



Legislation Text

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CITY of ALBUQUERQUE
TWENTIETH COUNCIL

COUNCIL BILL NO. O-13-46

ENACTMENT NO. _____

SPONSORED BY: Dan Lewis

ORDINANCE

Amending Chapter 6, Article 9, ROA 1994, Regarding Public Improvement Districts, To Provide For The Establishment Of Candidate Election Policies And Procedures For Public Improvement Districts Located Within The City (Lewis)

AMENDING CHAPTER 6, ARTICLE 9, ROA 1994, REGARDING PUBLIC IMPROVEMENT DISTRICTS, TO PROVIDE FOR THE ESTABLISHMENT OF CANDIDATE ELECTION POLICIES AND PROCEDURES FOR PUBLIC IMPROVEMENT DISTRICTS LOCATED WITHIN THE CITY. BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

Section 1. FINDINGS. The Council finds:

(A) In 2003, the City adopted certain Public Improvement District (“PID”) Policy Guidelines and Application Procedures (the “PID Ordinance”) in relation to the Public Improvement District Act, Sections 5-11-1 through 27, NMSA 1978, as amended (the “Act”), enacted by the New Mexico Legislature in 2001.

(B) Pursuant to Section 5-11-6 of the Act, a PID, upon formation, is governed by a board consisting of members of the governing body, ex officio or, upon determination of the governing body, five directors appointed by the governing body.

(C) Pursuant to Section 5-11-9(A) of the Act, three members of an appointed board of directors are to serve initial terms of six years and two of the members are to serve initial

terms of four years, and if a vacancy occurs on the PID board because of death, resignation or inability of the director to discharge the duties of director, the City shall appoint a director to fill the vacancy, who shall hold office for the remainder of the unexpired term until a successor is appointed or elected.

(D) Pursuant to Sections 5-11-2(F) and 5-11-9(C) of the Act, at the end of the terms of the appointed directors of a PID, the longest of which is six years after the date of the formation of the PID, the governing body is to hold an election of new directors by majority vote of the qualified electors and owners in the PID.

(E) Pursuant to Section 5-11-2(G) of the Act, elections under the Act are to be held in compliance with Sections 5-11-6 and 5-11-7 of the Act.

(F) Sections 5-11-7(B) and (F) of the Act provide that either a PID board or the governing body (which for purposes of the Act is the City) may establish provisions for voting by mail and for the returns of the election to be made in person or by mail.

(G) Except as provided in Section 5-11-7 of the Act, elections pertaining to a PID are to be held in compliance with the general election laws of the State of New Mexico.

(H) In order to establish (1) a uniform policy for all PIDs within the City, (2) procedures by which an election of new directors shall be held, and (3) provisions for voting by mail and the returns of elections, the PID Ordinance is hereby amended to include provisions for the administration of elections of PID board directors.

Section 2. Section 6-9-1(E) ROA 1994, GENERAL POLICIES, is amended to read:

“(E) The PID shall be governed by a Board of Directors appointed or elected pursuant to Sections 5-11-1 et seq. NMSA (“the Act”). If the City Council is serving as the PID Board, the City Council may, in accordance with law, delegate certain responsibilities of governance of the PID to a committee as approved by the City Council. Advisory committees may, at the option of the PID Board, be utilized.”

Section 3. Chapter 6, Article 9 ROA 1994 is amended by inserting the following new section:

§ 6-9-7 PID BOARD ELECTION PROCEDURES.

(A) *Delegation of Election Administration to PID Board.* It is the policy of the City that all elections of PID board members held pursuant to Section 5-11-7 NMSA 1978 shall be conducted pursuant to the provisions of this section on behalf of the governing body of the City, and the responsibility for the conduct and administration of certain aspects of

such board elections pursuant to the provisions of this policy shall be delegated to the board of directors of each PID formed by the City.

(1) After a PID is organized and the first board is appointed, the PID board shall govern the conduct of all subsequent regular and special elections of the PID, determine when all subsequent regular and special elections of the special district are to be held, may consult with and obtain guidance and assistance from the City Clerk concerning the conduct of such elections, and shall act as the canvassing board for the purpose of interpreting procedures and deciding controversies or other matters arising in the conduct of the elections.

(2) All powers and authority delegated to the board pertaining to the conduct of regular or special elections may be exercised in the absence of the board by the secretary or by an assistant secretary appointed by the board. The person named by the board who is responsible for the conducting of the election shall be the designated election official.

