



**CITY ATTORNEY'S OFFICE ADVISORY MEMO**

**TO:** ECRB MEMBERS  
**FROM:** ZACHARY SHANDLER, ASSISTANT CITY ATTORNEY 3j  
**SUBJECT:** COUNCILOR IVES BILL  
**DATE:** SEPTEMBER 2, 2016

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This agenda item is not a voting item; it is a report on the status of a bill. The chronology of the bill is:

- In 2015, the ECRB was studying how to write a bill to address issues with public financing.
- In August 2015, Common Cause submitted a bill to the ECRB.
- In December 2015, the ECRB voted on the Common Cause bill with minor changes.
- In December 2015, Councilor Ives volunteered to sponsor the bill.
- In December 2015, the City Attorney's Office word-smithed the bill in an effort to re-write what we felt was archaic-sounding language.
- In December 2015, the City Attorney's Office sent the bill to Councilor Ives.
- On January 25, 2016, the Council's Public Works Committee was scheduled to hear the bill.
- On January 25, 2016, Councilor Ives moved to postpone the bill due to differences in the language.
- On February 16, 2016, the City Attorney's Office deleted its word-smithing and sent Councilor Ives a copy of the bill.
- Councilor Ives did not request a new hearing at the Council's Public Works Committee.
- In June 2016, the ECRB subcommittee met to jump-start the process and clarify any wording issues.
- In July 2016, the ECRB subcommittee sent their version of the bill to the City Attorney's Office and two executive summary sheets.
- On July 13, 2016, Chair Miller sent an email to Councilor Ives asking if he has had a chance to consider the recent submission from the ECRB.
- As of today, the City Attorney's Office awaits notice of when Councilor Ives wants to schedule a new hearing at the Council's Public Works Committee.

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2016-\_\_

3 INTRODUCED BY:

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5 Councilor Peter N. Ives

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10 AN ORDINANCE

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

18  
19 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

20 Section 1. Section 9-3.3 SFCC 1987 (being Ord. No. 2009-44, § 4, as amended)  
21 is amended to read:

22 9-3.3 Definitions.

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

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

1 accounts are maintained.

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

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

8 (1) Announce publicly;

9 (2) File for office;

10 (3) When contributions are accepted or expenditures made; or when

11 (4) Any activity is held to promote an election campaign of an individual if  
12 that activity is endorsed or supported by that person or if the benefits of such activity are  
13 later accepted by such person.

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

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

21 (1) The term "contribution" includes:

22 (a) The transfer of funds or anything of value between political  
23 committees;

24 (b) The transfer of anything of value for less than full consideration;

25 (c) Interest, dividends or other income derived from the investment

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of campaign funds;

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

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

(f) A coordinated expenditure.

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

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

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

(2) in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, his/her representatives or agents or the candidate's political committee, including but not limited to, the following examples in subsection 9-3.2(K).3(F)(2)(a)-(d):

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

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

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

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

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

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

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

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

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

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

1 I. *Fund* means the public campaign finance fund created by subsection 9-3.4 SFCC  
2 1987.

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

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

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

9 M. *Qualified small contribution* means a contribution of no more than one hundred  
10 dollars (\$100) made and accepted in compliance with the provisions of subsection 9-3.12 SFCC  
11 1987.

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

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

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

24 [~~P.~~] Q. *Seed money contribution* means a contribution of no more than one hundred  
25 dollars (\$100.) made and accepted in compliance with the provisions of subsection 9-3.6 SFCC

1 1987 and used exclusively for the purposes specified in that section.

2 [Q.] R. *Uncontested race* means a race in which there is only one (1) candidate for the  
3 office sought.

