



# Agenda

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## CHARTER REVIEW COMMISSION

Monday, January 14, 2013

4:00 pm to 5:30 pm

City Council Chambers

200 Lincoln Avenue

1. PROCEDURES:
  - a) Roll Call
  - b) Approval of Agenda
  - c) Approval of December 17, 2012 Minutes
  
2. Presentation/Discussion and possible action regarding proposed Amendments of the Municipal Charter for the City of Santa Fe for Possible Amendments with public input on each item (remaining articles reviewed at future meetings):
  - a) Article I. Incorporation and Powers
  - b) Article II. Policy Statements
  - c) Article III. Citizen Rights
  - d) Article IV. Elections
  - e) Other
  
3. Establish working any necessary committees.
  
4. PUBLIC COMMENT (3 minutes per person ).
  
5. MEETING DATE(S), TIME(S) AND LOCATION(S).
  
6. ADJOURNMENT.

Persons with disabilities in need of accommodations, contact the City Attorney's Office at 955-6512, five (5) working days prior to meeting date.

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 CHARTER REVIEW COMMISSION  
 Monday, January 14, 2013**

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**MINUTES OF THE  
CHARTER REVIEW COMMISSION  
Monday, January 14, 2013**

A meeting of the Charter Review Commission was called to order by the Honorable Patricio Serna, Chair, at approximately 4:00 p.m., on January 14, 2013, in the City Council Chambers, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

**1. PROCEDURES**

**a) ROLL CALL**

Roll call indicated the presence of a quorum as follows:

**MEMBERS PRESENT**

The Honorable Patricio Serna, Chair  
Nancy R. Long, Vice-Chair  
Roman Abeyta  
Steven G. Farber  
Brian Patrick Gutierrez  
John B. Hiatt  
Houston Johansen  
Carol Romero-Wirth

**MEMBERS EXCUSED**

Daniel Werwath

**OTHERS ATTENDING**

Marcos Martinez, Assistant City Attorney  
Irene Romero, City Attorney's Office  
Melessia Helberg, Stenographer

**b) APPROVAL OF AGENDA**

Chair Serna said with regard to Item #2, the Committee will discuss each of the items, and then open input from the public article by article, so we don't have to wait for public comment until Item #4.

Commissioner Farber said he appreciates the Chair's comment with regard to having public input on the various articles. He said he has been asked to see if the Commission might consider having public comment at the beginning as well as at the end of the meeting, because it may be that someone would like

to comment about something discussed by the Commission at the previous meeting, without having to sit through the entire meeting to make comment. He said we could start the meeting with a more limited public comment and then have public comment at the end of the meeting.

Commissioner Farber said he would like to amend the Agenda to have limited public comment as the first item after approval of the December 12, 2012 minutes.

**MOTION:** Jack Hiatt moved, seconded by Nancy Long, to approve the agenda.

**FRIENDLY AMENDMENT:** Commissioner Farber would like to amend the motion to allow public comment as the first item of business after approval of the December 12, 2012 minutes, limited to whatever the Chair determines is a reasonable time. **THE AMENDMENT WAS FRIENDLY TO THE MAKER.**

**CLARIFICATION BY THE SECOND BEFORE DECLARING THE AMENDMENT FRIENDLY:**

Commissioner Long asked for clarification, noting the Chair said he wants to take public comment on each of the presentation discussion items, "so are you speaking of 3 public comment opportunities – at the beginning, on each article that we will be discussing, and at the end of the meeting."

Commissioner Farber said, "Yes. I hadn't known that the Chair was going to do that. We're talking about wanting to have as much public input as possible, and it could be that someone wants to comment about something that's not a part of 1, 2 or 3, but something we discussed at the last meeting, and might want to just touch on something."

Chair Serna said, "I think that's reasonable and that's certainly consistent with transparency that we're following here. So after approval of the minutes, we will have limited public comment. Of course, I will have to keep it under control and limit it to some degree and I'm sure you all agree with that reasonableness."

**THE AMENDMENT WAS FRIENDLY TO THE SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE COMMISSION.**

**VOTE:** The motion, as amended, was approved unanimously on a voice vote.

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**Comment from the Commission**

A letter dated January 13, 2013, to Justice Patricio Serna, Chair, City of Santa Fe Charter Commission, from Daniel Werwath, Charter Commission member, is incorporated herewith to these minutes as Exhibit "1."

A letter dated January 13, 2013, to Daniel [Werwath], from Steven Farber, is incorporated herewith to these minutes as Exhibit "2."

A copy of a Fact Sheet *Large Capacity Ammunition Feeding Device Act*, from the Brady Campaign to prevent gun violence, last updated 2-10-2011, entered for the record by Steven Farber, is incorporated herewith to these minutes as Exhibit "3."

Commissioner Farber noted he received a letter from Daniel Werwath and asked when it would be appropriate to receive comment from the Commission.

Chair Serna said we will do that now.

Steven Farber read the letter into the record to the Commission from Daniel Werwath. Please see Exhibit "1" for the text of this letter.

Commissioner Farber said he did not send a copy of his letter to the other Commissioners because the City Attorney had made a comment that the members of the Commission weren't supposed to communicate with one another, commenting he believes that the City Attorney is mistaken. He said perhaps Commissioner Werwath's letter was in violation. He said, "I think it's a mistake in policy. I think we should be able to communicate, not more than 4 [members] and certainly not anything in violation of the Open Meetings Act or with any intent to violate any provisions of the Open Meetings Act."

Steven Farber then read his letter of response to Commissioner Werwath into the record. Please see Exhibit "2" for the text of Commissioner Farber's letter. Commissioner Farber also entered for the record a copy of a Fact Sheet from the Brady Campaign [Exhibit "3."]

**MOTION:** John Hiatt moved, seconded by Steven Farber, to enter Daniel Werwath's letter, Steven Farber's letter and the Fact Sheet from the Brady Campaign, into the record, and to postpone consideration of these items to the next meeting when Commissioner Werwath returns.

**VOTE:** The motion was approved unanimously on a voice vote.

Chair Serna said he would like to appoint Commissioner Werwath as the chair of a subcommittee to work on an outline of the entire Charter review process, and asked the Commission's thoughts in this regard.

It was the consensus among the Commission to proceed as recommended by the Chair.

Chair Serna said he will be appointing Commissioner Werwath to chair a subcommittee to develop an outline of the Charter review process.

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**c) APPROVAL OF MINUTES – DECEMBER 17, 2012**

The following corrections were made to the minutes of December 17, 2012:

Page 4, paragraph 3, line 2, correct as follows: "...served as ~~Assistant District Attorney~~ the Acting District Defender..."

Page 6, paragraph 2, clarify as follows: "Chair Serna said ~~he~~ Mr. Johansen was appointed by Councilor Calvert."

Page 8, paragraph 3, line 3, correct as follows: "... on December ~~9 7, 2012~~ 1997, and..."

**MOTION:** Stephen Farber moved, seconded by Brian Gutierrez, to approve the minutes of December 17, 2012, as amended.

**VOTE:** The motion was approved unanimously on a voice vote.

**d) PUBLIC COMMENT**

A copy of *Report to the Charter Commission from the League of Woman Voters Santa Fe County*, dated January 14, 2013, entered for the record by Jody Larsen, is incorporated herewith to these minutes as Exhibit "4."

A copy of a report *Ranked Choice Voting for Santa Fe*, entered for the record by John Otter, is incorporated herewith to these minutes as Exhibit "5."

A letter to the Home Rule Commission dated January 14, 2013, from Rebecca Frenkel, entered for the record by Rebecca Frenkel, is incorporated herewith to these minutes as Exhibit "6."

A copy of *City's Home Rule Charter Requires Broader Amendments by Joseph Maestas*, entered for the record by Joseph Maestas, is incorporated herewith to these minutes as Exhibit "7."

A copy of *Time to Yank Ranked-Choice Voting?* By Larry N. Gerston, published Monday, December 31, 2012, submitted for the record by Terry Reilley, a member of the public, is incorporated herewith to these minutes as Exhibit "8."

