MEMORANDUM

To: Charter Revision Committee
From: Charter Revision Working Group
(Ted Siff, Ann Kitchen, Fred Lewis, Margaret Menicucci, Susan Moffat)
Re: Additional Recommendations on Planning Commission and Campaign Finance Reporting
Date: January 18, 2012

EXECUTIVE SUMMARY

The CRC Working Group recommends the following three proposed amendments to the full Charter Revision Committee:

1. Clarify that ex officio members of the Planning Commission are non-voting members whose attendance does not affect quorum requirements.

2. Revise the current city reporting system to require more stringent and accessible disclosure of all bundled campaign contributions received by city candidates and officeholders.

3. Limit the amount of bundled campaign contributions by registered city lobbyists to a maximum of $1750 per city candidate per election cycle for individual bundlers and $3500 per candidate per election cycle for firms that bundle.

1. Clarify that ex officio members of the Planning Commission are non-voting members whose attendance does not affect quorum requirements.

PROBLEM

The Austin City Charter expressly creates four ex officio members of the city's Planning Commission under Article X, Section 2. These are: the City Manager, the Director of Public Works, the President of the AISD Board of Trustees, and the Chair of the Board of Adjustment. Traditionally, these ex officio seats have been viewed as non-voting positions. However, an ex officio member recently expressed a desire to vote on cases before the Commission.

Questions raised by allowing ex officio members to vote include the following:

• Two of the ex officio members are city staff members, notably the City Manager and the Director of Public Works, raising the possibility of conflicts of interest and impartiality.

• The nine appointed Planning Commission members are required to attend meetings or lose their positions, but the four ex officio members are not held to this requirement. Given that only one ex officio member regularly attends Planning Commission meetings, the Commission effectively has 10 members currently. This means tie votes are possible if the ex officio member votes.

• The current quorum for Planning Commission requires five of the nine members to be present to meet or pass a motion. If ex officio members were granted voting rights, this would presumably raise the quorum requirement to seven. Given the other demands on their time, it is unlikely that a majority of ex officio members would be available for regular meetings, potentially making it difficult to obtain the quorum needed to conduct business.

• Ex officio members serve by virtue of their office (literally “from the office”) and most typically serve as advisors to a body, not fully vested members.

In response to this situation, the Austin City Council voted in December to amend the City Code to clarify that ex officio members of the Planning Commission are not voting members. However, the City Charter language remains silent on this issue and, due to this ambiguity, the possibility of a legal challenge has been raised regarding a city-imposed restriction in an area on which the Charter is silent, given that the City Charter legally supersedes City Code.

To clarify any remaining ambiguity and protect the city against possible legal action, the Planning Commission and the City Council have requested the Charter Revision Committee to consider a proposed amendment to Article X, Section 2 of the Charter to

clearly state that ex officio members of the Planning Commission are non-voting members.

SUMMARY OF PROPOSED AMENDMENT

The proposed charter amendment would revise Article X, Section 2 to specifically provide that ex officio members of the Planning Commission shall serve as non-voting members whose attendance shall not affect quorum requirements.

RECOMMENDED

This proposed amendment is recommended to the full committee by a unanimous vote of the CRC Working Group.

2. Revise the current city reporting system to require more stringent and accessible disclosure of all bundled campaign contributions received by city candidates and officeholders.

PROBLEM

The city's current campaign finance reporting system requires many laborious hunt-and-peck searches to locate and compile information related to bundled campaign contributions. This makes it difficult for the public to readily determine the sources or total amounts of large donations that are channeled through a single individual or entity to a city candidate or officeholder. Given that a single bundler delivered as much as $25,000 to a single candidate in a recent city election, we believe a compelling public interest exists to improve the transparency of these transactions.

As a 2010 report by the Brennan Center for Justice explains:

"Bundling occurs when an intermediary, sometimes known as a "conduit," gathers contributions from individuals and sends them to a candidate. The bundler takes credit for soliciting and delivering the funds, but because he or she is acting as an intermediary in passing on contributions from others, the contributions do not count against the bundler's own contribution limit. Bundling therefore may be seen to raise the same risk of corruption or appearance of corruption as large campaign contributions do."[1]

In local races, the practice of bundling can result in substantial injections of money. According to the *Austin American-Statesman*, in the last City Council election, one prominent law firm employing registered lobbyists who frequently represent clients before City Council bundled a total of $25,000 for a single Council candidate - an amount over 70 times the top contribution allowed by an individual citizen. Nearly one-quarter of the money raised for the candidate in question came from a dozen bundlers who, according to the Statesman, "work for some of Austin's biggest lobbying, law and development firms…". Another $10,000 in bundled contributions for the same officeholder came from employees of firms involved in a controversial project on which the recipient had voted as a council member.

Austin City Code Section 2-2-22 requires a candidate or officeholder to report "… the name and address of any person who solicits and obtains contributions on their behalf, during a reporting period, of $200 or more per person from five or more individuals, and provide the name and address of those individual donors." But due to omissions and structural flaws in the current reporting system, it is not easy to discern the total amounts and sources of large bundled contributions.

Under Austin's current system, each bundler is assigned a number. To find the total

[1] Torres-Spelliscy, Ciara. *Writing Reform, 2010 Revised Edition* (pp. III 29-32). Brennan Center for Justice. http://brennan.3cdn.net/6a899b38279d11d8e1_3jm6b4bgp.pdf

amount given by each bundler, one must search the entire list of individual contributors by hand, identify those names that appear with a bundler's number, write down the individual amounts of each contribution and, finally, add them up. This unwieldy process must then be repeated for each bundler and each candidate or officeholder for each reporting period. Only through this time-consuming practice can the public currently identify those individuals and entities who are delivering significant bundled contributions to candidates and elected officials.

