



Agenda

CITY CLERK'S OFFICE

DATE 6/13/13 TIME 2:55pm

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CHARTER REVIEW COMMISSION

Wednesday, June 19, 2013
Santa Fe Convention Center
Milagro/Kearny Room
201 Marcy Street
4:00 pm to 6:00 pm

1. Roll Call
2. Approval of Agenda
3. Approval of June 13, 2013 Minutes
4. Public Comment
5. Discussion and Action on topics previously discussed and ready for vote by Commission
Any Carry Over Issues from June 13, 2013 Agenda
6. Discussion and Action on topics previously discussed and ready for vote by Commission
GOVERNANCE ISSUES
 - a. Full Time Mayor Proposal
 - b. Mayor to Vote on all Issues before the Governing Body
 - c. Take Power from Governing Body and only Mayor to Hire and/or Fire the City Manager, or City Attorney or City Clerk
 - d. Clarify Charter Power of City Manager to Hire and/or Fire City Employees (i.e., City Manage does not Hire or Fire City Attorney or City Clerk
 - e. Clarify and add Definitions of Chief Executive Officer (Mayor) and Chief Administrative Officer (City Manager)
 - f. City of Santa Fe have an Ordinance requiring an Audit Committee
 - g. Salaries of Elected Officials to be set by Independent Commission
 - h. Public Notice of Recommended Budget and Capital Expenditures and Capital Outlay Programs

[Specific Language for Proposals or Amendment are requested to be submitted to the Charter Review Commission, c/o Irene Romero at City Attorney's Office, at least 48 hours prior to the meeting.]

7. Discussion/Possible Action Setting dates for votes at Future Meetings
 - a. Governance Issues – Carry over from June 19, 2013 Meeting
 - b. Policy Statements – Anticipated to be at June 27, 2013 Meeting
8. Communication from Charter Commission Members
9. Public Comment
10. 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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**MINUTES OF THE
CHARTER REVIEW COMMISSION
June 19, 2013
Santa Fe Convention Center
Milagro/Kearny Room
4:00 p.m. to 6:00 p.m.**

CALL TO ORDER.

A meeting of the Charter Review Commission was called to order by the Honorable Patricio Serna, Chair, at approximately 4:00 p.m., on Wednesday, June 19, 2013, in the Milagro/Kearny Room, at the Santa Fe Convention Center, 201 Marcy Street, Santa Fe, New Mexico.

1. ROLL CALL

Roll call indicated the presence of a quorum as follows:

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

MEMBERS EXCUSED

Roman Abeyta [Resigned]

OTHERS ATTENDING

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

There was a quorum of the membership in attendance.

2. APPROVAL OF AGENDA

MOTION: Commissioner Hiatt moved, seconded by Commissioner Johansen, to approve the agenda as presented.

VOTE: The motion was approved on a voice vote, with Commissioners Long, Farber, Gutierrez, Hiatt, Johansen and Werwath voting in favor of the motion, no one voting against and Commissioner Romero-Wirth absent for the vote.

3. APPROVAL OF JUNE 13, 2013 MINUTES

Postponed to the meeting of June 27, 2013.

4. PUBLIC COMMENT

Chair Serna welcomed Councilor Ives and Councilor Wurzbarger to the meeting.

Former Councilor Karen Heldmeyer said, "I have been authorized to speak on behalf of the League of Women Voters. The topics listed on this agenda are ones that were introduced a long time ago and there has been no further discussion and no further information was available, or least that was provided to us, even though we asked for it, about these issues. And since some of these issues are proposing a fairly large change to City government, the League, under its transparency position would ask, although we're finally discussing these issues tonight, that you defer voting on them until the public is aware of them and can have some input on them. Otherwise, you guys are making the decision, and we think these are things the public would be interested in if they knew they were being proposed. And we're just reading over them quickly right now."

Jim Harrington said, "I don't know if this is the appropriate time to speak or not. I don't have anymore to add to the debate between Steve and me, but I did have a clarification of Common Cause's position on that issue, which I can wait until we are talking about it."

Chair Serna asked him to wait, noting we have a couple of Councilors who have to move on to other things this evening, so we want to get to them as soon as we can.

5. DISCUSSION AND ACTION ON TOPICS PREVIOUSLY DISCUSSED AND READY FOR VOTE BY COMMISSION, ANY CARRY-OVER ISSUES FROM JUNE 13, 2013 AGENDA.

An Email Memorandum dated June 17, 2013, with attachments, from Steven Farber, to Irene K. Romero, regarding Fwd" Request for Input re Santa Fe, NM Home Rule Charter, is incorporated herewith to these minutes as Exhibit "1."

Chair Serna said, regarding Item 5, *Discussion and Action on Topics Previously Discussed and ready for vote by Commission, and any carry-over issues from June 13, 2013 Agenda*. He said Vice-Chair Long just informed him that those are listed under Governance issues, and asked if the Commissioners preparing the agenda have any comment in this regard.

Commissioner Farber said, in preparing the agenda for today, the carry-over item was the continuation of the proposal that he set forth regarding setting a ban on contractor or business entity contributions. He said there was a motion to postpone further consideration of that item to this meeting, since it was brought up at the end of the meeting and we were still debating it. He said this is the only carry-over issue. The other issues were based upon he and Commissioner Hiatt going over what was ready. He said, however, he agrees with some of Former Councilor Heldmeyer's comments. He said, independent of that, these were issues that were on the matrix that Ms. Barkley had prepared, so they pulled them and put them down under the category of governance. He said, "For the Commission's benefit, at the next meeting, June 27, 2013, would be the various policy statements which were published today, the agenda for the June 27th meeting. So that's how the agenda was developed."

Carol Romero-Wirth arrived at the meeting.

Chair Serna asked the desire of the Commission on that item which already has had quite a bit of discussion, noting there was an email from Dean Erwin Chemerinsky [Exhibit "1"] a constitutional lawyer.

Commissioner Farber said, "Commissioner Hiatt was discussing with me, that it seemed logical that we would take up at some point, with just a little more debate, the issue of contractor contributor limits or bans and then move on to the other issues."

Chair Serna said then you want to do that now before we take up the Governance Issues.

Commissioner Farber said it seemed logical to do that since we are in the middle of it, "but you're the Chair, and if you want to put it at the end, we can do that."

Chair Serna asked Mr. Harrington if he would mind waiting if we put it to the end, and Mr. Harrington said no, noting he has to leave by 6:30 p.m. Chair Serna said his concern is about the Councilors in attendance and he wants to get to their presentations as soon as possible, so he would like to hold off for now on Item 5, but said the Commission will get to it.

6. DISCUSSION AND ACTION ON TOPICS PREVIOUSLY DISCUSSED AND READY FOR VOTE BY COMMISSION: GOVERNANCE ISSUES.

- A. FULL TIME MAYOR PROPOSAL**
- B. MAYOR TO VOTE ON ALL ISSUES BEFORE THE GOVERNING BODY**
- C. TAKE POWER FROM GOVERNING BODY AND ONLY MAYOR TO HIRE AND/OR FIRE THE CITY MANAGER, OR CITY ATTORNEY OR CITY CLERK**

- D. **CLARIFY CHARTER POWER OF CITY MANAGER TO HIRE AND/OR FIRE CITY EMPLOYEES (I.E., CITY MANAGER DOES NOT HIRE OR FIRE CITY ATTORNEY OR CITY CLERK.**
- E. **CLARIFY AND ADD DEFINITIONS OF CHIEF EXECUTIVE OFFICER (MAYOR) AND CHIEF ADMINISTRATIVE OFFICER (CITY MANAGER).**

Items 6(A) through (E), were combined for purposes of presentation, discussion and action. Items 6(F) through (H) were voted upon separately.

A copy of a redline version of *ARTICLE V. THE MAYOR, ET AL*, prepared by and submitted for the record by Councilor Ives, is incorporated herewith to these minutes as Exhibit "2."

A copy of the statement for the record by Councilor Rebecca Wurzbarger, entered for the record by Councilor Wurzbarger, is incorporated herewith to these minutes as Exhibit "3."

A copy of an email Memorandum with attachment, from Councilor Peter N. Ives, to Irene K. Romero, regarding *Next Charter Agenda*, is incorporated herewith to these minutes as Exhibit "4."

Vice-Chair Long reviewed the contents of Exhibit "2," please see Exhibit "2" for specifics of this presentation. She said these items were discussed at length at the meeting at the Public Library, noting Mayor Coss spoke to the Commission about the problems associated with these items.

Councilor Peter Ives said he prepared the redline before the Commission [Exhibit "2"] knowing this Commission was looking at governance issues, and what, from his perspective, might make better sense for the City. He said Vice-Chair Long has captured a number of the issues that have arisen over time, noting he hasn't been on the Council for much of those, but he has seen some of the interplay which the Mayor spoke about to the Commission some time ago as well. He said, "What I would like to do is to add one more thing, which from my perspective.... I think we all tend to think of the Mayor, whoever that person is, as embodying the leadership and the vision of the City of Santa Fe. And I think our current system, the way it allocates responsibilities and power doesn't really hold up to that measure. And what I would like to see, and what I'm putting forth in this proposal is to really make that a full time job, a job which is committed to the City without distraction and allow that person to come forward with their vision for the City on an annual basis in the State of the City report, to try and lay out that Mayor's vision for what Santa Fe should be doing and how we get there. And commensurate with that, is the notion of trying to empower the Mayor in that position with the capacity to actually effect change and that's where the hiring, and the multitude of provisions comes into the matter."

Councilor Ives continued, "I did not try, if you will, to fill out exactly who the logical persons or positions the Mayor would have under that type of system in order to effect the policies they wish to bring forward in the City. It essentially would be the vision they would have in the various departments in the City. So with a capacity to be a full time position to be paid commensurate with that position to have an obligation to bring forth a legislative agenda on an annual basis for the City of Santa Fe, and then having the staffing in place to effect that vision to the extent possible. And they still have, of course, the Council in

terms of approval of ordinances and resolutions, so there are still checks and balances in the system, but really to strengthen that position to where that position does become the visionary leadership for the City of Santa Fe in a more realistic way. That's really all I wanted to add to those remarks, and I know that Councilor Wurzbarger also has a number of things to say."

The Commission commented and asked questions as follows:

- Commissioner Farber said, "With regard to this proposed radical restructuring of Santa Fe's form of government, do you have an itemization of the costs to the City of making the Mayor's position full time."

Councilor Ives said he hasn't studied what other Mayoral positions in different, similarly situated cities earn, so he doesn't have that cost, commenting that would be the primary cost associated with the proposal. He said that salary presumably is going to be determined to be that which that position should earn, commenting presumably there is a process that would reasonably determine that figure.

- Commissioner Farber said, "With all due respect, Councilor Ives, don't you think that it's important that we as a body, making a recommendation to the Council which would then have to debate this issue, should have some understanding of the cost significance and fiscal impact of creating a full time Mayor's position with regard to salary. When Mayor Coss was here, he mentioned.. \$100,000 was the figure he threw out, maybe not up to that, he said. Then you have the City's PERA contributions, the health insurance contributions, the City having to pay FICA tax, so there's a fairly significant cost, wouldn't you agree. And that's information that we ought to have to be able to properly consider this for the community."

