



Council Work Session Summary

Meeting Date: August 8, 2016

TITLE: PUBLIC CAMPAIGN FINANCING.

PURPOSE(S) OF DISCUSSION:

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

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Common Cause New Mexico (CCNM) presentation will focus on why public campaign financing for Las Cruces, key components of the ordinance, and concerns and suggestions regarding the proposed ordinance.

SUPPORT INFORMATION:

N/A

Public Campaign Financing in Las Cruces



The opportunity before US



- Widespread concern about money in politics
- Las Cruces can effectively address this problem in municipal elections
- Innovative ordinance that prioritizes participation by residents of city and individual districts

Key components of current ordinance



- **Voluntary system:** candidates may choose to participate in public financing – or not
- **Cap on individual contributions:** Participating candidates agree to accept only small contributions (\$100/\$200)
- **Qualifying contributions:** initial contributions required to qualify (\$5,000 mayor/\$1,000 council/\$1,000 judge)
- **Matching of voter contributions:** only those contributions made by registered voters within the district are matched (4:1)
- **Candidate matching cap:** Each position is subject to a total matching cap from the Fair Election Fund (\$64,000 mayor/\$12,000 council/\$12,000 judge)

Important to note



- **There are costs associated with this ordinance**
 - Anticipated expenses for a four year election cycle, assuming full candidate participation, expected to be \$647,000 or about \$162,000 per year
 - To initially establish the fund, \$200,000 per year will be appropriated to the Fair Election Fund.
 - Cost is low compared to benefit of having higher citizen participation and confidence that council decisions are being made free of the influence of large campaign donors
- Does not eliminate outside spending by 3rd party organizations
- Does allow a participating candidate to run a competitive campaign even in the presence of outside money.

Concerns and suggestions



- **Important that this is an ordinance rather than a Charter amendment.**
 - Passed and amended by Council action rather than difficult-to-modify Charter process
- **Current Council members should be allowed to use public financing**
 - All candidates should have equal opportunity to use public financing not just new candidates
 - *We the citizens* benefit from all candidates, including incumbents, being free from undue influence of large contributions
 - Legal precedent supports use by current council (CCNM counsel)
- **Change candidate filing date in City Charter from current 42nd day to 77th day before the election**

Why public financing for our city elections?



- Reinforces our democratic processes
- Opportunity to reduce the influence of big money in our municipal politics
- Innovative ordinance that prioritizes participation of residents of city and individual districts

Q&A





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COUNCIL WORK SESSION SUMMARY ROUTING SLIP

Meeting Date August 8, 2016

TITLE: PUBLIC CAMPAIGN FINANCING.

- 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	<i>Monica Campbell</i>	541-2128	8/2/2016
Department Director	<i>[Signature]</i> ACTING CITY MGR.	541-2128	8-2-16
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Assistant City Manager/CAO (if applicable)			
Assistant City Manager/COO (if applicable)			
City Manager	<i>[Signature]</i>		8-4-16



City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Work Session Summary

Meeting Date: August 1, 2016

TITLE: PUBLIC CAMPAIGN FINANCING.

PURPOSE(S) OF DISCUSSION:

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

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Common Cause New Mexico ("CCNM") encourages the City of Las Cruces (City) to implement a Public Campaign Financing Ordinance. CCNM believes that moneyed interests are capable or 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 Counsel's last work session in December and 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. May money be used by candidates to ensure compliance with the ordinance?
2. May counselors take benefit of the ordinance during the next election for which they are able?
3. Should the City fund the program with voluntary donations?
4. May funds be used for recounts or runoffs?

SHORT ANSWERS

1. Yes, but it is capped at \$1000.00.
2. No, Counselors must abstain for the next election for which they are able.
3. No, voluntary donations should not be permitted.
4. Funds may be used for recounts but not runoffs.

SUPPORT INFORMATION:

1. Attachment "A", Fair Elections Public Financing Policy Model (Draft)

Las Cruces, NM
Fair Elections Public Financing
Policy Model
Draft August 1, 2016

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

Section 1. 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, the Campaign Code, or in Article III, the Fair Elections Act, 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 and elects to participate and excludes any person who served as a City of Las Cruces City Councilperson or Mayor and who is also seeking reelection for the term immediately subsequent to that respective person's term in which the City of Las Cruces' Fair Elections Public Financing ordinance was enacted.