4 **Section 2. Section 9-3.5 SFCC 1987 (being Ord. No. 2009-44, § 6, as amended)**  
5 **is amended to read:**

6 **9-3.5 Eligibility as a Participating Candidate.**

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

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

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

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

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

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

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

24 **Section 3. Section 9-3.6 SFCC 1987 (being Ord. No. 2009-44, § 7, as amended)**  
25 **is amended to read:**

1           **9-3.6           Seed Money Contributions.**

2           A.       A candidate seeking to become a participating candidate may solicit and accept  
3 seed money contributions to defray expenses incurred in obtaining qualifying contributions and in  
4 seeking certification as a participating candidate.

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

10          C.       Each seed money contribution shall be accompanied by a form signed by the  
11 contributor, which shall include the contributor's name, home address, telephone number,  
12 occupation and name of employer. The Ethics and Campaign Review Board may, by regulation,  
13 permit the use of an electronic signature of such forms.

14          D.       No person shall knowingly make and no candidate shall knowingly receive a  
15 seed money contribution which is not from the person named on the form or for which the person  
16 named on the form has been or will be reimbursed or compensated by another person.

17          ~~[D.]~~ E. All seed money contributions received by a candidate shall be deposited in a non-  
18 interest-bearing account in a campaign depository to be established by the candidate before  
19 soliciting or accepting any such contributions. All expenditures of seed money shall be made  
20 from the campaign depository.

21          ~~[E.]~~ F. Seed money contributions shall be used only for the purposes specified in  
22 paragraph A. of this subsection, and all seed money contributions that have not been spent or used  
23 for such purposes by the time the candidate applies for certification as a participating candidate or  
24 by the end of the qualifying period, whichever is sooner, shall then be paid over to the municipal  
25 clerk for deposit in the fund; provided, however, that if payment of all of the candidate's unspent

1 seed money to the municipal clerk would cause the bank account in the campaign depository to  
2 be closed, an amount of seed money necessary to keep the account open may be temporarily  
3 retained in the account and paid over to the municipal clerk at a later time in compliance with  
4 paragraph C of subsection 9-3.10 SFCC 1987.

5 **Section 4. Section 9-3.7 SFCC 1987 (being Ord. No. 2009-44, § 8, as amended)**  
6 **is amended to read:**

7 **9-3.7 Qualifying Contributions.**

8 A. Each qualifying contribution shall be accompanied by a form signed by the  
9 contributor, which shall include the contributor's name, registered address and telephone number.  
10 The Ethics and Campaign Review Board may, by regulation, permit the use of an electronic  
11 signature of such forms.

12 B. No candidate or person acting on a candidate's behalf shall pay to any other  
13 person any form of compensation for soliciting or obtaining a qualifying contribution.

14 C. No person shall knowingly make and no candidate shall knowingly receive a  
15 qualifying contribution which is not from the person named on the form or for which the person  
16 named on the form has been or will be reimbursed or compensated by another person.

17 D. All qualifying contributions received by a candidate shall be deposited in a non-  
18 interest-bearing account in a campaign depository to be established by the candidate before  
19 soliciting or accepting any such contributions, and shall be paid over to the municipal clerk for  
20 deposit in the fund when the candidate applies for certification as a participating candidate or  
21 when the qualifying period ends, whichever is sooner.

22 **Section 5. Section 9-3.8 SFCC 1987 (being Ord. No. 2009-44, § 9, as amended)**  
23 **is amended to read:**

24 **9-3.8 Application for Certification as a Participating Candidate.**

25 A. A candidate who wishes to be certified as a participating candidate shall, before

1 the end of the qualifying period, file an application for such certification with the municipal clerk  
2 on a form prescribed by the municipal clerk.

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

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

8 (2) The candidate's averment under oath that the candidate has accepted no  
9 contributions to the candidate's current campaign other than qualifying contributions and  
10 seed money contributions solicited and accepted pursuant to subsections 9-3.6 SFCC  
11 1987 and 9-3.7 SFCC 1987;

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

15 (4) The candidate's agreement that his or her current campaign will not  
16 solicit, direct or accept any further contributions or make any further expenditures from  
17 any sources other than payments received from the fund pursuant to subsections 9-3.10  
18 and 9-3.13 SFCC 1987 and qualified small contributions received pursuant to subsection  
19 9-3.12 SFCC 1987.

