



Legislation Text

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CITY of ALBUQUERQUE
TWENTY THIRD COUNCIL

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

SPONSORED BY: Ken Sanchez, by request

ORDINANCE

Amending Article III, Section 3, Article VI, Section 4 And Article XVI, Sections 3, 6, 7, 12, And 20 Of The Charter, Amending Chapter 2, Article 4, Part 13, ROA 1994, The Filing Of Petitions Ordinance, And Amending Chapter 2, Article 4, ROA 1994, To Add The Limitations On Seed Money And Maintenance Of Campaign In Off Years Ordinances (Sanchez, by request)

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

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

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

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

WHEREAS, the Local Election Act mandates that the City require as a precondition to the

receipt of public financing that a person first be qualified as a candidate; and

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

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

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

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

CITY CHARTER, ART. VI, CHARTER AMENDMENTS

SECTION 4. ELECTION.

The election must be held at the next general election or regular local election.

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

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

SECTION 3. DEFINITIONS

SECTION 3(G)

EXPLORATORY PERIOD.

(1) For Mayoral Applicant Candidates, the Exploratory Period begins 285 days before the election, and ends 239 days before the election; and

(2) For Council Applicant Candidates, the Exploratory Period begins 169 days before the election, and ends 135 days before the election.

SECTION 3(Q).

QUALIFYING PERIOD.

(1) For Mayoral Applicant Candidates the Qualifying Period begins 238 days before the election, and ends 161 days before the election; and

(2) For Council Applicant Candidates, the Qualifying Period begins 134 days before the election, and ends 105 days before the election.

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)

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;
- (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
- (8) there are not pending challenges to the County Clerk's qualification of the Candidate.

SECTION 7(B)

The Clerk shall certify Applicant Candidates running for Mayor and Council, complying with the requirements of this section, as Participating Candidates twenty days after the last day of the Qualifying Period.

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

SECTION 12. TIMING AND AMOUNT OF FUND DISTRIBUTION.

SECTION 12(A)

The Clerk shall distribute money from the Fund to Participating Candidates. The Clerk shall distribute revenue within three business days of certification. In the event that a Candidate's certification for public financing or qualification by the County Clerk as a

Candidate has been challenged, the Clerk shall distribute funds to the Participating Candidate within three business days of receiving notice that the certification and/or qualification by the County Clerk as a Candidate has been upheld.

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

SECTION 20. APPEALS

The procedure for challenging a decision of the Clerk to grant, deny, or revoke a Candidate's certification as a Participating Candidate is as follows:

(A) A Person aggrieved by 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 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 administrative and/or court costs 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, 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;
- (3) For Council candidates who are seeking public financing, 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 for verification every Tuesday by 12:00 p.m. 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 their Declaration of Candidacy and verified petitions with the County Clerk fourteen (14) days after the last day of the Qualifying Period.

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

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

§ 2-4-20 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 9. Chapter 2, Article 4, is amended to add Part 21 as follows:

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

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

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

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

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

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

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

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

(G) Financial disclosure statements must be filed in accordance with Article XII, Section 4, Subsection 2(A).

(H) A committee established pursuant to this section may accept contributions until the following deadlines:

- i. For Mayoral candidates, 287 days before an election in which the individual benefitted by the committee seeks to be a candidate where the person is a candidate; and
- ii. For Council candidates, 203 days before an election in which the individual benefitted by the committee seeks to be a candidate where the person is a candidate.

(I) The registration of a committee established pursuant to this section shall expire each year on December 31st. A committee established pursuant to this section shall renew its registration with the City Clerk upon the later of expiration or within five days of any contribution collection or expenditure by the committee that is in excess of \$250.

(J) Any unspent funds remaining in the committee's account as of the first day of the Exploratory period shall be forfeited to the Fund.

(K) Contributions to a committee pursuant to this section shall count towards the aggregate and per Person limits on seed money.

SECTION 10. Article III, Section 3 is amended as follows:

(a)(6) If the Council fails to act upon a measure so proposed within fourteen days after the City Clerk files a certification with the Council that the petition has been signed by the required number of voters, or the Council acts adversely thereon or substantively amends it an election on the issues must be held at the next general election or regular municipal election.

(b) Subject to state law and Secretary of State rules regarding ballot questions, at such election the ballot shall contain the proposed measure as originally submitted and the measure as amended, if substantively amended by the governing body of the city. If the question was not substantively amended by the governing body, or if the proponents of the

measure originally submitted concur with the governing body's substantive amendments, only the measure as amended shall be placed on the ballot. Below any such measure, there shall be printed the words: "For" and "Against" followed by spaces for marking with a cross or a check the word desired.

SECTION 11. 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 12. COMPILATION. Sections 1 through 9 of this ordinance shall amend, be incorporated in and made part of the City Charter and Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 13. EFFECTIVE DATE. This ordinance shall take effect on January 1, 2020.

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