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CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD
February 28, 2019**

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**MINUTES OF THE CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD
Thursday, February 28, 2019**

1. CALL TO ORDER

A special meeting of the City of Santa Fe Ethics and Campaign Review Board was called to order on the above date by Justin Miller, Chair, on this date at approximately 3:00 p.m. in the City Council Chambers, 1st floor, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

2. ROLL CALL

Roll call indicated the presence of a quorum as follows:

Members Present:

Justin Miller, Chair
Judith Amer
Paul Biderman
Ruth Kovnat
Kristina Martínez

Members Absent:

Tara Luján
Seth McMillan

Staff Present:

Yolanda Y. Vigil, City Clerk
Marcos Martínez, Assistant City Attorney

Others Present:

Councilor Carol Romero-Wirth
Elizabeth Martin for Carl Boaz, Stenographer

3. APPROVAL OF THE AGENDA

MOTION: Member Kovnat moved to approve the agenda as presented. Member Martínez seconded the motion and it passed by unanimous voice vote.

4. APPROVAL OF MINUTES: August 23, 2018

MOTION: Member Amer moved to approve the minutes of August 23, 2018 as presented. Member Kovnat seconded the motion and it passed by unanimous voice vote.

5. DISCUSSION AND POSSIBLE ACTION

a. Pursuant to Ordinance 2018-28, Whether the ECRB Should, as Permitted by the Ordinance, Enact Regulations Permitting the Use of Electronic Signatures on Certain Forms.

Chair Miller said this discussion addresses the passage of Ordinance 2018-28 where the Governing Body approved changes proposed by this Board. The ECRB made those recommendations quite a long time ago. He was glad the Governing Body took the time and energy to focus on those and eventually pass them. He thanked the City Clerk for facilitating that.

Among the changes, they made three references to electronic signatures of reporting documents. The language for the three says the ECRB "may" allow electronic signatures. At the December 2018 hearing of the Governing Body, there was a fair amount of discussion about the electronic signature provision and what it meant. Questions were raised as to when an electronic signature was appropriate, when it would happen, and other considerations.

The Governing Body wanted to ensure and was concerned if an electronic signature was permitted, whether they would be permitted in a manner that ensured the authenticity of the signature and contribution. Councilors also expressed the sentiment that such a change would be helpful bringing the system into the 21st century. For young people, having such a change might help them participate in the process and make it more efficient. The Council wondered, if this is in the rules, how this would be implemented and what form it might take. It was part of this Board's recommendations that the language permit the Board to allow electronic signatures, if the Board ruled it was necessary. The City Attorney was asked if there was a provision for citizens to use electronic signatures.

The answer was no, but times are changing, and it might be worth the ECRB looking at this and considering it. The ECRB did look at it and received public comment that recommended a provision in the code to allow electronic signature by rule. That was our recommendation to City Council, and it was adopted by them. The question now before the Board is whether the Board would like to consider permitting electronic signature on forms and if so, how it would be done and if it should be done, what form that rule would take. Today is a discussion to see if we want to pursue it and if it can be done. If so, there is more work down the road.

Member Biderman asked where the Board sees the opportunity for this.

Chair Miller said the seed money count, qualifying count and quantity of small contributions. Those are three sections of the code. One consideration raised with respect to seed money, it says the size for seed money must be no more and no less than \$5. City Attorney's Office said this does not work with an electronic contribution

because there could be an administrative fee attached to it. There may be times when an administration fee is not charged so that is for us to explore

Member Amer asked if a city committee has ever promulgated regulations before.

Chair Miller said this Board has and he imagined that other boards have too.

Member Amer noted that these are regulations that affect the public. She asked if this Board is authorized to promulgate regulations or just recommend regulations to the Governing Body.

Mr. Martinez said he would like to review that procedure for how the rules would get adopted. There are certain sections of the ordinance that do amend rules and regulations so that is not unheard of, but for the process by which the rules are adopted formally, he will need to get more information. It can be done but how it gets done administratively he will have to come back to explain.

Chair Miller said the Ordinance setting up this Board says the Board can promulgate rules.

Member Amer she did a little bit of research and the State Commission of Public Records and the state recommended the administration has to rule. It is very detailed and might be something to look at.

Chair Miller asked when that rule was done.

Member Amer said it was on July 1, 2015, pursuant to the New Mexico Uniform Electronic Act.

Chair Miller recognized Council Romero-Wirth in the audience and asked to hear her thoughts about it.

