



## SHANDLER, ZACHARY A.

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**From:** Yvonne Chicoine <ychoicoin@comcast.net>  
**Sent:** Tuesday, May 30, 2017 12:11 PM  
**To:** SHANDLER, ZACHARY A.  
**Cc:** Gessing, Paul; colin@theblf.com; scott@fuqualawpolicy.com; Sean Krispinsky; kheld@earthlink.net; etstein.crlw.com; EAbdoli@nmgovlaw.com; sandrawechsler@gmail.com; smartprogressnm@gmail.com; HFerguson@commoncause.org; eliilyonglee@gmail.com; harr77@earthlink.net; VHarrison@commoncause.org  
**Subject:** Re: Santa Fe ECRB requesting public comment who appeared in front of ECRB in Spring 2017

Good afternoon, Zach.

Thank you for contacting the Republican Party of Santa Fe County (RPSFC) to invite its views on questions the Ethics and Campaign Review Board has posed for public comment.

I am writing to let you know that I will not be responding to the questions on which the Review Board is soliciting public comment. In the absence of a specific context for how the City might use an RPSFC response, any RPSFC response would be premature and ill-advised. That said, if the Review Board proceeds to advance proposed revisions to the Campaign Code for public comment and hearing, the RPSFC would be interested in reviewing that draft language and responding at that time.

Best regards,

Yvonne

Yvonne Chicoine, Chairman  
Republican Party of Santa Fe County  
Post Office Box 32087  
Santa Fe, NM 87594  
h: 505/820-2397  
c: 505/235-6155  
ychoicoin@comcast.net

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**From:** "ZACHARY A. SHANDLER" <zashandler@ci.santa-fe.nm.us>  
**To:** pgessing@riograndefoundation.org, colin@theblf.com, ychoicoin@comcast.net, scott@fuqualawpolicy.com, "Sean Krispinsky" <skrispinsky@ameribev.org>, kheld@earthlink.net, "etstein.crlw.com" <etstein.crlw.com@gmail.com>, EAbdoli@nmgovlaw.com, sandrawechsler@gmail.com, smartprogressnm@gmail.com, HFerguson@commoncause.org, eliilyonglee@gmail.com, harr77@earthlink.net, VHarrison@commoncause.org  
**Cc:** "ZACHARY A. SHANDLER" <zashandler@ci.santa-fe.nm.us>  
**Sent:** Wednesday, May 24, 2017 1:13:18 PM  
**Subject:** Santa Fe ECRB requesting public comment who appeared in front of ECRB in Spring 2017

### CITY OF SANTA FE ETHICS AND CAMPAIGN REVIEW BOARD

Questions on the Campaign Code for public comment

**The City of Santa Fe Ethics and Campaign Review Board is asking for public written comment on how to answer several questions. Please email your written comments by June 7, 2017 to Geralyn Cardenas (City Clerk's office) at [gfcardenas@santafenm.gov](mailto:gfcardenas@santafenm.gov).**

1. How does the term "entity," as it appears in various provisions of §9-2 of the Campaign Code (e.g., in §§9-2.3K, 9-2.6, or 9-2.12 B), relate to the definition of "business or organizational contributor," as it is used in §9-2.3 J (2)?
  - a. Please provide an example(s) of an "entity" as found in §§9-2.3K, 9-2.6, or 9-2.12 B.
  - b. Can an "entity" ever be an individual?
  - c. How is an "entity" distinguishable from a "business or organizational contributor" in §9-2.3 J (2)?
2. When the following group gives money or in-kind services in a campaign are they a "business or organizational contributor" or an independent expenditure "entity"?
  - a. Real estate firm
  - b. Restaurant
  - c. Teacher's union
  - d. Political party
  - e. Based on your answers, do any relevant exemptions in §9-2.6 apply to any of these groups?
  - f. Based on your answers, if the candidate accepts the money or in-kind services from any of these groups, does the candidate have to add the tag line to his/her literature: "This campaign material is supported in part by donations from an organization that is not required to disclose its contributors to the Santa Fe city clerk."
3. What do the city staff and the public suggest as the best ways to enforce the provisions of §9-2.6?

