



# City of Albuquerque

City of Albuquerque  
Government Center  
One Civic Plaza  
Albuquerque, NM 87102

## Legislation Details (With Text)

**File #:** O-22-39

**Type:** Ordinance      **Status:** Enacted

**File created:** 9/19/2022      **In control:** City Council

**Final action:** 12/5/2022

**Enactment date:** 12/20/2022      **Enactment #:** O-2022-041

**Effective date:** 12/27/2022

**Title:** C/S Amending Chapter 2, Article 4 Of The City Code Relating To Elections And Petitions (Davis, Peña, Bassan, by request)

**Sponsors:** Pat Davis (By Request), Klarissa J. Peña (By Request), Brook Bassan (By Request)

**Indexes:**

**Code sections:**

**Attachments:** 1. O-39, 2. O-39 Approved Committee Substitute, 3. CS O-39Enacted

Date	Ver.	Action By	Action	Result
12/27/2022	3	City Clerk	Published	
12/19/2022	3	Mayor	Signed by the Mayor	
12/9/2022	2	City Council	Sent to Mayor for Signature	
12/5/2022	2	City Council	Passed	Pass
11/21/2022	2	City Council	Accepted with a recommendation Do Pass, As Substituted	
11/14/2022	1	Finance & Government Operations Committee	Substituted	Pass
11/14/2022	1	Finance & Government Operations Committee	Sent to Council with a recommendation of Do Pass, as Substituted	Pass
10/24/2022	1	Finance & Government Operations Committee	Postponed	Pass
9/19/2022	1	President	Referred	
9/19/2022	1	City Council	Introduced and Referred	

# CITY of ALBUQUERQUE

## TWENTY FIFTH COUNCIL

COUNCIL BILL NO. C/S O-22-39      ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Pat Davis, Klarissa J. Peña, and Brook Bassan, by request

### ORDINANCE

C/S Amending Chapter 2, Article 4 Of The City Code Relating To Elections And Petitions (Davis, Peña, Bassan, by request)

AMENDING CHAPTER 2, ARTICLE 4 OF THE CITY CODE RELATING TO ELECTIONS AND PETITIONS.

WHEREAS, changes to the local election act require removing references to management of elections that the City no longer maintains; and

WHEREAS, the 2021 election cycle highlighted the need for continuity in petition gathering timeframes; and

WHEREAS, to comply with the Local Election Act, the City needs to establish deadlines for filing of qualification documents.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. ROA 1994, Chapter 2, Article 4 is hereby amended as follows and its sections and subsections are to be renumbered accordingly:

“§ 2-4-1 SHORT TITLE.

This chapter shall be known and may be cited as the "Municipal Elections Ordinance."

§ 2-4-2 PURPOSE.

The purpose of this chapter is to prescribe certain rules of procedure concerning municipal elections by implementing the Constitution of the State of New Mexico and the Charter of the City of Albuquerque i.e., Article XIII of the Charter and by supplementing and modifying the statutes of the state and their application to the city. In the event any of the provisions of this chapter conflict with the Constitution of the state or the Charter of the city, the Constitution and Charter shall prevail, and if any provision of this chapter conflicts with any otherwise applicable provision of the general statutes of the state, the provisions of this chapter shall prevail.

§ 2-4-3 MUNICIPAL ELECTION CODE LAWS.

The conduct of municipal elections is governed by this Chapter, the State Election Code, the Local Election Act, and the City Charter, as any of them are amended and supplemented from time to time.

§ 2-4-4 CITY CLERK DUTIES.

The City Clerk shall administer all municipal elections as provided herein. The City Clerk may delegate to Deputy City Clerks and Assistant City Clerks any of the duties of the City Clerk in the administration of municipal elections.

§ 2-4-5 DATES OF REGULAR, SPECIAL AND RUNOFF ELECTIONS.

(A) Regular municipal elections shall be held on the first Tuesday after the first Monday in November of odd-numbered years.

(B) Any special election that may be called by the City Council shall be held as provided by law.

(C) Any runoff election that may be called by the City Council shall be held on any day designated by the Council by resolution consistent with Section 8 of Article II of the City Charter. Upon informing the proper filing officer of the offices to be filled at the next regular local election, the governing body shall set the date of the runoff, not later than 120 days before the election.

§ 2-4-6 REGULAR MUNICIPAL ELECTION; TAKING OFFICE.