Councilor Ives said, "Again, if you've already heard figures from Mayor Coss, you do have, presumably, a presumptive basis upon which to consider that position. It's a matter that's currently set for the Council to determine, and I can't tell you how the Council would vote in the future. But I think all the Councilors are certainly sensitive to the budgetary restrictions in the City. If there were an independent commission, presumably, they would be going through an independent analysis, and I don't know if every matter that you've considered, as you've been going through these various things, if you've done a cost analysis to determine what its fiscal impact would be. I guess my sense is you should be able to consider this without having a firm notion of what that salary is going to be. And if you need to presume something, the Mayor's estimate is probably as good a one, if not a better one, than I could give you off the top of my hear. So I would certainly urge you to consider that as part of your process."

- Vice-Chair Long said she doesn't see the salary as part of that.
- Commissioner Farber said he understands the salary is not a part of it. He said, "I'm just asking, in the context of attempting to restructure City government, don't you think it's important to have

some kind of breakdown and analysis of what this might cost and whether this is, from a management standpoint, a good idea, like what is the role of the City manager, vis a vis a full time Mayor.”

- Commissioner Werwath said he thinks it's safe to assume, based on both the Albuquerque Mayor's position which we researched, and other things, to be probably less than \$150,000 a year. If a full FIR was to be done, would it take into consideration things like the savings and staff time from having less City Councilor micromanagement of City staff. He said, "It seems like it's a bit of a red herring. I think we have a general idea of the cost."
- Commissioner Farber said, "I think I had the floor, and I don't think that it's been taken from me to be able to ask questions, so Daniel, I would appreciate it if you don't interrupt me like you did at the last meeting."
- Chair Serna asked, "Let us proceed peacefully and in harmony. Go ahead and ask a question, Commissioner Farber, whatever you want."
- Councilor Farber asked, "What is the relationship anywhere between this proposal that we have in front of us and the role of a full-time City Manager."

Councilor Ives said, "In the Charter as it is now, the City Manager is essentially nominated by the Mayor and has to be approved by the Council. So the element that would no longer be there is the approval by the Council. The Mayor would simply find that person that they think does that job the best to be part of the Mayor's executive team, in terms of implementing policy on behalf of the City."

- Commissioner Farber asked what is the check and balance that would be within the governmental structure in the event a Mayor became arbitrary, and the City Manager became arbitrary, to the detriment of the Governing Body and to the community.

Councilor Ives said the Governing Body still has capacity to make policy, and then there's an obligation to enforce those policies. So he thinks there has been that balance throughout all of the modern history of the City. He said there was the mention of recall if something gets to the point where that might be appropriate.

- Vice-Chair Long said, "Or the voters don't vote them back in."
- Commissioner Farber asked if there is the ability of the Governing Body to remove the City Manager.

Councilor Ives said that is proposed to be removed in this proposal.

- Councilor Farber asked, "With regard to this particular proposal, is there a citizen's petition that you have received supporting this idea."

Councilor Ives said no, he has received no such petition.

- Commissioner Farber asked Councilor Ives, "How do you envision protecting against political patronage with the Mayor having the power, not just to appoint the City manager, but also, it appears, to be some blanks with regard to the department directors, and other positions like department directors."

Councilor Ives said currently those positions are filled by the City Manager, and this proposal would have them to be filled by the Mayor, commenting they have to be filled by somebody, and there is no more or less patronage possible in this than there is in the current system.

- Councilor Faber said, "Under Paragraph 2, your proposal gives to the Mayor, the power to appoint and remove the City Manager, City Attorney, City Clerk and other positions like department directors, and appoint and remove, subject to the approval of the Governing Body, members of the advisory commissions. Does the Governing Body, under your proposal still have the power to remove the City Manager, the City Attorney and the City Clerk and members of advisory commissions as allowed under State law."

Councilor Ives said, "My understanding is the that the only body [position?]that the City Council currently has input on is the City Manager. I'm not aware of a power under a municipal charter currently to remove the City Attorney, so, I'm proposing to now give the Council that power, and the only change is to remove the Council's capacity to remove the City Manager."

- Councilor Farber asked, "Are you aware of the provisions under State law which give to the Governing Body, as a matter of State law, the power of removal of the City Manager, and I believe other..."
- Vice-Chair Long said, "That's just unfair. This is an unfair question that you're asking, because you asked the City Attorney for an opinion on whether it was required by State law, and you received an opinion. We got this email on Wednesday, May 22, 2013, where Jamison Barkley disagreed with that opinion. And you are presenting this as a question to Councilor Ives as though this were State law. And I think that is unfair and I think it is disingenuous of you not to reveal that we have sought a legal opinion on this. We have obtained it, and it is not required by State statute."

Commissioner Farber said, "I respectfully, Commissioner Long, disagree that this is any kind of detailed analysis of structure of government when we're dealing with something that will fundamentally shift the governmental structure of the City of Santa Fe."

- Vice-Chair Long said, "I'm just saying that it would be more forthcoming to tell the Councilor of that opinion that we asked for and received. I just don't think it's fair."

- Councilor Farber said, "What I was going to do was ask the Councilor, if I may, about his awareness of the State statute, which I believe is cited there, but without an analysis of a number of the cases."

Councilor Ives said, "My understanding is this is something we can do, and my understanding has been on the Council that we don't have authority to remove the City Attorney. I've never heard anybody suggest that from the Council, from the Mayor's Office or from the City Attorney's Office."

- Commissioner Farber said he is mainly concerned about the City manager.

Councilor Ives said, currently, the Charter gives us the capacity as a Council, to remove the City Manager, and this proposal forecloses to change that, so the Mayor has that authority.

- Commissioner Farber asked what is the protection, short of recall, that a community would have in the event you have a Mayor that acted in an arbitrary fashion, in concert with the City Manager, to the detriment of the Governing Body and the Community.

Councilor Ives said it isn't a power to remove the City Manager in that situation. The Council does have its ability to affect policy on behalf of the City which needs to be implemented regardless of who is the City Manager, and if there is a dereliction of duties, presumably that would be a matter that would be taken to the people for potential recall. He said clearly, once an Ordinance is passed it is incumbent for us, pursuant to the oaths we take, to uphold the Charter and the Constitution. If we don't, then clearly you are subject to removal."

- Commissioner Hiatt said he is concerned, because since we started, we have considered these items separately, and is concerned about how they have rolled up into one proposal. He is hopeful that the Chair will permit the members to consider these one at a time, and at the end, whatever is accepted and recommended by the Commission to the Council could be rolled into one proposal. He would like to consider these one at a time, but will leave that to this Commission.
- Commissioner Romero-Wirth believes that we need to look at these together, although we can talk about each one individually, but we do need to see how they work as a whole.
- Commissioner Hiatt said he was waiting for Commissioner Long to move approval of the whole thing, and then we would have to "pick and choose and go through them dig at them." He said Commissioner Farber is correct, this is a significant change. He has thought of these items separately, but now he is having to think of these in a congress manner with which he is unfamiliar.
- Commissioner Romero-Wirth asked if is this modeled on something – is there another city which works with these same provisions.
- Councilor Ives said he is unaware of one, but there could be. The desire was to try to create a stronger mayoral position.

- Commissioner Romero-Wirth said she is concerned about this. She said she is in full agreement that the Mayor already works full time, and we should acknowledge that and put that in the Charter. However, the Mayor is an executive and we're "sort of treating him that way here, but we're sorta not, because he's only allowed a vote, but yet he's supposed to set an agenda and set a budget and then rally people around, but I'm not sure we're giving him the power he needs to do that if he has only one vote." She would like to discuss whether we should pull him off the City Council altogether, and make him an executive, and there is a radical restructuring."

- Commissioner Hiatt suggested additionally the Mayor should have veto power.

Commissioner Ives said that is like the Albuquerque form of government.

- Commissioner Romero-Wirth asked if there is another City government that operates as Councilor Ives is suggesting, and what are the pros and cons.

Councilor Ives said he doesn't know, and there probably are many people asking how to fix the Albuquerque system, as there are saying the same thing about Santa Fe. He said one of the problems described in our current system is exemplified by the tremendous turnover in the City Manager office.

- Commissioner Romero-Wirth said we need to be very clear about who has the hiring and firing power, and it can't be a whole bunch of folks. "I think it needs to be a very linear line there." She said, "Perhaps if the Mayor were to be made an executive, Councilor Farber is correct, you do change the role of the City Manager and that becomes more like a chief of staff rather than a City Manager. I haven't studied this closely in terms of what other city governments do, commenting this seems almost a hybrid and I don't know that it works."

Councilor Ives said he can't offer that information because he doesn't know, commenting he thinks there would be good coming out of making that position capable of running for that position across the City and therefore having the imprimatur of the people by virtue of election and the team the Mayor brings with him into office. It is different from the current system, but not as radical as moving to the Albuquerque system, and believes it is a reasonable and rational way to create a stronger Mayor with sufficient checks and balances.

- Vice-Chair Long said we heard some of this at the meeting at the Library, noting Mayor Coss seemed more in support of the system in Albuquerque. She said this is an attempt at a compromise to capture what exists, and putting into language what already exists in many ways – a way of fixing the issue with the Council being able to fire the Manager, observing that it probably is a compromise.

- Commissioner Romero-Wirth asked if this really makes the Mayor more powerful.

Councilor Ives said this gives some of the consistency in the government as a whole.

- Commissioner Farber asked Councilor Ives if there are any requirements for someone to run for Mayor, so it doesn't become like the PRC where anybody could run because it is a good salary.

Councilor Ives said he isn't aware of those kinds of limitations on any other executive position, and leaves it to the good sense and determination by the electorate.

- Commissioner Farber asked if the Commission will have the opportunity to make comments later as we debate this.
- Chair Serna said to run for Mayor they still have to get nomination petitions, so there will be a "winnowing and sifting" through that process.

Councilor Ives said, with an appropriate salary, it might open it up more broadly to others who wouldn't otherwise be able to run.

- Vice-Chair Long said Mayor Coss addressed this saying previous Mayors were retirees with a State pension or had independent means.
- Commissioner Farber said as a point of information, "To my recollection, the only time this was discussed, getting to Former Councilor Heldmeyer's point, was at our meeting of April 23, 2013, at the Public Library when Mayor Coss appeared. We've had no other input, no other analysis. There was a man who spoke from the audience, Brad Parkins, talking about management analysis and companies that come in, in terms of consulting, to be able to look at an organization and make recommendations with regard to structure. But there has been no real thorough discussion of this issue, other than at that meeting, and it wasn't even thorough. It was just the Mayor speaking and some of us commenting."
- Chair Serna assured the Commission that there would be full discussion in this matter, commenting he is very interested in the recommendations of the League of Women Voters, Common Cause, the neighborhood associations and such, and believes the Commission will be fully informed and the public will have full opportunity to provide input into this matter.

Councilor Ives thanked the Commission for its time and the opportunity to appear before it and contribute to those matters it is considering on behalf of the City, and wished the Commission well in its consideration. He looks forward to seeing the Commissions' recommendations and taking those up at Council, as well.

Councilor Wurzbarger thanked the Commission for the opportunity to speak, noting this won't be a legal argument and that her testimony is based on her 11 years experience service on the City Council on the issues about which she is concerned. She said, "In terms of preface, on how this issue was raised, it was raised in the beginning by Resolution, and our expectation that it would be addressed and if it would be later, it would be later. In terms of any public input on this issue, I can assure you that there are many

staff at the City of Santa Fe that would have many opinions about this, if they were not afraid to testify." Councilor Wurzburger then read her statement into the record in support of Councilor Ives' proposed Charter amendments. Please see Exhibit "3" for the text of Councilor Wurzburger's statement.

