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Council Action and Executive Summary

Item # 13 **Ordinance/Resolution#** 2677

For Meeting of January 22, 2013 (Ordinance First Reading Date)

For Meeting of February 19, 2013 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: **AN ORDINANCE REPEALING LCMC 1997, ARTICLE II. CAMPAIGN PRACTICES, SECTIONS 8-31 THROUGH 8-67 IN ITS ENTIRETY AND REPLACING WITH NEW SECTIONS ENTITLED ARTICLE II. CAMPAIGN CODE, SECTIONS 8-31 THROUGH 8-39.**

PURPOSE(S) OF ACTION:

To repeal existing Campaign Practices and replace with new Campaign Code.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Esther Martinez-Carrillo	**Department/Section:** Legal/City Clerk	**Phone:** 541-2115
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On April 2, 2012, City Council approved Resolution No. 12-170 to establish a Campaign Finance Ad Hoc Committee. The Committee was appointed on May 7, 2012 and met for the first time on June 14, 2012. The Committee worked with staff and reviewed and evaluated the current Campaign Finance Ordinance.

After four meetings, the Committee forwarded a draft Campaign Code to the City Manager and the topic of "Campaign Finance Committee Report" was scheduled for the September 10, 2012, Work Session. Chair Daniel Scheller gave the report and City Council asked questions and made recommendations.

On November 9, 2012, the Campaign Finance Ad Hoc Committee met to review and discuss the minutes of the September 10, 2012 Work Session. The Committee's consensus was to make changes to the draft Campaign Code as mentioned during the Work Session.

One committee member expressed concern over *Sec. 8-37B(4) Donation to another candidate seeking election to municipal office;* and wanted it struck from the Campaign Code, however, consensus from the rest of the committee was to leave it in place.

(Continue on additional sheets as required)

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Proposed New Campaign Code.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
N/A	*Budget Adjustment Attached*	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
N/A	Yes	☐	Funds will be deposited into this fund: _____ in the amount of $_____for FY__.
	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will repeal the existing Campaign Practices and replace with new Campaign Code.
2. Vote "No"; this will keep the current Campaign Practices in place.
3. Vote to "Amend"; this allow City Council to modify the ordinance as it deems appropriate.
4. Vote to "Table"; this could allow City Council to table/postpone the ordinance and direct staff accordingly.

REFERENCE INFORMATION:

N/A

(Continue on additional sheets as required)

COUNCIL BILL NO. 13-022
ORDINANCE NO. 2677

AN ORDINANCE REPEALING LCMC 1997, ARTICLE II. CAMPAIGN PRACTICES, SECTIONS 8-31 THROUGH 8-67 IN ITS ENTIRETY AND REPLACING WITH NEW SECTIONS ENTITLED ARTICLE II. CAMPAIGN CODE, SECTIONS 8-31 THROUGH 8-39.

The City Council is informed that:

WHEREAS, on May 7, 2012, the City Council appointed a Campaign Finance Ad Hoc Committee to review and evaluate the current Campaign Finance Ordinance; and

WHEREAS, the Campaign Finance Ad Hoc Committee presented a draft new Campaign Code to City Council during the September 10, 2012 Work Session; and

WHEREAS, the Campaign Finance Ad Hoc Committee met on November 9, 2012 to review and discuss the Work Session minutes and made further changes to the Campaign Code as referenced in Exhibit "A".

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces:

(I)

THAT LCMC 1997, Article II. Campaign Practices, Sections 8-31 through 8-67 are hereby repealed in its entirety.

(II)

THAT a new LCMC 1997, Article II. Campaign Code, Sections 8-31 through 8-39 is hereby enacted as shown in Exhibit "A" attached hereto and made part thereof.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____day of _____, 2013.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

ARTICLE II. CAMPAIGN CODE

Sec. 8-31. Title.

This section may be cited as the "Campaign Code."

Sec. 8-32. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A. *Candidate* means an individual seeking election to the position of mayor, councillor or municipal judge at a regular or special election of the city.

B. *Contribution* means a gift, proceeds from any fundraiser(s), subscription, loan, loan guarantee, advance, pledge, deposit, contract agreement or promise of money or anything of value or other obligation, including but not limited to in-kind services or contributions, whether or not legally enforceable, made directly or indirectly, for the primary purpose of supporting or opposing a candidate for elective office or purpose of supporting a municipal question to a candidate or political committee. This does not include the value of services provided without compensation or unreimbursed personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate, political committee and/or municipal question.

