



**2018 CHARTER REVIEW COMMISSION
MINUTES**

**REGULAR MEETING
MARCH 12, 2018**

The 2018 Charter Review Commission convened in a regular meeting on Monday, March 12, 2018, Austin City Hall, 301 W. 2nd Street, Austin, Texas.

Chair Palvino called the Commission Meeting to order at 6:32 p.m.

Commission Members in Attendance:

Commissioner Authur	Commissioner Borgelt
Commissioner Cotera	Commissioner Hersh
Commissioner Lewis	Commissioner Musselman
Chair Palvino	Commissioner Smith
Vice-Chair Weigand	

Commission Members absent:

Commissioner Martinez-Moncada and Commissioner Ward

Staff in Attendance:

Jannette Goodall, City Clerk's Office
Myrna Rios, City Clerk's Office
Lynn Carter, Law Department

1) CITIZEN COMMUNICATION: GENERAL (3 minutes to speak)

No speakers registered.

3) NEW BUSINESS

The Commission may discuss and take action on the following agenda items:

e) Discussion on Revenue Bonds

Speakers: Paul Robbins

Paul Robbins and Commissioner Smith presented the proposed recommendation (see attachment). The recommendation was to insert \$25 million in the first blank dollar amount field and \$50 million in the second blank dollar amount field.

The motion to include the proposed recommendation with the dollar amounts listed above as an item presented during the public hearings was accepted without objection.

Action on the item was postponed to April 16, 2018 without objection.

2) APPROVAL OF MINUTES

a) Approval of minutes from February 26, 2018 and March 5, 2018 meetings.

The motion to approve the minutes from the February 26, 2018 meeting was approved on Commissioner Smith's motion, Commissioner Musselman's second on a 6-0 vote. Those voting aye were: Chair Palvino, Commissioners Arthur, Hersh Lewis, Musselman, and Smith. Vice-Chair Weigand and Commissioner Borgelt abstained. Commissioner Cotera was off the dais.

The motion to approve the minutes from the March 5, 2018 meeting was approved on Commissioner Borgelt's motion, Vice-Chair Weigand's second on a 6-0 vote. Those voting aye were: Chair Palvino, Vice-Chair Weigand, Commissioners Arthur, Borgelt, Lewis, and Smith. Commissioners Hersh and Musselman abstained. Commissioner Cotera was off the dais.

3) NEW BUSINESS CONTINUED

The Commission may discuss and take action on the following agenda items:

- a) Recommendation from the Campaign Finance and Ethics Working Group on an Independent Ethics Review Commission.

Speaker: Jason Hadavi, City Auditor's Office

Commissioner Lewis presented the revised recommendation with the following additional revisions:

Section 3.01 to include "in Texas" after "shall be a licensed attorney..."

Section 1.03 to clarify what relevant experience would include. Chair Palvino suggested the following language: "and have expertise in relevant subject matters including but not limited to..."

Discussion occurred on jurisdiction of investigations involving Boards and Commission members. Recommendation was to have the wording to allow "concurrent investigations" incorporated into the recommendation.

Section 2.01 H clarify and streamline the wording of this section.

Section 2.01 K change $\frac{3}{4}$ to $\frac{2}{3}$ of Council and change "and" to "or".

Section 1.07 D change "participate" to "actively participate".

The motion to approve the item on first reading with the amendments listed above was approved on Vice-Chair Weigand's motion, Commissioner Borgelt's second on a 9-0 vote.

- b) Recommendation from the Campaign Finance and Ethics Working Group on a Voucher Program.

The motion to approve items 1, 2, 3, and 16 on Option A: Proposed Austin Democracy Dollars Voucher Program was approved on Commissioner Cotera's motion, Vice-Chair Weigand's second on an 8-1 vote. Commissioner Borgelt voted nay.

The motion to remove the residency requirement for issuing vouchers was made by Commissioner Authur. The motion failed for a lack of a second.

Section B.1 the recommendation to change the date for sending out the vouchers to no earlier than February 1st was approved on Commissioner Smith's motion, Commissioner Lewis' second on a 7-2 vote. Those voting aye were: Chair Palvino, Vice-Chair Weigand, Commissioners Authur, Hersh, Lewis, Musselman and Smith. Those voting nay were: Commissioners Borgelt and Cotera.

- c) Recommendation from the City Auditor regarding staff of the Auditor's Office being exempt from Municipal Civil Service.

Speakers were: Jason Hadavi, City Auditor's Office and Carol Guthrie, AFSCME.

Chair Palvino recommended that the Commission take no action on this item. The recommendation was accepted without objection.

- d) Discussion on the impact of the redistricting on the 2022 Election.

Recommendation to Council to review the impact of redistricting.

3) FUTURE MEETING DATES AND AGENDA ITEMS

The Commission may discuss and identify additional meeting dates and future agenda items, topics or presentations.

The next regular Commission meeting will be on April 16, 2018. Public hearings are scheduled for March 28, 2018, April 3, 2018 and April 7, 2018.

Chair Palvino adjourned the meeting at 8:22 p.m. without objection.

§ 11. - REVENUE BONDS.

The city shall have power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing of public utilities, recreational facilities or facilities for any other self liquidating municipal function not now or hereafter prohibited by any general law of the state, and to issue revenue bonds to evidence the obligation created thereby. Such bonds shall be a charge upon and payable solely from the properties, or interest therein, acquired and the income therefrom, and shall never be a debt of the city.

All revenue bonds issued by the city for projects whose total cost exceeds \$__ million shall first be authorized by a majority of the qualified electors voting at an election held for such purpose. All power and water purchases whose total price for each project exceeds \$__ million shall also first be authorized by a majority of the qualified electors voting at an election held for such purpose.

The amounts subject to voter approval shall be modified each year with the adoption of the budget to increase or decrease in accordance with the most recently published federal government, Bureau of Labor Statistics Indicator, Consumer Price Index (CPI-W U.S. City Average) U.S. City Average. The most recently published Consumer Price Index on December 31, 2018 shall be used as a base of 100 and the adjustment thereafter will be to the nearest \$1,000.00.

The Proposed Independent Ethics Commission and the City Auditor: Which Body Should Have Jurisdiction Over Various Conflicts of Interest Investigations?

