

**CITY OF SANTA FE
CHARTER REVIEW COMMISSION**

REPORT AND RECOMMENDATIONS TO THE GOVERNING BODY

INTRODUCTION

The Charter Review Commission was created by Ordinance 2005-46, adopted by the governing body on May 11, 2005, pursuant to Section 10.01 of the Municipal Charter, which requires appointment of a commission to review the charter at least every ten years. The members of the Commission were appointed by the governing body on November 30, 2005. Since that time, the Commission has held eleven meetings of two and three hours duration each. It has received many suggestions and comments from members of the public, as well as detailed communications from two city councilors and testimony from several expert witnesses.

In the course of its deliberations, the Commission has considered more than thirty proposals for amending the Charter. Of these, the Commission has decided to recommend eleven substantive amendments and three technical or clarifying amendments for adoption by the governing body and placement on the ballot at the special election to be held later this year. In this report, the Commission presents a description and justification of each of the recommended amendments, followed by a brief description of the many proposals for additional amendments that the Commission considered but decided not to recommend.

CHARTER AMENDMENTS RECOMMENDED BY THE COMMISSION

1. Public Campaign Financing

The Commission first recommends that Section 2.05 of the Charter be amended and a new Section 4.06 be added to the Charter to require adoption of a system of voluntary public financing of election campaigns for all municipal elected offices. The recommended amendments are as follows:

2.05. Campaign finance and campaign practices. The escalating cost of campaigning for elective office provides an opportunity for monied interests to control the electoral process of city government. Candidates may be encouraged to put the interests of their campaign contributors ahead of the needs and concerns of their constituents, and the passage or defeat of a measure may be skewed by monied interests to the detriment of the public interest. In order to eliminate financing inequities, conflicts of interest, and the potential for corruption inherent in this situation, the governing body shall enact such ordinances, and may appoint such commissions and take such other actions as may be necessary to make campaigns for elective office more democratic. To this end, the governing body shall facilitate voting, establish ethical standards for the conduct of campaigns, regulate lobbying of city officers and employees, provide methods of voter education that will enhance the possibility for an open, accountable and responsive campaign process, encourage broad-based contributions from the public, and require that each candidate and campaign committee for issues appoint one central committee to coordinate, control and report all financial transactions and make full and timely disclosure of all campaign contributions and expenditures. The governing body shall ~~consider the issue of financing campaigns, including public financing~~ provide for meaningful public financing of campaigns.

4.06. Public campaign financing [NEW MATERIAL]. The governing body shall adopt an ordinance or ordinances to provide for meaningful public financing of campaigns for all municipal elected officials within 2 years after the effective date of the amendment to the Charter that includes this requirement. Prior to such adoption, the governing body shall take such action as is reasonable and necessary to provide for a well-informed consideration and review of the issue of public campaign financing and to solicit public input on the substance that may be included in such an ordinance or ordinances, including, but not limited to the creation of a subcommittee, task force or similar body that will conduct public meetings, study alternative methods of public campaign financing and make recommendations to the governing body on a form of ordinance for consideration by the governing body.

The advantages of public campaign financing are well known. Among other things, it substantially eliminates (or, in the case of "partial" public financing, reduces) the influence of money on the decisions of public officials, improves public trust in the integrity of government and relieves public officials of the necessity to spend time on fund-raising which would be better spent on formulating sound public policy. In addition, offering public financing to candidates in exchange for their voluntary agreement to abide by spending limits is the only constitutional way to impose any legal limit on the burgeoning cost of political campaigns. These consid-

erations have convinced an increasing number of jurisdictions to adopt public campaign financing, including the City of Albuquerque and the State of New Mexico for elections to its Public Regulation Commission. These reasons also persuaded the Commission to adopt this recommendation by unanimous vote, and the Commission hopes the governing body will likewise be persuaded to place this measure on the ballot to allow the voters to decide whether they wish to adopt this method of campaign financing for our city elections.

The Charter amendment recommended by the Commission is phrased in general terms and, if adopted, would give the governing body broad discretion to design a system of public financing that best suits the needs of Santa Fe. The Commission does not believe that the details of the public financing system should be spelled out in the Charter, because the Charter is difficult to amend and any system the city might adopt is likely to need adjustments and refinements in the light of experience. The Commission has therefore recommended a Charter amendment which would merely require the governing body to adopt some meaningful form of public campaign financing, and would leave to the council and mayor the determination of the particular type of system to be adopted, including the resolution of such key issues as whether there should be "full" or merely "partial" public financing and how to defray the estimated \$100000-\$200000 annualized cost of publicly financed campaigns. To provide some idea of the range of different systems that might be adopted, a pair of draft ordinances embodying both a "full" and a "partial" public financing system were presented to the Commission and are available in the city attorney's office for review by the public or members of the governing body.

