

**PRELIMINARY REPORT OF THE CAMPAIGN FINANCE COMMITTEE OF THE AUSTIN
CHARTER REVISION COMMISSION RECOMMENDING AN INDEPENDENT ETHICS
COMMISSION (1/22/2018)**

Executive Summary. Committee Recommendation for an Independent Ethics

Commission. We unanimously recommend that Austin follow the lead of major cities that are recognized as having effective ethics enforcement and administration, and that Austin adopt an independent ethics commission. Such a commission would be independent of the Council, City Manager, and City Attorney; it would report to and be overseen by a public board. The board would hire the Executive Director, and the commission's staff would administer and enforce all campaign finance, ethics, conflicts, and lobbyist disclosure laws. In addition, we would recommend requiring provisions in the charter that safeguards the commission's independence by ensuring it receives sufficient resources and staff to do its work properly.

Experts consider the best practice is to establish an independent ethics commission that is professionally staffed and that reports to a public board¹, rather than elected officials or their hires, because of the political nature of the decisions being made. Experts "are concerned about the potential loss of autonomy for ethics agencies that merged with agencies which fall under the authority of those they are intended to regulate." *Comlossy, Ethics Commissions*, p. 9.

We believe effective enforcement and administration are crucial to the effectiveness of any laws, but especially in the areas of campaign finance and ethics. Because of the politicized nature of these issues, we believe ethics commission independence is the key to effective enforcement and implementation. The public's trust in its decision-making is crucial: "Ethics commissions work to ensure voters' trust in policymakers and political institutions through external oversight and transparency...One of the greatest challenges to ethics committees is maintaining their credibility with the public." *Comlossy, Ethics Commissions: Representing the Public Interest* (Center for Ethics in Government; National Conference of State Legislatures 2013), p. 1

Major Issues Involved in An Independent Ethics Commission: We believe Austin's goal should be establishing an effective, trusted ethics agency that has autonomy, expertise and jurisdiction over all ethics related laws: lobbyist disclosure, conflicts of interest, revolving door, ethics and campaign finance laws. We have looked extensively at studies

¹ "An ethics commission is usually an independent body that provides external oversight and enforcement of ethics laws." *Understanding the Role of Ethics Commissions* (Institute for Local Government, December 2007), p. 3. "For an ethics commission to achieve the goal of promoting public confidence in its decision-making processes, it needs fair-minded and diligent members who are concerned with equitably enforcing its adopted ethics laws and requirements." *Id.*, p.5

and at Seattle, Los Angeles, San Francisco, and other major cities' Ethics Commission laws. See Los Angeles City Charter, Section 700; Code of San Francisco, Section 15.100; Seattle City Code, Section 3.70 (three laws are attached).

Here are our preliminary recommendations. We ask for guidance from the Charter Revision Commission, so we can finalize a recommendation to the Commission.

1. Comprehensive Responsibilities for One Agency. Most effective ethics commissions do essentially all tasks in one agency: accept campaign finance and lobbyist filings, recommend policy changes, adopt and implement regulations, issue advisory opinions, inform the public, and enforces the law. See *Comlossy, Ethics Commissions*, p.9; *Understanding the Role of Ethics Commissions* (Institute for Local Government, December 2007), pp. 3-4. See also City of Los Angeles Charter, Section 7.02²; San Francisco Code, Section 1.164; Seattle City Code, Section 3.70.100

In Austin, we currently have four different entities involved in ethics matters: the City Clerk, City Attorney, City Auditor, and Ethics Review Commission. There is no single, dedicated ethics agency. Many of the tasks done by other states' and cities' are not done in Austin: there are no advisory opinions for candidates and political committees, little to no advisory services for candidates and the public, no thorough and proactive policy recommendations, no thorough investigations, no strong enforcement or fines levied, and

² Los Angeles Charter, Section 7.02: "The City Ethics Commission shall have the following duties and responsibilities:

(a) to receive documents required to be filed pursuant to, and to otherwise administer, the provisions of Section 470 and to conduct audits as otherwise set forth in that section;

(b) to receive documents required to be filed pursuant to, and to otherwise administer, the provisions of the City's municipal lobbying ordinance;

(c) to act as the filing officer and to otherwise receive documents in any instance where the City Clerk would otherwise be authorized to do so pursuant to Chapters 4 and 7 of the California Political Reform Act of 1974 (Government Code Section 81000, et seq.), as amended;

(d) to audit disclosure statements and other relevant documents and investigate alleged violations of state law, the Charter and City ordinances relating to limitations on campaign contributions and expenditures, lobbying, governmental ethics and conflicts of interest and to report the findings to the City Attorney and other appropriate enforcement authorities...

