



**CITY ATTORNEY'S OFFICE ADVISORY MEMO**

**TO:** ECRB MEMBERS  
**FROM:** ZACHARY SHANDLER, ASSISTANT CITY ATTORNEY 38  
**SUBJECT:** COUNCILOR DOMINGUEZ 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 2016, the City's Finance Department looked at the city's budget.
- It is my understanding that the City's Finance Department saw the amount in the Public Campaign Finance Fund was larger than the minimum amount required for the 2018 election (i.e. there was more than \$600,000 in the fund).
- It is my understanding that the City's Finance Department recommended that the City not budget the annual \$150,000 for the fund in Section 9-3.4B.
- The Council discussed the City's Finance Department's decision during the budget hearing over the City Clerk's budget.
- In the late spring of 2016, the City Council approved the Fiscal Year 2017 budget which adopted the Finance Department's recommendation.
- On July 27, 2016, Councilor Dominguez introduced a bill to make Section 9-3.4B accord with the Fiscal Year budget.
- It is my understanding that Councilor Dominguez and Councilor Ives agreed the bill should go straight to council (and not committees) because it dealt with the recently passed Fiscal Year 2017 budget.
- On August 10, 2016, the Council voted to set up a public hearing at a Council meeting on the bill.
- Councilor Dominguez will present a Substitute Bill that will make the budget recommendation only apply to the Fiscal Year 2017 budget.
- On September 14, 2016, the bill is scheduled to have a public hearing at a Council meeting.

**CITY OF SANTA FE, NEW MEXICO**

**BILL NO. 2016-35**

**INTRODUCED BY:**

Councilor Carmichael A. Dominguez

**AN ORDINANCE**

**AMENDING SUBSECTION 9-3.4 SFCC 1987 TO MODIFY THE DEPOSIT INTO THE PUBLIC CAMPAIGN FINANCE FUND FOR FISCAL YEAR 2016-2017.**

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

**Section 1. Subsection 9-3.4 SFCC 1987 (being Ord. #2009-44, §5, as amended) is amended to read:**

**9-3.4 Public Campaign Finance Fund.**

A. A dedicated public campaign finance fund ("the fund") is established to be administered by the municipal clerk for the purpose of providing public financing for the election campaigns of participating candidates. Monies in the fund and disbursed from the fund to participating candidates are public monies entrusted to the candidates to be used solely for the public purposes specified in this Section 9-3 SFCC 1987.

B. ~~[Beginning with the city budget for fiscal year 2009-2010 and in each]~~ Each fiscal year ~~[thereafter]~~, except for fiscal year 2016-2017, the sum of one hundred fifty thousand dollars (\$150,000.) shall be budgeted for and deposited in the fund.

1 C. ~~[Beginning with the election of 2014, the]~~ The governing body shall appropriate and  
2 deposit in the fund such additional sums, if any, as may be necessary to ensure:

3 (1) That the balance in the fund one hundred nineteen (119) days preceding each  
4 election for mayor and four (4) council seats is at least six hundred thousand dollars  
5 (\$600,000.); and

6 (2) That the balance in the fund one hundred nineteen (119) days preceding each  
7 election for municipal judge and four (4) council seats is at least three hundred thousand  
8 dollars (\$300,000.).

9 D. In addition to the deposits required by paragraphs B. and C. of this subsection, the  
10 following shall also be deposited in the fund:

11 (1) All seed money contributions received by candidates seeking to become  
12 certified as participating candidates which remain unspent;

13 (2) All qualifying contributions received by candidates seeking to become  
14 certified as participating candidates;

15 (3) All amounts paid from the fund to participating candidates which have not  
16 been spent or obligated as of the date of the election;

17 (4) All fines levied by the ethics and campaign review board or as decreed by a  
18 court of competent jurisdiction as a condition of probation;

19 (5) Voluntary donations made to the fund;

20 (6) All interest and other income earned from investment of the fund; and

21 (7) Such other appropriations to the fund as may be made by the governing body  
22 as necessary to fulfill the requirements of this Section 9-3 SFCC 1987.

