

Late Backup

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**2012 CHARTER REVISION COMMITTEE  
REPORT TO CITY COUNCIL  
FEBRUARY 22, 2012**

# TABLE OF CONTENTS

2012 Charter Revision Committee Overview.....	1
Recommendations Summary.....	2
Recommendations Overview.....	4
Exhibit A: Working Group Report Dated October 14, 2011	
Exhibit B: Working Group Report Dated November 16, 2011	
Exhibit C: Working Group Report Dated January 18, 2012	
Exhibit D: Working Group Report Dated January 30, 2012	
Exhibit E: Written Statement of Luis Figueroa of MALDEF	
Exhibit F: Written Statement of David Richards of Richards, Rodriguez & Skeith, LLP	
Exhibit G: Written Statement of Prof. Steve Bickerstaff	
Exhibit H: Meeting Dates and Locations	

# **2012 CHARTER REVISION COMMITTEE OVERVIEW**

The Austin City Council established the 2012 Charter Revision Committee per Resolution 20110804-028 on August 4, 2011. Council directed the body to make recommendations regarding the proposed City Charter amendments laid out in Resolutions 20100624-078, 20110428-048, and 20110623-094; make recommendations regarding the proposed single member district maps presented to Council on June 9 and on any additional maps conforming with Resolutions 20110526-024 and 20110526-025 that may be brought forward by the public; and submit a final report by spring 2012.

Appointments to the body included Gonzalo Barrientos, Ann Kitchen, David Butts, Fred Cantu, Delia Garza, Richard Jung, Delores Lenzy-Jones, Fred Lewis, Nelson Linder, Dr. Fred McGhee, Margaret Menicucci, Susan Moffat, Ken Rigsbee, Ted Siff, and Kathleen Vale. The body chose Gonzalo Barrientos as Chair and Ann Kitchen as Vice Chair.

The Committee met for the first time on September 15, 2011. Over the course of the next six months, the body met approximately every two weeks at well-attended meetings all over the city and heard from over 100 speakers.

The Committee also immediately created a Working Group made up of Vice Chair Kitchen and Committee Members Siff, Moffat, Lewis, and Menicucci that assessed the proposed charter amendments and other related charter proposals and periodically brought summary reports to the larger body for consideration and discussion. This approach allowed the Committee to take a vote on election administration and personnel amendments on October 13, campaign finance amendments on December 8, a Planning Commission and additional campaign finance amendments on January 19, and an independent redistricting committee item on February 2. While some of the recommendations could be achieved by a code change, the Committee sees the Charter as the most secure place to make these important amendments.

At every meeting, the Committee as a whole worked through issues related to the pros and cons of the range of maps proposed by council and presented by members of the public. Invited speakers included Sydney Falk, Bickerstaff Heath Delgado Acosta LLP; Ryan Robinson, City Demographer; Luis Figueroa, MALDEF; Gary Bledsoe, Texas NAACP; David Richards, Richards Rodriguez & Skeith LLP; and Prof. Steve Bickerstaff. The Committee focused its February 2 meeting on the issues of an independent districting commission and council structure, voting 13-2 in support of recommending an independent districting commission and 8-7 in support of a 10-1 plan (10 single member districts, mayor at-large).

The Committee held a final meeting on Thursday February 16 to finalize its report to council in fulfillment of its obligations. Though the Committee has dissolved with submission of this report, the former members remain a resource going forward.

The Committee wishes to thank City staff from the Law Department, Library Department, CTM, and the Emma S. Barrientos Mexican American Cultural Center for their support at many meetings; Austin Community College and the Lord's Church of Austin for opening their doors to provide locations for Committee meetings; and the many individuals who shared their comments, materials, and recommendations with the body.

## RECOMMENDATIONS SUMMARY

At the October 13, 2011 Committee meeting, the Working Group made recommendations regarding election administration and personnel. (Its detailed memos on all its recommendations are attached in the appendix for your convenience.) The body voted to recommend these charter amendments, in addition to a separate 'single member district' item on the same ballot (see also February 2 recommendations):

1. Allow voters to choose whether to move date of Austin's municipal elections from May to November through a ballot item (The committee did not make a recommendation as to whether May or November was preferable; no change to stagger, term length, or term limits; no decision regarding whether terms should be cut short or lengthened for May-to-November transition). (14-1)
2. Prohibit Council members from switching places for the purpose of avoiding term limits. (14-1)
3. Make the number of required initiative and referendum petition signatures the same as the number required for petitions for charter amendments. Specify number of signatures as five percent of the number of the municipality's qualified voters. (14-1)
4. Council appoints the City Attorney and City Attorney appoints deputy city attorneys.
5. Council appoints Council staff. (14-1)
6. City Clerk appoints deputy clerks; eliminate council authority to appoint deputy clerk. (14-1)
7. City Auditor appoints deputy auditors. (14-1)

At the December 8 Committee meeting, the Working Group made recommendations regarding campaign finance charter amendments. The body voted to make the following recommendations:

8. Create a new 30-day fundraising period following election with additional restrictions on officeholder accounts. (9-5-1)
9. Increase the amount allowed in officeholder accounts to \$40,000, with additional use restrictions (no use in campaigns). (12-2)
10. Mandate that jurisdiction and enforcement powers of the City Ethics Review Commission include alleged violations of city campaign finance law. (14-0)
11. Report within 1 business day those campaign contributions and expenditures exceeding \$2500 made within 9 days of an election. (14-0)
12. Enhance disclosure via reporting and disclaimer of independent expenditures, including express advocacy and electioneering, especially as it relates to corporate expenditures. (14-0)
13. Create a public searchable and downloadable database of all electronic campaign finance reports, lobbying reports, and independent expenditures. (14-0)
14. Require a city election to approve major new revenue bonds over the \$50 million dollar amount, with a cost of living adjustment. (10-3-1)

*There was no action regarding increasing contribution limits, because the amount already increases with inflation; the motion to table this item passed 11-3. There was no action regarding the recommendation that the charter state that campaign contributions for a run-off*

may only be collected after general election's election day, because this is already the Committee's understanding of current law.

At the January 19 meeting, the Working Group made charter amendment recommendations regarding a Planning Commission and additional campaign finance amendments. The body recommended as follows:

15. Ex-officio members of the Planning Commission are non-voting members whose attendance does not affect quorum requirements. (13-0)
16. Revise the City bundling laws and forms to provide additional information. (13-0)
17. Limit the amount that a registered City lobbyist can bundle, to a maximum of \$1,750 per council candidate per election cycle (5 contributors at current maximum amount), and limit the amount registered firms can bundle, to a maximum of \$3,500 per council candidate per election cycle (10 contributors at current maximum amount). (12-1)

At the February 2 meeting, the body discussed and voted on the following charter amendment recommendations:

18. Utilize an independent redistricting commission to draw maps. (13-2)
19. Change the current 7-seat system of all at-large council seats to a 10-1 system with ten single member districts and the mayor elected at-large. (8-7)

## RECOMMENDATIONS OVERVIEW

1. Allow voters to choose whether to move date of Austin's municipal elections from May to November through a ballot item (the committee did not make a recommendation as to whether May or November was preferable; no change to stagger, term length, or term limits; no decision regarding whether terms should be cut short or lengthened for May-to-November transition). Motion passed 14-1 (Lenzy-Jones voting nay).

In making this recommendation to move elections from May to November, the body did not advocate for whether City elections should be moved to November of even or odd numbered years, because retaining the stagger necessitates elections in Novembers of both even and odd numbered years.

2. Prohibit Council members from switching places for the purpose of avoiding term limits. Motion passed 14-1 (Lenzy-Jones voting nay).

This item is a Committee-proposed amendment, intended to ensure that Council members do not circumvent term limits by running for different council seats.

3. Make number of required initiative and referendum petition signatures the same as number required for petition for charter amendments. Specify number of signatures as five percent of the number of the municipality's qualified voters. Motion passed 14-1 (Lenzy-Jones voting nay).

Council's proposal on this item suggested making the number of required petition signatures for initiative and referendum match the required number of petition signatures for city charter changes contained in state law. The Committee recommended this proposal, with the change that the number of signatures be specified across the charter as 5% of the city's voters, as opposed to pegging the standard to state law.

4. Council appoints City Attorney; City Attorney appoints deputy city attorneys. Motion passed 14-1 (Lenzy-Jones voting nay).

The Committee recommended that Council's two separate City Attorney-related proposals – that the City Attorney report directly to Council and that the City Attorney be authorized to directly appoint deputy city attorneys – be combined as one ballot item.

5. Council appoints Council staff. Motion passed 14-1 (Lenzy-Jones voting nay).

This recommendation was intended to assist Council with effective administration of their offices.

6. City Clerk appoints deputy clerks; eliminate council authority to appoint deputy clerk. Motion passed 14-1 (Lenzy-Jones voting nay).

The Committee recommended that Council's two separate City Clerk-related proposals – that the City Clerk be authorized to directly appoint deputy city clerks and that council authority to appoint deputy clerks be eliminated – be combined as one ballot item.