Councilor Romero-Wirth thanked Chair Miller and Board members. She pointed out that she thought in the ordinance just passed, Council gave this Board the authority to come up with regulations, so you have that authority. She asked Mr. Martinez how you go about that and how you publish for comment needs to be researched. We did give you the authority to promulgate a regulation with regard to electronic signature. You summed up the concerns that were expressed in December of last year.

Member Martinez said the concern is the idea of small contributions. You have to go out and meet the public and get these nominal amounts. There are some concerns that the intent for the candidate to meet potential voters would be lost if the candidate just put up a website and people clicked on it. So it makes sense, but it needs a very detailed set of regulations.

Chair Miller pointed out that in order to have electronic signatures you also need an electronic contribution process.

Member Martinez said she was thinking that, too.

Chair Miller said that seems to be opening the door to that because there has to be a verifiable connection between the signature and the form.

Member Amer added that there would be a certain expense the City would have to incur to purchase a system for electronic signatures and to get electronic deposits. She did not know if the City already has that software.

Chair Miller asked why the City would need that as opposed to the candidate.

Member Amer explained that if you want to have it be uniform, you would want the City to have webpage control where they do a signature - maybe not for contributions but other aspects of this.

Chair Miller asked if there is any situation now where a candidate can accept an electronic contribution through the City.

Ms. Vigil believed if the candidates that are not publicly financed could set up their own website and do something through Pay Pal so the contribution can be deposited into their accounts, that would be different from public financing at this point. Per the memo, that contribution must be \$5, no less and no more.

Chair Miller reasoned that if that was not public financing when they accept electronic contributions, they must also collect the information they are required for the City.

Ms. Vigil said they have to report it, but they do not have forms like the publicly financed candidates do.

Member Martínez concluded that would have the information to report it but not on a form.

Ms. Vigil agreed.

Councilor Romero-Wirth made a distinction. You need to understand when a qualified contribution allows you to become publicly financed. When a voter signs that form, someone in the City Clerk's Office has to confirm the contributor is a registered voter in the district of the candidate. In that instance, this a different kind of signature than if you are a privately financed candidate. The signature has different values and

purposes that the contributor should be aware of. If you are raising money to get matched by City, that signature does not have to get verified as a voter in the correct district. They can be from anywhere. Seed money can come from anywhere. Is this the qualified contributions?

Ms. Vigil said yes. A digital signature can mean different things. An electronic signature could be just typing in your name and it pops up in whatever font you want. That is exactly what we don't want on qualified signatures. That signature has to be matched to certified voters. Are scanned forms with signatures acceptable.

Chair Miller thought it might be hard to verify a signature on the screen.

Member Biderman saw the problem but suspected it would be the same volume of "push this button" and would not be more personal contact by candidates or supporters that will lead them to where they can contribute and sign. You talked about concerns about administrative fees. He knew that Act Blue does not say there is a fee on that software, it says "leave a tip." You can contribute a flat \$5 on that. There is software out there. We have underplayed the fact that Councilor Romero-Wirth did a remarkable job getting this. She came up with a miracle and it passed the Council. Thank you. We worked a lot to get this done.

Councilor Romero-Wirth said to Member Biderman's point that Act Blue, you may not see it on your side. But on the candidate side, they take a very small percentage for running the software for you and give you what is left. You don't see that as a donor but that is a problem for qualifying for public financing. It has to be \$5. The minutes of December 12th Council meeting in the packet for January 9th Council meeting, there is discussion that occurred between Councilors on this issue of electronic signatures that might be helpful to this Board. Certainly there was concern around making sure you protect the integrity of the \$5 donations. There was some discussion about if there should be a unified process such as software the City ran for the purpose of publicly financed candidates. It is another thing to consider.

Member Kovnat assumed from conversation that we have not researched any other cities or political bodies with respect to this. Flying in the dark, not knowing if has been done before and what the strength and pitfalls are, she felt we should not proceed until we get some research done. This conversation has made her very skeptical about using electronic signature for publicly financed candidates. That is where she is going but would love to know what experiences were had elsewhere.

Chair Miller had another question which was if the signature for the qualifying contributions needed to be checked to make sure they were from qualified electors in a particular district. The contributions for seed money and quality control also require a signature but is it your understanding those signatures don't need to be checked or verified?

Ms. Vigil said that is correct. Those contributions can come from anyone. They do not have to be from someone in the City or Santa Fe registered voters. They do not have to be verified.

Chair Miller surmised it was not to the same level of importance as the qualified contributions.

Mr. Jim Harrington said that everything that has been said seems to him to be right on. He noticed the Board actually had that authority before the Council vote. All the provisions of the law say the ECRB does have that authority.

