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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2019-9

INTRODUCED BY:

Councilor Carol Romero-Wirth

AN ORDINANCE

AMENDING AND REPEALING VARIOUS SECTIONS OF THE ELECTION CODE, SECTION 9-1 SFCC 1987, TO ACCOMMODATE RECENT CHANGES IN STATE LAW GOVERNING LOCAL ELECTIONS; AND ENACTING A NEW PROVISION OF THE ELECTION CODE TO AUTHORIZE EITHER THE CITY CLERK OR THE ETHICS AND CAMPAIGN REVIEW BOARD TO ADOPT RULES APPLYING THE CODE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Section 9-1.5 SFCC 1987 (being Ord. No. 1985-60, § 5, as amended) is amended to read.

9-1.5 Residency of candidates.

A. ~~[Only persons residing in a particular municipal election district and who otherwise meet all applicable requirements imposed by law or ordinance, shall be allowed to be candidates for the position of city councilor for that municipal election district.~~

B.] In determining ~~[whether the residence of a person is in a particular district]~~ the residency of candidates, the rules set forth in Section ~~[s-3-8-3 and]~~ 1-1-7 NMSA 1978 shall

1 apply.

2 1. City Councilor Candidates. Only persons residing in the municipal
3 election district they seek to represent and who otherwise meet all applicable
4 requirements imposed by law or ordinance shall be allowed to be candidates for the
5 position of city councilor.

6 2. Mayor and Municipal Judge Candidates. Only persons residing in the
7 city of Santa Fe and who otherwise meet all applicable requirements imposed by law
8 or ordinance shall be allowed to be candidates for the position of mayor or municipal
9 judge.

10 ~~C. — In addition to the requirements for a declaration of candidacy set forth in~~
11 ~~Section 3-8-27 NMSA 1978 and subsection 9-1.6 SFCC 1987, the municipal clerk shall not~~
12 ~~accept a declaration of candidacy for the position of city councilor unless the declaration of~~
13 ~~candidacy states which district the candidate resides in and is seeking election from. The~~
14 ~~municipal clerk shall determine if the candidate's residence is within the district from which~~
15 ~~the candidate is seeking election. If the candidate does not reside within the district, the~~
16 ~~municipal clerk shall determine that the declaration of candidacy is invalid.]~~

17 **Section 2. Section 9-1.6 SFCC 1987 (being Ord. No. 1985-60, § 6, as amended)**
18 **is amended to read:**

19 **9-1.6. Election resolution; nominating petition; declaration of candidacy;**
20 **~~[certification of candidacy and withdrawal of candidacy]~~ posting a list of qualified**
21 **candidates.**

22 **A. Election Resolution.** ~~[The requirements for the regular municipal election~~
23 ~~resolution shall be governed by Section 3-8-26 NMSA 1978, except that the] An election~~
24 ~~resolution shall be adopted by the governing body no earlier than one hundred [forty-seven (147)]~~
25 ~~fifty (150) days and no later than one hundred [nineteen (119)] twenty (120) days prior to the date~~

1 of a regular municipal election. The election resolution shall include a list of the positions that
2 are to be filled at the election and serve as the election proclamation referred to in Section 4.03(C)
3 of the Santa Fe Municipal Charter. Notification of the election resolution shall be delivered to the
4 county clerk pursuant to Section 1-22-4(A) NMSA 1978.

5 B. ~~[Candidate Filing Day. The requirements for candidate filing day shall be~~
6 ~~governed by Section 3-8-27(A) NMSA 1978, except that candidate filing day shall occur between~~
7 ~~the hours of 8:00 a.m. and 5:00 p.m. on the ninety first day preceding the election.]~~ Nominating
8 Petitions. Nominating petitions shall be prepared, circulated, and filed in accordance with the
9 requirements of the New Mexico Election Code § 3-1-5 NMSA 1978 and Section 4.03 of the
10 Santa Fe Municipal Charter and shall be submitted for certification by the city clerk.