20 C. The application shall be accompanied by:

21 (1) Reports listing all seed money contributions and qualifying contributions  
22 received by the candidate and all expenditures of seed money contributions made by the  
23 candidate, and showing the aggregate amounts of all such contributions and expenditures  
24 and the aggregate amounts of all contributions received from each contributor;

25 (2) Copies of forms signed by contributors for all seed money contributions

1 and qualifying contributions received by the candidate; and

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

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

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

10 **Section 6. Section 9-3.9 SFCC 1987 (being Ord. No. 2009-44, § 10, as amended)**  
11 **is amended to read:**

12 **9-3.9 Certification as a Participating Candidate.**

13 A. On or before the eighty-ninth (89th) day before the election the municipal clerk  
14 shall make a determination whether the candidate's application complies with the requirements of  
15 subsection 9-3.8 SFCC 1987 and whether the candidate satisfies the requisites for certification as  
16 a participating candidate prescribed by subsection 9-3.5 SFCC 1987, and shall thereupon issue a  
17 decision, in accordance with the determination so made, granting or refusing such certification to  
18 the candidate.

19 B. The municipal clerk may revoke a candidate's certification as a participating  
20 candidate for any violation by the candidate of the requirements of this section, and may require  
21 that any candidate whose certification has been revoked to pay over to the municipal clerk for  
22 deposit in the fund any amounts previously paid to the candidate pursuant to subsections 9-3.10  
23 and 9-3.13 SFCC 1987.

24 **Section 7. Section 9-3.11 SFCC 1987 (being Ord. No. 2009-44, § 12, as**  
25 **amended) is amended to read:**

1           **9-3.11           Use of Payments from the Fund [~~the Fund as Exclusive Source~~].**

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

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

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

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

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

14                   (4)       An expenditure supporting the election of another candidate or the  
15 approval or defeat of a ballot proposition or the defeat of any candidate other than an  
16 opponent of the participating candidate;

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

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

20           C.       All payments from the fund received by a participating candidate which have not  
21 been spent or obligated for the purposes specified in paragraph A of this subsection and any  
22 electronic, telecommunication or computer tangible assets purchased with such payments  
23 remaining in the possession of the campaign as of the date of the election shall be returned by the  
24 candidate and shall be conveyed to the municipal clerk within forty-five (45) days after that date.  
25 Returned payments shall be deposited in the fund. Tangible assets shall be conveyed to the city

1 for its use or disposition in accordance with the city's procurement code. Proceeds from such  
2 disposition shall be deposited in the fund.

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

10 (Ord. #2009-44, §12; Ord. #2011-28, §16; Ord. #2013-28, §12; Ord. #2015-22, §2)

11 **Section 8. A new Subsection 9-3.12 SFCC 1987 is ordained to read:**

12 **9-3.12 ~~{Reserved.}~~ [NEW MATERIAL] Qualified Small Contributions.**

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

16 B. The aggregate amount of qualified small contributions from any one contributor  
17 to any one candidate shall not exceed one hundred dollars (\$100).

18 C. Each qualified small contribution shall be accompanied by a form signed by the  
19 contributor, which shall include the contributor's name, home address, telephone number,  
20 occupation and name of employer. The Ethics and Campaign Review Board may, by regulation,  
21 permit the use of an electronic signature on such forms.

22 D. No person shall knowingly make and no candidate shall knowingly receive a  
23 qualified small contribution which is not from the person named on the form or for which the  
24 person named on the form has been or will be reimbursed or compensated by another person.

