



*The Pilot Program for
Public Financing of
Municipal Campaigns*

*A Report of the
Connecticut State Elections
Enforcement Commission—
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Report on the
Pilot Program for Public Financing of Municipal Campaigns

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Executive Summary

Connecticut's municipal public financing pilot program, incorporated in General Statutes § 9-760 as a part of the Comprehensive Campaign Finance Reform Legislation, was successfully implemented and overseen by the State Elections Enforcement Commission for the 2007 municipal election cycle. New Haven was the sole municipal participant, and the program it created, the Democracy Fund, operated for the 2007 municipal election cycle. The Democracy Fund, while beset with some difficulties and less than optimal circumstances in regard to the level of primary competition, was a worthwhile experiment in public financing at the municipal level. New Haven has elected to continue the Democracy Fund Program, and the Commission supports continuation of the Program, albeit with recommendations for improvement.

This report contains a summary of: the municipal pilot program, New Haven's Democracy Fund and the 2007 New Haven mayoral election, as well as observations and suggestions on the operation of the Democracy Fund and municipal public financing programs generally, with our final recommendation to expand the Commission's authority to oversee the launch of additional municipal public financing programs.

II. Background

On October 25, 2005, the Connecticut General Assembly passed Public Act 05-5, An Act Concerning Comprehensive Campaign Finance Reform for Statewide, Constitutional and General Assembly Offices. On December 7, 2005, Governor Rell signed Public Act 05-5 into law. This act established the Citizens' Election Program as a voluntary system of public campaign financing for statewide and legislative offices, and broadly changed the landscape of campaign finance law in Connecticut. As a part of this model legislation, the legislature included a provision for the State Elections Enforcement Commission (the "Commission") to establish a pilot program for the public financing of municipal elections. This portion of the public act was codified in General Statutes § 9-760, which provided, in relevant part, that "the State Elections Enforcement Commission shall establish a pilot program for the public financing of campaigns of candidates for the municipal offices of chief executive officer, municipal clerk and legislative body member, who agree to limit campaign fund-raising and expenditures, at a municipal election in not more than three municipalities."

A. Establishment of the Pilot Program

In accordance with General Statutes § 9-760, the Commission established a pilot program for public financing of municipal elections, along with an application process and criteria for the selection of the municipalities. The law creating the program did not provide for any state funds for municipalities or any additional funds to implement their programs. Interested municipalities were required to demonstrate their ability and commitment to adequately fund and implement their programs. Participation in the pilot program was voluntary and applications from municipalities would be reviewed upon proof of consent by their legislative body.

At its January 2006 meeting, the Commission adopted procedures and application criteria for interested municipalities and began seeking applications for the pilot program. Upon receipt of the application materials, the Commission was to review and determine whether the municipality met the threshold standards, and notify the municipality of its decision. (See **Appendix A**, attached hereto, describing criteria used by the Commission for approval for participation.) Each municipality that met the threshold standards was to submit to the Commission a fully drafted plan. Commission staff would lend technical and legal assistance to the municipality responsible for drafting the plan. The plan would then be reviewed for approval by the legislative body and re-submitted to the Commission for final approval or modifications.

In the ensuing weeks and months, staff from the Commission met and communicated with municipal leaders, and conducted analysis of past campaign spending by interested municipalities. In February 2006, the Commission's staff, in cooperation with the Connecticut Conference on Municipalities, held a workshop on the public financing pilot for municipal campaigns.

In order for there to be sufficient time to implement the necessary procedures so that qualified candidates could receive public funds for their election campaigns, the Commission set forth a deadline to submit application materials (April 1, 2006), a deadline to submit fully drafted plan (July 1, 2006), and a date by which the Commission would make its final decision on the selection of municipalities (September 15, 2006).

Two municipalities, New Haven and Norwalk, participated in the application process, but only New Haven followed through until completion and approval.

B. New Haven's Application

New Haven was eager to participate in a municipal public financing program from the outset.¹ In March 2006, the City of New Haven submitted an application, proposing to create the New Haven Democracy Fund ("Democracy Fund"). Accordingly, the Commission was required to review the application, and to make a decision whether or not to grant preliminary approval to participate.

On June 6, 2006, New Haven Board of Aldermen passed the proposed New Haven Democracy Fund Ordinance, signed by the Mayor of New Haven. Shortly thereafter, the City of New Haven sent the Commission a copy of the Ordinance. A copy of the (revised final) Ordinance is attached to this report as **Appendix B**.

¹ On December 6, 2005, Mayor of New Haven John DeStefano and the Board of Aldermen's President and Majority Leader sent a letter to the Commission, expressing interest in participating in the pilot program. Included in this correspondence was a unanimous resolution adopted by New Haven's Board of Aldermen manifesting desire to participate.

New Haven's proposed program was to be limited to only mayoral candidates, the office that has traditionally been the most expensive to seek in that city.²

New Haven proposed a public financing system that combined the use of grants and matching funds. Qualified candidates would be required to raise at least \$5,000 in contributions from a minimum of 200 New Haven electors of not less than \$25 and not more than \$300. Such candidates would be eligible for matching public funds on a 2:1 basis for the first \$25 of any contribution. For example, a candidate who raises \$100 from an individual would get \$50 in matching public funds, i.e. $\$25 \times 2 = \50 in matching funds. Fifty dollars, therefore, would be the maximum matching grant triggered from any single contribution.

Candidates who reached the \$5,000/200 resident qualifying threshold would also be eligible for a \$15,000 grant from the city, but *only* if they were deemed to be in a competitive primary or election. More specifically, the candidate was required to meet all requirements to appear on a primary or general election ballot and the candidate must be participating in a contested primary or election in which more than one candidate has met all requirements to appear on the ballot, and has qualified for public financing or otherwise raised or spent at least \$5,000.

Political committees ("PACs") could not contribute to participating candidates. Town committee contributions were to be limited to \$300; however, qualifying contributions were restricted to *individual* donors only. Spending was to be limited to \$200,000 for a primary and \$200,000 for a general election. No candidate could receive more than \$125,000 in public funds per primary or general election. Finally, for a candidate to be eligible for public matching funds and grants, he or she was required to participate in public forums open to all candidates in the primary or general election (as the case may be).

The stated purpose of the Democracy Fund Ordinance was to ensure citizens a fair and meaningful electoral process and to "(a) counter the perception that New Haven's public policy was influenced by campaign contributions, (b) ensure that meritorious Mayoral candidates were able to raise and spend sufficient campaign funds through public financing of elections to convey their message to the voters, (c) reduce the need for ongoing fundraising and to encourage Mayoral candidates to spend more time communicating with citizens, [and] (d) give all citizens an opportunity for a reasonable supporting role in the selection of Mayor by making even small contributions meaningful." (New Haven Democracy Fund Ordinance, Section 2-241) Other goals and objectives of the program were reducing corruption, reducing the cost of the mayoral election, investment in a stronger democratic process, more fair competition in the mayoral race, and attracting more diverse candidates.

Finding the New Haven plan to be constitutional, legally sufficient and workable—with some revisions—in April 2006, the Commission resolved to grant the city preliminary approval to participate in the pilot program.

² Commission staff analysis of campaign spending for the previous two mayoral elections indicated that the winner (incumbent) spent \$192,000 and \$161,000, respectively.

In September 2006, Executive Director, Jeffrey Garfield sent a letter to the New Haven Board of Aldermen raising certain technical issues regarding the Democracy Fund Ordinance. In October 2006, Garfield and Beth Rotman, Director of the Citizens' Election Program, communicated with Carl Amento, Assistant Corporation Counsel to the City of New Haven, regarding necessary revisions to the Ordinance. During that time they shared public financing models from other jurisdictions, including Maine, New York City, and Los Angeles. Various policy and legal issues underlying public campaign financing were also discussed. These discussions continued throughout November and December 2006 between Commission senior management and Mr. Amento. The revised (final) Ordinance included most of the basic provisions of the original Ordinance, but raised the expenditure ceiling from \$200,000 to \$300,000 for each primary and election.

In December 2006, Mr. Amento met with Mayor John DeStefano and the Board of Aldermen and the final Ordinance was approved. On January 17, 2007, the Commission gave final approval for the participation of the City of New Haven in the pilot program. On March 5, 2007, the New Haven Board of Aldermen passed the revised Ordinance, and submitted it to Mayor DeStefano, who signed the final Ordinance on March 16, 2007.

III. New Haven's Democracy Fund

A. Summary of New Haven 2007 Mayoral Election

In the 2007 New Haven Mayoral election, there were initially five candidates for mayor who agreed to participate in the Democracy Fund program. Three Democratic candidates announced in the primary, including the incumbent mayor, John DeStefano, Jr., James Newton, and William Greene. However, Mr. Newton failed to qualify for the ballot and Mr. Greene withdrew early so a primary was unnecessary.³ No other party had a primary. In the general election, DeStefano faced a Republican candidate, Richter Elser, and a Green Party candidate, Ralph Ferrucci.

³ In Administrator Robert Wechsler's report (attached hereto as **Appendix C**), he states that this was unusual and changed the landscape of this particular election. "The principal feature of the election was that there was no Democratic primary. In New Haven, the Democratic primary is the most important election, because since 1953 the Democratic nominee has won the general election by a sizeable margin, if not a landslide. In 2007, three Democrats declared to run against the incumbent mayor. One of them became very ill, and dropped out of the race. Another abandoned his campaign days after filing his Affidavit of Participation in the Democracy Fund, and gave his support to the third contender, James Newton. Mr. Newton successfully raised funds, but failed to obtain sufficient names to appear on the primary ballot (apparently through errors in the petition process). Also, although his campaign applied for matching funds, and had enough contributors to qualify, it did not provide sufficient backup documentation before his campaign ended. Therefore, no Democratic contender received matching funds, only the incumbent mayor. And there was little need for the incumbent mayor to continue raising funds, because there was to be no primary election."

Only one candidate in either the primary or general election, DeStefano, qualified for public matching funds. No candidate qualified for the \$15,000 block grant, because there was only one candidate who raised or spent more than \$5,000 (DeStefano). (Mayor DeStefano did receive a \$15,000 block grant in error, but it was returned to the Fund.) The matching funds were given to Mayor DeStefano in the primary only. Mayor DeStefano qualified for \$11,850 in matching funds based on his collection of more than \$5,000 in contributions of not less than \$25 (nor more than \$300) from at least 200 New Haven electors. No other candidate collected enough qualifying contributions to receive public financing.

In addition to the incumbent Democratic Mayor, there was a Republican and a Green Party candidate in the general election. However, neither of them met the qualifying threshold that was required for public funds. No public funds were given to any candidate in the general election. Mayor DeStefano was re-elected as mayor of New Haven.

B. Operation of New Haven's Program

The seven member Democracy Fund Board (the Board), which oversaw the implementation of the Program, convened monthly during the pre-election period. The Board drafted bylaws, interviewed and hired the Administrator, Robert Wechsler, and managed certain operations as required by the Ordinance. These operations included: the creation and approval of forms and materials required for the administration of the program, approval of the matching funds disbursement calendar drafted by the Administrator and determination of whether each election was contested.

The Administrator dealt with all other operational matters, and prepared memos and resolution language for the Board. The position of Administrator averaged 40 hours per month between July and December 2007. Questions from the candidates and the media were answered by the Administrator. No training sessions were held.

Public funds eligibility was determined on the basis of matching funds requests and inquiries to the candidates concerning their fundraising and expenditures. Such inquiries are necessary to decide whether there is a *contested election*, i.e., whether there is an opposing candidate who has raised or spent at least \$5,000. It should be noted here (and is commented upon later) that the Ordinance had no additional reporting requirements for the participating candidate committees—candidates were required to follow the statutory reporting schedules.

As outlined earlier, in order for a participating candidate to be eligible to receive the \$15,000 public grant, the candidate must (a) appear on the primary or general election ballot as a nominated or petitioning candidate, and (b) be running in a *contested* election. In this election, the Administrator (admittedly) erred in assessing the grant eligibility for the primary because, although there were candidates who sought a primary, only one candidate made it onto the ballot—as a result, there was no primary. When the primary candidate Newton failed to get on the ballot, the Board was

obligated to ask the DeStefano campaign for the grant back.⁴ The campaign willingly complied.

