/her representatives or agents or the candidate's
25 political committee, including but not limited to, the following examples in 9-

1 2.3(K)(3)(a)-(e):(i)-(v):
2

3 (a) An expenditure shall be presumed to be "coordinated expenditure" when:
4

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

11 (b) an entity is directly or indirectly formed or established by or at the
12 request or suggestion of, or with the encouragement of the candidate,
13 candidate's political committee or his/her representatives or agents;

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

23 (d) if the individual or entity disseminates, distributes or republishes an
 advertisement that contains, in whole or in part, any broadcast or any
 written, graphic, or other form of campaign material prepared by the

1 candidate, candidate's political committee or his/her representatives or
2 agents; [FOR DISCUSSION]

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

12 (b) An expenditure shall not be presumed to be is not a coordinated
13 expenditure solely because:

14 (i) the individual or entity and a candidate or candidate's
15 political committee use the same vendor to provide polling
16 services, printing or distribution services or physical space,
17 provided that the vendor has in place prior to the
18 expenditure a firewall to ensure insure that there is no
19 exchange of information between the individual or entity
20 and the candidate or campaign committee. Evidence of an
21 adequate firewall is a vendor's formal written policy
22 prohibiting the exchange of information between the
23 individual or entity and the candidate or candidate's
24 political committee, which policy is distributed to all

1 relevant employees, consultants and clients affected by the
2 policy. The firewall shall be designed and implemented to
3 prohibit the flow of information between employees and
4 consultants providing services to the individual and entity
5 and to those currently or previously providing services to
6 the candidate or candidate's political committee.
7 Coordination will be presumed in the absence of such a
8 firewall.

9 (c) An expenditure shall not be presumed to be is not a coordinated
10 expenditure solely because the individual or entity making the
11 expenditure:

- 12 (i) interviews a candidate;
13 (ii) has endorsed a candidate;
14 (iii) has obtained from the candidate a biography of the
15 candidate or a position paper, press release, or
16 similar material about the candidate;
17 (iv) has invited the candidate to make an appearance
18 before the person's members, employees or
19 shareholders;
20 (v) has shared space with a candidate or candidate's
21 political committee for single events of limited
22 duration.

23 (d) The Ethics and Campaign Review Board shall establish procedural rules
24 defining how citizens and entities may file or respond to complaints

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~~which involve these above-cited presumptions and any necessary
required evidentiary matters.~~

"PART 2: TRANSPARENCY INDEPENDENT EXPENDITURES"

9-2.6 Independently Sponsored Campaign ~~[Materials]~~ Communications And Reporting

A. Any person or entity that ~~[contracts for or initiates the dissemination of campaign materials supporting the election or defeat of an identifiable candidate or of a ballot proposition, and that spends in the aggregate makes expenditures of two hundred fifty dollars (\$250.) or more in the aggregate during a single election to pay for any form of public communication, including print, broadcast, cable or electronic advertising, billboards, signs, pamphlets, mass mailers, mass e-mails, recorded phone messages, organized phone-banking or organized precinct-walking, that is disseminated to 100 or more eligible voters, and that either:~~

(1) expressly advocates the election, passage or defeat of a candidate or ballot proposition, or

(2) refers to a clearly identifiable candidate or ballot proposition within ~~60~~ 30 days before an election at which the candidate or proposition is on the ballot,

shall thereafter, on each of the days prescribed for the filing of campaign finance statements of political committees, file with the city clerk a report of all such expenditures made and all contributions received for ~~[such]~~ the purpose of paying for such expenditures **[For Discussion Purposes]** on or before the date of the report and which have not been previously reported. Each report shall be submitted on a form prescribed by the city clerk. Contributions shall be specified by date, amount of contribution, name, address and occupation of the person or entity from whom the contribution was made. No contribution shall be reported in the name of a person who is not the actual contributor or who has been or will be reimbursed or compensated for the contribution by another person. Expenditures shall be specified by date, the amount of the expenditure, the name and address of the person or entity where an expenditure was made and the purpose of the expenditure. No report is required under this subsection for expenditures made exclusively for ~~communications~~ to, or editorials, reports or commentary by news media, **[Media Exception Deleted-For**

1 **Discussion]** impartial candidate forums or debates or the announcements thereof, or for impartial
2 voter guides allowed by the Internal Revenue Code for Section 501(c)(3) organizations or a
3 communication by a membership organization or corporation to its current members, stockholders or
4 executive or administrative personnel unless the membership organization or corporation is a
5 campaign committee or a political committee;

6
7 B. Any person who transfers money to another person or persons in an aggregate amount
8 of two hundred fifty dollars (\$250) or more during a single election with the knowledge, expectation
9 or understanding that the money will be paid over to a candidate, political committee or person
10 obligated to file a report under subsection (A) of this section, and will be used to make expenditures
11 supporting or opposing the election of a candidate or the passage of a ballot proposition, shall report
12 each such transfer to the city clerk. Reports of such transfers shall be filed on each of the days
13 prescribed for the filing of campaign finance statements by political committees, and shall include all
14 such transfers made by the person filing the report on or before the date of the report and not
15 previously reported. Each report shall state the name of the person who made the transfer or transfers
16 and the amount, date and recipient of each such transfer. No report of a transfer is required under this
17 subsection if the candidate, political committee or other person to whom the money was paid over has
18 a duty to report the name of the person making the transfer and the amount, date and recipient of the
19 transfer under subsection (A) of this section or under another section of the Campaign Code or the
20 Public Campaign Finance Code.

