

CANDIDATE AND OFFICEHOLDER BROCHURE

CAMPAIGN FINANCE

DISCLAIMER

This brochure is intended to assist candidates in City of Austin elections and City of Austin officeholders. It has been prepared by the Ethics Review Commission of the City of Austin, and does not necessarily represent the position of the City of Austin. The candidate or officeholder utilizing this brochure is held responsible for knowing and obeying all laws governing campaign finance and reporting. **THIS BROCHURE IS NOT INTENDED AS LEGAL ADVICE**, nor is it an exhaustive discussion of relevant election law. Anyone using this brochure must consult his/her own attorney for interpretation and applicability of any and all election laws.

APPLICABLE CITY CHARTER AND CODE PROVISIONS

Article III, Section 8 of the Austin City Charter (“the Charter”), entitled *Limits on Campaign Contributions and Expenditures*, governs issues relating to campaign finance. Chapter 2-2 of the City of Austin City Code (“City Code” or “Code”), entitled *Campaign Finance*, also governs issues relating to filing and reporting requirements, contribution and expenditure limitations, accounts, campaign debt, disclosures, appointments, fund raising, limitations on use of contributions, enforcement, sanctions, records retention, and the like. In cases of apparent or actual conflict between Charter provisions and Code provisions, the Charter controls.

APPLICABLE STATE LAW PROVISIONS

Vernon’s Texas Codes Annotated, Election Code, Title 15, entitled *Regulating Political Funds and Campaigns*, Chapters 251 – 258 governs, among other matters, issues relating to campaign finance. The state statutes apply to candidates and officeholders at both the local level and the state level. This brochure does not contain such state statutes, but all candidates and officeholders are required to be aware of and comply with applicable provisions of state law.

City of Austin campaign finance laws and requirements work in conjunction with state law, and City Charter and City Code requirements must be read in light of and in harmony with state campaign finance laws and all applicable state statutes.

TEXAS ETHICS COMMISSION

Title 15 of the Texas Election Code, is interpreted and administered by the Texas Ethics Commission. The Texas Ethics Commission does **not** have jurisdiction over City of Austin campaign finance requirements, nor is its staff prepared to answer inquiries about or interpret City campaign finance issues.

As to state law, the Texas Ethics Commission has excellent interpretive materials available on topics governed by state campaign finance statutes. Please refer to the online publication, *Campaign Finance Guide for Candidates and Officeholders Who File with Local Filing Authorities* (2017);

https://www.ethics.state.tx.us/guides/coh_local_guide.pdf

Attorneys and staff will respond to telephone inquiries, and may be contacted as follows:

Texas Ethics Commission
201 East 14th Street
Sam Houston Building, 10th Floor
Austin, TX 78701
Telephone: 512.463.5800/Fax: 512.463.5777
Website: www.ethics.state.tx.us/

CITY OF AUSTIN ETHICS REVIEW COMMISSION

The Ethics Review Commission (ERC) is an eleven-member board of the City of Austin. It has numerous responsibilities regarding campaign finance, including but not limited to recommending guidelines for ethical standards of conduct for City officials and employees; prescribing forms for reports, statements, notices, and miscellaneous documents required by City campaign finance laws; and scheduling and overseeing public candidate forums held in connection with City elections.

City Code Chapter 2-7, Article 2, entitled *Ethics Review Commission*, sets the ERC as the body having jurisdiction over City Code Chapter 2-2 (*Campaign Finance*) and Charter Article III, Section 8 (*Limits on Campaign Contributions and Expenditures*). City Code § 2-7-26. The ERC hears and rules on sworn complaints of alleged violations in these areas, and may impose a range of sanctions. City Code §§ 2-7-30(A)(6) and 2-7-49.

CITY OF AUSTIN CAMPAIGN FINANCE LAWS

City-imposed Additional Requirements. The City's campaign finance laws mandate reporting requirements and impose restrictions on the receipt, timing and use of political funds that are in addition to those found in state law. Most significantly, the City Charter imposes limitations on contributions and expenditures [Article III, Section 8, Limits on Campaign Contributions and Expenditures] and imposed a requirement for filing a structured data file for campaign finance reports. City Code §2-2-26.

