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CITY OF SANTA FE
CHARTER REVIEW COMMISSION
FINAL REPORT AND RECOMMENDATIONS
TO THE GOVERNING BODY

INTRODUCTION

The Charter Review Commission was created by Resolution 2012-45, adopted by the Governing Body on April 25, 2012, pursuant to Section 10.01 of the Municipal Charter, which requires appointment of a commission to review the charter at least every ten years. The members of the Commission were appointed by the Governing Body and began deliberations in December 2012. Since that time, the Commission has held 16 meetings of two to four hours duration each. It has received many suggestions and comments from members of the public, as well as detailed communications from several organizations, members of the Governing Body and City staff.

In the course of its deliberations, the Commission has considered more than 30 proposals to amend the Charter. Of these, the Commission has decided to recommend seven substantive amendments to be placed on the ballot for the election to be held in March 2014. In this report, the Commission presents a description and where appropriate justification for the recommended amendments, followed by a brief description of the remaining proposals for additional amendments that were considered, but not recommended.

Early on in the Commission process, an outreach subcommittee was formed to develop and implement a strategy to maximize the availability of the Commission's deliberations to the public. The results included a webpage on the City's website, Facebook page and Twitter account. To further promote

participation, the Commission held meetings in each of the four City Council Districts utilizing the Southside Library, Santa Fe School Board Chambers, Downtown Library and Genoveva Chavez Community Center. Members of the Commission also provided public outreach by conducting interviews on radio stations KSWV, KTRC and KVSF. Newspaper articles in the Santa Fe New Mexican and Albuquerque Journal North provided additional public coverage of the Commission proceedings.

CHARTER AMENDMENTS RECOMMENDED TO THE GOVERNING BODY

POLICY ISSUES

Water Protection and Conservation. Adopted 4-3, Justice Serna voting to approve after tie vote.

Amend Section 2.03 as follows:

The natural beauty of Santa Fe, its historical heritage, and its unique architectural style are among the city's most valued and important assets. In order to enhance the beauty and quality of both the natural and built environment within and around the city, the governing body shall protect, preserve and enhances the city's natural endowments, plan for and regulate land use and development, manage the city's growth, encourage source reduction, re-use and recycling of materials, and promote and maintain an aesthetic and humane urban environment. To effect these ends, the governing body may take whatever action is necessary and may enact ordinances and may establish appropriate commissions with jurisdiction, authority, and staff sufficient to effectively administer this policy. Because water quality and availability are extremely important to the citizens of Santa Fe, the governing body shall protect, preserve, and enhance the city's water resources through regulation, conservation and tying development to water availability.

Neighborhood Preservation. Adopted 7-0.

Amend Section 2.04 as follows:

Cultural and Neighborhood Preservation.

The people of Santa Fe derive invaluable benefits from our multi-cultural heritage. The multi-ethnic and multi-racial residents who have made their homes here over the centuries have each left their unique mark on our city, producing a rich blend of stories, ~~and~~ traditions and neighborhoods. The result is a community that treasures a variety of artistic, literary and musical forms, that symbolizes an architectural style, and that celebrates the diversity of those who have chosen to live here. We therefore declare that the multi-cultural heritage and neighborhoods of Santa Fe ~~is~~ are essential to the people of this community and that public officials shall at all times exercise their powers with sensitivity to and respect for that cultural and neighborhood heritage.

ELECTION ISSUES

Independent Redistricting Commission. Adopted 6-1.

Amend Section 6.03 as follows:

“The City shall be divided into four dual-member districts numbered one through four. District boundaries shall be reviewed and revised at least every ten years following the decennial census by an independent citizens’ redistricting commission. The governing body shall, by ordinance, ~~{set the boundaries of each district and}~~ establish a procedure for the appointment and deliberations of the commission which will, to the maximum practicable extent, ensure that the commission’s decisions will be based exclusively on ~~{the periodic review of district boundaries. In establishing the district boundaries, the governing body shall consider}~~ the following principles in the following order of priority: A. each district

shall contain as nearly as possible substantially the same population based upon the most recent federal census; B. districting plans must avoid dilution of minority voting strength; C. communities of interest, including those based upon ethnic and economic factors, shall be preserved within a single district whenever reasonable; D. each district shall be formed of compact, contiguous territories. The total length of all district boundary lines shall be as short as possible; E. districting plans shall compensate for U.S. census undercount of minorities.”

NOTE: The Commission recommends that an independent citizen’s redistricting commission undertake redistricting as opposed to the current process of having the governing body perform the redistricting. Additionally, the recommendation allows redistricting to occur more frequently than every ten years and provides that redistricting be accomplished only pursuant to the relevant legal standards.

Campaign Contribution Limits. Adopted 8-0.

Create a new Section 4.07 as follows:

“The governing body shall have an ordinance that limits the amount of campaign contributions that can be accepted by all candidates.”

Note: While there is an ordinance in place, a charter amendment would ensure permanency.

Ban on Contributions From Business Entities and City Contractors. Adopted 8-0.

Create a new Sections 4.07B as follows:

“The governing body shall adopt an ordinance or ordinances to provide meaningful bans and/or limitations on campaign contributions from contractors and entities doing business with the City of Santa Fe to all municipal elected officials and this shall be done within one year after the effective date of the amendment to the Charter that includes this requirement.”

NOTE: There is a widespread recognition that money plays a very negative role in electoral politics. There are instances regionally and statewide of pay to play contributions from contractors and business entities doing business with governmental entities. This provision is intended to require that the City of Santa Fe enact permissible limits and/or bans on contractors and business entities doing business with the City of Santa Fe. The City Council would be required to have such an ordinance in place within one year of the effective date of the amendment. There is nothing that would stop the Governing Body from enacting such an ordinance before the upcoming municipal election.

