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COUNCIL WORK SESSION SUMMARY ROUTING SLIP

Meeting Date April 11, 2016

TITLE: CITY CHARTER PROPOSED CHANGES

- Are there attachments to the Council Work Session Summary? Yes No
- Will there be a Video Presentation for this item? Yes No
- Will there be a PowerPoint Presentation for this item? Yes No
- If "yes", will a copy of the PowerPoint Presentation be included on the Council Work Session Agenda? Yes No

DEPARTMENT / ORGANIZATION	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact		541-2128	4/4/2016
Department Director		541-2128	4/4/2016
Other			
Assistant City Manager/CAO (if applicable)			
Assistant City Manager/COO (if applicable)			
City Manager		541-2076	4-5-16



Council Work Session Summary

Meeting Date April 11, 2016

TITLE: CITY CHARTER PROPOSED CHANGES.

PURPOSE(S) OF DISCUSSION:

- Inform/Update
- Direction/Guidance
- Legislative Development/Policy

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

As a result of the litigation regarding the city petition and election processes, the City Attorney's Office provided City Council with presentations with proposed charter changes on December 14, 2015 and on February 22, 2016. The City Council provided the City Attorney's Office with guidance, and expressed interest in the following proposed charter amendments concerning recall including:

1. Petitioners citing grounds for recall;
2. Increasing the number of signatures for a recall petition;
3. Requiring petition circulators to live in the district of the councilor subject to recall;
4. Adding five more days for the city clerk to certify a petition;
5. Clarify when and how a signature may be withdrawn before final action by City Council;
6. Clarify the starting the time for a petition on the day the petitions are picked up from the city clerk; and
7. Eliminating the supplemental petition process.

These changes are being considered to eliminate potential litigation and save taxpayer money.

This work session will consider the recall process, recommending its removal in its entirety and using existing state statutes involving the removal of public officials. Additionally, there will be limited changes proposed to the petition process which would affect the initiative process and referendum. This work session does not address an initiative ordinance under Article VIII, Section 8.06. and the ability to change an initiative ordinance.

The below changes to the City Charter are proposed:

Delete all reference to recall in the charter and use the removal statute. NMSA 1978, Section 10-4-1, et seq., provides for the removal of any city official elected by the people. The grounds are:

- A. Conviction of any felony or of any misdemeanor involving moral turpitude;
- B. Failure, neglect or refusal to discharge the duties of the office, or failure, neglect or refusal to discharge any duty devolving upon the officer by virtue of his office;
- C. Knowingly demanding or receiving illegal fees as such officer;
- D. Failure to account for money coming into his hands as such officer;
- E. Gross incompetency or gross negligence in discharging the duties of the office;
- F. Any other act or acts, which in the opinion of the court or jury amount to corruption in office or gross immorality rendering the incumbent unfit to fill the office.

The process to remove a city official begins with a written accusation presented to the grand jury. If the grand jury finds probable cause, then the district attorney brings the case to the district court. The rules of criminal procedure apply which requires a "beyond a reasonable doubt" standard. The trial is to have precedence over all other cases. The trial must be a jury trial. If the defendant is convicted, he is removed from office. There is no other penalty. The court may suspend the official until the completion of trial.

The removal procedure provides for grounds to be established, with a review of the allegations by a grand jury. The adoption of this process would allow the recall procedures in the city charter to be removed in their entirety and meet the expressed concerns of Council on the current recall procedure. As noted above, the removal process is subject to strict standards and has the independent grand jury making the determination to recommend removal, subject to a jury trial using the "beyond a reasonable doubt" standard before a mayor or city councilor could be removed from office.

The recall provisions of Article VIII Sec. 8.01(c), Sec 8.02, Section 8.03(a), Section 8.07, Section 8.08(b) and (c), and Section 8.09(c) would be eliminated or language deleted.

With respect to the petition process which would affect an initiative petition or referendum petition:

- a) Start the 60-day clock for petitions the day after the petition is picked up from the City (change to Article VIII, Section 8.02)
- b) In an effort to conserve staff resources in the City Clerk's Office, the supplemental petition process should be eliminated. To fix this problem all language regarding supplemental or amended petitions should be eliminated in Article VIII, Section 8.04.
- c) The number of days the city clerk has to certify a petition should be increased from 20 to 25 days. Article VIII, Section 8.04(a) would be amended.
- d) Signatures may be withdrawn up to one week (7 days) prior to the City Council meeting to consider the petition. To fix this problem, Article VIII, Section 8.04 should be changed to indicate that a signatory can remove their signature up until seven days before final action of the City Council.

