

CITY of ALBUQUERQUE

TWENTY THIRD COUNCIL

COUNCIL BILL NO. O-19-67 ENACTMENT NO. _____

SPONSORED BY: Ken Sanchez, by request

1 **ORDINANCE**

2 **AMENDING ARTICLE VI, SECTION 4 AND ARTICLE XVI, SECTIONS 3, 6, 7, 12,**
3 **AND 20 OF THE CHARTER, AMENDING CHAPTER 2, ARTICLE 4, PART 13,**
4 **ROA 1994, THE FILING OF PETITIONS ORDINANCE, AND AMENDING**
5 **CHAPTER 2, ARTICLE 4, ROA 1994, TO ADD THE LIMITATIONS ON SEED**
6 **MONEY AND MAINTENANCE OF CAMPAIGN IN OFF YEARS ORDINANCES.**

7 **WHEREAS, there have been recent changes to state election laws, and**
8 **there is a need to clarify and adjust the City of Albuquerque's election and**
9 **public financing processes to comply with State law, ensure transparency,**
10 **accountability, and maintain the efficient administration of elections; and**

11 **WHEREAS, the Local Election Act states that no special election may be**
12 **held within 70 days of a statewide election, and**

13 **WHEREAS, the existing requirement that an election on Charter**
14 **Amendments must be held within 90 days has already, and will continue to,**
15 **conflict with the Local Election Act's provision, and**

16 **WHEREAS, the Local Election Act mandates that the City require as a**
17 **precondition to the receipt of public financing that a person first be qualified**
18 **as a candidate; and**

19 **WHEREAS, to comply with the Local Election Act requires the City needs to**
20 **establish new timeframes for public financing and the filing of candidate**
21 **qualification documents; and**

22 **WHEREAS NMSA 1-22-3.2(C) allows the City to amend the Charter by**
23 **ordinance to conform with the requirements of the Election Code and other**
24 **applicable state or federal laws related to elections.**

25

[Bracketed/Underscored Material] - New
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1 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
2 ALBUQUERQUE:

3 SECTION 1. Article VI, Section 4 is amended as follows:

4 CITY CHARTER, ART. VI, CHARTER AMENDMENTS

5 SECTION 4. ELECTION.

6 The election must be held ~~[within ninety days after the date of the Council~~
7 ~~filing the proposed amendment with the City Clerk or from the time of filing the~~
8 ~~petition with the City Clerk]~~ [at the next general election or regular local
9 election].

10
11 SECTION 2. Article XVI, Section 3 is amended as follows:

12 CITY CHARTER, ART. XVI, OPEN AND ETHICAL ELECTIONS CODE

13 SECTION 3. DEFINITIONS

14 SECTION 3(G)

15 EXPLORATORY PERIOD.

16 (1) For Mayoral Applicant Candidates, [the
17 Exploratory Period begins 285 days before the election, and ends
18 239 days before the election] ~~[from January 1 through February 15];~~
19 and

20 (2) For Council Applicant Candidates, [the
21 Exploratory Period begins 169 days before the election, and ends
22 135 days before the election.] ~~[from March 15 through April 30].~~

23
24 SECTION 3(Q).

25 QUALIFYING PERIOD.

26 (1) For Mayoral ~~[candidates]~~ [Applicant Candidates
27 the Qualifying Period begins 238 days before the election, and ends
28 161 days before the election] ~~[from February 16 through March 31];~~
29 and

30 (2) For Council ~~[candidates]~~ [Applicant Candidates,
31 the Qualifying Period begins 134 days before the election, and ends
32 105 days before the election.] ~~[from May 1 through May 31.]~~
33

SECTION 3. Article XVI, Section 6 is amended as follows:

SECTION 6. SEED MONEY-IN-KIND CONTRIBUTIONS.

[(H) Mayoral Applicant Candidates may accept Seed Money from 285 days before the election through 141 days before the election. Council Candidates may accept Seed Money from 169 days before the election through 85 days before the election].