21 [Alternate to Paragraph B: For Discussion Purposes]. Any entity, which has to file under
22 Section 9-2.6 and receives contributions from another entity that does not have to disclose its
23 contributors to the City Clerk, shall place the following visible disclosure on its campaign materials:
24 "This campaign material is supported in part by donations from an organization that is not required to
25 disclose its contributors to the Santa Fe City Clerk."

1 C. Contributions shall be specified by date, amount of contribution, name, address and occupation of
2 the person or entity from whom the contribution was made. The name of the president, chief
3 executive officer or equivalent position and the address of the entity shall be stated in the report. The
4 entity must provide the name of its president or chief executive officer.

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

9 E. The president, chief executive officer or equivalent position shall certify on the filing that its
10 expenditures were not made in cooperation, consultation or concert with, or at the request or
11 suggestion of, a candidate, his/her representatives or agents or the candidate's political committee.

**PART 3. GETTING RID OF SEED MONEY AND QUALIFYING
CONTRIBUTIONS AND REPLACING IT WITH \$100 QUALIFIED SMALL
CONTRIBUTION SYSTEM**

9-3.3 Definitions

L. Qualified small contribution means a contribution of no more than one hundred dollars (\$100) made and accepted in compliance with the provisions of subsection 9-3.6 SFCC 1987.

~~[L. Qualifying contribution means a contribution of no more [or] and no less than five dollars (\$5.00) that is received from a qualified elector during the qualifying period by a candidate seeking to become a participating candidate. A candidate for councilor shall only receive qualifying contributions from qualified electors registered to vote in the council district in which the candidate is running.]~~

~~[M. Qualifying period means the period during which a candidate seeking to become a participating candidate is permitted to collect qualifying contributions and to apply for certification as a participating candidate. It begins one hundred eighty-three (183) days before the election and ends one hundred six (106) days before the election.]~~

~~[N.]~~ M. Race means the electoral process in which one (1) or more candidates run and one (1) candidate is elected to the office of mayor, municipal judge or city councilor for a particular district.

~~[O. Seed money contribution means a contribution of no more than one hundred dollars (\$100.) made and accepted in compliance with the provisions of subsection 9-3.6 SFCC 1987 and used exclusively for the purposes specified in that section.]~~

[Remaining sections shall be re-lettered accordingly.]

9-3.4 Public Campaign Finance Fund.

A. A dedicated public campaign finance fund ("the fund") is established to be

1 administered by the municipal clerk for the purpose of providing public financing for the election
2 campaigns of participating candidates. Monies in the fund and disbursed from the fund to
3 participating candidates are public monies entrusted to the candidates to be used solely for the public
4 purposes specified in this Section 9-3 SFCC 1987.

5 B. Beginning with the city budget for fiscal year 2009-2010 and in each fiscal year
6 thereafter, the sum of one hundred fifty thousand dollars (\$150,000.) shall be budgeted for and
7 deposited in the fund.

8 C. Beginning with the election of 2014, the governing body shall appropriate and deposit
9 in the fund such additional sums, if any, as may be necessary to ensure:

10 (1) That the balance in the fund one hundred nineteen (119) days preceding each
11 election for mayor and four (4) council seats is at least six hundred thousand dollars
12 (\$600,000.); and

13 (2) That the balance in the fund one hundred nineteen (119) days preceding each
14 election for municipal judge and four (4) council seats is at least three hundred thousand
15 dollars (\$300,000.).

16 D. In addition to the deposits required by paragraphs B. and C. of this subsection, the
17 following shall also be deposited in the fund:

18 ~~[(1) All seed money contributions received by candidates seeking to become~~
19 ~~certified as participating candidates which remain unspent;]~~

20 ~~[(2) All qualifying contributions received by candidates seeking to become~~
21 ~~certified as participating candidates;]~~

22 ~~[(3)]~~ (1) All amounts paid from the fund to participating candidates which
23 have not been spent or obligated as of the date of the election;

24 ~~[(4)]~~ (2) All fines levied by the ethics and campaign review board or as
25 decreed by a court of competent jurisdiction as a condition of probation;

1 ~~[(5)]~~ (3) Voluntary donations made to the fund;

2 ~~[(6)]~~ (4) All interest and other income earned from investment of the fund; and

3 ~~[(7)]~~ (5) Such other appropriations to the fund as may be made by the
4 governing body as necessary to fulfill the requirements of this Section 9-3 SFCC 1987.

5 **9-3.5 Eligibility as a Participating Candidate.**

6 ~~Beginning with the election of 2012,~~ Any candidate for municipal office may qualify as a
7 participating candidate eligible to receive payments from the fund pursuant to subsections 9-3.10 and
8 9-3.12 SFCC 1987 if the candidate:

9 A. Meets the requisites to be listed on the ballot as a certified candidate for municipal
10 office pursuant to the provisions of Section 3-8-27 (B) through (E) NMSA 1978 and Article IV
11 Section 4.03 of the Santa Fe Municipal Charter;

12 B. Has collected ~~[the requisite number of qualifying contributions, as follows]:~~

13 (1) For a candidate running for the office of mayor, six hundred (600) qualified
14 small contributions of no less than five dollars (\$5.00) ~~[qualifying contributions]~~ from
15 separate qualified electors;

16 (2) For a candidate running for the office of city councilor, one hundred fifty
17 (150) qualified small contributions of no less than five dollars (\$5.00) ~~[qualifying~~
18 ~~contributions]~~ from separate qualified electors registered to vote in the council district in
19 which the candidate is running;

20 (3) For a candidate running for the office of municipal judge, one hundred fifty
21 (150) qualified small contributions of no less than five dollars (\$5.00) ~~[qualifying~~
22 ~~contributions]~~ from separate qualified electors.