SUPPORT INFORMATION:

1. Attachment "A", New Mexico Statutes Annotated 1978, Sections 10-4-1 through 10-4-29.

§ 10-4-10. Guilty plea; judgment; denial or refusal to plead; trial, NM ST § 10-4-10

N. M. S. A. 1978, § 10-4-1

§ 10-4-1. Local officers subject to removal

Any county, precinct, district, city, town or village officer elected by the people, and any officer appointed to fill out the unexpired term of any such officer, may be removed from office on any of the grounds mentioned in this chapter and according to the provision hereof.

N. M. S. A. 1978, § 10-4-2

§ 10-4-2. Causes for removal of local officers

The following shall be causes for removal of any officer belonging to the class mentioned in the preceding section:

- A. conviction of any felony or of any misdemeanor involving moral turpitude;
- B. failure, neglect or refusal to discharge the duties of the office, or failure, neglect or refusal to discharge any duty devolving upon the officer by virtue of his office;
- C. knowingly demanding or receiving illegal fees as such officer;
- D. failure to account for money coming into his hands as such officer;
- E. gross incompetency or gross negligence in discharging the duties of the office;
- F. any other act or acts, which in the opinion of the court or jury amount to corruption in office or gross immorality rendering the incumbent unfit to fill the office.

N. M. S. A. 1978, § 10-4-3

§ 10-4-3. Grand jury accusation

An accusation in writing against any officer belonging to the class of officers mentioned in Section 10-4-1 NMSA 1978, charging any of the matters mentioned in this chapter as sufficient ground for removal, may be presented by the grand jury to the district court of the county in or for which the officer accused is elected.

N. M. S. A. 1978, § 10-4-4

§ 10-4-4. Form of accusation

The accusation must state the offense charged in ordinary and concise language without repetition and in such manner as to enable a person of common understanding to know what is intended.

N. M. S. A. 1978, § 10-4-5

§ 10-4-5. Presentment of grand jury accusation; service on defendant; return day

The accusation must be presented in open court, and the judge, after receiving the same, must forthwith cause it to be transmitted to the district attorney who must cause a copy thereof to be served upon the defendant and require by written notice that such defendant appear before the district court at a date to be named in the notice, which shall be not less than five nor more than ten days after service of a copy of such notice, and answer the accusation.

N. M. S. A. 1978, § 10-4-6

§ 10-4-6. Defendant's appearance or default

The defendant must appear at the time appointed in the notice and answer the accusation unless for sufficient cause the court has assigned another date for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence.

N. M. S. A. 1978, § 10-4-7

§ 10-4-7. Defendant's answer; grounds

The defendant may answer the accusation either by objecting to the sufficiency thereof, or any portion thereof, or by denying the truth of the same.

N. M. S. A. 1978, § 10-4-8

§ 10-4-8. Objection for insufficiency; form immaterial

If he objects to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it represents intelligibly the ground of the objection.

N. M. S. A. 1978, § 10-4-9

§ 10-4-9. Criminal procedure made applicable

All matters of procedure not otherwise provided for in this chapter shall be governed by the laws governing criminal procedure.

N. M. S. A. 1978, § 10-4-10

§ 10-4-10. Guilty plea; judgment; denial or refusal to plead; trial

If the defendant pleads guilty, the court must render judgment of conviction against him. If he denied the matters charged or refuses to answer the accusation, the court must immediately, or at such time as it may appoint, proceed to try the accusation.

N. M. S. A. 1978, § 10-4-11

§ 10-4-11. Precedence in trial

As soon as the case is at issue, it must be immediately set down for trial and shall have precedence over all other cases on the docket.

N. M. S. A. 1978, § 10-4-12

§ 10-4-12. Jury trial required; procedure

The trial must be by jury and conducted in all respects in the same manner as a trial on an information or indictment for a misdemeanor.

N. M. S. A. 1978, § 10-4-13

§ 10-4-13. Verdict; form

The form of verdict of the jury in such cases shall be "guilty" or "not guilty".

N. M. S. A. 1978, § 10-4-14

§ 10-4-14. Judgment of removal; entry

Upon a conviction the court must pronounce judgment that the defendant be removed from office; and the judgment must be entered upon the minutes assigning therein the causes of removal.

N. M. S. A. 1978, § 10-4-15

§ 10-4-15. Attendance of witnesses

The district attorney and the defendant are respectively entitled to such process as may be necessary to enforce the attendance of witnesses as upon a trial of an information or indictment.

N. M. S. A. 1978, § 10-4-16

§ 10-4-16. Appeal; suspension pending reversal; filling vacancy

From a judgment of removal, appeal may be taken to the supreme court in the same manner as from a judgment in a civil action, but until such judgment is reversed, the defendant is suspended from his office, and pending the appeal, the office must be filled as in case of vacancy.