(B) *Call for Nominations.*

(1) Not less than 70 days nor more than 90 days before a regular special district election, the designated election official shall provide notice of a call for nominations for the election and such notice shall be posted in at least three (3) public places within the PID and shall be published in full, in English and Spanish, once a week for at least two (2) consecutive weeks before the 45th day prior to the election in the *Albuquerque Journal* or another newspaper of general circulation within the PID. The call shall state the date of the election, the number of PID directors to be voted upon at the election, where a self-nomination and acceptance form may be obtained, the deadline for submitting the self-nomination and acceptance form to the designated election official, information on obtaining a ballot if the election will be by mail-ballot only, the name and address of the designated election official, and a brief summary of the information described in subsection (B)(2) of this Section.

(2) The call for nominations shall include either (i) a summary of the basic annual and periodic responsibilities of the PID board, including items (a) through (e), or (ii) the method by which interested persons may obtain the summary. Annual and periodic board responsibilities include:

- (a) Adoption of an open meetings resolution;

(b) Preliminary and final approval of an annual budget sufficient to pay debt service on outstanding district bonds and annual administrative costs;

(c) Exercise of remedies to collect delinquent PID special levies;

(d) Approval of audited financial statements; and

(e) Approval of continuing disclosure reports prepared on behalf of the PID.

(3) The designated election official shall provide the information described in subsection (B)(2) of this Section promptly to all persons accepting nominations for board positions, including self-nominated candidates as provided in Section (C) below.

(C) Self-Nomination.

(1) Not less than 60 days before the date of the election, any person who desires to be a candidate for the office of a PID director shall file a self-nomination and acceptance form or letter signed by the candidate and by a registered elector as a witness to the signature of the candidate.

(2) On the date of signing the self-nomination and acceptance form or letter, the candidate for director shall be a resident of the State eligible under State law to vote in statewide elections.

(3) A self-nomination and acceptance form that is not sufficient may be amended once at any time prior to 3 p.m. on the 30th day before the election.

(4) The self-nomination and acceptance form or letter shall state the name of the PID in which the election will be held, the date of the election, the full name of the candidate as it is to appear on the ballot, and a statement that the candidate is a resident of the State eligible under State law to vote in statewide elections. Unless physically unable, all candidates and witnesses shall sign their own signature and shall print their names, their respective residence addresses, including the street number and name, the city or town, the county, telephone number, and the date of signature on the self-nomination and acceptance form or letter.

(5) The self-nomination and acceptance form or letter shall be filed with the designated election official of the PID in which the election will be held, and the designated election official shall verify the sufficiency of the information contained therein and shall return any insufficient self-nomination form to the candidate with a written description of the insufficiency. The candidate shall have three (3) days from the date of mailing or other delivery by the designated election official of notice of insufficiency to submit a corrected

self-nomination and acceptance form or letter.

(6) The Governing Body, at its option, may nominate one or more candidates, each of whom shall be a resident of the State eligible under State law to vote in statewide elections. The Governing Body or its designee shall provide a list of any candidate(s) nominated by the Governing Body to the designated election official of the PID in which the election will be held not less than 60 days before the date of the election. The Governing Body shall have no duty to nominate any candidate.

(D) Time for Holding Elections; Manner of Election; Notice.

(1) Except as otherwise provided in subsection (D)(2) of this section, regular PID elections shall be held on the first Tuesday after the first Monday in May in every other even-numbered year.

(2) Special elections may be held on the first Tuesday after the first Monday in February, May, October, or December, but in no event on a date within 42 days before any statewide election, as provided by Section 1-12-71 NMSA 1978.

(3) At least 60 days prior to a PID Board election, the designated election official or the City Clerk shall request that the County Clerk provide to both the City Clerk and the designated election official a list of the names and addresses of registered electors of the county who are also registered electors of the PID.

(4) At least 60 days prior to a PID Board election, the designated election official or the City Clerk shall request that the County Assessor provide to both the City Clerk and the designated election official a list of the names and addresses of the owners of real property in the district on the current property tax assessment roll.

(5) The designated election official shall prepare a voter list of registered electors residing within the PID and owners of property within the PID from the lists provided by the County Clerk and County Assessor.

(6) The designated election official shall prepare and provide to the City Clerk a form of ballot containing the names of the eligible candidates.

