



**2018 CHARTER REVIEW COMMISSION
MINUTES**

**REGULAR MEETING
APRIL 16, 2018**

The 2018 Charter Review Commission convened in a regular meeting on Monday, April 16, 2018, Austin City Hall, Room 1029, 301 W. 2nd Street, Austin, Texas.

Chair Palvino called the Commission Meeting to order at 6:35 p.m.

Commission Members in Attendance:

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

Commission Members in Absent: Commissioners Authur and Martinez-Moncada

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)
Speakers were: Peck Young, Debbie Russell and Paul Robbins.

- 2) **APPROVAL OF MINUTES**

- a) **Approval of minutes from March 12, 2018 Regular meeting, March 28th, April 3rd, April 7th, April 12th, 2018 Public Hearings.**

The motion to approve the minutes from the March 12, 2018 Regular meeting, March 28th, April 3rd, and April 7th, 2018 Public Hearings was approved without objection on Commissioner Borgelt's motion, Vice-Chair Weigand's second.

The April 12th, 2018 Public Hearing was cancelled, no minutes were prepared.

- 3) **DISCUSSION AND POSSIBLE ACTION ITEMS**

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

- a) **Proposed amendments to the Independent Ethics Review Commission.**

Speaker: Brian Thompson.

A motion to revise Section 1.02 to read "The Commission shall be composed of five (5) members, who shall be selected per Subchapter V below. The Commission shall select its chair from among its members." was approved on Commissioner Lewis' motion, Chair Palvino's second on a 9-0 vote.

A motion to revise Section 1.03 to read “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 relevant subject matters, which may include ethics, conflicts of interest, transparency, campaign finance, investigations, or enforcement. All Commissioner shall attest to their support for administering and enforcing all laws under the Commission’s jurisdiction. Commissioners not maintaining these qualifications automatically forfeit their office and can no longer serve on the Commission in any capacity.” was made by Commissioner Lewis and seconded by Vice-Chair Weigand.

A friendly amendment to add “civil rights and labor” to the relevant subject matters was made by Commissioner Lewis and seconded by Commissioner Smith. The amendment and friendly amendment were approved on a 9-0 vote.

A motion to revise Section 1.02 and 5.01 to increase the size from “5” to “7” members was approved on Commissioner Borgelt’s motion, Vice-Chair Weigand’s second on a 9-0 vote.

A motion to revise Section 1.03 by striking the word “lobbyist” and inserting at the end of the sentence after “state and local government, with “and shall not have lobbied the City or assisted such a lobbyist” was approved on Commissioner Borgelt’s motion, Commissioner Musselman’s second on a 9-0 vote.

A motion to revise Section 5.01 failed on Chair Palvino’s motion, Vice-Chair Weigand’s second on a 3-5-1 vote. Those voting aye were: Chair Palvino, Vice-Chair Weigand and Commissioner Lewis. Those voting nay were: Commissioners Borgelt, Cotera, Hersh, Smith and Ward. Commissioner Musselman abstained. The amendment was to have Section 5.01 read: “The members of the commission shall be selected as follows:

- A. Four (4) members shall be appointed by a two-thirds (2/3) vote of the members of the City Council; and The fifth member shall be appointed by a vote of three of the other four (4) members, subject to confirmation by the City Council.

A motion to revise Section 1.05 by to read:

“1.05. Vacancy and Removal

- A. In the event of substantial neglect of duty, gross misconduct in office, or inability or failure 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 four (4) of the seven (7) Commissioners.
- B. Any vacancy, whether created by removal or resignation shall be filled for the term by the Commission within 60 days after the vacancy occurs. At least four Commissioners must agree to the appointment.”

The motion was approved on Commissioner Smith’s motion, Commissioner Cotera’s second on a 9-0 vote.

A motion to revise Section 1.07 D and add “actively participate” was made by Commissioner Musselman, Commissioner Borgelt’s second, but no vote was taken.

