

2018 Charter Review Commission  
Report to City Council  
May 7, 2018

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# 2018 Charter Review Executive Summary

The 2017 Charter Revisions Commission (CRC) makes the following recommendations to the Austin City Council:

1. Establish a Democracy Dollars Program to provide eligible Austin residents up to four (4) \$25 Democracy Dollar Vouchers (“Democracy Dollars”) per election cycle. The Democracy Dollars may be donated to a resident’s district city council or mayoral candidate. The purpose of the Democracy Dollars program is to ensure that all of the people of Austin have equal opportunity to participate in political campaigns and are heard by candidates, to strengthen democracy, to fulfill the purposes of single-member districts, to enhance candidate competition, and prevent corruption.
2. Establish an Independent Ethics Review Commission to impartially and effectively administer and enforce all city laws relating to campaign finance, campaign disclosures, conflicts of interest, financial statement disclosure, lobbyist regulations, revolving door, disqualification of members of city boards, certain conflict of interest and ethics laws, and other responsibilities.
3. Create a City Budget and Efficiency Officer whose mission is to produce independent analyses of budgetary and fiscal issues to support the Austin City’s Council’s budget process by issuing reports and reviews of proposed and existing programs.
4. Require that a notice of intent to circulate a referendum petition be filed with the city clerk prior to collecting signatures and that the signed referendum petition be filed with the city clerk within 180 days of passage of an ordinance.
5. Require that a notice of intent to circulate a recall petition be filed with the city clerk prior to collecting signatures, that the recall petition contain the grounds on which the removal is sought, and that the recall petition be signed by at least 20% of the qualified voters of the district from which the council member is elected, or 10% citywide for the mayor.
6. Require that City Council appoints the City Attorney.
7. Clarify that the timing of the Planning and Zoning commission appointments should be determined by ordinance.
8. Require that 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, and that all electricity and water purchases whose total price for each project exceeds \$200

million shall first be authorized by a majority of the qualified electors voting at an election held for such purpose.

9. Correction of clerical matters, routine harmonizing, and clarification of verbiage.

## 2018 Charter Review Commission Overview

The Austin City Council (the “Council”) established the 2018 Charter Review Commission (the “CRC”) pursuant to Resolution 20170622-040 adopted on June 22, 2017. Council established the CRC “to advise the Council on revisions which may be necessary or desirable to align the City Charter with changes to municipal ordinances, and to make recommendations to the Council to improve and enhance transparency and the general functions of city government.”

Council directed the Commission to propose recommendations regarding the following:

- (a) Campaign finance, including consideration of contribution and expenditure limits;
- (b) City boards and commissions, including terms of Planning Commission members;
- (c) Requirements for citizen-initiated petitions, including requirements for percentages and numbers of valid signatures on various types of petitions (initiative, referendum, and recall of a mayor or a council member from a specific geographic district), and reporting and residency requirements for citizen-initiated petitions;
- (d) Appointment of the City Attorney by the City Council; and
- (e) Correction of clerical matters, routine harmonizing of provisions, and clarification of verbiage as recommended by the City Clerk and the City Attorney.

Council directed the Commission to submit a Recommendation Report containing the substance of any proposed amendments, revisions, or repeals to the Charter, the policy reasons for each proposal, the estimated fiscal budgetary impacts for each proposal, the impacts of each proposal on existing City laws, rules, practices, and procedures, and proposed ballot language for each proposal.

Appointments to the Commission included Joy Authur, Roger Borgelt, Martha Cotera, Matt Hersh, Fred Lewis, Diego Martinez-Moncada, Karl-Thomas Musselman, Jessica Palvino, Jeff Smith, Tane Ward, and Ingrid Weigand. The Commission chose Jessica Palvino as Chair and Ingrid Weigand as Vice Chair.

The Commission first met on November 6, 2017 and divided into three Working Groups. The Campaign Finance and Ethics Working Group consisted of Martha Cotera, Fred Lewis, Karl-Thomas Musselman, and Tane Ward. The Citizen-Initiated Petition Working Group consisted of

Roger Borgelt, Jeff Smith, and Ingrid Weigand. The City Attorney/Boards & Commission Working Group consisted of Matt Hersh, Diego Martinez-Moncada, and Jessica Palvino. The Working Groups were tasked with developing proposed recommendations for the topics within their scope of work.

The Commission invited several speakers, including Paul Ryan (Common Cause), Wayne Barnett (Seattle Ethics and Election Commission), Frank Rodriguez (former Senior Policy Advisor to Mayor Adler), and Seattle Councilmember Teresa Mosqueda.

The meeting schedule of the CRC is attached as Appendix A and the agendas, minutes, and all materials distributed at the meetings are available on the CRC's website at [http://www.austintexas.gov/cityclerk/boards\\_commissions/meetings/151\\_1.htm](http://www.austintexas.gov/cityclerk/boards_commissions/meetings/151_1.htm)

The CRC wishes to thank City staff, in particular City Clerk Jannette Goodall, Deputy City Clerk Myrna Rios, City Attorney Lynn Carter, and City Attorney Jerikay Gayle for their dedication, professionalism, and expertise. The CRC also wishes to thank the individuals who shared their comments, materials, and recommendations.

# Recommendation No. 1: Democracy Dollars

The CRC recommends amending the Charter to establish a Democracy Dollars Program to provide eligible Austin residents up to four (4) \$25 Democracy Dollar Vouchers (“Democracy Dollars”) per election cycle. The Democracy Dollars may be donated to a resident’s district city council or mayoral candidate.

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

This recommendation passed by a vote of [ \_\_\_\_\_ ]

## **Background and Policy Reasons for the Recommendation**

The CRC was directed to consider and make recommendations regarding “Campaign finance, including consideration of contribution and expenditure limits.” Resolution No. 20170622-040 at 10.a.

The Campaign Finance and Ethics Working Group was formed on November 27, 2017 and presented its [preliminary findings](#) to the CRC on January 8, 2018.

At the January 8, 2018 meeting, the Working Group unanimously recommended that: (1) Austin add a public voucher component to the City’s current campaign finance system and that (2) Austin adopt an independent ethics commission with the autonomy, resources, and expertise to effectively enforce and implement campaign finance and ethics laws.<sup>1</sup> In making its recommendation, the Working Group considered six major goals of a model campaign finance system for Austin:

1. the 10-1 single-member district system’s goal of fair representation is enhanced, and not undermined by, the campaign finance system;
2. Austinites across the city have faith that our City’s democratic process is not corrupted by the monied interests, thwarting the majority’s will;

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<sup>1</sup> The Independent Ethics Commission is more thoroughly addressed beginning on page \_\_\_ as “Recommendation No. 2.”