Payment amounts were determined by the Administrator's review of public fund requests. This review included verifying that contributors were New Haven registered voters, that contributor cards were properly completed for all contributors who contributed cash, that copies of checks were filed, that all checks were signed and dated, that the check and contributor card dates fell within the appropriate election period, the amounts of the contributions, and that multiple contributions from the same contributor were aggregated. Payment followed the Democracy Fund schedule: 2-to-1 for the first \$25 given by each contributing New Haven registered voter. No auditing process was undertaken beyond reviewing the matching funds request.

C. Summary of New Haven's Analysis of the Program

Attached to this report as **Appendix C** is the full Report of the New Haven Democracy Fund to the Commission, which details the Fund Administrator's analysis of the program. Such detailed analysis will not be repeated here. Briefly, the analysis raises the following points.

The 2007 mayoral election was atypical, with the absence of a Democratic primary in this traditionally Democratic city. For reasons that had little or nothing to do with the Democracy Fund itself, most of the Democracy Fund's stated goals "were neither met, nor did they fail." See footnote 10, *supra*. Of the original five candidates who signed up to participate in the program, only one received public funding.

In the general election, there was a Republican and a Green Party candidate where there had been no Republican in the previous election. One of the reasons both of them stated that they decided to run was the opportunity to get the message out to more people with the help of a Democracy Fund grant and matching funds. All declared candidates, Democrat, Republican, and Green (with the exception of the candidate who became ill before the campaign began), joined the Program, which is indicative of candidate support for the Democracy Fund Program.⁵

The Program started with \$400,000 in the Fund. Total expenditures were less than \$20,000 for the 2007 election year (including matching funds and administrative costs). An appropriation of \$100,000 was requested for 2008 to supplement the Fund. There was ample money in the fund for the 2007 election. There is sufficient money in the fund for future elections even in the event that more candidates participate and

⁴ Although Mr. Newton had apparently raised in excess of \$5,000, the registrar found that Mr. Newton had too many improper names on his petition to qualify for placement on the primary ballot.

⁵ Candidates were required to file an affidavit with the Board that included a written certification that the candidate either intended to abide by the expenditure limits under the Ordinance or did not intend to do so. The candidates who certified their intent to abide by the expenditure limits were referred to as "participating candidates." New Haven Democracy Fund Ordinance, Section 2-247.

qualify for public funds. Subsequent to the election, the President of the Board of Aldermen met with the Democracy Fund Board and indicated that his intention was to continue to fund the Democracy Fund until it becomes a self-sustaining endowment. As such, he suggested that the Board request a \$100,000 appropriation for each of the next two fiscal years, and continue to increase the Fund until it reaches a self-sustaining level.

D. Proposed Changes

The Democracy Fund Board has started discussing possible changes to the Democracy Fund Ordinance, in light of its experience in the election and of anticipated future issues. Such discussions are ongoing. The Administrator has recommended to the Board numerous minor, technical changes to the Ordinance. The Board hopes to make a series of recommended changes in the Democracy Fund Ordinance to the Board of Aldermen. See **Appendix B**, pages 10 - 11 for a more detailed analysis of the proposed changes. Since the publication of that report the following additional changes have been proposed for consideration by the Board. Indeed, any such changes to the Ordinance would necessarily have to comply with state law to avoid issues of pre-emption with state election statutes. The staff of the Commission would be glad to assist the Board and its counsel with any changes to the Ordinance that may implicate such issues. See e.g. General Statutes § 7-192a. The following are among the Board's proposed changes:

- Reducing the dollar amount of qualifying contributions from \$25 to \$10;
- Adoption of the participating candidate contribution limit of \$300 for non-participating candidates;
- Reduction in the number of signatures needed to get on primary ballot, from 5% to 3% of party members (a proposal which requires a change in state law);
- Substantial reduction of the expenditure ceiling;
- Addition of seven reporting requirements to the Ordinance, including independent expenditure reporting;
- Application of additional reporting requirements to non-participating candidates;
- Disclosure of status as city contractors of anyone who gives an aggregate of \$100 or more to any candidate;
- Deeming any qualified candidate who wins a primary election to have qualified for the general election.

The Board has also proposed the following changes:

- Clarifying that participating candidate committees are limited to making qualified campaign expenditures;
- Clarifying that write-in candidates can get matching funds but not grants;
- Removing timing restrictions as to when a qualified candidate in the general election may receive a grant, and amendment to the contested election rule for the general election, so that it is met by having a candidate win a primary;

- Clarifying election cycle division rules by allowing for a rollover of primary contributions and matching funds into the general election campaign in the event there is no primary, and by making it clear that the \$300 contribution limit applies to each of the primary and general campaigns; and
- Deeming any qualified candidate who wins a primary election to have qualified for the general election.

IV. Commission's Analysis

The Program, while beset with first-run problems and less than optimal circumstances in regard to the level of primary competition, was worthwhile as an experiment in public financing at the municipal level. There is not one single correct manner in which to attempt to implement a public financing system of any size, and first and foremost, New Haven deserves praise for its effort to enact and administer the Democracy Fund.

Municipal public financing programs vary greatly from one jurisdiction to another.⁶ For example, public funds can be provided to candidates in two common ways, via matching grants or as block grants (lump sums). Matching grants are more-or-less as they sound: for any sum of money raised by a candidate, a separate (but not always equal) sum is provided by the body administering the program. In most instances, there is a total cap on the amount available through this method. For example, in Los Angeles, for city council candidates, matching occurs at a dollar-for-dollar rate for contributions up to \$250 to total 4/5 of the full grant monies available to that candidate (in the general election).⁷ Smaller jurisdictions such as Petaluma and Long Beach, provide \$.50 for each dollar raised.⁸ In New Haven, the match is 2:1, but applies only to the first \$25 raised per contribution.

Block grants (a/k/a lump sum grants) can be used in combination with matching funds—as New Haven has done. In New Haven, candidates must raise \$5,000 from at least 200 City electors in amounts of between \$25 and \$300 dollars to receive the block grant.

There are many feasible methods of dispensing grants, but as one commenter has observed, “[t]he element most critical to the success of a public financing program is its funding mechanism. Candidates will not participate in a program that is underfunded, making the program useless.”⁹ In this respect, New Haven has laid the ground work for success. The Democracy Fund is well-funded and encouraged participation by the candidates involved in the 2007 municipal elections.

⁶ Ryan, Paul, *Beyond BCRA: Cutting-Edge Campaign Finance Reform at the Local Government Level*, 92 National Civic Review 3, at 3 (2003).

⁷ http://ethics.lacity.org/PDF/laws/law_cfo_mf.pdf

⁸ Ryan, p. 8. “Every jurisdiction but Austin limits the total amount of public financing available to a candidate.” *Id.*

⁹ *Id.*, p. 9.

A. Administrative Resources

The singular goal that the administration of all public financing programs must have is an abiding vigilance for the protection of the public fisc. The proven methods for such protection are robust audit and enforcement mechanisms and maximum exposure to sunlight through the public disclosure of campaign spending and contributions. Under the best of circumstances, developing an administrative infrastructure is not easily done. Here, New Haven established an administrative structure to monitor the Program and distribute the public funds to mayoral candidates, but apparently not to adequately (and visibly) ensure the proper use of those funds. In short, it appears that the administrative structure may not be sizable enough to fully realize the goals of the program in the future.

In particular, no auditing of campaign contributions or expenditures was done and no additional reporting of campaign contributions or expenditures was required. If such audit and reporting were required, there is no realistic way, given the administrative resources currently allocated, for these tasks to be meaningfully accomplished.¹⁰ The actual effect of this in this particular campaign (where only one grant was distributed) is perhaps of less importance as the potential effect on ensuring public confidence that the public funds have been and will be adequately safeguarded and utilized, now and in the future. Auditing and enforcement capabilities need to be realistically addressed.¹¹

For example, the Democracy Fund program relied on the standard filing procedure for municipal candidates, i.e. SEEC-generated reporting forms were deposited with the New Haven town clerk at statutorily mandated—quarterly—deadlines.¹² Without more, this presents several problems. First, this procedure relies on the town clerk's office or the general public (which has access to these filed reports) for timely scrutiny of the contents of those reports. Ideally, the Democracy Fund administration should have the capacity to do this internally for both compliance and

¹⁰ Additional reporting requirements, in particular, would need to be adopted by way of an amendment to the ordinance or program's candidate contracts, but could only be accomplished if resources were allocated to effectuate them. Increased reporting requirements are among the recommended changes to the Ordinance by the Board.

¹¹ The Ordinance does provide the authority to audit participating candidates (Ordinance § 2-245 (d)), but that authority is vested in the Board, the unpaid, appointed volunteer group that oversees the program. There is no indication that the Board exercised (or was equipped to exercise) its audit powers vis-à-vis the participating candidates.

¹² Pursuant to Ordinance § 2-247 (d), copies of these standard disclosure reports were also filed with the Board, but there appears to be no apparatus for the Board to methodically scrutinize these reports, i.e. no audit personnel.

enforcement purposes.¹³ Secondly, the campaigns' access to block grant funds (i.e. \$15,000) is contingent upon a competitor's campaign raising or spending more than \$5,000. In a campaign, this effectively could allow a competitor to cross that threshold three months before the campaign was required to report it. This presents obvious problems for the campaign seeking (or planning to seek) public funds that are dependent on the electoral race being "contested."¹⁴

In the 2007 campaign, only Mayor DeStefano's campaign applied for *and received* matching funds. This application contained documentation of over two-hundred contributions. The lone Administrator was able to review this back-up documentation. It is difficult to imagine that this could be adequately accomplished if five (or more) candidates applied, and continued applying for matching funds on an on-going basis. Clearly, more staff would be required.¹⁵

Another example of the effects of the undersized administrative apparatus is that no training sessions were held for public education or for the benefit of the candidates or media. All questions were handled by the lone Administrator. Although this process may or may not have been sufficient in this particular election, it would likely not be in an election where more candidates aggressively pursue grant monies and more grants were distributed.¹⁶ The lack of public outreach also fails to positively influence public perception that the campaign financing system is having its intended remedial effect.

Here, a candidate (who was unopposed in the primary) was awarded a block grant when the opponent had failed to qualify for the ballot. This error ultimately proved harmless (the money was returned by the DeStefano campaign). It is difficult to see this error as an irreparable flaw in the Program. Nevertheless, it speaks to the need for a backstop mechanism that can only feasibly be provided by additional oversight. Clearly, a more robust administrative apparatus is required.

¹³ The Ordinance assigns the administrator the following responsibilities (among many others): review the statements of acceptance or rejection of expenditure ceilings, nomination papers, requests for public matching funds and the candidate's and other campaign financial disclosure reports in a timely fashion to certify a candidate's eligibility to receive public matching funds. Ordinance § 2-245 (h).

Based on the experience of the Commission with the Citizens' Election Program such review for even a small field of candidates would require greater resources than those utilized in the New Haven program.

¹⁴ This dilemma was faced by the DeStefano campaign in the 2007 election. No other campaign in the general election crossed the \$5,000 threshold—but this fact proved difficult to ascertain and affected campaign fundraising and strategy.

¹⁵ As Mr. Wechsler notes in his report, "[f]ortunately, there was also no need to make an investigation." Assuredly, it may be fortunate, however such good fortune cannot be reasonably expected in every election. It is also not clear what cause to investigate might have been revealed had routine audits taken place.

¹⁶ The campaign that did most actively participate in the Democracy Fund considered the lack of training one of the biggest shortcomings of the program's trial run. In particular, the separate application process for the primary and general election cycle was a source of confusion.

In addressing the above observations, it is helpful to look to other jurisdictions. One contrast with other municipal public finance programs is that most programs apply to all or nearly all of the affected jurisdiction's elected officials:¹⁷ New Haven's program involved only the office of mayor. New York City, Los Angeles, Tucson and San Francisco, for example, all offer public financing to (the corresponding local equivalent of) both the mayor's office and the city council. While the individual jurisdiction's impetus for doing so may vary, there are obvious reasons why this makes sense. First and foremost, the same purposes would be served and the same ills cured by opening up public financing to the different governing bodies attending these municipalities.