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1 APPROVED AS TO FORM:

2 Kelley A. Brennan  
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4 KELLEY A. BRENNAN, CITY ATTORNEY

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25 *M/Legislation/Bills 2016/2016-35 Campaign Finance Fund (Substitute)*

Original bill

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**CITY OF SANTA FE, NEW MEXICO**

**BILL NO. 2016-\_\_**

**INTRODUCED BY:**

Councilor Carmichael A. Dominguez

**AN ORDINANCE**

**AMENDING SUBSECTION 9-3.4 SFCC 1987 TO MODIFY ANNUAL DEPOSITS INTO THE PUBLIC CAMPAIGN FINANCE FUND.**

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

**Section 1. Subsection 9-3.4 SFCC 1987 (being Ord. #2009-44, §5, as amended) is amended to read:**

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~~[B. Beginning with the city budget for fiscal year 2009-2010 and in each fiscal year thereafter the sum of one hundred fifty thousand dollars (\$150,000.) shall be budgeted for and deposited in the fund.]~~

1           ~~[C.]~~ B. ~~[Beginning with the election of 2014, the]~~ The governing body shall appropriate and  
2 deposit in the fund such additional sums, if any, as may be necessary to ensure:

3           (1)       That the balance in the fund one hundred nineteen (119) days preceding each  
4 election for mayor and four (4) council seats is at least six hundred thousand dollars  
5 (\$600,000.); and

6           (2)       That the balance in the fund one hundred nineteen (119) days preceding each  
7 election for municipal judge and four (4) council seats is at least three hundred thousand  
8 dollars (\$300,000.).

9           ~~[D.]~~ C. In addition to the ~~[deposits]~~ deposit required by paragraph[s] B. ~~[and C.]~~ of this  
10 subsection, the following shall also be deposited in the fund:

11           (1)       All seed money contributions received by candidates seeking to become  
12 certified as participating candidates which remain unspent;

13           (2)       All qualifying contributions received by candidates seeking to become  
14 certified as participating candidates;

15           (3)       All amounts paid from the fund to participating candidates which have not  
16 been spent or obligated as of the date of the election;

17           (4)       All fines levied by the ethics and campaign review board or as decreed by a  
18 court of competent jurisdiction as a condition of probation;

19           (5)       Voluntary donations made to the fund;

20           (6)       All interest and other income earned from investment of the fund; and

21           (7)       Such other appropriations to the fund as may be made by the governing body  
22 as necessary to fulfill the requirements of this Section 9-3 SFCC 1987.

23 APPROVED AS TO FORM:

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25 KELLEY A. BRENNAN, CITY ATTORNEY

*M/Legislation/Bills 2016/Campaign Finance Fund*

11. **CONSIDERATION OF RESOLUTION NO. 2016-\_\_\_ (COUNCILOR RIVERA, COUNCILOR IVES AND COUNCILOR TRUJILLO). A RESOLUTION PROCLAIMING SEVERE OR EXTREME DROUGHT CONDITIONS MAY EXIST IN THE CITY OF SANTA FE; IMPOSING FIRE RESTRICTIONS; RESTRICTING THE SALE OR USE OF FIREWORKS WITHIN THE CITY OF SANTA FE AND PROHIBITING OTHER FIRE HAZARD ACTIVITIES. (REYNALDO GONZALES)**

This item is postponed to the Governing Body meeting of August 31, 2016.

12. **REQUEST TO PUBLISH NOTICE OF PUBLIC HEARING ON SEPTEMBER 14, 2016: BILL NO. 2016-35. AN ORDINANCE AMENDING SUBSECTION 9-3.4 SFCC 1987, TO MODIFY ANNUAL DEPOSITS INTO THE PUBLIC CAMPAIGN FINANCE FUND (COUNCILOR DOMINGUEZ). (YOLANDA Y. VIGIL AND ADAM JOHNSON)**

Councilor Dominguez said this is just a request to publish. He said the intent of the Ordinance is to align the Legislation with the budget, and it is not to obligate future monies. He said he didn't understand or realize that action was being considered by the ECRB, but we don't know what the result of that is going to be.

**MOTION:** Councilor Dominguez moved, seconded by Councilor Rivera, to approve this request.

**DISCUSSION:** Councilor Dominguez said he will work with his colleagues between now and the public hearing, first to consider what, if anything, comes out of the ECRB, and then to clarify the intent that we really are just trying to align this year's budget with the legislation which already has been approved regarding campaign finance.