Requirement to have timely disclosure of the purposes of tax increases and bond measures. Adopted 8-0.

Create a new Section 4.08 as follows:

“The governing body shall adopt an ordinance that ensures that the City shall provide and disseminate in a timely manner the purposes of proposed expenditures for any tax increase or bond measure that requires ratification by the voters.”

Note: Currently the City is not required to timely disclose the purposes of tax increases and bond measures. There is not a standardized format for how information about bond expenditures is presented to voters aside from the language contained in the ballot.

Create an Audit Committee. Adopted 8-0.

Create a new Section 9.04 as follows:

“The governing body shall, by ordinance, adopt an independent audit committee for the City.”

Note: The City has recently established an Audit Committee, but a Charter amendment would solidify its existence.

ADDITIONAL COMMENTS TO THE GOVERNING BODY

The Commission is concerned that ranked choice voting has not been implemented although voters adopted it in 2008. The editorial note to the Charter states that this manner of voting "... will go into effect with the regular municipal election in March 2010 or as soon thereafter when equipment and software are available..." There appears to have been some progress in the acquisition of the appropriate voting machines that would make ranked choice voting possible, but there was insufficient information available to this Commission to make a specific recommendation. Attention should be given to the implementation of ranked choice voting as provided in Charter Section 4.06

GOVERNANCE ISSUES

Change the Duties and Powers of the Mayor. Adopted 4-3.

Amend Articles 5, 6 and 8 as follows:

"ARTICLE V. THE MAYOR

5.01 Powers and Duties.

The city shall have a mayor who shall:

- A. Be elected at large by the voters of the city;
- B. have a vote on all matters that come before the governing body;
- C. be the chief executive officer of the city, which position shall be no less than full time (forty (40) hours per week), and shall not be otherwise employed or self-employed;
- D. appoint with the consent of the governing body the city manager, city attorney, city clerk and members of advisory commissions;
- E. appoint department directors;

- F. have sole authority to remove the city manager, city attorney, city clerk and department directors;
- G. cause the ordinances and regulations of the city to be faithfully and constantly obeyed;
- H. have, within the city limits, the power conferred on the sheriffs of counties to suppress disorders and keep the peace;
- I. propose programs and policies to the governing body;
- J. work with City personnel and timely prepare an annual budget and proposed spending priorities for review and approval by the finance committee and the City Council;
- K. represent the city in intergovernmental relationships; ~~perform other duties compatible with the nature of the office as the governing body may from time to time require;~~
- L. present an annual state of the city message, which shall identify among other matters the mayor's legislative agenda for the upcoming year;
- M. be recognized as head of the city government for all ceremonial purposes and; ~~perform other duties compatible with the nature of the office as the governing body may from time to time require;~~
- N. be recognized by the governor for purposes of military law;

ARTICLE VI. THE GOVERNING BODY

6.01 Composition

The members of the governing body, exclusive of the mayor shall be known and designated as councilors. The mayor and the councilors together are the governing body of city.

6.02 Powers and duties.

A. The governing body shall consider the legislative agenda put forth by the mayor and propose amendments to existing policies and propose new policies. ~~serve as the principal policy maker of the city;~~

B. All legislative powers of the city shall be vested in the governing body, except as otherwise required by law or this charter. The governing

body shall provide for the exercise of its powers and for the performance of all duties and obligations imposed on the city by law.

C. The governing body shall by ordinance fix the annual salaries of the mayor, the municipal judge and councilors and shall review those salaries not less than every four years.

D. The governing body shall by ordinance set a policy for reimbursement of the actual and necessary expense incurred by the mayor, the municipal judge and city councilors.

ARTICLE VIII. CITY MANAGER

8.01 Appointment.

The city manager shall be appointed by the mayor with the ~~With the~~ ~~advice and~~ consent of the governing body.

8.02 Qualifications.

The city manager should be professionally trained and have the necessary administrative and managerial skills to manage the municipality.

8.03 Powers and duties.

The city manager shall:

- A. be the chief administrative officer of the city;
- B. have the power to hire and fire all city employees except for those employees whom the mayor has the exclusive authority to appoint and remove; and
- C. have such other powers as are provided for in city ordinances and state law.

8.04 Removal.

The city manager may be removed by the mayor ~~subject to the approval of the council or by the governing body by a majority vote of all members at a regularly scheduled meeting.~~

Effective Date: These amendments shall take effect when the mayor and councilors who are to be elected at the March 6, 2018 election take office.

Note: The Commission's recommendations are intended to move Santa Fe's weak mayor into a position of strength. These recommendations include designating the mayor as a full-time position, allowing the mayor to vote on all matters, not just in case of a tie or on matters that require more than a majority vote; allowing the mayor to continue to appoint the City Manager, City Attorney and City Clerk with the approval of the Council, however, only the mayor may remove these appointees; and finally the mayor will also appoint department directors. These recommendations are made to reform and improve the governance and administration of the City of Santa Fe. These changes have been adopted by a majority of well-run cities in the United States. The recommendation will allow the City Council to focus its attention on legislative and policy matters and will eliminate the involvement of Council members in details of City administration. This recommendation will eliminate the inherent conflicts in the current system where council districts sometimes find their interests in conflict with the best interests of the City as a whole. The City Council will retain its ultimate legislative power and work out fair compromises of their differences that are in the best interests of all citizens of Santa Fe. As has always been the case in Santa Fe, checks and balances of political power in city government remain in the hands of the voters.