**Jody Larsen, 107 Tierra Rica, representing the League of Women Voters of Santa Fe County.** Ms. Larson said the League appreciates the Commission's willingness to accept public input on the items it is considering. Ms. Larson presented a statement for the record from the League. Please see Exhibit "4" for the specifics of this presentation.

Chair Serna said, "Thank you, and I assure you there will be a winnowing and a sifting of all ideas before any action is taken."

**Karen Walker** said, "Three items are all I am going to comment on. Only one is covered by your agenda this evening, and that would come under Elections. It is my opinion that to request a Councilor to resign his or her office if they wish to run for Mayor, disenfranchises the voting members of that District. The person that they specifically chose over any other candidate to represent them would now be told by our Charter that they can't continue to represent them and I think that's disenfranchisement of the voters."

Ms. Walker continued, "On the subject of term limits, which will come up later, I guess. One possibility to consider, I know there are good arguments on both sides of term limits, but one possibility would be a 6-year term and then you would have to sit out before you could run again. And that could apply to the Mayor and to the Councilors. The reasoning for this would be for the Governing Body for new people in the first year, they have a learning curve, which is usually more than they anticipate. At the 4<sup>th</sup> year, they're madly running for office again. So at the best, there's two years for them to accomplish something and nothing seems to move quite that quickly here. If they had a 6-year term, they would still have the learning curve at the beginning of the 6-year term, but the 6<sup>th</sup> year they would not be running for office because they couldn't, and they would have 5 full good years to really get something done for a change. So I think that should be in the mix as one of the possibilities for our governing body."

Ms. Walker continued, "And another thing I brought up before, but it's not exactly... well it is in our Charter. We have 4 Districts by law. And the only person who has to look out for the City as a whole, because they're elected by the City as a whole, is whomever happens to be Mayor. Now the Councilors in the Districts, I'm sure, try to look out for the City as a whole, but there is a natural inclination for them to give special weight to their District since those people elected them. So my recommendation, which is used all over the country, is called partial districting. That is where we retain our Districts, and each District has a representative solely selected by the electorate in that District. The other 4 are elected at large, so we would have a majority of the Governing Body that is looking out for the City as a whole, instead of just their District. Now we have 1/9th looking out for the City as a whole, and we then would have 5/9ths. I think it would be a huge improvement, and I think there would be better cooperation and the City as a whole would benefit."

Ms. Walker continued, "This change would require an amendment to the State Constitution, but we've done that before. And the way the State Legislature tends to deal with Santa Fe when we make these requests, is to make it a local option, because almost nobody else would want these bizarre ideas that we want. When we went for the runoff elections which had been forbidden by the State Legislature, they allowed it as a local option issue. And I think we would do this here. One of the larger cities that does it very successfully that I'm aware of is Boston."

Ms. Walker continued, "Each District still has one person representing them, and all the rest are elected at large. I think it's a really good mix and I would love it if you would give it some thought."

Chair Serna asked Ms. Walker to submit this proposal in writing, detailing how everything would work, commenting he is unsure he completely comprehends it at this level of detail.

Ms. Walker asked if she could obtain email addresses so they can email things to him or communicate with him, or is that *ex parte* communication.

Chair Serna said he would prefer that she send it to Irene Romero so it can be shared with the entire Commission.

**Joseph Maestas, 3999-A Old Santa Fe Trail**, said he has several comments for the record. He said, "The first one relates to the whole nature of the frequency of the convening of a Charter Commission. I think the concept is great, but perhaps the frequency should be reconsidered. The whole intent of being a Home Rule City and having your own Charter, is to be a much more nimble government to respond to the needs that exist out there in the community. So, what I'm requesting is that provision be changed, and allow the Charter to be changed at any time. Obviously, I'm not advocating that it no longer be voter-ratified. That's an absolute. Whether a change be brought forward by the Governing Body or by petition from the public, the voters need to ratify this because it is very very important to a Home Rule City for all voters to ratify any potential amendments to the Charter. So that's one of my requests and it truly is consistent with being a Home Rule City."

Mr. Maestas continued, "And the next one. You all know there is a ranked choice voting provision and it's dependent on having appropriate voter equipment and software, and I think that kind of connection to other external actions, I think defeats the purpose of a Charter. I think any amendment that is ratified by voters should go into effect immediately, and not depend on State-enabling legislation or a County Clerk for purchasing the right voter equipment and software. So I'm recommending that the Commission maybe consider a different run-off concept, perhaps something like a 40% runoff election system where the top two vote getters, if they didn't get a minimum of 40%, would be the two candidates in a special election."

Mr. Maestas continued, "The next one is one of your specific questions I think that was included in the Resolution that created this Commission and that's requiring a mid-term Councilor to give up their term if they run for Mayor. I believe that the voters of that District voted that Councilor into office and I think they're duly elected and they should be able to serve out their full term. The end of term Councilors, I think we all know it's obvious you can't run for two offices. You can't run for City Council and Mayor at the same time, so my recommendations are silent on that – *status quo*. If you are end of term and you're a Councilor and you want to run for Mayor, you give up your office. You can't serve in two offices."

Mr. Maestas continued, "The other one is with regard to term limits. I think here is a classic case where the City is depending on State enabling legislation to carry out a proposed amendment to the Charter. I think if you eliminate the 10 year rule to convene a Charter Commission, and in its place put a more liberal provision to modify the charter, then if and when the State amends the Constitution to allow for term limits for local government officials, then the Charter can be amended to respond to the amendment to the State Constitution. So I think that's really the way it should work, because, again, it would be very similar to the ranked choice voting. You have an amendment that's stagnant, that's not implemented



because it is dependent on external action. So, I'm recommending you postpone amending the Charter for term limits until the State Constitution is amended.

Mr. Maestas continued, "One of the objectives of imposing term limits is to maximize the opportunities for other people who are qualified to run for office. I think you should look at the greater context which has to do with salaries. I realize that the Charter pretty much allows the Governing Body to set salaries. And I would like you to consider, in lieu of having the Governing Body set the salaries, to have an independent citizens commission set the salaries. And to truly attract qualified folks out there, pay the Mayor a full time salary. You could do what Albuquerque does. Its Charter forbids the Mayor from having any public or private employment while they are Mayor, and that ensures that the Mayor is focusing full time on the job, but getting a full time salary."

Mr. Maestas provided a copy of his written suggestions for the record [Exhibit "7"].

Commissioner Farber asked Mr. Maestas if this is pretty much what he wrote in the New Mexican.

Mr. Maestas said yes, noting he skipped all of the background information. He said, "I do want to reiterate that this is a great opportunity for the City to fully maximize its home rule powers and truly realize its self-determination through this Charter, and I'm urging the Commission to consider other, broader amendments to the Charter."

Commissioner Farber said everyone should read Mayor Maestas' column in The Santa Fe New Mexican, which was a very good column. He thanked him for sharing his ideas publicly as well as today.

**Signe Lindell, 147 Gonzales Road**, said, "In the spirit of trying to make this brief, I only want to address one thing today, which is the mid-term resignation of a Council member. It doesn't seem right to me that the political ambitions of sitting Council members should trump the vote of an entire district. It just makes no sense to me that a Councilor should be elected and not be able to serve our their term. So, in an effort to be brief, that's all I have today. Thank you."

Chair Serna commented that "brevity is the nectar of the Gods and you have done that."

**Rebecca Frenkel, 1252 Vallecita Drive**. Ms. Frenkel thanked the Commission for the opportunity to speak. She said, "I want to reiterate what has been said by the previous presenters, that I also believe that an elected official should be allowed to complete the term of office to which elected, even when seeking another position during that term."