25 E. Before soliciting or accepting qualified small contributions, a candidate shall

1 appoint a treasurer and establish a campaign depository in the manner required by subsection 9-  
2 2.8 SFCC 1987. All qualified small contributions received by a candidate shall be recorded by  
3 the candidate's campaign treasurer, deposited in a separate non-interest-bearing account in the  
4 campaign depository and used in the candidate's campaign or disposed of following the election  
5 in the manner required by subsection 9-2.9 SFCC 1987. All such contributions shall be timely  
6 reported in a campaign finance statement prepared in the manner and filed on the dates required  
7 by subsections 9-2.10 through 9-2.12 SFCC 1987. Campaign finance statements reporting the  
8 receipt of qualified small contributions shall be accompanied by copies of the forms signed by  
9 each contributor pursuant to paragraph C of this subsection.

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

11 **9-3.13 ~~{Reserved.}~~ [NEW MATERIAL] Additional Reports of Qualified**  
12 **Small Contributions; Additional Matching Payments from the Fund.**

13 A. In addition to the dates specified for the filing of campaign finance statements by  
14 subsection 9-2.10 SFCC 1987, a campaign finance statement reporting the receipt of qualified  
15 small contributions may also be filed by participating candidates on the fifty-seventh day  
16 preceding the election.

17 B. Within two business days after the filing of a campaign finance statement by a  
18 participating candidate reporting the receipt of qualified small contributions and accompanied by  
19 copies of the forms signed by the contributors as required by paragraph C of subsection 9-3.12  
20 SFCC 1987, the municipal clerk shall disburse to the candidate an additional payment from the  
21 fund equal to two times the total amount of the qualified small contributions reported in the  
22 campaign finance statement; provided, however that no such additional matching payments shall  
23 be made for contributions reported in a campaign finance statement filed after the twenty-fifth  
24 day preceding the election.

25 C. Additional payments made to a participating candidate pursuant to paragraph B

1 of this subsection shall be deposited in the separate account in the candidate's campaign  
2 depository that was established by the candidate for the deposit of payments received from the  
3 fund pursuant to paragraph A of subsection 9-3.11.

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

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

10 **Section 10. Section 9-3.14 SFCC 1987 (being Ord. No. 2009-44, § 15, as**  
11 **amended) is amended to read:**

12 **9-3.14 Reports of Expenditures; Exemption from Certain Reporting**  
13 **Requirements.**

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

22 B. The reports required by paragraph A of this subsection shall be filed on each of  
23 the days prescribed for the filing of campaign finance statements by subsection 9-2.10 SFCC  
24 1987.

25 C. A campaign finance statement filed by a participating candidate to report

1 qualified small contributions pursuant to paragraph E of subsection 9-3.12 SFCC 1987 or  
2 paragraph A of subsection 9-3.13 SFCC 1987 shall also include a report of all expenditures made  
3 during the period covered by the statement from the separate account established by the candidate  
4 for the deposit of such contributions pursuant to paragraph E of subsection 9-3.12 SFCC 1987.  
5 The statement shall show that the expenditures were made from that source and shall contain all  
6 the information concerning the expenditures, account balances and funds on hand that is required  
7 for campaign finance statements filed pursuant to subsection 9-2.11 SFCC 1987.

8 ~~{C-}~~ D. Except as provided in paragraphs A ~~{and B}~~ through C of this subsection ~~{and}~~ ,  
9 paragraph C of subsection 9-3.8 SFCC 1987, paragraph E of subsection 9-3.12 SFCC 1987 and  
10 paragraph A of subsection 9-3.13 SFCC 1987, participating candidates are exempt from the  
11 requirement to file campaign finance statements imposed by subsections 9-2.10 SFCC 1987  
12 through 9-2.12 SFCC 1987 and from the requirements to file campaign records with the  
13 municipal clerk imposed by paragraph D of subsection 9-2.9 SFCC 1987; provided, however, that  
14 campaign records shall be maintained in the manner required by the applicable provisions of the  
15 Campaign Code (Section 9-2 SFCC 1987) and shall be made available upon request to the  
16 municipal clerk and the ethics and campaign review board.

