



# Agenda

CITY CLERK'S OFFICE

DATE 6/5/13 TIME 11:00a

SERVED BY Irene Romero

RECEIVED BY [Signature]

## CHARTER REVIEW COMMISSION

Thursday, June 13, 2013

City Council Chambers

4:00 PM – 6:00 PM

1. Roll Call
2. Approval of Agenda
3. Approval of May 28, 2013 Minutes
4. Public Comment
5. Discussion and Action on topics previously discussed and ready for vote by Commission  
ELECTION ISSUES:

- a. Independent Redistricting Commission
- b. Partial Redistricting Proposal
- c. Ranked Choice Voting Implementation
- d. Ranked Choice Typographical Error Correction
- e. Changing Municipal Elections to the Fall
- f. Requirements of the Threshold Number of Signature for Referendum, Initiative, and Recall Rights of Voters
- g. Tax and Bond Elections Required to Have Full Expenditure Timetable

[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.]

6. Discussion and Possible Action on proposed Ban on Contributions from Business Entities, Individuals, and City Contractors have Contracts with the City over a stated amount  
[Language for proposal was submitted at May 28, 2013 meeting]
7. Discussion/Possible Action Setting Agenda dates for votes at Future Meetings
  - a. Governance Issues – Anticipated to be at 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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Wednesday, June 13, 2013

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**MINUTES OF THE  
CHARTER REVIEW COMMISSION  
City Council Chambers  
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 Thursday, June 13, 2013, in the City Council Chambers, 200 Lincoln Avenue, 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 Werwath, to approve the agenda as presented.

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

### **3. APPROVAL OF MAY 28, 2013 MINUTES**

The following corrections were made to the minutes:

Page 6, add an explanation as follows: "Second paragraph under #1, Commissioner Farber said in using the word eclectic, he was speaking of Santa Fe and not Albuquerque."

Page 6, paragraph 2, line 6, correct as follows: "... under St. Francis/Alameda..."

Page 12, line 2, correct as follows: "from 4 each district..."

Page 19, paragraph 3, line 5, correct as follows: "...the ~~second amendment to the~~ Constitution and Bill of Rights..."

**MOTION:** Commissioner Hiatt moved, seconded by Commissioner Farber, to approve the minutes of the meeting of May 28, 2013, as amended.

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

### **4. PUBLIC COMMENT**

A packet of information, entered for the record by Dr. Raymond Singer, is incorporated herewith to these minutes as Exhibit "1."

Dr. Raymond Singer's Statement for the record, dated June 13, 2013, entered for the record by Dr. Raymond Singer, is incorporated herewith to these minutes as Exhibit "2."

A copy of an email dated June 10, 2013, with a copy of Rick Lass's statement regarding ranked choice voting, from Rick Lass to Irene Romero, is incorporated herewith to these minutes as Exhibit "3."

**Dr. Raymond Singer, Santa Fe County**, neurotoxicologist and Board-certified Neuropsychologist, said he is here on behalf of Dr. Felicia Trujillo, to request the inclusion of the language on the precautionary principle in the Charter. Dr. Singer read a statement into the record, urging "reduction of exposure to microwave radiation," and "to resist the temptation to allow cell phone technology, the toxicology of which is becoming clearer every day to take over our community and our health." Please see Exhibit "2" for specifics of Dr. Singer's remarks.

Commissioner Farber said he has a wireless phone, and is a strong believer in what Dr. Singer has said regarding cell phone technology, and asked if he has made a review of the difference between cell phone technology and wireless technology, or if it is the same with the same dangers.

Dr. Singer said in his opinion, he finds that the cell phone technology is more noxious than the simple wireless technology, such that the wireless technology in this building is a more contained energy stimulation. He said cell phones carries more energy.

Commissioner Farber said he is speaking of wireless used in an airport when waiting for a plane, for example.

Mr. Singer said based on his study so far, he believes that poses less of a risk. The major risks he has found so far are the cell phone tower transmission equipment, and considerable research has been don that residents living closer to the cell phone towers can suffer from neural behavior disorders, such as sleep disorders, cognitive problems, depression, irritation. And the closer to the towers, the more likely they are to show those symptoms. He said this has been more established, but "with regard to other aspects of microwave transmission there is less of an established research finding."

Chair Serna said Dr. Singer made a good point that perhaps it might not appear until years later. He has a good friend who retired from LANL, and he worked around radiation, and he just got notice that his goiter cancer was caused by that exposure, noting his peers also developed that kind of cancer. He reiterated that the effects of electromagnetic ration also may not show up until years later.

Dr. Singer said it is known to have a physiological effect, which has been demonstrated in various models. He said he agrees we don't know the full extent to what we will be impacted, especially in holding a cell phone next to our head or we live next to one of these towers.

Commissioner Farber asked, "In one or two sentences, or three, are you able to differentiate for us, at least the issues with regard to whatever is being transmitted by power lines versus cell phone technology and quantify that, if not quantify, give an assessment.

Dr. Singer said, "My understanding of the power line issues is that I think that would be a much less toxic effect than that of a cell phone radiation tower. You would have to be living underneath the power line in order to get an effect from it."

**Karen Walker** said, "In reference to what this gentleman was just talking about, it looks like our next cell tower will be placed right near Gonzales School, so if any of you have good ideas for an alternate location, it might be good to talk to AT&T about that, or Kelley Brennan, or somebody."

Ms. Walker said, "Quick comment on some of the subjects you're going to be voting on tonight, starting from the bottom up. If there were some way to have, I don't think there is, to have bond elections whereby the people using the bond money do what they say they will do, as opposed to pretending. And a good example is the recent County Courthouse, where one of the reasons so many voted for this bond was because they were promised parking. As to the requirements of the threshold numbers, I think they're fine. Changing municipal elections to fall would get more of a turnout, if that's the main goal of this Commission and of the Council. Ranked Choice Voting Implementation is long overdue. An Independent Restricting Commission is definitely essential, if at all possible, to get it out of the political realm."

Ms. Walker continued, "And then we come to (b) which is my favorite, Partial Redistricting. This is not an unknown concept. What it means, just to repeat again for this group, each District continues to have a representation which we are required by law to have, but out of the Governing Body members, 8[4?] Councilors and the Mayor. The other 4 Councilors would run at large. This would be an opportunity for those people running for the at-large seats to learn about the City as a whole, and they would have to run in the entire City, the way the Mayor does now. So they would learn. The result is that we would have a Governing Body where a slight majority looked after the City as a whole and not just their district. And it would eliminate a lot of the logrolling we see and other unpleasant aspects of full districting. This may not be the Councilors' most popular thing that you might forward to them for obvious reasons, but I think it should be put to the voters, and let the voters decide."

Commissioner Werwath said he believes Mr. Martinez gave the Commission a legal interpretation that said that all City Councilors have to represent Districts. He asked Mr. Martinez if it is possible to do a hybrid model until State law.

Mr. Martinez said, "That precise question has not been addressed by the Courts, but a related question has been posed. And the way I read it is matters of statewide concern are not the types of things that the City can legislate in. And so, I would be hesitant to say that the City would be able to do partial districting, based on the way the statutes are written right now. And, so I would stand by my earlier analysis. I understand, in looking at the minutes that Jamison [Barkley] offered a different opinion, but I still think this is the type of legislation that is pre-empted by the State."

**Paul Holton, Cerro Gordo Road**, said he has looked at the issue of the power of a home rule to govern itself. He said, "And I think matters of self governance are inherently matters of local concern, and I think under Article X, Section 6, of the State Constitution, home rule cities are granted very broad powers of self-governance, and in fact, I believe the Constitution states that, as far as matters of local concern are involved, that the power of the City overrides the power of the State. So, it seems sort of odd to say that there is local preemption of issues, but I think that's the way the law works. And, I haven't seen any cases that address this point, but the general issue of the relative powers of State and local government divide along this somewhat ambiguous line of what's a matter of statewide concern and a matter of local concern. But it's hard for me to imagine anything that is more a matter of local concern than the self-governance of the City of Santa Fe, for example. So, thank you."

**Rick Fabrick, Chair, Green Party of Santa Fe County**, said he was tasked by the Party to look into the ranked choice voting. He said, "I talked to Rod Adair and Bobbie Scheer at the Secretary of State's Office, and they said people had applied for their voting machines had applied for their voting machines to be approved in New Mexico, and they were going to fast track those machines, and said they should be ready by November or December. And so, we've already had people come and say they're considering whether to run for office. And I think it would make a big difference to them to know if we're going to have ranked choice voting or not. Because if we're not going to have it, people won't want to split the vote on the right or the left kind of thing, but if we are going to have it, then that problem is sort of eliminated a little bit."

Commissioner Werwath said, "For clarification, the ranked choice provisions are already part of the Charter. And they're to be implemented when the machines are eligible and cost effective, or something to that effect."

Mr. Fabrick said, "It says when they become available."

Commissioner Werwath said, "There's something about cost in there. So decisions made by this group probably have little effect on that, especially since it will be at the March election where people adopt the recommendations that have gone from us to the City Council and then to referendum (?). So, actually any decisions made here have no effect on the November elections."

Mr. Fabrick said, "I understand it was already amended, the City Charter, that we're to have the ranked choice voting as the machines become available."

Commissioner Werwath said, "And that's true, but it does not necessarily mean that they will be used this November, because of other language that is in the Charter."

Mr. Fabrick said, "There's actually something interesting Rod Adair told me, that machine called Hart [Heart?], and I think he was referring to one that we use, it's a tabulator. He said it is in the process of being decertified. I think he said federally."

Commissioner Werwath said, "I'm filling in some information here hopefully, and hopefully it's correct information, but the City uses the County's machines, so we are kind of at the mercy of what the county choose to purchase."

Mr. Fabrick said, "I've already talked to Geraldine Salazar, the County Clerk, and she seemed to be unaware that we needed machines to do ranked choice voting. So she asked me to send her a copy of the City Charter where it says that's how we're supposed to vote. So possibly, coordinating with Geraldine Salazar and letting her know that we need to have these machines, and then maybe coordinating with Rod Adair and Bobbie Scheer, they were very helpful to me on the phone. And they were also unaware."

Commissioner Werwath said, "I would just point out that we're reviewing the City Charter. We have no power to enforce action on the part of the City staff, so I would highly recommend that you take that information to the City Clerk, Yolanda Vigil "

Mr. Fabrick said, "I called her the other day to let her know that Geraldine Salazar didn't seem to be aware, and I left a detailed message with somebody, but she just never called back."

Commissioner Werwath said he should follow up with Ms. Vigil, reiterating that this Commission has no power to enforce any of the things you're asking us to do."

Mr. Fabrick said, hopefully when you come to implementing ranked choice voting, maybe it will come up.



**Rick Lass** said he believes the Commission received a copy of his written statement, which also is regarding ranked choice voting. He said, "Since I am here, I want to say that I strongly support an Independent Redistricting Commission for the City and other bodies. And I just want to quickly summarize, because I know you have a lot of materials. I agree there is no need to go back to the voters with ranked choice voting. And I would be here, except that it seems there are some people questioning whether you're going to change the Charter or recommend changing the Charter. And I just want to reiterate what I said in my written statement, that I don't think that's a good idea. The voters made it clear they want this to happen and that it's in the administrative realm now. And as I said in my statement, the Council can make the changes via ordinance as a home rule charter City, that we could either use the existing machine or we could do a hand tally of the runoff right now in this March 2014 election. And then, as Mr. Fabrick said that there are two machines awaiting State certification that the County could purchase, presumably before the March 2014 Election that would do the tabulation with the machines. So basically, I just wanted to state that I think the Charter as it stands is good, and that the City should be implementing ranked choice voting without needing any further changes from the voters to our Charter. And I also want to thank you all for your time and efforts in reviewing our City Charter. And I would hope that in your Report that you would issue a strong statement saying this is already in the Charter and we hope that you will implement it. And if you have any questions, you can feel free to email me or call me to discuss any details. That will be that. Thank you very much."

Chair Serna welcomed Councilor Wurzbarger to the meeting.

**5. DISCUSSION AND ACTION ON TOPICS PREVIOUSLY DISCUSSED AND READY FOR VOTE BY COMMISSION, ELECTION ISSUES.**

**A. INDEPENDENT REDISTRICTING COMMISSION.**

An email from James Harrington to Irene Romero dated June 6, 2013, with attached joint proposal from Common Cause and the League of Women voters, is incorporated herewith to these minutes as Exhibit "4."

A copy of the rough draft of this proposal as approved by the Commission is, at the request of Commissioner Farber, incorporated herewith to these minutes as Exhibit "5."

Former Councilor Heldmeyer said the Commission received a joint proposal from the League of Women Voters and Common Cause, to establish an independent redistricting commission. She said they were able to agree on the same wording for both groups. She thanked the State Board of the League which strengthened its position on an independent redistricting commission for the whole State at its annual meeting in May. She said they really think this is a very important way to take politics out of something that's very important to the City and put it in the hands of the citizens.

Jim Harrington said it is Common Cause's position when making any decision on an important matter of public policy that affects the entire public, it's best to take it out of the hands of people who have a personal interest in the outcome that may conflict with the public interest. He said, "As Councilor Bushee

said at the last meeting, the Council really demonstrated in the last go-round why it is inadvisable to have people with a personal interest involved in this decision. So, we strongly hope the Commission will go along with recommending something along the lines of this proposal."

Commissioner Long asked, "If the independent commission would make recommendations to the Governing Body. I don't know what power an independent commission would have to implement redistricting. Maybe there's some law on that, but it seems to be within the purview of the Governing Body in much the way the State Legislature must continue that obligation of redistricting. I don't know that could be handed off to another group is my concern."

Mr. Harrington said, "This would specify that the redistricting, the drawing of boundaries would be done by a Commission, and this would be in the Charter." He said he supported Legislation this year, and will in the future, that would have amended the State Constitution to give the process to an independent commission, and that's been done in Arizona and California, noting the Legislature would have no say in the process. The only recourse is to take it to Court, if you don't like what they did and claim it doesn't comply."

Commissioner Long asked, "How does it gets adopted."

Mr. Harrington said in both states it was by initiative, which is a trickier process. He said, "Our best hope for getting this accomplished is this Commission."

Commissioner Long said she is talking about how the Redistricting Plan itself will become law or part of the Ordinance.

Mr. Harrington said in Arizona and California, and in this Charter Amendment, the Commission would draw the boundaries and that would be the end of it. The Council would have no second-guessing authority.

Former Councilor Heldmeyer said, "Way at the beginning of this process, we gave you some references to both states that do this and also municipalities. And in those municipalities, it was adopted by Ordinance that this shall happen. And of course, the Council has a lot of powers of which it delegates some and doesn't delegate others. Certain of the Council's enumerated powers in State law, they have, in fact handed to the Planning Commission and made it the final determiner. So that also could be the case with an ordinance that would speak to an independent redistricting commission."

Mr. Harrington said the Charter currently says that redistricting shall be done by the Governing Body. If the voters line through that language and say redistricting shall be done by an independent commission, I don't think a court or anyone looking at that would hesitate to say the Commission has the final word and the Governing Body will have nothing to do with redistricting itself. That's the intent of it. If you want to make that clear that would be wonderful, but it does say district boundaries shall be reviewed and revised at least every 10 years, following a decennial census, by an independent redistricting commission. You could say and the Governing Body shall have nothing to do with it, or something to that effect. I don't know if that would be necessary."

Commissioner Werwath said a lot of the details would be worked out in an Ordinance that implements this direction. He said we are deciding on the principle of whether or not an independent group will redistrict, and that will have to get hammered out on the policy level.

Mr. Harrington said we didn't get into the method of appointment of members of the Commission, but this would leave that to the Governing Body, and hopefully they would do that in an apolitical way in appointing a group of citizens such as this group.

**MOTION:** Commissioner Hiatt moved, seconded by Commissioner Farber, to approve the independent redistricting commission, and is prepared to offer the language which has been agreed to by those two bodies.

**COMMISSIONER HIATT READ THE LANGUAGE PROPOSED TO BE APPROVED INTO THE RECORD AS FOLLOWS:** Mr. Hiatt said, "This amends Section 6.03 of the Charter. In the second sentence, this is added language, District boundaries shall be reviewed and revised at least every 10 years, following the decennial census by an independent citizens redistricting commission. In the next line, language will be omitted-, which I'll read the omitted language. The Governing Body shall, by Ordinance, omit set the boundaries in each District and that's omitted, and we pick up, establish a procedure for and then add the appointment and deliberations of the Commission which will, to the maximum practicable extent, ensure that the Commission's decisions will be based exclusively on, and thereafter delete the language the periodic review of district boundaries. Also deleting in establishing District boundaries, the Governing Body shall consider, and then it picks up the original language of the section. Further down in Section E, it adds the language Districting plans shall not intentional favor or disfavor any candidate, and following that, Section E shall become Section F. I believe that's the entire language. Is there any reason to think that's not the language that was agreed to. Thank you."

**POINT OF CLARIFICATION BY THE SECOND:** Commissioner Farber said, "Can we have a copy of this attached to the record [Exhibit "5"], so it can be very clear what you just read, and Commissioner Hiatt said, "Absolutely."

**DISCUSSION:** Commissioner Romero-Wirth said she wants to be sure she understands. She said, "District boundaries shall be reviewed and revised at least every 10 years. There was a disagreement. Jim, you said that you changed your position to match the League's. Am I understanding that correctly."

Mr. Harrington said, "That is correct."

Commissioner Romero-Wirth said, "Somebody refresh my memory why we think it needs to happen more than every 10 years, or what would trigger it to happen."

Former Commissioner Heldmeyer said, "Common Cause would prefer to have only once every 10 years, because they're worried about more frequent redistricting being, essentially, political shenanigans. The reason that the League wanted the language in there about potentially more than every 10 years, is that there are things that may happen, such as Phase 2 annexation that may cause the City to believe that it is important to redistrict to make sure that everybody has equal representation on the Council."

Commissioner Romero-Wirth asked who would say that it needs to happen.

Former Councilor Heldmeyer said the Council would call the Commission, and it would be its decision.

Commissioner Romero-Wirth noted that isn't in this proposal and asked how that happens.

Former Councilor Heldmeyer said, "The reason it's not there, is as you've all talked about how you don't want to clutter up the Charter with details, that the details will be in the Ordinances."

Commissioner Romero-Wirth said, "The appointment and deliberation of the Commission which will, to the maximum practical extent, ensure that the Commission's decision will be exclusively based on then all these other rules of law. So you're saying then, the appointment of a Commission... in terms of who makes up the Commission has to somehow be determined by A through F."

Chair Serna said no.

Commissioner Romero-Wirth said, "That's the way it reads."

Councilor Heldmeyer said, "You want people who are going to do this..... those aren't criteria."

Commissioner Romero-Wirth said, "So when I look at other City charters when they talk about appointment of that commission, they talk about things like geographic representation and ethnic representation, diversity basically along a number of factors. You are pointing to appointment of a commission against legal principles which I think could be confusing."

Mr. Harrington said, "The appointment of members should be done in such a way that the decisions will be made based on objective criteria and not on, for example, who is a friend and will favor a particular Councilor or disfavor a particular Councilor. Now that's hard to enforce, but that's what it says."

Commissioner Romero-Wirth said, "I've got trouble with that language. Then tell me about E. Districting plans shall not intentionally favor or disfavor any candidate. Is that..."

Former Councilor Heldmeyer said, "That is a national/state/local League position, has been for years."

Commissioner Romero-Wirth asked what is that based on – case law.

Former Councilor Heldmeyer said, "It is based on what the League does, here is where League positions come from. The League, at whatever level it is, does a study, usually a couple of year, studying different ways to do things and comes up with what is essentially a best practices kind of thing. This is in every level of the League. In point of fact, the national position says, neither favor nor disfavor any candidate or political party. Since the City positions are not partisan, the local League chose to leave that phrase out. The other things are all in the Charter already."

Commissioner Romero-Wirth said, "I understand that. They're principles of law. Whether they were in the Charter or not, based on case law, this is the way you have to do redistricting. What I'm asking you is, I understand it's League position. I understand how League positions are set, what I'm asking is what is the basis. Is this a legal term of art that you all are embracing, or is it... Each District shall contain, as nearly as possible, substantially the same population based on the most recent federal census. I believe that's based on case law."

Former Councilor Heldmeyer said, "Correct."

Commissioner Romero-Wirth said, "So what I'm asking you, is E, is that case law. Is that a legal phrase or some sort that has particular meaning. Or is that just.. Where does it come from."

Former Councilor Heldmeyer said, "It comes from the National League position which is trying to set up a system that is as even-handed as possible about districting. Now Jim can speak to the law."

Mr. Harrington said, "Actually A & B are things that are really constitutionally required. The others are desirable. In fact, with respect to what would be the new E, the Courts have held that it is not unconstitutional to take account of the interest of incumbents. Both the League and Common Cause thinks that's very undesirable as a matter of public policy, but it is not unconstitutional. So the Charter already, and this amendment, would carry things a little beyond what the Constitution strictly requires."