**Thank you.**

Thank you,  
Zachary Shandler  
City Attorney's Office  
955-6303

**SHANDLER, ZACHARY A.**

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**From:** Eli Il Yong Lee <eliilyonglee@gmail.com>  
**Sent:** Wednesday, May 31, 2017 4:39 PM  
**To:** SHANDLER, ZACHARY A.; CARDENAS, GERALYN F.  
**Cc:** Sandra Wechsler  
**Subject:** Re: Santa Fe ECRB requesting public comment who appeared in front of ECRB in Spring 2017  
**Attachments:** ECRBResponse.docx

Hi Zach and Geralyn,

Please find some thoughts from Sandra and me.

Hope you are well.

Best,  
Eli

On Wed, May 24, 2017 at 1:13 PM SHANDLER, ZACHARY A. <[zashandler@ci.santa-fe.nm.us](mailto:zashandler@ci.santa-fe.nm.us)> wrote:

**CITY OF SANTA FE**

**ETHICS AND CAMPAIGN REVIEW BOARD**

Questions on the Campaign Code for public comment

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a. Real estate firm

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c. Teacher’s union

d. Political party

e. Based on your answers, do any relevant exemptions in §9-2.6 apply to any of these groups?

f. Based on your answers, if the candidate accepts the money or in-kind services from any of these groups, does the candidate have to add the tag line to his/her literature: “This campaign material is supported in part by donations from an organization that is not required to disclose its contributors to the Santa Fe city clerk.”

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**Thank you.**

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Zachary Shandler

City Attorney’s Office

955-6303

**1. How does the term “entity,” as it appears in various provisions of §9-2 of the Campaign Code (e.g., in §§9-2.3K, 9-2.6, or 9-2.12 B), relate to the definition of “business or organizational contributor,” as it is used in §9-2.3 J (2)?**

“An entity” includes a “business or organizational contributor”; a “business or organizational contributor” is one type of “entity.”

a. Please provide an example(s) of an “entity” as found in §§9-2.3K, 9-2.6, or 9-2.12 B.

An “entity” could be a political committee or a 501c4 organization.

b. Can an “entity” ever be an individual?

Yes, if the individual has made expenditures under \$250 in the aggregate.

c. How is an “entity” distinguishable from a “business or organizational contributor” in §9-2.3 J (2)?

In this section, a “business or organizational contributor” is simply a type of “entity.” In the section cited, there are other types of entities that would be defined differently than stated (i.e. an individual).

**2. When the following group gives money or in-kind services in a campaign are they a “business or organizational contributor” or an independent expenditure “entity”?**

a. Real estate firm

b. Restaurant

c. Teacher’s union

d. Political party

If any of these entities gives money, then they fit the definition of a “business or organizational contributor.”

If they make an in-kind service to the campaign, by definition, they are making a coordinated contribution, and thus they are also a “business or organizational contributor.”

If they make an independent expenditure, than they are an “entity,” because by definition, they are not making a contribution but are instead, making an expenditure.

e. Based on your answers, do any relevant exemptions in §9-2.6 apply to any of these groups?

Yes.

For a real estate firm, a restaurant, a teachers’ union, or a political party: certainly, impartial forums and voter guides would be exempt from reporting because no electioneering communications has occurred. Similarly, electioneering communications to bona fide members, stockholders, etc. is already exempted by federal law.

“Communications to the news media” (e.g. a press release) should remain exempt from reporting

by these entities, as well as “reports or commentary by the news media” (which would include editorials) because the entity has no control over what the new media will eventually publish or say.

f. Based on your answers, if the candidate accepts the money or in-kind services from any of these groups, does the candidate have to add the tag line to his/her literature: “This campaign material is supported in part by donations from an organization that is not required to disclose its contributors to the Santa Fe city clerk.”

The statutory language is too poorly worded to offer an opinion.

First, neither “donation” nor “organization” are defined terms.

Second, what is “an organization that is not required to disclose its contributors to the Santa Fe City Clerk”? A restaurant or a law firm does not have “contributors.” They have customers or clients. Would they fall under this category if they made a donation to a candidate? Often, trade associations collect dues. Are dues-paying members “contributors”? Does the trade association fall under the intent of “an organization that is not required to disclose its contributors to the Santa Fe city clerk”? Is there an assumption that we are only addressing “organizations” that have “contributors,” or are we casting the net wider to include any non-individual (i.e. an “organization”) who has made a contribution, whether that non-individual has its own class of people it calls “contributors” or not?