23 **9-3.6 ~~[Seed Money.]~~ Qualified Small Contributions.**

24 A. A participating candidate or a candidate seeking to become a participating candidate
25 may solicit and accept ~~[seed money contributions to defray expenses incurred in obtaining qualifying~~

1 ~~contributions and in seeking certification as a participating candidate]~~ qualified small contributions.

2 B. The aggregate amount of ~~[seed money]~~ qualified small contributions from any one
3 contributor to any one candidate shall not exceed one hundred dollars (\$100.) ~~[-and the aggregate~~
4 ~~amount of seed money contributions accepted by a candidate shall not exceed ten percent (10%) of~~
5 ~~the amount payable under subsection 9-3.10 SFCC 1987 to a candidate in a contested election for the~~
6 ~~office sought].~~

7 C. Each ~~[seed money]~~ qualified small contribution shall be accompanied by a form signed
8 by the contributor, which shall include the contributor's name, home address, telephone number,
9 occupation and name of employer. The Ethics and Campaign Review Board may, by regulation,
10 permit the use of an electronic signature on such forms.

11 D. No person shall knowingly make and no candidate shall knowingly receive a
12 qualified small contribution which is not from the person named on the form or for which the person
13 named on the form has been or will be reimbursed or compensated by another person.

14 ~~[D:] E. [All seed money contributions received by a candidate shall be deposited in a non-~~
15 ~~interest-bearing account in a campaign depository to be established by the candidate before soliciting~~
16 ~~or accepting any such contributions. All expenditures of seed money qualified small contributions~~
17 ~~shall be made from the campaign depository.]~~ Before soliciting or accepting qualified small
18 contributions, a candidate shall appoint a treasurer and establish a campaign depository in the manner
19 required by subsection 9-2.8 SFCC 1987. All qualified small contributions received by a candidate
20 shall be recorded by the candidate's campaign treasurer, deposited in a separate non-interest-bearing
21 account in the campaign depository and used in the candidate's campaign or disposed of following
22 the election in the manner required by subsection 9-2.9 SFCC 1987. All such contributions shall be
23 timely reported in a campaign finance statement prepared in the manner and filed on the dates
24 required by subsections 9-2.10 through 9-2.12 SFCC 1987. Campaign finance statements reporting
25 the receipt of qualified small contributions shall be accompanied by copies of the forms signed by

1 each contributor pursuant to paragraph C of this subsection.

2 **Section 9-3.7 is repealed.**

3 **9-3.8 Application for Certification as a Participating Candidate.**

4 A. A candidate who wishes to be certified as a participating candidate shall, on or before
5 the 106th day preceding the election [~~before the end of the qualifying period~~], file an application for
6 such certification with the municipal clerk on a form prescribed by the municipal clerk.

7 B. The application shall identify the candidate and the office that the candidate is
8 seeking, and shall set forth:

9 (1) The candidate's averment under oath that the candidate satisfies the requisites
10 for qualification and certification as a participating candidate prescribed by subsection 9-3.5
11 SFCC 1987;

12 (2) The candidate's averment under oath that the candidate has accepted no
13 contributions to the candidate's current campaign other than [~~qualifying contributions and~~
14 ~~seed money~~] qualified small contributions solicited and accepted pursuant to subsection[s] 9-
15 3.6 SFCC 1987 [~~and 9-3.7 SFCC 1987~~];

16 (3) The candidate's averment under oath that the candidate has made no
17 expenditures for his or her current campaign from any source other than [~~seed money~~]
18 qualified small contributions; and

19 (4) The candidate's agreement that his or her current campaign will not solicit,
20 direct or accept any further contributions other than qualified small contributions or make any
21 further expenditures from any sources other than qualified small contributions and payments
22 received from the fund pursuant to subsections 9-3.10 and 9-3.12 SFCC 1987.

23 C. The application shall be accompanied by:

24 (1) Reports listing all [~~seed money contributions and qualifying contributions~~]
25 qualified small contributions received by the candidate [~~and all expenditures of seed money~~

1 ~~contributions made by the candidate,]~~ and showing the aggregate amounts of all such
2 contributions ~~[and expenditures and the aggregate amounts of all contributions received from~~
3 ~~each contributor]; and~~

4 (2) Copies of forms signed by contributors for all ~~[seed money contributions and~~
5 ~~qualifying contributions]~~ qualified small contributions received by the candidate. ~~]; and~~

6 ~~[(3) A check or checks issued to the City of Santa Fe from the candidate's~~
7 ~~campaign depository for the amount of all qualifying contributions received by the candidate~~
8 ~~[and all seed money contributions received by the candidate except:~~

9 ~~[(a) Amounts previously spent for the purposes specified in paragraph A~~
10 ~~of subsection 9-3.6 SFCC 1987; and~~

11 ~~[(b) The amount, if any, that has been temporarily retained by the~~
12 ~~candidate for the purpose of keeping open the bank account in the campaign~~
13 ~~depository pursuant to paragraph E of subsection 9-3.6 SFCC 1987.]~~

14 **9-3.9 Certification as a Participating Candidate.**

15 A. On or before the eighty-ninth (89th) day before the election the municipal clerk shall
16 make a determination whether the candidate's application complies with the requirements of
17 subsection 9-3.8 SFCC 1987 and whether the candidate satisfies the requisites for certification as a
18 participating candidate prescribed by subsection 9-3.5 SFCC 1987, and shall thereupon issue a
19 decision, in accordance with the determination so made, granting or refusing such certification to the
20 candidate.