7. City Auditor appoints deputy auditors. Motion passed 14-1 (Lenzy-Jones voting nay).

This recommendation was intended to assist the City Auditor with effective administration of their office.

8. Create a new 30-day fundraising period following the election, with additional restrictions on officeholder accounts. Motion passed 9-5-1 (Garza, Vale, Cantu, Barrientos, and Butts voting nay; Jung abstaining).

The Committee supported creation of a 30-day post-election fundraising period to ensure newly elected or re-elected councilmembers can focus on job responsibilities rather than be concerned by lingering personal debt or unpaid campaign bills. However, officeholder accounts should not be used for expenses, such as contributions to nonprofit organizations, membership dues, advertising, or newsletters; these expenditures could serve a political purpose and should be prohibited. Councilmembers may use their city-approved budget for these expenditures, if they are an appropriate use of city resources (e.g., use city budget for a newsletter). Members Barrientos, Butts, and Cantu voted nay based on concerns that councilmembers would be pressed to make these community expenditures from personal funds, and the restrictions would place wealthy councilmembers in a better position to pay from personal funds.

9. Increase the amount allowed in officeholder accounts, with additional use restrictions on officeholder accounts, including no use of an officeholder account balance for a subsequent campaign. Motion passed 12-2 (Jung and Rigsbee' voting nay).

The Committee supported increasing the amount that may be retained in an officeholder account from the current \$20,000 to \$40,000. The cost of living in Austin has increased, and Councilmembers need additional funds to discharge the duties of their public office. However, officeholder accounts should not be used for non-officeholder expenditures such as contributions to nonprofit organizations, membership dues, advertising, or newsletters; these expenditures could serve a political purpose and should be prohibited. Councilmembers may use their city-approved budget for these expenditures, if they are an appropriate use of city resources (e.g., use city budget for a newsletter). Also, the balance of an officeholder account could not be used in a subsequent campaign.

10. Mandate that jurisdiction and enforcement powers of the City Ethics Review Commission include alleged violations of city campaign finance law. Motion passed 14-0.

The City for years has interpreted the City Code as providing that the Council-appointed citizen Ethics Review Commission is without jurisdiction to hear campaign finance complaints. As with its current Code authority to hear ethics and conflict of interest allegations, the Ethics Review Commission would be given the authority to hear evidence and make a recommendation to the City Attorney as to whether a violation has probably occurred. It also would be given the authority, in its discretion, to engage a special prosecutor in cases where the Ethics Review Commission believes the City Attorney may have a conflict of interest.

11. Report within 1 business day those campaign contributions and expenditures exceeding \$2500 made within 9 days of an election. Motion passed 14-0.

City Code does not currently require candidates and political action committees to report contributions and expenditures made in the last nine days before a city election until after election day has passed – defeating the purpose of disclosure. For ten years, state law has required reporting in the last 9 days, but this applies only to state candidates and political committees. Likewise, the Committee recommends that city candidates should file a report when contributions or expenditures in aggregate exceed \$2,500. Political action committees should file a report when contributions, expenditures, or independent expenditures in aggregate exceed \$2,500, or when political action committees make independent expenditures opposing a specific candidate that exceed \$1,000.

12. Enhance disclosure via reporting and disclaimer of independent expenditures, including express advocacy and electioneering. Motion passed 14-0.

This recommendation would modernize the City's 1994 provisions regarding independent expenditures to ensure, after the *Citizens United* case, that corporate and union monies spent on political activities are disclosed, to the extent constitutionally permissible, fully and timely to the electorate. The recommendation requires disclosure of electioneering communications ('issue advertisements' that do not explicitly state 'vote for' or 'vote against' but influence the election) and independent expenditures (both express advocacy and electioneering communications) by all persons, including corporations, unions, nonprofit organizations, unincorporated associations, and individuals. Reporting would occur within 5 business days if made more than 60 days before an election, within 48 hours if made between 60 days and 10 days before an election, and within 24 hours if made within 9 days before an election. A city disclaimer would be required as well, with additional disclosure of the five largest contributors to the entity within the preceding 12 months. These recommendations come from recent enactments in other jurisdictions and leading scholarly institutions, such as the Brennan Center.



13. Create a public searchable and downloadable database of all electronic campaign finance reports, lobbying reports, and independent expenditures. Motion passed 14-0.

Current city code from 1994 currently requires candidates, candidate committees, political action committees, bundlers, lobbyists, or any entity engaged in independent expenditures to report electronically, but not in a form that is searchable or downloadable by the general public. The amendment would require that a modern searchable, downloadable database with filing information be fully operational no later than six months after voter approval of this proposition.

14. Require a city election to approve major new revenue bonds (excluding refinanced bonds) over the \$50 million dollar amount, with a cost of living adjustment. Motion passed 10-3-1 (Lenzy-Jones, Menicucci, and Siff voting nay; Jung abstaining).

The Working Group was not unanimous on their recommendation to the full body for discussion, in light of concerns about what impact this change in procedure would have on Austin's ability to competitively operate its energy and water utilities as well as other enterprise departments. The Working Group also conveyed to the full body their understanding that state law allows the city the option whether to conduct a revenue bond election or not; this charter amendment would require that the city exercise the option and allow citizens to vote on large bond issues as they did in the past. The Committee chose the \$50 million dollar amount as a balance between the city's need for revenue bond capacity and flexibility and the electorate's right to vote on major revenue projects.

15. Ex-officio members of Planning Commission are non-voting members whose attendance does not count for quorum. Motion passed 13-0.

The Charter currently creates four ex-officio members of the Planning Commission. Council has acted to amend the code to indicate ex-officio members are not voting members, and this amendment is intended to clarify the matter at the Charter level.

16. Revise the City bundling laws and forms to provide additional information. Motion passed 13-0.

City Code currently requires candidates to report the name and address of any person who bundles (solicits and obtains contributions on their behalf), during a reporting period, of \$200 or more per person from five or more individuals, and provide the name and address of those individual donors. With this amendment, bundlers would also need to report to the candidates their employer and occupation; names of all registered lobbyists, if any, employed by the bundler and his/her firm or employer; occupation and employer of each individual contributor; the total amount delivered to each candidate for that reporting period; and the cumulative amount delivered to each candidate for the current election cycle. In addition, bundlers and their contributions would be listed on a separate reporting schedule with candidate campaign reports.

17. Limit the amount that a registered City lobbyist can bundle, to a maximum of \$1,750 per council candidate per election cycle (5 contributors at current maximum amount), and *limit the amount registered firms can bundle, to a maximum of \$3,500 per council candidate per election cycle (10 contributors at current maximum amount).* Motion passed on a vote of 12-1 (Menicucci voting nay).

City Code currently limits registered city lobbyists to \$25 campaign contributions but allows lobbyists to bundle contributions without limit. With this amendment, lobbyists would be limited in their bundling activity, as they are limited in their contribution activity.

18. Utilize an independent redistricting commission. Motion passed 13-2 (Butts and McGhee voting nay.)

The Committee recommends the city utilize a 14-member independent redistricting commission for initial districting and redistricting following each census. The proposal is based on the California independent redistricting model, which was recommended by expert Prof. Steve Bickerstaff and in a number of expert publications. The City Auditor's office would publicize widely for applicants and make sure that they met minimum qualifications and satisfied conflict of interest provisions. An Applicant Review Panel, consisting of 3 independent, qualified auditors selected at random by the Auditor then would choose in public at random 8 commissioners from this pool. These 8 commissioners would then choose 6 additional members, to ensure diversity, from the remaining applicants in the pool. The redistricting criteria would be mandatory and must be followed by the Commission. The Commission could not consider the address of incumbents or partisanship in drawing lines. There would be considerable public input and hearings before final adoption of maps. The Commission would have to adopt the maps by a super-majority of 9 members. The related Working Group January 30 agenda backup document for discussing this recommendation includes lengthy guidance for what would constitute a qualified applicant, the selection process generally, and many other provisions.

19. Change the current 7-seat system of all at-large council seats to a 10-1 system with ten single member districts and the mayor elected at-large. Motion passed 8-7 (Kitchen, Butts, Jung, McGhee, Menicucci, Moffat, and Siff voting nay).