Third, virtually all candidates and PAC’s would have to add the tagline to their materials if the statute was interpreted broadly, because a single contribution from a restaurant, law firm, business, or any other entity that does not have a class of individuals called “contributors” would trigger this tagline. Practically speaking, if virtually all candidates and PAC’s have to add the tagline, it renders the tagline somewhat useless.

### **3. What do the city staff and the public suggest as the best ways to enforce the provisions of §9-2.6?**

It would be most difficult to enforce a provision that is unclear to begin with.

**1. How does the term “entity,” as it appears in various provisions of §9-2 of the Campaign Code (e.g., in §§9-2.3K, 9-2.6, or 9-2.12 B), relate to the definition of “business or organizational contributor,” as it is used in §9-2.3 J (2)?**

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**2. When the following group gives money or in-kind services in a campaign are they a “business or organizational contributor” or an independent expenditure “entity”?**

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e. Based on your answers, do any relevant exemptions in §9-2.6 apply to any of these groups?

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f. Based on your answers, if the candidate accepts the money or in-kind services from any of these groups, does the candidate have to add the tag line to his/her literature: "This campaign material is supported in part by donations from an organization that is not required to disclose its contributors to the Santa Fe city clerk."

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### **3. What do the city staff and the public suggest as the best ways to enforce the provisions of §9-2.6?**

It would be most difficult to enforce a provision that is unclear to begin with.

## **SHANDLER, ZACHARY A.**

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**From:** SHANDLER, ZACHARY A.  
**Sent:** Wednesday, June 07, 2017 8:19 AM  
**To:** CARDENAS, GERALYN F.  
**Cc:** SHANDLER, ZACHARY A.  
**Subject:** FW: CCNM Responses to ECRB Questions of 5/24/17

Please save for the next ECRB packet.

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**From:** James Harrington [mailto:harr77@earthlink.net]  
**Sent:** Tuesday, June 06, 2017 8:49 PM  
**To:** SHANDLER, ZACHARY A. <zashandler@ci.santa-fe.nm.us>  
**Cc:** Justin Miller <justinomiller@gmail.com>; Viki Harrison <VHarrison@commoncause.org>; Heather Ferguson <HFerguson@commoncause.org>  
**Subject:** CCNM Responses to ECRB Questions of 5/24/17

Dear Zach and board members -

Thank you for your recent e-mail requesting comments on the interpretation and application of the terms “entity” and “business or organizational contributor” in the city’s Campaign Code. Our comments are set forth below, starting with some general observations and then turning to the answers to your specific questions.

Since the terms “entity” and “business contributor” were already used in the Campaign Code before our organization began to work with the city on these issues (Ord. No. 1998-41, §§3, 4), we cannot shed any light on the intent of the drafter in the initial adoption of these terms. The only useful historical information we can offer derives from our involvement in the 2014 amendment to the code that expanded the term “business contributor” to encompass any “business or organizational contributor” and broadened the definition of that term in various respects (Ord. No. 2014-12, §4). Before that change, candidates and political committees were required to report only their “individual contributors” and their “business” contributors (Ord. No. 1998-41, §§3, 10). Since there were certain potential contributors, such as labor unions and non-profit advocacy groups, that could be characterized as falling within neither of these categories, there was a risk that certain contributors to campaigns would escape reporting based solely on their form of legal organization. The 2014 amendments were suggested in order to close this loophole and thus to further the Code’s declared objective “[t]hat political campaign contributions and expenditures be fully disclosed to the public” §9-2.2(B) SFCC).

Our overall view on the interpretation of the terms “entity” and “business or organizational contributor” is that both these terms should be interpreted and applied by the board in accordance with this same objective - that is, of ensuring maximum public disclosure of all spending on city elections and, more specifically, of preventing any campaign spender or contributor from avoiding disclosure by reason of some legal artifice that would exclude them from the definitions of those who are subject to the code’s requirements. Both of these terms are literally broad enough to encompass anyone or anything that has chosen to make expenditures or contributions of the kind that are required to be reported by the sections of the Campaign Code in which these terms are used. We urge the board to interpret these terms in this expansive manner in order to ensure that these reporting requirements are fully enforced and not left vulnerable to evasion. We offer our suggestions for resolving each of the board’s specific questions in the hope that the board will adopt this approach.

