

San Juan County Charter Review Commission Findings

June 2, 2012

CRC findings are derived from research by CRC members, presentations by former and present elected officials, comments received from the public, and the experience and judgment of CRC members. Divided votes (with the majority supporting the finding) indicate that some CRC members' interpretations and conclusions differed from those of the majority. Each of the findings listed below identifies problems with the existing Charter and states the Commission's recommendations for remedying those problems.

All evidence supporting the following findings, including documents and oral and written comments by elected and appointed officials, as well as members of the public, was presented and discussed at regular open public meetings of the Commission.

All documentary evidence is cited in the paragraphs to which they are pertinent. Oral and written presentations made to the CRC are referenced via CRC minutes, which are available by going to www.sanjuanco.com and clicking on "Charter Review Commission."

Finding 1. Number of Council Members:

The Commission heard from former San Juan County Commissioners John Evans, Tom Cowan, Rhea Miller, Alan Lichter, Bob Myhr, Kevin Ranker, and Tom Starr specifically concerning this issue. All seven spoke in favor of returning to a council of three (see CRC minutes 1/7, 1/21, 3/3, 3/10, and 4/14; also audio recording for 1/21, Commission Documents). In addition, the Commission considered public materials, as cited below. Members of the public testifying at Commission meetings reported the opacity of public process resulting from committees of the present Council not being subject to the Open Public Meetings Act. County Administrator Pete Rose's testimony indicated that, among other things, administrative support of Council committees burdened the administrative budget with respect to both time and money (see CRC minutes 1/14/12). Accordingly, on the basis of the foregoing, and on the basis of open public Commission discussion held at its regular meetings, the Commission finds that:

1. A membership of six on the County's governing Council has resulted in greater expense than originally anticipated, in part because of the increasing expense of personnel benefits, but also because of greater overhead costs of office space, computer systems and staff support time (see <http://www.islandguardian.com/archives/00001028.html> and BOCC/COUNTY COUNCIL COSTS & ADMINISTRATION COSTS 2006 VS 2011, SJC Auditor's reports 1/14/12). Additionally, six members have required greater staff time providing information to the Council and their committees.

2. A membership of six on the County's governing Council has resulted in the creation of closed committees of that body which has damaged public confidence in the transparency of County governance (see comments from Michael Peterson and Steve Ludwig, CRC minutes 1/28/12; from County Council member Lovel Pratt 2/25; and from web publisher Jack Cory 2/18). Due to the limits set forth in the Open Meetings Act, a meeting of any two members of a three-person Council constitutes an official meeting (see also item 10 below, regarding potential obstruction of Council actions). A legislative body of three results in all Council business being held in open meetings, providing for greater transparency to the citizens.

3. The Commission finds logically that the ability to make decisions in a group of three is more efficient than with six members. The Commission's view in this matter was strongly supported by former County Commissioners (e.g., written addendum from John Evans, CRC minutes 1/21 and comments by Alan Lichter, audio recording 1/21, Commission Documents; also see interview with Clallam County Commissioner Mike Doherty, and presentation by former Sheriff Bill Cummings, CRC minutes 2/25). In addition, the Commission heard testimony that the potential of deadlocked votes and extra time needed for decisions has been frustrating to the public and even to some sitting Council members. Academic research indicates that the optimum group size for decision-making is between two and five, and an odd-number is best because even-numbered groups take more time to make decisions (see www.intuitor.com/statistics/SmallGroups.html, www.sheilamargolis.com, www.wikiworld.com/collectiveintelligence).

4. The three-person council/commission system is widely used because of the simplicity of decision-making compared to any other number. Out of 39 counties in Washington State, 34 counties have three elected legislators. Only San Juan County has experimented with the even number of six legislators. A majority of counties in the United States have three elected legislators (see http://sanjuanco.com/CRC/docs/CRCDocs/WA_Counties_Population_Admin_Method_doc.docx.pdf); County Government Structure, A State-by-State Report, National Association of Counties, March 2009; and item 8 below.