Ms. Frenkel continued, "Then I want to address ranked choice voting, Section 4.06. Ms. Walker and I worked with then Santa Fe Representative Max Coll in the nineties for New Mexico legislation to permit municipal run-off elections. Both House and Senate Election Committee members' primary concern during their hearings is if this would allow ranked choice voting which they strongly opposed. Despite how the language may be manipulated, the Constitution and legislation permit only run-off elections. I urge this

Commission to investigate and support changing 4.06 or another section, to allow run-off elections and eliminate the ranked choice voting option.”

Ms. Frenkel continued, “As an active member of the League of Women Voters for the last 50 years and having been a poll worker, I have spoken to numerous voters. A frequently voiced voter concern is how complicated voting has become. I believe ranked choice voting will discourage some voters from participating. I also oppose the hand counting of ballots. It is expensive and has a high risk for errors. And again, thank you.”

Ms. Frenkel entered a copy of her statement for the record [Exhibit “6”].

**John Otter** said, “At the last meeting the Chairman requested that I provide a background paper with regard to the ranked choice voting and the Charter Commission. I have prepared a document, and I don’t know if I got it adequately in time Irene, to get into your packets or not. Was that in the packets.”

Ms. Romero said it was sent out.

John Otter said, “I will be brief in summarizing that since ranked choice voting was approved by the voters, 65%, in the Charter Amendment Election in 1997 [2008?], there has been considerable use of ranked choice voting in other municipalities and counties in the United States. Some using equipment, but some using the same procedure which would be available here using our existing ESS M-100 machines for first preference tabulation and then hand counting thereafter. And that has been used successfully with up to 70,000 vote elections in Minneapolis, Minnesota, etc. And the administrators of those election has concluded that it’s easy to administer and that it’s quick and accurate. And, the evidence from elections which have been going on in San Francisco for some time using RCV and in other cities, has indicated that the number of valid ballots cast in those elections generally exceeds 99.7%. So the concern about the ability to correct invalid ballots is not an important consideration.”

Mr. Otter continued, “So that briefly... I didn’t put a specific recommendation in this because I didn’t think it was appropriate, but ranked choice voting can be easily implemented in Santa Fe, even without this provision in Section 4.06 that calls for as soon thereafter as equipment and software for tabulation and votes and the ability to correct incorrectly marked in-person ballots is available at a reasonable price. That provision can be eliminated without causing the implementation[?] of ranked choice voting to be easy, accurate and develop procedure. So I recommend that that provision be eliminated in a Charter Amendment so that we can proceed with RCV which has many advantages I won’t detail now, will be available for use in the election 2014.”

**Former City Councilor Karen Heldmeyer, 325 E. Berger**, said, “I was asked by staff to provide some background information why ranked choice voting in the Charter is the way it is. And I was going to wait until you got to Article 4, but you may not get there today. So just let me say a few words about it now. When the ranked choice voting came before Council after the last Charter Commission, there were two concerns. One was counting the ballots, can you do it by hand, do you need a machine. But the

second, and more important one, was a question of whether a new way of voting would disenfranchise people. Ranked choice voting elections have a very high rate of error where ballots are rejected. It may not be rejected for number one. Everybody seems to figure out number one, and I think that's where the 99.7 comes in. But when you start looking at, okay what about who do you rank number two, who do you rank number three. Do you rank two people number two, well too bad, that part of your ballot gets rejected. And those rejection rates have run at about, the first couple of elections, have run about 20%."

Ms. Heldmeyer continued, "And at the time I was on Council, I was more concerned about people being disenfranchised, rather than about whether we had this new way of essentially replacing runoffs. I don't care about runoffs one way or another. I don't see where we have a huge number of people beating down the doors to be candidates in Santa Fe, although maybe the 2014 Mayoral Election may be an exception to that. But in general, we have to sort of beat the bushes to get candidates, it's not that we have too many of them."

Ms. Heldmeyer continued, "And Councilor Ortiz and I came up with that rather convoluted wording that's in the Charter which is that if we are going to have ranked choice elections, then it had to be after a point at which we had a machine that could reject a badly marked ballot, and people would have a chance to correct them. Because we were more concerned about people not being able to vote, or not having their voices heard, than we were about ranked choice voting *per se*. And this doesn't hit people equally. It hits minorities and the elderly at a much higher rate than voters in general. And so that's why that language is in there, and that's... we felt that that was at least the least protection that could be offered the voters if we went to ranked choice voting. Thank you."

**Jim Harrington, 1588 Cerro Gordo**, said he was the Chair of the last Charter Commission, as well as the current State Chair of Common Cause New Mexico. He said, "My comments related to particular articles, and I had intended to wait till you get to those articles, but it occurred to me that because of the Round House and so on, I might not be able to get here at the meeting where those are considered. He said he would briefly talk about those."

Mr. Harrington continued, "Wearing my common cause hat, I hope you'll leave the public financing article intact. The system has worked very well, and I don't see any need for amendments to that. I'll just wear my hat as former Commission Chair."

Mr. Harrington continued, "Common Cause doesn't have a position on the merits of ranked choice voting, but I agree that something should be done with that particular article, because of the last minute amendment by the Council to the Commission's recommendation. The article has turned out to mean something very different from what the voters thought they were voting for. The requirement of equipment available to count the votes has been interpreted by the administration, and rightly or wrongly, to mean that it has to be able to count the votes by machine from start to finish. There is such equipment, but there is no reasonable prospect that Santa Fe's ever going to acquire it because of legal and practical requirements that we use the same machines that all of the rest of the State uses, and so forth."

Mr. Harrington continued, "So I think, that to be honest with the voters, the Commission should consider either deleting that language and requiring ranked choice to be conducted no matter how you count the votes, or deleting the Ranked Choice Article."

Mr. Harrington continued, "Mayor Maestas has come up with an interesting proposal that would go for traditional runoffs. And the possibility of coupling that in what is presented to the voters with ranked choice and offering the voters the choice between those methods was something we considered on the previous Commission, and some of the Commissioners voted in favor of that. The majority voted the other way because we thought that ranked choice was clearly superior, in terms of both cost and expedition at finishing the election, to traditional runoffs. But that is a possibility. You could recommend a provision going to the voters that says 'Do you want traditional runoffs, ranked choice or neither.' But, in its current form, the Charter provision is something of a deceptive Article in there because it's effectively been nullified by the available equipment requirement. So that's all I have."

Chair Serna asked Mr. Harrington if Common Cause will come up with a recommendation regarding ranked choice, because it appears that the League of Women Voters have come up in opposition to it, since he is speaking today as an individual, and not on behalf of Common Cause.

Commissioner Harrington said, "On that article, I was just speaking as a former Commission Chair with some background of what happened. I'll talk with our Executive Director and see. The last I knew, even our national didn't have a position on that question, but I will ask again. And if I find out something I will tell you."

Chair Serna said, "Then at this time you have no position on it."

Commissioner Harrington said, "Except that the current Article is unsatisfactory because it just doesn't mean what the voters thought they were voting for, and they should be given another chance, one way or the other, to express what kind of voting they would like to see in Santa Fe, realizing that if you specify a machine counting requirement for ranked choice voting, it isn't going to happen."

**2. PRESENTATION/DISCUSSION AND POSSIBLE ACTION REGARDING PROPOSED AMENDMENTS OF THE MUNICIPAL CHARTER FOR THE CITY OF SANTA FE FOR POSSIBLE AMENDMENTS WITH PUBLIC INPUT ON EACH ITEM (REMAINING ARTICLES REVIEWED AT FUTURE MEETINGS):**

- a) ARTICLE I. INCORPORATION AND POWERS
- b) ARTICLE II. POLICY STATEMENTS
- c) ARTICLE III. CITIZEN RIGHTS
- d) ARTICLE IV. ELECTIONS
- e) OTHER

Commissioner Hiatt said he is trying to get his arms around all of this and it appears there are 14-15 specific suggestions from the public, Commissions and Councilors. He said it would seem to him it

would be helpful if we could review to see if we have all those suggestions, and if we've missed others. And secondly, whether we could divide them into the various articles so we could see what is being proposed under the various existing articles of the Charter. He said, thirdly, it probably lends itself to some subcommittees, noting the Chair already appointed one.