MATTERS CONSIDERED BUT NOT RECOMMENDED BY THE COMMISSION:

- 1. PERSONAL USE AND POSSESSION OF MARIJUANA BY AN ADULT SHOULD BE THE LOWEST LAW ENFORCEMENT PRIORITY**
- 2. PROPOSAL FOR GUN VIOLENCE PREVENTION ORDINANCES**
- 3. PROPOSAL REGARDING IMMIGRATION POLICIES AND ENFORCEMENT**
- 4. PROPOSAL REGARDING PREVENTION AND PROTECTION FROM ADVERSE IMPACT OF ELECTROMAGNETIC RADIATION FROM CELL TOWERS.**
- 5. PROPOSAL REGARDING CHILDREN'S ISSUES AND CONCERNS**
- 6. PARTIAL REDISTRICTING AND PARTIAL DISTRICTING**
- 7. CHANGES TO THE THRESHOLD NUMBER OF SIGNATURES REQUIRED FOR REFERENDUM, INITIATIVE AND RECALL**
- 8. ALL MAIL BALLOTS FOR ELECTIONS**
- 9. COUNCILOR RESIGNATION TO RUN FOR MAYOR**
- 10. TERM LIMITS FOR ELECTED OFFICIALS**
- 11. MUNICIPAL ELECTIONS TO BE HELD IN THE FALL**
- 12. RANKED CHOICE VOTING**
- 13. SALARIES FOR ELECTED OFFICIALS TO BE SET BY AN INDEPENDENT COMMISSION**

July 17, 2013

Minority Report to the Governing Body

From: Steven G. Farber, Commissioner,
Santa Fe Home Rule Charter Review Commission

1. Executive Summary of Minority Report:

There are many fine proposals being submitted for consideration by the Governing Body, such as an independent redistricting committee; the requirements for a campaign finance campaign ordinance and an ordinance banning or limiting campaign contributions from contractors or business entities doing business with the city; the requirement of an audit committee ordinance; a tax and bond timetable disclosure; the addition of a water protection and conservation statement in section 2.03 of the Charter and an amendment to Section 2.04, specifically including neighborhoods. These proposed amendments should be approved and submitted to the electorate.

I submit a Minority report to express my strong opposition to the proposal being presented by the majority of the Charter Review Commission members and that is commonly referred to as the "strong Mayor proposal". As I state in **Part 3**, at page 3, this deeply flawed proposal radically restructures City of Santa Fe Government. It is no exaggeration to state that the potential for an autocrat, an autocratic form of government, and political patronage are made possible through the proposed consolidation of such enormous power in the office of the Mayor.

This "strong Mayor proposal" requires amendments to five (5) separate sections of the Santa Fe Home Rule Charter listed in this Report and specifically to nine (9) subsections of Section 5.01. This "strong Mayor proposal" is complex and controversial. There is substantial ambiguity regarding the coordination of the roles and functions of the Mayor and City Manager under this full time and "strong Mayor proposal".

The majority's proposed amendments to implement these dramatic changes to increase the Mayor's powers will eliminate the system of checks and balances that currently exists in the city's governing structure. These amendments will decrease the role and importance of the City Council in city government structure.

In my opinion, these amendments will allow the substantial possibility of pay to play and political patronage and favoritism to flourish in city government because of the enormous hiring and firing power being given to the Mayor.

Without any runoff provisions or any minimum percentage of the vote required to win an election stated in the Home Rule Charter a weak candidate in a crowded field with only a small plurality of the vote could be granted a generous salary and benefits and enormous powers to govern this city. The "strong Mayor proposal" should be stricken because it has not been fully researched, analyzed and debated. The City Council should not be made bystanders and powerless as a Governing Body in the face of potential misconduct or overreaching by a Mayor and City Manager and other Executive employees appointed by the Mayor.

Part 4, at page 13, presents a summary of a number of important Policy Statements that were presented to the Charter Review Commission but not recommended for action by the Charter Review Commission either because of a negative vote, as was the case for the United Way proposal regarding children, or by Motions not receiving a second so that the matters could be further debated and considered.

Part 5, at page 17, expresses my concerns about the lack of resources provided the Charter Review Commission to enable it to do its work in a fully informed manner. **Part 6**, at page 18, states my concern about the role of the Office of the City Attorney serving as the liaison and support for the Charter Review Commission in the face of an appearance of a conflict of interest.

2. Introduction:

First, I want to thank the Chair of the Santa Fe Home Rule Charter Review Commission, retired Justice Patricio Serna, for the professional and courteous manner in which he has chaired the Charter Review Commission and its meetings. It is an honor to be able to serve on such a Commission with such a distinguished jurist. There are many fine proposals being submitted for consideration by the Governing Body, such as an independent redistricting committee; the requirements for a campaign finance campaign ordinance and an ordinance banning or limiting campaign contributions from contractors or business entities doing business with the city; the requirement of an audit committee ordinance; a tax and bond timetable

disclosure; the addition of a water protection and conservation statement in section 2.03 of the Charter and an amendment to Section 2.04, specifically including neighborhoods. These proposed amendments should be approved and submitted to the electorate.

Though it will take considerable time, I recommend to the Governing Body and the public to take the time to read and consider the minutes from the Charter Review Commission meetings, particularly those meetings where issues of Elections, Governance and Policy Statements were discussed and then later the meetings of June 13, 2013, June 19, 2013 and June 27, 2013 where there were important votes.

3. Objection to the “Strong Mayor Proposal”

I submit this report primarily to express my strong opposition to the proposal being presented by the majority of the Charter Review Commission members and that is commonly referred to as the “strong Mayor proposal”. In my opinion, this deeply flawed proposal radically restructures City of Santa Fe Government. It is no exaggeration to state that the potential for an autocrat, an autocratic form of government, and political patronage are made possible through the proposed consolidation of such enormous power in the office of the Mayor.

