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CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2023-__

INTRODUCED BY:

Councilor Michael Garcia

Councilor Chris Rivera

A RESOLUTION

PROPOSING A BALLOT QUESTION TO BE SUBMITTED TO THE CITY’S VOTERS DURING THE NOVEMBER 7, 2023, REGULAR LOCAL ELECTION REGARDING AMENDING THE CITY’S CHARTER TO INCLUDE A PROVISION STATING THAT THE GOVERNING BODY, COMMISSIONS, AND BOARDS MUST ADOPT PROCEDURAL RULES STATING THAT THEY MUST ADHERE TO ESTABLISHED PRINCIPLES OF PROCEDURAL DUE PROCESS AND FUNDAMENTAL FAIRNESS WHEN FUNCTIONING IN A QUASI-JUDICIAL ROLE.

WHEREAS, pursuant to Section 10.01, the City of Santa Fe’s Charter (“Charter”) requires the Governing Body to appoint a Charter Review Commission (“Commission”) at least every ten years; and

WHEREAS, the Governing Body adopted Resolution 2022-40 on July 27, 2022, identifying nine topics the Commission should consider; and

WHEREAS, one of the nine topics the Governing Body asked the Commission to consider was “ideas suggested by the commissioners and members of the community”; and

1 **WHEREAS**, the Governing Body appointed members to the Commission in October,
2 2022; and

3 **WHEREAS**, the Commission met from November of 2022 through May of 2023, to
4 deliberate about and consider the details of more than fifteen proposals to amend the Charter; and

5 **WHEREAS**, the Commission received public comment in person, by videoconferencing,
6 in writing, and through the Commission’s webpage; and

7 **WHEREAS**, the Commission produced a final report detailing its recommendations and
8 presented the report to the Governing Body on May 10, 2023 (“Final Report”); and

9 **WHEREAS**, according to the Charter Commission’s Final Report, “the Commission
10 recommends six substantive amendments be placed on the ballot for the November 2023 election”;
11 and

12 **WHEREAS**, a member of the public proposed that all quasi-judicial proceedings
13 conducted by the Governing Body, commissions, and boards adhere to the concepts of due process
14 of law and fundamental fairness, as applied to both applicants and members of the community; and

15 **WHEREAS**, as a result of this proposal by the public, the Commission recommended
16 including a provision in the Charter that the Governing Body, commissions, and boards adhere to
17 due process when functioning in a quasi-judicial form; and

18 **WHEREAS**, specifically, the Final Report includes the recommendation that a new section
19 be added to the Charter as follows (“the Proposal”):

20 Recognizing the importance to the Santa Fe community of procedural due
21 process of law and fairness in proceedings addressing land use and other matters
22 that require City decision-makers to act in a quasi-judicial manner, the City shall
23 adopt procedural rules that ensure that all quasi-judicial proceedings conducted by
24 the Governing Body and City commissions and boards adhere to established
25 principles of procedural due process of law and fundamental fairness and apply

1 these principles in an impartial manner to applicants and members of the
2 community who participate in those proceedings; and

3
4 **WHEREAS**, the Proposal uses terms such as “procedural due process of law”, “fairness”,
5 “established principles of procedural due process of law and fundamental fairness”, “impartial
6 matter”, which are not defined in the Final Report and may have many different interpretations and
7 impacts, depending on their use; and

8 **WHEREAS**, it is not clear what the Charter Commission intended by its proposal that the
9 City “apply these principals in an impartial manner to applicants and members of the community
10 who participate in those proceedings”, because “the established principles of procedural due
11 process” depend on the process that is due to different persons, based on the impact of a particular
12 proposal on their rights to life, liberty, and property; and

13 **WHEREAS**, the City employs procedural rules and practices in quasi-judicial proceedings
14 that were recently challenged and upheld by the First Judicial District Court; and

15 **WHEREAS**, the First Judicial District Court also recently found that there was no question
16 that members of the public are interested persons in a quasi-judicial land use matter, but that “being
17 a party provides more process than an interested person” and that community members failed to
18 show they had the right to have the same rights as parties to a matter; and

19 **WHEREAS**, in *Albuquerque Commons Partnership v. City Council of City of*
20 *Albuquerque*, the New Mexico Supreme Court recognized that “the enhanced procedures” that are
21 required to accompany quasi-judicial proceedings are “the primary protection for the landowner”;
22 and

23 **WHEREAS**, the Charter Commission did not identify in which section of the Charter the
24 recommended language should appear, but Article IX is titled “Miscellaneous Governmental
25 Issues” and could include language about due process; and

1 **WHEREAS**, the Governing Body wishes to submit the above recommended amendment
2 to the City’s voters for approval, to the extent that it is consistent with law; and

3 **WHEREAS**, the portion of the recommended amendment that states that the City should
4 apply due process and fairness “in an impartial manner to applicants and members of the
5 community who participate in those proceedings” appears inconsistent with law, in that it suggests
6 that members of the public and applicants are due the same procedural rights; and

7 **WHEREAS**, the Charter, Article X, Section 10.02, states that “[t]his Charter may be
8 amended or repealed as provided by law”; and

9 **WHEREAS**, state law, NMSA 1978, Section 3-15-16, states that a home rule municipality
10 may amend its Charter “by a proposal submitted by the governing body of the municipality to the
11 qualified electors”; and

12 **WHEREAS**, a resolution is the formal expression of the will of the Governing Body, and
13 is used by the City to describe a proposed ballot question and submit it to the electors; and

14 **WHEREAS**, NMSA 1978, Section 1-16-3, requires the City to “file a resolution proposing
15 the ballot question” with the county clerk, not less than seventy (70) days before the election at
16 which the ballot question is proposed to be submitted to the voters.

17 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**
18 **CITY OF SANTA FE** that the Governing Body identifies Article IX as the appropriate location
19 for the language recommended by the Charter Commission regarding due process, without the
20 phrase “in an impartial manner to applicants and members of the community who participate in
21 those proceedings”; and

22 **BE IT FURTHER RESOLVED** that the Governing Body hereby proposes the placement
23 of the following question on the ballot of the regular local election on November 7, 2023:

24 **REQUIRED PROCEDURAL RULES FOR QUASI-**
25 **JUDICIAL PROCEEDINGS**

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Should Article IX to the City’s Charter state that the Governing Body is required to adopt procedural rules that require quasi-judicial proceedings conducted by the Governing Body and City commissions and boards to adhere to established principles of procedural due process of law and fundamental fairness?

For Against

BE IT FURTHER RESOLVED that the City Clerk shall present this ballot question to the Santa Fe County Clerk no later than August 29, 2023.

BE IT FURTHER RESOLVED that, if the voters approve the ballot question above, then Article IX of City’s Charter will be amended to include the language recommended by the Charter Commission regarding due process, without the phrase “in an impartial manner to applicants and members of the community who participate in those proceedings”.

PASSED, APPROVED, and ADOPTED this _____ day of _____, 2023.

ALAN WEBBER, MAYOR

ATTEST:

KRISTINE MIHELIC, CITY CLERK

1 APPROVED AS TO FORM:

2 Erin McSherry

3 Erin McSherry (Jul 26, 2023 17:17 MDT)

4 ERIN K. McSHERRY, CITY ATTORNEY

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25 *Legislation/2023/Resolutions/Due Process When Functioning in Quasi-Judicial Form*