C. *Election* means any general or special municipal election in the city.

D. *Expenditure* means a payment, transfer, or distribution, or obligation or promise to pay, transfer or distribute any money or other thing of value for the purpose of influencing the outcome of an election of a candidate or a municipal question, but does not include the candidate's or his/her immediate family's personal expenses.

E. *General purpose political committee* means a political committee other than a special purpose political committee.

F. *Political committee* means every two or more persons who are selected, appointed, chosen or associated for the purpose of, wholly or in part, supporting or opposing one or more candidates at any election or a municipal question, and includes political committees or similar organizations composed of employees or members of any corporation, labor organization, trade or professional association or any other similar group which raises, collects, expends or contributes money or any other thing of value for the purpose of supporting or opposing a candidate

or a municipal question in a municipal election.

G. *Special purpose political committee* means a political committee making contributions to support or oppose one candidate or a municipal question, such contributions being limited to one special or one general election.

H. *Reporting individual* means every candidate, every treasurer of every political committee whose purpose is to aid the candidate in the campaign for municipal office or a municipal question.

I. *Municipal question* means any question that is placed upon a ballot for a general or special election by the registered voters of the city or the governing body.

Sec. 8-33. Purpose and Intent.

It is the public policy of the City of Las Cruces that:

A. Public confidence in municipal government is essential and must be promoted by all possible means;

B. Political campaign contributions and expenditures be fully disclosed to the public and that secrecy in the sources and application of such contributions be eliminated;

C. The public's right to know how political campaigns are financed far outweighs any right that political campaigns remain secret and private;

D. The public interest is served by encouraging the widest participation of the public in the electoral process by reducing the dependence of candidates on large contributions; and

E. This article also applies to any contributions, expenditures of persons, or committees whose purpose is to encourage adoption or defeat of any candidate or municipal question submitted to the voters of the city.

Sec. 8-34. Printing or publishing campaign material without specifying sponsor.

A. It is unlawful for any person, organization or political committee to publish or print or circulate any campaign advertising or communication which does not specify the name of the sponsor or the name of a responsible officer who authorized the printing or publication or circulation of such material in any municipal election or special election. Written, printed or posted materials shall also show a telephone contact number.

B. The printer of any campaign material shall be identified.

Sec. 8-35. Campaign Treasurer.

A. Each candidate or any political committee subject to the financial restriction of Section 8-36E shall have a designated campaign treasurer. A candidate or person may appoint himself/herself as Campaign Treasurer.

(1) Political committees established to support or defeat a municipal ballot question shall file with the City Clerk within ten (10) business days after City Council authorizes the municipal question to be placed on a ballot.

B. The name, address and telephone number of the Campaign Treasurer shall be filed with the City Clerk with his/her declaration.

C. The Campaign Treasurer shall keep a true and full record of all contributions and expenditures, to include:

(1) The name and address of every contributor whose total contribution exceeds $25;

(2) The amount and form of every contribution;

(3) A full record of all disbursements;

(4) Receipts for all expenditures exceeding $25, reflecting the purpose of each expenditure, the date and method of payment;

(5) A full record of all debt incurred.

D. Campaign records shall be preserved by the Campaign Treasurer or candidate for at least two years after the date of the election for which the accounts are required to be kept.

Sec. 8-36. Reporting.

A. Each candidate or campaign treasurer on behalf of the candidate, person or committee shall file a campaign report with the City Clerk, on a form provided by the City Clerk.

B. It is unlawful for any political committee as defined in NMSA 1978, 1-19-26L (2010) to engage in a political purpose as defined in 1-19-26M (2010), to receive contributions or expend in excess of $500 in any calendar year or continue to receive or make any contributions or expend for any political purpose unless that

political committee appoints and maintains a treasurer as required by this article. Each treasurer shall comply with Sections 8-35 and 8-36 herein.

C. Each campaign report which identifies any contributions and expenditures exceeding $25, shall itemize each such item including:

(1) The amount of contribution or expenditure or value of goods and services contributed;

(2) The purpose of the contribution or expenditure;

(3) The date of the contribution or expenditure;

(4) The name and address of the person or entity from whom any cumulative contribution exceeding $25 was received;

(5) The name and address of the person or entity to whom any cumulative expenditure exceeding $25 was made; and

(6) Anonymous contributions may not exceed $25.

D. Each campaign report shall contain the total of all contributions and expenditures. Total contributions to the candidate shall not exceed $2,300 from single individual or political committee or any other entity.