This “strong Mayor proposal” requires amendments to five (5) separate sections of the Santa Fe Home Rule Charter and specifically to nine (9) subsections of Section 5.01. The proponents of this proposal, and the majority of the Commission, lumped all of these changes into one proposal rather than have individual changes to the provisions be recommended for the ballot. As such, this conglomerate proposal for the “strong Mayor proposal” will create a confusing ballot. A

As I understand it from communications from an Assistant City Attorney each provision of the Charter that is being proposed for Amendment will need to be voted on separately by section. As per the April 10, 2013 email messages of Assistant City Attorney Barkley regarding the form of the ballot:

Last night after the meeting, Commissioner Romero-Wirth asked me about how the commission's proposed charter amendments that are approved by the governing body will be voted on by the electorate.

What has happened in the past has been that all amendments to a given charter section are treated as one ballot question, with a "yes" vote adopting all amendments to that section and a "no" vote leaving the section as is.

....

The voters will be asked whether to accept all proposed revisions *to a given charter section* together.

According to the Assistant City Attorney, the voters would be given the choice of accepting or rejecting in Toto the changes to the amendments to the nine (9) subsections of Charter provision 5.01, and there would also be separate ballot questions for each of Sections 6.01, 8.01, and 8.03, and 8.04. Thus, there will be five separate ballot questions regarding the "strong Mayor proposal". And, it is not at all clear that these ballot questions would be clustered together.

It is all the more ironic that the majority should have favored this approach and created a complicated ballot issue when consistently during the Commission process members of the Charter Review Commission stated to the public and other members of the Charter Review Commission concerned with various policy statements and amendments to specific charter provisions that proposed amendments to the Home Rule Charter should be short and not be complicated. See, e.g., 7/1/13, minutes, pp. 3-4, 5-6, 9-10, 11-13, 17. There was never a vote by the Charter Review Commission that proposals for amendments should be short or truncated but that impression was certainly understood by those citizens and Commissioners attending the Commission meetings wanting to offer policy statements or proposed amendments.

As I frequently stated throughout this Commission process with regard to the issue of proposed policy statements and amendments to Charter provisions, some issues are more complicated than others are and required a detailed statement for a Charter Amendment. As the Commission minutes reveal, proposals offered of more than several sentences were often challenged, criticized and picked at by

various Commissioners. But, this was not the case by the same proponents of the “strong Mayor proposal”. It appears to me that in this context there was a double standard applied because this “strong Mayor proposal” is complex, convoluted, and controversial.

In summary, the majority of the Charter Review Commission proposes that there be amendments to change the Santa Fe Home Rule Charter: 1) to have the Mayor be a full time position and who shall not be otherwise employed; 2) to have the Mayor have power to hire the City Manager, City Attorney, and City Clerk and appoint advisory committee members subject to the consent of the City Council; 3) to have the Mayor have the sole power to fire the City Manager, City Attorney, and City Clerk; 4) to have the Mayor have the sole power to hire and fire all the various Department Directors of the City of Santa Fe. ¹

There was also a recommendation that I agree with to have the Mayor vote on all matters that come before the Governing Body.

Further, the role of the Governing Body being the chief policy maker for the City of Santa Fe as stated in Section 6.02 of the Home Rule Charter is eliminated. The Governing Body’s role that currently exists to provide for extra or special duties to be fulfilled by the Mayor as currently allowed per Section 5.01 J is eliminated. The independent right of the Governing Body allowed under both State law and the current charter provisions to terminate the City Manager is eliminated by amending Section 8.04. The roles of a full time Mayor as the Chief Executive Officer and a City Manager as the Chief Administrative Officer are now completely ambiguous and confusing. There is no specification regarding the manner of the coordination of the position of a full time Mayor in the structure of city government and the role of the City Manager in the structure of city government as per the Santa Fe Charter and relevant state statutes.

In my view, the majority’s complicated amendments to the Santa Fe Home Rule Charter to implement these dramatic changes to increase the Mayor’s powers will eliminate the system of checks and balances that currently exists in the city’s governing structure. These amendments will decrease the role and importance of the City Council in city government structure. In my opinion, these amendments

¹ It was reported that there were approximately ten Department Directors.

will allow the substantial possibility of pay to play and political patronage and favoritism to flourish in city government because of the enormous hiring and firing power being given to the Mayor. Rather than be concerned, as a justification for these amendments Commissioner Werwath stated that the changes supported in the proposal regarding giving the sole hiring power to the Mayor for Department heads was happening now anyway given the influence of Mayors and the practices that he has observed at City Hall. See, e.g., 6/27/13, Minutes, pp. 26-27.

My opposition to these changes is structural and not a liberal or conservative issue. In my judgment, these proposed amendments potentially affect the integrity and non-partisan nature of municipal elections in Santa Fe. Indeed, it is my opinion that these changes will only increase partisan politics in our municipal elections (and not just of the traditional Democratic or Republican divide or the many intra-Democratic party politics and power plays). In this age of the Citizens United decision, these proposed amendments will also promote and increase the infusion of large sums of money into the political and electoral process and they will increase special interest monetary pressure and political patronage into city government.

The majority glosses over its recommended removal of the checks and balances against the potential of an arbitrary and/or inappropriate use of power. The corrective power of the voters and the Governing Body is diluted. Mayoral elections only happen every four years. The power of recall in the Charter is not able to be used in the first or last year of a Mayor's term of office as per Section 3.03 C. And, under the majority's recommendation, there would be absolutely no power of removal of a City Manager except by the act of a Mayor. The power of recall would only apply to the Mayor, and not a City Manager, and the Mayor is insulated from a recall in the first and last years of the term of office. If a Mayor and City Manager were improperly colluding and/or engaging in mismanagement or impropriety there would be no effective means of removal of a City Manager. The sole power for the removal of an underperforming or derelict Department Director would be limited to the Mayor since the City Manager's role in the hiring and firing decision regarding Department Directors is eliminated. And, there would be no proper checks and balances oversight by the Governing Body regarding the City Manager and the proper functioning of municipal government.