Candidates may voluntarily contract with the City to abide by limitations on expenditures, thereby becoming eligible to potentially receive benefits/funding under the Austin Fair Campaign Chapter of the City Code Chapter 2-2, § 2-2-1 *et. seq.*

The Austin Fair Campaign Chapter is discussed more fully below under its own subheading.

- Persons Subject to City of Austin Campaign Finance Laws. The mayor, council members, candidates for those offices, and for some matters officeholders are subject to the City's campaign finance laws, requirements, and regulations. Additionally, some campaign finance laws affect political action committees, contributors, and others who participate in City elections.
- Time when Person Becomes Subject to City of Austin Campaign Finance Laws. For purposes of both City of Austin campaign finance laws and state campaign finance statutes, a person becomes a candidate – and therefore subject to campaign finance laws – when that person takes any action for the purpose of gaining election to public office. Examples of such actions include but are not limited to filing an Appointment of Campaign Treasurer form, circulating a petition for placement on the

ballot, soliciting pledges or actual contributions, or holding a press conference in which candidacy is effectively announced.

- Appointment of Campaign Treasurer Form.
 - **Filing an Appointment of Campaign Treasurer form should be the first act of a person's candidacy.**
 - The form is obtainable from, and is filed with, the City Clerk. A candidate should make certain he/she obtains the instruction booklet that accompanies the form.
 - A candidate may not begin to accept contributions or make political expenditures until the form has been correctly completed and filed.
 - A candidate may not spend personal funds for campaign purposes without first properly designating a treasurer by filing the form.
 - Filing the form does not place a candidate's name on the ballot. For information on securing a position on the ballot, candidates should contact the City Clerk.
 - Immediately upon filing the form, a candidate becomes responsible for filing required periodic reports of contributions and expenditures with the City Clerk. There are criminal and civil penalties for failure to timely file required reports. Filing required reports is the responsibility of the candidate, not the campaign treasurer.

CAMPAIGN CONTRIBUTIONS

- **Definition.** The City Code definition of "contribution" in Section 2-2-2(7) states: CONTRIBUTION means a direct or indirect transfer of money, goods, services, or any other thing of value, including a pledge or an agreement or other obligation incurred, whether legally enforceable or not, to make a transfer." The term does include an in-kind contribution, except for in-kind labor as defined in Code Section 2-2-2(11). The term includes a guarantee of a loan or extension of credit, as well as a loan or extension of credit other than those expressly excluded by state law. Tex. Election Code § 251.001(2). The term does not include "a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made" or "an expenditure required to be reported under Texas Government Code, Section 305.006(b)." Tex. Election Code § 251.001(2).
- **City Charter Limitations on Campaign Contributions.** State law imposes no limits on the size of campaign contributions. However, the Charter in Article III, Section 8 imposes the following limitations on contributions for all City elections:
 - **A candidate may authorize, establish, administer, or control only one campaign committee at one time.**
 - **A candidate and the candidate's campaign committee must not accept contributions in excess of \$350 (the current limit adjusted for inflation) per contributor per election from any person, except for the candidate and small-donor political**

committees. The amount of the contribution limit must 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. The most recently published Consumer Price Index on May 13, 2006, shall be used as a base of 100 and the adjustment thereafter will be to the nearest \$50.00.

- A candidate and the candidate's campaign committee must not accept an aggregate contribution total of more than \$36,000 **(the current limit adjusted for inflation)** per election, and \$24,000 **(the current limit adjusted for inflation)** in the case of a runoff election, from sources other than natural persons eligible to vote in a postal zip code completely or partially within the Austin city limits. The amount of the contribution limit must 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. The most recently published Consumer Price Index on May 13, 2006, shall be used as a base of 100 and the adjustment thereafter will be to the nearest \$1,000.00.
- **A small-donor political committee, as defined in City Charter Article III, Section 8(B)(2), must not contribute more than \$1,000 per candidate per election for the offices of Mayor and City Council. Each donation cannot exceed \$25. See City Charter, Article III, Section 8(B)(1).**
- **The candidate has the responsibility of preventing violations. The candidate or the candidate's campaign committee must determine whether accepting each contribution would violate City Charter Article III, Section 8 before accepting the contribution.**
- **Additional Restrictions on Accepting Contributions.**
 - City-owned Buildings. A person must not make a contribution to a candidate or officeholder, and a candidate or officeholder must not solicit or accept a contribution at a City-owned building, except at a City-owned building that is available for rental to the general public and that is rented for a campaign-related event at the time the contribution is made. This prohibition does not apply to acceptance of contributions mailed to officeholders at a City mailing address. See City Code Section 2-2-52.
 - Cash Contributions. State law prohibits a candidate, officeholder, or special-purpose committee from accepting from a contributor in a reporting period, political contributions in cash that total more than \$100. Tex. Election Code § 253.033 Checks are not considered to be cash.