11 C. ~~[Certification of] Declaration of Candidacy. [The requirements for certification~~
12 ~~of] A declaration of candidacy [shall be governed by Section 3-8-27(G) NMSA 1978, except that~~
13 ~~no later than the ninetieth (90th) day preceding the day of the election, the municipal clerk shall~~
14 ~~determine whether a declaration of candidacy shall be certified.]~~ in the form prescribed by
15 Section 1-22-8 NMSA 1978 and accompanied by the candidate's certificate of valid nominating
16 petition shall be submitted:

17 (1) By a person who is applying for public financing, to the city clerk with
18 the person's application for public financing before the end of the qualifying period
19 pursuant to Section 9-3.8 SFCC 1987 and Section 1-22-3.2(D)(2) NMSA 1978;

20 (2) By a person who is not applying for public financing or who has failed to
21 be approved for public financing but who otherwise qualifies to be a candidate and is
22 seeking to be listed on the ballot, to the county clerk on the seventieth (70th) day before
23 the election pursuant to Sections 1-22-3.2(D)(5) and 1-22-7 NMSA 1978; and

24 (3) By a person seeking to be a write-in candidate, to the county clerk on the
25 sixty-third (63rd) day before the election pursuant to Section 1-22-8.1 NMSA 1978.

1 D. Qualification of Candidates. Determinations of the qualifications of candidates
2 to be listed on the ballot or to run as write-in candidates are made by the county clerk pursuant to
3 Sections 1-22-3.2(D)(3), 1-22-8.1 and 1-22-10 NMSA 1978.

4 ~~[D:] E. Posting the List of [Certified and Non-Certified] Qualified Candidates.~~ [The
5 requirements for posting the list of certified and non-certified candidates shall be governed by
6 Section 3-8-27(H) NMSA 1978, except that the municipal clerk shall post such list no later than
7 9:00 a.m. on the eighty-ninth (89th) day preceding the election.] Within one day of receipt of
8 notification from the county clerk of the county clerk's determination of qualified candidates, the
9 city clerk shall post the list of the candidates' names in the city clerk's office.

10 ~~[E. Candidate Statement to Ascertain Validity of Declaration of Candidacy.~~ The
11 requirements for the candidate statement to ascertain validity of declaration of candidacy shall be
12 governed by Section 3-8-27(D)(5) NMSA 1978, except that the candidate or the candidate's
13 authorized representative shall contact the office of the municipal clerk during normal business
14 hours on the eighty-ninth (89th) day before the election to ascertain whether the municipal clerk
15 has certified the declaration of candidacy as valid.

16 ~~F. Affidavit of Withdrawal of Candidacy.~~ The requirements for the affidavit of
17 withdrawal of candidacy shall be governed by Section 3-8-27(I) NMSA 1978, except that no later
18 than 5:00 p.m. on the eighty-fourth (84th) day before the day of the election, a candidate for
19 municipal office may file an affidavit on the form provided by the municipal clerk in the office of
20 the municipal clerk stating that the candidate is no longer a candidate for municipal office.

21 ~~G. Confirmation of Names and Positions on the Ballot.~~ The requirements for the
22 confirmation of the names and positions on the ballot shall be governed by Section 3-8-27(J)
23 NMSA 1978, except that no later than 10:00 a.m. on the eighty-third (83rd) day preceding the
24 election, the municipal clerk shall confirm with the printer on contract with the municipality and
25 the county clerk the names of the candidates and their position on the ballot.]

1 Section 3. **[REPEAL]** Section 9-1.7 SFCC 1987 (being Ord. No. 1985-60, § 7, as
2 amended) is hereby repealed.

3 Section 4. **[REPEAL]** Section 9-1.8 SFCC 1987 (being Ord. No. 1985-60, § 8, as
4 amended) is hereby repealed.

5 Section 5. **[REPEAL]** Section 9-1.9 SFCC 1987 (being Ord. No. 1985-60, § 9, as
6 amended) is hereby repealed.

7 Section 6. A new Section 9-1.9 SFCC 1987 is ordained to read:

8 Section 9-1.9 **[NEW MATERIAL]** Rules and Educational Materials.

9 Either the city clerk or the ethics and campaign review board may adopt rules and
10 develop educational materials explaining and applying the provisions of this Section.

11 Section 7. **[REPEAL]** Section 9-1.10 SFCC 1987 (being Ord. No. 1985-60, § 10, as
12 amended) is hereby repealed.

13 Section 8. **[REPEAL]** Section 9-1.11 SFCC 1987 (being Ord. No. 1976-1, Code § 1-
14 20, as amended) is hereby repealed.