Discussion on this item began with a 14-1 vote to change the current council structure to include some form of geographic representation. This was followed by an unsuccessful 7-8 vote on a 10-2-1 council structure, and a successful 8-7 vote on a 10-1 council structure. Discussion regarding the pros and cons of each format included consideration of whether or not retaining some at-large seats would fairly serve the needs of minority communities that are evenly distributed across the city, such as the Asian-American community, and whether or not retaining some at-large seats would continue the negative aspects of the current at-large system and dilute the influence of under-represented areas and protected minorities

## EXHIBIT A

## Memorandum

To: Charter Review Committee

From: Subcommittee on Ballot Initiatives

Date: October 14, 2011

RE: Report of Subcommittee and Motion for Action

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Motion: To recommend to the City Council to place on the ballot the following items, as seven distinct ballot items. The wording of the ballot items should reflect the subcommittee comments. The subcommittee is directed to work with staff to determine the ballot language to bring forward with these items in the recommendation to City Council:

Resolution #	Proposed Amendment	Committee Comments
<b>Changing the Election Date</b>		
1. Resolution 20110428-048 and 2. Resolution 20110428-048	Moving the date of Austin's municipal elections from May to November in odd numbered years	<b>RECOMMENDATION: Ballot Item.</b> Committee agreed to recommend the following * Do not change staggered terms * Do not change term, keep three years * Do not change term limits, remain as three terms * Voters decide on May vs November for elections * Neutral, simple, clear choice for voters on ballot language * Ballot language allows individual to check May or check November, with explanation that checking November will result in elections in xxx years will be on the ballot with the Presidential election
<b>Council Terms: Changing the length and staggering of terms</b>		
4. Resolution 20110428-048 and 7. Resolution 20110623-94	Reduce City Council term limits from three terms to two terms, and prohibit Council members from switching places for the purpose of avoiding term limits	<b>RECOMMENDATION: Ballot Item.</b> Prohibit Council members from switching places to avoid term limits. Do not change term limits

Initiative, Referendum and Recall		
10. Resolution 20110623-94	Make the number of required petition signatures for initiative and referendum match the required number of petition signatures for city charter changes contained in State law	<b>RECOMMENDATION:</b> Ballot Item. Agreed with this provision, but charter language should include actual percentage of required signatures, not just reference state law as that may change. Discussed adding language requiring ballot language for petition initiatives be written in factually accurate and neutral way.
Changing reporting and management structure of certain City staff		
13. Resolution 20110428-048 and 14. Resolution 20110428-048	City attorney to report directly to council  City attorney to directly appoint deputy city attorneys if city attorney reports directly to city council	<b>RECOMMENDATION:</b> Ballot Item. Committee favors Combine with 14.
15. Resolution 20110428-048	Council to directly appoint Council staff	<b>RECOMMENDATION:</b> Ballot Item. Committee favors
16. Resolution 20110428-048 and 18. 20110623-94	City Clerk to directly appoint deputy clerks  Eliminate city council authority to appoint assistants to city clerk	<b>RECOMMENDATION:</b> Ballot Item. Committee favors. Combine with 18
17. Resolution 20110428-048	City Auditor to directly appoint deputy auditors	<b>RECOMMENDATION:</b> Ballot Item. Committee favors

## EXHIBIT B

## MEMORANDUM

To: Charter Revision Committee  
From: Charter Revision Working Group  
(Ted Siff, Ann Kitchen, Fred Lewis, Margaret Menicucci, Susan Moffat)  
Re: Recommendations on Proposed Campaign Finance and Election Charter  
Amendments  
Date: November 16, 2011

### Executive Summary

To improve transparency and promote voter confidence in city elections, the working group recommends a package of campaign finance and election reforms that includes the following proposed charter amendments:

- Create a new 30-day fundraising period following regular, run-off and special elections for the purpose of retiring campaign debt and funding officeholder accounts, provided that officeholder accounts may no longer be used to fund the following items: contributions to charities; contributions to nonprofit organizations, membership dues, advertising and newsletters.
- Increase the limit for officeholder accounts from \$20,000 to \$40,000, provided that officeholder accounts may no longer be used to fund the following items: contributions to charities, contributions to nonprofit organizations, membership dues, advertising and newsletters.
- Clearly establish the jurisdiction and enforcement powers of City Ethics Commission.
- Require timely disclosure of campaign contributions made within 9 days of an election.
- Require disclosure of independent expenditures, including express advocacy, electioneering communications and disclaimers.
- Require electronic filing of all campaign finance and lobbying reports and expenditures in a publicly searchable database.
- Require a public election to approve all new major revenue bonds over a specified dollar amount.

The working group is still considering a small number of additional proposals and will report on these items at a later date.

## **Need for Campaign Finance Amendments**

Within the next year, Austin may transform both the structure and election of our City Council. Like most big life changes, this one is driven by dissatisfaction with the status quo, coupled with the hope that there must be a better way. City leaders cite concerns about an increasingly disengaged electorate and hope that change will spark more robust voter turnout. Members of the public say moneyed interests have effectively limited representation to a select few and hope that defined geographic representation will give average citizens a stronger voice at city hall.

While we laud both goals, we believe that neither can be achieved without key reforms to Austin's campaign finance laws. No matter how many districts we create or how they are apportioned, special interests can still attempt to sway outcomes with infusions of cash - and in fact, may find smaller single-member districts a bargain. Without full confidence in a fair transparent system, fewer voters will see a reason to participate in local elections and civic engagement will continue on its downward spiral. Austin simply cannot afford to get this wrong.

Recent Supreme Court decisions and changes in state and federal practices have only heightened the urgency of such reforms. In the wake of *Citizens United*, corporate contributions for elections are already ramping up, and with them so-called "independent expenditures" that often mask the source of their financial backing. Without firm reporting requirements, common-sense restrictions on use of funds, and clearly defined powers for our City Ethics Commission, even the most dramatic restructuring of our City Council will not realize our hopes for improved civic engagement and representation.

While such reforms could be achieved by code amendments, we believe these provisions deserve the permanency and protection afforded by the City Charter and that the citizens of Austin deserve the opportunity to ratify them at the ballot box. To improve transparency and promote voter confidence in city elections, the CRC working group urges the Committee to support a campaign finance package that includes the charter amendments recommended herein. These proposed campaign finance reforms are appropriate and beneficial under the current at-large system of electing City Council members and are even more critical if the voters decide to move to a district-based system of electing City Council Members.

### **A. Recommendations Regarding Amendments Proposed by City Council Resolutions**

The City Council sent the Committee two resolutions pertaining to campaign finance, containing a total of four potential amendments. After evaluating each of these four items, we refer one proposal to the full Committee for discussion without a recommendation and recommend two proposals for inclusion on the ballot contingent on additional restrictions. We do not recommend the last proposal from Council as this issue is already addressed generally in the current City Charter and specifically in City Code.



#### 1. Resolution 20110428-048

SUMMARY OF PROPOSAL: The proposed amendment would increase the allowed individual campaign contribution for at-large seats to \$700 per person per election, twice the current cap of \$350.

NO RECOMMENDATION: The working group believes this issue requires consideration by the full committee and refers it without recommendation. In preliminary discussions, working group members generally felt the proposed \$700 per person limit was too high, noting that a couple donating to a single candidate in both a general election and a runoff could potentially contribute a total of \$2800 in just one race. Members felt that in the event an increase was found to be warranted, a more-reasonable figure might be in the \$400-\$450 range; however, they recognized that others believe a higher cap for at-large positions would be beneficial. Members also discussed the possibility of leaving the \$350 per person cap intact for at-large seats and reducing the limit to \$150 per person for single-member district seats, if single-member seats are ultimately adopted. One working group member recalled that when campaign contributions were raised to their current levels, many felt that the previous cap of \$100 might be viable for smaller single-member district races; in short, the current caps were raised specifically to accommodate running at-large so may still be sufficient at \$350 per person.

#### 2. Resolution 20110428-048

SUMMARY OF PROPOSAL: This proposed amendment would create a new 30-day fundraising period following regular, run-off and special elections for the purpose of retiring campaign debts and funding officeholder accounts.

RECOMMENDED WITH ADDITION: The working group recommends this item only if it includes language specifically restricting officeholder accounts from funding the following items, which are currently allowed: contributions to charities, contributions to nonprofit organizations, membership dues, advertising and newsletters. The working group does not recommend this item for inclusion on the ballot absent this added restriction.

REASONING: Winners of elections are often left with large personal debts or unpaid bills from various vendors. We believe there is a legitimate public interest in ensuring that officeholders are focused on job responsibilities, not worried about debt retirement, and for that reason we support the creation of a 30-day post-election fundraising period. However, officeholder accounts should be clearly limited to expenses directly related to the discharge of that public office, not used to fund items that are essentially political in nature. Expenses such as contributions to charitable or nonprofit organizations, membership dues, newsletters or other advertising may allow an incumbent to gain favor with groups and individuals, but do not advance a true public interest; therefore, any

charter amendment that increases funding to officeholder accounts, directly or indirectly, should also eliminate these questionable uses. (Note: We have specifically prohibited these uses in both proposed amendments dealing with officeholder accounts to ensure their restriction in the event that only one proposed amendment is adopted).

### 3. Resolution 20110428-048

SUMMARY OF PROPOSED AMENDMENT: This proposal would increase the limit for officeholder accounts to \$40,000, double the current limit of \$20,000.

RECOMMENDED WITH ADDITION: As with Item 2 above, the working group recommends this proposed amendment only if it includes language specifically restricting officeholder accounts from funding the following items, which are currently allowed: contributions to charities, contributions to nonprofit organizations; membership dues, advertising and newsletters. The working group does not recommend this item for inclusion on the ballot absent this added restriction.

REASONING: The costs of living in Austin have risen dramatically in recent years and the expenses of our city officeholders have risen with them. Therefore we feel it is reasonable to increase the amount that may be retained in an officeholder account from the current \$20,000 cap to \$40,000. However, as previously noted, we strongly believe that officeholder accounts should be limited to purposes that are directly related to the discharge of that public office, and that any charter amendment that increases funding to officeholder accounts, directly or indirectly, should eliminate these questionable uses. Again, we have specifically prohibited these uses in both proposed amendments related to officeholder accounts to ensure their restriction in the event that only one proposed amendment is adopted.