A candidate or officeholder who accepts cash contributions in connection with a City election must maintain a receipt book for cash contributions. The receipt book must list the date of any cash contributions and the contributor's name and address. However, this is not the case if the cash contributions are received by a candidate or officeholder at one or more fundraising events having a stated ticket price of \$25 per person or less. Such contributions may be aggregated if the treasurer files with the next contribution and expenditure report an

affidavit stating the amount of cash proceeds received at the event and verifies that no individual made a cash contribution of more than \$50 in connection with the event. *See* City Code Section 2-2-51.

- Contributions from Lobbyists. No person who is compensated to lobby the mayor or city council and who is required to register with the City as a lobbyist, and no spouse of any such 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. *See* City Code Section 2-2-53. Lobbyists can be individuals, corporations, associations, firms, partnerships, committees, clubs, organizations, or a group of persons who are voluntarily acting in concert. For information on lobbyist registration requirements, see City Code Chapter 4-8, and more specifically, section 4-8-3. Texas law generally prohibits accepting political contributions from corporations. Tex. Election Code § 253.094; *King Street Patriots v. Texas Democratic Party*, 521 S.W.3d 729, 741-43 (Tex. 2017). For more information on the prohibition on corporate political contributions, contact the Texas Ethics Commission.

“AUSTIN FAIR CAMPAIGN CHAPTER”

- Voluntary Contract. As previously stated, candidates may voluntarily contract with the City to abide by limitations on expenditures, thereby becoming eligible to potentially receive benefits/funding under the Austin Fair Campaign Chapter. City Code Section 2-2-11 *et. seq.*
- **Time for Signing Campaign Contract. A candidate who wishes to sign the Campaign Contract must personally execute it the earlier of (1) 30 days after becoming a candidate under the Texas Election Code; or (2) the date the candidate files for a place on the ballot.**
- Campaign Contract Availability. City Code Section 2-2-11(A) states: “A candidate for mayor or city council may sign a contract with the City agreeing to abide by limitations on that candidate’s contributions and expenditures as specified in this article in exchange for benefits provide under this chapter.” Such contract is called the “Campaign Contract” and may be obtained from the City Clerk.
- Available Funding. City Code Section 2-2-11(C) provides as follows: “Only a candidate who signs a campaign contract with the City will qualify for public funds from the Austin Fair Campaign Finance Fund.” Additionally, the signing candidate must agree to participate in a series of candidate forums arranged by the City’s Ethics Review Commission.

Information about the Fair Campaign Finance Fund is found in City Code Section 2-2-61 *et. seq.*

The Fair Campaign Finance Fund provides partial public support for qualifying candidates in runoff elections. Funding is subject to availability, and is not provided to candidates in uncontested elections, recall elections, or elections to fill vacancies created by a recall election. The fund itself is comprised

from monies garnered from lobbyist fees, donations, liquidated damages and criminal fines collected for violations of campaign laws, and filing fees from candidates.

