City of Las Cruces®

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Council Action and Executive Summary

Item # 17 **Ordinance/Resolution#** 2682

For Meeting of May 6, 2013 (Ordinance First Reading Date)

For Meeting of May 20, 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 ENACTING 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 February 19, 2013, 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*, was tabled to March 4, 2013 and at that meeting failed to pass on a vote of 0-7.

City Council held a Work Session on March 18, 2013 and staff presented a format for discussion on the proposed campaign code. At the Work Session, several changes were recommended and consensus was given to make modifications as shown in Exhibit "A".

(Continue on additional sheets as required)

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Proposed New Campaign Code.
3. Attachment "A", Article II. Campaign Practices.

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. 13–027
ORDINANCE NO. 2682

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

The City Council is informed that:

WHEREAS, on March 4, 2013, Council Bill No. 13-022; Ordinance No. 2677, an ordinance to enact a new campaign code was presented to City Council and it failed to pass on a vote of 0-7; and

WHEREAS, a Work Session to further discuss the new campaign code was held on March 18, 2013 and direction was given to staff to modify the proposed campaign code as shown 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

EXHIBIT "A"

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, deposit, contract agreement 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 one or more persons who is/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, every person or corporate officer 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.

J. *Person* means any individual, estate trust, receiver, conservative association, club, corporation, company firm, partnership, joint venture, syndicate or entity.

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 by 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.

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 thirty (30) 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 any contribution or expenditure and any in-kind contribution or in-kind 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.

(7) When the reporting individual is a candidate, the report shall include the expenditures and contributions of those political committees authorized by the candidate to expend and receive funds on behalf of his candidacy, and when the candidate files a report for the political committee, the treasurer thereof need not file a report of expenditures and contributions for the period of time covered in the candidate's report.

D. Each campaign report shall contain the total of all contributions and expenditures. Total contributions to the candidate shall not exceed $2,300 from any individual or political committee or any other entity. Except for a candidate's contribution or loan to their own campaign.

E. An itemized campaign report is required if the total contributions received and total expenditures exceed $250. A campaign report shall contain a written declaration, under oath, if 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 designated 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 to a candidate who intends to seek election.

(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 or contributions on hand in their campaign shall file a report a year after an election and every six months thereafter so long as debt remains or contributions have not been exhausted. Once the debts and/or contributions are resolved the candidate shall file a final report.

(8) The city clerk shall notify all candidates, via email, when a report is due at least ten (10) working days in advance.

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 $50.00 per day for each regular working day until the complete report is filed up to a maximum of $1,000.00.

(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 (no P.O. Boxes allowed) 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.

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.

the statement of withdrawal, the remaining candidate shall be the winner, and a casting of lots shall not be held.
(Ord. No. 2219, § I, 8-1-05)

Secs. 8-14—8-30. Reserved.

ARTICLE II. CAMPAIGN PRACTICES

DIVISION 1. GENERALLY

Sec. 8-31. 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:

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

Contribution means a gift, subscription, loan, advance or deposit of any money or other thing of value which is made for the primary purpose of supporting or opposing a candidate for elective office. 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.

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

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, but does not include the candidate's or his immediate family's personal expenses.

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

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 a candidate at any election, 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 in a municipal election.

Reporting individual means every candidate, every treasurer of every special purpose political committee or treasurer of every general purpose political committee whose purpose is to aid the candidate in the campaign for municipal office.

Special purpose political committee means a political committee making contributions to support or oppose one candidate, such contributions being limited to one special or one general election.
(Code 1988, § 12-16; Ord. No. 1783, § I, 3-20-00)
Cross reference—Definitions generally, § 1-2.

Sec. 8-32. Applicability of article.

This article also applies to any contributions, expenditures, persons, or committees whose purpose is to encourage adoption or defeat of any municipal question submitted to the voters of the city.
(Code 1988, § 12-17)

Sec. 8-33. Reserved.

Editor's note—Ord. No. 1783, § II, adopted Mar. 20, 2000, repealed § 8-33 in its entirety. Former section 8-33 pertained to printing or publishing campaign material without specifying sponsor and derived from the Code of 1988, § 12-18.

Secs. 8-34—8-60. Reserved.

DIVISION 2. REPORTS OF EXPENDITURES AND CONTRIBUTIONS

Sec. 8-61. Required.

Each candidate and each treasurer of each special purpose political committee and general purpose political committee shall file with the city clerk a report of expenditures and contributions on forms prescribed by the city clerk. When the reporting individual is a candidate, the report

shall include the expenditures and contributions of those political committees authorized by the candidate to expend and receive funds on behalf of his candidacy, and when the candidate files a report for the political committee, the treasurer thereof need not file a report of expenditures and contributions for the period of time covered in the candidate's report.
(Code 1988, § 12-26)

Sec. 8-62. Forms furnished by city.

The city clerk shall furnish upon request to political committees or candidates the form for the reporting of expenditures and contributions. The clerk shall give each candidate, or a designated representative, the prescribed reporting forms at the time of filing the nominating petition. Ten days before any report of expenditures and contributions is required to be filed by this division, the city clerk shall notify each candidate by certified mail of the deadline for filing the report.
(Code 1988, § 12-27)

Sec. 8-63. Contents.