17 ~~{D-}~~ E. ~~{A}~~ Seed money and qualifying contribution reports, ~~{and an}~~ campaign finance  
18 statements and contribution and expenditure reports of a candidate for municipal judge are not  
19 required to be signed or acknowledged by the candidate.

20 APPROVED AS TO FORM:

21 \_\_\_\_\_  
22  
23 KELLEY A. BRENNAN, CITY ATTORNEY

24  
25 *M/Legislation/Bills 2016/Campaign Finance Reform*

Summary of Amendments Proposed by the Santa Fe Ethics and Campaign Review Board  
Concerning Public Financing of Campaigns for Municipal Office

**Executive Summary**

To implement the requirement of the 2008 amended Santa Fe City Charter, the City Council has adopted a Public Campaign Finance Code, §9-3 SFCC. This ordinance creates a system whereby candidates for elected city offices who agree to forego all but minimal private fundraising may qualify for an allocation of public funds to conduct their campaigns. A public campaign finance fund is established, with funds allocated by the City Council and certain other deposits.

The effectiveness of this system has been undermined by the U.S. Supreme Court's 2010 ruling in *Citizens United v. Federal Election Commission*. That case held that independent advocacy groups have a First Amendment right to support the campaigns of candidates with as much funding as they wish, so long as they do not coordinate their campaign activities with those of the candidates they support, or the candidates' committees. Oversight bodies may only require that these independent groups disclose their activity and expenditures.

All three candidates in the 2014 mayoral election accepted public funding and observed the limits on private fundraising. One candidate, however, received support from an independent group, greatly increasing the amount of money spent in support of his campaign. The Ethics and Campaign Review Board (ECRB), after conducting months of public hearings, subsequently proposed amendments to the City's Campaign Codes. The City Council accordingly clarified the definition of "coordinated expenditures," to provide guidance to candidates and independent groups as to which independent expenditures could exceed the limits permitted under the Public Campaign Finance Code. The Council also adopted reporting requirements to better ensure that the real donors behind the independent campaign activity are publicly identified.

While these measures have strengthened the public campaign financing system, one more amendment is needed, so that publicly financed candidates can better respond to unregulated independent expenditures on behalf of opponents: to allow publicly financed candidates to solicit and receive an unlimited number of small, qualified campaign contributions, not exceeding \$100 from any contributor. As these donations are reported to the city clerk, she would issue checks from the public campaign fund for double the amount of contributions reported. No candidate could receive in matching funds more than twice the amount to which that candidate was originally entitled, and if the fund were exhausted, no further distributions would be made for that election.

ECRB believes that allowing publicly financed candidates to collect small private contributions and matching funds will give those who do not have support from independent groups the opportunity to close the funding gap with those candidates who do. The plan will be acceptable to the courts because any candidate will be able to use this approach. ECRB urges the adoption of the amendments to implement this plan.

Summary of Amendments Proposed by the Santa Fe Ethics and Campaign Review Board  
Concerning Public Financing of Campaigns for Municipal Office

**I. Synopsis and Background**

**Synopsis**

The City of Santa Fe Ethics and Campaign Review Board (ECRB) proposes amendments to the Public Campaign Finance Code, §9-3 SFCC 1987 et seq. The purpose of these amendments is to preserve and strengthen the opportunity for candidates to run viable publicly financed campaigns regardless of whether they or their opponents are supported by independently financed, non-coordinating groups.

**Background**

In March 2008, the voters amended §4.05 of the Municipal Charter to require the City Council to provide for public financing of municipal elections. The Council did so the subsequent year by enacting Ordinance #2009-44. This ordinance began with findings that the existing system of private financing of campaigns for municipal office, among other things, undermined public confidence in the democratic process, created a danger of undue influence by large donors, diminished accountability to constituents, and forced officials to spend time fundraising, §9-3.2A. Its purposes included strengthening public confidence in the electoral process, the elimination of the danger of undue influence on elected officials caused by private financing of campaigns and increasing accountability to constituents, as well as providing candidates with sufficient resources to communicate with voters, §9-3.2B.