There is a secondary effect that expanded application of a local public financing program would have that should not be overlooked. That is that the apparatus for administering such a program must be rigorous and robust enough to be responsive in compliance and thorough in enforcement. Such an apparatus requires dedicated personnel and not insignificant resources. The practical upshot is that the overall cost of running such a program would benefit from an economy of scale. Furthermore, the justification for the associated expenditure may more easily be made with the resultant savings, as well as the broader application. Undoubtedly there are other benefits, such as greater publicity and public education that a broader-based program would bring. These benefits were not realized by New Haven's program.

In sum, here the small scope of the Program ostensibly ameliorated the need for larger administrative structure (i.e. if more candidates for more offices could participate, then more staff would be justifiably required)—but a critical mass would be useful to fulfill the Program's goals. Although the small scope of the Democracy Fund may not justify the increased resources recommended for a larger administrative structure, the addition of more offices eligible for public financing, for example the Board of Alderman, may enhance such justification and reinforce and upgrade the existing structure.

B. Additional Observations

The administrative structure of the Program might be improved in another, unrelated respect. The Democracy Fund's Board is currently comprised of seven members who are nominated by the Mayor and subject to approval by the Board of Aldermen. Although the enabling Ordinance prescribes that only three members of the Board can be of one political party, the fact that all members are nominated by the Mayor—who may be seeking re-election in any given election year—creates, at the least, a perception problem. Public trust in the Program undoubtedly would be enhanced by distributing the nomination power to various authorities, instead of one (generally interested) authority. To its credit, the Democracy Fund Board has adopted bylaws that limit members' political activities to ensure the appearance of impartiality.

It should be noted that the New Haven Democracy Fund Ordinance did not provide additional public monies to counter *independent expenditures*, as do the state

¹⁷ Id., p. 7.

statutes. Although this feature is not a pre-requisite for a successful public finance program, it does impact a program's efforts to incentivize participation. This was not seen as a problem in the 2007 mayoral race.

The Democracy Fund Board has advanced proposals for improvements in the next election cycle. The Democracy Fund Report, attached hereto as **Appendix C**, lists these proposals, which are synopsised *supra*, in Section III (D), along with more recent proposals. Generally, this Commission neither endorses nor opposes these proposals, with the following exceptions. The Commission's initial recommendation to the City was to increase the expenditure ceiling from \$200,000 to \$300,000, and although the intervening 2007 election did not demonstrate spending that would justify such a ceiling, the election was unusual. Past elections have shown that the higher ceiling was reasonable, and the risk of a "substantial reduction of the expenditure ceiling" is that participation in the Program could be discouraged: an undesirable result that should be avoided if at all feasible. We especially encourage, for the reasons stated above, the addition of "seven reporting requirements to the Ordinance, including independent expenditures [and] . . . additional reporting requirements to non-participating candidates. . . ." The caveat being, as discussed, that meaningful reporting would require greater administrative scrutiny. Increased reporting, in the absence of such scrutiny, does not achieve its intended purpose.

As discussed, there is not one single correct manner in which to attempt to implement a municipal public financing system of any size, and there are many ways that the Democracy Fund can grow, experiment and potentially improve, and it appears headed in a positive direction.

V. Legislative Recommendations

Now that the pilot program has run its course, the Commission recommends that the General Assembly consider amending the General Statutes to expand the Commission's authority to oversee the launch of additional municipal programs. This would give other municipalities the opportunity to develop their own public financing schemes (if they so choose), and further this state-wide experiment in publically funded elections at the municipal level. It is important to encourage municipalities to execute their own public policy initiatives and to encourage local governments as laboratories of democracy.

The Commission should be delegated the power and authority to review such proposals for constitutionality, legal sufficiency and state law preemption issues, such as with General Statutes § 7-192a, and approve such proposals as it deems fit. Further, the Commission should set forth an application procedure and a schedule for submission of such applications and a timeframe for action on those proposals. The Commission would advise on the basic elements of public financing program implementation and administration of all approved municipal programs. Additionally, the Commission would advise such municipalities on the implementation and administration of other campaign financing restrictions including but not limited to the sale of advertising space in fundraising programs, restrictions on contributions from communicator lobbyists

and their immediate family members, and restrictions on contributions from municipal contractors, prospective contractors and their principals.

Finally, the Commission recommends the continuation of the New Haven Democracy Fund Program, albeit with recommendations for improvement.

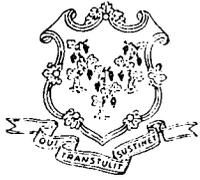
VI. Conclusion

Public financing is a powerful tool in the effort to eliminate corruption and to restore public confidence in the electoral process where it has been diminished. It is important to encourage local governments to experiment with public financing, a proven method for achieving many identifiable and desirable goals in our democratic system of government. The Commission considers the first run of the pilot program to have been worthwhile and recommends expansion of the Commission's authority to oversee the launch of additional municipal programs.

VII. Appendices

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Appendix A



STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION
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Pilot Program for Public Financing of Municipal Elections

Introduction

In accordance with Section 48 of newly enacted Public Act 05-5 of the October 25, 2005 Special Session of the General Assembly, the State Elections Enforcement Commission is required to establish a pilot program for public financing of municipal elections in as many as three municipalities. The Commission is required to establish an application process and criteria for the selection of the municipalities. Participation in the pilot program is purely voluntary, and a municipality must consent to such participation by its legislative body, provided if the legislative body is a town meeting, consent must be manifested by the board of selectmen.

Although the legislation does not explicitly specify, the Commission will seek applications from interested municipalities for the 2007 municipal elections. In order for there to be sufficient time to implement the necessary procedures so that qualified candidates can receive public funds for their election campaigns, the following schedule is established:

1. Deadline to submit application materials—April 1, 2006
2. Deadline to submit fully drafted plan---July 1, 2006
3. Commission makes final decision on selection of municipalities—September 15, 2006

The remainder of this document will explain the application process and the criterion that the Commission will utilize to select the participants. It should be noted however, that the legislation provides no state funding for the administration of the municipal public financing program, including payments to qualifying candidates. Nor is the State Elections Enforcement Commission charged with the administration or enforcement of the new program. The Commission's role is defined carefully in the legislation creating this pilot program, and is confined to providing technical and legal assistance to ensure that the drafted plan submitted by the municipality is voluntary, workable, fair, comports with constitutional principles, contains the necessary administrative and legal structures to implement and monitor compliance with program requirements, and provides sufficient funds to qualifying candidates to encourage them to participate in the program.

Application Process

In order to apply for participation in the pilot program, the legislative body must adopt a resolution by at least a majority thereof signifying its consent to participate. The likelihood of success of a public financing program in a municipality is dependent upon

the support it receives from its chief executive and legislative body. Accordingly, the Commission may consider the degree of support and interest these critical officials have in participation. The resolution must be submitted to the State Elections Enforcement Commission by April 1, 2006, along with the other application materials described herein. The resolution must be accompanied by a cover letter which includes a local contact person who will be responsible for answering questions concerning the application and proposed plan of the municipality.

In addition to the resolution and cover letter, a designee of the legislative body of the municipality, on behalf of such body, shall provide answers to the following questions concerning the proposed plan of public financing of municipal elections.

1. How will the public campaign financing system be funded by the municipality?
2. How much funding will be set aside for payments to candidates participating in the program?
3. What local governmental agency will be responsible for verifying candidates' qualifications for the program?
4. What local governmental agency will be responsible for payments to qualifying candidates?
5. How will the program provisions be enforced? By which local government agency?
6. Will candidates' participation in the public financing program be voluntary?
7. Which offices will be covered under the program?
8. Will there be public funds available to candidates who qualify for primaries as well as elections?
9. Will the public financing program be a grant system, such as the state system created by the legislation, or a matching funds system?
10. How will candidates qualify for public funds?
11. How much will each candidate qualify for?
12. How will the influence of special interests be curtailed in the qualifications for the program?
13. How will minor party and petitioning party candidates qualify for public funds for their campaigns?
14. Will all candidates who participate in the public financing program be required to limit their campaign spending to certain levels?
15. What will be the spending limits for each office covered under the program?
16. Will there be additional funds available to a participating candidate whose non-participating opponent exceeds the voluntary spending limits?
17. How much?
18. Will there be additional campaign finance reporting requirements, beyond what is currently required by state law, to monitor compliance with spending limits?
19. Will there be special prohibitions or limitations on the use of public campaign funds?

20. How will the program address the possibility that independent expenditures may be made by other groups to oppose a candidate in the public financing program?
21. Will the program requirements and provisions be enacted as an ordinance?
22. What other measures will be taken to instill public confidence in the public financing program?

Upon receipt of the application materials, the Commission will review them to determine whether the municipality meets the threshold standards, and will notify the municipality of its determination. The Commission shall advise each municipality which meets the threshold standards to submit a fully drafted plan, and the staff of the Commission shall lend technical and legal assistance provided that an attorney designated by the municipality shall be responsible for the drafting of the plan, which shall be approved by the legislative body before it is submitted to the Commission for final approval.

Criteria Used by the State Elections Enforcement Commission in its Determination of whether to Approve a Municipality for Participation in the Pilot Program

The Commission shall consider the following criteria in determining whether to grant preliminary approval to a municipality to participate in the pilot program:

1. The level of support demonstrated by the legislative body of the municipality
2. The support of the chief elected official of the municipality
3. The level of support of the citizens of the municipality
4. Whether the proposed plan for public financing is voluntary
5. Is there an adequate and reliable funding mechanism to support the program
6. Are there local governmental structures in place, or proposed to be established, that will fairly and effectively administer and enforce the provisions of the program?
7. The extent to which the proposed plan is attractive to candidates by offering them sufficient incentives to participate, and yet not coercive
8. Are the qualifying levels fair and reasonable, and do such levels treat all candidates fairly
9. Do the qualifying levels require a showing of support within the municipality or district
10. Does the proposed plan effectively address the financial influences of special interests in a political campaign
11. Are the public funds available to participating candidates adequate to wage an effective campaign
12. Will the program requirements encourage greater competition in the electoral process
13. Are the spending limits imposed on participating candidates as a condition for receiving public financing fair and reasonable, and will such limits operate to attract candidates to participate
14. Does the proposed plan adequately address overspending by non participating candidates who are opposed by a participating candidate
15. Does the proposed plan address the possibility of independent expenditures

16. Does the plan satisfy constitutional requirements
17. Are the verification and qualification procedures adequate to deter fraud and abuse
18. Are there other mechanisms and procedures proposed, including special reporting and disclosure requirements, that will ensure compliance with spending limits or other program requirements
19. Are there enforceable penalties or other sanctions that will encourage compliance by candidates
20. Are there adequate resources in place or proposed to support the governmental structures designated to administer and enforce the program
21. The overall likelihood that the program will be successful and enhance the confidence of the public in the electoral process

In determining whether to grant final approval to a municipality which has been given preliminary approval, the Commission shall consider whether the fully drafted plan for implementation satisfies the criteria described above and if more than one municipality having substantially the same population was given preliminary approval, which plan has the best chance to be successful. The Commission shall notify all municipalities which had been given preliminary approval of its final selections by September 15, 2006.

Approved by the State Elections Enforcement Commission
January 11, 2006

Appendix B

New Haven Democracy Fund Ordinance

Title II. Special Laws Article XVIII. Democracy Fund

Note: The comments below (in italics) are those of the Democracy Fund Administrator, not of the Board of Aldermen. The Appendix, including certain referenced sections of the Connecticut General Statutes, has also been added by the Administrator.

Sec. 2-241 Purpose

The purpose of this ordinance is to ensure that all the citizens of New Haven have a fair and meaningful opportunity to participate in the election of their Mayor. Specifically, the ordinance aims to:

- (a) Counter the perception that New Haven’s public policy is influenced by campaign contributions;
- (b) Ensure that meritorious Mayoral candidates are able to raise and spend sufficient campaign funds through public financing of elections to convey their messages to the voters;
- (c) Reduce the need for ongoing fundraising and to encourage Mayoral candidates to spend more time communicating with citizens;
- (d) Give all citizens an opportunity for a reasonable supporting role in the selection of Mayor by making even small contributions meaningful.