(1) In the event that a Candidate's certification for public financing or qualification by the County Clerk as a Candidate has been challenged, the Candidate may continue to accept seed money until the City Clerk provides the Candidate with notice that the certification or qualification by the County Clerk as a Candidate has been upheld.]

SECTION 4. Article XVI, Section 7 is amended as follows:

SECTION 7. CERTIFICATION OF PARTICIPATION.

SECTION 7(A)

~~[Upon receipt]~~ [Within twenty days] of a final submittal of Qualifying Contributions by an Applicant Candidate, the Clerk shall determine whether the Applicant Candidate has:

(1) signed and filed a declaration of intent to obtain fund revenue;

(2) submitted the appropriate number of Qualifying Contributions;

(3) qualified as a candidate pursuant to other applicable City and State election law;

(4) complied with Seed Money contribution and Expenditure restrictions; and

(5) otherwise met the requirements for obtaining financing pursuant to the Open and Ethical Elections Code~~[-]~~;

(6) otherwise met any additional criteria for certification set forth in rules by the Clerk;

(7) been qualified as a Candidate by the County Clerk; and

1 (8) there are not pending challenges to the County Clerk's
2 qualification of the Candidate.]

3
4 SECTION 7(B)

5 The Clerk shall certify Applicant Candidates running for Mayor [and
6 Council], complying with the requirements of this section, as
7 Participating Candidates [twenty days] [on April 1] [after the last day
8 of the Qualifying Period.] [after final submittal of Qualifying
9 Contributions. The Clerk shall certify Applicant Candidates running
10 for Council, complying with the requirements of this section, as
11 Participating Candidates on June 1 after final submittal of Qualifying
12 Contributions.]

13
14 SECTION 5. Article XVI, Section 12(A) is amended as follows:

15 SECTION 12. TIMING AND AMOUNT OF FUND DISTRIBUTION.

16 SECTION 12(A)

17 ~~[Beginning with the election cycle that ends with the 2007 regular~~
18 ~~municipal election, t] [T]he Clerk shall distribute money from the~~
19 Fund to Participating Candidates. The Clerk shall distribute revenue
20 [within three business days of certification. In the event that a
21 Candidate's certification for public financing or qualification by the
22 County Clerk as a Candidate has been challenged, the Clerk shall
23 distribute funds to the Participating Candidate within three business
24 days of receiving notice that the certification and/or qualification by
25 the County Clerk as a Candidate has been upheld.] [as follows:

26 (1) ~~For Mayoral candidates, on April 1 of the year that a regular~~
27 ~~municipal election is held; and~~

28 (2) ~~For Council candidates on June 1 of the year that a regular~~
29 ~~municipal election is held.]~~

30
31 SECTION 6. Article XVI, Section 20 is amended as follows:

32 SECTION 20. APPEALS

The procedure for challenging a ~~certification of participation~~
decision ~~[of the Clerk to grant, deny, or revoke a Candidate's~~
~~certification as a Participating Candidate]~~ [or a determination
~~whether a Participating Candidate is eligible for matching Funds by~~
~~the Clerk]~~ is as follows:

(A) A Person aggrieved by ~~[a certification of participation~~
~~decision or a decision regarding the distribution of matching~~
~~Funds]~~ [the Clerk's decision] may appeal to the Clerk within
three days of the decision. The appeal shall be in writing and
shall set forth the reasons for appeal;

...

(D) Participating Candidates whose certification of
participation is revoked on appeal may be required to return to
the Clerk up to all money distributed from the Fund. If the City
Hearing Officer or court finds that an appeal was made
frivolously or to ~~[result in]~~ [cause] delay or hardship, the City
Hearing Officer or court may sanction the moving party by
requiring the party to pay the attorney's fees and court costs
~~of the administrative [and/or court costs] [hearing, the court~~
~~hearing and] [of]~~ the opposing parties.