5. The nature of six part-time Council members from six districts, being oriented and guided in their jobs by an Administrator, has led to a leadership accountability vacuum resulting in inefficiency in county government and confusion about the role of Council members. (See also Finding 2 relating to countywide elections and Finding 5 relating to substituting a subordinate manager for a separate administrative branch.)

6. Three full-time members on the County's governing council has the potential to reduce the overall costs of governance, and in any event will assure that the members of the County's governing body will be obligated to maintain the transparency of their governance, and reduce the burden imposed upon administrative levels of the County. (See also Finding 5 relating to separation of powers).

7. The Commission believes that fewer Legislative positions will encourage greater competition in races, resulting in fewer uncontested races and more choices for voters.

8. With a Council of six, San Juan County has a comparatively high ratio of elected Council members to total population. Among Washington's 39 counties, 34 have three-member commissions or councils. Almost all of these counties are considerably larger in population than San Juan County. For example, Spokane, Clark, Thurston, Kitsap, and Yakima counties, with populations ranging from 244,700 to 472,650, all have three-member boards. Of Washington's six charter counties, San Juan County is the smallest. The next largest, Clallam County, has four and one-half times the population of San Juan County but only three elected commissioners. The Commission finds unpersuasive the argument that San Juan County's governance requires six elected councilpersons when much larger counties are governed by boards of three.

9. There is a strong and well-understood tradition in Washington State, founded on the State Constitution (Article XI, Section 4) and practiced in San Juan County since its founding, that three elected legislators can represent the citizens and function in an efficient and just manner and bring the County together as a whole.

10. Under the current six-member Council system, three members can meet privately with staff and administrative personnel. This is because three members do not constitute a quorum of the Council. Nevertheless, the same three members, while not constituting a quorum, can block any action by the Council. This obstructive capacity is not possible with a three-member Council (see CRC minutes 2/25, Lovel Pratt). The Commission finds unpersuasive a justification for private meetings that allow wider latitude for expression by Council members than a public meeting would allow (see CRC minutes 2/3: Rich Peterson, 2/18: Patty Miller).

Wherefore, pursuant to Section 8.32 of the Charter, the Commission (via a unanimous decision of members present, CRC minutes 1/14, affirmed by vote against rescission 14 opposed, 2 in support, 2 abstentions, CRC minutes 3/3, and affirmed by vote for all amendments to be sent for review by prosecutor 17 in favor, 1 opposed, CRC minutes 4/14) recommends the following change be made to Article 2 of the Charter:

Section 2.10 - Composition

“The County Council shall consist of **three (3) members . . .”**

Finding 2. Countywide Elections:

The Commission heard testimony from the public specifically concerning this issue. Members of the public testifying at Commission meetings reported that they were better represented when they had the power to elect all county legislators. Based on public testimony and documentation, the Commission finds that:

1. The current six-member board, elected initially by district, has resulted in Council members being unresponsive to those living outside “their district,” thereby impairing the Council’s functions as a whole in responding to citizens’ legitimate concerns (see comment by Cindy Carter, CRC minutes 2/11).
2. Countywide elections will provide countywide accountability as all legislators are responsible to all county electors, thereby making political accountability and accessibility congruent with the legislators’ legal obligations (see, for example, written presentation by Lovel Pratt, CRC minutes 2/25 and Lisa Byers CRC minutes 3/3).
3. A membership of six on the County’s governing body has institutionalized a “balkanization” of perceived interest among the communities comprising the County. Specifically, elected Council members have more responsibility just to their district constituents (those who vote for them) than to the rest of the county citizens from other districts.
4. The Commission finds that countywide voting is more consistent with the specific intent of the Charter, as stated in its preamble, “to assert greater control over the actions of County government,” than is the structure set forth in the current Charter.
5. There is a strong and well-understood tradition in San Juan County since its founding days that countywide elections best serve the interests and the diverse needs of the citizens and help to unify the County as a whole. District elections have not been found to have improved this level of public service.
6. The Commission finds that a three-member legislative body elected countywide does not constitute an impediment to the healthy differentiation of communities and local cultures comprising the County’s residents.
7. Although both propositions passed in 2005, the Commission finds it persuasive that the Basic Charter, which called for countywide voting for a Council of three, received more public support than did the Amended Charter, which called for voting by districts for a Council of six.
8. We are advised and therefore find that countywide elections meet all the statutory and Constitutional requirements for equal representation (see RCW 36.32.040 (2) and memorandum from San Juan County Prosecuting Attorney Randall Gaylord, April 19, 2012).