E. An itemized campaign report is not required if neither the total contributions received nor the total expenditures exceed $250. However, the campaign report shall contain a written declaration, under oath, that neither the campaign contributions nor the expenditures exceed $250.

F. Each campaign report shall contain a declaration that the campaign report has been prepared with all reasonable diligence and that it is true, complete and correct.

G. Each campaign report shall be subscribed and sworn to by the candidate or Campaign Treasurer.

H. It is the candidates and political action committees responsibility to be aware of the reporting requirements and penalties for violation thereof.

Sec. 8-37. Report Filing Periods.

A. Mandatory campaign reports to include, but not limited to, a full record of all debt incurred shall be filed during the following periods:

(1) The first report shall be filed on Candidate Declaration date, 42 days before the election. The first campaign report shall contain a total listing of all contributions and expenditures made beginning January 1st of the year in which candidate intends to seek election. If contributions are received prior to January 1st of the election year, a candidate shall file a report within 60 days of receiving contributions.

(2) If a candidate has not received any contributions or has not made any expenditures since the candidate's last report was filed with the City Clerk, the candidate shall only be required to file a statement of no activity, which shall be notarized, in lieu of a full report when the report would otherwise be due and shall not be required to file a full report until the next required filing date.

(3) The second report shall be filed not later than 12:00 noon 15 calendar days preceding the date of the election.

(4) The third report shall be filed not later than 30 days after an election for both certified and uncertified candidates. This is the final report for uncertified candidates.

(5) A final report shall be filed any time after an election but no later than six months after date of election if no debt remains.

(6) Candidates having debt on their campaign shall file a report a year after an election and every six months thereafter so long as debt remains. A $100.00 fee is imposed and due each time a report is filed so long as the campaign debt remains. Once the debts are resolved the candidate shall file a final report.

(7) A letter from the bank stating the account has been closed shall be submitted with the final report.

B. By the date of the final report any remaining contributions not expended on the campaign shall be disposed of, at the option of the candidate, by one of the following methods:

(1) Returned to the person(s) who made the contribution;

(2) Placed in the City of Las Cruces' General Fund for future election costs; or

(3) Donated to a 26 U.S.C. 501(c)(3) organization as evidenced by certificate from the organization; or

(4) Donation to another candidate seeking election to municipal office.

C. The final campaign report shall reflect the final disposition of such contributions.

D. Late Filing:

(1) If any candidate or Campaign Treasurer of a political committee fails to submit any required report to the City Clerk of expenditures and contributions by the deadlines outlined in this Section, the candidate or Campaign Treasurer shall pay to the City of Las Cruces General Fund designated for future election costs, the sum of $100 per day for each regular working day until the complete report is filed.

(2) It is unlawful for a candidate or Campaign Treasurer of a political committee to knowingly and willfully file a false report of expenditures and contributions.

(3) Any elected candidate who fails or refuses to file a report of expenditures and contributions in the manner within the time required by this division shall not be issued a certificate of election until such candidate files the report of expenditures and contributions.

Sec. 8-38. Election financial records.

Upon being notified of the formation and existence of any political committee, the City Clerk shall furnish by registered mail to the chairman or moderator, or head of this committee a copy of the City Charter and Campaign Code, and identify in these documents the requirements for reporting contributions and expenditures by the committee as provided for in this article. It is recognized that an affirmative duty rests on the officials of this committee to be aware of the provisions of the City Charter and Campaign Code, and accordingly, such officials shall prepare and file the required statements without a request from the office of the City Clerk.

Within ten (10) days of receipt of this registered notification from the City Clerk, the political committee shall prepare and file with the office of the City Clerk a statement signed by the head of the committee acknowledging receipt of the City Charter and Campaign Code, setting forth the following:

(1) The exact name of the committee;

(2) The official address and phone number;

(3) The membership and officials thereof; and

(4) An Acknowledgement and receipt of a copy of the City Charter and campaign code and of the requirements regarding filing of reports. It is recognized that an affirmative duty rests on the officials of such political committee to be aware of the provisions of the City Charter and campaign code, and, accordingly, such officials shall prepare and file the required statements without a request from the office of the City Clerk. The city is excused from notifying the candidates or committees.

Sec. 8-39. Severability.

The provisions of this Article and each of its Sections, paragraphs, subparagraphs, sentences and clauses are severable. In the event that any such provision is held to be invalid or unenforceable by any judicial or administrative tribunal, it is the intent of the governing body that all other provisions thereof shall remain in full force and effect.