Under this division, each reporting individual shall file a report containing the following information:

(1) A report of expenditures and contributions, itemizing each item of expenditure and contribution, including:

a. The name and address of the person to whom an expenditure was made or from whom a contribution was received;

b. The amount of the expenditure or contribution, or value thereof;

c. A description of the in-kind services or goods received; and

d. The date of the expenditure or contribution.

(2) The report of expenditures and contributions shall be subscribed and sworn to by the candidate or treasurer of the political committee, as the case may be.

(Code 1988, § 12-28)

Sec. 8-64. Time for filing.

All candidates and special purpose political committees and general purpose political committees shall file reports of expenditures and contributions for the following reporting periods:

(1) Twelve days prior to an election;

(2) Not later than 30 days after an election;

(3) Six months after an election, if any contributions in the possession of the candidate or special purpose political committee remain unexpended or if any debt remains unpaid; and

(4) Every 12 months after an election, so long as any debt remains unpaid by the candidate or special purpose political committee.

(Code 1988, § 12-29; Ord. No. 1783, § III, 3-20-00)

Sec. 8-65. Late filing penalty; failure to file report.

(a) If any candidate or treasurer of a political committee files a report of expenditures and contributions after any deadline imposed by the campaign procedures, such person shall be liable and shall pay to the city clerk at the time of late filing the sum of $50.00 per day for each regular working day after the time required by this division for the filing of reports of expenditures and contributions. An incomplete report will be considered as no report; a late filing penalty will apply to the completed report if it is not filed within the prescribed time limits. All sums collected for such penalty shall be deposited in the general fund of the city. If sent by certified mail or registered mail, the report shall be deemed filed on the date three days following the date of the postmark.

(b) Any candidate who fails or refuses to file a report of expenditures and contributions in the manner and 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.
(Code 1988, § 12-30; Ord. No. 1783, § IV, 3-20-00)

Sec. 8-66. Political committee treasurer.

(a) It is unlawful for the members of any political committee or candidate to make any expenditure or solicit or accept any contribution for the purpose of supporting or opposing a candidate, unless:

(1) A treasurer has been appointed and is constantly maintained; however, when a duly appointed treasurer is unable for any reason to continue as treasurer, the candidate may appoint a successor, provided that nothing in this subsection prohibits a candidate from appointing himself treasurer;

(2) All disbursements of money and receipts of contributions shall be recorded by and through such treasurer; and

(3) Such treasurer, upon disbursing or receiving money or other things of value, shall immediately enter and thereafter keep in a proper book, to be preserved by him, a full, true and itemized statement and account of each sum disbursed or received, the date of such disbursal or receipt, to whom disbursed or from whom received and the object and purpose for which it has been disbursed or received.

(b) Anonymous contributions in an amount not to exceed $25.00 from one individual or organization may be accepted, but such contributions shall be reported as to date and amount.
(Code 1988, § 12-31)

Sec. 8-67. Election financial records.

(a) Candidates for elective office or treasurers for political committees shall keep financial records for a period of six months following the date of election, in order that the records will be available if a complaint is filed or inquiry is made. Such financial records shall include cancelled checks, invoices, receipts, bank statements, bills of sale, statements of account, and all other financial records pertinent to the campaign.

(b) In preparing and maintaining financial records such as ledgers and journals and recording contributions and expenditures on the disclosure statement of campaign financing, the candidates or treasurers of political committees shall:

(1) Record in-kind contributions as both contributions and expenditures with a description of such in-kind services or goods received;

(2) Record campaign loans as contributions, with subsequent repayment of loans credited against contributions; and

(3) Record returned contributions as credits against contributors.

(c) The services of a person who is performing the duties of treasurer pursuant to the city Charter shall not be considered a campaign contribution as defined in this section.

(d) The gross receipts of a fundraising activity on behalf of a candidate for elective office are considered to be campaign contributions, and all expenditures associated with such a fundraising activity are considered to be campaign expenditures. As used in this interpretation, the term "gross receipts" includes all monies and donations of any kind which are received as part of the fundraising activity.

(e) The city clerk, upon being advised of the formation and existence of a special political committee, as defined in this article, shall furnish by mail to the chairman, moderator, or head, however designated, of such committee, and also the fundraising member thereof, however designated, if known, a copy of the city Charter and campaign practices, and shall call attention to the requirements for reporting contributions and expenditures by the political committee as provided for in this section. Within ten days from receipt of the notification from the city, the political committee shall prepare and file with the office of the city clerk a statement, signed by the head of the committee or by the finance chairman thereof, setting forth the following:

(1) The exact name of the committee;

(2) Its official address and phone number, if available;

(3) Its membership and officials thereof; and

(4) Acknowledgment of receipt of a copy of the city Charter and campaign practices 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 practices, and, accordingly, such officials are enjoined to 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.
(Code 1988, § 12-32)