



# AGENDA

CHARTER REVIEW  
COMMISSION  
APRIL 27, 2023  
5:00 PM  
COUNCIL CHAMBERS, CITY  
HALL  
200 LINCOLN AVENUE

---

## PROCEDURES FOR CHARTER REVIEW COMMISSION MEETING

**Viewing:** Members of the public may view the meeting on the City of Santa Fe's YouTube channel at <https://www.youtube.com/user/cityofsantafe>. The YouTube live stream can be accessed at this address from most smartphones, tablets, or computers.

The video recording of this meeting of the Charter Review Commission will also remain available for viewing at any time on the City's YouTube channel at <https://www.youtube.com/user/cityofsantafe>. Staff is available to help members of the public access pre-recorded Charter Review Committee Meetings meetings online at any time during normal business hours. Please call 955-6521 for assistance.

**Virtual Viewing:** To attend the meeting virtually, you must join the Zoom meeting by internet or phone, as follows:

Internet: To join the Zoom meeting on the internet using a computer, laptop, smartphone, or tablet, use the following link: <https://santafenm.gov.zoom.us/j/88392116633>

Phone: To join the Zoom meeting using a phone, use the following phone numbers and Webinar ID: **US: 1 (346) 248-7799 - Webinar ID: 883 9211 6633**

1. **CALL TO ORDER**
2. **ROLL CALL**

3. **APPROVAL OF AGENDA**

4. **APPROVAL OF MINUTES**

- a. Minutes from April 13, 2023, Charter Review Commission Meeting.

5. **PRESENTATION**

6. **PUBLIC COMMENT**

- a. Public comment.

Written public comment is also welcome. Click [here](#), then find commenting to the right of the current meeting of the Charter Review Commission.

- b. Comments from councilors.

7. **ACTION ITEMS: DISCUSSION**

- a. Consideration of Proposals by Subcommittee on Governance Issues and Financial Audit

A. The appropriate number of city council districts.

B. The appropriate number of city councilors per district

C. Whether a city councilor who has lost a campaign for mayor [should be permitted to] remain in office after the inauguration of a new mayor.

D. Whether the Charter should dictate the City's Board and Commission organization.

E. Whether the City's mayor should have a purely executive role, rather than both legislative roles and, if so, what new rights and limitations should be adopted along with such a separation of powers.

F. Whether councilors should be full-time.

G. Whether the roles of the mayor, councilors, and city manager should be better defined and, if so, how.

H. Whether the Charter should address additional financial management matters.

I. Whether the Charter's requirements for the public rights of referendum and initiative should be modified.

J. Whether the Charter's requirements for recall should be modified.

K. Whether the City shall commit to assuring that all quasi-judicial proceedings shall adhere to the concepts of due process of law and fundamental fairness, as applied to both applicants and members of the community.

b. Consideration of Proposals by Subcommittee on Human Rights and Social Issues

A. Whether the Human and Civil Rights policy statement should be more specific with regard to the breadth of required protections and/or the manner in which such rights should be protected.

B. Whether the Charter should provide protections for agriculture.

C. Whether the Charter should allow voting beginning at age 16 in municipal elections.

D. Whether all bodies of city government, including those established as advisory in nature, such as committees, commissions, special committees, task forces, etc., should comply with the State's Open Meeting Act.

c. New Topics for Consideration by the Commission

d. New Charter Review Meetings

A. Council Chamber Meeting Options: May 2 at 12 pm or 4 pm or May 3 at 12 pm or 3 pm.

B. Virtual Meeting Options: Request for Approval for the Finding that it is in the Best Interest of the Public for the Charter Review Commission to

Conduct Charter Review Commission Meetings May 3 and/or May 8.

8. **MATTERS FROM STAFF**
9. **MATTERS FROM THE COMMITTEE**
10. **MATTERS FROM THE CHAIR**
11. **NEXT MEETING: Wednesday, May 3, 2023 (See Item 7d.)**
12. **ADJOURN**

**CHARTER REVIEW COMMISSION  
APRIL 13, 2023, 5:00 PM  
CITY HALL, COUNCIL CHAMBERS  
SANTA FE, NEW MEXICO**

**1. CALL TO ORDER**

The meeting of the Charter Review Commission was called to order by Nancy Long, Chair, on April 13, 2023, at 5:00 pm at City Hall, in the Council Chambers, Santa Fe, New Mexico.

**2. ROLL CALL**

**MEMBERS PRESENT**

Alba Blondis  
Paul Dirdak  
Bridget Dixon  
John Paul Granillo  
Peter Ives  
Lilliemae Ortiz  
Maria Perez  
Nancy Long, Chair

**MEMBERS ABSENT**

**OTHERS PRESENT**

Erin McSherry, City Attorney  
Marcos Martinez, Senior Assistant City Attorney  
Pat Feghali, Assistant City Attorney  
Marci Eannario, Manager, Policy and Legislative Innovation  
Councilor Carol Romero-Wirth  
Councilor Jamie Cassutt  
Councilor Signe Lindell  
Adam Fulton Johnson, OSFA  
Hilario Romero  
Elizabeth Martin, Stenographer

Chair Long asked Commissioner Ives to conduct the meeting as she was attending virtually.

### 3. APPROVAL OF AGENDA

**MOTION** A motion was made by Commissioner Ortiz, seconded by Commissioner Montoya, to approve the agenda as presented.

**VOTE** The motion passed on a voice vote.

### 4. APPROVAL OF MINUTES

#### A. MINUTES FROM THE MARCH 30, 2023 CHARTER REVIEW COMMISSION MEETING

Commissioner Ortiz complimented Ms. Martin on capturing what everyone says in the minutes.

**MOTION** A motion was made by Commissioner Ortiz, seconded by Commissioner Granillo, to approve the minutes as amended.

**VOTE** The motion passed on a voice vote.

### 5. PUBLIC COMMENT

#### A. PUBLIC COMMENT

**Adam Fulton Johnson, 121 Arroyo Hondo Trail.** Mr. Johnson said he is here to speak to quasi-judicial issues regarding public comment. The subcommittee's recommendation is that the City Council review and instruct the process through the Chapter 14 revisions to use the code intact. That is a good course of action. His request is that you take the next step and put language to that effect in the Charter. The Charter Commission is better situated to address this issue rather than the Land Use consultant. Why not apply the language to the Charter and do it immediately. He would also like to note that regarding the issue of public participation, only two have participated. He encountered technical hiccups in participating. He has issues with the portal for this meeting as well. He wants to flag that for you. The issue of public participation is that this has not been publicized enough for the public to be aware. He appreciates all of your work and for your consideration of his viewpoints.

**Steven Fox.** Mr. Fox said he started a branch of the United Nations in Santa Fe. He is happy to see diligent City Councilors here tonight. He spoke to United Nations issues.

## B. COMMENTS FROM COUNCILORS

Councilor Romero-Wirth thanked the Commission for the opportunity to comment, saying, she would like to share a couple of thoughts with them. For the last Commission, she had the pleasure of sitting in your seats. Thank you for your service and the work you are putting into this. She would like to share with you, from that experience, some of the thoughts we had at the time and how we arrived where we are with our current governance structure and encourage you to think about the structure and consider the governance structure without regard to the current personalities serving. Also she would like to share with you that when we proposed, and the voters agreed, a full time Mayor it was because of the experience that City government had been pulled in different directions. We, with this structure, were trying to correct that lack of a charted course. We were not doing the things we needed to do in government to move forward with current technologies. She encourages you to keep with that path and take the future Mayor off of the Council all together and give that Mayor a veto authority. Albuquerque has a model similar to this. The Council there elects a Chair from their members. The Mayor functions as a true Executive Officer in a true way. She heard that you would be hearing from Councilors this afternoon and wanted to share those thoughts with you and her experience. Also her intention is to bring back a Resolution with other Councilors to bring back an Office of Equity and Inclusion. We want to go forward with that. What it looks like and how we do it is something we are talking about. Maybe we can start small internally. Will there be an addition of an office with a budget of \$700,000, probably not. We will come back with recommendations. It may take a little longer than your window of opportunity for your work. Thank you for your service. She appreciates the work you are doing.

Councilor Lindell said she has a couple of things to speak about. One is on elections and how the terms go for Councilors in their elections. Specifically Councilors that run for Mayor while being a sitting Councilor. Her belief is that if a sitting Councilor decides to run for Mayor they should give their seat up. The way it is structured now, there are two classes of Councilors. Elections are every four years and our terms are two years. Some Councilors can run for Mayor and not give up their seat. There are other Councilors who have to give up their seat because they cannot run for two things at a time. She served with Councilor Ives and he ran against Mayor Webber and he retained his seat. He was a perfect gentleman. She has seen other Councilors who ran for Mayor and did not win and presented every roadblock possible to the next administration. Starting a new administration is extremely hard. They don't need to have a Council working against them. The other side of that is a Councilor who runs and wins. Then their seat is vacant. They then get to appoint a person to their seat. That does not seem right to her either. She is uncomfortable with it. She wishes this Commission would give deep consideration to what that means to incoming administrations. She has seen two new administrations, one very smooth and the other did not have nearly the cooperation from the get go that they deserved. Her other item is what she read in the *Reporter* this week. She thinks some of the items she has seen being considered by the Commission are not within the purview of the Commission.

One being a Charter addition on the protection of agriculture. She was here when we went through a long process with a garden in the past. Our Land Use Department and the Director spent an inordinate amount of time dealing with a gardening situation that was illegal and unreasonable to a neighborhood and misused water. She doesn't think the issue of agriculture is within the purview of the Charter. These are policies that the Council can choose to pick up and make comments on. She has very strong feelings about giving a new administration every opportunity to go forward, but not having the opportunity to stack the deck and appoint Councilors. Thank you for the work you do. Thank you Chair Long and Councilor Ives for letting her speak.

Councilor Cassutt said thank you Chair Long and Commissioner Ives for serving on a really important Commission and really considering the structure of government. The three of us were involved in writing the Resolution establishing this Commission. As Councilor Romero-Wirth discussed, looking at our government structure is interesting. There is a component of looking at the balance of power and looking at how to separate the Legislative and Executive branches and provide more opportunities for interaction between the two in order to get things done. Although there has been improvement we still come to the place where we need to find five votes. She would like to see that massaged for clarity and for the opportunity for City Council to have more power. She would like to look at where Council can exert their power. Over the last three years, there have been moments of authority questions. We need that clarity. Is it allowed to be done by Council. Is it allowed to be done by the Mayor. It would likely add to the workload of a Councilor. As one of the Councilors who does not have another paid job, other than a 4 ½ year old, she is constantly behind anyway. Whether it is a matter of making this a full time paid job and or providing staff to the Council so the Council has the ability to analyze legislation and make sure we are making sound decisions in our proposals. We need to truly understand the implications and impact. It is something to look at. The conversation about a Councilor giving up their seat, she is one of the Councilors elected in off years. She thinks there is a concern in how that seat is replaced by a Councilor who won for Mayor and the public not having a say in who will represent them for the next two years. If you have any questions on the items we put forward please feel free to reach out. She appreciates your work.

Commissioner Ives said thank you all for attending this evening and speaking to us. Thank you to the members of the public as well.

## **6. ACTION ITEMS: DISCUSSION**

### **a. CONSIDERATION OF PROPOSALS BY SUBCOMMITTEE ON GOVERNANCE ISSUES AND FINANCIAL AUDIT**

#### **A. THE APPROPRIATE NUMBER OF CITY COUNCIL DISTRICTS**

#### **B. THE APPROPRIATE NUMBER OF CITY COUNCILORS**

- PER DISTRICT**
- C. WHETHER A CITY COUNCILOR WHO HAS LOST A CAMPAIGN FOR MAYOR (SHOULD BE PERMITTED TO) REMAIN IN OFFICE AFTER THE INAUGURATION OF A NEW MAYOR**
  - D. WHETHER THE CHARTER SHOULD DICTATE THE CITY'S BOARD AND COMMISSION ORGANIZATION**
  - E. WHETHER THE CITY'S MAYOR SHOULD HAVE A PURELY EXECUTIVE ROLE, RATHER THAN BOTH LEGISLATIVE ROLES AND, IF SO, WHAT NEW RIGHTS AND LIMITATIONS SHOULD BE ADOPTED ALONG WITH SUCH A SEPARATION OF POWERS**
  - F. WHETHER COUNCILORS SHOULD BE FULL-TIME**
  - G. WHETHER THE ROLES OF MAYOR, COUNCILORS, AND CITY MANAGER SHOULD BE BETTER DEFINED, AND IF SO, HOW**
  - H. WHETHER THE CHARTER SHOULD ADDRESS ADDITIONAL FINANCIAL MANAGEMENT MATTERS**
  - I. WHETHER THE CHARTER'S REQUIREMENTS FOR PUBLIC RIGHTS OF REFERENDUM AND INITIATIVE SHOULD BE MODIFIED**
  - J. WHETHER THE CHARTER'S REQUIREMENTS FOR RECALL SHOULD BE MODIFIED**
  
  - K. WHETHER THE CITY SHALL COMMIT TO ASSURING THAT ALL QUASI-JUDICIAL PROCEEDINGS SHALL ADHERE TO THE CONCEPTS OF DUE PROCESS OF LAW AND FUNDAMENTAL FAIRNESS, AS APPLIED TO BOTH APPLICANTS AND MEMBERS OF THE COMMUNITY**

Commissioner Dirdak said thank you Councilors and Mr. Johnson. It is fortunate that the item he is reporting on comes right after hearing from all of you. He wants to refer the Commissioners to the piece we started writing six or seven weeks ago. It has gone through several versions. Posted is version 13. That is not to say version 14 isn't in draft form depending on the outcome of this meeting. In version 13 you will notice at last meeting we looked at version 12 and a long list of notes on amendments that we discussed. The marginal notes in version 13 are also voluminous. The questions in the right hand margin are new. We attended to each of them and adjusted as we thought we should. Turning to the comments we just heard from the Councilors, he does not know the accepted protocols. He will refer to Commissioner Ives for process. If he is reporting on something one of the Councilors just discussed can we be informal and ask the person to come to the microphone and enter into conversation with him.

Ms. McSherry said we need to refer to Roberts Rules for that. We don't have public hearing rules for this Commission. Whatever we do now we will need to be consistent.

Commissioner Dirdak said his first presentation item, commented on by Councilor Romero-Wirth, was discussed as long as six weeks ago when we began drafting the document in consideration now. We saw the referral from the Council to look at separation of powers. 10 items were referred to us. Two were carbon copies. We considered both together and began by noticing that as the Charter had been written, its organization of topics and sequence seemed to lend itself to confusion. It describes the duties of the Mayor at length and then has a short description of the duties of the Council and then a short discussion of the duties of the City Manager. When powers are to be balanced they need to be separated. If separated, how are they balanced. You cannot be effective without balancing one with the other. The City Attorney was very helpful in educating him. In some countries the military is a branch of government. We have two branches of government in the City and we want to separate and balance them. The text we have does what Councilor Romero-Wirth described. We are thinking along the lines of your thinking. As usual, the devil is in the details. We put a lot of attention in the details. We know this document will go before you all and you will adjust it as you see fit. As to the presentation from Councilor Lindell, we value and appreciate the way you framed your comments. You are seeing in our material that the majority of our subcommittee felt we should not proceed in the direction given in the referral. Our approach was supported by a large majority of the subcommittee. He was the odd man out. He wonders if the issue could be better handled if it was stated in positive terms rather than the negative terms presented to us. Should a Councilor have to resign if they lose. It seemed to us that was close to punishment. He wonders if it would shift the discussion if stated positively. Consider such language as this: "a Councilor may run for another elected office in government when the Councilor has completed the Council office to which they were elected." That puts the "shoe on the other foot." He invites all of us to consider doing it that way as opposed to setting it into a constitutional document. The expectation would be that we would get a letter of resignation as a result of a loss.

Councilor Lindell said, to clarify, the sentence you just stated that a person would need to resign, she doesn't think that is really where we need to go. Her feeling is that if that Councilor that still has two years left on their term wants to run for Mayor at that point they should give up their seat prior to the election so their constituents can elect someone to that seat. That seems fair. It is fair to the constituents to elect someone to that seat.

Councilor Lindell pointed out the issue is the difference from what came to us originally. At the time of announcement you make a choice of the office you run for. The vacant office can then be put on the ballot. That would take care of a new Mayor's ability to appoint after the election.

Councilor Cassutt said the candidate packets come out in May. Are we saying someone has to give up their seat in May.

Councilor Lindell said they would serve the rest of the year and vacate January 1<sup>st</sup>. The public would know they can then elect a new person for the seat.

Commissioner Ortiz said she has a clarifying question directed to the City Attorney to understand the process. The Commission was established to make recommendations to the Councilors. We were given suggestions and came up with our own. We are making recommendations to the Councilors on those issues. Are the Councilors allowed to consider other items for the Charter or only those the Charter Commission submits.

Ms. McSherry said we have made changes to the Charter outside of the Charter Commission. She doesn't think they have to come from the Charter Commission.

Commissioner Ortiz said the Commission may recommend in a subject area you asked us to look at. It may not be exactly what you wanted to see. We are not stifling your ability to do anything. We just recommend ideas for you to look at to determine the best path. We still have not had public comment and still want to do some of that and still have to look at the entire document as a whole. It looks a bit different when you read the whole thing. We will still have an opportunity to add to it or change it. Public comments weigh heavily on her decision. She hopes we get some. She wanted that clarification.

Commissioner Dirdak said this conversation has helped him. We had not had an opportunity to interact between the two bodies. This added a lot of light to the discussion. In one case there was a question about how we frame a provision regarding the Mayor's veto. We discussed that and it turns out the model Charter has quite a passage about it. We found other examples as well. It became clear that we should put in the document a marker in the duties of the Mayor and override the duties of the Council, but then Pat was very helpful in saying if, indeed, the body agreed to that as the direction to take, it would be considered a directional decision and the Council could add the sentences necessary to make a through decision. On the other hand, he did find a Charter from a City in Ohio that has two pages as to the process of a veto. That does not sound like Santa Fe. The subcommittee is proceeding with that question as we think dividing the branches is the right thing to do. We want to empower both branches. Veto and legislative override. We did not do fine editing or drafting of the material. We don't feel we are professionally equipped to draft.

Commissioner Dirdak continued, saying there is a reference to the finance committee in the present Charter. This became an opportunity for us to improve the existing Charter as well as add new ideas. We saw the wisdom of making it clear and certain that committees of the Council are theirs to manage. When the Council determines its committees and the role and responsibility, expecting them to usurp the

role of Council becomes monstrously unwelcoming. We went in the opposite direction and struck a reference to internal Council committees in the Charter. The Committee on Internal Audit is a different story. There are two places where the decision on this matter affects two areas. He corrected that error in version 14. Mr. Johnson requested an enjoiner. We did place the wording you suggested in the proposal where Council can choose to engage the chapter 14 process with your issue. We appreciate your comment on the awkwardness of the timing. The test you proposed would enjoin the process with due process. We were reluctant to add it into the City's Charter because it is already in the law of the State of New Mexico. That is the nature of our thinking. If we have misunderstood the importance in some way we will need an ongoing conversation. It matters to us, Erin, this question of when a principal is stated in law when do we or do we not recapitulate that in a Charter.

Ms. McSherry asked are you talking about a City Ordinance.

Commissioner Dirdak said no, State law.

Ms. McSherry said it might depend on the type of law and context. For most of the items we cannot deviate from law in the Charter. There may be times when State law does not apply to home ruled Charters.

Commissioner Dirdak asked do we follow due process.

Ms. McSherry said she thinks enjoining is asking for government to provide more process to people who do not have that. The Charter can always give additional rights. If those rights interfere with other rights is a question. The idea of giving equal rights to property owners and non-property owners would be a legal issue that would not be permissible. The process depends on what rights. If you own property would you give rights to those not owning the property. That is the question.

Mr. Johnson said he appreciates that you added the text into the document. He recognizes this is an issue that is ongoing in Santa Fe. He does not foresee it magically disappearing. There are statements in section 2 of the Charter where there are specific items reaffirmed in the Charter. He is asking for reaffirmation of that language. It could be in the neighborhood and preservation section. It could be recognition of Santa Fe's historic character that supports the economy. Development issues do contain a matter of public concern. That is why we have zoning that has specific delegation of what things go where. His initial commentary was about exceptions and variances. He thinks it is the property owners right to be upheld when they are within the law and regulations. He thinks enshrinement in the Charter is the issue. He is not a lawyer. This a proposal.

Commissioner Dirdak said unless there are questions by Commission members he will leave it here.

Commissioner Ortiz said she is very grateful for Commissioner Dirdak's work. He has worked tirelessly in putting this together. Thank you. She wants to make a comment on the finance committee and taking the language out. When she read the whole document it occurred to her if we take the language in the Charter out we are going counter to our intent of adding financial and budgeting language added in.

Chair Long thanked the subcommittee and particularly Commissioner Dirdak, saying it is evident the amount of work he has put into these proposals. Thank you for that hard work. She wants to ask if you would explain again how the Mayor participates in tie votes and how that works and the Mayor's role in attending quasi-judicial hearings and why you felt that needed to be included in those hearings and the reasoning for that.

Commissioner Dirdak said the text where we had discussions of quasi-judicial participation is one of the changes we made.

Chair Long said if it was a prior version and it is out now that is helpful. What about the tie vote issue.

Commissioner Dirdak said we described that in the commentary. Page 9 and 10. Another of the Mayoral duties is to break a tie vote. We suggested three ways for Council to handle it. Commissioner Dirdak read the wording from the proposal and said we think people with parliamentary experience will find ways to do this.

Chair Long said so it is not a Charter issue, but is in the rules of procedure.

Chair Long said her request is to have the subcommittee take a look again at the issue we heard from two Councilors tonight as to choice of which office you pick at the time you run for Mayor with concern expressed about the Mayor's ability to appoint a replacement. Take another look at that with reframing of the issue we heard tonight.

Commissioner Dirdak said we will do that.

Commissioner Ives said having been in those Land Use discussions on both sides, ensuring fairness is what creates confidence in the public in decisions that are made. When a sense that fairness has not been equal in opportunities to address issues to deciding bodies that has created tremendous strife in the past. He is in favor of a statement in the Charter requiring that. Some of those principals are not fully observed. He is a strong proponent of having something that captures that for all participants in a proceeding.

**b. CONSIDERATION OF PROPOSALS BY SUBCOMMITTEE ON HUMAN RIGHTS AND SOCIAL ISSUES**

- A. WHETHER THE HUMAN AND CIVIL RIGHTS POLICY STATEMENT SHOULD BE MORE SPECIFIC WITH REGARD TO THE BREADTH OF REQUIRED PROTECTIONS AND/OR THE MANNER IN WHICH SUCH RIGHTS SHOULD BE PROTECTED**
- B. WHETHER THE CHARTER SHOULD PROVIDE PROTECTIONS FOR AGRICULTURE**
- C. WHETHER THE CHARTER SHOULD ALLOW VOTING BEGINNING AT AGE 16 IN MUNICIPAL ELECTIONS**
  
- D. WHETHER ALL BODIES OF CITY GOVERNMENT, INCLUDING THOSE ESTABLISHED AS ADVISORY IN NATURE, SUCH AS COMMITTEES, COMMISSIONS, SPECIAL COMMITTEES, TASK FORCES, ETC., SHOULD COMPLY WITH THE STATE'S OPEN MEETINGS ACT**

Commissioner Ives said our items are in your packets. The issues were reviewed by Mr. Martinez, but his comments did not seem to be captured in the packet.

Ms. McSherry said Mr. Martinez reviewed your materials. She did not review any.

Mr. Martinez said in an overabundance of caution he suggested submitting clean versions rather than red-lined. His comments are not captured in the versions in the packet. He is happy to do that if it is wanted. He asks your preference and offers that we could touch base beforehand to understand what you prefer to see.

Commissioner Ives said he would love to do that. Circulating out those comments to members of the Commission would be helpful so they understood that back and forth you and I had. There were not other substantive changes to materials in your packet. We did not take up item D which was added to the subcommittee. He suspects our subcommittee is interested in addressing those issues. We will have done so by the next meeting.

Mr. Dirdak said when you presented the proposed amendment regarding food policy, in the implementation sentence you noted that you used a verb three times in the sentence and you were going to do something about that. His hope is that putting a City in the position of having to do something that public entities have tried for years to measure and have failed seems to be opening a barn door of liability. It seems if this says the City shall ensure that no one goes hungry would relate to City liability. He is hopeful when we see this again it is more clear.

Councilor Ives said he is happy to do that and bring back any changes appropriate to concerns you raised. He will take it up with the City Attorney as well.

Chair Long said we heard tonight from Councilor Romero-Wirth that the Office of Equity and Inclusion would be brought back. She wonders if that impacts the Subcommittee's desire to establish a Human Rights Commission for the City.

Councilor Ives said we did touch on that. The question was if the consideration of their issues were significant enough to create a permanent Commission within the City to address those issues rather than an office within the Executive Branch. The other point we talked about was that it was significant enough to allow the people of Santa Fe, who will vote on changes to the Charter, to weigh in on that as well. We talked about the significance of issues within the City such as being a sanctuary City and human rights. It is significant at a State, national and international level. That was the feeling of the Subcommittee. He can affirm that the subcommittee will still bring that forward to the entire Commission to consider.

**c. NEW TOPICS FOR CONSIDERATION BY THE COMMISSION**

None.

**7. MATTERS FROM STAFF**

Ms. McSherry said thank you staff for being here tonight. She wants to mention a few things. We met with our webmaster yesterday on a draft page that will include materials and each of the proposals for comment. The default will send the comments to all of you directly. It is pretty close to being ready. If there are additional materials the Commission would like to be placed there let us know. She wants to comment about the branches idea. Under the current Charter we have elected officials with characters of both branches. The idea of branches does not come up in our Charter or structure currently. To clarify the comment about the finance committee, the finance committee is defined in an Ordinance as are other Council committees. Procedures are defined by Council. Model code says committees are not required to be part of the reviewing process. By adding the requirement of the finance committee, that deviates from model code and anything else in the Charter. It seems to be an outlier. She asks that if we get a recommendation for a Human Rights Commission it would be very helpful to hear what distinct powers it would have and who would be protected by that Commission. That is one of the points we have not done full research on. That will help our analysis.

Commissioner Dirdak said when you post on the web his preference is that all of the tract changes are made in the material and a current version of our proposal in a clean form is what is posted including the commentary sections.

Ms. McSherry said she is happy to do what you prefer.

Commissioner Ives said it is best to give where we have ended up for comments as to what is posted rather than the red lines.

Commissioner Ortiz said the governance packet is 30 pages and has all the work that has been done. She wants to be sure we clarify for the public as to what we know we agree upon. Just post a clean version of the document without the lining out. We want public comment. We need to make it user friendly with no commentary to make it as easy as possible. She hopes the attorneys will put just a clean version on the website. She appreciates Mr. Johnson raising the issue that the website is not working. Hopefully the public will get on line and comment.

## **8. MATTERS FROM THE COMMITTEE.**

Commissioner Ives welcomed the new Commissioner, Ms. Dixon.

## **9. MATTERS FROM THE CHAIR**

Chair Long said on the issue of reports being posted for public view, she agrees with the clean version recommendation. Do we also want something as an introduction as to what it does. A report of what we recommended and why. She wonders if it would helpful to the public to just say what we recommend and why.

Commissioner Ives said that would be an important component. When presented can it be with commentary. Keep it simple and as straight forward as possible.

Chair Long said we meet in two weeks. To meet our drop dead deadline we may need a meeting in May to wrap up our work.

Ms. McSherry said the deadline is May 10<sup>th</sup> to have the recommendations to the Governing Body at their regular meeting on that day. If not as a presentation it can just be submitted that day.

Chair Long said we need to alert everyone that we may need a meeting the first week of May.

Commissioner Ortiz asked if we can select a date now.

Chair Long deferred to the City Attorney.

Ms. McSherry said we can schedule something or send something out as to availability.

Chair Long said send something out based on availability and site.

Ms. McSherry said she will have to consult with Clerks office.

Chair Long said check with the Clerk and we can get some idea.

Chair Long welcomed Commissioner Dixon. Thank you for joining us. We will have some time to catch up before next meeting.

**10. NEXT MEETING**

**THURSDAY, APRIL 27, 2023**

**11. ADJOURN**

There being no further business before the Commission, the meeting adjourned at 6:43 pm.

---

Nancy Long, Chair

---

Elizabeth Martin, Stenographer

**SUMMARY OF ACTION  
 CHARTER REVIEW COMMISSION  
 APRIL 13, 2023, 5:00 PM  
 CITY HALL, COUNCIL CHAMBERS  
 SANTA FE, NEW MEXICO**

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE</u>
CALL TO ORDER		1
ROLL CALL	QUORUM	1
APPROVAL OF AGENDA	APPROVED	2
APPROVAL OF MINUTES	APPROVED	2
 <u>PUBLIC COMMENT</u>		
PUBLIC COMMENT	HEARD	2
COMMENTS FROM COUNCILORS	HEARD	3-4
 <u>ACTION ITEMS: DISCUSSION</u>		
CONSIDERATION OF PROPOSALS BY SUBCOMMITTEE ON GOVERNANCE ISSUES AND FINANCIAL AUDIT	INFORMATION/DISCUSSION	4-9
CONSIDERATION OF PROPOSALS BY SUBCOMMITTEE ON HUMAN RIGHTS AND SOCIAL ISSUES	INFORMATION/DISCUSSION	9-11
NEW TOPICS FOR CONSIDERATION BY THE COMMISSION	NONE	11
MATTERS FROM STAFF	INFORMATION/DISCUSSION	11-12
MATTERS FROM THE COMMITTEE	INFORMATION/DISCUSSION	12
MATTERS FROM THE CHAIR	INFORMATION/DISCUSSION	12-13

**NEXT MEETING**

**APRIL 27, 2023**

**13**

**ADJOURN**

**ADJOURNED**

**13**

Chair Long said check with the Clerk and we can get some idea.

Chair Long welcomed Commissioner Dixon. Thank you for joining us. We will have some time to catch up before next meeting.

**10. NEXT MEETING**

**THURSDAY, APRIL 27, 2023**

**11. ADJOURN**

There being no further business before the Commission, the meeting adjourned at 6:43 pm.

---

Nancy Long, Chair



---

Elizabeth Martin, Stenographer

6. PUBLIC COMMENT

a. Public comment.

Written public comment is also welcome. Click [here](#), then find commenting to the right of the current meeting of the Charter Review Commission.

**Name**

Steven Farber

**Comment - 04/24/2023 11:18 PM : (No Vote)**

As a former City Councilor serving from 1992 to 1996 and an appointed member of the initial Home Rule Charter Commission and the main Home Rule Charter Review Commission in 2013, I continue to believe that the change to a full time Mayor was a fundamental flaw in the Santa Fe governmental processes. I do not feel that the ballot question presented to the voters fully and properly explained to the voters how the powers of the City Council regarding oversight and participation in governmental affairs was substantially diluted. I wrote a minority report at the time I was serving on the Home Rule Charter Review Commission expressing my concerns about the change to a full time Mayor and I believe that many of my concerns have unfortunately been proved to be true to the prejudice of this city and the community at large.

I am very concerned that there has been so little information made public by the city about the work of the Charter Review Commission and that there has been little public participation. Having the materials on-line does not substitute for an outreach program that would keep the citizenry advised of the important work of the Charter Review Commission. This is our Constitution and it should be a front and center topic of discussion, debate, and consideration at this stage of the proceedings – even before recommendations are made to the City Council for presentation to the electorate.

1. In addition, from what I have read about the recommendation to not include a provision in the Charter but leaving that important issue to the revised Chapter 14 rewrite will continue to allow violations of due process of law to occur with regularity at the quasi-judicial hearings the city is required to hold. As it is two major appeals are underway challenging the conduct of the City in its holding of quasi-judicial hearings. The Zia Station rezoning and development project is on appeal and pending in the New Mexico Court of Appeals. The 2200 Old Pecos Trail rezoning is on appeal and pending in the First Judicial District Court. It appears that the Governing Body and Planning Commission aided and abetted by the Land Use Department and the City Attorney’s office have substantially violated the rights of the public in these quasi-judicial proceedings by not following the governing law regarding the need for the application of due process of law principles in these proceedings. It is my opinion that the city and its staff routinely make it difficult for citizen input in land use matters and work to deny proper quasi-judicial hearings from being held by the Planning Commission and the Governing Body. The Home Rule Charter should include a provision requiring the city of uphold the principles of due process of law in quasi-judicial hearings to allow the public to meaningfully participate in these proceedings.

2. The city does not properly comply with state law requiring the disclosure of public

records. There should be a provision included in the Charter that requires the City of Santa Fe to faithfully follow and adhere to the requirements of the New Mexico Inspection of Public Records Act (IPRA). It is my opinion from submitting requests for public records and litigating a case against the City for almost one year that the City does not honor its obligations and responsibilities under that state law. The City of Santa Fe has also continually violated the provisions of the New Mexico Inspection of Public Records Act (IPRA) by failing to comply with the provisions of that act requiring the prompt and proper disclosure of public records upon proper request made under IPRA. As many of you may have read I recently settled an IPRA case with the City of Santa Fe for the payment of a substantial sum of money. This all would have been unnecessary had the city simply followed the law. I alleged in the lawsuit and was prepared to prove at trial that the City, especially through the Land Use Department and the City Attorney's office, unreasonably and improperly hid or allowed to be hidden public records in a rezoning case, improperly delayed providing public records for disclosure, improperly used the "excessively burdensome or broad" provision of IPRA to delay disclosures of public records, and the city officials and/or employees allowed the alteration and tampering with public records pertaining to records connected with Prime.gov and the Planning Commission. I am attaching a document entitled "Statement of Steven G. Farber re IPRA lawsuit re 2339 Botolph Rd. rezoning". It seems to me that all Charter Review members to fulfill their duties on this Charter Review Commission should read that lengthy statement in full to gain a fair and full perspective of what residents of this City are subjected to under the current form of government where the Council is denied access to and shielded from knowing the excesses and improper conduct of the city administration. I apologize for typos in that Statement but I was writing and editing pretty quickly. I also include for the review of the Charter Review Commission members the Peremptory Writ of Mandamus issued against the City of Santa Fe by District Judge Frank Mathew commanding the disclosure of public records, the Mutual Settlement Agreement and Release regarding that IPRA lawsuit. I am also attaching a copy of a Land Use Department report recommending denial of the rezoning. That report was requested in April 2022 but it was not disclosed and/or hidden from the public and neighbors regarding the rezoning of the 2339 Botolph Rd. rezoning and only discovered on October 6, 2022 as a part of an 800 page document dump. In my opinion the Land Use Department and City Attorney's office tried to obscure this report that improperly changed the recommendation of denial without any notice to neighbors and residents until 5 or six days prior to the June 2, 2022 Planning Commission meeting. The public does not know that these things happen at the city government level due to a lack of accountability and oversight.

I do note that since the announcement that this lawsuit was settled that the city's improper initial response to IPRA requests has been modified to explain the IPRA process. In the past all that a requester received was simply an acknowledgment that a request had been received. Yet, more needs to be done by way of our Constitution – our Home Rule Charter – to protect and preserve the rights of the public to the timely and proper access to public records without the need for anyone to file a lawsuit seeking public records from the City.

And it seems to me that given your responsibilities as members of the Charter Review

Commission you have the duty and obligation to assure that there is proper oversight and regulation of the city administration by the City Council. Weakening the City Council as your proposals appear to do will continue this practice of a lack of accountability. You should assure that provisions are included in the Charter to stop the abuses that are happening because of the powers of the Mayor, City Manager, and City Attorney. It is onerous to require that six votes are required to terminate the hand picked City Attorney of the Mayor when that City Attorney may be responsible for enabling improper conduct to exist within city government.