A motion to revise Section 2.01 D to read: “D. To prescribe and promulgate forms, publish informative publications, conduct trainings, and provide advice related to Commission-

administered laws to the public, City employees and campaigns;" was approved on Commissioner Borgelt's motion, Commissioner Lewis' second on a 9-0 vote.

A motion to revise Section 2.01 H to read: "H. To enforce all Commission-administered laws by receiving and initiating complaints, authorizing and conducting investigations, holding hearings, making findings on violations of any Commission-administered laws, levying appropriate civil sanctions, fees and administrative fines, issuing and enforcing administrative orders to compel reports and other required filings and all other necessary authority to enforce Commission-administered ordinances. The City Auditor shall have sole jurisdiction to investigate and present alleged ethics and conflict of interest violations involving current and former city employees, and the City Auditor shall have initial and concurrent jurisdiction with the Commission to investigate City Board and task force members' alleged ethics and conflicts of interest violation; except the Commission shall have sole jurisdiction to 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, the Clerk of the Municipal Court, and any other employee who is not a member of the Municipal Civil Service or former employee." was approved on Vice-Chair Weigand's motion, Commissioner Cotera's second on a 9-0 vote.

A motion to revise Section 2.01 I to read: "I. To bring a civil action to enjoin violations of or compel compliance with the Commission-administered laws;" was approved on Commissioner Lewis' motion, Commissioner Cotera's second on a 9-0 vote.

A motion to revise Section 2.01 J to read: "J. To investigate and report criminal violations and to make referrals to Municipal Court and other appropriate jurisdictions." was approved on Commissioner Lewis' motion, Commissioner Cotera's second on a 9-0 vote.

A motion to revise Section 2.01 J (2) and renumber accordingly to read: J. To administer oaths and affirmations, examine witnesses, compel attendance of persons and production of documents, papers, books, accounts, letters, and records by subpoena;" was approved on Commissioner Lewis' motion, Commissioner Borgelt's second on a 9-0 vote.

A motion to revise Section 2.01 L to read: "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 as its deems appropriate. All legal matters shall be handled, at the Commission's sole discretion, by the City Attorney's office, the Commission's attorneys, or outside counsel." was approved on Commissioner Borgelt's motion, Commissioner Weigand's second on a 9-0 vote.

A motion to revise Section 2.01 N to read: N. To be regularly audited financially by an outside, impartial auditor as selected by the City Auditor; to have a performance audit conducted every five 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." was approved on Vice-Chair Weigand's motion, Commissioner Musselman's second on a 9-0 vote.

A motion to revise Section 2.01 H to strike "and former" from the City Auditor's investigative jurisdiction, was approved on Commissioner Lewis' motion, Commissioner Borgelt's second on a 9-0 vote.

A motion to revise Section 3.02 C to read: C. Overseeing all investigations and enforcement; initiating and conducting investigations; issuing subpoenas; drafting preliminary findings of fact and conclusions of laws; making presentations and presenting evidence at hearings; recommending lawsuits, including lawsuits for injunctions for Commission approval, and implementing their decisions; recommending referrals for criminal prosecution; prosecuting Class C misdemeanors in Municipal Court; recommending civil sanctions for Commission approval, and implementing their decisions; levying on their own administrative and late fines and compelling administratively required reports and information;” was approved on Commissioner Borgelt’s motion, Vice-Chair Weigand’s second on a 9-0 vote.

A motion to adopt the following revisions to Section 4 was approved on Commissioner Borgelt’s motion, Vice-Chair Weigand’s second on a 9-0 vote. The revisions were:

To revise Section 4.01. Commission Enforcement Authority to read: “The Commission shall have authority to conduct investigations, seek injunctions, and prosecute alleged civil violations of all Commission-administered laws. Further, the Commission shall have the authority to refer criminal violations to Municipal Court and other appropriate jurisdictions. The Commission’s investigatory authority on alleged conflicts of interest and ethics violation shall be limited as specified in Section 2.01(H).”