Sec. 2-243 Definitions

Unless otherwise defined in this section or the contrary is stated or clearly appears from the context, the definitions in this section shall govern the interpretation of this ordinance.

- (a) “Mayoral Committee” shall mean a committee designated by a single candidate, or established with the consent, authorization of a single candidate for the purpose of a single primary or election and to aid or promote such candidate’s candidacy alone for the office of Mayor. “Mayoral Committee” as used in this article shall not include any “Exploratory committee”, “Political committee” or any “Party committee” as those terms are defined in Connecticut General Statutes, Section 9-333a.

Comment: The above-referenced state statute section is now §9-601.

- (b) “Candidate” means an individual who seeks nomination for election or election to the office of Mayor whether or not such individual is elected, and for purposes of this ordinance, an individual shall be deemed to seek nomination

for election or election if such individual has (1) been endorsed by a party or become eligible for a position on the ballot at an election or primary, or (2) solicited or received contributions, made expenditures or given such individual's consent to any other person to solicit or receive contributions or make expenditures with the intent to bring about such individual's nomination for election or election to the office of Mayor.

- (c) "Campaign treasurer" means the individual appointed by a candidate to receive and disburse funds on behalf of the candidate or Mayoral committee.
- (d) "Election" shall mean any primary or general election for Mayor of the City of New Haven.
- (e) "Contested Election" shall mean any election in which more than one candidate seeking a party nomination or election to the office of Mayor has raised or spent \$5,000 or surpassed the qualifying contributor threshold to receive public matching funds. The Democracy Fund Board shall, by majority vote, declare an election as a contested election.
- (f) "Qualified Committee" shall mean either a Mayoral Committee established to aid or promote the success of any candidate for nomination for election or election to the office of Mayor, which Mayoral Committee has been approved by the Democracy Fund Board to receive public matching funds under this ordinance. A candidate for nomination for election or election to the office of Mayor shall only have a single "Qualified Committee" at any given time.

Comment: Ignore the "either" in (f). Also note that it is the Administrator, not the Board, that certifies a candidate's eligibility to receive public matching funds (§2-245(h)).

- (g) "Contribution" shall mean any gift, payment, subscription, advance or deposit of money or anything of value made for the purpose of influencing the nomination for election or election of a candidate, and shall also include but not be limited to:
 - (1) the payment by any person other than a candidate or a candidate's committee of compensation for the personal services of any other person which are rendered without charge to a candidate or his or her committee for any purpose;
 - (2) A loan made to a candidate's committee, whether or not made in the regular course of the lender's business, to the extent the loan is not repaid by the date of the first election following the date of the loan;

The term "contribution" shall not include:

- (1) the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate; or
- (2) the use of real or personal property and the cost of invitations, food or beverages voluntarily provided by an individual to a candidate at the individual's residential premises for candidate-related activities to the extent the cumulative value of such property, invitations, food or beverages do not exceed two hundred dollars (\$200) in value; or

(3) the travel expenses of any individual who on his or her own behalf volunteers his or her personal services to any candidate to the extent such expenses are not reimbursed and do not exceed two hundred dollars (\$200) in value.

Comment: "Value" here means fair market value. The figures in the second part are aggregate, not per event or trip.

- (h) "Qualified campaign contribution" shall mean any contribution made to a qualified committee that shall be counted toward the contribution limits of a candidate who signs a candidate contract to accept public matching funds under this article. Only contributions from individuals and from a town committee shall constitute "qualified campaign contributions".
- (i) "Matchable contribution" shall mean a contribution, not greater than the contribution limits set forth in this ordinance, made by an individual elector of the City of New Haven to a participating candidate, which contribution may be matched by public matching funds as provided in this ordinance.

The following contributions are not matchable:

- (1) in-kind contributions of property, goods or services;
 - (2) contributions in the form of a purchase price paid for an item with significant intrinsic or enduring value;
 - (3) contributions in the form of the purchase price for or otherwise induced by a chance to participate in a raffle, lottery, or similar drawing for valuable prizes; and
 - (4) contributions from individual vendors to whom the participating candidate or his or her Mayoral Committee makes an expenditure.
- (j) "Expenditure" shall mean any purchase, payment, distribution or gift of money or anything else of value when made by a Mayoral Committee established to aid or promote the success of any candidate for Mayor for his or her nomination for election or for his or her election.
 - (k) "Qualified campaign expenditure" shall mean an expenditure of a qualified committee that shall be counted toward the expenditure ceiling of a candidate who signs a candidate contract to accept matching funds under this ordinance. "Qualified campaign expenditures" for a candidate shall include all expenditures for campaign-related purposes taking into account the public nature of matching public funds and the public finance grant, the purposes of the Democracy Fund as stated above, the reasonableness of the expenditures under the circumstances, and the fair market value of the goods or services purchased with the expenditure.

Examples of typical "qualified campaign expenditures" shall include but not be limited to: reasonable and appropriate expenditures for printing and mailing costs; political advertising expenses; campaign communications such as signs, bumper stickers, T-shirts or caps with campaign slogans, etc.; office supplies; campaign events (e.g. food, rent of hall or tent, etc.); food for volunteers while they are working (limited to no more than \$10 per person for breakfast or \$20 per person for lunch or dinner); campaign staff salaries and

expenses; campaign travel expenses, such as fuel and tolls; and post-election parties, thank you notes or advertising to thank supporters or voters (such post-election expenditures are limited to a cumulative maximum of \$250 per election).

“Qualified campaign expenditures” shall also include but not be limited to:

1. The pro rata share of the actual expense paid or incurred by the candidate’s committee of operating a campaign headquarters and of preparing, printing and disseminating any political communication on behalf of the candidate and any other candidate or candidates for other municipal offices; or
2. A non-monetary contribution provided to the candidate or qualified committee, other than volunteer personal services, and other than any not reimbursed payments for travel expenses made by an individual, on his or her own behalf, who volunteers his or her personal services to a single candidate, if the payments are made voluntarily without any understanding or agreement that they will be reimbursed.

“Qualified campaign expenditures” shall not include:

1. Personal expenses for goods and services of the candidate which would otherwise be purchased independently of the campaign, including but not limited to day-to-day household food items and supplies; vehicle and transportation expenses unrelated to the campaign; mortgage, rent or utility expenses for the candidate’s personal residence, even if part of the residence is being used by the campaign; and clothing, including attire for political functions such as business suits, dresses or shoes; or
2. Expenditures supporting or opposing any ballot measure, political committee, or the campaign of any candidate other than the candidate for whom the funds were originally designated; or
3. Compensation to the candidate for services provided by the candidate; or
4. Payment of civil penalties, fines or forfeitures to the Board or any other governmental or regulatory authority, or the cost of defending the candidate in enforcement proceedings brought by the Board or any other governmental or regulatory authority; or
5. The expenses involved in contesting an enforcement decision, civil penalty, fine, forfeiture imposed by the Board or any other governmental or regulatory authority, or the expenses involved in seeking a recount of an election.

(l) “Individual” means a single human being.

(m) “Person” means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

- (n) “Independent Expenditure” shall mean an expenditure that is made without the consent, knowing participation, or consultation of, a candidate or a candidate’s committee. Such an expenditure shall not be considered a “qualified campaign expenditure”.
- (o) “Coordinated Expenditure” shall have the same meaning as that term is defined in Conn. Gen. Statutes, Section 9-333a (19). Such an expenditure shall be considered a “qualified campaign expenditure”.

Comment: The above-referenced state statute section is now §9-601(19) and is included in the appendix to this ordinance.

- (p) “Board” shall mean the Democracy Fund Board established in Section 2-245.
- (q) “Fund” shall mean the Democracy Fund established in Section 2-245.
- (r) “Administrator” shall mean the Democracy Fund Administrator.
- (s) “Investigator” shall mean the Democracy Fund Investigator.
- (t) “Agent” shall mean any person acting at the express or implied direction of an individual.

Sec 2-245 Democracy Fund Administration

- (a) There is hereby established within the City’s general fund a separate non-lapsing reserve account to be known as the Democracy Fund. The City has made an appropriation of \$200,000 to the Democracy Fund for the 2006-2007 Fiscal Year. For Fiscal Year 2007-2008, the Democracy Fund Board will report to the Board of Aldermen in March of 2007 what amount of funds it recommends should be appropriated to properly fund the operations of the Fund. However, the appropriation to the Fund for the 2007-2008 Fiscal year shall be at least \$200,000. For Fiscal year 2008-2009 and subsequent Fiscal Years, the Board shall issue in January a report to the Mayor and the Board of Aldermen of its expenditures and the current balance of its account, and shall include a specific recommendation for funding for the following Fiscal Year. In 2007 and in subsequent years, the Board of Aldermen will consider the recommendation of the Democracy Fund Board and the on-going funding needs of the Fund in its budget deliberations and again in its post-budget approval amendment process. The Board of Aldermen will exercise its best efforts to make sufficient appropriations to the Fund to allow it to carry out its operations effectively. The Board of Aldermen will also consider in a prompt manner any interim requests made by the Board for supplemental appropriations needed

during the Fiscal Year. The Fund can also accept any voluntary individual contributions made to it.

Once City general funds are appropriated, or individual contributions deposited into the Fund, they cannot be transferred for other purposes, canceled, or rescinded. The City's Finance Department shall be responsible for the prudent investment of the Fund's assets, balancing the need for investment growth with the need for liquidity at certain time periods. Investment earnings credited to the assets of the Fund shall become part of the assets of the Fund. All monies deposited in the Fund shall be used only for the purposes of this ordinance, including for the administration of the Fund. Any unused funds shall carry over from year-to-year in the Fund.

- (b) The Fund shall be overseen by the Democracy Fund Board. The Board's membership will consist of seven members. Only three members can belong to the same political party. Members will be nominated by the Mayor and confirmed by the New Haven Board of Aldermen. Of the first seven members appointed, four will be nominated to four-year terms, and three members to two-year terms. The Mayor will indicate the length of the initial term of the first seven members when nominating them. After the first seven members' terms have expired, all appointments will be for terms of four-years. In the event that a member is no longer able to serve due to illness, death, or resignation, the Mayor may nominate a replacement to serve out the remainder of the term. Replacement nominees must also be confirmed by the New Haven Board of Aldermen. If a member's term has expired and his or her successor has not been appointed and approved, the member shall continue to serve until his or her successor has been appointed and approved. A member may be removed only for just cause, which may include excessive absenteeism from Board meetings or failure to carry out the duties of a Board member, as determined by the Mayor and approved by the Board of Aldermen.
- (c) Said Board's duties shall include the: (1) selection of the Democracy Fund Administrator and Democracy Fund Investigator, (2) review of the performance of the Administrator and the Investigator, (3) selection and engaging an independent attorney to advise the Board on legal matters, when necessary; (4) establishment of rules of procedure for Board meetings, hearings and general operation not inconsistent with this ordinance; (5) approval of forms and materials required for the administration of the program set forth within this ordinance, (6) approval of the matching funds disbursement calendar drafted by the Administrator, (7) approval of candidate contracts, (8) direction of the Investigator to confidentially investigate and report to the Board concerning any alleged violations or complaints made about participating candidates, and (9) any other general administrative duties required to ensure compliance with this ordinance.
- (d) The Board shall be empowered to audit and examine all matters relating to the performance of its functions and any other matter relating to the proper

administration of this ordinance. These audit and examination powers extend to all participating candidates and their Mayoral committees.