3. city candidates can run with funds primarily from their district's constituents without having to raise the vast majority of their funds from outside their district from wealthy donors;
4. city candidates can spend more time with and listen more to their constituents in their district, as opposed to cultivating wealthy donors who live outside their district;
5. at least several candidates in each race are competitive financially so that voters have choices and issues are aired; and
6. the city's campaign finance and ethics laws are effectively and fairly enforced so that the laws are followed, violators are investigated and punished, and the public has confidence in the system's integrity.

After evaluation of the key facts and concerns with Austin's current campaign finance system, and considering several potential solutions, the Working Group ultimately concluded that adding a public voucher component to Austin's current campaign finance system was the best solution. The Working Group [recommended](#) that the CRC look to the Seattle Democracy Voucher program as a starting point for designing Austin's program.

The CRC invited four speakers to provide briefings and answer questions regarding campaign finance-related issues:

1. Lynn Carter, City of Austin staff attorney;
2. Paul S. Ryan, Common Cause;
3. Wayne Barnett, Executive Director Seattle Ethics and Election Commission;
4. Teresa Mosqueda, Seattle City Council Member.

Additionally, the CRC reviewed and considered the following materials, publications, and data:

- Ryan, Paul, [Beyond BCRA: Cutting-Edge Campaign Finance Reform at the Local Government Level](#), National Civic Review, vol. 92, no. 1, Spring 2003;
- [Breaking Down Barriers: The Faces of Small Donor Public Financing](#), Brennan Center for Public Justice at New York University School of Law;
- [Overview of Municipal Public Finance Programs](#), prepared by the Illinois Campaign for Political Reform;
- [Demos, Public Funding for Electoral Campaigns: How 27 States, Counties, and Municipalities Empower Small Donors and Curb the Power of Big Money in Politics](#);
- [Campaign Finance Analysis for the 2014 Election of Austin's Mayor and City Council Members](#) by Ken Martin, Editor, Austin Bulldog;

- [Chart of Expenditures of Austin Candidates in the 2014 Election Cycle](#), derived from Austin Bulldog's March 2015 analysis of 2014 election data;
- Beatty, Leland, [City of Austin Contributions to Political Candidates by Zip Code](#), January 5, 2017 report;
- [First Look: Seattle's Democracy Voucher Program](#), November 15 2017 report
- Demos, [Designing Public Financing Systems to Advance Equity and Independent Political Power](#), 2016;
- [Memorandum dated November 13, 2017](#) to the Charter Review Commission from Anne Morgan, City Attorney regarding the *Zimmerman v. City of Austin* lawsuit;
- Findings of Fact and Conclusions of Law, Donald Zimmerman v. City of Austin, Cause No. 1:15-CV-628-LY, in the United States District Court for the Western District of Texas;
- The Seattle [Democracy Voucher law](#);

Furthermore, the CRC received public comments and/or written testimony regarding the public voucher program from the following individuals and organizations:

- Anthony Gutierrez, Executive Director, Common Cause Texas
- Austin Raza Roundtable
- Frances McIntyre, Advocacy Director, League of Women Voters
- Joanne Richards, Board Chairperson, Common Ground for Texans
- Prof. Joseph Fishkin, Marrs McLean Professor in Law, University of Texas
- Prof. Terrell Blodgett, Mike Hogg Professor Emeritus in Urban Management, LBJ School
- Dave Jones, President, Clean Elections Texas
- Adrian Shelly, Executive Director, Public Citizen Texas
- Craig McDonald, Executive Director, Texans for Public Justice
- Liliana Beverido, Amhiga Hispana
- Linda Del Toro, LULAC Council 4246
- Lauren Ross, PhD, Glenrose Engineering, Inc.
- Peck Young

The public comments and written testimony received by the CRC can be found at the following links: (1) [Written testimony received on February 12, 2018](#) and (2) [Written testimony received on April 16, 2018](#).

The CRC debated and discussed the Democracy Dollars program at meetings on [January 8, 2018](#), [January 11, 2018](#), [February 12, 2018](#), [February 19, 2018](#), and [March 12, 2018](#).

A majority of the CRC believes that a public small voucher component, added to the City's current campaign finance system, will further realize 10-1's goal of fair representation in Austin. The 10-1 single-member district system has helped ensure representation from all areas of our

City by requiring that candidates come from and are elected by their distinct geographic district. A public small voucher component further advances the 10-1 system by allowing participating candidates to fund their campaigns primarily from small public vouchers from their constituents.

Moreover, there is preliminary evidence suggesting that a public small voucher system increases public engagement, small-dollar campaign donations, and voter turnout.

The CRC adopted its final recommendation on [insert date] by a vote of \_\_ to \_\_.

### **Substance of the Proposed Amendments, Revisions or Repeals to the Charter:**

The substance of the proposed amendments to Article III of the Charter are contained in Appendix B.

### **Estimated Fiscal Budgetary Impact for the Recommendation:**

The CRC recommends that Council consider funding the Democracy Dollars Program from the existing City budget, particularly the programs that are dedicated to Communications and Public Information budget item for “Community Engagement.”

As for the fiscal impact, the CRC estimates that the fiscal impact of Democracy Dollars program is \$1.55 million annually with an initial, one-time set-up cost of \$400,000. There are three cost components to the proposed Democracy Vouchers program: 1) Start-up costs: the initial, one-time costs to set up the program; 2) Administration costs: the cost of administering the program during each election cycle; 3) Voucher costs: the cost of the Democracy Dollar vouchers.

#### **Start-up Costs**

The start-up costs entail two main aspects: 1) designing and printing the program’s new materials for candidates and the public; and 2) establishing the accounting and technology to track the vouchers. Based on Seattle’s actual costs that Austin would incur, we believe the start-up costs in Austin would be no more than \$400,000 and likely substantially less if the accounting and technology work is performed by in-house Austin personnel. The \$400,000 estimate consists of \$250,000 for technology, \$125,000 for informational mailers, and \$25,000 for office hardware and supplies. See Democracy Voucher Program, Biennial Report 2017 (Seattle Ethics and Election Commission, March 2018), p.25, Appendix E. We believe the mailing

costs may be substantially reduced if the informational mailers are included in Austin Energy's billing mailings or other City of Austin mailings.

### Program Administration

Based on Seattle's experience, the Austin program administration would consist mainly of voucher printing and mailing, outreach materials and events, voucher signature verification, and additional program staff. See Democracy Voucher Program, Biennial Report 2017 (Seattle Ethics and Election Commission, March 2018), p.25, Appendix E. This additional cost should be no more \$685,000 for a two-year election cycle, or \$342,500 a year. Based on Seattle's experience, the proposed Independent Ethics Commission staff would administer the program, except for one additional temporary employee during the election year, which should cost around \$55,000. (The baseline cost of the permanent Commission's staff is set out in its fiscal impact statement). We believe the voucher production and mailing costs would be \$400,000, and these could be substantially less if postage costs were avoided by using existing City mailings. We also expect that by 2022 the vouchers will be delivered mainly over the Internet. While there will be a one-time technological cost for this, the mailing costs will be dramatically reduced. Outreach materials and events are estimated to cost around \$125,000. There also may be additional technology costs of \$75,000 and miscellaneous office supply costs of up to \$10,000. Contract voucher signature verification is estimated to cost around \$20,000.

