

Recommended Charter Amendments

ROLES OF COUNCIL, MAYOR, AND MANAGER

Referrals to the Commission: We considered two referrals together:

- Whether the City’s mayor should have a purely executive role rather than both executive and legislative roles and, if so, what new rights and limitations should be adopted along with such a separation of powers.
- Whether the roles of the mayor, councilors, and city manager should be better defined and, if so, how.

Action: Reorganize articles that specify separation of powers; combine certain duties; add certain duties.

Recommendation: a new Article V to replace current Articles V—VIII, entitled GOVERNANCE with these sections: The Legislative Branch, The Executive Branch.

ARTICLE V. GOVERNANCE

Balance and Separation of Powers: City government in Santa Fe shall be defined by this Charter, and specifically by the separated and balanced powers of its branches, legislative and executive.

5.01 The Legislative Branch

THE CITY COUNCIL

5.01 The Legislative Branch, Composition

There shall be a city council composed of elected councilors representing districts as provided herein. The members of the city council shall be known and designated as councilors. The mayor and the councilors when acting together may be referred to as the governing body of the city.

The Legislative Branch, Powers, and Duties

- A. The city council shall serve as the principal policy maker of the city, and shall, as necessary, amend existing policies that are consistent with other

provisions of the charter. The council shall consider the-agenda put forth by the mayor and propose amendments to existing policies and propose new policies.

B. All legislative powers of the city shall be vested in the city council except as otherwise required by law or this charter. The city council 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 city council shall select from among its members a presiding officer, who may or may not also be the mayor *pro-tempore*.

D. The city council may override a mayoral veto by a super-majority of the total possible members voting to do so.

E. *Mayor pro tempore*.

At the first meeting of the council following a regular city election the mayor shall appoint, subject to the approval of the council, a councilor to serve as mayor *pro tempore* until the next regular city election. The mayor pro tempore shall perform the duties of the mayor in the absence or temporary incapacity of the mayor and continue as a member of the council.

F. The city council shall by ordinance fix the annual salaries of the municipal judge and councilors and shall review those salaries not less than every four years.

G. The city council shall by ordinance establish an independent salary review commission whose sole purpose shall be to review and set the mayor's salary. The independent salary review commission shall review the mayor's salary no less than every four years.

H. The city council shall by ordinance set a policy for reimbursement of the actual and necessary expenses incurred by the mayor, the municipal judge and city councilors.

I. The city council shall consider and take action throughout the year on the mayor's legislative agenda.

The Legislative Branch, City Council Districts

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, 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 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.

Legislative Branch, Conditions of Service

A. Eligibility.

Registered voters who reside in the district shall be eligible to run for the office of councilor from that district.

B. Term of office.

Councilors shall be elected for a term of four years. The terms of office of the two councilors from each district shall be staggered so that one councilor shall be elected from each district at each regular municipal election.

C. Vacancies in office.

The office of a councilor shall become vacant upon the member's death, resignation, termination of residency in the district from which elected, or removal from office in any manner authorized by law or this charter. When such a vacancy occurs, the mayor shall within thirty days appoint a

qualified elector from the district in which the vacancy has occurred to serve until the next regular city election, at which time a qualified elector shall be elected to fill the remaining unexpired term, if any. The governing body shall approve or disapprove the mayor's appointment not later than its second regularly scheduled meeting after the appointment.

D. Grounds for removal from office.

A councilor may be removed from office in accordance with applicable state law or this Charter.

5.02 The Executive Branch

THE MAYOR

Powers and Duties of the Mayor

The city shall have a mayor who shall:

- A. Be elected at large by the voters of the city.
- B. Provide the city council, in person or by other means, with mayoral messages on major matters under consideration by the council and be free to amend any of the mayoral messages in light of the council's debate on the matters.
- C. Be the chief executive officer of the city whose position shall be full-time. The mayor shall function as the political leader, public convenor, and head of city government for all purposes, including, but not be limited to:
 - facilitating, as may be possible, cooperation among all stakeholders in government and the private sector to solve the major challenges facing the city, and
 - enlisting the support of the council to add legislative framework as may be necessary.
- D. Earn a salary set by an independent commission as created by ordinance.
- E. Appoint, with the consent of a majority of the total possible membership of city council: the city manager, city attorney, city clerk, and members of advisory commissions.