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 in an amount which, when added to all other contributions from the same person to the same candidate during the same election cycle, does not exceed two hundred dollars (\$200) for a candidate for the office of mayor or one hundred dollars (\$100) for a candidate for the office of city councilor or 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 seventy-seventh 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 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 8-36 (“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 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 8-37 (“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 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) A candidate involved in a runoff election shall file campaign reports not later than 12:00 noon on the 15th calendar day preceding the runoff election and on the Thursday preceding the runoff election.
- (6) The city clerk shall notify all candidates, via email, when a report is due at least ten working days in advance.
- (b) Within six months following the election or, for candidates involved in a runoff election, within six months following the runoff election, 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
- (c) A final campaign report shall be filed not later than six months following the election or, for candidates involved in a runoff election, not later than six months following the runoff election. The final report shall disclose the disposition of all campaign funds pursuant to Subsection (b) of this section.
- (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 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 8-39 (“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 filed 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 5. 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 6. Be it Ordained by the People of the City of Las Cruces that Section 8-41 (“SPECIAL ELECTIONS”) is added to Las Cruces Municipal Code, Chapter 8 (“ELECTIONS”), Article II (“CAMPAIGN CODE”) to read as follows:

Sec. 8-41. Special Elections.

The provisions of this Article shall apply to special elections. The City Clerk shall adjust the dates and deadlines as necessary to accommodate the circumstances of the special election.

Section 7. Be it Ordained by the People of the City of Las Cruces that Section 8-42 (“SEVERABILITY”) is added to Las Cruces Municipal Code, Chapter 8 (“ELECTIONS”), Article II (“CAMPAIGN CODE”) to read as follows:

Sec. 8-42. 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.

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 purpose is to advance the public policies articulated in Section 8-33 of the Las Cruces Municipal Code.

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.
- 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) Other funds appropriated by the Mayor and City Council;
 - (4) Any interest generated by the Fund; and
 - (5) 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 a majority 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) Review of the Fair Election Fund.

In the year following each mayoral election the City Clerk shall conduct a review of the Fair Election Act, its appropriations and expenses and make recommendations for revisions to the City Council. The City Council shall review the recommendations and make appropriate modifications.

Sec. 8-102. 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. 8-103. 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 contract with the City, in such form as is prescribed by the City Clerk, which will serve as an application for certification as a participating candidate, containing the identity of the candidate, the office that the candidate seeks, and the candidate's signature, under penalty of perjury, certifying and agreeing under contract 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 this Chapter during the election cycle to date and that they are complete and accurate; and
 3. The candidate will comply with the requirements of this Chapter 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, ensure that the following number and total amount of qualified contributions have been collected by the candidate or his or her campaign committee or campaign treasurer. 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. Comply with the requirements imposed on all candidates by the Campaign Code (Article II of this Chapter), including the requirement to file campaign reports under Sections 8-36 and 8-37 of the Campaign Code.
 - f. 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;
 - g. Make no expenditures for the candidate's campaign, at any time during the election cycle, from any source other than qualified contributions and payments received from the Fund;
 - h. Accept no contributions to the candidate's campaign, at any time during the election cycle, other than qualified contributions; and
 - i. Solicit no contributions at any time during the election cycle, other than qualified contributions to the candidate's own campaign, to any person or entity for the purpose of supporting the candidate's election or the defeat of an opposing candidate.
- (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. If the candidate is thereafter found to have committed a substantial violation of the requirements of this Act, the city clerk may revoke the candidate's certification or may order repayment of some or all of the Fair Elections funds received by the candidate or any combination of these remedies. Such a finding may be made and such remedies may be imposed only after a hearing for which the candidate has been given fair notice and an opportunity to be heard.
 - (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. 8-104. 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. 8-104(4). In the event that a participating candidate is unopposed the candidate may retain the qualifying contributions for qualifying campaign expenses but is not eligible for Fair Elections fund payments.
- (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. 8-10 4(4). In the event that a participating candidate is unopposed the candidate may retain the qualifying contributions for qualifying campaign expenses but is not eligible for Fair Elections fund payments.
 - (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 \$12,000. In the event that a participating candidate is unopposed the candidate may retain the qualifying contributions for qualifying campaign expenses but is not eligible for Fair Elections fund payments.
 - (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. \$64,000 for a candidate running for the office of Mayor;
 - b. \$12,000 for a candidate running for the office of City Council; and
 - c. \$12,000 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 at least 63 days before the election.