Councilor Wurzburger said the New Mexico Municipal League has models, and Bill Fulginiti, the Director, would be happy to come here and testify to this Commission. She said she also would be happy to testify where needed. She thanked Councilor Ives for taking the time to put something on the table "to which "you may apply your own due diligence and research and look at the options." She said, "But again, of all the points in this, I think if you don't do anything else for the City, then seriously pass something that addresses the hire/fire issue, so that you're not only affecting quality of service, but you are affecting the quality of the workforce climate, which Mr. Hiatt experience. And I won't give my views of his personal sharings with me, but I sincerely believe this is something that needs to be addressed. So thank you for listening to my testimony."

The Commissioners commented and asked questions as follows:

- Commissioner Romero-Wirth asked, "I've been reading charters as I'm listening, about how they work, to see if there is any model like what was presented to us. If we were to leave the Mayor as non-voting or only voting in the case of a tie, and make all these other changes, what do you think about that."

Councilor Wurzburger asked, "You mean if you only did the vote."

- Commissioner Romero-Wirth said, "No. If we leave that piece alone and we do all the other things, so he's sort of quasi executive."

Councilor Wurzburger said, "I would personally, from my experience, see no problem with that. Again, and I sort of wait for Councilor Heldmeyer's chastisement on an expression that she usually comments on when I use it, and that is hierarchy of the judges. And there are a hierarchy of judges for me. That would be one of the lone objectives. The higher ones are the ones that I mentioned, and I go on down the list. The three that I have identified, I think are the most important for moving the City forward in that. You know, labels are always wonderful, whether it's radical or not radical. The question for me is whether it is more functional and how we can better serve the City. That would be my opinion."

- Vice-Chair Long said, the thinking is, because we're not proposing veto power for the Mayor, that maybe we take away that vote because it really can't do a whole lot in terms of chief executive function.
- Commissioner Romero-Wirth said, "So he only votes now in case of a tie."
- Vice Chair Long said, "Well, in certain other instances, but the Mayor does not usually vote."
- Commissioner Romero-Wirth asked about the vote in other instances.

- Vice-Chair Long said the Mayor votes when they need a majority vote for an ordinance or something.

Councilor Wurzburger said it depends on the level of the vote.

- Former Councilor Heldmeyer said, "The term is when it makes a difference."
- Vice-Chair Long said, "The Mayor does not recuse himself. I think we can say that."
- Commissioner Werwath said, "Giving the Mayor a vote on every issue would also give him the power to put together coalitions around legislation that currently falls to him only in a tie."

Councilor Wurzburger said, "It's not in forming coalitions, it's how you do it and when it happens, and for what purposes. Councilors talk to one another and try to come to terms with evolving a compromise around the legislation. I just don't know... [*inaudible because she was interrupted*]."

- Commissioner Romero-Wirth said the Charter provides, "The City shall have a Mayor who shall vote only in the case of a tie or when his or her vote will provide the necessary number of votes required by law for taking action on an issue before the Governing Body."

Chair Serna said this is his identical power as the Chair of this Commission.

- Commissioner Farber said, "Councilor Wurzburger, I agree completely that a Councilor should not be involved in micromanagement of governmental affairs. I believe that the Council serves in policy functions, based upon my service on the Council. And I also just want to say that your comments, as well as Councilor Heldmeyer's, with regard to the amount of time, is completely accurate. It is a civic calling and I don't think people ought to be running for these offices unless they understand, generally, that you're going to spend a whole lot of time fulfilling your responsibilities. You have full time jobs, parents or whatever, so I think running for Mayor is a specific calling more than almost anything else, as well as the Council."
- Commissioner Farber continued, "I'm concerned about checks and balances, and I want to give you an example of how you deal with it. You have a Mayor who..."

Councilor Wurzburger asked if he has a question for her.

- Commissioner Farber said, "Yes, it's a hypothetical, but it's real. A mayor who colludes with the city manager to mislead a governing body, what power...., and the Governing Body finds out that the city manager provided false information.."

Councilor Wurzburger said, "Then they should come forward with that information and call for a recall."

- Councilor Farber asked about the power of the governing body that exists, currently in State Statute, to remove the City Manager."

Councilor Wurzbürger said, "I said I wasn't going to have a discussion about the power of State Statutes."

- Councilor Farber said he is talking about the power, that exists within the Charter right now, of the Governing Body to remove a City Manager who lies to them. He asked, "What would you do about that."

Councilor Wurzbürger said, "I think that power should be given to the Mayor."

- Councilor Farber said, "Even if the Mayor and the City Manager collude to lie together."

[Councilor Wurzbürger's remarks here are inaudible because too many people were talking at the same time].

Councilor Wurzbürger said, "These are my opinions. I find your questions to be something that I don't care to.... we could come up with 73 *[inaudible because she was interrupted by Commissioner Farber]*

- Commissioner Farber said it actually happened.

Councilor Wurzbürger said she is not aware of that.

- Commissioner Farber said, "I don't want to embarrass people, but it actually happened.

Councilor Wurzbürger reiterated she is not aware of that.

- Commissioner Farber said it happened when Debbie Jaramillo was Mayor and David Coss was City Manager, and they were asked about the donation of fire trucks to a city in Mexico, which the Governing Body would have approved. It had already happened, but they denied that it happened. And Mayor Coss lost his job because he misled the Council."

Councilor Wurzbürger asked if the Council couldn't then come back and explain the truth.

- Commissioner Farber said they then terminated the City Manager, who happened to be Mayor Coss.

Councilor Wurzbürger said, "Then I would say that they did an action that was relevant."

- Councilor Farber said "your" proposal would take away from the Governing Body the ability to remedy that situation.

Councilor Wurzbarger said that's right, you couldn't do that quickly. "But I think if you had brought that up in the public that... However, to continue, people can be forced to retire. There are people that have left the City because they were put in a circumstance, the work environment, it doesn't just have to be the firing, they left, because it became too uncomfortable. And I would think that if you, as a Council at that time, just hypothetically, had come forward and made a big issue of it in the paper about the lies that you knew, maybe there would have been another way to deal with it. I don't know. And again, I can only quote my experience, and I really don't know how to answer you further. Thank you for your questions. And thank you again for the opportunity to speak with you all."

- Chair Serna thanked the Councilors for their appearance here this evening.
- Commissioner Gutierrez said, "Councilor [inaudible] says if your hierarchy is to hire and fire the City Manager, that you have that authority. I was having lunch with a friend one time, and he said to me in conversation that he worked for the best City Manager and the worst City Manager in the same City. That stuck in my head. What if you have the worst City Manager and the best City Manager, the same person, but two different bosses. What would be the checks and balances."

Councilor Wurzbarger asked Commissioner Gutierrez to elaborate on his question.

- Commissioner Gutierrez said, "The same City Manager, two administrations. Did that City Manager go from one administration as the best Manager, to the worst City Manager for another."

Councilor Wurzbarger said she would have to know more about how that happened.

- Commissioner Gutierrez said he is under the assumption that the Mayor was driving the City Manager to do what was happening.

Councilor Wurzbarger said, "I think the checks and balances rely on the public. Again, I think a mayor should be given the chance for 4 years to run the City, and if it's going down the tubes, whatever, however you want to operational define that, I think the City of Santa Fe would be organized in a way, through Councilors and other people to get rid of the Mayor."

- Commissioner Werwath pointed out that every other time that we've talked about checks and balances and term limits for elected positions, it's already been brought up that the ballot box was the effective [term] limit. He said several Commissioners and Councilor Heldmeyer have brought that up in the past.

Councilor Wurzbarger said that's the term limit issue, with which she doesn't agree personally. She said, "However, people say, bottom line, if they don't want them, they won't be there."

Former Councilor Heldmeyer said, "Let me first say, the League does not have a position on this because we didn't see them [Exhibit "2"]. I'm surprised they were handed out at the last meeting. I asked at the last meeting that I be kept informed and get copies of things that were handed out to the Commission. I was told I couldn't be on the stated list because Commissioners didn't want their email addresses public. That's fine. But maybe if the League had had this for a week, maybe some of the research you're talking about could have been done. And I don't know if the League is going to have a position on this. But clearly, they can't have a position on what they didn't see. Okay."

Former Councilor Heldmeyer continued, "Now, as an individual. I've been sitting here scribbling notes, in terms of this particular thing. And, as I read it... well... as I read it, it says that 'the Mayor shall appoint and remove and, subject to the approval of the Governing Body is crossed out,' and it then reads the City Manager, City Attorney, City Clerk and other positions, such as department directors. I don't see the check and balance that has been talked about, in terms of what the Council can do if there is a really bad City Manager. City Managers came and went during the 8 years I was on Council. Some of them of their own volition, some of them, maybe not. The only one I was involved in, in terms of removal, was for a serious breach of conduct and breach of law. And that does happen, from time to time. And, something should be done about it, and the Council, it seems to me, to be the group that should do it."

Former Councilor Heldmeyer continued, "There's discussion of appointing and removing, subject to the approval of the Governing Body, members of advisory commissions. I'm particularly concerned about the remove part, whether that is in relationship to how people serve out their terms on these advisory commissions, or if that essentially is at the will of the City Manager [Mayor?]. Could the City Manager [Mayor?] knock out the whole Planning Commission, if the Planning Commission didn't go along with the, excuse me, the Mayor. Could the Mayor knock out the entire Planning Commission if he or she didn't like what the Planning Commission was doing. And those are all things I think that need to be worked out. Things that are not in this draft."

Former Councilor Heldmeyer continued, "There is no discussion at all of the City Manager. Things that the League proposed which was not a position, but merely a clarification – What is the chief executive officer, which is what the Mayor has been. What is the chief operating officer which has been the City Manager. There is no discussion in this draft of changing anything about the City Manager. The other thing I see, it still says 'The Governing Body, shall by ordinance, fix the annual salaries of the Mayor, Municipal Judge and Councilors. I guess if you didn't like the Mayor, the Council could set the salary at \$1 a year and hope they could go away. That's always a possibility."

Former Councilor Heldmeyer said, "In terms of the few things that have been said here.... Oh, and if we're going to talk about recall as the check and balance, then I think you need to revisit the recall portion of the Charter which does not allow recall in the first and fourth years of anyone's term. So there's only a small window of opportunity for recall. I would agree with Councilor Wurzbarger, that micromanaging is the bane of City Hall. It's the bane of good, competent City employees who are doing their jobs and don't like Councilors or Mayors to come and tell them that

they should be doing something else, particularly when that something else is something against the law, something against policy, and/or something which is not something that they feel is their duty, as given to them, by the Council and the City Manager. And that happens a lot more than it should, and it is one reason why good people leave City Hall. And I just looked at the Resolution that set up this Commission, and I don't see anything about these issues. They may have been discussed at Council when this resolution was discussed. I didn't follow that, but they certain aren't in the Resolution itself. And a minor point, Councilor Farber, the City does not pay FICA on elected officials. And I found that out the hard way, that I'm going to take a huge hit in my social security because they didn't do that. If they pay into PERA, they don't have to pay into FICA, and they're going to dock my social security like 40% or something."

