



City of Las Cruces®

PEOPLE HELPING PEOPLE

COUNCIL WORK SESSION SUMMARY ROUTING SLIP

Meeting Date December 14, 2015

TITLE: Public Campaign Finance,

- Are there attachments to the Council Work Session Summary? Yes No
- Will there be a Video Presentation for this item? Yes No
- Will there be a PowerPoint Presentation for this item? Yes No
- If "yes", will a copy of the PowerPoint Presentation be included on the Council Work Session Agenda? Yes No

DEPARTMENT / ORGANIZATION	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact		541-2128	12/9/15
Department Director		EXT 2128	9 Dec 2015
Other			
Assistant City Manager/CAO (if applicable)			
Assistant City Manager/COO (if applicable)			
City Manager			12/9



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PEOPLE HELPING PEOPLE

Council Work Session Summary

Meeting Date: December 14, 2015

TITLE: Public Campaign Finance

PURPOSE(S) OF DISCUSSION:

- Inform/Update
- Direction/Guidance
- Legislative Development/Policy

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Common Cause New Mexico ("CCNM") encourages the City to implement a public campaign financing ordinance. CCNM believes that moneyed interests are capable of promoting certain candidates to promote self-interests and buy elections. According to CCNM, the solution is to promote ordinary citizens to positions of electoral power by publicly financing their campaigns. CCNM has forwarded the City Attorney's Office a copy of its proposed legislation.

After a thorough review of the proposed ordinance, the City Attorney's Office have analyzed the proposed ordinance and have formulated the followed questions and answers to be addressed in detail in presentation format. The questions and answers are as follows:

QUESTIONS PRESENTED

1. What are the costs of the prospective legislation;
2. What are the available methods of enforcement of the terms of use of public donated campaign money;
3. What levels of additional reporting will be required;
4. What will be the administrative burden on the Clerk's Office?

SHORT ANSWERS

1. CCNM estimates the total cost to be \$200,000 per year. There are a number of reasons why this number is likely to be higher.
2. On the municipal level, the City of Las Cruces ("City") will be limited in terms of judicial remedy to jail terms of 90 days and fines not to exceed \$500.00.
3. Small donor financing requires a good deal of additional reporting and oversight to ensure compliance. This leads to additional work for the Clerk's Office.
4. The administrative burden on the Clerk's Office will be substantial.

Continue on additional sheets as required)

SUPPORT INFORMATION:

1. Attachment "A". Proposed Legislation
2. Attachment "B". Small Donor Campaign Financing



215 E Street, NE · Washington, DC 20002
 tel (202) 736-2200 · fax (202) 736-2222
www.campaignlegalcenter.org

Paul S. Ryan

Recommended Policy Model for Public Campaign Financing in the City of Las Cruces, NM

Below is a policy model for a voluntary public campaign financing program in the City of Las Cruces, NM. All specified dollar amounts are simply placeholders for amounts to be determined by local stakeholders. Key provisions include:

- Addition to the Las Cruces Municipal Code of definitions essential to the implementation of the public financing system.
- Addition to the Las Cruces Municipal Code of additional campaign financing reporting requirements for candidates who voluntarily participate in the public financing program.
- Establishment of a “Fair Elections Fund” with appropriations, on a per-resident basis, from the city’s general fund to cover the operating costs of the public financing program.
- Specified criteria for eligibility to receive public funds, including requirements that a participating candidate:
 - collect a specified number of “qualified contributions” (contributions not greater than \$200 for mayoral candidates, or \$100 for city council and municipal judge candidates, made by a natural person resident of the City of Las Cruces) in order to show a broad base of public support;
 - not make expenditures from personal funds;
 - not accept contributions other than “qualified contributions”;
 - not solicit or direct contributions other than qualified contributions to such candidate’s controlled committee.
- Payment of public funds to eligible participating city council candidates equal to 400% of “qualified contributions” received from district residents (*i.e.*, \$4-to-\$1 match), subject to a cap.
- Payment of public funds to eligible participating mayoral candidates equal to 400% of “qualified contributions” received from city residents (*i.e.*, \$4-to-\$1 match), subject to a cap.
- Restriction on the use of public funds—may only be used for direct campaign purposes, not for personal or family support, clothing or other items related to

personal appearance, contributions or loans or independent expenditures supporting other candidates or committees.

- Cost of living adjustment for dollar amounts specified in the program, to keep the program amounts up to date as the costs of campaigning rise in the future.
- Enforcement and penalty provisions for violation of the law.