I am also attaching recent correspondence that I sent to the City Councilors about these matters of public concern – particularly dealing with the issue of public records and what I believe that I have learned and discovered during the process of requesting public records and litigating that lawsuit. I have little faith that there will be any follow up on the part of the Mayor, City Manager, and City Councilors about these issues, but I wanted this very important City Commission to have the ability to review all of these materials.

Thank you,

Steven Farber  
Former City Councilor, District II

**STATEMENT OF STEVEN G. FARBER RE THE SETTLEMENT OF HIS  
IPRA LAWSUIT AGAINST THE CITY OF SANTA FE SEEKING PUBLIC  
RECORDS RELATING TO SANTA FE LAND USE POLICIES AND  
PRACTICES AND THE APPLICATION FOR THE REZONING OF THE  
PROPERTY LOCATED AT 2339 BOTULPH RD.**

**Introduction: The Farber v. Whiting IPRA lawsuit and its history** Page 1

**History of the IPRA requests made by Steven Farber re the 2339 Botulph Rd.  
upzoning/rezoning case** Page 4

**The City of Santa Fe blatantly fails to comply with and follow the requirements  
of the Inspection of Public Records Act (IPRA) and fails to disclose and even  
hides public records that have been properly requested under IPRA** Page 5

**Specific Examples of Bad Faith Responses as a part of the City's IPRA practices**  
Page 12

**The City of Santa Fe Land Use Department still continues to deny the Planning  
Commission with properly submitted resident input resulting in deficient and  
proper Quasi-Judicial hearings** Page 20

**The City of Santa Fe engaged in delay disclosing public records to IPRA  
requests and also in litigation and disclosure practices in the lawsuit that made  
it difficult to find and locate responsive public records and in the extraordinary  
Mandamus proceeding were Ordered by District Judge Frank Mathew to  
disclose public records** Page 22

**The process of discovering that the city engaged in hiding and not disclosing  
properly requested public records** Page 24

**It Appears that the City of Santa Fe has altered and tampered with public  
records on its Prime.Gov site regarding meetings of the Santa Fe Planning  
Commission** Page 25

**It Appears that the City of Santa Fe has altered and tampered with public  
records on its Prime.Gov site regarding meetings of the Santa Fe Planning  
Commission** Page 29

**Why I filed and pursued and settled this IPRA lawsuit** Page 34

**The City can and should make changes to be more responsive to IPRA requests**  
Page 35

**The City's Land Use Department still engages in practices to attempt to limit public input and participation challenging its practices**

Page 35

**Conclusion:**

Page 37

**INTRODUCTION TO THE IPRA LAWSUIT FILED AGAINST THE CITY**

I am the Plaintiff in the lawsuit. I also appeared in the case representing myself as the attorney for Plaintiff Steven Farber (myself) until December 29, 2022 when I submitted my Notice of Withdrawal as a licensed attorney since 1972 to the New Mexico Supreme Court - after 50 years of the practice of law. I was first admitted to the New Mexico Bar in 1975 after being initially being admitted in the Commonwealth of Pennsylvania in 1972. Afterwards I only appeared in the case in a Pro Se capacity.

Today I announce that I have settled my IPRA lawsuit that I filed against the City of Santa Fe on May 26, 2022. In return for the payment of Fifty Thousand Dollars (\$50,000.00) in damages from the City of Santa Fe I will dismiss that lawsuit. Pursuing this lawsuit, I uncovered what I believe are acts of malfeasance, misfeasance, and nonfeasance on the part of the hypocritical Webber Administration and Land Use Department officials and employees by their acts of tampering with public records pertaining to materials related to rubber stamp Planning Commission meetings, failing to timely disclose public records, hiding properly requested public records and then later disclosing them in document dumps, and repeatedly violating the Inspection of Public Records Act. As most people will realize Fifty Thousand Dollars is a large sum of money to pay in damages to anyone without a physical injury, discrimination, or whistleblower type claim - it is especially significant to pay that amount of Damages in an IPRA enforcement case. The basis of my claims of improper conduct and the city and its officials' acquiescence to that misconduct is explained herein.

The details of the settlement of this lawsuit, **Farber v. Whiting**, D-101-CV-2022-00931 is that a damages payment will be made by the City of Santa Fe to Steven Farber in the sum of Fifty Thousand Dollars (\$50,000.00) in return for a dismissal of the lawsuit. <sup>1</sup> I have attached a copy of the signed Mutual Settlement Agreement and Release regarding the lawsuit.

---

<sup>1</sup> Because I have learned most, if not all, of what I was seeking to know as a part of the settlement I also agreed that I would limit future IPRA requests to only 12 IPRA requests pertaining solely to the 2339 Botolph Rd. rezoning case.

I think that the public in Santa Fe will be shocked by the amount that the city had to pay me in damages for me to consider dismissing this lawsuit in which I contended and was prepared to prove that there were many violations of IPRA. I will be donating an amount from those settlement funds, similar to the concept of tithing, to some organizations and others trying to save Santa Fe like the Old Santa Fe Association, the Old Pecos Trail Rezoning Appeal Fund, the Zia Station Project Opposition Appeal Fund, the South Meadows Appeal Fund (if they choose to appeal the approval of that inappropriate development), and prepare to appeal the upzoning/rezoning 2339 Botulph Rd. I will assist the Neighborhood Network and other organizations I feel are working for open and transparent governmental processes in Santa Fe city government.

Because I feel the various efforts I've mentioned are opposing and challenging the closed-door and non-transparent governmental policies of the Webber Administration, the build at any harm and any place policies of the Webber Administration that I believe are ruining this city, this current development oriented City Council that approves developments or rezonings regardless of the harmful effects of its decisions, the current rubber stamp Planning Commission, and the policies and practices of the Land Use Department and City Attorney's office I want to support their efforts. These groups opposing the harmful policies of this current city government are the ones truly working for the preservation of this unique and historic City Different so that it remains the special City Different. Winning the National Geographic Award a number of years ago for maintaining a sense of place was an incredible accomplishment for Santa Fe and made possible by preservation efforts. I feel we must redouble our efforts to retain that recognized and special sense of place.

This IPRA case I filed is unusual in the sense that when I first submitted an IPRA request to obtain the case file and background information about a neighborhood upzoning/rezoning case at 2339 Botulph Rd. I imagined that my IPRA requests would be treated in what I believe was such a cavalier, deceitful, and unlawful manner by the City of Santa Fe, its Land Use Department and its City Attorney's office. I just wanted to review public records and the City's zoning case file to ascertain the basis of the upzoning/rezoning, understand the history and figure out if and how I could go about objecting to the inappropriate and ill-advised request for an upzoning/rezoning in our unique semi-rural neighborhood in Santa Fe of a small but strategic parcel of vacant land.

It is a travesty that the Webber administration, its Land Use Department and City Attorney's office, and the rubber stamp Planning Commissioners support that totally ill-advised and inappropriate upzoning/rezoning at 2339 Botulph Rd. that benefits no one other than the property owner. And, there is no aspect of this upzoning/rezoning that will in any way create any affordable housing for the community.<sup>2</sup>

As I learned more while pursuing this matter, I discovered and felt I could show and prove the tampering with the public records relating to the Planning Commission meetings as found on the city's Prime.gov site regarding postdated uploading of reports and documents. I discovered through the city's evasive and dilatory tactics responding to IPRA requests that show that this conduct occurred after the May 5, 2022 Planning Commission meeting date.<sup>3</sup> This issue of tampering with public records implicates the issues of the integrity of governmental processes, the integrity of public records, and a fair and proper quasi-judicial hearing. My conduct in continuing to seek these public records from the Land Use Department and the City of Santa Fe regarding the upzoning/rezoning for the 2339 Botulph Rd property and the improper conduct of governmental employees furthers openness of governmental processes, helps to expose the need for the fundamental integrity of governmental affairs, and hopefully will lead to greater transparency in government which are the very reasons stated in IPRA about why IPRA was enacted.

I am only one person and, on this issue, attempting to get access to public records I have been fighting City Hall alone. I have accomplished much of what I set out to do which is to find out how the City and its officials and employees manipulated the upzoning/rezoning process regarding the property located at 2339 Botulph Rd. in 2022 and how it is proceeding to do so again since March 2023 to continue to push for this ill-advised and inappropriate upzoning/rezoning request.

I was individually self-funding an expensive undertaking pursuing this IPRA lawsuit for open government purposes. Each person has a limit of the work they can

---

<sup>2</sup> This is not a situation where a long time resident of a tract of land is seeking an up-zoning for family reasons to stay on the family land. Rather, as shown by the MLS listings of land and houses for sale, the owner/applicant bought the vacant land for speculation for \$155,000 and then listed the same land for sale as an unique in-city estate with Clearview Realty and Mr. Alcozar for \$325,000. Thereafter the property owner reduced the price several times to \$295,000 and \$275,000. When the land did not sell for the asking price and only months later did the owner seek to get the 2339 Botulph property rezoned from R-1 to R-2. Prior to seeking rezoning there was not one word about affordable housing for family use. And, a large family compound can be built on this property with its current R-1 zoning classification.

<sup>3</sup> The uncovering of the city's tampering with or alteration of public records in connection with the May 5, 2022 (and April 7, 2022) Planning Commission meeting is discussed in detail herein.

do or expenses they personally want to advance. And, I chose through a Court ordered mediation to make a compromise since I had reviewed the vast majority of the documents I was seeking - though it was like pulling teeth - and I believe I know the answers to the questions I wanted answered. It is my opinion that if either the District Attorney for the First Judicial District or the Attorney General of New Mexico, if they chose to investigate, would likely find that the city and certain of its officials and employees altered and/or tampered with public records and may have violated the Tampering with Public Records state statute.

And, my motivation and why I was willing to bear the expense and time of the lawsuit and advance thousands of my own dollars to pursue this lawsuit was based on my strong belief in open and transparent government supported by the purposes of IPRA and as clearly stated in IPRA as state policy calling for governmental transparency. I want to expose the city's improper and delaying conduct responding to mine and many residents' requests for disclosure of public records. I believe that the Webber Administration and its Land Use Department and City Attorney's office by their conduct manipulate the processes of an open and transparent government and continue their improper behavior because they do not think that are accountable to the public.

### **History of the IPRA requests made by Steven Farber re the 2339 Botulph Rd. upzoning/rezoning case**

The various IPRA requests I made, and the late and lack of disclosures of public records by the Land Use Department with the apparent assistance of the City Attorney's office regarding the upzoning/rezoning of the 2339 property led me to discover that the City of Santa Fe engaged and still engages in improper and unlawful IPRA practices. In my opinion it appears that the City of Santa Fe, the Defendant Records Custodian, and certain City Land Use Department employees, particularly Land Use Director Jason Kluck, Planning Division Director Margaret Moore, and Senior Planner Daniel Esquibel, or other City employees particularly from the City Attorney's office have likely engaged in conduct that included conduct that: 1) implicates the integrity of public records of the City of Santa Fe, 2) engaged in improper and inappropriate delays in the disclosure of properly requested public records, 3) improperly denied that requested public records existed, and 4) failed to follow the proper processes for the inspection of public records under IPRA.

**The City of Santa Fe blatantly fails to comply with and follow the requirements of the Inspection of Public Records Act (IPRA) and fails to disclose and even hides public records that have been properly requested under IPRA**

This foregoing statement is not hyperbole and I shall provide some examples.

This case would have been easier if it was just about some document or several documents that weren't turned over or for which there was a reasonable or proper delay in disclosure of public records. But, based on my experience requesting relevant public records from the City and its Land Use Department in this upzoning/rezoning matter I became aware of and was personally confronted with what I believe is a systemic pattern and practice of conduct that violates IPRA - from not following the procedures set forth in IPRA for response to initial IPRA requests, to arbitrarily engaging in a practice that starts with a three day extension, almost always extends automatically to the 15 day disclosure time limit in IPRA, then arbitrarily extends to the unreasonable and improper claim that the request is "excessively burdensome or broad", and then further extends the time for disclosure of public records to thirty days and often continues to extend the time period for additional thirty day periods of time. IPRA requests that I made, which are a part of the public record, were unreasonably and improperly outstanding for many months.

As just an example of the way in which the city handles IPRA requests and because it just happened, I submit the following to give a sense of what I have been dealing with as Plaintiff making requests for public records. I initially offer as an example a request about what I perceived to be the very aggressive nature of the city's defense to the IPRA lawsuit I filed on May 25, 2022, amending it the next day just to reword the request for remedies, so the First Amended Complaint for IPRA violations was filed on May 26, 2022. Based on what I was experiencing I thought that the defense costs must be high for an IPRA case because of the need to try to defend the city's unjustifiable misconduct.

I named various city official as Defendants in addition to the Records Custodian because of what I believe was a pattern and practice of improper responses to IPRA requests. That Complaint was detailed. The strident defense mounted by the city included filing a 12B6 Motion to dismiss my complaint claiming that I had failed to state a claim for which relief could be granted and the city also sought to dismiss all the other named Defendants besides the Records Custodian.<sup>4</sup> I felt that there

---

<sup>4</sup> I had named the Mayor, City Manager, City Attorney and Land Use officials because of the pattern and practice claims and the administrative roles that the Mayor, City Manager, and City Attorney play in their administrative roles

were proper claims for relief. District Judge Frank Mathew refused to dismiss the Complaint but directed me to more specifically allege the specific IPRA violations because the defense attorney claimed that he did not know what I was alleging that violated IPRA - even though each IPRA request I submitted was identified and the city has full records of the requests and my objections to incomplete responses, unreasonable and improper delays, and outright closing IPRA requests without providing records.

So, I filed a Second Amended Complaint that was 72 pages and specifically included verbatim the thirty (30) IPRA requests that I claimed the City and its Records Custodian, and city officials did not handle in accordance with IPRA.

And the city had earlier responded to Requests for Production in the lawsuit and included more than 18,000 pages of records - despite me advising the city that the bulk of those materials - I estimate to be at least three quarters of the records - provided were irrelevant and extraneous city minutes and information packets from the Council, Commission, and Boards having nothing to do with my IPRA requests. I believe this was an attempt by the city to overwhelm me with irrelevant records so I could not find the public records regarding the rezoning I had properly requested.

The city through its IPRA process had previously sent me the same and similar voluminous and irrelevant and unresponsive records rather than simply provide the rezoning records. I also objected to that improper IPRA practice at that time. As one gross example, I had specifically requested only minutes and materials from the Planning Commission and Governing Body meetings that approved a rezoning 20 years ago of a small nearby property (a less than 2-acre tract) as I was trying to find out the justification for allowing the upzoning/rezoning of this less than 2-acre parcel at 2339 Botolph Rd., adjacent to the Arroyo de los Chamiso and an established semi-rural area, to proceed to increase density in our neighborhood and change the character of the neighborhood. So, what the city did in response to this specific IPRA request for just the minutes pertaining to that old rezoning case was to cavalierly provide almost all the records from the Planning Commission, Governing Body, and

---

under the City's Home Rule Charter and City Code and I was seeking Injunctive Relief. I contend that the Land Use officials are complicit in the delays and failures to provide requested public records. I contend that the Records Custodian, Cindy Whiting, is simply a functionary. At a motions hearing Judge Mathew found that the Court in Pacheco v. Hudson ruled that the only proper defendant in an IPRA case is the Public Records Custodian and he dismissed all the Defendants other than the Records Custodian. In the Amended Complaints without naming the officials as Defendants I still specifically alleged that these other named officials failed to comply with their official duties and were and are responsible for the IPRA violations happening in the systemic manner I've alleged by failing to properly supervise, and/or modify and/or change policies and practices of which they are aware that violate IPRA.

Board of Adjustment for approximately eighteen months or more which I estimate are probably are in excess of 12,000 pages - including the information packets for each agenda matter for the meetings. And the City's attempt to overwhelm me with irrelevant materials included providing many duplicates of lengthy emails without ever identifying from whom they were from. In discovery responses in the lawsuit the city even added to this overreach by including the First Amended Complaint with practically every response to its Responses. I estimate that this irrelevant submission of the city added a thousand more pages to the total pages that I had to review.

Now, getting back to my first specific example, on 10/20/2022 because of the enormity of the city's response mounted against my IPRA requests, I submitted a request using the City's online IPRA request portal [Next Request] and sought the billing records and invoices of the City's outside Roswell lawyers from 5/26/22 through 9/30/22. I requested any records of the payment of fees, invoices, any retainer agreements, and the insurance policy and the like that covered the defense of this lawsuit. Well, the City did the three-day notice to start the process of delay, and then followed up with a fifteen-day notice claiming they needed more time to disclose these public financial records. Then, on 11/2/22 I received a message that the City needed more time as "We are waiting for approval to release responsive records. We will need until 11-18-22. Thank you."

On 11/18/22 the City sent me a copy of the insurance policy and nothing else. On 11/18/22 I received this message with the insurance policy: "We are waiting for approval to release responsive records. We will need until 12-20-22." And then on 12/20/2022 the city again extended the time for response to 1/20/2023 by stating: "On 10-20-22, the City Records Custodian received your request to inspect certain records. The Records Custodian has determined your request is excessively burdensome or broad and we need additional time to respond, until 1-20-23."

And, on 1/20/23 the city sent me a message that after a search no responsive records could be located and as a result the city summarily closed out that IPRA request by stating: "You were sent electronic file(s) in response to your request on 11-18-22. No additional responsive records were found. The city asserts that it has met its obligations under IPRA by searching for the responsive documents and providing them to you. The city now considers this records request closed."

I submitted detailed objections each time there was a delay as referenced above. The City had sent me an insurance policy but nothing else.<sup>5</sup>

As a result of the City's conduct, I immediately objected to the closing of the request and renewed the request. On that same day 1/20/2023 I also opened a new IPRA request seeking the exact same information as I had on 10/20/2022, without including the insurance policy. So, on January 25, 2023 under the new request number the city provided the outside lawyer billing records (27 pages) through 9/30/22 and copies of some checks paying most of the invoices. The city also sent three of my pleadings filed in the lawsuit that had absolutely nothing to do with the IPRA request. But the city did not send any copies of any fee agreement, professional services contract, or engagement letters.

All these public records were available to be disclosed within the three-day point, certainly within the first 15 days of the 10/20/2022 request - and the insurance policy could have also been sent before the 30-day mark. Yet, the city kept extending the time for response until it closed the request on 1/20/2023. This is the City's pattern. I suspect and believe that there is a coordinated effort with the City Attorney's office to limit the disclosure of public records it does not want revealed. I only got the outside lawyer records because I persisted as a matter of principle.

Unlike the City Attorney, and her Assistant City Attorney Feghali, the outside Roswell lawyer acted in a professional manner as an hard advocate doing his job and trying within the bounds of the Rules of Professional Conduct to defend the City. He was gentlemanly and mostly responsive. At the least the outside lawyer did not blatantly make up flimsy and intellectually dishonest legal interpretations that had no basis in fact or in law. This was contrary to the conduct I saw and heard from Assistant City Attorney Feghali at the Planning Commission public hearing on June 2, 2022 and in other contested land use hearings. And, other misstatements of the law and facts appear in many of the City's responses to my IPRA requests for extensions of time for the disclosure of IPRA requested public records and denials that public records existed - presumably from the City Attorney's office input.

I used the request about the lawyer's records simply as an example to show the way the City uses the time limits set out in IPRA and then the "excessively

---

<sup>5</sup> And apparently the city still engages in these types of practices as on January 17, 2023 I also requested similar billing and payment records from the time period of October 1, 2022 through mid-January 2023 and the city Records Custodian again delayed disclosing any records other than the insurance policy and has now extended again the time for disclosing the requested public records until May 17, 2023 - an unreasonable and improper delay of 120 days from the IPRA request again claiming that the request was "excessively burdensome or broad".

burdensome or broad” provision of IPRA as an excuse to unreasonably and improperly delay the disclosure of public records to residents. These other delays regarding my IPRA requests prejudiced my ability to show that the Botolph Rd. upzoning/rezoning was inappropriate and ill-advised. This dilatory conduct didn’t just happen to me as I believe that the city practices this policy of delay with many IPRA requests it receives from interested residents and individuals.

It is my opinion, that the city operates with the assumption it has 30 days to respond - rather than the specific 15-day time limit set forth in IPRA - and the city arbitrarily gives itself thirty-day extensions as a matter of practice. This seems to be a pattern the city uses when a person makes a request particularly seeking records from the Land Use Department regarding other land use projects, and even sometimes police records and reports, within the City of Santa Fe.

After being stymied by the city in getting properly requested records I felt that I needed to review the background for the City’s land use department position on the upzoning/rezoning.

I/we were blindsided by the City with a surprise report disclosed just days before the 6/2/2022 Planning Commission meeting at which the upzoning/rezoning was recommended for approval - along with an apparent unintentional uploading to the City’s public portal site of a completely contrary draft of Findings of Fact for the meeting from the prior month recommending the denial of the upzoning/rezoning.

That suspicious document indicated to me there were irregularities and improprieties in the City’s failures to disclose requested public records that would show what was going on behind the scenes. I felt I needed to find out what was really going on behind the closed doors of the Land Use Department and the City Attorney’s office. It seems to me from my experiences and review of the process and procedures used that this conduct was acquiesced in by the Mayor and City Manager, if not directed by them, to stymie efforts at uncovering unethical behaviors or worse.

And to prepare for the upcoming quasi-judicial hearing before the Governing Body that followed the Planning Commission recommendation, on June 10, 2022 and June 20, 2022 I made a number of additional IPRA requests for emails and other materials from April 1, 2022 and later. The disclosures of these requests were often delayed and denied by the statements that there were no responsive public records.

So, I became more assertive in the lawsuit and on September 12, 2022 I filed a Petition for Alternative Writ of Mandamus to obtain these public records through

the special remedy of Mandamus. I was specific with the dates of these requests in the Petition and the dates of the delays in the City's response that gave me support for the filing of that Petition for Alternative Writ of Mandamus - in the lawsuit. And, I would have proven the pattern of delays and denials at the trial case using the same degree of specificity to demonstrate continuing improper conduct of the city.

Judge Mathew granted a Peremptory Writ of Mandamus - an extraordinary remedy - on September 26, 2022. Judge Mathew ruled at that hearing that the City had not responded in a timely or proper manner under IPRA. Thus, the Judge agreed with my position that the City's conduct violated IPRA. I felt that same analysis reasoning was likely to be present with all the many pending and premature denials of IPRA requests that were at issue in the lawsuit and if the case had gone to trial.<sup>6</sup>

The Second Amended Complaint dealt with delayed responses and improperly denied IPRA requests as of May 26, 2022. I filed a Third Amended and Supplemental Complaint under NMRA 1-015 D and E included the additional IPRA requests I filed (and there are many) since May 26, 2022 as I focused in on what I believed was the improper and unethical conduct of the City administration and its officials and employees in failing to disclose and hiding public records. I served the many additional IPRA requests - particularly after Judge Mathew's ruling on the Writ - to try to tie down the City's culpability and improper conduct. I do not make that statement lightly because I felt at a trial I could show irregular, unreasonable, and improper city conduct in hiding public records and attempts to obscure its unlawful conduct.

It was actually from the City's delayed disclosures and Judge Mathew ordering records disclosed that I was able to start figuring out from clues and inconsistencies in records that there were certain serious irregularities and previously hidden documents that had been requested in my prior and specific IPRA requests. These City public records (documents and emails) were ultimately disclosed and placed (intentionally I think) into the middle of late disclosures of materials in the latter part of September and October 2022. The hidden documents that the City had previously denied existed were towards the back of an approximately 800-page dump of materials (not bates stamped or numbered in any way other than seeing their

---

<sup>6</sup> All the pleadings dealing with seeking the Peremptory Writ of Mandamus that was issued by Judge Mathew after the City's delays in providing requested emails and other public records are a matter of public records through the caselookup function in nmcourts.gov.

page number on the PDF file) and were provided to a request that had been made on April 11, 2022 and the wording of that IPRA request was only generally related to the materials that were disclosed in that dump. That dump of records was not made until October 6, 2022. That by itself was a disclosure delay of 178 days. There were multiple separate documents (correspondence, exhibits, and drafts of reports, report for May 5, 2022) that were hidden in the midst of unresponsive records and that were previously properly requested but not disclosed. It was only by reading all the materials from the dump that I was able to find the specific materials I had requested (described herein) that the City Records Custodian had denied existed and/or failed to timely disclose.

I've attached at the conclusion of this statement a copy of the report that was prepared for the May 5, 2022 Planning Commission public hearing by Senior Planner Daniel Esquibel that was approved by Mr. Kluck and Ms. Moore that I found in the dump of materials even though the City Records custodian never disclosed these requested records and even denied they existed. That May 5, 2022 meeting was postponed to June 2, 2022.<sup>7</sup> It was apparently postponed to allow the applicant/owner and the city's planner Daniel Esquibel to coordinate their respective submissions to the Planning Commission to seek an approval recommendation for the upzoning/rezoning.

Interestingly, this case regarding the 2339 Botolph upzoning/rezoning effort has now been resurrected and at the rubber stamp Planning Commission hearing on March 2, 2023, in which my request for the due process right of cross examination of relevant witnesses Kluck, Moore and Esquibel to rebut evidence was denied. In my opinion Mr. Esquibel feebly stated that mistakes were made previously regarding the prior report prepared for the May 5, 2022 meeting recommending denial of that rezoning effort. In my opinion he was attempting to avoid the fact, and no Planning Commissioner even asked him a question about this point, that he and the Land Use Department initially recommended denial of the rezoning application and then worked in complicity with the planner for the owner to change the application to a recommended result for the June 2, 2022.

---

<sup>7</sup> I had also filed a Third Amended and Supplemental Complaint that contained a listing of the various IPRA requests that I made since the lawsuit was filed – and in those requests it felt like I often needed to play word games with the city to get around the stalling and delaying and obstructive tactics of the city. I needed to often seek specific documents to try to avoid the city using the “excessively burdensome or broad” excuse to not timely produce public records. This added to the number of IPRA requests that I felt forced to make to seek records for review.

And, Mr. Esquibel again restated his position that the Land Use Department worked with the developers to pursue their goals - like working on a building permit - and not with neighbors and neighborhood concerns. In my judgment this policy and admission by Mr. Esquibel is against the interests of city residents and neighbors who are adversely affected by inappropriate development that basically benefits the developers and not the immediate neighbors - who were and are most adversely affected and opposed to ill-advised and inappropriate rezoning and other land use matters.

The foregoing examples are just a few of many instances where the Defendant Records Custodian delayed disclosing public records, or closed out public records requests for existing public records, or denied that existing public records existed.

### **Specific Examples of Bad Faith Responses as a part of the City's IPRA practices**

Following are some examples of IPRA requests, the City Responses, and what I later discovered. I believe the city submitted masses of irrelevant materials (through the Land Use Department, and/or City Clerk, and/or City Attorney) as a subterfuge to hide the relevant requested public records. This isn't like a personal injury case or police brutality case where there is generally a discrete act causing an injury and there is a determination of liability and damages. Rather the lawsuit I filed involved a number of requests for relevant public records, city responses and delays, and then sometimes delayed city disclosures of records, and my unraveling facts that led to the discovery of hidden public records and unlawful conduct.

As the year progressed while this lawsuit was pending, in order to avoid the inevitable invocation by the Records Custodian of the "excessively burdensome or broad" excuse to not timely disclose public records I often just asked for a discrete document or set of documents to try to avoid the City from unlawfully, unreasonably, and improperly delaying providing the public records. Sometimes that worked but often it didn't particularly as I focused in on the irregularities of the City's conduct regarding the integrity of maintaining the records and irregularities in the City's internal processes. This approach had the inevitable effect of increasing the number of IPRA requests at issue. But by seeking out only a document or discrete set of documents it did allow me to focus in for trial on some very troublesome and most likely unlawful City practices regarding public records. In my judgment this makes the City Land Use Department report preparation and processes suspect.

For instance, I had information that the owner's planner submitted her initial application for rezoning the subject tract on February 21, 2022. That would mean that the hearing before the Planning Commission would be April 7, 2022. Of course, I wanted to see the rezoning application and its supporting materials. We (neighbors and I) were provided copies of that first rezoning application. The Planning Commission/Land Use department has a published schedule of deadlines that are to be met that include the date for the submission of drafts of the report for the Planning Commission, the date for the submission of Exhibits for the packet of information to be presented to the Planning Commission, and the date for the Final Report from Land Use to be submitted to the Planning Commission so that the materials can be posted on the City's Prime.gov website for city resident review approximately five or six days before the scheduled Planning Commission meeting. There is also a separate provision on that schedule that sets a deadline for the public to submit Public Comments on the Agenda items for the meeting and for the Commissioners' review that are published for the upcoming Planning Commission meeting.

So, based on what I had observed about the Defendant City Records Custodian claiming that my prior IPRA requests were "excessively burdensome or broad" I decided to make individual requests for the particular items based on the dates these items were due as stated on the Planning Commission chart.<sup>8</sup> In preparation for the April 7, 2022 meeting, I submitted separate IPRA requests for any drafts of reports as per the date on the schedule, for any exhibits as per the date on the schedule, and for the final report as per the date on the schedule. For each of these requests I was advised in writing by the Defendant Records Custodian that a search of the land use department did not locate any responsive documents. Since it was early in the process I was trusting. But I was also concerned and it seemed unusual at that point.

I accepted the city representation that there was no draft or drafts of a report, no compilation of exhibits to be presented to the Planning Commission, and no final report of the Land Use Department recommendation regarding the rezoning for the April meeting. As an aside, based on what I had observed about prior conduct of the Land Use Department in other rezoning cases, I engaged in a concerted effort to have neighbors and others interested in the 2339 Botolph Rd upzoning/rezoning to submit their comments into the Land Use Department by a date certain to be included

---

<sup>8</sup> There is a schedule of the Planning Commission Schedule of due dates - and that schedule indicates that a rezoning application needed to be submitted by March 21, 2022 for the May 5, 2022 Planning Commission meeting and it seems to me that helps explain why I discovered there were three different letters from the applicant all dated March 21, 2022 but containing different content. This appears to have been done to avoid the requirement that a new rezoning application be submitted which would have started the process anew.

in the packet of information and specifically request that the submissions be included in the packet of information that was to be presented to the Planning Commission before the date of the compilation of the exhibits in the latter part of March 2022. Though the rezoning matter had initially been placed on the April 7, 2022 Planning Commission meeting agenda we were advised that the matter would be postponed to the May 5, 2022 Planning Commission meeting and the agenda reflected that postponement and the case was postponed until May 5, 2022.

So, the next month in preparation for the May 5, 2022 Planning Commission meeting I submitted the same type of separate IPRA requests. I submitted separate IPRA requests for any drafts of reports, for any compilation of exhibits, and for the final report regarding the rezoning application. For each of these requests I was advised in writing by the Defendant Records Custodian that a search of the land use department did not locate any responsive documents. It seemed peculiar at that point that there were no responsive public records. But, I accepted the representation from the Records Custodian that was no draft or drafts of a report, no compilation of exhibits to be presented to the Planning Commission, and no final report of the Land Use Department recommendation regarding the rezoning for the May 5, 2022 meeting. Later as I shall explain I found out that these representations by the City were false as there were in fact drafts of a report, a compilation of exhibits, and a final report that recommended that the rezoning be denied because it did not meet the rezoning criteria. I later found the hidden materials as a part of an October 6, 2022 document dump of 800 pages of mainly irrelevant materials.

That document dump happened on October 6, 2022 after Judge Mathew's issuance of a Peremptory Writ of Mandamus on September 25, 2022 and showed the duplicity of the city, the Land Use Department officials and employees including Director Jason Kluck and Planning Manager Margaret Moore, and the City Attorney's office. I didn't know that when I filed the extraordinary proceeding seeking a Mandamus remedy for public records that there actually were drafts of the previously requested report that were being reviewed, that exhibits had been compiled for presentation to the Planning Commission, and that there was a report signed and approved by the Land Use planner Esquible and Land Use officials Kluck and Moore approving the recommendation of denial of the rezoning for the May 5, 2022 Planning Commission meeting. Again, I was only advised in connection with my IPRA request that nothing existed because a report was still under review.

Though the rezoning matter had been placed on the May 5, 2022 meeting agenda we were advised that the matter would be postponed to the June 2, 2022 Planning Commission meeting, and the agenda posted at that time reflected that postponement. The case was postponed until June 2, 2022. There was no public hearing on May 5, 2022 regarding the 2339 Botolph Rd rezoning.

I had also made requests for copies of any rezoning or amended rezoning application and any emails or correspondence regarding this rezoning matter. All of these items are public records. Little did we know until after the September 26, 2022 hearing before Judge Mathew and after the City was ordered by Judge Mathew to disclose public records that the Land Use Department and City Attorney's office in complicity with the owner's planner allowed the planner to amend her application letter of March 21, 2022 with the rezoning application support materials at least two times but without in any way indicating that the amendments were made by letter at later dates in May 2022 but using the same March 21, 2022 date. This change with new reasons offered for the rezoning in a rezoning application should have required the resubmission of a new rezoning application to start the upzoning/rezoning process from the beginning as the reasons provided for supporting the rezoning changed and the nearby neighbors were never notified of these changes until only days before the June 2, 2022 Planning Commission meeting.

And as I found out later there never was any indication in any of the applicant's letters all still dated March 21, 2022 - but that contained different content - that these subsequent letters had amended the original March 21, 2022 cover letter submitting the rezoning application submittal. These amended letters from the applicant, with the same date, though requested were never disclosed until after Judge Mathew issued his Peremptory Writ of Mandamus. These gross misrepresentations by the City in failing to disclose public records caused great prejudice because the public records were not disclosed and the changes were never explained to or provided to the public.

And if any lawyer had submitted these letters, all dated the same day and made to appear they were the same letter without in any way indicating that the substance or information in the letters changed that lawyer would be rightfully the subject of a disciplinary board complaint for misrepresentation. And, in my opinion knowing all this those city planners (Kluck, Moore and Esquibel) if they knew of and/or were involved in delaying or failing to provide the requested records in a timely manner,

or withheld the requested public records beyond the time period required by IPRA, or even hid the requested records, they did not act in an ethical manner.

So, the next month in preparation for the June 2, 2022 Planning Commission meeting in May 2022 again as per the schedule, I again submitted the same type of separate IPRA requests. I submitted separate IPRA requests for any drafts of reports, for any exhibit compilations, and for the final report for the scheduled hearing. Drafts of the prior report with amendments existed but were not disclosed. As I recall in response to IPRA request #22-2983 I was advised that there were no drafts of any reports to be presented to the Planning Commission. And rather than be provided with any requested public records as I also requested I was simply directed to the City's public portal to access exhibits to be presented to the Planning Commission and the Land Use Department Report to be presented to the Planning Commission.

I accessed these records late on May 25, 2022 and was shocked at what I discovered was being presented to the Planning Commission and the public by the Land Use Department with the acquiescence of the City Attorney and the City Administration. So, we had only between late May 25, 2022 and the June 2, 2022 Planning Commission meeting to process the information that now appeared on the City's public portal. Without any explanation, the city planners had done a complete about face from the report that was prepared for the May 5, 2022 Planning Commission meeting. Now they were recommending approval based on different criteria but never had the common courtesy or followed protocol in notifying neighbors of all the changes that had been made for the rezoning application.