### 4. Resolution 20110623-94

SUMMARY OF PROPOSED AMENDMENT: This proposal would establish that campaign contributions for a run-off election may only be collected after the election day of the general election for which a run-off is to be held.

DO NOT RECOMMEND: This proposal is not recommended for inclusion on ballot.

REASONING: This topic is already addressed generally under the current City Charter and specifically by City Code. City Charter Section 8 (F)(2) states that a candidate or candidate's committee may not solicit or accept a political contribution except during the last 180 days before the election. City Code Section 2-2-7 specifically provides that a general election and a run-off election each have separate campaign periods and that the campaign period for a runoff election begins the day after the date of an election at which no candidate receives a majority of the votes. This section further states that a candidate may only raise funds for an election during an authorized campaign period.

Given this, we believe the current language is sufficient and that any problems related to this issue are due to erroneous interpretation or lack of enforcement.

## **B. Additional Recommended Campaign Finance and Election Amendments**

In addition to the proposals from City Council, the working group strongly recommends the following proposed charter amendments as key campaign finance and election reforms that are urgently needed and deserve the durable protection afforded by the City Charter. For each proposal, we first identify the current problem, followed by a brief summary of the solution provided by the proposed amendment.

### 1. Clarify Jurisdiction and Enforcement Powers of City Ethics Commission

**PROBLEM:** The City of Austin currently has no functioning mechanism to enforce violations of city campaign finance laws. For over ten years, the City of Austin's Legal Department has taken the position that the existing City Ethics Commission has jurisdiction only over city conflict of interest complaints; but not city campaign finance complaints. As a result, there is effectively no enforcement of Austin's local campaign contribution limits and additional campaign disclosure provisions. The City Ethics Commission has recommended to successive city councils that they clarify current law to specifically state that the Ethics Commission has jurisdiction over city campaign finance violations, but to date no City Council has publicly considered this request. If the City Ethics Commission's provisions were clearly applied to campaign finance complaints, the Ethics Commission would be able to hear evidence under oath and make a recommendation as to whether a violation has occurred, authority it currently lacks. However, even with this change, authority to prosecute violations would still remain with the City Attorney, which could be problematic under certain circumstances particularly where there may be the appearance of a conflict of interest. For this reason, we also recommend that the City Ethics Commission be given authority to hire a special prosecutor at its discretion in cases where it believes such action is necessary.

**SUMMARY OF PROPOSED AMENDMENT:** This proposed charter amendment would state explicitly that the City Ethics Commission, established in Chapter 2, Article 7 of the City Code, has jurisdiction over all alleged city campaign finance and campaign disclosure violations. It would provide that the current Commission processes apply to such alleged violations and ensure funding for all reasonable and necessary expenses of the Commission in fulfilling its duties. It would preclude the City Council in the future from weakening or limiting the powers of the Commission by ordinance, though Council would retain the authority to strengthen the Commission's powers if desired. It would also grant the Committee authority to appoint a special prosecutor in cases where it finds this action necessary, with funding provided by the City.

### 2. Require Timely Disclosure of Campaign Contributions Made Within 9 Days of an Election

PROBLEM: Currently, city candidates and political action committees (PACs) are not required to report contributions and expenditures made in the last nine days before a city election until after Election Day has passed. Unfortunately, some parties have exploited this loophole to prevent Austin voters from learning the sources and amounts of major campaign contributions or expenditures until after they have cast their ballots.

Texas has already closed this loophole for state candidates and PACs influencing state elections, requiring that contributions over \$5000 and expenditures over \$1000 against a specific candidate made in the last nine days before Election Day must be reported within one day. However, this loophole still exists at the city level.

SUMMARY OF PROPOSED AMENDMENT: The proposed charter amendment would require all candidates and political committees to report within one business day contributions and expenditures made in the last nine days before Election Day at the following levels: (1) candidates shall file a report whenever their contributions or expenditures in aggregate exceed \$2500; (2) PACs shall file a report whenever their contributions, expenditures, or independent expenditures in aggregate exceed \$2500, or when they make independent expenditures opposing a specific candidate that exceed \$1000. Note: While this proposal mirrors state reporting requirements, the suggested reporting thresholds are lower because city elections usually involve significantly less money than state elections.

### 3. Require Enhanced Disclosure of Independent Expenditures, Including Express Advocacy, Electioneering Communications, and Disclaimers

PROBLEM: Entities that are not candidates or official PACs may currently avoid disclosure of independent expenditures and funding sources because state and city laws have not been updated to address the increasingly common practice of using nonprofits organizations, ad hoc groups, unions, corporations or other entities for political purposes. Current city law does require independent expenditures over \$1000 to be disclosed within 7 business days or, if made in the last 9 days before the election, within 48 hours. But neither state nor city law explicitly defines independent expenditures to clearly require disclosure of electioneering communications such as sham issue ads, i.e., ads that do not expressly say to vote for or against a candidate but are clearly under the circumstances intended to influence an election.

The Supreme Court Ruling in the Citizens United case now allows corporate and union funds to be used for independent expenditures intended to influence city elections; but if the electioneering communications in question do not specifically say to vote for or against a candidate, they can escape reporting requirements under current city law. This deceptive practice is expected to increase in the future as local copycats follow growing, abusive practices at the national level.

However, since the Citizens United decision, courts have upheld laws requiring disclosure of corporate and union funding of independent expenditures, including

electioneering communications that do not expressly advocate the election or defeat of a candidate. Courts also have held that third-party expenditures, corporate or otherwise, made in "coordination" with a candidate's campaign may be treated as an in-kind contribution to a campaign.

To address this growing problem, the working group strongly recommends a charter amendment to require disclosure of independent electioneering communications and coordinated expenditures made by any entity or person in city elections, modeled on effective, recent provisions from other jurisdictions that have been upheld by the courts.

**SUMMARY OF PROPOSED AMENDMENT:** The proposed charter amendment would explicitly require the disclosure of independent expenditures and electioneering communications *by all persons*, including corporations, unions, 501c nonprofit organizations, unincorporated associations and individuals.

Independent expenditures would be defined to include both express advocacy, in which voters are urged to vote for or against a specific named candidate, and electioneering communications, which are identified using the accepted "bright line electioneering test." The bright line test requires disclosure of independent expenditures that involve: (1) communications that in aggregate exceed \$2500; (2) refer to a clearly identified candidate or ballot measure; (3) are disseminated by television; radio, billboard, mass mailing or telephone bank; (4) are publicly distributed within 60 days of an election; and (5) are targeted to the candidate's electorate, defined as 5000 people eligible to vote or 2% of the electorate, whichever is less. (Note: All the terms in the preceding definition would be defined in even greater detail using language from model laws). The City Code's 1994 definition of "coordination with a campaign" (which currently applies only to cooperation and sharing of strategic communications between candidates and third-parties making expenditures) would be expanded to include cooperation, consultation, or a broader sharing of pertinent campaign information between a third party or his or her agents with a candidate or his or her agents.

The proposed amendment would also mandate that all independent expenditures and their sources be reported within 5 business days if made more than 60 days before an election. If made between 60 days and 10 days before an election, independent expenditures would have to be reported within 48 hours. Independent expenditures made within 9 days before an election would be reported within 24 hours to conform with the above-recommended reporting requirement for candidates and PACs.

Finally, the working group also strongly recommends that the usual "paid by" disclaimers on communications purchased by independent expenditures in Austin elections be required to provide additional disclosure, as these entities often operate under generic or intentionally misleading names. To ensure transparency, the proposed charter amendment would require communication disclaimers to state the names of the five largest contributors to the entity within the preceding 12 months, an approach that has been successfully implemented in Connecticut.

#### 4. Require Electronic Filing of all Campaign Finance and Lobbying Reports and Expenditures in a Publicly Searchable Database

PROBLEM: The City of Austin requires the reporting of all campaign contributions and expenditures, as well as lobbyist registration and expenditures, but not in a form that is readily accessible or searchable by the general public, despite commonly available technology that would provide such access. Currently, most campaign and lobbyist reports are only available in hardcopy form, requiring a trip to the City Clerk's office and hours, if not days, of hand-sorting depending on what information is sought. Those reports that are filed electronically are typically in a locked PDF format, which presents yet another roadblock to electronic searches. Both the State of Texas and the City of Houston already require electronic filing of these documents in a searchable database. For a city that prides itself on technological savvy, it is surprising that Austin does not facilitate meaningful public access to this information because it clings to a paper filing system.

SUMMARY OF PROPOSED AMENDMENT: The proposed charter amendment would require any entity that contributes, accepts, or expends funds related to a city election to file all required reports electronically and that such reports would be publicly available in a searchable database. This amendment would apply to candidates, candidate committees, PACs, bundlers, lobbyists, or any entity engaged in independent expenditures, and would also require lobbyists to register and file any regular reports electronically for inclusion in a searchable database. The amendment would require that the database be fully operational no later than six months after voter approval of this measure.