2. Referendum and Initiative

The Commission recommends several amendments to Sections 3.01 and 3.02 of the Charter governing popular referenda and initiatives. Most of these amendments are designed to eliminate or ease

certain restrictions in the current versions of these sections that have rendered it extremely difficult as a practical matter for citizens to exercise these forms of direct democracy. At the same time, however, the Commission also recommends retaining or in some cases expanding certain other limitations which are meant to ensure that resort to these kinds of measures will occur only in exceptional circumstances. The recommended amendments are as follows:

3.01. Referendum.

A. Right of referendum. Registered voters who are residents of the city shall have the power to repeal any adopted ordinance, except as prohibited by law or this Charter.

B. Prohibited use of referendum power. The power of referendum shall not extend to: the budget; the capital program; any ordinance ~~relating to the appropriation of~~ appropriating money; the levy of taxes, unless a referendum is specifically authorized by state law; salaries of city officers or employees; zone map amendments; ordinances authorizing bonds or other obligations when such ordinances, bonds, or other obligations are revenue bonds or have previously been approved at a city election; or any ordinance adopted in furtherance of the human and civil rights policy of this Charter; and any ordinance mandated by this Charter.

C. Approval as to form. The city clerk shall not accept for filing any referendum petition that the clerk has not approved as to form. The form of the proposed petition shall be submitted to the city clerk prior to its circulation in the city for signature. The city clerk shall indicate in writing on a proposed petition that it is approved as to form if the petition contains:

[1] a heading which states that the petition is for the purpose of referendum to repeal an ordinance, specifying which sets forth in full the title, and number of the ordinance which is the subject of the referendum, and ~~which includes~~ a brief description of the ordinance;

[2] a place for the person signing the petition to write the date, name (printed), address, and signature; and

[3] a statement that any person knowingly providing, or causing to be provided, any false information on a petition, forging a signature, or signing a petition when that person knows that he or she is not a qualified elector in the City of Santa Fe, is guilty of a misdemeanor.

D. Collection of petition signatures. The collection of the petition signatures must be in accordance with the provisions of the ordinances of the City of Santa Fe.

E. Number of signatures. A referendum petition shall be deemed sufficient if signed by qualified electors in an amount equal to twenty percent or more of the registered actual voters at the last mayoral election of the city, including ~~not fewer than~~ at least ten percent of the registered actual voters for mayor in from each council district in the last mayoral election. The city clerk shall determine the number of ~~registered actual voters at the last mayoral election either as of the date of the last regular municipal election or as of the effective date of the most recent redistricting of council districts, whichever is later.~~

F. Time for filing of petition. A referendum petition shall be filed with the city clerk not more than ~~sixty~~ ninety days following the date on which the ~~governing body voted to enact the ordinance~~ city clerk approved the petition as to form.

G. Verification of petition. Upon receipt of a referendum petition which has previously been approved as to form, the city clerk shall verify the petition in accordance with NMSA 1978 Section 3-1-5, and the city clerk and governing body shall perform the duties otherwise required by NMSA 1978 Section 3-1-5, except to the extent such provisions are inconsistent with this section of the charter.

H. ~~Effect of a verified petition.~~ ~~If a referendum petition regarding an emergency ordinance is verified, the emergency ordinance shall continue in effect pending the final outcome of the referendum process. If a referendum petition regarding any other ordinance eligible for referendum is verified, the ordinance shall be suspended pending the final outcome of the referendum process.~~

I. ~~Governing body review.~~ After a petition has been verified, the city clerk shall promptly present the referred ordinance to the governing body at its next scheduled session. The governing body shall within thirty days consider the ordinance in accordance with its established procedures for repealing ordinances. If the governing body fails to repeal the ordinance within thirty days, the governing body shall enact an election resolution for the purpose of submitting the ordinance to a vote. The governing body shall enact such election resolution at the meeting at which it fails to repeal the ordinance.

J-I. ~~Ballot presentation.~~ The ballot shall contain the full text of the ordinance as adopted by the governing body. Below the text of the ordinance shall be the words "for the ordinance" and "against the ordinance" with spaces for crosses after each phrase.

K-J. ~~Results of election.~~ In order to have a valid election, at least twenty percent of the qualified electors of the city must cast ballots. If a majority of the votes cast are in favor of the ordinance, then the ordinance shall ~~take effect immediately or continue in effect, as the case may be~~. If a majority of the votes cast are against the ordinance, then it shall be deemed repealed upon certification of the election results.

3.02. Initiative.

A. **Right of initiative.** Registered voters who are residents of the city shall have the power to propose ordinances to the governing body, except as prohibited by law or this charter.