Las Cruces, NM
Fair Elections Public Financing
Policy Model
Draft September 21, 2015

**AMENDMENT TO CITY OF LAS CRUCES MUNICIPAL CODE CHAPTER 8
TO CREATE A FAIR ELECTIONS PUBLIC CAMPAIGN FINANCING SYSTEM**

Section 1. FINDINGS

The People of the City of Las Cruces find that the City of Las Cruces' current campaign finance system:

- A. Discourages many otherwise qualified candidates from running for office because of the need to raise substantial sums of money to be competitive;
- B. Fuels the public perception of corruption and undermines public confidence in the democratic process and democratic institutions;
- C. Creates a danger of actual corruption by encouraging elected officials to take money from private interests that are directly affected by governmental actions;
- D. Forces candidates to raise larger and larger percentages of money from interest groups that have a specific financial stake in matters before City of Las Cruces government to keep pace with rapidly increasing campaign costs;
- E. Diminishes elected officials' accountability to their constituents by compelling them to be disproportionately accountable to the contributors who finance their election campaigns;
- F. Violates the rights of all citizens to equal and meaningful participation in the democratic process;
- G. Disadvantages challengers, because campaign contributors tend to give their money to incumbents, thus causing elections to be less competitive;
- H. Burdens candidates with the incessant rigors of fundraising and thus decreases the time available to carry out their public responsibilities; and
- I. Necessitates the creation of a Fair Elections public financing system to address these concerns.

Section 2. Be it Ordained by the People of the City of Las Cruces that Las Cruces Municipal Code, Chapter 8 ("ELECTIONS"), Article II ("CAMPAIGN CODE"), Section 8-32 ("DEFINITIONS") is hereby amended to read as follows:

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:

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, 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.

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

Election cycle means the period beginning on the day after the date of the most recent general election for the specific office or seat that a candidate is seeking and ending on the date of the next general election for that office or seat.

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.

Fund means the Fair Elections Fund created by Sec. 8-101.

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

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.

Participating candidate means a candidate who qualifies for Fair Elections campaign funding.

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

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 that 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.

Qualified elector means a person who is properly registered to vote pursuant to state law.

Qualified contribution means a contribution not greater than two-hundred dollars (\$200) to a candidate running for the office of Mayor and not greater than one-hundred dollars (\$100) to a candidate running for the offices of City Council and Municipal Judge.

Qualifying period means the period beginning on the day after the date of the most recent general election for the specific office or seat that a candidate is seeking and ending on the candidate nomination filing deadline on the forty-second day before the election, pursuant to City Charter Article VII Section 7.02.

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.

Runoff election means an election held pursuant to City Charter Article VII Section 7.05(c).

Special election means an election other than a regular election or runoff election held pursuant to City Charter Article II Section 2.06(c).

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.

Section 3. Be it Ordained by the People of the City of Las Cruces that Las Cruces Municipal Code, Chapter 8 (“ELECTIONS”), Article II (“CAMPAIGN CODE”), Section 8-36 (“REPORTING”) is hereby amended to read as follows:

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 NMSA 1978, § 1-19-26M (2010), to receive contributions or expend in excess of \$500.00 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 that identifies any contributions and expenditures exceeding \$25.00, or any qualified contribution, shall itemize each such item including:

- (1) With respect to any reported qualified contribution, designation as such and affirmation that the address reported for such qualified contribution is the contributor's residential address;
 - (2) The amount of contribution or expenditure or value of goods and services contributed;
 - (3) The purpose of any contribution or expenditure and any in-kind contribution or in-kind expenditure;
 - (4) The date of the contribution or expenditure;
 - (5) The name and address of the person or entity from whom any cumulative contribution exceeding \$25.00 was received;
 - (6) The name and address of the person or entity to whom any cumulative expenditure exceeding \$25.00 was made; and
 - (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.
 - (e) An itemized campaign report is required to be filed by all participating candidates and, with respect to other candidates, if the total contributions received and total expenditures exceed \$250.00. A campaign report shall contain a written declaration, under oath, if neither the campaign contributions nor the expenditures exceed \$250.00.
 - (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 candidate's and political action committees' responsibility to be aware of the reporting requirements and penalties for violation thereof.

Section 4. Be it Ordained by the People of the City of Las Cruces that Las Cruces Municipal Code, Chapter 8 (“ELECTIONS”), Article II (“CAMPAIGN CODE”), Section 8-37 (“REPORT FILING PERIODS”) is hereby amended to read as follows:

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 12:00 noon on the Thursday preceding the election.
 - (5) The fourth 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.
 - (6) 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.
 - (7) 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 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(s);
 - (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 article shall not be issued a certificate of election until such candidate files the report of expenditures and contributions.

