To: Charter Review Committee
From: Preston Jordan
Date: 21 April 2009

Re: Council-as-a-whole appointment method and process

On February 2nd, 2009, the Albany City Council ("the Council") referred consideration of the use of cumulative voting for making multiple, simultaneous Council-as-a-whole appointments to the Charter Review Committee ("the Committee") for its consideration and development of a recommendation. The Council directed the Committee to provide this recommendation no later than June, 2009.

The Charter Review Committee has discussed the use of cumulative voting for making multiple Council-as-a-whole appointments to a single body at its February and March meetings. At the February meeting, I was charged with preparing this memorandum, which presents cumulative voting in the context of appointments and discusses advantages, disadvantages and decision points.

This memorandum also reviews current policy regarding all Council-as-a-whole appointments (both multiple and single), the implementation of this policy in practice, the options for adopting any recommended process changes, and additional process features considered by the Committee outside of the appointment election method.

**Current Policy**

The Charter Review Committee previously recommended Council-as-a-whole appointment procedures at its 22 May 2007 meeting. These procedures consisted of casting simultaneous written votes with each Councilor afforded as many votes as available positions. The applicants would subsequently be ranked by number of votes received. The applicant(s) receiving the greatest number of votes would be appointed provided they received a number of votes equal to at least a majority the number of Councilors present. This system is termed "majority at-large" in this memorandum.

The Albany City Council subsequently passed Resolution 07-67 on 15 October 2007 including this recommended appointment procedure.

**Cumulative Voting**

Cumulative voting is relevant only in situations where more than one seat is to be filled pursuant to an election. Currently this is the case only for the Charter Review and Waterfront Committees, each of which have two Council-as-a-whole positions.

Cumulative voting provides each voter a number of votes equal to the number of seats to be filled, which is akin to the at-large system in use now for multiple simultaneous appointments as well as the general election of the City Council and School Board. The significant difference between cumulative voting and at-large voting is that electors may cast more than one vote for a candidate, or applicant/nominee, in cumulative voting. Under both systems, the candidates with the most votes traditionally win.

The feature of being able to cast more than one vote for a candidate exists to assure voters in the minority the possibility of representation while guaranteeing voters in the majority no less than half the representation. Note in this memorandum the term minority refers to perspectives rather than ethnicity.

It has been expressed that the current at-large majority system provides for a proper result as it assures all representation accrues to the majority. In situations where the community is most evenly divided, the majority at-large elections will create the most distorted outcome relative to the makeup of the electorate. This will tend to reinforce and even enflame divisions in the electorate. Further, this outcome would tend to stilt discussion and decision making due to unbalancing the range of viewpoints on the body as compared to the polity.

The main disadvantage of cumulative voting is its greater complexity. Councilors must understand they can caste more than one vote for a nominee. Additionally, the ability to caste more than one vote for a nominee may strike some as conferring undue power on a minority.

**Decision point 1:** The Committee must decide whether to recommend cumulative voting or to recommend continuing the status quo of majority at-large.

**Election Threshold**

As described, current policy establishes a majority threshold for appointment by the Council as a whole. If the Committee determines to recommend cumulative voting, a next consideration is whether to recommend doing so also with a threshold number of votes required for election.

Cumulative voting has historically been implemented without such a threshold. The lack of a threshold creates the prospect of vote splitting, which occurs when there are more nominees holding a particular perspective than there is support to elect them under cumulative voting. This exigency can determine which voters gain representation and which do not, rather such determination occurring purely based on the prevalence of perspectives. Inclusion of a threshold eliminates vote splitting and assures the outcome reflects the prevalence of perspectives.

The inclusion of a threshold can also make clearer to Councilors holding the minority view how to vote to secure representation.

While requiring a threshold for election eliminates the prospect of appointments determined by vote splitting, thresholds introduce another level of complexity, although it is noteworthy that the current method includes a threshold.

**Decision point 2:** The Committee must decide whether to recommend inclusion of appointment thresholds if a decision is taken to recommend cumulative voting.

In the case of cumulative voting, the threshold would be dependent on the number of seats. A properly chosen threshold assures that winning candidates have garnered more votes than any other candidate. This is accomplished by rounding up the number of votes divided by the number of seats plus one (number of votes/(n+1) being the formula where n = number of seats). In the case of two seats to fill and five Councilors present, the threshold is four votes.