- Commissioner Farber said, with regard to the Resolution, the "Be It Therefore Resolved" clause sort of says this Commission can deal with any amendments. He said the Mayor issue was not in any of the "Whereas" clauses that he recalls. He said he thinks this is an important topic and worthy of debate. He said we have been operating on a schedule based on a belief that that these issues need to be voted on at the upcoming March election. And so that has sort of set the structure of our meetings.
- Commissioner Farber continued, "But this is a really involved proposal, it seems to me, and I think we shouldn't take form as in March election over substance, and perhaps this requires extended debate and consideration, and some of the proposal may be worthy. I know Commissioner Long thinks it's all worthy. Some may not, there may be disputes. I agree with Commissioner Hiatt that it was certainly never our view when we were doing the agenda that it was going to be lumped together. So I just throw this out there. There's nothing that says that this has to be voted on in March if it affects the proper deliberation of this [Commission]. And I think having the input from Mr. Fulginiti, whether at the next meeting or a meeting after that, would be important, because as I recall there's some flexibility to be able maybe to have another meeting."
- Chair Serna said he understood we had to wrap everything up by the end of June, so he set a three-week trip beginning on July 9, 2013, so he won't be available after June.
- Commission Werwath said he won't be available after July 4, 2013.
- Chair Serna said we have to do this in the time that we have been given. He said, "Apparently, Commissioner Farber is suggesting to defer the issue of a full-time mayor until another time."
- Commissioner Farber said this won't apply to the next mayor, it would be the mayor after that, so it's four years down the road. He said this is an important, weighty issue which he thinks requires some very thoughtful consideration, but there's a lot to it.
- Chair Serna said his major concern is that there have been 11 City Mayors with the last 3 Mayors, which to him, demonstrates so glaringly that there is something wrong with the system. And if it's wrong, then it's adversely impacting our citizens. He said, "I think we have a duty to try to correct a wrong that, to me, is so obvious."

Former Councilor Heldmeyer said some of those City Managers left because they were fighting with the Mayor, more than because they were fighting with the Council.

- Commissioner Werwath said some of the City Managers colluded with the Council against the Mayor.

Former Councilor Heldmeyer said, thankfully, she hasn't been a part of the last "5 years of shenanigans."

- Vice-Chair Long asked if we are still asking questions of Councilor Heldmeyer at this point, or if we are moving on to other discussion by the Committee.
- Chair Serna said we need to move forward with the discussion. He asked Ms. Romero what time we have to vacate the room, and Ms. Romero said at 6:00 p.m. Chair Serna said we only have 40 minutes to complete this long agenda.
- Vice-Chair Long said she can understand if it is the pleasure of the Commission to defer voting on this to see if there is further input on the specific language that others have not seen. However, she believes it is important and we need to take it up and she doesn't want to punt it to the next Commission, or give it to the Council saying we couldn't figure it out or we couldn't come up with a recommendation. She said that's where the rubber will need the road on this, and believes we should take a position on this, commenting that's our job."

Vice Chair Long continued, saying the Commission has concerns about having a really bad City Manager, and what we can do if the Mayor has put that person in place, and where is the check and balance. She said if it is a bad City Manager, the Mayor should fire them. She said this is why we elect the Mayor, and if they can't do that, then we won't reelect that Mayor. She believes there would be a real outcry if there were a crime, or untruthfulness. She said we are assuming scenarios that haven't happened, or that are of minor concern in light of the real problems that have heard. She said we can't provide for everything that could happen, and we have to trust our public officials to do their jobs and hire people that can do their jobs. She thinks we may be making up scenarios as a way to not deal with this.

Vice-Chair Long continued, saying she thinks a full time salaried mayor opens the position to people that maybe couldn't run for mayor, and perhaps we want a broader base than retired people or those who are independently wealthy. She thinks we want to provide that opportunity to be able to get that talent pool, and perhaps attract some younger people to run.

- Chair Serna said he agrees with the Vice-Chair, that this probably is the most significant topic this Commission is facing, and we're going to have address it and resolve it one way or another and then send it to the City Council. He agrees that we investigate the obvious and not investigate the obscure. He said, "We're going to have to just take the bull by the horns and do it."

- Commissioner Farber agrees we should “take the bull by horns and do it,” but believes we need more information and more public input. He said we received this redline proposal after the last meeting, noting we have had 3 meetings right in a row. He said community groups, including the League of Women Voters, the Neighborhood Network, and others haven’t had the opportunity to seriously consider this issue. He agrees that younger folks should be able to run for Mayor and it shouldn’t be a position sought only by retired or wealthy people. He said, however, he is concerned about what happens with the infusion of money into politics, with a full time Mayor at an attractive salary, with an inability to limit contributions from outside groups, and the politicalization of the process when it is supposed to be a non-partisan process. He sees this as a slippery slope which concerns him, such as what happened with the PRC elections before they developed even minimal qualifications.
- Commissioner Farber said there was a disagreement between Assistant City Attorney Martinez and Assistant City Barkley, with regard to redistricting.
- Vice-Chair Long said there was no disagreement on this particular issue.
- Commissioner Farber said it is because Mr. Martinez hasn’t been asked to opine on this, and he doesn’t know what Mr. Martinez’s position would be. He said the State Statutes provide that the Governing Body may discharge an appointed official or employee by a majority of all members of the Governing Body, in 3-11-6(D)(1) NMSA. And he said he tries to understand New Mexico law regarding the ability of a home rule charter city to make its own laws, to have its own governing structure, but not in conflict with state law. He said the law makes a distinction between local and general law. He doesn’t believe’s Ms. Barkley’s email really analyzed that. He doesn’t know how we have the ability to take that check and balance from the Governing Body.
- Vice-Chair Long said because the email isn’t lengthy, doesn’t mean it isn’t thorough, and Ms. Barkley arrived at her conclusion in light of the specific statute, referenced by Commissioner Farber, that in light of a Supreme Court decision, and the City’s home rule powers, any legal challenge to the City’s variation from State Statutes or composition of local government would be unsuccessful. She said we asked for and got that opinion, and she agrees with it. She said it is in line with State Statutes, and says, “A charter may provide for any system or form of government that may be deemed expedient and beneficial to the people.” She doesn’t think we’ve asked for another opinion on that. She said, “I think it is a well founded opinion.”
- Chair Serna said Jamison Barkley was his law clerk for two years, and she is one of the best law clerks he ever had, noting he had lunch with her today. He said he also has faith in her Memorandum.

[STENOGRAPHER’S NOTE: Ms. Barkley’s Memorandum was not submitted for the record.]

- Commissioner Werwath said, given the limited time, he thinks it would be great to get tons of public input on this, but he doesn’t think that is necessarily the role of this Commission right now. He thinks our role is to review this on the merits. He said when it goes to the City Council it will get

significant press coverage, and a lot more attention, and will be debated in public forums where there are many more participants, and not just public interest groups. He said, "I would urge the Commission to move forward and weigh this on the merits, not on a public opinion basis, because I think there's ample time for the Council's consideration of this. And if forwarded to the ballot, it will be voted on by the people and that's the ultimate test."

- Chair Serna said, "Well said, Daniel."
- Commissioner Hiatt said he would like to hear a motion, and said, "Commissioner Long, forgive me for being so blunt, but would you please make a motion, because if this is it and you want to do it, I'd like to work on the individual issues that I have, and I can't do it without a motion, I don't think."
- Commissioner Romero-Wirth said she would like to postpone this item with the idea of talking about the issues we may have. She asked if the Commission can we identify where the issue areas are and postpone it to the next meeting.
- Vice-Chair Long said this is the reason we were discussing it, because if there is a motion to postpone [*inaudible*].

Commissioner Hiatt said, "With all due respect to Councilor Heldmeyer, I'm ready to move on. I'm ready to vote and I'd like to at least have an up/down vote on whether we're going to vote, and I can't do it without a motion. And if I have to be the one to make the motion, even though I object to some of the conditions in there, I'll do it, but I think we need to move on. A motion on the substantive issue. On this proposal. With a motion and a second, we can either postpone or we can have more substantive argument.

MOTION: Commissioner Romero-Wirth moved, seconded by Commissioner Farber, to postpone this item to the next meeting of the Commission on June 27, 2013, so we can identify issue areas and get more information on the issue areas we have identified as problematic.

VOTE: The motion was approved on a show of hands, with Commissioners Long, Farber, Gutierrez, Johansen, Romero-Wirth and Werwath voting in favor of the motion, and Commissioner Hiatt voting against.

Discussion following the vote regarding the issue areas

Commissioner Farber asked Commissioner Romero-Wirth her thought as to how to identify the issues, the structure for proceeding.

Commissioner Romero-Wirth said the individual Commissioners need to say what is their issue and what additional information they need. She would like to know if there another City that operates under this structure.

Commissioner Farber said, "Since City Attorneys are our staff, and we have no other resources, we have to direct our questions to the City Attorney to get information. Correct."

Mr. Martinez said, "Sure."

Commissioner Farber said, "I would like to know what the fiscal impact would be of having a full time Mayor, and I would like to know what the relationship is, the statutory relationship, an administrative relationship, between a full time Mayor and a full time City Manager."

Mr. Martinez said, "I'm not sure I can give the Commission a fiscal impact report [FIR] because I'm not a member of the Finance Committee and do not prepare the fiscal impact reports. It sounds like this would duplicate basically, the cost of the existing City Manager. I may be able to ask what fiscal impact that is, and provide that to the Commission. The current City Manager would have this fiscal impact, basically, and I can find out what that salary is and find out what the cost is to the City for the benefits and the salary. I think that's the best I can do, as far as an approximation, given the time constraints. So, that's what I'll propose to bring back to the Commission, as far as the fiscal impact of having a full time Mayor. I think there was a time when there was a City Manager and an Assistant City Manager. So we could imagine that the City Manager role might be changed and might have a fiscal impact in the Assistant City Manager."

Commissioner Farber said he was wondering about the statutory relationship with a full time Mayor and a full time City manager and how that works.

Commissioner Werwath asked if we would do this using a crystal ball.

Commissioner Farber said he's just trying to understand how it works.

Commissioner Romero-Wirth said if we look at other city charters and we find a charter with a full time Mayor, then we look at the role of the City Manager, if there a City Manager, or if it is a chief executive or a chief of staff, or a chief operating officer. She thinks this is what we need to understand. She said we need to understand this model against those. She noted some of the charters have been provided, but she hasn't found one that is exactly the same.

Commissioner Farber asked if that is because they have a Commission or a Manager.

Commissioner Romero-Wirth said there is one where the Mayor votes, but the Commission appoints the City manager. She said we want the Mayor to be able to put his own people in place to carry out his own agenda. She asked how we can best make that happen.

Commissioner Farber asked if the check and balance would still be available.

Commissioner Romero-Wirth asked, "Where you have a City manager and a Mayor, doesn't the City manager work with the Mayor. You all are sounding like the City Manager is a free agent, which I think under our deal is, because they don't answer to one person, because they answer to the entire City Council which I believes is the problem." She said without the free agent City Manager, it would fall in line better – the City Manager would answer to the Mayor.

Commissioner Farber said he wants to avoid micromanagement, or provincialism that seems to be a diminution of the role of the Governing Body.

Vice-Chair Long said she thinks this is an elevation of their power, because they are elected to work on policy, and they are elected to look at the broader issues, and if they are removed from the day to day, sort of micromanaging, if they can't do that, it really brings them up a level. She believes it elevates what they're supposed to be doing and to deal with their other elective duties.

[Too many people talking at the same time here to transcribe]

Commissioner Farber said he believes Councilors play an important role legislatively and a very important role with regard to confirmation of appointments of the Mayor to advisory commissions as well as the City Manager appointment by the Mayor, and removal powers in the event that there are problems. He said, "Of course you can say, well, what if there's a problem with the City Manager, it would be the Mayor who should remove the City Manager, but what if the City Manager and the Mayor are in some kind of inappropriate alliance, the City, the Governing Body, the City Council has had its power taken from it. So that seems to me to be a concern."