1. How does the term “entity,” as it appears in various provisions of §9-2 of the Campaign Code (e.g., in §§9-2.3K, 9-2.6, or 9-2.12 B), relate to the definition of “business or organizational contributor,” as it is used in §9-2.3 J (2)?

Although these two terms are used in separate sections of the Code that impose different reporting obligations on campaign participants who engage in different kinds of activities, it is our view, as stated above, that wherever either of these terms is used, they should be broadly interpreted so that no one who engages in the activities that trigger those reporting obligations will be able to avoid reporting merely by reason of the form in which they are organized. As we just noted, achieving this kind of broad interpretation was actually the purpose of the 2014 amendments expanding the scope and definition of the term “business or organizational contributor” in Sections 9-2.3(J) and 9-2.11(A)(3). The intent was that all contributors to a candidate or political committee should be reported under Section 9-2.11 regardless of the contributor’s precise legal character or form of organization. Although we were not similarly privy to the original intentions of the drafters who introduced the term “entity” into the code, we submit that this term should be interpreted in the same all-encompassing manner in the code sections in which it is used. So, for example, in Section 9-2.3(K), defining “coordinated expenditure,” and in Section 9-2.6, prescribing the reporting duties of independent campaign spenders other than political committees, the term “entity” should be interpreted to cover anyone or anything that makes the specific kinds of campaign expenditures that are covered by those code provisions.

1.a. Please provide an example(s) of an “entity” as found in §§9-2.3K, 9-2.6, or 9-2.12 B.

The last election provided several examples of the kinds of persons and things that would be encompassed by an appropriately broad definition of the term “entity,” including Smart Progress New Mexico, Rio Grande Foundation, Coca-Cola Bottling Co. of Santa Fe, American Beverage Association, IATSE, Organizing in the Land of Enchantment, Local Flavor and Interstate Policy Alliance.

1.b. Can an “entity” ever be an individual?

In three of the five code provisions in which the term “entity” is used, the answer to this question is either inconsequential or obvious from the context. Thus, in Sections 9-2.3(K) and 9-2.6(A), the term “entity” is used only as part of the phrase “individual or entity” or “person or entity.” Since individuals are obviously covered by the terms “individual” and “person,” it does not matter, for purposes of applying these provisions, whether individuals would also be covered by the term “entity.” In Section 9-2.3(N), which defines a “political committee” to be “any entity formed for the principal purpose of” carrying on specified types of campaign activities, it is obvious that the term “entity” does not include individuals, since an individual could never properly be characterized as having been “formed for the principal purpose of” engaging in a particular activity.

This leaves only Sections 9-2.6(B) and 9-2.12(B), both of which were added to the code by amendments adopted in 2015. The first of these provisions, Section 9-2.6(B), requires that “[a]ny person or entity that has to file under this subsection and receives contributions from another *entity* that does not have to disclose its contributions to the city clerk shall place the following visible disclosure on its campaign materials: ‘This campaign material is supported in part by donations from an organization that is not required to disclose its contributors to the Santa Fe city clerk.’” The second provision, Section 9-2.12(B), similarly provides that any “candidate or political committee that receives contributions from another *entity* that does not have to disclose its contributions to the city clerk shall indicate as such on the campaign finance statement submitted to the city clerk pursuant to existing reporting requirements.” In both of these instances, the code language offers no clear answer to the question whether the term “entity” is meant to include individuals, and the ordinary tools of interpretation seem to point in conflicting directions. Thus, on the one hand, the fact that

Section 9-2.6(B) refers to the “entity” in question as “an *organization* that is not required to disclose its contributors” suggests that, at least in this provision, the term “entity” is not meant to include individuals. On the other hand, however, excluding individuals from the scope of this term in applying these provisions might tend to frustrate the code’s objective of full disclosure because it would allow the requirements of these sections to be evaded by the simple tactic of employing an individual as the final intermediary between the contributor and the recipient.