21 B. The municipal clerk may revoke a candidate's certification as a participating candidate
22 for any violation by the candidate of the requirements of this section, and may require that any
23 candidate whose certification has been revoked to pay over to the municipal clerk for deposit in the
24 fund any amounts previously paid to the candidate pursuant to subsection 9-3.10 SFCC 1987.

25 C. Qualified small contributions in the campaign depository of a candidate who fails to

1 obtain certification as a participating candidate, whose certification is revoked or who withdraws as a
2 participating candidate may be retained by the candidate to be used in the candidate's campaign and
3 disposed of after the election in the manner required by subsection 9-2.9 SFCC 1987.

4 **9-3.10 Payments to Participating Candidates.**

5 A. Within three (3) business days of certifying a candidate as a participating candidate, the
6 municipal clerk shall disburse to the candidate from the fund:

7 (1) Sixty thousand dollars (\$60,000.) for a candidate in a contested race for the
8 office of mayor;

9 (2) Fifteen thousand dollars (\$15,000.) for a candidate in a contested race for
10 the office of city councilor;

11 (3) Fifteen thousand dollars (\$15,000.) for a candidate in a contested race for
12 the office of municipal judge; or

13 (4) For a candidate in an uncontested race, ten percent (10%) of the amount
14 that would be due to a candidate in a contested race for the same office.

15 B. If the amounts required to be paid to candidates under paragraph A of this subsection
16 exceed the total amount available in the fund, each payment shall be reduced in proportion to the
17 amount of such excess. Any such proportionate reduction in the payment due to any candidate under
18 paragraph A of this subsection shall give the candidate the option to reject the payment and to
19 withdraw as a participating candidate. A candidate who withdraws as a participating candidate
20 pursuant to this paragraph shall file an affidavit with the municipal clerk so stating and shall
21 thenceforth be treated for all purposes as a non-participating candidate relieved of all obligations and
22 restrictions and excluded from all benefits and exemptions imposed or conferred on a participating
23 candidate by this Section 9-3 SFCC 1987.

24 ~~[C. Within five (5) business days of the candidate's receipt of the amount disbursed under~~
25 ~~paragraph A of this subsection or the municipal clerk's refusal to certify the candidate as a~~

1 ~~participating candidate pursuant to paragraph A of subsection 9-3.9 SFCC 1987, whichever is sooner,~~
2 ~~the candidate shall pay over to the municipal clerk for deposit in the fund any amount of seed money~~
3 ~~that has been temporarily retained by the candidate for the purpose of keeping open the bank account~~
4 ~~in the campaign depository pursuant to paragraph E of subsection 9-3.6 SFCC 1987.]~~

5 **Section 11. Section 9-3.11 SFCC 1987 (being Ord. No. 2009-44, §12) is amended to**
6 **read:**

7 **9-3.11 Use of Payments from the Fund [~~the Fund as Exclusive Source~~].**

8 A. All payments received by a participating candidate from the fund shall be deposited in a
9 separate non-interest-bearing account in the candidate's campaign depository and shall be used
10 exclusively to pay expenses reasonably incurred in furtherance of the candidate's current campaign.

11 B. Payments received from the fund shall not be used for any other purpose, including:

12 (1) The candidate's personal living expenses or compensation to the candidate or
13 the candidate's family;

14 (2) A contribution to another campaign of the candidate or a payment to retire
15 debt from another such campaign;

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

18 (4) An expenditure supporting the election of another candidate or the passage
19 or defeat of a ballot proposition or the defeat of any candidate other than an opponent of
20 the participating candidate;

21 (5) Payment of legal expenses or any fine levied by a court or the ethics and
22 campaign review board.

23 (6) Any gift or transfer for which compensating value is not received.

24 C. All payments from the fund received by a participating candidate which have not been
25 spent or obligated for the purposes specified in paragraph A of this subsection and any tangible assets

1 purchased with such payments remaining in the possession of the campaign as of the date of the
2 election shall be returned by the candidate and shall be conveyed to the municipal clerk within forty-
3 five (45) days after that date. Returned payments shall be deposited in the fund. Tangible assets shall
4 be conveyed to the city for its use or disposition in accordance with the city's procurement
5 code. Proceeds from such disposition shall be deposited in the fund.

6 C. In accordance with the agreement entered into pursuant to subparagraph B(4) of
7 subsection 9-3.8 SFCC 1987, a candidate who has been certified as a participating
8 candidate shall not thereafter accept any contribution to the candidate's campaign other
9 than payments received from the fund pursuant to subsections 9-3.10 and 9-3.12 SFCC
10 1987 and qualified small contributions received pursuant to subsection 9-3.6 SFCC
11 1987, and shall not make any expenditure in support of the candidate's campaign from
12 any source other than payments and contributions so received and previously deposited
13 in the candidate's campaign depository.

14 **9-3.14 Reports of Expenditures; Exemption from Certain Reporting Requirements.**

15 A. A participating candidate shall file with the municipal clerk reports under oath of
16 expenditures made from the payments received from the fund, indicating that the expenditures were
17 made from that source and showing the date and amount of each such expenditure, the name and
18 address of the person or organization to whom it was made, the purpose of the expenditure, the
19 aggregate amount of such expenditures made to each person or organization and the aggregate
20 amount of all such expenditures made by the candidate or by his or her campaign. Receipts for all
21 such expenditures shall be preserved for a period of two (2) years from the date of the expenditure.

