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MEMORANDUM

TO: Mayor and City Councilmembers

FROM: Carrie Daggett, City Attorney *CD*
Heather Walls, Interim City Clerk *HW*

DATE: June 20, 2024

RE: Overview of Election-Related Charter Amendments Planned for July 2

The Council's Election Code Committee has met several times during 2024 to receive information and consider potential City Charter amendment proposals related to the election and petition processes that are governed by the Charter.

These changes are requested by the staff who manage and conduct these processes to address ambiguities, inconsistencies, and process complexity. The Committee expressed support for these changes, which also include language modernization such as making the language gender inclusive and substituting active and direct terminology. Many of the changes bring the Charter in line with Colorado municipal election law. **The changes do not alter the signature requirements for any of the petition types, nor do they reduce the time for circulation of petitions.**

Ordinances proposing ballot questions to be put to the voters that would enact these amendments are being prepared for Council consideration on July 2. The three ballot questions would:

1. Amend Charter Article VIII, regarding elections generally;
2. Repeal and Reenact Article IX, regarding recall; and
3. Repeal and Reenact Article X, regarding initiative and referendum.

Description of Amendments and Rationale:

1. Reorganization for Clarity:

Article IX and Article X have been reorganized to make the description of the process and requirements flow better so they are easier to follow. The full process for initiatives and the full process for referenda are set out, rather than having a third section that combined some of the process requirements. This will make each of the two different petition processes simpler and easier to follow. The significant shifting of information within these Articles has made repealing and reenacting the appropriate method for revising them, rather than showing the extensive individual wording amendments.

2. Computation of Time:

The process deadlines in all three of these Articles are clarified in the proposed amendments.

- A computation of time section has been added to each Article (when the overall Charter update process is completed, we anticipate that a general time computation provision will be added for the Charter overall). This clarifies how deadlines are affected by holiday, weekend, and emergency closures, which currently is an issue that creates confusion and potential for disagreement.
- Deadlines for actions to be taken by the City are stated in “business days” in increments of five, except where particulars dictate otherwise.
- Deadlines for actions to be taken by the public are stated in “days” (defined to mean calendar days) in increments of seven, except where particulars dictate otherwise.
- Deadlines will be at the end of the regular business day.
- Generally, the deadline will shift forward to the first business day where a deadline falls on a weekend, holiday, or emergency closure day.
- Where a requirement is stated as “no later than” or “at least X days before”, the deadline will shift to the closest earlier business day.
- **Many of the timing provisions are slightly modified to reflect this shift and in an effort to make more consistent how timeframes will run in these processes. It does not reduce the time given to petitioners.**

3. Updates to Petition Form Approval by the City Clerk:

- The proposed revisions change the method for setting the form of initiative and referendum petitions so that the Clerk is responsible for preparing a general statement of purpose, in consultation with the City Attorney, to fairly and accurately summarize the initiated measure or ordinance to be referred.
- Where the referred ordinance exceeds two pages in length, the Clerk will similarly prepare a summary of it, rather than the current requirement that the entire ordinance be presented with each section of the petition.
- **This will reduce the iterative process that often takes place at the beginning of the petition approval process and reduce the amount of paper material required for petition circulation.**

4. Updates to Review Periods for the City Clerk:

- In all Articles, review periods allowed for the City Clerk have been updated because volumes (such as numbers of petition signatures to review) have increased since these current provisions were adopted and are more in line with the statutory review periods.
- **There have been no changes to the signature requirements for any of the petition types in these Articles.**

5. Simplification of the Petition Review Process (“Cure” Provisions):

- The current process for *recall petitions* allows for “cure” meaning the petition may be withdrawn if determined insufficient and an additional 15 days is allowed for amending the petition. Under Colorado municipal election law this is used not to add signatures but to add or clarify information and correct affidavits. This cure mechanism has not been used and adds confusion to the process.
- The current process for *initiative petitions* allows for “cure” by the submission of additional signatures after a determination of insufficiency, but only within the time originally allowed for submission of signatures. Colorado municipal election law does not allow a “cure.” This cure mechanism has not been used as a general rule and adds confusion to the process.
- The current process for *referendum petitions* allows for “cure” by the submission of additional signatures after a determination of insufficiency, but only within the time originally allowed for submission of signatures. Colorado municipal election law does not allow a “cure.” This cure mechanism has not been used as a general rule and adds confusion to the process.
- **Because these “cure” periods create confusion, are not well utilized or understood and generally are inconsistent with Colorado municipal election law, staff has proposed that they be removed.**