Commissioner Romero-Wirth said, "So this language E, specifically, has been found to be constitutional, or this is just a desirable thing that the League would, nationally, locally, has... Here's my underlying problem with this. Districting plans shall not intentionally favor or disfavor any candidate. So, let's say you have more Democrats than Republicans in a particular district. Doesn't that arguable favor a particular candidate. Let's say you have more Hispanic voters in a particular district. Doesn't that favor the Hispanic candidate. What I'm trying to understand is, as a practical matter, can you really.... I understand we're trying to take the politics out, and I have no problem creating an independent citizens redistricting commission. But, I do have problems with this language."

Mr. Harrington said he said the language isn't constitutionally required, and the Courts have held that it is s permissible to favor incumbents, and if you've done that in the redistricting plan, it doesn't make it unconstitutional..

Commissioner Romero-Wirth said she worked on redistricting for the State Legislature. She said E, is getting out the fact that incumbents often are favored in redistricting.

Mr. Harrington said in the most recent case in Santa Fe, one of the incumbents was disfavored.

Commissioner Romero-Wirth said, "But that was done by the Courts."

Mr. Harrington said, "Yes, but the idea here is not to take a kind of who's going to get the seat or what candidate is going to be favored."

Former Councilor Heldmeyer said the League is the who has been behind independent redistricting locally and at the state level, in most places where it has been achieved. This language has been used in those laws. She knows of no cases where they've been overturned by the Courts.

Commissioner Romero-Wirth said, then there are laws that use the language in E specifically, and Former Councilor Heldmeyer said yes, noting the research was done several months ago and she doesn't remember where specifically.

Commissioner Romero-Wirth said she has no problem if we add language to the Charter to the effect that, "The City Council shall establish by ordinance, an independent citizens redistricting commission." She does have problems with the way this is laid out for all the reasons she's just walked through.

Commissioner Farber said, "In talking specifically, with regard to E, because I think the introductory paragraph does give power to the independent citizens redistricting commission to review and revise, based on a set of principles. I think E... talking about what I think happened in the City of Santa Fe, was a particular City Councilor was the subject of redistricting, which cost him the ability to run in a particular district, I believe, at least as I recall. And I wasn't involved in anything, but it seems to me that that there was certainly public discussion about that and concerns that someone may have been targeted. And the language here has a requirement of 'intentionally.' I think that is a very strong term. It means that someone cannot form, or a group of people cannot form some kind of agreement, to target a candidate, a demographic population, a cultural group to its detriment. It should be as neutral as possible. And we have an experience in the City where some people may feel that that did not happen. And that would be an argument why this proposal, brought forward by the joint efforts of Common Cause and the League of Women Voters, and I don't always agree with all their stuff, but I think the motion by Commissioner Hiatt is appropriate, and that's why I seconded it. And I think that the concerns that you have, Commissioner Romero-Wirth.... I don't know that there has to be a particular case that says this particular language..."

Commissioner Romero-Wirth said, "I was just looking for meaning. I was trying to understand what it was that led to this language, because, as I see it, again, if you have one District that has more Hispanics in it than the... you could argue the intentionally be favoring a candidate, you're favoring the Hispanic candidate. Or, you're favoring the Democratic candidate. Or you're favoring, however it is that you're dicing these things. And I guess, the next question would be, too, would be should this be here, in the constitution, or should it be part of the ordinance."

Commissioner Farber asked, "Is your concern with the whole, or most of the proposal, or just Paragraph E."

Commissioner Romero-Wirth said, "So my concerns are, I think three. Again, I support an independent citizens redistricting commission. If we had language that just said, in the Charter, the City shall establish such a Commission, almost period. I think we've seen language in other City Charters where that's it. I support that. I guess I don't support the 'at least' part of this thing, at least 10 years. I think 10 years ought to be sufficient. It concerns me what would trigger more often and these processes are very time

consuming, very expensive, and we have operated every 10 years, and every 10 years, we fix things like population growth and whatever has made Districts out of whack with the principles that they should be in line with."

Commissioner Romero-Wirth continued, "I also don't like 'The Governing Body shall by ordinance, establish a procedure for the appointment, because I think that refers to the people in a way that would be really hard to figure out whether the people being appointed are qualified under these principles. As a practical matter, I don't know how you get to that. It seems we ought to be thinking about geographic diversity and ethnic, and all the diversities that we have, and other charters point to that. This seems difficult."

Commissioner Werwath said, "I was going to turn to the Commission, of one of the 5 attorneys sitting up here, to explain to me one of the things about, particularly about the language in E, does not the vagueness of that created potential for lawsuit in almost any situation when redistricting happens, because it is so broad and so vague."

Commissioner Long said, "I think so. I think the vagueness can create havoc with the interpretation of it, and I don't think the intentional language makes a difference to me."

Commissioner Werwath said, "You mean you've have to prove that in Court, but it wouldn't keep you from showing up in Court, right."

Commissioner Long said, "Right. And because it speaks to all candidates, doesn't say incumbents, it doesn't say declared candidates. I don't know how you interpret that. Does that mean that it is only someone who is a declared candidate. Does it mean... at what point in the year is the redistricting occurring. Do you know who the candidates are. And then, just when you were going through this, the language, and Jack was reading it, I had a concern about the language that the City Council would establish a procedure for the deliberations of the Commission. I really don't know what that means, and I've never seen... I don't know of an ordinance or resolution that tells a committee or a commission how to deliberate. That doesn't make sense to me."

Former Councilor Heldmeyer said, "Two points. One, again, we put in the... the assumption is that redistricting will be done every 10 years with the census. However, one circumstance under which redistricting may be done otherwise is, in fact, if the City faces a lawsuit about not redistricting in special circumstances. And I think that the Courts have shown that they are loath to overturn what elected bodies do, but if there's a sufficient case where the Courts feel the peoples' rights are being violated by not having... annexation, the Courts may. And so we just want to have that loophole in there for very extraordinary cases. As I said, Common Cause would prefer not to have that in, and in fact there is a lot of law, statute and case law, that tells bodies how to deliberate, make these decisions using these criteria. Make these decisions this way."

Commission Werwath said, "The second point that I just want to reflect back on, is I think we do have a very unique situation here, where we have about 10,000 people who are about to be added to the City's population, which is certainly an extraordinary circumstance. And I think the consideration here, is do we



include something in the Charter that maybe should have been considered at the time of the last redistricting, and that it is basically an oversight, either in timing or otherwise that it wasn't considered."

Commissioner Romero-Wirth said, "Karen just pointed to that the courts can call for redistricting, so arguably, we don't have to put it in the City Charter to say it has to happen every 10 years. If there's a real reason to do it, it can be done, even if this language is.... Jim, please, guide us."

Mr. Harrington said he did a little bit of research and isn't a great expert on this subject. He said, "I don't think there's ever been a case that went after a public body for not redistricting more often than 10 years. You have to keep up with the census, that's the requirement. And beyond that, if you have an annexation, it'll be picked up at the next decennial redistricting. So, that too, is not constitutionally necessary, but based on discussions with Karen and with Councilor Bushee who is concerned about this, Common Cause decided to say okay, at least. And I would think it would be up to the Commission to decide, and not the Governing Body, if they wanted to do it more often."

Commissioner Romero-Wirth said, "There isn't anything constitutionally that says that, but didn't Karen say that the Courts could step in if they thought it should be redistricted more often, for some extraordinary reason, say this major annexation."

Former Councilor Heldmeyer said, "However, the question is whether you want to go through the court system to reach that decision, or if the citizens want to say, hey, something extraordinary has happened here, and we think it is time to redistrict. Or if you want to go to all the trouble and expense of a court case to reach that same decision."

Commissioner Romero-Wirth noted Common Cause's original position is they didn't want redistricting more than every 10 years, because they were worried about political shenanigans.

Mr. Harrington said that is correct, particularly in Texas.

Commissioner Romero-Wirth agrees that there is merit to that position. She said the last state-wide redistricting they did, the population was really askew. There were parts of the State where a lot of people had left, while other parts of the State had experienced exponential growth, and every 10 years we fix that. She said if this one-time situation in Santa Fe is so extraordinary then perhaps it does need to go through the Court process to fix. She said, "Allowing this to happen more than every 10 years, for other reasons, I think, is unnecessary."

Commissioner Werwath said, "If the process is truly independent, then doesn't that theoretically, even if happens more often, eliminate the political motivation for it. I mean hypothetically."

Chair Serna said Ms. Romero reminded him there is not another meeting following this one, and he is willing to go until 7:00 p.m., if the Commissioners would like.

Commissioner Romero-Wirth said she can stay a little past 6:00 p.m., but she has other things to do.



**FRIENDLY AMENDMENT:** Commissioner Long said there is a motion on the table. She said, "I too, support the concept of an independent redistricting commission, but I do have problems with some of the language. And I think if we removed the phrase 'procedure for the appointment and deliberations of the,' and just had 'shall by ordinance establish a Commission, which will to the maximum practicable extent, ensure that the Commission's decisions will be based,' delete 'exclusively,' based on the following principles and the following order of priority, just the way it is in the current Charter. And then remove E, which I too have problems with. I think it's vague and I think it's just ripe for misinterpretation."

**PARTIAL ACTION ON THE FRIENDLY AMENDMENT:** Commissioner Hiatt asked Commissioner Long if she is offering an amendment, and if so, asked her to repeat her proposed amendment, which Commissioner Long did. Commissioner Hiatt said he and the second agree on some of this. He said, "Let me just point out that we will agree, Commissioner Long, to those exclusions that you made in the full paragraph. And, so that would be deleting the word 'exclusively,' and deleting 'A procedure for the appointment and deliberations of'." **THE FRIENDLY AMENDMENT WAS ONLY PARTIALLY FRIENDLY TO THE MAKER AND SECOND, AND ITEM E IS STILL UP FOR DISCUSSION.**

Commissioner Hiatt said, "And so...Now, having accepted that as a friendly amendment, we're okay with that, but Commissioner Farber would like to talk about E a little more, if you would."

Commissioner Farber said, "And I would also just like to just clarifying something else, besides E, because maybe I misunderstood Commissioner Long's point. I don't see that the members of the Redistricting Commission are appointed on the basis of E, correct. I think what the intent of the Charter provision, as I understand it, is that those are the principles, A through F, which would guide the deliberations of the redistricting commission, the independent redistricting commission, with the hope that the Governing Body would appoint people who are independent, and who would carry forward those thoughts and those principles. That's at least my understanding, so there's a distinction. I do think, and I am concerned, that there be some positive language about the need to not intentionally favor or disfavor any candidates. I think we have an example in this community where a candidate, or potential candidate, was specifically disfavored. And I think the Charter ought to deal with that, so that kind of situation cannot be allowed to happen again."

Commissioner Farber continued, "I think, again, it's hard to prove intent, at least in my experience, on doing both criminal and civil cases, when there is specific language in either a statute that says, with the intent to, versus intent inferred. And civil's a little different, particularly, the Justice knows statutory construction better than I, but there's that whole difference between specific intent and general intent, and I think the inclusion of the language intentionally acts as a protector for neutrality."

Commissioner Long asked, "What about the candidate problem, though. In that."

Commissioner Farber said, "It would be any candidate. You can't target either any group...."

Commissioner Long said, "On the definition of a candidate, depending on when you redistrict, candidate has a specific meaning if you declare candidacy. Just because someone is a sitting Councilor doesn't mean they're decided to run or not yet, or they've declared a candidacy. So that was part of my problem."

And you can have redistricting that it is going to disfavor someone, and it could be a incumbent, and it could be a sitting Councilor, and that's just the way the commission decides to draw the boundaries, and if they've got this criteria that they have to follow, I think it could hamstring their work, if they're got to worry about protecting sitting Councilors."

Commissioner Farber said he certainly doesn't want to protect sitting Councilors, just because they're City Councilors. However, he thinks when you go after somebody, or target somebody, because you want to remove them is a problem. It's a hard standard to prove intentionally. He said, "I am very much in favor of diversification, culturally, racially, sex-wise. I think we need to do the best that we can to have as diverse a group as possible."

Commissioner Romero-Wirth said, "Don't you think just establishing an independent citizens review commission gets to what you're trying to do, which is....all of these processes can be abused. You aren't going to protect it from never happening again, but hopefully this is a way, just in and of itself, that these people who are appointed don't necessarily have 'a dog in the fight,' and have a way... they don't have the same self-interest."

Commissioner Farber said, "In the best of all worlds, I agree with you, and I think that group of people on the Charter Commission are essentially independent, and have been appointed by certain people. Some people didn't know who they were appointed by, so we're using our own independent judgment is what it seems like to me, as we've gone through this process."

Commissioner Farber continued, "I would like to point out that... yes, the commission is a protection, but already in the Charter there are Paragraphs A through E, and I don't see any reason why that ought to be struck down. I understand your concern, and maybe we discuss a little bit more Paragraph E. It seems to me that... I can't read into why people submitted something, but it makes some sense that Paragraph E is addressing a particular problem when perhaps people are not as independent as they should be. So it allows an aggrieved person to go in and say, you intentionally excluded Candidate A or B, or your intentionally excluded a group of people, who were disenfranchised because of your decision."

Commissioner Romero-Wirth said, "I think the A through E that's here in the City Charter, I think these are all rules of law. This is really.... it's not necessary. Because when you do redistricting, you have to follow A, B, C, D and E, as it's currently presented in the Charter. If we add this new E about not intentionally favoring or disfavoring any candidates, this goes back to my question. This is not a rule of law, this is a League position nationally, locally. It's not a rule of law. It's not how things have to happen, and I understand that's what we want to happen, which is why we want to have an independent commission, but I think this language is very problematic, and if it's that important, try putting it in the ordinance, where if we have problems with it, we could at least tweak it periodically to address some of the questions, like who is the candidate that we're aiming at here. And I don't know. I have problems."

Mr. Hiatt said the motion, since we are both in agreement that we will accept those original suggestions by Commissioner Long, is now modified, and I want to make sure everybody knows that it's modified. And now, the only issue that I hear us debating is E, and if Commission Long's amendment to delete that from the motion receives a second, I would suggest we vote on E alone and move forward.

**MOTION TO AMEND THE MOTION, AS AMENDED:** Commissioner Long moved, seconded by Commissioner Werwath to delete the proposed E for all the reasons that we have discussed.

**VOTE:** The motion was approved on a voice vote, with Commissioners Long, Gutierrez, Johansen, Romero-Wirth and Werwath voting in favor of the motion, and Commissioners Farber and Hiatt voting against, and the Chair not voting.

**COMMISSIONER HIATT READ THE TEXT AS AMENDED AS FOLLOWS:** The City shall be divided into four dual-member districts numbered one through four. District boundaries shall be reviewed and revised at least every ten years following the decennial census by an independent citizens' redistricting commission. The governing body shall, by ordinance, establish a commission which will, to the maximum practicable extent, ensure that the commission's decisions will be based on the following principles in the following order of priority: [list A through the existing E, and there is no additional E.]

**VOTE ON THE MAIN MOTION AS AMENDED:** The motion, as amended, was approved on a voice vote, with Commissioners Farber, Hiatt, Long, Gutierrez, Johansen, and Werwath voting in favor of the motion, Commissioner Romero-Wirth voting against, and the Chair not voting.

Chair Serna thanked the League of Women Voters and Common Cause for their work on this, noting the Commission made substantial compliance with Commissioner Romero-Wirth's requests.

## **B. PARTIAL REDISTRICTING PROPOSAL.**

Chair Serna asked if there is proposed language for this item.

Commissioner Hiatt said he thought this was removed 5-6 meetings ago, but he is unsure he used the correct language in doing so. So he and Commissioner Farber put this item back on the Agenda to be sure it is "dead, dead, dead, if it's going to be dead."

**MOTION:** Commissioner Hiatt moved, seconded by Commissioner Werwath, to remove this item from consideration, with or without language.

**DISCUSSION:** Chair Serna said we did hear from our counsel.

Commissioner Long said the initial question posed to counsel was if we could have districts at large, and "I think Marcos did not understand that to mean that there could be partial Councilors at large, so that you would have one Councilor elected from the district and then the second 4 after that election, would be elected at large. And I think Commissioner Werwath asked the question today, and maybe even of Jamison Barkley at our last meeting, as to whether that would be allowed. She thought it would initially. She didn't have time to run it down, and then she quit. In the interest of keeping the issues moving, and not spending further time on it, I'm fine with removing this. But I don't know we really have a final conclusion as to whether it's allowed or not, so I wouldn't want that in our report somehow, because the Council may decide that they want to take it up.

Commissioner Hiatt said, "One other thing, I'm just a little hesitant to move forward on something when we get two different opinions from the same City Attorney's Office. It just bothers me a little."

Commissioner Farber said, "I would just want to make a comment about this one. I think it's an interesting issue, and we could probably spend the entire length of time that we've been meeting talking about just this one issue – about the civil rights implications of this, and also other interesting things, like wouldn't it be neat for City Councilors to try out mayoral elections before they actually run for Mayor. I think personally, I do like the idea of having an at-large City Councilor or two or three or four, but I think, given the time constraints and the fact that we can't get a clear answer from the Attorney's Office, despite my particular interest in this issue, that we should move forward."

Commissioner Farber said, "I don't know that I necessarily agree with the position that, simply because you are elected from a district that you do not look out for the interest of the City as a whole. That's the premise of having one from each particular district, and then four City-wide, because it's considered to be provincial. I can only speak from my own experience which was, when I served, I thought about the City, I thought about the residents, I certainly have a political philosophy and I followed through on that political philosophy. It doesn't necessarily follow that each and every decision is going to be district-centric in that way. I would hope that people are more idealistic and more civic minded and understand, when you get elected as a Councilor, you're a City Councilor. You're not necessarily a District 1, 2, 3 or 4 Councilor only. So I'm against it on principle."

Commissioner Werwath said, "I was making no implication of your service as a City Councilor."

Commissioner Farber said he didn't take any, and he is just saying in general.

Commissioner Werwath said, "I have witnessed this, first hand."

Commissioner Farber said, "There are certainly people who are provincial."

Commissioner Werwath said, "Okay, as long as we can just agree to that point, I'm ready to move on."

**VOTE:** The motion was approved unanimously on a show of hands.

### **C. RANKED CHOICE VOTING IMPLEMENTATION.**

**MOTION:** Commissioner Werwath moved, seconded by Commissioner Farber, to leave the language intact, as it is currently stated in the Charter, and include a note around implementation in the Report to the City Council, which includes the information which was provided today.

**DISCUSSION:** Commissioner Werwath said, "I would just reiterate what I said at earlier meetings, that I think that there is somewhat of a breach of faith to the public that this hasn't been implemented. I said that at a previous meeting, and that's why one of the reasons we considered removing it, was because it looked like it was going to be implementable. I think it would be great if, in our report, we could highlight

that there has been progress made. I think this is a great opportunity to increase the participation in local elections, and so I'm strongly in support of seeing this implemented as it's currently written in the Charter."

Commissioner Romero-Wirth asked about the typographical error proposed to be corrected.

Commissioner Farber said it involves two commas.

**FRIENDLY AMENDMENT:** Commissioner Hiatt would like to amend the motion to delete the comma after "ballots," and insert a comma after "price." **THE AMENDMENT WAS NOT FRIENDLY TO THE MAKER AND SECOND.**

**VOTE:** The motion was approved unanimously on a show of hands.

#### **D. RANKED CHOICE TYPOGRAPHICAL ERROR CORRECTION.**

**MOTION:** Commissioner Farber moved, seconded by Commissioner Werwath, to remove Item 5(4) Ranked Choice Typographical Error from consideration.

**VOTE:** The motion was approved unanimously on a show of hands.

#### **E. CHANGING MUNICIPAL ELECTIONS TO THE FALL.**

An email Memorandum dated June 7, 2013, from Karen Heldmeyer to Irene K. Romero, regarding this matter, suggesting this item be removed from consideration, is incorporated herewith to these minutes as Exhibit "6."

Former Councilor Heldmeyer said she sent a Memo through Ms. Romero, to withdraw this item.

Commissioner Long said the Board has that Memo.

Former Councilor Heldmeyer said, "I still think it is a good idea, but it would *require much more*... a lot of mechanics would have to be changed in order to do it, and this Commission is not the Commission that is going to change a lot of mechanics. They should have done it when they passed the first Charter."

**MOTION:** Commissioner Hiatt moved, seconded by Commissioner Johansen, to remove this item from further consideration, the concept of Changing Municipal Elections to the Fall.

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

**F. REQUIREMENTS OF THE THRESHOLD NUMBER OF SIGNATURES FOR REFERENDUM, INITIATIVE AND RECALL RIGHTS OF VOTERS.**

An email Memorandum dated June 7, 2013, from Karen Heldmeyer to Irene K. Romero, regarding this matter, is incorporated herewith to these minutes as Exhibit "7."

Commissioner Long said there is no proposed language, but the Commission did receive an email, which is in the Commission materials, from Ms. Heldmeyer, stating that the League doesn't have a position. She said this is what Ms. Heldmeyer has stated all along, that the League has no position on whether these are under-utilized and how many signatures are appropriate. She said we have discussed that lack of use of initiative and referendum, that the thresholds are high and Mr. Harrington has told us why that is. She said the last Charter Commission did consider it and there was a lot of debate about it. She said we have discussed it, but we haven't heard from others, nor received any specific language on changing those numbers.