22 B. The reports required by paragraph A of this subsection shall be filed on each of the days
23 prescribed for the filing of campaign finance statements by subsection 9-2.10 SFCC 1987.

24 C. A signed campaign finance statement filed by a participating candidate to report qualified
25 small contributions pursuant to paragraph E of subsection 9-3.6 SFCC 1987 or paragraph A of

1 subsection 9-3.12 SFCC 1987 shall also include a report of all expenditures made during the period
2 covered by the statement from the separate account established by the candidate for the deposit of
3 such contributions pursuant to paragraph D of subsection 9-3.6 SFCC 1987. The statement shall
4 show that the expenditures were made from that source and shall contain all the information
5 concerning the expenditures, account balances and funds on hand that is required for campaign
6 finance statements filed pursuant to subsection 9-2.11 SFCC 1987. Receipts for all such expenditures
7 shall be preserved for a period of two (2) years from the date of the expenditure.

8 ~~[C-]~~ D. Except as provided in paragraphs A ~~[and B]~~ through C of this subsection ~~[and]~~, paragraph
9 E of subsection 9-3.6 SFCC 1987, paragraph C of subsection 9-3.8 SFCC 1987[;] and paragraph A of
10 subsection 9-3.12 SFCC 1987, participating candidates are exempt from the requirement to file
11 campaign finance statements imposed by subsections 9-2.10 SFCC 1987 through 9-2.12 SFCC 1987
12 and from the requirements to file campaign records with the municipal clerk imposed by paragraph C
13 of subsection 9-2.9 SFCC 1987; provided, however, that campaign records shall be maintained in the
14 manner required by the applicable provisions of the Campaign Code (Section 9-2 SFCC 1987) and
15 shall be made available upon request to the municipal clerk and the ethics and campaign review
16 board.

17 E. ~~[A seed money and qualifying contribution report and an]~~ Campaign finance statements and
18 contribution and expenditure reports of a candidate for municipal judge are not required to be signed
19 or acknowledged by the candidate.
20

**PART 4. ALTERNATIVE COMPLIANCE FOR QUALIFICATION AS PUBLIC FINANCED
CANDIDATE**

Section 9-3.5

C. Alternative Compliance

(1) In lieu of collecting the qualified small contributions set forth in 9-3.5 B, a candidate for municipal office may qualify as a participating candidate by filing with the city clerk a supplemental nominating petition containing the same number of signatures ~~additional from additional voters as were~~ [For Discussion purposes] required to qualify as a candidate for that office pursuant to Article IV Section 4.03 of the Santa Fe Municipal Charter.

(2) For purposes of this section, the city clerk may not count toward the required number of supplemental signatures the signature of any voter who has signed a supplemental nominating petition for any other candidate for the same office during the same election cycle.

E.D. Submits an application for certification pursuant to subsection 9-3.8 SFCC 1987 setting forth the agreement and the averments and accompanied by the forms[;] and reports [and payments] that are required by that section.

1 **PART 5. MATCHING FUND PROPOSAL**
2

3 **9-3.12 [NEW MATERIAL] Additional Reports of Qualified Small Contributions;**

4 **Additional Matching Payments from the Fund**

5 A. Those participating candidates who wish to submit for matching payments from the
6 Fund, in addition to the dates specified for the filing of campaign finance statements by subsection 9-
7 2.10 SFCC 1987, may file campaign finance statements reporting the receipt of qualified small
8 contributions on the eighty-third day preceding the election, the sixty-second day preceding the
9 election and the fifteenth day preceding the election.

10 B. Within two business days after the filing of a campaign finance statement by a
11 participating candidate reporting the receipt of qualified small contributions and accompanied by
12 copies of the forms signed by the contributors as required by paragraph C of subsection 9-3.6 SFCC
13 1987, the municipal clerk shall disburse to the candidate an additional payment from the fund equal to
14 four times the total amount of the qualified small contributions reported in the campaign finance
15 statement; provided, however, that no such additional matching payments shall be made for
16 contributions reported in a campaign finance statement filed after the Tuesday preceding the election;
17 and provided further that additional matching payments for contributions listed in a report filed with
18 the candidate's application for certification under subsection 9-3.8 SFCC 1987 shall not be made until
19 two business days after such contributions have been listed anew in a campaign finance statement
20 filed under paragraph E of subsection 9-3.6 SFCC 1987 or paragraph A of this subsection.

21 C. Additional payments made to a participating candidate pursuant to paragraph B of
22 this subsection shall be deposited in the separate account in the candidate's campaign depository that
23 was established by the candidate for the deposit of payments received from the fund pursuant to
24 paragraph A of subsection 9-3.11.

25 D. The aggregate amount of additional payments made to a participating candidate
26 pursuant to paragraph B of this subsection shall not exceed two hundred percent (200%) of the

1 amount initially paid to the candidate pursuant to subsection 9-3.10 SFCC 1987.

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

5
6 **[For Discussion purposes: Hypotheticals]**

7 Public Finance Campaign Fund:

8 Last Election Revenues: \$330,000 = \$300,000 per election cycle from the General Fund + \$30,000
9 per election cycle in qualifying funds

10 Last Election Expenditures: \$285,000 = \$180,000 Grant to 3 mayor candidates + \$105,000 Grant to 7
11 council candidates

12 Carryforward to the reserve: Approximately \$45,000

13 Current reserves: approximately \$500,000

14
15 But what if you eliminate the qualifying fund process = you eliminate of \$30,000 per election cycle in
16 revenues and you end up the revenues and expenditures per election cycle netting out at zero.