There was no substantial evidence or data presented to the Charter Review Commission that supports these radical revisions and changes. There was no management study presented to the Charter Review Commission that supports these changes. There was no comparison of other governmental systems by the Charter Review Commission based on input received from other municipalities around the state. The Charter Review Commission did not take the time as a group to compile and study other municipal governmental operations in New Mexico relating to this change in the structure of the city's government. The Commission was provided copies of various Charters from other municipalities but it did not seek any organized follow up input from those municipalities about what actually works and does not work in municipal government structure.

The Charter Review Commission had no independent staff and no budget to seek out the assistance of professionals or consultants for analysis. See, e.g., 6/19/13, Minutes, p. 28. The Charter Review Commission did not reach out to the Municipal League for input, advice, or assistance in analyzing these proposed changes. The Charter Review Commission only had the input from Mayor Coss at the April 23, 2013 meeting, pp. 17-25, and then Councilors Ives and Wurzbarger advocated at the June 19, 2013 meeting for this "strong Mayor proposal" insisting that these changes were necessary. After the proposed amendments were presented, these amendments were pushed without the proponents providing substantive backup or independent research demonstrating the necessity of making these radical revisions to the current Charter provisions.

Prior to making its recommendation or voting on the "strong Mayor proposal" the Charter Review Commission did not find it necessary to invite to its meetings former Mayors, former City Councilors, and former City Managers, among other interested and informed residents, to hear their views on the subject nor did it request and receive written input from them regarding their insights and opinions about the proposed changes.

The specific wording of the "strong mayor proposal" was submitted so late in the Charter Review Commission process that various civic and neighborhood groups, such as the League of Women Voters, were not even notified of these proposed changes until the day the proposal was submitted at the start of June 19, 2013 meeting thus limiting their opportunity for review of the proposal and

interfering with their ability to provide informed comment and detailed input. See e.g., 6/19/2013, Minutes, p. 2.

The process that was followed in pushing this strong Mayor proposal forward in my opinion undermined all the hard work that the Charter Review Commission, under the leadership of Justice Serna, had previously done to have an open and transparent process. The presentation of the “strong Mayor proposal” red lined version to the community at large at the June 19, 2013 Charter Review Commission meeting by Vice Chair Long and Councilor Ives and Councilor Wurzbarger did not afford this community ample opportunity for review and input regarding this fundamental change. To state that there was complete surprise about the scope of this proposal by a number of citizens in attendance at that meeting would be an understatement. See e.g., 6/19/2013, Minutes, pp. 2, 15-16.

Though the topics of a strong mayor and taking away the powers of the Governing Body to terminate a City Manager and other related topics had been listed on Charter Review Commission agendas it is important to note that no specific language regarding any of these proposals had been previously submitted for review and consideration. The Charter Review Commission had set a deadline for the submission of topic and initial proposal language to the Charter Review Commission by the May 22, 2013 meeting. This practice was not followed regarding the “strong Mayor proposal”.

At the June 19, 2013 meeting Councilor Ives, the proponent making a presentation in favor of these amendments had absolutely no information regarding the scope and manner of any fiscal impact of having a full time Mayor and a full time City Manager. After being pressed for some information on the fiscal impact Councilor Ives and being advised about Mayor Coss’ prior statements, Councilor Ives took the position that Mayor Coss’ comments regarding a \$100,000 range for a salary should be considered presumptively correct. See, e.g., 6/19/13, Minutes, p. 5. Commissioner Werwath opined that his research based upon Albuquerque was that the monetary cost would be less than \$150,000. See, 6/19/13, Minutes, p. 6. The Assistant City Attorney Martinez opined that the costs would likely be the same as the costs for a City Manager. See, 6/19/13, Minutes, p. 20.

Neither Councilor Ives nor Councilor Wurzbarger nor Vice Chair Long, or any other proponents of this proposal, provided specific information regarding the coordination of the roles and functions of the Mayor and City Manager under this full time and “strong Mayor proposal”. See, e.g., 6/19/13, Minutes, pp. 4-23.

At the June 19, 2013 meeting, the Chair and other members of the Charter Review Commission apparently recognized the importance of this issue to the community and the concerns being expressed by the public, as well as the fact that Councilor Ives’ and Councilor Wurzbarger’s and Vice Chair Long’s proposal had not been submitted to the public previously for input and consideration, and agreed with other Charter Review Commission members to postpone further consideration of the proposal to the June 27, 2013 meeting.

During the Charter Review meeting process there were public and media appearances by the Chair and other Charter Committee members. There were notices and minutes on the City’s website. However, the posting of minutes was necessarily delayed after each meeting due to the labor-intensive nature of preparing the minutes and the workload of the stenographer. For instance, the minutes from the very important meetings of June 19, 2013 (when the wording for the “strong Mayor proposal” was first introduced and discussed) and June 27, 2013 (when there was continuing debate and a vote on the amendments for the ‘strong Mayor proposal’) were not even received by the Charter Review Commission members until respectively June 25, 2013 and July 15, 2013. The minutes from the July 1, 2013 meeting were only received the afternoon of July 16, 2013, the day before the last scheduled meeting of the Charter Review Commission.

There was an attempt to use social media. Near the beginning of the process Commissioner Werwath was appointed the Chair of the outreach committee. But, the results of feedback from social media were rarely reported to the Commission by the Chair of the outreach committee. The outreach committee Chair did not follow through with the process as had been explained at the outset to provide full and complete information to the community regarding proposed changes to the Charter. Apparently, the Charter Review Commission Facebook page was never updated after April 23, 2013 and thus failed to provide the public with notice of

proposed amendments to the Charter.² This omission is particularly important regarding the controversial “strong Mayor proposal” that was essentially presented at the last moments of the Charter Review Commission’s process. The Charter Review Commission was not provided by its outreach committee with community input and feedback through any credible survey results or other credible compilation of public reaction to these amendment proposals as had been stated would be attempted at the outset of this process.

