

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2016-8

3 INTRODUCED BY:

4  
5 Councilor Peter N. Ives

6  
7  
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9  
10 AN ORDINANCE

11 AMENDING SECTION 9-3 SFCC 1987, THE PUBLIC CAMPAIGN FINANCE CODE TO  
12 INCLUDE A DEFINITION FOR QUALIFIED SMALL CONTRIBUTION;  
13 ESTABLISHING A NEW SECTION REGARDING QUALIFIED SMALL  
14 CONTRIBUTIONS; AND ESTABLISHING A NEW SECTION REGARDING  
15 REPORTING OF QUALIFIED SMALL CONTRIBUTIONS AND MATCHING  
16 PAYMENTS.

17  
18 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE.

19 Section 1. Subsection 9-3.3 SFCC 1987 (being Ord. #2009-44, §4, as amended)  
20 is amended to read:

21 9-3.3 Definitions.

22 As used in this section, the following terms have the following meanings:

23 A. *Campaign depository* means a bank, mutual savings bank, savings and loan  
24 association or credit union doing business in this state under which a campaign account or  
25 accounts are maintained.

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

5           C.     *Candidate* means any individual who seeks election to a Santa Fe municipal  
6 office. An individual shall be a candidate when they:

- 7                   (1)     Announce publicly;
- 8                   (2)     File for office;
- 9                   (3)     When contributions are accepted or expenditures made; or when
- 10                  (4)     Any activity is held to promote an election campaign of an individual if
- 11                   that activity is endorsed or supported by that person or if the benefits of such activity are
- 12                   later accepted by such person.

13           D.     *Contested race* means a race in which there are at least two (2) candidates for the  
14 office sought.

15           E.     *Contribution* means a loan, loan guarantee, gift, advance, pledge, contract,  
16 agreement or promise of money or anything of value or other obligation, whether or not legally  
17 enforceable, made directly or indirectly, to a candidate or political committee, or to a person  
18 obligated to file a report under subsection 9-2.6 SFCC 1987, for the purpose of supporting or  
19 opposing the election of a candidate or the approval or defeat of a ballot proposition.

- 20                   (1)     The term "contribution" includes:
- 21                           (a)     The transfer of funds or anything of value between political
- 22                           committees;
- 23                           (b)     The transfer of anything of value for less than full consideration;
- 24                           (c)     Interest, dividends or other income derived from the investment
- 25                           of campaign funds;

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

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

5 (f) A coordinated expenditure.

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

9 F. *Coordinated expenditure* means an expenditure that is made:

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

12 (2) in cooperation, consultation or concert with, or at the request or  
13 suggestion of, a candidate, his/her representatives or agents or the candidate's political  
14 committee, including but not limited to, the following examples in subsection 9-  
15 3.3(F)(2)(a)-(d):

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

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

25 (c) the candidate, candidate's political committee or his/her

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

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

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

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

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

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

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

18 H. *Expenditure* means a payment or transfer of anything of value in exchange for  
19 goods, services, property, facilities or anything of value for the purpose of supporting or opposing  
20 the election of a candidate or the approval or defeat of a ballot proposition. This includes  
21 contributions, subscriptions, distributions, loans, advances, deposits, or gifts of money or  
22 anything of value, and includes a contract, a promise or agreement, whether or not legally  
23 enforceable, to make an expenditure. The term "expenditure" also means the transfer of funds or  
24 anything of value between political committees.

25 I. *Fund* means the public campaign finance fund created by subsection 9-3.4 SFCC

1 1987.

2 J. *Non-participating candidate* means a candidate who is not a participating  
3 candidate.

4 K. *Participating candidate* means a candidate who has qualified and has been  
5 certified pursuant to subsection 9-3.9 SFCC 1987 as eligible to receive payments from the fund.

6 L. *Qualified elector* means a person who is registered to vote in the City of Santa  
7 Fe.

8 M. *Qualified small contribution* means a contribution of no more than one hundred  
9 dollars (\$100) made and accepted in compliance with the provisions of subsection 9-3.12 SFCC  
10 1987.

11 M. *Qualifying contribution* means a contribution of no more or no less than five  
12 dollars (\$5.00) that is received from a qualified elector during the qualifying period by a  
13 candidate seeking to become a participating candidate. A candidate for council shall only receive  
14 qualifying contributions from qualified electors registered to vote in the council district in which  
15 the candidate is running.

16 N. *Qualifying period* means the period during which a candidate seeking to become  
17 a participating candidate is permitted to collect qualified small contributions and to apply for  
18 certification as a participating candidate. It begins one hundred eighty-three (183) days before the  
19 election and ends one hundred six (106) days before the election.

20 O. *Race* means the electoral process in which one (1) or more candidates run and  
21 one (1) candidate is elected to the office of mayor, municipal judge or city councilor for a  
22 particular district.