- (e) The Board shall be empowered to adopt and publish regulations to carry out the provisions of this ordinance.
- (f) No later than nine (9) months before the next general election, the City's Office of the Controller shall issue a request for proposals for a Democracy Fund Administrator and a separate request for proposals for a Democracy Fund Investigator. The Administrator's responsibilities shall include the administration of the public matching funds system, the public financing grant, contribution limitations, voluntary expenditure ceilings, the auditing of candidate financial reports and statements to ensure compliance with this ordinance, and the proposing of recommendations for the determination and resolution of complaints and disputes brought before the Board. The Investigator's responsibilities shall include the confidential investigation of, and the preparation of reports concerning, alleged violations and complaints made against participating candidates at the direction of the Administrator or the Board.
- (g) The Administrator shall draft any and all forms necessary to carry out the provisions of this ordinance, including the forms for the standardized candidate contract and for candidate requests for public matching funds. Said forms must be approved by the Board. The Administrator shall also draft a schedule for the issuing of matching contributions to participating candidates. Said schedule must be approved by the Board.
- (h) The Administrator shall review the statements of acceptance or rejection of expenditure ceilings, nomination papers, requests for public matching funds and the candidate's and other campaign financial disclosure reports in a timely fashion to certify a candidate's eligibility to receive public matching funds. After review, and in accordance with the approved schedule for matching the contributions of participating candidates, and if the Administrator determines that the candidate is eligible, the Administrator shall issue a request to the Treasurer of the City for checks or electric fund transfers to be issued to the candidate's qualified committee.
- (i) During the final 60 days before an election, a participating candidate committee may only submit a request for public matching funds to the Administrator provided the matching funds requested amount to \$3,000 or more. The Administrator shall have 5 calendar days to process the request and disburse the public funds to the qualified committee.
- (j) The Administrator shall issue a press release in a timely fashion identifying those candidates who have signed a candidate contract. In addition, the Administrator should, in collaboration with the Board, undertake public education and outreach efforts to explain the rationale and operation of the Fund.

- (k) Alleged violations of this Ordinance and other complaints brought against the participating candidates, their agents and/or their qualified committees shall be investigated promptly and confidentially by the Investigator who shall report his findings to the Board. The Board shall have the power to issue subpoenas to compel the attendance of witnesses and to compel the production of documents in connection with an investigation or a hearing. The Board shall grant an administrative hearing regarding all alleged violations and disputes at which all interested parties may present testimony and evidence. The Board shall render its decision as soon as practicable after the hearing is concluded. The Board shall notify the parties of its decision by certified or registered mail. The Board shall establish a procedure, consistent with basic due process principles, including notice and an opportunity to be heard and to have the alleged violation or dispute fairly and impartially adjudicated, for the investigation and hearing of alleged violations and disputes. The Board shall establish procedures designed to attempt to secure voluntary mediation of disputes and voluntary compliance by informal methods of conference, conciliation and persuasion with the provisions of this ordinance.

Sec. 2-247 Candidate Contract

- (a) Each candidate for nomination for election or election to the office of Mayor shall file an affidavit with the Board. The affidavit shall include a written certification that the candidate either intends to abide by the expenditure limits under this ordinance or does not intend to abide by these limits. The certification shall be made by both the candidate and the campaign treasurer of the candidate committee for such candidate. A candidate for nomination for election or for election to the office of Mayor shall file such affidavit not later than four o'clock p.m. on the sixtieth day before the day of the election for Mayor.

Comment: The word "election" toward the end of the last sentence of the above paragraph includes both a primary election and a general election.

- (b) A candidate who so certifies the candidate's intent to abide by the expenditure limits of this ordinance shall be referred to as a "participating candidate". A candidate who so certifies the candidate's intent to not abide by said limits shall be referred to as a "nonparticipating candidate". A candidate who fails to file such affidavit in a timely manner or at all shall be deemed to be a "nonparticipating candidate". The Board shall prepare a list of the participating candidates and a list of the nonparticipating candidates and shall make such lists available for public inspection.

Comment: The candidate lists will be filed with the clerk's office and will be placed on the Democracy Fund website:

<http://www.cityofnewhaven.com/Government/DemocracyFund.asp>.

- (c) At the same time a participating candidate files an affidavit of intent to participate, the participating candidate shall also file a candidate contract in a form approved by the Board. In order for the candidate to qualify for the public matching funds program, the Board must approve the candidate contract.
- (d) The candidate contract shall include, without limitation, written certifications by the candidate and his or her campaign treasurer that (1) the campaign treasurer of a candidate committee for such candidate shall expend any funds received from the Fund in accordance with the provisions of this ordinance and any regulations adopted by the Board pursuant to Section 2-245(e); (2) the candidate and the campaign treasurer shall be personally and jointly and severally liable and shall repay to the Fund any such monies that are not expended in accordance with this ordinance and the Board's duly adopted regulations; and (3) the candidate and the campaign treasurer shall abide by all the provisions of, and accept the penalties, including personal liability, associated with noncompliance with this ordinance, (4) the candidate and the campaign treasurer shall file with the Board, on the same dates required by the state, copies of the reporting statements required under Conn. Gen. Statutes Sect. 9-333j, and shall agree to be subject to the record-keeping and reporting requirements of this ordinance and shall be subject to audit and examination as provided in this ordinance. The candidate contract may include any other items or requirements applicable to all candidates as determined by the Board.

Comment: The above-referenced state statute section is now §9-608.

- (e) A participating candidate may withdraw from participation in the Democracy Fund program before making an initial application for public matching funds by filing an affidavit with the Board, which shall include a written certification of such withdrawal. A candidate who files such an affidavit shall be deemed to be a nonparticipating candidate for the purposes of this ordinance, and shall not be penalized for such withdrawal. No participating candidate shall withdraw from participation in the Democracy Fund program after making an initial application for public matching funds.
- (f) The Board shall vote to accept or reject a signed candidate contract within thirty days of its receipt. In determining whether to accept or reject a candidate contract, the Board shall be governed by the requirements for such a contract specified in this ordinance and any other requirements applicable to all candidates established by the Board.

Sec. 2-249 Voluntary Expenditure and Contribution Size Ceilings and Restrictions

- (a) No candidate for the office of Mayor who voluntarily signs a candidate contract of acceptance of public matching funds, nor any committee of such candidate, shall receive contributions in excess of \$300 from any individual or town committee, except as provided in this ordinance. Subject to the contribution ceilings, limits and restrictions of this ordinance and those limitations on

contributions imposed by Chapter 150 of the Connecticut General Statutes, a participating candidate and his or her qualified committee may only accept contributions from individuals and from a town committee. Such a participating candidate and qualified committee shall not accept any contributions from “political committees” or “business entities” as those terms are defined in Connecticut General Statutes, Section 9-333a. Only contributions, not greater than the contribution limits provided in this ordinance, from individuals who are electors of the City of New Haven shall be considered matchable contributions under this ordinance.

Comment: The \$300 contribution limit applies to each of the two elections, primary and general. The above-referenced Chapter 150 is now Chapter 155. The above-referenced Section 9-333a is now Section 9-601(a). (See appendix below for definitions of “political committee” and “business entity.”)

- (b) No candidate for Mayor who voluntarily signs a candidate contract to accept matching funds, nor any committee of such candidate, shall make qualified campaign expenditures in excess of \$300,000 in a primary election, or \$300,000 in a general election, except as otherwise provided in this ordinance.
- (c) If a candidate for the office of Mayor not participating in the matching funds program, or his or her committee, exceeds spending of \$300,000 for a primary or general election, the candidates participating in the matching funds program who have reached the expenditure ceiling can either choose to (1) apply for, receive and may expend an additional \$25,000 bonus grant from the Fund or (2) have the expenditure ceiling lifted. A participating candidate who has not reached the expenditure ceiling of \$300,000 shall not be eligible to receive the \$25,000 bonus grant.
- (d) Any candidate participating in the matching funds program that chooses to have the voluntary expenditure ceiling lifted will not have contributions matched after the candidate raises enough funds to reach the original voluntary expenditure ceiling.
- (e) Any candidate participating in the matching funds program whose Mayoral committee receives a contribution in excess of the amounts allowed under this ordinance or a kind of contribution not allowed under this ordinance must return promptly the excess portion of the contribution or the entire contribution as the case may be, and if returning such contribution is not possible or feasible, it shall be paid to the Fund. Returned contributions cannot be matchable contributions.
- (f) For purposes of the voluntary expenditure ceilings, qualified campaign expenditures made at any time up to and including the date of the primary election shall be considered expenditures for that primary election, and qualified campaign expenditures made after the date of the primary election shall be considered expenditures for the general election. However, in the event that payments are made but the goods or services are not used during the period

purchased, the payments shall be considered qualified campaign expenditures for the time period in which the goods and services are used. Payments for goods or services used during both periods shall be prorated.

Sec 2-251 Eligibility for Matching Funds

(a) In order for a candidate for the office of Mayor to be eligible for public matching funds, the candidate must satisfy all of the following requirements:

(1) Sign and file with the Board, through the Administrator, a candidate contract, as provided in Section 2-247 above, agreeing to abide by the voluntary spending limits as a condition for participating in the public matching fund program and accepting the penalties associated with noncompliance. This contract must be approved by the Board before the participating candidate's qualified committee can receive matching funds.

(2) Agree to participate and actually participate in at least one public forum to be designated by the Administrator at which all candidates qualified for the relevant ballot are invited to participate. Candidates accepting matching funds in primaries must agree to participate and actually participate in a primary forum open only to all candidates from that party qualifying for the ballot. Candidates accepting matching funds in the general election must agree to participate and actually participate in a forum open to all candidates qualifying for the ballot.

(3) Agree to limit and actually limit the use of personal funds for campaign purposes to no more than \$15,000 per primary or general election.

(4) Agree to furnish to the Board, on the same dates required by the state, copies of the reporting statements made to the state under Conn. Gen. Statutes, Sect. 9-333j, to maintain such records of contributions and expenditures as are required by the Board, to furnish to the Board any information it may request relating to campaign contributions and expenditures, and to furnish such documentation and such other proof of compliance with this ordinance as may be requested by the Board.

Comment: The above-referenced state statute section is now §9-608.

(5) Raise the threshold of qualifying contributions specified in Sections (*sic*) 2-253.

(6) Not have lost a primary election for Mayor in the same year as the general election for which the Mayoral candidate is requesting public matching funds.

- (7) Not be in default to the City, or not have agreed to a payment arrangement with the City, regarding outstanding tax payments or contractual obligations.
- (b) In order for a participating candidate for the office of Mayor to be eligible to receive the \$15,000 public financing grant, the candidate must satisfy the following requirements in addition to the requirements specified above:
- (1) Meet all requirements to appear on the primary or general election ballot, whether as a nominated or petitioning candidate;
 - (2) Be running in a contested election as defined in Section 2-243 of this ordinance.

Sec. 2-253 Qualifying Threshold

Public matching funds shall be allocated to participating Mayoral candidates beginning on April 1st of the election year upon satisfying the requirements of Section 2-251(a) of this ordinance and the qualifying contribution threshold as determined by the Administrator. A candidate shall satisfy the qualifying threshold for a primary election and for a general election separately. The qualifying threshold for disbursement of matching funds shall be according to the following formula:

- (a) A candidate for the office of Mayor who has signed and received approval of their candidate contract must raise 200 contributions from separate individuals who are electors of the City of New Haven of no less than \$25 and no more than \$300 to receive matching funds.
- (b) Once the Administrator determines that a participating candidate has met the contributor threshold, the candidate shall receive a match of \$50 per distinct individual contributor who is an elector of the City of New Haven of \$25 or more dollars until the candidate raises enough funds to meet the voluntary expenditure ceiling. The participating candidate shall receive a 2 to 1 match for any such contributions under \$25.
- (c) All contributions received by a participating candidate must include the name and address of the contributor on the check or on a separate card with the name and address of the contributor and signed by the contributor and stating the amount of the contribution. Only individual contributions of \$25 or less shall be accepted in cash. All contributions made by cash or money order or in-kind contributions must be accompanied by the signed card referred to above. The form of the card used with contributions shall be approved by the Board.
- (d) The Administrator must regularly make disbursements to participating candidates as specified by the disbursement schedule approved by the Board.