It seemed to me throughout this Charter Review Commission process from the commentary of certain Commissioners that seemed to have the support of the majority of the Charter Review Commission, that it was more important to meet an arbitrary timetable to have the work of the Charter Review Commission done and completed and a report submitted to the Governing Body. This was declared to be necessary by a deadline set for the end of July 2013 so that amendments could be forwarded to the Governing Body for review so that they would be considered at the March 2014 municipal election.

This focus on a deadline for an election vote on proposed changes rather than a meaningful attempt to gather all relevant information and a meaningful debate on the substance of this “strong Mayor proposal” was detrimental to the work of the Commission. For that reason alone, the Governing Body should reject for consideration at the next municipal election the issue of the “strong Mayor proposal” because it was not fully researched, analyzed and debated. There should be due consideration of these important ideas without any hovering deadline. I understand that there is cost in having a separate Home Rule Charter Amendment election for a “strong Mayor proposal”, but it seems to me that this issue is of such import to the city that additional time should have been, and should be, taken to carefully study the many facets of this particular proposal.

I completely agree that a Mayor is the head of our municipal government and should have an agenda and set a course for this city. The Mayor should be able to communicate this agenda and gather support to implement these policies. We do need to be mindful that without any runoff provisions or any minimum percentage of the vote required to win an election stated in the Home Rule Charter

² It has been reported that a Draft of the Charter Review Commission Report appeared on the Facebook page on July 16, 2013.

that a weak candidate in a crowded field with only a small plurality of the vote could be granted a very generous salary and enormous powers to govern this city.

I strongly agree, honored to have been elected in District 2 to serve as a City Councilor, that City Councilors should not be involved in any micromanagement of the government or city employees. Therefore, from an informed position, I state that the role of the City Council being the main policy maker for the City as exists under the current Home Rule Charter should be maintained. The role of the City Council to maintain checks and balances is crucial and should be retained. The City Council should not be made bystanders and powerless as a Governing Body in the face of potential misconduct or overreaching by a Mayor and City Manager.

This “strong Mayor proposal” essentially emasculates the existing powers of the City Council. The City Council necessarily plays an appropriate and strong role in the advocacy for neighborhoods and community concerns. These proposed amendments make that role difficult to perform in any kind of meaningful manner, particularly if the Governing Body, which includes the Mayor, is removed from being the “principal policy maker of the city.”

The argument that the Mayor needs these consolidated powers to carry out a mandate of election is spurious. As exists today, under Home Rule Section 5.01 the Mayor has substantial input into the policies and procedures of government. A City Manager appointed by the Mayor with demonstrated administrative expertise should have the skill to direct city government in support of programs and policies that the Mayor is presenting to the Governing Body. The City Manager should also be sensitive to the articulated policy positions of the Mayor as the Chief Executive Officer of the City as well as to the positions of the Governing Body as the primary policy maker for the City. The City Manager should not be placed in a position to serve as an assistant Mayor or chief of staff.

It has been stated that a reason for the need for this change is that there have been too many personnel changes in the City Manager position. But this general statement does not take into account the information that the Charter Review Commission members also received, individually or collectively, that there were many reasons why various City Managers resigned. There was no substantial or credible information presented that the City Managers were forced to resign as a

part of a pattern and practice of meddling by majority factions of the City Council rather than for many other legitimate or personal reasons. The push to make these changes seems to stem more from subjective opinion than objective evidence warranting these changes.

In communications to the Charter Review Commission, I consistently stated my view that the Charter Review Commission should engage in a deliberate and detailed review of the issues even if this made the Charter Review Commission process longer. See, e.g., 6/19/13, Minutes, pp. 16 and 18. I felt and still feel that we owe it to the public to fully study, analyze, and consider the substance and consequence of these issues. Prior to the June 27, 2013 Charter Review Commission meeting, the only other articulated input the Charter Review Commission received on this proposal was the dissemination of interesting, but generally irrelevant for a city the size of Santa Fe, chapters on government structure and powers from a text book from a government class that had been attended by a son of one of the Charter Review Commission's members. The information presented to the Charter Review Commission was inadequate to use as justification for these fundamental changes to our governmental structure.

These proposed changes to the structure of city government should have been thoroughly vetted, researched, reviewed, and been the subject of more public hearings prior to any vote on the proposal. And, the proposal was made more complex by the decision by Councilor Ives at the end of the process prior to the June 27, 2013 meeting to add even more sections of the Charter to be amended to carry out this "strong Mayor proposal". These supplemental amendments were received by the Charter Review Commission members between the June 19, 2013 meeting and the June 27, 2013 meeting. And, it is not at all clear when members of the public were furnished with the supplemental amendments that were prepared and submitted by Councilor Ives.

From the public hearings, it did not appear that there is serious or substantial support in the community at large, via petition or otherwise, for this proposal. At the time he presented the proposal, Councilor Ives admitted that he had received no citizen's petition seeking these changes. See, e.g. 6/19/13, Minutes, p. 6-7.

4. The Charter Review Commission and Policy Statements Not Recommended

Various Policy Statements were submitted for Charter Review Commission action and they were either not acted upon or defeated at the July 1, 2013 Charter Review Meeting. There had been a number of prior meetings where the various Policy Statements were on the Agenda and public comment and background information was presented regarding these issues. In my opinion, there is substance to the Policy Statements included herein and the Governing Body should give due consideration to placing these Policy Statements on the Ballot or enacting ordinances that would implement these policy positions.

The following are the particular Policy Statements that were presented at the July 1, 2013 Charter Review Commission meeting but not recommended.