If the Committee decides not to recommend cumulative voting, the Committee should consider recommending increasing the current majority threshold for multiple simultaneous Council-as-whole appointments to the threshold proposed above. This is because the current majority threshold allows for a three-way tie in the event of two simultaneous appointments. With five Councilors appointing to two seats, three nominees could meet the majority threshold of three votes received.

**Limiting Balloting If Thresholds Recommended**

Inclusion of a threshold may necessitate multiple rounds of balloting to identify a sufficient number of nominees receiving a threshold number of votes or higher. In standard parliamentary procedure this is viewed positively as it provides opportunities for the appointing body to deliberate. Some may see multiple rounds of balloting as a waste of the Council's time, however.

Inclusion of a threshold can also lead to a stalemate if it becomes apparent that an insufficient number of nominees will ever receive the threshold number of votes. Obviously this would not serve the City, and it is noteworthy that this is a weakness of the currently defined process wherein two applicants may not receive a number of votes equal to a majority of Councilors.

The typical means for forestalling this possibility is to eliminate those nominees from the runoff election that received the fewest votes in the previous election. Including such a remedy in the appointment process would tend to stifle discussion on the Council, though, which would be counterproductive to enhancing conversation as discussed above. It could also eliminate all the applicants preferred by the minority, which could secure appointment once they organized around one applicant through the process of multiple balloting with intervening discussions.

**Decision point 3:** Under either the status quo or any other recommendation contemplated in this memorandum, the Committee should recommend a process to forestall the possibility that a sufficient number of applicants never reach the election threshold. Possible solutions are

candidate elimination and/or eliminating the threshold requirement after a certain number of election rounds. The Committee has previously indicated a preference for eliminating the threshold requirement after three rounds of balloting.

**Tie-breaking Under Threshold Elimination**

**Decision point 4:** If thresholds are recommended and are recommended for elimination after a certain number of rounds of balloting, the Committee should recommend a tie breaking methodology.

If the Committee prefers the status quo with the majority threshold, the Committee should also consider recommending a tie-breaking methodology. The majority threshold is not sufficiently high to assure only as many nominees pass the threshold as there are positions to fill, as explained above.

**Recommended Method For Adopting Recommendations**

There appear to be three main options for implementing policy in the City: resolution, ordinance and charter amendment. As described, the current Council-as-a-whole appointment process was established by resolution.

The first regular Council-as-a-whole appointments after this resolution occurred on 21 January 2009 with the appointments to the Waterfront Committee. Regarding the process used, the minutes of the meeting state, "The Council discussed how the voting would take place and it was decided that each Council Member would write down two names on a business card and then the City Clerk would read the results."

This deliberation suggests a lack of institutional knowledge concerning the policy in force via Resolution 07-67. Consequently, placing the appointment process in an ordinance may provide greater assurance that the process adopted will be followed at the time of appointments every two years. Ordinances are more complicated to adopt, however.

The appointment process could also be the subject of a charter amendment. Such adoption is more complicated still as it requires passage by the voters. This threshold also means making changes is more difficult.

**Decision point 5:** The Committee should consider whether adoption of its recommendations by resolution, ordinance or charter amendment is preferable.

**Applicant Statement Opportunity**

The Committee has discussed some procedural issues outside of the voting method for multiple Council-as-a-whole appointments. One consideration raised was that the appointment process could include an opportunity for applicants to make a statement. Applicants can currently speak

as members of the public during public comment, but the time when public comments are opened may be awkward relative to the Council's deliberations.

**Decision point 6:** The Committee should decide whether to recommend the appointment process specifically include an opportunity for applicants to make a statement, and if so at what point in the process this opportunity should be afforded.

**Nomination**

The Committee has also discussed the utility of including the normal nomination process as a component of the Council-as-a-whole appointments. Currently, the appointment process does not specifically include nominations from among the applicants. Resolution 07-67 jumps from applicants to voting without providing absolute clarity on who the Council is voting upon. The presumption is that the Council is voting on all the applicants.

In order to be nominated an applicant must have the support of two Councilors. The support of at least two Councilors is also required for appointment using cumulative voting to fill two positions. Consequently the nomination process would provide Councilors some indication of support for their preferred applicants ahead of voting. The nomination process also affords another opportunity for Council discussion.

The nomination process does add another step, however, thus increasing the time to make the appointments.

**Decision point 6:** The Committee should decide whether to recommend the appointment process include nomination.