B. **Prohibited use of initiative power.** The power of initiative shall not extend to: the budget; the capital program; any ordinance ~~relating to the appropriation of~~ appropriating money; the levy of taxes; salaries of city officers or employees; zone map amendments; ordinances authorizing bonds or other obligations when such ordinances, bonds, or other obligations are revenue bonds or have previously been approved at a city election; or any ordinance that would violate the human and civil rights policy of this charter.

C. **City attorney's opinion required.** The city attorney shall review and render and publish a public opinion as to the legality and form of any proposed ordinance before it is submitted to the governing body for consideration.

D. **Approval as to form.** The city clerk shall not accept for filing any initiative petition that the clerk has not approved as to form. The form of the proposed petition shall be submitted to the city clerk prior to its circulation in the city for signature. The city clerk shall indicate in writing on a proposed petition that it is approved as to form if the petition contains:

[1] a heading which states that the petition is for the purpose of enacting an ordinance by initiative, and which sets forth in full the text of the proposed ordinance;

[2] a place for the person signing the petition to write the date, name (printed), address, and signature; and

[3] a statement that any person knowingly providing, or causing to be provided, any false information on a petition, forging a signature, or signing a petition when that person knows that he or she is not a qualified elector in the City of Santa Fe, is guilty of a misdemeanor.

E. **Collection of petition signatures.** The collection of the petition signatures must be in accordance with the provisions of the ordinances of the City of Santa Fe.

F. **Number of signatures.** An initiative petition shall be deemed sufficient if signed by qualified electors in an amount equal to twenty percent or more of the registered actual voters in the last mayoral election of the city, including not fewer than at least ten percent of the registered actual voters for mayor in from each council district in the last mayoral election. The city clerk shall determine the number of ~~registered actual voters at the last mayoral election either as of the date of the last regular municipal election or as of the effective date of the most recent redistricting of council districts, whichever is later.~~

G. **Time for filing of petition.** An initiative petition shall be filed with the city clerk not more than ~~sixty~~ ninety days following the date on which the city clerk approved the petition as to form.

H. **Verification of petition.** Upon receipt of an initiative petition which has previously been approved as to form, the city clerk shall verify the petition in accordance with NMSA 1978 Section 3-1-5, and the city clerk and council shall perform the duties otherwise required by NMSA 1978 Section 3-1-5, except to the extent such provisions are inconsistent with this section of the charter.

I. **Governing body review.** After a petition has been verified, the city clerk shall promptly present the proposed ordinance to the governing body at its next scheduled session. The governing body shall within thirty days consider the proposed ordinance in accordance with its established procedures for enacting ordinances. If the governing body fails to adopt the initiated ordinance as proposed within said thirty days, the governing body shall enact an election resolution for the purpose of submitting the initiated ordinance to a vote. The governing body shall enact such election resolution at the meeting at which it fails to adopt the initiated ordinance.

J. **Ballot presentation.** The ballot shall contain the full text of the initiated ordinance. Below the text of the initiated ordinance shall be the words "for the ordinance" and "against the ordinance" with spaces for crosses after each phrase.

K. **Results of election.** In order for an initiative to be approved at least twenty percent of the qualified electors of the city must cast ballots. If the initiated ordinance receives a majority of the votes cast, then the ordinance is adopted. An adopted initiated ordinance shall be deemed effective upon certification of the election results, unless a later date is specified in the ordinance.

Under the current versions of these sections, proponents of a referendum or initiative are required to collect the signatures of 20 per cent of the registered voters in the city. Since the voter lists are infrequently purged and have been inflated by inclusion of the names of many departed or deceased persons, and since only about a third of the registered voters typically vote in any election, the practical effect of this provision is to require the proponents to collect signatures of approximately 60 per cent of the persons who normally vote in Santa Fe elections. This requirement seemed to the Commission to be unreasonable and to make it virtually impossible to qualify a referendum or initiative for the ballot. The Commission therefore recommends reducing the number of

required signatures to 20 per cent of the actual vote in the last previous mayoral election, which would have the effect of reducing the actual signatures required by approximately two-thirds. This would still normally require collection of over 3000 signatures, and the Commission believes that this would impose a sufficient burden on the proponents of such measures to ensure that their use would not become commonplace or susceptible to abuse.

Besides requiring an unrealistic number of signatures, these sections presently impose various additional obstacles which have contributed in one way or another to making referenda and initiatives unavailable to the citizenry as a practical matter under the current Charter. The Commission accordingly recommends certain further amendments to these sections that would remove these obstacles. First, it is recommended that the period within which the proponents of such measures may collect signatures should be extended from 60 days to 90 days, which the Commission believes is a more realistic length of time for collecting such a large number of signatures. Secondly, the Commission recommends deleting the prohibition against using such measures to enact or repeal ordinances "relating to the appropriation of money," a phrase which could be construed to cover almost anything, and substituting a more specific prohibition covering only ordinances actually "appropriating money." Finally, the Commission recommends deletion of the requirement that a petition for a referendum to repeal an ordinance must be signed by the requisite number of voters and filed with the city clerk within 60 days of the date the ordinance was adopted. The Commission saw no reason why the right of referendum should be arbitrarily confined to recently enacted ordinances and should not be available to repeal any ordinance which the voters may decide is no longer in the public interest. The Commission believes that these several changes are necessary to give practical meaning to these important rights of the citizenry, and it therefore urges the

governing body to present these amendments to the voters for adoption.