A. Gun Violence Prevention Ordinances:

The June 26, 2013 meeting of the Governing Body was long and difficult. The subject was a proposed ordinance that would ban excess capacity ammunition magazines within the City of Santa Fe. That ordinance failed. But, there appeared to be unanimity from the audience and the Governing Body that as a society we must do all that we can to prevent gun violence and that the dialogue and conversation regarding gun violence prevention should continue. Thus, it is surprising that a proposal that the Charter include a provision requiring the City to adopt "gun violence prevention ordinances" did not even obtain the support of a second at the July 1, 2013 Charter Review Commission meeting. See, 7/1/13, Minutes, pp. 3-5.

All this provision would have done would be to place on the ballot for a public vote this simple requirement. It would be up to the Governing Body to determine the nature and substance of any such ordinances. The public conversation started at the June 26, 2013 Governing Body meeting should continue. This Policy Statement is a way to make that conversation continue and to implement gun violence prevention ordinances for the health, safety, and welfare of the city. This Policy Statement should be adopted and placed on the ballot for consideration by the voters. There would be nothing stopping the

Governing Body from independently moving forward to enact whatever gun violence prevention ordinances it deems appropriate.

B. Proposal Regarding Children's Issues and Concerns:

Santa Fe United Way submitted the following proposal for inclusion in the Charter as a separate provision:

“Our children are Santa Fe's most valuable asset. In order to nurture and protect our children, and to enhance our children's ability to thrive and to grow into productive members of society, the Governing Body shall take into account, the effects of any action on our children, and shall take action to support and protect our children. To effect these ends, the Governing Body may take whatever action is necessary and may enact ordinances and may establish appropriate commissions with jurisdiction authority and steps sufficient to effectively administer this policy.”

Though most everyone professed their love for children, the Motion to pass this important Policy Statement to be included in the Charter failed when only Commissioner Gutierrez and I voted for its passage and approval. Commissioners Long, Hiatt, Johansen, and Romero-Wirth voted against this Policy Statement for inclusion in the Charter. See, 7/1/13, Minutes, pp. 5-7.

This is an important statement about the fabric and values of this city. For the health, safety, and welfare of the city this Policy Statement should be adopted and placed on the ballot for consideration by the voters.

C. Proposal Regarding Immigration Policies and Enforcement:

The City's Immigration Committee appeared at meetings and presented language for a Policy Statement that exists in a City Resolution that:

No municipal resources will be used to identify or apprehend any non-citizen resident on the sole basis of immigration status unless otherwise required by law to do so.

At the time of the consideration of this Policy Statement for a vote no one from the City's Immigration Committee was present to advocate for the inclusion of this Policy Statement in the Charter. There was no second to my Motion that

would have allowed further consideration of this Policy Statement. See, 7/1/13, Minutes, p. 11. If the City's Immigration Committee wants to support the adoption of this Policy Statement language in the Charter then it should make its views known to the Governing Body.

D. Proposal for Preservation of Neighborhoods and Neighborhood Integrity:

The Neighborhood Network was among the civic groups actively involved in the Charter Review Process by attending meetings and making public comment. The Neighborhood Network submitted the following proposal which was not approved because the recommended amendments to Section 2.04 were adopted instead. See, 7/1/13, Minutes, pp. 11-15.

The Santa Fe community is defined not only by the cultural composition of its citizens, but also by the variety and diversity of the neighborhoods in which these citizens reside. Santa Fe neighborhoods have distinct features that reflect a cultural and architectural heritage, and legitimate interests which affect the quality of life of their residents. These features and interests should be recognized, promoted and protected.

The recognition of Neighborhoods and Neighborhood integrity is important. And while it is significant that there is recognition that neighborhoods should be explicitly recognized by the amendments to Section 2.04, the inclusion of the Policy Statement Submitted by the Neighborhood Network as a separate provision is more inclusive and substantial than just the inclusion of the word "Neighborhood" in Section 2.04. The Governing Body should give due consideration to including this Policy Statement submitted by the Neighborhood Network for adoption and placement on the ballot for consideration by the voters.

E. Proposal Regarding Prevention and Protection From Adverse Impacts of Electromagnetic Radiation (WARN proposed language)

The Charter Review Commission heard from health care practitioner, Dr. Felecia Trujillo, and a neuro-toxicologist, Raymond Singer, Ph.D., regarding the science and findings of adverse health impacts from electromagnetic radiation and studies that were being done in Europe and other countries that were showing concerning findings regarding adverse health impacts from electromagnetic

radiation. WARN, a coalition of health care providers, submitted voluminous data and information regarding this issue. The Charter Review Commission did not provide a second to my Motion to adopt the revised Policy Statement language submitted by WARN and for an alternative Motion. See, 7/1/13, Minutes, p. 15-19. The Governing Body should continue to closely monitor and take all appropriate action regarding the health, safety, and aesthetic issues that are presented by the issues of the transmission of electromagnetic radiation.

F. Proposal for Marijuana Adult Personal Possession and Use to be the Lowest Law Enforcement Priority

This topic was proposed based on my 40 years of experience in the field of criminal justice. See, 7/1/13, Minutes, pp. 19-20 and the 4/9/13, Minutes, pp. 7-16. The Motion to approve this Policy Statement died for lack of a second.

There is a change happening in this country with regard to people's views about the medicinal qualities of cannabis, and cannabis (marijuana) in general. Scientific research and testing is occurring in Europe and in Israel and in other parts of the world showing the beneficial medicinal qualities of cannabis. Unfortunately, in this country that research is being restricted by federal authorities. States are taking it upon themselves to move forward, citizens of 17 states and the District of Columbia, including the State of New Mexico now have medical cannabis programs. Our sister State of Colorado has voted to legalize the personal possession of small amounts of marijuana for adult use, as has the State of Washington. Society has not fallen apart, all the doom and gloom from reefer madness has been seen to note be true. Prohibition does not work.