In reviewing and then downloading the materials on the City's Prime.gov portal I noticed and read Exhibit B. Exhibit B was clearly a draft of Findings of Fact and Conclusions of Law that referenced a report and that was obviously prepared for the May 5, 2022 Planning Commission meeting. Further this draft stated that the Findings were to recommend denial of the rezoning request. Yet, the final report to the Planning Commission for the June 2, 2022 meeting was to approve the rezoning request. I/we were blindsided by this Exhibit B as we had been advised by the Defendant Records Custodian in response to my prior IPRA requests detailed before that there were no drafts, exhibits, or report prepared by the Land Use Department prepared for the May 5, 2022 Planning Commission.

One other aspect of this saga is that the City's public portal allows the public to submit written Public Comments that are supposed to be available for the Planning Commissioners to review along with the other materials submitted to the Planning

Commission in connection with the rezoning case. The City, through the Land Use Department, refused to accept a letter submitted on behalf of an adjacent neighbor to the rezoning property, Mr. Tiano, who objected to the rezoning claiming it was sent in too late (by hours certainly no more than less than a day) to be included in the information packet that is submitted to the Planning Commissioners. So, in the early AM - shortly after mid-night as I recall - on May 25, 2022 I copied and pasted that e-mailed letter on behalf of Mr. Tiano into the Public Comment portion of the City's Public Portal. That Public Portal lists and contains the materials that the Land Use Department employees supposedly submit to the Planning Commissioners for the agenda items for a particular meeting. That list as it appears on the City's Prime.gov public portal and the accompanying materials are a public record under the definition of public records that is found in IPRA. I have screenshots of the list of materials.

The missing public records that has been requested were important for my/our presentation to the Planning Commission since it now appeared that only one month prior to the June 2, 2022 Planning Commission meeting the City staff (Land Use staff and City Attorney staff) had prepared documents recommending against approval of the rezoning request. Those documents - public records - would have supported the neighborhood positions against the upzoning.

But at the June 2, 2022 Planning Commission meeting the city staffers (from Land Use and the City Attorney) took the strong position in favor of recommending approval of the upzoning/rezoning request to go to the Governing Body. In my opinion they mislead the Planning Commission - not that it cared - about the preceding events. We were told that the Applicant for the upzoning/rezoning had submitted an amended rezoning application. That amended rezoning application had never been provided despite the IPRA requests for that public record. To say that I/we were surprised, taken aback, and prejudiced by these events is an understatement. We did not know that behind the scenes the Land Use Department apparently through Daniel Esquibel was working with the applicant to change the rezoning application and seek the rezoning under the amorphous Section 14-3-5 (1)(a) (iii) of the rezoning criteria because even the Land Use Department could not justify the criteria that the area around the rezoning area had changed character. <sup>9</sup>

---

<sup>9</sup> And that realization that the area in question had not changed should have alerted the Planning Commissioners that if the area around the area in which the rezoning was sought had not changed that using a huge Review area for comparison purposes, as was done in the reworked report and as a demonstrative exhibit, as was done by Senior

At the June 2, 2022 Planning Commission meeting <sup>10</sup> I feel we were denied a fair and proper quasi-judicial hearing. We were limited in our ability to contest the upzoning. We were not allowed to cross examine witnesses or rebut evidence due to the direction of Assistant City Attorney Feghali. There was real prejudice by the Defendant/City in hiding relevant records that could have been used at that hearing. The city staff, mainly Daniel Esquibel, stated that the uploading of the infamous “Exhibit B” was a mistake. The city staff further insisted that they work in concert with the applicant/developer to get what they want (analogizing it to a building permit type of issue) and do not work with the residents of the neighborhood expressing their concerns about changes in the character of a neighborhood.

In my opinion as a former City Councilor the city staff has expanded the concept of the rezoning criteria for the greater “community” benefit to the city to the point of absurdity. This was a property bought for speculation purposes. <sup>11</sup> We presented evidence to support that assertion. There does not appear to be any support in the City Code for the filing of an amended rezoning application on different grounds without starting the whole rezoning process again and following all the City’s notice provisions and requirements. <sup>12</sup>

And, contrary to the Land Use Department and City Attorney insistence that the general plan and future land use maps of the city must be followed. It is a fact that both the general plan and future land use map were adopted by Resolution and are only advisory. And, the pertinent minutes show that it was city staff that was urging higher densities and that a planning process was supposed to follow but it never happened. The general plan and future land use map are not ordinances and they are not the law. And, the city staff and the Planning Commissioners continually ignore Section 2.04 of the City Home Rule Charter which emphasizes neighborhood

---

Planner Esquibel and supported by his superiors Jason Kluck, Land Use Department Director, and Margaret Moore, Land Use Department Manager, was totally inapplicable and inappropriate.

<sup>10</sup> The Chair of the Commission at that time Brian Gutierrez was polite and sensitive but felt that he had no choice but to follow the advice that he was being provided at the meeting by Assistant City Attorney Feghali which in my view was flawed and intellectually dishonest.

<sup>11</sup> **As shown by the MLS listings of land and houses for sale, the owner/applicant bought the land for speculation. The purchase prices was for \$155,000 and then the same property was listed for sale as an opportunity for a unique in-city estate with Clearview Realty and Mr. Alcozar for \$325,000. Thereafter the property owner reduced the price several times to \$295,000 and \$275,000. Only when the land did not sell for the asking price and only many months later did the owner seek to get the 2339 Botolph property rezoned from R-1 to R-2.**

<sup>12</sup> I submitted an IPRA request for the provision of the portion of the City Code that allows an amended rezoning application to be filed and I received back in response a complete copy of Chapter XIV of the City Code with the message that the issue of rezoning was referenced in the City Code. Chapter XIV by itself appears to be more than 100 pages. That is hardly a proper response to an IPRA request.

and cultural preservation. I know about Section 2.04 of the Charter because I was on the initial Home Rule Charter Commission and later served on the City Home Rule Charter Review Commission that amended Section 2.04 to emphasize the importance of neighborhood preservation. The word “neighborhood” was added to Section 2.04 four times and the voters approved those amendments to the Home Rule Charter.

So, after the fundamentally flawed decision at the Planning Commission on June 2, 2022 recommending approval of the rezoning, I submitted further IPRA requests on June 10, 2022 and June 20, 2022 because I wanted open and transparent government. I wanted to know what was going on behind the so-called closed doors. This is what led to the subject of the Mandamus proceeding. It was my view that there had to be communications between the city and the applicant for these kinds of coordinated changes to the rezoning application for all this to have happened. My IPRA requests were done in such a way, as before, to be separate requests for any emails and communications that the identified city staffers had sent to the applicant from April 1, 2022 and April 15, 2022 to the date of the request and a separate request for any emails and communications that the identified city staffers who had received from the applicant for the owner.

**The City of Santa Fe Land Use Department still continues to deny the Planning Commission with properly submitted resident input resulting in deficient and proper Quasi-Judicial hearings**

As a side note, the city and developer of 2339 Botulph Rd have recently resurrected the upzonng/rezoning claiming that their delay since last year was caused by a notice problem. I think a large part of the delay had to deal with the irregularities I uncovered by seeking the public records relating to the rezoning process for this property. This case was heard de novo on March 2, 2023 and again the process was fundamentally flawed as I explain in this statement. After the Planning Commission recommended approval without even being provided a proper public comment submission by the Land Use Department I also submitted a lengthy detailed Motion for Reconsideration with Exhibits to the Planning Commissioners which I attempted to attach to the new public comments for the recent March 2, 2023 Planning Commission meeting. There has been a gross violation of due process of law in connection with a quasi-judicial hearing - and either the rubber stamp Planning Commissioners knew and went along with the city staff and this plan or were themselves duped by the aforesaid city staffers. The result was the same. The

Planning Commissioners casting aside any serious negative impacts on adjacent neighbors voted to recommend approval of the upzoning rezoning - even though it was obvious that the Review area urged by planner Esquibel was totally inappropriate and not at all representative of the 2339 Botulph Rd. area under review. The Planning Commissioners know that they could not understand the submissions that were made for the March 2, 2023 meeting because the Land Use Department provided public comments I made in a completely disorganized and unrecognizable form and format as discussed herein but they never had the candor to even admit or question why that the public comment submissions were confusing and completely disorganized and request that the public comments and attachments be reorganized.

One would think that a Planning Commission which now consists of a college President (and former Congressman), a former Administrative Law Judge, experienced lawyers, professional planners and other professionals would be independent thinkers and know that something was suspicious about the process they were participating in and witnessing first hand.

Previously it was inexplicable that the former Administrative Law Judge made a Motion at the June 2, 2022 to approve this upzoning/rezoning without even publicly discussing, considering, or commenting on the balancing requirements of the rezoning provisions of the City Code and the negative aspects of the upzoning impacts on adjacent property owners - let alone the precedent and domino effect the upzoning/rezoning would set. It was inexplicable that a Planning Commissioner would consider the Camino Alire and Botulph Rd areas to be equivalent areas because those streets have the same characterization. And, it is even more inexplicable that an educated and presumably knowledgeable College President and former Congressman (and who has only been a resident of Santa Fe for about 10 years and likely hardly does not have even a basic understanding of this community, and its history, and its neighborhoods and their unique qualities) would make a Motion to adopt Findings of Fact under these suspicious circumstances presented at the public hearing and later detailed in the lengthy and well documented Motion for Reconsideration. One can only wonder what caused these Planning Commissioners to engage in this rubber stamp and unquestioning conduct.<sup>13</sup> There is nothing in the

---

<sup>13</sup> And now that the 2339 Botulph Rd rezoning was resurrected again at the March 2, 2023 Planning Commission meeting, the Land Use Department staff failed to properly prepare or organize public comments regarding resident objections for the consideration of the Planning Commissioners at the meeting, the public portal system did not work for the uploading of commentary and large documents, we have seen that these types of problems happened in the past regarding the Zia Staton Project still exist using this new system and this prejudicial disorganization will be challenged again on due process grounds as this rezoning process, and others, move forward.

city history or the advisory general plan that urges that all of the land and neighborhoods within the city limits be urbanized and that the character of semi-rural areas that still exist in the city should be changed.

**The City of Santa Fe engaged in delay disclosing public records to IPRA requests and also in litigation and disclosure practices in the lawsuit that made it difficult to find and locate responsive public records and in the extraordinary Mandamus proceeding were Ordered by District Judge Frank Mathew to disclose public records**

As a matter of practice responding to IPRA requests the city regularly delayed the disclosure of properly requested public records. These delays seem to have been intended to avoid disclosure of public records. Other times the city provided voluminous non-responsive records which are seem to have been intended to avoid and/or confuse the disclosure of responsive public records. The city practices violate and violated the intent and purpose of IPRA. <sup>14</sup>

The city mounted a vigorous and costly defense of their inexcusable conduct. It continued to insist in its lawsuit pleadings and continues to assert that it complied with IPRA. Notwithstanding the denials in the Release, in my opinion that is simply not true. And further in my opinion the payment of damages by the city was not done to limit the expenses of litigation. It has been my experience over the years as an experienced lawyer representing victims of governmental abuses and other victims of serious harm in litigation that Defendants commonly use that excuse to attempt to deflect responsibility for liability or misconduct.

And, from a professional experience standpoint it is an unspoken but commonly understood aspect of the litigation process that a defendant will almost always claim in a settlement agreement that there is no admission of liability. That is just the way it works the vast majority of times when cases get settled. I believe that the city knows it violated and violates IPRA and would have lost the trial and that is why it settled the case.

I received discovery responses from the city's outside counsel on September 9, 2022 and September 14, 2022, including 18,000 pages of materials of mostly

---

<sup>14</sup> And, the City in what seems like an apparent response to the IPRA requests I made about this inappropriate and ill-advised rezoning and it seems to also clutter the record with more pages to make discovery of improprieties even more difficult provided about ten duplicate copies of the almost 100 page reconsideration submission as a part of responses to IPRA requests without indicating in any way from whom these duplicate copies were sent to the Records Custodian from or received from in the disclosures. This is another example of the Defendant's unreasonable and improper practices relating to IPRA disclosures as to the 2339 Botolph Rd upzoning/rezoning.

irrelevant and unresponsive materials, and started my review of the materials. But in going through this mass of material I realized, as I had suspected, that the Defendant/City had not provided properly requested and particularized public records in response to many of my IPRA requests. It provided irrelevant records to attempt to confuse the situation and make finding relevant public records difficult.

So, that is why I worked hard and prepared the previously mentioned Verified Petition for Alternative Writ of Mandamus. Judge Mathew granted a hearing on the Petition on September 14, 2022 and set the hearing on the Verified Writ for September 26, 2022. At that hearing an Assistant City Attorney appeared by a limited Entry of Appearance, outside counsel appeared, and I presented the case for granting a Peremptory Writ of Mandamus.

After reviewing the Verified Petition, the Response, the Reply, and the arguments of the parties, Judge Mathew granted the Petition and orally issued a Peremptory Writ of Mandamus directing that public records specified in the five IPRA requests at issue for that hearing to be disclosed within three days, and ordered the City to conduct a good faith search for additional records and within 15 days disclose additional records and if not, he required that the Defendant provide an detailed explanation of why the search for records could not be conducted within the 15 day deadline set by the Court for disclosure. The Court also required a Certificate of Compliance to be filed by the city.<sup>15</sup>

The Court further ordered that the issues of damages, remedies, costs, and attorney's fees for Petitioner (me) under both NMSA § 14-2-11 and NMSA § 14-2-12 be deferred to a later date.

The Assistant City Attorney and I could not agree on the wording of the Writ. Under the local rule I submitted my proposed form of Writ. At that time the City Attorney did not file any objections nor an alternative form of Writ. The Assistant City Attorney only filed a proposed alternative form of Writ one hour before a Motions and Presentment Hearing on November 17, 2022. Only through the kindness of Judge Mathew (though he did not use those words) did the Assistant City Attorney get a strong rebuke from the Court for not following procedure, not submitting Objections, and only submitting a form of Writ one hour before the

---

<sup>15</sup> The City never submitted any Certificate of Compliance until later in December after I filed a Motion for an Order to show Cause why the Defendant and the City should not be held in Contempt of Court for failing to comply with the conditions of the Peremptory Writ of Mandamus. Because the case has settled I did not pursue that issue.

presentment hearing. The Court told the Assistant City Attorney that his conduct was “unacceptable”. I believe that was the word that was used.

Judge Mathew wanted to modify the detailed form of Writ I had proposed. So, Judge Mathew modified the Writ to his liking, and entered his written Peremptory Writ of Mandamus the next day on November 18, 2022, but it was effective as of the date of his formal oral ruling at the aforesaid Motions hearing. Attached is a copy of the Peremptory Writ of Mandamus that was entered by Judge Mathew regarding the conduct of the city and commanding the disclosure of public records - and that set in motion the process by which I found the hidden and undisclosed public records referenced herein.

### **The process of discovering that the city engaged in hiding and not disclosing properly requested public records**

A major factor leading to the settlement of the IPRA lawsuit happened after I started reviewing the emails and materials that the Defendant/City started providing after the Peremptory Writ of Mandamus was orally issued by Judge Mathew. In late September 2022 and early October 2022 as I was reviewing newly disclosed and voluminous public records I discovered as I have written earlier that there were communications, **drafts** and a Report and proposed Findings of Fact and Conclusions of Law and communications about these documents prepared by the Land Use and City Attorney staff for the May 5, 2022 Planning Commission meeting recommending against the upzoning of the property based on the rezoning application submitted by the applicant. There also was a noticeable period of “radio silence” reasonably leading one to believe that thereafter there were communications happening between the applicant/owner and the Land Use Department planner and City staff and/or City Attorney staff - in a manner to not create public records of their communications.

On October 5, 2022 and after many prior IPRA requests seeking emails and communications from the applicant to the city, I finally received copies of the three submissions from the applicant - all dated March 21, 2022 - but which differed in content. I then started a search to find out the dates that the Land Use Department had received each of these three submissions because the Land Use Department failed to provide that previously requested information. To this day the City has not provided that properly and particularized requested information and documentation about the actual dates that these different “March 21, 2022” letters from the applicant

were received by the Land Use Department or any City department to change the justifications for approval of the rezoning.

I know from my own review, and based on nothing that the Defendant/City has properly provided - as a cover letter or the like that accompanied the submissions as had been IPRA requested, that two of the submissions had to be after the May 5, 2022 Planning Commission meeting because the properties to those PDF documents show that they were created on May 9, 2022 and May 11, 2022. That was after the May 5, 2022 Planning Commission hearing in which the 2339 Botulph Rd rezoning case was postponed to June 2, 2022.

**It Appears that the City of Santa Fe has altered and tampered with public records on its Prime.Gov site regarding meetings of the Santa Fe Planning Commission**

Another important issue regarding irregularities with the City's public records and IPRA requests that I have discovered and revealed deals with the City's Prime.Gov site where the City posts information regarding meetings of City Boards and Committees and information packets for the Boards and Committees related to those meetings as well as posting public comments. One would think that the Planning Commission as public officials operating under an oath to uphold and follow the law would be concerned about the integrity of public records relating to its public hearings and the work that it does. That does not appear to be the case.

We know that there was no public hearing regarding the rezoning of the property located at 2339 Botulph Rd at either the April 7, 2022 or May 5, 2022 meetings of the Planning Commission. It states as much on the original agendas and minutes relating to those meetings. And I was monitoring the City's site because I wanted to read and review the staff report and recommendations regarding the 2339 Botulph rezoning as well as all the supporting documents as soon as possible so that I could be prepared to understand and rebut the case for the upzoning/rezoning at those meetings. For both the April 7, 2022 and May 5, 2022 meetings nothing by way of information packet other than an item on the agenda indicating that the case had been postponed appeared on the city site about that rezoning case for those dates.

But, after I started making inquiries about the irregularities I was discovering regarding the failure to disclose the Land Use Department drafts and reports recommending denial of the rezoning of 2339 Botulph Rd and after the June 2, 2022 meeting of the Planning Commission at some point in time I discovered that the City uploaded documents [reports, exhibits, correspondence, public comments, etc.] to

make it appear that they had been posted on line prior to and for the May 5, 2022 Planning Commission meeting. The Land Use Department also did this for the April 7, 2022 Planning Commission meeting. I know that these records are not accurate and were uploaded after the dates of the meetings because the public comments that appear were mine and they were date and time marked as being received on May 25, 2022.

When I made that realization I then started to make IPRA requests seeking to ascertain the date(s) when the various specified items were uploaded by the City in connection with the May 5, 2022 meeting because of the issue of the newly discovered drafts, exhibits, and report for the May 5, 2022 that were hidden and never revealed until October 6, 2022 in the middle of that 800-page document dump. And again, these documents were important since they were recommending that the upzoning for 2339 Botolph Rd be denied.

The Defendant/City responded to my IPRA requests that the city has no way of determining the date when these items were uploaded to that City portal site. That is a statement I find unbelievable because, though my knowledge of the inner working of computers is limited, I have learned that there is a computer log and details that are kept in the form of electronic records about the activities associated with computer networks. This is not a complicated CSI issue as forensic analysts find out this information all the time - that is how child porn, fraud, computer crime, and other cases are investigated and prosecuted all the time. The Defendant/City insists they have no way of providing the requested information from the City's own computers or networks. The city did however identify a person, Geraldine Gurule, as the person who uploaded the materials.

The reason this is important for a public integrity and open government and governmental transparency purpose is that the items that were posted [and that can still be accessed through advanced searching though it is not easy] is because the report the City posted for the May 5, 2022 meeting was actually for the June 2, 2022 Planning Commission meeting which was obviously not held until June 2, 2022 and as I stated previously the Public Comments that are posted are mine and they are date and time marked May 25, 2022 and the Land Use report that appears is dated for the June 2, 2022 Planning Commission meeting.

Based on the Defendant's failures and/or refusals to provide the requested public records I decided to incur expense to pursue the lawsuit and noticed and took

the depositions of three city employees, including Ms. Geraldine Gurule.<sup>16</sup> These depositions taken at my expense provided some information regarding the City's internal processes. They were videotaped and show in my judgment Ms. Gurule being evasive and seeking guidance as she was being asked questions about the process and dates of uploading these documents, and the authorization to do so, in connection with the May 5, 2022 Planning Commission meeting that give the false information, as a public record, that the items were actually all posted before and in connection with the May 5, 2022 Planning Commission meeting.<sup>17</sup> The other agenda items - particularly the public comments for other agenda items (cases) for that meeting - do not appear to have the same after the fact uploading of relevant materials as they predate the meeting rather than being dated after the meeting date.

In fact, whoever wanted those materials uploaded from the Land Use Department apparently failed to consider that the public comments regarding the 2339 Botolph Rd upzoning that were uploaded were submissions that I made on May 25, 2022 (date and time marked upon receipt) thus conclusively proving that the uploading of these materials could not have conceivably happened prior to the May 5, 2022 Planning Commission meeting.

To me it seemed that Ms. Gurule was notable in her lack of memory about this uploading issue. Geraldine Gurule stated she did not remember uploading the materials but testified that those who are authorized to upload the documents to the City's Prime.gov site are limited. She likely would have taken direction about uploading these items regarding the rezoning case from either Jason Kluck, Land Use Director or Margaret Moore, Land Use Planning Division Director. There is the very real issue of the alteration and tampering with public records as the electronic record that appear in connection with the May 5, 2022 Planning Commission meeting. These are public records under IPRA and that public record had no materials uploaded in connection with the May 5, 2022 Planning Commission meeting (or the April 7, 2022 Planning Commission meeting for that matter). Now

---

<sup>16</sup> I also served Notices of Depositions and Subpoenas on Mayor Alan Webber for his deposition on 2/16/23, City Manager John Blair for his deposition on 2/17/23, and City Attorney Erin McSherry for her deposition on 2/20/23 as I have alleged in both the Second and Third Amended Complaint that they have administrative and legal responsibilities for the proper administration of the City's compliance with and response positions regarding IPRA under the Santa Fe City Code and New Mexico Statutory responsibilities - it's very much like a supervisory liability claim. It is alleged that they have knowledge of the systemic problems and have allowed, if not encouraged, the failures to comply with IPRA. The City's outside counsel had refused to even discuss a negotiation regarding accommodations for institutional concerns and/or limitations under NMRA 1-026 and filed absolute Notices of Non-Appearance and Motions for Protective Orders that would have been responded to in due course had the case not settled on 2/10/23.

<sup>17</sup> Within the past several months or so (since I started looking on line) these same uploaded items now also appear in connection with the April 7, 2022 Planning Commission meeting.

it is made to appear that records never uploaded for those meetings were in fact uploaded as “item attachments” for those meetings.

Under IPRA public records are defined as:

**NMSA 14-2-6 G.** "public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained;

Ms. Gurule testified that she was the person within the Land Use Department with the job to upload the packets of information through a link she receives which contains all the packet information for all the cases - but the facts do not bear that out as the other agenda items appear to be appropriate for what was on the particular agendas and actually heard at the April 7, 2022 and May 5, 2022 Planning Commission meetings. And, the public records regarding 2339 Botulph Rd. do not appear in the same manner – as the after the fact uploading of materials related to the 2339 Botulph Rd. upzoning/rezoning.

In addition, I noticed the deposition of the Manuel Gonzalez, the head of the City of Santa Fe’s IT Department. It seemed to me that he had spoken with a City Attorney beforehand and would testify that he did not have any specific information regarding the Prime.Gov platform and how it functioned - particularly with regarding to the uploading of the materials pertaining to the May 5, 2022 and April 7, 2022 Planning Commission records. Prior to his deposition the city nor any or its representatives ever provided me the courtesy of letting me know the limited knowledge of Mr. Gonzales regarding the Prime.gov platform.

Nevertheless, based on my years of experience litigating cases at that point in the deposition when I saw how things were going with Mr. Gonzales professed limited knowledge about Prime.gov, I changed the direction for the deposition and started inquiring about the City’s servers and their functions in maintaining records of all the various records that the Defendant Records Custodian had been stating in communication did not exist in closing out various IPRA requests without providing responsive documents. Mr. Gonzalez in fact confirmed that the City servers had the information and documentation - even if not yet disclosed - that the City was denying

existed about the dates that emails were/are received (like the applicant's sending the City the three versions of the March 21, 2022 rezoning letters and the like).

### **The city's disclosure practices violate and violated the intent and purpose of IPRA**

I filed the lengthy Third Amended Complaint that consists of more than 130 pages to avoid any attack by the city that the Complaint did not state claims for relief - as the city did for the First Amended Complaint. I copied each of the IPRA requests at issue and listed all the alternative ways that I believe the requests were handled in a manner that violated IPRA. I also clearly laid out the administrative roles of the Mayor (under our new strong Mayor form of government giving the Mayor ultimate administrative authority for running the City), and the role of both the City Manager for his administrative responsibilities and City Attorney's duty to make sure that the City Code and laws of New Mexico are followed. The Defendant/City simply filed a pro forma Answer to that Third Amended Complaint.

### **The City of Santa Fe's inadequate process for response to IPRA requests**

For the benefit of the public, and those who want to make IPRA requests, it is important to explain how the City's IPRA on-line request and response process actually seems to work in practice as opposed to the way it is supposed to work based on the IPRA laws.

The city has an electronic program called "Next Request". There is a process for creating an on-line account. Once you figure out how to use the on-line program - there is no tutorial that I know of - a person can create an on-line account. After creating the account by email address and password a user types in a request for information, fills in personal identifying information, and submits the request. The City sends an email form that acknowledges receipt of the request. Some, but not all, of the City's on-line responses are date and time stamped. The City sends a separate email indicating that a communication has been sent. So an individual must keep track of all emails received from the Records Custodian and correlate them with the entries that appear on Next Request. This can be a problem later, if this coordination is not done at the same time, in trying to independently present a cogent timeline of the date of communications received from the Records Custodian. It seems that this method is made to be confusing and is certainly not user friendly.

The lack of a consistent date and time stamp marked on the user side of Next Request makes it hard to figure out the dates of the City's responses and/or

disclosures if there is a dispute about disclosures, while the requestor's communications seem to be documented with date and time that the city and its employees can access through a back channel called a "Timeline" and do not seem to readily disclose - even upon being the subject of an IPRA request.

By signing into your Next Request account, a requester can keep track of the status of a request (but not necessarily the date and time of a city response) and there is a way that the entire string of communications between the city and the Requestor can be printed out from the user side of Next Request - if one can figure out how to copy and paste the communications. In my lawsuit I got copies of the "Timeline" for the requests at issue through the lawsuit discovery process. But the "Timelines" the city provided were not verbatim and it is hard to decipher all the relevant dates of contacts that the city makes with its employees of IPRA contacts, the content of those communications, or the steps that the city has taken to comply with providing the disclosures in response to an IPRA Request.

The Defendant Records Custodian Cindy Whiting is basically a functionary. She gets and reviews the IPRA requests and apparently works with the IPRA department manager and then somehow decides the department that the Records Custodian thinks has the requested information. She sends a designated contact person within that city department an email message/form requesting the records. That contact person is then to somehow communicate (usually by email) with their managers about the IPRA request to seek the requested public records. It does not seem that the Records Custodian gives enforceable deadlines for response by city departments or has any powers to demand timely responses from Land Use Department officials and employees other than nudging the department, and city employees, to comply with IPRA deadlines.

So, there appears to be, from my experiences and review of discovery materials provided in my lawsuit no internal accountability and/or penalty for city officials and employees, particularly in the Land Use Department and City Attorney's office and City Clerk's office delaying and ignoring IPRA deadlines for the disclosure of public records. That lack of enforcement of deadlines and lack of accountability I believe is a reason why the City regularly extends the time for disclosing public records by declaring the IPRA requests to be "excessively burdensome or broad". It appears that the city assumes that most requesters will simply go along with the extended and unreasonable and/or improper delays in providing public records.

The only remedy for the unreasonable and/or improper delays and/or denials is the filing of a lawsuit. And it appears based on the way the city handles IPRA requests that the City, through the City Attorney's office, clearly assumes lawsuits for enforcement of IPRA rights will not happen because most requesters simply do not have the legal training or resources or perseverance to pursue such a lawsuit against these dilatory tactics. And unfortunately there are few attorneys in New Mexico who are willing to handle IPRA lawsuits on a contingency basis - notwithstanding the attorney's fees provision in IPRA for prevailing parties. As a result, it seems the city regularly and strategically flaunts the IPRA public record request process.

But I did get access to a City Attorney Business Process form from the City Attorney's office that sets out a procedure that the city has developed - and importantly for purposes of my lawsuit and for others who may wish to challenge the city process that policy now states that requests are generally to be completed within thirty (30) days - even if the request is determined to be "excessively burdensome or broad". My experience was that the city typically extended that initial thirty-day period into additional thirty-day extensions of time in violation of the intent of IPRA.

The IPRA statute specifically states that requests are to be fulfilled promptly but in no event later than fifteen (15) days after the request is made unless the request is determined to be "excessively burdensome or broad". There are actually important three-day and fifteen-day deadlines in the IPRA statute that appear to be routinely ignored by the city in practically all situations regarding IPRA requests involving land use matters - even if the public records exist and are easily disclosable.

It appears the City acts as if the 30-day mark is the deadline and regularly makes extensions of time declarations beyond fifteen (15) days regardless of whether there is a basis for that extension or not. It appears that the city often did that for my IPRA requests for legally invalid reasons. There are no objective standards or criteria stated in the city policy for how any determination is made that an IPRA request is "excessively burdensome or broad". It appears to be entirely subjective.

It is my opinion that the city at the outset sets the stage for creating delay and setting an excessive time for response to IPRA requests. Judge Mathew was clear during his ruling on the Petition for Alternative Writ of Mandamus issue that the statutory requirements are important to follow and that the public entities must do

all they can to comply with these statutory requirements as a matter of important public policy under IPRA - including hiring or contracting with additional personnel to comply with IPRA.

The case of **Franklin v. DPS**, 2022-NMCA-058, from the New Mexico Court of Appeals attempts to define the concepts of “reasonable” and “prompt” in the context of interpreting delays in disclosures, the use of the “excessively burdensome or broad” provision, and requirements imposed for disclosures. I believed that at a trial I would clearly be able to show that the Defendant and City officials violated IPRA many times as explained in **Britton v. Office of the Attorney General**, 2019-NMCA-002, ¶¶ 31-33 because they did not disclose identified public records even if they had identified the public records. I was also prepared to show that the Defendant and City officials and employees conduct in responding to my IPRA requests was neither “reasonable” nor “proper” under **Franklin v. DPS**, 2022-NMCA-058 and the preceding precedent in IPRA cases.

If an IPRA request seeks email communications the Records Custodian conducts a search for the emails. It does not appear that the Records Custodian seeks out an identified person who may have sent out or received an email that was requested as a first step in the process to expedite the disclosure of these public records. Now, in a system where there are not trustworthy employees or officials, as appears from my experience and belief to often be the case with the Santa Fe Land Use Department and City Attorney’s office it would be a good thing for the Records Custodian to conduct a separate search for emails as a good check and balance for integrity purposes. However, as the city system exists the Records Custodian who does not appear to be a trained linguist or investigator attempts to frame phrases or words - not necessarily with the precision required - to search for responsive public records. This method appears to be inefficient, ineffective, and inevitably misses many relevant public records in the form of email communications that should be disclosed. If the Records Custodian does not get “hits” based on her search it does not appear that the Records Custodian follows up and seeks out the identified city official or employee to question or make inquiry and specifically try to identify the requested public records. This is a huge gap in the disclosure process and leads to many public records requests being denied and/or delayed because of this big flaw in the process.

In addition, the Records Custodian and the City Attorney’s office also engages in improper redaction of document practices by completely blacking out entire pages

of records without any indication of from whom the document or documents were sent or by whom they were received. If a communication or document has a City Attorney or paralegals name on the communication that communication is completely redacted - whether or not the content of the communication is attorney client privileged or not. And, the Records Custodian or her designee only provides a meager statement at the end of the disclosure that refers to the assertion of a privilege but does not provide any specific information. The City does not seek any in camera inspection by the Court of any of these blacked out records leaving the burden of attempting to ascertain whether the city has properly responded to an IPRA request or made proper redactions on the person that made the request.

#### **14-2-5. Purpose of act; declaration of public policy. (1993)**

Statute text

Recognizing that a representative government is dependent upon an informed electorate, the intent of the legislature in enacting the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978] is to ensure, and **it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. It is the further intent of the legislature, and it is declared to be the public policy of this state, that to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees. (Emphasis Supplied).**

The city even sought a jury trial to attempt to prolong and make more complicated the disclosure of their improper IPRA practices. Though I am a strong proponent of the jury trial functions I do not believe for all the reasons I stated in my Motion to Strike the Defendant's Jury Trial Demand that the presiding Judge would have granted the City's demand for a jury trial in this IPRA case. It seemed to me that the Judge seemed pretty incredulous at the idea of a jury trial in an IPRA case when city's counsel advised him at the Case Management Scheduling Conference that the city would be demanding a jury trial.

I made an extensive record of my objections to the various IPRA requests that were delayed, denied, and for which the "excessively burdensome or broad" provision was unreasonably and improperly used contrary to the **Britton** and **Franklin** cases and the prior IPRA cases that seemed to require the public entity to

go through each document on an item-by-item basis to determine whether the records are responsive and should be disclosed and all these communications are now a part of the public record.

Damages can be calculated under IPRA up to \$100.00 a day, but we have months and months and months of delays for clearly disclosable public records. The disclosures that the city provided on October 6, 2022 with the hidden compilation of exhibits, drafts of reports, and reports, and that had been pending for a long time and that is only a part of the daily delay calculation. Taking those delay days and using any multiple for the numbers and importance of the public records withheld can easily support a large claim of damages. Judge Mathew already made a finding in the Mandamus portion of the case that both NMSA §14-2-11 and §14-2-12 of IPRA have been implicated by the City's conduct.

### **Why I filed and pursued and settled this IPRA lawsuit**

As a former City Councilor and neighborhood advocate I do have an interest in making sure that the city becomes more responsive to resident objections to inappropriate rezoning requests. I served IPRA requests to ascertain the facts. Fact finding is important for all the residents of this City so that the malfeasance, misfeasance, and nonfeasance of the Webber Administration can be stopped. That is why I pursued this matter.

I now basically understand what happened. I believe I now understand how the Land Use Department and certain of its planner/employees Jason Kluck, Land Use Director, Margaret Moore, Land Use Planning Manager, and Daniel Esquibel, Land Use Senior Planner thwarted the public interests and apparently acted in an unethical and improper manner. It appears to me they feel enabled to do so by knowledge that there will be no accountability, the apparent ends justify the means mentality of the Webber administration of building regardless of the harms created, and knowing that they when appear before Planning Commissioners that lack independence and insight and do not meaningfully question irregularities or their conduct - even if improprieties are clearly brought to Planning Commissioners attention with documentation. And, the majority of the Governing Body as a whole appears to act in that same compliant and unquestioning manner.

### **The City can and should make changes to be more responsive to IPRA requests**

The city should hire more personnel to handle these IPRA requests, particularly in IPRA land use matters. The city should follow the law. I have heard

from other colleagues and residents that the City regularly is unresponsive in handling IPRA requests. It seems apparent to me that the City blatantly overuses and abuses the “excessively burdensome or broad” provisions of IPRA to delay disclosing and providing public records.

The City should be required to establish clearly written standards and follow them before they are allowed to invoke the “excessively burdensome or broad” provision of IPRA to extend and delay disclosures of public records. This provision should not be justified because the City hasn’t gotten around to searching for or providing public records to the public. It is important that others in this community are not subjected to the conduct of the city I experienced while pursuing public records and during the course of this lawsuit.

I can upload or send pleadings and back up information including certain of the hidden drafts and reports that supports the representations that I have made in this submission.