Chair Serna asked Mr. Harrington if he has any specific language.

Commissioner Werwath said previously, Mr. Harrington had mentioned that the City Council that adopted the current Charter amendments in place now, did not adhere to the recommendation of the Commission at the time you were Chair.

Mr. Harrington said, "Not exactly. The two changes they made on our recommendations were on the ranked choice proviso, and the other was we had recommended that the number of signatures required be changed to 1/4 the number of the actual voters in the last Mayoral election for recall, and 20% for initiative and referendum. They raised the 20% to 1/3, so it's 1/3 across the board now in the Charter. And I don't know. I don't have any strong thoughts one way or the other between the 1/3 and the 20%, but our Commission did recommend 20% and now it's 1/3."

Commissioner Romero-Wirth asked, "Can we leave this alone – can we have a motion to leave this alone."

**MOTION:** Commissioner Hiatt moved, seconded by Commissioner Johansen, to delete this matter from further consideration by the Commission.

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

**G. TAX AND BOND ELECTIONS REQUIRED TO HAVE FULL EXPENDITURE TIMETABLE.**

An email Memorandum dated June 7, 2013, from Karen Heldmeyer to Irene K. Romero, regarding this matter, is incorporated herewith to these minutes as Exhibit "8."

A copy of the handwritten proposal for the ballot language, submitted for the record by Commissioner Romero-Wirth, is incorporated herewith to these minutes as Exhibit "9."

Former Councilor Heldmeyer said, "The League is very concerned that voters have correct information when they vote, and not just in terms of what is on the ballot, because people don't read it when it's on the ballot. It's too late. In addition to what's on the ballot, the advertising material that is put out in favor of these various tax increases or bond measures, and the League is saying that this Governing Body shall adopt an ordinance or ordinances that ensure that the City will disseminate a clear, comprehensive schedule of proposed expenditures for any tax increase or bond measure that needs to be ratified by voters. This doesn't mean that you have to account for every single penny. It doesn't mean that things can't be changed, because certainly in the Ordinance that's passed by Council, language could be put in that changes could be made, but we think voters, when they're voting, should have an idea of what they're voting for."

Former Councilor Heldmeyer continued, "And we do have a committee right now that's looking at the whole issue of bond elections and tax elections, and when, if ever, the League can support those elections and what kinds of information the League would want to support it, which is a slightly different issue than what the voters would want. But because of that, I watched the part of Council last night where they voted on bonds that were voted, supported G.O. Bonds, that were voted in the 2012 election. And they were putting out bonds equal to half of the money that they were authorized to put out. They're going to put out the other half some other time. One of the Councilors asked the question, well which things are being funded with these bonds, which half is being funded. And the answer was, oh well, we didn't give you that. We'll give you that later."

Commissioner Werwath said, "I was listening to that meeting, and that's not a perfect characterization of what happened."

Former Councilor Heldmeyer said, "It's close. I'm not quoting, and I'm not speculating why certain things were said either."

Commissioner Werwath said they didn't have the list of specific parks improvements projects that were going to be funded on that particular bond issue, but they did have the large category, which wouldn't be affected."

Councilor Farber asked that only one person speak at a time. He asked Commissioner Werwath, "How do you disagree with Karen's characterization. I'm curious about that."

Commissioner Werwath said, "It was a sub, sub-category of things. It was the specific parks improvements projects that were being undertaken, and they didn't have a detailed list on hand in the Council packet."

Former Councilor Heldmeyer said, "They didn't have a detailed list for the Council."

Commissioner Werwath, "The individual projects. All they said was that it was the high priority trail improvements. There was a fair level of detail, and I don't expect that, even through this ordinance that we would get anything better than that level of detail – through the eventual ordinance that could be created through this language that we would we get a finer level of detail, and I wouldn't suggest that we ever should get a finer level of detail than broad categories."

Former Councilor Heldmeyer said, "Let me just add, it was not just the specific category that was asked about, although that was the discussion, but in talking to people today I found out that, in other categories, the Council was also not given more than just very broad [?]. I know that least one member of the Commission has a problem with this, but the League feels very strongly that when people are asked to vote to tax themselves, that they should be given as much useful information as possible."

Commissioner Farber said, "With regard to this proposal, it doesn't seem there's any kind of timeframe that's included for the Governing Body to provide the information to the public."

Commissioner Farber said, "It doesn't seem like there is any kind of time frame that is included for the Governing Body to provide the information to the public, am I reading that right?"

Commissioner Romero-Wirth said, "Prior to it's being ratified by the voters."

*Several people talking here at the same time making it impossible to transcribe*

Commissioner Long asked if it needs to be included on the ballot itself.

Commissioner Farber said, "Yes, I'm not clear, right. Does this need to be included on the ballot or is it by publication. It seems to me, to be effective, there ought to be some time period, prior to an election, for this provision to be meaningful.... [Commissioner Farber's remarks here are inaudible because he was interrupted by Former Councilor Heldmeyer]."

Former Councilor Heldmeyer said, "And that would be fine. Again, we have tried to follow the direction from this Commission to put as few details as possible in the Charter and to say, ordinance or ordinances., but if you want to put that in, that's fine with me."

Commissioner Romero-Wirth said, "That could be done by ordinance, the timeframe."

Commissioner Farber said, "I understand that. I think some things require a little bit more detail and other things obviously don't."

Commissioner Romero-Wirth said, "I would like to propose a change to this language, and maybe make it a motion, if that's not too complicated."

Commissioner Hiatt said, "I think you can move whatever language you want."



Commissioner Romero-Wirth said, "I have a problem with schedule, and I know the League thinks that's not going to cause any problems, but you know, again, these things get determined by Courts and lawyers and I think 'schedule' is too specific and I think broad categories are where things need to say."

**MOTION:** Commissioner Romero-Wirth moved, seconded by Commissioner Long, to approve the following language, *"The Governing Body shall adopt an ordinance or ordinances that ensure that the City shall clearly state and disseminate the purpose of proposed expenditures for any tax increase or bond measure that needs to be ratified by the voters."*

Commissioner Hiatt said we need that specific language for the Commission Reporter, and Commissioner Romero-Wirth said she would provide it to Ms. Helberg.

Responding to Commissioner Hiatt who asked for the specific section for the site, Commissioner Romero-Wirth said they created a new 4.08, which, having not really looked through here. I assume they did, so."

Commissioner Johansen said, "I think it should be 4.07, because I don't think there's a 4.07 in.....  
[Commissioner Johansen's remarks here are inaudible because he was interrupted by Former Councilor Heldmeyer].

Councilor Heldmeyer said, "You passed 4.07 at the last meeting."

Commissioner Johansen said, "That's right, thank you."

Commissioner Long said, "Clearly state and disseminate. And the disseminate I understand. The 'state' would be clearly state... that's the only way we have 'clearly' that works. So, 'clearly state' or shall 'provide and disseminate'."

**FRIENDLY AMENDMENT:** Commissioner Romero-Wirth suggested amending the motion as follows: "shall provide and disseminate in a timely manner the purposes of proposed expenditures....". **THE AMENDMENT WAS FRIENDLY TO THE SECOND AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE COMMITTEE.**

**FRIENDLY AMENDMENT:** Commissioner Long suggested amending the motion to add "that requires ratification by the voters" at the end of the sentence. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE COMMITTEE.**

**FRIENDLY AMENDMENT:** Commissioner Farber would like to amend the motion to add "in a timely manner" after "disseminate." **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE COMMITTEE.**

**FRIENDLY AMENDMENT:** Commissioner Long would like to amend the motion to delete "or ordinances." **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE COMMITTEE.**

**DISCUSSION:** The Commission discussed the proper grammar and elegance of the proposed amendment to the Charter, and finally agreed on the following language:

**STATEMENT ON THE PROPOSED LANGUAGE OF THE MOTION AS REVISED:** *"The Governing Body shall adopt an ordinance ~~or ordinances~~ that ensures that the City shall clearly state provide and disseminate in a timely manner the purposes of proposed expenditures for any tax increase or bond measure that ~~needs to be ratified~~ requires ratification by the voters."*

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

Former Councilor Heldmeyer thanked the Commission for its work on this amendment.

***[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.]***

**6. DISCUSSION AND POSSIBLE ACTION ON PROPOSED BAN ON CONTRIBUTIONS FROM BUSINESS ENTITIES, INDIVIDUALS AND CITY CONTRACTORS HAVE CONTRACTS WITH THE CITY OVER A STATED AMOUNT. *[Language for proposal was submitted at May 28, 2013 meeting]***

A copy of *Ban on Contributions from Business Entities and City Contractors*, entered for the record by Commissioner Farber, is incorporated herewith to these minutes as Exhibit "10."

An email Memorandum dated June 9, 2013, from James Harrington to Irene K. Romero, regarding this matter, with attached comments on this proposal, is incorporated herewith to these minutes as Exhibit "11."

Chair Serna said he got a long legal memorandum from Mr. Harrington, with citations, footnotes and everything, commenting he believes the Commission has had the opportunity to read it, and asked him to summarize his Memorandum.

Commissioner Farber said, "Point of order, it's my proposal and I have some issues with that Memorandum, both legally and factually. I am happy to discuss this at this meeting, but I think this could be potentially 15-20 minutes or more. I just wanted to alert people. I know there's a timing issue. We could do it at the next meeting and carry it over, because some of those topics I think are also, well, I think, could be... at the next meeting."

Commissioner Long said, "We also want to hear from Jim [Harrington] too, since he's here."

Commissioner Farber said, "I would like to be able to speak first, since it's my proposal."

Chair Serna told him to go ahead, saying we would go over a few minutes.

Commissioner Romero-Wirth asked the Chair to decide what time we are going to wrap-up this meeting.

Commissioner Farber said that is up to the Chair.

Commissioner Long said she can stay until 6:20 p.m.

Chair Serna said, "Okay, we're going to wrap it up at 6:20 p.m."

Commissioner Farber said, "At the last meeting, where there was a deadline, I handed out copies of the proposal [Exhibit "10"], and I think it's worthy of consideration. And with regard to the position set forth by Common Cause, as much as I respect Common Cause as an organization, I think it is somewhat timid. And I think the Memo that we were provided [Exhibit "11"] does not accurately reflect the state of the law, nor do I think that it properly characterizes the cases which I've read, that were cited. In particular the case of *Wagner v. the FEC*, which is a District Court case, and I can provide copies to everybody, and I would commend the people who actually read these cases, was a case from 2012, where the District Court Judge specifically recognized that federal law has prohibited contributions from contractors for about 70 years. So this is not something that is novel."

Commissioner Farber continued, "And I think it becomes important also to recognize that this is one discrete part of the Albuquerque Charter provision. It's not all the Albuquerque Charter stuff on campaign finances and campaign financing. And I agree, from a philosophical standpoint, that the Albuquerque Charter is too detailed, and reads like a municipal code, as opposed to general principles and statements of law that should govern a community. And they do have regular votes. If you read the Charter, it's not unusual to have 5, 7 even 12, I think, proposed changes at a particular municipal charter election. Because at the end of the Charter they talk about all of the different changes that were presented."

Commissioner Farber continued, "But, I think that there's a big gap in the City not banning, which the City is allowed to do, contractor contributions, and what I took also, which I struggled with on a personal level, was this high threshold for contractors of a dollar amount, using the Albuquerque number, which is \$20,000, which is pretty high, when you think about the difference between Albuquerque as a municipality and Santa Fe as a much, much smaller municipality. And this is not a proposal that assumes that every contractor, or most contractors, or the vast majority of contractors are not honorable people. They are. The reason for bans and sometimes limitations on certain categories of contributions is because, not just because of actual corruption which is the term used by Common Cause in its communications with me, but they wanted to use the term corruption. Well they say, corruption or the appearance of corruption. So the appearance of corruption is very broad. And I think we want to be very careful about labeling people as corrupt. That's why I have a problem using the word, in that context, in this particular provision, although I do note that we already, in the Code, to the extent that the submission by Common Cause said that there were problems and there has to be use of the word 'corruption' for it to be appropriate."

Commissioner Farber continued, "In the Code as it is right now... the word corrupt already appears in our Charter in Section 2.05. I'm trying to find the exact line. So, it's in 2.05, 'In order to protect against the potential for corruption inherent in this situation, which talks about campaign financing, campaign finance practices. So there is a recognition already in the Charter of the potential for corrupt practices. I don't think we need to repeat it. It certainly can be incorporated, not in a legal sense, but you read something in the whole."

Commissioner Farber continued, "And the purpose of the ban, my proposal, it made sense for a ban on contributions, is to avoid possible corruption without labeling people corrupt, and the appearance of corruption and to further the purposes of the Ethics Codes, and in the submission by Common Cause, what they were saying is, 'well here's all these provisions in Albuquerque, that have been struck down, and that's why in some ways this is a problem.' Well just because certain provisions in Albuquerque were struck down, doesn't mean that this particular provision would be struck down. And just because someone filed a lawsuit in this recent election, does not mean the threat of a lawsuit should be something that should discourage us from passing something, if this group thinks that it's a good idea."

Commissioner Farber continued, "If we had.... and just as an aside, when you serve in public office you get threatened with lawsuits all the time, and if people caved in to the threat of lawsuits, we wouldn't have a publicly run bus system. Laidlaw ran the bus system for the first year. It wasn't working out. I came forward with a proposal that the City run it. Sam was really upset, the Mayor, was really upset with that, but the City has been running it for twenty-some years after the Laidlaw contract went. There was a threatened lawsuit about a moratorium that we enacted so that there wouldn't be a Smith's on Baca Street. Had there been a Smith's on Baca Street, imagine what Cerrillos Road would be like, and what would have happened in the Baca Street area. There were threats of lawsuits which would have discouraged us from buying the Railyard property. Now there are problems with the Railyard property and the way it's been implemented, but I think most people would say that the Railyard Park is a pretty neat thing, and it was probably a good idea to have control. So just the fact that there's a lawsuit potential, does not mean it should not be considered."

Commissioner Farber continued, "And when we look at all the cases, the cases do not say you cannot have this kind of ordinance by the City, and the City has not come forward with an Ordinance, and the Memo against the proposal said, 'Well the Ethics Board came forward over a series of years with proposals to tighten things up.' Well the reality is, at least to my knowledge, there has been no proposal about contractor bans that I'm aware of in the City. I'm just talking about in the City. So the Ethics Committee hasn't come forward with it, it's a big hole. It's an issue that we want to discourage the perception of, or that people get favoritism or that there is 'pay to play.' And one of the things these cases talk about, if you really read the cases, is they say they've all been upheld because they say that the legislative body which enacted them, usually after the fact because we don't have legislative history. I don't know that our minutes are legislative history, I don't know that the Council minutes are legislative history. We know that the State Legislature does not have, to my knowledge, Legislative history and the Court struggles with understanding the statutes."

Commissioner Werwath asked, "Can we focus in on the substantive matters here, because we've got about 5 minutes left."

Commissioner Farber said, "The reason.... this is important and I said it was going to take some time."

Commissioner Werwath said, "You were talking about bus contracts and stuff. I'm trying to rein you in a little bit for all of us."

Commissioner Farber said, "All I'm saying Daniel, is the threat of a lawsuit should not discourage a good idea, if it's a good idea, and I was giving examples of what I thought were good ideas."

Commissioner Werwath said, "I think actually, your proposal is a great idea for an ordinance. I don't think it's a great idea for the Charter."

Commission Farber said, "We don't know that the Council is going to include it as an Ordinance, and so what the case talks about, and I have to get into this. If you look at Advantage Asphalt, there's an indictment based upon alleged improprieties and bribery, as I recall, from Advantage Asphalt. Advantage Asphalt is a City contractor. Advantage Asphalt principals made substantial contributions to City candidates to my recollection. We have the 'pay to play' example in the State Treasurer's office, where we have two State Treasurers who ended up going to prison. We have the 'pay to play' example. This is what the cases all talk about and why Common Cause's position is wrong. We have examples in the State and it just doesn't have to be in the City."

Commissioner Farber said, "We have examples... prior improprieties in the State Auditors Office, we have allegations of pay to play with the State Investment Council. So we can take a view of all of this, that people make contributions to get something in return. I think this is appropriate, it can work, it comes right from the Albuquerque Charter with some tweaking of language to make it broader and more flexible, and I found the submission by Common Cause is actually an argument against campaign finance reform in this context, because it is too timid. And it does not go to what can be done. It says, 'back off. We're afraid it might not hold up.' I don't think that should be the philosophy."

Commissioner Werwath asked for clarification on the reason this wasn't simply added to the recommended of Section 4.07 that was passed at the previous meeting. He said, "Because again, this kind of feels a little like circumventing the will of the Governing Body by creating Ordinance level language that's going to be inserted into the Charter, when we already had created a section which clearly sets limits on campaign contributions. If you're going to create... let me finish... if you're going to create an additional very detailed and very complex limit on campaign contributions, wouldn't it arguably be better to do that in the same form and section as that previous recommendation. And say, add language to that that says, shall adopt an ordinance that includes limits on contributions by contractors. Again, and I just read Common Cause's Brief very quickly, but I think one of the points rings very true there. It's not the threat of lawsuits, it's the threat of changing law, and us having something in the Charter that's illegal for 10 years. Right."

*Too many people talking here at the same time to transcribe*

Chair Serna asked that only one person talk at a time, noting there are 4 minutes left in the meeting.

Commissioner Farber said, "It is not changing the law. The law throughout the country has enforced these. You look around at what is appropriate. It is one page, it's not detailed more than one page. It is reasonable and it seems to me, for purposes of the public, that if it's a separate provision, it's more easily understandable, it doesn't circumvent the Council, because the Council gets to review this. If we think it's a good idea collective, then the Council still, for everything we've done, could say yes or no. I mean just because we're working hard, doesn't mean the Council is going to agree with us. So it's not circumventing anything. And I think it's long overdue and should be done. I'm disappointed that Common Cause has taken the position, well if you include the word corruption, then it's okay."

Commissioner Long said, "I would like to hear, I know there were a couple of hands up over here. I would like to hear from Brian. I think Houston did too, have his hand up."

Commissioner Gutierrez said, "I think it's a good starting point. There's a few things I'm looking at. It's going to be a heavy work load that you're placing the burden on the City Finance Director and City Clerk. I think that needs to be thought about a little more. If you take and break down the \$20,000 over a 24 month period, that's just over \$800 per month. In my business, for example, if I tow in 4-5 DWI's to the City contract lot, that's going to break that threshold, and it puts it in a case where it may have never been thought about. So I think there are some other areas that need to be thought about in there. And, everything else we've been working on. We've kind of stayed away from dollar amounts. And that's another idea that I wanted to bring forward."

Commissioner Farber asked to respond briefly. He said, "The idea is to create fair competition, so that favored people who regularly get contracts, as opposed to new people, or younger people, or newer businesses who don't have an in with the City get a fair opportunity. So nobody above that level should be able to contribute, so that there cannot be a question that someone is being favored."

Commissioner Werwath said he doesn't think it's our job to get that detailed in this stuff.

Commissioner Gutierrez said, "I think it's too detailed, also."

Commissioner Johansen said, "I just have to agree. I think this is a little too detailed for what we've been tasked with doing. I certainly agree with your intention here Commissioner to get a level of corruption that may be going on out of politics. But, given what we've already passed, and given that there already is an Ordinance on the book on public financing, this is definitely an issue best left to the Council, not to use. And I think we're just going to clutter up not only our time, but even if we did pass this, it would clutter up this Charter with something that isn't necessarily needed, and could be better addressed at the Council level."

**MOTION:** Commissioner Hiatt moved, seconded by Commissioner Johansen, to postpone further discussion this item to the next meeting of the Commission.

**DISCUSSION:** Chair Serna agrees, noting Mr. Harrington hasn't had the opportunity to speak.

Commissioner Hiatt said, "I know, but it isn't going to happen."

Commissioner Farber asked if he can he come back with modified language to try to address some of the concerns that have been expressed here to present at the next meeting.

Commissioner Werwath said, "Sure. And I would just say I'm not going to vote for it unless it fits in 4.07. Just as guidance."

Commissioner Hiatt noted this is a motion to postpone. He said, "We're just trying to postpone, because we're not giving Mr. Harrington a chance. And in deference to Commissioner Romero-Wirth, I want to get out of here. I just moved to postpone the discussion to the next meeting."

Chair Serna, responding to a request from the Commission, said Mr. Harrington can address the Commission very briefly."