(e) to provide assistance to agencies and public officials in administering the provisions of the Charter and other laws relating to campaign finance, conflicts of interest and governmental ethics;

(f) to make recommendations to the Mayor and the Council concerning campaign finance reform, lobbying, governmental ethics and conflicts of interest and to report to the Council every three years concerning the effectiveness of these laws;

(g) to maintain a whistle-blower hotline;

(h) to annually adjust the limitation and disclosure thresholds required by City law to reflect any increases or decreases in the Consumer Price Index. Adjustments shall be rounded off to the nearest hundred dollars for the Limitations on contributions and the nearest thousand dollars for the limitations on expenditures and the matching funds provisions of relevant ordinances;

(i) to assist departments in developing their conflict of interest codes as required by state law; (j) to advocate understanding of the Charter, City ordinances and the roles of elected and other public officials, City institutions and the City electoral process..."

no regulations providing more specificity to city ordinances. The tasks that are done in Austin are split among various entities:

- The City Clerk accepts the campaign finance reports, financial statements and lobbyist filings, oversees the campaign e-filing system, and conducts facial compliance on lobbyist filings (to see if all sections are all filled in).
- The City Attorney provides legal advice to the City Clerk and Ethics Review Commission. It does not issue advisory opinions to candidates or give general advice to the public. The City Attorney has taken no ethics or campaign finance enforcement actions in municipal court over the last three years (according to documents recently produced by the City in December response to PIA Request No. 38234), and none that we are aware of over the last 20 years. There have been only 4 minor “sanctions” (2 reprimands, 1 admonition, and 1 notification) by the Ethics Review Commission in the last three years.
- The City Auditor investigates alleged breaches of ethics by council and board members. Austin City Code, Section 2-3-5 (K). Also, as of June 2017, with the implementation of the new lobby reform law, the City Auditor audits at random at least 5% of lobbyist filings per year. Austin City Code, Section 4-8-10. The City Auditor Office’s expertise, however, is more in financial and performance auditing, than in ethics and campaign finance investigations.
- The Ethics Review Commission (ERC) consists of 11 commissioners, one appointed by the mayor and each council member. They have no required expertise in ethics, campaign finance, or enforcement. There are no qualification restrictions on serving as an Ethics Review Commissioner, other than those that apply to every other Austin board: the board member must be an Austin resident and can’t be a lobbyist. There are no ERC board member restrictions on contributing to campaigns, running for office, or working for campaigns.

The ERC hears and makes recommendations on ethics and campaign finance complaints, but prosecution rests with the City Attorney because violations are a Class C misdemeanor (up to a \$500 fine). The ERC has done no thorough or proactive evidentiary investigations, although it has held several final hearings. The Ethics Review Commission members also lack the time or expertise to make proactive policy recommendations, although it has commented on council-initiated proposed ordinances, such as lobbyist disclosure reform, secret money disclosure, and campaign e-filing.

2. Independent Agency. We believe the best approach is establishing an independent ethics agency that answers to an expert public member Board, and not to the City Attorney, City Manager or Council. An Independent Commission’s Board hires the Executive Director, who has a fixed term and can be removed only for cause by the Board. The Board oversees the Executive Director, who executes the laws and investigates and prosecutes wrongdoing. The Commission approves advisory opinions, adopts regulations, makes policy recommendations, and decides enforcement cases. An Independent Ethics

Commission and its staff are answerable first to its Board, but ultimately to the public and courts.