**The City’s Land Use Department still engages in practices to attempt to limit public input and participation challenging its practices**

And I have reserved the right to submit a Complaint under the New Mexico Religious Freedom Restoration Act and related statutes due to the failures of the City to accommodate my immediate religious needs and accept submissions regarding that upcoming March 2, 2023 Planning Commission Hearing while I was observing the Jewish religious practice of sitting Shiva<sup>18</sup> and the Sabbath after the death of my stepdaughter on Sunday, February 12, 2023 and her funeral on Friday, February 17, 2023 given the deadlines dictated by Margaret Moore in her communications to me in this regard.<sup>19</sup> The Land Use Department Officials and the city had the ability

---

<sup>18</sup> The practice of sitting Shiva in Reform Judaism is explained: <https://reformjudaism.org/everything-you-need-know-about-jewish-custom-shiva>

<sup>19</sup> And it defies reason and common sense that the rubber stamp Planning Commissioners who were not at the March 2, 2023 meeting would be so obsequious as to volunteer at the April 6, 2023 Planning Commission meeting that they reviewed all materials pertaining to the March 2, 2023 Planning Commission hearing when the compilation of those associated public comments and materials are indecipherable as they appear in the public comments - even to me as the author and submitter of those materials - without spending many hours downloading and printing out and sorting the materials so that they would be in some understandable form and format. So, in my opinion it is proper to question the good faith and credibility of those Planning Commissioner comments and the fairness of the Planning Commission in general. Anyone can go on the city’s site and see that the manner in which the public comments and associated documentation that was submitted by me in accordance with the requirements of the Land Use Department and newly posted by the Land Use Department process (without seeking public input) is totally compromised and makes little sense since the public comments and associated documentation are posted out of context. And, the Land Use Department did not submit to the Planning Commission for its consideration the materials I sent Mr. Kluck, Ms. Moore, and Mr. Esquibel on February 26, 2023 and/or February 27, 2023.

and discretion to accept my submissions for the Planning Commission on the dates that the initial submissions were sent to the Land Use Department so that it would not limit or interfere with my religious practice sitting of Shiva.

And, when I did submit public comments and attachments on February 26, 2023 and February 27, 2023 using the Prime.gov, while I was deeply grieving the loss of my stepdaughter but needed to submit public comments as per the new city policy regarding the acceptance of public comments so they would be submitted to the Planning Commissioners for review, my carefully written public comments and properly uploaded and attachments were completely disorganized by the Land Use Department computer process from the proper manner in which they were submitted with the supportive attachments. My public comments and the associated attachments were presented to the Planning Commissioners starting backwards from the way in which they were submitted. They were disorganized and presented to the Planning Commissioners in an indecipherable manner to the prejudice of myself and others who oppose the upzoning/rezoning of the property at 2339 Botolph Rd.

The first thing that appears in the public comments are exhibits to depositions without any explanation about what those numbered exhibits were referencing or associated with. The depositions were posted later and it is obvious that anyone reading the exhibits would have no context for why they even appeared as a part of the public comments. It appears that the supporting attachments I submitted were completely separated from the associated public comments that were submitted. The Land Use Department process made the public comment process I was directed to follow completely incomprehensible and a farce.

On April 3, 2023 I submitted detailed Objections and Motions to bring these facts to the attention of the Planning Commissioners. On April 6, 2023 the Planning Commissioners had the opportunity to question the improper public comment processes used by the Land Use Department and City Attorney's office at its April 6, 2023 meeting when it considered the proposed Findings of Fact and Conclusions of Law. Yet, not one of the Planning Commissioners even raised a question about this totally flawed system. One has to wonder if these Objections and Motions were even presented to the Planning Commissioners for consideration - not one commissioner even mentioned those submissions. And all of the Planning Commissioners present simply voted to approve the flawed proposed finding of fact at that meeting without even questioning or considering the pending submissions. And in violation of the New Mexico Religious Freedom Restoration Act the

Planning Commissioners ignored, or were not presented with, the Motion for Postponement I also filed and submitted to the Land Use Department officials and the Chair of the Planning Commission seeking to postpone consideration of the Findings of Fact and Conclusions of Law so that meeting could be attended or viewed on line by those observing Passover, something they had discretion to do, until the very next meeting of the Planning Commission because April 6, 2023 was the second night of the important Jewish Holiday Passover when many members of the Jewish community, such as me, observe that night by having the second night Passover Seder.<sup>20</sup>

**Conclusion:**

I have taken the time to write this lengthy explanation of my lawsuit and why I settled that case. I have explained what I have learned about the current city's inappropriate and improper practices and what I experienced because it is my belief that only by exposing the city's inappropriate, improper, and potentially unlawful practices will there be pressure on the Webber administration and its Land Use Department and City Attorney's office and the rubber stamp Planning Commission to engage in open government practices, allow fair and proper quasi-judicial public hearings and engage in proper independent deliberations and determinations, and follow the governing law. I will continue to participate in efforts to fight for and seek open and transparent government in land use matters and to seek proper quasi-judicial hearings. And most important I will continue to try to preserve the very special nature and character of this city, including the Height Ordinance for the Historic Districts I authored in 1996 and ongoing Historic Preservation efforts.

Sincerely,

/s/ Steven G. Farber

Steven G. Farber  
PO Box 2473  
Santa Fe, NM 87504

[sfarberlawoffice@aol.com](mailto:sfarberlawoffice@aol.com)

---

<sup>20</sup> It is very common in the United States for most people of the Jewish faith observing Passover to hold Passover Seders on the first two nights of Passover. <https://reformjudaism.org/jewish-holidays/passover/passover-history> and <https://reformjudaism.org/jewish-holidays/passover>

**MUTUAL SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Settlement Agreement") is entered into this 14<sup>th</sup> day of March, 2023, by and among Steven G. Farber (hereinafter referred to as "Releasor"), and Cindy Whiting, in her official capacity as the Public Records Custodian of the City of Santa Fe, and the City of Santa Fe and its officials, employees, and agents (hereinafter collectively referred to as "Releasees").

The Parties agree as follows:

**1. Release and Discharge**

Releasor, being of lawful age, does hereby release and forever discharge Releasees, who may be liable to the undersigned, of and from any and all claims or causes of action of any kind whatsoever, whether known or unknown, foreseen or unforeseen, and the consequences thereof, and from any and all liability arising out of any and all alleged or unalleged acts resulting in damages under the New Mexico Inspection of Public Records Act, NMSA 1978, Section 14-2-1, *et seq.* (IPRA), including attorney's fees, regarding the requests listed in Plaintiff's Third Amended Complaint in Steven G. Farber v. Cindy Whiting, No. D-101-CV-2022-00931 on the following terms and conditions.

**2. Payment**

In consideration of this Settlement Agreement and Release, the receipt and sufficiency of which is hereby acknowledged, payment shall be made to Releasor as follows:

Within thirty days of the final signature on this Settlement Agreement and Release, but not later than ten days after signature or April 21, 2023, whichever comes later, payment shall be made to Releasor, Steven G. Farber, by and on behalf of Releasees, in the total and final amount of Fifty Thousand and 00/100 Dollars (\$50,000.00), which is paid in satisfaction of this disputed claim. Any memorandum or description on the payment instrument will note "Damages".

**3. Additional Terms:**

**a. Future IPRA requests by Releasor related to 2339 Botulph Rd.**

From the date of the mediation of this case (February 10, 2023) forward, Releasor may submit no more than twelve (12) IPRA requests (not to include subparts) to the City of Santa Fe concerning the rezoning of the property located at 2339 Botulph Road, in Santa Fe, New Mexico. Any further IPRA requests that Releasor may make shall be 250 words or less in total length, as counted by Microsoft Word, and the subject(s) of records requested shall be listed ordinally. Any IPRA requests made by Releasor after the limit of twelve (12) may be rejected by Releasees, in which event the City of Santa Fe shall inform Releasor of said rejection within the time limits set forth in the New Mexico IPRA statute, after which Releasor has the right to modify the rejected request.

b. This limitation of IPRA requests shall not apply to any IPRA requests made by Steven G. Farber regarding any other City of Santa Fe matter other than the property located at 2339 Botulph Rd, Santa Fe, NM. Steven G. Farber shall be specifically allowed whatever rights he may have under the Inspection of Public Records Act to submit any

other IPRA requests regarding any other City of Santa Fe matters, including, but not limited to, any City of Santa Fe public records as defined in the Inspection of Public Records Act concerning the processes for the submission of information to or for any board, and/or commission, and/or City Council, and/or Governing Body, and/or about any city department, and/or city employees and/or officials and/or agents.

c. No other restriction on either party's statutory rights under the New Mexico Inspection of Public Records Act, NMSA 1978, Section 14-2-1 *et seq.*, is contemplated in this Agreement.

**d. Payment of Mediator's Fees**

Releasees agree to pay all of the fees of the Hon. Stephen French (Ret.), to wit: the Mediator's fees for conducting the mediation of this case and for any further services performed by the Mediator in connection with the settlement of this case and finalizing the closing documents to end this lawsuit.

e. Payment and other consideration made by Releasees pursuant hereto is not an admission of liability by Releasees, and is made solely for the purpose of terminating any dispute between the parties. It is understood and agreed that the payment made pursuant hereto is payment for any and all matters related to or inherent in the issues in the cause of action filed in the First Judicial District Court for the County of Santa Fe, State of New Mexico, Cause Number D-101-CV-2022-00931, entitled, Steven G. Farber, Plaintiff v. Cindy Whiting, Public Records Custodian of the City of Santa Fe in her official capacities,

Defendant, including any claim, demand, action or cause of action which was or could have been asserted on or before February 10, 2023. No payment made under this Settlement Agreement and Release is in any way made in payment of attorneys' fees, nor shall it ever be considered as such.

**4. Releasees Make No Admission of Liability**

Releasor further understands that Releasees state that by agreeing to this settlement they do not admit any liability of any kind, that liability has at all times been denied, and that the settlement evidenced by this Release is a compromise to avoid the expense of litigation and to terminate all controversies and/or claims in connection with the matter of Steven G. Farber, Plaintiff v. Cindy Whiting, Public Records Custodian of the City of Santa Fe in her official capacities, Defendant. This full and final settlement shall never be treated as an admission of liability or responsibility at any time or in any manner whatsoever, nor used by either party as evidence of liability.

**5. Releasor states that he agrees to this Compromise Settlement of Claims.** In doing so Releasor states that, though he was at all times prepared and willing to continue trial preparation and to take this matter to trial, in a compromise with Defendant and to resolve and settle the lawsuit of Steven G. Farber, Plaintiff v. Cindy Whiting, Public Records Custodian of the City of Santa Fe in her official capacities, Defendant, No. D-101-Cv-2022-00-931, he will forego seeking any further relief from the claims raised in the aforementioned lawsuit including from the Order of the Presiding Judge regarding the Peremptory Writ of Mandamus orally entered by the Hon. Frank Mathew on September

26, 2022 and which was entered in writing by the Clerk of the Court on November 18, 2022, directing and ordering the Defendant to disclose and produce public records and holding the issue of, inter alia, damages, remedies and attorneys' fees in abeyance.

## **6. General Release**

Releasor expressly represents and declares that, notwithstanding the damages, injuries or losses known at this time, or which may be subsequently discovered by Releasor, or any changes in the law or interpretations of the law which may occur, payment for all known and unknown damages sustained by Releasor as a result of the aforementioned lawsuit is included in the consideration paid for this Release and in the Additional Terms described above, and that no further claim can or will be made against Releasees in connection with the matters raised in Steven G. Farber, Plaintiff v. Cindy Whiting, Public Records Custodian of the City of Santa Fe in her official capacities, Defendant, No. D-101-CV-2022-00931.

Upon receipt of the aforesaid payment, Releasor accepts that payment of the stated Fifty Thousand Dollar (\$50,000.00) sum, together with the Additional Terms specified herein, constitutes a complete and unconditional resolution of all matters involving disputed issues of law and fact with respect to those claims for damages for which Releasees may be liable, as alleged in Steven G. Farber, Plaintiff v. Cindy Whiting, Public Records Custodian of the City of Santa Fe in her official capacities, Defendant, No. D-101-CV-2022-00931.

It is expressly represented by Releasor: (a) that no promise or inducement has been offered except as herein set forth; (b) that this Release is executed without reliance upon any statement or representation of the person or parties released, or their

representatives, regarding the nature and extent of the damages, injuries or losses or legal liability therefore; and (c) that acceptance of the consideration set forth herein is in full accord and satisfaction of a disputed claim, for which liability is expressly denied.

Releasor represents and warrants that he has complete authority to settle the entire claim against Releasees.

The parties to this Settlement Agreement and Release agree that payment under this Settlement Agreement and Release is not owed to anyone other than Releasor.

#### **7. Indemnification and Hold Harmless**

Releasor agrees to indemnify and hold harmless Releasees from any and all claims against Releasees by others who might assert claims on behalf of Releasor. This is a material representation, and Releasor agrees to completely release, protect, defend, indemnify and hold harmless Releasees as to any such existing or future lien and/or claim, without limitations upon the submission and payment to Releasor of the sum of \$50,000.00 in damages.

#### **8. Attorney's Fees and Costs**

The parties hereto shall each bear their respective attorney's fees and costs arising from or in connection with the cause of action filed in the First Judicial District Court for the County of Santa Fe, State of New Mexico, Cause Number D-101-CV-2022-00931, entitled, Steven G. Farber, Plaintiff v. Cindy Whiting, Public Records Custodian of the City of Santa Fe in Her Official Capacities, Defendants, this Settlement Agreement and the matters and documents referred to herein and all related matters.

**9. Dismissal with Prejudice**

Releasor shall take such action as may be necessary to have the above-referenced Complaint dismissed with prejudice.

**10. Complete Agreement**

Releasor and Releasees further represent that this Release contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not a mere recital.

**11. Governing Law**


This AGREEMENT shall be construed and interpreted in accordance with the laws of the United States of America and the State of New Mexico.

**THE UNDERSIGNED HAVE READ THE FOREGOING RELEASE, OR HAD IT READ TO THEM , AND FULLY UNDERSTAND IT.**

I, Steven G. Farber, affirm, under penalty of perjury under the laws of the State of New Mexico, that the foregoing Mutual Settlement Agreement and Release is true and correct.

  
\_\_\_\_\_  
**STEVEN G. FARBER**  
Date 4/5/2023

I, Cindy Whiting, in my official capacity as Public Records Custodian of the City of Santa Fe, affirm, under penalty of perjury under the laws of the State of New Mexico, that the foregoing Mutual Settlement Agreement and Release is true and correct.

  
\_\_\_\_\_  
**CINDY WHITING**  
**Public Records Custodian, City of Santa Fe**  
Date 4/6/23

I, John Blair, in my capacity as Santa Fe City Manager, affirm, under penalty of perjury under the laws of the State of New Mexico, that the foregoing Mutual Settlement Agreement and Release is true and correct.

*John Blair*

John Blair (Apr 18, 2023 12:02 MDT)

**JOHN BLAIR, Santa Fe City Manager**

**Date** Apr 18, 2023

CITY OF SANTA FE:

*John Blair*  
John Blair (Apr 18, 2023 12:02 MDT)

JOHN BLAIR, CITY MANAGER

DATE: Apr 18, 2023

ATTEST:

*Kristine Mihelcic*  
KRISTINE BUSTOS MIHELICIC, *XIV*  
CITY CLERK

CITY ATTORNEY'S OFFICE:

*Kevin L. Nault*  
Kevin L. Nault (Apr 11, 2023 15:59 MDT)

ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

*Emily K. Oster*  
Emily K. Oster (Apr 18, 2023 11:59 MDT)

EMILY OSTER, FINANCE DIRECTOR

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT

STEVEN G. FARBER,

Plaintiff,

v.

No. D-101-CV-2022-00931

CINDY WHITING, PUBLIC RECORDS CUSTODIAN  
OF THE CITY OF SANTA FE; et al.

Defendants.

**PEREMPTORY WRIT OF MANDAMUS**

This matter having come before the Court at the hearing that the Court set for September 26, 2022 on the Alternative Writ of Mandamus issued on September 14, 2022, and the parties appearing on September 26, 2022, Steven G. Farber, as Attorney for Petitioner-Plaintiff and pro se, and Kevin L. Naught, Assistant City Attorney for Respondent Cindy Whiting, Public Records Custodian, and the Court having reviewed the Verified Expedited Petition for Alternative Writ of Mandamus to Enforce the Provisions of the Inspection of Public Records Act, the Respondent's Response to Alternative Writ of Mandamus, and Petitioner-Plaintiff's Reply to Respondent's Response to Alternative Writ of Mandamus, and the Court further having heard the arguments of counsel, and being otherwise advised in the premises, **AND** the Court finding good cause hereby grants the Peremptory Writ of Mandamus

as stated herein and Finds:

1. On June 10, 2022, June 20, 2022, and August 15, 2022 Petitioner submitted four written requests for public records to the City of Santa Fe via Next Request, the City of Santa Fe's online portal which were designated as #22-3456, #22-3457, #22-3459, #22-3668, and as #22-4909;
2. For Requests #22-3456, #22-3457, #22-3459, #22-3668 the Respondent-Defendant on behalf of the City of Santa Fe sent multiple messages stating that it had determined that the requests were "excessively burdensome or broad," such that the City "requires additional time to respond to your request" and set dates in the future as referenced in the Next Request record for the requests.
3. The records that Petitioner seeks from the City of Santa Fe are public records within the meaning of **NMSA 1978, § 14-2-6 (G)**.
4. The City of Santa Fe has a clear, nondiscretionary duty to "... permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request." **NMSA 1978, § 14-2-8 (D)**.
5. "If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request." **Id.**
6. The timely and proper disclosure of public records is "... an essential function of a representative government and an integral part of the routine duties of public

officers and employees.” NMSA 1978, § 14-2-5.

7. This Court may compel the performance of these important nondiscretionary acts. See NMSA 1978, § 44-2-4 (stating that a writ of mandamus “. . . may be issued to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station;”); NMSA 1978, § 14-2-12 (B) (stating that a district court “. . . may issue a writ of mandamus . . . to enforce the provisions of the Inspection of Public Records Act.”).

**YOU ARE HEREBY COMMANDED FORTHWITH TO:**

A. Comply with your mandatory, nondiscretionary duty to produce the requested public records to Plaintiff-Petitioner that have already been identified by the City of Santa Fe and/or Respondent Whiting and as stated at or referred to at the Hearing on the Alternative Writ of Mandamus as responsive to Plaintiff-Petitioner Requests #22-3456, #22-3457, #22-3459, #22-3668, and #22-4909 within three days of the date of the September 26, 2022 hearing on the Alternative Writ of Mandamus, to wit: September 29, 2022;

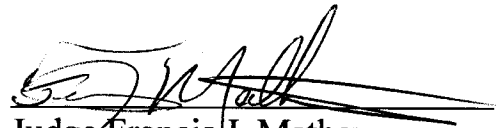
B. Conduct a good faith search of City of Santa Fe records for any public records responsive to Plaintiff-Petitioner’s Requests #22-3456, #22-3457, #22-3459, #22-3668, and #22-4909 and disclose those public records to Plaintiff-Petitioner within fifteen days from September 26, 2022 or provide a detailed

response explaining why the search and disclosure of the aforesaid requested public records cannot be completed by the Court's imposed deadline, to wit: October 11, 2022.

C. The issue of any damages and costs for litigating this Petition, **NMSA 1978, § 44-2-12**, and paying reasonable attorney's fees and damages to Petitioner and costs and other appropriate relief, pursuant to **NMSA 1978, §§ 14-2-11 and 14-2-12** shall be deferred to a later date; and

D. Return with certification that you have done as commanded.

Approved:

  
Judge Francis J. Mathew,  
Division 1

xc: Counsel, e-served



## WHITING, CYNTHIA A.

---

**From:** KLUCK, JASON M. <jmkluck@santafenm.gov>  
**Sent:** Saturday, April 30, 2022 9:43 AM  
**To:** MOORE, MARGARET; ESQUIBEL, DANIEL A.; GURULE, GERALDINE A.  
**Subject:** FW: 2022-4942 Botulph Road Signature needed.  
**Attachments:** Final\_memo\_2022-4942 Botulph\_Road (002)\_jmk.docx

Did you get this one? I sent it yesterday morning, but got a notice on my laptop this morning that it went undelivered. The notice mysteriously did not appear on my office desktop computer yesterday, so I'm checking in now. Thanks.

---

**From:** KLUCK, JASON M.  
**Sent:** Friday, April 29, 2022 8:37 AM  
**To:** MOORE, MARGARET <mmoore@santafenm.gov>  
**Cc:** ESQUIBEL, DANIEL A. <daesquibel@santafenm.gov>  
**Subject:** RE: 2022-4942 Botulph Road Signature needed.

Approved. Dan and I just spoke about giving them the option of postponement since they are almost meeting the approval criteria, but failed to respond adequately to approval criteria 1. He will call the applicant this morning. I also had some very minor typographical changes. Let's go ahead and forward this to Geraldine for posting. Thanks.

---

**From:** MOORE, MARGARET <[mmoore@santafenm.gov](mailto:mmoore@santafenm.gov)>  
**Sent:** Thursday, April 28, 2022 4:01 PM  
**To:** KLUCK, JASON M. <[jmkluck@santafenm.gov](mailto:jmkluck@santafenm.gov)>  
**Subject:** 2022-4942 Botulph Road Signature needed.

Jason  
Please see the attached memo for your review and signature. When signed please forward the memo and exhibit binder to Geraldine for upload.  
Thanks you

Maggie Moore  
Planner Manager  
City of Santa Fe  
[mmoore@santafenm.gov](mailto:mmoore@santafenm.gov)  
505.490.5930

---

**From:** ESQUIBEL, DANIEL A. <[daesquibel@santafenm.gov](mailto:daesquibel@santafenm.gov)>  
**Sent:** Thursday, April 28, 2022 3:45 PM  
**To:** MOORE, MARGARET <[mmoore@santafenm.gov](mailto:mmoore@santafenm.gov)>  
**Subject:** Signature needed.

Exhibit Binder

<https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:9815c1f0-3c70-3cbc-aa27-37494fac6bbc>

## Adobe Acrobat

Adobe Acrobat

[acrobat.adobe.com](http://acrobat.adobe.com)

Dan Esquibel

Planner Senior

Land Use Dept., Current Planning Division

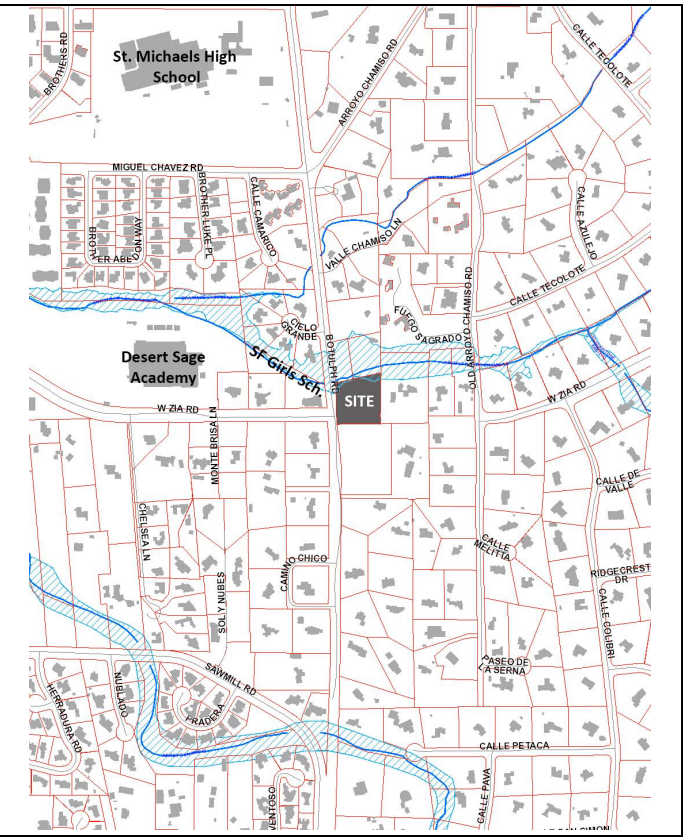
Office: 505-955-6587

Email: [daesquibel@santafenm.gov](mailto:daesquibel@santafenm.gov)



# Planning and Land Use Department Planning Commission Staff Report

**Case No:** 2022 - 4942  
**Hearing Date:** May 5, 2022  
**Applicant:** Shelley Espinoza  
**Request:** Rezoning  
**Location:** 2339 Botulph Road  
**Case Mgr.:** Daniel A. Esquibel  
**Zoning:** R-1(Residential- one dwelling unit per acre)  
**Overlay:** Suburban Archaeological Review Districts  
**Pre-app. Mtg.:** September 23, 2021  
**ENN Mtg.:** January 5, 2022  
**Proposal:**  
Applicant requests rezoning per Chapter 14 SFCC 1987, 14-3.5 "Rezoning" from R-1 (Residential: one dwelling unit per acre) to R-2 (Residential: two dwelling units per acre) for a 1.41-acre lot.



**Case #2022-4942. 2339 Botulph Road Rezoning.** Liaison Planning Services Inc., Agent, for Shelley Espinoza, Owner, requests rezoning per Chapter 14 SFCC 1987, 14-3.5 "Rezoning" from R-1 (Residential: one dwelling unit per acre) to R-2 (Residential: two dwelling units per acre) for a 1.41-acre lot. The property is located within the Suburban Archeological Review Districts.

## I. RECOMMENDATION

The Planning Commission should recommend that the Governing Body DENY Case #2022-4942.

Two motions will be required in the following order:

- Approve or deny Case #2022-4942 request for rezoning of approximately +/-1.41-acres.
- Approve or deny the Findings of Fact and Conclusions of Law for Case #2022-4942 as shown on Exhibit A.

## II. EXECUTIVE SUMMARY

Liaison Planning Services Inc., (Agent), representing Shelley Espinoza (Applicant), is requesting rezoning from R-1 (Residential: one dwelling unit per acre) to R-2 (Residential: two dwelling units per acre) for +/- 1.41-acres (Project).

The subject property is a legal lot of record approved by the City and Recorded in the Office of the Santa Fe County Clerk on May 12, 2016.

The Applicant has complied with Subsections 14-3.1(E) "Pre-Application Conferences," 14-3.1(F) "Early Neighborhood Notification Procedures," and 14-3.1(H) "Notice Requirements."

Staff's analysis finds that the Applicant has not satisfied Subsection 14-3.5(C) "Approval Criteria" for the rezoning requests.

### III. PROJECT ANALYSIS

#### A. Property information:

In 1981 the project site was located in the County of Santa Fe's Jurisdiction (reference Figure 1 "1981 City Zoning Map").

Figure 1 1981 Zoning Map



The project site was part of the Phase 1, area 16, and City initiated annexation approved by ordinance (Ord. 2009-51).



The Future Land Use Map (Reference Figure 4 “Future Land Use Map”) identifies the project site within the Phase 1, area 16 as Residential Very Low Density (RVLD). RVLD allows densities between one and three dwelling units per acre.

**Figure 4 Future Land Use Map**

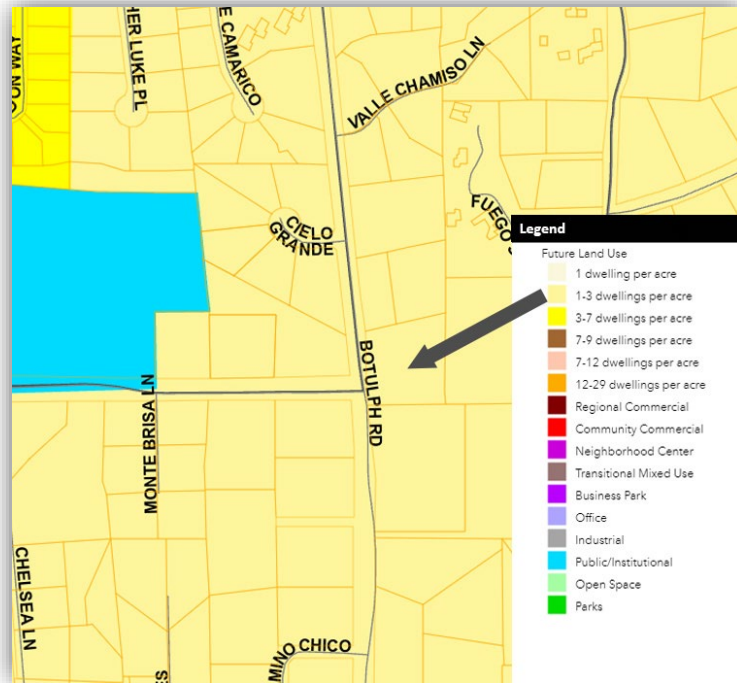
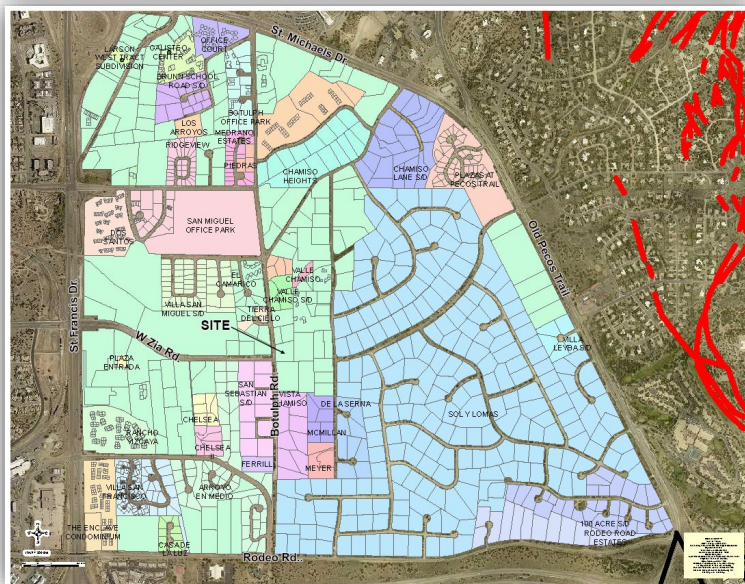


Figure 5 “Review Area” identified an average residential density of 2.4 dwelling units per acre.

**Figure 5 Review Area**



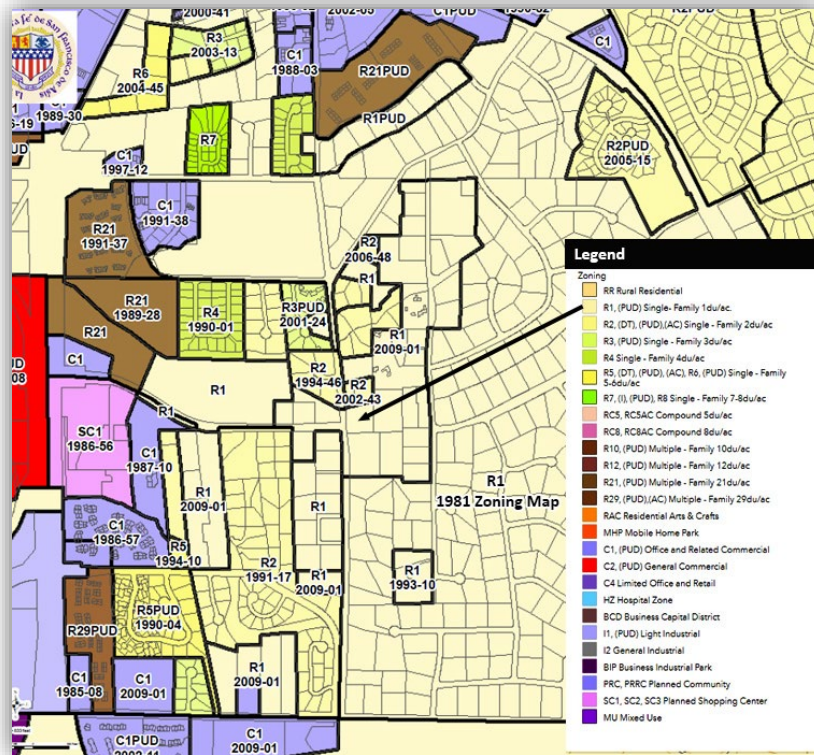
The Future Land Use Map designations for the project site and property to the north south, east and west is RVLD. The City Zoning Map and legal lot information is identified in Table 1 “Zoning and Adjacent properties” and Figure 6 “Zoning and Rezoning Map.”

**Table 1 Zoning and Adjacent properties**

<b>Direction</b>	<b>Zoning and Legal Lot</b>
Project site	Residential and Zoned R-1 (Residential – one dwelling unit per acre) Lot line adjustment approved by the city in 2016.
North	R-2 (Residential – two dwelling units per acre) Lot split approved by the city in 2007.
Northwest & West	(Tierra Del Cielo Subdivision, six residential lots. Approved by the Planning Commission in 1995)
West	R-2 (Residential – two dwelling units per acre) - Residential and Zoned R-1 (Residential – one dwelling unit per acre) Botulph Road/Santa Fe Girls School Lot split approved by the City/County Extraterritorial Zoning Commission in 1993.
East	Residential and Zoned R-1 (Residential – one dwelling unit per acre) Lot line adjustment approved by the city in 2016.
Southeast	Residential and Zoned R-1 (Residential – one dwelling unit per acre) San Sebastian Subdivision city approved in 1987.
South	Residential and Zoned R-1 (Residential – one dwelling unit per acre) Lot line adjustment approved by the city in 2016.

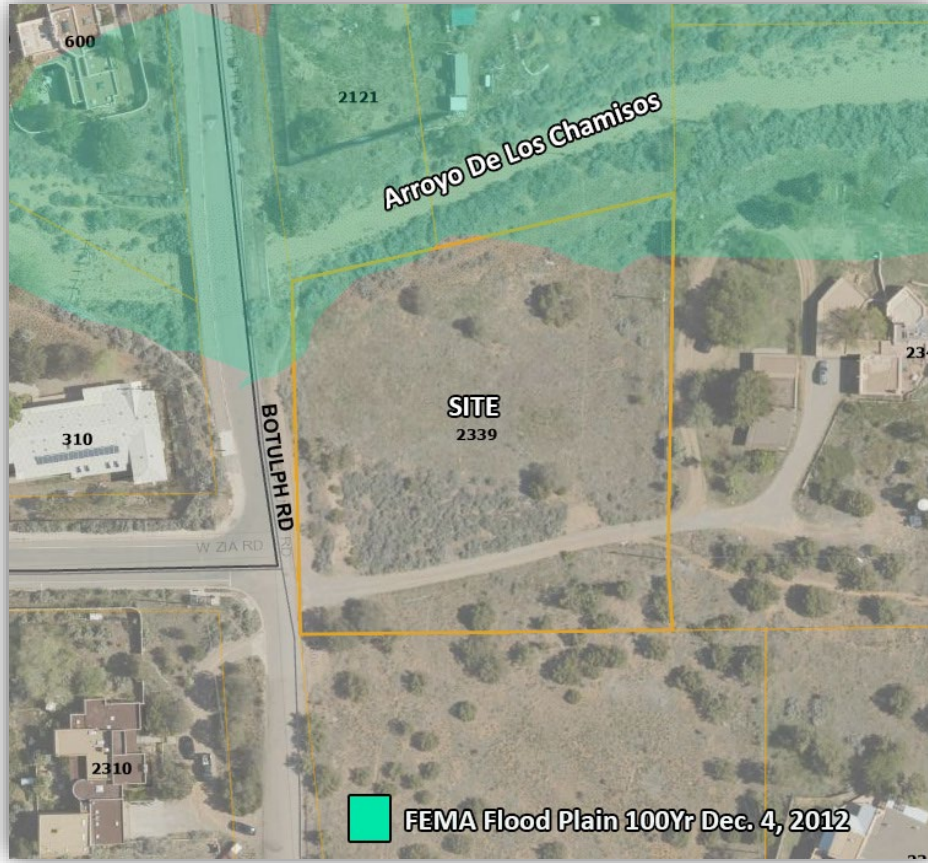
Figure 6 “Zoning and Rezoning Map” identifies changes in zoning for the area resulting from annexations and rezonings.