Mr. Harrington said, "Just a couple of quick things and then I have a lot of things to day, but I won't say 95% of them until next time. I should say it was with great regret that we had to take this position against an effort at campaign finance reform, and I wish we had had a chance to discuss it beforehand, and we didn't so, we had to... or to discuss it at all. We had to come in with this position. But I think on the legal issues, all I can say is that the lawyers on the Commission, if they have the opportunity, should read the cases. And I'm confident that you'll find that what we say in the Memo about the cases is correct. In every case in which there has been an actual history of corruption preceding the enactment of the ban, it's been upheld in every case, specifically two of them where there hasn't been such a history, it's been struck down. But the legal thing is sort of a distraction from the main point here, which is in this area, there are constantly arguments going on back and forth, between the federal circuits, between the courts, between the lawyers, and you don't know how it's going to come out, and to chisel something in the Charter really risks ending up with a bunch of ineffectual laws. And I think this City, starting with the Campaign Reform Commission, on which Vice-Chair Long served, has devised an excellent method for handling this situation. And by the way, an update, on Tuesday night, the ECRB finalized its latest, it's 5<sup>th</sup> one, biennial recommendation for tweaking the Codes, and Councilor Calver introduced that as a bill last night, a number of further refinements. And that's an excellent way to go about this. And I think, just the fact that they're down so many lawyers should lead you to have pause. And as far as like, pushing the envelope, there are two points to be made about that, one is if you are going to push the envelope and try for a risky measure that might be struck down, a threat of a lawsuit, it's much better to do it by ordinance than by charter. Because when the courts push back, which in this case, they surely would, you can adopt plan b. the second point is that it can be very expensive in this are to push the envelope as the Attorney General has found out to his regret and has been criticized in the Legislature for shelling out close to a quarter of a million in attorneys fees in the last 4-5 years, trying to defend obviously on constitutional campaign finance laws at the state level. All these cases that challenge campaign finance laws are Section 1983 actions which require attorneys fees to the successful plaintiff. So when you push the envelope here, it can cost

you seriously. Anyway. So on the cases, it would be a shame to get into an argument about what one case said or some other case said. The only way you can settle that is to read them. Thank them, sorry I went over a little bit."

Commissioner Farber said "May I just say, I will send members of the Commission the cases. I hope you read them, that are cited in the Brief of Common Cause. I'm an experienced 1983 litigator. I don't say things cavalierly. Nancy's defended cases that I've had. I respect her. Hope she respects me. Reasonable people can differ on some of these things."

Commissioner Hiatt said, "I respect you both."

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

**7. DISCUSSION/POSSIBLE ACTION SETTING AGENDA DATES FOR FUTURE MEETINGS:**

- A. GOVERNANCE ISSUES – ANTICIPATED TO BE AT JUNE 19, 2013 MEETING**
- B. POLICY STATEMENTS – ANTICIPATED TO BE AT JUNE 27, 2013 MEETING**

Chair Serna said on June 19, 2013, we're going to discuss and hopefully vote on Governance Issues, and on June 27, 2013, it will be Policy Statements, commenting that perhaps we should vote on them individually.

Commissioner Long said she has been linked to some of these governance issues, the strong Mayor and the Manager, so she will send language through Ms. Romero, hopefully by tomorrow or Monday – before the next meeting.

Chair Serna said we are going to have to develop a Final Report to City Government, and asked for volunteers.

Commissioner Hiatt said Commissioners Romero-Wirth and Long will volunteer he is sure, as well as the Chair.

Chair Serna said we might should give a heads up to staff that we will be preparing the report to the Governing Body.

**8. COMMUNICATION FROM CHARTER COMMISSION MEMBERS**

There was no communication from Charter Commission members.



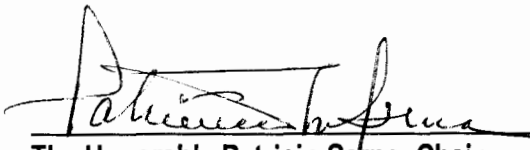
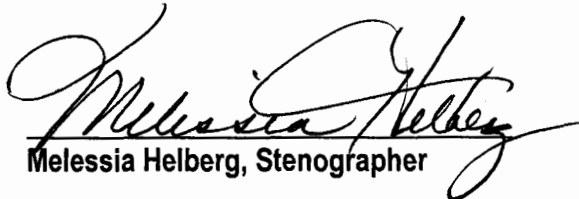
**9. PUBLIC COMMENT**

There was no public comment.

**10. ADJOURNMENT**

**MOTION:** Commissioner Hiatt moved, seconded by Commissioner Werwath, 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, Stenographer

# Increasing incidence of burnout due to magnetic and electromagnetic fields of cell phone networks and other wireless communication technologies

Ulrich Warnke and Peter Hensinger

Burnout syndrome (BOS) is a psychosomatic stress disorder. Exogenous stress leads to oxidative cellular stress, the formation of excessive reactive oxygen species, reactive nitrogen species, and reaction products (ROS/RNS). This then leads to mitochondrial metabolic dysfunction, which results in a lack of ATP (adenosine triphosphate) and subsequently in a diminished performance of cells. Lack of ATP is a crucial factor in BOS, as well as in chronic fatigue syndrome (CFS). A crucial element in the multisystem disease BOS is inflammation as a consequence of nitrosative and oxidative stress, as well as the acquired mitochondriopathy. Weak ambient magnetic fields (e.g. from transformers in devices) and various radio-frequency resonances increase the level of free radicals and their reaction products that have toxic effects. The nonionizing radiation of cell phone networks and other wireless communication technologies (cell towers, cell phones, Wi-Fi, etc.) also leads to cell stress. There is a correlation between the stress trigger due to living conditions, magnetic fields, and RF radiation of cell phone networks and other wireless communication technologies. The affected person will suffer from functional impairment and diseases; and if these are hereditary, they will be passed on to the next generation as a pre-existing defect, as is the case with e.g. "acquired energy dyssymbiosis syndrome" (AEDS).

**Keywords:** burnout, electromagnetic fields, mobile telephony, RF radiation, stress, chronic fatigue syndrome (CFS), chronic inflammation, chronic multisystem illness (CMI), acquired energy dyssymbiosis syndrome (AEDS)

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## Increase in chronic multisystem diseases

In medical history, the definition of general fatigue, depressiveness, and avolition as a pathological condition is discussed against the backdrop of societal developments; in the past, they were referred to as melancholia, vapors, neurasthenia, and depression (EHRENBURG 2009) and today as burnout syndrome. Stress always plays a central role in these conditions. Benkert offers a timely definition: "The burnout syndrome is a specific result of continuous stress." (BENKERT

2009) Burnout belongs to the chronic disorders (GEUENICH & HAGEMANN 2012) with increasing prevalence within the group of the so-called chronic multisystem illnesses (CMI) (see Fig. 1). Conditions with diffuse symptomatology include:

- MCS (multiple chemical sensitivity),
- CFS (chronic fatigue syndrome),
- BOS (burnout syndrome),
- PTSD (post-traumatic stress disorder),
- Fibromyalgia syndrome.

## Zusammenfassung

**Steigende „Burn-out“-Inzidenz durch technisch erzeugte magnetische und elektromagnetische Felder des Mobil- und Kommunikationsfunks**

Das Burn-Out-Syndrom (BOS) ist eine psychosomatische Stresserkrankung. Exogener Stress führt zu Oxidativem Zellstress, einer übermäßigen Entstehung von Freien Sauerstoff-Radikalen, Stickstoff-Radikalen und Folgeprodukten (ROS / RNS). Dadurch entstehen mitochondriale Stoffwechselstörungen, die zu einem Mangel an ATP (Adenosintriphosphat) und in der Folge zur verminderten Leistungsfähigkeit der Zellen führen. ATP-Mangel ist ein wesentlicher Faktor beim BOS als auch beim Chronic Fatigue Syndrom (CFS). Ein zentrales Element der Multisystemerkrankung BOS sind die Entzündung (Inflammation) als Folge von nitrosativem und oxidativem Stress so wie die erworbene Mitochondriopathie.

Aus der Umgebung stammende schwache Magnetfelder (z.B. Gerätetransformatoren) und diverse Hochfrequenzschwingungen erhöhen die Ausbeute von Freien Radikalen und toxisch wirkenden Folgeprodukten. Die nichtionisierende Strahlung der Mobil- und Kommunikationstechnologie (Mobilfunkmasten, Handys, WLAN u.a.) führt ebenso zu Zellstress. Es besteht eine Wechselwirkung zwischen der Stressauslösung durch Lebensumstände, Magnetfelder und Mobil- und Kommunikationsfunkstrahlung. Der Mensch leidet an Funktionsstörungen und Krankheiten und - soweit sie vererbbar sind - gibt er sie als Vorschädigungen an die nächsten Generationen weiter, wie z.B. beim 'Acquired Energy Dyssymbiosis Syndrom' (AEDS).

Schlüsselwörter: Burn-out, Elektromagnetische Felder, Mobilfunk, Stress, Chronic Fatigue Syndrome (CFS), chronische Entzündung, chronische Multisystemerkrankung (CMI), Acquired Energy Dyssymbiosis Syndrom (AEDS)

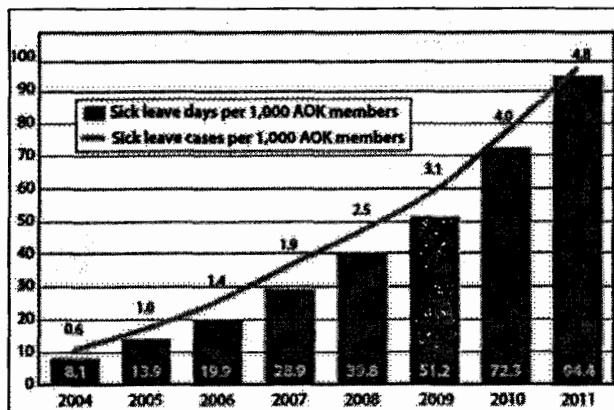


Fig.1: Burnout: the number of diagnoses rises rapidly (WIDO 2012, AOK = General German health insurance)

The prevalence of chronic multisystem illnesses is estimated to comprise at least 25% of the population in western industrial countries - with an increasing trend. For CFS alone, a prevalence of 522 cases per 100,000 in females and 291 per 100,000 in males is given for the U.S. (AACFS 2003). According to a study of the University of Chicago, the prevalence of CFS thus easily exceeds those of HIV infections (125/100,000), lung cancer (43/100,000), or breast cancer (26/100,000) (JASON et al. 1999).

The pathogenesis of CMI syndromes and all other CMI-associated illnesses involves free radicals and inflammatory events of the immune system.

### Special focus: oxidative stress

The crucial role of oxidative stress is generally known and scientifically acknowledged:

*"Cell processes require redox homeostasis, which must be maintained by a multitude of antioxidant enzymes... When the organism's homeostatic balance is tipped in favor of oxidative processes, we speak of oxidative stress. Oxidative stress is associated, among others, with the aging of cells. Furthermore, a severe accumulation of reactive oxygen species (ROS) with a simultaneous decrease in the level of the body's own antioxidant glutathione is considered a known cause of acute and chronic degenerative diseases such as stroke, arteriosclerosis, diabetes, Alzheimer's disease, and Parkinson's disease" (HELMHOLTZ ZENTRUM 2008). The Robert Koch Institute confirmed these relationships (RKI 2008).*

In persons with burnout syndrome, changes can be observed in the following cell functions, among others (BAUR 2012, BIEGER 2012, MÜLLER 2012, VON BAEHR 2012):

- Oxidative cell stress (ROS), chronic inflammation, and nitric oxide formation result in an increased formation of peroxynitrite;
- Lower levels of the body's own antioxidants, especially superoxide dismutase (SOD2);
- Decrease in ATP production and diminished energy supply through mitochondria;
- Disruption of the neuroendocrine stress axis, slowing down of the catabolism of catecholamines, and modulating effects on the neuroendocrine immune system.

Beside mental stress, environmental stressors, including EMF (electromagnetic fields, see Fig. 2), are discussed as triggers. Both mental stress as well as environmental stressors lead to cell stress (= oxidative stress); the interactions provide a model to explain the increasing incidence of burnout.

## Parallels between biological stress symptoms and adverse biological effects of RF radiation

Why do we need to worry that these phenomena of general loss of performance also may have a causal relationship, among others, with the ubiquitous cell phone and wireless networks? The "digitization of our world" means that, since ca. 1998, our cells have been exposed to a continually increasing level of nonionizing radiation to which they have not adapted. There is a relationship between triggers of stress due to living conditions and RF radiation. Research results regarding the effects of nonionizing radiation on cells show similar effect mechanisms as the burnout research in environmental medicine (see Fig. 3).

Radio-frequency electromagnetic fields (RF-EMF) interfere with cell processes:

- RF-EMFs produce excessive cell-damaging free radicals and strongly reactive oxygen and nitrogen species, which in turn can damage the DNA (see below).
- The body's own defense in the form of endogenous radical scavengers (antioxidants) is weakened by RF-EMFs (see below).
- The repair of DNA damage is impaired (BELYAEV et al. 2005).
- RF-EMFs interfere with the center of our metabolism, the mitochondria, and thus interfere with our energy production: ATP production is inhibited (SANDERS et al. 1980, 1984, 1985).
- The decrease in ATP production debilitates the entire system.
- The exposure to RF radiation triggers a downward spiral of disease. RF-EMFs accelerate toxic cascades.

*"The clinical picture of AEDS or acquired energy dyssymbiosis syndrome ... describes a deficiency in cell energy with a simultaneous deterioration of the cell milieu. This leads to mitochondriopathy. Energy production is blocked; the power plants of the cell are transformed into efficient sources of free radicals."* (WARNKE 2007)

## Unnatural environment and little protection

All living organisms, especially those living in the atmosphere, are immersed in ever-growing layers of radio-frequency radiation as well as electric and magnetic fields. Satellites show that the highest level of radiation of technical origin is found across Europe; the U.S. and China are somewhat less exposed (LIGHT et al. 2001).

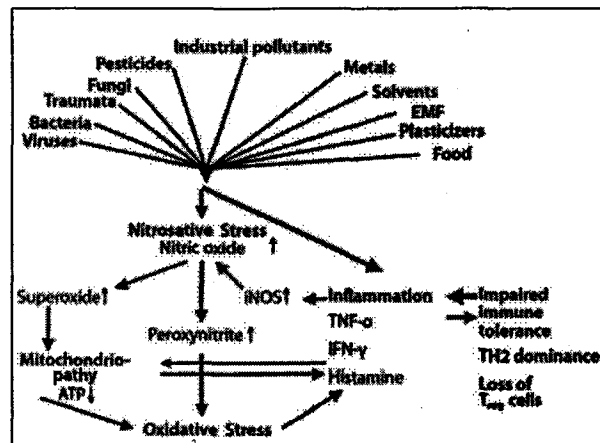


Fig.2: Pathogenesis of inflammation, mitochondriopathy, and nitrosative stress as a result of the exposure to trigger factors (VON BAEHR 2012)

The statements by those in power (politicians, network providers, "experts") have remained the same for years: "According to the current body of scientific knowledge, there is no risk to human health below the exposure guidelines." In Germany, the exposure limits of the 26<sup>th</sup> Ordinance Implementing the *Federal Immission Control Act* apply. And the authorities keep repeating the same statements, assuring the public that, based on current knowledge, cell phone radiation is safe. Those findings that do show effects would not be reproducible. People who refer to themselves as electrosensitive are labeled as experiencing a nocebo response or suffering from a mental illness. And the spurious argument that there is no effect mechanism that would explain a risk also keeps coming up. The quantum energy of the radiation, it is said, is far too low; it is several orders of magnitude below the thermal noise level, which is why it would not have the power to impair or damage living organisms.

Normally one would expect that the biological response to weak and very weak magnetic fields and RF radiation of cell phone and other wireless communication technologies would be masked by the - stronger quantum - thermal noise inside the human body. Because at temperatures between 20 °C and 40 °C, as occur in the human body, molecules and their components are in constant random motion. A signal with lower energy than that cannot change this motion in any meaningful way. Adverse effects could therefore not exist as long as the allegedly damaging fields are lost in this random noise and an increase in temperature can be prevented. And this is what current exposure limits guarantee, and all worldwide experts in politics and industry adopt this argumentation from one another.

Yet disastrously, it is exactly this central point of their placating argument that is false. There is not only a conceivable but even a completely plausible effect mechanism, which is able to explain DNA damage and all other described symptoms for such low-energy, nonthermal fields, and this completely independent of an increase in temperature. It is the

production of free radicals through nonionizing radiation of wireless networks, which provokes the destruction of body cells and genes.

Then what is the rationale for how electromagnetic fields of cell phone and other wireless communication technologies generate disease?

**Fact #1:** Never before has the Earth's atmosphere been saturated with so many electric and magnetic fields and nonstop electromagnetic radiation of technical origin, and this radiation exposure continues to increase.

**Fact #2:** Inflammation triggered by oxidative stress and its resulting cardiovascular diseases (e.g. infarct, arteriosclerosis, etc.) are the number one cause of death in industrial countries, closely followed by tumors (see Fig. 4). Alzheimer's disease, Parkinson's disease, diabetes, amyotrophic lateral sclerosis (ALS), among others, show an increasing trend.

**Question:** Does a causal relationship beyond the presently known risk factors exist?

Numerous consistent scientific findings show that the radiation of cell phone and other wireless communication technologies can produce additional ROS/RNS in living organisms; this can occur in the presence of both ELF magnetic fields as well as RF electromagnetic fields. The energy of these fields that can trigger effects is several orders of magnitude below the average thermal noise level (FRIEDMAN et al. 2007).

### RF-radiation-induced increase in free radicals: nitric oxide (NO) and reactive nitrogen species (RNS)

Cell phone radiation at 900 MHz induced increased nitric oxide or NO levels in rat brains. Malondialdehyde (MDA) levels, xanthine oxidase (XO) activity, and adenosine deaminase (ADA) activity were also increased. At the same time, superoxide dismutase (SOD) and glutathione peroxidase (GSH-Px) activities decreased in the brain. These unfavorable changes could be prevented through appropriate doses of ginkgo biloba extract as an antioxidant (ILHAN et al. 2004; for similar results also see OZGÜNER et al. 2005, 2006, PAREDİ et al. 2001, YARIKTAS et al. 2005).

### RF-radiation-induced increase in reactive oxygen species (ROS)

Numerous single studies demonstrate the production of oxidative stress through nonionizing radiation. The study by MOUSTAFA et al. 2001 showed that cell phone radiation at 900 MHz produces oxidative stress by increasing lipid peroxi-

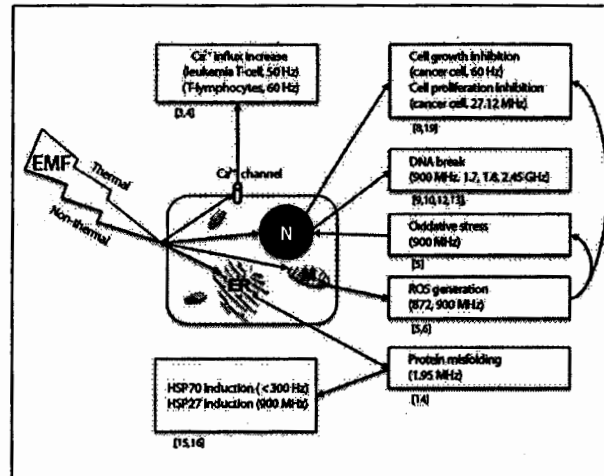


Fig.3: Summary of effects on the cellular level caused by electromagnetic fields (GYE & PARK 2012)  
EMF: electromagnetic field; N: nucleus; ER: endoplasmic reticulum; M: mitochondria

dation and interfering with antioxidase activities. This already occurred in adult male volunteers while the cell phone was still in standby mode in their coat pocket. Plasma lipid peroxide levels increased significantly after 1, 2, and 4 hours in standby mode. The activity of the radical scavengers SOD and GSH-Px in human erythrocytes had decreased. It says in the abstract:

*"These results indicate that acute exposure to radiofrequency fields of commercially available cellular phones may modulate the oxidative stress of free radicals by enhancing lipid peroxidation and reducing the activation of superoxide dismutase and total glutathione peroxidase, which are free radical scavengers. Therefore, these results support the interaction of radiofrequency fields of cellular phones with biological systems."* (MOUSTAFA et al. 2001, summary EMF-Portal).

A human blood platelet suspension was exposed to 900 MHz cell phone radiation for 1, 3, 5, and 7 minutes. After 1, 5, and 7 minutes, the malonaldehyde (MDA) level increased and at the same time the SOD activity decreased. At 3 minutes, the activity levels were temporarily reversed (STOPCZYK et al. 2002). The 930 MHz cell phone radiation only increased the reactive oxygen species (ROS) level in rat lymphocytes when the cells were treated with iron ions (ZMYSLONY et al. 2004). A study by the Department of Environmental and Radiological Health Sciences, USA, found that melatonin levels - an effective antioxidant - decreased considerably with cell phone calls of longer than 25 minutes (BURCH et al. 2002). The cell phone radiation increased the malondialdehyde (MDA) concentration in rat brains, but not phospholipids and p53 immune reactions (DASDAG et al. 2004, 2009).

RF radiation at 1800 MHz causes damage to the mtDNA. This research project was financed by the Chinese government. In this project, DNA damage in mitochondria of rat cortical neu-

rons was demonstrated, which had been induced by cell phone radiation with a pulse of 217 Hz. The 1800 MHz RF radiation caused the oxidative damage through the formation of reactive oxygen species (ROS), which are implicated in various nervous system diseases (XU et al. 2009).