(A) Each candidate, elected to the office of Mayor or Councilor, shall personally appear before the City Clerk at a time and place specified by the City Clerk, but not earlier than after canvass and after the candidate has received the certificate of election and not later than the administration of the oath of office. When the candidate appears, the candidate shall sign a written statement acknowledging receipt of the certificate of election and acknowledging that the candidate is legally qualified to hold office. The City Clerk shall cause a copy of the certificate of election and the written receipt and qualification statement to be filed in the Journal of the Council.

(B) The City Clerk or any other person allowed by law to administer oaths shall administer the oath of office to each candidate who has provided the written receipt and qualifications statement to the City Clerk. A public ceremony repeating the swearing in shall also be conducted on or about January 1 following each election. Officials who have satisfied the requirements of division '(A)' or '(C)' of this section shall be deemed to have taken office on January 1 regardless of the date of the public swearing in ceremony.

(C) If a candidate fails to appear as required in division (A) of this section, then the candidate or the candidate's authorized personal representative shall file an affidavit with the City Clerk, not later than 5:00 p.m. on the fifth day after the time specified by the City Clerk pursuant to division (A) of this section, stating that the candidate was unable to personally appear before the City Clerk as required by division (A) of this section. If such an affidavit is timely filed, the candidate shall appear before the City Clerk not later than 5:00 p.m. on the 15th day following the specified date for the commencement of the term of office to provide the election certificate, file the receipt and qualifications statement and take the oath of office.

(D) If a candidate fails to comply with division (A) of this section prior to the specified date for

the commencement of the term of office, then the person holding the office shall remain in office until the candidate takes office or the office is declared vacant.

(E) If a candidate fails to comply with division (A) or division (C) of this section, then that office is deemed vacant.

#### § 2-4-7 NOTICE OF INTENT.

Prior to circulating a petition pursuant to Sections 1 or 3, Article III, or Article VI of the City Charter, a notice of intent to circulate a petition, containing the signatures of at least five qualified voters, must be filed with the City Clerk. The City Clerk shall designate the form of the notice of intent, which shall include sufficient information to determine if each signer of the notice of intent to circulate a petition is a legally registered voter and a person entitled to vote in city elections. A notice of intent to circulate a petition to recall a Councilor, pursuant to Section 1, Article III of the City Charter, shall be signed only by qualified voters registered as residing in the District which the Councilor represents.

#### § 2-4-8 FILING OF PROPOSED MEASURES AND CHARTER AMENDMENTS.

(A) Measures. Concurrently with the filing of a notice of intent to circulate a petition, pursuant to Section 3, Article III of the City Charter, the proposed measure shall be filed with the City Clerk. The proposed measure shall be complete in all respects.

(B) Charter Amendments. Concurrently with the filing of a notice of intent to circulate a petition, pursuant to Article VI, City Charter, the proposed Charter amendment shall be filed with the City Clerk. The proposed Charter amendment shall be complete in all respects.

#### § 2-4-9 FORM OF PETITION, REQUIREMENTS FOR CIRCULATORS AND VOID PETITION SIGNATURES.

(A) The form of petition submitted pursuant to Article II shall be in accordance with the petition requirements in NMSA 1978, § 1-8-30.

(B) The City Clerk shall designate the form of the petitions to be followed in all petitions to be circulated in accordance with the provisions of Articles III and VI of the City Charter. The form established shall include sufficient information to determine if the signer of the petition is a legally registered voter and a person entitled to vote in city elections. Every petition page shall contain (1) a heading which clearly conveys the purpose for signing the petition; (2) columns for the voter's signature, printed name of voter, residence of voter as shown on current voter registration rolls, and the date the voter signed the petition; (3) in capital letters in the upper right-hand corner of the face of the petition page the following: " \_\_\_\_ Paid Circulator" " \_\_\_\_ Unpaid Volunteer".

