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CITY OF SANTA FÉ  
ETHICS AND CAMPAIGN REVIEW BOARD**

**December 17, 2014**

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**MINUTES OF THE**  
**CITY OF SANTA FÉ**  
**ETHICS AND CAMPAIGN REVIEW BOARD**  
**DECEMBER 17, 2014**  
3:00 p.m.

**1. PROCEDURES**

**a) Roll Call**

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

Roll call indicated the presence of a quorum as follows:

**Members Present:**

Justin Miller, Chair  
Ruth Kovnat  
Tara Luján  
Kristina Martínez

**Members Absent:**

Roderick Thompson, Vice Chair [excused]  
Paul Biderman [excused]  
Seth McMillan [excused]

**Staff Present:**

Zachary Shandler, Assistant City Attorney  
Yolanda Vigil, City Clerk

**Others Present:**

Jim Harrington, Common Cause  
Karen Heldmeyer  
Fred Rowe, Neighborhood Law Center  
Carl Boaz, Stenographer

**b) Approval of Agenda**

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

**c) Approval of Minutes – February 17, 2014 and February 25, 2014**

**Ms. Martínez moved to approve the minutes of February 17, 2014 and February 25, 2014 as**

**presented. Ms. Kovnat seconded the motion.**

Ms. Vigil clarified that the notes on the February 25 executive session were prepared by Mr. Shandler and asked if the maker of the motion would include the notes in the motion to approve.

**Ms. Martinez accepted the addition as friendly and the motion passed by unanimous voice vote.**

## **2. DISCUSSION AND POSSIBLE ACTION**

### **a) Approval of Final Written Order in the Matter of Complaint Against Mr. Javier Gonzales and Mr. Jon Hendry.**

Chair Miller said the complaint was addressed and decided by the Board at the last meeting and this is the final written order memorializing the decision. It needs to be formally approved.

**Ms. Kovnat moved to approve the final written order in the complaint against Mr. Gonzales and Mr. Hendry. Ms. Luján seconded the motion and it passed by unanimous voice vote.**

### **b) Review and Consideration of Recommended Changes to the Governing Body for Improving the Code of Ethics, the Election Code, and Campaign Code, and the Public Campaign Finance Code.**

Chair Miller said the Board was here today to review and consider the Board's recommended changes to the Governing Body for improving the Code of Ethics, the Election Code, the Campaign Code and the Public Campaign Finance Code. This item is one of the charges of this Board under the ordinance, particularly after a municipal election. We all have experience and lessons learned in the last municipal election and need to consider revisions. He didn't anticipate taking actions today. It is more of planning and process meeting and figure out how the Board is going to make proposed revisions to the codes.

He asked if the Board wanted to consider revisions to each body of law at one time. The Board could take them separately or as a whole.

Secondly, he was what the Board needs to consider in this. He would like to hear from the City Clerk and City Attorney either today or later.

The Board also wants to hear from the public in Public Comment who are interested in the election process on how the process worked or not.

The Board needs to review what legislation is being considered by Councilors.

The Board needs to discuss how to do this work - whether a subcommittee should consider proposals and what form it would take, whether to prepare a draft of proposed code changes or just comments on the codes.

Lastly, the Board should determine what schedule to adopt. He anticipated this would be the first of 2-4 meetings to evaluate all that needs to be evaluated. He also wanted to know what deadlines the City or Governing Body has for this.

He asked first for Board discussion and then hear from the public.

Ms. Vigil, regarding deadline, clarified that the candidate packets are released in September so recommendations should go to the Governing Body by June in order to have time for "request to publish" and time for the public hearing.

Ms. Kovnat proposed that the Board establish some priorities in how the Board goes about addressing the problems that the Board saw in the last mini election and use the priority list in planning our work and have regular public meeting on them.

Chair Miller asked if she was talking about prioritizing the campaign code and the public finance code as opposed to ethics codes.

Ms. Kovnat agreed those should be first. One of the major problems was figuring out when independents' expenditures were coordinated in the campaign. That was a high priority for her.