By Fred I. Lewis (3/12/2018)

The issue here is the respective investigation authority over conflict of interest and ethics investigations between the City Auditor and the proposed Independent Ethics Commission ("Ethics Commission"). The Commission's other jurisdictional areas, such as campaign finance and lobbyist disclosure, are not in question.

Currently, conflict of interest and ethics (hereafter conflicts of interest") investigations are handled under Austin City Code, Section 2-3, by the City Auditor for City officials and employees in various ways:

- 1) The City Council, City Council staff, and City Manager. The City Auditor hires an outside audit firm to investigate (because of the City Auditor's own potential conflict of interests) and the matter is heard by the Ethics Review Commission (ERC). Austin Code, Section 2-3-5(K).

Recommendation: Since the City Auditor does not handle these investigations, I believe these conflicts of interest allegations should be investigated and presented by the proposed Ethics Commission's staff.

- 2) Municipal Civil Service Employees. The City Auditor investigates municipal civil service employees for violations of city laws and policies, including ethics violations; the cases are heard by the Municipal Service Commission, not the Ethics Review Commission. Austin Code, Section 2-3-5 (L)

Recommendation: Keep the process the same, with the City Auditor investigating and the Municipal Civil Service Commission hearing the conflicts of interest allegations. These municipal civil service cases will not be heard by the Ethics Commission, so its staff should not be investigating these issues.

- 3) The City Clerk, Clerk of the Municipal Court Clerk, members of Board and Commissions, and City employees who are not members of the Civil Service. The City Auditor currently investigates conflict of interest allegations against these officials and employees, and their cases are heard by the ERC. Austin City Code, Section 2-3-5 (L). All these cases would now be heard by the proposed Commission, since there would be no remaining body to hear them.

Recommendation: I believe the 2 Clerks should be under the Commission's investigatory jurisdiction (similar to the City Manager) and the non-civil service employees under the City Auditor's (because of the intermingling of city personnel policies with these issues and the workload). The more difficult issue, for me, is whether the Board members should be under the Auditor's or Commission's investigatory authority. I believe it should be the Commission because of their specialization in conflicts and because they have their own independent attorneys.

AUSTIN INDEPENDENT ETHICS COMMISSION

Subchapter I - Commission

1.01. Commission Jurisdiction.

The Austin Independent Ethics Commission is established to impartially and effectively administer and enforce all city laws relating to ethics, campaign finance, campaign disclosure, conflicts of interest, financial statement disclosure, lobbyist regulations, revolving door, disqualification of members of city boards, and certain conflict of interest and ethics laws, and other responsibilities assigned the Commission.

Comment: The Commission's jurisdiction is drafted broadly to provide the Austin Independent Ethics Commission (EC) authority over all City ethics-related laws.

1.02. Commission Membership

The Commission shall be composed of five (5) members, whom shall be selected per Subchapter V below. The Commission shall select its chair from among its members.

Comment: Most cities have 5-7 Ethics Commissioners, rather than out current 11 Ethics Review Commissioners (ERC, because a smaller size tends to be more productive than a larger commission, in a specialized subject area such as ethics.

1.03. Qualifications.

All Commissioners shall be registered voters and be residents of Austin for at least 5 years prior to appointment. All Commissioners shall not have served for three years before their appointment as an elected official, political consultant, officer or employee in a political party (other than a precinct chair), lobbyist, City of Austin employee, City of Austin contractor, or candidate for state or local government. All Commissioners shall have demonstrated impartiality and have expertise in ethics, transparency, campaign finance, investigations, enforcement, or other relevant subject matters. All Commissioner shall attest to their support for administering and enforcing all laws under the Commission's jurisdiction; ~~no person shall be appointed who has a history of opposing the Commissions laws or similar laws.~~ Commissioners not maintaining these qualifications automatically forfeit their office and can no longer serve on the Commission in any capacity.

Comment: These qualifications are similar to those for Ethics Commissioners in other cities and for the Austin Independent Citizens Redistricting Commissioners. The period of time for various qualification can be adjusted as well as the scope of the restrictions. We thought it best city employees and city contractors not serve as Commissioners, but those provisions are not as typical.

1.04. Terms.

Members of the Commission shall serve for a term of five (5) years ending on May 1 of the fifth year of such term and until their successors are appointed and qualify; except the initial five commissioners to be appointed shall by lot classify their terms so that the term of one

commissioner shall expire at on each of the second, third, and fourth anniversaries of their terms on May 1 of such year respectively and two commissioners on the 5th anniversary of their terms on May; and, on the expiration of these and successive terms of office, the appointments shall be made for five-year terms. The initial shortened terms shall be appointed from the Commissioners from the existing applicant pool pursuant to subchapter 5. **No person may serve more than one five-year term as a member of the Commission**, provided that persons appointed to fill a vacancy for an unexpired term with three years or fewer remaining or appointed to an initial term of three years or fewer shall be eligible to be appointed to one additional five-year term.

Comment: Terms vary by City Ethics Commissions from 3-6 years generally, are typically staggered, and cities are split between allowing reappointment or not.

1.05. Vacancy and Removal

A. In the event of substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office, a member of the commission, having been served written notice and provided with an opportunity for a response and hearing, **may be removed by a vote of at least 3 of all the Commissioners.**

B. Any vacancy, whether created by removal, resignation, or absence, shall be filled by the Commission within 60 days after the vacancy occurs, from the remaining pool of applicants. At least three Commissioners must agree to the appointment.

Comments: To ensure independence, we suggest not allowing for removal of Commissioners by the Council. For accountability, we propose at least 3 votes of Commissioners be required to remove another Commissioners for specific good cause. Vacancies will be filled similarly to appointments from an applicant pool of qualified, diverse people.

1.06. No Compensation.

Members of the Commission shall serve without compensation. Members shall be reimbursed their reasonable and necessary expenses incurred in the performance of the duties of their office.

1.07. Impartiality During and After Commission Service.

No member of the Commission shall during their term of office, or for two years after their service ends:

- A. Hold or campaign for elective office;
- B. Be an officer of any political party (except precinct chair), or campaign treasurer or principal of any political committee;
- C. Permit his or her name to be used, bundle, or make contributions, in support of or in opposition, to any candidate for City office or ballot measure in a City election;
- D. Participate in any City election campaign;
- E. Be a political consultant for any candidate or campaign;

- F. Participate in any committee that provides ratings of candidates for City office; or
- G. Lobby the City or assist such a lobbyist.