**Figure 6 Zoning and Rezoning Map**



In 2016 the project site (+/-1.41-acre vacant lot) was approved by the city as part of a Lot Line Adjustment Plat. The Lot Line Adjustment Plat identified a small area of the Arroyo De Los Chamisos 100-year flood zone encroaching onto the property along the north property line and a driveway crossing the property through the southern one-quarter of the lot, providing access to the property to the east (reference Figure 7 “Aerial Image”).

Figure 7 Aerial Image



**IV. General Plan**

A General Plan amendment is not required to apply for a rezoning from R-1 to R-2.

**V. ZONING APPROVAL CRITERIA**

Section 14-3.5(A) and (C) SFCC 2001 sets forth approval criteria for rezoning as follows:

- (1) The Planning Commission and the governing body shall review all rezoning proposals on the basis of the criteria provided in this section, and the reviewing entities must make complete findings of fact sufficient to show that these criteria have been met before recommending or approving any rezoning:

**Table 2 Rezoning from R1 to R-6**

<p><b>Criteria 1 (14-3.5(C)(a))one or more of the following conditions exist:</b></p> <ul style="list-style-type: none"> <li>(i) there was a mistake in the original zoning;</li> <li>(ii) there has been a change in the surrounding area, altering the character of the neighborhood to such an extent as to justify changing the zoning; or</li> <li>(iii) a different use category is more advantageous to the community, as articulated in the general plan or other adopted city plans;</li> </ul>	<p><b>Criterion Met: (Yes/No) NO</b></p>
<p><b>Applicant’s Response (Rezoning from R1 to R-2):</b></p>	

**(i) there was a mistake in the original zoning;**

*"N/A"*

**(ii) there has been a change in the surrounding area, altering the character of the neighborhood to such an extent as to justify changing the zoning;**

*"The surrounding neighborhoods have been annexed into the City allowing them to benefit from City infrastructure. Since then, the properties along the Botulph Road have been rezoned and subdivisions have been created. Upgrades to Botulph Road have supported this trend in providing connectivity to surrounding services, resulting in varied residential densities (see attached Zoning Map). As shown on the Official Zoning Map, the property directly to the north is zoned R-2 and has been further subdivided into two lots. Tierra de Cielo Subdivision located on the NW corner of the subject property has been rezoned to R-2 and further north of the property on Botulph, a trend of R2-R-3PUD zoning has occurred. These re-zoned properties provide for moderate residential densities, creating an appropriate transition from the higher densities and commercial zoning along the St. Francis to the R-1 zoning in the Sol y Lomas Subdivision to the east. Rezoning the subject property to R-2 will be consistent with this pattern of development."*

**(iii) a different use category is more advantageous to the community, as articulated in the general plan or other adopted city plans.**

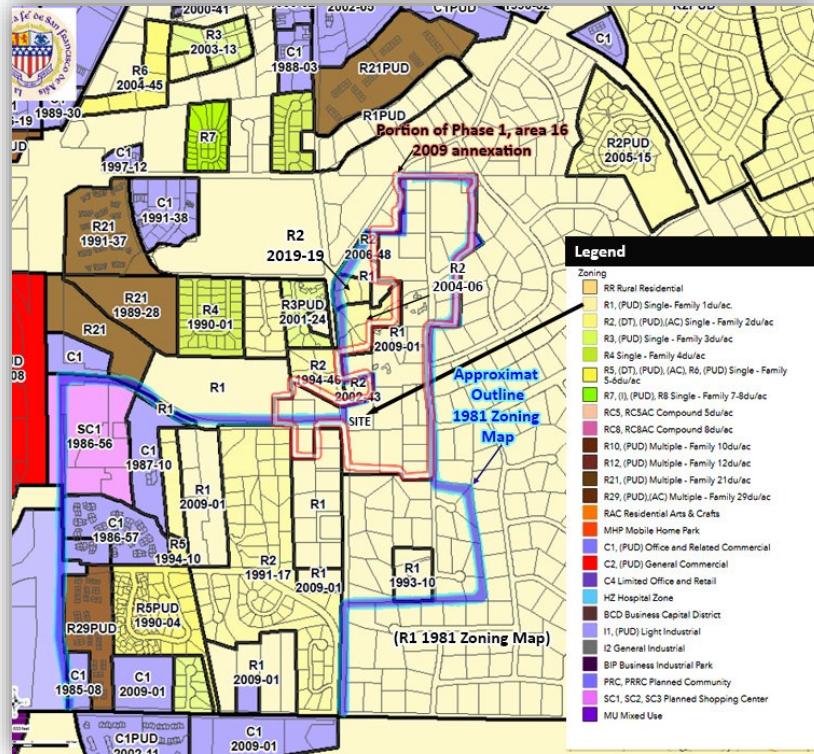
*"N/A"*

**Staff Response (Rezoning from R1 to R-2):**

(i) Staff agrees with the Applicant's response. There was no mistake in the original zoning.

(ii) As shown in Figure 3 "*Annexations*" and Figure 8 "*Rezonings Over Time*," the surrounding area is a mix of annexations and various zoning changes that occurred over time when compared to the 1981 zoning map identified in Figure 1 "*1981 Zoning Map*." The portion of Phase 1, area 16, annexed into the city, was zoned R-1. GIS mapping identified higher zonings in the area from R-2 to R-29 that existed before the Phase 1 annexation. Only one rezoning occurred within the area post Phase 1 annexation (Ordinance 2019-19). While there have been many zone changes over the past 41 years, with the most recent change occurring in 2019, staff does not identify these changes as a trend as addressed by the Applicant. The Applicant's request would allow a density consistent with the area. However, the Applicant has not identified that "*there has been a change in the surrounding area, altering the neighborhood's character to such an extent as to justify changing the zoning.*"

Figure 8: Rezoning Over Time



(iii) The Applicant did not address 14-3.5(C)(a)(iii).

Staff finds that the Applicant did not meet the requirements of Criterion 1 (14-3.5(C)(a)).

<p><b>Criteria 2 (14-3.5(C)(b)): all the rezoning requirements of Chapter 14 have been met;</b></p>	<p><b>Criterion Met: (Yes/No) No</b></p>
<p><b>Applicant’s Response (Rezoning from R1 to R-2):</b>  <i>“The proposed rezoning complies with all code requirements for rezoning the property, as described in this application and addressed in section [1 4-3.5(c)(2)(b)]...”</i></p> <p><b>Staff Response (Rezoning from R1 to R-2):</b>                  The Applicant submittal is a complete application required by Chapter SFCC 1987, 14-3.5(C) “Approval Criteria”. However, the Applicant’s response to 14-3.5(C)(a) did not address the finding to justify a change in zoning.</p> <p>Staff finds that the Applicant did not meet the requirements of Criterion 1, 14-3.5(C)(a) and does not comply to Criterion 2 (14-3.5(C)(b)).</p>	
<p><b>Criteria 3 (14-3.5(C)(c)): the rezoning is consistent with the applicable policies of the general plan, including the future land use map;</b></p>	<p><b>Criterion Met: (Yes/No) Yes</b></p>
<p><b>Applicant’s Response (Rezoning from R1 to R-2):</b>  <i>“The requested R-2 zoning is consistent with the Future Land Use Map and policies of the General Plan by providing Low Density Residential of 1 - 3 dwelling units per acre (see attached Future Land Use Map). A rezoning to R-2 will create an appropriate transition between the higher density zoning to the west</i></p>	

and NW, R-2 zoning to the north and R-1 zoning to the south and east. Furthermore, the Project exemplifies a compact urban form as encouraged by the General Plan, while respecting the semi-rural nature of the properties to the south and east by still providing a low-density residential designation.”

**Staff Response (Rezoning from R1 to R-2):** Staff agrees that many of the General Plan Themes and Policies for RVLD allow for a change from R-1 to R-2. Staff’s review also acknowledges that the Future Land Use Map allows for R-2 zoning and the request for R-2 zoning is not inconsistent with the global residential density for the area.

Staff finds that the Applicant’s response provides sufficient information to address Criterion 3 (14-3.5(C)(c)).

<b>Criteria 4 (14-3.5(C)(d)):</b> the amount of land proposed for rezoning and the proposed use for the land is consistent with city policies regarding the provision of urban land sufficient to meet the amount, rate and geographic location of the growth of the city;	<b>Criterion Met: (Yes/No)</b> <b>YES</b>
--	--

**Applicant Response (Rezoning from R1 to R-2):**  
*“Within the General Plan Figure 4-4, Urban Sub-Areas, designates the subject property and surrounding area as an “Infill Area.” The General Plan Section 4.1 states, “In both ‘infill’ and ‘future growth’ areas, the city must encourage higher densities of residential and commercial development than existing zoning often allows... Smaller subdivided lots and smaller homes help create efficient use of already existing roads and utilities, help ensure cost-efficient public transit, and provide the type of housing that will be in demand as the general population ages during the upcoming decades. “This project fulfills this intent by providing smaller subdivided lots and utilizing existing City infrastructure.”*

**Staff Response (Rezoning from R1 to R-2):** Staff agrees with the Applicant’s response to infill. Additionally, 14-3.5(C)(2)(b) prohibits a rezoning if the rezoning will “affect an area of less than two acres, unless adjusting boundaries between districts.” The Applicant’s request is to adjust the R-2 District boundary adjoining the property to the north to include the property.

Staff finds that the Applicant’s response provides sufficient information to address Criterion 4 (14-3.5(C)(d)).

<b>Criteria 5 (14-3.5(C)(e)):</b> the existing and proposed infrastructure, such as the streets system, sewer and water lines, and public facilities, such as fire stations and parks, will be able to accommodate the impacts of the proposed development.	<b>Criterion Met: (Yes/No)</b> <b>YES</b>
---	--

**Applicant’s Response (Rezoning from R1 to R-2):**  
*“Botulph Road and Zia Road have sufficient capacity to serve this rezoning request. Water, gas and electricity current exist on the property. The property will connect to sewer lines in Botulph Road. Fire and police protection will be provided by the city. Public transportation (bus stop) is located directly across the street from the property on the west side of Botulph Road in addition to a very wide paved walking path/sidewalk.”*

**Staff Response (Rezoning from R1 to R-6):** Staff agrees with the Applicant’s response the “subject property is currently served by existing roadways and public water and sewer infrastructure.”

Staff finds that the Applicant’s response provides sufficient information to address Criterion 5 (14-3.5(C)(e)).

<b>Criteria 6 (14-3.5(C)(2)):</b> Unless the proposed change is consistent with applicable general plan policies, the planning commission and the governing body shall not recommend or approve any rezoning, the practical effect of which is to: (a) allow uses or a change in character significantly different from or inconsistent with the prevailing use and character in the area; (b) affect an area of less than two acres, unless adjusting boundaries between districts; or	<b>Criterion Met: (Yes/No)</b> <b>YES</b>
---	--

<b>(c) benefit one or a few landowners at the expense of the surrounding landowners or general public.</b>	
<p><b>Applicant’s Response (Rezoning from R1 to R-2):</b></p> <p>(a) <i>“The proposed low density residential rezone from R-1 to R-2, is consistent with the prevailing low to moderate density residential uses in the surrounding area, including the adjacent bordering property to the north, and the adjacent properties across the street to the northwest corner of the property, and is consistent with the surrounding residential character ranging from R-1 , R-2 and R-3.”</i></p> <p>(b) <i>“The property is 1.4 + acres (less than 2 acres); however, adjusting boundaries between districts is permissible when an adjacent property is the same zone as being requested. In this situation, the adjacent property to the north is zoned R-2 and the adjacent properties bordering the northwest corner of the property are also zoned R-2.”</i></p> <p>(c) <i>“This rezoning request will not benefit one or a few landowners at the expense of the surrounding landowner or general public. A rezone from R-1 to R-2 is consistent with the uses and density of the surrounding neighborhood. The property can be accommodated by the existing infrastructure and public facilities, as described in [14-3.5(c)(1)(d)] above.”</i></p> <p><b>Staff Response (Rezoning from R1 to R-2):</b> Staff Agrees with the Applicant's response.</p> <p>(a) The prevailing use and character of the area are generally residential. A density increase to R-2 is consistent with density for the area,</p> <p>(b) Adjusting district boundaries to include land less than two acres is permitted.</p> <p>(c) A rezone from R-1 to R-2 is consistent with the uses and density of the surrounding neighborhood and the "subject property is currently served by existing roadways and public water and sewer infrastructure."</p> <p>Staff finds that the Applicant’s response provides sufficient information to address Criterion 6 (14-3.5(C)(2)).</p>	

**VI. EARLY NEIGHBORHOOD NOTIFICATION**

The Applicant conducted one Early Neighborhood Notification ("ENN") meeting. The ENN meeting was held virtually via Zoom Video Communications on January 5, 2022. Many concerns were raised and can be found in Exhibit D (prepared by Donna Wynant).

Additional comments received can be found in Exhibit F *“Correspondence.”*

**VII. EXHIBITS:**

EXHIBIT A: Findings of Fact and conclusions of Law

EXHIBIT B: City DRT Comments

- 1) September 24, 1998, Wastewater Management Division for Tierra Del Cielo Subdivision
- 2) March 2022, City Wastewater comments (Stan Holland, Engineer)
- 3) Environmental Services Division (Eric Lucero, Operations Manager)

EXHIBIT C: Ordinance References

- 1) Ordinance 2009-52
- 2) Annexation Agreement

EXHIBIT D: Early Neighborhood Notification material

- 1. ENN Application
- 2. Poster Photo
- 3. ENN Notes

EXHIBIT E: Maps and Photos

- 1. Figure 1 1981 Zoning Map
- 2. Figure 2 Agreement Phase 1 Area 16
- 3. Figure 3 Annexations
- 4. Figure 4 Future Land Use Map
- 5. Figure 5 Review Area
- 6. Figure 6 Zoning and Rezoning Map
- 7. Figure 7 Aerial Image
- 8. Figure 8 Rezoning Over Time

EXHIBIT F: Correspondence

- 1. Bill Welch
- 2. Elise Noble
- 3. Frauke Rininsland
- 4. Jane Chavez
- 5. Judy Rubenstein
- 6. Kari Albert
- 7. Larry Cohen
- 8. Lee Lewin
- 9. Marilyn and Ed Winter-Tamkin
- 10. Marilyn Winter-Tamkin
- 11. Phyllis Weil
- 12. Robert Garcia
- 13. Robin Chavez.pdf
- 14. Shann Stringer
- 15. Steven Farber (7)
- 16. Tom Noble (2)
- 17. William Bruno

EXHIBIT G: Applicant Material

- 1. Application Report

APPROVED AS TO FORM:

Title	Name	Initials
Planning and Land Use Department Director	Jason Kluck	<i>jmk</i>
Planning and Land Use Planner Manager	Margaret Moore	MRM
Planning and Land Use Planner Senior	Dan Esquibel	DAE

Councilors:

I understand that your first reaction to receiving this email - having been improperly indoctrinated by the City Attorney's office - may be to ignore and not read this message and the attachment. I suggest that if you simply forward this to the City Attorney's office **without reading this content and the attachment that it would be a dereliction of your oaths of office and your sworn duties.** It is my opinion that **these are matters of important public concern.** I state that as a former City Councilor, a former Special Prosecutor of public corruption cases, and having spent a career fighting against the abuses and overreach of governmental officials.

Let me remind all of you again that **you have taken an oath of office to follow the law and to uphold your lawful and fiduciary duties.**

**You are therefore placed on notice of allegations of malfeasance, and/or misfeasance, and/or non-feasance within the City of Santa Fe that are contained in the detailed attachment documenting violations of the public trust by the Land Use Department and certain of its officials and employees and the City Attorney's office and its members. In addition, it seems attention needs to be paid to the interplay of Land Use Department with the Planning Commission.**

All of this is independent of the issue of quasi-judicial hearings and the requirements for those hearings.

Perhaps the City Manager is not aware of, or is willfully blind of, the documented instances of malfeasance, misfeasance, and non-feasance - as he was quoted in the Santa Fe New Mexican on April 21, 2023. I find that hard to believe but perhaps that is the situation.

The City Manager's public statements regarding the IPRA lawsuit that was settled and the number of IPRA requests that were made strikingly did not mention that **many of the IPRA requests that were made by me were to specifically attempt to determine who within the city was responsible for the hiding and seriously late disclosures of public records violating IPRA and with the alteration and/or tampering of public records of the City of Santa Fe - particularly dealing with records on [Prime.gov](https://www.primegov.com) in connection with the May 5, 2022 meeting of the Planning Commission (and also the April 7, 2022 Planning Commission meetings) and the conduct of the Land Use Department viz a viz influencing the affairs of the Planning Commission pertaining to its meetings of June 2, 2023 and March 2, 2023.**

It has seemed to me that much of the misconduct I allege and believe I have uncovered comes from, and/or is acquiesced in by, the Land Use Department officials - particularly Land Use Department Director Jason Kluck, Planning Division Manager Margaret Moore, and Senior Planner Daniel Esquibel. In addition it seems that City Attorney's office member Feghali, enabled by City Attorney McSherry, has had a significant role in limiting input from the public and stopping the disclosure of these and other matters of public concerns.

**Though you have allowed your powers to be substantially limited under your current rules of procedure and the so-called strong Mayor form of government, as elected public officials you all still have great responsibilities for oversight of governmental affairs in Santa Fe government.**

And, it is hard for me to understand how the Mayor, the Chief Executive Officer of the City of Santa Fe, would have no knowledge regarding facts dealing with the settlement of the IPRA lawsuit entitled Farber v. Whiting, D-CV-101-2022-00931, and the basis for that lawsuit and the many IPRA requests that were made to uncover improper conduct, as he was apparently quoted in that same article as the City Manager.

It seems to me that all of this conduct as documented in the attached Statement could have been orchestrated by the Land Use Department officials and the City Attorney's office. And it seems that an independent investigation is warranted regarding the altering and/or tampering with public records and other matters of public concern.

**It seems to me that all of these issues should concern all of you as public officials sworn to uphold the law and make sure that the laws are faithfully followed and enforced by the City of Santa Fe Boards and Commissions, such as the Planning Commission, and by City of Santa Fe officials and employees within the Land Use Department and the City Attorney's office.**

Respectfully submitted,

Steven G. Farber  
Retired Attorney at Law  
P.O. Box 2473  
Santa Fe, New Mexico 87504  
505-988-9725 (p)  
505-988-9250 (f)

Dear Chair Long,

Thank you for your kind response the other day. I appreciate it.

I guess I had pretty much given up on my frustrations over ranked-choice voting.

For several years, among friends and to several officials, I've voiced concerns over its negative impact on democracy and debate. But I figured, well this was considered and accepted here via the last Charter review, and though it took nearly half-decade to implement, it's here and done.

But Milan's column today reminded me of my own frustrations with it (as well as now participating/seeing it in action in two local elections). And if a Charter Review effort can start it, a Charter Review effort can end it. I hope you'll consider adding reconsideration of ranked-choice voting to the CRC's topics.

Here's my basic issue: it stifles candidate debate and open conversation about issues. When there are more than two candidates for an office, any who perceive themselves as not the front runner will naturally be deferential to that person and his/her positions, as well as to other candidates. That weaker candidate needs to be perceived, at a minimum, as acceptable to supporters of other candidates so those supporters will select that weaker candidate as their number 2 or, arguably, number 3 choice, so as ballots go through the rounds of elimination, that weaker candidate will end up with the most votes swinging his/her direction. It's the only way they have a chance to win.

So you go through the ranked-choice debate and election cycle with, generally, debate and expressed differences or challenges that may only nibble at the edges of the real controversies. In fact, it may be so subtle that some voters may think the candidates all have the same views. The most dominant candidate at the start of the process has a defense already built into the system.

In a non-ranked-choice vote system, where to win a candidate must have 50 percent of the vote, first of all, candidates are free to voice their real views in order to stand out. When there is no 50-plus percent winner on election day, the top two go head-to-head in a runoff. This is where a clear distinction is made; where dramatic debate can occur; and where voters get real clarity on policy differences. It is a place where voters may see that their vote matters, and is likely to drive increased voter participation. A runoff process is good for democracy, and can't happen in a ranked-choice process.

Yes, a ranked-choice process may be "more efficient" (i.e. cheaper and quicker. But openness, debate, and true distinctions among candidates may be the makings of real democracy, even if a little less "efficient".

(If you want to make your head spin, check out the 2013 Minneapolis mayoral contest, where ranked-choice voters and the subsequent winnowing process had to deal with 35, yes 35, candidates for that one office.)

So, I say go back to a traditional voting system. Eliminate the ranked-choice process in Santa Fe. It's better for open debate, voter interest, voter participation, and democracy.

Berl Brechner

Santa Fe.

3/29/23

Dear Chair Long and Ms. Ortiz,

This elaborates on a point I've made in some earlier comments to the Commission. Please share these thoughts with other commissioners.

It's my firm belief that a Charter Review Commission should focus on how government should go about its business, and how that government can best serve and give voice to the citizens of its jurisdiction in the fairest manner possible while also meeting its statutory obligations.

But it's also my firm belief that a charter, and changes to it, while specifying the "hows", should absolutely stay away from the "whats" that government bodies should or (in the case of a charter) must do, no matter how high-minded such concepts may seem. (There could be no end to the number of "good" things that could be put forth.) Those kinds of things are the province of elected officials who have been chosen by citizens to add, subtract, modify and evaluate policies and laws. Commission members are not elected, are not in a position to evaluate any given proposal against other needs and proposals, and should have no role in determining what matters and activities might be beneficial, or an imposition, on citizens.

Perhaps this thought offers guidance to Commissioners as you continue your important work and evaluate the pluses and minuses of the many topics before you, toward concluding your recommendations.

Thank you for your consideration of this, and your service.

Respectfully,

Berl Brechner

Santa Fe

*I agree with the Model City Charter, which argues against two of your proposals, giving the mayor a vote only to break a tie, and giving him veto power:*

*"Communities should avoid granting special voting status to the mayor (e.g., vote on council only to make or break a tie). Such power will likely impede rather than enhance the mayor's capacity to lead. Similarly, giving the mayor veto power in a council-manager city cannot help but confuse his or her role with that of the executive mayor in a mayor-council city."*

*Please remove these portions. Thank you.*

Thank you.  
Barbara Larson (Jody)  
District 2

**SANTA FE CHARTER COMMISSION  
AND ITS GOVERNANCE SUB-COMMITTEE  
2023**

**Summary**

- Council selects its own presiding officer.
- Council finds, develops, and processes to completion the city’s legislative solutions.
- Mayor votes to break ties.
- Mayor may veto council actions.
- Mayor leads the city as a whole to focus on major issues.
- Mayor hires and supervises city manager, city attorney and city clerk.
- Council may override the mayor’s veto.
- City manager advises council and submits budgets.
- Charter contains a new Financial Management section.
- Signature thresholds to put referenda or initiatives on the ballot are reduced.
- Recommendations that do not require charter amendments are listed.

**Full text**

<b>Recommended Charter Amendments</b>
---------------------------------------

**ROLES OF COUNCIL, MAYOR, AND MANAGER (E&G)**

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

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

**ARTICLE V. GOVERNANCE**

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

**5.01 The Legislative Branch**

THE CITY COUNCIL

## 5.01 The Legislative Branch, Composition

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

### The Legislative Branch, Powers, and Duties

- A. The city council shall serve as the principal policy maker of the city, and shall, as necessary, amend existing policies that are consistent with other provisions of the charter. The council shall consider the-agenda put forth by the mayor and propose amendments to existing policies and propose new policies.
- B. All legislative powers of the city shall be vested in the city council except as otherwise required by law or this charter. The city council shall provide for the exercise of its powers and for the performance of all duties and obligations imposed on the city by law.
- C. The city council shall select from among its members a presiding officer, who may or may not also be the mayor *pro-tempore*.
- D. The city council may override a mayoral veto by a super-majority of the total possible members voting to do so.
- E. *Mayor pro tempore*.  
At the first meeting of the council following a regular city election the mayor shall appoint, subject to the approval of the council, a councilor to serve as mayor *pro tempore* until the next regular city election. The mayor pro tempore shall perform the duties of the mayor in the absence or temporary incapacity of the mayor and continue as a member of the council.
- F. The city council shall by ordinance fix the annual salaries of the municipal judge and councilors and shall review those salaries not less than every four years.
- G. The city council shall by ordinance establish an independent salary review commission whose sole purpose shall be to review and set the

mayor's salary. The independent salary review commission shall review the mayor's salary no less than every four years.

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

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

#### The Legislative Branch, City Council Districts

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

- A. Each district shall contain as nearly as possible substantially the same population based upon the most recent federal census.
- B. Districting plans must avoid dilution of minority voting strength.
- C. Communities of interest, including those based upon ethnic and economic factors, shall be preserved within a single district whenever reasonable.
- D. Each district shall be formed of compact, contiguous territories. The total length of all district boundary lines shall be as short as possible.
- E. Districting plans shall compensate for U.S. census undercount of minorities.

#### Legislative Branch, Conditions of Service

##### A. Eligibility.

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

B. Term of office.

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

C. Vacancies in office.

The office of a councilor shall become vacant upon the member's death, resignation, termination of residency in the district from which elected, or removal from office in any manner authorized by law or this charter. When such a vacancy occurs, the mayor shall within thirty days appoint a qualified elector from the district in which the vacancy has occurred to serve until the next regular city election, at which time a qualified elector shall be elected to fill the remaining unexpired term, if any. The governing body shall approve or disapprove the mayor's appointment not later than its second regularly scheduled meeting after the appointment.

D. Grounds for removal from office.

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

## **5.02 The Executive Branch**

### THE MAYOR

#### Powers and Duties of the Mayor

The city shall have a mayor who shall:

- A. Be elected at large by the voters of the city.
- B. Provide the city council, in person or by other means, with mayoral messages on major matters under consideration by the council and be free to amend any of the mayoral messages in light of the council's debate on the matters.
- C. Be the chief executive officer of the city whose position shall be full-time. The mayor shall function as the political leader, public convenor, and head of city government for all purposes, including, but not be limited to:

- facilitating, as may be possible, cooperation among all stakeholders in government and the private sector to solve the major challenges facing the city, and
  - enlisting the support of the council to add legislative framework as may be necessary.
- D. Earn a salary set by an independent commission as created by ordinance.
- E. Appoint, with the consent of a majority of the total possible membership of city council: the city manager, city attorney, city clerk, and members of advisory commissions.
- F. Supervise the city manager, city attorney and city clerk.
- G. Have the sole authority to remove the city clerk, the authority to remove the city manager with consent of a majority of the total possible membership of the city council at a regularly scheduled meeting and may remove the city attorney with the consent of six members of the city council.
- H. Shall join the city council as the governing body, with voice and vote, to break tie votes.
- I. Shall sign, veto, or allow to become law without signature, each ordinance adopted by the council. Signature or veto shall be exercised within 30 days of the ordinance adoption.
- J. Cause the ordinances and regulations of the city to be faithfully and constantly obeyed.
- K. Have, within the city limits, the power conferred on the sheriffs of counties to suppress disorders and keep the peace.
- L. Propose programs and policies to city council.
- M. Represent the city in intergovernmental relationships.
- N. Present an annual state of the city message which shall identify among other matters the mayor's legislative agenda for the upcoming year.

O. Be recognized by the governor for purposes of military law.

#### Conditions of Service by the Mayor

##### A. Eligibility.

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

##### B. Term of office.

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

##### C. Vacancy in office.

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

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

##### D. Grounds for removal from office.

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

#### THE CITY MANAGER

##### Appointment.

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

##### Qualifications.

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

##### Powers and duties.

The city manager shall:

- A. Be the chief operations officer of the city.
- B. Have the power to hire and fire all city employees, except for the city attorney and city clerk.
- C. Work with city personnel and timely prepare an annual budget and proposed spending priority for review and approval by the finance committee and the city council.
- D. Provide for a program of public communication on behalf of the city, informing the public of the on-going work of departments, including city-owned enterprises, their successes, and outstanding challenges as well as the public's interaction with the departments.
- E. Have such other powers as are provided for in city ordinances and state law.

Removal

The city manager may be suspended or removed:

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

### **5.03 THE MUNICIPAL COURT**

A. Establishment.

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

B. Jurisdiction.

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

C. Eligibility.

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

D. Term of office.

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

E. Vacancy in office.

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

F. Grounds for removal from office.

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

G. Salary.

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

**COMMENTARY:**

Our recommendation features the following:

- We reorder sections of the current charter to conform to the recognizable governance structure of branches: legislative, executive.
- We begin with a declarative statement that the branches both balance and separate the powers of government.
- The mayor is not a member of the council except as noted in Powers and Duties (H) but has the opportunity to make or send statements declaring positions on the major legislative matters that the council has under consideration, as determined by the mayor.
- One of the duties proposed for the mayor (B) calls for leadership on “major matters”. The Charter should not define “major” because that definition is not a constitutional issue, it is exactly the political issue for which the

mayor is expressly elected by the people. We elect one mayor rather than another candidate in large part because one appears to the electors to grasp the “major” determinants of the city’s future with greater comprehension, insight, and appreciation than another.

The text also calls for “mayoral messages”. They are advisory and reveal the mayor’s position on the issue under consideration. The messages are not meant to be legislative, so in no sense are they to be adopted or rejected in or of themselves.

- Another of the mayoral duties is to break tie votes in the council (H). How might that actually occur in practical terms? It occurs to us that there are several means:
  - The council or its presiding officer might on certain occasions anticipate a tie and ask the mayor to attend at least for that agenda item.
  - The councilors who vote in the affirmative, may be ready to move to reconsider so as to allow one or more of them to change the vote exactly to avoid a tied outcome.
  - The matter may be automatically tabled, or tabled by vote, to be brought off the table so as to include the mayor’s tie-breaking vote, either for or against.
- Our deliberations on the distinct roles of mayor and manager were informed by several passages in the Model City Charter, 9<sup>th</sup> edition (MCC9), such as:

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

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

*(\*) "It is difficult to find candidates for mayors who are equally adept at providing both political and administrative leadership... [It] is important for the mayor to devote a substantial amount of time to interacting with the public, making it difficult to devote sufficient attention to policy development, administration, and management. So-called "strong" mayors may actually be overextended mayors." (MCC9, p. 71)*

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

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

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

## CHARTER SECTION ON FINANCE (H)

**Action:** Include a “Financial Management” section in the Santa Fe Charter.

**Recommendation:** add the following:

### FINANCIAL MANAGEMENT – Section \_\_\_\_

#### Section \_\_\_\_ Submission of Budget and Budget Message.

The city manager shall submit to the city council, a budget for the ensuing fiscal year and an accompanying message.

#### Section \_\_\_\_ Budget Message.

Consistent with the form required in NM law, the city manager’s message shall explain the budget both in fiscal terms and in terms of the work programs, linking those programs to organizational goals and community priorities. It shall outline the proposed financial policies of the city for the ensuing fiscal year and the impact of those policies on future years. It shall describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the city’s debt position, including factors affecting the ability to raise resources through debt issues, and include such other material as the city manager deems desirable. The council shall provide in ordinance the budget summaries that will facilitate its work.

#### Section \_\_\_\_ Budget.

The budget shall provide a financial plan of all city funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the city manager deems desirable or the city council may require for effective management and an understanding of the relationship between the budget and the city’s strategic goals. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the anticipated tax revenues, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. It shall indicate in separate sections:

- (1) The proposed goals and expenditures for current operations during the ensuing fiscal year, detailed for each fund by department

or by other organization unit, and program, purpose or activity, method of financing such expenditures, and methods to measure outcomes and performance related to the goals;

(2) Proposed longer-term goals and capital expenditures during the ensuing fiscal year, detailed for each fund by department or by other organization unit when practical, the proposed method of financing each such capital expenditure, and methods to measure outcomes and performance related to the goals; and

(3) The proposed goals, anticipated income and expense, profit and loss for the ensuing year for each utility or other enterprise fund or internal service fund operated by the city, and methods to measure outcomes and performance related to the goals. For any fund, the total of proposed expenditures shall not exceed the total of appropriated funds.

**Section \_\_\_\_ . City Council Action on Budget.**

(a) **Notice and Hearing.** The city manager shall publish the general summary of the budget and a notice stating:

(1) The times and places where copies of the message and budget are available for inspection by the public, and

(2) The time and place, not less than two weeks after such publication, for a public hearing(s) on the budget.

(b) **Amendment Before Adoption.** After the public hearing, the city council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for an estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than total estimated income.

(c) **Adoption.** The city council shall adopt the budget on or before the city's budget is due to the state. If it fails to adopt the budget by this date, the budget proposed by the city manager shall go into effect.

(d) **"Publish" defined.** As used in this article, the term "publish" means to print in the- form of publication recognized in NM law for government entities, plus any electronic media that the council deems accessible to the public.

**Section \_\_\_\_ . Administration and Fiduciary Oversight of the Budget.**

The governing body shall provide by ordinance the procedures for administration and fiduciary oversight of the budget.

**Section \_\_\_\_ . City Council Action on Capital Program.**

**(a) Notice and Hearing.** The city manager shall publish the general summary of the capital program consistent with the requirements in NM law for public notice.

**(b) Adoption.** The city council by resolution shall adopt the capital program with or without amendment after the public hearing and before the capital program is due to the state.

**Section \_\_\_\_ Independent Audit.**

The city council shall provide for an independent annual audit of all city accounts and may provide for more frequent audits as it deems necessary. The council shall by ordinance update its financial processes and accounting systems, and prioritize budgetary resources to staff its financial services so as to facilitate timely completion of audits.

**Section \_\_ Additional provisions**

**Investments**

The city shall follow the laws and policies of the State of New Mexico regarding investment of public funds.

**Procurement**

The governing body shall, by ordinance, adopt a fair and equitable procurement code for the city.

**Independent audit committee**

The governing body shall, by ordinance, adopt an independent audit committee for the city.

## **SIGNATURE THRESHOLDS FOR INITIATIVES, REFERENDA AND RECALL (I&J)**

**Action:** recommend reducing the initiative and referendum signature thresholds only.

**Recommendation:** Note deletions and additions in text below.

### **3.01. Referendum**

**E. Number of signatures.** A referendum petition shall be deemed sufficient if signed by qualified electors in an amount equal to fifteen percent or more of the number of voters who voted in the most recent election that included the election of the office of mayor, including at least ten percent of the number of voters in each council district who voted in the most recent election that included the election of the office of mayor. The city clerk shall determine the number of voters who voted in the most recent election that included the election of the office of mayor both city-wide and per district.

### **3.02. Initiatives**

**F. Number of signatures.** An initiative petition shall be deemed sufficient if signed by qualified electors in an amount equal to fifteen percent or more of the number of voters who voted in the most recent election that included the election of the office of mayor, including at least ten percent of the number of voters in each council district who voted in the most recent election that included the election of the office of mayor. The city clerk shall determine the number of voters who voted in the most recent election that included the election of the office of mayor both city-wide and per district.

### **3.03. Recall.**

**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 percent or more of the number of voters who voted in the most recent election that included the election of the office of mayor, including at least fifteen percent of the number of voters in each council district who voted in the most recent

election that included the election of the office of mayor. The city clerk shall determine the number of voters who voted in the most recent election that included the election of the office of mayor both city-wide and per district.