Further, bundlers are not currently required to disclose certain information that would allow the public to determine the connections that may exist between the bundler, his or her individual contributors, and registered city lobbyists in the bundler's employ.

We believe these issues must be addressed to improve transparency and promote voter confidence in city elections. As with other campaign finance reforms, we recommend the proposed amendment for inclusion in the City Charter to ensure its permanency and protection, and to allow the voters of Austin the opportunity to ratify it at the ballot box.

SUMMARY OF PROPOSED AMENDMENT

Under the proposed amendment, the city would create a required reporting form for all bundlers.[2] It would further revise Schedule V[3], which city candidates and officeholders are already required to file as part of their regular Contribution and Expenditure Reports (C&Es), to provide more detailed information about bundlers and the sources of the bundled contributions in a single place within the C&E. All reports related to bundled contributions would be available in a publicly searchable, downloadable database, as previously recommended by the Charter Revision Committee.

Under the revised system, each bundler would be required to report the following information in writing to the candidate or officeholder who must, in turn, cause this information to be filed with his or her C&Es (asterisk denotes information already required by City Code):

- Identity of bundler and address*
- Bundler's employer and occupation
- Names of all registered lobbyists, if any, employed by the bundler and his/her firm or employer
- Name•, address*, occupation and employer of each individual contributor
- Total amount delivered to each candidate or officeholder for that reporting period
- Cumulative amount delivered to each candidate or officeholder for the current election cycle

[2] As defined by Austin City Code Section 2-2-22.

[3] http://www.ci.austin.tx.us/election/candpack_20120512_english.htm

Candidates and officeholders shall notify all bundlers of these requirements and each bundler shall have a duty to report all required information to each candidate at such time as bundled contributions are delivered. Candidates and officeholders shall report all bundled contributions in conformance with deadlines for each reporting period. In cases where bundled PAC contributions are earmarked for a particular officeholder or candidate, the same reporting requirements would apply.

RECOMMENDED

This proposal is recommended to the full committee by a unanimous vote of the CRC Working Group.

3. Limit the amount of bundled campaign contributions by registered city lobbyists to a maximum of $1750 per city candidate per election cycle for individual bundlers and $3500 per candidate per election cycle for firms that bundle.

PROBLEM

To preserve public confidence in our electoral process, the City of Austin already wisely limits personal contributions by registered city lobbyists to city candidates and officeholders. However, the failure to limit the bundling of campaign contributions by these same entities effectively negates this important campaign finance provision.

Austin City Code provides a compelling rationale for such restrictions. Section 2-2-53 (A) reads:

"The city council finds that the practice of lobbying for compensation creates a unique relationship between candidates and officeholders on the one hand, and lobbyists on the other. To preserve public confidence in the electoral process, to diminish the appearance of impropriety and special influence, and to minimize the role of political contributions in the legislative and regulatory processes and the awarding of public contracts, it is appropriate to prohibit persons who lobby the city council from making contributions to candidates for mayor and city council and to officeholders. Accordingly, no person who is compensated to lobby the city council and who is required to register with the City as a lobbyist, and no spouse of the person, may contribute more than $25 in a campaign period to an officeholder or candidate for mayor or city council, or to a specific purpose political committee involved in an election for mayor or city council." [4]

Despite the clear intent of this provision, many registered lobbyists or their firms effectively circumvent these limits by bundling campaign contributions for city candidates or officeholders.

As previously discussed, bundling occurs when an intermediary gathers contributions from others and delivers them to a candidate or officeholder. Through this practice, registered lobbyists may effectively gain the same favor, influence or access – or the appearance thereof - that our City Code specifically seeks to prevent. In fact, some might argue that the current system offers lobbyists the best of both worlds: they can't be tapped for large personal contributions themselves, yet they gain whatever benefits may flow from such generosity by soliciting and proffering the money of others.

As discussed in Item 2 above, the city's current reporting system requires numerous time-consuming hunt-and-peck searches to find and compile information on bundled contributions. Moreover, if an associate or employer performs bundling on a lobbyist's behalf, the lobbyist's name may not be reported at all. In large firms, it is not uncommon for a highly placed partner to undertake the soliciting and delivery of bundled

[4] Sec. 2-2-53 (B) does permit registered lobbyists to contribute to the Austin Fair Campaign Fund created under this chapter.

contributions, while registered lobbyists in the firm's employ are not reported. However, the lobbyist's connection to that firm remains clear to the receiving candidate or officeholder.

As previously noted, bundled contributions can add up. In a recent city election, one candidate received $25,000 from a single bundler, with additional bundles delivered by some of Austin's largest lobbying, law and development firms.

Likely most candidates and officeholders would strenuously deny that large bundled contributions influence their decision-making, and this may well be true. However, as our City Code correctly notes, the appearance of special influence may be just as damaging as actual corruption, feeding a growing cynicism and detachment among voters that Austin can ill afford.

For these reasons, we believe it is important to address the loophole that allows unrestricted bundling of campaign contributions by registered city lobbyists. As with other campaign finance reforms, we recommend the proposed amendment for inclusion in the City Charter to ensure its permanency and protection, and to allow the voters of Austin the opportunity to ratify it at the ballot box.

SUMMARY OF PROPOSED AMENDMENT

The proposed amendment would limit bundled campaign contributions by registered city lobbyists to a maximum of $1750 per city candidate per election cycle for individual bundlers and $3500 per candidate per election cycle for firms that bundle.

RECOMMENDED

This proposed amendment is recommended to the full committee by a 4-1 vote of the CRC Working Group.