### Democracy Vouchers

As for the cost of the Democracy Dollar Vouchers, we have projected that the cost should be \$1.2 million a year. This is based on the assumptions that 2 candidates per race will qualify for Democracy Dollars, that each will reach the maximum thresholds, and each will make the runoff. These assumptions are reasonable, and if anything high, based on Seattle's and other public financing jurisdictions' experiences. [See Campaign Finance Committee Projection, attached – CAN'T FIND THIS ON CRC WEBSITE.](#) Regardless of the number of candidates participating, the total voucher cost is capped at no more than \$1.5 million.

### **Impact of the Recommendation on Existing City Laws, Rules, Practices and Procedures:**

The CRC does not anticipate that the Democracy Dollars program will have an impact on existing city laws, rules, practices, and procedures. The CRC is recommending that the Democracy Dollars program is administered by the Independent Ethics Commission.

**Proposed Ballot Language:**

[STILL IN PROGRESS]

## Recommendation No. 2: Independent Ethics Commission

The CRC recommends that the Charter be amended to establish an Independent Ethics Commission (IEC) to impartially and effectively administer and enforce all city laws relating to campaign finance, campaign disclosures, conflicts of interest, financial statement disclosure, lobbyist regulations, revolving door, disqualification of members of city boards, certain conflict of interest and ethics laws, and other responsibilities.

This recommendation passed the CRC by a vote of 9-0, but there is disagreement among the CRC regarding the selection method for IEC commissioners, as further described below.

### **Background and Policy Reasons for the Recommendation**

The CRC was directed to review and propose recommendations regarding “City boards and commissions...”

Two Working Groups – the Campaign Finance and Ethics Working Group and the City Attorney/Boards and Commissions Working Group – proposed that the CRC consider recommending the creation of an IEC.

The recommendation first came to the CRC on January 8, 2018, as part of the Campaign Finance and Ethics Working Group’s [report](#) on democracy vouchers. Then, on January 22, 2018, both working groups submitted follow-up reports [recommending](#) that the CRC consider recommending the creation of an IEC.

After discussion and obtaining consensus that the CRC desired to move forward with these recommendations, the Campaign Finance and Ethics Working Group took the lead in drafting a proposed Charter amendment. The proposed Charter amendment was [presented](#) to the CRC on March 12, 2018 and passed by a vote of 9-0.

The CRC was directed to “consider the recommendations of the Ethics Review Commission on all matters relating to campaign finance, ethics, and financial disclosure.” See Resolution 20170622-040 at 3. In connection with this directive, on April 11, 2018, CRC members Jessica Palvino and Ingrid Weigand attended the regular meeting of the City of Austin’s Ethics Review Commission.

Several concerns were voiced by the Ethics Review Commission regarding, among other issues:

1. the qualifications for the independent ethics commissioners;
2. the selection process for choosing independent ethics commissioners; and
3. the conduct of hearings for employees who are not covered the Municipal Civil Services Commission.

Based on feedback from the Ethics Review Commission, several amendments were proposed at the April 16<sup>th</sup> meeting of the CRC. The full text of these amendments can be found [here](#).

Most of the proposed amendments passed, including an amendment to Section 1.03 that expanded the qualifications required for independent ethics commissioners and an amendment to Section 1.02 that increased the number of commissioners from 5 to 7. Additionally, an amendment passed to include within the IEC's jurisdiction complaints made against former City of Austin employees and other employees who are not members of the Municipal Civil Services Commission.

There is disagreement among the members of the CRC regarding the selection process contained in the current recommendation. The current selection process is a variation of the process used to select the members of the Independent Citizen's Redistricting Commission. At the April 16<sup>th</sup> CRC meeting, there was an amendment made to change the selection process for choosing the IEC commissioners. The amendment proposed was as follows:

"5.01. 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
- B. The fifth member shall be appointed by the other four (4) members, subject to confirmation by the City Council."

This amendment failed by a vote of 3-5-1.

Additionally, commentators have stated, in an editorial published on April 19, 2018, that the selection process proposed by the CRC should be revised. A copy of this editorial can be found in Appendix C.

### **Substance of the Proposed Amendments, Revisions or Repeals to the Charter:**

The CRC recommends that the Charter be amended to include the language found in Appendix D.

## **Estimated Fiscal Budgetary Impact for the Recommendation**

The estimated fiscal impact of the proposed IEC can be broken into three components: (1) regular operating/administration costs, (2) voucher administration costs, and (3) commissioner selection costs. The voucher administration costs are reflected on page [redacted] of this report, under the Democracy Dollars recommendation.

CRC estimates that the ongoing administration costs of the proposed Independent Ethics Commission (IEC) will be none to minimal, and that the selection process for the ethics commissioners will cost approximately \$92,000 in 2019 and will be repeated every 8 years.

### **Regular Operating Administration Costs**

Currently, City costs to administer the City's ethics, campaign finance, lobbyist disclosure and conflicts of interest laws are scattered across 4 departments. These costs are overwhelmingly personnel costs. There should be no additional personnel costs because the current ethics-related responsibilities will be transferred to the IEC. The IEC then would bear the personnel costs of administering these same laws.

The IEC would be responsible for the following department's current ethics-related duties: 1) the City Clerk's Office's duties to accept, post and review campaign finance, lobbyist, and statement of financial information reports as well as to produce public brochures on ethics-related laws; 2) the City Attorney's Office's responsibilities to train city employees on ethics and conflicts of interest laws, to provide legal advice on ethics, conflicts of interests, lobbyist disclosure, campaign finance, the Ethics Commission and related laws, and to investigate and prosecution violations of city ethics-related laws; 3) the City Auditor Office's duties to investigate and present alleged conflict of interest violations not involving Municipal Civil Service; and 4) the Ethics Review Commissions liaison and administrative support.

We have received information from most of these city agencies as to their responsibilities and personnel, and do not believe additional personnel for the IEC would be needed to perform these same tasks. We also expect that by centralizing these responsibilities in one entity (the IEC), that personnel will be coordinated and utilized more efficiently and effectively. Moreover, looking at Seattle and other cities' independent ethics commissions and their commensurate responsibilities, we expect that 5-6 IEC personnel will be sufficient. See City of Seattle Proposed 2017-2018 Budget, Seattle Ethics and Election Commission, pp. 535-540 (Seattle Commission's functions and size are similar to Austin's). See also [Understanding the Role of Ethics Commissions](#) (Institute for Local Governments Dec. 2007).