[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 percent or more of the number of voters who voted in the most recent election that included the election of the office of mayor in the district from which the councilor was elected. -The city clerk shall determine the number of voters who voted in the most recent election that included the election of the office of mayor in the district from which the councilor was elected.

## **COMMENTARY:**

### **On Initiatives and Referenda**

Having access to initiative and referendum rights allows voters to own the ballot's provisions upon which they may vote, in cases where their representatives are not responsive in prioritizing specific voter priorities or have acted despite the voters and their priorities.

The National Civic League's Model City Charter, 9<sup>th</sup> Edition states that the percentage of signatures required for voters to be able to put a Ballot Initiative or a Referendum on the ballot "should not be too easy nor too burdensome". The document recommends the signature requirement for Initiatives and Referenda to be equal in number to at least 5 to 10% of the total number of registered voters who voted in the last regular election. The city of Albuquerque's signature requirement for initiatives and referenda is 20%, whereas the city of Las Cruces' is 15%. A study of initiative and referenda signature requirement thresholds shows a range most commonly occurring between 2% and 15%.\*

We recommend changing the signature requirement threshold for initiatives and referenda from 33.3% to 15%. We also recommend keeping the signature requirement threshold per district at 10%.

---

\*[http://www.iandrinstute.org/docs/A\\_Comparison\\_of\\_Statewide\\_landR\\_Processes.pdf](http://www.iandrinstute.org/docs/A_Comparison_of_Statewide_landR_Processes.pdf)

### **On Recalls**

The Model City Charter report recommends the signature requirement threshold be higher for recalls than for initiatives or referenda. When an elected official is

not responsive to the voters and their priorities, the voters do have a recourse to address this issue, and that is electing a different representative the next time that representative is up for re-election. Therefore, we do not recommend changing the signature requirement threshold for recalls.

We recommend keeping the signature requirement threshold for recalls at 33.3%, as well as keeping the signature requirement threshold per district at 15%.

<b>Recommended non-Charter Actions</b>
--

### **FULL-TIME COUNCILORS (F)**

**Action: add staff but keep part-time councilors**

**Recommendation:** add one staff person assigned to each councilor. Within the confines of city government and the ability to utilize vacant positions, the city may find adequate resources to meet this need. We do not presently recommend changing Santa Fe's councilors to full-time. This action does not require a charter amendment.

**Commentary:** Full-time councilors may be warranted when the city population, through annexation or influx, reaches 100,000. Current trends suggest that that may occur in the 2030-2040 decade.

### **BOARDS AND COMMISSIONS SUNSET (D)**

**Action: evaluate city boards and commissions.**

**Recommendation:** That the council determine whether city boards and commissions, not required by law, are functioning and productive.

**Commentary:** Council should determine on-going relevance or effectiveness of boards and commissions unless required by law, and that they be terminated or reauthorized accordingly. This is not properly a Charter topic.

## **DUE PROCESS WHEN FUNCTIONING IN QUASI-JUDICIAL FORM (K)**

**Action:** refer with request to incorporate content to Code Chapter 14 revision

**Recommendation:** That the council instruct the process currently under way to revise Chapter 14 of the city code to evaluate and potentially incorporate language that allows equity of input between the public and the applicant(s).

**Commentary:** The Commission was asked to recommend relevant language as Charter amendment. Our view is that the request constituted compliance with law but proposed to do so at the constitutional level of authority. There may be useful ways to ensure such compliance as the city devises policy and procedure. That would be the proper location for such remedy. For reference, the correspondent who appealed to the Commission sent the following proposed text:

“Recognizing the importance of due process of law and fairness in matters that require quasi-judicial hearings the City of Santa Fe and all its Governing Body, Boards, Commissions, and Committees shall commit to assuring that all quasi-judicial proceedings shall adhere to the concepts of due process of law and fundamental fairness, and apply these concepts in an impartial manner to both applicants and members of the community that may be affected by the outcome of such proceedings.” (Correspondence from Mr. Adam Johnson, Old Santa Fe, 3/31/2026)

<h3><b>Our Recommendations Regarding the Remaining Referrals</b></h3>
---

## **NUMBER OF DISTRICTS AND COUNCILORS (A&B)**

**Action:** refer the current configuration of 4 dual member districts to the 2030 Charter review and adjust the sequence of Charter and Redistricting Commissions.

**Recommendation:**

- That the number of districts and councilors be referred to the 2030 Charter Commission as soon as the 2030 census is completed, and
- The next Charter Commission should be convened prior to convening the next Redistricting Commission.

**Commentary:** The benefits of adding a district and reducing the number of councilors do not outweigh the disruption that these changes would make at this time.

The sequence of Charter and then Redistricting commissions' work is preferred. One recommended possibility would be to spend the census year with a full year of charter review with ample public engagement from beginning to end of that year. The census report and the charter report would then both be available to the redistricting process.

### **AT-LARGE COUNCIL MEMBER (This was in the original referral as C see attached)**

**Action:** apply the legal restriction against this item.

**Recommendation:** that the council does not forward this item unless the Legislature acts to allow it.

**Commentary:** Case law in NM would not allow at-large membership. (*Casuse v. City of Gallup*, 1987-NMSC-112, P 8.) Presently, the council approaches the maximum number of members allowed by NM law. An at-large member would only serve to relieve the necessity of all members to act on behalf of the city as a whole as well as to represent their own district.

### **COUNCILORS WHO LOSE MAYORAL ELECTION (C)**

**Action:** rely on the will of the voters

**Recommendation:** that the proposal to remove councilors who lose a mayoral election from service on the council is found to be unnecessary.

**Commentary:** We do not find that a need to resign to protect against post-election acrimony on the council has been demonstrated. We trust the voters to express their preferences for councilors at the polls and that that is sufficient incentive for councilors to act in the interests of their constituents.

**TERM LIMITS (This was in the original referral as H see attached)**

**Action:** apply the legal restriction against this item.

**Recommendation:** that the council does not forward this item unless the Legislature acts to allow it.

**Commentary:** The proposal should not be considered for a Charter amendment until/unless the NM Constitution is amended to allow it. (*New Mexico Constitution Article 7, Section 2.*)

**RECOMMENDATIONS ON TOPICS REFERRED TO THE  
SANTA FE CHARTER COMMISSION  
AND ITS GOVERNANCE SUB-COMMITTEE  
BY THE CITY COUNCIL, 2023**

*The council referrals are listed here with the original letter designations for easy and consistent reference. The topics that have been added by action of the Commission are enumerated within the final Council topic (J) as sequential numbers within Council referral J (J.1, J.2, etc.)*

*MCC9== - National Civic League’s Model City Charter, 9<sup>th</sup> Edition,*

<b>Recommended Charter Amendments</b>
---------------------------------------

**REFERRALS D & F  
ROLES OF COUNCIL, MAYOR, AND MANAGER  
SANTA FE CHARTER COMMISSION  
BY THE CITY COUNCIL, 2023**

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

**Recommendation:** a new Article V to replace current Articles V—VIII, entitled GOVERNANCE with three sections: The Legislative Branch, The Executive Branch, and Municipal Court.

.....

**ARTICLE V. GOVERNANCE**

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

5.01 The Legislative Branch

THE CITY COUNCIL

5.01 The Legislative Branch, Composition

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

### The Legislative Branch, Powers and Duties

- A. ~~The governing body~~ city council shall serve as the principal policy maker of the city, and shall, as necessary, amend existing policies that are consistent with other provisions of the charter. The council shall consider the ~~legislative~~ agenda put forth by the mayor and propose amendments to existing policies and propose new policies.
- B. All legislative powers of the city shall be vested in the city council ~~governing body,~~ except as otherwise required by law or this charter. The city council ~~governing body~~ shall provide for the exercise of its powers and for the performance of all duties and obligations imposed on the city by law.
- C. The city council shall select from among its members a presiding officer, who may or may not also be the mayor *pro-tempore*.
- ~~D. The city council shall select from among its members a finance committee and may select from among its members other committees to facilitate its work.~~
- E. The city council may override a mayoral veto by a super-majority of the total possible members voting to do so.

#### E. Mayor *pro tempore*.

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

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

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

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

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

### The Legislative Branch, City Council Districts

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

- A. each district shall contain as nearly as possible substantially the same population based upon the most recent federal census;
- B. districting plans must avoid dilution of minority voting strength;
- C. communities of interest, including those based upon ethnic and economic factors, shall be preserved within a single district whenever reasonable;
- D. each district shall be formed of compact, contiguous territories. The total length of all district boundary lines shall be as short as possible;

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

### Legislative Branch, Conditions of Service

#### A. Eligibility.

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

#### B. Term of office.

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

#### C. Vacancies in office.

The office of a councilor shall become vacant upon the member's death, resignation, termination of residency in the district from which elected, or removal from office in any manner authorized by law or this charter. When such a vacancy occurs, the mayor shall within thirty days appoint a qualified elector from the district in which the vacancy has occurred to serve until the next regular city election, at which time a qualified elector shall be elected to fill the remaining unexpired term, if any. The governing body shall approve or disapprove the mayor's appointment not later than its second regularly scheduled meeting after the appointment.

#### D. Grounds for removal from office.

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

### 5.02 The Executive Branch

#### THE MAYOR

## Powers and Duties of the Mayor

The city shall have a mayor who shall:

A. be elected at large by the voters of the city;

B. ~~have a vote on all matters that come before the governing body;~~  
provide the city council, in person or by other means, with mayoral messages on major matters under consideration by the council and be free to amend those any of the mayoral messages in light of the council's debate on such the matters.

C. Be the chief executive officer of the city whose position shall be full-time.  
The mayor shall function as the political leader, public convenor, and head of city government for all purposes and public problem solver 'facilitator in chief' throughout the city, including, but not be limited to:

- facilitating, as may be possible, cooperation among all stakeholders in government and the private sector to solve the major challenges facing the city, and
- enlisting the support of the council to add legislative framework as may be necessary.

D. Earn ~~a an initial~~ salary set by an independent commission as created by ordinance.

E. Appoint, with the consent of a majority of the total possible membership of city council: governing body the city manager, city attorney, city clerk, and members of advisory commissions;

F. ~~exercise administrative control and supervision over~~ supervise the city manager, city attorney and city clerk;

G. have the sole authority to remove the ~~city manager, city attorney and city clerk without council approval;~~ the authority to remove the city manager with consent of a majority of the total possible membership of the city council at a regularly scheduled meeting, and may remove the city attorney with the consent of a six members of the city council.

H. shall join the city council as the governing body, with voice and vote, to break tie votes;

- I. shall sign, veto or allow to become law without signature, each ordinance adopted by the council. Signature or veto shall be exercised within 30 days of the ordinance adoption.
- J. cause the ordinances and regulations of the city to be faithfully and constantly obeyed;
- K. have, within the city limits, the power conferred on the sheriffs of counties to suppress disorders and keep the peace;
- L. Propose programs and policies to city council ~~the governing body~~;
- M. represent the city in intergovernmental relationships;
- N. present an annual state of the city message which shall identify among other matters the mayor's legislative agenda for the upcoming year;
- O. ~~be recognized as head of the city government for all ceremonial purposes;~~  
and
- P. be recognized by the governor for purposes of military law.

Conditions of Service by the Mayor

A. Eligibility.

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

B. Term of office.

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

C. Vacancy in office.

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

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

members of the governing body to serve as mayor until a special election can be held.

D. Grounds for removal from office.

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

## THE CITY MANAGER

Appointment.

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

Qualifications.

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

Powers and duties.

The city manager shall:

- A. be the chief ~~administrative~~ operations officer of the city;
- B. have the power to hire and fire all city employees, except for the city attorney and city clerk;
- C. Work with city personnel and timely prepare an annual budget and proposed spending priority for review and approval by the ~~finance committee and city council~~ the governing body;
- D. provide for a program of public communication on behalf of the city, informing the public of the on-going work of departments, including city-owned enterprises, their successes, and outstanding challenges as well as the public's interaction with the departments; And
- E. have such other powers as are provided for in city ordinances and state law.

Removal. [~~Effective March 12, 2018~~]

The city manager may be suspended or removed:

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

5.03

#### THE MUNICIPAL COURT

A. Establishment.

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

B. Jurisdiction.

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

C. Eligibility.

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

D. Term of office.

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

E. Vacancy in office.

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

F. Grounds for removal from office.

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

G. Salary.

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

**COMMENTARY:**

Our recommendation features the following:

- We reorder sections of the current charter to conform to the recognizable governance structure of three branches: legislative, executive, and judicial.
- We begin with a declarative statement that the branches both balance and separate the powers of government.
- The mayor is not a member of the council except as noted in Powers and Duties (H) but has the opportunity to make or send statements declaring positions themselves on the major legislative matters that the council has under consideration, as determined by the mayor.
- One of the duties proposed for the mayor (B) calls for leadership on “major matters”. The Charter should not define “major” because that definition is not a constitutional issue, it is exactly the political issue for which the mayor is expressly elected by the people. We elect one mayor rather than another candidate in large part because one appears to the electors to grasp the “major” determinants of the city’s future with greater comprehension, insight, and appreciation than another. The text also calls for “mayoral messages”. They are advisory and reveal the mayor’s position on the issue under consideration. The messages are

not meant to be legislative, so in no sense are they to be adopted or rejected in or of themselves.

- Another of the mayoral duties is to break tie votes in the council (H). How might that actually occur in practical terms? It occurs to us that there are several means:
  - The council or its presiding officer might on certain occasions anticipate a tie and ask the mayor to attend at least for that agenda item.
  - The councilors who vote in the affirmative, may be ready to move to reconsider so as to allow one or more of them to change the vote exactly to avoid a tied outcome.
  - The matter may be automatically tabled, or tabled by vote, to be brought off the table so as to include the mayor's tie-breaking vote, either for or against.
- Our deliberations on the distinct roles of mayor and manager were informed by several passages in MCC9, such as:

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

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

(\*) “It is difficult to find candidates for mayors who are equally adept at providing both political and administrative leadership... [It] is important for the mayor to devote a substantial amount of time to interacting with the public, making it difficult to devote sufficient attention to policy development, administration, and management. So-called “strong” mayors may actually be overextended mayors.” (MCC9, p. 71)

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

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

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

**REFERRAL J.2  
CHARTER SECTION ON FINANCE  
SANTA FE CHARTER COMMISSION  
BY THE COMMISSION**

**Action: Include a “Financial Management” section in the Santa Fe Charter.**

**Recommendation: add the following:**

**FINANCIAL MANAGEMENT – Section \_\_\_\_**

**Section \_\_\_\_ Submission of Budget and Budget Message.**

The city manager shall submit to the finance committee of the council, and other committees as the council’s adopted ordinances provide, and thence to the city council, a budget for the ensuing fiscal year and an accompanying message.

**Section \_\_\_\_ Budget Message.**

Consistent with the form required in NM law, the city manager’s message shall explain the budget both in fiscal terms and in terms of the work programs, linking those programs to organizational goals and community priorities. It shall outline the proposed financial policies of the city for the ensuing fiscal year and the impact of those policies on future years. It shall describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the city’s debt position, including factors affecting the ability to raise resources through debt issues, and include such other material as the city manager deems desirable. The council shall provide in ordinance the budget summaries that will facilitate its work.

**Section \_\_\_\_ Budget.**

The budget shall provide a financial plan of all city funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the city manager deems desirable or the city council may require for effective management and an understanding of the relationship between the budget and the city’s strategic goals. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the anticipated tax revenues, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative

figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. It shall indicate in separate sections:

(1) The proposed goals and expenditures for current operations during the ensuing fiscal year, detailed for each fund by department or by other organization unit, and program, purpose or activity, method of financing such expenditures, and methods to measure outcomes and performance related to the goals;

(2) Proposed longer-term goals and capital expenditures during the ensuing fiscal year, detailed for each fund by department or by other organization unit when practical, the proposed method of financing each such capital expenditure, and methods to measure outcomes and performance related to the goals; and

(3) The proposed goals, anticipated income and expense, profit and loss for the ensuing year for each utility or other enterprise fund or internal service fund operated by the city, and methods to measure outcomes and performance related to the goals. For any fund, the total of proposed expenditures shall not exceed the total of appropriated funds.

#### **Section \_\_\_\_ . City Council Action on Budget.**

(a) **Notice and Hearing.** The city manager shall publish the general summary of the budget and a notice stating:

(1) The times and places where copies of the message and budget are available for inspection by the public, and

(2) The time and place, not less than two weeks after such publication, for a public hearing(s) on the budget.

(b) **Amendment Before Adoption.** After the public hearing, the city council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for an estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than total estimated income.

(c) **Adoption.** The city council shall adopt the budget on or before the city's budget is due to the state. If it fails to adopt the budget by this date, the budget proposed by the city manager shall go into effect.

(d) **"Publish" defined.** As used in this article, the term "publish" means to print in the- form of publication recognized in NM law for government

entities, plus any electronic media that the council deems accessible to the public.

**Section \_\_\_\_.** **Administration and Fiduciary Oversight of the Budget.**

The ~~city council~~ governing body shall provide by ordinance the procedures for administration and fiduciary oversight of the budget.

**Section \_\_\_\_.** **City Council Action on Capital Program.**

**(a) Notice and Hearing.** The city manager shall publish the general summary of the capital program consistent with the requirements in NM law for public notice.

**(b) Adoption.** The city council by resolution shall adopt the capital program with or without amendment after the public hearing and ~~on or before the day of the month of the current fiscal year.~~ before the capital program is due to the state.

**Section \_\_\_\_** **Independent Audit.**

The city council shall provide for an independent annual audit of all city accounts and may provide for more frequent audits as it deems necessary. The council shall by ordinance update its financial processes and accounting systems, and prioritize budgetary resources to staff its financial services so as to facilitate timely completion of audits.

**Section \_\_\_\_** **Additional provisions**

Investments

The city shall follow the laws and policies of the State of New Mexico regarding investment of public funds.

Procurement

The governing body shall, by ordinance, adopt a fair and equitable procurement code for the city.

Independent audit committee

The governing body shall, by ordinance, adopt an independent audit committee for the city.

**REFERRAL J.5  
SIGNATURE THRESHOLDS  
FOR INITIATIVES, REFERENDA AND RECALL  
SANTA FE CHARTER COMMISSION**

**Action:** recommend reducing the initiative and referendum signature thresholds only.

**Recommendation:** Note deletions and additions in text below.

**3.01. Referendum**

**E. Number of signatures.** A referendum petition shall be deemed sufficient if signed by qualified electors in an amount equal to fifteen ~~thirty-three and one third~~ percent or more of the number of voters who voted in the most recent election that included the election of the office of mayor, including at least ten percent of the number of voters in each council district who voted in the most recent election that included the election of the office of mayor. ~~voters for mayor in each council district in the last mayoral election.~~ The city clerk shall determine the number of voters who voted in the most recent election that included the election of the office of mayor both city-wide and per district. ~~actual voters at the last mayoral election.~~

**3.02. Initiatives**

**F. Number of signatures.** An initiative petition shall be deemed sufficient if signed by qualified electors in an amount equal to fifteen ~~thirty-three and one third~~ percent or more of the number of voters who voted in the most recent election that included the election of the office of mayor, including at least ten percent of the number of voters in each council district who voted in the most recent election that included the election of the office of mayor ~~actual voters in the last mayoral election, including at least ten percent of the actual voters for mayor in each council district in the last mayoral election.~~ The city clerk shall determine the number of voters who voted in the most recent election that included the election of the office of mayor both city-wide and per district. ~~actual voters at the last mayoral election.~~

**3.03. Recall.**

## **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 percent or more of the number of voters who voted in the most recent election that included the election of the office of mayor, including at least fifteen percent of the number of voters in each council district who voted in the most recent election that included the election of the office of mayor ~~actual voters at the last mayoral election, including at least fifteen percent of the actual voters for mayor from each council district.~~ The city clerk shall determine the number of voters who voted in the most recent election that included the election of the office of mayor both city-wide and per district. ~~actual voters for mayor in each district.~~

[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 percent or more of the number of voters who voted in the most recent election that included the election of the office of mayor in the district from which the councilor was elected. ~~actual voters at the last mayoral election in the district from which the councilor was elected.~~ The city clerk shall determine the number of voters who voted in the most recent election that included the election of the office of mayor in the district from which the councilor was elected. ~~actual voters in the district at the last mayoral election.~~

## **COMMENTARY:**

### **On Initiatives and Referenda**

Having access to initiative and referendum rights allows voters to own the ballot's provisions upon which they may vote, in cases where their representatives are not responsive in prioritizing specific voter priorities or have acted despite the voters and their priorities.

The National Civic League's Model City Charter, 9<sup>th</sup> Edition states that the percentage of signatures required for voters to be able to put a Ballot Initiative or a Referendum on the ballot "should not be too easy nor too burdensome". The document recommends the signature requirement for Initiatives and Referenda to be equal in number to at least 5 to 10% of the total number of registered voters who voted in the last regular election. The city of Albuquerque's signature requirement for initiatives and referenda is 20%, whereas the city of Las Cruces' is 15%. A study of initiative and referenda signature requirement thresholds shows a range most commonly occurring between 2% and 15%.\*

We recommend changing the signature requirement threshold for initiatives and referenda from 33.3% to 15%. We also recommend keeping the signature requirement threshold per district at 10%.

[http://www.iandrinstitute.org/docs/A Comparison of Statewide IandR Processes.pdf](http://www.iandrinstitute.org/docs/A%20Comparison%20of%20Statewide%20IandR%20Processes.pdf)

### **On Recalls**

The Model City Charter report recommends the signature requirement threshold be higher for recalls than for initiatives or referenda. When an elected official is not responsive to the voters and their priorities, the voters do have a recourse to address this issue, and that is electing a different representative the next time that representative is up for re-election. Therefore, we do not recommend changing the signature requirement threshold for recalls.

We recommend keeping the signature requirement threshold for recalls at 33.3%, as well as keeping the signature requirement threshold per district at 15%.

<b>Recommended non-Charter Actions</b>
--

**REFERRAL E  
FULL-TIME COUNCILORS  
SANTA FE CHARTER COMMISSION  
BY THE CITY COUNCIL, 2023**

**Action: add staff but keep part-time councilors**

**Recommendation:** add one staff person assigned to each councilor. The council has the authority to re-classify unfilled positions. Within the confines of city government and the ability to utilize vacant positions, the city may find adequate resources to meet this need.

We do not presently recommend changing Santa Fe’s councilors to full-time. This action does not require a charter amendment.

**Commentary:**

Full-time councilors may be warranted when the city population, through annexation or influx, reaches 100,000. Current trends suggest that that may occur in the 2030-2040 decade.

**REFERRAL J.1  
BOARDS AND COMMISSIONS SUNSET  
SANTA FE CHARTER COMMISSION  
BY THE COMMISSION**

**Action: evaluate city boards and commissions.**

**Recommendation:** That the council determine whether city boards and commissions, not required by law, are functioning and productive.

**Commentary:**

Council should determine on-going relevance or effectiveness of boards and commissions unless required by law, and that they be terminated or reauthorized accordingly.

This is not properly a Charter topic.

**REFERRAL FROM PUBLIC COMMENT  
DUE PROCESS WHEN FUNCTIONING IN QUASI-JUDICIAL FORM  
SANTA FE CHARTER COMMISSION  
BY THE COMMISSION**

**Action: refer with request to incorporate content to Chapter 14 revision**

**Recommendation:** That the council instruct the process currently under way to revise Chapter 14 of the city code to evaluate and potentially incorporate language that allows equity of input between the public and the applicant(s).

**Commentary:**

The Commission was asked to recommend relevant language as Charter amendment. Our view is that the request constituted compliance with law but

proposed to do so at the constitutional level of authority. There may be useful ways to ensure such compliance as the city devises policy and procedure. That would be the proper location for such remedy. For reference, the correspondent who appealed to the Commission sent the following proposed text:

“Recognizing the importance of due process of law and fairness in matters that require quasi-judicial hearings the City of Santa Fe and all its Governing Body, Boards, Commissions, and Committees shall commit to assuring that all quasi-judicial proceedings shall adhere to the concepts of due process of law and fundamental fairness, and apply these concepts in an impartial manner to both applicants and members of the community that may be affected by the outcome of such proceedings.” (Correspondence from Mr. Adam Johnson, Old Santa Fe, 3/31/2026)

## **Our Recommendations Regarding the Remaining Referrals**

### **REFERRALS A & B NUMBER OF DISTRICTS AND COUNCILORS SANTA FE CHARTER COMMISSION BY THE CITY COUNCIL, 2023**

**Action: refer the current configuration of 4 dual member districts to the 2030 Charter review and adjust the sequence of Charter and Redistricting Commissions.**

#### **Recommendation:**

- **that the number of districts and councilors be referred to the 2030 Charter Commission as soon as the 2030 census is completed, and**
- **The next Charter Commission should be convened prior to convening the next Redistricting Commission.**

#### **Commentary:**

The benefits of adding a district and reducing the number of councilors do not outweigh the disruption that these changes would make at this time.

The sequence of Charter and then Redistricting commissions’ work is preferred. One recommended possibility would be to spend the census year with a full year of charter review with ample public engagement from beginning to end of that year. The census report and the charter report would then both be available to the redistricting process.

**REFERRAL C  
AT-LARGE COUNCIL MEMBER  
SANTA FE CHARTER COMMISSION  
BY THE CITY COUNCIL, 2023**

**Action:** apply the legal restriction against this item.

**Recommendation:** that the council does not forward this item unless the Legislature acts to allow it.

**Commentary:**

Case law in NM would not allow at-large membership.  
(*Casuse v. City of Gallup*, 1987-NMSC-112, P 8.)

At present, the council approaches the maximum number of members allowed by NM law. An at-large member would only serve to relieve the necessity of all members to act on behalf of the city as a whole as well as to represent their own district.

**REFERRAL G  
COUNCILORS WHO LOSE MAYORAL ELECTION  
SANTA FE CHARTER COMMISSION  
BY THE CITY COUNCIL, 2023**

**Action:** rely on the will of the voters

**Recommendation:** that the proposal to remove councilors who lose a mayoral election from service on the council is found to be unnecessary.

**Commentary:**

We do not find that a need to resign to protect against post-election acrimony on the council has been demonstrated. We trust the voters to express their preferences for councilors at the polls and that that is sufficient incentive for councilors to act in the interests of their constituents.

**REFERRAL H  
TERM LIMITS  
SANTA FE CHARTER COMMISSION  
BY THE CITY COUNCIL, 2023**

**Action:** apply the legal restriction against this item.

**Recommendation:** that the council does not forward this item unless the Legislature acts to allow it.

**Commentary:**

The proposal should not be considered for a Charter amendment until/unless the NM Constitution is amended to allow it.

(New Mexico Constitution Article 7, Section 2.)

## 2.01. Human and civil rights.

The human and civil rights of the residents of Santa Fe are inviolate and shall not be diminished or otherwise infringed. ~~To that end~~ Thus, no city ordinance, resolution or policy shall be enacted or adopted, nor shall any action be condoned which discriminates on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition or citizenship status;~~;~~ ~~nor shall any~~ No ordinance enacted or policy adopted protecting or enhancing these rights ~~shall~~ be subject to the right of referendum or initiative. The governing body shall preserve, protect and promote human rights and human dignity, and shall, through all of its activities, including but not limited to employment, awarding of contracts, housing accommodation, and the provision of city services, prohibit ~~and discourage~~ such discrimination. To ~~effect~~ affect these ends, the governing body may ~~may~~ enact ordinances and ~~shall~~ establish an Office of Equity and Inclusion ~~appropriate commissions~~ with jurisdiction, authority, and staff sufficient to effectively administer ~~this~~ these policies ~~policy~~ in coordination with the Human Rights Commission. The Human Rights Commission shall have five commissioners, each serving a two-year term, except two commissioners drawn by lot who shall initially serve a one-year term, in order that every two years either two or three commissioners will be appointed to the commission. One commissioner from each

council district shall be appointed by the consensus of the two councilors from that district, and one commissioner shall be appointed by the Mayor. Each commissioner shall be limited to two, two-year terms. The commissioners once appointed shall elect a chair and a vice chair from their number.

2.08.

Having sufficient and nutritious food readily available to the people of Santa Fe is a key component of the sustainability of our community. It is an essential element of good health at every age, including our school-aged children and our elders, who often do not have sufficient readily available nutritious food. We consider it a basic human right that our citizens have nutritious food readily available and do not experience significant or prolonged hunger. To ensure that all in Santa Fe are well fed and not experiencing prolonged hunger or lack of nutritious food, our City government shall take those steps necessary to provide our community with adequate food resources in a sustainable manner that promotes the local production of food and the wise and conservation-minded use of water.

## CASE STATEMENT FOR A CITY HUMAN RIGHTS COMMISSION

Across the United States current efforts by groups of individuals and by state legislatures to limit human and civil rights is occurring. Individual municipalities in some instances are also passing ordinances affecting these rights. Administrations come and go and along with them different priorities for the protection of human and civil rights. Further, offices are formed, funded and later dismantled, often owing to administrative priorities.

We believe that to avoid changes in administrations and in administrative priorities, creation of a City based Human Rights Commission makes sense and is called for. With that, a city administrative office that examines City actions and operations through an equity lens is of paramount importance in our changing society. It is impossible to predict the racial and ethnic diversity yet to be realized in Santa Fe's future. Also impossible to predict is the impact food, housing and city services availability will have on the residents in neighborhoods throughout Santa Fe.

In anticipation of these changes due to time and city growth, an equity foundation must be laid. A mandate for a Human Rights Commission within the City of Santa Fe Charter, is therefore necessary. Further, to bring such a statement before the voting public of Santa Fe gives our citizens the opportunity to declare that a strong commitment to equity exists.

The work of municipalities such as Seattle, WA and Portland, OR offer their assessments and reflections of learned experiences. It is this sub-committees' hope that resources are tapped by an Office of Inclusion, Diversity, Equity and Access (IDEA) or any future office with a different acronym to augment ideas.

The development of an equity checklist for different departments as project decisions are made is one method the city of Seattle, Washington uses that could be reviewed and refined if necessary for the City of Santa Fe.

As noted by Kent Keel, President of the Association of Washington Cities, in its report entitled: "Equity Resource Guide", a copy of which is attached as Appendix 1:

While many may say that racism or lack of equity isn't an issue in their communities, I challenge us all to go a little deeper. Unfortunately, we all share a history where racism has played a role in government's policy decisions. But we are not bound by that history, and we shouldn't fear it. Instead, we can embrace our role as city leaders by facing these challenges and uncomfortable conversations. We can work to ensure that all of our community members, especially those who may feel disenfranchised and underrepresented, know that we hear their voices and are committed to working on their behalf.

And as noted in Portland, Oregon's report entitled "Racial Equity Strategy Guide", a copy of which is attached as Appendix 2:

"**EQUITY** is when everyone has access to the opportunities necessary to satisfy their essential needs, advance their well-being and achieve their full potential. We have a shared fate as individuals within a community and communities within society. All communities need the ability to shape their own present and future. Equity is both the means to healthy communities and an end that benefits all."

*- The Portland Plan (adopted by City Council April 2012)*

and,

Equity is Portland's key to increasing economic and social opportunity. Through expanding and coordinating how the City practices the value of equity, Portland can realize its potential as both an economic leader and thriving community.

Creating opportunity and achievement for all

is essential for the city's future growth and prosperity.

By initially focusing on *racial* equity, we can address Portland's most persistent disparities while developing a permanent shift towards fairer practice and institutions that benefit all.

6

We are all aware of some of the issues occurring within our community. We have seen protests, which continue to this day; we have seen criminal activity initiated by some in the name redressing historic wrongs; we know of the need for affordable housing in our City; we know of the need for better means of addressing hunger in our City. These circumstances and others tell us that more needs to be done. A City Human Rights Commission representative of the interests of all of our community, is a strategic place to being to systemically solve these issues.

Several publications, attached as Appendices, identify how other communities have and are tackling these issues. They are attached as:

Appendix 1 - Association of Washington Cities, "Equity Resource Guide"

Appendix 2 - Portland, Oregon, "Racial Equity Strategy Guide"

Appendix 3 - The Nonprofit Association of Oregon, "Equity and Inclusion Lens Guide"

Appendix 4 - ICMA Research Report, Governing for Equity: Implementing an Equity Lens for Local Governments"

Appendix 5 - GARE-Racial Equity Toolkit

## Appendix 1

## **ARTICLE X. CHARTER REVIEW AND AMENDMENT**

### **10.01. Charter review.**

A charter review commission shall be appointed as needed, but not less frequently than every ten years. The charter review commission shall consist of nine members; each city councilor shall select one member of the Commission and the Mayor shall select the ninth member. The selected commissioners shall elect one of their members to be the chair and a second one of their members to be the vice-chair of the commission. The commission, once selected, shall serve for a one-year term. The commission shall be selected as set forth above no less than 15 months before the election at which any proposed amendments are to be presented to the voters. Consistent with the Bateman Act, the City shall budget \$50,000 for the commission. In the event, any commission needs an increase in the budget the Governing Body must approve a budget increase before being made available. The city shall staff the commission with a designated city attorney and no fewer than two staffers to perform research and drafting functions for the commission. The city shall advertise the creation of the commission and its function, setting up a separate page on the City's web page for the submission of proposed amendments from the public. The City shall hold no less than two meetings in each of the four city council districts after the commission is selected for the purpose of taking input from the public. The commission shall report its recommended amendments to the Charter to the governing body on or before the first week of June prior to the election when any such amendments are to be considered. Any recommendation put forth by the commission, unless prohibited by law, shall be given to the voters at the next election, unless the Governing Body does not approve it by a vote of no less than six members of the Governing Body.

## AGRICULTURE AND HUNGER

**"Poverty is the worst form of violence." Mahatma Ghandi**

The United Nations Human Rights Commission in its publication entitled "The Right to Adequate Food", states in part that:

*Combating hunger and malnutrition is more than a moral duty or a policy choice; in many countries, it is a legally binding human rights obligation.*

*The right to food is recognized in the 1948 Universal Declaration of Human Rights as part of the right to an adequate standard of living, and is enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights. It is also protected by regional treaties and national constitutions. Furthermore, the right to food of specific groups has been recognized in several international conventions. All human beings, regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status have the right to adequate food and the right to be free from hunger.*

### **1. Proposed Amendment to the City of Santa Fe Charter, Article II, Food Policy**

*2. \_\_\_ Having sufficient and nutritious food readily available to the people of Santa Fe is a key component of the sustainability of our community. It is an essential element of good health at every age, including our school aged children and our elders, who often do not have sufficient readily available nutritious food. We consider it a basic human right that our citizens have nutritious food readily available and do not experience significant or prolonged hunger. To ensure that our community is striving to ensure that all in Santa Fe are well fed and not experiencing prolonged hunger or lack of nutritious food, our City government shall take those steps necessary to ensure that our community has abundant food resources readily available to all in Santa Fe and shall make available City land and water so that this can be accomplished in a sustainable manner that promotes the local production of food and the wise and conservation minded use of water.*

### **2. NEED WITHIN OUR COMMUNITY**

#### **a. Food Depot Information**

The Food Depot notes the following with regard to hunger and food insecurity within their service area, which is broader than the City or County of Santa Fe:

***Hunger Statistics***

*Hunger was a persistent challenge in New Mexico before the COVID-19 public health crisis. The demand for hunger relief increased by 30% after crisis began.*

***2018 Food Insecurity Data (pre-pandemic)***

- *In The Food Depot’s service area, 12.2% of people are food insecure.*
- *In The Food Depot’s service area, 23% of children are food insecure.*

***2020 Food Insecurity Projections***

- *Projections show that 17.4% of people will be food insecure in The Food Depot’s service area.*
- *Projections show that, 33.7% of children will be food insecure in The Food Depot’s service area.*

<https://thefooddepot.org/hunger-statistics/>

**b. Santa Fe Food Policy Council Information**

**i. Growing Food**

*Our vision for food production in Santa Fe City and County views farming and ranching as an economically viable way of life that promotes stewardship of the land and resources. This vision supports food security through the integration of sustainable agricultural practices into the built environment.*

***Goal 1: Increase the impact and efficiency of community gardens.***

- Enforce existing water conservation policies for community gardens. This will encourage appropriate growing methods that support efficient water usage and minimize negative environmental impacts.
- Support development of community gardens that create educational opportunities with diversified crops.
- Define the populations intended to be served by community gardens and develop policies that ensure those populations have access and education to benefit from the increased food security of those gardens.
- Support the development of community gardens and other agricultural projects by providing water, land, and infrastructure on County or public land where appropriate. (Santa Fe County Sustainable Growth Management Strategy 15.1.1, page 86).
- Allow the option for community gardens to be considered as part of the open space requirements for new developments. (Santa Fe County Sustainable Growth Management Plan, 2010, Strategy 15.5.2, page 86).