Comments: To ensure impartiality, we suggest Commissioners for a period of two years after leaving not be allowed to engage in certain conduct which may lead the public to question their impartiality during their Commission service. Cities usually have provisions such as this and they vary on the period and scope of restrictions.

Subchapter II - Commission Powers and Duties

2.01. Powers and duties

The Commission shall have the following powers:

A. To administer all City charter amendments, ordinances, regulations and laws related to ethics, campaign finance, conflicts of interest, financial statement disclosure, lobbyist regulations, revolving door, disqualification of members of city boards, and other matters assigned to the Commission (collectively "Commission-administered laws");

Comment: Subsection A generally defines the scope and authority of the EC and the following subsections provide typical specific, Ethics Commission- duties.

B. To receive and maintain all documents required to be filed pursuant to Commission-administered laws, including financial statements, lobbyist filings, conflict of interest forms, campaign finance reports and data, revolving door documents and all other information. To maintain and control the City's websites and databases related to Commission-administered laws;

C. To prescribe and promulgate all forms, to publish informative publications, to conduct trainings, and to provide advice related to Commission-administered laws to the public, City employees and campaigns;

D. To provide training and assistance to City officials and employees in complying with conflict of interest, financial statement disclosure, ethics, and other Commission-administered laws.

E. To make recommendations on proposed changes to the Council concerning Commission-administered laws at least every three years;

Comment: This is a typical responsibility of Ethics Commissions and is to ensure periodic recommendations for updating the laws.

F. To annually adjust the contribution limitation thresholds required by City law to reflect any increases or decreases in the Consumer Price Index formula; to adjust any expenditure limits and participating candidate thresholds one year before any regularly scheduled city candidate election so as to ensure the purposes of the applicable provisions are served;

Comment: This provision allows the Commissioners to adjust the thresholds of participating

candidates, if any, to fulfill the purposes of the laws as times change.

G. To promulgate, amend and rescind rules and regulations to define Commission-administered laws, to establish the Commission's procedures, and to administer the Commission;

Comments: Most cities allow Commissions to promulgate regulations (consistent with the charter provisions and ordinances) to flesh out their procedures and definitions of terms. Some cities allow no council review, some allow Council to vote only up or down on Commission rules, and some require a 2/3rds Council vote to reject any Commission proposed rules. We think the approach of the Texas Ethics Commission is best: the Commission, with its expertise and independence, should promulgate the regulations on ethics. Similarly, the Independent Citizens Redistricting Commission charter amendment provided Council could not change the Commission's maps. City of Austin Charter, Article II, section 3(G).

H. To enforce all Commission-administered laws by receiving and initiating complaints, authorizing and conducting investigations, holding hearings, making findings of fact and conclusions of law, levying sanctions, fees and administrative fines, issuing and enforcing administrative orders to compel reports and other required filings, seeking and enforcing injunctions, prosecuting criminal violations, making referrals to other agencies, suing in court, and all other necessary authority to enforce Commission-administered ordinances, except the City Auditor shall have sole jurisdiction to investigate and present alleged ethics and conflict of interest violations involving current and former city employees, except only the Commission shall investigate, present and pursue alleged ethics and conflict of interest violations by the City Council, the Council members' direct staff, the City Manager, the City Clerk, and Board and task force members.

Comment: This is common except some Commissions allow the City Attorney to prosecute criminal and civil violations. We believe to ensure that the Commission's legal representation is and appears independent, that its lawyers work for the Commission. The Austin Independent Citizens Redistricting Commission was empowered to select its own private attorneys and consultants. City of Austin Charter, Article II, Section 3(H),(K)(5).

I. To administer oaths and affirmations, examine witnesses, compel depositions and interrogatories, require attendance at hearings of persons, subpoena and compel production of any and all documents, papers, books, accounts, letters, and records, and use any other lawful investigatory and evidentiary tools;

J. To appoint an Executive Director and set their salary;

K. To develop an annual budget that has the resources and staff to efficiently and effectively fulfill all the Commission's duties so that the City has an effective, well-functioning -model, state-of-the-art Commission; to recommend and approve its annual budget and make expenditures authorized in its annual budget, ~~to submit annually a proposed budget for review and approval by the City Auditor, which shall review and approve the Commission's budget.~~ The City Council shall approve the Commission's recommended is budget as is by the start of the new fiscal year and shall fully appropriate the funds to meet all the operational and other costs of the Commission, unless by 3/4th vote of the entire Council they find the Commission's recommended budget unreasonable and unnecessary. ~~To recommend as needed supplemental appropriations for additional or~~

unanticipated budget items to the City Auditor for prompt review and approval, which shall then be funded in full within 10 business days by the City Council;

Comments: It is crucial that the Ethics Commission have budget independence and sufficient staff and resources to do its job well. Some jurisdictions (California and Alabama for example) allow the Commission alone to set their budget based on a formula and review by an independent body. We think the best approach is allowing the EC to make a budget recommendation, which the City Council must approve unless 3/4th of the entire council find it unreasonable and unnecessary. ~~Auditor reviews and approves, and then the council must fund at that level.~~ The Austin Independent Ethics Commission, which does not operate continuously, –required a similar mandatory funding provision but without a budget process: “the City Council shall appropriate sufficient funds to meet the operational cost of the commission and the cost of any outreach program to solicit broad public participation in the redistricting process.” City Charter of Austin, Article II, Section 3(K)(9).

L. To have full charge and control of its office, employees, and supplies; to adopt Commission personnel and other polices, including strict conflicts and financial disclosure laws; to be solely responsible for the Commissions’ proper, impartial, and independent administration and enforcement of Commission-administered laws; to retain expert, legal, special prosecutor, and consultant services in its sole discretion; to use as appropriate in its sole discretion the services of the City ~~Auditor or other City services~~ as its deems appropriate, except all legal matters shall be handled by the Commission’s hired staff attorney(s) or hired outside counsel, and not by the City Attorney’s Office or other city staff.

Comment: We think it best that the Commission have its own attorneys and staff to ensure independence and impartiality, similar to the Austin Independent Citizens Redistricting Commission, Article II, Section 3 (K)(5).