The remaining amendments recommended by the Commission to the sections governing referenda and initiatives are intended to remedy miscellaneous additional problems that the Commission perceived in the current versions of these sections. First, since some voters may not know the meanings of the words "referendum" and "initiative," the Commission recommends that the petition and ballot for a referendum should be required to state explicitly that its purpose is "to repeal an ordinance," and that the petition and ballot for an initiative should likewise have to state that its purpose is "to enact an ordinance." Secondly, it is recommended that the list of prohibited subjects of referenda be expanded to include "any ordinance mandated by this Charter," because there is no reason that the citizenry should have any greater right than the governing body to contravene the Charter unless they have first voted to amend it. Finally, the Commission recommends deleting the provision requiring the suspension of a challenged ordinance upon the filing of a referendum petition, because it was felt that an ordinance should remain in effect until the electorate has actually voted to repeal it, and that the mere filing of a petition signed by a minority of the voters should not be deemed sufficient by itself to suspend its operation.

3. Recall

The Commission recommends only two changes in Section 3.03 of the Charter governing the recall of elected officials. These changes are: (1) an extension from 60 to 90 days of the period within which signatures may be gathered on a petition for recall, and (2) a change in the required number of signatures from 20 per cent of the registered voters to 33-1/3 per cent of the actual voters in the last mayoral election, either city-wide in the case of recall of a mayor or in the councilor's district in the case of re-

call of councilor. The specific recommended amendments are as follows:

3.03. Recall.

A. **Right of recall.** Registered voters who are residents of the city or residents of the district from which a councilor was elected shall have the right to recall certain elected officials in accordance with the procedures set forth in this section.

B. **Officials subject to recall.** The mayor and city councilors shall be subject to recall.

C. **Prohibited use of recall power.** No elected official shall be subject to a recall election within the first year of each term of office or within the last year of each term of office.

D. **Number of recall elections.** No elected official shall be subject to a recall election more than one time during each term of office.

E. **Approval as to form.** The city clerk shall not accept for filing any recall petition that the clerk has not approved as to form. The form of the proposed petition shall be submitted to the city clerk prior to its circulation in the city for signature. The city clerk shall indicate in writing on a proposed petition that it is approved as to form if the petition contains:

[1] a heading which states that the petition is for the purpose of recall, which sets forth in full the name of the official recall is sought against and the reasons for the recall;

[2] a place for the person signing the petition to write the date, name (printed), address, and signature: and

[3] a statement that any person knowingly providing, or causing to be provided, any false information on a petition, forging a signature, or signing a petition when that person knows that he or she is not a qualified elector in the City of Santa Fe, is guilty of a misdemeanor.

F. **Collection of petition signatures.** The collection of the petition signatures must be in accordance with the provisions of the ordinances of the City of Santa Fe.

G. **Number of signatures.**

[1] **For mayor.** A recall petition shall be deemed sufficient if signed by qualified electors in an amount equal to thirty three and one third ~~twenty~~ percent or more of the registered actual voters at the last mayoral election of the city, including ~~not fewer than ten~~ at least fifteen percent of the registered actual voters for mayor from each council district. The city clerk shall determine the number of registered actual voters for mayor in each district either as of the date of the last regular municipal election or as of the effective date of the most recent redistricting of council districts, whichever is later.

[2] **For councilor.** A recall petition shall be deemed sufficient if signed by qualified electors in an amount equal to thirty three and one third ~~twenty~~ percent or more of the registered actual voters at the last mayoral election in ~~of~~ the district from which the councilor was elected. The city

clerk shall determine the number of ~~registered~~ actual voters in the district at the last mayoral election ~~either as of the date of the last regular municipal election or as of the effective date of the most recent redistricting of council districts, whichever is later.~~

H. **Time for filing of petition.** A recall petition shall be filed with the city clerk not more than ~~sixty~~ ninety days following the date on which the city clerk approved the petition as to form.

I. **Verification of petition.** Upon receipt of a recall petition which has previously been approved as to form, the city clerk shall verify the petition in accordance with NMSA 1978 Section 3-1-5, and the city clerk and council shall perform the duties otherwise required by NMSA 1978 Section 3-1-5, except to the extent such provisions are inconsistent with this section of the charter.