Each circulator submitting a petition or group of petitions pursuant to City Charter Article III or VI shall attach a signed and notarized affidavit containing the following: (1) the circulator's actual residence address and if no street address exists, a description of the residence location, city and zip code; (2) the printed or typed name of the circulator; (3) the printed name, address and signature of the person or representative of the organization or other entity that paid the circulator; and (4) the following verification signed by the circulator: "I \_\_\_\_\_ (name of circulator), under penalty of perjury, hereby verify that each of the names on this petition page was signed in my presence and that in my belief each signer was a qualified elector who was registered to vote at the address given as their residence on the date indicated". The City Clerk shall place on the affidavit the petition pages to which the affidavit applies, using the petition page numbers that are designated by the City Clerk. The affidavit shall not be part of the petition. The circulator shall not sign and complete the affidavit at the time the petition is presented to voters for their signatures but shall sign and complete the affidavit before it is submitted to the City Clerk. All requirements for affidavits set forth in this section shall apply to affidavits in support of petitions submitted pursuant to City Charter Article II, provided that such affidavits need be signed only by the candidate or the candidate's treasurer who is registered with the City Clerk, that no name, signature and address of the person or organization that paid the circulator need be provided and that the affidavit need not represent that the petition was signed in the presence of the candidate or the candidate's treasurer. The signature of the City Clerk and date of issuance of the petition shall appear on each petition page. All print on the petition shall be in no less than eleven point type. The circulator of the petition shall indicate whether he or she is a paid circulator or a volunteer on each petition page prior to obtaining any signatures. Petition pages submitted under City Charter Article III, Section 3, Direct Legislation by Voter Initiative, or Article VI, Charter Amendments, shall contain the full text of the measure proposed to be on the ballot or shall attach the full text of the measure to the petition. The measure proposed to be placed on the ballot shall be provided in writing to the voter by the circulator prior to the voter signing the petition. The circulator shall provide the voter the opportunity to read the entire measure to be placed on the ballot or, if requested by the voter, shall read the entire measure to be placed on the ballot to the voter prior to the voter signing the petition.

(C) Signatures obtained in violation of this section are void and shall not be counted by the City Clerk in determining whether a sufficient number of signatures were submitted to the City Clerk. All signatures on a petition page shall be void if (1) the circulator fails to provide the affidavit

required in this section, (2) neither "Paid Circulator" nor "Unpaid Volunteer" is checked on the petition page, or (3) the petition page does not contain all of the information required by this section to be on or attached to a petition page. When a petition page meets all of the requirements of this section, the presence of a signature that is invalidated because the person signing the petition cannot be identified by the City Clerk as currently registered to vote in Albuquerque shall not invalidate other signatures on the petition that were obtained as prescribed by this section.

(D) A "circulator" of a petition is any person who presents or otherwise makes available to any person a petition required under the Albuquerque City Charter or Ordinances of the City of Albuquerque for the purpose of requesting or obtaining that person's signature on such petition.

(E) The City Clerk shall not approve the form of a petition proposing a measure or a Charter amendment if the proposed measure or Charter amendment has not been filed pursuant to this section.

#### § 2-4-10 FILING OF PETITIONS.

(A) The City Clerk shall accept a petition for filing only if the City Clerk has approved the form of the petition prior to circulation of the petition.

(B) Persons submitting petitions in accordance with Article II, Section 4 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, starting at 8:00am 199 days before the election, and ending at 5:00pm 136 days before the election; and

(2) For Council candidates, starting at 8:00am 155 days before the election, and ending at 5:00pm 120 days before the election.

(C) Petitions gathered pursuant to the provisions of Subsection (B) shall be submitted to the City Clerk for verification every Tuesday by 12:00 p.m. during the petition gathering period.

(1) 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.

(D) Persons submitting petitions in accordance with Article III, Sections 1 or 3 of the City Charter, or Article VI of the City Charter, shall do so within the 60-day limitation; provided, that parts of the petition may be submitted in three stages:

(1) The first part not more than 20 days after the filing of the notice of intent to circulate the petition;

(2) The second part not more than 40 days after the filing of the notice of intent to circulate the petition; and

(3) The third and final part of the petition shall be filed no later than 60 days after the filing of the notice of intent to circulate the petition.

(E) Persons submitting petitions in accordance with Article III, Section 2 of the City Charter, shall do so within the 35-day limitation; provided, that parts of the petition shall be submitted in two stages:

(1) The first part not more than 15 days after the filing of the notice of intent to circulate a petition; and

(2) The second and final part of the petition shall be filed no later than 35 days after the filing of the notice of intent to circulate the petition.

(F) All such petitions shall be filed in the City Clerk's office during the regular business hours of that office as determined by Rule promulgated by the City Clerk.