- F. Supervise the city manager, city attorney and city clerk.
- G. Have the sole authority to remove the city clerk, the authority to remove the city manager with consent of a majority of the total possible membership of the city council at a regularly scheduled meeting and may remove the city attorney with the consent of six members of the city council.
- H. Shall join the city council as the governing body, with voice and vote, to break tie votes.
- I. Shall sign, veto, or allow to become law without signature, each ordinance adopted by the council. Signature or veto shall be exercised within 30 days of the ordinance adoption.
- J. Cause the ordinances and regulations of the city to be faithfully and constantly obeyed.
- K. Have, within the city limits, the power conferred on the sheriffs of counties to suppress disorders and keep the peace.
- L. Propose programs and policies to city council.
- M. Represent the city in intergovernmental relationships.
- N. Present an annual state of the city message which shall identify among other matters the mayor's legislative agenda for the upcoming year.
- O. Be recognized by the governor for purposes of military law.

Conditions of Service by the Mayor

A. Eligibility.

Registered voters who reside in the city shall be eligible to run for the office of mayor.

B. Term of office.

The mayor shall be elected for a term of four years.

C. Vacancy in office.

The office of mayor shall become vacant upon the mayor's death, resignation, termination of residency in the city, or removal from office in any manner authorized by law or this charter.

When such a vacancy occurs, the mayor pro tempore shall serve as mayor until the next regular city election. If the offices of both the mayor and the mayor pro tempore are vacant, then a councilor shall be elected by the remaining members of the governing body to serve as mayor until a special election can be held.

D. Grounds for removal from office.

A mayor may be removed from office in accordance with applicable state law or this Charter.

THE CITY MANAGER

Appointment.

The city manager shall be appointed by the mayor with the consent of the governing body.

Qualifications.

The city manager should be professionally trained and have the necessary operational and managerial skills to carry out the duties and responsibilities of the city manager. The council shall adopt minimum and preferred demonstrated experience that shall be required for the position.

Powers and duties.

The city manager shall:

- A. Be the chief operations officer of the city.
- B. Have the power to hire and fire all city employees, except for the city attorney and city clerk.
- C. Work with city personnel and timely prepare an annual budget and proposed spending priority for review and approval by the finance committee and the city council.

- D. Provide for a program of public communication on behalf of the city, informing the public of the on-going work of departments, including city-owned enterprises, their successes, and outstanding challenges as well as the public's interaction with the departments.
- E. Have such other powers as are provided for in city ordinances and state law.

Removal

The city manager may be suspended or removed:

- A. By the mayor with consent of a majority of the total possible membership of city council at a regularly scheduled meeting, or
- B. by a vote of six councilors at a regularly scheduled meeting.

5.03 THE MUNICIPAL COURT

A. Establishment.

There shall be a municipal court for the city, which shall be presided over by a full-time municipal judge. The governing body may by ordinance authorize the election of additional municipal judges.

B. Jurisdiction.

The municipal court shall have all jurisdiction provided under state law and city ordinances.

C. Eligibility.

Registered voters who reside in the city and are licensed members of the New Mexico Bar shall be eligible to run for the office of municipal judge.

D. Term of office.

The municipal judge shall be elected for a four-year term.

E. Vacancy in office.

The office of a municipal judge shall become vacant upon the judge's death, resignation, termination of residency in the city or membership in the New Mexico Bar, or removal from office in any manner authorized by law. In case of such vacancy, the mayor with the consent of the governing body shall within thirty days appoint a person who meets the eligibility requirements for the office

of municipal judge to serve until the end of the unexpired term of that municipal judge.