Common Cause suggests that this problem should be resolved by appropriate code amendments, which could include (1) Inserting the words “person or” before the word “entity” where that word is now used by itself in these provisions, and (2) replacing the word “organization” with “person or entity” in Section 9-2.6(B). (It would probably be easy enough to include these minor changes in the code amendments that we understand the board is already contemplating in order to bring some overall consistency to these code provisions - that is, in order to require that candidates and political committees include the specified disclosure in their campaign materials as well as in their filings with the city clerk, and that persons or entities filing reports under Section 9-2.6(A) include this disclosure in their clerk filings as well as in their campaign materials.)

*1.c. How is an “entity” distinguishable from a “business or organizational contributor” in §9-2.3 J (2)?*

These terms are not distinguishable in any abstract or absolute sense. They are used in different sections of the code that impose different reporting obligations on campaign participants engaging in different sorts of conduct. As advocated above, both terms should be broadly construed by the board to prevent evasion of the code’s requirements through legal artifices designed to exclude some campaign participants from the definitions of the kinds of persons and things to which those requirements were meant to apply. Thus, for example, as it is used in Sections 9-2.3(J) and 9-2.11(A)(3), the term “business or organizational contributor” should be construed in such a way as to ensure that all contributors to a candidate or political committee shall be reported regardless of their legal character. Likewise, the term “entity,” where it is used in Sections 9-2.3(K) and 9-2.6, should be construed as broad enough to cover anyone or anything that makes the types of expenditures that are described in those provisions.

*2. When the following group gives money or in-kind services in a campaign are they a “business or organizational contributor” or an independent expenditure “entity”: (a) Real estate firm; (b) Restaurant; (c) Teacher’s union; (d) Political party?*

There is no indication in the code that the quoted terms are meant to be mutually exclusive. To the contrary, as the recent election illustrates, the same campaign participant will sometimes fall within the definitions of both of these terms if both of them are given the kind of broad interpretation that is needed to fulfill the aim of achieving maximum disclosure under the Code. Thus, for example, anyone or anything (other than an “individual contributor”) that contributes money or in-kind services to a candidate or political committee - including any of the types of groups that are listed in this question - should be treated as a “business or organizational contributor” within the meaning of Section 9-2.11 in order to ensure that no contribution is exempted from reporting under that section by the fact that the contributor happens to have one legal character rather than another. At the same time, however, if in-kind services donated by such a business or organizational contributor happen to consist of the type of spending on advertising materials that is described by Section 9-2.6(A), that contributor should also have to file the detailed expenditure report that is required by that section from “any person or entity” who engages in such spending, and - most importantly - should not be relieved of the duty to file such a report by the mere the fact that some candidate or political committee may have reported the same expenditure as an in-kind contribution.

This interpretation of the code is necessary in order to avoid effective nullification of the reporting requirements of Section 9-2.6(A). If the terms “entity” and “business or organizational contributor” were

instead construed as mutually exclusive and anyone whose spending had been reported as an in-kind contribution from a “business or organizational contributor” under Section 9-2.11 were thereby excluded from the scope of the term “entity” in Section 9-2.6 and thus excused from filing a spending report under that section, any independent spender could entirely evade the detailed reporting requirements of that section by simply having a friend or ally set up a political committee and report their spending as an in-kind contribution for “advertising” or “media.” This stratagem was actually employed in the last election, where several of the in-kind contributors to the two participating political committees were reported to have made expenditures for “signs,” “direct mail pieces,” “print media” and various other types of campaign advertising that clearly fall within the scope of the sort of “public communications” for which expenditure reports are required under Section 9-2.6. Yet no such reports were ever filed by any of these entities, who apparently harbored an unjustifiable belief that the cryptic references to their expenditures in the campaign finance statements of the two political committees had somehow excused them from filing the detailed spending reports that are required by Section 9-2.6. As noted by at least one editorial writer (Journal North, May 5, 2017), the voters were thereby deprived of all the detailed information about the campaign spending of these entities that would have been elicited by reports properly filed under that section. We hope the board will make clear that it will not again tolerate this maneuver, and that anyone who makes expenditures of the kind covered by Section 9-2.6 will henceforth have to comply with its clear requirements regardless of whether or not their spending has also been reported by someone else as an in-kind contribution under Section 9-2.11.