N. M. S. A. 1978, § 10-4-17

§ 10-4-17. Presentment of accusation by district attorney; vacation; no grand jury in county

The accusation provided for in this chapter may be presented by the district attorney to the judge in vacation or term time at any time when, under the provisions of law there will be no grand jury in the county where the same is presented, for a period of at least twenty days after the presentment of such accusation.

N. M. S. A. 1978, § 10-4-18

§ 10-4-18. Duty of district attorney on receipt of evidence

Whenever sworn evidence is presented to the district attorney showing that any of the officers of the class provided for in this chapter are guilty of any of the matters herein mentioned as causes for removal, he must present the accusation to the court as provided in the next preceding section.

N. M. S. A. 1978, § 10-4-19

§ 10-4-19. Presentment by district attorney; supporting affidavits; procedure

When the accusation is presented by the district attorney as provided in the preceding section, the same must be supported by sworn affidavit or affidavits, and the court must forthwith investigate the matter, and if a jury is in attendance at the time such accusation is presented, the court must order a citation to the defendant and thenceforth the case must proceed as provided in this chapter where the accusation is by a grand jury.

N. M. S. A. 1978, § 10-4-20

§ 10-4-20. Procedure for suspension from office

If the accusation provided in this chapter, to be presented by the district attorney, is presented at a time when there is no jury in attendance or is presented to the court in vacation, the court, if it deems such action necessary, after ordering a citation to the defendant as provided in the next preceding section, may, on application of the district attorney, also order the defendant to appear at a time not less than five nor more than fifteen days after service of such order and at such place as may be mentioned in the order, to show cause why he should not be suspended from office until the matters and things alleged in the accusation have been judicially determined under the provisions of this chapter.

N. M. S. A. 1978, § 10-4-21

§ 10-4-21. Order of suspension

On the date provided in the order, if the defendant appears and offers proof, the court must hear the testimony presented by the district attorney and the defendant, and if in the judgment of the court there is reasonable ground to believe that the matters and things stated in the accusation will be established upon a trial, he may forthwith enter an order suspending the officer until after final hearing.

N. M. S. A. 1978, § 10-4-22

§ 10-4-22. Effect of suspension order

The order of suspension shall operate to relieve the officer from all the duties of the office until the matter is finally determined, and he must forthwith vacate the office and turn over all moneys, books, papers and property belonging thereto to the party appointed to serve until such suspension is removed.

N. M. S. A. 1978, § 10-4-23

§ 10-4-23. Denial of motion to suspend; dismissal of proceedings

If the court concludes that there is not sufficient ground for suspending the officer, it may enter an order denying the motion to suspend him and hold the matter in statu quo until final hearing, or the court may, in its discretion, dismiss the proceedings.

N. M. S. A. 1978, § 10-4-24

§ 10-4-24. Default of defendant; effect

If the defendant fails to appear and answer the order to show cause why he should not be suspended, the court may proceed in his absence as in this chapter provided.

N. M. S. A. 1978, § 10-4-25

§ 10-4-25. Continuance; preliminary investigation required; suspension pending final adjudication

Nothing in this chapter shall operate to deprive any defendant of the right to a continuance in any case in which such right would attach in any criminal case as provided by law, but before any case shall be continued, upon application of the defendant, beyond the term of court at which the accusation is presented, or if such accusation is presented in vacation beyond the first term of court after presentment thereof the court may, upon application of the district attorney, make a preliminary investigation as provided in this chapter and suspend the officer, pending a final adjudication of the matters alleged in the accusation.

N. M. S. A. 1978, § 10-4-26

§ 10-4-26. Reinstatement of suspended officer

If upon final trial the defendant is found not guilty, he must be reinstated and the party serving during the time of his suspension must immediately vacate the office and return to the defendant all moneys, books, papers and other property in his hands as such officer.

N. M. S. A. 1978, § 10-4-27

§ 10-4-27. Payment of salary after reinstatement; compensation of interim officer

If an officer has been suspended as provided in this chapter and reinstated after final trial, he shall receive pay for the entire time of his suspension, and the court may make an order to pay the officer serving during the time of such suspension, such reasonable compensation as his services warrant, which shall be paid out of a fund to be designated by the court.

N. M. S. A. 1978, § 10-4-28

§ 10-4-28. Officer appointed for suspension period; oath and bond; filling vacancy after final removal

When any officer is suspended as provided in this act [chapter], the judge of said court shall appoint some qualified person to discharge the duties of such officer during the period of his suspension, which person shall take the oath and give the bond required of incumbents of such office, and in case the final judgment be for the removal of such accused officer before the expiration of his term, his successor shall be appointed in the manner provided by law for filling vacancies in such office.

N. M. S. A. 1978, § 10-4-29

§ 10-4-29. Exclusive method of removal

No officer belonging to the class mentioned in Section 10-4-1 NMSA 1978 can be removed from office in any manner except according to the provisions of this chapter.