M. To comply with all state laws, including Texas Government Code, Chapters 551 and 552, and Texas Local Government Code, Chapters 171 and 176. The Commission may adopt rules and regulations allowing greater transparency and stronger conflicts of interest, recusal, and financial statement disclosure for the Commissioners and staff; and

N. To be annually audited financially by an outside, impartial auditor as selected by the City Auditor; to have a performance audit conducted every five ~~three~~ years by an outside, impartial auditor as selected by the City Auditor, or as such other times and other outside, impartial audits as the City Auditor deems necessary.

Comment: We think this is a useful check and balance to have annual audits and periodic performance audits of the Ethics Commission by an outside, impartial auditor selected by the City Auditor, which is also an independent City entity.

2.02. Quorum.

Three (3) members of the Commission shall constitute a quorum for the conduct of all business and proceedings, except removal of the Executive Director or Commissioner.

2.03. Meetings.

The chairperson or any three (3) members of the Commission may call a meeting of the Commission.

2.04. Advisory Opinions.

Any person may request that the Commission, or the Commission may on its own initiative, issue a written advisory opinion with respect to legal requirements under any Commission-administered law. The commission shall, within 30 days, either issue a written opinion or advise the person who made the request whether and when an opinion will be issued. No person who reasonably acts in good faith on a written advisory opinion issued to them by the Commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The commission's opinions shall be public records and shall be published.

Comment: It is a typical provision to allow ethics commissions to publish written advisory opinions.

Subchapter III - Executive Director

3.01. Executive Director and Qualifications.

A. There shall be an Executive Director, appointed by the Commission. The Executive Director shall be a licensed attorney, have been a lawyer at least 5 (five) years, and have expertise in ethics, campaign finance, conflicts of interest, and/or enforcement. The position of Executive Director shall be exempt from the municipal civil service laws. The term for the Executive Director position is five (5) years. The Commission may reappoint the Executive Director for subsequent terms.

Comment: We think requiring the Executive Director to have a law license and 5 years legal experience is important in this legally technical area. Some cities' terms for Executive Director vary from 5 years.

B. The Executive Director shall not have served for three years before their appointment as an elected official, political consultant, officer or employee in a political party (other than a precinct chair), lobbyist, or candidate for state or local government.

Comment: Some sort of provision like this is common. We didn't exclude a city employee or contractor from appointment as Executive Director.

C. Notwithstanding any other law, only the Commission may remove its Executive Director for cause upon a majority vote of its entire membership.

3.02. Powers and Functions of Executive Director.

Under the supervision of the Commission, the functions of the Executive Director include:

- A. Enforcing and implementing Commission-administered laws and programs;

Comments: Subsection A provides broad general authority for the Executive Director to execute all the EC's laws and the subsections below delineate the Executive Director's specific duties. These provisions also specify when the Executive Director requires the Commission Board's approval to act.

B. Hiring, setting salaries, and removing staff; hiring and terminating vendors and contractors, including special prosecutors; supervising their work; making and enforcing contracts; drafting rules, regulations, recommendations, and policies for Commission approval; drafting advisory opinions for Commission approval; coordinating with City Departments; conducting education, assistance and information programs about Commission-administered laws; and implementing all other duties and policies of the Commission;

Comment: We thought it best the Executive Director hire the staff; some cities, however, have the Commissioners hire the Executive Director and the staff.

C. **Overseeing all investigations and enforcement; initiating and conducting investigations; issuing subpoenas and interrogatories;** drafting preliminary findings of fact and conclusions of laws as to probable cause for criminal violations; making presentations and presenting evidence at hearings; recommending lawsuits, injunctions, sanctions, and prosecutions for Commission approval, and implementing their decisions; levying on their own administrative and late fines and compelling administratively required reports and information;

D. Developing and recommending an agency budget to the Commission for approval; implementing the budget and all agency policies and procedures; disbursing Commission funds as authorized by its budget and by law; **accepting and collecting all revenue, funds, and fees due to the Commission, which includes fees and fines; implementing with Austin Energy a utility check-off and collecting all the gross funds;** accepting appropriate charitable donations and grants, as approved by the Commission's Board; and depositing funds received into the Commission's **separate** treasury account; and

Comment: This provision makes clear the Commission receives and collects certain fees and fines, shall implement a utility checkoff, and may accept grants and other appropriate funds.

E. Executing all other powers and functions pursuant to Commission-administered or other related laws, or as assigned by the Commission's Board.

3.03. Impartiality During and After Commission Service.

The Executive Director, and no member of the staff of the Commission, shall during their Commission service and for two years thereafter:

- A. Hold or campaign for elective office;

B. Be an officer of any political party (except precinct chair) or campaign treasurer or principal of any political committee;

- C. Permit his or her name to be used, bundle, or make contributions, in support of or in opposition, to any candidate for City office or ballot measure in a City election;
- D. Participate in any City election campaign;
- E. Be a political consultant for any candidate or campaign;
- E. Participate in any committee that provides ratings of candidates for City office;
- F. Lobby the City or assist such a lobbyist.

Comment: Some sort of provision like this is typical, all the provisions vary some.

Subchapter IV- Investigations and Enforcement Proceedings

4.01. Commission Enforcement Authority.

The Commission shall have authority to conduct investigations, seek injunctions, and prosecute alleged civil, criminal and other violations of all Commission-administered laws, except the City Auditor shall have sole authority to investigate and present alleged city ethics and conflict of interest violations involving current and former city employees, excluding the City Council, the Council's direct staff, the City Manager, the City Clerk, and members of all City Boards and Task Forces, whose alleged conflict of interest and ethics violations shall remain under the Commission's sole authority.

4.02 Investigations.

A. If the Commission, upon the sworn complaint of any person or on its own initiative, determines in its discretion that there is sufficient cause to conduct an investigation, it shall investigate alleged violations of Commission-administered laws.

Comment: Broad authority is allowed to the Commission to investigate, which is common, and the investigation stage, subsection b below, is confidential.

B. The investigation shall be conducted in a confidential manner consistent with the Commission's responsibility to conduct a thorough investigation. Records of any investigation shall be considered confidential information pursuant to law enforcement, attorney-client, work product, and other pertinent privileges. The unauthorized release of confidential information shall be sufficient grounds for the termination of the employee or removal of the Commissioner responsible for the release.

C. The Executive Director, or their designee, may subpoena witnesses, compel their attendance and testimony for an investigation or for a hearing, administer oaths and affirmations, compel answers to written interrogatories, take evidence, and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or exercise of its powers.