- Limitations on Contributions. City Code Section 2-2-13 imposes the following limitations on contributions for those signing the Campaign Contract:
 - Candidates for Mayor: A candidate must not accept contributions from an individual or any political committee in excess of the aggregate contribution amount set by City Charter Article III, Section 8(A)(1) for both the campaign period for the election and the campaign period for a runoff election; and more than \$24,000 from political committees for a regular election, or an additional \$16,000 for a runoff election.
 - Candidates for City Council: A candidate must not accept contributions from an individual or any political committee in excess of the aggregate contribution amount set by City Charter Article III, Section 8(A)(3) for both the campaign period for the election and the campaign period for a runoff election; and more than \$15,000 from political committees for a regular election, or an additional \$10,000 for a runoff election.
- Limitations on Expenditures. City Code Section 2-2-12 imposes the following limitations on expenditures for those signing the Campaign Contract:
 - Candidates for Mayor: A candidate for mayor must not make expenditures in excess of \$120,000 for the campaign period for the election, and an additional \$80,000 for a runoff election.
 - Candidates for City Council: A candidate for city council must not make expenditures in excess of \$75,000 for the campaign period for the election, and an additional \$50,000 for a runoff election.
 - A candidate in a race for mayor or city council must not make expenditures from the candidate's own funds that exceed five percent of the applicable voluntary expenditure limits delineated above for an election or runoff election.
- Disclosure Statement Required.
 - City Code Section 2-2-14 mandates that a candidate who has signed a Campaign Contract must include the following notice in all political advertising, verbatim and in a clear and conspicuous manner: **“This campaign has agreed to comply with the contribution and expenditure limits of the Austin Fair Campaign Chapter.”**
 - The same City Code section also mandates that if a candidate has not signed a Campaign Contract, the following notice must be included in all political advertising, verbatim and in a clear and conspicuous manner: **“This campaign has not agreed to comply with the contribution and expenditure limits of the Austin Fair Campaign Chapter.”**

- Consequences of Violation of Campaign Contract.
 - Breach of a candidate's Campaign Contract can be the result of violating the contribution or expenditure limits, or authorizing the publication of political advertising without the required notice, or the like.
 - The Campaign Contract provides for liquidated damages payable to the City and to other candidates for the same office who have signed a Campaign Contract, and the amount of liquidated damages is three times the amount of the excessive expenditure made or contribution accepted. City Code § 2-2-15. Additionally, the City and each opposing candidate having signed a Campaign Contract are able to recover reasonable attorney's fees from the breaching party in connection with a lawsuit for liquidated damages. City Code § 2-2-15. The City may also recover from the breaching party any amount paid to that candidate from the Fair Campaign Finance Fund. The breaching party may also be barred for four years from being considered as a provider of goods or services to the City.
 - The Campaign Contract is enforceable as a matter of contract law in the courts. It is not intended to create criminal liability.

TIME RESTRICTIONS ON CANDIDATE FUNDRAISING

A candidate may only raise funds for an election during an authorized campaign period. City Code § 2-2-7(G). The campaign period for a general election begins 365 days¹ before the date of the general election. City Code § 2-2-7(B). The campaign period for a runoff election begins the day after the date of an election. City Code § 2-2-7(C).

RESTRICTIONS ON USE OF CONTRIBUTIONS

- State law prohibits converting contributions to personal use.
- Candidates are not required to disgorge (or distribute the balance of) campaign funds at the end of an election.²
- City Charter Article III, Section 8(F)(6-8) allows an officeholder to retain up to \$20,000 of funds received from political contributions for the purposes of officeholder expenditures, with the provision

¹ The 365-day campaign period was adopted by city council after a federal court struck down the 180-day campaign period (which is set forth in City Charter Article III, section 8(F)(2)). *Zimmerman v. City of Austin*, ---F.3d---, 2018 WL 652854 *8-9 (Feb. 1, 2018).

² See *Zimmerman v. City of Austin*, ---F.3d---, 2018 WL 652854 *9-11 (Feb. 1, 2018)(holding unconstitutional City Charter Article III, Section 8(F)(3), which required disgorgement of campaign funds).

that such funds be held in a separate account, be used only for officeholder expenditures and not for campaign expenditures, and be paid to the Fair Campaign Fund when the officeholder leaves the council.