23 P. *Seed money contribution* means a contribution of no more than one hundred  
24 dollars (\$100.) made and accepted in compliance with the provisions of subsection 9-3.6 SFCC  
25 1987 and used exclusively for the purposes specified in that section.

1           P.       *Uncontested race* means a race in which there is only one (1) candidate for the  
2 office sought.

3           **Section 2.       Subsection 9-3.4 SFCC 1987 (being Ord. #2009-44, §5, as amended)**  
4 is amended to read:

5           **9-3.4   Public Campaign Finance Fund.**

6           A.       A dedicated public campaign finance fund ("the fund") is established to be  
7 administered by the ~~[municipal]~~ city clerk for the purpose of providing public financing for the  
8 election campaigns of participating candidates. Monies in the fund and disbursed from the fund to  
9 participating candidates are public monies entrusted to the candidates to be used solely for the  
10 public purposes specified in this Section 9-3 SFCC 1987.

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

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

16               (1)     That the balance in the fund one hundred nineteen (119) days preceding  
17 each election for mayor and four (4) council seats is at least six hundred thousand dollars  
18 (\$600,000.); and

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

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

24               (1)     All seed money contributions received by candidates seeking to become  
25 certified as participating candidates which remain unspent;

1 (2) All qualifying contributions received by candidates seeking to become  
2 certified as participating candidates;

3 (3) All amounts paid from the fund to participating candidates which have  
4 not been spent or obligated as of the date of the election;

5 (4) All fines levied by the ethics and campaign review board or as decreed  
6 by a court of competent jurisdiction as a condition of probation;

7 (5) Voluntary donations made to the fund;

8 (6) All interest and other income earned from investment of the fund; and

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

11 **Section 3. Subsection 9-3.5 SFCC 1987 (being Ord. #2009-44, §6, as amended)**  
12 **is amended to read:**

13 **9-3.5 Eligibility as a Participating Candidate.**

14 [~~Beginning with the election of 2012, a~~] Any candidate for municipal office may qualify  
15 as a participating candidate eligible to receive payments from the fund pursuant to subsections 9-  
16 3.10 and 9-3.13 SFCC 1987 if the candidate:

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

20 B. Has collected the requisite number of qualifying contributions, as follows:

21 (1) For a candidate running for the office of mayor, six hundred (600)  
22 qualifying contributions from separate qualified electors;

23 (2) For a candidate running for the office of city councilor, one hundred fifty  
24 (150) qualifying contributions from separate qualified electors registered to vote in the  
25 council district in which the candidate is running;



1                   (3)     For a candidate running for the office of municipal judge, one hundred  
2                   fifty (150) qualifying contributions from separate qualified electors.

3                   C.     Submits an application for certification pursuant to subsection 9-3.8 SFCC 1987  
4                   setting forth the agreement and the averments and accompanied by the forms, reports and  
5                   payments that are required by that section.

6                   **Section 4.     Subsection 9-3.6 SFCC 1987 (being Ord. #2009-44, §7, as amended)**  
7                   **is amended to read:**

8                   **9-3.6   Seed Money Contributions.**

9                   A.     A candidate seeking to become a participating candidate may solicit and accept  
10                  seed money contributions to defray expenses incurred in obtaining qualifying contributions and in  
11                  seeking certification as a participating candidate

12                  B.     The aggregate amount of seed money contributions from any one contributor to  
13                  any one candidate shall not exceed one hundred dollars (\$100), and the aggregate amount of seed  
14                  money contributions accepted by a candidate shall not exceed ten percent (10%) of the amount  
15                  payable under subsection 9-3.10 SFCC 1987 to a candidate in a contested election for the office  
16                  sought.

17                  C.     Each seed money contribution shall be accompanied by a form signed by the  
18                  contributor, which shall include the contributor's name, home address, telephone number,  
19                  occupation and name of employer.

20                  D.     All seed money contributions received by a candidate shall be deposited in a non-  
21                  interest-bearing account in a campaign depository to be established by the candidate before  
22                  soliciting or accepting any such contributions. All expenditures of seed money shall be made  
23                  from the campaign depository.

24                  E.     Seed money contributions shall be used only for the purposes specified in  
25                  paragraph A. of this subsection, and all seed money contributions that have not been spent or used

1 for such purposes by the time the candidate applies for certification as a participating candidate or  
2 by the end of the qualifying period, whichever is sooner, shall then be paid over to the municipal  
3 clerk for deposit in the fund; provided, however, that if payment of all of the candidate's unspent  
4 seed money to the municipal clerk would cause the bank account in the campaign depository to  
5 be closed, an amount of seed money necessary to keep the account open may be temporarily  
6 retained in the account and paid over to the municipal clerk at a later time in compliance with  
7 paragraph C of subsection 9-3.10 SFCC 1987.