(G) All candidates who submitted a petition in accordance with Section 4, Article II of the City Charter shall file the results of the City Clerk's petition signature verification and their Declaration of Candidacy with the proper filing officer on the prescribed filing day in accordance with Section 1-22-3.2(D) NMSA 1978 or Section 1-22-7 NMSA 1978.

(1) Publicly Financed Candidates for Mayor shall submit their petitions and Declaration of Candidacy to the City Clerk one hundred and twenty-two (122) days before the election in accordance with NMSA 1978, Section 1-22-3.2(D).

(2) Publicly Financed Candidates for City Council shall submit their petitions and Declaration of Candidacy to the City Clerk one hundred and six (106) days before the election in accordance with NMSA 1978, Section 1-22-3.2(D).

(3) Privately Financed Candidates for Mayor and City Council shall submit their petitions and Declaration of Candidacy to the County Clerk seventy (70) days before the election in accordance with NMSA 1978, Section 1-22-7. The Candidate may store the original petitions in the City Clerk's Office vault until the above-specified filing date for privately financed candidates.

#### § 2-4-11 VALIDITY OF PETITION.

When a petition is circulated pursuant to the procedures set forth in the City Charter, the validity of the petition shall be determined by the City Clerk in accordance with Section 3-1-5 NMSA 1978, as amended and as supplemented from time to time. It shall be the duty of the City Clerk to begin the verification process of the validity of the petition and any portion thereof upon being filed in the

City Clerk's Office. The results of the validation process shall become a matter of public record and a list of the names, addresses and signatures which were purged from the petition shall be posted in the office of the City Clerk.

#### § 2-4-12 REINSTATEMENT OF PURGED SIGNATURES.

Any person whose signature has been purged from a petition shall have the opportunity to have the person's signature reinstated in accordance with Section 3-1-5 NMSA 1978. The widest latitude is to be given for the manner in which a person whose signature is to be purged from a petition may have the person's name reinstated.

#### § 2-4-13 RECOMMENDATIONS.

Within a reasonable time after the holding of a municipal election the City Clerk shall make appropriate recommendations to the Mayor and the City Council for modification of election procedures designed to insure fairness and accuracy, protect the secrecy of the ballot and reduce the administration costs and burdens of conducting elections.

#### § 2-4-14 ABSENTEE VOTING.

Absentee voting shall be conducted in accordance with NMSA 1978, Chapter 1, Article 6.

#### § 2-4-15 LIMITATION ON USE OF FUNDS.

(A) Short title. This section may be referred to as the "Limitation on Use of Open and Ethical Elections Code Funds Ordinance".

(B) Limitation on use of funds. Funds distributed to participating candidates under the provisions of the Open and Ethical Elections Code, in addition to the limitations contained in that Code, shall not be used for the following purposes:

- (1) The purchase of "alcoholic beverages" as that term is defined at § 13-2-2 ROA 1994.
- (2) Any payment to a registered voter in exchange for that voter agreeing to vote in an election.

(C) Penalty. Violation of this section shall be a criminal act punishable as provided for at § 1-1-99 ROA 1994.

#### § 2-4-16 LIMITATIONS ON USE OF SEED MONEY.

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

(B) Limitation on use of seed money. Seed money collected by applicant candidates under the provisions of the Open and Ethical Elections Code, in addition to the limitations contained in that Code, shall be subject to the following limitations:

(1) All goods and services received prior to certification must be paid for with seed money contributions, except for goods and services that are excluded from the definition of contribution in Article XIII, Section 2, subsection g. It is a violation of this ordinance for a participating candidate to use fund revenues received after certification to pay for goods and services received prior to certification.

(2) Prior to certification, an applicant candidate may obligate an amount greater than the seed money collected, but may only receive that portion of goods and services that has been paid for or will be paid for with seed money. An applicant candidate who has accepted contributions or made expenditures that do not comply with the seed money restrictions under this chapter may petition the Clerk to remain eligible for certification as a participating candidate if the failure to comply was unintentional and does not constitute a significant infraction of these restrictions.

(3) An applicant candidate or participating candidate who receives a contribution exceeding the seed money per donor restriction or the total amount restriction must immediately return the contribution and may not otherwise use the contribution.

SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, word or phrase of this ordinance is for any reason held to be invalid, or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 3. COMPILATION. Section 1 of this ordinance shall amend, be incorporated in, and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five (5) days after publication by title and general summary.

X:\CL\SHARE\CL-Staff\_Legislative Staff\Legislation\25 Council\O-39CSfinal.docx