J. **Governing body review.** After a petition has been verified, the city clerk shall promptly present the recall petition to the council at its next scheduled session. The council shall enact an election resolution for the purpose of submitting the recall to a vote.

K. **Ballot presentation.** The ballot shall contain the full name of the elected official subject to recall. Below the name shall be the words "for the recall" and "against the recall" with spaces for crosses after each phrase.

L. **Results of election.** In order for a recall of the mayor to be approved, at least twenty percent of the qualified electors of the city must cast ballots. In order for a recall of a councilor to be approved, at least twenty percent of the qualified electors of that councilor's district must cast ballots. Additionally, the number of persons voting for the recall of the mayor or councilor must exceed the number of votes the official received when elected. If a majority of the votes cast are in favor of recall, and the number of votes cast meets the foregoing criteria, the official shall be recalled.

As in the case of initiatives and referenda, the Commission believes it is preferable to state signature requirements for recall petitions as a percentage of actual voters in recent elections rather than as a percentage of registered voters, because the number of registered voters is approximately triple the number of persons who actually vote in our elections and includes many deceased and departed voters who should long since have been purged from the rolls. The Commission is also of the view that the present requirement of signatures of 20 per cent of the registered voters, like the identical requirement for initiatives and referenda, is virtually impossible to satisfy and must therefore be reduced if the citizens' right to recall elected officials is not to remain a practical nullity. The Commission does not, however, recommend a

reduction in the number of signatures of quite the same magnitude as the reduction it has recommended in the signatures required for initiatives and referenda, because the Commission believes that recalling an elected official should be significantly more difficult than enactment or repeal of ordinances by the citizenry.

The Commission is accordingly recommending that the required number of signatures on a recall petition should be changed from 20 per cent of the registered voters to 33-1/3 per cent of the actual voters in the last mayoral election in the area (the entire city or a single council district) from which the official was elected. Since registered voters are three times more numerous than actual voters, this amounts to an effective 44 per cent reduction in the number of required signatures. Although this is less substantial than the 66-2/3 per cent reduction that the Commission is recommending in the number of signatures required for initiatives and referenda, the Commission believes that such a 44 per cent reduction would be sufficient to make the recall procedure practically accessible to the citizens. At the same time, this reduction would not, in the Commission's view, make this procedure so easily available as to give rise to frivolous or vexatious recall campaigns. In the case of a recall of the mayor, for example, adoption of the Commission's recommendation would mean that proponents of a recall would have to collect more than 5000 signatures to place the recall on the ballot, a sufficiently high number to confine the use of this procedure to rare and serious situations.

Besides reducing the number of necessary signatures on the petition, the Commission also recommends enlarging from 60 to 90 days the time allowed for the proponents to collect signatures. This is the same change that the Commission is recommending for initiative and referendum petitions, and has the same justification - namely, to alleviate one of the several obstacles which have heretofore

made it practically impossible for the citizens to utilize these tools of popular democracy under the present Charter.

4. Nominating Petitions.

The Commission recommends that the number of signatures required by Section 4.03 of the Charter to nominate candidates for municipal office should be restated as a percentage of actual voters instead of a percentage of registered voters. The recommended amendment is as follows:

4.03 Nominating Petitions

A. For mayor and municipal judge. Any person wishing to be a candidate for the office of mayor or municipal judge shall file with the city clerk a nominating petition containing the signatures of qualified electors in an amount equal to at least one and one-half of one percent of the registered actual voters of the city in the last mayoral election.

B. For councilor. Any person wishing to be a candidate for the office of councilor shall file with the city clerk a nominating petition containing the signatures of qualified electors in an amount equal to at least one and one-half of one percent of the registered actual voters of for council candidates at the last election in the district, which the candidate seeks to represent.

C. Number of registered actual voters. The city clerk shall determine the number of ~~registered actual voters of in the city and of in each council district~~ registered actual voters of in the city and of in each council district at the last mayoral and council elections as of the date of the election proclamation.

The reason for this change is the same problem of inflated voter lists that was mentioned above. In this instance, however, the Commission did not wish to change the actual number of signatures that would have to be collected. Therefore, since about a third of registered voters actually vote in a typical election, the Commission recommends restating the required percentage of voters' signatures as a percentage of actual voters rather than registered voters, but at the same time tripling the required percentage, with the result that the number of signatures actually required would remain substantially the same as before.