## Cost of Selecting Commissioners

Estimated Fiscal Impact Cost in 2019: \$92,000. The primary costs to administer the Independent Ethics Commissioners' selection process will be the City Auditor's staff time, publicizing the applicant process, and paying for the 3 independent auditors' time for the Applicant Review Panel. We do not believe the City Auditor's Office will have to hire additional personnel for the process, but the process will take its staff time to oversee drafting the process materials, the publicizing of the auditor and commissioner applicant process, and reviewing the independent auditor applicants' qualifications. The Auditor estimates their internal staff time for the Independent Citizen Redistricting Commission (ICRC) cost \$104,000, which should be less for the Ethics Commission process because the applicant pool is 1/3 that of the ICRC. The publicizing should cost around \$72,000, based on the Auditor's experience with the Independent Citizen Redistricting Commission (ICRC) in 2012-2013. It may be less expensive if the Auditor uses the internet and social media more than traditional publicizing approaches. We do not have the prior costs for the ICRC's independent auditors, but the Ethics Commission's process' workload should be significantly less. This is because the Ethics Commission's qualified pool consists of 20 applicants rather than the ICRC's 60 applicants. We preliminarily estimate the 3 auditors in aggregate will work approximately 100 hours, and their total charge will be approximately \$20,000.

The initial selection process for the Independent Ethics Commission will occur in 2019. Because of term staggering, it will occur the selection process will recur 5 years later, or 2024.

Subsequently, the process should recur eight years thereafter, unless the pool unexpectedly needs to be refreshed to 20 applicants before then. Thus, the estimated \$92,000 cost for 2019 will recur in 2024 and 2032.

The CRC requested and received information from the Office of the City Auditor's (OCA) office regarding the cost of the selection process for the Independent Citizen's Redistricting Commission. This information is contained in Appendix E.

## **Impact of the Recommendation on Existing City Laws, Rules, Practices and Procedures:**

In addition to requiring a Charter amendment, this recommendation will have a broader impact on existing City laws, rules, practices and procedures, particularly those connected to the current Ethics Review Commission.

**Proposed Ballot Language:**

[Still in Progress]

# Recommendation No. 3: City Budget and Efficiency Officer

The CRC recommends that the Charter be amended to create a City Budget and Efficiency Officer whose mission is to produce independent analyses of budgetary and fiscal issues to support the Austin City's Council's budget process by issuing reports and reviews of proposed and existing programs.

This recommendation [passed](#) the CRC by a vote of 7 to 0.

## **Background and Policy Reasons for the Recommendation**

The background and policy reasons for this recommendation are addressed in the presentation "[Building a Better City of Austin Budget](#)," presented by Frank Rodriguez to the CRC on February 5, 2018.

## **Substance of the Proposed Amendments, Revisions or Repeals to the Charter:**

The CRC proposes that Section 17 of Article VII of the Charter shall be added which shall read as follows:

"Section 17. Council Budget and Efficiency Officer. There shall be a Council Budget and Efficiency Officer, who shall be appointed by and report directly to the City Council. The Council Budget and Efficiency Officer shall have a five-year term of office, except that he or she may be removed during the five-year term by a vote of three-fourths of the City Council. The Officer may be reappointed by a majority of the City Council for a new five-year term. The Council Budget and Efficiency Officer shall report to the City Council through a Committee of the Council or as directed by Council. The Council Budget and Efficiency Officer shall have such duties, responsibilities and staff as determined by ordinance including the responsibilities of providing information to the City Council to assist such officials in the discharge of their responsibilities which are related to the budgetary process including: (1) information which respect to the budget, appropriations, efficiency, cost savings, and proposed ordinances with fiscal implications; (2) information with respect to estimated revenues and changing revenue conditions; and, (3) such other information or analyses as may be requested by such officials."

## **Estimated Fiscal Budgetary Impact for the Recommendation**

The [estimated fiscal budgetary impact](#) of this proposal is 5 full time employees at a cost of \$800,000.

## **Impact of the Recommendation on Existing City Laws, Rules, Practices and Procedures:**

Other than the amendment to Article VII of the Charter, this recommendation is not expected to have an impact on existing City laws or rules. This recommendation may have an impact on existing City practices and procedures, but the CRC was unable to fully evaluate the potential impact.

## **Proposed Ballot Language:**

The CRC proposes the following ballot language:

“Shall the City Charter of the City of Austin be amended to require that a City Council Budget and Efficiency Office be created with a Council Budget and Efficiency Officer to be appointed by and report directly to the City Council?”

# Recommendation No. 4: Citizen-Initiated Petitions and Initiatives

The CRC was directed to consider and make recommendations for citizen-initiated petitions, including requirements for percentages and numbers of valid signatures on various types of petitions (initiative, referendum, and recall of a mayor or a council member from a specific geographic district), and reporting and residency requirements for citizen-initiated petitions.

The Recall & Referendum Working Group, consisting of Roger Borgelt, Jeff Smith, and Ingrid Weigand, was established November 27, 2017 and presented its preliminary findings to the CRC on March 5, 2018.

The Committee made the following [recommendation](#) regarding citizen-initiated petitions and initiatives:

*The people reserve the power to approve or reject at the polls any legislation enacted by the council which is subject to the initiative process under this Charter, except an ordinance which is enacted for the immediate preservation of the public peace, health or safety, which contains a statement of its urgency, and which is adopted by the favorable votes of eight (8) or more of the councilmembers. Within 180 days of passage of an ordinance upon third reading, a petition signed by qualified voters of the city equal in number to the number of signatures required by state law to initiate an amendment to this Charter may be filed with the city clerk requesting that any such ordinance be submitted to a vote of the people for repeal or approval. A notice of intent to circulate such a petition shall be filed with the city clerk prior to doing so.*

The recommendation [passed](#) the CRC by a vote of 7-0.

## **Background**

The Commission contacted four Texas cities of comparable size and city government with the following questions:

1. What are your ordinances or charter provisions regarding citizen-initiated petitions including requirements for percentages and numbers of valid signatures?

2. What are your ordinances or charter provisions regarding reporting and residency requirement for citizen-initiated petitions?
3. What are your ordinances or charter provisions regarding citizen-initiated review or repeal of city ordinances passed by council?

It also researched the National Civic League and the Texas Municipal League, as well as the city of Portland, OR.

