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CITY OF SANTA FÉ
ETHICS AND CAMPAIGN REVIEW BOARD**

December 17, 2015

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**MINUTES OF THE
CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD
Thursday, December 17, 2015**

1. PROCEDURES

A. ROLL CALL

A regular meeting of the City of Santa Fe Ethics and Campaign Review Board was called to order by Justin Miller, chair on this date at approximately 3:06 p.m. in the City Council Chambers, 1st floor, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum as follows:

Members Present:

Justin Miller, Chair
Paul Biderman
Ruth Kovnat
Kristina Martínez
Seth McMillan

Members Absent:

Tara Luján
One Vacancy

Staff Present:

Zachary Shandler, Assistant City Attorney

Others Present:

Jim Harrington, Common Cause
Peter N. Ives, City Councilor
Karen Heldmeyer, former City Councilor
Carl Boaz, Stenographer

B. APPROVAL OF THE AGENDA

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

C. APPROVAL OF MINUTES

1) May 20, 2015

Member Biderman noted that action items showed the actions taken.

Member Biderman moved to approve the minutes of May 20, 2015 as presented. Member Kovnat seconded the motion and it passed by unanimous voice vote.

2) September 24, 2015

Member Biderman moved to approve the minutes of September 24, 2015 as presented. Member Martínez seconded the motion and it passed by unanimous voice vote.

2. DISCUSSION AND POSSIBLE ACTION

a) Amendments to the Campaign Code and Public Campaign Finance Code

Chair Miller recalled that much of the work of this Board were on revisions to the Campaign Code and the Public Campaign Finance Code and made recommendations to City Council last summer. Some of the amendments were adopted and some were tabled. The direction to this Board was to put together a working group composed of members and City Councilors to see if the recommendations could be revised somewhat to be more palatable to the Council and bring them back by January. So we constituted the working group with volunteers from Council and this Board and today the Board will see what progress was made and translate them into formal recommendations.

1) Report from Joint Working Group

Member Kovnat reported. Pursuant to direction of the Board, the working group met on November 16 with three members of Council: Councilors Bushee, Dominguez and Lindell worked with Member Biderman, Member Martínez and herself. Mr. Shandler was present and Mr. Harrington represented Common Cause. The goal was to fashion a proposal for reform of the Public Finance Code that would meet the approval of Council and this Board for improving the public financing system. The proposal would free publicly financed candidates to raise small amounts of private contributions that the City could match, at least partially, to pay for expenses of the campaigns with other public or privately funded candidates and also with as little change to the current system as possible and have no fiscal impact to the City.

The working group started with current system of public financing including retaining the \$5 qualifying contribution for public financing. They sought to retain the concept of seed money with donations of no more than \$100 up to an amount that is ten percent of the public award for the qualified candidate. The major change they proposed to the

current system was to allow a publicly funded candidate to raise private contributions of no more than \$100 but not until the candidate had been certified as a publicly funded candidate 85 days before the election.

The proposal called for matching of all such private contributions with public funds subject to a cap to protect public funds. It also called for the matches to be made when the contributions were recorded in campaign finance statements to be filed 57, 40, 25, 15 and 7 days before the election. The 40 and 25 day reports are mandatory for all candidates.

The Councilors and the Working Group all seemed to favor the hybrid system allowing candidates to also solicit small private donations. They all questioned the feasibility of matching those donations with public funds and seemed to be concerned that matching distributions made late in the campaign cycle couldn't be effectively used by a candidate. At the end of the meeting, the members of the Subcommittee agreed to meet again.

The Working Group then met on November 23 with Mr. Shandler and discussed the reactions of the Councilors and ways of integrating the reactions into the proposal.

The conclusions of the Subcommittee are: The ECRB should propose the changes to the current Code she just described and respect the Councilors' concerns about the match in light of the City's current fiscal situation but agreed the City should match in some ratio. They recommended 2 to 1.

With respect to the frequency of the matches, the Subcommittee unanimously recommended that 57, 40, and 25 day reports for matches should be required and the match 7 days before the election was too late. There was discussion of the 15-day match. The group did not reach agreement on that.

To summarize, there were still two questions: the ratio of the match and the frequency and timing of the matches.

Chair Miller clarified that the Subcommittee's recommendations were from Member Biderman, Member Kovnat and Member Martínez.

Member Kovnat agreed. The Councilors are very concerned about the fiscal condition of the City and therefore, the Subcommittee had some difficulty with the match. They understood the situation and came back with the 2:1 ratio.