Section 5. Be it Ordained by the People of the City of Las Cruces that Las Cruces Municipal Code, Chapter 8 (“ELECTIONS”), Article II (“CAMPAIGN CODE”), Section 8-39 (“SEVERABILITY”) is hereby amended to read as follows:

Sec. 8-39. Additional Information Required From Participating Candidates.

In addition to the reports required by Sections 8-36 and 8-37, each candidate participating in the Fair Elections campaign funding program shall file, together with such candidate’s written application for certification as a participating candidate pursuant to Las Cruces Municipal Code Section 8-104, a report of receipts and expenditures containing the contents specified by Section 8-36. Each participating candidate shall also file any additional reports of receipts and expenditures at such times and in such manners as the City Clerk may by regulation prescribe, including, but not limited to, reports containing information necessary to verify that qualified contributions received by participating candidates and Fair Elections funds spent by participating candidates comply with the restrictions and requirements of this chapter.

Section 6. Be it Ordained by the People of the City of Las Cruces that Section 8-40 (“CONTRIBUTION RESTRICTIONS”) is added to Las Cruces Municipal Code, Chapter 8 (“ELECTIONS”), Article II (“CAMPAIGN CODE”) to read as follows:

Sec. 8-40. Contribution Restrictions.

- (a) Anonymous contributions shall not exceed \$25.00; and
- (b) No individual, political committee or other entity shall make contributions to a candidate that, in the aggregate, exceed \$2,300 per election. This limit shall not apply to a candidate’s contribution or loan to the candidate’s own campaign.

Section 7. Be it Ordained by the People of the City of Las Cruces that Section 8-41 (“SEVERABILITY”) is added to Las Cruces Municipal Code, Chapter 8 (“ELECTIONS”), Article II (“CAMPAIGN CODE”) to read as follows:

Sec. 8-41. 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.

Commented [PSR1]: These contribution restrictions were moved from the disclosure section above. I reworded the provision establishing a \$2,300 limit, but didn’t change its scope in any way.

If the political will exists, you might consider prohibiting corporations and labor unions from contributing to candidates. You might also consider limiting candidate solicitations in connection with an election outside of these limits—i.e., a “soft money” ban. Without such a soft money ban, these limits will be borderline meaningless because candidates will be able to solicit huge contributions for super PACs and other “independent” expenditure groups.

Commented [PSR2]: The purpose of this section is actually just to renumber what is currently Section 8-39 as a new Section 8-40, to make room for the new disclosure provision added above as 8-39. We need to check with local folks to make sure if this is the appropriate format for renumbering a section.

Section 8. Be it Ordained by the People of the City of Las Cruces that Article III (“LAS CRUCES FAIR ELECTIONS ACT”) is added to Las Cruces Municipal Code, Chapter 8 (“ELECTIONS”) to read as follows:

ARTICLE III. LAS CRUCES FAIR ELECTIONS ACT

Sec. 8-100. Title and Purpose.

This Article shall be known as the Las Cruces Fair Elections Act. Its purposes are to:

- A. Diminish the public perception of corruption and strengthen public confidence in the governmental and election processes.
- B. Eliminate the danger of actual corruption of Las Cruces officials caused by the private financing of campaigns.
- C. Help reduce the influence of private campaign contributions on Las Cruces government.
- D. Foster more meaningful participation in the political process.
- E. Provide candidates who participate in the program with sufficient resources with which to communicate with voters.
- F. Increase the accountability of elected officials to the constituents who elect them, as opposed to the contributors who fund their campaigns.
- G. Free candidates from the time needed to raise campaign money, and allow officeholders more time to carry out their official duties.

Sec. 8-101. Fair Elections Fund.

(1) Establishment of Fair Elections Fund.

A special, dedicated, non-lapsing Fair Elections Fund shall be established by the City Council for the purpose of:

- a. Providing public financing for the election campaigns of certified participating candidates; and
- b. Paying for the administrative and enforcement costs of City staff related to the Fair Elections Act public campaign financing program. The administrative and enforcement costs shall not exceed \$100,000 in any four year election cycle.

(2) Appropriations to the Fair Elections Fund.