Additional research findings confirm that RF-EMF causes oxidative stress, and that at power density levels well below the exposure limits (ATASOY et al. 2012, AYATA et al. 2004, AYDIN & AKAR 2011, CAMPISI et al. 2010, CEYHAN et al. 2012, ELHAG et al. 2007, ESKEMAYA et al. 2011, GULER et al. 2010, GUMRAL et al. 2009, GUNEY et al. 2007, KESARI et al. 2010, 2011, 2012, KIHRAZOVA et al. 2012, KOYU et al. 2005, LU et al. 2012, OKTEM et al. 2005, OZGUR et al. 2010, SOKOLOVIC et al. 2008, YAO et al. 2008, YUREKLI et al. 2006). See also the summary paper by Desai et al., in which a detailed effect mechanism is outlined (DESAI et al. 2009).

## — Effects on the endocrine system

An increasing number of research findings demonstrate the effect of cell phone radiation on the stress hormone axis. Several studies indicate effects on the endocrine system (AUGNER et al. 2010, BUCHNER & EGER 2011, DJERIDANE et al. 2008, ESME-KAYA et al. 2010, MEO et al. 2010, MISA AGUSTINO et al. 2012, SAROOKHANI et al. 2011, SEYEDNOUR & CHEKANIAZAR 2011, VANGELOVA & ISRAEL 2005). A systematic review of this topic is still missing.

## — Electron transport enzymes are magnetosensitive

The stimulation of free radicals including NO by physical fields and radiation has been reliably validated by science. This alone, however, does not prove the existence of damage as along as the primary effect mechanism is not known. A connecting link that explains the adverse effect was shown by Friedman et al.. The enzyme NADH oxidase shows a high - and entirely reproducible - sensitivity to magnetic and electromagnetic fields of cell phones. Friedman et al. found that exposing rat cells to RF-EMF caused an immediate activation of the enzyme NADH oxidase, which resulted in an increased production of free radicals. And the study also offers an effect mechanism: "This study delineates a detailed molecular mechanism by which electromagnetic fields at mobile phone frequency induces short-term MAPK activation and thereby transcription and other cellular processes. ... The first step is mediated in the plasma membrane by NADH oxidase, which rapidly generates reactive oxygen species." (FRIEDMAN et al. 2007, according to EMF-Portal)

NADH oxidase is quite important in another respect. It is also found in the cell nucleus where - depending on the redox system - it can regulate gene expression, but also damage genes (USHIO-FUKAI 2006).

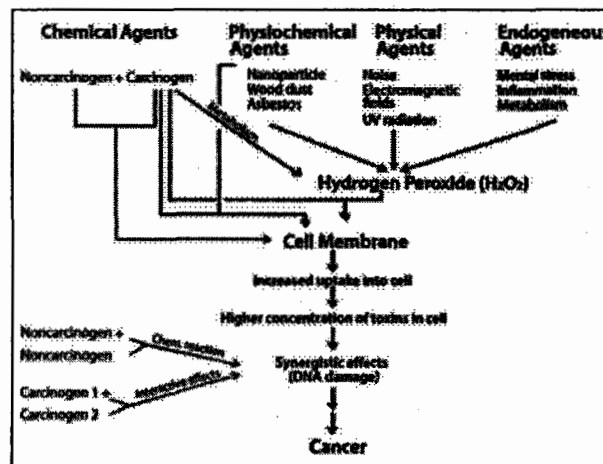


Fig.4: Graph of possible combination effects, which can result in additive and synergistic DNA damage, also including electromagnetic fields (WITTE 2012)

Severe pathological deterioration manifests itself when, due to magnetic field and radio-frequency radiation exposure, additional reactive oxygen species (ROS) such as superoxide radical and hydrogen peroxide are produced that combine with the also increasingly produced NO to form the highly toxic peroxynitrite, which in turn reacts with hydrogen to form even more hydrogen peroxide (see Fig.4).

The agreement between the cascade triggered by magnetic field and RF radiation exposures and the findings of the burn-out research is obvious. Müller writes in his article *Fatigue from the Perspective of Clinical Environmental Medicine*:

*"The situation becomes especially critical when, under the influence of environmental toxic agents and / or an increased formation of peroxynitrite, the functioning of the mitochondria is impaired. They have the task of making the energy carrier molecules adenine triphosphate (ATP). There is much to suggest that the functional impairment of the mitochondria is equivalent to the disease pattern called burnout, whereas the prolonged damage to mitochondrial DNA induces chronic fatigue."* (MÜLLER 2012)

As early as 1985, the study by Sanders and colleagues showed a decrease in ATP production due to weak RF radiation exposure (nonthermal effect): "Since brain temperature did not increase, the microwave-induced increase in NADH and decrease in ATP and CP concentrations was not due to hyperthermia. This suggests a direct interaction mechanism. It is consistent with the hypothesis of microwave inhibition of mitochondrial electron transport chain function of ATP production." (SANDERS et al. 1985, according to EMF-Portal).

Both approaches (cell phone research, burnout research) suggest that the mitochondrial dysfunction is a result of damage to the mitochondrial function complexes caused by ROS/RNS: "Mitochondriopathies lead to progressive inactivation of the respiratory chain and other mitochondrial functions, and in turn to severe neuropathies, encephalopathies, cardio-/myopathies, and endocrinopathies." (BIEGER 2012).

## Extending the lifetime of free radicals

This pathological cascade is enhanced by EMFs because even rather low magnetic field intensities affect chemical reactions and extend the lifetime of free radicals (BROCKLEHURST & MCLAUCHLAN 1996, NEITZKE 2012, WARNKE 2009). The model of Scaiano et al. demonstrates that in the presence of a magnetic field the radical concentration increases. The half-life of free radicals is extended (SCAIANO et al. 1994). The possibilities for radical reactions to occur have thus increased. Within a magnetic field, the lifetime of free radicals is extended in such a way that the electron transfer within the DNA can be affected, which in turn also changes the protein induction (MOHTAT et al. 1998). Magnetic fields extend the lifetime of free radicals by impairing the intersystem crossing in triplet radicals (CHIGNELL & SIK 1995, WARNKE 2009).

### Regarding the question of health problems and risks

The effect mechanism documented by Friedman et al. (2007) is of such utmost importance because it shows that there is a well-explained biological basis for the subjective symptoms many people suffer from. By studying the cascades listed below, it is easier to understand why electrosmog is dangerous.

## Functional impairments and disease patterns

EMF-induced excessive ROS/RNS stimulation can be divided into three areas of effects, which are run through one after another:

- Stimulation of free radicals,
- Stimulation of highly toxic peroxynitrite,
- Stimulation of highly toxic peroxide radical.

The consequences of these processes are serious: cell components are destroyed; antioxidants taken up with food and the electron-rich substances manufactured by the body are used up; the damaging cholesterol increases. Such a person feels tired, tense, fights various inflammations and a broad range of associated illnesses, which show similarities to the burnout syndrome.

## Acquired energy dyssymbiosis syndrome (AEDS)

The clinical picture of AEDS or acquired energy dyssymbiosis syndrome describes a deficiency in cell energy with a simultaneous deterioration of the cell milieu. This leads to mitochondriopathy. Energy production (ATP) is blocked; the power plants of the cell are transformed into efficient sources of free radicals. These changes have serious consequences:

Inflammatory processes spread and release additional substances that have adverse effects (tumor necrotic factor TNF $\alpha$  and again nitric oxide) at excessive levels. We should always bear in mind that in our industrial society inflammation-based illnesses continue to increase and that arteriosclerosis such as myocardial infarction - the number one cause of death - is basically one of them. Today this view has gained acceptance among the scientists of the medical community.

Aerobic glycolysis (glycolysis despite the presence of oxygen) is activated as an emergency power generator, which in turn is associated with:

- Stimulation of proto-oncogenes (precursors of oncogenes)
- Increased release of superoxide radicals
- Lactate acidosis (hyperacidosis).

Eventually the genome of the mitochondria will mutate. But exactly this pathological change can also be inherited from the mother. The offspring will have to carry the burden, and the change becomes integrated into the genetic material of generations to come.

This is the disease state of a growing number of people with in our polluted environment. It can manifest itself as burnout syndrome or electromagnetic hypersensitivity. This pathological cascade reveals that the nonionizing radiation of wireless communication technologies does not directly cause damage to cells like ionizing radiation does, but it triggers many diseases based on oxidative stress through an indirect pathway by producing free radicals, and thus can cause burnout syndrome or exacerbate it.

H.-P. Neitzke (ECOLOG-Institut) states: "With the current and soon to be available technology, it will not be possible to realize the AACC visions of "Anytime, Anywhere Communication and Computing" in a manner that is compatible with human health." (NEITZKE 2010, EMF-Monitor 6/2010)

(Note: A comprehensive version of this article is published in German as a research report by the Kompetenzinitiative e.V. and Diagnose-Funk e.V.. Available as a free download at: [www.kompetenzinitiative.net](http://www.kompetenzinitiative.net) & [www.mobilfunkstudien.de](http://www.mobilfunkstudien.de))

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# With the help of the Santa Fe Health Care Professionals, We are creating the Wireless and Radiation Network (W.A.R.N.)

As a member of the Santa Fe community it is aware that EMR (electromagnetic radiation) issues are not being addressed by the community. We would like to inform the community that there are known safety issues with exposure to wireless and radiation. We are currently planning a meeting to discuss this issue.

We are currently planning a meeting to discuss this issue and their long-term effects on our community in Santa Fe. New Mexicans need to be informed. More information is needed before decisions are made with such far-reaching consequences.

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Carol MacHendrie, LISW  
Michael Bianshan, ND  
Richard Fiske, MA, DSc  
Naomi Fiske, LPC  
Mark Hess, LMT  
Mark Jensen, DC  
Gaynel Keefe, DOM  
Alice K Ladas, Ed.D.  
Daniel Piburn, LMT  
Louisa Putnam LPCC, LMT  
Jean Stokes, PhD  
Lise Wall, DC

Wilhelm Heppel, ND  
Jon Trapp, DOM  
Donald VanHowten, LMT  
Corina VanHowten, LMT  
Chaz Schatzle, DC, APC  
John Sherdon, DOM  
Donald K. Smith, OMT  
Alexanna Hope, RN  
Nina Zelevansky, MA, LPCC  
Felicia N. Trujillo, ND, GCFP  
Zoe Van Ackeren, LMT  
Wendy Vandilla, ND  
JoAnne Waters, RN, M.Ed.  
Sudarshan Ahben, clinical asst.  
Darling Horcasitas, PA  
Patricia Ziegler, MT  
Life Vessel Santa Fe  
Santa Fe Soul Health & Healing Ctr.

If you are a healthcare professional and would like to have your name added to this list please contact  
SantaFeDoctorsWARN@gmail.com

**W R N**

## ATTACHMENT 11



RESOLUTION 2012/13-23

Board of Education  
Linda M. Trujillo, President  
Steven J. Carrillo, Vice President  
Lorraine T. Price, Secretary  
Glenn Wilde, Member  
Susan Duncan, Member

### Opposing the Construction of a Cell Tower Adjacent to Gonzales Community School

1 Whereas the health and safety of our students, our school, and its community are fundamental concerns of  
2 the Santa Fe Public Schools Board of Education, and  
3

4 Whereas AT&T has announced plans to construct a cell tower at the Burger King adjacent to Gonzales  
5 Community School, and  
6

7 Whereas this site is located in a historic district of Santa Fe and a cell tower would detract from the visual  
8 appearance of the historic district and possibly reduce home values in the neighborhood, and  
9

10 Whereas this site is at the corner of St. Francis and Alameda and should the tower fall it would block traffic  
11 at a major intersection, and  
12

13 Whereas there is also a gas station at this site and should the tower fall on the gas tanks it would cause an  
14 inferno, and  
15

16 Whereas there is significant if not conclusive evidence of the carcinogenic potential of exposure to low  
17 frequency electromagnetic fields from cell towers, especially for children, and  
18

19 Whereas concerns about the possible safety, health, and/or aesthetic impacts of a cell tower could cause  
20 families with children to move out of the neighborhood or not move into the neighborhood, thus impacting  
21 the enrollment and/or diversity of Gonzales Community School, and  
22

23 Whereas the Santa Fe Historic District Review Board has jurisdiction over whether a cell tower can be built  
24 at this site;  
25

26 Therefore, be it resolved that the Santa Fe Public Schools Board of Education communicate to the Santa Fe  
27 Historic District Review Board, the Santa Fe City Council, and AT&T its opposition to the construction of a  
28 cell tower at this location.  
29  
30

31 ADOPTED this 19<sup>th</sup> day of March, 2013  
32  
33

34 Attested by:

35  
36 A handwritten signature in cursive script, appearing to read 'Linda M. Trujillo', written over a horizontal line.

37 Linda M. Trujillo  
38 Board of Education President  
39 Santa Fe Public Schools  
40

A handwritten signature in cursive script, appearing to read 'Lorraine T. Price', written over a horizontal line.  
Lorraine T. Price  
Board of Education Secretary  
Santa Fe Public Schools

**AT&T HAS NOT COMPLIED WITH OR SATISFIED THE REQUIREMENTS OF  
SANTA FE CITY CODE,  
THEREFORE, WAIVER SHOULD BE DENIED  
AND THE APPLICATION SHOULD NOT BE APPROVED**

**Executive Summary**

The La Nueva Casa Solana Neighborhood Association respectfully requests protection by the Historic District Review Board Members with a denial of AT&T's waiver and application for reasons as follows:

	<b><u>Page</u></b>
<b><u>NO ALTERNATIVES EXPLORED, NO WAIVER.</u></b> .....	<b>5</b>
• It cannot show it explored alternatives.	
<b><u>PUBLIC SAFETY IMPACT.</u></b> .....	<b>7</b>
• It cannot show that Burger King is the "least intrusive practicable alternative" in choosing:	
○ a site within feet of gasoline pumps.	
○ a site where these gasoline pumps are next door to a large elementary/middle school.	
○ a site where gasoline pumps will be subjected to refueling during high levels of unregulated traffic at one of the busiest intersections in the city.	
○ a site on the edge of an unstabilized portion of an arroyo in a flood plain.	
○ a site where additive effects can lead to catastrophic fire	
<b><u>HISTORIC INTEGRITY IMPACT</u></b> .....	<b>13</b>
• It cannot show that Burger King is the "least intrusive practicable alternative" in choosing a site where the visual integrity and general harmony of the historic neighborhood will be compromised.	
<b><u>INTRUSIVE OBSTRUCTION FAILS TO FILL NEED</u></b> .....	<b>15</b>
• It cannot show if it can close a defined and significant gap.	
<b><u>NEIGHBORHOOD AND SCHOOL COMMUNITY IMPACT</u></b> .....	<b>17</b>
• It cannot show that Burger King is the "least intrusive practicable alternative" in choosing a site where such hazards would impact the diversity and livelihood of the people who live in Casa Solana.	
<b><u>SUMMARY AND SIGNATURES</u></b> .....	<b>20</b>
<b><u>ATTACHMENTS.</u></b> .....	<b>21</b>

The La Nueva Casa Solana Neighborhood Association believes that AT&T is not entitled to a waiver of the City's Code when there are better alternatives in Santa Fe that were overlooked. Furthermore, AT&T has been disingenuous in its assertions that there were no other alternatives available, that it thoroughly explored alternatives, and that Burger King is the "least intrusive and practicable alternative."

**RASCH, DAVID A.**

---

**From:** Cyndi Hall <cyndihallstylist@yahoo.com>  
**Sent:** Saturday, February 23, 2013 8:26 AM  
**To:** RASCH, DAVID A.  
**Subject:** Gonzales Community School

Good Morning,

Please forward this to the members of the Historic Review Board as their emails are not listed.

I am writing to you to please join us in the fight against the proposed cell tower at the Burger King on the Northwest corner of St. Francis and Alameda in Santa Fe, NM.

I am a parent of two students who go to Gonzales Community School, which is located roughly 25 yards away from the proposed tower location. I am not a vigilante. I am not against cell phones, Wi-fi, or cell towers. I am a parent whose children will attend this school for the next 6 years and I feel that they should have the opportunity to learn and grow in a safe environment. Honestly, the health hazards as a result of the RF Radiation is unproven. I understand this... But the issue is that no one knows the long term effects of this, and until we know, I don't want my children exposed, so closely, to this tower.

On Friday February 22, over 100 students, parents, and teachers protested in the snow, wind, and cold so that the City Council and the Historic Review Board will reconsider the placement of this tower. I realize we cannot legally fight this tower based on negative unproven health issues. We can fight this based on the historic district guidelines, the danger of the tower falling onto our school, and the fact that the extra coverage is simply not needed by AT&T customers in this area.

Please help stop this tower. We have a petition on change.org with over 300 signatures. Does that not represent a significant number of community members? Does AT&T have 300 signatures of community members that want this tower? No

As visitors enter and leave our beautiful city that you fight so hard to protect, this hideous tower will be the "welcome sign" that they see. St. Francis is a major thoroughfare and this sight of this tower will not be missed by anyone.

My children have the right to attend school in a safe environment. Please save our Santa Fe youth.

Thank you for your consideration.

Tsali and Cyndi Hall

**AT&T HAS NOT COMPLIED WITH OR SATISFIED THE REQUIREMENTS OF**  
**SANTA FE CITY CODE,**  
**THEREFORE, WAIVER SHOULD BE DENIED**  
**AND THE APPLICATION SHOULD NOT BE APPROVED**

The La Nueva Casa Solana Neighborhood Association (Association) submits to the Historic Design Review Board (Board) that AT&T has not complied with or satisfied the requirements of the Santa Fe City Code (Code), and therefore, AT&T's request for a waiver should be denied and its application should not be approved. The pertinent parts of the Code with which the Association takes issue are highlighted in red, and the reasons and support for Association's assertions are described in detail herein as follows:

*Section 14-6 (E)(1)(i) encourages the character of the Santa Fe neighborhood to be preserved.*

*Section 14-6(E)(4)(b) A tower or antenna that is located in a historic district and is not otherwise permitted or administratively approved shall be reviewed and approved by the historic districts review board in accordance with applicable requirements of Section 14-5.2(Historic Districts) and in accordance with this Subsection 14-6.2(E) as follows. In approving an application, the historic districts review board shall determine that:*

- (i) the application complies with applicable requirements of Section 14-5.2 and this section; and*
- (ii) the applicant has demonstrated that no other less intrusive means or alternative to the proposed telecommunications facilities siting is practicable*

***Section 14-6 (E)(4)(c) Aesthetic Requirements***

*Subject to applicable federal standards and design and safety codes, the following criteria must be met:*

- (i) telecommunications facilities shall be installed underground to the maximum extent technically feasible;*
- (ii) if above ground, the telecommunications facilities shall be designed, installed and maintained in such a manner as to minimize the visual impact upon adjacent lands, public rights of way and residentially zoned property. Acceptable methods to minimize visual impact include concealment, screening, camouflaging, color, materials, texture, shape, size and location;*
- (iii) consideration shall be given to minimize disruption to or alteration of the natural land forms and landscape*

***Section 14-6.2(E)(5)(b) Maximum height***

*Telecommunications facilities located on existing structures shall not exceed the height of the structure upon which the facility is located unless otherwise allowed under this section. Telecommunications facilities located on new structures shall not exceed the maximum height for buildings otherwise allowed as set forth in Chapter 14 with the exception that in C-2, I-1 and I-2 districts the height limit of telecommunications facilities shall be one hundred feet.*

*Section 14-6(E)(6)(b)(x)(4) that the proposed telecommunications facilities are necessary to close a defined and significant gap in service coverage based on actual signal strength data for the area where the gap is claimed and for the type of gap claimed and that the proposed facilities are the least intrusive method to do so.*

**AT&T HAS NOT COMPLIED WITH OR SATISFIED THE REQUIREMENTS OF**  
**SANTA FE CITY CODE,**  
**THEREFORE, WAIVER SHOULD BE DENIED**  
**AND THE APPLICATION SHOULD NOT BE APPROVED**

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## **Section 14-5.2 Historic Districts**

### **(A) General Provisions**

#### **(1) General Purpose**

*In order to promote the economic, cultural, and general welfare of the people of the city and to ensure the harmonious, orderly and efficient growth and development of the city, it is deemed essential by the governing body that the qualities relating to the history of Santa Fe, and a harmonious outward appearance, which preserve property values and attract tourists and residents alike, be preserved, some of these qualities being:*

- (a) The continued existence and preservation of historical areas and buildings;*
- (b) The continued construction of buildings in the historic styles; and*
- (c) A general harmony as to style, form, color, height, proportion, texture and material between buildings of historic design and those of more modern design.*



**NO ALTERNATIVES EXPLORED, NO WAIVER**  
**NO ALTERNATIVES EXPLORED, NO APPROVAL**

In the March 27, 2013, Application, superseded by a March 29, 2013, Submittal, AT&T states in an "Alternatives Analysis" ("Analysis") that "multiple alternatives have been evaluated over the course of several years." A request for the public records of the City of Santa Fe was made by George Kaschner, yet the search for information on alternative sites yielded no findings. In fact, throughout the Application, records and documents clearly show that the Burger King site has been seriously considered and actively pursued since 2011.