Vice-Chair Long said we have heard that, and she appreciates that concern, but believes we should hear if there are other issues of concern to others before we take this up for a vote, because we are running out of time.

Commissioner Romero-Wirth said we've already voted to postpone this, but what do we want more information on. She said, "Somebody else talk. What other places do you all get stuff in this proposal."

Commissioner Farber said Paragraph H provides, "... work with the City personnel and timely prepare an annual budget and propose spending priorities for review and approval by the Finance Committee and the City Council." He said he thinks that's already happening, and would like clarification as to whether this is some sort of proposed change to existing policy.

Vice-Chair Long said she doesn't think it is, and it is to make it clear that it is an obligation in response to only the Mayor.

Commissioner Farber questioned why we would remove Item K, "perform other dues compatible with the nature of the office as the governing body may from time to time require." He thinks that should stay in.

Commissioner Romero-Wirth said, "Does the Council control the Mayor or is the Mayor an independent and equal force. The part I don't like about that is 'as the governing body may from time to time require'."

Commissioner Romero-Wirth said the Mayor should be an equal. It's the branches of government essentially, there's where she gets caught up on this.

Commissioner Farber said he thinks that generally is where the Mayor did the ceremonial type things.

Vice-Chair Long said that is the new Item K, "...be recognized as the head of the city government for all ceremonial purposes."

Commissioner Romero-Wirth said we don't need the old Item K, because it makes it seem like the Mayor is responding to the Council rather than as an equal player.

Commissioner Farber said the impact of 6.01, [Exhibit "2"], takes away from the Governing Body being the "principal policymaker of the City." He understands the desire to have the Mayor to be able to carry out an agenda and try and work on projects, and that's what this paragraph does.

Vice-Chair Long said it carries-forward Item J, and the Council can proposed amendments to policies and propose new policies, so it doesn't take away the power.

Commissioner Werwath said Section 6.01(B) provides "All legislative powers of the City shall be vested in the Governing Body..."

Commissioner Farber said it already is. He said, what it does is it takes away the power of the Governing Body to be the principal policymaker of the City.

Commissioner Romero-Wirth said, "Then it is shared. You have an executive and an you have a legislative and a judicial branch, and arguably, all of them set policy at some level." She said the weird thing about this is that we're blending the executive with the legislative.

Commissioner Farber said the Governing Body ends up functioning in a *quasi judicial* capacity, but what you want to do is to keep them away from the executive functioning, and here, when you talk about blending, he is clear about the relationship that would exist between a full time Mayor, a full time City Manager and the Council. He said the Mayor and the City Council constitute the Governing Body. He said, "It just seems to me to not be clear what we're looking for."

Commissioner Romero-Wirth said Commissioner Farber's observation lends credence to the idea that maybe the Mayor ought to be the executive and not in the legislative branch.

Responding to Commissioner Farber, Commissioner Romero-Wirth said she doesn't get caught up in the City Manager, "because I think what we need to do is the City Manager needs to answer to one person, the Mayor." She said the City Manager helps the Mayor carry out whatever it is they were elected to do.

Chair Serna said we need to wrap this up, noting we have 15 minutes left.

Commissioner Hiatt said the Commission is going to need another meeting in early July, and Chair Serna agreed.

Commissioner Hiatt noted we have a full agenda for the next meeting as well.

Chair Serna said we should vote on this significant matter, but for the time being we need to move forward to F, G and H, if possible with the 15 minutes we have remaining.

Commissioner Hiatt said, although it came up in the discussion, the question under E, clarifying the definitions, we have not considered that, and we need to not lose sight of Item #E, so he believes Item E is postponed to the next meeting of the Commission as well.

F. CITY OF SANTA FE HAVE AN ORDINANCE REQUIRING AN AUDIT COMMITTEE

An email Memorandum, with attachments, dated June 17, 2013, from Melissa D. Byers, to Irene, K. Romero and Marcos D. Martinez, regarding Councilor Ives introduction of legislation in this matter, is incorporated herewith to these minutes as Exhibit "5."

An email Memorandum dated June 17, 2013, from Steven Farber to Irene K. Romero, regarding *Alternative Proposal for Audit Committee*, is incorporated herewith to these minutes as Exhibit "6."

Commissioner Farber said this is his proposal, and the proposed language provides, "The Governing Body shall, by ordinance, adopt an Independent Audit Committee for the City within six months of the adoption of this provision." He understands Councilor Ives is coming forward with this legislation at the City.

MOTION: Commissioner Werwath moved, seconded by Commissioner Farber, to adopt the proposed language as a recommendation.

DISCUSSION: Vice-Chair Long asked where it would go in the Charter.

Commissioner Farber said he looked at Section 9.02 of the Charter on Procurement, and the provision would go near there, and probably would be 9.04. He said, "If you look at 9.02, I used the same format. I tried to be consistent with the original charter."

Vice-Chair Long said "Independent" is underlined, indicating that is an addition, or redline.

Commissioner Farber said he initially submitted a proposal that didn't say "independent," and ask that it be included, noting it doesn't have to be underlined.

Vice-Chair Long said she thinks "provision" is confusing.

Commissioner Werwath said he is open to a friendly amendment.

Chair Serna said last week at Council, Councilor Ives introduced legislation to repeal the Audit Committee established by Resolution and to establish the Audit Committee by Ordinance, and the Ordinance is outlined in Exhibit "5." He asked Councilor Ives if this action would "fly in the face of his Ordinance."

Councilor Ives said his goal at Council was to take what had been passed by Resolution and make it an Ordinance, making it more permanent.

Commissioner Farber said this is very similar to the campaign finance provision the Commission voted on, noting the Council already had an ordinance, and it was just intended that through the Charter, there would continue to be an Ordinance.

Councilor Ives said the Ordinance is based on a discussion with the Mayor, and looking at the Audit Committee, and said they wanted to try to make it more permanent.

Commissioner Farber said the Chair of the Audit and the Internal Auditor were present at the meeting where this was discussed, noting the Mayor was also present. He said independent to him means they are not employees of the City. He said what Councilor Ives is doing is commendable and he appreciates it. He just thinks we should have a provision in the Charter that provides that.

Commissioner Romero-Wirth asked if it should say Commission rather than Committee.

[Too many people talking here at the same time to transcribe anything]

Chair Serna said it should be called a Committee, the Audit Committee.

Commissioner Hiatt reiterated Governing Body is the term used for Mayor and Council, so we are talking about 9 people.

Chair Serna said we're saying it will be created within 6 months within the adoption of this provision, which puts this ahead of the game.

Councilor Ives said he trusts the Municipal Judge to make those appointments.

FRIENDLY AMENDMENT: Vice-Chair Long would like to amend the motion as follows: "... Of this Charter provision." And secondly, instead of spelling out Independent Audit Committee with initial caps, to make those lower case as follows: "independent audit committee," and delete the underscore under "independent," so it reads: *The Governing Body shall, by ordinance, adopt an independent audit committee for the City within six months of the adoption of this Charter provision.* **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE COMMISSION.**

Councilor Ives said, "Might I just suggest that you say, if not otherwise then existing, because my plan would be to have this through Council long before the Charter goes to the public for a vote."

Commissioner Farber said, "But this would continue on after [that?], so that a subsequent Council, if you're not on it, would not be able to repeal [it?]."

FRIENDLY AMENDMENT: Vice-Chair Long would like to delete the language "within six months of the adoption of this Charter Commission, so it reads: *The Governing Body shall, by ordinance, adopt an independent audit committee for the City ~~within six months of the adoption of this Charter provision.~~* **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND 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.

G. SALARIES OF ELECTED OFFICIALS TO BE SET BY INDEPENDENT COMMISSION

Chair Serna asked if there is specific language for this proposal, and Vice-Chair Long said no.

Chair Serna said, if there is no language, he would like to postpone this item to the next meeting.

Vice-Chair Long asked who proposed this item, and Commissioner Hiatt said it was Joseph Maestas.

Commissioner Farber said Mr. Maestas provided the idea, but did not provide any language.

Former Councilor Heldmeyer said the League of Women Voters has no position on this.

MOTION: Commissioner Hiatt moved, seconded by Commissioner Romero-Wirth to remove this item from further consideration.

DISCUSSION: Commissioner Farber asked who sets the salary of the Mayor.

Vice-Chair Long said it is linked to the Class A County Commissioners salary. She said the Governing Body sets the salary of the Mayor by City Charter.

Commissioner Farber said that is now geared to the County Commissioners salary.

Vice-Chair Long said it would be necessary to change the Ordinance to change that provision and said she is unsure this should be done, and this could come back to haunt us.

VOTE: The motion failed on a show of hands, with Commissioner Hiatt voting in favor, and Commissioners Long, Farber, Gutierrez, Johansen, Romero-Wirth and Werwath voting against.

There was no action on this item. Chair Serna postponed this item to the next meeting of the Commission on June 27, 2013, and asked the members to come up with the one sentence needed by the next meeting.

H. PUBLIC NOTICE OF RECOMMENDED BUDGET AND CAPITAL EXPENDITURES AND CAPITAL OUTLAY PROGRAMS.

Commissioner Farber said he submitted language on this item previously, but it isn't in the Commission packet.

Chair Serna suggested, and it was the consensus among the Commission, to defer this item to the next meeting of the Commission on June 27, 2013.

[Specific language for proposals or amendments are requested to be submitted to the Charter Review Commission, c/o Irene Romero at the City Attorneys Office, at least 48 hours prior to the meeting.]

7. DISCUSSION/POSSIBLE ACTION SETTING DATES FOR VOTES AT FUTURE MEETINGS

A. GOVERNANCE ISSUES – CARRY OVER FROM JUNE 19, 2013 MEETING

B. POLICY STATEMENTS – ANTICIPATED TO BE AT JUNE 27, 2013 MEETING

8. COMMUNICATION FROM CHARTER COMMISSION MEMBERS

Chair Serna said there was a Mr. Miller in attendance and asked if anyone knows what he wanted, but no one on the Commission knew why he attended today.

9. PUBLIC COMMENT

An email Memorandum dated June 17, 2013, from James Harrington, to Irene K. Romero, regarding *Contractor Contribution Ban*, is incorporated herewith to these minutes as Exhibit "7."

A copy of *Alternative No. 1 and Alternative No. 2*, regarding *campaign contributions from contractors and business entities*, entered for the record by Commissioner Farber, is incorporated herewith to these minutes as Exhibit "8."

Marilyn Bane said she will be very brief. Ms. Bane said, "I think what Mr. Miller might have wanted to say, and that is what Mr. Bemis wanted to say, and what I would like to suggest to you, if you're going to go for a much stronger Mayor role, you might want to reconsider the ranked choice, if you weren't considering it, because it might be more comforting to have a stronger mayor with more than 50% of the vote."

Mr. Jim Harrington said he can't attend the meeting because of long standing plans which include a medical appointment in California. He said, "The purview of Common Cause at the State level are just voting rights, government ethics and campaign financing, and it looked as if the Commission was going to be finished with that. I'm sorry, on these issues you're discussing, we don't have a position and won't be having one. Some of this was discussed at the last Charter Commission, but not as thoroughly as you're discussing it, and I don't we're going to have much on it. As far as the one pending campaign finance issue, I don't have anything to add to the legal debate."