***Goal 2: Develop on-site gardens at senior centers to increase the availability of fresh and local foods for seniors.***

- Design sustainability plans for senior center gardens to ensure they have operational support, are economically self-sufficient, and are integrated into the community.

- Connect garden coordinators to resources, technical support, and educational opportunities available within Santa Fe County.
- Develop the plan by which fruit and vegetables grown in senior center gardens can be practically harvested, washed, stored and integrated into food preparation for senior center meals.

***Goal 3: Increase the number of school gardens aimed at helping youth***

- Develop and implement plans for school gardens that address the need for continuing support from the school district and community. Encourage schools to use school gardens as outdoor classrooms, integrating learning about food into the school day, cafeteria meals, and afterschool and summer programs.
- Work with school administration and local governments to develop joint use agreements establishing community gardens on school grounds. This will increase opportunities for multi-generational and multi-cultural learning and help gardens become long-term resources that serve the entire community.
- Develop partnerships with the Santa Fe Community College and/or other academic institutions to deliver arid-land agriculture training for residents and people pursuing careers in food production.

***Goal 4: Conserve water through educational programs, incentives, and policies.***

- Design educational landscapes in urban and rural settings that demonstrate the range of possibilities for water conservation, including harvested rainwater, xeric irrigation, re-vegetation and supplementing food production.
- Require that urban farms that grow produce for sale or to donate to organizations that address food insecurity must provide a water use plan including a water budget for plantings and water sources which minimize the use of municipal drinking water for crop irrigation.
- Support rebates and other incentives for agricultural use such as rain barrels, drip-irrigation, composting systems, and water conservation techniques in areas where appropriate.
- Support the use of rain fed agriculture where collected water is used to irrigate crops. (Santa Fe County Sustainable Growth Management Plan, 2010, strategy 16.2.2, p. 87.
- Support farming techniques that facilitate the conversion from spray irrigation-based practices to lower water use systems such as no-till, drip irrigation, and/or greenhouse based agriculture.

***Goal 5: Increase the viability and presence of local gardens, farms and ranches.***

- Work with Santa Fe County to incorporate land use allowances for agricultural activity into the Sustainable Land Development Code.
- Design and implement a City Harvest program, (as detailed in the Sustainable Santa Fe Plan), to create multiple growing, processing, storing, and selling opportunities. (Sustainable Santa Fe Plan, 2008, Proposed Action 10-2 under Food Production, page 29-30.)
- Develop a Commercial Scale Urban Agricultural Permit to protect both neighborhood and agricultural interests within the City by setting policies for uses including, but not limited to water conservation, embedded greenhouse gas footprint, sales, employees, volunteers, visitors and community educational benefits.
- Encourage public and private land owners within the City to revitalize vacant and underutilized property by allowing land to be used for green space and gardening.

***Goal 6: Develop agricultural incentives and innovative programs to support small farmers and maximize food production/distribution in our regional foodshed.***

- Promote and expand outreach and incentives for extended season farming techniques, supporting farmers to generate more income.

- Coordinate with local communities and organizations to promote the development of agricultural products and markets, including the development of farmers markets, buy-local campaigns, and a local products website to market and distribute fresh goods. (Santa Fe County Sustainable Growth Management Plan, 2010, strategy 14.2.3, page 85.)

- Establish Specialty Crop programs which support local farm and food based businesses by creating subsidies for fruits and vegetables.

***Goal 7: Adopt sustainable land/resource management practices at a regional scale.***

- Develop incentives, policies and programs throughout the City and County designed to support farming and ranching activities and improve environmental resiliency: develop a composting program, build soil to increase land fertility and groundwater recharge, improve functionality of waterways and irrigation networks, and promote growth of plants that are resilient in a wider range of climate conditions and provide habitat for beneficial insects.

***Goal 8: Prioritize sustainability and agriculture in future development in Santa Fe City and County.***

- Establish City and County development approval requirements with standards and regulations that do not limit home-based agricultural activities otherwise allowed by land use approval authority.
- Revise the City of Santa Fe’s Development Code landscape requirements to allow and/or require a percentage of plants produce fruits or vegetables that have low to moderate water requirements.

## ii. Getting Food

*Our vision for connecting diverse communities throughout the Santa Fe region to a reliable supply of healthy and affordable food is rooted in building knowledge of available assistance programs and resources, as well as ensuring that these foods are readily available in local stores, farmers markets, senior centers, hospitals, and schools.*

***Goal 1: Improve residents’ ability to access fresh, nutritious food.***

- Require City-and County-operated institutions include an increasing amount and variety of local food in their meal service programs to a maximum feasible percentage.
- Support provision of infrastructure and programming to improve food access in rural and under-served areas.

***Goal 2: Promote self-reliance, family gardening, and food storage.***

- Conduct education and outreach campaigns which emphasize self-reliance as a cornerstone of sustainability.

***Goal 3: Prioritize getting local, fresh food into schools.***

- Continue to support Farm to School educational activities currently taking place within our schools, such as on-site school gardens, food system and farming curriculum, fruit and vegetable tastings, culinary programs, field trips to local farms and venues, farmers in the classroom, and food system entrepreneurship programs.
- Work with School Food Service Directors and District Procurement offices to increase the availability of local foods in schools by setting up sustainable systems to purchase foods from local farmers, including standing purchase orders and bid processes that emphasize local purchasing.

***Goal 4: Promote existing food assistance programs.***

- Promote innovative programs aimed at increasing access to fresh, local food, such as the Southside Farmers Market and Santa Fe Farmers Market Double

Buck Days which provide SNAP recipients with additional funds to shop at local farmers markets.

**Goal 5: Celebrate local food and support regional food economy.**

- Grow the demand for local food by organizing an outreach campaign aimed at educating and inspiring residents to buy local.
- Implement innovative strategies that support local economic development efforts such as mobile grocery stores and food carts to bring locally produced food into under-served areas of the county.
- Work with Santa Fe City and County to develop urban agriculture ordinances.
- Maximize the efficiency of existing Community Commercial Kitchens and assess the need for additional facilities in order to enhance the economic potential of local value-added products and traditional foods

**c. New Mexico First**

*Food, Hunger, Water, Agriculture Policy Workgroup  
Project Summary*

*The Food, Hunger, Water and Agriculture Policy Workgroup is made up of a group of a cross-partisan coalition of policy makers, agricultural producers, agricultural and food-related businesses, the emergency food sector, people of faith, anti-poverty and anti-hunger advocates, researchers/academics, dietitians and health experts, educators, and public policy advocates. While participants come from many different communities and professions across New Mexico and have many different life experiences, there is a shared belief that working together to address food insecurity and strengthen local food systems will improve the health and nutrition of all New Mexicans. For questions about these priorities or for introductions to workgroup members, please contact New Mexico First at [info@nmfirst.org](mailto:info@nmfirst.org).*

*The Policy Workgroup came together in 2019 to support the following policy efforts:*

- 1. Increase data-driven decisions about food and hunger that support local food systems.*
- 2. Strengthen local food systems with policies that promote resiliency in local agriculture.*
- 3. Develop and support family-friendly policies that address hunger-related income inequalities.*

*Since the pandemic, the Food, Hunger, Water, Ag Policy Workgroup has been focusing on COVID-19 response and recovery, including policy work, to strengthen local food systems and end hunger. The Policy Workgroup includes a diverse range of professionals and stakeholders dedicated to the coordination of community responses to complement government efforts.*

Since July, 2022, the Policy Workgroup is organized by a steering committee comprised of six organizations: ToohBAA (Shiprock Dine' Farmers Cooperative), NM Voices for Children, NM Food & Agriculture Policy Council, Lutheran Advocacy Ministry – NM, NM First and Roadrunner Food Bank.

<https://nmfirst.org/initiatives/food-hunger-policy-workgroup/>

**d. Feeding America, a non-profit organization**

***What Hunger Looks Like in New Mexico***

*In New Mexico, 271,210 people are facing hunger - and of them 99,100 are children.*

*1 in 8 people*



*face hunger.*

***1 in 5 children face hunger.***

*People facing hunger in New Mexico are estimated to report needing \$131,722,000 more per year to meet their food needs. The average cost of a meal in New Mexico is \$3.02. Data from Feeding America's Map the Meal Gap study.*

***Supplemental Nutrition Assistance Program (SNAP) in New Mexico***

*Charitable programs are unable to fully support those facing hunger. The combination of charity and government assistance programs are necessary to help bridge the meal gap.*

*SNAP, formerly food stamps, provides temporary help for people going through hard times – providing supplemental money to buy food until they can get back on their feet.*

*In New Mexico,*

***41.1%****of households receiving SNAP benefits have children*

*\$632,907,856*

*distributed through*

***SNAP generated \$1,075,943,355 in economic activity\*.***

*\*Economists estimate that every dollar a household redeems through SNAP generates about \$1.70 in economic activity.*

<https://www.feedingamerica.org/hunger-in-america/new-mexico>

**e. KQRE Reporting**

## NEW MEXICO NEWS **unger in Santa Fe**

by: [Curtis Segarra](#)

Posted: Jun 21, 2022 / 02:57 PM MDT

Updated: Jun 21, 2022 / 03:04 PM MDT

SANTA FE, N.M. (KRQE) – ... Santa Fe County has around 5,000 children under the age of 18 who are repeatedly food insecure, according to the latest data from the state’s Human Services Department. That means that there are likely thousands of children in the county who have to limit or skip meals or eat a reduced diet.

The report goes on to explain that doubling down on existing efforts may not be enough to end childhood hunger. “Despite the good intentions of the individuals and organizations involved in the myriad existing anti-hunger programs and efforts, both governmental and nonprofit, and expenditure of multimillions of dollars annually, this objective has never been achieved in Santa Fe or anywhere else in the U. S.,” the report notes.

### f. **CHILDREN'S HEALTH WATCH REPORTING**

**Food insecurity is harmful to children’s health.** Many studies have found that food insecurity harms children’s health in a variety of ways.<sup>3,4</sup> Research conducted by Children’s HealthWatch and others has found that food-insecure young children are nearly twice as likely to be in fair or poor health<sup>ii</sup> when compared to food-secure young children, and significantly more likely to be hospitalized.<sup>5,6</sup> Food-insecure children are also more likely to suffer from common illnesses such as stomachaches, headaches, and colds when they reach preschool age.<sup>6</sup> Research on the relationship between food insecurity in childhood and obesity is inconclusive. One longitudinal study of young children, however, suggests that persistent household food insecurity may be a contributing factor in childhood obesity.<sup>7</sup>

> **Food insecurity is harmful to children’s development.** Children’s HealthWatch findings show that food insecure infants and toddlers are two thirds more likely than food-secure young children to be at risk for developmental delays.<sup>8</sup> Our research has also tied food insecurity to iron-deficiency anemia in young children,<sup>9</sup> a condition which negatively influences development of basic motor and social skills.<sup>10</sup> The stress that family hardships, like food-insecurity, place on a young child physically alter the development of crucial brain structures controlling memory<sup>11</sup> and psychosocial functioning.<sup>12</sup> Early childhood is

the narrow window during which one builds the basic capacity to learn and interact productively with others; disrupting this brief period diminishes children’s ability to acquire complex school skills as they grow, and, later, job skills.<sup>13</sup>

**> The developmental impact of food insecurity in early childhood is sustained through a child’s critical first years in school.** A study of school-aged children who suffered from iron-deficiency anemia as infants—a health outcome associated with food insecurity—found impaired memory and social functioning more than 10 years after the children had completed iron treatment.<sup>14</sup> Researchers examining the role of food insecurity in cognitive outcomes found that food-insecure 6-11 year-olds scored lower than their food-secure peers on a measure of child intelligence and were more likely to have seen a child psychologist. The same study also found that these children had a harder time getting along with others, were more likely to have repeated a grade, and had lower arithmetic and general achievement test scores than food-secure children in the same age group.<sup>15</sup> A study using data from the 1999 National Survey of American Families found that food insecurity predicts poor school engagement partly because food-insecure children tend to be in poor emotional and physical health.<sup>16</sup> In a longitudinal study, other researchers found that food insecurity in kindergarten was associated with poor reading performance and impaired social skills in later grades.

#### 4. Addressing the Need and Implementing Solutions to Hunger Issues

##### a. A Proposed to Strengthen Sustainability and Feed the Hungry in Santa Fe

How can the City boost its participation in solving the problems of food insecurity and hunger within our community, while strengthening our City's sustainability? One real step is to make both City land and water available for the production of food in sustainable ways. Attached hereto is a proposed form of ordinance to allow for the use of City land for the erection of commercial green houses, using hydroponic or aquaponic methodologies and city water, for the production of food that would be directed to those experiencing food insecurity and hunger, including, in particular, our young people and our elders.

##### b. NM Constitution Anti-donation Clause

Article IX, Section 14, provides, in pertinent part, that:

Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad except as provided in Subsections A through H of this section.

A. Nothing in this section prohibits the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons.

D. Nothing in this section prohibits the state or a county or municipality from creating new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses if this assistance is granted pursuant to general implementing legislation that is approved by a majority vote of those elected to each house of the legislature. The implementing legislation shall include adequate safeguards to protect public money or other resources used for the purposes authorized in this subsection. The implementing legislation shall further provide that:

(1) each specific county or municipal project providing assistance pursuant to this subsection need not be approved by the legislature but shall be approved by the county or municipality pursuant to procedures provided in the implementing legislation; and

The Food Depot estimated that to eliminate hunger in its service area, the minimum wage would need to be raised to \$22 to \$25 per hour. This statement makes clear that poverty and lack of economic means is a prime driver in creating hunger issues within our community. Such a solution has not moved forward within our community, leaving with the need to address this issues of indigency through other mechanisms. When it comes to food, when people do not have the economic power to buy that food, the solution comes into focus: make food available at less expensive prices. That can be done in significant part through controlling land and water costs associated with the production of food. The City has land and water, and will not run afoul of the Anti-donation Clause of the NM Constitution serving the indigent, and could therefore

move toward solving hunger issues within our community by undertaking the following steps:

- make City land available at a reduced cost, i.e., with a donative component, for hydroponic and aquaponic food production for the poor and indigent members of our community;
- make water available at a reduced cost, i.e., with a donative component, for hydroponic and aquaponic food production, for the poor and indigent members of our community;
- require that those utilizing City land and water for these purposes make the food produced available at reduced cost or no cost to the poor and indigent members of our community;
- require that those utilizing City land and water for these purposes hire the unemployed or underemployed within our community, when possible, and specifically hire personnel trained in hydroponic and aquaponic food production at local educational institutions;

c. City Land/City Water

The City owns some \_\_\_\_ acres of undeveloped land with the boundaries of the City. The City makes water available currently for land use development projects that involve residences that are fewer than \_\_\_\_ in number. The City can use its own land and water to incentivize such food production and enhance the sustainability of the City.

d. Skilled Workforce/Training

The Santa Fe Community College offers a program/training in hydroponic and aquaponic agriculture - Controlled Environment Agriculture. The City could work cooperatively with the SFCC to move its students into the workforce at the new greenhouses that could be built.

5. Draft City Ordinance- A sample form of ordinance for consideration in implementing such a program:

**RESOLUTION NO. 2023-\_\_**  
**INTRODUCED BY:**  
**Councilor \_\_\_\_\_**

**A RESOLUTION  
IN SUPPORT OF HYDROPONIC AND AQUAPONIC GROWING IN  
CONTAINED ENVIRONMENT AGRICULTURE UTILIZING CITY LAND AND**

**CITY WATER TO FURTHER SANTA FE'S SUSTAINABLE FUTURE AND  
ELIMINATE HUNGER IN OUR COMMUNITY.**

**WHEREAS**, hunger was a persistent challenge in New Mexico before the COVID-19 public health crisis; the demand for hunger relief increased by 30% after that crisis began.

**WHEREAS**, the United Nations Human Rights Commission in its publication entitled "The Right to Adequate Food", states in part that "Combating hunger and malnutrition is more than a moral duty or a policy choice; in many countries, it is a legally binding human rights obligation.... All human beings, regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status have the right to adequate food and the right to be free from hunger";

**WHEREAS**, the people of the City of Santa Fe affirm that the right to adequate food and the right to be free from hunger are basic human rights;

**WHEREAS**, New Mexico First's Food, Hunger, Water, Agriculture Policy Workgroup supports the following policy efforts: 1) Increase data-driven decisions about food and hunger that support local food systems; 2) Strengthen local food systems with policies that promote resiliency in local agriculture and 3) Develop and support family-friendly policies that address hunger-related income inequalities;

**WHEREAS**, in New Mexico one in eight persons experience hunger related issues, and one in five children experience hunger; and

**WHEREAS**, the City of Santa Fe has land and water resources that can be utilized in accord with law for the purposes of creating contained environment agricultural systems in the form of greenhouses to produce food to feed the hunger and malnourished in our City in a sustainable manner.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTA FE**, that the City of Santa Fe shall develop and implement within two years a program to make City land in every district within the City available for hydroponic and aquaponic food production in contained environment agricultural production facilities, such as greenhouses;

**BE IT FURTHER RESOLVED**, that the City of Santa Fe shall make available City water for use at significantly reduced rates in such greenhouses if they are commercial greenhouses and recycle said water multiple time within said facilities;

**BE IT FURTHER RESOLVED**, that any person(s) or entity(ies) operating such greenhouses shall be required to give priority in hiring to persons trained in the operation of such greenhouses and having degrees from the Contained Environment Agricultural program operated by the Santa Fe Community College; and

**BE IT FURTHER RESOLVED** that the food produced in such greenhouses shall be made available at no cost or low cost to feed children, elderly persons, and other residents of Santa Fe who experience food insecurity or hunger in Santa Fe, utilizing Santa Fe Schools, Santa Fe Senior Centers, and nonprofits faith communities within the Santa Fe community addressing hunger issues.

**PASSED, APPROVED, AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_,**

**2023**

6. Conclusions

The City of Santa Fe is uniquely situated to solve the problems of food insecurity and hunger in its community. A Charter Amendment stating the City's policy regarding making available nutritious food, utilizing City land and water should act as a catalyst to end hunger in our City, affirming the fundamental human right to food. The City has the land and water resources to promote the creation of commercial green houses on City land and using City water, that could be dedicated to the production of hydroponic and aquaponic food resources to feed the hungry in our community. We have at our local community college extant training programs (Controlled Environment Agriculture) to educate and train hydroponic and aquaponic farmers.

7. Appendices

- A. Santa Fe Food Policy Council Information
- B. KQRE Report
- C. Childrens HealthWatch Information
- D. SFCC - Controlled Environment Agriculture

## Appendix A - Santa Fe Food Policy Council Information

### A. Growing Food

#### *GROWING FOOD*

*Our vision for food production in Santa Fe City and County views farming and ranching as an economically viable way of life that promotes stewardship of the land and resources. This vision supports food security through the integration of sustainable agricultural practices into the built environment.*

#### **Goal 1: Increase the impact and efficiency of community gardens.**

- Enforce existing water conservation policies for community gardens. This will encourage appropriate growing methods that support efficient water usage and minimize negative environmental impacts. *Potential Partners: City of Santa Fe Parks Division, Community Garden Council, Homegrown NM, Santa Fe Watershed Association*
- Support development of community gardens that create educational opportunities with diversified crops. *Potential Partners: City of Santa Fe Parks Division, Community Garden Council, Homegrown NM, Santa Fe County Open Space, Santa Fe Community College, Institute of American Indian Arts*
- Define the populations intended to be served by community gardens and develop policies that ensure those populations have access and education to benefit from the increased food security of those gardens. *Potential Partners: City of Santa Fe Parks Division, Community Garden Council, Homegrown NM, Earth Care, Somos un Pueblo Unido*
- Support the development of community gardens and other agricultural projects by providing water, land, and infrastructure on County or public land where appropriate. (Santa Fe County Sustainable Growth Management Strategy 15.1.1, page 86). *Potential Partners: Santa Fe County Open Space and Trails program, Santa Fe County Growth Management Department*
- Allow the option for community gardens to be considered as part of the open space requirements for new developments. (Santa Fe County Sustainable Growth Management Plan, 2010, Strategy 15.5.2, page 86). *Potential Partners: Santa Fe County Open Space and Trails program, Santa Fe County Growth Management Department.*

#### **Goal 2: Develop on-site gardens at senior centers to increase the availability of fresh and local foods for seniors.**

- Design sustainability plans for senior center gardens to ensure they have operational support, are economically self-sufficient, and are integrated into the community. *Potential Partners: Santa Fe County Community Services, City of Santa Fe Community Services, City of Santa Fe Parks Division, Santa Fe County Open Space and Trails program, Homegrown NM, non-profits*
- Connect garden coordinators to resources, technical support, and educational opportunities available within Santa Fe County. *Potential Partners: Santa Fe County Community Services Department, City of Santa Fe Community Services, Santa Fe Community College, Institute of American Indian Arts (IAIA), Homegrown NM, non-profits.*
- Develop the plan by which fruit and vegetables grown in senior center gardens can be practically harvested, washed, stored and integrated into food preparation for senior center meals. *Potential Partners: Santa Fe County Community Services Department, New Mexico Environment Department, National Farm to School Network, Farm to Table, New Mexico State Extension Service*

#### **Goal 3: Increase the number of school gardens aimed at helping youth**

- Develop and implement plans for school gardens that address the need for continuing support from the school district and community. Encourage schools to use school gardens as outdoor classrooms, integrating learning about food into the school day, cafeteria meals, and afterschool and summer programs. *Potential Partners: National Farm to School Network, school district administration and staff, Americorps, Food Corps, non-profits.*
- Work with school administration and local governments to develop joint use agreements establishing community gardens on school grounds. This will increase opportunities for multi-

generational and multi-cultural learning and help gardens become long-term resources that serve the entire community. *Potential Partners: City of Santa Fe Community Services, Santa Fe County Community Services, school district administration and staff, non-profits.*

- Develop partnerships with the Santa Fe Community College and/or other academic institutions to deliver arid-land agriculture training for residents and people pursuing careers in food production. *Potential Partners: Santa Fe Community College, Sustainable Santa Fe, Santa Fe Community Farm, IAIA*

**Goal 4: Conserve water through educational programs, incentives, and policies.**

- Design educational landscapes in urban and rural settings that demonstrate the range of possibilities for water conservation, including harvested rainwater, xeric irrigation, re-vegetation and supplementing food production. *Potential Partners: City of Santa Fe Water Division, Santa Fe County Water Policy Advisory Committee, City of Santa Fe Environmental Services Department, Santa Fe Watershed Alliance, non-profits, Sustainable Santa Fe.*
- Require that urban farms that grow produce for sale or to donate to organizations that address food insecurity must provide a water use plan including a water budget for plantings and water sources which minimize the use of municipal drinking water for crop irrigation. *Potential Partners: City of Santa Fe Water Division, Santa Fe County Water Policy Advisory Committee, City of Santa Fe Environmental Services Department, Santa Fe Watershed Alliance, non-profits, Sustainable Santa Fe.*
- Support rebates and other incentives for agricultural use such as rain barrels, drip-irrigation, composting systems, and water conservation techniques in areas where appropriate. (Santa Fe County Sustainable Growth Management Plan, 2010, strategy 16.2.1, p. 87). *Potential Partners: City of Santa Fe Water Division, Santa Fe County Water Policy Advisory Committee, City of Santa Fe Environmental Services Department, Santa Fe Watershed Alliance, non-profits, Sustainable Santa Fe.*
- Support the use of rain fed agriculture where collected water is used to irrigate crops. (Santa Fe County Sustainable Growth Management Plan, 2010, strategy 16.2.2, p. 87. *Potential Partners: Santa Fe County Growth Management Department, City of Santa Fe Water Division, Santa Fe County Water Policy Advisory Committee, City of Santa Fe Environmental Services Department, Santa Fe Watershed Alliance, non-profits, Sustainable Santa Fe.*
- Support farming techniques that facilitate the conversion from spray irrigation-based practices to lower water use systems such as no-till, drip irrigation, and/or greenhouse based agriculture. (Santa Fe County Sustainable Growth Plan, 2010, strategy 16.2.3, p.87.) *Potential Partners: Santa Fe County Growth Management Department, Santa Fe Watershed Association, New Mexico Acequia Association, Natural Resource Conservation Service (NRCS), New Mexico State Extension Service.*
- Create educational programs that highlight our watershed, related policies, and water conservation tips. *Potential Partners: City of Santa Fe Water Division, Santa Fe County Water Policy Advisory Committee, City of Santa Fe Environmental Services Department, Santa Fe Watershed Association, New Mexico Acequia Association, non-profits.*

- Develop and publicize incentive programs to reduce in-home water use by utilizing gray water and rainwater for irrigation and other purposes that do not require potable water. *Potential Partners: City of Santa Fe Water Division, Santa Fe County Water Policy Advisory Committee, City of Santa Fe Environmental Services Department, Santa Fe Watershed Alliance, non-profits.*

**Goal 5: Increase the viability and presence of local gardens, farms and ranches.**

- Work with Santa Fe County to incorporate land use allowances for agricultural activity into the Sustainable Land Development Code. *Potential Partners: Santa Fe County Growth Management Department, Santa Fe County Board of County Commissioners, Water and Soil Conservation Districts, local farmers, non-profits.*
- Create a LandLink program which connects landowners in Northern New Mexico with farmers who need land; Also provides opportunity to connect new farmers with experienced mentors. *Potential Partners: Santa Fe County Growth Management Department, North Central New Mexico Economic Development District.*

- Collaborate with area agencies and organizations to help small and medium scale farms meet market-based and Federal food safety requirements. *Potential partners: New Mexico State Extension Service, New Mexico Department of Agriculture, Farm to Table*
- Design and implement a City Harvest program, (as detailed in the Sustainable Santa Fe Plan), to create multiple growing, processing, storing, and selling opportunities. (Sustainable Santa Fe Plan, 2008, Proposed Action 10-2 under Food Production, page 29-30.) *Potential Partners: Santa Fe County Growth Management Department, City of Santa Fe Water Division, Santa Fe County Water Policy Advisory Committee, City of Santa Fe Environmental Services Department, Santa Fe Watershed Alliance, non-profits, Sustainable Santa Fe.*
- Develop a Commercial Scale Urban Agricultural Permit to protect both neighborhood and agricultural interests within the City by setting policies for uses including, but not limited to water conservation, embedded greenhouse gas footprint, sales, employees, volunteers, visitors and community educational benefits. *Potential Partners: City of Santa Fe Land Use and Zoning Department, Santa Fe City Council, neighborhood associations, non-profits, farmers, and community members*
- Work with the City and County to develop zoning and land use polices which clearly detail home-based agricultural activities such as raising chickens, small livestock, and honey bees. *Potential Partners: City of Santa Fe Land Use and Zoning Department, Santa Fe City Council, Santa Fe County Growth Management and Land Use Department, neighborhood associations, non-profits, farmers, and community members.*
- Encourage public and private land owners within the City to revitalize vacant and underutilized property by allowing land to be used for green space and gardening. *Potential Partners: City of Santa Fe Land Use and Zoning Department, Santa Fe City Council, and community members*

**Goal 6: Develop agricultural incentives and innovative programs to support small farmers and maximize food production/distribution in our regional foodshed.**

- Promote and expand outreach and incentives for extended season farming techniques, supporting farmers to generate more income. *Potential Partners: New Mexico State Extension Service, Natural Resource Conservation Service, Santa Fe Farmers Market Institute*
- Assess and develop resource tools such as conservation easements, improvement districts, and grants to support the viability of agricultural uses. (Santa Fe County Sustainable Growth Management Plan, 2010, strategy 14.2.2, page 85.) *Potential Partners: Santa Fe County Planning Division, Santa Fe Growth Management Department, Santa Fe Board of County Commissioners, New Mexico Land Conservancy*
- Coordinate with local communities and organizations to promote the development of agricultural products and markets, including the development of farmers markets, buy-local campaigns, and a local products website to market and distribute fresh goods. (Santa Fe County Sustainable Growth Management Plan, 2010, strategy 14.2.3, page 85.) *Potential Partners: Santa Fe County Growth Management Department, Santa Fe Food Policy Council, Santa Fe Farmers Market Institute, New Mexico Farmer's Market Association, NMDA-Taste the Tradition and Growth with Tradition*
- Establish Specialty Crop programs which support local farm and food based businesses by creating subsidies for fruits and vegetables. *Potential Partners: City of Santa Fe Economic Development, Santa Fe County Economic Development, New Mexico Department of Agriculture.*
- Clarify and communicate the process by which landowners can apply for Agricultural Exemptions; Conduct a "Did You Know?" campaign to make the public aware of qualifications for this classification, and to facilitate the application process. *Potential Partners: Santa Fe County Growth Management Office of the Santa Fe County Assessor, Santa Fe Food Policy Council-Lane Use Subcommittee*
- Maximize the efficient use of existing infrastructure in our regional food shed. For example, the Rail Runner is a public transit spine, which could be used to transport growers and their produce, expanding markets and food access points from Belen to Santa Fe. *Potential Partners: Santa Fe County Growth Management, Rio Metro Board, Mid Region Council of Governments (MRCOG), University of New Mexico*

**Goal 7: Adopt sustainable land/resource management practices at a regional scale.**

- Encourage City planning initiatives such as urban forestry, green belts, and edible infrastructure to create continuous green space which can provide habitat for animals, food, shade, and places to play. *Potential Partners: City of Santa Fe Parks Division, City of Santa Fe Roadway and Trails Department, Southwest Area Planning Initiative*
- Develop a list-serve for urban food harvesting opportunities to connect individuals to existing food production sites, allowing them to collect crops that would otherwise go to waste. *Potential Partners: City of Santa Fe, Santa Fe County Growth Management Department, Gaia Gardens, non-profits, community members.*
- Support the development of community elected “GMO Free Zones” to create buffer zones that protect farmland, crops, and seeds from the unknown impacts of genetically engineered organisms. *Potential Partners: Santa Fe County Growth Management, New Mexico State Extension Service, area Tribal Governments, non-profits.*
- Promote educational opportunities in community gardens and public spaces that highlight native, low water plants and traditional uses. *Potential Partners: Homegrown New Mexico, Tesuque Agriculture Department, City of Santa Fe Parks Division, Santa Fe County Open Space and Trails Division, Southwest Area Planning Initiative*
- Develop incentives, policies and programs throughout the City and County designed to support farming and ranching activities and improve environmental resiliency: develop a composting program, build soil to increase land fertility and groundwater recharge, improve functionality of waterways and irrigation networks, and promote growth of plants that are resilient in a wider range of climate conditions and provide habitat for beneficial insects. *Potential Partners: City of Santa Fe Parks Division, Santa Fe County Growth Management, New Mexico State Extension Service, area Tribal Governments, USDA, Santa Fe Watershed Association, Quivira Coalition, other non-profits*
- Collaborate with area agencies and organizations to develop “Farmer to Farmer” outreach programs focused on innovative farming and ranching practices that build soil health. *Potential partners: Santa Fe Farmers Market Institute, Quivira Coalition, Natural Resource Conservation Service, New Mexico State Extension Service, Farm to Table, other non-profits.*

**Goal 8: Prioritize sustainability and agriculture in future development in Santa Fe City and County.**

- Develop an Implementation Plan for the Agriculture and Ranching Element, Chapter 4 of the 2010 Sustainable Growth Management Plan. *Potential Partners: Santa Fe Food Policy Council, Santa Fe County Growth Management, Santa Fe County Board of County Commissioners, Santa Fe Food Policy Council.*
- Establish City and County development approval requirements to incorporate water-efficient edible landscapes, food production and composting areas for the future residents into their master plans. *Potential Partners: City of Santa Fe Department of Housing and Community Development, Santa Fe County Building and Development Services, Santa Fe County Growth Management and Land Use, area developers*
- Establish City and County development approval requirements with standards and regulations that do not limit home-based agricultural activities otherwise allowed by land use approval authority. *Potential Partners: City of Santa Fe Department of Housing and Community Development, Santa Fe County Growth Management and Land Use, Homegrown NM, area developers*
- Revise the City of Santa Fe’s Development Code landscape requirements to allow and/or require a percentage of plants produce fruits or vegetables that have low to moderate water requirements. *Potential partners: City of Santa Fe Parks Division, Sangre de Cristo Water Division, Santa Fe Watershed Association*
- Assess and develop a county-wide composting program that considers food waste, green waste, and manure. (Santa Fe County Sustainable Growth Management Plan, 2010, strategy 15.3.3, page 86). *Potential Partners: City of Santa Fe Environmental Services Division, Santa Fe County Growth Management, New Mexico State Extension Service, area Tribal Governments, USDA, Santa Fe Watershed Association, Quivira Coalition, other non-profits.*

- Complete an Agricultural Overlay Zone to protect agricultural land and resources and create bonus and incentive zoning techniques. *Potential Partners: Santa Fe County Growth Management Department, Santa Fe Food Policy Council-Land Use subcommittee.*
- Provide regulatory framework to accommodate sustainable historic development patterns and strengthen community planning efforts to ensure that traditional communities are supported in planning for their futures. *Potential Partners: Santa Fe County Growth Management*
- Develop an agriculture preservation policy that is directed toward maintaining small agricultural parcels, including “working land” (such as barns, greenhouses, and other structures) as part of the development land. (Santa Fe County Sustainable Growth Management Plan, 2010, strategy 14.1.3, page 85). *Potential Partners: Santa Fe County Planning Division, Santa Fe County Growth Management Department, Santa Fe Food Policy Council,-Land Use Subcommittee, Santa Fe Board of County Commissioners, non-profits.*
- Create an inventory of agricultural lands and conduct a land suitability analysis to identify agricultural potential and determine high priority of protection for agricultural soils and other sensitive arable lands, especially historical agricultural lands with water rights. (Santa Fe County Sustainable Growth Management Plan, 2010, strategy 14.1.5, page 85). *Potential Partners: Santa Fe County Growth Management Department, Santa Fe Food Policy Council-Land Use Subcommittee, Santa Fe Board of County Commissioners, New Mexico Acequia Association, non-profits.*
- Require clustering of new development on acequia-irrigated agricultural land. (Santa Fe County Sustainable Growth Management Plan, 2010, strategy 16.3.5, page 87). *Potential Partners: Santa Fe County Growth Management Department, Santa Fe Food Policy Council, Santa Fe Board of County Commissioners, non-profits.*

## B. Getting Food

### *Getting Food*

*Our vision for connecting diverse communities throughout the Santa Fe region to a reliable supply of healthy and affordable food is rooted in building knowledge of available assistance programs and resources, as well as ensuring that these foods are readily available in local stores, farmers markets, senior centers, hospitals, and schools.*