F. Grounds for removal from office.

The municipal judge may be removed from office in accordance with applicable state law.

G. Salary.

The governing body shall review and set salary for the municipal judge at least every four years.

COMMENTARY:

Our recommendation features the following:

- We reorder sections of the current charter to conform to the recognizable governance structure of branches: legislative, executive.
- We begin with a declarative statement that the branches both balance and separate the powers of government.
- The mayor is not a member of the council except as noted in Powers and Duties (H) but has the opportunity to make or send statements declaring positions on the major legislative matters that the council has under consideration, as determined by the mayor.
- One of the duties proposed for the mayor (B) calls for leadership on “major matters”. The Charter should not define “major” because that definition is not a constitutional issue, it is exactly the political issue for which the mayor is expressly elected by the people. We elect one mayor rather than another candidate in large part because one appears to the electors to grasp the “major” determinants of the city’s future with greater comprehension, insight, and appreciation than another. The text also calls for “mayoral messages”. They are advisory and reveal the mayor’s position on the issue under consideration. The messages are not meant to be legislative, so in no sense are they to be adopted or rejected in or of themselves.
- Another of the mayoral duties is to break tie votes in the council (H). How might that actually occur in practical terms? It occurs to us that there are several means:

- The council or its presiding officer might on certain occasions anticipate a tie and ask the mayor to attend at least for that agenda item.
- The councilors who vote in the affirmative, may be ready to move to reconsider so as to allow one or more of them to change the vote exactly to avoid a tied outcome.
- The matter may be automatically tabled, or tabled by vote, to be brought off the table so as to include the mayor's tie-breaking vote, either for or against.
- Our deliberations on the distinct roles of mayor and manager were informed by several passages in the Model City Charter, 9th edition (MCC9), such as:

*“The mayor is a comprehensive leader who draws on the features of the council-manager form of government to make it even more effective. The mayor is a community leader who interacts extensively with the public. The mayor strives to create a shared vision for the city with the support of the entire council. **The facilitative mayor helps to assure that there is extensive and positive communication between the council and the manager. The mayor also focuses on communicating with the public and ensuring that their views are being incorporated in the decision made by the council and the priorities being pursued by staff.** (emphasis added.) The leadership role of the mayor is supported by direct election. Candidates speak to the full population about citywide issues and the proposals they are advancing, and residents are able to indicate which candidate and proposals they support.” P 7.*

The theory, here, is that both the Mayor and the City Manager are officers whose roles supply overview and detail-view of the city's work. MCC9 observes persuasively (*) that the reason to have both is that a Mayor who leads the city and manages it is a mayor who is either overextended or who defaults on behalf of the public's need for her or him. So, we have two officers, but each has a separate, cooperative, leadership task within the Executive Branch of government.

() “It is difficult to find candidates for mayors who are equally adept at providing both political and administrative leadership... [It] is important for the mayor to devote a substantial amount of time to*

interacting with the public, making it difficult to devote sufficient attention to policy development, administration, and management. So-called “strong” mayors may actually be overextended mayors.” (MCC9, p. 71)

- MCC9 also informed our discussion of the role of the city attorney as experienced by a range of cities. The city attorney is to be the sole legal representative of city units and enterprises on matters of compliance as well as litigation and discharging disputes. Therefore, if the city attorney is both hired and fired by the mayor it becomes unclear if the difference of opinion occurs between the mayor and the council. Cities have cured the matter by requiring that the mayor both hire and fire with the consent of the council. Heretofore, in Santa Fe, council consent has been required only on the occasion of hiring.

(MCC9, pp. 31- 33, esp. 33.a. Note also: it is entirely the city’s option as to whether this role is exercised by the Mayor or the Manager on behalf of the executive branch. The pattern in Santa Fe has been to assign this responsibility to the Mayor and we see no reason to change it.)

- We added an explicit duty under Powers and Duties of the manager (C) to raise the level of emphasis that the public may expect the city to communicate more fully both its successes and its challenges, and that the importance of this matter is constitutional in nature.