5. Ranked-Choice Voting

The Commission recommends that the city add a new Section 4.07 to Article IV of the Charter adopting the system of voting and

counting votes variously known as "ranked choice," "instant runoff" and "single transferable vote." The new section would read as follows:

4.07. Ranked-choice balloting [NEW MATERIAL]. Commencing with the general municipal election in March 2010 and at all subsequent elections, the mayor, city councilors and municipal judge shall be elected using a ranked choice (sometimes called instant runoff) voting system allowing voters to rank in order of their preference the candidates for each office appearing on the ballot. If, after counting all voters' first choice listed on their ballots for an office, no candidate receives a majority of votes cast, the candidate with the fewest votes shall be eliminated. Each ballot shall be tallied again for that office counting the vote from each ballot for the highest ranked candidate who has not been eliminated. If still no candidate for that office receives a majority, the process shall be repeated until a candidate receives a majority of the votes for that office.

The Commission believes that it is desirable to avoid situations in which officials are elected to office by a minority of the electorate, which can occur and have commonly occurred under the present plurality voting system. There are two ways to prevent this outcome and to ensure instead that all elected officials will have received the support of a majority of voters. One is to conduct a second election, a runoff, some months after the first election, in which only the top two vote-getters from the first election are allowed to run. The other is to utilize the system of voting and vote-counting called "ranked choice." In this system, the voters are allowed to rank all the candidates on the ballot in the order of their preference, and the votes are then counted in a series of rounds in which the candidate receiving the least number of votes is eliminated in each round and the ballots cast for that candidate are then reallocated to the remaining candidates who are ranked next on those ballots, until one candidate finally receives a majority of the votes. Except in very unusual situations, the result will be the same one that would have been produced by the conduct of a runoff election, but without the substantial delay or sizable additional expense to both the city and the candidates that a later runoff election would entail.

Although the Commission considered recommending that both of these methods - that is, traditional runoffs and ranked-choice voting - be presented to the voters for them to choose between the two, it ultimately decided by a divided vote that it was preferable to make a single recommendation in favor of ranked choice. The majority of the commissioners were concerned, first of all, about the difficulty and potential confusion that would have arisen in presenting to the voters a pair of alternative and mutually exclusive proposals on the same issue. Second, they were convinced that, in any event, the ranked-choice system is so clearly superior to traditional runoffs in terms of reducing the cost and expediting the outcome of elections that further consideration of traditional runoffs made little sense. Ranked-choice voting is being adopted by an increasing number of local jurisdictions (four more, including St. Paul and Oakland, within the last year) and has worked well in the cities where it has actually been used in elections. The Commission is hopeful that the governing body will give the voters the opportunity to add Santa Fe to this growing list.

The Charter amendment recommended by the Commission does not prescribe detailed procedures for implementing ranked-choice voting, but would instead leave it up to the governing body to adopt appropriate ordinances resolving such issues as ballot design, the manner and timing of counting the votes and the procedure for resolving tie votes that may occur during the rounds of counting. The Commission does not believe that provisions governing such matters should be included in the Charter, since these may need periodic refinements and the Charter cannot be modified except by holding an election.

A question has been raised concerning the constitutionality of this system of voting under the provisions of Art. VII, §5, of the New Mexico Constitution governing the conduct of municipal elections. The Commission does not believe it has the authority to

render legal advice to the governing body and therefore expresses no view on this question. If the governing body finds this recommendation otherwise appropriate and wishes to submit it to the voters for their approval, the city attorney will eventually be called upon to render a formal opinion on the constitutionality of this proposal pursuant to Section 10.02 of the Charter, which provides that "[t]he city attorney shall review and render and publish a public opinion as to the legality and form of any proposed charter amendment before it is submitted to the voters."

6. Powers and Duties of the Mayor

The Commission recommends that Section 5.01 of the Charter, defining the powers and duties of the mayor, should be amended to permit the mayor to vote, not only to break a tie among the councilors, but also in all other cases where his or her vote is necessary to reach the number of votes required by law for the governing body to take action on any issue. The recommended amendment is as follows:

5.01. Powers and duties. The city shall have a mayor who shall:

- A. be elected at large by the voters of the city;
- B. vote only in the case of a tie or when his or her vote will provide the necessary number of votes required by law for taking action on an issue before the governing body;
- C. be the chief executive officer of the city;
- D. appoint and remove, subject to the approval of the governing body, the city manager, city attorney, city clerk, and members of advisory commissions;
- E. cause the ordinances and regulations of the city to be faithfully and constantly obeyed;
- F. have, within the city limits, the power conferred on the sheriffs of counties to suppress disorders and keep the peace;
- G. propose programs and policies to the governing body;
- H. represent the city in intergovernmental relationships;
- I. present an annual state of the city message;

J. perform other duties compatible with the nature of the office as the governing body may from time to time require;

K. be recognized as head of the city government for all ceremonial purposes; and;

L. be recognized by the governor for purposes of military law.

In the course of its deliberations, the Commission considered many proposals for expanding or otherwise modifying the powers and duties of the mayor. In the end, however, the only proposal that could command a majority vote among the commissioners was the amendment now being proposed to permit the mayor to vote whenever this is necessary to produce the number of votes that are legally required for taking action on certain issues. There are situations in which some statute or ordinance requires a certain number of votes on the governing body, beyond a simple majority of those present and voting, to reach a decision on certain matters, and the required number of votes sometimes cannot be reached unless the mayor is permitted to vote (see, e.g., §3-21-8(C) NMSA 1978). The Commission believes it makes eminent sense to permit the mayor to vote in all these situations, and it accordingly recommends to the governing body that it place the proposed amendment to this effect on the ballot for approval by the voters.