Commissioner Hiatt said, "And I think there's probably 3 that kind of jump out to me as being probably could take two or three of the various 14-15 suggestions. And I wondered if I could just, before we start individually, if I could just name the ones that I'm aware of and see if I've missed anything. Would that be reasonable."

Chair Serna said it is reasonable.

Commissioner Hiatt enumerated the following topics, which include any topics which were missed and pointed out by the Commissioners.

1. Councilor Heldmeyer's suggestion about voting in the Fall.
2. Ranked choice voting – counting ballots by hand
3. Assault weapons and magazines
4. Marijuana
5. Establishing an Auditor/Inspector General
6. Districting by an independent commission
7. Daniel Werwath's suggestion about technological changes
8. Citizen engagement
9. Term limits
10. Full time Mayor
11. Mayor Maestas' recommendation for more frequent Charter Amendments
12. Salaries of elected officials set by an independent commission
13. City-wide districts or partial districting.
14. Retain public financing – Mr. Harrington's suggestion to keep this as is.
15. Councilors resigning to run for Mayor
16. Broadening referendum and initiative rights of the voters.
17. The issue of having the City Manager hired and removed solely by the Mayor

Commissioner Hiatt asked if anybody has additional suggestions.

Commissioner Farber said if he read Commissioner Werwath's letter correctly, he is saying what we should do, to try and get more participation, is to think about using new technologies to somehow give the public access to our deliberations. He said he remembers Councilor Chris Moore talking about wireless, and he wondered what he was talking about – in the mid-nineties. He said wireless is now all over the place. He said it might be that what Daniel is talking about that we could do, not just for this Committee, but maybe recommend to the City for all of its committee meetings, is to have web cameras, web streaming, so that people at home can see what is being talked about by this Commission or any City committee that is meeting. He said it would require internet access, but there may be other ways people go to libraries if they're interested or can't attend the meetings. He thinks this is the general intent."

Commissioner Farber said that gets into how we organize ourselves. He is unsure whether it is productive to be going line by line, paragraph by paragraph, unless a problem has been identified to us by somebody as something we should be dealing with. He said all of the Commissioners should read the charter, but it seems we should focus our efforts on those areas about which we are concerned. He doesn't know that we have a litmus test for that. For example, 6 people are interested and that has more value than what 20 people say in terms of what we do. He said this is part of the process of us learning what we are doing, which he thought we would be doing, rather than going paragraph by paragraph. He thinks the comments at the beginning of the meeting were extraordinarily helpful to help us focus and to get a grasp on how to organize ourselves, about which Commissioner Hiatt was speaking.

Commissioner Long thanked Commissioner Hiatt for developing that list. She said she was comparing it with some of the other comments she hears, and some of the written comments. She said the League of Women Voters also included broadening referendum and initiative rights of the voters. And in line with a full time Mayor with a full time salary, she would like to add the issue of having the City Manager hired and removed solely by the Mayor as something we should consider.

Commissioner Abeyta said we need to add the issue of Councilors resigning to run for office.

Commissioner Farber said the League of Women Voters didn't want the redistricting of Council Districts to be done by the Council, and are suggesting it be done by an independent body.

Commissioner Long said that was included on Commissioner Hiatt's list.

Commissioner Abeyta said he didn't hear the issues of Councilors resigning to run for Mayor.

Commissioner Farber said he recalls that there are some legal issues with at-large elections. He said there had been a change because of that, because there is a potential to disenfranchise minority voters. He said he would like a short Memorandum from City Legal on that issue. He said Ms. Walker spoke about partial Districting, with some Councilors running at large. He said that seems to be a legal issue as well, and doesn't know what we can and can't do about it.

Marcos Martinez, Assistant City Attorney, said he will prepare a memo in this regard for the next meeting.

Chair Serna said in view of the time, he doesn't know we can discuss article by article today, and said he would like to go to the next item on the agenda.

### **3. ESTABLISH ANY NECESSARY WORKING COMMITTEES**

Chair Serna said he is thinking of appointing an Agenda Committee to develop a specific agenda for each meeting. He would like Steve Farber to Chair that subcommittee, and appointing John Hiatt and Roman Abeyta to serve on that subcommittee as well. He asked the Commissioners their thoughts about doing this.

Commissioner Johansen Houston said this a great idea and it will make the process a lot easier, commenting these are competent people who do a good job.

Chair Serna said this would allow us to get specific agendas to the public so they would know what we will discussing, so they would have the opportunity to prepare. He believes it would make the meetings run more smoothly and we could get a lot done. He said, therefore, he will appoint Steve Farber as Chair, and John Hiatt and Roman Abeyta as members of the Agenda Committee.

Commissioner Long agrees this is a great idea, and will get the Commission more focused on specific measures to be considered. She said we will need to be able to communicate with this Commission and have the Commission to be able to communicate with one another. She would like the Agenda Committee to consider that, and take it up with the City Attorney in terms of whether we can do that. She believes this will be a more fruitful process if we can get ideas to and from the members in filling out the topics identified.

Carol Romero-Wirth said she has no problem with an Agenda Committee. However, she is a little confused in terms of process – how we will get the universe of recommendations. She asked if will just be people who happen to attend the meetings, or are we going to call for ideas – how are we going to get the list which Commissioner Hiatt has started to compile and know it is comprehensive.

Commissioner Romero-Wirth asked how we will get information about all of these things. Will we have people who can come and testify of whom we can ask questions, or are we going to be given briefs – how are we going to get the information so we can weigh the sides of the issue. What is the process we will use in order to do this.

Commissioner Romero-Wirth said she would like to see the charters of the 11 other charter cities in New Mexico, if that can be obtained. She thinks it would be interesting to see how other home rule cities operate under their charters.

Commissioner Farber thanked the Commissioners for their comments. He said we are just now starting, and part of that is figuring out how to organize ourselves, which he thought we would be doing today, but we can do that at the next meeting. He said perhaps he, Jack and Roman can come up with ideas of how we structure our process organizationally. He agrees with Commissioner Romero-Wirth that we will need input from people, and need reach out to various constituencies and stakeholders, commenting this is not meant in any way to negate the input from individuals who attend the meeting, with regard to any issues they may have. He said we also will want a way to consider any amendments which might come from the Governing Body. He said the members of the agenda will need to brainstorm to develop a proposal for discussion at a meeting.

Commissioner Farber said, "I wanted to follow up on what Commissioner Long just said, which is I was sort of surprised by the City Attorney when I just asked for copies of minutes, not to vote on anything. And the response was, you can't communicate with another. I don't think that's so. I think that we can communicate with one another. I think that we, on our little subcommittee, would be open to people's ideas about how we should organize ourselves, because that's what I would suggest should be the topic



for our next meeting. So it's good to have the public input, but we also then have to move forward and know when to take in information. So, if we're not voting on something, I guess I would want some clarity. This is not, as Commissioner Long mentioned to me, this is not a *quasi judicial* body. We're more legislative than anything else. We're not going to be voting on things."

Commissioner Long said they wouldn't be taking a final vote.

Commissioner Farber said, "We wouldn't be voting by email or anything like that. So we need to flesh out what we can and can't do in a way that allows us to be able to communicate with one another and not run afoul of the law. Because, I know, there's another issue actually. I've heard criticism that the City Attorney's office has taken too strict a position with regard to this whole *quasi judicial* aspect. And as a lawyer, I'm very sensitive to due process rights and *quasi judicial* proceedings. But when you have the Chair of a Committee who can't even explain to the Council what happened at a meeting that person participated in it, that might be a stretch. So we might even have to put that on the list, talk about a stretch in terms of the interpretation of what is *quasi judicial*, not that we want to run afoul of any Supreme Court opinions, but we want to have open communication."