#### 4. Require a City Election to Approve Major New Revenue Bonds Over a Specified Dollar Amount

PROBLEM: Article 7, Section 11 of the City Charter states: "All revenue bonds issued by the city shall first be authorized by a majority of qualified electors voting at an election held for this purpose." Despite such clear language, since the 1990s, the city has largely ignored this provision, citing a superseding state law that allows cities to issue revenue bonds without a public vote. However, just because state law allows an action does not necessarily mean it is good public policy. Revenue bonds fund our municipally owned electric and water utilities, and decisions regarding major new projects may have far-reaching consequences both for citizens' wallets and for the direction of our city as a whole. In light of recent discussions about voter turnout, we believe Austin residents are more apt to become engaged voters when they are consulted on major civic decisions and are treated as capable of casting informed ballots. Though the working group was not unanimous regarding this issue, a majority of the members felt that major revenue bonds should be subject to a City election before approval. Other subcommittee members had concerns about what impact this change in procedure would have on Austin's ability to operate its Energy and Water Utilities as well as other enterprise departments competitively. The working group recommends discussion of the full Committee to determine a reasonable dollar amount threshold for this amendment.

SUMMARY OF PROPOSED AMENDMENT. Public elections would be required to initiate new debt for major projects over a specified dollar amount (threshold amount to be determined by full Committee). Elections would not be required for refinancing of existing debt or in emergency situations, defined as an imminent catastrophic threat to the health and safety of citizens not of the city's own making.

### **Conclusion**

The working group respectfully submits the above recommendations to the full Committee for future discussion and possible action. The working group is continuing to evaluate a small number of additional proposed amendments and may submit further recommendations to the full Committee at a later date.

Submitted to the Charter Revision Committee (CRC) by members of the CRC Working Group: Ted Siff, Ann Kitchen, Fred Lewis, Margaret Menicucci, and Susan Moffat

November 16, 2011

## EXHIBIT C



## MEMORANDUM

To: Charter Revision Committee  
From: Charter Revision Working Group  
(Ted Siff, Ann Kitchen, Fred Lewis, Margaret Menicucci, Susan Moffat)  
Re: Additional Recommendations on Planning Commission and Campaign Finance Reporting  
Date: January 18, 2012

### EXECUTIVE SUMMARY

The CRC Working Group recommends the following three proposed amendments to the full Charter Revision Committee:

1. Clarify that ex officio members of the Planning Commission are non-voting members whose attendance does not affect quorum requirements.
2. Revise the current city reporting system to require more stringent and accessible disclosure of all bundled campaign contributions received by city candidates and officeholders.
3. Limit the amount of bundled campaign contributions by registered city lobbyists to a maximum of \$1750 per city candidate per election cycle for individual bundlers and \$3500 per candidate per election cycle for firms that bundle.

**1. Clarify that ex officio members of the Planning Commission are non-voting members whose attendance does not affect quorum requirements.**

**PROBLEM**

The Austin City Charter expressly creates four ex officio members of the city's Planning Commission under Article X, Section 2. These are: the City Manager, the Director of Public Works, the President of the AISD Board of Trustees, and the Chair of the Board of Adjustment. Traditionally, these ex officio seats have been viewed as non-voting positions. However, an ex officio member recently expressed a desire to vote on cases before the Commission.

Questions raised by allowing ex officio members to vote include the following:

- Two of the ex officio members are city staff members, notably the City Manager and the Director of Public Works, raising the possibility of conflicts of interest and impartiality.
- The nine appointed Planning Commission members are required to attend meetings or lose their positions, but the four ex officio members are not held to this requirement. Given that only one ex officio member regularly attends Planning Commission meetings, the Commission effectively has 10 members currently. This means tie votes are possible if the ex officio member votes.
- The current quorum for Planning Commission requires five of the nine members to be present to meet or pass a motion. If ex officio members were granted voting rights, this would presumably raise the quorum requirement to seven. Given the other demands on their time, it is unlikely that a majority of ex officio members would be available for regular meetings, potentially making it difficult to obtain the quorum needed to conduct business.
- Ex officio members serve by virtue of their office (literally "from the office") and most typically serve as advisors to a body, not fully vested members.

In response to this situation, the Austin City Council voted in December to amend the City Code to clarify that ex officio members of the Planning Commission are not voting members. However, the City Charter language remains silent on this issue and, due to this ambiguity, the possibility of a legal challenge has been raised regarding a city-imposed restriction in an area on which the Charter is silent, given that the City Charter legally supersedes City Code.

To clarify any remaining ambiguity and protect the city against possible legal action, the Planning Commission and the City Council have requested the Charter Revision Committee to consider a proposed amendment to Article X, Section 2 of the Charter to

clearly state that ex officio members of the Planning Commission are non-voting members.

SUMMARY OF PROPOSED AMENDMENT:

The proposed charter amendment would revise Article X, Section 2 to specifically provide that ex officio members of the Planning Commission shall serve as non-voting members whose attendance shall not affect quorum requirements.

RECOMMENDED

This proposed amendment is recommended to the full committee by a unanimous vote of the CRC Working Group.

DRAFT

**2. Revise the current city reporting system to require more stringent and accessible disclosure of all bundled campaign contributions received by city candidates and officeholders.**

**PROBLEM**

The city's current campaign finance reporting system requires many laborious hunt-and-peck searches to locate and compile information related to bundled campaign contributions. This makes it difficult for the public to readily determine the sources or total amounts of large donations that are channeled through a single individual or entity to a city candidate or officeholder. Given that a single bundler delivered as much as \$25,000 to a single candidate in a recent city election, we believe a compelling public interest exists to improve the transparency of these transactions.

As a 2010 report by the Brennan Center for Justice explains:

*"Bundling occurs when an intermediary, sometimes known as a "conduit," gathers contributions from individuals and sends them to a candidate. The bundler takes credit for soliciting and delivering the funds, but because he or she is acting as an intermediary in passing on contributions from others, the contributions do not count against the bundler's own contribution limit. Bundling therefore may be seen to raise the same risk of corruption or appearance of corruption as large campaign contributions do."<sup>1</sup>*

In local races, the practice of bundling can result in substantial injections of money. According to the *Austin American-Statesman*, in the last City Council election, one prominent law firm employing registered lobbyists who frequently represent clients before City Council bundled a total of \$25,000 for a single Council candidate - an amount over 70 times the top contribution allowed by an individual citizen. Nearly one-quarter of the money raised for the candidate in question came from a dozen bundlers who, according to the *Statesman*, "work for some of Austin's biggest lobbying, law and development firms...". Another \$10,000 in bundled contributions for the same officeholder came from employees of firms involved in a controversial project on which the recipient had voted as a council member.

Austin City Code Section 2-2-22 requires a candidate or officeholder to report "... the name and address of any person who solicits and obtains contributions on their behalf, during a reporting period, of \$200 or more per person from five or more individuals, and provide the name and address of those individual donors." But due to omissions and structural flaws in the current reporting system, it is not easy to discern the total amounts and sources of large bundled contributions.

Under Austin's current system, each bundler is assigned a number. To find the total

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<sup>1</sup> Torres-Spelliscy, Ciara. *Writing Reform, 2010 Revised Edition* (pp. III 29-32). Brennan Center for Justice. [http://brennan.3cdn.net/6a899b38279d11d8e1\\_3jm6b4b9p.pdf](http://brennan.3cdn.net/6a899b38279d11d8e1_3jm6b4b9p.pdf)

amount given by each bundler, one must search the entire list of individual contributors by hand, identify those names that appear with a bundler's number, write down the individual amounts of each contribution and, finally, add them up. This unwieldy process must then be repeated for each bundler and each candidate or officeholder for each reporting period. Only through this time-consuming practice can the public currently identify those individuals and entities who are delivering significant bundled contributions to candidates and elected officials.

Further, bundlers are not currently required to disclose certain information that would allow the public to determine the connections that may exist between the bundler, his or her individual contributors, and registered city lobbyists in the bundler's employ.

We believe these issues must be addressed to improve transparency and promote voter confidence in city elections. As with other campaign finance reforms, we recommend the proposed amendment for inclusion in the City Charter to ensure its permanency and protection, and to allow the voters of Austin the opportunity to ratify it at the ballot box.

#### SUMMARY OF PROPOSED AMENDMENT

Under the proposed amendment, the city would create a required reporting form for all bundlers.<sup>2</sup> It would further revise Schedule V, which city candidates and officeholders are already required to file as part of their regular Contribution and Expenditure Reports (C&Es), to provide more detailed information about bundlers and the sources of the bundled contributions in a single place within the C&E. All reports related to bundled contributions would be available in a publicly searchable, downloadable database, as previously recommended by the Charter Revision Committee.

Under the revised system, each bundler would be required to report the following information in writing to the candidate or officeholder who must, in turn, cause this information to be filed with his or her C&Es (asterisk denotes information already required by City Code):

- Identity of bundler and address\*
- Bundler's employer and occupation
- Names of all registered lobbyists, if any, employed by the bundler and his/her firm or employer
- Name\*, address\*, occupation and employer of each individual contributor
- Total amount delivered to each candidate or officeholder for that reporting period
- Cumulative amount delivered to each candidate or officeholder for the current election cycle

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<sup>2</sup> As defined by Austin City Code Section 2-2-22.