(7) In the event of a mail ballot only election, the following procedures shall be followed:

(a) The designated election official or the City Clerk shall make available at the Office of the City Clerk beginning no later than 20 days before the date of the election a regular ballot to any person whose name appears on the voter list or who provides an

affidavit of ownership signed by that person. The designated election official or the City Clerk shall record the names and mailing addresses of each person receiving a regular ballot.

(b) The designated election official or the City Clerk shall make available at the Office of the City Clerk a provisional ballot to any person not appearing on the voter list, but claiming eligibility to vote as either a qualified resident elector or as an owner of property within the PID. The designated election official or the City Clerk shall record the name and mailing address of any person to whom a provisional ballot is given, and shall keep copies of any evidence presented by such person in support of the claim of eligibility. If during the canvass the PID Board determines it has insufficient information to determine whether a person given a provisional ballot is a qualified elector, it shall provide written notification to such person that he or she may present additional evidence of eligibility to the PID Board, and shall describe the means by which such evidence may be presented and that the evidence must be presented before the end of the canvassing period of 30 days, as provided in Section 5-11-7(G) NMSA 1978.

(c) Ballots shall be available to prospective electors at the Office of the City Clerk, or, upon written request, shall be mailed or e-mailed to the requesting person, until the close of business on the Friday immediately preceding the date of the election.

(8) At least one polling place shall be provided for a PID board election that is not a mail ballot only election. The designated election official shall select the most convenient and suitable public building or public school building within the PID that can be obtained. If no public building or public school building is available, the designated election official shall provide some other suitable place, which shall be the most convenient and appropriate place obtainable within or near the PID, considering the purpose for which it is to be used.

(E) Voter Eligibility.

(1) No person shall be permitted to vote in any election unless that person is a registered qualified elector or property owner as defined in section 5-11-3 NMSA 1978.

(2) Each voter may cast one vote per candidate for up to five (5) candidates. As provided in Section 5-11-7 NMSA 1978, a property owner who is also a qualified resident elector shall not be entitled to an additional vote as a result of residing within the PID.

(3) Any person desiring to vote at any election as a registered qualified elector or

property owner shall sign an affidavit that the person is an elector of the PID. The affidavit shall be on a form that contains in substance the following:

FORM OF AFFIDAVIT

_____ does hereby declare and warrant that (s)he is either (1) the owner of record title of real property located in the ____ Public Improvement District known as lot (s)/tracts ____, located in _____ Subdivision, within the _____ Public Improvement District or (2) is a resident qualified elector (i.e. a person who resides within the boundaries of the _____ Public Improvement District and who is qualified to vote in the general elections held in the state pursuant to Section 1-1-4 NMSA 1978). I, _____ (printed name), reside at _____ (address), am an elector of this (name of PID) and desire to vote at this election. I do solemnly swear (or affirm) that I am qualified to vote in this PID election as:

_____ A resident of the district or area to be included in the district for not less than thirty days; or

_____ The owner of taxable real property situated within the boundaries of the PID.

I have not voted previously at this election.

Date _____

Signature of elector

(F) Notice of Election. Pursuant to Section 5-11-7(A) NMSA 1978, a notice of election shall be posted in at least three (3) public places within the PID not less than 20 days before the election and shall be published in full, in English and Spanish, once a week for at least two (2) consecutive weeks before the election in the *Albuquerque Journal* or another newspaper of general circulation within the PID. The notice shall indicate the following:

(1) Ballots may be obtained at the Office of the designated election official City Clerk or, upon written request received not later than the close of business on the Friday immediately preceding the election, will be mailed or e-mailed to the requesting person.

(2) Each elector may cast one vote per candidate for up to five (5) candidates listed on the ballot.

(3) Ballots may be returned to the Office of the City Clerk no later than 5:00 p.m. on the date of the election. Mail-in ballots must be received in the Office of the City Clerk by

5:00 p.m. on the date of the election.

(4) If voting will be in-person, the hours during the day, not less than six, in which the polls will be open.

(G) Form of Ballot; Voting and Canvassing Results.