Accordingly, the ordinance established a public campaign finance fund, §9-3.4, to provide candidates the opportunity to support their campaigns without having to conduct extensive private fundraising. Pre-determined sums of public money would be awarded to candidates who satisfied two threshold criteria demonstrating their commitment and a level of public support: (1) a number of valid petition signatures, determined by a formula for each position, §9-3.5A; and (2) deposit into a public fund of a sufficient number of valid, small qualifying contributions of no more and no less than \$5.00. Candidates who qualified for and accepted public financing were prohibited from accepting private donations for their campaigns, apart from the qualifying contributions and certain seed money contributions to cover initial expenses, within strict limits permitted by the ordinance. Specifically, seed money contributions were limited to \$100.00 from any one contributor, and the total amount of seed money contributions accepted by a candidate was limited to no more than 10% of the amount payable to a candidate in a contested election by the public finance fund. §9-3.6B.

This public financing system was soon impacted by the U.S. Supreme Court decision in *Citizens United vs. Federal Election Commission*, 558 U.S. 310 (2010). That case held that independent

advocacy groups have a First Amendment right to pay for advertisements and other campaign activities in support of a candidate, so long as they do not coordinate their campaign activities with those of the campaigns of either their candidates or those candidates' political committees. Government may not limit the amount of such an advocacy group's expenditures. The only requirement that government can place on those uncoordinated activities is to mandate the independent groups to report their funding sources, activities and expenditures to public authorities, so that the public will know who is supporting each candidate.

The effect of *Citizens United* on Santa Fe's elections was manifested in the 2014 city elections. Three candidates ran for mayor, all of whom qualified for and accepted public funding. All three candidates observed the restriction against private fundraising beyond the limited amounts permitted in the Public Campaign Finance Code. Yet several groups acting independently expended substantial funds in support of the campaign of one of the candidates; the other two had no such outside support. Because of the restrictions in the Public Finance Code, their resources were limited and they could not raise private funds to combat those independent expenditures. The candidate who received the support of independent groups was elected mayor, casting doubt for many observers on the value of the public financing system.

These circumstances do not reflect on the validity of that election or the qualifications of any candidates. The concern of the ECRB is whether candidates in future elections will choose to apply for public funding and commit not to fundraise privately, when opposing candidates who also accept public funding may benefit from unlimited expenditures by non-coordinating, independent groups. Candidates faced with opponents expected to receive strong support from advocacy groups may opt to fund their campaigns privately. Furthermore, potential candidates may be deterred from running at all if they believe their opponents can both accept public financing and receive the unlimited support of independent groups.

To address this issue, ECRB in 2015 proposed a set of amendments to the City's Public Campaign Finance Code as well as to its Campaign Code, §9-2 SFCC. The City Council enacted Ord. #2015-22 to amend the Public Finance Campaign Code, and Ord. #2015-23 to amend the Campaign Code. The most significant changes to those ordinances, for purposes of this discussion, were (1) to **define the term "coordinating expenditures"** in both these ordinances in greater detail; and (2) to **require public disclosure by non-coordinating campaign organizations of their funding sources and expenditures**, when their donations or expenditures exceed certain thresholds.

Revising the definition of "coordinated expenditures" will clarify for candidates and advocacy groups the kinds of campaign expenditures the groups can make and the campaigning actions they can perform, without becoming unlawful contributors to a publicly funded candidate's campaign. See §9-2.3 K (Campaign Code) and §9-3.3 F (Public Campaign Finance Code). Requiring detailed public disclosure of donations to and expenditures by independent advocacy groups will inform the public of the sources of a candidate's support, even if neither solicited by nor coordinated with the candidate. See §9-2.6 (Campaign Code). This enables the voters to

take those funding sources into consideration when they decide who the candidate may feel accountable to once elected.