Granted, AT&T considered Alto Park, but the City had concerns with that location. AT&T considered La Montanita Co-Op located at Casa Solana Center as a proposed site, but the neighborhood objected. AT&T would have you believe it has honored the Casa Solana neighborhood by moving the site to Burger King; however, the neighbors' pleas have been ignored by virtue of the fact that Burger King lies within the boundaries of the Casa Solana Neighborhood Association as defined by City neighborhood association boundaries (Attachment 1). In fact, the Casa Solana neighborhood's interests have been blatantly dismissed in that the tower is now being proposed only one block away from where it was originally proposed in the area; in an historic gateway to the city; at one of the busiest intersections of the City; next door to a school; and feet away from gas pumps. The Association submits that considering two sites is not enough to satisfy the requirement of "exploring alternatives" and that AT&T has not demonstrated good faith in choosing an alternative that is the "least intrusive and practicable", as required by both the telecommunications provisions and Historic Review Board provisions of the Code.

In AT&T's "Analysis", it states that "The ENN meeting was well attended and lengthy... The Opposition was exclusively on the basis of perceived risks associated with RF emissions from cell towers... It appears that the consensus was that no alternative would ever be acceptable regardless of site alternatives." This is a subjective mischaracterization of what happened at the ENN meeting on May 21, 2012. It is also inaccurate. In fact, a Journal North journalist

## **Section 14-5.2 Historic Districts**

### **(A) General Provisions**

#### **(1) General Purpose**

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present at the ENN meeting reported on May 22, 2012, that "Concerns ranged from the aesthetics of the tower to potential safety hazards - what if the pole fell down?" (Attachment 2). In addition, attendees brought up several potential sites as alternatives to the proposed site. In the same Journal North article, the journalist reported, "Many people said AT&T could find another location for the cell tower, and suggested nearby DeVargas Mall, Frank Ortiz Dog Park or a nearby cemetery might be better choices." (Attachment 2).

In the "Analysis," AT&T's last statement is "Overall the site and alternatives have been thoroughly explored and this is the least intrusive practicable alternative." Since AT&T did not thoroughly explore alternative sites to the proposed site in the historic district, AT&T should not be allowed a waiver, and AT&T's application should not be approved. For the reasons that follow, the Association will demonstrate the adverse effects from AT&T's failure to fulfill this most critical requirement.

## **PUBLIC SAFETY IMPACT**

The proposed Burger King cell tower is not a "least intrusive practicable alternative," nor is it an acceptable risk, to locate a 64-foot tall tower (that may be extended to 100 feet per Code) on the same property as gasoline pumps, with unregulated traffic using the gas station as a short-cut to cut across the intersection corner. This corner is located on one of the City's busiest intersections, and it is also next door to an elementary/middle school with the student capacity of more than 500 children (Attachment 3).

The list of public safety risk factors that currently exist and/or would arise after erecting a cellular tower in this location is extensive. The possibility of more than one of these factors occurring at the same time may have an additive effect. The result of combining these risk factors at the Burger King location increases the likelihood of catastrophic consequences. Some of these additional risk factors or potential scenarios include (but are not limited to):

- Refueling tanks
- Radiant heat protrusion
- Exposure of high voltage
- Gas station patrons smoking while fueling vehicles or after eating at Burger King
- Uncontrolled grease fire inside Burger King
- Trees and brush living in drought conditions surrounding the site
- Construction/maintenance incidents (i.e. wrench dropped during maintenance causing a spark, igniting a tower fire)
- Lightning strikes per capita among highest in nation
- Site located adjacent to flood plain
- Winds and wind gusts in excess of 50mph
- High altitude

There are numerous Santa Fe drivers who use the Burger King gas lanes as a shortcut from St. Francis to Alameda. Drivers using this short-cut create a public safety hazard. Gonzales Community School administrators recognize that hazard as a risk and ask parents/caregivers through weekly school newsletters to be safe and not use the shortcut. To date, the owner/operator of Burger King has made no visible attempt to install signage or speed bumps to restrict or slow the traffic using the fueling lanes as a bypass around the traffic lights. This is

a serious risk factor that is particularly evident at the beginning (during rush hour) and the end of every school day.

Many of the above risk factors/scenarios would result in the cell tower and/or antennae falling, including: fires, construction/maintenance incidents, location of site adjacent to flood plain, and high winds. During a maintenance operation on an AT&T cell phone tower, a workman standing at the base of the tower was killed by a falling antenna when the rope used to lower the antenna broke (Attachment 4). The proposed location is approximately 10 feet, at its closest point, from an unstabilized and crumbling portion of Arroyo Mascaras, part of a designated flood plain (Attachments 5-6). A large monsoon event could severely erode the soil around the foundation of the tower, causing it to fall. Santa Fe is subject to high winds which will also pose a real threat to the tower's stability. ABC News reported and confirmed April 26, 2009, that the 2007 Malibu fires were caused by utility poles overburdened by new cellular phone gear. Power poles that were rated to have withstood winds of up to 92mph, snapped in 50mph winds due to the cables and antennae catching the heavy winds (Attachment 7).

Federal law requires the owner of the tower to allow other antennae to be placed on the tower which will increase the load. It is possible for the additional loading to exceed the design capacity of the tower, compromising any design safety factors that are built in. The environmental conditions associated with high altitudes, including extreme ranges of temperature and wind, may have a negative effect on the ability of maintenance workers to perform safe and efficient operations. The proposed site at Burger King does not allow for a significant safe "fall zone" which would protect innocent children, their families, neighbors, and tourists from harm due to an unexpected falling tower or antenna (Attachment 4).

The location of the tower on the site is such that it could fall and block a major highway through Santa Fe, resulting in a potential hazard for both residents and those travelling through the city. A fire at this corner could also be disastrous, spreading quickly through the dry brush and trees in the arroyo and threatening homes in Casa Solana and Gonzales Community School.

Firefighters responding to a fire at the site will now have to contend with the high voltage and radiation, especially if using ladders, or tower equipment, even if the tower is not the original cause of a fire (Figures 1-4).

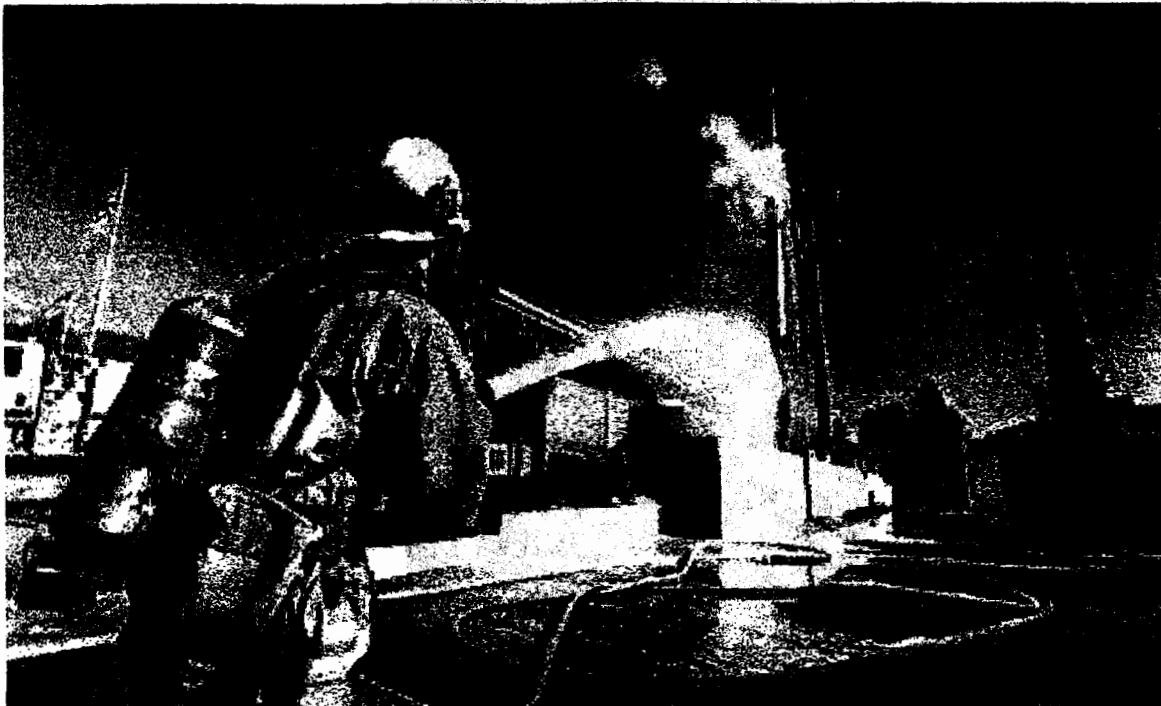


Figure 1.



Figure 2.

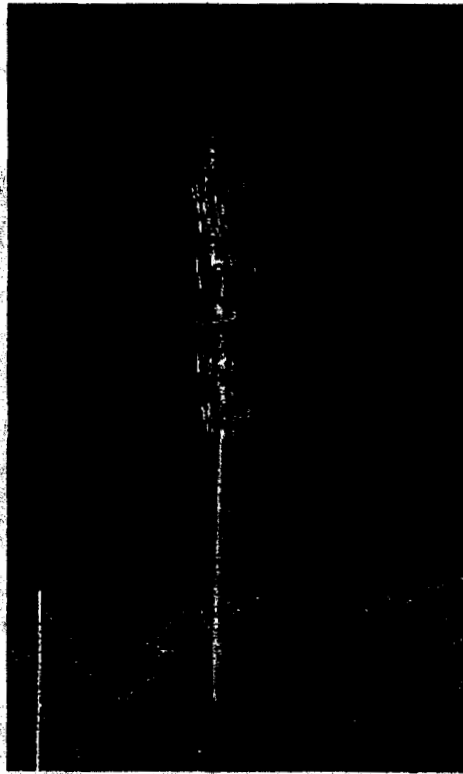


Figure 3.



Figure 4.

Burger King is adjacent to a major artery of Santa Fe. In the event of a catastrophic accident at the location, evacuation routes for the city, school, and neighborhood will be severely compromised. Add to that any of the above stated risk factors currently existing and/or arising after a cell phone tower construction at the site, and we have a situation that puts the entire community at risk. (For extensive review of cell tower related injuries and deaths during and after construction, see Wireless Estimator Articles in Attachment 13 (a-o).)

Two presenters with knowledge and experience will provide further information in their individual presentations:

Dr. George Kaschner's background includes experience as a US Navy electrician/nuclear-qualified electrical operator, multiple degrees in applied physics and engineering, as well as 15+ years' experience at Los Alamos National Laboratory (including qualifications as a fissile materials handler (FMH)). His training compels him to consider an integrated systems approach to potential accident scenarios. It is his belief that locating a cell tower on the same site as a gas station adjacent to a school poses an elevated and unacceptable risk.

You will also hear from Michael Lee, the principal of Gonzales Community School and a volunteer firefighter. He will share with you his concerns, based on his expertise and experience, of radiant heat; refueling; unregulated traffic; especially at 7:45 a.m. when the school day begins and 2:50 p.m. when the school day ends; ingress/egress; and the hazards that codes cannot foresee.

AT&T will tell you there are safety measures and codes in place to protect against such dangers, but these two men, and the evidence presented in this packet, will tell you these codes cannot protect against the totality of the risks. We are deeply concerned about the valid public safety risk that would exist as a direct result of building a cell tower at Burger King. It has the undesired ability to cause great harm to our neighborhood, visiting tourists, and of overarching concern, the children.



And please remember, AT&T had other choices... safer choices... in Santa Fe. It is apparent that AT&T has failed to consider the consequences of placing a cell tower on a property with a fast food establishment and a gas station adjacent to a community school on one of the busiest intersections of the city. AT&T did not choose the "least intrusive and practicable alternative" when it chose Burger King. Because it did not explore alternatives, AT&T should not be allowed a waiver, and its application should not be approved.

### **HISTORIC INTEGRITY IMPACT**

AT&T cannot construct a 64-foot tall tower (that may be extended to a height of 100 feet per Code) that will provide the "least negative impact" and maintain a "harmonious outward appearance" in Casa Solana and the adjacent historic districts. Contrary to the Code, this proposed tower does not "preserve the Santa Fe neighborhood," nor will it "minimize the visual impact upon adjacent lands" or "minimize the disruption of the natural landscape."

AT&T had the responsibility to look at alternatives, including potential co-location sites that are required to be made available by both Federal Telecommunications Act of 1996 and Santa Fe City Code §14.6 (E)(1)(d)(ii). Simply looking at two sites is not enough. The failure of AT&T to explore alternatives is an intrusion into the harmonious integrity of an historic district. A cell tower will bring into the Casa Solana neighborhood an industrial element at its eastern entrance. An industrial element rising 48 feet above the adjacent Burger King further compromises the ability for Casa Solana to be considered for Historically Contributing designation, as envisioned in the City's Master Plan.

The Cultural Resources Assessment, Tierra Archaeological Report No. 2011-211 is Appendix D of the AT&T application. The report minimizes the effect of the proposed tower on views in the Historic District by citing only the impact on views from the windows of designated historic buildings. The investigators neglect that the industrial element presented by the proposed cell tower will be visible to tourists and residents alike while transiting the walkways and streets of Santa Fe. Figure 13 of the assessment demonstrates that the proposed cell tower is readily viewed along West Alameda Street from a distance greater than ¼ mile (Attachment 8).

AT&T has stated, in its application, its intent to comply with federal and city requirements requiring that they co-locate antennae of competing telecommunications providers. This proliferation will create an even greater negative visual impact to the Westside Guadalupe Historic District, further impacting the historic status of Casa Solana. Such proliferations are

intrusive upon the harmonious appearance of the neighborhood, in complete contradiction of the Code. Please recall the recent hearings regarding the unsightly tower on Marcy Street (Attachment 9). We respectfully request that you do not allow this to happen to Casa Solana.

Responses to the petition opposing the construction of a cell tower at Change.org ("City of Santa Fe, AT&T, and Burger King/Phillips 66: Do Not Build a Cell Tower Adjacent to Gonzales Community School") include pleas to not "lose the charm of Santa Fe". The proposed 64-foot tall cell tower would be visible from the intersection of the Veterans Memorial Highway (599 Bypass) at US 285/84, the gateway to Santa Fe from the north. Tourists arriving from the Albuquerque Sunport will confront the cell tower as they travel north toward the Historic Plaza.

AT&T has not done its due diligence to look for alternative sites that are least intrusive. For this reason, AT&T should not be allowed a waiver, and its application should not be approved.

### **INTRUSIVE OBSTRUCTION FAILS TO FILL NEED**

The Code requires AT&T to show that the tower is necessary to close a defined and significant gap in service coverage based on actual signal strength data for the area where the gap is claimed and for the type of gap claimed and that the proposed tower is the least intrusive method to do so. At the ENN meeting on May 21, 2012, Dr. George Kaschner asked whether AT&T had experience demonstrating that a tower, located in an area with such dense foliage as exists in the Casa Solana neighborhood, would improve cell phone reception. AT&T responded: "We don't know. We don't have experience showing that it will improve reception in areas with dense foliage."

AT&T cites in its application that its antennae facilities "depend upon line-of-sight technology and due to the specific radio frequency spectrum which AT&T uses there is a strong need for an unobstructed and high location for the antennas." AT&T has stated they have no guarantee of reception at this location, proving again that it is not the "least intrusive and practicable alternative."

Search ring maps show the potential service coverage overlap that AT&T could provide using existing towers (assuming some co-location on existing towers) (Attachment 10). The burden of proof lies with AT&T to demonstrate a tower is necessary to provide adequate coverage in this area. AT&T has not met that burden. Placing a tower at the proposed site does not provide significant new coverage that is not currently encompassed by the radius of an existing tower. In short, AT&T has not substantiated that it will gain any significant increase in coverage by installing a tower at this location.

AT&T is asking for a waiver of setback requirements that all other applicants must meet, but they have produced nothing to show the basis for it. If AT&T had chosen a different site, a waiver for a setback may not have been required. AT&T has not met the Code requirements to obtain reception at this particular spot for their customers. AT&T will have you believe that the

only effective way for them to meet their customers' needs is at this site so they need the waiver or exception, but AT&T has not produced anything to support this argument. Therefore, its application and waiver should be denied.

## **NEIGHBORHOOD AND SCHOOL COMMUNITY IMPACT**

As you may know, the Santa Fe Public School District Board Members unanimously (5-0) passed a resolution on March 5, 2013, opposing the proposed Burger King cell tower (Attachment 11). It is attached for your review. The closing lines of Resolution 2012/13-23 read:

Whereas the Santa Fe Historic District Review Board has jurisdiction over whether a cell tower can be built at this site;

Therefore, be it resolved that the Santa Fe Public Schools Board of Education communicate to the Historic District Review Board, the Santa Fe City Council, and AT&T its opposition to the construction of a cell tower at this location.

Gonzales Community School is located within the Casa Solana neighborhood association as defined by City neighborhood association boundaries (Attachment 1). The Gonzales Community School representative, Member Susan Duncan, wrote and proposed the attached resolution. Following Member Duncan's initial discussion at a school board meeting about writing a resolution opposing the cell tower on the school's behalf, other school board members verbalized their positions as ones that were not yet decided and perhaps against the resolution. The board heard the testimony of current Casa Solana residents, Gonzales Community School parents, staff, and one brave student. The board was also presented with copies of the 300+ signatures of people who signed the petition at Change.org to oppose the cell tower. After the board received factual evidence with supporting documents regarding engineering, fire safety, cell tower falling risks, tower construction and maintenance risk, and how these risk factors in combination could harm the children of Gonzales Community School, the school board members passed the resolution unanimously.

Also enclosed in your packet are signatures of the nearly 400 people who have signed the Change.org petition; people who live in the Casa Solana neighborhood and/or in the Gonzales Community School zone, teachers and staff, concerned family members living out of state, and established tourists from across the nation who say "No" to the proposed cell tower.

The petition posted at Change.org states:

**City of Santa Fe, AT&T and Burger King/Phillips 66: Do not build a cell tower adjacent to Gonzales Community School.**

A large cell tower on a property adjacent to a school poses many risks for children. The tower will be located on the property at the Northwest corner of St. Francis Drive and W. Alameda. The property has a Burger King and a Phillips 66 Gas Station. If the tower caught fire or fell, it could injure children or cause a major explosion. In addition, this intersection is the gateway to the historic area of Santa Fe and a large tower here would be a visible distraction to all traffic entering Santa Fe from the North on US 84/285 and traffic coming from I-25 on St. Francis Drive. It will also affect the views along the beautiful Santa Fe river trail. The property borders an arroyo which is a 100 year flood plain. The arroyo is full of large trees. This location is too close to a major intersection, a flood plain, and most importantly to a K-8 school.

We respectfully request that AT&T and the City of Santa Fe work together to find more appropriate locations for large cell towers than adjacent to a school with young children.

Historic district code encourages the principle that efforts should be made to "preserve property values and attract tourists and residents alike." As mentioned in the Historic Integrity Impact section of this packet, Santa Fe tourists noted in the comment section of the Change.org petition that they feared a tall cell phone tower would spoil the charm and beauty of this historic town. At one of the December 2012 public discussion meetings held at Gonzales Community School and sponsored by concerned parents, one participant identified herself as a real estate broker. She reported that she was attending on behalf of clients from New York who saw the cell phone tower public notice (ENN) regarding Burger King during a visit to the

city and were concerned about the impact it might have on the Casa Solana neighborhood that held their interest for purchasing their next home.

Further language in the General Purpose section of 14-5.2(1)(c) reads "A general harmony as to style, form, color, height, proportion, texture and material between buildings of historic design and those of more modern design." Current Casa Solana neighborhood residents and potential future residents would be subjected to a view from their yards and windows that is inescapable and permanent if the proposed cell tower is built. A 64-foot tall cell tower with antennae does little to offer a design that blends with historic or modern design features in the neighborhood. As children at Gonzales Community School play in the schoolyard, they, too, will have an extremely tall, unattractive, mismatched structure as a central part of their permanent daily view. Contrast this to their current view that is dominated by a beautiful mountainscape under a big blue sky with cumulus clouds that inspire their active imaginations.

The public safety and school community impact described in the SFPS resolution, the support of hundreds of individuals that signed the Change.org petition, and the disharmonious contribution of a 64-foot tall cell tower within the Casa Solana neighborhood clearly demonstrate that the Burger King site is not the "least intrusive and practicable alternative." For these reasons, the waiver should not be approved, and the application should be denied.