- a. The City Council shall annually appropriate \$2 per City of Las Cruces resident per year, as determined by the most recent official United States Census Bureau Population Estimate for the City of Las Cruces, from the City General Fund to the Fair Elections Fund. The Council’s duty to appropriate funds for the public financing program shall cease upon the termination of the public financing program.
- b. Other sources of revenue to be deposited in the Fund shall include:
 - (1) Unspent funds distributed to any participating candidate who does not remain a candidate until the election for which they were distributed, or such funds that remain unspent by a participating candidate following the date of the election for which they were distributed;

- (2) Fines levied against candidates for violation of election laws;
 - (3) Voluntary donations made directly to the Fair Elections Fund;
 - (4) Other funds appropriated by the Mayor and City Council;
 - (5) Any interest generated by the Fund; and
 - (6) Any other sources of revenue determined as necessary by the City Council.
- c. The amount in the Fair Elections Fund shall not exceed \$1 million. In order to comply with this limitation, revenue that would otherwise be deposited in the Fair Elections Fund pursuant to subsections (a) and (b) shall instead be deposited in the City General Fund.
 - d. The City Council may, by adoption of an ordinance by not less than two-thirds vote of its membership, make an official declaration of fiscal emergency and suspend or reduce the amount of the annual appropriation specified in subsection (a). Any such ordinance suspending or reducing the annual appropriation shall be effective for no more than one year.

(3) Cost of Living Adjustments.

The City Clerk shall adjust the dollar amounts specified in subsections (1)(b), (2)(a) and (2)(c) of this Section upward or downward, for changes in the cost of living, by the percent change in the Consumer Price Index.

Sec. 8-103. Offices Covered.

Candidates for the offices of Mayor, City Council and Municipal Judge shall be eligible to participate in the public campaign financing program established by this chapter, pursuant to the restrictions, requirements and provisions specific to these respective offices.

Sec. 8-104. Eligibility for Fair Elections Campaign Funding.

- (1) To be eligible to be certified as a participating candidate, a candidate must:
 - a. During the qualifying period for the election involved, choose to participate in the Fair Elections program by filing with the City Clerk a written application for certification as a participating candidate in such form as may be prescribed by the City Clerk, containing the identity of the candidate, the office that the candidate seeks, and the candidate's signature, under penalty of perjury, certifying that:
 - 1. The candidate has complied with the restrictions of this chapter during the election cycle to date;
 - 2. The candidate's campaign committee has filed all campaign finance reports required by law during the election cycle to date and that they are complete and accurate; and
 - 3. The candidate will comply with the requirements of this Act during the remainder of the election cycle and,

specifically, if certified an eligible participating candidate, will comply with the requirements applicable to participating candidates.

- b. Meet all requirements of applicable law to be listed on the ballot;
- c. Before the close of the qualifying period, collect the following number and total amount of qualified contributions. Each qualified contribution shall be acknowledged by a receipt to the contributor, with a copy retained by the candidate. The receipt shall include the contributor's signature, printed name, home address, and telephone number, if any, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor's signature that the contributor understands that the purpose of the qualified contribution is to help the candidate qualify for Fair Elections campaign funding and that the contribution is made without coercion or reimbursement. A contribution for which a candidate has not obtained a signed and fully completed receipt shall not be counted as a qualified contribution.
 - 1. To a candidate running for the office of Mayor, at least 100 qualified contributions of at least five dollars (\$5) totaling at least \$5,000 made by a registered voters of the City of Las Cruces;
 - 2. To a candidate running for the office of City Council, at least 25 qualified contributions of at least five dollars (\$5) totaling at least \$1,000 made by registered voters of the City of Las Cruces who are residents of the council district sought to be represented by the candidate; and
 - 3. To a candidate running for the offices of Municipal Judge, at least 25 qualified contributions of at least five dollars (\$5) totaling at least \$1,000 made by a registered voter of the City of Las Cruces.
- d. Maintain such records of receipts and expenditures as required by the City Clerk;
- e. Obtain and furnish to the City Clerk any information it may request relating to his or her campaign expenditures or contributions and furnish such documentation and other proof of compliance with this chapter as may be requested by such City Clerk;
- f. Not make expenditures from or use his or her personal funds or property or the personal funds or property jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a qualified contribution to his or her controlled committee;
- g. Not accept contributions other than qualified contributions in connection with the election for which Fair Elections funds are sought.

- h. Not solicit or direct contributions in connection with any election during the election cycle in which Fair Elections funds are sought other than qualified contributions to such candidate's controlled committee.
- (2) At the earliest practicable time after a candidate files with the City Clerk a written application for certification as a participating candidate, the City Clerk shall certify that the candidate is or is not eligible. Eligibility can be revoked if the candidate commits a substantial violation of the requirements of this Act, in which case all Fair Elections funds shall be repaid. Such a determination shall be made by the [City Clerk] following a hearing.
- (3) The [City Clerk's] determination is final except that it is subject to a prompt judicial review.
- (4) If the City Clerk determines that a candidate is not eligible, the candidate is not required to comply with provisions of this Act applicable only to participating candidates.

Sec. 8-105. Fair Elections Fund Payments.