17 For example, if you eliminated the \$30,000 in revenues and if just one more council candidate in
18 2014 had qualified for the initial grant, the revenues (\$300,000) and expenditures (\$300,000) would
19 have netted out at zero. *Any additional costs would have come from the reserves.*

20 And what if 5 mayor candidates had qualified? The expenditures would have been \$405,000 =
21 \$300,000 Grant to 3 mayor candidates + \$105,000 Grant to 7 council candidates. *This would have*
22 *eaten into the reserves*

23
24 But what if you have a system where the three **mayor** candidates could raise money and could get a 4
25 **X1 match (capped at 200% of the initial grant)?**

1 Mayor A would get \$60,000 in the initial grant, could raise \$30,000 in small contributions and get a
2 match of \$120,000.

3 Mayor B would get \$60,000 in the initial grant, could raise \$30,000 in small contributions and get a
4 match of \$120,000

5 Mayor C would get \$60,000 in the initial grant, could raise \$30,000 in small contributions and get a
6 match of \$120,000

7 This equals: \$180,000 in grant funds and \$360,000 in matching funds

8
9 Further Examples:

10 What if you have a system where the three **mayor** candidates could raise money and could get a **2 X1**
11 match (capped at **200%** of the initial grant)?

12 Mayor A would get \$60,000 in the initial grant, could raise \$60,000 in small contributions and get a
13 match of \$120,000.

14 Mayor B would get \$60,000 in the initial grant, could raise \$60,000 in small contributions and get a
15 match of \$120,000

16 Mayor C would get \$60,000 in the initial grant, could raise \$60,000 in small contributions and get a
17 match of \$120,000

18 This equals: \$180,000 in grant funds and \$360,000 in matching funds.

19
20 What if you have a system where the three **mayor** candidates could raise money and could get a **1 X1**
21 match (capped at only **200%** of the initial grant)?

22 Mayor A would get \$60,000 in the initial grant, could raise \$120,000 in small contributions and get a
23 match of \$120,000.

24 Mayor B would get \$60,000 in the initial grant, could raise \$120,000 in small contributions and get a
25 match of \$120,000

1 Mayor C would get \$60,000 in the initial grant, could raise \$120,000 in small contributions and get a
2 match of \$120,000

3 This equals: \$180,000 in grant funds and \$360,000 in matching funds.
4

5 What if you have a system where the three **mayor** candidates could raise money and could get a **4 X1**
6 match (capped at only 100% of the initial grant)?

7 Mayor A would get \$60,000 in the initial grant, could raise \$15,000 in small contributions and get a
8 match of \$60,000.

9 Mayor B would get \$60,000 in the initial grant, could raise \$15,000 in small contributions and get a
10 match of \$60,000

11 Mayor C would get \$60,000 in the initial grant, could raise \$15,000 in small contributions and get a
12 match of \$60,000

13 This equals: \$180,000 in grant funds and \$180,000 in matching funds.
14

15 What if you have a system where the three **mayor** candidates could raise money and could get a **2 X1**
16 match (capped at only 100% of the initial grant)?

17 Mayor A would get \$60,000 in the initial grant, could raise \$30,000 in small contributions and get a
18 match of \$60,000.

19 Mayor B would get \$60,000 in the initial grant, could raise \$30,000 in small contributions and get a
20 match of \$60,000

21 Mayor C would get \$60,000 in the initial grant, could raise \$30,000 in small contributions and get a
22 match of \$60,000

23 This equals: \$180,000 in grant funds and \$180,000 in matching funds.
24

25 But what if you have a system where the three **mayor** candidates could raise money and could get a **1**

1 **X1 match** (capped at **only 100%** of the initial grant)?

2 Mayor A would get \$60,000 in the initial grant, could raise \$60,000 in small contributions and get a
3 match of \$60,000.

4 Mayor B would get \$60,000 in the initial grant, could raise \$60,000 in small contributions and get a
5 match of \$60,000

6 Mayor C would get \$60,000 in the initial grant, could raise \$60,000 in small contributions and get a
7 match of \$60,000

8 This equals: \$180,000 in grant funds and \$180,000 in matching funds.

9
10 *Don't forget council and judge races--what if you have a system where the three **council** candidates*
11 *could raise money and could get a **4 X1 match** (capped **at 200%** of the initial grant)?*

12 *Candidate A would get \$15,000 in the initial grant, could raise \$7,500 in small contributions and get*
13 *a match of \$30,000.*

14 *Candidate B would get \$15,000 in the initial grant, could raise \$7,500 in small contributions and get*
15 *a match of \$30,000*

16 *Candidate C would get \$15,000 in the initial grant, could raise \$7,500 in small contributions and get*
17 *a match of \$30,000*

18 *This equals: \$45,000 in grant funds and \$90,000 in matching funds.*

From: James Harrington <harr77@earthlink.net>

Sent: Sunday, April 26, 2015 1:58 PM

To: Justin Miller <justinomiller@gmail.com>; SHANDLER, ZACHARY A. <zashandler@ci.santa-fe.nm.us>

Cc: VIGIL, YOLANDA Y. <yyvigil@ci.santa-fe.nm.us>; Ruth Kovnat <ruthkovnat@gmail.com>; Fred Rowe <fredrowe@cybermesa.com>; heather Ferguson <HFerguson@commoncause.org>; Viki Harrison <VHarrison@commoncause.org>

Subject: code amendments and cost estimates

Dear Justin and Zach -

The latest draft of code changes ("Discussion Draft 4/10/16 [sic]") looks great. Thanks very much for all your hard work. I'm happy to report I only have two minor comments on the draft amendments, as follows:

1. The second alternative proposal for dealing with "Russian dolls" set forth on page 8, lines 21-25, would apply by its terms only to independent entities who are required to report their spending under section 9-2.6, and - unlike the first alternative provision that appears on page 8, lines 7-20 - would not apply to candidates or political committees who are required to report under section 9-2.11. Common Cause believes this omission should be corrected if the board decides to opt for this second alternative, because candidates and political committees should not have any greater right to conceal the identities of their contributors inside "Russian dolls" than do the independent groups who report under section 9-2.6. (Indeed, it was a political committee that triggered the board's concern about this issue by identifying its largest contributor in the last election under an uninformative name ("Justice League PAC") which revealed nothing about the source of its funds.)