Commissioner Farber continued, "There's a whole lot we have to do, and we're learning and we're babies at this. And we had an immersion when I was on that first Committee, and I was telling Karen Walker it seemed like we worked for a year, but we worked for half a year and did a whole year's worth of work in half a year. We have the luxury of not having those kinds of statutory deadlines, but it will help us to be organized ourselves and to know what the direction is, I mean organizational direction. Or, like, I think there is a time, and this is going to sound like Ecclesiastes, but there's a time for the Councilor's amendments, there's a time for the Commission's amendments, there's a time for the public's amendments, to consider them and ultimately, do we vote as we go along, do we vote at the end. Those kinds of things are the factors I would think we would want to debate ourselves, probably at the next meeting."

Commissioner Hiatt said he is anxious to move forward, so he would like to be more specific about the next recommendation. He said, "As you consider forming committees, it's pretty clear to me that at least 6-7 of these topics fall under elections, and it seems to me that a committee on elections to consider these would be appropriate. And then the last suggestion I would have is there seems to be several that would fall under the category of Policy itself, whether it's the assault weapons, or marijuana or other things. It just seems like a general Policy Committee might be appropriate. And I would like to recommend those to you as well. I have some recommendations on some meeting dates beyond January.

Chair Serna said we need to get the committees in place as soon as we can. He asked Commissioner Farber if he has individuals to recommend for these committees, or should we think about it and appoint them at the next meeting.

Commissioner Hiatt said he has nobody specific in mind. He said, "I would look cautiously around the group and look for a volunteer, but it's not me."



Commissioner Farber asked Mr. Hiatt if we could have a preliminary discussion and think through 4-5-6 potential committees, strike out 3 of them, and have that as a part of the agenda at the next meeting – our proposals of what might be the committees. He said the Chair will appoint those Committees.

Commissioner Romero-Wirth asked Jim Harrington if the last Commission did work by committee, and Mr. Harrington said no.

Commissioner Romero-Wirth said, "It troubles me a little bit – then you're going to get into rules about the 3 of you meeting in private, or are your committee meetings going to be public.

Mr. Farber asked if she is speaking of the Agenda Committee.

Commissioner Romero-Wirth said she is speaking about any of these – Policy Committee, Election Committee, Agenda Committee.

Commissioner Farber said, "I was thinking it would just be a recommendation to the Commission, if in fact we agree, that at the next meeting there would be recommendations that would be a part of the agenda of having certain subcommittees to get some information like – should all of us read all of the charters. Probably. Will all of us read all 11 charters. Maybe not."

Commissioner Romero-Wirth asked what he sees these committees as doing. Are they going to meet in public and take information in about each of these policies, and the time commitment of dividing all this work, spreading it out into committees and then bringing this all back to do it again.

Mr. Farber asked if the Agenda Committee is subject to the Open Meetings Act.

Mr. Martinez said, "Not if there isn't a quorum of the Commission. I'm not sure what Mr. Zamora was thinking in the last meeting, but I know that the Open Meetings Act is what he was wanting the committee to be cognizant of, and so we would want to avoid a quorum in a subcommittee."

Mr. Hiatt said he would think no committee would have more than 3 members.

Commissioner Romero-Wirth said, "I also, I guess, maybe I don't like this committee meeting. I would rather we set a meeting and say we're going to talk about the election sections of the Charter. Ya'll come, bring your ideas, and then maybe we take those ideas and we have some way of gathering information where we have people come to talk to us about the pros and cons if they care about a particular proposal with regard to elections. And then, you know, we make a decision as a group. I really would discourage doing work by committee for this group."

Commissioner Farber asked Commissioner Romero-Wirth if she is having second thoughts about the Agenda Committee, and asked how she would suggest we go about doing that.

Commissioner Romero-Wirth said, "I don't necessarily have a problem with the Agenda Committee if part of your task is to figure out process, but when we start getting into substantive committees, then I'm not so sure."

Commissioner Farber said perhaps what we should do, as part of the process, is to have a discussion about whether there should be substantive committees at the next meeting.

Chair Serna said that is a good idea.

Commissioner Romero-Wirth asked when is the next meeting.

Commissioner Farber said it is January 29, 2013.

Commissioner Long would like the Agenda Committee to consider Commissioner Romero-Wirth's question about how is it that we are going to analyze these issues, who is going to be doing the briefing and the analysis and how we are going to get input.

Commissioner Farber said, "I sent a letter early on, after I got the letter of appointment, to the City Attorney, asking whether we would have a budget. The answer is no, at least right now. Whether we would have staff, because with the first Charter Commission we actually hired somebody, the Institute of Public Law, Paul Biderman. And there was a bidding process, or something like that, maybe not a bidding process, but Paul was like our counsel. And so the Assistant City Attorney I guess, is our liaison, we don't want to overload them. And I guess it really depends on what the issues are, because we will need help."

Chair Serna agreed saying, "No doubt about it."

Commissioner Farber said part of the discussion could be about issues requiring a budget, or not.

**4. PUBLIC COMMENT (3 minutes per person)**

There was no additional public comment.

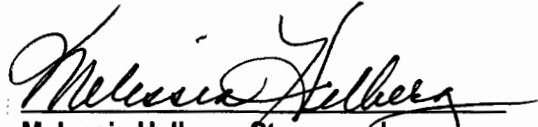
**5. MEETING DATE(S), TIME(S) AND LOCATION(S).**

The next meeting will be held on January 29, 2013, at 4:00 p.m., in the City Council Chambers.

**6. ADJOURNMENT**

There was no further business to come before the Commission, and the meeting was adjourned at approximately 5:30 p.m.

  
The Honorable Patricio Serna, Chair

  
Melessia Helberg, Stenographer

Justice Patricio Serna, Chair

City of Santa Fe Charter Commission

January 13<sup>th</sup> 2013

Being unable to attend the Charter Commission meeting of January 14<sup>th</sup> 2013, I wanted to offer a written statement for inclusion in the record for this meeting.

In the interest of maximum transparency, I would like to suggest that we create an outline of the entire Charter review process that can be provided to the public. This should include number of meetings, the general date that they would occur and the purpose of each meeting.

In addition, I would like to encourage the Commission to consider scheduling some of these meetings at locations other than Council Chambers and at least one meeting on the weekend.

As a member of this commission, I have two priorities that I would like to put forward. First, in recognition of the rapidly changing technological environment that we currently find ourselves in, I would like to encourage the Commission to pursue changes to the City Charter that take advantage of the new types of communication technologies available to increase the opportunities for public input in policy processes.

After years of interaction with City policymaking processes, I also feel that too often a small minority of the citizens of our City dictates these processes. In recognition of this, I would like the Commission to explore systems to better engage the entire citizenry in the process of policymaking at the City government level. In particular engaging younger demographics and working class people who often cannot attend meetings due to timing conflicts with employment or child care responsibilities.

Lastly, while I sympathize with the issue of firearms regulation brought up by Mr. Farber at our first meeting, this issue does not appear to pertain to the form, structure and processes of our local government. As a specific set of regulatory policy, I feel this issue is better dealt with on the ordinance level. To the extent possible I would encourage my fellow members to remain focused on the purpose of the City Charter without deviating to specific policy initiatives.

Daniel Werwath

Charter Commission Member

*Exhibit "1"*

**ROMERO, IRENE K.**

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**From:** Daniel Werwath [dwerwath@gmail.com]

**Sent:** Sunday, January 13, 2013 9:03 AM

**To:** ROMERO, IRENE K.

**Cc:** ZAMORA, GENO I.; Brian Patrick Gutierrez; Houston Johansen; John B. Hiatt; Justice Patricio M. Serna; MARTINEZ, MARCOS D.; Nancy R. Long, Esq.; Roman Abeyta; Steven G. Farber

**Subject:** Statement for Meeting Tomorrow

Hello All-

Unfortunately I will be travelling tomorrow, returning from a memorial service for my grandmother, and not be able to attend the meeting of the Charter Commission.

In lieu of my presence, I wanted to offer a short written statement to be included in the record of the meeting.

I look forward to our continued effort on behalf of this very important work.

Best Regards,

Daniel

01/14/2013

January 13, 2013

Daniel

I am very sorry about your loss of your grandmother.