15 Section 9. **[REPEAL]** Section 9-1.12 SFCC 1987 (being Ord. No. 1976-1, Code § 1-
16 21, as amended) is hereby repealed.

17 Section 10. **[REPEAL]** Section 9-1.13 SFCC 1987 (being Ord. No. 1976-1, Code § 1-
18 22, as amended) is hereby repealed.

19 Section 11. **[REPEAL]** Section 9-1.14 SFCC 1987 (being Ord. No. 1976-1, Code § 1-
20 23, as amended) is hereby repealed.

21 Section 12. Section 9-1.15 SFCC 1987 (being Ord. No. 2017-26, § 1) is amended
22 to read 9-1.7.

23 Section 13. **[REPEAL]** Section 9-1.16 SFCC 1987 (being Ord. No. 1985-60, § 12, as
24 amended) is hereby repealed.

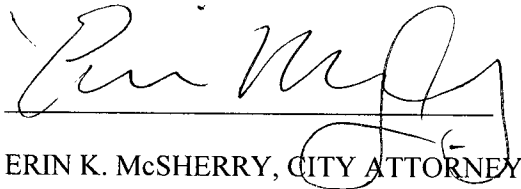
25 Section 14. **[REPEAL]** Section 9-1.17 SFCC 1987 (being Ord. No. 1985-60, § 13, as

1 amended) is hereby repealed.

2 Section 15. Section 9-1.18 SFCC 1987 (being Ord. No. 2018-24, § 2) is amended
3 to read 9-1.8.

4 Section 16. [REPEAL] Section 9-1.19 SFCC 1987 (being Ord. No. 2018-24, § 3) is
5 hereby repealed.

6 APPROVED AS TO FORM:

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8
9 ERIN K. McSHERRY, CITY ATTORNEY

MEMORANDUM TO: GOVERNING BODY, CITY OF SANTA FE
FROM: JIM HARRINGTON, COMMON CAUSE NM
SUBJECT: SUMMARY AND EXPLANATION OF PENDING COUNCIL BILLS
SPONSORED BY COUNCILOR ROMERO-WIRTH PROPOSING TO
AMEND THE ELECTION CODE AND THE PUBLIC CAMPAIGN FINANCE
CODE TO CONFORM TO RECENT CHANGES IN STATE LAW
DATE: APRIL 30, 2019

I. Background

In the last two legislative sessions, the legislature carried out a comprehensive revision of the state laws governing elections (HB 98, 2018; HB 407, 2019). A principal purpose of these voluminous (774 pages in total) enactments was to simplify local elections by curtailing local autonomy and mandating that all such elections be administered under the same rules by the secretary of state and the county clerks (see §§1-22-1 et seq. NMSA). Although cities were given a choice of two possible dates – March of even-numbered years and November of odd-numbered years – on which to hold their elections (§1-22-3.1(B) NMSA), local election laws were otherwise almost entirely preempted and replaced by uniform statewide rules and procedures (see §§1-22-1 et seq. NMSA). The former Municipal Election Code (former §§3-8-1 through 3-8-80 NMSA), which had permitted charter cities to conduct their own elections under their own laws (former §3-8-1(E) NMSA), and which is referred to throughout Santa Fe’s Election Code, was repealed in its entirety (HB 98, 2018, §175(B)).

These major changes in state law require conforming changes in city law. The city began this process last year by passing charter amendments and ordinances “opting in” to November elections and adjusting the terms of current office-holders accordingly (Charter, §§4.01, 5.03, 6.05, 7.04 and 11.01; §§9-1.2 and 9-1.18 SFCC). There remain, however, several additional “cleanup” tasks – namely, repealing the many provisions of the city’s Election Code that have now been preempted by state law, amending other provisions to conform to the new state laws, and amending the Public Campaign Finance Code to take advantage of an exemption from a state-imposed rule that would have crippled the city’s public financing program. This “cleanup” of city law is the purpose of the two bills that are the subject of this summary. The bills were prepared by the city attorney on the basis of consultations with the sponsor and the city clerk and with the advice of Common Cause, which had worked extensively on the underlying changes in state law.