2. Common Cause again respectfully suggests that the words "the eighty-third day preceding the election" and the comma following those words should be deleted from line 8 on page 21. Having received their initial stipends on the 86th day before the election (see §9-3.10(A)), the publicly financed candidates would not really need an additional matching payment only three days later.

Although these are my only two comments on the draft amendments, I do have some serious criticisms of the financial analysis of both the current public financing system and the proposed new system that is appended to those proposed amendments (pages 22-25 of the Discussion Draft). That financial analysis has two parts - first, a description of the recent history and current status of the revenues and outlays of the public campaign finance fund (page 22), and second, a series of scenarios illustrating the potential costs of the proposed new system (page 22-25). Both of these parts of the analysis exhibit certain flaws.

First, the draft's description of the recent history and current status of the public campaign finance fund depicts a system that differs in important respects from the one that is actually mandated by the governing ordinance and has been in place since the ordinance was enacted. Thus, the draft posits a supposed public financing budget of "\$300,000 per election cycle" plus "\$30,000 per election cycle in qualifying funds," and states that any money in the fund in excess of these amounts should be viewed as "reserves" that should not be

Exhibit "B"

“eaten into” under normal circumstances. But the ordinance in fact contains no mention of any of these things - neither a base budget of “\$300,000 per election cycle,” nor additional revenues of “\$30,000 in qualifying funds,” nor any kind of “reserves” that should not normally be spent. Rather, the governing section of the ordinance (§9-3.4 SFCC) simply prescribes annual appropriations to the fund of \$150,000 beginning in FY 2010 (§9-3.4(B)), supplemental appropriations as needed to ensure that the fund will always contain \$300,000 four months before each judge-council election and \$600,000 four months before each mayor-council election (§9-3.4(C)), and, finally, certain additional deposits into the fund of qualifying contributions collected by the publicly financed candidates and any unspent amounts that may remain in their’ campaign accounts (§9-3.4(D)). The explicit requirement for the council to ensure that the fund will always contain at least \$600,000 in advance of each mayoral election by itself clearly belies both the notion that there is a budget of only \$330,000 per election cycle and the suggestion that any spending beyond this amount would improperly “eat[] into reserves.” Common Cause therefore respectfully suggests that the board should appropriately discount these aspects of the Discussion Draft’s description of the current financial condition of the fund.

By criticizing the description of the current system that appears in the draft, however, we are by no means implying that the actual operation of the system has departed in any respect from the requirements of the ordinance. In fact, the parenthetical statement in the draft that the fund currently contains “approximately \$500,000” (though incorrectly describing this amount as “reserves”) clearly indicates that the ordinance has been complied with in all respects. Thus, a review of the campaign finance records of the last two elections suggests that, if all of the required appropriations and deposits into the fund have been made, the amount currently in the fund should be about \$484,000 (appropriations of \$150K annually for FY’s 2010 through 2014, plus a required supplemental appropriation of about \$60K to bring the fund balance up to \$600K before the 2014 election, plus qualifying-contribution deposits of \$4K in 2012 and \$14K in 2014, minus payments to candidates of \$75K in 2012 and \$285K in 2014, plus refunds from candidates’ accounts of \$12K in 2012 and \$4K in 2014, equals \$484K), which is in close accord with the draft’s statement that the fund now contains “approximately \$500,000.” Common Cause, in other words, has no objection to what has actually been occurring, but rather only to the intimation in the Discussion Draft that the system is now operating perilously close to some kind of imprudent invasion of “reserves.” In fact, what has been happening seems to be precisely what the ordinance prescribes, and, as will be shown at a later point below, the current balance in the fund is, if anything, atypically inflated as a result of outlays from the fund in recent elections that were well below the level of outlays anticipated when the funding mechanism was initially designed.

Turning now to the second part of the financial analysis in the Discussion Draft, this consists of a series of hypothetical scenarios depicting the potential costs of adopting various different versions of the proposed new matching-fund system that is set forth in the draft of code changes. These scenarios are mathematically unobjectionable as far they go, but Common Cause is obliged to point out that this review of the potential costs of the new system omits to mention what is probably the most important factor that should be taken into account in estimating these costs - namely, the provision of both the current code and the proposed new ordinance which limits the total payments to candidates to the amount that is currently contained in the public campaign finance fund, and which requires that the candidates’ entitlements must be reduced proportionately to ensure that they will never exceed that amount (§9-3.10(B) SFCC; draft amendments §§9-3.10(B), 9-3.12(E)). As will now be demonstrated, the practical effect of this provision is that ***city outlays under either the current system or the proposed new system could never exceed a long-term average annual cost of \$225,000 no matter what sort of campaign-spending scenarios might materialize.***