While these two amendments have strengthened our public financing system for municipal elections as compared with its condition in 2014, one issue vital for the credibility of the public financing system remains unresolved. That issue is how to provide an opportunity for publicly funded candidates to compete with their opponents who are receiving independent support—or who are funding their campaigns privately.

## II. ECRB's Proposals

ECRB calls for one further set of amendments to the Public Campaign Finance Code, to restore the full value of the public financing system as supported by the voters in their adoption of the City Charter: namely, to allow publicly funded candidates to accept small campaign donations, and to match those donations, two-for-one, with public money.

This amendment would reduce the adverse impact of the *Citizens United* decision on our public financing system, through two provisions:

- first, it would allow publicly funded candidates to solicit unlimited small donations without losing eligibility for public funding. However, no one donor could contribute more than \$100 to any single candidate for the entire campaign; and
- second, a publicly funded candidate would report those private donations to the city clerk at specified intervals. The clerk would then allocate twice the amount of the qualified donations to the candidate from the public campaign fund, with certain limits to protect the fund.

Changing our current ordinance to allow publicly funded candidates to obtain private donations would provide them the opportunity to match the campaigns of publicly funded opponents who are receiving support from independent advocacy groups, or opponents who are privately funding their campaigns. Matching those small contributions two-for-one from the City's Public Campaign Finance Fund would further help publicly funded candidates to close the gap with an opponent receiving independent or private support. In the mayoral election of 2014, the candidates who did not receive the backing of independent advocacy groups understandably complained that, because they had committed not to fundraise, they could not catch up to their opponent who was receiving independent support. This amendment would alleviate that situation.

The next part of this memo will address questions that have been raised concerning earlier versions of this proposal.

### III. Questions and Answers on ECRB's Proposals

- 1. Isn't the point of public financing to make candidates independent of private funders? Won't the amendment defeat that purpose by allowing candidates to seek private campaign contributions while also accepting public funding?**

Answer: That is indeed the point, and it is the reason why the current ordinance prevents candidates from soliciting all but the small amounts needed to establish their viability. It is also why even those qualifying contributions are ultimately deposited in the City's public campaign fund, not the candidate's campaign treasury. ECRB has supported that system.

But after *Citizens United* held that advocacy groups can collect and spend unlimited sums to support a candidate, we were faced with a new reality. Some candidates who accept public funds by agreeing to cease private fundraising may still have unlimited amounts of money spent on their behalf, while others will not. The public may then perceive that these independent groups will obtain extra influence after the election of their candidate.

With that concern in mind, the amendment provides that the donations that candidates may accept from any one person may not exceed \$100 per election. It is highly unlikely that anyone would perceive that so modest an amount could seriously influence an elected official. The public matching funds would add to the value of each contribution, but without using private funds to do so.

ECRB would rather see government regain the authority to impose limits on expenditures by advocacy groups, in which case this amendment would be unnecessary. But unless the Supreme Court reverses its 2010 ruling or the Constitution is amended to permit imposition of such limits, the proposal is the next best measure available.

- 2. Why not limit the matching allocation of public campaign funds to publicly funded candidates whose opponents actually *receive* support from independent advocacy groups? As the amendment is written, any candidate could solicit the small donations and receive the matching public funds—even the candidates who are supported by advocacy groups, or those whose opponents receive no such support.**

Answer: Great idea—except Arizona tried that approach and was struck down in *Arizona Free Enterprise Club vs. Bennett*, 564 U.S. 721 (2011).

- 3. Won't this cost the City more money for every election?**

Answer: This is possible, but unlikely. The amendment imposes two limits on the amount of additional money the City Clerk may award from the public campaign finance fund to candidates. One limit is that no candidate, regardless of how many \$100 donations he or she raises, will receive more than twice the amount of public funding he or she originally qualified

for. The second limit is that no further distributions will occur in any election once the total amount of the public campaign finance fund has been distributed.