<sup>3</sup> [http://www.ci.austin.tx.us/election/candpack\\_20120512\\_english.htm](http://www.ci.austin.tx.us/election/candpack_20120512_english.htm)

Candidates and officeholders shall notify all bundlers of these requirements and each bundler shall have a duty to report all required information to each candidate at such time as bundled contributions are delivered. Candidates and officeholders shall report all bundled contributions in conformance with deadlines for each reporting period. In cases where bundled PAC contributions are earmarked for a particular officeholder or candidate, the same reporting requirements would apply.

RECOMMENDED

This proposal is recommended to the full committee by a unanimous vote of the CRC Working Group.

DRAFT

**3. Limit the amount of bundled campaign contributions by registered city lobbyists to a maximum of \$1750 per city candidate per election cycle for individual bundlers and \$3500 per candidate per election cycle for firms that bundle.**

**PROBLEM**

To preserve public confidence in our electoral process, the City of Austin already wisely limits personal contributions by registered city lobbyists to city candidates and officeholders. However, the failure to limit the bundling of campaign contributions by these same entities effectively negates this important campaign finance provision.

Austin City Code provides a compelling rationale for such restrictions. Section 2-2-53 (A) reads:

*"The city council finds that the practice of lobbying for compensation creates a unique relationship between candidates and officeholders on the one hand, and lobbyists on the other. To preserve public confidence in the electoral process, to diminish the appearance of impropriety and special influence, and to minimize the role of political contributions in the legislative and regulatory processes and the awarding of public contracts, it is appropriate to prohibit persons who lobby the city council from making contributions to candidates for mayor and city council and to officeholders. Accordingly, no person who is compensated to lobby the city council and who is required to register with the City as a lobbyist, and no spouse of the person, may contribute more than \$25 in a campaign period to an officeholder or candidate for mayor or city council, or to a specific purpose political committee involved in an election for mayor or city council."*<sup>4</sup>

Despite the clear intent of this provision, many registered lobbyists or their firms effectively circumvent these limits by bundling campaign contributions for city candidates or officeholders.

As previously discussed, bundling occurs when an intermediary gathers contributions from others and delivers them to a candidate or officeholder. Through this practice, registered lobbyists may effectively gain the same favor, influence or access – or the appearance thereof – that our City Code specifically seeks to prevent. In fact, some might argue that the current system offers lobbyists the best of both worlds: they can't be tapped for large personal contributions themselves, yet they gain whatever benefits may flow from such generosity by soliciting and proffering the money of others.

As discussed in Item 2 above, the city's current reporting system requires numerous time-consuming hunt-and-peck searches to find and compile information on bundled contributions. Moreover, if an associate or employer performs bundling on a lobbyist's behalf, the lobbyist's name may not be reported at all. In large firms, it is not uncommon for a highly placed partner to undertake the soliciting and delivery of bundled

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<sup>4</sup> Sec. 2-2-53 (B) does permit registered lobbyists to contribute to the Austin Fair Campaign Fund created under this chapter.

contributions, while registered lobbyists in the firm's employ are not reported. However, the lobbyist's connection to that firm remains clear to the receiving candidate or officeholder.

As previously noted, bundled contributions can add up. In a recent city election, one candidate received \$25,000 from a single bundler, with additional bundles delivered by some of Austin's largest lobbying, law and development firms.

Likely most candidates and officeholders would strenuously deny that large bundled contributions influence their decision-making, and this may well be true. However, as our City Code correctly notes, the appearance of special influence may be just as damaging as actual corruption, feeding a growing cynicism and detachment among voters that Austin can ill afford.

For these reasons, we believe it is important to address the loophole that allows unrestricted bundling of campaign contributions by registered city lobbyists. As with other campaign finance reforms, we recommend the proposed amendment for inclusion in the City Charter to ensure its permanency and protection and to allow the voters of Austin the opportunity to ratify it at the ballot box.

#### SUMMARY OF PROPOSED AMENDMENT

The proposed amendment would limit bundled campaign contributions by registered city lobbyists to a maximum of \$1750 per city candidate per election cycle for individual bundlers and \$3500 per candidate per election cycle for firms that bundle.

#### RECOMMENDED

This proposed amendment is recommended to the full committee by a 4-1 vote of the CRC Working Group.



## EXHIBIT D

## MEMORANDUM

To: Charter Revision Committee

From: Charter Revision Working Group

(Ted Siff, Ann Kitchen, Fred Lewis, Margaret Menicucci, Susan Moffat)

Re: Recommendation Regarding Independent Citizens Redistricting Commission

Date: January 30, 2012

### Executive Summary

In the event the Charter Revision Committee (CRC) votes to recommend a full or partial district system for future Austin city elections, the CRC Working Group unanimously recommends an accompanying proposed charter amendment to create an Independent Citizens Redistricting Commission. Basic elements included in the Charter provision are the following:

1. The Austin City Charter establishes a 14-member Independent Citizens Redistricting Commission charged with drawing districts lines for Austin City Council seats once every ten years based on federal census data and other specific criteria stated in the charter.
2. An application process conducted by the City Auditor identifies a preliminary group of qualified, diverse, impartial applicants.
3. The Applicant Review Panel, consisting of 3 independent auditors selected randomly by the City Auditor from a qualified pool, uses specified criteria to select a pool of 60 diverse, highly qualified applicants, and selects 8 commissioners at random from this pool.
4. These 8 randomly selected commissioners examine all remaining applications in the 60-person pool and select 6 additional commissioners with the goal of ensuring a fully diverse commission, racially, ethnically, geographically, and by gender, sexual orientation, and student status.
5. The commission must follow all applicable constitutional and statutory provisions, as well as additional criteria specified in the charter, in drawing district lines.
6. The commission must operate openly and transparently with substantial, well-defined opportunities for public input and review at all stages of the redistricting process.
7. The commission will clearly communicate all review and accountability processes to the public on redistricting decisions.

The universal adoption of independent redistricting commissions has been recommended by the American Bar Association since 2008 and more recently by the Brennan Center for Justice. While an independent commission will not provide the perfect answer for all potential problems, the CRC Working Group believes it offers a critical path to ensure voter trust and engagement if or when Austin transitions to a district system for city elections.

## Need for Independent Commission

For decades, Austin residents have observed firsthand the many serious, well-documented problems of disenfranchisement and conflicts of interest that are inherent in state and federal redistricting processes that allow district lines to be drawn by the same elected officials that seek to run in these districts. At best, the process has distracted officeholders from other pressing public business, as critical issues such as school finance take a back seat to map wars. At worst, it has provided a venue for self-serving gerrymandering, petty vendettas, and multiple lawsuits. It has contributed to deep public cynicism about our democratic process, with elected officials picking their voters rather than voters choosing their public servants. The legal quagmire that currently disrupts our state primaries provides a case in point.

We see no reason to recreate this same troubled system at the city level, nor do national legal experts. Since 2008, the American Bar Association has urged all states to enact independent commissions for redistricting.<sup>1</sup> Similarly, a report by the Brennan Center for Justice cites independent commissions as likely the only effective means to “avoid motivation for shenanigans” in redistricting.<sup>2</sup>

An independent commission does not provide the perfect answer for all potential problems because complete independence is often impossible to obtain and the necessity of balance exists so that citizens who are engaged and involved in their city government may participate. Nevertheless, the CRC Working Group believes that these commissions introduce a level of impartiality that is a critical improvement over allowing elected officials or their appointees to draw their own districts. We strongly recommend the creation of an independent commission, with mandatory redistricting criteria included in the charter, as the best path to ensure voter trust and engagement if or when Austin transitions to a full or partial district system for city elections.

For those who wish to undertake an in-depth examination of redistricting practices generally, there are a number of nonprofit websites devoted to this topic including *Redrawing the Lines*, a project of the NAACP Legal Defense Fund<sup>3</sup>, or *Redistricting Online*, a nonpartisan redistricting resource<sup>4</sup>. Materials provided the committee by Steve Bickerstaff, a national expert on independent redistricting commissions, are also available on the committee’s website.

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<sup>1</sup> ABA H. Delegates, *Daily Journal: 2008 Midyear Meeting*, Report No. 102A (2008), at [http://www.abanet.org/leadership/2008/midyear/docs/Daily\\_Journal.doc](http://www.abanet.org/leadership/2008/midyear/docs/Daily_Journal.doc); see also A.B.A. Sec. Admin. L. Reg. Prac., *Report to the House of Delegates*, No. 102A (2008), at [http://www.abanet.org/leadership/2008/midyear/updated\\_reports/hundredtwoa.doc](http://www.abanet.org/leadership/2008/midyear/updated_reports/hundredtwoa.doc).

<sup>2</sup> Levitt, Justin. *A Citizen’s Guide to Redistricting, 2010 Edition* (VII. Suggestions for Reform, 75). Brennan Center for Justice.