- (e) The request for public matching funds shall be made on a form determined by the Administrator, and shall include copies of each check, money order or other written legal tender, as well as copies of all signed contribution cards, eligible to be matched by public funds.
- (f) For purposes of this section, a loan, pledge or non-monetary contribution shall not be considered a matchable contribution.
- (g) No more than \$125,000 in public matching funds shall be disbursed to each participating candidate per primary or general election.
- (h) Once a participating candidate meets the contributor threshold and satisfies the requirements of Section 2-251(b) of this ordinance, the candidate shall be eligible to receive a \$15,000 public financing grant from the Fund. A candidate may receive the \$15,000 public financing grant once before a primary election and once before a general election with disbursement of the grant by the Board to be timed as follows:
 - (1) For a primary election, a participating candidate, who is otherwise eligible as provided above, shall receive the \$15,000 public financing grant after the participating candidate has received a party nomination and the participating candidate's opponent has successfully petitioned to appear on the primary ballot. If the participating candidate does not receive a party nomination but successfully petitions to appear on the primary ballot, the participating candidate shall receive the \$15,000 public financing grant after he or she has qualified to appear on the primary ballot.
 - (2) For a general election, if the participating candidate, who is otherwise eligible as provided above, receives a party nomination, he or she shall receive the \$15,000 public financing grant either: (1) after the time for petitioning to appear on a primary ballot for all parties has expired and no one has successfully petitioned to appear on a primary ballot; or (2) after the completion of the primary election or elections for all parties having such elections.
- (i) A payment of public matching funds does not constitute the Board's final determination of the amount for which a participating candidate may qualify and such payment is subject to post-payment audit and readjustment by the Board.

Sec. 2-255 Insufficient Public Funds

If there are insufficient public matching funds available for all participating candidates, whatever funds are available in the Fund shall be distributed on a pro rata basis to participating candidate in such allocations as determined by the Administrator but approved by a majority vote of the Board.

Sec. 2-257 Use of Public Matching Funds

- (a) Public matching funds shall be used exclusively for qualified campaign expenditures to promote the candidacies of the participating candidates.
- (b) All surplus public matching funds, or matching funds used in violation of the requirements of this ordinance, shall be returned or reimbursed to the Fund.
- (c) If the candidate withdraws from the campaign, becomes ineligible or dies during the campaign, the candidate's committee will return to the Fund, for deposit in the Fund, all monies received from the Fund which the candidate's qualified committee has not spent, or has not become legally obligated to expend, on qualified campaign expenditures as of the date of such occurrence.

Sec. 2-259 Cost of Living Adjustment

Beginning in 2008, and every four years thereafter, the minimum qualifying contribution, the voluntary contribution size limit, the public financing grant, the personal funding limitation, and the contribution and expenditure ceiling per election cycle shall be adjusted according to four-year aggregate cost of living changes in the New Haven MSA, as shown in the Consumer Price Index for all items in the New Haven MSA. The adjustment shall be rounded to the nearest five dollar size variation (i.e. \$25, 30, 35, 310, 315, 320) for the minimum qualifying contribution and the voluntary contribution size limit. The adjustment shall be rounded to the nearest thousand for the public financing grant, the personal funding limitation and the contribution and expenditure ceilings (i.e. \$16,000, \$17,000, \$18,000, \$301,000, 302,000, 303,000).

Sec. 2-261 Enforcement

- (a) Any person who violates any provision of this ordinance shall be personally and jointly and severally liable for the re-payment of any funds inappropriately obtained or expended under the provisions of this ordinance.
- (b) The Board shall be authorized to levy a civil penalty not to exceed two thousand dollars (\$2000.) per violation or twice the amount of any improper expenditure or contribution, whichever is greater, against any person the Board finds to be in violation of any provision of this ordinance. In the case of failure to pay any such penalty levied within thirty days of written notice sent by certified or registered mail to such person, the Board may apply to the Connecticut Superior Court for an order requiring such a person to pay the penalty imposed and such court costs, state marshal's fees and reasonable attorney's fees incurred by the Board as the court may determine.

- (c) The Administrator may further seek the application of any and all criminal and civil actions, penalties, sanctions, orders (including cease and desist orders) and remedies available under the laws of the State of Connecticut, including but not limited to prosecution for misappropriation of funds of the City. The Administrator shall be authorized to refer any violations to the state Election Enforcement Commission, the District Attorney's Office, the Attorney General's Office or any other appropriate authority.
- (d) The remedies provided in subdivision (a) above shall also apply to any person who causes any other person to violate any provision of this ordinance or who aids and abets any other person in a violation.

Sec. 2-263. Applicability of Other Laws

Nothing in this ordinance shall exempt any person from applicable provisions of any other laws of the city, state, federal or other appropriate jurisdiction.

Sec. 2-265. Severability

If any provision of this ordinance, or the application of such provision to any person or circumstance, shall be held invalid for any reason, the remainder of this ordinance to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this ordinance are severable.

Sec. 2-267. Effective Date

This ordinance shall become effective upon passage.

Sec. 2-268 – 2-275. Reserved

Appendix of Connecticut General Statutes Definitions Referenced in Democracy Fund Ordinance

CGS §9-601(19) (referenced above in §2-244(o)): "Coordinated expenditure" means an expenditure made by a person:

(A) In cooperation, consultation, in concert with, at the request, suggestion or direction of, or pursuant to a general or particular understanding with (i) a candidate, candidate committee, political committee or party committee, or (ii) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;

(B) For the production, dissemination, distribution or publication, in whole or in substantial part, of any broadcast or any written, graphic or other form of political advertising or campaign communication prepared by (i) a candidate, candidate committee, political committee or party committee, or (ii) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;

(C) Based on information about a candidate's plans, projects or needs, provided by (i) a candidate, candidate committee, political committee or party committee, or (ii) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee, with the intent that such expenditure be made;

(D) Who, in the same election cycle, is serving or has served as the campaign chairperson, campaign treasurer or deputy treasurer of a candidate committee, political committee or party committee benefiting from such expenditure, or in any other executive or policymaking position as a member, employee, fundraiser, consultant or other agent of a candidate, candidate committee, political committee or party committee;

(E) For fundraising activities (i) with or for a candidate, candidate committee, political committee or party committee, or a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee, or (ii) for the solicitation or receipt of contributions on behalf of a candidate, candidate committee, political committee or party committee, or a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;

(F) Based on information about a candidate's campaign plans, projects or needs, that is directly or indirectly provided by said candidate, the candidate's candidate committee, a political committee or a party committee, or a consultant or other agent acting on behalf of said candidate, candidate committee, political committee or party committee, to the person making the expenditure or said person's agent, with an express or tacit understanding that said person is considering making the expenditure; or

(G) For a communication that clearly identifies a candidate during an election campaign, if the person making the expenditure, or said person's agent, has informed said candidate, the candidate's candidate committee, a political committee or a party committee, or a consultant or other agent acting on behalf of said candidate, candidate committee, political committee or party committee, concerning the communication's contents, intended audience, timing, location or mode or frequency of dissemination.

CGS §9-601(3) (referenced above in §2-249(a)): "Political committee" means (A) a committee organized by a business entity or organization, (B) persons other than individuals, or two or more individuals organized or acting jointly conducting their activities in or outside the state, (C) an exploratory committee, (D) a committee established by or on behalf of a slate of candidates in a primary for the office of justice of the peace, but does not mean a candidate committee or a party committee, (E) a legislative caucus committee, or (F) a legislative leadership committee.

CGS §9-601(8) (referenced above in §2-149(a)): "Business entity" means the following, whether organized in or outside of this state: Stock corporations, banks, insurance companies, business associations, bankers associations, insurance associations, trade or professional associations which receive funds from membership dues and other sources, partnerships, joint ventures, private foundations, as defined in Section 509 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended; trusts or estates; corporations organized under sections 38a-175 to 38a-192, inclusive, 38a-199 to 38a-209, inclusive, and 38a-214 to 38a-225, inclusive, and chapters 594 to 597, inclusive; cooperatives, and any other association, organization or entity which is engaged in the operation of a business or profit-making activity; but does not include professional service corporations organized under chapter 594a and owned by a single individual, nonstock corporations which are not engaged in business or profit-making activity, organizations, as defined in subdivision (6) of this section, candidate committees, party committees and political committees as defined in this section. For purposes of this chapter, corporations which are component members of a controlled group of corporations, as those terms are defined in Section 1563 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, shall be deemed to be one corporation.

Appendix C

Report of the New Haven Democracy Fund To the State Elections Enforcement Commission

Introduction

The New Haven Democracy Fund is the first pilot municipal public campaign financing program in Connecticut (pursuant to CGS §9-760). The Democracy Fund's program applies solely to the city's mayoral election, which takes place every odd year. The first election occurred in 2007.

Although there was no Democratic primary election in 2007, and the general election was not very competitive, the election cycle provided an excellent opportunity for the newly-appointed Democracy Fund Board and Administrator to understand the program, deal with unexpected problems, and discuss recommendations for beneficial changes to the Democracy Fund Ordinance.

All five candidates agreed to participate in the Democracy Fund program. However, only one candidate, the incumbent mayor, qualified for public matching funds and no candidate was given a public financing grant. Some of the program's goals were met; others were not met due to the unusual nature of the election.

The incumbent mayor spent less than half the expenditure ceiling. The Democracy Fund program spent less than \$20,000 on the election, including matching funds and administrative costs.

I. History of the New Haven Democracy Fund

A. Chronology

Shortly after the 2001 mayoral election, in which over \$1.2 million dollars was spent by three candidates (two in the primary, the victor and a third in the general election), or about \$36 for each vote cast, talk began about campaign finance reform in conjunction with plans to revise the city charter. In February 2002, Mayor John DeStefano, Jr. came out in favor of public financing of the mayoral election, arguing that fundraising took far too much of his time, thereby shortchanging the city. In June he asked that language be added to the charter to make public financing possible. His original proposal called for reducing the contribution limit from \$1,000 to \$300; setting expenditure ceilings of \$200,000 per candidate for the primary and \$100,000 per candidate for the general election; and disallowing contributions from PACs.

Early in 2003, New Haven sought a state bill allowing the city to create a public financing program as an experiment that might be replicated in other Connecticut cities. All seven of the city's legislators supported the bill, but it was opposed by Governor John

Rowland, who had vetoed a state public financing bill. The bill was not passed in 2003 (it passed the Senate, but not the House), but it was passed late in 2005, becoming effective December 31, 2006, as an adjunct to the statewide Citizens' Election Program (Chapter 158). The state law provided for up to three municipal pilot programs.

The New Haven Board of Aldermen began considering a public campaign financing ordinance later in 2003. It was proposed by Alderman Carl Goldfield, with the support of community organizations in a coalition called Citizens for the New Haven Democracy Fund. Yale Students for Clean Elections founder Daniel Weeks was the coalition's spokesperson. The original ordinance included most of the basic provisions of the final ordinance. The principal difference was that the expenditure ceiling was \$200,000 for each election, rather than the final figure of \$300,000. The stated goals included: to increase taxpayer influence in the election, decrease contractors' influence, give a voice to interesting smaller voices, change the perception of a pay-to-play political atmosphere, and prevent the recurrence of the expensive race of 2001.

The ordinance was supported by both the candidates in the 2003 Democratic primary, as well as the losing candidate in the 2001 Democratic primary, State Senator Martin Looney, who sponsored the state bill. The principal opposition to the ordinance on the Board of Aldermen involved the expenditure of taxpayers' money. The city's daily newspaper, the *Register*, opposed the idea as expensive (suggesting a property tax checkoff) and unlikely to be approved at the state level or to be embraced by candidates at the local level. It argued that such a program would probably not "alter the character or outcome of the election."

In February 2004, the Board of Aldermen began to consider the Democracy Fund Ordinance, but did not approve it. Additional stated goals included attracting candidates without the means to run for office, eliminating the appearance of impropriety that comes from contractors giving large campaign contributions, controlling the cost of campaigns, increasing political accountability, and having a stronger democratic process

In December 2005, the Board of Aldermen unanimously agreed to file an application with the state public campaign financing pilot program. The daily *Register* supported the application and the program in an editorial.

Early in 2006, the Board of Aldermen began discussing the Democracy Fund Ordinance again. Newly stated goals included: making campaign competition more fair and having real competition (after little competition in the 2003 and 2005 races). The principal concern remained selling the program to taxpayers, who would be footing the bill (projected to be about \$100,000 a year), by showing them that clean elections are a public good.

In March 2006, New Haven filed an application to be the state's first city to participate in the state's pilot campaign financing program.