8 **Section 5. Subsection 9-3.8 SFCC 1987 (being Ord. #2009-44, §9, as amended)**  
9 **is amended to read:**

10 **9-3.8 Application for Certification as a Participating Candidate.**

11 A. A candidate who wishes to be certified as a participating candidate shall, before  
12 the end of the qualifying period, file an application for such certification with the municipal clerk  
13 on a form prescribed by the ~~[municipal]~~ city clerk.

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

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

19 (2) The candidate's averment under oath that the candidate has accepted no  
20 contributions to the candidate's current campaign other than qualifying contributions and  
21 seed money contributions solicited and accepted pursuant to subsections 9-3.6 SFCC  
22 1987 and 9-3.7 SFCC 1987;

23 (3) The candidate's averment under oath that the candidate has made no  
24 expenditures for his or her current campaign from any source other than seed money  
25 contributions; and

1           (4)     The candidate's agreement that his or her current campaign will not  
2     solicit, direct, or accept any further contributions or make any further expenditures from  
3     any sources other than payments received from the fund pursuant to subsections 9-3.10  
4     and 9-3.13 SFCC 1987 and qualified small contributions received pursuant to subsection  
5     9-3.12 SFCC 1987.

6     C.     The application shall be accompanied by:

7           (1)     Reports listing all seed money contributions and qualifying contributions  
8     received by the candidate and all expenditures of seed money contributions made by the  
9     candidate, and showing the aggregate amounts of all such contributions and expenditures  
10    and the aggregate amounts of all contributions received from each contributor;

11          (2)     Copies of forms signed by contributors for all seed money contributions  
12    and qualifying contributions received by the candidate; and

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

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

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

21     **Section 7.     Subsection 9-3.9 SFCC 1987 (being Ord. #2009-44, §10, as amended)**  
22     **is amended to read:**

23     **9-3.9    Certification as a Participating Candidate.**

24     A.     On or before the eighty-ninth (89th) day before the election the municipal clerk  
25    shall make a determination whether the candidate's application complies with the requirements of

1 subsection 9-3.8 SFCC 1987 and whether the candidate satisfies the requisites for certification as  
2 a participating candidate prescribed by subsection 9-3.5 SFCC 1987, and shall thereupon issue a  
3 decision, in accordance with the determination so made, granting or refusing such certification to  
4 the candidate.

5 B. The [~~municipal~~] city clerk may revoke a candidate's certification as a  
6 participating candidate for any violation by the candidate of the requirements of this section, and  
7 may require that any candidate whose certification has been revoked to pay over to the municipal  
8 clerk for deposit in the fund any amounts previously paid to the candidate pursuant to subsections  
9 9-3.10 and 9-3.13 SFCC 1987.

10 **Section 8. Subsection 9-3.10 SFCC 1987 (being Ord. #2009-44, §11, as**  
11 **amended) is amended to read:**

12 **9-3.11 Use of Payments from the Fund; the Fund as Exclusive Source.**

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

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

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

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

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

25 (4) An expenditure supporting the election of another candidate or the

1 approval or defeat of a ballot proposition or the defeat of any candidate other than an  
2 opponent of the participating candidate;

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

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

6 C. All payments from the fund received by a participating candidate which have not  
7 been spent or obligated for the purposes specified in paragraph A of this subsection and any  
8 tangible assets purchased with such payments remaining in the possession of the campaign as of  
9 the date of the election shall be returned by the candidate and shall be conveyed to the municipal  
10 clerk within forty-five (45) days after that date. Returned payments shall be deposited in the  
11 fund. Tangible assets shall be conveyed to the city for its use or disposition in accordance with  
12 the city's procurement code. Proceeds from such disposition shall be deposited in the fund.

13 D. In accordance with the agreement entered into pursuant to subparagraph B(4) of  
14 subsection 9-3.8 SFCC 1987, a candidate who has been certified as a participating candidate shall  
15 not thereafter accept any contribution to the candidate's campaign other than payments received  
16 from the fund pursuant to subsections 9-3.10 and 9-3.13 SFCC 1987 and qualified small  
17 contributions received pursuant to subsection 9-3.12 SFCC 1987, and shall not make any  
18 expenditure in support of the candidate's campaign from any source other than payments and  
19 contributions so received and previously deposited in the candidate's campaign depository.

20 **Section 9. A new Subsection 9-3.12 SFCC 1987 is ordained to read:**

21 **9-3.12 ~~[Reserved.]~~ [NEW MATERIAL] Qualified Small Contributions.**

22 A. A participating candidate may solicit and accept qualified small contributions  
23 beginning on the date on which the candidate is certified as a participating candidate pursuant to  
24 subsection 9-3.9(A) SFCC 1987.

