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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 two-hundred dollars (\$200) 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 600% of “qualified contributions” received from district residents (*i.e.*, \$6-to-\$1 match) and 400% of “qualified contributions” received from non-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 (*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 July 23, 2014

**AMENDMENT TO CITY OF LAS CRUCES MUNICIPAL CODE CHAPTER 8
(ELECTIONS) ARTICLE II (CAMPAIGN PRACTICES) TO CREATE A FAIR
ELECTIONS PUBLIC CAMPAIGN FINANING 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 PRACTICES"), Division 1 ("GENERALLY"), Section 8-31 ("DEFINITIONS") is hereby amended to read as follows:

Sec. 8-31. Definitions.

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

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

Contribution means a gift, subscription, loan, advance or deposit of any money or other thing of value which is made for the primary purpose of supporting or opposing a candidate for elective office. This does not include the value of services provided without compensation or unreimbursed personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate.

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

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, but does not include the candidate's or his 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.

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

Political committee means every two or more persons who are selected, appointed, chosen or associated for the purpose of, wholly or in part, supporting or opposing a candidate at any election, and includes political committees or similar organizations composed of employees or members of any corporation, labor organization, trade or professional association or any other similar group which

raises, collects, expends or contributes money or any other thing of value for the purpose of supporting or opposing a candidate in a municipal election.

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) made by a natural person resident of the City of Las Cruces.

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

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, 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 PRACTICES”), Division 1 (“GENERALLY”), Section 8-63 (“CONTENTS”) is hereby amended to read as follows:

Sec. 8-63. Contents.

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

- (1) A report of expenditures and contributions, itemizing each item of expenditure and contribution, including:
 - a. The name and address of the person to whom an expenditure was made or from whom a contribution was received;
 - b. 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;
 - ~~b~~ c. The amount of the expenditure or contribution, or value thereof;
 - ~~c~~ d. The purpose of the expenditure;
 - e. A description of the in-kind services or goods received; and
 - ~~d~~ f. The date of the expenditure or contribution.
- (2) The report of expenditures and contributions shall be subscribed and sworn to by the candidate or treasurer of the political committee, as the case may be.

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 PRACTICES”), Division 1 (“GENERALLY”), Section 8-64 (“TIME FOR FILING”) is hereby amended to read as follows:

Sec. 8-64. Time for filing.

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

- (1) ~~Twelve days prior to an election~~ by 5:00 p.m. on the second Monday in September, a report of all expenditures made and contributions received on or before the first Monday in September and not previously reported;
- (2) ~~by 5:00 p.m. on the second Monday in October, a report of all expenditures made and contributions received on or before the first Monday in October and not previously reported;~~
- (3) ~~by 5:00 p.m. on the Thursday before a regular city election held pursuant to City Charter Article II Section 7.01(a), a report of all expenditures made and contributions received by 5:00 p.m. on the Tuesday before the election;~~
- (4) ~~by 5:00 p.m. on the Thursday before any runoff election held pursuant to City Charter Article II Section 7.05(c), a report of all expenditures made and contributions received by 5:00 p.m. on the Tuesday before the runoff election;~~

- (2 5) Not later than 30 days after an election by 5:00 p.m. on the thirtieth day after a regular election held pursuant to City Charter Article II Section 7.01(a) or a runoff election held pursuant to City Charter Article II Section 7.05(c), a report of all expenditures made and contributions received before the twenty-fifth day after the election and not previously reported;
- (3 6) Six months after an election, if any contributions in the possession of the candidate or special purpose political committee remain unexpended or if any debt remains unpaid; and
- (4 7) Every 12 months after an election, so long as any debt remains unpaid by the candidate or special purpose political committee.

Section 5. Be it Ordained by the People of the City of Las Cruces that Sec. 8-68 is added to Las Cruces Municipal Code, Chapter 8 (“ELECTIONS”), Article II (“CAMPAIGN PRACTICES”), Division 2 (“REPORTS OF EXPENDITURES AND CONTRIBUTIONS”) to read as follows:

Sec. 8-68. Additional Information Required From Participating Candidates.

In addition to the reports required by Section 8-64, each candidate participating in the Fair Elections campaign funding program shall file, together with such candidate’s written application for certification as a participating filed pursuant to Las Cruces Municipal Code Section 8-104, a report of receipts and expenditures containing the contents specified by Section 8-63. 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 Division 3 is added to Las Cruces Municipal Code, Chapter 8 (“ELECTIONS”), Article II (“CAMPAIGN PRACTICES”) to read as follows:

DIVISION 3. 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 \$250,000 in any four year election cycle.

(2) Appropriations to the Fair Elections Fund.

- a. The City Council shall annually appropriate \$4 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 \$2 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 and City Council shall be eligible to participate in the public campaign financing program established by this chapter.

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 at least 30 qualified contributions of at least ten dollars (\$10), for a total dollar amount of at least three-hundred dollars (\$300).
 - 1. 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.
 - 2. A contribution for which a candidate has not obtained a signed and fully completed receipt shall not be counted as a qualified contribution.
 - 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 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(2).
- (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:
 - a. six-hundred percent (600 percent) of the amount of qualified contributions from residents of the district to be represented by the candidate 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(2); and
 - b. **four-hundred percent (400 percent)** of the amount of qualified contributions from non-district residents 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(2)
- (3) The aggregate amount of Fair Elections funds payments that may be made to a participating candidate during an election cycle may not exceed:
 - a. **\$100,000** for a candidate running for the office of Mayor;
 - b. **\$40,000** for a candidate running for the office of City Council;
- (4) 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.

- (5) 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.
- (6) The City Clerk shall establish a schedule for the submission of Fair Elections funds payment requests, 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.
- (7) 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?]

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 8. EFFECTIVE DATE

All provisions of this act will take effect immediately.

Section 9. 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.