SECTION 7. Chapter 2, Article 4, Part 13, subsections B, C, and F are amended
as follows, and subsection G is added as follows:

§ 2-4-13 FILING OF PETITIONS.

(B) Persons submitting petitions in accordance with Section 4, Article II
of the City Charter shall collect all signatures on such petitions during the
following periods in the year of the election:

(1) For Mayoral candidates [who are seeking public financing],
~~[from February 16 through April 28]~~ [starting 238 days before the
election, and ending 161 days before the election];

(2) For Mayoral candidates who are seeking private financing,
[starting 161 days before the election, and ending 84 days before the
election]; [and]

~~[(2)]~~ [(3)] For Council candidates [who are seeking public financing], [from May 1 through June 28] [starting 169 days before the election, and ending 105 days before the election; and
(4) For Council candidates who are seeking private financing, [starting 148 days before the election, and ending 84 days before the election.
(5) If a candidate seeking public financing collected one or more petition signatures during a public financing petition gathering period, and later converts to a privately funded candidate, the candidate may only collect petition signatures during the public financing petition gathering period in which they began.]

(C) Petitions gathered pursuant to the provisions of Subsection (B) shall be submitted to the City Clerk ~~[no later than 5:00 p.m. April 28 for Mayor candidates and 5:00 p.m. June 28 for Council candidates.]~~ [for verification every Tuesday by 12:00pm during the petition gathering period.

(1) For Mayoral candidates seeking public financing, the final submission of petitions is due to the City Clerk no later than 5:00 p.m. 161 days before the election.

(2) For Mayoral candidates seeking private financing, the final submission of petitions is due to the City Clerk no later than 5:00 p.m. 84 days before the election.

(3) For Council candidates seeking public financing, the final submission of petitions is due to the City Clerk no later than 5:00 p.m. 105 days before the election.

(4) For Council candidates seeking private financing, the final submission of petitions is due no later than 5:00 p.m. 84 days before the election.

(5) Petition signatures that have not been submitted to the City Clerk within the timeframes set in Subsection (B) shall be deemed invalid and shall not be considered in any determination of candidate qualification.]

...

[(F) Applicant Candidates seeking public financing who are submitting petitions in accordance with Section 4, Article II of the City Charter shall file

1 their Declaration of Candidacy and verified petitions with the County Clerk
2 fourteen (14) days after the last day of the Qualifying Period.]

3
4 ~~[(F)]~~[(G)] All such petitions shall be filed in the City Clerk's office during
5 the regular business hours of that office. If the last day to file a petition
6 falls on a Saturday, Sunday or city holiday, the time in which to file a
7 petition shall be deemed to be extended to 5:00 p.m. on the next full
8 business day following the Saturday, Sunday or holiday.

9
10 SECTION 8. Chapter 2, Article 4, is amended to add Part 20 as follows:

11 [§ 2-4-20 LIMITATIONS ON USE OF SEED MONEY.]

12 (A) Short title. This section may be referred to as the "Limitation on Use of
13 Seed Money Ordinance".

14 (B) Limitation on use of seed money. Seed Money collected by Applicant
15 Candidates under the provisions of the Open and Ethical Elections Code, in
16 addition to the limitations contained in that Code, shall be subject to the
17 following limitations:

18 (1) All goods and services received prior to certification must be
19 paid for with Seed Money contributions, except for goods and
20 services that are excluded from the definition of contribution in
21 Article XIII, Section 2, subsection g. It is a violation of this ordinance
22 for a Participating Candidate to use Fund revenues received after
23 certification to pay for goods and services received prior to
24 certification.