Chair Miller understood that the Working Group is not actually making the recommendations at this time. Member Kovnat agreed.

Member Biderman said he believed the report is accurate.

Member Martínez agreed.

Mr. Shandler had nothing to add for now.

2) Public Comment

Mr. Harrington said he was glad to see the match survived. The numbers are subject to change, depending on fiscal considerations. It sounds like a good proposal.

Ms. Heldmeyer appreciated their work on this. This is like preaching to the choir. The Councilors on the Working Group are not the Councilors that negatively reacted to the original proposal. It is important that those Councilors that were negative be consulted and also open this up to the public. When it was opened up before, she got comments such as that the City cannot afford to match and another who asked what the point is if they will just go out anyway to raise money.

From candidates and potential candidates for the 2016 election, she heard some are grudgingly going to take the public money and some said it was not sufficient. Even one unopposed candidate said no to it.

Some potential candidates said, if there is opposition in the race, someone will not be the public candidate and they did not want to be that public candidate. She thought the Board needs to make it a lot more public and a lot more inclusive - not just theoretically what would be a good idea but what would work for Santa Fé.

Chair Miller asked Ms. Heldmeyer, when she said "a lot more public" if she meant at the Board level or at Council level.

Ms. Heldmeyer responded "before it goes to Council." That might mean not at 3 p.m. or maybe jointly with a Council committee at 5 p.m.

Councilor Ives said thanks to the Board for its work on this topic. Hopefully it will keep Santa Fé in the forefront of these issues across the nation - looking for the right solutions to problems with our elective process. The proposal represents the best thoughts on these issues.

If the Board desires greater public comment, he would not hesitate to recommend a public study session at a time and in a place convenient to everybody. He was always frustrated when people say they didn't know. It needs to culminate in front of Council at some time. He would be happy to try to facilitate from the City perspective.

He was unclear about what the match is that plays into the equation. There is the city deficit that should not be exacerbated. Personally, he believed the public process and participation is important and should not be underfunded. Candidates need to get

their information out. With three unopposed races, it will be interesting to see the turnout.

Regarding how much is appropriate in an election at our level, the issue came to a head in 2014 with the mayoral election and the complaints that followed. That participation in that race are bonafide or to be permitted under the law and nothing at the Supreme Court prohibits that.

He was not aware of any PACs entering in this round of campaigns. So there is a little disconnect in discussions here in Santa Fé. He thought this is a national problem and Santa Fé should take a role in solving these issues. Allowing people to participate is important. It seems prudent to act and put something forward without rushing. There are only two contested races and He didn't anticipate PACs engaged in the races.

From the electorate perspective, the solutions are complex and they need to find ways that resonate with people. He would encourage more participation by the electorate and work with this Board to make sure our election laws are fair and as progressive as needed. But he was still a little unclear on the percentages.

Chair Miller had that question too. There is a ratio of how much based on how much is collected by a candidate and also what the cap is on that match. He understood the Subcommittee recommended a ratio of two to one but wondered about the cap.

Member Kovnat said the cap would be the same. She believed it is 200% of the original.

Councilor Ives said there is also the aspect of who can access the match. There were questions on timing about reports and matching money being available.

Member Kovnat asked if his question was about a possible "run" on the fund and how to deal with that.

Councilor Ives agreed. With three people in the race and each of them has qualified for the public funding. A match is available at the first report at, say, 60 days before the election. If one of them secures \$100 contributions and seeks the match and the others have secured \$500 in contributions. How is that fair? The smaller campaigns you collect and therefore should have more match money available. We want to elevate the sense of fairness throughout the process.

Mr. Harrington said a higher ratio is desirable. Perhaps the Board should reduce the cap to \$50. At the meeting with Councilors, it was mentioned that the one jurisdiction that had a matching of free enterprise in Arizona that is now allowing more and their ratio is somewhere between 25 to 40:1. The ratio turns out to be enormous.

Member Biderman said there are issues raised here and the biggest question is how to proceed, going forward. Good public participation gives us good feedback. The most attendance at these meetings in this room was when we took it to Council and it has been dwindling. Whatever we can do to get more people to come – we have pretty much drained that well.

It is better to bring it in front of Council. We have good support from Councilors and could have a majority with the new proposal. He was in favor of moving it forward again.

This won't apply to the March 2016 election but to the 2018 election. There were council campaigns in Las Cruces and Albuquerque that have been pretty expensive. We often have small turnout for the races and he did not think the City would get swamped this year. It is easier to swing an election with a little bit of money. We don't know what project or developer might come along. He pictured Shell Oil discovering oil under the Plaza and that could have a big effect.