Chair Miller wanted to have research done and have a subcommittee to look at this.

Member Martínez was willing to work on it but had no time until April.

Member Amer said she was jammed in March but could work on it in April. If it had any urgency, she would have to decline.

Ms. Vigil said there is a sense of emergency on this issue. For the November 2019 election, candidate packets have to be released during the first week of May, so it needs to be decided in March. There is a time crunch. Or it may be the Board would not be able to do electronic signatures for the November election. The upcoming election will include four Councilor seats and a municipal budget.

Member Martínez said Member Luján may have some expertise on this. Otherwise, she thought they should put it off to the following election.

Chair Miller designated Member Luján and Member McMillan for the subcommittee. He agreed it seems to be something we will want to not do for the November election since it has to be done so quickly. He will talk with them and see if they can jump on it right away. If they are unable to do, then we cannot get it done for November.

Member Kovnat wondered if we could ask for some preliminary research as to other cities from the City Attorney's Office.

Chair Miller asked if that would be possible.

Mr. Martinez said yes, that he would be happy to look into any information he can find what other cities have done to address electronic signatures in general and if there is an amendment, he would bring it back to the Board.

Member Amer said at the federal courts, when you submit a document, have you sign on a piece of paper then scan it and email it. That might be a way to go with

qualifying contributions. The candidates could then email what they receive in a PDF so the City could cross-check the signatures.

Chair Miller agreed that might be a possibility.

Member Amer said the candidate would not have to have a website with that arrangement.

Ms. Vigil said it would have to be looked at and if workable, would have to be added into the rule.

Chair Miller asked if the Clerk accepts anything electronically.

Ms. Vigil said that at this point, it is all hard copy.

Member Biderman asked Councilor Romero-Wirth if there were some other issues raised by other councilors and what the issues raised by Councilor Vigil Coppler and Councilor Harris were.

Council Romero-Wirth said she read the minutes and thought the Board has touched on everything. You may want to review the minutes as well. Councilor Abeyta was definitely supportive of the fact that when need to do some things around electronic signature. We are moving more and more in this direction. Young people are particularly fluid in this need to make the process easy, if young people going to run. She also suggested we may be on too short a time frame here to be ready for the November election. She did not know what process the Board must follow in order to adopt a regulation, whether it includes a public notice and public comment and that sort of thing. She urged them to not do a bunch of hurry-up stuff and find it not possible to get it done.

Member Biderman recalled two members did vote against the resolution and entire ordinance for that reason - this signature issue to councilors.

Councilor Romero-Wirth agreed. The biggest problem is the qualifying contribution that the candidate needs to be a publicly financed candidate. There were concerns on the part of several councilors. They don't want fraud. What are we doing to protect the integrity of the process?

Mr. Harrington said he understood from Councilor Rivera that he voted against the idea in general of the City putting more money into it. The issue for this election might be wise to defer this until the election following this one. A bill in the legislature, if that passes, will produce a need for an urgent ordinance change. Under current law, a candidate cannot qualify until 60 days before the ballot. His recommendation would be to amend the law to say you don't have to formally qualify for the ballot just 60 days out.

Chair Miller said that is getting into the next time. It is important for this one too. There may not be time to do this rule if the Board wants to go that way. He will get with the two who were willing to help. If it complies and we can't be ready, that may be the case.

Member Biderman had no problem assigning the work to the two but thought someone from the group who has heard the discussion needs to be on it.

Chair Miller said we will get the minutes to them.

Member Martínez said if we put it off, she would be happy to serve on the committee with them.

6. DISCUSSION

a. Governing Body and Voter Approval of Opt-In to the Local Election Act

Chair Miller this discussion also involves what Mr. Harrington brought up as potential changes to City Code and changes to election laws at the state level. Potentially, it could be very significant. HB 407 is a 470-page bill. It would change a lot of what the City does. It may pass and it may not. Potentially, it could cause a lot of work for the City to do on revising the code. That work is for the ECRB to do. It may be only small pieces coming before the ECRB. Together, we could have a brief discussion about it for information and hear from the City about how the City might go about approaching the task making the necessary changes and where ECRB may become involved in this process.

Ms. Vigil said this is difficult because this bill has not been approved yet. We are trying to mesh everything at this point. She honestly believed her comment on any of this would be premature. We need to see what passes. Portions of 407 would repeal HB 98 and we may have to amend certain sections of our code. It is pretty complicated. Right now we are dealing with nominating petitions. There are a whole lot of issues. She did not think she cared to comment on what changes we will have to make until we see what is approved.