Austin has experience with independent agencies: the City Auditor's Office and the Independent Citizens Redistricting Board (ICRC)³ were both adopted as charter amendments by voters in the November 2012 election. The ICRC, for example, is an independent, standalone entity whose public members cannot be removed by council and must be funded by council sufficient to accomplish its tasks. Austin City Charter, Article 2, Section 3 (J)(1), (K)(9) The ICRC's members are not appointed by the Council: 8 are selected at random from a qualified, conflict-free pool culled by 3 independent auditors, and then those 8 commissioners select from the remaining qualified pool the 7 other commissioners by supermajority vote. See Austin City Charter, Article 2, Section 3 (I).

3. Terms, Qualifications and Restrictions of Commission members. Other cities (as well as the ICRC) have qualification restrictions such as: 1) board members must be a registered voter in the city; 2) cannot be lobbyists, candidates, contributors, political consultants, party officials, staff, etc. within a period of time before and after their appointment. Like some cities, we would add that they have demonstrated expertise in campaign finance, ethics, conflicts, or enforcement. We also would add a qualification that they must be committed to supporting and enforcing ethics and campaign finance laws. This is because often appointed members to the Federal Elections Commission in Washington oppose the very laws that they are supposed to administer and enforce, destroying the agency's effectiveness and engendering public cynicism.

To ensure independence, Commissioners usually are given fairly long-terms between 3-5 years and their terms are staggered. Most Independent Ethics Commission boards are relatively small for effectiveness: San Francisco's has 5 members, Los Angeles' has 5, Seattle's has 7. (Austin's Ethics Review Commission currently has 11 members). These cities' members are mostly appointed by multiple-elected officials (such as mayor, district attorney, city attorney, tax assessor, auditor, council). Seattle's 7th member is selected by the other commissioners. We are exploring a selection process similar to the ICRC for an independent ethics commission, with a pool of qualified, conflict-free applicants reviewed by auditors, with the commissioners picked at random or by council from that pool.

4. Budget Independence and Sufficiency. It is important that the Commission have the funding to do its job effectively (and not allow the agency to be pressured financially as retribution for taking action, which is all too common across the country). We don't have the Austin budget figures at this time, but the City Clerk has noted for years her lack of resources for her responsibilities. We recommend, like in California, a base budget, plus

³ Austin City Charter, Article II, Section 3 provides that the ICRC hires and fires its own staff and doesn't not answer to the Council or City Manager.

cost of living and work load adjustments, per a formal analysis by the City Auditor.⁴ The City Auditor could establish a commission annual budget amount based on the expenditure totals of good municipal ethics commissions in other cities as well as having sufficient resources to do their specific tasks effectively and promptly. The City Council would be required to fund Commission at this recommended amount. We have a somewhat similar Council requirement for funding the Independent Citizen Redistricting Commission.⁵ Alabama and California’s ethics agencies have budgets that are independent of the legislatures that they regulate.

5. Enforcement Process. We recommend that all enforcement personnel (lawyers, investigators, etc.) work for the independent commission and not the City Attorney. This is because the City Attorney works for the City Manager. We recommend that the commission’s lawyers work on pro-active audits and evidentiary investigations with investigators. They may prosecute when needed if cases cannot be settle. The Executive Director and staff would have full authority to investigate with subpoena power, right to take witness statements etc. *before* hearings—which is not done now. The Board would hear matters and set fines and reprimands and issue cease and desist orders. Appeal would be to a court of competent jurisdiction.

Conclusion: We look forward to your guidance and feedback on our recommendation that Austin adopt a state of the art independent ethics commission.

⁴ California Code, Title 9, Section 83122 “There is hereby appropriated from the General Fund of the state...the sum of one million dollars (\$1,000,000) in Fiscal Year [1974], adjusted for cost-of-living changes, during each fiscal year thereafter, for expenditures to support the operations of the Commission pursuant to this title. The expenditure of funds under this appropriation shall be subject to the normal administrative review given to other state appropriations. The Legislature shall appropriate such additional amounts to the Commission and other agencies as may be necessary to carry out the provisions of this title.”

⁵ Austin City Charter, Article II, Section 3 (K): “the City Council shall appropriate sufficient funds to meet the operational cost of the commission and the cost of any outreach program to solicit broad public participation in the redistricting process.” See also “The commission... shall inform the City Council if it determines that funds or other resources provided for the operation of the commission are not adequate. The City Council shall provide adequate funding to defend any action regarding a certified map.” Article 2, Section 3 (K)