Councilor Ives said he is in opposition to the Ordinance and wants to explain the reason. He said, "One, as he looks at the language, it is not designed merely to align next year's budget, but eliminates entirely the obligation of the City to deposit that sum into the fund going forward. It basically leaves it ultimately to the discretion, annually, of the budgetary process for whether or not the deposit will be made. I think that is the wrong direction to be going in, in connection with our Public Campaign Financing. I think we have established a wonderful system here in the City that is, in significant portion, designed to take money out of politics, which is such an important issue across our country, and one which has captured so much of the attention of the populace since the decisions in *Citizens United* and *The Arizona Free Enterprise* cases were ruled on in a 5-4 decision by the U.S. Supreme Court. So I stand in favor of the City's obligation to continue to make those depositions. And I know I spoke to this during our budgeting process as well. For me, it's simply taking a big step in the wrong direction. It's not merely modifying this year's budget, but an entire process was put in and voted on previously that established our Public Campaign Finance system. So I am in opposition to it."

Councilor Harris said he hears Councilor Ives, but "I just don't find that language that says it becomes discretionary. If you could perhaps elaborate a little bit. I just don't see it."

Councilor Ives said, "Certainly by eliminating Section B, which said, '*Beginning with the with the City budget for fiscal year 2009-2010 and in each fiscal year thereafter the sum of one hundred fifty thousand dollars (\$150,000) shall be budget for and deposited in the fund.*' So, we've eliminated that obligation to continue to make that deposit in each instance. And then it says, '*...The Governing Body shall appropriate and deposit in the fund such additional sums, if any, as may be necessary to ensure.*' that. So it does eliminate that obligation. Granted we still have other obligations thank goodness under this provision, but again I'm simply in support of continuing to make that funding available to ensure that there is adequate funding in that fund on an annual and going forward basis."

Councilor Harris said, "The language that starts in Section B, I think covers it, '*...shall appropriate and deposit in the fund such additional sums.*' [which tells me there's already money in the account] '*...if any, as may be necessary to insure.*' I understand the language you're reading, but I believe the statement here is sufficient, and I think it requires the Governing Body to 'appropriate and deposit'."

Councilor Maestas said he wants to echo what Councilor Harris, and "I think it does not change in any way the minimum balances required for certain election cycles." He said this action places a higher burden on the next budget to capitalize that and meet the minimum balances. He said, "I think this is fine, but I think the greater is I think the optics and symbolism of even considering reducing the Public Finance Fund was not very good, especially in light of the fact that we are pursuing adding and expanding public financing through matching funds. It's unfortunate. It happened through the budget. It was a one time thing, but I think if this were to be recurring then I definitely would take issue. And if any future actions would inhibit our ability to expand public financing, for example to add matching funds, then I definitely would oppose any such action. But I believe we're fine. The minimum balances were not affected in this legislation."

Councilor Harris said he sent 2 questions to Adam Johnson, with two simple questions. He said, "I'm just asking how much money was expended in the last election cycle, and what is the balance in this account right now."

Adam Johnson, Budget Officer, said, "The current balance in this account which is what was the original object of proposing this change through the budget process, the current balance is \$663,000, which exceeds the balance that is in Section B(1) of the Resolution. So the only point was to capture that we have made that the intent of the legislation, and to continue to add to the fund, especially during a difficult budget cycle, didn't make sense. And what we need is more flexible language to say if \$600,000 is the balance, then we'll make sure that balance is there as we approach every budget cycle. That weighs no regard on whether or not that number is \$600,000, \$1 million or \$10 million, as far as what that has to be. So it still gives that flexibility to meet that through every cycle. To add context also to the concern with the continual \$150,000 in perpetuity annually, the last budget cycle, we spent \$75,000. In the prior election cycle, we spent \$281,000. So we currently have a balance in there that staff believes is sufficient for the next election cycle, should it dip below the language that it is proper to add to get back to \$600,000."

Councilor Villarreal said, "I think we need to work on some language. I'm willing to let this get published, but I really would like us to not prevent us some opportunities to look at matching funds, if they are for review. But deciding that you were going to run for Mayor, then you probably would want some money in there, wouldn't you, for public financing. So I'm just letting you know, that we need to make sure we have

enough money, especially for the mayoral race. And so, I'm willing to move this forward with the current language, but I would like to make sure the language makes sense as we move it through committees. And I wanted to ask if it is going to get assigned to the ECRB. Is that correct. As a recommending body."

Councilor Dominguez said we can send it to the ECRB.

Councilor Villarreal said, "I would like to recommend that it go to the ECRB first and then Finance Committee, and any other committees after."