Thus, since the payments to the candidates are limited, under the provisions just cited, to the amount contained in the fund, the city’s maximum financial exposure is necessarily defined by the amounts that have been appropriated to the fund. These amounts, in turn, are expressly set by the ordinance, which, as noted above, requires annual appropriations of \$150,000 supplemented by such top-up appropriations as may be necessary to ensure that there will be \$300,000 in the fund in advance of each judge-council election and \$600,000 in advance of each mayor-council election. Since the annual appropriations of \$150,000 during the

two years between a mayor-council election and a judge-council election will always amount to at least \$300,000, a top-up appropriation for a judge-council election will never be necessary. Such an appropriation will virtually always be necessary, however, in advance of a mayor-council election, because the required \$600,000 minimum balance cannot normally be achieved by the \$150,000 annual appropriations alone unless no money has been expended from the fund during the preceding judge-council election, an eventuality which is unlikely to occur. The amount of this top-up appropriation in advance of mayor-council elections will vary according to how much was spent in the previous judge-council election (this amount was about \$60,000 in advance of the 2014 election), but in no event could it ever exceed \$300,000, which is the amount that would have to be appropriated in order to bring the fund balance up to \$600,000 in the extreme case where the fund had been completely depleted in the previous election and the only other amounts in the fund therefore consisted of the \$150,000 annual appropriations that were made in the intervening two years. It follows that the largest possible amount that will ever be appropriated to the fund during any four-year election cycle will be the sum of the four annual appropriations of \$150,000 and a maximum supplemental appropriation of \$300,000 in advance of the mayor-council election - a total of \$900,000 for the four-year cycle and an annual average of \$225,000. This is the maximum possible long-term annual cost of the proposed new system under any conceivable scenario. Common Cause submits that this is a small price to pay in order to eliminate the potential illicit influence of large campaign donations on our elected officials.

Before concluding, it is appropriate to dispose of a superficially appealing but ultimately invalid objection to this analysis that might be suggested by the current healthy balance in the fund. Since the fund was designed for a much more generous public financing system (involving additional payments to match opponents' and PACs' spending) than the one the city has actually been operating in the wake of the Arizona Free Enterprise decision (which invalidated those matching payments), the fund has built up an unexpectedly large balance. As noted above, the current balance is about \$484,000, and, after the additional appropriation of \$150,000 that is due by June 30 of this year, the fund balance in advance of the 2016 judge-council election will actually be about \$634,000. It is therefore conceivable that, under the proposed new matching system, the council and judge candidates in that election might draw that much money from the fund if they prove to be especially numerous and especially adept at fund-raising; and it is certainly possible - indeed perhaps even likely - that this unusually large balance would be consumed under that system in the course of the next two or three elections. This would of course mean that average payments from the fund during those years could exceed \$225,000 annually.

This does not, however, undercut the conclusion that the long-term average outlay by the city will never exceed \$225,000 under the proposed system, because the current inflated balance in the fund which makes possible such large expenditures over the next few years is itself a product of several years of appropriations to the fund that substantially exceeded the payments to the candidates under the stripped-down system that the city has been forced to use during those years; and the average annual amount of those appropriations has actually been much less than \$225,000. Thus, the \$634,000 balance that will be available to candidates for the 2016 election is the product of six annual appropriations of \$150,000 each plus a supplemental appropriation, as noted earlier, of about \$60,000 in advance of the 2014 election. This is a total appropriation of \$960,000 over six years, or an average annual appropriation of \$160,000, which is of course significantly less than \$225,000. The conclusion that \$225,000 is the maximum long-term average cost of the system thus remains unchanged notwithstanding the unusual situation that has prevailed recently. The most that can be deduced from this situation is that fluctuations in spending from the fund will often occur and that atypically high spending in particular elections will sometimes be possible when the fund has become temporarily inflated as a result of atypically low spending in previous elections. But it remains true that, for the reasons already explained, the long-term average cost of the system can never exceed the maximum appropriations to the fund of \$900,000 per four-year election cycle or \$225,000 a year.

The scenarios set forth in the Discussion Draft depict various methods by which the payments available to candidates under the new system might be reduced in order to save money. These methods include matching

ratios that are reduced from 4-1 to 2-1 or even 1-1, and caps on per-candidate matching payments that are reduced from \$120,000 for mayor and \$30,000 for council/judge to \$60,000 for mayor and \$15,000 for council/judge. As a general matter, Common Cause opposes any such reductions because, as was just stated, the maximum \$225,000 annual average cost of the system proposed in the current draft (with a 4-1 match and per-candidate caps of \$120K/\$30K) is actually a very modest price for the city to pay to achieve the salutary goal of reducing the potential influence of private campaign spending on our elected officials. But if the board ultimately deems it necessary to propose such reductions, we suggest that it would be better to reduce the per-candidate caps than to reduce the matching ratio. The matching ratio should be maintained at a high level because any new system the board might propose should still be a *public* financing system in which the vast majority of the candidates' campaign expenses will be borne by the city. The purpose of allowing candidates to raise some private contributions is not to allow them to fund their campaigns from this source to any significant degree, but rather simply to force them to demonstrate, as a condition to obtaining additional public money, that they have a sufficient need for this additional money - presumably as a result of heavy opposition spending - to go to the trouble of raising a significant portion of it. Requiring them to raise \$1 for every \$4 they will receive from the city should provide an adequate demonstration of this need, and reducing that 4 to 1 ratio would only serve to dilute the public share and increase the private share of election spending to the ultimate detriment of the overriding goal of reducing the influence of private campaign spending on our city government.

I hope these comments are helpful. I again thank you for all you do.

Jim Harrington
Common Cause NM