*2.e. Based on your answers, do any relevant exemptions in §9-2.6 apply to any of these groups?*

Yes. By the express terms of Section 9-2.6(A), none of these groups would be required to file reports under that section “for expenditures made exclusively for communications to the news media, editorials, reports or commentary by the news media, impartial candidate forums or debates or the announcements thereof, or for impartial voter guides allowed by the Internal Revenue Code for Section 501(c)(3) organizations or a communication by a membership organization or corporation to its current members, stockholders or executive or administrative personnel unless the membership organization or corporation is a campaign committee or a political committee.”

*2.f. Based on your answers, if the candidate accepts the money or in-kind services from any of these groups, does the candidate have to add the tag line to his/her literature: “This campaign material is supported in part by donations from an organization that is not required to disclose its contributors to the Santa Fe city clerk.”*

No. Under the Code as it now reads, a candidate who accepts contributions from an entity that does not disclose its contributors is required to include that information only in the candidate’s filings with the city clerk under Section 9-2.12(B) and not in the candidate’s campaign materials, the contents of which are still governed by the unamended provisions of Section 9-2.5. The opposite is true of independent spenders reporting under Section 9-2.6, who must include this information in their campaign materials pursuant to Section 9-2.6(B) but not in their filings with the city clerk under the still unamended provisions of Section 9-2.6(A). As noted above, we understood from the discussion at recent board hearings that the board is contemplating additional code amendments that would resolve these inconsistencies in the 2015 amendments. If and when the Code is amended to require this “tag line” in candidates’ campaign materials as well as in their clerk filings, then yes, candidates would have to include an appropriate disclosure in their campaign literature if they accepted money or in-kind contributions from an entity that did not disclose its own donors. We suppose this might happen if the contributor to the candidate were a teachers’ union or a political party, but probably not if it were a real estate firm or a restaurant, which are profit-making enterprises that wouldn’t normally receive donations of any kind.

*3. What do the city staff and the public suggest as the best ways to enforce the provisions of §9-2.6?*

We have offered suggestions for enforcing these provisions at various points in the preceding discussion.

We hope these comments are helpful.

Jim Harrington  
Viki Harrison  
Heather Ferguson  
Common Cause New Mexico

## **CARDENAS, GERALYN F.**

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**From:** Berl Brechner <bbrech@bestweb.net>  
**Sent:** Tuesday, June 06, 2017 7:48 PM  
**To:** CARDENAS, GERALYN F.  
**Subject:** response to Ethics and Campaign review board Qs

June 6, 2017

To : Ethics and Campaign Review Board

Re: Online questions regarding meanings of various items including "entity", and enforcement provisions of campaign code (posted online sometime in May, 2017, but undated at least as seen online).

The interpretations and definitions you are seeking comment on are, I believe, well established in general definition, in law, in commerce, in accounting, and in tax code (and in court decisions on matters related to the above). The City of Santa Fe has counsel, it has business and finance people, and hopefully they should be able to offer professional and competent answers and interpretations.

While these various applications and uses of "entity" will differ somewhat, the general use is quite broad and encompassing, and the general definition basically says that anything that is identifiable and can "speak" for itself is an "entity".

Two examples:

Merriam Webster online: "1a : being, existence; especially : independent, separate, or self-contained existence. b : the existence of a thing as contrasted with its attributes. 2 : something that has separate and distinct existence and objective or conceptual reality."

businessdictionary.com: "A person, partnership, organization, or business that has a legal and separately identifiable existence."

So, even the use constantly in the City code sections you cite (which I only skimmed and have not read in detail) which frequently refers to an "individual or entity", seems in itself redundant, in that an individual is indeed an entity for most definitions and purposes.

And, logically, as to your question 2, it would seem that the four groups you list are both "business or organizational contributor" as well as "entity."

An accountant I spoke with on this topic says that usually, when somebody is trying to limit, narrow or carve-out by definition what an entity is, there is suspicion about whether they are seeking to show favoritism or to benefit in some way certain groups at the expense of others. On the other hand, there are Constitutional protections related to privacy, speech (which means money and spending in the political context) and more, that you must recognize and respect.

You may want to take this to heart, and, as the definitions suggest, have as broad and inclusive definition of entity as possible. But again, while you have solicited public comment, I believe this discussion is more suited as matters for the City's counsel and professionals, and if the code is wrong or not clear, or ineptly written, it should be up to them to suggest fixes, and any resulting code proposals to then be fully vetted in public settings.

Respectfully,

Berl Brechner  
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