I agree wholeheartedly with your articulated desires to have as much information and participation as possible from all segments of our community - particularly those who are not typically represented at meetings.

As to addressing the Commission by email message before the meeting – which seems to counter to the ill-advised admonition of the City Attorney regarding communications between Charter Commission members, I shall address the substance of that paragraph at the Charter Commission meeting, regarding my comments or position on an assault weapon or high magazine capacity. It is my opinion that you are fundamentally mistaken about my position in this regard and the role of a Charter Commission. Of course it is for a City Council to enact an ordinance with its particulars, but it is perfectly within the prerogative of the Charter Commission to recommend, if it chooses, to include a statement in the Santa Fe Home Rule Charter that the City should have, as a matter of policy and governance, an ordinance consistent with state law that prohibits and bans the possession of assault weapons and magazines, clips and strips (ammunition feeding devices) that contain excessive capacity ammunition. That would be quintessentially a proper statement to be included in a Home Rule Charter – if it gathered the appropriate support on the Charter Commission or the City Council to be submitted for a vote of the citizenry. After all, the Charter is beyond anything else an expression of the will of the City regarding policies and values that will or should govern the City.

And, I note that the NM constitutional provision, Art. II, Section 6 is completely silent about any aspects dealing with ammunition as opposed to firearms. To my knowledge there are no New Mexico Supreme Court opinions interpreting this provision as it applies to high capacity magazines, strips and clips (ammunition feeding devices) for firearms. And, the United States Supreme Court in Heller case specifically allowed states to enact reasonable regulations regarding firearms.

I do feel that we, as a community, should do all things possible to control and regulate these lethal devices – including regulations regarding their possession, making sure

*Exhibit "2"*

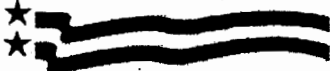
that there is sufficient and appropriate mental health assistance available, registration and background checks of gun and ammunition sellers and purchasers, gun buyback programs (which while well-intentioned seem to do little to reduce the hundreds of millions of guns that are in private hands). For your information, the Brady Campaign to stem handgun violence supports efforts to limit high capacity magazines (ammunition feeding devices) and there were bills introduced in the last Congress – both in the house and senate this past term which parallel the proposals being reported in the press.

Again, as I understand the Charter and the role of the Charter in City governance, policy is at the heart of the task that we have been appointed to consider – not just some narrow political questions such as whether some councilor should be forced to resign if they want to run for Mayor during their term of office or whether there should be term limits for City office holders – something that is not allowed by law now.

And, underlying this is the question about whether the Charter should even be amended at all at this time. I would like to hear and assess all of these issues, and more, from the public participation, for which you have submitted excellent ideas, that I hope will be forthcoming during this process.

Steven Farber

## Brady Campaign



To Prevent Gun Violence

**SENSIBLE GUN LAWS SAVE LIVES**

## "Large Capacity Ammunition Feeding Device Act" (H.R.308/S.32): Fact Sheet

Shortly after 19 people, including Rep. Gabrielle Giffords, were shot outside a Tucson, Arizona grocery store with a handgun equipped with a large capacity ammunition magazine, Rep. Carolyn McCarthy and Sen. Frank Lautenberg introduced H.R. 308/S. 32, the Large Capacity Ammunition Feeding Device Act, in the 112th Congress, to prohibit civilian possession of these military style magazines. **The Brady Campaign strongly supports this legislation.**

### The Problem

- Large capacity ammunition magazines are designed to enable shooting mass numbers of people quickly and efficiently without reloading. They have been used in numerous mass shootings, including in Tucson, Virginia Tech, Fort Hood, and Columbine, but they are not useful for hunting or self-defense.
- According to law enforcement, "There's absolutely no doubt the magazines increased the lethality and the body count of [the Tucson] attack."<sup>1</sup> In just 15 seconds, the shooter was able to fire more than 30 shots from one magazine, hitting 19 people, including Rep. Giffords, killing 6, including a 9-year-old girl and a federal judge. The damage was limited to the firepower of his magazine; when it was empty, he was stopped while attempting to reload. Unfortunately, a large capacity magazine enabled him to fire more than three times the rounds of a standard magazine.
- New magazines containing more than 10 rounds were banned under the Federal Assault Weapons Act, but Congress did not renew the law in 2004, despite widespread support from over 70% of Americans.<sup>2</sup> Now only 6 states and D.C. limit the capacity of magazines.

### What The Act Does

- The Act makes it unlawful for a person to *possess* a large capacity ammunition magazine unless it was lawfully possessed before the bill was enacted. It also prohibits the *transfer or sale* of large capacity ammunition magazines.
- The Act defines large capacity ammunition magazines as those devices holding more than 10 rounds of ammunition.
- The Act does not restrict in any way the sale or possession of conventional-sized ammunition magazines used by sportsmen and other law-abiding firearms owners.
- The bill eliminates a problem of the lapsed federal ban, as it prevents sellers from circumventing the law by stockpiling large capacity magazines, and then selling them after the ban takes effect.
- Leading experts on gun policy have concluded that banning high-capacity magazines is "a common-sense policy change that is likely to generate modest but important benefits to society at a very small cost, and so is worth doing."<sup>3</sup>

### Exemptions

The Act contains exemptions for active and retired law enforcement, for certain federal and state departments and agencies, and allows manufacture, transfer, or possession of large capacity magazines for authorized testing or experimentation.

<sup>1</sup> [http://openchannel.msnbc.msn.com/\\_news/2011/01/09/5801374-tucson-shooting-with-high-capacity-magazines-reignites-gun-debate](http://openchannel.msnbc.msn.com/_news/2011/01/09/5801374-tucson-shooting-with-high-capacity-magazines-reignites-gun-debate).

<sup>2</sup> Over 70% favor banning large capacity ammunition magazines and assault weapons, The Harris Poll, Sept. 9-13, 2004.

<sup>3</sup> <http://www.cnn.com/2011/OPINION/01/12/cook.ludwig.gun.control/>



## **Report to the Charter Commission from the League of Women Voters Santa Fe County (LWVSFC)**

January 14, 2013

We appreciate the Commission's willingness to accept public input on the items you are considering. However, we are somewhat concerned about the agenda listing "possible action" on items relating to the first four articles of the charter.

There has been very little publicity about this meeting, and many people have only been informed of it in the last day or two. We know that some groups and individuals (including the LWVSFC) will be presenting new ideas pertaining to the charter today, but in the interest of openness and transparency, we think that those ideas should be made available to the public for comment before the Commission takes any action upon them.

We also hope that the Commission is gathering as much information as it can from outside sources to inform itself about what it is possible to do with a city charter. To that end, we think it would be helpful for this Commission to request copies of the charters of the eleven other charter cities in New Mexico (Alamogordo, Albuquerque, Clovis, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Los Alamos, Rio Rancho, and Silver City).

That being said, the LWVSFC would like to propose that the Commission consider the following possible amendments to the charter. All of these are based on League positions that have been arrived at through the traditional LWV study and consensus process. As the Charter Commission progresses, the LWVSFC may present other ideas or comment on ideas that have been presented by others, particularly if LWVSFC contributions to earlier versions of the charter are under discussion.

### **Article II. Policy Statements**

2.03. The policy statement on Environmental Protection should include specific mention about protecting the city's water supply and tying development to water availability.

### **Article III. Citizen Rights**

3.01. Referendum and 3.02 Initiative

The LWVSFC supports both referendum and initiative. We ask the Commission to consider broadening the availability of these tools of democracy by making it easier to collect signatures for such measures (15% - 25% of actual voters) and by extending the power of referendum to other matters, such as real estate sales and rentals.

### **Article IV. Elections**

4.01. Elections.

The LWVSFC supports nonpartisan municipal elections.

The LWVSFC supports true run-off elections.

