



# CITY OF SANTA FE CITY ATTORNEY

## MEMORANDUM

To: City of Santa Fe Public  
From: Erin K. McSherry, City Attorney   
Re: Legality and Form of 2025 Proposed Charter Amendments

### **I. MEMO PURPOSE AND SCOPE**

The City of Santa Fe's ("City's") Charter requires the City Attorney to review the legality and form of any proposed charter amendment and render and publish a public opinion before the amendment is submitted to the voters. *See* Santa Fe City Charter, Section 10.02. The City's Governing Body voted on July 30 and August 13, 2025, to submit two charter amendments to the voters to consider as ballot questions during the regular election on November 4, 2025. This memo analyses the legality and form of the proposed charter amendments.

### **II. BACKGROUND**

The City is a "home-rule" municipality, governing pursuant its Charter and constitutional constraints, unless the State of New Mexico otherwise further expressly restricts it by state statute. The New Mexico Constitution provides that the purpose of municipalities adopting charters "is to provide for maximum local self-government" and requires that "a liberal construction" be "given to the powers of municipalities." N.M. Const., Art. 10, Section 6 (E). The New Mexico Supreme Court has provided that a home-rule municipality or charter municipality does not need "to look to the legislature for a grant of power to act, but only looks to legislative enactments to see if any express limitations have been placed on their power to act. . . . To adopt any other interpretation in New Mexico would make the home rule amendment [to the New Mexico Constitution] meaningless." *Apodaca v. Wilson*, 1974 -NMSC- 071, ¶ 14. Thus, the legality of a charter amendment depends on the amendment's constitutionality and whether there is a state statute that expressly disallows the amendment.

### **III. ANALYSIS**

#### **A. Proposed Charter Amendment Providing for Six Councilors to Remove the City Manager, City Attorney, and City Clerk.**

The ballot question on this topic follows:

**AUTHORIZING SIX COUNCILORS TO SUSPEND OR REMOVE THE  
CITY MANAGER, CITY ATTORNEY, AND/OR CITY CLERK.**

Should Article VI, Section 6.02 the Santa Fe Municipal Charter be amended to provide that six councilors may suspend or remove the city manager, city attorney, and/or city clerk during a regularly scheduled meeting?

\_\_\_ For  
\_\_\_ Against

Currently, the City's Charter allows the mayor to appoint the city manager, city attorney, and city clerk with governing body consent. It also allows the mayor to remove those appointees without governing body consent. The Charter provides that six councilors may suspend or remove the city manager, but does not describe city councilor removal of either the city attorney or city clerk.

New Mexico's Constitution is silent on the issue of city manager, city attorney, and city clerk removal. State statute expressly provides that, if a home-rule municipality's charter conflicts with Sections 3-11-1 to -7 and 3-12-1 to 4, then the home-rule municipality's charter governs. *See* NMSA 1978, § 3-11.1 ("Applicability"). Those sections also provide default mayoral and governing body duties and powers that apply unless a home rule municipality has adopted procedures in its Charter that conflict. Thus, although Section 3-11-6 provides that a simple majority of a governing body may remove officers or employees appointed by the mayor, the City's proposed charter amendment requiring six governing body members to remove the officers or employees would govern.

### 3. Conclusion

Because the proposed Charter amendment is not expressly limited by the State, the proposed amendment to allow six governing body members to remove the mayor's appointees for city manager, city attorney, and city clerk is legal.

## **B. Proposed Charter Amendment Limiting Mayoral Voting Rights to Ties and Situations in which the Mayor's Vote is Required to Provide the Necessary Votes to Take Action.**

### 1. Ballot Question

The proposed Ballot question regarding this topic is as follows:

#### **MAYOR VOTING RIGHTS**

Should the Santa Fe Municipal Charter be amended to only allow the Mayor to vote on issues before the governing body when the vote will break a tie amongst city councilors or provide the necessary number of votes to take action?

\_\_\_ For  
\_\_\_ Against

### 2. Analysis

New Mexico's Constitution is silent on the issue of mayoral voting rights. State statute expressly provides that, if a home-rule municipality's charter conflicts with Sections 3-11-1 to -7 and 3-12-1 to 4, then the home-rule municipality's charter governs. *See* NMSA 1978, § 3-11.1

("Applicability). Thus, although Section 3-11-3 describes mayoral voting rights, the proposed amendment would supersede statute to the extent it conflicts.

### **3. Conclusion**

Because the proposed Charter amendment is not expressly limited by the State, the proposed Charter amendment to limit the mayor's vote to ties and situations in which the mayor's vote is required to act is legal.

#### **C. Form of the Ballot Questions.**

According to the New Mexico administrative rules governing ballot questions, a ballot question must be stated as a question that seeks permission of the voters to accomplish an act with a legal consequence; contain such information necessary to give a reasonably prudent voter notice of the act proposed; and be answerable with a "Yes" or "No," unless state law requires otherwise. An affirmative answer to the question must indicate approval and a negative answer must indicate rejection. In addition, the rule prohibits the full text of the act, resolution, charter amendment, or ordinance itself from being a part of the form of the ballot question and prohibits that full text to be printed on the ballot. *See* NMAC 1.10.16.8.

The City's ballot questions, if approved, would result in legal consequences. They each contain reasonable notice regarding the proposed change, and they can be answered yes or no to either indicate approval or rejection, respectively. The full text of the ordinances and resolutions that resulted in the questions will not be included in the ballot.

For the above reasons, the form of the City's ballot questions conforms with law.