In April 2006, supporters of the Democracy Fund sought to have the Board of Aldermen budget \$200,000 for it, although the Ordinance had not yet been passed. The

principal argument was that corruption, and the inefficiencies it causes, are an enormous cost to government, and the Democracy Fund could help to lessen corruption. Supporters pointed to the pay-to-play situation in the Rowland Administration, which showed how campaign contributions could be “legalized bribery.” Other arguments included: that the program would be an investment in democracy, with real long-term benefits; more diverse candidates; and candidates engaging more with small donors.

Those opposing the Democracy Fund focused on the cost, especially at a time when the mill rate was going up, and on forcing taxpayers to give money to candidates whose views they don’t agree with.

New Haven’s application was approved by the SEEC later in April 2006. In May, the Board of Aldermen’s Finance Committee approved the Democracy Fund’s \$200,000 budget line item, and in June the Board of Aldermen approved the Democracy Fund Ordinance. The principal change was the raising of the expenditure ceiling for each election to \$225,000 per candidate.

In September, the Board of Aldermen asked the SEEC to delay its approval of the Democracy Fund Ordinance, because the SEEC had recommended some changes to the Ordinance, and the Board of Aldermen needed time to consider these recommendations. Mayor DeStefano began to recommend individuals to the Board of Aldermen to serve on the Democracy Fund Board.

In February 2007, at the Mayor’s request, the Board of Aldermen’s Legislative Committee unanimously approved amendments to the Ordinance, including another increase in the expenditure ceiling, this time from \$225,000 to \$300,000 per election per candidate (the original proposal had been \$200,000 for the primary and \$100,000 for the general election). The concern was that candidates would opt out of the program if the expenditure ceiling was too low. The mayor said that the ceiling could be changed for 2009 based on how things went in 2007, because there were concerns that \$300,000 was too low a figure. The revised Ordinance was approved by the Board of Aldermen in March.

B. Goals and Objectives of the Democracy Fund

The Ordinance states the following goals and objectives:

- countering the perception that policy is influenced by campaign contributions
- ensuring that meritorious candidates can convey their messages to voters
- reducing fundraising and encouraging more communication by candidates with citizens
- making small contributions meaningful and thereby giving all citizens a chance to participate

Other stated goals and objectives include:

- lessening corruption
- bringing down the cost of the mayoral election
- investment in a stronger democratic process
- more fair competition in the mayoral race
- attracting more diverse candidates

C. Principal Provisions of the Democracy Fund Ordinance

Matching Funds: 2-to-1 for the first \$25 given by each contributing New Haven registered voter per election

Public Financing Grant: \$15,000 per election

Contribution Limit: \$300 per contributor (including party town committees) per election; \$15,000 in personal funds per election; and no contributions from political committees or business entities

Qualifying Threshold for Matching Funds: 200 contributions of \$25-300 from registered New Haven voters per election; in a general election, the candidate cannot have lost a primary election for mayor that year

Qualifying Threshold for Grant: same as for matching funds plus: the candidate must first meet all the requirements to be on the primary or general election ballot (as an endorsed, nominated, or petitioning candidate; write-in candidates cannot qualify for a grant); there must be another candidate who has raised or spent at least \$5,000; and for a primary election, there has to be not only a party-endorsed candidate, but also a second candidate who has successfully petitioned to be on the primary ballot

Expenditure Ceiling: \$300,000 per candidate per election; matching funds are limited to \$125,000 per candidate per election

Non-participating Candidate Trigger: if a non-participating candidate spends more than the expenditure ceiling, participating candidates who have (or once they have) reached the expenditure ceiling have a choice between applying for a second public financing grant of \$25,000 or having the expenditure ceiling lifted

Independent Expenditures: not included in determining expenditure ceiling; no trigger or reporting requirement

Reporting Requirements: None other than sending SEEC campaign reports to Administrator.

Funding: from budget appropriations. \$400,000 in first two fiscal years (2006-7, 2007-8) required, but no guaranteed funding thereafter

Administration: contracted, part-time Administrator and Investigator

II. Procedural Aspects of Implementation and Administration of the Democracy Fund

A. Implementation

Due to the lateness of the changes made to the Democracy Fund Ordinance in 2007, the slowness of the nomination and approval process for Democracy Fund Board members, and the inability to hire an Administrator the first two times the position was bid out, for the first few months of the program it was facilitated by the Assistant Corporation Counsel assigned to the Board, Carl Amento.

Robert Wechsler began to serve as Administrator at the beginning of July 2007. The Investigator position was bid out once again, but there was no response. Fortunately, there was also no need to make an investigation.

The Democracy Fund Board met on a monthly basis. It put together a set of bylaws, interviewed and hired an administrator, and made the decisions required of it by the Ordinance, including the creation and approval of forms and materials required for the administration of the program, approval of the matching funds disbursement calendar drafted by the Administrator, approval of candidate contracts, and determination of whether each election was contested. As for other duties set forth in the Ordinance, it had no need to hire an independent attorney, it did not establish rules of procedure besides those in the bylaws, it did not audit any candidate, and it did not adopt regulations. Some Board members were involved with the planning and running of a general election candidates forum.

The Administrator dealt with all other matters, and prepared memos and resolution language for the Board. He billed 87 hours in July, 42.5 in August, 17.75 in September, 43.25 in October, 32 in November, and 21.75 in December (an average of 40 hours per month). It is clear, therefore, that a part-time Administrator was sufficient, at least for an election cycle of this nature.

B. Administration

Questions from the candidates and the media were answered by the Administrator, over the phone, via e-mail, and after Board meetings. No training sessions were held.

Grant eligibility was determined on the basis of matching funds requests and queries to other candidates concerning their fundraising and expenditures, which are necessary to decide whether there is a "contested election," that is, whether there is a second candidate who has raised or spent at least \$5,000. The Administrator erred in missing the second step for determining grant eligibility for the primary (a second candidate has to get onto the primary ballot) and advised the Board to give John DeStefano, Jr. a grant before he was eligible. Because the second candidate, James Newton, although raising substantially more than \$5,000, had so many improper names on his petition for placement on the primary ballot, he failed to get onto the ballot, and the Board was forced to ask the DeStefano candidate committee for the grant back.

Payment amounts were determined by going through matching funds requests, checking to see that contributors were New Haven registered voters, that contributor cards were filed (and signed and dated) for all contributors said to have given cash, that checks were filed for all contributors said to have given by check, that all checks were signed and dated, that the check and contributor card dates fell within the appropriate election period, that the amounts were \$25 or above (for qualifying contributions, the only kind that were matched during this election cycle), and that multiple contributions from the same contributor were aggregated. Payment followed the Democracy Fund rules: 2-to-1 for the first \$25 given by each contributing New Haven registered voter per election.

Beyond checking over matching funds requests, no auditing was done.

Since public dollars were given only to the incumbent mayor, and only on one occasion (public matching funds), and due to the qualifying threshold and requirements, there was no need to ensure that public dollars were distributed only to qualified candidates, beyond carefully going through matching funds requests.

Backup information required of mayoral campaigns included the names, addresses, and contribution amounts of contributors, and their checks and/or contributor cards. In the case of repayment checks (one candidate had gone beyond the rules before deciding to participate in the Democracy Fund), the campaign committee was asked to provide processed repayment checks (it did not fully do so, but it also received no public funds).

III. Analysis of 2007 Mayoral Primary and Election

A. Summary of Election

Three Democratic candidates announced in the primary: the incumbent, John DeStefano, Jr., James Newton, and William Greene. However, Newton failed to qualify for the ballot and Greene withdrew early. The general election had a Republican candidate, Richter Elser, and a Green Party candidate, Ralph Ferrucci.

All candidates participated in the program: Ferrucci elected to participate on May 14, DeStefano on June 12, Newton on July 12, Greene on July 13, and Elser on August 23. However, public funds were only disbursed to one candidate in the Democratic primary, and no public funds were disbursed in the general election.

In the Democratic primary, Mayor DeStefano qualified for \$11,850 in matching funds, but Newton's application for funds was incomplete. No primary election actually occurred. In the general election, Mayor DeStefano's application for public funds did not contain enough qualifying contributions, and neither the Republican nor the Green candidate received enough contributions to apply for funds.

Campaigns were funded by individual contributions no greater than \$300. Town committees could give a maximum of \$300, and PAC contributions were not allowed.

Major components of campaign expenditures

DeStefano (total spending: \$154K)

\$54K political mailers

\$24K campaign manager

\$16K polling

\$11K copier

\$105K (68%) in big ticket items

Newton (total spending \$24K)

\$3K campaign manager

\$2K Midtown Motors

\$2K campaign treasurer

\$1K OPMR, Newington

Elser (total spending \$4K)

\$1K to Republican Town Committee

Ferrucci (total spending \$2K)

B. Analysis of the Election and the Program

Overall the program worked well, although there were some hiccups in this first-time implementation, and four out of five attempts to qualify for public funding failed.

The biggest hiccup concerned a situation not contemplated in the ordinance: a candidate who had apparently qualified for public funds in the primary failed to qualify for the ballot. This put the Democracy Fund Board in a difficult spot. (For more on this, see the bottom of page 5.)

Number of candidates for Mayor of New Haven, 2001-2007

Year	Number of candidates		
	Democratic primary	Republican primary	General election
2007	[no primary]	[no primary]	3
2005	[no primary]	[no primary]	3
2003	2	[no primary]	2
2001	2	[no primary]	3

Campaign fundraising by candidates for mayor of New Haven, 2001-2007

Year	DeStefano	Dem Challenger	Fundraising	
			Republican	Petition/Green/Other
2007	\$175K	\$25K	\$4K	\$2K
2005	\$160K	[none]	[none]	[no reports]
2003	\$407K	\$25K	[none]	[no reports]
2001	\$707K	\$288K	\$222K	[no reports]

There was enough money in the fund for the 2007 election. We started with \$400,000 in the fund and have requested an appropriation of \$100,000 for 2008. Total expenditures were less than \$20,000 this election year. The ordinance specifies pro rata distribution in the event of insufficient funds, as determined by the Administrator and approved by the Board.

There is sufficient money in the fund for future elections even in the event that more candidates participate and receive public funds. No candidate may receive more than \$125,000 in public funds per primary or general election, and because of the number of contributions from New Haven registered voters required to reach this sum, it is unlikely that many candidates will be able to approach the maximum.

The President of the Board of Aldermen met with the Democracy Fund recently and indicated that his intention was to continue to fund the Democracy Fund until it becomes a self-sustaining endowment. As such, he suggested that we request a \$100,000 appropriation for each of the next two fiscal years, and continue to build up the fund until it reaches a self-sustaining level.

IV. Critique of the 2007 Election and the Democracy Fund

A. Meeting Stated Goals

The 2007 mayoral election was so unusual, for reasons that had little or nothing to do with the Democracy Fund, that the Democracy Fund's stated goals were neither met, nor did they fail.

The principal feature of the election was that there was no Democratic primary. In New Haven, the Democratic primary is the most important election, because since 1953 the Democratic nominee has won the general election by a sizeable margin, if not a landslide. In 2007, three Democrats declared to run against the incumbent mayor. One of them became very ill, and dropped out of the race. Another abandoned his campaign days after filing his Affidavit of Participation in the Democracy Fund, and gave his support to the third contender, James Newton.

Mr. Newton successfully raised funds, but failed to obtain sufficient names to appear on the primary ballot (apparently through errors in the petition process, not due to lack of

support). Also, although his campaign applied for matching funds, and had enough contributors to qualify, it did not provide sufficient backup documentation before his campaign ended. Therefore, no Democratic contender received matching funds, only the incumbent mayor. And there was little need for the incumbent mayor to continue raising funds, because there was to be no primary election.

In the general election, there was a Republican and a Green candidate (there had been no Republican in the previous election, but there had been a Green candidate and a petitioning candidate), and one of the reasons both of them decided to run was the chance to get the message out to more people with the help of a Democracy Fund grant and matching funds. However, neither of them met the qualifying threshold.

For this reason, the Democracy Fund was not an important factor in the election, even though all declared candidates, Democrat, Republican, and Green (with the exception of the candidate who became ill before the campaign began), participated in the program, something very unusual for the first year of a public campaign financing program. This was an important show of support for the Democracy Fund.