Bryan,

TX [https://library.municode.com/tx/bryan/codes/code\\_of\\_ordinances?nodeId=PTICH\\_S10IN](https://library.municode.com/tx/bryan/codes/code_of_ordinances?nodeId=PTICH_S10IN)

Sec. 10. – Initiative (a)

Summary: Any proposed ordinance may be submitted to the City Council by a petition signed by qualified voters of the city equal in number to 10 percent of the qualified voters of the city as appears in the county voter registration records as of the January 31st preceding the date of submission of the petition.

The City of Bryan does not have a provision to repeal an ordinance; voters eliminated that section from their Charter years ago.

Dallas, TX

[http://library.amlegal.com/nxt/gateway.dll/Texas/dallas/cityofdallastexascodeofordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:dallas\\_tx](http://library.amlegal.com/nxt/gateway.dll/Texas/dallas/cityofdallastexascodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:dallas_tx) Chapter IV, Section 12

Summary: The Dallas Charter does not specifically address referenda except to state “to be valid, a petition submitted for the purpose of complying with an election process must comply with the Texas Election Code, as amended.”

Fort Worth, TX

<http://fortworthtexas.gov/boards/charter/2016.pdf> Chapter XXI

Summary: A referendum on an ordinance can be initiated prior to the ordinance taking effect or within 30 days of taking effect. The petition requires signatures of 20% of “registered and qualified legal voters” with no further definition of a qualified voter.

San Antonio, [City-Charter-City-Code](#) Article IV, Sections 34 and 35

Summary: San Antonio requires valid signatures from ten percent of the electors qualified to vote at the time of the last regular municipal election to initiate or approve or reject an ordinance. Ordinances can be repealed within 40 days of their enactment.

Portland, OR <https://www.portlandoregon.gov/citycode/28285>

## Section 2.04.090

Summary: Portland requires valid signatures from 9 percent of registered voters of the last primary city election for a petition, which must be filed no less than four months prior to the requested election date. A referendum on an existing ordinance requires valid signatures from six percent or 2,000 of registered voters (see above) and must be submitted no later than 30 days after the passage of the ordinance it seeks to overturn.

## National Civic

League [http://www.dextermi.gov/sites/dextermi.gov/files/client\\_files/Charter\\_Commission/modelcharter8.2nd-1.pdf](http://www.dextermi.gov/sites/dextermi.gov/files/client_files/Charter_Commission/modelcharter8.2nd-1.pdf) Article VI ELECTIONS, Section 6.04

Texas Municipal League <https://www.tml.org/pdftexts/HRHChapter1.pdf>

Summary: Both leagues provide overviews but not specifics on how to conduct a referendum other than excluding budget, capital, tax or emergency items from the list of ordinances that can be repealed or amended.

## **Substance of the Proposed Amendments, Revisions or Repeals to the Charter**

This recommendation provides greater opportunity to voters to amend or repeal an ordinance than is currently provided in [City Charter, Article IV Paragraph 2 Power of Referendum](#). It specifies that a petition can be initiated after the 3rd reading of an ordinance and expands the length of time granted to collect signatures, including, potentially, a date after the ordinance has already gone into effect. It also requires the initiators of the petition to file a letter of intent with the City Clerk.

## **Policy Reasons for the Recommendation**

The right to a referendum is guaranteed by the Texas Constitution. However, the current City Charter states that a referendum must be filed prior to the effective date of the ordinance it seeks to overturn or amend. Since ordinances typically take effect immediately upon passage, it is virtually impossible under the current charter to file a successful petition. The proposed language extends the time a petition can be initiated and filed. It also requires the petitioner to file a letter of intent with the City Clerk, thus putting the City on notice that the ordinance will be challenged.

## **Estimated Fiscal Budgetary Impact for the Recommendation**

There is no fiscal impact to this recommendation.

**Impact of the Recommendation on Existing City Laws, Rules, Practices and Procedures**

[CITY CHARTER, ARTICLE IV, § 2. POWER OF REFERENDUM](#) will need to be amended.

**Proposed Ballot Language**

The charter amendment allowing submission of a petition to approve or reject an ordinance up to 180 days after its passage on third reading.

## Recommendation No. 5: Recall of a Mayor or Council Member

The CRC was directed to consider and made recommendations for citizen-initiated petitions, including requirements for percentages and numbers of valid signatures on various types of petitions (initiative, referendum, and recall of a mayor or a council member from a specific geographic district), and reporting and residency requirements for citizen-initiated petitions.

The Recall & Referendum Working Group, comprised of Roger Borgelt, Jeff Smith, and Ingrid Weigand, was established November 27, 2017 and presented its preliminary findings to the CRC on March 5, 2018.

The Committee made the following [recommendation](#) regarding the recall of a mayor or a council member from a specific geographic district:

*The people of the city reserve the power to recall any member of the council and may exercise such power by filing with the city clerk a petition, signed by qualified voters of the district from which the council member is elected equal in number to at least 20 percent of the qualified voters of the district from which the council member is elected, or 10% citywide for the mayor, demanding an election for the removal of a mayor or council member. A notice of intent to circulate such a petition shall be filed with the city clerk prior to doing so and shall be treated as a ballot measure for finance campaign contribution ordinances from the date such notice is filed. The petition shall be signed and verified in the manner required for an initiative petition, shall contain one of the following grounds for which the removal is sought: incompetency (gross ignorance of official duties, gross carelessness in the discharge of official duties, or inability or unfitness to promptly and properly discharge official duties because of a serious mental or physical defect that did not exist at the time of election); official misconduct (intentional unlawful behavior relating to official duties including an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law); habitual intoxication; or conviction for any felony or misdemeanor involving official misconduct. One of the signers of each petition paper shall make an affidavit that the statements therein made are true.*

This recommendation [passed](#) the CRC by a vote of 8-0.

## **Background**

The Commission contacted four Texas cities of comparable size and city government with the following question:

1. What are your ordinances or charter provisions regarding recall of a mayor or council member from a specific geographic district, including any financial disclosure requirements for the initiators?

It also researched the National Civic League and the Texas Municipal League as well as the city of Portland, OR.

Bryan,

TX [https://library.municode.com/tx/bryan/codes/code\\_of\\_ordinances?nodeId=PTICH\\_S10IN](https://library.municode.com/tx/bryan/codes/code_of_ordinances?nodeId=PTICH_S10IN)

Sec. 10. – Initiative (e)

Summary: A recall of City Councilmembers requires signatures from 10 % of qualified voters and must give the cause for the recall from a prescribed list, similar to the one proposed in the CRC’s recommendation. While there are no financial disclosure requirements, Bryan City staff indicated that the required five qualified voters who need to spearhead the recall petition might be considered a PAC and therefore fall under Title 15 of the Texas Election Code.