Wherefore, pursuant to Section 8.32 of the Charter, the Commission recommends (via vote of 14 in favor, 1 opposed, CRC minutes 1/14, affirmed by vote to send amendments to prosecutor 17 in favor, 1 opposed, CRC minutes 4/14) the following change be made to Article 2 of the Charter:

Section 2.10 - Composition

"The Legislative Body shall consist of ~~six (6)~~ three (3) members nominated and voted on by ~~district~~. countywide."

Finding 3. County Council Residency Districts:

Although the Commission finds that, while countywide elections are preferable as assuring countywide concern and representation by each council member, one consequence, if uncured, could be election of all three council members from the island with the largest population. Accordingly, Council candidates are required to be nominated from separate residential districts, delineated in accordance with RCW 36.32.020 that accommodates the unique geographic nature of San Juan County and proved workable for over a hundred years prior to Charter adoption. The Prosecuting Attorney advises that under constitutional decisions to date, the disparity of population between districts does not result in an unconstitutional allocation of either voting power or representation, as voting is countywide and every voter, regardless of district, has equal influence on the outcome of elections (again, see RCW 36.32.040 and memorandum from San Juan County Prosecuting Attorney Randall Gaylord, April 19, 2012).

Wherefore, pursuant to Section 8.32 of the Charter, the Commission (via a unanimous vote of all members present, CRC minutes 1/14, affirmed with slight modification via vote of 17 in favor, one opposed, CRC minutes 4/14) recommends the creation of three County Council Residency Districts, to include whole islands and existing precincts, by amending Article 5 [new numbering] of the Charter as follows:

Section 5.30 [new numbering], Legislative Body--County Council Residency Districts

"District 1 – San Juan: Stuart, Johns, Cactus, Flattop, Ripple, Speiden, Battleship, Barren, Pearl, Henry, O’Neal, Brown, Turn, Dinner, Goose and San Juan comprising precincts 11, 12, 13, 14, 15, 16, 17, 101 and 102;

District 2 – Orcas: Skipjack, Bare, Waldron, Patos, Sucia, Ewing, Matia, Puffin, Clark, Barnes, Doe, Orcas, Obstruction, Freeman, Jones, McConnell, Yellow, Low, Reef, Cliff, Crane, Fawn, Bell, Double, Victim, Skull, Jap and Blakely comprising precincts 21, 22, 23, 24, 25 and 36;

District 3 – Lopez/Shaw: Bund, Shaw, Canoe, Lopez, Decatur, Pointer, Armitage, Willow, Flower, Frost, James, Trump, Center, Ram, Deadman, Long, Charles, Boulder, Hall, Iceberg, and Colville comprising precincts 31, 32, and 41."

Finding 4. Full-Time Legislators:

The Commission heard testimony from members of the public and members of the Council and former County Commissioners testifying at Commission meetings regarding this issue. Accordingly, on the basis of the foregoing, and on the basis of discussion held at its regular meetings, the Commission finds that:

1. Legislative work on the County's governing council was, has been, and continues to warrant at least 40 hours per week, as attested by most Council members. As complex issues and controversial decisions continue, the Commission feels that the legitimate demands of Council work is truly full-time.
2. As the citizens expect members of the County's governing council to be the leaders of the County, leadership requires full-time attention and effort, a difficult challenge for a person otherwise employed (see comment by County Council member Howie Rosenfeld, CRC minutes 2/18).
3. Offering full-time positions with commensurate compensation will broaden the spectrum of motivated and informed citizens who can contribute their time and resources to local government in the Legislative/Administrative Role. The Commission considers it likely that countywide campaigns will require larger campaign organizations and expense. However, the Commission believes that the benefit of obtaining the best candidates from a wide range of backgrounds elected countywide would lead to better County governance.
4. Full-time Legislative positions will raise citizen expectations to full-time participation in County affairs and set a full-time standard for performance of Council members.
5. The Commission learned that frequent presence in Olympia is important in promoting and protecting the interests of the County (see letter from County Council member Lovel Pratt April 19, 2012), that such presence has diminished under the current system, and that when the County had full-time commissioners those interests were better served (see CRC minutes for presentation by former BOCC member Rhea Miller on March 10, 2012 and presentation by former BOCC member Kevin Ranker April on 14, 2012).

Wherefore, pursuant to Section 8.32 of the Charter, the Commission recommends (via a 11 to 4 decision with 1 abstention, CRC minutes 1/21, affirmed by vote to send amendments to prosecutor 17 in favor, 1 opposed, CRC minutes 4/14) Article 2 of the Charter be amended as follows:

Section 2.10 - Composition "The Legislative Body shall consist of ~~six (6)~~ three (3) members nominated and voted on by district-countywide who shall serve full-time." [This is the cumulative result of three interrelated recommendations concerning Section 2.10.]

Finding 5. Substitution of Subordinate Administration for Separate Administrative Branch:

The present Charter vests the appointed Administrator with "all the executive powers of the County not vested in other specific elected officers." The current elected Council is restricted to making policy and passing ordinances. Presentations heard by the Commission were virtually unanimous that the division between legislative and administrative functions was not working, as legislators so often ignored it. This resulted in a merger of legislative and administrative function and an increased burden on the

Administrator, raising the possibility of there being in effect two independent administrative tracks operating simultaneously, with a consequent loss of transparency and accountability.

The Commission understands that the separate administration, partitioned by a separation of powers, was intended to resolve some problems that existed in the past (see presentation by Kevin Ranker, CRC minutes 4/14). The Commission regards this structure as an overreaction, and concludes that a simpler and more-flexible system can be put in place toward the same end.

Accordingly, on the basis of the foregoing and discussion held at its regular meeting on March 10, 2012, the Commission finds that:

1. Contrary to the long-held San Juan County tradition, consistent with accountability, that elected legislators respond to a wide variety of their constituents' needs, not solely legislate policy, the current charter discourages that tradition and form of accountability (see written addendum by Angie Ponder, CRC minutes 3/10), and Council members, in seeking to perform as expected, feel forced to violate the intentions of the existing charter. Consequently, the separation of powers created in the original Charter is ineffective and unenforceable.
2. The existing separation of legislative and administrative functions, while well-intentioned, is both counterproductive with respect to the traditionally expected role of the Council, and unnecessarily burden administrative personnel (see presentation by Pete Rose, CRC minutes 1/14).
3. It is necessary to establish, or at a minimum allow for, the necessary interplay between legislative and administrative roles in order to establish a system that is realistic and encourages the level of governmental service that the people of San Juan County have, over the years, come to expect (see written comment V. c. 1 and V.c.3 by Rich Peterson, addendum to CRC minutes 2/18, and presentation by former Commissioner and Council member Bob Myhr, CRC minutes 3/10).

Wherefore, pursuant to Section 8.32 of the Charter, the Commission recommended (via a13 to 3 vote, CRC minutes 3/10) of members present) as follows:

Removal of all references to a separate executive branch from the Charter, return of the executive and administrative function to the elected County Council, thus empowering the Council to delegate any or all of its executive and administrative duties to subordinate officers appointed for that purpose or from among county employees if they so choose, without relinquishing any of their executive and administrative accountability.