(1) The designated election official or the City Clerk will make ballots available to prospective voters at the Office of the City Clerk. In addition, upon request, the designated election official or the City Clerk shall mail or e-mail a ballot to requesting persons upon the presentation of a title report or other evidence establishing ownership of property within the PID, or the presentation of evidence establishing that the person is eligible to vote under the PID Act (i.e. the voter is a resident qualified elector who resides within the boundaries of the PID and is qualified to vote in general elections held in the state pursuant to Section 1-1-4 NMSA 1978). Property owners who do not live within the PID (but who would like to vote in the Election) must execute an affidavit stating that they are the owner of land in the PID. Completed ballots, if delivered by hand, must be received by 5:00 p.m. on the date of the election at the office of the PID; and if delivered by U.S. Mail, must be postmarked on or before 5:00 p.m. on the date of the election. The form of ballot shall contain in substance the following:

FORM OF BALLOT

_____ PUBLIC IMPROVEMENT DISTRICT

DISTRICT BOARD ELECTION

Each owner of real property located in the _____ Public Improvement District (the "PID"), located in the City of Albuquerque, New Mexico and each resident qualified elector, if any, residing in the PID ("Voters") may vote in the affirmative (YES) or in the negative (NO) for the candidates listed below by placing an X in a YES box or an X in a NO box to the right of each candidate's name. Voters may vote in the affirmative (YES) for _____ candidates. Any ballot in which a Voter votes more than five times in the affirmative (YES) will be held invalid and such ballot will not be counted. The _____ candidates receiving the most affirmative (YES) votes will be elected as the new PID board members of the PID. The polling place for the election will be _____, and the polls will be open on _____, __, 20__, between the hours of _____ a.m. and __ p.m. There will be no polling place for the election, which will be conducted by mail ballots only. Completed ballots, if delivered by hand, must be received by 5:00 p.m. on _____ __, 20__ at the Office of the City Clerk,

600 2nd NW, 7th floor, Albuquerque, New Mexico, 87102; and if delivered by U.S. Mail, must be postmarked on or before 5:00 p.m. on _____, 20__.

(Voters may vote YES for up to ___ candidates)

- 1. YES NO
- 2. YES NO
- 3. YES NO
- 4. YES NO
- 5. YES NO
- 6. YES NO
- 7. YES NO
- 8. YES NO

Etc.

(2) The place for the receipt of completed ballots for the Election shall be the Office of the City Clerk, 600 2nd NW, 7th floor, Albuquerque, New Mexico, 87102.

(3) Completed ballots, if delivered by hand, must be received by 5:00 p.m. on _____, 20__ at the Office of the City Clerk; and if delivered by U.S. Mail, must be received in the Office of the City Clerk before 5:00 p.m. on _____, 20__.

(4) The ___ candidates receiving the most votes, as evidenced by the certificate of canvassing prepared by the designated election official or the City Clerk, will be elected as the new members of the PID board.

(5) The ballots are expected to be counted and the results tallied in the Office of the City Clerk, 600 2nd NW, 7th floor, Albuquerque, New Mexico, 87102 on _____, 20__ at 3:00 p.m. In any event, canvassing shall be completed within thirty (30) days of the Election and the designated election official or the City Clerk shall prepare a certificate of canvassing for recording in the PID board's minute book by the PID Clerk, which certificate will indicate the total number of votes cast, the total number of votes cast for each candidate, and will specify which five candidates received the most votes.

(H) *Transfer of Property Title to Qualify Electors.* No person shall take or place any interest in title to taxable property in the name of another, whether a fractional undivided interest or otherwise, or enter into a contract to purchase or sell taxable property, for the purpose of attempting to influence the outcome of any PID election. Any ballot cast in violation of this subsection as determined in an election contest conducted pursuant to

Section 1-14-1 et seq. NMSA 1978, shall be void.

(I) *Board Member Terms.* All PID board members shall have four (4) year terms.

(J) *Quorum.* A majority of the number of director positions filled at the time of a PID board meeting shall constitute a quorum for the carrying out of PID board duties.

(K) *Definitions.* The terms defined in Section 5-11-2 NMSA 1978 shall have the same meaning when used herein unless otherwise indicated.

(L) *Further Authorization.* The City Clerk, the Chairperson of the PID board and the PID Clerk of a PID are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Section 6-9-7. The PID Clerk shall consult with and seek the assistance of the City Clerk as he or she deems necessary or convenient, but is authorized and directed to take any and all steps necessary for the proper conduct of the election, including giving timely notice of the election by proclamation by publication and posting thereof and compliance with the Federal Voting Rights Act and any other matters of federal or state election law.

Section 4. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, 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 5. COMPILATION. Sections 2 and 3 of this Ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

Section 6. EFFECTIVE DATE. This Ordinance shall take effect five (5) days after publication by title and general summary.

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