7. Eligibility of Candidates for Municipal Judge

Finally, the Commission recommends amending Sections 7.03 and 7.05 of the Charter to require that the municipal judge be a member of the New Mexico State Bar and remain a member of the bar in good standing throughout his or her tenure on the bench. The recommended amendments are as follows:

7.03. Eligibility. ~~Registered voters~~ Licensed members of the New Mexico Bar who reside in the city shall be eligible to run for the office of municipal judge.

7.05. Vacancy in office. The office of a municipal judge shall become vacant upon the judge's death, resignation, termination of residency in the city or membership in the New Mexico Bar, or removal from office in any manner authorized by law. In case of such vacancy, the mayor with

the consent of the governing body shall within thirty days appoint a person who meets the eligibility requirements for the office of municipal judge to serve until the end of the unexpired term of that municipal judge.

The Commission devoted more time to this issue than any other, discussing it during most of two meetings and hearing presentations on the subject from both the current municipal judge and the executive director of the New Mexico Judicial Standards Commission. The information presented convinced the Commission that - although there have been some excellent non-lawyer judges and although judges with law degrees are by no means immune from mistakes - the likelihood of serious errors and miscarriages of justice, including wrongful deprivations of personal liberty, increases very substantially when the judge is not a lawyer. The Commission therefore concluded that a requirement that the municipal judge be a licensed attorney would ensure a permanent improvement in the quality of justice administered by our municipal court, and accordingly voted 5 to 1 to recommend adding such a requirement to the Charter. The Commission hopes that the governing body will share its view of the importance of this requirement as a guarantee of fairness and legality in the proceedings of the municipal court.

In the course of the Commission's deliberations a question was raised whether requiring candidates for municipal judge to be members of the bar would be constitutional under the "Qualifications Clause" (Art. VII, §2) of the New Mexico State Constitution, which provides that "Every citizen of the United States who is a legal resident of the state and is a qualified elector therein, shall be qualified to hold any elective public office except as otherwise provided in this constitution." It was noted that the only court decision ever to mention the issue has affirmed in dicta that cities have been given "the authority to establish the qualifications of municipal court judges," and further that the City of Las Cruces has required its municipal judges to be members of the bar for some

time without any challenge to this requirement. See *Tsiosdia v. Rainaldi*, 89 N.M. 70, 73 (N.M. 1976). Since the Commission has no authority to give legal advice, it expresses no view on this issue, on which the governing body would in any event have to seek a formal opinion from the city attorney pursuant to Section 10.02 of the Charter before the issue could be presented to the voters.

PROPOSALS CONSIDERED BUT NOT RECOMMENDED BY THE COMMISSION

As noted earlier, the Commission considered a number of proposed Charter amendments which it ultimately decided not to include among its recommendations. In many cases, it was evident that the proposal had no significant support on the Commission, and it was therefore rejected without much discussion. In the list of these rejected proposals that follows, the reasons for the Commission's decision are noted only to the extent these were revealed by the debate among the commissioners.

1. Mayoral veto. Since there is no precedent for a member of a legislative body to have a veto power over its enactments, adoption of a mayoral veto would have entailed removal of the mayor from the governing body and, in order to forestall tie votes, the addition or subtraction of a council seat. In the absence of any showing of a compelling need for such a major revolution in city government, the Commission concluded by consensus that this proposal should be rejected.

2. At-large election of some councilors. The Commission felt that this proposal likewise would have effected too great a change in city government to justify its adoption without some showing of clear necessity, which was not presented to the Commission.

3. Grounds and prerequisites for recall. The Commission briefly considered but voted unanimously to reject a suggestion that the city adopt the same rules and procedures for recalling elected officials that are prescribed for county officials by Article X §9 of the New Mexico Constitution, which permits recall only for "malfea-

sance or misfeasance in office or violation of the oath of office" and requires a finding of "probable cause" by a district court before a recall petition can be circulated.

4. Recall for "fraud" within one year of election. The Charter does not permit recall of an elected official within one year of his or her election. A suggestion was made that there be an exception to this prohibition for cases in which an official has committed "fraud" during his or her election campaign. The Commission was of the unanimous view that the impossibility of clearly defining such "fraud" rendered this proposal impractical.