<b>Name</b>	<b>Location</b>	<b>Date</b>
Rilana Van Helden	Venlo, NE, Netherlands	2013-01-30
Jennifer Moore	Santa Fe, NM, United States	2013-01-30
Beatriz Scannapleco	Santa Fe, NM, United States	2013-01-30
Jenn Yi-Mushen	Santa Fe, NM, United States	2013-01-30
Jennie Sherwin	Santa Fe, NM, United States	2013-01-30
Brian Haas	Santa Fe, NM, United States	2013-01-30
Kimberly Spray	Santa Fe, NM, United States	2013-01-30
misty herrera	Santa Fe, NM, United States	2013-01-30
Sharon Dozar	Santa Fe, NM, United States	2013-01-30
melynn Schuyler	Santa Fe, NM, United States	2013-01-30
Nedret Gurler	santa fe, NM, United States	2013-01-30
Nanda Currant	Tesuque, NM, United States	2013-01-30
Cindy Martinez	Santa Fe, NM, United States	2013-01-30
Theresa Storey	Santa Fe, NM, United States	2013-01-30
Crystal Herrera	Santa Fe, NM, United States	2013-01-30
Norman Vigil	Santa Fe, NM, United States	2013-01-30
Emily Breza	Santa Fe, NM, United States	2013-01-30
daniel lujan	santa fe, NM, United States	2013-01-30
PAUL CASAUS	Santa Fe, NM, United States	2013-01-30
Robyn Romero Cardenas	Santa Fe, NM, United States	2013-01-30
Dafyd Rawlings	Santa Fe, NM, United States	2013-01-30
Barbara Gurule	Santa Fe, NM, United States	2013-01-30
Ray Chavez	Santa Fe, NM, United States	2013-01-30
Bob Den Hartog	Santa Fe, NM, United States	2013-01-30
Eileen Naranjo	santa fe, NM, United States	2013-01-30
Jason Dreikosen	Santa Fe, NM, United States	2013-01-30
Krysta Gomez	Santa Fe, NM, United States	2013-01-30
LeeAnn Archuleta	Santa Fe, NM, United States	2013-01-30
Teresa Valdez	Santa fe, NM, United States	2013-01-30
Susan Burke	Santa Fe, NM, United States	2013-01-30
Christian Leahy	Santa Fe, NM, United States	2013-01-30
Andrie Carmack	Santa Fe, NM, United States	2013-01-30

<b>Name</b>	<b>Location</b>	<b>Date</b>
Dahlia Christen	Santa Fe, NM, United States	2013-01-29
Melissa Willis	Santa Fe, NM, United States	2013-01-29
Grace Elena Woods	Santa Fe, NM, United States	2013-01-29
Christine Hoch	Haymarket, VA, United States	2013-01-30
Ronald Chavez	Santa Fe, NM, United States	2013-01-30
FELICIA N TRUJILLO	SANTA FE, NM, United States	2013-01-30
R.C. Luna	Santa Fe, NM, United States	2013-01-30
Malika Healey	Santa Fe, NM, United States	2013-01-30
Alice Ladas	Santa Fe, NM, United States	2013-01-30
Kurt Stalzer	Santa Fe, NM, United States	2013-01-30
Michelle Lynn	Santa Fe, NM, United States	2013-01-30
Erica Elliott	Santa Fe, NM, United States	2013-01-30
Nondas Puma	Santa Fe, NM, United States	2013-01-30
Katya Miller	Alb., NM, United States	2013-01-30
::Lyman Kellstedt	santa fe, NM, United States	2013-01-30
nina zelevansky	Santa Fe, NM, United States	2013-01-30
david morrison	portland, OR, United States	2013-01-30
Suzan Sattell	Santa Fe, NM, United States	2013-01-30
susan gallagher	santa fe, NM, United States	2013-01-30
John MacCuish	Santa Fe, NM, United States	2013-01-30
Katia Van Horn	Santa Fe, NM, United States	2013-01-30
Marjorie Young	Santa Fe, NM, United States	2013-01-30
Nancy King	Santa Fe, NM, United States	2013-01-30
Camille Coates	Santa Fe, NM, United States	2013-01-30
Lisa Stakes	Santa Fe, NM, United States	2013-01-30
Linda Vi Vona	Santa Fe, NM, United States	2013-01-30
terri moore	Santa Fe, NM, United States	2013-01-30
Eleannor Leighton	Santa Fe,, NM, United States	2013-01-30
Emily Stern	Santa Fe, NM, United States	2013-01-30
Nicole de Jurenev	Santa Fe, NM, United States	2013-01-30
Fabio Macchioni	Santa fe, NM, United States	2013-01-30
Sharon Wirtz	Santa Fe, NM, United States	2013-01-30

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Sharon Wirtz	Santa Fe, NM, United States	2013-01-30

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Bobi Den Hartog	Santa Fe, NM, United States	2013-01-30
Eileen Naranjo	santa fe, NM, United States	2013-01-30
Jason Dreikosen	Santa Fe, NM, United States	2013-01-30
Krysta Gomez	Santa Fe, NM, United States	2013-01-30
LeeAnn Archuleta	Santa Fe, NM, United States	2013-01-30
Teresa Valdez	Santa fe, NM, United States	2013-01-30
Susan Burke	Santa Fe, NM, United States	2013-01-30
Christian Leahy	Santa Fe, NM, United States	2013-01-30
Andrie Carmack	Santa Fe, NM, United States	2013-01-30

Name	Location	Date
Karla Milosevich	San Francisco, CA, United States	2013-02-02
Deborah Rubin	tampa, FL, United States	2013-02-02
Karen Ushman	Santa Fe, NM, United States	2013-02-02
Dayna Velasco	albuquerque, NM, United States	2013-02-03
Michelle DAVIS	Santa Fe, NM, United States	2013-02-03
Jamie Isman	Santa fe, NM, United States	2013-02-03
Kelly McCabe	Santa Fe, NM, United States	2013-02-03
Betsy Robinson	Santa Fe, NM, United States	2013-02-03
Emily Gillette	Santa Fe, NM, United States	2013-02-03
Robert Riedlinger	Mission BC, Canada	2013-02-03
Jade Wright	Fort Worth, TX, United States	2013-02-03
shedy berrios	jacksonville nc, NC, United States	2013-02-03
Sean Murphy	Notre Dame, IN, United States	2013-02-03
Janet Creagan	Santa Fe, NM, United States	2013-02-03
Maureen Sutton	Albuquerque, NM, United States	2013-02-03
Catherine Gould	Albuquerque, NM, United States	2013-02-03
Lindsay Leray	Santa Fe, NM, United States	2013-02-04
BRANDON TAYLOR	Santa Fe, NM, United States	2013-02-04
Roxana Shaffe	Tampa, FL, United States	2013-02-04
David Stupin	Santa Fe, NM, United States	2013-02-04
Toni Chavez	Santa Fe, NM, United States	2013-02-04
Tim Rogers	Santa Fe, NM, United States	2013-02-04
Melissa Houser	Santa Fe, NM, United States	2013-02-04
Russella Serna	Santa Fe, NM, United States	2013-02-04
Chip Conway	Santa Fe, NM, United States	2013-02-04
Robert Malone	Santa Fe, NM, United States	2013-02-04
Dennis Cooper	Santa Fe, NM, United States	2013-02-04
Felecia Ford	Santa Fe, NM, United States	2013-02-04
Dan Rusthoi	Santa Fe, NM, United States	2013-02-05
Melissa Duncan	Santa Fe, NM, United States	2013-02-05
Benjamin Larzelere	Santa Fe, NM, United States	2013-02-05
Jackie Caballero	Santa Fe, NM, United States	2013-02-05

<b>Name</b>	<b>Location</b>	<b>Date</b>
Michelle Lucero	Santa Fe, NM, United States	2013-01-31
Rosalyn Padilla-salazarr	Santa Fe, NM, United States	2013-01-31
Heather Estrada	Santa Fe, NM, United States	2013-01-31
Thomas Wolinski	Santa Fe, NM, United States	2013-01-31
Teresa Lopez Pacheco	Santa Fe, NM, United States	2013-01-31
Amy Iddings	Santa Fe, NM, United States	2013-01-31
Irene Sanchez	Santa Fe, NM, United States	2013-01-31
Lorraine Ortega	Santa Fe, NM, United States	2013-01-31
doug webb	Santa Fe, NM, United States	2013-01-31
Anais Weckert	Santa Fe, NM, United States	2013-02-01
Justin Fergus	Santa Fe, NM, United States	2013-02-01
Thomas Iddings	Santa Fe, NM, United States	2013-02-01
Polly Maichir	Santa Fe., NM, United States	2013-02-01
Stephanie Stringer	Santa Fe, NM, United States	2013-02-01
Lys Verduzco	Santa Fe, NM, United States	2013-02-01
Beth Dykman	Santa Fe, NM, United States	2013-02-01
Victoria Bloodworth	Santa Fe, NM, United States	2013-02-02
Peter Anastasia	Santa Fe, NM, United States	2013-02-02
Devon Bowes	santa Fe, NM, United States	2013-02-02
Ariana Kramer	Taos , NM, United States	2013-02-02
cindy romero	Santa Fe, NM, United States	2013-02-02
Patsie Ross	Santa Fe, NM, United States	2013-02-02
Joan Didak	santa fe, NM, United States	2013-02-02
Carlo Gislimberti	Santa Fe, NM, United States	2013-02-02
Francesca Bottos	Santa Fe, NM, United States	2013-02-02
Susan Foster, MSW	Rancho Santa Fe, CA, United States	2013-02-02
Dr. Charlotte Cooke	Santa Fe, NM, United States	2013-02-02
Mary Boudreau	Santa Fe, NM, United States	2013-02-02
Bird Thompson	Albuquerque, NM, United States	2013-02-02
Kevin Alexander	Gunnison, CO, United States	2013-02-02
Clara de la Torre	Santa Fe, NM, United States	2013-02-02
Reina Fernandez	Santa Fe, NM, United States	2013-02-02

Name	Location	Date
Alyiah Doughty	Santa Fe, NM, United States	2013-03-02
K E Gold	Chimayo, NM, United States	2013-03-09
Pamela Sher	Santa Fe, NM, United States	2013-03-12
Peter Kralovic	Bratislava, , Slovakia	2013-03-12
Andreja Žorž	Vipava, , Slovenia	2013-03-18
Edwina Taylor	Santa Fe, NM, United States	2013-03-18
Carlyn Massey	Santa Fe, NM, United States	2013-03-18
Liz Young	Wayne, PA, United States	2013-03-19
Taylor Young	COonshohocken, PA, United States	2013-03-19
Katie Young	Chatham, NJ, United States	2013-03-19
maraka trapp	santa fe, NM, United States	2013-03-19
JULIE TRUJILLO	Truchas, NM, United States	2013-03-19
Katie Macaulay	Santa Fe, NM, United States	2013-03-19
Joan Schutz	Santa Fe, NM, United States	2013-03-20
Fran Tenorio	St Petersburg, FL, United States	2013-03-20
Kent Calhoun	Santa Fe, NM, United States	2013-04-01
Sheila Beingessner	La Palma, CA, United States	2013-04-08
Nadine Ulibarri	Santa Fe, NM, United States	2013-04-08
Eric Ulibarri	Santa Fe, NM, United States	2013-04-08
Eric Rowland	Santa Fe, NM, United States	2013-04-08
Alyssa Latuchie	Santa Fe, NM, United States	2013-04-08
Paul Benson	Santa Fe, NM, United States	2013-04-08
Lorraine Burton	Santa Fe, NM, United States	2013-04-08
Jenny Rowland	Santa Fe, NM, United States	2013-04-08
Abbie Collins	Santa Fe, NM, United States	2013-04-08
Jason Burnett	Santa Fe, NM, United States	2013-04-08
Lawrence Rivera	Santa Fe, NM, United States	2013-04-08
Carolyn Lamuniere	Santa Fe, NM, United States	2013-04-09
Yolande Clarinval	Santa Fe, NM, United States	2013-04-09
Cary Arden	Santa Fe, NM, United States	2013-04-09
Bruce Macfarlane	Larchmont, NY, United States	2013-04-09
KirkPenelope Beingessner	Roseville, CA, United States	2013-04-09

<b>Name</b>	<b>Location</b>	<b>Date</b>
Faith Garfield	Santa Fe, NM, United States	2013-02-17
Randy Crutcher	Santa Fe, NM, United States	2013-02-17
Samia van Hattum	Santa Fe, NM, United States	2013-02-17
Carol Guzman	Santa Cruz, NM, United States	2013-02-17
Paterson Simons	Santa Fe, NM, United States	2013-02-17
Angel Acevedo	Santa Fe, NM, United States	2013-02-17
Marilyn Jacobs	Santa Fe, NM, United States	2013-02-18
Michelle Wong	Horsefly, Canada	2013-02-18
Marta Harrison	Santa Fe, NM, United States	2013-02-18
DorothyAnn Collom	Santa Fe, NM, United States	2013-02-18
Barbara Aran	Santa Fe, NM, United States	2013-02-18
Eytan Krasilovsky	Santa Fe, NM, United States	2013-02-18
Adele La Breche	Santa Fe, NM, United States	2013-02-19
Linda Park	Australia	2013-02-19
Lauren Meyer	Santa Fe, NM, United States	2013-02-19
Zachary Youmans	Santa Fe, FL, United States	2013-02-19
Eduardo Krasilovsky	Santa Fe, NM, United States	2013-02-20
Elaine Gilmartin	Ashland, OR, United States	2013-02-20
Claudene James	Santa Fe, NM, United States	2013-02-21
Debby Kaschner	Santa Fe, NM, United States	2013-02-21
Susan Slotter	Santa Fe, NM, United States	2013-02-22
Maheli Hamdouni	Santa Fe, NM, United States	2013-02-22
S B Hammaker	Camarillo, CA, United States	2013-02-22
Carol Stoughton	Sacramento, CA, United States	2013-02-22
Arlene Kaschner	Hot Springs, AR, United States	2013-02-24
Julie Stoughton	Reno, NV, United States	2013-02-24
magita story	Santa Fe, NM, United States	2013-02-24
Alfons Grabher	Bregenz, Vbg, Austria	2013-02-24
David Stoughton	Sacramento, CA, United States	2013-02-25
Shawn Evans	Santa Fe, NM, United States	2013-03-01
Annette Pacheco	Santa Fe, NM, United States	2013-03-01
Roger Stoughton	Sacramento, CA, United States	2013-03-01



<b>Name</b>	<b>Location</b>	<b>Date</b>
Joan Schoepfer	Portland, OR, United States	2013-04-09
Ellen Arias	Santa Fe, NM, United States	2013-04-09
Anne Lee	Santa Fe, NM, United States	2013-04-09
David Bacon	Santa Fe, NM, United States	2013-04-10
Cathy Rowland	Santa Fe, NM, United States	2013-04-10
Helen Oates	Santa Fe, NM, United States	2013-04-10
Diane Whitmire	Santa Rose, CA, United States	2013-04-11
Marilynne Martin	Venice, FL, United States	2013-04-12
Warren Woodward	Sedona, AZ, United States	2013-04-12
Cathy Grippi	Longboat Key, FL, United States	2013-04-12
Deborah Rubin	tampa, FL, United States	2013-04-12
David Watkins	Edgewater, FL, United States	2013-04-12
S Hack	Santa Fe, NM, United States	2013-04-12
amy bunting	santa fe, NM, United States	2013-04-12
Victoria Sievers	San Rafael, CA, United States	2013-04-12
monique thomas	orange park, FL, United States	2013-04-13
Frank Henry	Cottonwood, AZ, United States	2013-04-13
Denise Vandenberg	St. Marys, WV, United States	2013-04-16
Susan Nartowicz	Venice, FL, United States	2013-04-16
Terry Williams-Keffer	Santa Fe, NM, United States	2013-04-21
kim rubn	santa fe, NM, United States	2013-04-21
Carol Eastes	Santa Fe, NM, United States	2013-04-24
Asha Wilford	santa fe, NM, United States	2013-04-27

# RAYMOND SINGER, PH.D.

*A Professional Association*

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Main office: 36 Alondra Road / Santa Fe, New Mexico / 87508  
Manhattan office: 180 E. 79<sup>th</sup> Street / Suite 1-C / New York, N.Y. / 10021  
Telephone: (505) 466-1100 / Fax: (505) 466-1101  
Website: [www.neurotox.com/](http://www.neurotox.com/) E-mail: [ray.singer@gmail.com](mailto:ray.singer@gmail.com)

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Statement to Santa Fe, New Mexico City Council, June 13, 2013

My name is Dr. Raymond Singer. My wife and I have lived in Santa Fe County for over 20 years, and raised 3 children here. I am a neurotoxicologist and a Board-certified Neuropsychologist with Added Forensic Specialization. My testimony has been accepted in both Federal and state courts since 1983, and I have testified in New Mexico regarding toxic chemical issues. I have served in landmark toxic chemical litigation, including the Agent Orange Vietnam Veterans Litigation. I have been studying toxicology since 1978, and the toxicology of cell phone technology since 2010.

I speak to you today regarding the dangers of cell phone technology. New research is published on this topic with increasing frequency.

In my over 30 years of work in toxicology, I have noticed that "where there is smoke, there is fire". The first human research that emerges regarding the toxicology of new technologies is practically always confirmed by later research. Such is the case with cell phone technology - although progress in this field *will be denied* by the people who profit from the technology.

The cell phone industry generates between \$200 billion and \$1 trillion revenue a year, depending on the analyst<sup>1</sup>. It would be naïve to believe that an industry that large will be truthful about the toxicology of their product.

As you recall, in 1994, tobacco executives swore before Congressman Henry Waxman that smoking tobacco was not addictive<sup>2</sup>. In fact, tobacco executives were actually designing cigarettes to be addictive, according to a US Surgeon General's

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<sup>1</sup> <http://communities-dominate.blogs.com/brands/2011/02/all-the-numbers-all-the-facts-on-mobile-the-trillion-dollar-industry-why-is-google-saying-put-your-b.html>,  
<http://www.ctia.org/advocacy/research/index.cfm/aid/10323>

<sup>2</sup> <http://www.pbs.org/wgbh/pages/frontline/shows/settlement/timelines/april94.html>

*Exhibit "2"*

report of 2010<sup>3</sup>. They also report that tobacco kills more than 443,000 people a year, costing the country more than \$193 billion a year in health care costs and lost productivity. Yet tobacco scientists and lawyers are still able to fend off lawsuits and delay compensation. Of course, reasonable people have not waited until full legal proof has accumulated before concluding that it is not healthy to smoke cigarettes.

What is the cost posed by cell phone technology to mental health? We do not know the total cost. At the present time, we know that many people are being harmed by this technology, but I am not certain regarding the numbers nor the extent of microwave radiation sickness. Research is progressing on a daily basis on this topic. For example, I will leave with the clerk a study of one type of mental health outcome of cell phone technology - burn-out, a syndrome of depression, fatigue, and motivational loss<sup>4</sup>. This article describes the oxidative stress and free radical particles resulting from radiofrequency radiation that lead to fatigue, neurocognitive changes and burn-out. This article is only one example of research ongoing regarding cell phone neurotoxicology.

I can assure you that cell phone technology managers, scientists, lawyers and spokespersons will strenuously promote their inadequately designed studies that purport to prove that cell phone technology is safe, while criticizing the better designed studies as being inadequate to show proof of harm. As with tobacco, this so-called controversy will continue unresolved for many years. In the meantime, many people have been and will become ill without knowing that the cause is microwave radiation. We could well be in the throes of an epidemic of mental health disorders from the increasing dissemination cell phone equipment and increasing power of cell phone radiation. For those who care about health, it would be prudent to engage the precautionary principle: if a technology or policy carries a risk of harm, the burden of proof that the technology or policy is safe remains with those promoting the technology or policy.

I urge you to reduce your exposure to microwave radiation to protect your health, and the health of your family and community. I also urge you to resist the temptation to allow cell phone technology, the toxicology of which is becoming clearer every day, to take over our community and our health.

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<sup>3</sup> <http://www.examiner.com/article/new-surgeon-general-report-cigarettes-designed-for-addiction-damage-immediate>

<sup>4</sup> WARNKE U; HENSINGER P (2013): Steigende „Burn-out“-Inzidenz durch technisch erzeugte magnetische und elektromagnetische Felder des Mobil- und Kommunikationsfunks; umwelt-medizin-gesellschaft, 26(1): 31-38.

**ROMERO, IRENE K.**

---

**From:** Rick Lass [ricklass@newmexico.com]  
**Sent:** Monday, June 10, 2013 4:05 PM  
**To:** ROMERO, IRENE K.  
**Subject:** Re: Charter Review Commission  
ok, it is attached.

thanks,  
Rick

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

**From:** ROMERO, IRENE K.

**To:** Rick Lass  
**Sent:** Monday, June 10, 2013 12:51 PM  
**Subject:** RE: Charter Review Commission

Hi Rick: You may send your testimony and I will distribute to the members by e-mail and hard copy. Thanks.

*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)*

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

**From:** Rick Lass [mailto:ricklass@newmexico.com]  
**Sent:** Monday, June 10, 2013 12:26 PM  
**To:** ROMERO, IRENE K.  
**Subject:** Charter Review Commission

Hi Irene,

I would like to submit written testimony regarding Ranked Choice Voting to the charter commissioners. Could you provide me with a list of email addresses, or is it more appropriate to send the testimony to you for distribution?

thanks,  
Rick Lass  
505-920-0540  
ricklass@newmexico.com

06/10/2013

*Exhibit "3"*

Dear Commissioners,

As you may know, I have been working on election reforms since 1995, as a result of being told that my participation in the democratic process was spoiling elections. It quickly became clear to me that the electoral process itself is what is spoiled- low voter participation, the overpowering role of big money contributions and the mass media, gerrymandered political districts, and on and on.

Over the past fifteen years, I have worked to create Public Campaign Financing at the state and local level, serving on Santa Fe's Public Campaign Finance Advisory Board as an appointee of the mayor. in 2009. More relevant to today's topic, though, I was, and continue to be, a proponent for Ranked Choice Voting, which as you know became a part of the Santa Fe city charter as a result of the 2008 election.