He thought the City needs to have some kind of match to run against a well-heeled campaign. The Board needs to bring it to Council, based on the conversations we have had and convince them we need the match.

3) Next Steps – Governing Body

Chair Miller was not sure what else this Board could do to get people out. Perhaps they should publish the notice early and consider evening meetings. Ultimately it is the Council that has to decide. What the Council asked us to do was to come back by January. We could disregard that request or take action today.

Mr. Shandler said regarding the process, that a bill usually goes to the Finance Committee and usually they have no public comment. The Board could always ask the Finance Committee Chair to have a public hearing as well. It would ultimately go to the Governing Body for a public hearing.

Another option would be an informational presentation to Council and maybe some of the critics would not feel pressured with an informational session. So the Board could have a 30-minute discussion at their afternoon session. One downside is that the afternoon sessions have not been working efficiently so it could be cut to a much shorter time limit or get put to the end of the evening agenda. Or the Board could have a study session in the evening session if not much major legislation was on the agenda. So there are different options in the next steps.

Member Martínez said she would be happy to do any of these 5:00 sessions. She was skeptical that somehow people felt the Board is not keeping their process not public.

Chair Miller agreed. There is nothing the Council could not discuss in a public session.

Mr. Shandler said it is a legislative process so there is a lot more flexibility. And it might be hard to convince Councilors to have a stand-alone third City Council meeting in the month.

Councilor Ives agreed with Mr. Shandler. In the direction to the Board by Council, they should bring it to Council in January, as well as at Finance and Public Works so that all Councilors have a chance to review it before coming to Council. If it came as an ordinance, the council would hear it for publication and it would have a public hearing within 30 days. In this one, there are complex issues which was why he suggested an independent study session, at which there would be no action taken. It would be independent of Council and could be scheduled. That certainly would be an opportunity to delve into the issues. He was not sure they were fully aware of the issues.

Member Kovnat wondered if the Board should draft an explanation of the changes in the ordinance language.

Councilor Ives agreed. Drafting into plain language and an FAQ sheet are very helpful for Councilors. It could also go to various groups in town that participate in public processes.

Member Kovnat added that it could include op-ed in the newspapers.

Member Biderman asked if Councilor Ives was suggesting an either/or by have this Board attend Finance and Public Works or Council or both.

Councilor Ives suggested both. Every effort to involve the public should be made. Understanding the impact on citizens is important too.

Member Biderman said the study session would involve public comment but asked if the committees don't have public comments.

Councilor Ives said it is optional.

Chair Miller said the Board is charged with making a recommendation to the Governing Body but once recommended, it is not out of our hands altogether. We need to have a Councilor become a sponsor.

Mr. Shandler agreed they need to have a sponsor.

Councilor Ives waved his hand.

Chair Miller noted the Subcommittee had consensus on a 2:1 ratio and three

distributions. He asked why they were not agreeing on the 15 day and 7 day allocations.

Member Martínez said it was clear that the Councilors didn't favor those. We took into account what they said and they strongly stated that those later dates would not be useful so she supported the recommendation to not include them.

Member Kovnat agreed that the 7-day match was not good but she thought the 15-day match should be retained. But there was no unanimity in the Subcommittee about the 15-day match.

Member Martínez recalled the Councilors said if the candidate didn't have the match at least 30-60 days before the election, it wouldn't matter.

Member Biderman said the specific instance that brought to his favoring dropping the 15th matching, was that there was a strong reaction in July against anything that close to the election. That was their political assessment.

Member Martínez said "Our impression was different than theirs."

Chair Miller thought it might not do any good but asked if it would do any harm. He asked, for example, if it was more administrative burden on the Clerk's office or a waste of public money.

Member Martínez said she didn't hear anything like that. From her perspective, she did not hear a principal reason why those two dates would not be useful. But they were adamantly against it. She wanted to propose something they would listen to and not feel that the Board was ignoring them.

Member Biderman said that was even stronger at the July meeting.

Mr. Shandler thought there was some push-back from the Clerk's Office. The Clerk had concerns about giving out money without a chance for verification. And she has other jobs to do at the same time. So we should also be concerned about the 15 day.

Chair Miller asked the Board how to do this - with a vote on each specific change or one vote on the whole. He asked if there was a consensus from the Committee to delete the 15 and 7.

Member Kovnat said there was no consensus on the 15 days. There was consensus on deleting the 7 days and keep the other three.

Chair Miller thought it might be best to address the 15 days separately.