Comment: We suggest that the Commission can conduct depositions and compel evidence during the investigation stage as well as for hearings. This should help the Commission get needed evidence and facilitate settlements.

4.03. Preliminary Hearing.

A. If the Executive Director determines that there is a reasonable basis to believe that that there has been a violation of Commission-administered laws involving criminal penalties, injunctive relief, or civil sanctions, the Executive Director shall cause a preliminary hearing notice of alleged violations to be sent to the alleged violators. The persons alleged to have committed the violations shall receive at least 10 business days' notice of the hearing, a copy of the complaint, and be informed of their right to be present in person and represented by counsel. All preliminary hearings shall be held in accordance with the Commission's procedures and be public.

B. The Commission shall determine at the preliminary hearing whether there is probable cause to find a violation or need for injunctive relief; and if there is such a finding, the Executive Director shall prosecute the violation or seek an injunction. Notwithstanding the above, if the Commission finds an emergency basis to seek immediate injunctive relief, it may do so upon a written finding by the Commission without any or shortened notice, at its discretion, and file for such injunctive relief in any court of competent jurisdiction.

Comment: We suggest the Commission have the power to seek injunctive relief if warranted to stop violations. This is fairly common.

4.04. Final Hearings.

A. All criminal final hearings shall be heard by the City's Municipal Courts and prosecuted by the Commission's attorneys.

Comment: Campaign finance and ethics violation are required by state law at this time to be criminal Class C Misdemeanors (a fine up to \$500), and therefore, should be heard in Municipal Court.

B. Injunctive or mandamus actions may be heard in any court of competent jurisdiction and handled by the Commission's attorneys.

C. All civil sanctions shall be heard by the Commission at public, evidentiary final hearings in accordance with Commission procedures. There shall be notice to the respondent of at least 15 business days with a copy of the complaint and a brief summary of the evidence. The Commission shall issue findings of fact based on a preponderance of the evidence and conclusions of laws, and its sanctions or order to compel reports, statements, documents or other information required by law by a certain date.

~~C.D.~~ The Commission shall have no jurisdiction to hear matters under the jurisdiction of the City's Municipal Civil Service Commission.

4.05. Penalties, Sanctions, Fines, and Other Relief

A. **Criminal Penalties.** A person commits an offense who violates intentionally and knowingly violates any Commission-administered law, or who causes any other person to violate any such law, or who aids and abets any other person in a violation. An offense under this Chapter is a Class C misdemeanor punishable as provided by state law. Each failure to file a report, failure to disclose or provide required information, failure to perform a required act, or commission of a prohibited act, is a separate offense. Each day that a violation persists is a separate offense. The penalties provided for in this section are in addition to any other remedies available under city or state law.

Comments: These provisions are similar to Austin's recent language for criminal penalties under the new lobbyist disclosure ordinance. Most cities in other states have higher fines than \$500, but that is the maximum allowed for cities under Texas state law. We also required that a violation be intentional or knowing, i.e., the person knew they were doing the act (not that they knew it was illegal). Many city criminal laws are strict liability, meaning violations occur without knowledge or negligence.

B. **Injunctive Relief.** Injunctive and mandamus relief in court may be sought to enforce an ongoing or threatened violation of Commission-administered laws. A violation of Commission-administered laws is presumed as a matter of law to be irreparable harmful without any other evidentiary showing.

C. **Sanctions.** If the Commission determines that a civil violation has occurred, or removal or recall from office is warranted, the Commission may impose or recommend the following sanctions as it deems appropriate: a letter of notification, a letter of admonition, a reprimand, a recommendation of removal from office or a recommendation of suspension from office, letter of censure, or a recommendation of recall. If the Commission recommends removal or recall, the Executive Director shall take all actions, including filing suit in a court of competent jurisdiction, to accomplish that directive. The Commission shall delineate when these sanctions are appropriate by written rules or policies.

Comment: The civil and other sanctions come from Austin City Code Article 2-7-48(C).

D. **Compelled Required Commission Documents.** The Executive Director may issue an administrative order to compel any person to produce reports, statements, documents or other information to the Commission within a reasonable time-period. The Commission may file an action in any court of competent jurisdiction to enforce such order.

E. **Late Fines.** A person responsible for filing a late report, statement, document, information, or fee is liable to the City for payment of a late fee. Reports and documents subject to a fee, for which the fee is not paid timely, are considered filed late and in violation.

The amount of the late filing fee shall be set by rules and regulations of the Commission. A late filing fee is not penal in nature and is in addition to any other available sanction or remedy for a late filing of a report. A person's payment of a late fee under this section does not

discharge a person's liability for a criminal offense under this chapter. The Executive Director shall determine whether a report under this chapter is late. On making a determination that a report is late, the Executive Director shall promptly send a notice of the determination to the person responsible for the filing, notifying the person of the fee for late filing or fee payment, and charging the late fee. If the fee and late fee is not paid before the 10th day after the date on which the notice is received by the person responsible for filing the report, the person is liable to the City for additional late fees periodically as determined by rules and regulations of the Commission.

Subchapter V- Selection of Commissioners

5.01. Publicizing Initial Commissioner Application Process.

No later than December 1, 2018, the City Auditor shall initiate and widely publicize a Commissioner application process, open to all residents who meet the requirements of Section 1.03 above, in a manner that promotes a diverse and qualified Commissioner applicant pool. The City Auditor shall take all reasonable and necessary steps to ensure that the pool has sufficient applicant numbers, diversity, and qualifications. The Council shall provide all funding needed for the City Auditor to fulfill these duties. This process shall remain open until February 28, 2019.