II. Amendments to the Election Code

The first of the two bills would repeal most sections of the city's Election Code, Chapter 9, Article 1, of the Santa Fe City Code. These are the ordinances governing the various steps in the administration of city elections by the city clerk, all of which have been preempted by the new state laws turning over the administration of local elections to the secretary of state and the county clerk (§§9-1-5(B) and (C), 9-1.6(E) through (G), 9-1.7 through 9-1.14, 9-1.16 and 9-1.17 SFCC, preempted by §§1-22-2 through 1-22-19 NMSA, as amended by HB 407). The bill would also repeal §9-1.19 SFCC, which is a now obsolete temporary code section prescribing the effective dates of last year's code amendments opting in to November elections and adjusting the terms of current office-holders (§§9-1.2 and 9-1.18 SFCC).

The remaining sections of the Election Code would either be amended by the bill to conform to the new state law or would be left unchanged because they have not been preempted by any contrary rule of state law. These surviving sections are those that provide for: (1) opt-in to November elections and adjustment of terms of office (§§9-1.2 and 9-1.18 SFCC); (2) establishment of council districts and redistricting (§§9-1.3 through 9-1.5 SFCC); (3) adoption of the election resolution stating which offices are to be filled at the election (§9-1.6(A) SFCC); (4) circulation and filing of nominating petitions under §4.03 of the Charter (proposed new §9-1.6(B) SFCC); (5) filing of declarations of candidacy by publicly financed candidates (proposed new §9-1.6(C) SFCC); and (6) ranked choice voting (§9-1.5 SFCC).

The bill would also enact a new section of the Election Code, to be numbered §9-1.9 SFCC, which would confer authority on the city clerk and the Ethics and Campaign Review Board to adopt rules implementing the provisions of the Election Code. This proposal is based on a similar existing provision in the Public Campaign Finance Code (§9-3.16 SFCC) and reflects a judgment that such rule-making authority might be necessary to fill in unanticipated gaps in the election procedures as the city attempts to work with the county clerk in implementing the entirely new system of election administration that is dictated by the new state laws.

III. Amendments to the Public Campaign Finance Code.

The passage of HB 98 at the 2018 legislative session created a serious problem for municipal public financing programs. Although the bill did not try to preempt or limit these programs directly, it contained a provision that would have discouraged many candidates from applying for public financing. Specifically, it precluded candidates from filing their declarations

of candidacy until 70 days before the election and gave the county clerk until 60 days before the election to determine whether they met the qualifications to be listed on the ballot (§§1-22-7(A) and 1-22-10(A) NMSA). Unless cities were willing to change their laws to take the risk of disbursing public funds to candidates who had not yet qualified for the ballot, these provisions would have effectively prevented publicly financed candidates from commencing their campaigns until less than two months before the election. Few candidates, especially mayoral candidates, would have been willing to accept public financing on these terms.

To solve this problem, Councilor Romero-Wirth and Common Cause persuaded Sen. Ivey-Soto, the author of both HB 98 and HB 407, to include in HB 407 at this year's session a special provision that allows cities to establish early filing dates for candidates applying for public financing and requires the county clerk to make her official determination of ballot qualification for these candidates within three days of receiving their declarations of candidacy and supporting documents from the city (HB 407, §144, adding a new subsection D to §1-22-3.2 NMSA). The purpose of Councilor Romero-Wirth's second bill is to take advantage of this provision by having candidates who are applying for public financing file their declarations of candidacy and supporting documents with their applications for public financing on the last day of the "qualifying period" 106 days before the election (see §9-3.8(A) SFCC; proposed new §§9-3.8(C) and 9-1.6(C) SFCC). The city clerk would then be required to deliver the ballot qualification papers to the county clerk in sufficient time to ensure that the county clerk, under the three-day deadline set by state law, would render her official determinations of ballot qualification before the date set by city law for certifying candidates to receive public financing and disbursing their public funds (see HB 407, §144, adding a new subsection D to §1-22-3.2 NMSA; §§9-3.8(A), 9-3.9(A), 9-3.10(A) SFCC). The bill would thus allow candidates to receive their funds and start their campaigns on the same timetable as under the current law.

IV. Conclusion

Common Cause NM urges the members of the Governing Body to approve these important and necessary amendments to the city's laws.

J.E.H.