The reason you have not seen me here before today is that I do not believe the charter needs any further amendment in order for the city to implement Ranked Choice Voting. I have made this position clear to city councilors, the mayor, the city clerk, and the city attorney. In my opinion, the city could have and should have conducted the 2010 and 2012 elections using Ranked Choice Voting. Unfortunately, the stubbornness of the current administration has prevailed over the will of the voters. This is particularly surprising to me, as RCV was put on the ballot by a unanimous vote of the city council and with the mayor's endorsement.

The question before the city is how would the runoff part of the Ranked Choice Voting election be conducted. I have repeatedly shown the city councilors and clerk that there are three simple and legal ways to do this.

In each of the following possibilities, Election Day would be handled exactly as it is currently, the only difference being the ballot design. The ES&S M100s would be programmed to tally the voters' first choices only. In the event no candidates get a majority, one of the following methods could be used:

- 1) Buy or lease a machine capable of conducting the runoff,. This could be done on Election night, or one of the days following. Several machines are available that could perform this function.
- 2) Hand sort the ballots based on voters first choices, then feed them into M100s which have been programmed to tally voters second choices. It may be necessary to continue to third choices as well, depending on the results of the first runoff.
- 3) Hand sort the ballots based on voters' first choices, then hand tally the second choices. It may be necessary to continue to third choices as well, depending on the results of the first runoff. Based on my experience during the 2006 UNM audit study, which became the model for the current state law governing voting machine audits, the hand count method could easily be done in a few hours.

Note to option (1): The city clerk has maintained that machines are not available for this, but it is more correct to say that the county, which provides machines for city elections, does not own any such machines. She also points out that there is barely time to conduct the post election canvass in the allotted three days.

I have asked councilors to remedy this by passing an ordinance that would allow the city to either do a hand count of the runoff or use a machine other than those provided by the county, and to extend the canvassing period to allow plenty of time for the runoff. Unfortunately, the council has not made this a priority, and the city has not honored the will of its citizens.

Further, it appears that two voting machine companies have applied for certification of Ranked Choice Voting capable machines for use in New Mexico elections (through the Secretary of State's office). It is likely that at least one of these machines will be certified and available for purchase in time for the 2014 municipal election.

I do not think that it is appropriate to again ask voters to go to the polls on a matter that they overwhelmingly approved just a few years ago. It is clearly a matter that can be dealt with administratively. I urge you to send a strong message to the council and administration that it is unacceptable not to implement Ranked Choice Voting in the 2014 municipal election.

Thank you for your time and your work in reviewing our charter.

Rick Lass  
505-920-0540  
ricklass@newmexico.com

**ROMERO, IRENE K.**

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**From:** James Harrington [harr77@earthlink.net]

**Sent:** Thursday, June 06, 2013 6:50 PM

**To:** ROMERO, IRENE K.

**Cc:** Karen Heldmeyer; Viki Harrison

**Subject:** LWV/CC redistricting proposal

Irene -

As Karen H. says in her e-mail of a few minutes ago, Common Cause and the League of Women Voters have developed a joint proposal to amend the charter to establish an independent redistricting commission. The proposed amendment is attached. It is identical to what Karen just sent you, **except** it appears that the strike-throughs on the bracketed material were somehow omitted from the copy that Karen sent you. I'm sure that this reflects some kind of typo or computer glitch. As soon as Karen confirms that, please go ahead and forward to the commissioners the attached version, which includes the strike-throughs (at least I hope that's the way it will look when you receive it).

Thanks very much. Have a good weekend. See you next week.

Jim H.

06/07/2013

*Exhibit "4"*

JOINT PROPOSAL OF THE LEAGUE OF WOMEN VOTERS OF SANTA FE COUNTY  
AND COMMON CAUSE NEW MEXICO TO AMEND THE SANTA FE CITY CHARTER  
TO ESTABLISH AN INDEPENDENT REDISTRICTING COMMISSION

Section 6.03 of the Charter shall be amended to read as follows:

6.03. Districts.

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

A. each district shall contain as nearly as possible substantially the same population based upon the most recent federal census;

B. districting plans must avoid dilution of minority voting strength;

C. communities of interest, including those based upon ethnic and economic factors, shall be preserved within a single district whenever reasonable;

D. each district shall be formed of compact, contiguous territories. The total length of all district boundary lines shall be as short as possible;

E. districting plans shall not intentionally favor or disfavor any candidate;

~~[E.]~~ F. districting plans shall compensate for U.S. census undercount of minorities.



JOINT PROPOSAL OF THE LEAGUE OF WOMEN VOTERS OF SANTA FE COUNTY  
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*Establish a Commission*

A. each district shall contain as nearly as possible substantially the same population based upon the most recent federal census;

B. districting plans must avoid dilution of minority voting strength;

C. communities of interest, including those based upon ethnic and economic factors, shall be preserved within a single district whenever reasonable;

D. each district shall be formed of compact, contiguous territories. The total length of all district boundary lines shall be as short as possible;

~~E. districting plans shall not intentionally favor or disfavor any candidate.~~ *or incumbent* *delete*

[E.] F. districting plans shall compensate for U.S. census undercount of minorities.

*Exhibit "5"*

**ROMERO, IRENE K.**

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**From:** Karen Heldmeyer [kheld@earthlink.net]  
**Sent:** Friday, June 07, 2013 2:57 PM  
**To:** ROMERO, IRENE K.  
**Subject:** moving the election date

Irene:

I see that the possibility of moving the election date is still on the agenda.

While I still think it is a good idea, after doing the research, I found that it would be very difficult to implement at this time, and that was what I told the Commission several months ago.

So, I don't know how they want to handle this, but it seems to me just removing it from the agenda would be the quickest way to deal with this. If that's not possible, they can certainly vote on it, but I wouldn't waste a lot of time on it.

Thanks,  
Karen

*Exhibit "C"*

**ROMERO, IRENE K.**

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**From:** Karen Heldmeyer [kheld@earthlink.net]  
**Sent:** Friday, June 07, 2013 3:12 PM  
**To:** ROMERO, IRENE K.; Jody Larson; NVanpeski@aol.com; Donna Reynolds; 'Chris Furlanetto'; Becky Frenkel  
**Subject:** signatures for referendum/initiative

Irene:

Please note that the League recommended to the Commission that they look at the signature requirements for referendum and initiative, to see if these requirements were too onerous, as referendum and initiative have not been used since the charter was last amended. The League thinks these tools of democracy should be available to citizens who want to have an impact on their local government.

However, the League does not have a position on whether referendum and initiative are, in fact, under-utilized, or on how many signatures are the appropriate in these cases. This is a decision for the Commission.

Thanks,  
Karen

**ROMERO, IRENE K.**

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**From:** Karen Heldmeyer [kheld@earthlink.net]

**Sent:** Friday, June 07, 2013 3:04 PM

**To:** ROMERO, IRENE K.; Jody Larson; NVanpeski@aol.com; Donna Reynolds; 'Chris Furlanetto'; Becky Frenkel

**Subject:** charter amendment on bond/tax election info

Irene:

The league has already submitted wording for this item, but I thought I would send it to you in preparation for the meeting so it won't get lost in the shuffle.

The term on the agenda, "Tax and bond elections required to have full expenditure timetable" is not quite accurate. I think the confusion stems from the use of the word "schedule", which in this case does not mean timetable but rather a plan for proposed uses of the tax or bond.

The wording we are proposing is:

**New 4.08. Tax and bond measure elections**

The governing body shall adopt an ordinance or ordinances that ensure that the city will disseminate a clear, comprehensive schedule of proposed expenditures for any tax increase or bond measure that needs to be ratified by the voters.

Thanks for all your help,  
Karen

06/07/2013

*Exhibit "8"*

The governing body  
shall adopt an  
ordinance ~~or ordinances~~  
that ensure that  
the city, shall  
provide & disseminate  
in a timely manner  
the purposes of  
proposed expenditures  
for any tax increase  
on bond measure that  
requires ratification by the voters

## Ban on Contributions from Business Entities and City Contractors

- I. In order to provide for transparency in government and to also further the purposes of the City of Santa Fe Ethics Code there shall be enacted the following provision:
  - a) *Ban on Contributions from Business Entities and City Contractors.*
  - b) No candidate for public office shall accept a contribution in support of the candidate's campaign from any corporation, limited liability company, firm, partnership, joint stock company or similar business entity or any agent, or sole proprietor making a contribution on behalf of such a business entity or sole proprietorship who at the time of the contribution is in a contractual relationship or who has business dealings with the City to provide goods or services to the City.
  - c) Within 48 hours of the receipt of a statement from a candidate listing campaign contributors, or as soon thereafter as reasonably possible, the Finance Director shall determine if any contributor has a contract or business dealings in the nature of a contract with the city. For the purposes of this section, a person is deemed to have a contract or business dealings if the person or in the case of an individual, the contributor's principal business or the contributor's employer has received \$20,000 or more pursuant to a contract with the city in the 24 months prior to the date of contribution. The Finance Director shall immediately notify the City Clerk of any campaign contributors who have business dealings with the city and the City Clerk shall post that information (including: contribution amount, recipient and business relationship) on the city's website.
  - d) The remedy for an unknowing violation of this subsection shall be the return of the contribution and notification to the public of the amount of the contribution and directive to return the contribution. The remedy for a knowing violation of this prohibition shall be a referral by the City Clerk to the appropriate City Committee and authorities.

*Exhibit "10"*

**ROMERO, IRENE K.**

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**From:** James Harrington [harr77@earthlink.net]  
**Sent:** Sunday, June 09, 2013 8:20 PM  
**To:** ROMERO, IRENE K.  
**Cc:** ZAMORA, GENO I.; MARTINEZ, MARCOS D.; VIGIL, YOLANDA Y.; Viki Harrison  
**Subject:** comments on charter proposal re contractor contributions



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Irene -

Common Cause would like to submit to the Charter Commission the attached memorandum commenting on Commissioner Farber's proposal to amend the charter to prohibit and regulate certain campaign contributions, which is on the agenda for action at this Thursday's commission meeting. Could you please distribute this memorandum to the commissioners? Thanks for your help.

Jim H.

M E M O R A N D U M

TO: CHARTER REVIEW COMMISSION

FROM: JIM HARRINGTON, COMMON CAUSE NEW MEXICO

SUBJECT: COMMENTS ON THE PROPOSAL TO AMEND THE CHARTER TO  
PROHIBIT AND REGULATE CERTAIN CAMPAIGN CONTRIBUTIONS

DATE: JUNE 9, 2013

Commissioner Farber has submitted a proposal to amend the city charter by adding a detailed provision prohibiting and requiring disclosure regarding certain campaign contributions from city contractors and other persons. Common Cause fully shares Commissioner Farber's goal of getting money out of politics and reducing the risk of corruption of elected city officials. With regret, however, we find ourselves obliged to oppose adoption of this proposed charter amendment for the reason we previously expressed to the sponsor - namely, that such a detailed regulation of campaign finance practices simply does not belong in the city charter. Campaign finance is a very fluid area of the law, in which lawmakers must be able to adapt to constant changes in the constitutional framework and innovations in campaign practices. They cannot do this if the campaign finance regulations are enshrined in charter provisions which can be changed only with great difficulty.

This assessment is amply supported by the contrasting experiences with campaign finance regulation in Albuquerque and Santa Fe. The City of Albuquerque, whose law evidently provided the model for Commissioner Farber's proposal, has chosen to put every detail of its campaign finance laws into its charter. During the last decade, as the courts have steadily expanded the constitutional restrictions on such legislation, one after another of these laws (or its substantively identical counterpart



in another jurisdiction) has been held unconstitutional and has ceased to be enforced - including, among other provisions, the spending limits for candidates (ABQ Charter Art. XIII, §4(d); *Homans v. City of Albuquerque*, 366 F.3d 900 (10th Cir. 2004)), the reporting requirements for PAC's and other third-party campaign participants (Art. XIII, §§2(k), 4(b)-(c); *New Mexico Youth Organized v. Herrera*, 611 F.3d 669 (10th Cir. 2010)), and a major part of the funding scheme for public campaign financing (Art. XVI, §§3(M), 16; *Arizona Free Enterprise Club PAC v. Bennett*, 131 S.Ct. 2806 (2011)). Meanwhile, other parts of Albuquerque's law, including its ban on contractor contributions (Art. XIII, §4(f)), have been rendered largely ineffectual by the discovery of loopholes that have permitted easy evasion of their requirements (see, e.g., "Two Mayoral Candidates Facing Ethics Complaints," *Albuquerque Journal*, April 26, 2013).<sup>1</sup>

In most of these cases, the enforceability of the law could have been restored by appropriate amendments to plug the loopholes or eliminate the unconstitutional features. Indeed, Common Cause has drafted and circulated several proposed amendments of this kind. Since all of Albuquerque's campaign finance laws are in its charter, however, the process of amendment is so difficult that no such amendments have actually been adopted, and none of these deficiencies in Albuquerque's laws has ever been fixed. Unless and until Common Cause or some other reform-minded organization can muster the financial resources necessary to mount a major ballot campaign, this unfortunate situation will persist. Albuquerque has thus been permanently saddled with numerous campaign finance laws that are unenforceable and ineffective.

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<sup>1</sup> The ban on campaign contributions from city contractors and "business entities" has also recently become the target of a lawsuit challenging its constitutionality ("ABQ's Campaign-Contribution Ban Faces Court Challenge," *Albuquerque Journal*, May 8, 2013).

Santa Fe has wisely avoided this outcome by including in its charter only a set of general principles on campaign finance and allowing the details of its regulations to be spelled out in ordinances. The city has therefore found it easy to adapt as campaign practices and the constitutional rules have evolved over the years. Thus, for example, when key provisions of the city's third-party reporting and disclaimer rules were determined to be unenforceable against certain anonymous pamphleteers during the 2004 city election, the governing body immediately convened a distinguished panel of citizens, known as the Campaign Reform Commission, to recommend necessary revisions to the campaign laws (Res. #2004-11). Almost all of the Commission's recommendations were thereafter accepted by the governing body, including adoption of a constitutionally compliant revised set of rules for disclaimers and third-party reporting and the establishment of an Ethics and Campaign Review Board (ECRB) to enforce the ethics and campaign laws (Ord. #2005-14).<sup>2</sup>

One of the farsighted provisions enacted at that time was a requirement that the ECRB review the campaign laws after every election and submit to the governing body any recommendations it might have for further revisions (§6-16.2(E) SFCC 1987). The Board made numerous such recommendations and they were adopted by the governing body following the 2006, 2008 and 2010 elections (Ords. #2007-11, 2009-10, 2011-28). The Board is now engaged in evaluating proposals for further refinements in both the Campaign Code and the Public Campaign Finance Code in the light of developments during the 2012 election. In this manner, Santa Fe has managed to keep pace with continuous changes in both campaign practices and the governing constitutional rules.

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<sup>2</sup> Having served on the Campaign Reform Commission and as vice chair of the ECRB for the first six years of its existence, the vice chair of the current Charter Review Commission is even more familiar with this history than is Common Cause's representative.

Adoption of Commissioner Farber's proposal would signal a marked departure from this salutary approach to campaign finance regulation, borrowing instead the inflexible method of legislating that has disabled the City of Albuquerque from adapting its laws to the changing legal and electoral landscape. That this departure would promptly lead to the same sort of problems that Albuquerque has experienced is apparent from the substance of the proposal itself, which, even apart from possible future constitutional developments or campaign innovations that might undermine its enforceability, appears to violate the constitutional restraints that are already imposed by the current law.

Several cases arising since the Supreme Court's *Citizens United* decision have addressed the constitutionality of so-called "source bans" of the kind exemplified by Commissioner Farber's proposal - that is, prohibitions against campaign contributions from particular sources such as contractors or lobbyists. *Lavin v. Husted*, 689 F.3d 543 (6th Cir. 2012); *Preston v. Leake*, 660 F.3d 726 (4th Cir. 2011); *Green Party v. Garfield*, 616 F.3d 189 (2d Cir. 2010); *Wagner v. FEC*, 854 F.Supp.2d 83 (D.D.C. 2012). A consensus has emerged in these decisions to the effect that such legislation will be upheld if and only if it is supported by a demonstrated history of *quid pro quo* corruption of the jurisdiction's elected officials by contributions from the particular group that is the subject of the ban. *Lavin*, *supra* at 547-48; *Preston*, *supra* at 729-30, 736-37; *Green Party*, *supra* at 200, 206-7; *Wagner*, *supra* at 90-91.<sup>3</sup>

To Common Cause's knowledge, discounting the occasional unsubstantiated rumor, no demonstrated history of this kind of

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<sup>3</sup> Cf. *Ognibene v. Parkes*, 671 F.3d 174 (2d Cir. 2011) (three separate opinions for the panel upholding lower contribution limits for contractors and lobbyists without requiring actual evidence of recent *quid pro quo* corruption, and distinguishing the same court's previous decision in *Green Party*, *supra*, striking down a ban on lobbyist contributions for lack of such evidence); *Towbin v. Antonacci*, 885 F.Supp.2d 1274 (S.D.Fla. 2012) (striking down lower contribution limit for minors where no actual evidence of prior abuse).

corruption exists in this city. Unless something of this sort were somehow to be discovered before Commissioner Farber's proposal became law, therefore, these precedents would portend a high probability that it would be struck down by the courts, thus burdening Santa Fe with the same sort of permanently unenforceable and unfixable campaign finance law that has become increasingly common in Albuquerque.

There are additional possible constitutional vulnerabilities, as well as some potential loopholes, in Commissioner Farber's lengthy and complex proposal.<sup>4</sup> But enough has already been said to show that its basic approach to campaign finance regulation is unsound and likely to entrap the city in the same sort of quagmire that has bogged down so many of Albuquerque's efforts to regulate campaign practices.

If the Commission is nevertheless inclined to do something to address the problem of potential corruption that is the target of Commissioner Farber's proposal, a better way to do this would be to follow the approach employed by previous charter commissions - that is, to recommend inclusion in the charter of a statement of policy that would leave it to the governing body

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<sup>4</sup> It is hard to identify these additional issues with any precision without first resolving certain ambiguities in the proposal, the most basic of which is the uncertain relationship between its two substantive parts, numbered (b) and (c). At first reading, these appear to be independent stand-alone provisions, part (b) being a ban on contributions from any city contractor or any agent making a contribution on its behalf, and part (c) being a requirement for disclosure by the city of any contributions from certain major contractors (over \$20,000) or any of the employees of these contractors. On this interpretation, the proposal raises no obvious additional constitutional problems besides the one already described in the text, but it does exhibit a potential loophole in part (b)'s contribution ban, consisting of the failure to cover contributions from executives, partners or major shareholders of contracting entities who make contributions from their personal funds (a loophole which it shares, by the way, with Albuquerque's law). It is alternatively possible, however, to interpret some of the language in part (c), particularly the second sentence, as modifying part (b) and extending part (b)'s contribution ban to cover certain principals and all employees of any major contractor. This would mostly plug the loophole in part (b), but it would simultaneously raise an additional constitutional issue, consisting of the question whether a complete prohibition against even the smallest contribution from even the most lowly employee of a large firm like PNM could be constitutionally defended as sufficiently "closely drawn" or "narrowly tailored" to serve the goal of preventing official corruption. See *Lavin, supra*, 689 F.3d at 548; *Preston, supra*, 660 F.3d at 737; *Green Party, supra*, 616 F.3d at 198-99, 209. These are the kinds of drafting wrinkles, not uncommon in this type of legislation, that could be ironed out over time if the text of the regulation were not chiseled in stone in the city charter.

to implement the policy with specific legislation. A policy statement on this subject could be appended to the similar statement the Commission has already adopted concerning contribution limits, which could be augmented in the following manner (additional language underlined):<sup>5</sup>

"The governing body shall adopt an ordinance or ordinances to limit the amount of campaign contributions that can be accepted by candidates and to prohibit campaign contributions from any category of contributors which has been shown to present a particular risk of corruption."

This language would require the governing body to enact an ordinance banning contributions from contractors or other groups if and when there appears the sort of evidence of corruption by a particular group which the courts have required to justify this sort of ban. The details of the prohibition would be devised by the governing body with the advice of the city attorney and the ECRB. In the event constitutional defects or loopholes in the law should thereafter come to light, it could readily be amended, in the way that similar ordinances have periodically been amended in the past, to accommodate these problems and to maintain a law that is as effective as the courts will allow it to be in combatting the potentially corrupting influence of campaign contributions.

Common Cause previously proposed this approach to Commissioner Farber and offered to work with him on this issue. We remain very willing to collaborate with him and to offer the Commission whatever assistance we can provide in dealing with this subject. For the present, however, we must respectfully oppose the specific charter amendment that Commissioner Farber

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<sup>5</sup> Since the language of the amendment on contribution limits was not finalized until the last commission meeting, and since the minutes of that meeting were not yet available as of this writing, the quotation of this language is only approximate. Hopefully it is close enough to serve the purpose of illustrating how the proposed new language could be appended to it.

has put forward. For all the reasons already stated, it represents the wrong way to go about campaign finance regulation.

J.E.H.