- (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) In the event of a runoff election, in lieu of further payments pursuant to Subsection (7) of this section, the City Clerk shall pay to each participating candidate involved in the runoff an additional amount of Fair Elections funds equal to the total amount of the contributions reported in the payment requests submitted by the candidate before the initial round of the election. Such additional payment shall be made no later than the fifth day after the completion of the final canvass of the results of the initial round of the election.
- (9) 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.
- (10) Payments of Fair Elections funds received by a candidate pursuant to this section shall be deposited in a bank account separate from the campaign account in which the candidate deposits the qualified contributions received from contributors.
- (11) No later than 45 days following the election or, for a candidate involved in a runoff election, no later than 45 days following the runoff election, all Fair Elections funds received by a candidate and not expended on the candidate's campaign shall be paid over to the City Clerk for deposit in the Fair Elections Fund.

Sec. 8-105. 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. 8-106. Special Elections.

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

Sec. 8-107. Retirement of Debt from Previous Campaign.

A candidate shall not be considered ineligible for certification as a participating candidate and shall not be deemed to have violated any provision of this Act solely by reason of contributions received or expenditures made to retire debt incurred in the course of a previous campaign in which the candidate was not a participating candidate. Contributions so received shall be duly reported pursuant to Sections 8-36 and 8-37 and are subject to the limits prescribed by Section 8-40 of this Chapter. All such contributions shall be deposited in a bank account separate from the accounts in which the candidate deposits qualified contributions and payments received from the Fair Elections Fund. All expenditures made to retire such debt shall be made from that separate account and duly reported pursuant to Sections 8-36 and 8-37 of this Chapter.

Sec. 8-108. Use of Fair Elections Funds.

- (1) A participating candidate shall use Fair Elections funds only for direct campaign purposes including the costs of any recount that may be assessable by law against the candidate.
- (2) Costs incurred by a participating candidate for purposes to ensure compliance of receipt of Fair Elections funds will be deemed a direct campaign purpose so long as compliance costs do not exceed \$1000.00 for any one election cycle.
- (3) 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. 8-109. Administrative Modification of Timelines

Notwithstanding any provision in this Act 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. 8-110. Insufficient Balance in the Fund.

If at any point the amount of the payments required to be made to candidates under Section 8-104 exceeds the available balance in the Fund, the City Clerk shall so notify the candidates and the amount of each such payment shall thereupon be reduced in proportion to the amount of such excess.

Sec. 8-111. Enforcement—Penalties for Violation

- (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. Violation of any provision of the Las Cruces Fair Elections Act may be punished as authorized under Section 1-10 of the Las Cruces Municipal Code and applicable state law.

Sec. 8-112. Violation—Persons Ineligible for Public Funds—Time Limit

In the event of a substantial violation of this Act, the city clerk may order, in addition to the other remedies authorized by this Act, that the candidate shall be ineligible to receive public funds for a period of four years from the date of the city clerk's determination, based on a hearing for which the candidate is given fair notice and an opportunity to be heard, that such a substantial violation has occurred. 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.

Public Campaign Finance



ISSUES PRESENTED

1. May money be used by candidates to ensure compliance with the ordinance?
2. May Councilors take benefit of the ordinance during the next election for which they are able?
3. Should the City fund the program with voluntary donations?
4. May funds be used for recounts or runoffs?
5. What are the costs to the City?

1. May money be used by candidates to ensure compliance with the ordinance?

ANSWER: YES

Under the current draft of the ordinance, candidates may use up to \$1000.00 of campaign funds to ensure compliance.

See 8-108(2)

2. May Councilors take benefit of the ordinance during the next election for which they are able?

ANSWER: NO

Participating candidate means a candidate who qualifies for Fair Elections campaign funding and elects to participate and excludes any person who served as a City of Las Cruces City Councilperson or Mayor and who is also seeking reelection for the term immediately subsequent to that respective person's term in which the City of Las Cruces' Fair Elections Public Financing ordinance was enacted.

See 8-32

3. Should the City fund the program with voluntary donations?

ANSWER: NO

Current draft excludes voluntary funds as a source

See 8-101

4. May funds be used for recounts or runoffs?

ANSWER: YES AND NO

Recounts: Yes, money may be used for recounts

Runoffs: No, money should not be used for runoff elections since the overhead to run such a campaign has already been effectuated.

- Current language in the ordinance still permits funds for runoffs. See 8-104 (8)

5. What are the costs to the City?

- Mayor (\$65,000/candidate)
- Councilor (\$12,000/candidate)
- Municipal Judge (\$12,000/candidate)

Common Cause New Mexico estimates a total of \$200,000 per year (equivalent to 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.

Questions