Member Biderman said he might make a motion to adopt the Committee report.

Then they could consider it piece by piece and then vote on the whole report.

Chair Miller asked Mr. Shandler if it would be possible for his office to take the recommendations adopted by the Board and revise the bill that had been presented before to the Council.

Mr. Shandler understood that Councilor Ives had volunteered to sponsor the bill and start through the committees if the Board wants.

Member Biderman asked if the bill could have a report to explain it.

Mr. Shandler agreed but he wasn't sure it could be done by the first Jan meeting.

Councilor Ives said on January 4th there is a special meeting of Council on the 2-cent per gasoline tax and a regular meeting on January 13.

Member Biderman moved to adopt the subcommittee report.

Member Kovnat said it appears the only two items that need Board action are the ratio of 2 to 1 and the timing and frequency of the reports. Otherwise, it is the current system.

Mr. Shandler clarified that there are four changes. The first is the post-certification that a publicly funded candidate would still be able to raise up to \$100. Part 2 is at least three times for reporting to the City Clerk to request a match and third is to qualify the match would come back at a 2:1 ratio and the fourth would be the maximum over the cumulative period that they could receive additional disbursements would be 200% of the initial grant as the cap.

Member Martínez agreed and seconded the motion which passed by unanimous voice vote.

Member Kovnat moved to add the 15th as a fourth distribution date. The motion died for lack of a second.

Mr. Shandler posed a scenario about collecting to the cap on the 57th day and another candidate raised \$100 on the 25th day and the Clerk saw the coffers were insufficient for that distribution.

Councilor Ives said that, to some degree, the cap of additional distribution timing presumes there is a full amount for any candidate during the budgeting process as a potential air brake in the process. So bringing it forward, he presumed with support for public campaigns, the City would be obligated to use that full amount. And if not used, it would roll over to the next election cycle. There is a difference in off-cycle elections. The next election will be for a full-time mayor.

Councilor Ives offered to work out the details with Mr. Shandler to address those issues.

Member Biderman said it is not a perfectly equitable system but the Board proposes a modification that addresses the original concern of possible large private financing skewing against the public candidate. We are not guaranteeing an equal amount of money but the candidates have a chance to earn it and still maintain a cap. He did not see a way out that doesn't monkey with the cap in an unacceptable manner.

Chair Miller surmised that Member Biderman's thought was that when and if the City reaches its limit and had to reduce the amount distributed and others had previously received the full match, it was just the way it is.

Member Biderman agreed.

Member McMillan asked if this is incentivizing an early rush on the matching money.

Member Martínez said it is not a terrible thing. There has to be some onus on the candidate at the beginning to know how much is in the fund and amounts that would be distributed. A candidate would organize their campaign taking that public matching into consideration.

Mr. Harrington commented that the Santa Fe Fund is in pretty good shape and provides an opportunity in the next election. The 2016 would not hit the cap but that could happen in 2018.

Mr. Shandler said right now a candidate can get \$100 as seed money. He suggested calling that "pre-qualification seed money" and distinguishing it from "post-certification seed money." He asked if the Board thought if the candidates get that \$100 before qualification, whether they could get \$100 after certification.

Member Kovnat said the \$100 is on the individual's contribution.

Member Biderman agreed and clarified that although the candidate collects it, that money goes to the fund.

Member Martínez read it as \$100 from all contributions.

Member McMillan said that to the extent that we are distinguishing between small contributions and seed money contributions, there is a provision in 9-3.6 limiting the aggregate amount of seed money contributions to \$100 and, in addition, as Member Martínez just called out, the cap on small contributions is \$100. He asked if that is the same \$100.

Member Kovnat said no individual can contribute more than \$100.

Member Martínez clarified that it is \$100 plus the \$5.

Member Kovnat thought that was correct.

Member Biderman moved that this concept be included in the report if needed and to authorize that without coming back to the Board. Member McMillan seconded the motion and it passed by unanimous voice vote.

Member Martínez asked Councilor Ives to let the Board members know if there is a teaching opportunity.

Councilor Ives agreed.

Member Biderman asked if that was no problem with a quorum present.

Councilor Ives agreed.

Mr. Shandler said Councilor Ives would present a bill first to the Finance Committee. He will contact Councilor Dominguez and get it on the agenda. He would contact Councilor Trujillo to get it on the Public Works agenda.

b) An Ordinance Amending Subsection 1-7.7 SFCC 1987 Prohibiting a Public Official from Accepting Employment with the City of Santa Fe within One 91) Year of Leaving Office. (Councilor Lindell) (Zachary Shandler)

Mr. Shandler presented the bill to the Board and pointed out the one change on page 3, lines 13-15. Initially it was sponsored by Councilor Bushee and Councilor Lindell. Then Councilor Bushee withdrew her change so there is only one. And it was postponed in order to compare the language with state law. That bill is more restrictive than state law. He read the state law portion.