5. Mayor's power of appointment. The Commission considered a proposal to expand the mayor's power of appointment to encompass all municipal employees and all members of boards, committees and commissions, but ultimately decided by a divided vote to recommend no change in the current Charter provision, which gives the mayor the power to appoint only the city manager, the city attorney, the city clerk and members of boards and commissions that are "advisory" in nature.

6. Mayor's right to vote. As noted above, the Commission approved a recommendation that the mayor be allowed to vote, not only to break a tie on the governing body, but also in all cases where his or her vote is necessary to reach the number of votes required by law for the governing body to take action on an issue. The Commission decided by a divided vote to reject a broader proposal that the mayor be allowed to vote on all issues coming before the governing body.

7. The governing body's power to fire the city manager without the concurrence of the mayor. The Commission rejected by voice vote a proposal to recommend doing away with this power and substituting a requirement that both the mayor and the council must concur in any decision to fire the city manager.

8. Term limits. The Commission initially voted 6 to 1 to recommend imposing a limit of two consecutive terms on the mayor and councilors and to allow current incumbents who have already served two terms to run for only one additional consecutive term. The Commission was subsequently advised, however, that the New Mexico Court of Appeals had already squarely held that term limits for municipal officers are unconstitutional under the "Qualifications Clause" of the New Mexico Constitution. *Cottrell v. Santillanes*, 120 N.M. 367 (N.M.App. 1995). Since there was therefore no chance that term limits could be validly adopted in Santa Fe, the Commission voted unanimously to remove this item from its recommendations to the governing body.

9. Charter amendments by the governing body. The Commission considered and rejected by consensus a proposal to allow the Charter to be amended by a two-thirds vote of the governing body.

10. Initiatives proposed by the governing body. A proposal to recommend allowing the governing body to place initiatives on the ballot was rejected by consensus based on the Commission's belief that the governing body has the power to enact any ordinance it wishes to enact and that, in any event, any councilor wishing to place an initiative on the ballot has the right to do so by circulating a petition in the same manner as any other citizen.

11. Mandatory disclosure of sponsorship of signature gatherers. There was a proposal to recommend adoption of a Charter amendment that would require all persons gathering signatures for initiatives, referenda, recalls or nominations of candidates to disclose the persons or organizations sponsoring their efforts. Some commissioners expressed doubt about the constitutionality of such a requirement, and the Commission eventually decided by consensus that this was a subject that should best be addressed in the Campaign Code rather than the Charter.

12. Choice of traditional runoffs or ranked-choice voting. As mentioned earlier, during the course of the Commission's deliberations on its recommendation to amend the Charter to require ranked-choice voting in all city elections, the Commission decided by a divided vote to reject an alternative proposed recommendation that the voters be asked to express a choice between traditional runoffs and ranked-choice voting. The majority of the Commission was of the view, as noted, that this potentially confusing alternative proposal was not warranted in light of the clear superiority of ranked-choice voting over traditional runoffs with respect to both overall cost and time saved in deciding the outcome of elections.

13. Date of municipal elections. A motion to recommend amending the Charter to require municipal elections to be held in September or October instead of March was tabled indefinitely by a 6 to 1 vote of the Commission.

14. Miscellaneous proposals. Several proposals for technical improvements in certain provisions of the Charter were rejected by consensus based on a belief that, although potentially meritorious, they were not sufficiently important to justify lengthening the ballot and distracting the voters with such relatively minor matters. These included proposals (1) to reconcile the language of Sections 5.01(d) and 8.03(b) regarding the appointment powers of the mayor and city manager; (2) to amplify the description of the emergency powers of the mayor in Sections 5.01(F)-(L); (3) to require that the mayor's annual state-of-the-city message mandated by Section 5.01(I) be delivered orally; (4) to conform the language of certain sections of the Charter referring to the need for the governing body to give its "approval" to certain actions of the mayor with the slightly different language in other sections requiring the governing body's "advice and consent" to such actions; (5) to add provisions to the Charter governing removal of the mayor pro tem or replacement of the mayor pro tem in the event of a vacancy

in that office; and (6) to recommend adding to Section 11.02, which imposes a one-year time limit on the enactment of ordinances mandated by the original Charter, a provision imposing a similar time limit on ordinances mandated by subsequent amendments to the Charter.

CONCLUSION

All of the members of the Commission are grateful to the governing body for the opportunity they have been given to serve on this important advisory body. The commissioners hope the governing body will give a sympathetic hearing to their recommendations, all of which are the product of extensive reflection and discussion. Finally, the Commission invites the members of the governing body to request the Commission's assistance in answering any questions they may have about its recommendations or in undertaking further review of any matters the governing body feels would benefit from additional consideration.

January 24, 2007

City of Santa Fe Charter Review Commission

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