The Commission was told at our meeting on April 9, 2013 that minority members are disproportionately stopped and picked up and arrested for personal possession marijuana charges. From a law enforcement perspective it would be cheaper and easier to issue citations rather than make arrests for these offenses. The Commission was told by a New Mexico State Police Officer that Marijuana offenders rarely cause problems for police officers. Police Officers' time would be far better used in investigating and enforcing laws relating to violent crimes, property offenses, burglaries, DWI offenses, domestic violence, and offenses that truly breach the peace.

The City of Santa Fe has no power to legalize or decriminalize the adult or juvenile possession and use of marijuana. That was not the intent of this proposal. But what the city can do, and what the Governing Body should do, as has

happened in Seattle, New Orleans, Philadelphia, New York City, and many other cities around this country is to enact a policy that arresting individuals for small amounts of marijuana for their own personal use is a low law enforcement priority. We should be spending our time and our effort on other crime problems.

This is not a matter that is on the back page any more. On the front page of the June 30, 2013 Santa Fe New Mexican there was article explaining that states are having to deal with the reality of the change that is happening with attitudes about personal marijuana possession and use. There was recently an hour-long program on CNN attempting to show the reality of what is happening in America regarding medical cannabis and marijuana in general.

As a community we can and should set forth a value and Policy Statement that: The Santa Fe Police Department and the Santa Fe City Attorney's Office shall make the investigation, arrest and prosecution of marijuana offenses, where the marijuana was intended for adult personal use, the City's lowest law enforcement priority.

This proposed policy statement sets forth a policy which will stop young people and adults from being labeled as criminals for the rest of their lives because they had or used a substance which is basically benign. Marijuana is not without problems, but they can be dealt with through education to discourage juvenile and young adult use of marijuana.

We need to do what we can so that people can avoid the stigma of having to disclose, for the rest of their lives, that they were arrested because they had a small quantity of marijuana. There are many long term prejudicial impacts from having a criminal arrest record, even for such a minor offense.

Since the Motion did not receive a second it could not be considered further.

Commissioner Werwath expressed his support for these concerns but stated that he felt that the policy statement should not be in the Charter.

5. The Charter Review Commission Should Have Been Provided Supplemental Resources and a Budget to Assist the Review Process

The question of assistance for a Charter Review Commission is also of concern. By Home Rule Charter Section No. 10.02 and Section 7 of Resolution 2012-45 the office of the City Attorney is the advisor and liaison to the Charter

Review Commission. This is no criticism of any Member of the Office of the City Attorney, but I felt that we were hampered by the lack of continuity of assistance from the City Attorney's office. There were four different attorneys who at one time or another were present at our meetings. At times there was conflicting information being provided. There did not appear to be a seamless transfer of responsibility for legal advice and counsel. There were difficult legal issues that were presented for analysis and review.

There was no procedure for supplemental assistance when specialized expertise was needed for the work of the Charter Review Commission. Since there was no budget created independent outside experts could not be retained. Thus, in future Resolutions convening a Charter Review Commission it would appear to be wise for the Governing Body to provide for some budget to assist the work of a Charter Review Commission for independent research, analysis, and input. This is particularly significant if there is a conflict of interest or the appearance of a conflict of interest on the part of the office of the City Attorney.

6. The City Attorney's Office has a Conflict of Interest and/or the Appearance of a Conflict of Interest but Continued to Serve as the Liaison to the Charter Review Commission

In my opinion, in this Charter Review process there appeared to be a conflict of interest, or the appearance of a conflict of interest, in the Office of the City Attorney providing research and assistance regarding this issue since throughout the process the City Attorney was subject to removal by the Mayor and the City Attorney position is specifically mentioned in this "strong Mayor proposal" regarding the sole power of the Mayor to hire and fire the City Attorney.

Respectfully Submitted,



Steven G. Farber

Member, Santa Fe Home Rule Charter Review Commission

July 17, 2013

Dear City Councilors,

Thank you for the opportunity to serve on the City Charter Review Commission. We have finished our work and have several proposals for your consideration. I would draw your attention to two items that should be given further thought.

First, the Commission is proposing an Independent Redistricting Commission, which I support. The language, you should note would allow for re-districting "at least every decennial census." This is new language in the Charter that opens the door for re-districting more often than every ten years and I believe should be amended to say simply "every decennial census". As you are aware, redistricting, while critical to governing, requires enormous time and resources that subtract for a time from the ability to govern. Common Cause initially opposed the proposal to redistrict more than every ten years because of a fear of "political shenanigans". In the end, they changed their position to one of support. One only need look at the state of Texas to see they were correct in their initial position. What would trigger re-districting besides the census?

Second, I believe there is another way to address the concern that water issues be explicitly recognized in the Charter. It does seem that the current language can be read to include them implicitly. We must be very careful what language we add to the Charter, as it is very difficult to change the language, if it is interpreted in a way that is unintended. In this particular proposal, I am concerned about the phrase "tying development to water availability". As you are aware the city has very progressive rules around water use and development, requiring that new development purchase water rights in order to proceed. How will the term "water availability" be interpreted? How do we determine if it is "available"? The Council could consider instead amending Section 2.03 to read:

The natural beauty of Santa Fe, its historical heritage, and its unique architectural style are among the city's most valued and important assets. In order to enhance the beauty and quality of both the natural and built environment within and around the city, the governing body shall protect, preserve and enhances the city's natural endowments, including air and water, plan for and regulate land use and development, manage the city's growth, encourage source reduction, re-use and recycling of materials, and promote and maintain an aesthetic and humane urban environment. To effect these ends, the governing body may take whatever action is necessary and may enact ordinances and may establish appropriate commissions with jurisdiction, authority, and staff sufficient to effectively administer this policy.

It has been an honor to serve on this Commission; I look forward to your consideration of all that has been presented to you.

Respectfully Submitted, Carol Romero-Wirth, MPP, Esq. 