*Exhibit "4"*

The LWVSFC supports the idea that all tax and bond measure elections should be preceded by a clear and comprehensive schedule of proposed expenditures.

in order to increase voter participation, the LWVSFC supports all-mailed ballot elections as approved by resolution of the governing body for any bond election, any election on the imposition of a mill levy or a property tax rate for a specified purpose, or any special election at which no candidates are to be nominated for or elected to office, subject to the following considerations: The governing body judges that the mailing can be done in an accurate and timely manner. The governing body should develop a timetable that ensures there is adequate time for the ballots to be received and returned. Drop stations with adequate security are provided around the jurisdiction to provide an alternative to returning the ballots by mail. If information in addition to the ballot is included in the mailing, it should be objective and balanced.

#### 4.05. Public campaign financing.

The LWVSFC supports limits on gifts and contributions to candidates for elected offices and to the holders of elected and appointed offices.

### **Article V. The Mayor**

#### 5.01. Powers and duties.

The LWVSFC supports the ability of the mayor to vote on all issues facing the governing body.

We note that in Section 5.01(C), the mayor is listed as the “chief executive officer” of the city but this term is undefined.

### **Article VI. The Governing Body**

#### 6.03. Districts.

The LWVSFC continues to support a city council made up of four dual-member districts.

### **Article VII. Municipal Court**

#### 7.03. Eligibility.

The LWVSFC continues to support a municipal judge who is a member of the New Mexico Bar.

### **Article VIII. City Manager**

#### 8.03. Powers and duties.

This section states that the city manager shall have the power to hire and fire all city employees, but the city attorney and city clerk currently serve at the pleasure of the governing body. This contradiction should be corrected.

### **Article IX. Miscellaneous Governmental Issues**

## Apportionment and redistricting

The LWVSFC supports a redistricting process and standards that provide the people with a meaningful choice in electing their representatives and facilitate holding government accountable.

The criteria for preparing redistricting maps should require that districts meet all Federal criteria including equal population and the provisions of the Voting Rights Act. In addition, it is important that districts:

- be contiguous
- be reasonably compact, in terms of travel time from one part of the district to another
- avoid crossing geographic barriers to travel, such as mountain ranges
- minimize the partition of major jurisdictions (counties, municipalities) to the extent possible
- not intentionally favor any political party.

The League supports having an independent commission or other independent group develop redistricting plans meeting these criteria to be considered by the governing body.

The public must have access to all information used in the redistricting process on a timely basis, and have the opportunity to comment and be heard on the proposed redistricting processes, criteria, and results.

## RANKED CHOICE VOTING FOR SANTA FE

John Otter [jmottter@q.com](mailto:jmottter@q.com) 471-9073

Government is more representative when officials elected in single seat contests receive a majority of votes for that office and when voter turnout is the greatest. Often the plurality elections used currently result in minority winners when there are more than two candidates for an office. At the time of the previous Charter Review Commission (2006), 15 of the last 35 officials had been elected with less than a majority of votes.

The Commission proposed the use of ranked choice voting (RCV) to assure majority winners. RCV (aka Instant Runoff Voting (IRV)) accomplishes that by incorporating runoff elections in its tallying process. Officials elected in RCV elections generally receive more votes than they would have in separate runoff elections because the turnout for the latter is often considerably less. That is so even though the number of votes the winner of an RCV runoff election receives may be less than the majority of first preference votes because some voters did not rank any candidate in the runoff.

The previous Review Commission's proposed Charter Amendment to use RCV was amended by the Ethics and Rules Committee and considered by the City Council at their regular meeting on September 26, 2007. The Council made amendments and then unanimously placed the amended proposal on the March 4, 2008 ballot. It passed with majorities of from 63.6 to 66.2% in the four council districts. The adopted Amendment was added to the Charter as Section 4.06:

### 4.06. Ranked-choice voting

Commencing with the general municipal election in March 2010, or as soon thereafter as equipment and software for tabulation of votes and the ability to correct incorrectly marked, inperson ballots, is available at a reasonable price and at all subsequent elections, the mayor, city councilors and municipal judge shall be elected using a ranked choice (sometimes called runoff) voting system allowing voters to rank in order of their preference the candidates for each office appearing on the ballot. If, after counting all voters' first choice listed on their ballots for an office, no candidate receives a majority of votes cast, the candidate with the fewest votes shall be eliminated. Each ballot shall be tallied again for that office counting the vote from each ballot for the highest ranked candidate who has not been eliminated. If still no candidate for that office receives a majority, the process shall be repeated until a candidate receives a majority of the votes for that office.

RCV has yet to be used for Santa Fe City elections. The reason given is failure to satisfy the provision underlined above, namely that "equipment and software for tabulation of votes and the ability to correct incorrectly marked, inperson ballots, is (sic) available at a reasonable price." That provision came from amendments to the Charter Review Commission's proposal.

Incorrect marking of RCV ballots has proven to be a very minor problem elsewhere. Data from RCV elections in the U.S. show no overall increase of invalid ballots, with some jurisdictions actually showing a decrease.<sup>1</sup> In American elections using RCV, more than 99% of voters typically cast a valid ballot.<sup>2</sup> 99.7% of voters cast a valid ballot in San Francisco, CA's first use of RCV (2004) despite educational efforts not having reached 30% of voters and the city's wide racial, ethnic and economic diversity. 99.84% of voters cast a valid ballot in Portland, ME's first use of RCV (2011) despite very little spent on voter education and 15 candidates.<sup>1</sup> Of Oakland voters indicating a preference in the mayoral race, 99.8% cast a valid ballot.<sup>4</sup> The above evidence indicates that correction of invalid ballots likely is unimportant for accuracy of results in the use of RCV.

*Exhibit "5"*

Most RCV elections historically have been tallied by hand. Hand counting of ballots has been efficient and accurate elsewhere. Ireland has elected its president with RCV since 1922. In 2011 over 1.6 million ballots for seven candidates were hand counted (three runoff rounds) in two days.<sup>6,7</sup> Australia has elected members of its national House of Representatives with RCV since 1918. There are frequently 10 or 12 candidates for a seat now. The ballots are hand counted on the night of the election and typically completed within two hours.<sup>8</sup>

Jurisdictions that have ES&S M100 optical scan tabulators have used those tabulators to make the first preference count and then counted runoff rounds by hand. Minneapolis, MN did this for their 70,000-vote, 2009 RCV election for mayor. The overseer of this implementation of RCV (termed IRV), said "We proved that IRV could be well administered, (and) quickly and accurately counted,..."<sup>3</sup> In St. Paul MN, after a machine count of first preferences, votes, three runoff rounds for a 5300-vote race were hand counted in one day in its first use of RCV in 2011. The election official praised the process<sup>10,11</sup> RCV runoff ballots were counted by hand in a recent election in Cary, NC. The County Board of Elections stated that IRV was very easy to administer and provided a useful analysis.<sup>3</sup> Telluride, CO hand counted RCV runoff ballots recently also.

The State of New Mexico hand counts ballots to perform the audits of machine tabulations mandated for every State election. Since paper ballots are the legal vote record in New Mexico, no auditing would be needed for hand counted RCV races.

Santa Fe municipal elections have one citywide race (mayor or municipal judge) and four races for one city councilor in each of the four districts. ES&S M100 machines have tabulated the votes, and could be used to tabulate first-preference RCV votes. With RCV, runoff rounds would be invoked only in races with no first-preference majority winner and with more than two listed candidates because Santa Fe ballots do not allow write-in-candidates.

The number of votes for a Santa Fe city councilor ranged from 1100 to 3300 in 2012. The number of votes for mayor was less than 13,000 in 2010. As evidenced above, implementation of RCV without the use of equipment and software for tabulation of RCV votes has been efficient for many more votes than are cast in Santa Fe municipal elections.

Although equipment and software for tabulating RCV votes is used elsewhere (Cambridge MA since 1940s, San Francisco CA since 2003, three cities in Alameda County, CA since 2010), and would be usable here, federal and State approvals desired here will likely not be made soon.