Mr. Harrington continued, "I did want to clarify one thing about Common Cause's position. In the memorandum we submitted to the Commission before the last meeting, we included some possible charter language that would say that the Council shall ban contributions from any group which it discovers evidence of actual corruption of elected officials. That was meant as a compromise and fall back. I think that, even that position is in accordance with the law in two Circuits, which are the only two Circuits that have addressed this kind of issue. I really don't know what the *[inaudible]* is going to do, but he has a reputation of being more conservative. And we don't know what the Supreme Court is going to do. And you can't ban contributions from a whole group. So I think the safest thing for the Commission to do, would be nothing on this issue, until the fog clears and the law settles itself, and then perhaps the Governing Body will do something. We offered that proposal in case the Commission felt, in light of Commissioner Farber's proposal, that it ought to say something on that subject. And I think what you should say is we support the current law *[inaudible here]*."

Chair Serna said it appears we are going to have to have another meeting in very early July to wrap everything up.

Mr. Harrington said he could be back by July 2, 2013.

Commissioner Romero-Wirth said she will be gone on that date.

Chair Serna said he will be gone on July 9, 2013, but he will be free before that date.

Commissioner Farber said he and Commissioner Hiatt were going to put this off until Mr. Harrington comes back, commenting he intends to bring this item forward, and he has other potential alternative language. He would like to do it when Mr. Harrington would be available.

Commissioner Farber asked if we could all meet on Monday, July 1, 2013, saying we have a very full agenda at the next meeting.

Mr. Harrington reiterated that he can't be back until July 2, 2013.

Commissioner Farber said perhaps if we dropped consideration of City Ordinances we could cover all this stuff.

Commissioner Werwath asked the City Attorney's Office to update the matrix.

Mr. Martinez said he doesn't have it, and he was in Las Cruces when Ms. Barkley left.

Commissioner Farber said it should be in the City's computer system, and asked Ms. Romero to call Ms. Barkley and get this information. He said it was very helpful information.

Mr. Martinez said he is unsure if he will be here for the next meeting, noting it is his wife's birthday, but perhaps the City Attorney assigned could look into that.

Commissioner Farber said we had a deadline, noting the Charter has a provision that the City Attorney's Office is supposed to be the staff person to the Charter Review Commission. He said, "It really does hamper the work of the Charter Review Commission to not have either money or continuity with regard to consultants or input." He said perhaps we want to consider a revision of that provision so the next Charter Commission has added resources to make its work a little easier.

Commissioner Hiatt said we can include that in the recommendation.

MOTION: Commissioner Romero-Wirth moved, seconded by Commissioner Werwath, to reconsider, per Mr. Harrington's recommendation, the ban on contractor contributions which has been postponed to the next meeting.

DISCUSSION: Commissioner Farber said, "I am prepared to debate, I thought we had to be out of here by 6:00 p.m., but I have comments. Chair, I don't know what you want to do about this."

Chair Serna said we are already ten minutes over, and we have to afford due process and an opportunity to be heard, and he doesn't know that we can accomplish this tonight. He said this still needs further dialogue."

Commissioner Romero-Wirth said, "I know you feel strongly that we ought to be doing something here. And again, the merits of this thing aside, what the cases say, or don't say, or who is interpreting what, the fact of the matter is I do believe that Common Cause is correct that we shouldn't be putting something into the Charter right now, given the state of the law. And we could argue the merits of the case, and what they say or don't say, forever, but the bottom line is we aren't at the point where we should be putting something in the Charter."

Vice Chair Long said we spent a lot of time on this at the last meeting, and we did fully vet it and said she was ready to vote on this item at that time.

CLARIFICATION OF THE MOTION: Commissioner Farber said the motion is to completely eliminate it as a topic of consideration. He said, "I have alternate proposals in the event that motion was defeated, that I was going to come out with."

Commissioner Werwath said the Commission stopped entering new proposals two meetings ago.

Commissioner Farber said, "No, but it's the same topic, it will just be amendments. And it actually tracks the language of campaign finance reform from the first Charter, from the Charter Commission that Mr. Harrington proposed, which I can hand out now, if we're allowed to stay here and debate. I think it would be unfair to just say, let's drop it from consideration..."

Commissioner Romero-Wirth asked, "How does what you're doing change the basic fact that the law isn't at a point where we..."

Commissioner Farber said, "Because there is an alternative proposal if you disagree, and I disagree with your view, because I think that Common Cause is too timid."

Commissioner Romero-Wirth said she agrees with the view of Common Cause.

Commissioner Farber said, "I got... Dean Chemerinsky agreed with me, and Mr. Harrington disagrees with the Dean, but I have a proposal that would just say the Charter should have a provision that either limits or bans contractor and entity contributions, and that follows the language in the amended Charter – that the Council would appoint a committee that would have public input, that would be debated that would then come forward. And I'm happy to hand that out, because I think that 'pay to play' is here. It's a real problem. We need to deal with it. No one's come forward on a City level to attempt to deal with a contractor entity contributions. It doesn't stop people from participating in government at all. You can have meetings, you can vote, you can..."

Commissioner Romero-Wirth said, "Wait. You're getting no questions, but I think still the fact is that this should be an ordinance, and not in the Charter."

Commissioner Farber said this says the City should have an ordinance. He said, "I happen to think it should be in the Charter. Obviously the majority of the Commission thinks not, but I think there should be a provision in the Charter that says there should be an ordinance dealing with the issue of contractor and entity contributions and that's what I have here."

Commissioner Romero-Wirth asked if it goes to the language we had already adopted two weeks ago, on contribution limits.

Commissioner Farber said, "It's on the same topic, which I think is permissible."

Commissioner Hiatt asked Mr. Harrington if he has read the language.

Mr. Harrington said, "No, I haven't seen it."

Commissioner Farber provided a copy for the Commission and Mr. Harrington [Exhibit "8"]. He said the second alternative actually tracks the existing Charter language from campaign finance. It's new Section 4.05, I believe."

Mr. Harrington asked what is meant by "continuing contributions."

Commissioner Farber said, "Not just in an election."

Vice-Chair Long said, "And 'meaningful,' I don't know what 'meaningful bans and/or limitations' means'."

Commissioner Farber said it is the same exact language from 4.05.

Commissioner Romero-Wirth said, "Contributions are always part of an election. You are always in a particular [election] cycle, like now, anything you get now is for the next primary, unless it is specifically state to be toward the General [election]. So you are always in an election cycle."

Commissioner Farber said, "Then you can take out the word 'continuing.' I wanted to it to be always. That when someone is contributing to somebody, that then becomes..."

Commissioner Romero-Wirth said, "That's the way the law always applies. You are always in an election cycle and the law always applies to whatever you are getting."

Mr. Harrington said, "If it's not a campaign contribution, then it's a gift and that's covered by a separate ordinance."

Former Councilor Heldmeyer said, "Sort of."

Commissioner Farber said, "So this is specific. It says it should be done within one year, as 4.05 gave the Council two years, but it's the same, with the exception of the description of the nature of what the ordinance should be. It's the same exact language, unless I made a mistake typing it out, which I didn't intend to make, and I don't think I did. So it would be Alternative 2."

Vice-Chair Long said, "4.05 is Public Campaign Financing, it's not campaign contribution limitations."

Commissioner Farber said, "Correct. I'm just saying I used the same language in here, and 'meaningful,' came out of 4.05, the process for public input, what the Governing Body should do, all that came out of 4.05."

Vice-Chair Long said, "Yes, but I just see them as very different topics."

Commissioner Farber said, "Well, they may be, but I think contractor contributions, business entity contributions is a concern."

Mr. Harrington said this looks open-ended enough to where you could probably do something constitutional under it. He said, "There is one area that Geno has actually suggested doing something about which is contributions during the pendency of a procurement process, contributions by the bidders to public officials during the pendency of a procurement process. And you could do that and it would satisfy the Charter Commission."

Commissioner Farber asked Mr. Harrington if he is speaking about the first or the second [alternative?].

Mr. Harrington said they are about the same, except for adding the advisory committee.

Commissioner Farber reiterated that came directly from 4.05, which was done by Mr. Harrington's Charter Review Commission.

Mr. Harrington said the public financing is a little bigger deal.

Commissioner Farber said he knows, but it still allowed public input, and required an ordinance.

Mr. Hiatt said we need to vote on Commissioner Romero-Wirth's motion first, before we consider this further.

Commissioner Romero-Wirth said yes, or she could withdraw her motion, and we could schedule this item. She asked Mr. Harrington, "But you think one of these could work."

Mr. Harrington said, "Yes. I don't think this would mandate that this would require the Council to do something unconstitutional, because there are other things they can do here which I don't think would be unconstitutional."

Commissioner Gutierrez asked Mr. Harrington, "Can you study this and send an email to Irene for the Commission to read your opinion."

Vice-Chair Long said that is a good idea.

Chair Serna asked that this item be set for final action at the next meeting.

Mr. Harrington said he doesn't see the need for this provision, commenting, "but it doesn't require the Council to do something unconstitutional."

Commissioner Farber said, "You're saying there should be an ordinance dealing with this issue."

Mr. Harrington said, "That's right, and there are lots of ordinances."

[Too many people talking here at the same here time to transcribe]

Commissioner Gutierrez asked if this will be put before the voters and Commissioner Farber said yes.

Commissioner Gutierrez said, "I would never read all of that."

Commissioner Farber said it was in the last election, and Commissioner Gutierrez said, "I probably didn't read that one either."

Commissioner Farber said, "Alternative 1 is actually the first part of it without the process."

[Mr. Harrington's remarks here are inaudible]

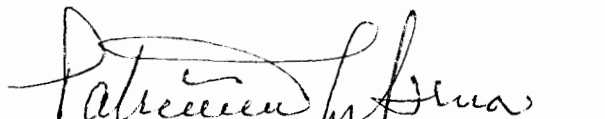
WITHDRAWAL OF THE MOTION BY THE MAKER: Commissioner Romero-Wirth withdrew her motion.

Consideration of this item was postponed to the next meeting on June 27, 2013.

10. ADJOURNMENT

MOTION: Commissioner Werwath moved, seconded by Commissioner Hiatt, to adjourn the meeting.

VOTE: The motion was approved unanimously on a voice vote, and the meeting was adjourned at approximately 6:30 p.m.


The Honorable Patricio Serna, Chair

Melessia Helberg
Melessia Helberg, Stenographer

ROMERO, IRENE K.

From: Steven Farber [sfarberlawoffice@aol.com]
Sent: Monday, June 17, 2013 8:25 AM
To: ROMERO, IRENE K.
Cc: sfarberlawoffice@aol.com
Subject: Fwd: Request for Input re Santa Fe, NM Home Rule Charter

Irene

I would greatly appreciate it if you could print out this email exchange between me and Dean Erwin Chemerinsky (and you could include this request to you) and make it a PDF and then send the PDF to the members of the Santa Fe Charter Review Commission for consideration for the continuing agenda item that was postponed to the June 19 meeting. You can also send a copy of the PDF to Mr. Harrington. I will provide a link Dean Chemerinsky's resume in a following email that I request that you forward to the Commission as well.