Comments: Most jurisdictions' Ethics Commissioners are appointed by a variety of elected officials, such as mayors, council, city attorneys, auditors etc. Atlanta, and some other cities have commissioners recommended from outside entities. For example, in Atlanta, one ethics commissioner each is recommended by the local League of Women Voters, Chamber of Commerce, 6 area Universities collectively, the Atlanta Bar, the historically African-American local Bar, the Business League, and Planning Advisory Board. We recommend using ~~an~~ abbreviated, modified version of the process used to select the Austin Independent Citizens Redistricting Commissioners, which we believe worked well here and has worked well in other jurisdictions with independent redistricting commissions. ~~To shorten the Austin Independent Redistricting Commission selection process, we recommend that the 3 outside auditor panel be eliminated and the City Auditor be allowed to appoint 3 of her experienced, disinterested auditors.~~

5.02. Initial Applicant Review Panel.

No later than ~~On February 15, January 15,~~ 2019, the City Auditor shall appoint 3 qualified experienced independent staff-auditor contractors, who shall begin reviewing all applications. The qualified independent auditors shall each be licensed by the Texas Board of Public Accountancy and have been a practicing independent auditor for at least five years prior to appointment. In addition, each ~~These~~ auditors shall not have served for three years before their appointment as an elected official, political consultant, officer or employee in a political party (other than a precinct chair), lobbyist, or candidate for state or local government. These auditors shall constitute the Applicant Review Panel. The Applicant Review Panel ~~y~~ first shall remove those applicants who lack the qualifications required in Section 1.03. Thereafter, they shall select an applicant pool of 12 by no later than April 15, ~~March 14,~~ 2019. The 12 selected applicants shall be the most qualified applicants on the basis of expertise set out in Section 1.03. The

members of the Applicant Review Panel shall not communicate directly or indirectly with any elected member of the City Council, Council staff, City management, or city employees, or their representatives, about any matter related to the selection process or any applicant. The City Council shall fund the auditor's services.

5.03. Selection of 5 Initial Commissioners.

A. No later than April 20, March 15, 2019, the City of Austin Auditor shall randomly draw at a public meeting three names from the pool of 12 selected applicants. These three individuals shall serve on the Independent Ethics Commission.

B. No later than May 30, April 15, 2019, the three selected Commissioners shall review the remaining names in the pool of applicants, and from that pool, shall appoint two applicants to the commission. These two appointees must be approved by at least two of the three commissioners. These two appointees shall be chosen to ensure that the Commission has the full complement of expertise specified in Section 1.03 and to reflect the diversity of the City of Austin.

(10) Once constituted, the Commission shall proceed with its operations no later than June 15, May 1, 2019.

5.04 Subsequent Selection of Commissioners.

No later than October 1 of 2023, and every five years thereafter, the City Auditor shall initiate and widely publicize a Commissioner application process as specified in Section 5.01, which shall remain open till the subsequent January 31. No later than On that January 31, the City Auditor shall appoint an Applicant Review Panel of 3 qualified experienced independent staff auditors, who shall begin reviewing all applications pursuant to the process in Sections 5.02 and 5.03. No later than ~~the subsequent~~ March 15, the City of Austin Auditor shall randomly draw at a public meeting three names from the pool of 12 selected applicants per the process in Section 5.03. Two of these individuals shall serve on the Commission as of the subsequent May 1, and one individual the following May. The next two term-limited Commission openings shall be selected from the new applicant pool per Section 5.03. Should any initial or subsequent applicant pool contain less than 4 remaining applicants willing and able to serve, the Commission shall direct the City Auditor to establish an Applicant Review Panel of 3 qualified independent auditors consistent with Sections 5.02 and 5.03 this Chapter to replenish the applicant pool to have 12 applicants within 4 months of such request.

Campaign Finance Committee Recommended Draft (March 12, 2018)
(Highlights below are changes pursuant to our preceding discussions since February 26)

I. Austin Democracy Dollars Program

(A) Austin Democracy Dollars Program’s Purpose.

Democracy Dollars are vital to ensure all the people of Austin have equal opportunity to participate in political campaigns and be heard by candidates, to strengthen democracy, to fulfill the purposes of single-member districts, to enhance candidate competition, and prevent corruption.

(B) Issuance of Democracy Dollars.

(1) Amount and Delivery. On the first business day of February of the year in every municipal election year, the Austin Independent Ethics Commission (hereafter “Commission”) shall mail to each person who was on or about that January 1 duly and actively registered to vote in the City of Austin, at his or her address in the voter registration records, two \$25 in Democracy Dollars Voucher ("Democracy Dollars") for each city-elected position, council and mayoral that the person may vote for in Austin, for a maximum of four \$25 Democracy Dollars Vouchers. However, the Commission may deliver Democracy Dollars online or in other manners if the Commission so elects. Thereafter, the Commission shall regularly issue two \$25 Democracy Dollars Vouchers for each city-elected position that the person may vote for in Austin, to any person becoming a duly registered City of Austin voter after that January 1st, up until the third Tuesday in November of the election year. Any adult natural person who resides more than 30 days in the City of Austin, and who is a registered voter, or is eligible to vote under state law, may opt in to the Program and obtain an equivalent number of Democracy Dollars Vouchers by application to the Commission. Any such eligible adult may request Democracy Dollars be mailed or emailed to an address other than that indicated in the voter registration records, or be delivered at the Commission offices, and as soon as the Commission shall have developed a secure system for such distributions of Democracy Dollars, including distribution online, in person, or to an address not listed in the voter registration records. No resident outside Austin, no corporation or other non-human entity, no person under the age of 18 years, and no person ineligible to vote under state law, may receive a Democracy Dollars Voucher. The Commission shall set by regulations the delivery dates, redemption dates, and other deadlines for Democracy Dollar Vouchers for special elections.

(2) Form of Democracy Dollars. Each \$25 Democracy Dollar Voucher shall state the holder's name, a unique voucher identification number, the election year, and words of assignment with blank spaces for the holder to designate a candidate and sign the holder's name, and may include such information the Commission deems helpful for verifying signatures such as the voter identification number and barcode, in substantially the following form:

\$25	1 of __	Democracy Dollars for 20xx Election	Jane Q. Public
On [insert date] _____ / _____ / _____, 20xx, I, Jane Q. Public, a resident of the City of Austin, assigned this Democracy Dollars Voucher to a candidate for mayor or city council whose district they reside in named _____ .			
I attest that I obtained this Democracy Dollars Voucher properly and make this assignment freely, voluntarily and without duress or in exchange for any payment of any kind for this assignment, and not for any consideration of any kind, and that I am aware that assignment does not guarantee availability of funds and is irrevocable. Assignment is complete upon delivery to Austin’s Independent Election Commission, the named candidate, or her or his			

registered representative. Sale/transfer for consideration of this Democracy Dollars Voucher is strictly prohibited and constitutes a local and state crime. The Voucher may be redeemed only by qualifying candidates and only if such candidate has complied with additional contribution limits and restrictions and if the funds are available.