Dallas, TX

[http://library.amlegal.com/nxt/gateway.dll/Texas/dallas/cityofdallastexascodeofordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:dallas\\_tx](http://library.amlegal.com/nxt/gateway.dll/Texas/dallas/cityofdallastexascodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:dallas_tx) Chapter V, Section 1,1

Summary

A recall of City Councilmembers requires signatures from 15% of voters who during the last municipal election were qualified to vote for the council member to be recalled and must contain a general statement of the grounds for removal. The City Secretary must be notified on the first day the recall petition is in circulation. The recall campaign must comply with the same financial disclosure requirements as an election campaign.

Fort Worth, TX

<http://fortworthtexas.gov/boards/charter/2016.pdf> Chapter XIX

Summary:

A recall of City Councilmembers requires signatures from least 20% of the entire of number of persons entitled to vote for a successor and needs to include a general statement of why removal is sought. There are no requirements for financial disclosures.

San Antonio, [City-Charter-City-Code](#) Article IV, Sect 26:

Summary: A recall of City Councilmembers or mayor requires signatures from 10 percent of voters who were qualified to vote in said district in the last election or, in case of the mayor in the last municipal election. There are no requirements for financial disclosures.

Portland, OR <https://www.portlandoregon.gov/citycode/article/13359> **2.08.170**

“Procedures and forms for a recall petition and election shall be according to state law.”

Texas Municipal League and the national Civic League describe the general process.

<https://www.tml.org/legal-qna/2010May-SH.pdf>

[http://www.dextermi.gov/sites/dextermi.gov/files/client\\_files/Charter Commission/modelcharter8.2nd-1.pdf](http://www.dextermi.gov/sites/dextermi.gov/files/client_files/Charter_Commission/modelcharter8.2nd-1.pdf)

### **Substance of the Proposed Amendments, Revisions or Repeals to the Charter:**

The recommendation proposes increasing the current requirement of 10% of qualified voters for a council member recall to 20% but keeping the same 10% in effect for mayoral recalls. In addition, CRC recommends that recall initiators be required to file a notice of intent with the City Clerk and be subject to the Austin Campaign Finance Ordinance.

### **Policy Reasons for the Recommendation**

The current city ordinance requires at least 10 percent of the qualified voters of the territory from which the council member is elected for the recall of a council member and 10% of city-wide qualified voters for a recall of the mayor.

This 10% requirement for a council member recall makes it easy for special-interest or single-issue groups, organizations or businesses to threaten a council member with a recall should said council member take, or fail to take, a desired action.

Under present rules, there is no requirement for people who want to recall a council member or mayor to give notice of their intent or to disclose financial information. The Campaign Finance Ordinance would be triggered at the time that the petitioners file their intent with the City Clerk. Without this provision, groups that form to solicit funds and make expenditures related to a recall will be treated as specific purpose PAC and be required to submit financial disclosures only twice a year until there an election is called. In that case, voters would not be

informed in a timely manner of the entities funding a recall, if indeed it is driven by special interest.

The commission feels that members of the city council, having been elected by the voters, should be free from the threat of recall simply for voting the wrong way or offending some group of voters. For that reason, we have required that recall be initiated only for specific reasons related to performance of duty rather than to shifting political winds.

### **Estimated Fiscal Budgetary Impact for the Recommendation**

This measure would add responsibilities to the City Clerk, but have no financial impact.

### **Impact of the Recommendation on Existing City Laws, Rules, Practices and Procedures:**

City Charter Article IV INITIATIVE, REFERENDUM, AND RECALL, Paragraph 6 POWER OF RECALL would have to be amended to include the larger percentage needed for a district member recall and to include a reference to the Campaign Finance Ordinance

Austin City Code Chapter 2-2 Campaign Finance, Article 3, DISCLOSURES AND FILING PROCEDURES FOR CONTRIBUTION AND EXPENDITURE REPORTS. , § 2-2-2 DEFINITIONS needs would have to be amended to include recall petitions.

### **Proposed Ballot Language:**

The charter amendment to increase the percentage of voters required to petition to recall a council member from 10% to 20% of the voters in the district, and to require grounds be sworn to for any recall petition

## Recommendation No. 6: City Attorney

The CRC was directed to consider and made recommendations regarding “Appointment of the City Attorney by the City Council” Resolution No. 20170622-040 at 10.d. The CRC unanimously recommends that the City Attorney be appointed by City Council.

### **Background and Policy Reasons for the Recommendation**

Proposed revisions to Article V, Section 6, which would have required the city attorney to report to council rather than the city manager, were presented to City of Austin voters in 2012 and failed to pass. In its February 22, 2012 Report to City Council, the 2012 Charter Revision Committee (“2012 CRC”) recommended by a vote of 14-1 that “Council appoints the City Attorney.” These recommendations were adopted by the Council and included on the November 2012 ballot as Proposition 6. Proposition 6 failed to pass, with 49.37% voting “Yes” and 50.63% voting “No.”

The City Attorney Working Group provided its [report](#) to the CRC on January 22, 2018. The Working Group’s final [recommendation](#) was presented on February 8, 2018 and [passed](#) by a vote of 11-0.

The City of Austin is an outlier in terms of how its city attorney is appointed. According to the most recent Texas Municipal League survey in 2010, most Texas home-rule cities (73%) authorize their council to appoint the city attorney directly. The CRC is also recommending this charter revision to ensure accountability of the city attorney’s office to the city council.

### **Substance of the Proposed Amendments, Revisions or Repeals to the Charter:**

The CRC recommends that Article V, Section 6 “City Attorney”, be revised as follows:

“There shall be a department of law, the head of which shall be the city attorney, who shall be appointed by the city ~~manager~~ council. The city attorney shall be a competent attorney who shall have practiced law in the State of Texas for at least five (5) years immediately preceding his or her appointment. The city attorney shall be the legal advisor of, and attorney for, all of the officers and departments of the city, and ~~he or she~~ the city attorney shall represent the city in all litigation and legal proceedings, and the representation shall comply with the Texas Disciplinary Rules of Professional Conduct. ~~He or she~~ The city attorney shall draft, approve, or file ~~his or her~~ written legal objections to, every ordinance

before it is acted upon by the council, and ~~he or she~~ the city attorney shall pass upon all documents, contracts and legal instruments in which the city may have an interest.

There shall be such assistant city attorneys as may be authorized by the council, who shall be authorized to act for and on behalf of the city attorney.”

### **Estimated Fiscal Budgetary Impact for the Recommendation**

No anticipated fiscal budgetary impact.

### **Impact of the Recommendation on Existing City Laws, Rules, Practices and Procedures**

Aside from the amendment of Article V, Section 6 of the City Charter, the appointment of the City Attorney by City Council will not have an impact on existing City laws or rules. This recommendation may have an impact on practices and procedures, but the CRC was unable to assess the full extent of this impact.