Thanks,

Steven Farber

Steven G. Farber
Attorney at Law
P.O. Box 2473
Santa Fe, New Mexico 87504
505-988-9725 (p)
505-988-9250 (f)
email: sfarberlawoffice@aol.com
website: <http://stevenfarber.com>

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-----Original Message-----

From: Erwin Chemerinsky <EChemerinsky@law.uci.edu>
To: Steven Farber <sfarberlawoffice@aol.com>
Sent: Mon, Jun 17, 2013 6:15 am
Subject: Re: Request for Input re Santa Fe, NM Home Rule Charter

Dear Mr. Farber,

Yes, I believe that it would be constitutional for a city to ban contractor contributions to candidates when the contractor does more than a specified amount of business. The Supreme Court has upheld restrictions on

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Exhibit "1"

contributions, including a federal law that prohibits all corporate contributions. In fact, I think that a restriction on corporate *expenditures* for corporations doing more than a certain amount of business with the city also would be permissible. The analogy is to the Hatch Act (and similar state laws) which prohibit federal employees from engaging in partisan political activities. The same could be done for corporations doing more than a specified amount of business with the city. I do not think it requires showing corruption in order for the city to adopt such a law.

I hope this helps.

Erwin

From: Steven Farber <sfarberlawoffice@aol.com>
Date: Sunday, June 16, 2013 5:46 PM
To: Microsoft Office User <echemerinsky@law.uci.edu>
Cc: "sfarberlawoffice@aol.com" <sfarberlawoffice@aol.com>
Subject: Request for Input re Santa Fe, NM Home Rule Charter

June 16, 2013

Dear Dean Chemerinsky:

I met you when you came to Santa Fe to speak at the local Inn of Court several months ago. The reason for my message, which I know is short notice, is to request your brief opinion whether a proposal that I am submitting to the Santa Fe Home Rule Charter Review Commission to ban contractor contributions would withstand a constitutional challenge. To further identify myself, we were sitting together after the program with (Judge) Harris Hartz, and I had asked you a question during the program regarding how to get meaningful reform in light of the Citizens United case without a constitutional amendment and I mentioned that I had argued *Wilson v. Garcia* in the US Supreme Court and was currently serving on the Santa Fe Home Rule Charter Review Commission. You described some ideas you had regarding legislative fixes to the Citizen United case and your experiences serving as the Chair of the Los Angeles Home Rule Charter Commission.

I submitted the attached proposal for a ban on contractor contributions over a certain amount (\$20,000) to the Charter Review Commission. I took the bulk of this specific proposal from the Albuquerque Home Rule Charter but tweaked it with some more finesse and clarity.

Common Cause, through its Chair, James Harrington, is opposing the proposal that I am offering because it states that the law is in flux, that the proposal will be challenged because there is no showing that there is corruption in the City of Santa Fe (though I can offer many examples of actual corruption convictions within the State of New Mexico and there is a pending indictment of a contractor for a case stemming from Santa Fe County and the principles of that company were contributors in prior City of Santa Fe elections). Common Cause also contends that the proposal should be opposed because I do not want to use the word corruption in the body of the proposal and that the proposal is subject to legal challenge at potential great cost to the city in 1983 fees. I retort that the threat of a lawsuit is not sufficient grounds to not consider a legitimate and substantive proposal that is not frivolous at the outset and that we have examples of corruption from within our state (total population a bit more than two million plus) and surrounding counties and that we do not

06/17/2013

need to wait for actual corruption to happen in our city before we are allowed to do something about pay to play politics. I state that we can take preventive action. There is another existing provision in our Charter on Campaign Reform that does state as an ideal keeping the city free from corruption. Common Cause says to me that the Tenth Circuit is very bad in this area and that the threat of an adverse opinion is reason enough not to proceed. I stated that Common Cause is being too timid and that their attached "Brief" in opposition besides seeming to be a copy and paste of a brief in opposition to a contribution ban misstates the holdings of the cited cases.

I know that this is short notice, and that it may seem like a great imposition, but if you could opine on these points prior to our next meeting on June 19, 2013 when we will be voting on this proposal I would be very grateful.

Thank you for your consideration.

Steven G. Farber

Steven G. Farber

Attorney at Law

P.O. Box 2473

Santa Fe, New Mexico 87504

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email: sfarberlawoffice@aol.com

website: <http://stevenfarber.com>

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ROMERO, IRENE K.

From: Steven Farber [sfarberlawoffice@aol.com]

Sent: Monday, June 17, 2013 8:28 AM

To: ROMERO, IRENE K.

Cc: sfarberlawoffice@aol.com

Subject: Dean Chemerinsky Resume

Irene

Please forward this email with the link to the resume and background of Dean Chemerinsky to the members of the Santa Fe Charter Review Commission.

http://www.law.uci.edu/faculty/page1_e_chemerinsky.html

Thank you

Steven Farber

Steven G. Farber

Attorney at Law

P.O. Box 2473

Santa Fe, New Mexico 87504

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email: sfarberlawoffice@aol.com

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06/17/2013

ARTICLE V. THE MAYOR

5.01. Powers and duties.

The city shall have a mayor who shall:

- A. be elected at large by the voters of the city;
- B. have a vote on all matters that come before the governing body ~~only in the case of a tie or when his or her vote will provide the necessary number of votes required by law for taking action on an issue before the governing body;~~
- C. be the chief executive officer of the city, which position shall be no less than full time (forty (40) hours per week), and shall not be otherwise employed or self-employed;
- D. appoint and remove, ~~subject to the approval of the governing body,~~ the city manager, city attorney, city clerk, _____ (other positions like Department Directors _____); and appoint and remove, subject to the approval of the governing body, members of advisory commissions;
- E. cause the ordinances and regulations of the city to be faithfully and constantly obeyed;
- F. have, within the city limits, the power conferred on the sheriffs of counties to suppress disorders and keep the peace;
- G. propose programs and policies to the governing body;
- H. work with City personnel and timely prepare an annual budget and proposed spending priorities for review and approval by the Finance Committee and the City Council;
- I. represent the city in intergovernmental relationships;
- J. present an annual state of the city message, which shall identify among other matters the mayor's legislative agenda for the upcoming year;
- ~~K. perform other duties compatible with the nature of the office as the governing body may from time to time require;~~
- K-L. be recognized as head of the city government for all ceremonial purposes; and;
- LM. be recognized by the governor for purposes of military law;

ARTICLE VI. THE GOVERNING BODY

6.01. Composition.

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

6.02. Powers and duties.

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

B. All legislative powers of the city shall be vested in the governing body, except as otherwise required by law or this charter. The governing body shall provide for the exercise of its powers and for the performance of all duties and obligations imposed on the city by law.

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

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

Justice Serna...Members of the Committee, thank you for this opportunity to speak before you about the importance of creating a stronger mayoral structure.

In previous testimony by Mayor Coss you have learned the fact that we have had 11 City Managers over the past 19 years. During my 11 years of service as a City Councilor there have been 5 City Managers. What is lamentable about the lack of leadership continuity that has occurred is certainly its impact upon the quality of service delivered by City government . What is unacceptable about this instability is its cause...a governance structure that empowers a very few individual Councilors to create an organizational climate of uncertainty through continual implied or actual threats of firing the City Manager.

Over the years I have observed a flurry of individual activity on the part of certain Councilors , usually right after an election , to capture the support of new councilors toward building a power base against the Mayor through the use of attacks on key City personnel...especially the City Manager. It is my belief that the many good staff (not just the City Managers) who have left the city over the past 11 years have done so "because they have had it " with certain Councilor threats , real and implied and their micromanagement of with daily operations of the city. The recent loss of our most effective City Manager, Robert Romero is a case in point. Over the past last 2 years Robert was approached by different City Councilors who "had 5 votes to get rid of him" if he did not a) fire the chief of

Exhibit "3"

police or b) alter his decision regarding the firing of different personnel.

The tragedy of this pattern goes far beyond the loss of individual staff who have served the citizens well. It is a major barrier to creating a work environment where all staff can perform their jobs without fear of reprisal and can focus upon the hard work of service delivery to the citizens. Furthermore, countless hours of staff and Council are spent on defending accusations in lieu of focusing on addressing collectively and collaboratively the issues of concern to the citizens of Santa Fe.

Removing the hire/fire responsibility from Council is one of the most important Charter changes you shall consider. Giving the Mayor the responsibility to be the true executive HEAD of the Governing Body will facilitate not only the smoother operations of the city, the creation of a better work climate, but also the possibility of the Governing Body as acting more as a powerful, effective legislative body rather than as a group of disparate parts with individual personal political agendas.

By Charter, the Mayor is the only member of the Governing Body who is elected City-wide. In accepting the huge responsibility of representing the entire City of Santa Fe, certainly the Mayor should be given the corollary authority to appoint and retain without interference a

leadership team for four years who can carry out the promises made during the election.

Councilor Ives has presented a proposal that will address the fact that our current governance structure is not working! Giving the Mayor the authority to hire and fire the right staff and having a right to vote on all matters before the Council, and making the Mayor a fulltime position will give Santa Fe its much-needed executive leadership....which it deserves! These changes will create a better system of governance where the Mayor as leader of the City can actually be held accountable for the progress of the City by ensuring the Council and staff focus upon issues of concern to the entire City.

Comment on for K.H. W.

Thank you for your consideration of these comments. I stand in support of Councilor Ives's proposed Charter revisions which addresses all the concerns I have raised in this testimony.

ROMERO, IRENE K.

From: IVES, PETER N.

Sent: Thursday, June 13, 2013 5:09 PM

To: ROMERO, IRENE K.

Subject: Next Charter Agenda

Irene, Here is that agenda item for the next Charter meeting. Peter

Peter N. Ives

City Councilor – District 2

City of Santa Fe

200 Lincoln Avenue

P.O. Box 909

Santa Fe, NM 87504-0909

Cell: (505) 231-3977

DD: (505) 955-6816

Email: pnives@santafenm.gov

06/13/2013

Exhibit "4"

Formatted: Left: 1", Right: 1"

ARTICLE V. THE MAYOR

5.01. Powers and duties.

The city shall have a mayor who shall:

- A. be elected at large by the voters of the city;
- B. have a vote on all matters that come before the governing body;
- C. be the chief executive officer of the city, which position shall be no less than full time (forty (40) hours per week), and shall not be otherwise employed or self-employed;
- D. appoint and remove, the city manager, city attorney, city clerk, _____ (other positions like Department Directors _____); and appoint and remove, subject to the approval of the governing body, members of advisory commissions;
- E. cause the ordinances and regulations of the city to be faithfully and constantly obeyed;
- F. have, within the city limits, the power conferred on the sheriffs of counties to suppress disorders and keep the peace;
- G. propose programs and policies to the governing body;
- H. work with City personnel and timely prepare an annual budget and proposed spending priorities for review and approval by the Finance Committee and the City Council;
- I. represent the city in intergovernmental relationships;
- J. present an annual state of the city message, which shall identify among other matters the mayor's legislative agenda for the upcoming year;
- K. be recognized as head of the city government for all ceremonial purposes; and;
- L. be recognized by the governor for purposes of military law;

Deleted: only in the case of a tie or when his or her vote will provide the necessary number of votes required by law for taking action on an issue before the governing body

Deleted: subject to the approval of the governing body,

Deleted: perform other duties compatible with the nature of the office as the governing ¶ body may from time to time require; ¶ L.

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ARTICLE VI. THE GOVERNING BODY

6.01. Composition.

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

6.02. Powers and duties.

A. The governing body shall consider the legislative agenda put forth by the mayor and propose amendments to existing policies and propose new policies,

Deleted: serve as the principal policy maker of the city

B. All legislative powers of the city shall be vested in the governing body, except as otherwise required by law or this charter. The governing body shall provide for the exercise of its powers and for the performance of all duties and obligations imposed on the city by law.

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

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

ROMERO, IRENE K.