Chair Miller thought it would be nice if members had particular issues like that to put them on the table right now. He asked if there were others to put on the list.

Ms. Kovnat recalled the Board was concerned on the lack of clarity when a publicly financed campaign starts. The Board should look at that question to get clarification.

Chair Miller agreed and a corollary is how to handle situations where a person might be private and then public.

Ms. Kovnat thought it might be clear enough in the current code but she was not sure. Then the big question of whether the public financing campaign code is adequate to get people to participate in public financing.

Ms. Martínez agreed with those three items. When the Board talked about timing of public finance campaigns, the Board needed to review the whole code. The Board also got this memo from Ms. Heldmeyer that she thought was helpful. She liked the idea of having a public meeting where public could identify their top priorities. Those two codes need to be looked at first. Ethical issues would arise as the Board goes through them that might need to be addressed.

Ms. Luján added transparency and issues of the past and making sure the Board has the language the Board needs to allow for the most transparency in our city elections.

Chair Miller added that the Board should look carefully at definitions to make sure they cover what the Board needs and are accurate.

Ms. Martínez agreed. She mentioned in-kind donations as one. Some of the terminology was confusing with contributions.

Chair Miller agreed. The Board needs also to look at a good focus on independent activities (independent of a campaign) and the role of PACs so that they are separate from campaigns and make clear the separation between them.

Ms. Martínez said regarding public financing code, that the Board should examine how well we train candidates on the requirements and procedures. That might have led to the complaints when people didn't understand the objective. It is an issue both for the Board and the City. The Board is authorized to render opinions so the Board needs to be able to determine when they are really violations.

Ms. Kovnat said the Board should look at expanding the rules and regulations to provide guidance to candidates. That should be afforded to every candidate.

Chair Miller said he had not seen a public focus on ethics. He thought the ethics code could be improved but the majority interest now is on the election side.

Ms. Luján agreed. And the Board should still work through the ethics code too. The Board needs to educate and train the candidates to make sure they aren't jeopardizing the ethics code.

Chair Miller asked Ms. Kovnat what she was thinking about scheduled meetings.

Ms. Kovnat said there is not only a deadline but an obligation to do it with dispatch. She would like to start with public comment on the issues and maybe the Board could meet every two weeks until they get through it. That might be too optimistic.

Ms. Luján appreciated that she would want to put that much time into it.

Ms. Kovnat proposed two week schedule from the first of the year.

Ms. Martínez said it is good to set meetings early on the calendar. A two-week schedule might be difficult but let's get it on the calendar.

Ms. Kovnat added that the first one should invite the public. The Board already has some identified issues from Common Cause and others.

Chair Miller agreed that every two weeks does sound hard but certainly at least once a month. He proposed they deal with the schedule in January. The Board could set up an ad hoc committee to process what the Board has received from the public and consider ideas from the Board or others from the City. Working in the interim makes sense to him. The others agreed.

Chair Miller noted that for our rules of practice, the Board is allowed to set up subcommittees. The Board adopted more stringent rules related to subcommittees to make sure they are not overused. To do

so requires us to determine - in the Board operation. He read the subcommittee policies. His opinion was that to form a subcommittee to start this work doesn't jeopardize the benefits of the Board's work.

Ms. Kovnat asked if the Board could agree on a top priority she would feel comfortable with it but the Board needs to hear from the public before that is established. She would move that. She would be comfortable taking a small part of it to deal with and then review it in public.

Ms. Kovnat volunteered to participate in the subcommittee to identify the issues.

Ms. Martínez preferred to wait until the second week in January and then determine the issues of priority at that time. There are only four members here today and only two weeks from the year end.

Ms. Luján agreed.

Chair Miller understood the Board wouldn't form the subcommittee now. He said Mr. Biderman was willing to serve on a subcommittee.

Ms. Kovnat suggested if the Board wants to direct the subcommittee on the issue, the Board might be able to make a recommendation at that January meeting.

Ms. Martínez said she would choose the PAC issue as the most pressing issue.