Ms. Brennan said, "Adam has explained sort of the monetary side. In fact, this in part addressed the conflict in the Ordinance. But I would also say, with respect to Councilor Villarreal's idea, that to the extent we're advertising and giving notice of a certain Ordinance enactment, to the extent it embraced another subject entirely, as you suggest, we would have to readvertise."

Councilor Dominguez said, "Kelley, help me think about, or maybe Yolanda, think of the timing a little bit. I understand there is something at ECRB that could impact this. Is that true. No."

Ms. Brennan said, "Councilor, I don't know."

Councilor Maestas said, "We got into trouble last year when we adopted a budget and we counted heavily on a transfer from the Water Fund. And if it weren't for the media surrounding that, the State wouldn't have been aware that we passed a budget without that policy action allowing for the Water Fund transfer to balance the budget. This is a similar situation where we submitted a budget, and we did it without the necessary policy decisions to authorize, for example, taking this money from the Public finance Fund. So I think there is some urgency to get this done, because right now, up until now, our budget really is not legally balanced, because we have not enacted the necessary policy to allow for that transfer from the Public Finance Fund. So I say we act tonight."

Councilor Maestas continued, "And I also want to urge us to avoid doing this, passing a budget, and then dealing with the policy after that facilitates a lot of the budget changes, and avoid having the State come down and say, we can't accept your budget because you need some policy decisions to fully authorize the changes you made and the budget you submitted to us. So I think there is a sense of urgency. This is a bad practice, we ought not to do it any more, but I think we should act tonight."

Ms. Vigil said, "If I could, that is why we're just sending this directly to Council for a public hearing, because this was a part of the budget. So it was not going to go to any of the committees, because it was approved as part of the budget."

Councilor Ives said, "Unfortunately, I believe that is inaccurate. I think the way the budget was presented, it was a one-time elimination of the \$150,000. I remember specifically, at least language that I thought said, this was a one-time not providing this funding into the City's budget. So when I look at this language, I actually do see it as very different than what we voted on in the budget process."

**CLARIFICATION OF THE MOTION:** Councilor Dominguez said really we're just approving a request to publish. He will be working with staff to make sure this gets clarified, along with "my colleagues, and the ECRB to make sure we get alignment." He said he keeps getting mixed messages about whether there is something on the table to consider by the ECRB. He hears this from Councilor Ives as well, but nonetheless he hopefully will get it squared away by the time we have the public hearing.

**VOTE:** The motion was approved on the following Roll Call vote:

**For:** Mayor Gonzales, Councilor Dominguez, Councilor Harris, Councilor Lindell, Councilor Maestas, Councilor Rivera, Councilor Trujillo and Councilor Villarreal.

**Against:** Councilor Ives.

**13. CONSIDERATION OF RESOLUTION NO. 2016-64 (COUNCILOR DOMINGUEZ). A RESOLUTION AMENDING THE GOVERNING BODY PROCEDURAL RULES TO ENSURE A MORE FAIR, JUDICIOUS AND EFFICIENT PUBLIC PROCESS. (KELLEY BRENNAN AND JESSE GUILLEN). (Postponed at the July 27, 2016 Meeting of the Governing Body)**

An Amendment Sheet for this item, submitted by the Finance Committee, is incorporated herewith to these minutes as Exhibit "6."

An Amendment Sheet for this item, submitted by Councilor Maestas, is incorporated herewith to these minutes as Exhibit "7."

Councilor Dominguez said this Resolution has been to Committees, noting there was a public hearing at the Finance Committee. He said he will accept the amendments from the Finance Committee, and the amendments proposed by Councilor Maestas. He said, "And I would like to add one more, and if I could just read that for the record, and it will be a part of my motion. It says, 'V(A)(14)(e), *However, this in no way should prevent any member of the Governing Body from raising public objections about a specific Executive Session, if he or she thinks that the conditions of the Open Meetings Act have been violated in that session.*' That has to do with Executive Session Rules. I will say that, although I would make a motion with that language in there, that on some level, I believe that members of the Governing Body should already know that is the case and that they have that option. But nonetheless, that will be my motion Mayor. Thank you."

**MOTION:** Councilor Dominguez moved, seconded by Councilor Maestas, to adopt Resolution No. 2016-64, with the Amendment proposed by the Finance Committee and amendment proposed by Councilor Maestas, with the following amendment to page 8 of the Substitute Rules as follows: V(A)(14)(e), *"However, this in no way should prevent any member of the Governing Body from raising public objections about a specific Executive Session, if he or she thinks that the conditions of the Open Meetings Act have been violated in that session."*