Chair Miller said that makes sense, but it would start with the City Clerk and City Attorney and this Board would get involved when the bill is approved and needed to know what they are envisioning.

Ms. Vigil agreed.

Councilor Romero-Wirth wanted to frame this. There is a lot of work, to be done for sure. She wanted to be clear. HB 98 last year was a big change on how we run

elections in this state. HB 407 is scheduled for the House Judiciary Committee tomorrow at 1:30 before it goes to the floor. It is essentially a clean-up of the changes made in HB 98, cleaning up the things that were not going to work. Of all those pages, there is only a certain segment that pertains to city elections and only a couple of issues that may affect us where we may have to step in to do something. A tool for it is repealing some sections of our code. She did not want to create panic or that we have an election law that does not work. As we worked on this bill it is not something that will not work and just going to currently work. There is a lot of work to be done to the Clerk's point. We want to cast that in the proper light.

Mr. Harrington said as far as the city code goes, the election code is almost entirely preempted by the state code. The public financing thing is the one with the most affect.

Mr. Martínez said, to bring back to agenda, HB 98 passed and did move the City election from March to November. That was a significant move that he hoped this Board was in favor of. It makes good sense to consolidate elections. Some work we can look at now are sections of the State Code that the City Code points to, where statutes get passed. He could bring those back to this Board if appropriate. He thought Ms. Vigil has identified some issues with the current bill as to public financing. It would be helpful to have the thoughts of this Board once we know what passes. What will affect the deadlines in the electronic calendar may make different deadlines for public and private financing. That could create issues. That very small piece we are aware of and we are talking to the Secretary of State about it. We may talk to the bill sponsor and see if we need to submit amendments or not.

Member Biderman asked which bill has the most effect.

Ms. Vigil said HB 407 is the main one.

Councilor Romero-Wirth said HB 98 passed last year and was signed by the Governor and is current law. We as a City, opted into that bill, creating the local election act. The bill is be voted on now and the hearing tomorrow is what passed the first committee - HB 407. That is the bill that is the clean-up of what HB 98 did last year.

Chair Miller noted that some of the clean-up items are very important. It is likely that some version of HB 407 will pass.

Member Amer asked if there are other known cities that passed ordinances adopting the local electronic signature act and have public financing.

Ms. Vigil believed Las Cruces has opted in and has public financing, Albuquerque was not sure of anyone else.

Member Amer thought it might be helpful to speak with the people there.

Ms. Vigil said we have not done that at this point.

Mr. Martinez said the Las Cruces ordinance was not very entangled with HB 407, so it is easier for them. Albuquerque has had more issues with HB 407.

Councilor Romero-Wirth said the sponsor very well may have answers for our system. But all three cities have different systems. Senator Ivey-Soto is very familiar with the Santa Fe system and wants to protect the rank choice voting and public financing. He has been working with city staff and Mr. Harrington to perfect the integrity of the public financing system. The hearing tomorrow is important. There are amendments from the sponsor. It might require the Governing Body's attention once all the dust settles.

Chair Miller believed that was about all the Board needed to do today on this issue. He asked that it be expressed to the City that this Board is ready to help as we can and anything within our scope, when the time is right.

7. BOARD MATTERS

Member Biderman noted that this Board is being sued

Mr. Martínez explained that the court has not made any rulings on motions for summary judgment from last August. We are waiting to hear more. He has been talking our co-counsel. Nothing has happened yet.

Member Martínez asked which judge has it.

Mr. Martínez said it is with Judge Herrera.

Member Biderman said Assistant Attorney Zach Shandler, on behalf of the Board sent Judge Herrera a letter to him thanking him for all the work he did to get us as far as we have come.

Chair Miller agreed. He has provided voice to the Council and helped with all we have gotten from the City Attorney's Office over the years. He was very helpful, and he thanked Mr. Shandler for that.

Member Biderman asked if a letter of appreciation would be okay.

Chair Miller agreed.

8. PUBLIC COMMENT

There were no public comments.

9. SCHEDULE NEXT MEETING

No date was scheduled.

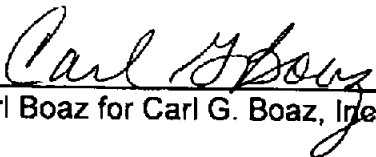
10. ADJOURNMENT

Upon motion by Member Martinez and second by Member Kovnat, the meeting was adjourned at 4:15 pm.

Approved by:

Justin Miller, Chair

Submitted by:



Carl Boaz for Carl G. Boaz, Inc.