Chair Miller asked how it would be if the subcommittee was charged with not a specific issue but on helping the Board prioritize a large number of issues to further the process of this Board.

Ms. Kovnat was fine with that but suggested maybe also working on the PAC issue too.

Ms. Martínez agreed that would be acceptable.

**Ms. Kovnat moved to form a subcommittee to continue working on the planning of the Board's work on recommendations to the Governing Body and the Board's own organization on the campaign code and public financing code. Ms. Martínez seconded the motion and it passed by unanimous voice vote.**

Chair Miller asked Ms. Kovnat and Mr. Biderman to serve on the subcommittee. Ms. Luján was also willing to serve on it.

Ms. Kovnat said the charge is to report at the next public meeting.

Chair Miller said it is a general charge to facilitate the planning process and develop ideas rather than a specific issue now.

Ms. Luján understood the subcommittee would present a working outline on how to move forward on the work of revisions.

Ms. Kovnat said she would understand that the subcommittee's work is to establish a work plan for the monthly meetings to complete recommendations to the Governing Body.

Chair Miller said okay.

Ms. Kovnat asked if it would be okay if the Board would be moved to make some specific recommendations based on the priorities.

Chair Miller agreed that would be helpful. Right now, nothing is off the table since it is just getting started.

The Board's discussion was completed and Chair Miller opened it to the public for further input.

Mr. Fred Rowe said he had most regard for the Board's wisdom, sagacity and responsibility. He deeply regretted having no meetings of the Board in the last nine months. It is a bit long for this Board to issue a decision based on a complaint that was determined nine months ago. He thought it was important for the Board's effective work for the public to be totally engaged in the work of this Board and that gets lost when the Board doesn't meet. The public may have forgotten about the issues before the Board and now it is important for the Board to reanimate these issues.

He was pleased that the Board intends to have a road map announced in advance for how this Board is to consider the important issues arising out of the last election, particularly PACs' participation and public finance system. He hoped the Board would announce to the public how they can participate. That would be a great help and the Neighborhood Law Center stands ready to assist the Board in meeting those responsibilities.

He thought Councilor Ives' proposal for inviting public candidates to adjure (not accept public funds as well as PAC funds). If the Board has it as a starting point, it would be a top issue and the public would be best served.

Chair Miller agreed it has been too long since the Board last met. We have been trying to meet since the summer and for a variety of reasons have not been able to do so. So he was glad to be able to meet now and he looked forward to working with the Neighborhood Law Center as they move forward.

Mr. Jim Harrington said the discussion was fruitful and interesting and he agreed the subcommittee is a good idea in some cases. But these issues are important and there is a big public interest and they should be involved with advance notice even with subcommittee meetings. And if a specific issue is to be considered, that should be announced in the agenda.

Perhaps the Board could schedule a series of meetings, each on different topics. A good criterion would be the complexity of some issues for prioritizing.

One simple one would be electronic signatures on campaign forms. And a simple provision that could lead to something simple in regulations such as prohibiting contributions from one person on behalf



of others . The Board could do much of that by regulation and it would give the Board more flexibility down the road.

The more controversial issue is that coordination, even if you do it by regulation and the other is what to do with the PACs. He thought the only response is to give more resources to the publicly financed candidates that are not triggered by the PAC's activities. The Board has to stand by the broad principle that the City cannot prescribe by its laws any action in response to the PACs that they would find unfavorable and would discourage them from spending their money. He considered the proposal by Councilor Ives to be one of them and would not stand scrutiny. He heard a new version from Senator Wirth and Mr. Rowe that probably would be constitutional - that the City could not prescribe anything but the candidates would simply be encouraged by the press and civic groups to give back some of their money. If there is no constitutional prohibition that would be fine but giving back money would not fly.

He hoped everyone would have a chance to read the written comments he submitted.

Chair Miller said the written submissions are great and very helpful. It is good to see them before the meeting. Don't hesitate to send them.