To revise Section 4.02 C to read: “C. The Executive Director, or their designee, may compel the attendance of persons and production of documents, papers, books, accounts, letters, and records by subpoena.”

To revise Section 4.03 to read:

“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, the Executive Director may refer the matter to the City Attorney for prosecution or recommend the appointment of a special prosecutor.

B. If the Executive Director determines that there is a reasonable basis to believe that that there has been a violation of Commission-administered laws requiring injunctive relief, or involving 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.

C. The Commission shall determine at the preliminary hearing whether there is probable cause to find a criminal violation or need for injunctive relief; and if there is such a finding, the Executive Director shall prosecute the criminal violation or seek an injunction in a court of competent jurisdiction. 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.”

To revise Section 4.04 A to read: “A. All criminal final hearings shall be heard by the City’s Municipal Courts.”

To revise Section 4.04 C to read: “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 respondent shall be entitled to receive a copy of the evidence held by the Commission. 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.”

To add a new Section 4.05 A and renumber remaining sections to read: “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.”

A motion to revise Section 3.03 D to be consistent with the change in 1.07 D to state e “actively participate” was approved on Commissioner Musselman’s motion, Commissioner Borgelt’s second on a 9-0 vote.

- b) Proposed amendments to the Public Campaign Voucher Program.
Language to indicate voucher participants will be audited will be included in the final document.
- c) Recommendation on the proposed language relating to Revenue Bonds.
Commissioner Ward read into the record proposed language. "All power and water expenditures whose total price for each project exceeds \$50 million should have at least two public hearings before final approval from city council in addition to going through the appropriate boards and commissions. In addition, Austin-owned projects for major utility-related projects that require over \$100 million in revenue bonds should require a city election for final approval."

A motion was made by Commissioner Borgelt, based on the original proposal by Mr. Robbins with public hearing language to be drafted at a later time, and seconded by Commissioner Hersh to insert \$100 million to be addressed by at least two public hearings and \$200 million to require approval of voters, and to substitute “electricity” for “power”. The motion was to approve Mr. Robbin’s proposed language with revisions to the second paragraph to read: "All revenue bonds issued by the city for projects whose total cost exceeds \$100 million shall not be considered by city council until at least two public hearings are held. All electricity and water purchases whose total price for each project exceeds \$200 million shall also first be authorized by a majority of the qualified electors voting at an election held for such purpose.” The amended recommendation was approved on a 7-1-1 vote. Chair Palvino voted nay. Vice-Chair Weigand abstained.

- d) Recommendation on Planning Commission terms.
The following recommendation was approved on Commissioner Lewis’ motion, Commissioner Borgelt’s second on a 9-0 vote. The recommendation was to forward the following language to Council:
“There shall be established a planning commission which shall consist of citizens of the City of Austin who must be registered voters in the city and must have resided within the city for one year next preceding their appointment. The planning commission shall have a number of

members equal to the number of members on the council plus two (2) additional members, a minimum of two-thirds of the members who shall be lay members not directly or indirectly connected with real estate and land development. The city manager, the chairperson of the zoning board of adjustment, the director of public works and the president of the board of trustees of the Austin Independent School District shall serve as ex officio members. The members of said commission shall be appointed by the council for a term of up to two (2) years, with the timing of appointment determined by ordinance ~~{five (5) members to be appointed in every odd-numbered year and four (4) members in every even-numbered year}~~. The commission shall elect a chairperson from among its membership and shall meet not less than once each month. Vacancies in an unexpired term shall be filled by the council for the remainder of the term.”

- e) Discussion on report and presentation to Council.
No action occurred.

4) FUTURE MEETING DATES AND AGENDA ITEMS

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

Next meeting was set for May 7, 2018.

ADJOURNMENT

Chair Palvino adjourned the meeting at 8:25 p.m. without objection.