Signed: _____ on _____, 20xx.

Jane Q. Public

voter ID and bar code

Voucher ID #123,456,789

(3) Assignment of Democracy Dollars. Democracy Dollars Vouchers are only transferable or assignable as stated herein. Any person properly obtaining and holding a Democracy Dollars Voucher may assign it by writing in the name of the assignee candidate, signing the holder's name on and dating the Democracy Dollars Voucher where indicated thereon, and delivering the signed and dated Democracy Dollars Voucher to the candidate, to the Commission, or to any candidate's representative who shall be registered for this purpose with the Commission. Delivery may be by mail, in person (by any person the holder requests to deliver the voucher), or electronically via a secure online system. The Commission shall establish a secure online system for delivery of Democracy Dollars Vouchers to the Commission (without prejudice to any eligible person's right to receive Democracy Dollars Vouchers in the mail at his or her option) no later than prior to the 2022 election cycle, unless the Commission determines this target date is not practicable; and in any event no later than the 2024 election cycle.

(4) Limitations on Assignment. A person may only assign a Democracy Dollars Voucher to a candidate who is on the ballot, has chosen to participate in the Austin Democracy Dollars Voucher Program and who has filed a signed statement of participation and pledge with the Commission as described below. No Democracy Dollars Voucher may be assigned after the day of the runoff election, or to any candidate filing for participation who then fails to qualify, loses, or becomes unqualified for the position sought or for the Program. A candidate or registered candidate representative may seek assignment in person or through representatives or by assisting a voter to access the Commission secure online system. A valid assignment is irrevocable. A person may assign \$25 Democracy Dollars Vouchers only to candidates in a council district they reside in and \$25 Democracy Dollars Vouchers for Mayoral candidates, if the council or mayoral election is on the ballot, in a given election cycle. Assignment or transfer for cash or any consideration is prohibited and constitutes a Class C misdemeanor under City law as well as state crimes. Offering to purchase, buy or sell a Democracy Dollars Voucher is prohibited and constitutes a Class C Misdemeanor under City law as well as state crimes. No person may give or gift a Democracy Dollars Voucher to another person, except by assigning it to a candidate as provided herein. Democracy Dollars Vouchers have no cash value and are not assets, income or property of the holder. A Democracy Dollars Voucher may not be assigned by proxy, power of attorney or by an agent.

(5) Assignor Assumes Certain Risks. A Democracy Dollars Voucher expires if the holder is no longer resident in the City of Austin, and in the case of Democracy Dollars Vouchers issued for a city council election, no longer is a resident of a city council district whose council member will be elected in the pending city election, or no longer is eligible to vote under state law, if such circumstances take place prior to the assignment to a qualified candidate. The holder of a Democracy Dollars Voucher assumes the risk that he or she may change his or her mind after assignment, or that the Democracy Dollars Voucher may not have use or be redeemed due to any contingency, including but not limited to unavailability of Program funds; the assignee candidate reaching the Democracy Dollars Voucher Aggregate limit, a candidate's death, disqualification,

dropping out, failure to redeem or use the Democracy Voucher; a candidate not qualifying or violating the terms of qualification; or otherwise.

(6) Democracy Dollars Voucher Replacement. The Commission shall establish a secure process for replacing lost Democracy Dollars Vouchers.

(7) Repeal. All Charter provisions and Ordinances inconsistent with this Charter Amendment are repealed, including Austin City Code, Chapter 2-2, Article 2.

(C) Candidates Qualify by Showing Grassroots Support and Agreeing to Contribution Limits and Other Requirements

(1) Only Qualified Candidates May Redeem Democracy Dollars Vouchers. Only a candidate who has filed with the Commission for participation in the Democracy Dollars Voucher Program may receive assignment of a Democracy Dollars Voucher. Only a candidate certified as qualified by the Commission may redeem a Democracy Dollars Voucher. Only a person eligible for and seeking the office of Mayor or City Council shall be eligible to file for Program participation.

(2) Candidate Requirements for Program. To seek qualification, the candidate shall file with the Commission, on or after July 1st the year before an election year and within four weeks after filing a declaration of candidacy as determined by the Commission, a sworn statement attesting to his or her intent to participate, asserting that the candidate shall timely file or has filed a formal declaration of candidacy for the office indicated, and that the candidate shall comply with Program requirements and applicable campaign laws. Such Program requirements are that the candidate: shall comply with campaign laws and contribution limits; shall not give their campaign a contribution (including a loan) greater than the individual contribution limit in Austin City Charter Article III, Section 8; shall not knowingly themselves, or through their agents, solicit money for or on behalf of any political action committee, political party, or any organization that will make an independent expenditure for or against any City of Austin candidate within the same election cycle (for the purposes of this section, appearing as a featured speaker at a fundraising event for a committee or entity, or similar activities, shall constitute soliciting money for such committee or entity); and shall take part in at least three public debates for general and runoff elections each (as defined by the Commission, which may waive or reduce at its discretion the number of debates, if a qualifying candidate makes all reasonable efforts to participate in debates and similar public events). Further Program requirements are that a participating candidate for Mayor shall not solicit or accept total contributions from any individual or entity in excess of the contribution limits per election specified in Article III, Section 8 of the Austin City Charter, and a participating candidate for City Council shall not solicit or accept total contributions from any individual or entity in excess of a total of half of the contribution limits per election specified in Article III, Section 8 (including any contribution used to qualify for Democracy Dollars, but excluding the value of Democracy Dollars assigned to such candidate).

(3) Qualifying Contributions and Signed Petitions. To qualify for the Democracy Dollars Program, candidates shall show to the Commission's satisfaction that they have received at least the following numbers of signed petitions and "Qualifying Contributions" of at least \$10 but not more than the Program contribution limit for the office sought provided in (C)(2) above from individual adults (18 years of age or older), who are human natural persons residing in the City of Austin, and eligible under federal law to make political contributions: Mayoral candidates, at least 400; and City Council candidates, at least 150. The Commission shall maintain a list of qualified candidates and make it readily accessible to the public, including by publishing it on the Commission's website. The Commission shall establish rules for campaign disclaimers as to

whether candidates are participating or not in the Program. After every election cycle and public hearings, the Commission may adjust the Qualifying Contribution and signed petition thresholds as circumstances change to ensure that the purposes of the Program are fulfilled.