- (1) A candidate who is certified as an eligible participating candidate for the office of Mayor shall receive payment of Fair Elections funds equal to four-hundred percent (400 percent) of the amount of qualified contributions made by registered voters of the City of Las Cruces to the candidate and received by the candidate during the election cycle with respect to a single election, subject to the aggregate limit on the total amount of Fair Elections funds payments to a candidate specified in Sec. 8-105(4).
- (2) A candidate who is certified as an eligible participating candidate for the office of City Council shall receive payment of Fair Elections funds equal to four-hundred percent (400 percent) of the amount of qualified contributions made by registered voters of the City of Las Cruces who are residents of the council district sought to be represented by the candidate and received during the election cycle with respect to a single election, subject to the aggregate limit on the total amount of Fair Elections funds payments to a candidate specified in Sec. 8-105(4).
- (3) A candidate who is certified as an eligible participating candidate for the office of Municipal Judge shall receive a single payment of Fair Elections funds in the amount of \$15,000.
- (4) The aggregate amount of Fair Elections funds payments that may be made to a participating candidate during an election cycle may not exceed:
 - a. ~~\$840,000~~ for a candidate running for the office of Mayor;
 - b. ~~\$1540,000~~ for a candidate running for the office of City Council; and
 - c. \$15,000 for a candidate running for the office of Municipal Judge.
- (5) A participating candidate's application for Fair Elections funds, including an initial request submitted with an application for certification as a participating candidate, shall be made using a form prescribed by the City

Clerk and shall be accompanied by qualified contribution receipts and any other information the City Clerk deems necessary. This application shall be accompanied by a signed statement from the candidate indicating that all information on the qualified contribution receipts is complete and accurate to the best of the candidate's knowledge. The City Clerk shall verify that a candidate's qualified contributions meet all of the requirements and restrictions of this Act prior to the disbursement of Fair Elections funds to the candidate. A participating candidate who receives a qualified contribution that is not from the person listed on the qualified contribution receipt shall be liable to pay the Fair Elections Fund the entire amount of the inaccurately identified contribution, in addition to any penalties.

- (6) The City Clerk shall make an initial payment of Fair Elections funds within four business days of the City Clerk's certification of a participating candidate's eligibility, or as soon thereafter as is practicable.
- (7) The City Clerk shall establish a schedule for the submission of Fair Elections funds payment requests by candidates for the offices of Mayor and City Council, permitting a candidate to submit a Fair Elections funds payment request at least once per month. However, the City Clerk shall schedule a minimum of three payment request submission dates within the thirty days prior to an election.
- (8) The City Clerk shall provide each participating candidate with a written determination specifying the basis for any non-payment of Fair Elections funds. The City Clerk shall provide participating candidates with a process by which they may immediately upon receipt of such determination petition the City Clerk for reconsideration of any such non-payment and such reconsideration shall occur within five business days of the filing of such petition. In the event that the City Clerk denies such petition then it shall immediately notify the candidate of his or her right to seek judicial review of the City Clerk's denial.

Sec. 8-106. Transition Rule for Current Election Cycle.

During the first election cycle that occurs after Council implementation of this Act, a candidate may be certified as a participating candidate, notwithstanding the acceptance of contributions other than qualified contributions before the date of enactment that would, absent this Section, disqualify the candidate as a participating candidate, provided that any funds other than qualified contributions accepted but not expended before the effective date of this Act shall be:

- (1) Returned to the contributor;
- (2) Held in a special campaign account and used only for retiring a debt from a previous campaign; or
- (3) Submitted to the City for deposit in the Fair Elections Fund.

Sec. 8-107. Special and Runoff Elections.

The provisions of this chapter apply to special and runoff elections. The City Clerk shall adjust the deadlines in this Act to account for the circumstances of the special and/or runoff election.

Sec. 8-109. Campaign Accounts for Participating Candidates.

- (1) During an election cycle, each participating candidate shall conduct all campaign financial activities through a single campaign expenditure and contribution account.
- (2) A participating candidate may maintain a campaign account other than the campaign account described in subdivision (1) if the other campaign account is for the purpose of retiring a campaign debt that was incurred during a previous election campaign in which the candidate was not a participating candidate.
- (3) Contributions for the purposes of a retiring a previous campaign debt that are deposited in the kind of "other campaign account" described in subdivision (2) shall not be considered "contributions" to the candidate's current campaign.
- (4) Participating candidates shall file reports of financial activity related to the current election cycle separately from reports of financial activity related to previous election cycles.

Sec. 8-110. Use of Fair Elections Funds.