- City Charter Article III, Section 8(F)(4) allows an unsuccessful candidate having unpaid expenses after an election, or who has unreimbursed campaign expenditures from personal funds that were made with the intent to seek reimbursement from political contributions, to solicit and accept political contributions after the election until the unpaid expenses are paid and the unreimbursed expenditures are reimbursed.
- City Charter Article III, Section 8(F)(5) allows an officeholder having unpaid expenses after an election, or who has unreimbursed campaign expenditures from personal funds that were made with the intent to seek reimbursement from political contributions, to solicit and accept political contributions after leaving office until the unpaid expenses are paid and the unreimbursed expenditures are reimbursed. An officeholder may also pay the unpaid expenses and reimburse the unreimbursed expenditures from political contributions received during a subsequent campaign.

CONTRIBUTION AND EXPENDITURE REPORTS; OTHER REPORTS

- City Code Section 2-2-2(3) defines “campaign finance report” as “a periodic report of contributions, loans, credits, interests, gains, reimbursements, and expenditures of a candidate, officeholder, or political committee required to be filed under Chapter 254, Texas Election Code, including any other matters and reports required to be disclosed” under City Code Chapter 2-2.
- Under City Code Section 2-2-21 and Texas Election Code Section 254.202, candidates for mayor and city council must file campaign finance reports with the City Clerk’s office. The report must include any information required by the Texas Election Code or the Austin Fair Campaign Chapter (City Code Chapter 2-2).
- Under City Code Section 2-2-26, a candidate, officeholder, or political committee, required by the City Code or state law to file a campaign finance report with the city clerk, must also provide the city clerk a structured data file containing the contents of the campaign finance report. The data file must comply with specifications and be on media determined by the city clerk. The data file must be provided to the city clerk no later than the date that the associated campaign finance report must be filed.
- Other Reports. As mandated by and in accordance with the Texas Election Code or City Code, a candidate must file the following:
 - A campaign treasurer appointment;
 - Semiannual sworn statements of contributions and expenditures;
 - Pre-election sworn statements of contributions and expenditures due 30 days before an election and eight days before an election (for opposed candidates);
 - Runoff reports (in the event of a runoff);

- A final report (as a candidate);
- Annual reports of unexpended contributions (for candidates who have unexpended contributions after having filed a final report); and
- A report of final disposition of unexpended contributions.
- City of Austin Pre-Election Reports
- City of Austin Bundling Report
- City of Austin Direct Campaign Expenditure Report
- City of Austin Candidate and Officeholder Data File

State law also encourages candidates and political committees to subscribe to the Code of Fair Campaign Practices. Tex. Election Code Chapter 258. Subscription to the Texas Fair Campaign Practices Code is voluntary. Tex. Election Code § 258.003. Candidates may subscribe to and file the Code of Fair Campaign Practices.

Candidates may obtain Code of Fair Campaign Practices forms, as well as Austin Fair Campaign Chapter forms, at the City Clerk's Office at 301 West Second Street, First Floor, Austin, Texas. Tex. Election Code § 258.005; City Code § 2-2-6.

DIRECT CAMPAIGN EXPENDITURES MADE BY PERSON OTHER THAN A CANDIDATE OR A CANDIDATE'S COMMITTEE

- City Code Section 2-2-32 sets forth reporting requirements for persons other than a candidate or a candidate's committee who make expenditures for or opposing a candidate or ballot measure. An expenditure supporting or opposing the election of a candidate or ballot measure is considered independent of the candidate's campaign if:
 - The expenditure is made independently of the candidate and the candidate's committee;
 - The expenditure is made without prior consent of the candidate; and
 - The expenditure is made without cooperation or strategic communication between the independent person making the expenditure and the candidate or the candidate's committee.
- City Code Section 2-2-32 requires reporting of direct campaign expenditures that in the aggregate meet or exceed \$500. The form identified as Schedule ATX.1, "Report of Direct Campaign Expenditures", must be filed with the City Clerk's office by every person, including political action committees other than a candidate or a candidate's committee, that makes independent expenditures of \$500 or more in the aggregate to promote the election or defeat of any candidate or ballot measure in a City election. The report must be filed within the deadlines specified in Section 2-2-32 and in compliance with any other campaign finance reporting deadlines under state law or the City Code.

LENGTH OF TIME FOR RETAINING RECORDS

- City Code Section 2-2-28 requires that copies of checks, bank statements, deposit slips, and other information necessary for filing Contribution and Expenditure Reports must be kept for a period of five years after the close of the reporting period to which the records are applicable.