[http://www.brennancenter.org/content/resource/a\\_citizens\\_guide\\_to\\_redistricting\\_2010\\_edition/](http://www.brennancenter.org/content/resource/a_citizens_guide_to_redistricting_2010_edition/)

<sup>3</sup> <http://www.redrawingthelines.org/redistrictingreform>

<sup>4</sup> <http://redistrictingonline.org/>

### Independent Redistricting Models

California and Arizona currently have the two most respected independent redistricting commission models in the United States. Both use transparent, open processes and clear mandatory line-drawing criteria, which are key parts of an independent redistricting commission. The CRC Working Group has based its recommended framework for an Austin commission largely on the California system. This model offers a more impartial selection process for commissioners and provides a larger, more diverse body, as recommended by the Brennan Center for Justice.<sup>5</sup>

### Recommended Elements of an Independent Citizens Redistricting Commission

The CRC Working Group recommends the following elements for an Austin independent redistricting commission, to be included in the charter where specified:

**1. A proposed amendment to the Austin City Charter establishes a 14-member Independent Citizens Redistricting Commission.**

(a) The commission will be charged with the responsibility of drawing districts for Austin City Council positions once every ten years based on federal census data and other laws and provisions specified below.

**2. An application process, conducted by the City Auditor, identifies a preliminary group of qualified, diverse, impartial applicants as follows:**

(a) Any resident of Austin who has been registered to vote for at least 5 years and has voted in 3 of the 5 most recent city elections may apply to serve on the commission. Any full-time student enrolled in an Austin college or university who is a registered voter is exempt from the requirement to have voted in 3 of 5 elections.

(b) In the previous 5 years, applicants may not have served in any of the following capacities: paid political consultant for a city or county candidate or officeholder; paid employee of a political campaign in a city or county election; candidate in an election for city office; elected city officeholder; registered city lobbyist; city employee; recipient of a non-competitively bid city contract over \$50,000 or recipient of a competitively bid city contract in an amount large enough to reasonably create the appearance of a conflict of interests; or a person who has bundled more than \$1750 in campaign contributions for any one city candidate in the last election.

(c) Applicants must agree not to run for elected city office for a period of 10 years after serving on the commission, and must agree not to engage in any of the following

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<sup>5</sup> Levitt, 75. The Arizona model allows the two major political parties to select 4 of the 5 commission members. This method involves partisan political involvement that is both inconsistent with the non-partisan City of Austin elections and less impartial than the California system.

activities for 3 years after serving on the commission: paid political consultant for a city or county candidate or officeholder; paid employee of a political campaign in a city or county election; registered city lobbyist; city employee; recipient of a non-competitively bid city contract over \$50,000 or recipient of a competitively bid city contract in an amount large enough to reasonably create the appearance of a conflict of interests; or person who bundles more than \$1750 in campaign contributions for any city candidate.

(d) Applicants will provide specific information to enable selection of a diverse well-qualified commission that fully represents all segments of Austin. At a minimum, required information must include: current occupation; gender; race or ethnicity; sexual orientation at applicant's discretion; age; home address; relevant professional expertise, skills, and/or experience such as statistical analysis, community or neighborhood involvement, advocacy of issues of importance to the city including but not limited to housing, land use, environment, healthcare, energy, social services, transportation and the arts. All applicants must sign a written commitment to act impartially in the best interests of the community as a whole.

**3. The Applicant Review Panel, consisting of 3 independent, qualified auditors selected at random by the City Auditor, uses specified criteria included in the charter to identify a pool of 60 highly qualified applicants and selects 8 commissioners at random from this pool.**

(a) The Applicant Review Panel reviews applications and selects a pool of the 60 most qualified applicants who represent a diverse range of Austin citizens and meet criteria for qualifications. The auditor will use criteria specified in the charter which includes: (1) diverse representation (gender, race, ethnicity, age, student status, sexual orientation, home address) and (2) professional expertise, skills and/or experience (statistical analysis, community or neighborhood involvement, advocacy of issues of importance to the city including but not limited to housing, land use, environment, healthcare, energy, social services, transportation and the arts), to ensure a diverse and well qualified commission.

(b) The City Auditor randomly selects in public the first 8 commissioners from this pool of 60.

(c) The City Auditor, or members of the Applicant Review Panel, may not communicate to the mayor or City Council or their staff on any matters related to the independent commission or redistricting except in a public forum or in written communications available to the public.

**4. These 8 randomly selected commissioners will examine all remaining applications in the 60-person pool and select 6 additional commissioners with the goal of ensuring a fully diverse commission, racially, ethnically, geographically, and by gender, sexual orientation, student status, and professional expertise, skills, and experience.**

(a) The 8 randomly selected commissioners will use the same criteria as the City Auditor to ensure a diverse and well-qualified commission and must agree on the 6 additional commissioners by at least 6 votes out of 8.

**5. Commissioners must follow all applicable constitutional and statutory provisions, as well as additional criteria specified in the charter, as follows, in drawing district lines.**

(a) Commissioners must follow all relevant provisions of federal, state, and city laws, including the U.S. Constitution and the Voting Rights Act. In addition, commissioners will consider the following criteria in determining district boundaries:

(b) Districts must be contiguous and compact.

(c) Districts should respect communities of interest and neighborhood association boundaries.

(d) Districts should not cross precinct lines.

(e) Commissioners shall not consider the home addresses of incumbents in drawing district boundaries.

(f) Commissioners shall not favor, or discriminate against, any city candidate, officeholder or political organization.

(g) Commissioners shall not communicate with any city elected officials or city candidates, or their respective staff members, regarding redistricting matters.

**6. The commission must operate openly and transparently with substantial, well-publicized opportunities for public input and review at all stages of the redistricting process.**

(a) All commission meetings and communications will be subject to the Open Meetings Act and Open Records Act.

(b) Commissioners and staff are prohibited from receiving communications about redistricting matters from anyone outside of a public hearing, other than exceptions permitted under the Open Meetings Act.

(c) The commission will establish an open hearing process for public input, subject to public notice and promoted through a thorough outreach program to solicit broad public participation in the redistricting public review process. The hearing process shall include hearings to receive public input before the commission draws any maps and

hearings following the drawing and display of any commission maps. Maps will be made available for public comment in a manner designed to achieve the widest public access reasonably possible, and comment shall be taken for at least 14 days from the date of public display of any map.

(d) Any action by the commission requires a supermajority vote of at least 9 of the 14 commissioners.

(e) The commission shall hire independent staff to provide, legal, technical and facilitation support for the meetings and business of the commission, which the City shall fund.

(f) The commission will adopt rules of organization including a process to replace or remove commission members.

**7. The commission will clearly communicate all review and accountability options to the public for redistricting decisions.**

(a) In addition to the public review process outlined above, the commission will provide information regarding the U.S. Department of Justice review and preclearance of redistricting maps, as well as any additional options for public or judicial review.

## EXHIBIT E





# MALDEF

Mexican American Legal Defense and Educational Fund

Dear Charter Revision Committee Members:

**San Antonio  
Regional Office**

110 Broadway  
Suite 300  
San Antonio, TX 78205  
Tel: 210.224.5476  
Fax: 210.224.5382

MALDEF has a long history as a leader in the areas of voting rights and redistricting, particularly in Texas. Beginning with the first statewide Texas redistricting after MALDEF's founding in 1968, MALDEF has worked throughout the state to inform Latinos about the redistricting process, and assist them in creating and advocating for fair plans. This assistance often includes educating redistricting officials about their legal obligations under the Voting Rights Act and representing Latino voters in administrative and legal proceedings that follow the adoption of redistricting plans in Texas. Our work has increased Latino-majority electoral districts in cities, school districts and counties as well as in statewide redistricting plans.

**National Headquarters**

**Los Angeles  
Regional Office**

634 S. Spring Street  
Los Angeles, CA 90014  
Tel: 213.629.2512  
Fax: 213.629.0266

Austin is the largest city in the state of Texas that still elects its City Council through at-large elections. Austin's continued use of this anachronistic system denies fair representation to Latinos. MALDEF supports the inclusion of an amendment to the Austin City Charter that will change the election of Austin City Council members from an at-large system to an all single-member district system.

**Chicago  
Regional Office**

11 East Adams Street  
Suite 700  
Chicago, IL 60603  
Tel: 312.427.0701  
Fax: 312.427.0691

Single-member districts will better serve Austin's diverse communities of interest and bring a wider range of social, economic, and political perspective to local government. Through single-member districts, every part of the city will have the opportunity to elect a representative familiar with its issues, concerns, and interests. No one neighborhood or area will be able to monopolize political power and no neighborhood will be ignored.

**Sacramento  
Policy Office**

1512 14<sup>th</sup> Street  
Sacramento, CA 95814  
Tel: 916.444.3031  
Fax: 916.444.7207

The demographics of the state are changing rapidly, and Austin is no exception. Latinos now constitute 33.5% of the city's total population and 21.5% of its citizen voting-age population. The growth of the Latino population alone accounted for 48% of Austin's total growth between 2000 and 2010. Single-member districts will allow these changes to be reflected in the City Council. Through this amendment, Austin's minority communities will gain increased opportunity to elect their candidates of choice.