Following are the objectives stated in the Ordinance, and how well they were met in the program's first election.

1. Countering the perception that policy is influenced by campaign contributions.

The reduction of the contribution limit to \$300 certainly countered this perception. But since there was very little fundraising, it did not become an issue.

2. Ensuring that meritorious candidates can convey their messages to voters.

Since no candidate but the incumbent mayor qualified for matching funds or a grant, the Democracy Fund did not help candidates convey their messages, except through the candidates forum it sponsored shortly before the general election. Without a competitive election, however, there was little media coverage, and with little fundraising, there was no advertising. On the other hand, the Republican and Green candidates ran partly because of the opportunity given them by the Democracy Fund to get their messages out to a wider audience.

3. Reducing fundraising and encouraging more communication by candidates with citizens.

Fundraising was limited because there was no primary, and the general election contenders did not succeed in raising much money. Since there was no competitive campaign, candidate communication with citizens was also limited.

4. Making small contributions meaningful and thereby giving all citizens a chance to participate.

The only small contributions that were made more meaningful by the Democracy Fund were those to the incumbent mayor. Without a competitive election, citizens did not participate much. There was only a 20% turnout at the polls.

Other stated objectives:

5. Lessening corruption.

Even though there was little need for campaign funds, large contributions might have been made had they been allowed, in order to seek contracts or support for projects.

6. Bringing down the cost of the mayoral election, and more fair competition

Without a competitive election, these were not issues.

7. Investing in a stronger democratic process

For the Democracy Fund, for candidates and potential candidates, for the news media, and for New Haven residents, this election provided a chance to better understand the Democracy Fund, so that it can be improved and, in the future, make a greater impact on the mayoral election and New Haven's democratic process.

8. Attracting more diverse candidates

Of the five participating candidates, two were African-American men. But there were no women or members of other minorities. The two candidates most affected by the opportunity provided by the Democracy Fund were both white men.

B. Possible Changes to Democracy Fund Ordinance

Although it was a very unusual mayoral election, it still provided an excellent learning experience for the Democracy Fund Board, the candidates, the parties, and the news media. Soon after the election was over, the Board began discussing possible changes to the Democracy Fund Ordinance, both in light of its experience in the election and in light of potential future problems it foresaw. These discussions are still ongoing, and no decisions have been made. In addition, the Administrator has recommended to the Board numerous minor, non-policy changes to the Ordinance.

This spring, the Board hopes to make a series of recommended changes in the Democracy Fund Ordinance to the Board of Aldermen. These changes will involve some or all of the following areas:

1. Reporting requirements. Even in a non-competitive election, the Administrator and Board found it difficult to make certain decisions due to the lack of timely information.

2. **Expenditure ceiling.** The Board is concerned that, with the current expenditure ceiling, a competitive election could cost as much as the 2001 election, whose enormous cost was one of the principal factors leading to support for public campaign financing.
3. **Qualifying threshold.** The failure of major and minor party candidates to qualify for matching funds or a grant has caused the Board to consider whether the qualifying threshold, in addition to the qualifying requirements, is the right level of community support to require.
4. **Non-participating candidate and independent expenditures triggers.** The Board will consider whether the current non-participating candidate expenditures trigger is optimal, and whether there needs to be an independent expenditures trigger (along with independent expenditures reporting requirements), in order to prevent candidates from taking advantage of the Democracy Fund rules in such a way as to make an election unfair and thereby undermine the program.
5. **Nature of the Democracy Fund.** Currently, it is part of the city's general fund. The Board will consider recommending that it be a separate fund, which can be invested (to pay for expenses and to grow between elections) and from which the Board can make direct payments to candidate committees.
6. **Lower contribution limit for non-participating candidates.** The Board will consider the possibility of applying the \$300 contribution limit for participating candidates to non-participating candidates, as was done recently in New York City.

The Board will also discuss the creation of a training program for the 2009 election, as well as a handbook, voter guide, and free media resources (public TV, website); the need for regulations; penalties; and the audit process.

The Board hopes that, with changes in some of these areas, the Democracy Fund will be able to better fulfill its objectives in future elections.

C. Criticism of the Democracy Fund.

There has not been a lot of criticism of the Democracy Fund since the Ordinance was passed. The principal criticism during consideration of the program concerned money, and the Democracy Fund spent only \$17,638 on the election, including \$11,850 in matching funds to the incumbent mayor, and the rest to the Administrator and for food after the candidates forum (see attached Report to the Mayor and Board of Aldermen).

The other principal concern was that there would not be many candidates to take advantage of the Democracy Fund. But this had to do with the strength of the incumbent

mayor's support rather than the Democracy Fund itself. And more candidates did participate than in recent elections.

The weekly New Haven *Advocate* criticized the incumbent mayor for making it look as if he were getting primarily small contributions. The paper pointed out that many contributions (68% of the dollar total), both from New Haven residents and from outside New Haven, were at the \$300 contribution limit, but that the ones presented to qualify for matching funds and a grant were smaller contributions (only 7% of these, the article said, were \$300 contributions).

The daily New Haven *Register* portrayed the Board as confused as to what to do when the primary election collapsed, and its editorial page called for the return of the grant given to the incumbent mayor, but these articles ran only five days after the event, and the Board dealt with the issue five days later, making a ruling on an issue not dealt with in the Ordinance and asking for the return of the grant, which had been given too early. Although it was a very difficult issue, and the Board was split on how to solve it, the Board met twice within ten days (in the middle of summer, still without all its seven members appointed) to discuss the issue and make the decision. This was an important test, and success, for the Democracy Fund Board.

The *Register* editorial also stated, "The vision may work in future years. But, the reality this year is that DeStefano is the dominant candidate and the public financing system has significantly eased his campaign fundraising burden." The fact that the one candidate who needed no help, and who originated the Democracy Fund, was the only candidate who received funds from the Democracy Fund (even if only \$11,850), was a common criticism. However, had the other primary candidate been more organized, he too would have received matching funds.

The Administrator responded with a letter to the editor, stating in part, "The DeStefano campaign is not the principal beneficiary of the Democracy Fund this year. It only seems that way, because the general election has just begun. The Republican candidate, Richter Elser, has said that the Democracy Fund was an important element of his decision to run, and the Green candidate, Ralph Ferrucci, will soon be applying for a grant and matching funds, as well. Meanwhile, the Democracy Fund limits the fundraising and expenditures of the incumbent's campaign, the only one that could conceivably have exceeded these limits in 2007."

Candidate James Newton originally announced he would not participate in the Democracy Fund, because he was worried it would not allow him to raise enough money to challenge the incumbent. His reasoning had less to do with the Democracy Fund itself than with his failure in 1999 to raise enough money to successfully challenge the incumbent (he still received 38% of the primary vote). Newton also argued that the Democracy Fund was the incumbent mayor's creation, and that he would feel more comfortable participating in a statewide program. A few weeks later, the Administrator was appointed and immediately

contacted the Newton campaign, discussed its concerns, and within days the Newton committee decided to participate. This change of heart, upon better understanding the program, was a major success of the Democracy Fund.

The two minor party candidates, the Republican Richter Elser and the Green Ralph Ferrucci, had a philosophical attitude about problems with the Democracy Fund. According to an article in the weekly *Advocate*, “Elser says local public financing is in a trial run and he’s happy to be part of the experiment. Elser sees the bigger picture too: that public financing is meant to promote vibrant elections and part of that means giving qualified candidates public funds that help pay for the work that would get them on the primary ballot. ... Ferrucci, who along with Elser is seen as an underdog (based on DeStefano’s name recognition, his support and New Haven’s heavily Democratic demographics), doesn’t mind being a lab rat either. ‘They’re going to be fixing things [in the public financing ordinance] for the next 10 years,’ Ferrucci says. ‘It’s going to be one thing after another. We’re learning as we go.’”

The campaign of incumbent mayor John DeStefano, Jr. reacted strongly to a request by the Administrator to look at the committee’s fundraising and expenditure information in order to determine if there might be any excess public funds remaining from the primary period of the election (since there was no primary election, the Board decided to divide the election into two periods, the general election period beginning the day after the Newton primary petition was refused). The campaign threatened to withdraw from the Democracy Fund. At the last second, the campaign did provide the Administrator with total figures, and the Board determined that there were no excess funds. Again, this was an issue that the Ordinance did not deal with clearly, and the Board dealt with it quickly and authoritatively.

DeStefano’s campaign manager took a philosophical view of the Democracy Fund after this matter was resolved by the Board: “It’s a learning process,” Arreola said of the Democracy Fund’s inaugural year (according to the *Register*). “We’re glad to be participating in the Democracy Fund.”

A Yale *Daily News* article in September examined the idea of extending the Democracy Fund to Aldermen candidates, and two Democracy Fund Board members were quoted as supporting the idea, as were a few Aldermen. However, this is not something the Board will be recommending this year. The Board is agreed that it’s too early to consider this.

The Administrator interviewed willing candidates, party chairs, reporters, and the President of the Board of Aldermen. All interviewees were positive about and supportive of the Democracy Fund program. Here are some of the useful ideas for changes to the Ordinance and program that they made.

1. More clearly define the election cycle divisions throughout the Ordinance.
2. Make clear that the candidate contract applies only to a primary or general election, not both.

3. Be more clear about write-in candidates.
4. Since city contractors must only say they're city contractors if they give over \$400, and the contribution limit is only \$300, they never have to identify themselves. This information should be required.
5. Deal in the Ordinance with such post-election fundraising and expenditures as when a candidate committee is in debt at the end of the campaign and needs to retire it.
6. Better promote the Democracy Fund program.
7. Put candidates in charge of the candidates forum, need for more guidelines, and questions all solicited in advance.
8. Add candidate committee training, a handbook, and a clearer timeline.
9. Adapt the new SEEC contributor card, which includes checks on the form itself.
10. Make more frequent disbursements of funds (was done every other week).
11. Lower qualifying threshold for primary (fewer contributions to qualify).
12. Allow those with New Haven ID cards to make qualifying contributions, even if not registered, if this is legal.
13. Advertise participating candidates in newspapers and on internet.
14. Board members should be more circumspect in their tone and in their discussions of candidates' motives.
15. Democracy Fund should be a separate fund and should be built to a point where it does not need regular funding out of the budget.
16. Ask for contributions from major political donors, city businesses, institutions, and foundations. Donors who can give only \$300 to a candidate can support the public financing program and the mayoral race by giving additional funds to match candidates' fundraising.
17. \$5 qualifying contributions.
18. Lower the expenditure ceiling, because raising it was bad for perception, especially since it was the incumbent mayor's proposal.
19. Put candidate contribution and expenditure information online.

D. Funding of the Democracy Fund

The Democracy Fund currently has \$380,000, which is enough to fund even a competitive election in 2009. However, the Board has requested a further \$100,000 appropriation for the 2008-2009 fiscal year, as part of its goal to build the Fund and prevent the need for possible requests for further appropriations in the middle of a heated campaign, or for extremely large requests immediately after an election. It is the Board's feeling that regular appropriations that are not overly large will better serve the future of the Fund.

E. Future Participation in the Democracy Fund

All participating candidates were supportive of the Fund, despite the problems that followed the sudden collapse of the primary. It is impossible to know, however, whether all candidates would participate under different, especially more competitive circumstances, for example, if the incumbent mayor were not running for re-election. The Board is considering the importance of future participation in its discussion of possible changes to the Ordinance.

F. Major Lessons Learned

As with any new program, the Board learned that many matters were not foreseen by the writers of the Ordinance. Major lessons learned include recognizing the need for more reporting requirements (to be done via electronic filing, possibly as part of the new SEEC system); for more clarity in rules governing election periods, repayment of excess public funds, and other matters; for training of both candidate committees and the news media; for better promotion of, and education regarding, the concept of public campaign financing; for better preparation with respect to candidate forums; and for more frequent disbursement of funds, which requires direct payment by the Fund rather than through the city administration.

New Haven Democracy Fund
Robert Wechsler, Administrator
Caleb Kleppner, Chair
March 25, 2008