Despite these limitations, there is one narrow set of circumstances under which the ECRB amendment could increase the cost to the City of the election process. While the Public Campaign Finance Code currently mandates the City to contribute \$150,000 annually to the fund, §9-3.4C also requires the Council to ensure certain minimum amounts are in the fund 119 days prior to each election. In years when the city elects its mayor and four councilors, that amount is \$600,000 (\$300,000 in non-mayoral election years). It is theoretically possible that enough candidates could claim their initial funding *plus* matching fund requests to bring the fund below the required minimum level before the next election, even after the city deposits its annual \$150,000 contributions. If that were to occur, it would require the Council to increase its appropriations to bring the fund up to the minimum pre-election level for the succeeding election cycle.

While that is a theoretical possibility, it is certainly not the case for the coming 2018 election. Given the low expenditures from the fund during the non-mayoral race of 2016, when only two races were contested, the City should be well on its way to ensuring the minimum fund balance for the 2018 mayoral race. ECRB believes, in any case, that the small, potential risk of needing additional contributions to sustain the required minimum fund balance must be weighed against the real harm that our public financing system has already experienced because of *Citizens United* and independent advocacy groups. That harm consists of the undermining of confidence in our public financing system when publicly financed candidates were unable to respond with private fundraising when confronted by an opponent who legally received substantial, unrequested support from independent advocacy groups.

**4. Can unopposed candidates raise the qualifying donations and claim the double funding from the public financing fund?**

Answer: Yes, but such candidates are only eligible to receive ten per cent of the public funds for which they would be entitled had they faced opposition. So the dollar limit on how much additional public funding such candidates could receive, twice the amount for which they are originally eligible, would be much lower.

**5. What good does the additional funding do a candidate when the election is almost over? Won't we be giving money to candidates when it is too late for them to put it to use?**

Answer: The amendment addresses this concern by limiting the two-for-one match to qualifying contributions reported on three dates. The last of these reports would be submitted 25 days prior to the election, when there is still ample time to spend the money effectively.

**6. What happens when the public campaign finance fund becomes depleted in an election cycle? Wouldn't the earliest candidates to claim the matching funding gain an advantage over those who apply later?**

Answer: In the unlikely event that the public campaign finance fund becomes exhausted, dispersals will end for that election cycle. But the amendment provides for only three reporting dates when candidates can receive additional public funds: after submitting a new report that would be due under the amendment 57 days before the election (amendment, §9-3.13 A and B); and after the already required reports filed forty days before the election (§9-2.10A (1)) and twenty-five days before the election (§9-2.10A (2)). If the dispersed funds must be reduced because funds are all used up, the deficit would be spread evenly among all the applicant candidates, and they would all have the same time to adapt. Candidates filing for matching funds would have some incentive to solicit their private qualifying contributions in time for the earlier reports, to help them obtain their full match. And even when the public funds have run out, the amended provision would still allow the publicly funded candidates to continue soliciting private donations of up to \$100.

But the more interesting aspect of this question is the implicit assumption that so many candidates would be collecting so many \$100 donations that the matching payments proposed by ECRB would exhaust the fund. Such a situation seems unlikely unless multiple candidates, perhaps in council as well as mayoral contests, are receiving support from independent advocacy groups.

If that assumption is correct, it underscores the urgency of this proposal. While the independent funding issue arose in the context of uncoordinated support for a single mayoral candidate in 2014, it might well arise in the future for multiple mayoral candidates and council races as well. Interest groups that want support from a majority of council members, even for a single policy or project, might find it worth their while to invest in the election of one or more specific candidates. If that were to happen, it would greatly diminish the value of the public financing system, undermining public confidence not only in the electoral process, but in the very integrity of city government.

**Conclusion**

The ECRB urges enactment of its proposal: to allow publicly funded candidates to solicit small qualifying donations which will be matched two-for-one with public funds, within the limits in the amendment. This will give all qualifying candidates an opportunity to benefit from public financing while also allowing them to add to their campaign funds through small private donations. It will advance the purposes and preserve the integrity of the Public Campaign Finance Code.