6. Updates to Petition Review Protest Process:

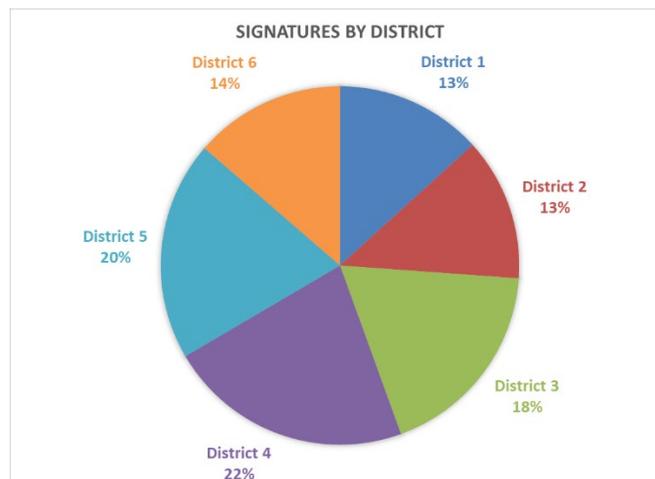
- The process for protesting a Clerk determination of sufficiency for petitions has been updated and made consistent for each of the three (recall, initiative and referendum) major petition processes.
- Time frames have been tightened except a slightly longer time frame for arranging, setting and providing notice of the protest hearing is included. This will allow more time for preparation in advance of the hearing by all involved.

7. Updates to the time for an election under each Article:

- **A significant challenge that has developed over time is the increased lead time required to place an item on a ballot and the increased overall time for the conduct of an election. Many current Charter timeframes are unworkable in some scenarios under current election requirements and limitations.**
- For a successful recall petition, the proposed language states that upon the City Clerk’s presentation of a petition certified as sufficient for recall:
 - Council must set the date for the election to be held on a Tuesday at the earliest possible election date and that the City Clerk will advise Council on the date that will allow sufficient time to meet all applicable requirements to hold such an election.
 - If the earliest possible election date determined by the City Clerk is less than 77 days prior to an upcoming November election (regular municipal or general election), the recall election must be consolidated with such election.
 - If the election will be consolidated with the November election and the office subject to recall is already on the upcoming November ballot, the recall process terminates.

- If the officer subject to the recall petition resigns before ballots are mailed to the voters, the recall process would end, and the vacancy must be filled by appointment.
- For a successful initiative petition, the proposed language changes FROM the current requirement that if a special election is requested it must be called by Council within 120 days TO a requirement that Council submit the measure at the next November election the City is able to coordinate with the County on, whether that is a special election or a regular City election.
- For a successful referendum petition, the proposed language clarifies that the Council must refer the item to the earliest regular or already-called special election date for which all election process requirements can be met. Council may opt to call an earlier special election for the matter so long as all election process requirements can be met.

The Election Code Committee also explored the idea of requiring petition signatures to be distributed to some extent throughout the City so as to show more than only localized interest in a matter before it is placed on a City-wide ballot. Anecdotally, Elections staff indicated that support for measures tends to be fairly well distributed without a requirement. The Committee chose not to pursue that additional requirement. After that discussion, staff has reviewed data from the most recent petition process (the 2023 Land Use Code referendum petition) and confirmed that the signatures were well-distributed:



We are happy to sit down and walk through these changes in more detail with individual Councilmembers who would find that helpful. In addition, if any Councilmember would find a work session discussion of these changes helpful in advance of consideration of the related ballot questions, currently planned for July 2, please contact Council leadership to request a work session on these in advance of publication of the agenda for July 2 on June 27.

cc: Kelly DiMartino, City Manager
Rupa Venkatesh, Assistant City Manager
Sara Arfmann, Assistant City Attorney