Ms. Heldmeyer said regarding the subcommittee, that there are twelve members of the public here and most of them are lawyers. If you go into subcommittee in a small group without much public input, it is a terrible idea. If they don't meet in public and don't take public comment that idea is beyond the pale.

She was glad to see the Board thinking about the problems but they need to have conversation with the public and that's the first thing to do and it should have been done in April or March. When she looked back at her notes she had to ask what she meant by them.

Ms. Heldmeyer said she knew Mr. Shandler has a lot of small specific things he would like changed. The ones she gave in her memo were the ones she heard from the public in decreasing order of importance. The PAC issue is a very big one. It is certainly something the public had a lot to say about at the time.

She commented that she came from the League of Women Voters' Christmas lunch meeting today and got two more. One is that unopposed candidates shouldn't get as much money. The second was by journalists who asked when a candidate accepts public financing whether the City can put restrictions on those candidates that would require them to engage more with the public, go to a forum, answer questions from the press, etc.

At some point, preferably the first couple of weeks in January, the Board needs to hear from those people instead of saying the Board already has its work plan.

Ms. Luján said she was concerned with that too. We need to come at it like a working road map and include the public in that.

Ms. Heldmeyer emphasized that there is much frustration among the public and the Board needs to win back the trust of the public.

Ms. Kovnat clarified that the subcommittee would come up with a proposal to be presented at the Board and based on a public invitation to attend and present their views. It would not be a finished product.

Chair Miller agreed. He didn't think there was any reason to form a subcommittee except to push things along and allow us to be more efficient in our work and not to do things out of the public eye. The Board doesn't need a subcommittee if it is not going to be helpful.

No others people from the public spoke.

Ms. Kovnat asked if there is a way to give more public notice to get the public here.

Chair Miller thought the items on the agenda would help.

Mr. Shandler said the City staff will help out however possible. It is a Board and public driven process. A lot of talk has happened in the nine months since the election. He pointed out that there was another City election - the marijuana election. And although the City didn't have to run it, there was a seven week process for people to submit proposals for the City staff to review and once the Council made its decision, then the Clerk and Legal Staff had to deal with litigation. And it was reported in the newspaper that the Secretary of State had some issues about it. The County had to take the lead on that marijuana election and that was a major factor between meetings.

Ms. Kovnat asked if it would be in order for Mr. Shandler to share his concerns from the last election on a priority list with the subcommittee or even for the next Board meeting.

Mr. Shandler said he would be happy to.

Ms. Luján asked regarding disclosure and public input, if it is asking too much for the subcommittee to present a proposed outline that could be publicized.

Chair Miller thought anything the subcommittee intends to present should be made public and widely distributed.

Ms. Kovnat asked if the Board could discuss a possible date.

Chair Miller asked for possible date from the Clerk.

Ms. Vigil didn't have a calendar but could check on possible dates offered. She noted that the second and fourth Wednesdays are City Council meetings.

Chair Miller suggested the third Wednesday in January.

### 3. BOARD MATTERS

Ms. Martínez reported that last week, she and Mr. Biderman went to the Neighborhood Law Center and she made a presentation. In doing so, she went to the web site and noticed the complaint form was not on the web site. It has to be brought in for notarizing. She thought all of that should be on the web site and right now it is not.

The Board also just needs to let the public know what it does. A few of the packets are there and one advisory opinion but that's all. It is difficult to find out how to make a complaint.

Ms. Vigil said she did look at that today. The complaint form was there previously and why it isn't there now, she didn't know. She agreed to get it up there. She said whatever the Board wants on the ECRB web page, she would try to get it there.

Chair Miller suggested that links for easier access would be helpful.

### 4. PUBLIC COMMENT

Mr. Harrington said on the public financing system, that it is important to amplify the resources available to make those candidates less vulnerable to PAC influences.

### 5. ADJOURNMENT

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


Having completed the agenda and with no further business to come before the Board, the meeting was adjourned at 4:10 p.m.

Approved by:

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Justin Miller, Chair

Submitted by:

  
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Carl Boaz for Carl G. Boaz, Inc.