- (1) A participating candidate shall use Fair Elections funds only for direct campaign purposes.
- (2) A participating candidate shall not use Fair Elections funds for:
 - a. Costs of legal defense in any campaign law enforcement proceeding under this Act;
 - b. Indirect campaign purposes, including but not limited to:
 1. The candidate's personal support or compensation to the candidate or the candidate's family;
 2. Clothing and other items related to the candidate's personal appearance;
 3. Capital assets having a value in excess of five hundred dollars (\$500) and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;
 4. A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;
 5. An independent expenditure;
 6. Any payment or transfer for which compensating value is not received.

Sec. 8-111. Administrative Modification of Timelines

Notwithstanding any provision in this chapter to the contrary, the City Clerk may alter any of the time periods or deadlines listed herein if it finds that they are

impracticable, so long as the readjusted period or deadline meets the objectives of this chapter.

Sec. 8-112. Insufficient Funds in the Program.

If the City Clerk determines that there are insufficient funds in the Fair Elections Fund to fund adequately all participating candidates, the City Clerk shall notify participating candidates that the City Clerk will not likely be capable of distributing to all participating candidates the maximum aggregate amount of Fair Elections funds payments permissible under Sec. 8-105(2). Under such circumstances, at such time as the City Clerk is unable to fulfill a valid application for Fair Elections funds submitted by a participating candidate pursuant to Sec. 8-105(3), the participating candidate may solicit for such candidate's controlled committee and accept contributions [under increased limit?]

Commented [JS3]: CLC does not have a recommendation for this limit and recommends connecting with other local leaders to determine the best limit for Las Cruces.

Sec. 8-113. Cost of Living Adjustments.

The City Clerk shall adjust the dollar amounts specified in Sections [XX] for cost of living changes in January of every odd-numbered year following Council implementation, adjusting upward or downward by the percentage change in the Consumer Price Index as computed for [XX]. Such adjustments shall be rounded to the nearest ten dollars (\$10) with respect to Sections [XX] and [XX] and one thousand dollars (\$1,000) with respect to Sections [XX] and [XX].

Sec. 8-114. Enforcement—Penalties For Violation

In addition to other enforcement and penalty provisions of the Las Cruces Municipal Code:

- (1) It is a violation of the law for candidates to accept more Fair Elections Act benefits than those to which they are entitled or misuse such benefits or Fair Elections funding.
- (2) If a participating candidate knowingly or willfully accepts or spends Fair Elections funding in violation of this Act, then the candidate shall repay to the Fair Elections Fund an amount equal to twice the value of Fair Elections funding unlawfully accepted or spent.
- (3) The [City Clerk] shall, after a hearing, have the authority to impose the fine created by this section.

Sec. 8-115. Violation—Persons Ineligible for Public Funds—Time Limit

No person who commits a substantial violation of this chapter shall be eligible to receive public funds for a period of four years from and after the date that [XX] determines that such a violation has occurred, following a hearing held pursuant to [XX]. The City Clerk shall by regulation state the criteria to be satisfied in order to make a finding of a substantial violation.

Section 9. EFFECTIVE DATE

All provisions of this act will take effect immediately.

Section 10. SEVERABILITY

In the event any court of competent jurisdiction holds any provision of this Act invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provisions hereof.

To: Rusty Babington
From: Thomas Limon
Date: 19 November 2015
RE: Research request – public campaign finance

SMALL DONOR CAMPAIGN FINANCING

BRIEF FACTS

Common Cause New Mexico (“CCNM”) is encouraging the City to implement a public campaign financing ordinance. CCNM believes that moneyed interests are capable of promoting certain candidates to promote self-interests and buy elections. According to CCNM, the solution is to promote ordinary citizens to positions of electoral power by publicly financing their campaigns. Rusty Babington, City Attorney, asked for a memo touching upon various issues pertaining to the prospective piece of legislation. The memo must be completed no later than November 30, 2015.

QUESTIONS PRESENTED

1. What are the costs of the prospective legislation;
2. What are the available methods of enforcement of the terms of use of public donated campaign money;
3. What levels of additional reporting will be required;
4. What will be the administrative burden on the Clerk’s Office?

SHORT ANSWERS

1. CCNM estimates the total cost to be \$200,000 per year. For reasons contained below, that number is likely to be higher.

2. On the municipal level, the City of Las Cruces (“City”) will be limited in terms of judicial remedy to jail terms of 90 days and fines not to exceed \$500.00.
3. Small donor financing requires a good deal of additional reporting and oversight to ensure compliance. This leads to additional work for the Clerk’s Office.
4. The administrative burden on the Clerk’s Office will be substantial.