Member Martínez asked if it applies to contracting also.

Mr. Shandler said contracts have that in the existing language so yes.

Member Biderman moved to recommend approval of the amendment to the Governing Body. Member Kovnat seconded the motion.

Member Biderman agreed with Mr. Shandler's reading. It is not duplicative of state law. The reason he was in favor was that it is part of appearances. If Mr. Shandler, as City Attorney, became an elected Councilor, he could be biased. He briefly gave an example.

Member Martínez didn't know why employment with the city, so long as it didn't result from that elected official's office, why it should be prohibited. She found this amendment to be too restrictive.

Member McMillan wondered if it would kill hiring a highly qualified candidate. That's the down side he saw.

Ms. Heldmeyer said the reason this is brought forward is that everyone assumed there was a prohibition for one year after the elected official's tenure, but some discussion on whether that person, after entering a contract with the City would also be prohibited - meaning they could not get a job with the City.

Member Biderman said that is a valid question. Considering a retiring councilor before other candidates would make them an inside candidate, so it could work either way.

Member McMillan gave a thumbs up to this amendment, since it is already being practiced.

Councilor Ives said he would not apply for employment but might volunteer, as Councilor Calvert does. Avoiding the appearance of impropriety is always good practice.

The motion to approve passed by unanimous voice vote.

c) Amendments to Procedures Regarding Complaint Timelines. (Zachary Shandler)

Mr. Shandler attended a Neighborhood Law Center conference where Albuquerque City Councilor Pat Davis gave a presentation. In his election there were a variety of campaign complaints filed to their ECRB in Albuquerque and the decision was too slow (after the election). This Board has discussed the pros and cons how a person could file a complaint and get resolution timely. The Code in Chapter six has no timelines in resolving complaints. The rules of organization are in the packet (page 8 in the packet, behind the second red tab) and has timelines. In the past election, the complaining parties need to serve the respondent. "Within ten business days" is used but a shorter timeline might be prescribed. At a future meeting, the Board should look at that paragraph.

Then in E 2, it contemplates hiring an investigator for fact-finding and says "that investigation shall be completed in 60 days." The Board probably should look at that also because 60 days seems like a very long period. He was not sure he was ready to offer a recommendation now.

Then in F 3 on page 9, he was not asking for any vote now but at the next meeting to consider a more expedited process.

Chair Miller said he would like for Board members to think about those rules too or share any thoughts now about what you are thinking.

Member Biderman suggested that if it applies to the upcoming election, the Board should consider it beforehand.

Mr. Shandler noted the Board has a mandatory meeting in January.

Chair Miller thought that was right and asked that the Board deal with it after January 1.

3. BOARD MATTERS

Member Biderman asked if he was still on this Board.

Member McMillan said he submitted, for the 1st Judicial District, resumes for himself, Ms. Martínez and Chair Miller as well as for two individuals who submitted resumes. We are all waiting for the Mayor's decision on the attorney position on the Board.

Mr. Shandler anticipated that it would be taken care of.

4. PUBLIC COMMENT

Councilor Ives thanked the Board for another year of service to the City. It is not easy but fundamental to democratic processes. As the Board considers the rules as discussed in 2-c, he would ask members to review section G 11 on compliance on deterring code violations and impositions of sanctions whether there is sufficient guidance in that regard. He thought they might need a review of the last ten years on matters that came up and disposition of them. The interest is in promoting public confidence that encourage participation rather than apathy.

Ms. Heldmeyer pointed out that there was nothing in the packet about the Joint Working Group report. She asked that the Board put what they are talking about into plain English. The philosophic background is nice but the political reality is more important.

5. ADJOURNMENT

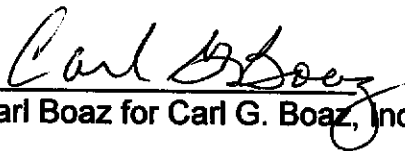
Member Martínez moved to adjourn the meeting. Member Kovnat seconded the motion and it passed by unanimous voice vote.

The meeting was adjourned at 4:46 p.m.

Approved by:

Justin Miller, Chair

Submitted by:



Carl Boaz for Carl G. Boaz, Inc.