### **Proposed Ballot Language:**

Shall the City Charter be amended to provide that the City Council appoint the City Attorney?

# Recommendation No. 7: Planning and Zoning Commission

The CRC was directed to review and propose recommendations regarding “[c]ity boards and commissions, including terms of Planning Commission members” and, in accordance with this directive, it reviewed and considered revisions Article X, Section 2 of the Charter regarding organization of the Planning and Zoning Commission.

The CRC is recommending that Article X, Section 2 of the Charter be amended to clarify that the timing of the Planning and Zoning commission appointments should be determined by ordinance.

## **Background, Policy Reasons for the Recommendation, and Substance of the Proposed Amendments, Revisions or Repeals to the Charter**

On March 5, 2018, Jannette Goodall, from the City Clerk’s Office, and Jerikay Gayle, from the City Law Department, provided a brief history of the issues surrounding the appointment of the Planning and Zoning commissioners. The City staff [recommended](#) that the planning commission appointments and terms to be determined by ordinance.

The CRC considered and discussed the proposal of the City staff at meetings on [March 5, 2018](#) and April 16, 2018.

The CRC voted 9-0 to recommend the following amendment to Article X, Section 2 of the Charter:

“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*. 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.”

The CRC is recommending this revision to bring clarity to the process for appointing Planning and Zoning Commissioners.

### **Estimated Fiscal Budgetary Impact for the Recommendation**

There is no estimated fiscal impact from this recommendation.

### **Impact of the Recommendation on Existing City Laws, Rules, Practices and Procedures**

Aside from requiring an amendment of Article X, Section 2 of the Charter, this recommendation will not have an impact on existing city laws, rules, practices and procedures.

### **Proposed Ballot Language**

[still in progress]

## Recommendation No. 8: Revenue Bonds

The CRC recommends that Article VII, Section 11 of the Charter be amended to require that 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, and that all electricity and water purchases whose total price for each project exceeds \$200 million shall first be authorized by a majority of the qualified electors voting at an election held for such purpose.

### **Background and Policy Reasons for the Recommendation:**

In 2012, the Charter Review Commission [recommended](#) that the Charter be amended to require a city election to approve major new revenue bonds over the \$50 million dollar amount, with a cost of living adjustment. In their report, the 2012 CRC stated that:

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

On March 12, 2018, Paul Robbins and Commissioner Jeff Smith presented a similar recommendation to the proposal submitted by the 2012 CRC. Their proposed recommendation was that all revenue bonds issued by the city for projects whose total cost exceeds \$25 million shall first be authorized by a majority of voters, and that all power and water purchases whose total price exceeds \$50 million shall also be authorized by a majority of voters.

The CRC discussed the recommendation and, because of concerns voiced regarding the impact that such a recommendation would have on City operations and the City’s energy and water utilities, amendments were proposed.

The amended recommendation passed by a vote of 7-1-1 (Palvino voting nay; Weigand abstaining).

**Substance of the Proposed Amendments, Revisions or Repeals to the Charter**

The CRC recommends that Article VII, Section 11 be amended to read as follows:

“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 \$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 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 (CPIW 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.”

**Estimated Fiscal Budgetary Impact for the Recommendation**

The CRC does not estimate that this recommendation will have an immediate fiscal budgetary impact.

The future fiscal budgetary impact is the cost of holding two public hearings on power and water expenditures exceeding \$100 million and the cost of holding an election on major utility-related projects that exceed \$200 million.

**Impact of the Recommendation on Existing City Laws, Rules, Practices and Procedures**

[still in progress]

**Proposed Ballot Language**

[still in progress]

## Recommendation No. 9: Routine Harmonization

On [January 29, 2018](#), Jerikay Gayle, of City Law Department gave the Commission a briefing on the proposed staff recommendations for corrections of clerical matters, routine harmonizing, and clarification of verbiage.

The staff recommendations for corrections of clerical matters, routine harmonizing, and clarification of verbiage were approved on Commissioner Hersh's motion, Commissioner Borgelt's second on an 8-0 vote.

The substance of the proposed amendments can be found [here](#).

## Appendix A: Meeting Dates

Monday, November 6, 2017	City of Austin City Hall
Monday, November 13, 2017	City of Austin City Hall
Monday, November 27, 2017	City of Austin City Hall
Monday, January 8, 2018	City of Austin City Hall
Monday, January 11, 2018	City of Austin City Hall
Monday, January 22, 2018	City of Austin City Hall
Monday, January 29, 2018	City of Austin City Hall
Monday, February 5, 2018	City of Austin City Hall
Monday, February 12, 2018	City of Austin City Hall
Monday, February 19, 2018	HEB Mueller Community Room, 1801 E. 51st Street
Monday, February 26, 2018	City of Austin City Hall
Monday, March 5, 2018	City of Austin City Hall
Monday, March 12, 2018	City of Austin City Hall
Monday, March 28, 2018	Public Hearing, Anderson High School
Tuesday, April 3, 2018	Public Hearing, Dove Springs Recreation Center
Saturday, April 7, 2018	Public Hearing, Austin City Hall
Monday, April 16, 2018	City of Austin City Hall

# Appendix B: Proposed Democracy Dollars Amendment

## **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.** No earlier than 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:

<b>\$25</b>	<b>1 of ___</b>	<b>Democracy Dollars for 20xx Election</b>	<b>Jane Q. Public</b>
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	<b>Voucher ID #123,456,789</b>	

**(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 3<sup>rd</sup> 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, audits, hearings, penalties, fines, sanctions, injunctive relief, and any other remedies. The Commission shall audit all participating candidates' campaign accounts to ensure the Democracy Dollars program is complied with fully.

**(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.

## Appendix C: [VIEWPOINTS: Independent ethics panel has benefits, but don't rush it](#)

Austin American Statesman, Editorial Board, Updated: 3:23 p.m. Thursday, April 19, 2018 | Posted: 10:38 p.m. Wednesday, April 18, 2018

It's still a work in progress, but the Charter Review Commission's proposal to establish an independent ethics panel to investigate — and if necessary prosecute — alleged violations of Austin's campaign-finance rules and other ethics-related matters is headed in the right direction.

We do offer some cautions: Whatever the final product is, it should not be rushed through the City Council or put before voters without public hearings or rigorous debate, as it would amend the city charter, Austin's incorporating document that spells out the powers and limitations of city government.

It's also worth noting that charter review members should craft a more balanced way of choosing the people who would sit on an independent ethics panel to avoid the body being controlled by any one city department or the City Council. It goes without saying that the cost of the initiative should be made public before it advances.

With several other initiatives being proposed for the November ballot — including a potential bond package that tops \$800 million, a campaign finance voucher system, as well as City Council races — time is short for meaningful public review.

We like that the proposal would strengthen the current system with two key elements it lacks: independence and teeth.