[Notes: 1. The slight rewording of this motion, made pursuant to the Procedural Action motion of 2/18, does not alter the sense of the motion in any fashion. 2. The adoption of this recommendation is reflected in alterations in both Article 2 and Article 3 of the Charter—see amended Charter, as proposed. 3. An effect of this change is a clarification of the Auditor's role in assisting the Council in budget preparation. 4. This action has no effect upon Section 3.70 of the present Charter relating to the hearing examiner.]

Finding 6. Requirement for Employment of County Manager:

In returning administrative authority to the Council, the Commission recognizes that the Council needs to have professional assistance in carrying out its duties in these times of complex legal requirements for the administration of counties, particularly those operating under the Growth Management Act. The Commission found useful in their deliberations on this topic some features of Clallam County's charter (http://www.clallam.net/Board/assets/applets/2007_Charter.pdf ; support for the Clallam model was expressed by Rich Peterson, CRC minutes, written addendum, 2/18) and the information and advice provided by Clallam County Commissioner Mike Doherty (see interview in CRC minutes 2/25). Current members of the County Council as well as members of the public advised the Commission of the need for an unelected professional County Manager or Administrator (see Richard Fralick, written addendum, CRC minutes 2/11, Patty Miller, CRC minutes 2/11), Alan Lichter, CRC minutes 1/21 and audio recording for 1/21, Commission Documents). Consequently the Commission makes the following findings:

1. The County Council should be required to employ a professional manager to assist in the administration of the County, under its direction.
2. With regard to the Charter Section 2.31 (1), "Limitations of Power and Relationship with Other Branches," limiting the legislators from directing staff, the Commission proposes to delete this language and replace it with the new policy language in Article 9, "Personnel." (See Finding No. 7, below.) This is consistent with increased administrative activity by the Council, but will protect employees from unwarranted or unethical interference from the Council.
3. Requiring the Council to hire a County Manager to whom they will delegate administrative functions and day-to-day operations as they see fit, will minimize stress and increase the effectiveness of county government. This should permit a match between the needs of the Council and the capacities of the County Manager.
4. The Council-Manager form of local government is the best system for San Juan County. It is commonly used and has proven successful in many counties and municipalities throughout the country. The Council-Manager form of government combines the strong political leadership of elected officials in a Council with the strong managerial experience of an appointed local government manager. This form establishes a representative system where all discretionary authority is concentrated in the elected Council and where that Council hires a professionally trained manager to oversee the delivery of public services. The Manager is directly accountable to the elected Council members, who delegate responsibilities to the Manager as they see fit. The Council is in turn directly accountable to the voters, thus making this system closer to the people. The Council-Manager form of government is a structure that will best carry out the teamwork necessary for effective county operations.

5. The Council-Manager form of local government creates sufficient separation of administrative and legislative functions necessary to increase efficiency and supplement the functions of appointed and elected department heads.

Wherefore, pursuant to Section 8.32 of the Charter (via a vote of 15 in favor and 2 opposed, CRC minutes 3/24, and affirmed by a vote of 17 in favor and 1 opposed to send amended Charter to prosecuting attorney, CRC minutes 4/14) the Commission recommends that Article 4 of the Charter [new numbering], Administrative Departments, be amended as follows:

Section 4.40—County Manager

The County Council shall appoint a County Manager, directly responsible to the Council, selected on the basis of his or her executive experience and professional administrative qualifications, to assist the County Council in carrying out the administrative responsibilities of the County [Note: language of original motion, pursuant to Procedural Actions motion of 2/18, was altered slightly by CRC Drafting Committee].

Finding 7. Interaction of Individual Council Members with Appointed Staff and Other Employees:

The Commission heard testimony from numerous parties concerning the difficulty Council members have had in meeting their constituents' expectations not only for accessibility, but also for results. However, the elimination of the "artificial separation of powers" between individual Council members and staff could expose staff to direct supervision by Council members. Such direct supervision in the past has on occasion placed inappropriate pressure upon department heads and staff, resulting in impairment rather than improvement of their performance. After discussion of this matter in three open public meetings, the Commission finds that, absent controlling language in the Charter, this pattern might return with a three-member Council with administrative powers.