From: BYERS, MELISSA D.
Sent: Tuesday, June 18, 2013 10:58 AM
To: ROMERO, IRENE K.; MARTINEZ, MARCOS D.
Subject: RE: Charter Review commission

Last week at Council, Councilor Ives introduced legislation to:

1. Repeal the Audit Committee that was established by resolution; and
2. Establish the Audit Committee by Ordinance, Article 6-5 SFCC 1987

Both pieces of legislation will be heard by the following committees:

Audit Committee – 7/3/13
Finance – 7/15/13
Council (request to publish) – 7/31/13
Council (public hearing) – 8/27/13

Attached are both pieces of legislation in the event you think these should be handed out at Charter Review tomorrow.

If you have any questions, please let me know.
Melissa

From: ROMERO, IRENE K.
Sent: Tuesday, June 18, 2013 10:47 AM
To: MARTINEZ, MARCOS D.
Cc: BYERS, MELISSA D.
Subject: Charter Review commission
Importance: High

Marcos: Melissa Byers brought an issue to my attention re: Item 6F to establish audit committee by ordinance. Let's discuss when you come in.

*Irene K. Romero
Office Manager/Paralegal
City Attorney's Office
City of Santa Fe
200 Lincoln Avenue
P.O. Box 909
Santa Fe, NM 87504
505-955-6512
505-955-6748 (fax)*

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2013-____

INTRODUCED BY:

Councilor Peter Ives

Mayor David Coss

AN ORDINANCE

RELATING TO CHAPTER VI SFCC 1987, BOARDS, COMMITTEES AND
COMMISSIONS; CREATING A NEW ARTICLE 6-5 SFCC 1987 TO ESTABLISH THE
CITY OF SANTA FE AUDIT COMMITTEE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. A new Article 6-5 SFCC 1987 is ordained to read:

6-5 [NEW MATERIAL] AUDIT COMMITTEE

6-5.1 Creation; Purpose.

A. There is created the city of Santa Fe audit committee, an advisory committee.

B. The purpose of the audit committee is to advise the city manager and the governing body regarding financial audits and investigations and related policies and procedures in order to promote transparency, accountability, efficiency and effectiveness of city government for the citizens of Santa Fe.

6-5.2 Powers and Duties. The audit committee shall:

A. Review and make recommendations regarding reports from the city's internal

1 auditor;

2 B. Review and make recommendations regarding the city's annual external audit;

3 C. Review the request for proposals for the external auditor and the resulting
4 recommendation for the selection of the city's external auditor (public accounting firm);

5 D. Review the city's preliminary financial reports semiannually;

6 E. Review and make recommendations regarding the city's policies and practices
7 and internal controls in place to control the operations, accounting, and regulatory compliance of
8 the city; and

9 F. Review the findings in the external audit and the proposed plans from the
10 departments for correction of the findings.

11 **6-5.3 Membership; Chairperson; Terms; Vacancies.**

12 A. *Membership.* The audit committee shall consist of five individuals solicited and
13 appointed by the municipal judge with the advice and consent of the governing body. The
14 members of the audit committee shall include individuals that have experience and knowledge
15 that would assist the governing body in completing the audit committee's purpose and who are
16 qualified by training, experience, and ability to exercise sound and practical judgment regarding
17 the duties and responsibilities of the audit committee. Of the five members one member shall be a
18 certified public accountant, one member shall be a lawyer or have a law enforcement background
19 and one member shall be a management consultant. Members shall reside in the state of New
20 Mexico.

21 B. *Chairperson.* The mayor, with the approval of the city council, shall appoint the
22 initial chairperson. The chairperson shall designate the vice chairperson. The chairperson shall
23 serve as chairperson for a period of one year. Following one year of service, the chairperson shall
24 be elected (or reelected) by the members of the Committee. The chairperson may appoint sub-
25 committees and sub-committee chairpersons as needed.

1 C. *Terms.* Two of the members shall be appointed for two year terms and three
2 shall be appointed for three year terms. Subsequent terms shall be for three years to maintain
3 staggering of terms. There is no limitation to reappointment. The members shall serve at the
4 pleasure of the governing body and may be removed at any time with or without cause.

5 D. *Vacancies:* Vacancies on the audit committee shall be filled in the same manner
6 as initial appointments and shall be for the remainder of the term of the vacant position.

7 **6-5.4 Meetings; Staff.**

8 A. *Meetings.* A quorum of the audit committee shall be at least three members. The
9 audit committee shall conduct all meetings in accordance with adopted city policies and
10 procedures and shall use *Robert's Rules of Order* in conducting its meetings. The audit committee
11 shall meet at least quarterly or as needed to accomplish the duties and responsibilities of the
12 committee.

13 B. *Staff.* The finance department shall serve as the primary liaison to the Committee
14 unless otherwise designated by the City Manager. Depending upon the issue, other city staff may
15 also be required to assist the Committee.

16 APPROVED AS TO FORM:

17
18 _____
19 GENO ZAMORA, CITY ATTORNEY

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DAVID COSS, MAYOR

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

GENO ZAMORA, CITY ATTORNEY

ROMERO, IRENE K.

From: Steven Farber [sfarberlawoffice@aol.com]
Sent: Monday, June 17, 2013 11:12 AM
To: ROMERO, IRENE K.
Cc: sfarberlawoffice@aol.com
Subject: Alternative Proposal for Audit Committee

Irene

Please submit this email to the Charter Review Commission for the upcoming meeting.

Alternative and Preferred Provision re Audit Committee:

Audit Committee (new and separate provision)

"The Governing Body shall, by ordinance, adopt an Independent Audit Committee for the City within six months of the adoption of this provision."

Steven G. Farber
Attorney at Law
P.O. Box 2473
Santa Fe, New Mexico 87504
505-988-9725 (p)
505-988-9250 (f)
email: sfarberlawoffice@aol.com
website: <http://stevenfarber.com>

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06/17/2013

Exhibit "4"

ROMERO, IRENE K.

From: James Harrington [harr77@earthlink.net]
Sent: Monday, June 17, 2013 10:27 PM
To: ROMERO, IRENE K.
Cc: Steven Farber; MARTINEZ, MARCOS D.; ZAMORA, GENO I.; Viki Harrison
Subject: contractor contribution ban

Irene -

Would you please pass along to the commissioners the following communication? Thank you very much.

Jim H.

Dear commissioners:

Besides thanking Steve and Irene for sending me a copy, I have three comments on the exchange of e-mails that Steve has shared with us:

1. On the specific issue of whether a ban on contractor contributions would be constitutional under current law in the absence of actual evidence of corruption of city officials by city contractors, I simply urge the commissioners as well as the city attorney to read the recent decisions on this issue cited in my earlier memorandum. For ease of reference, here are the free-access links to the opinions:

http://scholar.google.com/scholar_case?case=12022689393052137077&q=689+F.3d+543&hl=en&as_sdt=2,32

http://scholar.google.com/scholar_case?case=6482264125176849238&q=660+F.3d+726&hl=en&as_sdt=2,32

http://scholar.google.com/scholar?q=616+F.3d+189&btnG=&hl=en&as_sdt=2%2C32

http://scholar.google.com/scholar_case?case=2021351772026167457&q=854+F.Supp.2d+83&hl=en&as_sdt=2,32

2. Although the immediate question of whether or not Steve's proposal is constitutional is certainly important, it would be unfortunate if the debate between us on that issue were to divert the commission's attention from the far more important question of whether this kind of detailed regulation of campaign finance - whatever may seem to be its current legal status - should be enacted by charter amendment or by ordinance. As described in my earlier memo, the City of Albuquerque has provided a good example of the disadvantages of proceeding by charter amendment. Several of that city's most important campaign finance regulations, all of which were believed by the city's legal advisers to be constitutional and enforceable when enacted, have been struck down by the courts or rendered ineffectual by loophole-seekers during the last decade, and the city has been helpless to adapt its laws to these developments because of the great difficulty of amending its charter. Santa Fe has pursued the contrary approach: including in its charter only the most general policy statements, enacting all of its campaign finance regulations by ordinance, and utilizing the advice of distinguished panels of lawyers and other citizens - initially the Campaign Reform Commission and more recently the ECRB - to advise its governing body and keep it up to date on the latest developments in this constantly evolving area of the law. In this way, our city has been able to refine and perfect its campaign finance laws by frequent amendments to its code of ordinances. The most important question that this commission must now decide is whether to recommend continuing this salutary method of campaign finance legislation or instead abandoning it in favor of the very different approach that is embodied in Steve's proposal and exemplified by Albuquerque's laws.

3. Steve's invocation of the views of the eminent Erwin Chemerinsky on the constitutional issue presented by the pending proposal affords an excellent illustration of the uncertainty and unpredictability of the law in this area. Dean Chemerinsky observes in his e-mail that the Supreme Court upheld the federal ban on corporate

Exhibit "7"

contributions to candidates the last time it specifically ruled on this issue (FEC v. Beaumont, 539 U.S. 146 (2003)), and implies that he believes this ruling is likely to remain good law. This view, however, contrasts with the prediction he made in a commentary that I happened to read a couple of years ago on the Supreme Court's intervening decision in Citizens United v. FEC, 558 U.S. 310 (2010), where the Court struck down the federal ban on corporate electioneering expenditures, overruling its own previous decisions on this issue. In commenting on that ruling, Dean Chemerinsky stated:

"The Court did not consider the constitutionality of bans on corporate and union contributions directly to candidates, but there likely are five votes to strike this down as well in a future case." (California Bar Journal, August 2010, page 1 - available on the web at <http://www.calbarjournal.com/August2010/TopHeadlines/TH4.aspx>)

It is understandable that Dean Chemerinsky would express different ideas on this issue at different times, since it is one of the most unsettled questions in current campaign finance jurisprudence (see, generally, Note, 126 Harv.L.Rev. 1707 (2013) - available on the web at http://www.harvardlawreview.org/media/pdf/vol126_united_states_v_danielczyk.pdf). His apparent change of mind, however, proves the point that it is very difficult to make accurate forecasts about the future course of the law in this area, and amply attests to the wisdom of Santa Fe's decision to avoid legislating in such a form that its laws cannot be readily adapted to new or unforeseen circumstances.

I apologize for my role in having made this debate so long-winded. I hope that, having aired our views so thoroughly in advance, we can keep the discussion brief at Wednesday's meeting, where the commission is confronting a very full agenda.

Thank you for your attention.

Jim Harrington
Common Cause NM

Alternative No. 1

To be enacted as a Separate Provision or Sub-provision of the Charter

Section No. ____, Campaign Contributions from Contractors and Business Entities

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

Alternative No. 2:

Section No. ____, Campaign Contributions from Contractors and Business Entities

The governing body shall adopt an ordinance or ordinances to provide for meaningful bans and/or limitations on campaign and continuing contributions from contractors and entities doing business with the City of Santa Fe to all municipal elected officials and this shall be done within one year after the effective date of the amendment to the Charter that includes this requirement. Prior to such adoption, the governing body shall take such action as is reasonable and necessary to provide for a well-informed consideration and review of the issue of campaign and continuing contributions from contractors and entities doing business with the City of Santa Fe and to solicit public input on the substance that may be included in such an ordinance or ordinances, including, but not limited to the creation of a subcommittee, task force or similar body or delegation to an existing City Committee that will conduct public meetings, study the issue of campaign contribution law and make recommendations to the governing body on a form of ordinance or ordinances for consideration by the governing body.

Exhibit 'B'