(4). Seed Money. Each qualifying candidate shall receive seed money of \$5000 within 5 business days of qualifying for the program pursuant to (C)(3) above. After every election cycle and public hearings, the Commission may adjust the seed money amount as circumstances change to ensure that the purposes of the Program are fulfilled. The seed money a qualifying candidate receives shall count against their voucher aggregate limit.

(5) Voucher Aggregate Limits. Participating candidates shall comply with all campaign laws and not exceed the following Voucher Aggregate Limits for Vouchers on hand which the candidate shall have allocated to the general or runoff election: Mayor \$300,000 for the general election, and \$600,000 total (for both general election and runoff election); and City Council, \$75,000 for the general election, and \$150,000 total (for both general election and runoff election). After every election cycle and public hearings, the Commission may adjust the voucher aggregate limit thresholds for inflation, or as circumstances change, to ensure that the purposes of the Program are fulfilled.

(6) Further Limits on Redemption. A qualified candidate may collect Democracy Dollars Vouchers for the runoff election before the general election takes place and allocate same to the runoff election, but may not redeem Democracy Dollars Vouchers for the runoff election unless such candidate advances to the runoff election.

(7) Loss of Qualification. A candidate loses qualification for the Program by publicly announcing withdrawal, abandoning the race, failing to advance to the runoff election, or if the Commission finds sufficient material violations of election laws or Program requirements such as violation of contribution limits, or fraudulent or attempted fraudulent transfer or assignment of Democracy Dollars Vouchers.

(8) Redemption of Democracy Dollars Vouchers. The Commission shall redeem Democracy Dollars Vouchers only after verifying the assignment by ensuring the Voucher was issued to an eligible person for contributing to that particular city-elected position, and verifying the signature written in the words of assignment, and only if redemption shall not put the candidate over the Voucher Aggregate Limit and only if Program funds are available. To verify signatures the Commission may employ other governmental agencies or others to verify signatures. The Commission shall redeem Democracy Dollars Vouchers on published regular redemption dates that shall be no less frequent than twice a month and may redeem Vouchers on other dates notified in advance if the Commission deems it practicable. The Commission shall not redeem any Democracy Dollars Voucher received on or after the general election day from any candidate who doesn't qualify for the runoff, or received on or after the runoff election day from any candidate in the runoff.

(9) Limits on Use of Voucher Proceeds. Candidates shall use Democracy Dollar Voucher funds only to pay their own campaign costs or debts, as defined by state and local laws, for the relevant election, and may not use such proceeds after a reasonable period (to be set by the Commission) following the election to pay campaign debts incurred before the election. Candidates shall not use Democracy Voucher proceeds for any cash payments or in violation of any law; nor to pay the candidate or family members within the 3rd degree of consanguinity and affinity for any goods, services, or things of value; nor pay any entity in which the candidate, or family members within the third degree of consanguinity and affinity, holds a five percent or greater ownership interest; pay any amount over fair market value for any goods, services or things of value; pay

any penalty or fine; or pay any costs related to contested elections, defense of campaign or ethics violations, inaugurations, or officeholder expenses; or donate any amount to another candidate, political committee, or non-profit organization. The Commission may promulgate regulations defining what constitutes campaign use that is stricter than state law. The candidate and their campaign are liable for their campaign's misuse of Democracy Dollars. The Commission may establish by rules a liquidated damages clause in participating candidates' agreements to participate in the Program.

(10) Return of Democracy Voucher Proceeds. A candidate who has redeemed a Democracy Dollars Voucher, then withdraws, dies, becomes ineligible, loses qualification, or is eliminated in any general or runoff election, or wins a general election, shall within a reasonable period, as defined by the Commission, pay all reasonable and necessary debts and obligations, account to the Commission and restore to Commission the Program "Unspent Democracy Voucher Proceeds." The Commission shall define "Unspent Democracy Dollars Voucher Proceeds" and the return process by rule.

(D) The Commission's Authority and Penalties.

(1) Rules and Regulation. The Commission has full authority on its own without approval of the City Manager or Council to pass rules and regulations to fulfill the purposes of the Democracy Dollars Program.

(2) Enforcement. The Commission has full authority on its own to enforce this Program through investigations, hearings, penalties, fines, sanctions, injunctive relief, and any other remedies.

(3) Criminal Referrals. The Commission shall refer any possible criminal violation of state law related to the Program to the appropriate law enforcement authorities for prosecution.

(4) Penalties and Remedies. A person commits an offense who violates intentionally and knowingly violates any Program provision, or who causes any other person to violate any such law, or who aids and abets any other person in a violation. An offense under this Article is a Class C misdemeanor punishable as provided by state law. Each failure to perform a required act, or commission of a prohibited act, is a separate offense. Each day that a violation persists is a separate offense. The penalties provided for in this section are in addition to any other remedies available under city or state law. The candidate and their political committee are both personally liable for all penalties, fines, and fees.

(5) Should Commission Not Exist. If the Commission does not or no longer exists, then its duties for the Program shall be assumed by the City Clerk or the Commission's successors.

(E) Funding and Spending Limits.

(1) The Commission shall establish a Democracy Dollars Program dedicated fund account into which all the Program's proceeds shall be deposited. This account shall be under the Commission's discretion and full control.

(2) These funds shall be deposited promptly into the Democracy Dollars Program dedicated fund account for the exclusive use of funding Democracy Dollars Vouchers: all candidate filing fees; all campaign finance, lobbyist reporting, and ethics fines, late fees, and criminal penalties; all donations and grants for the Program allowed by the Commission; interest or other gains from the dedicated fund, and any other funds appropriated or designated for the Program.

(3) The Council shall provide the Commission the funds it needs to effectively administer and publicize the Program.

(4) At the beginning of each calendar year, the City of Austin shall transfer in general revenue funds \$1.5 million, as well as all other funds, to the Democracy Dollars Program fund.

(5) The Commission may use Austin Energy's mailings to publicize the Program.

(6) If there is an excess of funds in the dedicated fund for the Program's current or reasonably foreseeable future use of Democracy Dollars, the Commission, at its discretion, may transfer the excess to the City's general fund.

(F) Implementation Date. The Democracy Dollars Program shall be implemented in time for the 2022 election cycle.

Draft