Independence would come from being its own body with members who aren't all appointed by the City Council, as is the case with the current 11-member Ethics Review Commission. The proposed five-member panel would have teeth and greater reach with a staff of five to eight members who would investigate and prosecute ethics violations.

The American-Statesman's Elizabeth Findell reported last week that if approved by the City Council and voters, the new board would replace the ethics commission. To form that panel, city auditors would hire an independent person to review applications and

select 12 candidates from registered voters with “expertise in relevant subject matters” but no ties to politics or city operations. From those 12, auditors would draw three people from a hat — and those three would pick an additional two, for an ethics commission of five.

In our view, some of the members still should be appointed by the City Council to balance the body. Otherwise, the panel might reflect the more legal and prosecutorial mindset of the auditor’s office if all members originated with that department. Reflecting Seattle’s ethics panel, Austin’s could be expanded to seven members.

As it stands, the 11-member Ethics Review Commission has been criticized as being heavily influenced by City Hall politics. Be that perception or reality, it undermines the panel’s credibility. The ethics commission is hampered by a system that spreads its duties across several city departments, including offices of the city clerk, auditor, city manager and city attorney. It has no paid staff for its volunteer board.

The proposal aims to address deficiencies and questionable findings by the commission over several years, including a recent decision in which the ethics commission declined to find that former Austin Police Monitor Margo Frasier violated city policy in using her work computer for non-city purposes. A series of events related to the case — including the commission’s demand for the original source of a tip about Frasier, and its ultimate finding — caused City Auditor Corrie Stokes to declare her disgust.

Findell reported that a memo in February from Fred Lewis, a member of the charter review panel, noted that the city’s legal department has not pursued any ethics or campaign finance enforcement actions in at least the past three years. The ethics commission has issued only four minor sanctions during that time: two reprimands, one admonition and one notification of violation.

Keep in mind that the ethics commission is made up of volunteers. The inadequacies of the current system are not the fault of the people on the commission; it’s the structure that creates the problem. The way it is set up makes the commission susceptible to influence or politics of the city manager’s office that oversees it or the City Council that appoints its members.

The proposed panel to replace it would enforce all city laws relating to campaign finance, campaign disclosure, conflicts of interest, lobbyist regulations, revolving door,

and disqualification of members of city boards, among other things. That is a tall order. The legwork would be done by paid staff, including lawyers, investigators, administrative assistants and an executive director, who would work for an ethics panel of volunteers.

City Council members and the public will need to know the cost for the replacement system to make an informed decision. That number could make or break it. Already, Austin homeowners are looking at increases in their property tax bills this year — and it still is uncertain how much proposed bond initiatives will add to the tab.

Good government should not be judged solely in dollars and cents, and it's easy to see why this proposal makes sense — if for no other reason than it would separate the minders of campaign-finance matters and ethics reforms from the users: elected officials, lobbyists and others who are required to abide by city ethics rules.

Even so, it needs fine-tuning before going to the City Council — and public scrutiny before going to voters.

# Appendix D: Proposed Independent Ethics Commission Amendment

## 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 campaign finance, campaign disclosure, conflicts of interest, financial statement disclosure, lobbyist regulations, revolving door, disqualification of members of city boards, certain conflict of interest and ethics laws, and other responsibilities assigned the Commission.

### 1.02. Commission Membership

The Commission shall be composed of seven (7) members, who shall be selected per Subchapter V below. The Commission shall select its chair from among its members.

### 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), City of Austin employee, City of Austin contractor, or candidate for state or local government and shall not have lobbied the City or assisted such a lobbyist. All Commissioners shall have demonstrated impartiality and have expertise in relevant subject matters, which may include ethics, conflicts of interest, civil rights and labor 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.

### 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 on each of the second, third, and fourth anniversaries of their terms on May 1 of such year respectively and two commissioners on the 5<sup>th</sup> 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.

#### 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.

#### 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. **Actively participate** in any City election campaign;
- E. Be a political consultant for any candidate or campaign;
- F. Participate actively in any committee that provides ratings of candidates for City office; or
- G. Lobby the City or assist such a lobbyist.

### **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");
- 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;

- C. To maintain and control the City's websites and databases related to Commission-administered laws;
- 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;
- E. 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.
- F. To make recommendations on proposed changes to the Council concerning Commission-administered laws at least every three years;
- G. 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;
- H. To promulgate, amend and rescind rules and regulations to define Commission-administered laws, to establish the Commission's procedures, and to administer the Commission;
- I. 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 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, and the Clerk of the Municipal Court, and any other employee who is not a member of the Municipal Civil Service.
- J. To bring a civil action to enjoin violations of or compel compliance with the Commission-administered laws;

K. To investigate and report criminal violations and to make referrals to Municipal Court and other appropriate jurisdictions.

L. To administer oaths and affirmations, examine witnesses, compel attendance of persons and production of documents, papers, books, accounts, letters, and records by subpoena;

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

N. To develop an annual budget that has the resources and staff to fulfill all the Commission's duties so that the City has an effective, well-functioning Commission; to recommend and approve its annual budget and make expenditures authorized in its annual budget. The City Council shall approve the Commission's recommended 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 2/3rds vote of the entire Council they find the Commission's recommended budget unreasonable or unnecessary.

O. To have full charge and control of its office, employees, and supplies; to adopt Commission personnel and other policies, 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 it 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.

P. 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

Q. 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.

2.02. Quorum.

**Four (4)** 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 **four (4)** 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.

### **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 in Texas, 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.

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.

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;
- 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;
- 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;
- 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; 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
- 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. Actively 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;
- G. Lobby the City or assist such a lobbyist.

**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 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).

#### 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.

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 compel the attendance of persons and production of documents, papers, books, accounts, letters, and records by subpoena.

#### 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, 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.

#### 4.04 Final Hearings.

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

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 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.

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

#### 4.04. 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.

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.

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.

#### 5.02. Initial Applicant Review Panel.

No later than February 15, 2019, the City Auditor shall appoint three (3) qualified independent 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 (5) years prior to appointment. In addition, each auditor 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 first shall remove those applicants who lack the qualifications required in Section 1.03. Thereafter, they shall select an applicant pool of 12 (twelve) by no later than April 15, 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 ~~75~~ Initial Commissioners.

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

B. No later than May 30, 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, 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 January 31, the City Auditor shall appoint an Applicant Review Panel of three (3) qualified, independent auditors, who shall begin reviewing all applications pursuant to the process in Sections 5.02 and 5.03. No later than March 15, the City of Austin Auditor shall randomly draw at a public meeting three names from the pool of twelve (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 to replenish the applicant pool to have 12 applicants within 4 months of such request.

# Appendix E: Backup Materials Supporting Fiscal Impact