25 (2) Prior to certification, an Applicant Candidate may obligate an
26 amount greater than the Seed Money collected, but may only receive
27 that portion of goods and services that has been paid for or will be
28 paid for with Seed Money. An Applicant Candidate who has accepted
29 contributions or made Expenditures that do not comply with the
30 Seed Money restrictions under this chapter may petition the Clerk to
31 remain eligible for certification as a Participating Candidate if the
32 failure to comply was unintentional and does not constitute a
33 significant infraction of these restrictions.

1 (3) An Applicant Candidate or Participating Candidate who
2 receives a contribution exceeding the Seed Money per donor
3 restriction or the total amount restriction must immediately return
4 the contribution and may not otherwise use the contribution.]

5
6 SECTION 9. Chapter 2, Article 4, is amended to add Part 21 as follows:

7 § 2-4-21 MAINTENANCE OF CAMPAIGN IN OFF YEARS FOR PUBLICALLY
8 FINANCED CANDIDATES.

9 A person may solicit and accept contributions, not to exceed \$100 per
10 Person, for the purpose of financing costs related to maintenance of a
11 campaign during an election cycle in which the person is not a candidate
12 as follows:

13 (A) A person who accepts donations for these purposes must establish
14 a candidate finance committee and appoint a treasurer who is responsible
15 for keeping records of donations and for filing a financial disclosure
16 statement required by this section. All donations received must be
17 deposited in a separate and segregated account and may not be
18 commingled with any contributions received by any candidate or political
19 committee or any personal or business funds of any person.

20 (B) A committee established pursuant to this section shall register and
21 file a financial disclosure statement with the City Clerk as required by this
22 subsection.

23 (C) The committee shall register with the City Clerk within 10 days after
24 appointment of a treasurer. The registration must include the name and
25 mailing addresses of the members of the committee, and the treasurer.

26 (D) The financial disclosure statement must contain the names,
27 addresses, occupations and employers of all donors who have given
28 money or anything of value, including in-kind donations of goods or
29 services, along with the amounts and dates of the donations.

30 (E) Any outstanding loan, debt or other obligation of the committee must
31 be disclosed as a donation.

32 (F) The financial disclosure statement must identify the amounts, dates,
33 payees and purposes of all payments made by the committee.

- 1 (G) Financial disclosure statements must be filed in accordance with
2 Article XII, Section 4, Subsection 2(A).
3 (H) A committee established pursuant to this section may accept
4 contributions until the following deadlines:
5 i. For Mayoral candidates, 287 days before an election in which the
6 individual benefitted by the committee seeks to be a candidate where the
7 person is a candidate; and
8 ii. For Council candidates, 203 days before an election in which the
9 individual benefitted by the committee seeks to be a candidate where the
10 person is a candidate.
11 (J) The registration of a committee established pursuant to this section
12 shall expire each year on December 31st. A committee established
13 pursuant to this section shall renew its registration with the City Clerk
14 upon the later of expiration or within five days of any contribution
15 collection or expenditure by the committee that is in excess of \$250.
16 (K) Any unspent funds remaining in the committee's account as of the
17 first day of the Exploratory period shall be forfeited to the Fund.
18 (L) Contributions to a committee pursuant to this section shall count
19 towards the aggregate and per Person limits on seed money.]

20
21 **SECTION 10. SEVERABILITY CLAUSE.** If any section, paragraph, word or
22 phrase of this ordinance is for any reason held to be invalid, or unenforceable
23 by any court of competent jurisdiction, such decision shall not affect the
24 validity of the remaining provisions of this ordinance. The Council hereby
25 declares that it would have passed this ordinance and each section,
26 paragraph, sentence, clause, word or phrase thereof irrespective of any
27 provision being declared unconstitutional or otherwise invalid.

28 **SECTION 11. COMPILATION.** Sections 1 through 9 of this ordinance shall
29 amend, be incorporated in and made part of the City Charter and Revised
30 Ordinances of Albuquerque, New Mexico, 1994.

31 **SECTION 12. EFFECTIVE DATE.** This ordinance shall take effect on January 1,
32 2020.

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