I. WHAT ARE THE COSTS OF THE PROSPECTIVE LEGISLATION?

CCNM suggests the following matching caps per candidate: (1) Mayor (\$80,000), (2) Councilor (\$15,000), and (3) Municipal Judge (\$15,000). *Exhibit “A.”* Pursuant to CCNM’s published fact sheet, CCNM estimates the annual cost as follows:

“Basically, fair elections cost about \$2/resident per year. This is about \$200,000/year or .23% of the current City General Fund. Public financing may be thought of as an investment in the infrastructure of democracy.” *Id.*

However, it is this author’s opinion that CCNM has underestimated the potential for litigation tied to enforcement of the prospective ordinance and, thereby, underestimated the cost. For instance, this might entail a candidate’s breach of the terms of expenditures and the City’s obligation to recover misspent campaign funds pursuant to Sec. 8-114, 115. The City might also be interested in prosecuting candidates that have acted contrary to the ordinance knowingly or willfully while under oath. The City might also need to defend the City in candidate-initiated litigation over the City Clerk’s handling of regulations, reporting of campaign funds, and qualification of candidates. *See* 8-104(e)(2)-(3), Sec. 8-105(8)(Where denial of funds is subject to judicial review). These issues will almost certainly drive up costs associated with the prospective ordinance while also getting to difficult issues directly pertaining to the enforcement of the legislation.

II. WHAT ARE THE AVAILABLE METHODS OF ENFORCEMENT OF THE TERMS OF USE OF PUBLIC DONATED CAMPAIGN MONEY?

The proposed legislation includes a relatively benign enforcement regiment. It first establishes that “[i]t is a violation of the law for candidates to accept more Fair Elections Act benefits than those to which they are entitled or misuse such benefits or Fair Elections funding.” Sec. 8-114(1). Provided that the violations were knowing and willful, “...the candidate shall repay to the Fair Elections Fund an amount equal to twice the value of Fair Elections funding unlawfully accepted or spent.” *Id.* at (2). The City Clerk is responsible for holding a hearing and imposing the fine created by this section. *Id.* at (3).

The City Clerk is bound by the limited jurisdiction of the City, however. Accordingly, the maximum jurisdiction allowed is 90 days in jail and a \$500.00 fine; in other words, jurisdiction is equal to that of a petty misdemeanor with a 90 day incarceration limit. *See* NEW MEXICO STATUTES ANNOTATED 31-19-1(B) (2015)(note that incarceration sentences for petty misdemeanors can be set at 180 days or less depending on statute.) This City’s jurisdiction simply is not extensive enough to hold candidates accountable for the expenditure of tens of thousands of dollars. Moreover, to the extent that the Clerk will be able to enforce the ordinance, there is no requirement of a written finding, judgement, or anything else by which a record is created. There also are no guarantees of administrative due process including burdens of proof or notice requirements. These issues present potential harbingers for even more future litigation.

III. WHAT LEVELS OF ADDITIONAL REPORTING WILL BE REQUIRED?

Campaign funding and expenditure reports are already required under current municipal code. However, there will be additional layers added to existing reporting requirements that

will inevitably raise the workload of the Clerk's office. For instance, participating candidates will be required to file a report outlining qualified contributions to prove their eligibility to participate in the program. Sec. 8-105(5). These contributions total (100) each for mayoral candidates and (25) each for City Council and Municipal Judge Candidates. Sec. 8-104(1)(c). The reporting itself will not add too substantially to the body of effort necessary to run the campaign financing ordinance. That said, the real issue will be to what extent the reporting needs to be scrutinized for impropriety and veracity.

IV. WHAT WILL BE THE ADMINISTRATIVE BURDEN ON THE CLERK'S OFFICE?

The administrative burden on the Clerk's Office will be substantial. First, the Clerk's Office will be called on to determine the compliance of qualified contributions for a candidate's application to participate in the program. Sec. 8-104(3). The Clerk's Office will also need to create a payment schedule for disbursements to candidates. Sec. 8-105(7). Additionally, on a pragmatic level, in order to facilitate communication with qualified candidates or candidates who could not be qualified, the Clerk's Office will need to keep regular correspondence to facilitate the inflow of information which will invariably take time and resources.

Related to reporting requirements, the Clerk's Office will be tasked with auditing financial reports to ensure compliance with the new Fair Elections campaign financing. *See* Sec. 8-110(2)(b). Conceptually, it is helpful to think of Questions two (2), three (3), and (4) as three sides to the same issue. In order to ensure compliance, it will be necessary to obtain regular and accurate reports, and enforcement will be necessary to force compliance with the provisions. Of course, all of this falls upon the Clerk's Office and adds mightily to its administrative function.

Perhaps the most laborious aspect for the Clerk's Office, however, will be checking the uses of candidates' campaign funds and ensuring they were properly spent. When itemizations are required for all expenditures over \$25.00 and campaigns are spending tens of thousands of dollars on an election, the prospects of pouring over each expenditure to ensure compliance may appear daunting. *See* Sec. 8-36(c). It is worth remembering that each misspent campaign expenditure can trigger an enforcement action by the City Clerk. *See* Sec.8-114, *supra*.