Hybrid plans, which combine single-member and at-large offices, undermine the effectiveness and fairness a single-member district system. Hybrid plans allow for multiple elected officials from one group or one area to be overrepresented at the expense of the city as a whole. Just as at-large systems create barriers for equal political participation, hybrid proposals often dilute the voting strength of communities of interest and ethnic minorities.

**Washington, D.C.  
Regional Office**

1016 16th Street, NW  
Suite 100  
Washington, DC 20036  
Tel: 202.293.2828  
Fax: 202.293.2849

The time has come for the Austin City Council to reflect its diverse communities and changing demographics. The time has come for Austin to join cities across the state in 21st century democracy by adopting an all single-member district election system.

Respectfully submitted,

Luis Figueroa  
Legislative Attorney  
MALDEF

*Advancing Latino Civil Rights for over 40 Years*

[www.maldef.org](http://www.maldef.org)

## EXHIBIT F



**Richards Rodriguez & Skeith<sup>™</sup>**  
Attorneys at Law

David R. Richards  
[davidrichards@rrsfirm.com](mailto:davidrichards@rrsfirm.com)

December 9, 2011

Honorable Gonzalo Barrientos  
Chair City of Austin Charter Revision  
2906 Gem Circle  
Austin, Texas 78704

Dear Senator Barrientos,

Thank you for letting me appear before the Commission last week. With your indulgence, I wanted to briefly amplify my remarks on the subject of single member districts for the election of the Austin City Council. For all of the reasons voiced by the witnesses before the Commission, I heartily endorse the concept of single member district representation. I also heartily endorse the 10-1 plan that is under discussion. Such a plan is, in my opinion, significantly preferable as it is the best means of assuring that the minority communities will be adequately and fairly represented on the City Council. Such a plan should also be viewed most favorably by the Department of Justice in a Section 5 submission.

Thank you for your service to the community.

Sincerely,  
**RICHARDS, RODRIGUEZ & SKEITH, LLP**

David Richards



## EXHIBIT G

January 16, 2012

**The Austin City Charter Should Require  
That Any City Election District Boundaries Be Drawn By An  
Independent Citizen Commission**

If this Charter Revision Commission recommends that any members of the Austin City Council should be elected in the future from districts rather than at-large, it should also recommend that the City Charter be amended to require that the boundaries of such districts must be drawn now and in the future by an independent citizen commission.

Historically the lines of election districts have been drawn or enacted by the legislative or governing board of the affected jurisdiction. For example, in Texas, the legislature usually draws the boundaries of state legislative districts; a county commissioners' court draws the boundaries of county commissioner precincts; and in cities and school districts utilizing single-member districts, the council or board of trustees draws the districts.

However, redistricting by a legislative or governing body is dominated by personal and partisan interests instead of the public good. District boundaries are frequently gerrymandered in bizarre and contorted shapes to benefit incumbents, their friends, or a political group, candidate or interest, or to punish or defeat a particular incumbent. Neutral redistricting considerations and the public interest are overshadowed, even ignored. One of the clearest examples of such gerrymandering is found in the shape of Texas' congressional and state legislative districts. Similar bizarre shapes can be found in the redistricting plans of virtually every state and local government where the officials drawing the district boundaries are the same officials that must seek election in the approved districts.

Further problems exist. If properly done, redistricting is a complicated and time-consuming task. During redistricting, office-holders rarely have sufficient time to focus on the needs of the public in redistricting, while also dealing effectively with other issues and duties. This is especially true when an office-holder views the outcome of the redistricting process as likely to determine his or her political future. In such circumstances, redistricting simply dominates the office-holder's time and attention. It is common for substantive decisions to languish and for office-holders to trade votes on important legislation in return for another member's support or opposition to a particular redistricting plan or boundary change. In other words, the mere presence of redistricting as an issue before a legislative or governing body often affects the outcome on critical policy issues like the budget, taxes, roads, zoning, etc.

Perhaps the foremost problem, however, is the skeptical, even cynical, view that most people hold about a legislative or governing body redistricting itself. The public sees office-holders acting in their own selfish interest – no matter how many public hearings may accompany the redistricting process, or how many times the office-holder may insist that he or she is acting for the good of the people. This lack of trust has played a major role in the

unwillingness of the voters of Austin to approve a single-member district structure in the past, and will do so again unless the voters trust the redistricting process.

Several states and local governments have addressed this lack of public trust in a legislative or governing body redistricting itself by vesting the task of redistricting in a commission. The extent to which such a commission is independent of the legislative or governing body varies greatly. Commissions with only advisory authority have little effect on the final redistricting plan. Commissions with members chosen by current office-holders do little to avoid public cynicism because the members of the commission are often seen as stand-ins for the office-holders with the same political interests. To be effective both in producing redistricting plans in the public interest and in winning public trust, the commission must be truly independent of control by office-holders and personal interests that affect the integrity of the redistricting process and final plans.

I personally believe the best model for the City of Austin is found in the citizen commission utilized in California. A similar redistricting commission operates on behalf of the City of San Diego.

The independence of a commission is affected by several factors:

- Who Selects the Commission. Finding a truly fair and apolitical means of choosing the members of a redistricting commission is of critical importance. By referendum adopted in 2008, the voters of California approved a constitutional amendment creating a citizens commission to redistrict the state in 2011 and afterward. The members of the commission are chosen from among qualified voters that apply to serve on the commission. The complicated selection process utilizes the state auditor to select the 60 most qualified applicants and requires the random selection from those applicants of some commission members and a final commission composed of fourteen members that has a racial, ethnic, geographic, gender and political balance. The City of San Diego adopted its charter amendment in 2000 and utilizes municipal judges to achieve this same result.
- Who is Eligible to Serve on the Commission. In California, each applicant is required to meet several strict requirements designed to minimize use of redistricting for personal or political gain. For example, a person is ineligible to serve on the commission if she or he (or a member of their immediate family) has previously been a candidate for any elected office, or held any appointed office, or registered as a lobbyist, or served as a paid staff member or paid consultant for a political party or official, or contributed \$2,000, or more, to a candidate.
- What Restrictions Exist on the Commission Members After Serving. To avoid a member of the commission possibly using redistricting to further his or her own political ambitions, restrictions should exist on what a member may do after serving on the redistricting commission. For example, the California Constitution makes a

redistricting commission member ineligible for five years to be a candidate for elected office, or to serve as paid staff or a paid consultant for a party or office-holder, or to register as a lobbyist.

- What Legal and Neutral Criteria Must be Used in Redistricting. In any redistricting process, legal constraints on redistricting take priority. Any redistricting by the State of California or the City of Austin must comply with the United States Constitution and the Voting Rights Act of 1965. In addition to expressly recognizing the preeminence of these legal constraints, the California Constitution requires that the districts be contiguous and recognize the integrity of local governments and local neighborhoods and communities of interest. It encourages compactness. It also prohibits consideration of the residence of any incumbent or candidate for office during redistricting.

The redistricting process followed and redistricting plans adopted by the California Citizen Commission in 2011 have generally received good grades. The final plans were approved by the fourteen member bipartisan commission with only one dissenting vote. The congressional and state legislative districts are visibly more compact than in the past, more clearly follow geographical and community lines, and are devoid of obvious efforts at retaliation against any particular incumbent. There are numerous instances in which office-holders of both major parties are paired and there are many open and competitive districts. A surprising number of incumbents from both parties have chosen not to seek reelection under the new plans. However, the media reports that Republicans are divided in their opinion about the redistricting plans. Some members of the Republican Party have launched legal challenges to the state senate and congressional plans. Some Republicans have proposed a statewide referendum to overturn the redistricting plans. The result in the City of San Diego has been openly applauded, with the commission described as "behaving honorably" and the city plan described as "admirable." Apparently no litigation has erupted challenging the city plan.

If this Charter Revision Commission recommends an election system consisting wholly or partially of single-member districts, it should also recommend allowing the voters of Austin the opportunity to create an independent citizen commission for drawing the boundaries of such districts. An independent citizen commission provides the best mechanism for limiting the influence of politics and self-interest on the process. The citizens of Austin deserve a redistricting process that is transparent and designed to achieve election districts that truly reflect the public interest. The failure by this Charter Revision Commission or the city council to give the public an opportunity to create such a commission may doom any chance of convincing voters to change from the current at-large election system.

Steve Bickerstaff  
University of Texas School of Law

## **Exhibit H**

### **2012 CHARTER REVISION COMMITTEE MEETING DATES 2011 – 2012**

Thursday, September 15, 2011	City of Austin City Hall
Thursday, September 29, 2011	City of Austin Pleasant Hill Branch Library
Thursday, October 13, 2011	Austin Community College Highland Business Center
Thursday, November 3, 2011	City of Austin City Hall
Thursday, November 17, 2011	Austin Community College Pinnacle Campus
Thursday, December 1, 2011	City of Austin Carver Library
Thursday, December 8, 2011	City of Austin City Hall
Thursday, January 5, 2012	Emma S. Barrientos Mexican American Cultural Center (MACC)
Thursday, January 19, 2012	The Lord's Church of Austin
Thursday, February 2, 2012	City of Austin City Hall
Thursday, February 16, 2012	City of Austin City Hall