Wherefore, in accordance with pursuant to Section 8.32 of the Charter the Commission recommends (via a unanimous vote of members present) that Article 2 of the Charter be amended to include the following:

Section 2.42 Interactions with County Employees

In all interactions with County employees, County Council members shall exhibit ethical and respectful behavior. No individual County Council member shall direct or discipline, or threaten to direct or discipline, any County employee, whether department head, supervisor, or volunteer, unless such direction or disciplinary action, or warning concerning such direction or disciplinary action, has first been duly approved by a majority of the County Council. Any directives or discipline by County Council members shall be made through the established chain of authority.

No disciplinary action by the County Council may be taken with respect to another elected official or an employee or volunteer hired by or reporting to another elected official.

Finding 8. Transition and Terms:

The Commission was extensively briefed by the Prosecuting Attorney concerning transition. Several alternatives were considered. The Commission recommends the most conservative transition plan to assure strict compliance with Article 11 Section 4 of the Washington State Constitution, requiring charter adoptions to be implemented within six months after they are approved by voters, in order to discourage, or, if brought, defeat litigation. This choice does, however, require two special elections, one in February 2013, and another in April 2013. The total probable cost of these elections, if not shared by other entities in the same elections, may vary from \$25,000 to as much as \$50,000. This sum is less than the potential cost of litigation, and having two special elections will assure legal certainty.

The Commission recommends that the new County Council comprise three new members (currently serving members may run). The Commission considered suggestions for retaining the three Council members elected in 2010 or 2012 as the new three-member County Council but concluded that to do so would effectively disenfranchise the voters of the county that did not have an opportunity to vote for those members. Consequently, the Commission decided that the remaining terms of the County Council members elected in 2010 and 2012 should end effective upon certification on the April 2013 election of the new County Council members who would be nominated and elected countywide.

Initial terms would be for nearly four years for Council members for Districts 1 and 2, and nearly two years for the Council member for District 3, and all Council members' terms thereafter would be for four years (see CRC minutes 3/24 for discussion and 3/31 for votes on the amended motion).

Effective dates have been chosen to implement the Charter amendments within six months of adoption.

Wherefore, pursuant to Section 8.31 of the Charter, the Commission voted (16 in favor, 3 opposed, 1 abstention, CRC minutes 3/31, confirmed 17 in favor, 1 opposed) as revised by prosecutor CRC minutes 4/14) recommend adoption of new Article 11.60 to the Charter, as follows:

Section 11.60 - Initial Terms of Office

(1) Council members elected in the transition election to the position of Residency District 1 and Residency District 2 shall hold office for a short term which expires at midnight on December 31st, 2016. The first full term for Council Residency District 1 and Council Residency District 2 shall commence on January 1st, 2017. An election for the full term for Council Residency District 1 and Council Residency District 2 shall occur in the usual course of the 2016 elections for county officials.

(2) The Council member elected in the transition election to the position of Residency District 3 shall hold office for a short term which expires at midnight on December 31st 2014. The first full term for Council Residence District 3 commences on January 1st, 2015. The election for the full term for the Council Residency District 3 shall occur in the usual course of the 2014 elections for county officials.

Topics Discussed with No Changes Recommended:

The Commission received suggestions and recommendations to revise other features of San Juan County's Home Rule Charter. After deliberations in several meetings, the Commission found a lack of compelling reasons to recommend further changes to the Charter. Therefore, the following features of the Charter, though discussed, are not proposed for changes:

Initiative and Referendum

Non-partisan elections

Elected rather than appointed Auditor, Treasurer, County Clerk, and Assessor

Appointed rather than elected County Administrator/Manager

Separate elected offices (not consolidated)

Citizens' Salary Commission

Hearing Examiner System