Moreover, there will be need to be a system of checking the veracity of qualified contributions. While Sec. 8-104(1)(c) does require the contributors to identify themselves and provide pertinent information, there is no guarantee that these contributors are compliant with requirements of the qualified contribution unless investigated. Veracity of the contributions will need to be audited.

Additionally, harkening back to the issue of enforcement, it is uncertain and even highly unlikely that the issuance of a receipt and contributors signature would constitute the crimes of forgery or fraud.¹ This is important because if a candidate maintains some level of plausible deniability regarding the contributors skirting of campaign finance laws, the City would be powerless to hold the candidate responsible in terms of its enforcement provisions. *See* Sec. 8-114 (where violations must be knowing and willful.) Moreover, since contributors could fill the coffers of favorable candidates with non-compliant contributor funds, there would be little ability

¹ "Fraud consists of the intentional misappropriation or taking of anything of value that belongs to another by means of fraudulent conduct, practices or representations." N.M.S.A. 30-16-6 (2015)(Where a prospective qualified contributor gives something of value to another, it would be very difficult to prove they misappropriated or took anything from anyone irrespective of what the candidate chose to do with the money). Moreover, forgery consists of "(1) falsely making or altering any signature to, or any part of, any writing purporting to have any legal efficacy with intent to injure or defraud; or (2) knowingly issuing or transferring a forged writing with intent to injure or defraud." N.M.S.A. 30-16-10 (West 2015)(The receipt would have legal efficacy toward the candidate, but there would be no forgery if the contributor's signature was authentic.)

to enforce the credibility of the ordinance by pursuing contributors themselves for undermining the purpose of the ordinance as previously alluded to.² Therefore, the campaign finance ordinance may not be sufficiently enforceable at the level of qualified contributions and the contributors of those funds. However, if the funds were found insufficient to meet the standards of the ordinance, the City Clerk could still decline to count those contributions which are in violation as counting toward the total number of qualified contributions necessary to obtain public funding. See Sec. 8-104(1)(c)(1)-(3), (2), (3) ³.

² Sec. 8-104(C) requires that the contributor acknowledge the use of funds is for a Fair Election campaign, to sign a receipt, and acknowledge the contribution was made without coercion or reimbursement. However, this does nothing to bind the contributor to any of the terms of campaign finance ordinance. To the extent that the contributor affirms that the contribution cannot be reimbursed, say from a political activist organization, there would little to enforce the provision should it be violated by the contributor. See N.M.S.A. 30-16-6, 10 (West 2015), *supra*.

³ It is this author's opinion that there should be more of a deterrence, here. This could be accomplished by placing requirements on the contributor him or herself which should be outlined in a separate ordinance provision and enforceable through civil and criminal penalties.

Public Campaign Finance



ISSUES PRESENTED

1. What are the costs of the prospective legislation?
2. What are the available methods of enforcement?
3. What additional levels of reporting will be required?
4. What will be the administrative burden on the Clerk's Office?



1. What are the costs of the prospective legislation?



- Mayor (\$80,000)
- Councilor (\$15,000)
- Municipal Judge (\$15,000)

Common Cause New Mexico estimates a total of \$200,000 per year or approximately \$2.00 per resident per year.

Includes administrative costs and estimated number of candidates per position, but it **does not** include potential litigation costs.

2. What are the available methods of enforcement?



City of Las Cruces
People Helping People

- Those who misuse campaign money **knowingly** **and willfully** must repay all or some of the money unlawfully accepted or spent.
- Municipal jurisdiction **only** extends to 90 days in jail and a \$500 fine.
- The City's own jurisdiction is insufficient to enforce \$80,000 expenditures without a mechanism for redress in District Court.



3. What additional levels of reporting will be required?



City of Las Cruces
People Helping People

- There will need to be additional reporting on the qualifying contributions needed by the Clerk to determine whether or not candidates qualify for public campaign finance assistance.
- The qualifying candidates will also have to report expenditures to ensure they are in compliance with the ordinance.



4. What will be the administrative burden on the Clerk's Office?



The Clerk's Office will need to:

- Determine completeness and sufficiency of candidates' applications and accept or deny applications accordingly;
- Facilitate communication between City and candidates;
- Audit financial reports submitted to the Clerk's Office to ensure compliance with the ordinance;
- Audit expenditures of campaign funds in excess of \$25.00;
- **Check veracity of qualified contributions.**



Questions



City of Las Cruces
People Helping People