Removal from the City Charter of the provision for "equipment and software for tabulation of votes and the ability to correct incorrectly marked, inperson ballots, is (sic) available at a reasonable price." would still allow efficient and accurate implementation of RCV and could enable the citizens of Santa Fe to enjoy RCV's many benefits starting with the municipal election in 2014.

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1. <http://www.fairvote.org/ranked-choice-voting-in-portland#.UOBpwYVuNOW>.

2. "[Instant Runoff Voting and Its Impact on Racial Minorities](#)". New America Foundation. 1 August 2008.

3. Fair Vote archives: Wake County Board of Elections Answers to Questions on IRV Election Administration <http://archive.fairvote.org/?page=2543>.

4. <http://www.oaklandrising.org/blog/key-facts-about-oaklands-first-rcv-election>.

6. "[Live: Michael D Higgins elected President](#)". RTE. 29 October 2011..

7. [http://archive.fairvote.org/sf/SFLawsuit\\_Richie.pdf](http://archive.fairvote.org/sf/SFLawsuit_Richie.pdf).

8. [Australian Electoral Commission](#).

10. <http://www.minnpost.com/two-cities/2011/11/st-pauls-dave-thune-wins-re-election-after-ranked-choice-vote-reallocation>

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To: The Home Rule Commission  
City of Santa Fe, NM

January 14, 2013

I will speak to two areas of the election section.

1. An elected official should be allowed to complete the term of office to which elected even when seeking another position during that term.
2. Section 4.06 Ranked Choice Voting.

Ms. Walker and I worked with then Santa Fe Representative Max Coll in the 1990s for NM legislation to permit Municipal Run-off elections, Both House and Senate Election Committee members' primary concern during these hearings was if this would allow rank choice voting, which they strongly opposed.

Despite how the language maybe manipulated, the legislation permits only Run Off Elections. I urge this commission to investigate and support changing 4.06 to allow run off elections and eliminate the rank choice voting option.

As an active member of the League of Women Voters since 1060 and as having been a poll worker, I have spoken to numerous voters. A frequently voiced voter concern is how complicated voting has become. I believe rank choice voting will discourage some voters from participating.

I oppose the hand counting of ballots. It is expensive and has a high risk for errors.

*Rebecca Frenkel*

*Exhibit "6"*

*Commend Commission*

*3999A-Old Santa Fe Trail*

*effective response*

**City's Home Rule Charter  
Requires Broader Amendments  
By Joseph M. Maestas**

What is home rule? Home rule is the transfer of power from the State to local government units for the implementation of local self-government. This devolution of power is counter balanced by the State constitution which empowers the legislature to enact statutes that limit or prohibit the exercise of local government powers. A charter, under home rule, is similar to a constitution and allows a municipality to exercise all legislative powers and perform all functions not expressly denied by constitution, law, or the charter itself. The benefits of home rule are to enable municipalities to act more quickly and effectively to solve local problems without relying on State enabling legislation; and choose a form of government that best suits their needs.

Home Rule in New Mexico was authorized by a November 1970 Constitutional Amendment. The City of Santa Fe voters adopted a charter at a December 9, 1997 special election. As a former mayor of a non-home rule city, I believe home rule is the most liberal and participatory form of government which suits the City of Santa Fe very well.

A charter review commission has been appointed and convened to engage citizens regarding two possible charter amendment questions suggested by the Governing Body and consider others amendments. The first suggested amendment is to determine whether a mid-term councilor that chooses to run for mayor should be required to resign their seat. The second is to determine whether there should be term limits established for elected officials. However, an amendment setting term limits would not take effect until the New Mexico Constitution was amended to allow for term limits.

Santa Fe, as a home rule city, is very young and only one of 10 or so among the 104 municipalities in New Mexico. Consequently, I believe other, broader charter amendments should be considered to help truly maximize its home rule powers.

I recommend the following charter amendments:

- Repeal the provision that restricts the charter amendment cycle to a minimum of 10 years. Instead, allow the charter to be amended at any time by either the Governing Body or by Petition and voter-ratified. City government would be more nimble and effective in addressing community needs.

*Exhibit "7"*

- Repeal the ranked-choice voting provision that still awaits implementation for lack of proper vote tabulation equipment and software. Instead, add a runoff election provision requiring all candidates to receive a minimum of 40% of votes cast. If they don't, the top two vote-getters would automatically be the candidates in a runoff election.
- Allow mid-term councilors who choose to run for Mayor to retain their seats if they are not elected as Mayor. These councilors were duly elected by the voters in their districts and should be allowed to serve out their full terms.
- Postpone amending the charter to impose term limits until the State constitution is amended to allow term limits. *Same w/ 10 yr rule.*
- Remove the Governing Body's authority to set the annual salaries for the mayor, municipal judge, and councilors. This creates a perception of a conflict of interest. Instead, a citizens' independent salary commission should be established to determine such salaries.
- Require the Mayor to devote his/her full time and attention to the performance of the duties of office and forbid other paid public or private employment. In exchange, provide an appropriate full-time salary.

I will present these recommendations to the Charter Review Commission and I urge other citizens to participate in this important and rare community effort. As citizens, we have an obligation to be fully informed about our government and work together to continue refining it so that it's effective and responsive to our needs.



## Time to yank ranked-choice voting?

Larry N. Gerston

Published 7:14 pm, Monday, December 31, 2012

Democracies are known for providing political environments that encourage experimentation and refinement. Regularly scheduled elections, fixed terms of office and required vote thresholds are among the elements that define our political system. Many of these features have withstood the test of time, others have been modified, and others still have been dropped because they didn't work. Ranked-choice voting is one of the newest election wrinkles that has not lived up to its potential.

Advocates of the ranked-choice system praise the process for its ability to determine a winner in a single election, regardless of the number of candidates, because of the way that the second and third votes cast for candidates are redistributed to others until someone emerges with a "majority," albeit an artificial majority.

They also laud the new process for the way that it helps establish acceptable candidates who are not necessarily the voters' first choice but are still highly respected nonetheless. Finally, ranked-choice reformers like the fact that one-stop-election shopping reduces the campaign period as well as campaign costs.

Fair enough, but ranked-choice voting has revealed problems that strike at the heart of representative democracy.

First among these is the possibility that under the process, he or she who gets the most votes may not win because of the ability of another to gain more second- and third-place nods. That's what happened in 2010 to Oakland mayoral candidate Don Perata, who, despite his ability to garner the most votes, came in second to Jean Quan. Quan had secured additional second- and third-ballot support.

What if Perata and Quan had faced one another in a traditional runoff a few months later, after the voters had the time to compare the two in a less cluttered race? We'll never know.

Ranked-choice voting has also made it difficult for a loser in a multiple-candidate contest to challenge the outcome of a close election. Because the challenger must pay the cost of re-tabulating votes, the large number of first, second and third place votes in a crowded race makes the cost almost impossible to bear.

That's what happened to F.X. Crowley in November when he lost to Norman Yee in a race for San Francisco supervisor. Sure, Yee received 29 percent of the first place votes, compared to 24 percent for Crowley. But Crowley's claim was that he may have captured enough second and third place votes to overcome Yee's slim 132-vote victory out of more than 35,000 ballots. But with the cost so prohibitive, we'll never know.

Finally, there's the huge element of confusion that accompanies ranked-choice voting. Even though San Francisco first employed ranked-choice voting in 2004, a poll in 2011 found 55 percent of the voters confused about how it worked. It's pretty hard to choose your candidate(s) if you don't comprehend the selection concept. We'll never know how many potential voters threw their hands (and sample ballots) into the air and opted out of the process because they didn't understand the process.

Voting is a cornerstone of democracy. Shorter registration periods and absentee voting are recent changes that have helped to make the voting process more attractive than in the past. Lowering the age to 18 from 21 is another fairly recent change that has opened the system. Ranked-choice voting may have some benefits, but clearly the process extracts some heavy costs. This is one needed reform.

*Larry N. Gerston teaches political science at San Jose State University. His most recent book is "Not So Golden After All: The Rise and Fall of California."*

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*Exhibit "B"*