#### **Goal 1: Improve residents’ ability to access fresh, nutritious food.**

- Require public transportation routes to be aligned with food outlets that offer a full range of whole and fresh food options. *Potential Partners: Santa Fe Trails, North Central Regional Transit*
- Require City-and County-operated institutions include an increasing amount and variety of local food in their meal service programs to a maximum feasible percentage. *Potential Partners: Santa Fe County Community Services Department, City of Santa Fe Community Services, Area Agency on Aging, Santa Fe Public Schools, PED, CYFD*
- Support provision of infrastructure and programming to improve food access in rural and under-served areas. (Santa Fe County Sustainable Growth Management Plan, 2010, strategy 15.4.1, page 86). *Potential Partners: Santa Fe County Growth Management Department*
- Increase seniors’ awareness of various food assistance programs. *Potential Partners: Santa Fe County Community Services Department, New Mexico Income Support Division (ISD), Santa Fe County Office, non-profits, City and County Senior Centers administration and staff*

#### **Goal 2: Promote self-reliance, family gardening, and food storage.**

- Conduct education and outreach campaigns which emphasize self-reliance as a cornerstone of sustainability. *Potential Partners: Sustainable Santa Fe Commission, City of Santa Fe Environmental Services, Santa Fe City Council, Santa Fe Board of County Commissioners*
- *Inspire our community to integrate emergency preparedness into our daily lives through various lifestyle shifts, from smart shopping techniques for storing food reserves to revitalizing food preservation and storage traditions. Potential Partners: Santa Fe County Emergency Management, New Mexico State Extension Service, City of Santa Fe Emergency Management, non-profits*

- Sponsor a “Grow Up Gardening” campaign which highlights creative and fun food production techniques tailored to families, including container and vertical gardening techniques for limited space. *Potential Partners: Food for Santa Fe/Feeding Santa Fe, Santa Fe Farmers Market Institute, area nurseries, and food retail outlets that offer seasonal plant starts*

**Goal 3: Prioritize getting local, fresh food into schools.**

- Support and advocate for universal free school meals, which would make free healthy schools meals the norm for all children, irregardless of family income. *Potential partners: NM State Legislature, NM’s congressional delegation, the New Mexico Food and Agriculture Policy Council, New Mexico School Nutrition Association*
- Continue to support Farm to School educational activities currently taking place within our schools, such as on-site school gardens, food system and farming curriculum, fruit and vegetable tastings, culinary programs, field trips to local farms and venues, farmers in the classroom, and food system entrepreneurship programs. *Potential Partners: Santa Fe Public Schools, Santa Fe Farm to School Coordinator, Cooking With Kids, the New Mexico Food and Agriculture Policy*
- Work with School Food Service Directors and District Procurement offices to increase the availability of local foods in schools by setting up sustainable systems to purchase foods from local farmers, including standing purchase orders and bid processes that emphasize local purchasing. *Potential Partners: School District Procurement Offices, School Food Service Directors, Farm to Table, Cooking with Kids, the New Mexico Food and Agriculture Policy Council*

**Goal 4: Promote existing food assistance programs.**

- Demonstrate and promote creative uses of Supplemental Nutrition Assistance Program (SNAP) benefits—from tips for shopping on a budget to home gardening using seeds and plant starts available for purchase with monthly assistance benefits. *Potential Partners: New Mexico ISD Santa Fe County Office, Santa Fe Farmers Market Institute, Local Organic Meals on a Budget, Homegrown NM*
- Promote innovative programs aimed at increasing access to fresh, local food, such as the Southside Farmers Market and Santa Fe Farmers Market Double Buck Days which provide SNAP recipients with additional funds to shop at local farmers markets. Encourage clear signage at farmers markets and outreach about the WIC and Senior Farmers Market Nutrition Programs. *Potential Partners: Santa Fe Farmers Market Institute, New Mexico ISD Santa Fe County Office, NM Department of Health, Kitchen Angels, non-profits.*
- Organize volunteers to collect leftover crops from local farms to expand the availability of fresh food at area food banks/food pantries. *Potential Partners: Food for Santa Fe/Feeding Santa Fe, The Food Depot, area farms, non-profits*

**Goal 5: Celebrate local food and support regional food economy.**

- Grow the demand for local food by organizing an outreach campaign aimed at educating and inspiring residents to buy local. *Potential Partners: Santa Fe County Planning-Economic Development, Santa Fe Food Policy Council, Santa Fe Farmers Market Institute, New Mexico Farmers Marketing Association, NMDA-Taste the Tradition and Grown with Tradition, area food retail, non-profits, community members, farmers*
- Develop a locally based approach to address concerns of consumers and producers about the potential impacts of Genetically Modified Organism (GMO) food consumption and production in the region. *Potential Partners: Joint City-County GMO Task Force, Homegrown NM, Santa Fe County Extension, non-profits and initiatives.*
- Implement innovative strategies that support local economic development efforts such as mobile grocery stores and food carts to bring locally produced food into under-served areas of the county. *Potential Partners: City of Santa Fe Economic Development, Santa Fe County Economic Development, North Central New Mexico Economic Development District, MoGro Mobile Grocery*
- Work with Santa Fe City and County to develop urban agriculture ordinances. *Potential Partners: Santa Fe County Extension, Santa Fe Food Policy Council-Land Use Subcommittee, Gaia Gardens, Homegrown NM, non-profits*
- Maximize the efficiency of existing Community Commercial Kitchens and assess the need for additional facilities in order to enhance the economic potential of local value-added products and traditional foods

*Potential Partners: City of Santa Fe Economic Development, Santa Fe County Economic Development, Santa Fe SCORE, Southside Merchants Association, Santa Fe Business Incubator, Pojoaque Pueblo, non-profits, community members*

- Work with New Mexico regulatory agencies to streamline the process by which local producers and food processors can become certified for value added products. *Potential Partners: City of Santa Fe Economic Development, Santa Fe County Economic Development and Planning Division, New Mexico Environment Department, New Mexico Food and Agriculture Policy Council, Farm to Table*

## NEW MEXICO NEWS

# Report: No “cheap and easy” way to end child hunger in Santa Fe

by: [Curtis Segarra](#)

Posted: Jun 21, 2022 / 02:57 PM MDT

Updated: Jun 21, 2022 / 03:04 PM MDT

## SHARE

[SANTA FE, N.M. \(KRQE\)](#) – After more than a year of research, a task force examining how to end childhood hunger in Santa Fe has released its recommendations. The big picture: Feeding children require an increase in wages, and that won’t come easily.

The report on how to prevent childhood hunger was put together by policy advocates and experts organized by The Food Depot. That’s [a food bank that provides food services to residents in nine counties](#) in Northern New Mexico. “We recognize that this is a complex issue,” Sherry Hooper, the executive director of The Food Depot said in a press conference on Tuesday. “It’s time for bold action.”

## [The debate over New Mexico Hydrogen hub deepens](#)

Santa Fe County has around 5,000 children under the age of 18 who are repeatedly food insecure, according to the latest [data from the state’s Human Services Department](#). That means that there are likely thousands of children in the county who have to limit or skip meals or eat a reduced diet.

State leaders have taken steps to fix the problem. Earlier this year, for example, the [Office of the Governor initiated a \\$10 million grant](#) to try to increase food security. But the new report from The Food Depot says ending childhood hunger in Santa Fe might not be so easy.

The only way it will happen, the report says, is by increasing wages. They recommend raising the minimum wage in Santa Fe from the current \$12.95 to around \$22 to \$25 per hour. That income, plus some

government benefits, would be enough for a “living wage” that would ensure families can cover living expenses as well as sufficient food.

There is “no “cheap and easy” alternative that promises success in eliminating childhood hunger; our task force believes there is no less expensive alternative that can succeed in attaining that objective.”

“Not only is there no ‘cheap and easy’ alternative that promises success in eliminating childhood hunger; our task force believes there is no less expensive alternative that can succeed,” the report says.

### **Here are some new laws going into effect in New Mexico**

The report goes on to explain that doubling down on existing efforts may not be enough to end childhood hunger. “Despite the good intentions of the individuals and organizations involved in the myriad existing anti-hunger programs and efforts, both governmental and nonprofit, and expenditure of multimillions of dollars annually, this objective has never been achieved in Santa Fe or anywhere else in the U. S.,” the report notes.

While the report focuses on Santa Fe County, some public figures say the report has implications for the entire state.

“This report shows that we are at a turning point and that we are looking at how to approach hunger in a more broad way,” Santa Fe County Commissioner Anna Hansen said at a news conference Tuesday. “The county is a subdivision of the state... We have to think about how we’re going to pull them in, how we’re going to use the resources that we can.”

Commissioner Hansen also called on private businesses to help foot the bill.

“It is not just the counties and the cities that need to make sure that there is a living wage. It is private corporations that need to recognize that they have to pay workers more,” Hansen said. “And when they say, ‘well these workers are not educated.’ That doesn’t matter. That is not an excuse.”

Following the release of the report, Santa Fe County commissioners announced that June 21 would be “End Childhood Hunger Day.” Santa Fe Mayor Alan Webber joined the proclamation to mark the day.

“Santa Fe is a city with the ability to see to it that no child goes hungry,” Webber told KRQE News 13. “We have farmers and ranchers who produce healthy produce and meat, award-winning chefs and restaurants, and community outreach workers who can connect food and families. We need to align all those pieces so every child in Santa Fe can eat three healthy meals every day.”

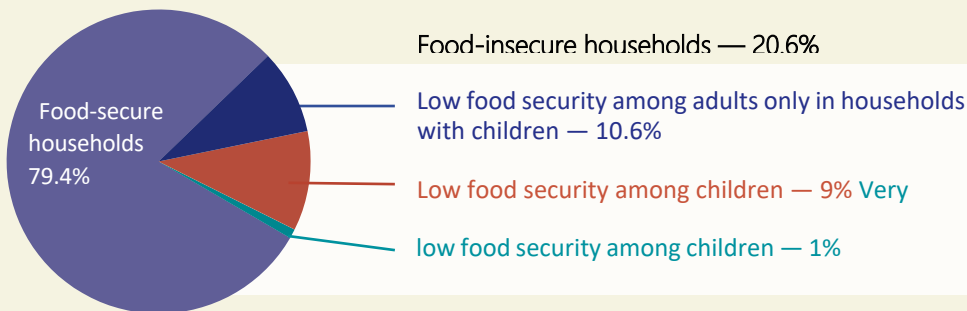
When asked whether or not a \$22 per hour living wage is possible in Santa Fe, the mayor says he plans on setting up another task force to address the issue. “I intend to form a task force that represents all parts of our community to take a look at what a living wage really is in 2022 in Santa Fe,” Webber says. “Santa Fe led the nation when we first adopted a living wage, and it took every interested party to come to the table and arrive at a proposal that demonstrated real leadership. It’s time to do that again.”

## Appendix C

### CHILDREN'S HEALTH WATCH REPORT

**Food insecurity can damage children's health and brain development years before they enter a classroom. By kindergarten, food-insecure children often are cognitively, emotionally and physically behind their food-secure peers.** This report is the first in a two-part series addressing the relationship between food insecurity, diminished educational attainment and implications for the U.S. workforce.<sup>i</sup>

One fifth of U.S. households with children (ages 0-18 years) experienced food insecurity in 2011



Source: Calculated by USDA, Economic Research Service using data from the December 2011 Current Population Survey Food Security

> **A household experiences food insecurity when any member of the household does not have access at all times to enough healthful food for an active, healthy life.**<sup>1</sup> The annual United States

Department of Agriculture (USDA) report on national food security reveals that the burden of food insecurity falls most heavily on families with children; families with young children are especially vulnerable. The USDA reported that 20.6% of US households with children ages 0-18 years, and 14.9% of all US households, experienced food insecurity in 2011.<sup>2</sup> Children's HealthWatch data indicate that 23.7% of households with young children (0-4 years) in our five-city sample are food-insecure.

**FOOD InSecUrly:** limited or uncertain availability of nutritionally adequate and safe foods or limited or uncertain ability to acquire acceptable foods in socially acceptable ways.

In 2006 the USDA changed the official terms for food insecurity.

**LOW FOOD SecUrly** equates to food insecurity without hunger: reports of reduced quality, variety or desirability of diet.

**Very LOW FOOD SecUrly** equates to food insecurity with hunger: At times during the year, eating patterns of one or more household members were disrupted and food intake reduced because the household lacked money and other resources for food.

these categories can be further differentiated among adults and children.



# Too Hungry to Learn: Food Insecurity and School

Source: *Children's HealthWatch*,

*economic conditions on the  
health of  
low-income young children.*

<sup>1</sup>The second brief in the series is entitled *Feeding Our Human Capital: Food Insecurity and the Workforce*

### Summary of Findings:

1. Food insecurity harms young children's health and development.
2. due to increased risk for developmental delays, many food-insecure children have greater difficulty acquiring social and academic skills necessary to successfully transition to pre-school or kindergarten.
3. Food insecurity predicts poor performance during a child's first years at school which has implications for future academic success.
4. SnAP, wIC, and cACFP are federal programs that can help young children overcome the negative effects of food insecurity on school readiness by supporting their health and development through healthy nutrition at home and at school.

> **Food insecurity is harmful to children's health.** Many studies have found that food insecurity harms children's health in a variety of ways.<sup>3,4</sup> Research conducted by Children's HealthWatch and others has found that food-insecure young children are nearly twice as likely to be in fair or poor health<sup>ii</sup> when compared to food-secure young children, and significantly more likely to be hospitalized.<sup>5,6</sup> Food-insecure children are also more likely to suffer from common illnesses such as stomachaches, headaches, and colds when they reach preschool age.<sup>6</sup> Research on the relationship between food insecurity in childhood and obesity is inconclusive. One longitudinal study of young children, however, suggests that persistent household food insecurity may be a contributing factor in childhood obesity.<sup>7</sup>

> **Food insecurity is harmful to children's development.** Children's HealthWatch findings show that food insecure infants and toddlers are two thirds more likely than food-secure young children to be at risk for developmental delays.<sup>8</sup> Our research has also tied food insecurity to iron-deficiency anemia in young children,<sup>9</sup> a condition which negatively influences development of basic motor and social skills.<sup>10</sup> The stress that family hardships, like food-insecurity, place on a young child physically alter the development of crucial brain structures controlling memory<sup>11</sup> and psychosocial functioning.<sup>12</sup> Early childhood is the narrow window during which one builds the basic capacity to learn and interact productively with others; disrupting this brief period diminishes children's ability to acquire complex school skills as they grow, and, later, job skills.<sup>13</sup>

> **The developmental impact of food insecurity in early childhood is sustained through a child's critical first years in school.** A study of school-aged children who suffered from iron-deficiency anemia as infants—a health outcome associated with food insecurity—found impaired memory and social functioning more than 10 years after the children had completed iron treatment.<sup>14</sup> Researchers examining the role of food insecurity in cognitive outcomes found that food-insecure 6-11 year-olds scored lower than their food-secure peers on a measure of child intelligence and were more likely to have seen a child psychologist. The same study also found that these children had a harder time getting along with others, were more likely to have repeated a grade, and had lower arithmetic and general achievement test scores than food-secure children in the same age group.<sup>15</sup> A study using data from the 1999 National

Survey of American Families found that food insecurity predicts poor school engagement partly because food-insecure children tend to be in poor emotional and physical health.<sup>16</sup> In a longitudinal study, other researchers found that food insecurity in kindergarten was associated with poor reading performance and impaired social skills in later grades.

> **Federal nutrition programs can improve school readiness by counteracting childhood food insecurity.** The Obama administration's initiative to increase access to public preschool,<sup>17</sup> is a very important step in improving the quality of life and long-term success of low-income children, especially if it includes high quality nutrition as part of the school day. It is clear, however, that the need for adequate, healthy food is present from birth, and that food security during these early days affects children's chances of receiving the full benefit of high quality early education. Food insecurity begins to harm children's health and development years before they ever enter a school building. School-only interventions that start at age four are insufficient by themselves. Parents and child care/ early education providers require help preparing children nutritionally in the years leading up to elementary school. Given the vital roles that good food and nutrition play in preparing young

*“With the money food stamps provide, I was able to feed her breakfast . . . Without it what would she have eaten? . . . with the help . . . she didn’t have to go without.”* CRySTaL S., WITneSS To HungeR

children to learn, ensuring that every young child has sufficient access to healthy food should be a top priority for the nation.

The Supplemental Nutrition Assistance Program (SNAP, formerly the Food Stamp Program), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and the Child and Adult Care Food Program (CACFP) together help families and child care providers supply quality nutrition at home and in other care settings. These federal nutrition programs reach children before they start school and support them outside of school throughout their formative years. These programs effectively reduce household food insecurity<sup>18,19, 20</sup> and help to counteract its negative impacts on school readiness.<sup>20,21, 22</sup> SNAP, WIC and CACFP are also smart investments: they help to reduce the need for expensive health care, including hospitalizations,<sup>23</sup> and can reduce the need for costly later special education placements by supporting children’s health and development now.<sup>24</sup>

ending food insecurity in childhood needs to be a national child health priority; programs like SnAP, wIc and cAcFP are part of the solution. they form a public health support system that every American family must be able to access in times of need.

By championing the issue of childhood food security, and supporting federal nutrition programs, lawmakers can help ensure the future prosperity of the nation and give every child a fighting chance of success.

**> The long-lasting negative effects of childhood food insecurity on school readiness**

**translate into poor academic and, ultimately, economic outcomes.** The burden food insecurity in early life places on children’s future abilities to work and provide for themselves and their families, as well as on the work force and public well-being at the societal level, are the focus of a second brief in this series, Feeding Our Human Capital: Food Insecurity and the Workforce. We encourage readers of this brief to review that publication for additional information on policy solutions.

<sup>18</sup>Based on the health status question developed by RAND and used in NHANES. Fair/poor health status (compared to excellent/ good) is positively correlated with higher rates of health care utilization.

We gratefully acknowledge support from Feeding America for earlier conceptual and literature review work leading to these briefs.

This brief was prepared by Meredith Hickson, BA, Stephanie Ettinger de Cuba, MPH, Research and Policy Director, Ingrid Weiss, MS, Senior Policy Analyst, Gemma Donofrio, BA, and John Cook, PhD, Principal Investigator. Please contact Stephanie Ettinger de Cuba at [sedc@bu.edu](mailto:sedc@bu.edu) for more information.

- <sup>1</sup> Anderson, S. A. (Ed.). (1990). Core indicators of nutritional state for difficult-to-sample populations. *The Journal of Nutrition*, 120, 1559-1600.
- <sup>2</sup> Coleman-Jensen, A., Nord, M., Andrews, M., & Carlson, S. U.S. Department of Agriculture, Economic Research Service. (2012). *Household Food Security in the United States in 2011* (ERR-141.). Retrieved from website: <http://www.ers.usda.gov/media/884525/err141.pdf>
- <sup>3</sup> Gundersen, C., Kreider, B., & Pepper, J. (2011). The economics of food insecurity in the United States. *Applied Economic Perspectives and Policy*, 33(3), 281-303.
- <sup>4</sup> Nord, M. United States Department of Agriculture, Economic Research Service. (2009). *Food insecurity in households with children: prevalence, severity, and household characteristics* (EIB-56). Retrieved from website: [http://www.ers.usda.gov/media/155368/eib56\\_1\\_.pdf](http://www.ers.usda.gov/media/155368/eib56_1_.pdf)
- <sup>5</sup> Cook, J. T., Frank, D. A., Berkowitz, C., Black, M. M., Casey, P. H., Cutts, D. B., ... & Nord, M. (2004). Food insecurity is associated with adverse health outcomes among human infants and toddlers. *The Journal of Nutrition*, 134(6), 1432-1438.
- <sup>6</sup> Alaimo, K., Olson, C. M., Frongillo Jr, E. A., & Briefel, R. R. (2001). Food insufficiency, family income, and health in US preschool and school-aged children. *American Journal of Public Health*, 91(5), 781.
- <sup>7</sup> Metallinos-Katsaras, E., Must, A., & Gorman, K. (2012). A Longitudinal Study of Food Insecurity on Obesity in Preschool Children. *Journal of the Academy of Nutrition and Dietetics*, 112(12), 1949-1958.
- <sup>8</sup> Rose-Jacobs, R., Black, M. M., Casey, P. H., Cook, J. T., Cutts, D. B., Chilton, M., ... & Frank, D. A. (2008). Household food insecurity: associations with at-risk infant and toddler development. *Pediatrics*, 121(1), 65-72.
- <sup>9</sup> Skalicky, A., Meyers, A. F., Adams, W. G., Yang, Z., & Frank, D. A. (2006). Child food insecurity and iron deficiency anemia in low-income infants and toddlers in the United States. *Maternal and Child Health Journal*, 10(2), 177-185.
- <sup>10</sup> Beard, J. L. (2008). Why iron deficiency is important in infant development. *The Journal of Nutrition*, 138(12), 2534-2536.
- <sup>11</sup> Evans, G. W., & Schamberg, M. A. (2009). Childhood poverty, chronic stress, and adult working memory. *Proceedings of the National Academy of Sciences*, 106(16), 6545-6549.
- <sup>12</sup> Knudsen, E. I., Heckman, J. J., Cameron, J. L., & Shonkoff, J. P. (2006). Economic, neurobiological, and behavioral perspectives on building America's future workforce. *Proceedings of the National Academy of Sciences*, 103(27), 10155-10162.
- <sup>13</sup> Lozoff, B., Jimenez, E., Hagen, J., Mollen, E., & Wolf, A. W. (2000). Poorer behavioral and developmental outcome more than 10 years after treatment for iron deficiency in infancy. *Pediatrics*, 105(4), e51.
- <sup>14</sup> Alaimo, K., Olson, C. M., & Frongillo, E. A. (2001). Food insufficiency and American school-aged children's cognitive, academic, and psychosocial development. *Pediatrics*, 108(1), 44-53.
- <sup>15</sup> Ashiabi, G. (2005). Household food insecurity and children's school engagement. *Journal of Children and Poverty*, 11(1), 3-17.
- <sup>16</sup> Jyoti, D. F., Frongillo, E. A., & Jones, S. J. (2005). Food insecurity affects school children's academic performance, weight gain, and social skills. *The Journal of Nutrition*, 135(12), 2831-2839.
- <sup>17</sup> Lowrey, A., & Rich, M. (2013, April 10). Budget embodies Obama's vision for remaking economy. *The New York Times*. Retrieved from <http://www.nytimes.com/>
- <sup>18</sup> Ratcliffe, C., & McKernan, S. M. The Urban Institute, (2010). *How much does SNAP reduce food insecurity?*. Retrieved from website: [http://www.urban.org/UploadedPDF/412065\\_reduce\\_food\\_insecurity.pdf](http://www.urban.org/UploadedPDF/412065_reduce_food_insecurity.pdf)
- <sup>19</sup> Black, M. M., Quigg, A. M., Cook, J., Casey, P. H., Cutts, D. B., Chilton, M., ... & Frank, D. A. (2012). WIC participation and attenuation of stress-related child health risks of household food insecurity and caregiver depressive symptoms. *Archives of pediatrics & adolescent medicine*, 166(5), 444.
- <sup>20</sup> Gayman, A. B., Ettinger de Cuba, S., March, E., Cook, J. T., Coleman, S., & Frank, D. A. Children's HealthWatch, (2010). *Child care feeding programs support young children's healthy development*. Retrieved from Children's HealthWatch website: [http://www.childrenshealthwatch.org/upload/resource/cacfp\\_brief\\_jan10.pdf](http://www.childrenshealthwatch.org/upload/resource/cacfp_brief_jan10.pdf)
- <sup>21</sup> Frongillo, E. A., Jyoti, D. F., & Jones, S. J. (2006). Food Stamp Program participation is associated with better academic learning among school children. *The Journal of Nutrition*, 136(4), 1077-1080.
- <sup>22</sup> Gayman, A., Ettinger de Cuba, S., Cook, J. T., March, E. L., & Coleman, S. Children's HealthWatch, (2010). *WIC improves child health and school readiness*.
- <sup>23</sup> Pfuntner, A., Wier, L. M., & Steiner, C. Agency for Healthcare Research and Quality, Healthcare Cost and Utilization Project. (2013). *Costs for hospital stays in the United States, 2010* (Statistical Brief #146). Retrieved from website: <http://www.ncbi.nlm.nih.gov/books/NBK121966/>
- <sup>24</sup> United States Department of Agriculture, Food and Nutrition Service. (n.d.). *How WIC helps*. Retrieved from: [www.fns.usda.gov/wic/aboutwic/howwichehelps.htm](http://www.fns.usda.gov/wic/aboutwic/howwichehelps.htm)

# Controlled Environment Agriculture, A.A.S.

---

CIP: 01.0604

School of Trades, Advanced Technologies and Sustainability, 505-428-1664

The purpose of this program is to revitalize agricultural traditions in order to build local food security in a way that is ecologically sustainable for future generations. Students will receive hands-on and classroom training in greenhouse management. Through various programs, the program will focus on hydroponic and aquaponic production techniques.

NOTE: A.A.S. degrees are designed to prepare students for entry-level positions in specific occupations; they are not general education degrees. For more information, see the **Credit** section of this catalog, or speak with an academic adviser.

**Students can earn the following certificates included in this degree:**

- [Controlled Environment Agriculture \(CEA\) Certificate](#)
- [Algae Cultivation Certificate](#)

## Program Learning Outcomes

---

Upon completion of this program, students will be able to:

- Demonstrate competency in basic workplace safety
- Demonstrate understanding of sustainable agriculture production techniques such as hydroponics and aquaponics
- Demonstrate an awareness of economic, environmental, and community impacts of soilless agriculture
- Demonstrate an understanding of soilless plant growth

## General Education Requirements: (20 Credits)

---

### Communications (6 Credits)

---

- [ENGL 1110 - Composition I](#) Credits: 3
- [ENGL 1120 - Composition II](#) Credits: 3
- or
- [ENGL 1210 - Technical Communications](#) Credits: 3
- or
- [ENGL 2210 - Technical and Professional Communication](#) Credits: 3
- or
- [COMM 1130 - Public Speaking](#) Credits: 3
- or
- [COMM 2120 - Interpersonal Communication](#) Credits: 3
- or
- [COMM 2140 - Small Group Communication](#) Credits: 3

### Mathematics (3 Credits)

- [MATH 1130 - Survey of Mathematics](#) Credits: 3 or higher numbered MATH course except MATH 1215 Intermed

## Laboratory Science (4 Credits)

- [BIOL 1110 - General Biology](#) Credits: 3
- and
- [BIOL 1110L - General Biology Lab](#) Credits: 1
- or
- [BIOL 1215 - Biology for Environmental Sciences](#) Credits: 3
- and
- [BIOL 1215L - Biology for Environmental Sciences Lab](#) Credits: 1
- or
- [BIOL 1625 - Introduction to Ecology and Field Biology](#) Credits: 4
- Any 4 credit Laboratory Science Course

## Social/Behavioral Sciences (3 Credits)

## Humanities and Fine Arts (3 Credits)

## Health and Wellness (1 Credit)

## Program Requirements: (29 Credits)

- [GRHS 121 - Greenhouse Design and Operation](#)  
Add to My Favorites (opens a new window)  
Share this Page  
Print (opens a new window)

### GRHS 121 - Greenhouse Design and Operation

**Credits:** 3

Controlled environment agriculture for commercial agricultural production and hobby-scale greenhouses. This includes aspects of greenhouse designs and styles, climate control systems, heating, cooling, ventilation, environmental control, energy consumption, lighting, and economic viability. Participants gain a thorough understanding of greenhouse systems and how to determine greenhouse viability and energy consumption.

**Offered:** Fall and Spring.  
Two lecture hours, two lab hours.

- 
- [GRHS 123 - Introduction to Soilless Production Systems](#)  
Add to My Favorites (opens a new window)  
Share this Page  
Print (opens a new window)

## GRHS 123 - Introduction to Soilless Production Systems

**Credits:** 4

An introduction to growing plants without soil. This includes an in-depth look at different types of systems, hydroponic, aquaponic, for growing various crops in recirculating and drain to waste systems. Students gain an understanding of how these systems operate, and hands-on practical experience growing plants using multiple systems. Topics include the history of hydroponics and aquaponics, from the early history to the current state of each industry, water quality, nutrient dynamics, light requirements, and appropriate plant variety for system types. At the conclusion of this course, students will be able to design a variety of soilless production systems for specific agricultural crops.

**Offered:** Fall and Spring.  
Three lecture hours, two lab hours.

- 

- [GRHS 125 - Hydroponic Plant Growth](#)

[Add to My Favorites \(opens a new window\)](#)

[Share this Page](#)

[Print \(opens a new window\)](#)

## GRHS 125 - Hydroponic Plant Growth

**Credits:** 3

Fundamental principals of hydroponic plant growth. This course covers cellular/ molecular biology as applicable to plant physiology, nutrient requirements and biochemical nutrient uptake activities. Soil components, properties, and nutrient dynamics in soil systems are studied to understand hydroponic plant growth and production. Other topics include water quality parameters such as pH and electrical conductivity (EC) and their relationship to nutrient availability. At the conclusion of the course, students will be able to create custom nutrient solutions from mineral salts, and have practical experience growing hydroponic plants.

**Offered:** Fall and Spring.  
Two lecture hours, two lab hours.

- 

- [GRHS 127 - Hydroponic Crop Production](#)

[Add to My Favorites \(opens a new window\)](#)

[Share this Page](#)

[Print \(opens a new window\)](#)

## GRHS 127 - Hydroponic Crop Production

**Credits:** 4

Growing hydroponic vegetables and herbs. Students apply knowledge and skills from the introductory study of hydroponics and plants to grow hydroponic vegetables and herbs. Topics include plant propagation, plant specific requirements, integrated pest management (IPM), identifying nutrient deficiencies and toxicities, organic hydroponics and nutrient and composition, and marketability.

**Prerequisite(s):** [GRHS 123](#) and [GRHS 125](#).

**Offered:** Fall and Spring.

Two lecture hours, four lab hours.

- 

- [GRHS 221 - Aquaponics](#)

[Add to My Favorites \(opens a new window\)](#)

[Share this Page](#)

[Print \(opens a new window\)](#)

## GRHS 221 - Aquaponics

**Credits:** 4

Growing aquaponic vegetables and herbs using this sustainable, water efficient method. Students learn about the hydroponic plant production with aquaculture (fish farming). Aquaponic systems support symbiotic relationships between fish to grow plants with the key link between these processes being microbial activity. Students gain experience with multi-trophic aquaculture (IMTA) production systems. Students learn the nitrogen cycle and its key components, water quality and nutrient dynamics, diagnose and treat diseases, and explore the economics of integrated systems.

**Prerequisite(s):** [GRHS 123](#) and [GRHS 125](#).

**Offered:** Fall and Spring.

Two lecture hours, four lab hours.

- 

- [ALTF 161 - Introduction to Algae Cultivation](#)

[Add to My Favorites \(opens a new window\)](#)

[Share this Page](#)

[Print \(opens a new window\)](#)

## ALTF 161 - Introduction to Algae Cultivation

**Credits:** 3

An introduction to algal biology and sustainable cultivation. Students are introduced to media preparation, sterile technique, inoculation, and microscopy. Students view demonstrations of scale-up from isolated strains to 10-liter photobioreactors. Monitoring equipment is also introduced for the analysis of water and media chemistry, monitoring algal growth, and troubleshooting. Data collection, record keeping, and safety are emphasized throughout the course.

**Offered:** Fall.  
Three lecture hours.

- 
- [BLDG 111 - Construction Industry Workplace Health and Safety](#)  
Add to My Favorites (opens a new window)  
Share this Page  
Print (opens a new window)

## BLDG 111 - Construction Industry Workplace Health and Safety

**Credits:** 3

This course follows the approved Occupational Safety and Health Administration (OSHA) curriculum for the 30-hour Training Program for Construction Industry Safety and Health. Topics include: an introduction to OSHA, hazard identification and control for the OSHA Focus four hazards (Falls, Electrocution, Struck-by and Caught-in), PPE, health hazards, stair and other applicable construction standards. Individuals complete the course and successfully achieve a passing 30-hr exam will be issued OSHA 30-hr cards.

**Offered:** Summer, Fall and Spring.  
Three lecture hours.

- 
- [HRMG 118 - Sanitation and Safety - ServeSafe Manager Course](#)  
Add to My Favorites (opens a new window)  
Share this Page  
Print (opens a new window)

## HRMG 118 - Sanitation and Safety - ServeSafe Manager Course

**Credits:** 2

An overview of the sanitation standards, quality controls and risk reduction standards in our industries. Sanitation covers two important areas in the professional and personal settings. Most successful businesses have high standards of safety. These businesses have high standards which have been established by the national ServSafe® program such as Hazard Analysis Critical Control Point (HACCP).

**Offered:** Summer, Fall and Spring.  
Two lecture hours.

- 
- [SUST 1130 - Sustainable Energy Technologies](#)  
Add to My Favorites (opens a new window)

Share this Page

Print (opens a new window)

## SUST 1130 - Sustainable Energy Technologies

**Credits:** 3

[Previously offered as: ENVR 112] Designed to provide students with a basic understanding of sustainability as an economic concept. The course will describe and analyze current and emerging sustainable-energy technologies. Additional information about basic skill requirements required to begin working in renewable energy fields are provided.

**Offered:** Fall and Spring.  
Three lecture hours.

## Related Requirements: (11 Credits)

Choose from the following:

Students in the Sustainable Technologies programs who are required to take a First Year Student Success course are recommended to take the following:

- [ALTF 121 - Biofuels I](#) Credits: 4
- [ALTF 221 - Biofuels II](#) Credits: 4
- [ALTF 261 - Advanced Algae Cultivation](#) Credits: 3
- [ALTF 262 - Algae Harvesting](#) Credits: 3
- [ALTF 268 - Algae Culture Capstone](#) Credits: 3
- [ALTF 298 - Biofuels Internship](#) Credits: 1-3
- [ELEC 111 - Electronic Fundamentals](#) Credits: 4
- [ENTR 1110 - Entrepreneurship](#) Credits: 3
- [ENVR 215 - Active Water Harvesting and Distribution Systems](#) Credits: 3
- [FACT 114 - Basic Electricity and Controls](#) Credits: 2
- [GRHS 128 - Biopesticides - Application and Safety](#) Credits: 2
- [GRHS 223 - Microgreen and Fodder Production](#) Credits: 2
- [GRHS 298 - Greenhouse Internship](#) Credits: 1-4
- [HRMG 115 - Customer Relations and Service](#) Credits: 3
- [PLMB 141 - Pumps and Motors](#) Credits: 2
- [SOLR 111 - Introduction to Solar Energy](#) Credits: 1
- [SOLR 121 - Design and Installation of Photovoltaic Systems I](#) Credits: 3
- [SOLR 131 - Design and Installation of Solar Hot Water Systems](#) Credits: 3
- [SUST 1134 - Introduction to Sustainability Studies](#) Credits: 3
- [WATR 160 - Applied Chemistry for Water Treatment Operators](#) Credits: 4

## Note

See [First-Year Student Success Course Requirement](#).

**Total 60 Credits Min.**



Control-Click to Open Links (Secure Links to Google Docs)

[Appendix 1 - Washington EquityResourceGuide.docx](#)

[Appendix 2 - Portland RACIAL-EQUITY-STRATEGY-GU...](#)

[Appendix 3 - NAO-Equity-Lens-Guide-2019.docx](#)

[Appendix 4 - Governing For Equity Implementing ...](#)

[Appendix 5 - GARE-Racial Equity Toolkit.docx](#)