25 B. The aggregate amount of qualified small contributions from any one contributor

1 to any one candidate shall not exceed one hundred dollars (\$100.00).

2 C. Each qualified small contributions shall be accompanied by a form signed by the  
3 contributor, which shall include the contributor's name, home address, telephone number,  
4 occupation and name of employer. The ethics and campaign review board may, by regulation,  
5 permit the use of an electronic signature on such forms.

6 D. All qualified small contributions received by a candidate shall be recorded by the  
7 candidate's campaign treasurer, deposited in a non-interest bearing account in the campaign  
8 depository and used in the candidate's campaign or disposed of following the election in the  
9 manner required by subsection 9-2.9 SFCC 1987. All such contributions shall be reported in a  
10 timely manner in a campaign finance statement prepared in the manner and filed on the dates  
11 required by subsections 9-2.10 through 9-2.12 SFCC 1987. Campaign finance statements  
12 reporting the receipt of qualified small contributions shall be accompanied by copies of the forms  
13 signed by each contributor pursuant to paragraph C of this subsection.

14 **Section 10. A new Subsection 9-3.13 SFCC 1987 is ordained to read:**

15 **9-3.13 [Reserved.] [NEW MATERIAL] Additional Reports of Qualified Small**  
16 **Contributions; Additional Matching Payments from the Fund.**

17 A. In addition to the dates specified for the filing of campaign finance statements by  
18 subsection 9-2.10 SFCC 1987, campaign finance statements reporting the receipt of qualified  
19 small contributions may also be filed by participating candidates on the fifty-seventh day  
20 preceding the election.

21 B. Within two business days after the filing of a campaign finance statement by a  
22 participating candidate reporting the receipt of qualified small contributions and accompanied by  
23 copies of the foms signed by the contributors as required by paragraph C of subsection 9-3.12  
24 SFCC 1987, the city clerk shall disburse to the candidate an additional payment from the fund  
25 equal to two times the total amount of the qualified small contribution reported in the campaign

1 finance statement distributed pursuant to subsection 9-2.10(A)(1-2).

2 C. The aggregate amount of additional payments made to a participating candidate  
3 pursuant to paragraph B of this subsection shall not exceed two hundred percent (200%) of the  
4 amount initially paid to the candidate pursuant to subsection 9-3.10 SFCC 1987.

5 D. If the amounts required to be paid to candidates under paragraph B of this  
6 subsection exceed the total amount available in the fund, each payment shall be reduced in  
7 proportion to the amount of such excess.

8 **Section 11. Section 9-3.13 SFCC 1987 (being Ord. No. 2009-44, § 15, as amended) is**  
9 **amended to read:**

10 **9-3.14 Reports of Expenditures; Exemption from Certain Reporting Requirements.**

11 A. A participating candidate shall file with the municipal clerk reports under oath of  
12 expenditures made from the payments received from the fund, showing the date and amount of  
13 each such expenditure, the name and address of the person or organization to whom it was made,  
14 the purpose of the expenditure, the aggregate amount of such expenditures made to each person  
15 or organization and the aggregate amount of all such expenditures made by the candidate or by  
16 his or her campaign. A copy of each receipt, printed on 8 ½" by 11" paper, shall be filed with  
17 the municipal clerk with the reports provided for in this subsection.

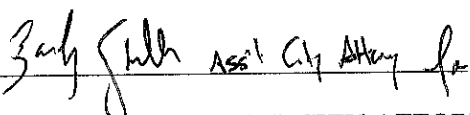
18 B. The reports required by paragraph A of this subsection shall be filed on each of  
19 the days prescribed for the filing of campaign finance statements by subsection 9-2.10 SFCC  
20 1987.

21 C. Except as provided in paragraph A and B of this subsection and paragraph C of  
22 subsection 9-3.8 SFCC 1987, paragraph D of subsection 9-3.12 SFCC 1987 and paragraph A of  
23 subsection 9-3.13 SFCC 1987, participating candidates are exempt from the requirement to file  
24 campaign finance statements imposed by subsections 9-2.10 SFCC 1987 through 9-2.12 SFCC  
25 1987 and from the requirements to file campaign records with the municipal clerk imposed by

1 paragraph D of subsection 9-2.9 SFCC 1987; provided, however, that campaign records shall be  
2 maintained in the manner required by the applicable provisions of the Campaign Code (Section 9-  
3 2 SFCC 1987) and shall be made available upon request to the municipal clerk and the ethics and  
4 campaign review board.

5 D. ~~[A-s]~~Seed money and qualifying contribution reports, ~~[and an]~~ campaign finance  
6 statements and contribution and expenditure reports of a candidate for municipal judge are not  
7 required to be signed or acknowledged by the candidate.

8 APPROVED AS TO FORM:

9  
10  Ass't City Attorney  
11 KELLEY A. BRENNAN, CITY ATTORNEY