

MEMORANDUM

To: Charter Revision Committee

From: Charter Revision Working Group

(Ted Siff, Ann Kitchen, Fred Lewis, Margaret Menicucci, Susan Moffat)

Re: Recommendation Regarding Independent Citizens Redistricting Commission

Date: January 30, 2012

Executive Summary

In the event the Charter Revision Committee (CRC) votes to recommend a full or partial district system for future Austin city elections, the CRC Working Group unanimously recommends an accompanying proposed charter amendment to create an Independent Citizens Redistricting Commission. Basic elements included in the Charter provision are the following:

1. The Austin City Charter establishes a 14-member Independent Citizens Redistricting Commission charged with drawing districts lines for Austin City Council seats once every ten years based on federal census data and other specific criteria stated in the charter.
2. An application process conducted by the City Auditor identifies a preliminary group of qualified, diverse, impartial applicants.
3. The Applicant Review Panel, consisting of 3 independent auditors selected randomly by the City Auditor from a qualified pool, uses specified criteria to select a pool of 60 diverse, highly qualified applicants, and selects 8 commissioners at random from this pool.
4. These 8 randomly selected commissioners examine all remaining applications in the 60-person pool and select 6 additional commissioners with the goal of ensuring a fully diverse commission, racially, ethnically, geographically, and by gender, sexual orientation, and student status.
5. The commission must follow all applicable constitutional and statutory provisions, as well as additional criteria specified in the charter, in drawing district lines.
6. The commission must operate openly and transparently with substantial, well-defined opportunities for public input and review at all stages of the redistricting process.
7. The commission will clearly communicate all review and accountability processes to the public on redistricting decisions.

The universal adoption of independent redistricting commissions has been recommended by the American Bar Association since 2008 and more recently by the Brennan Center for Justice. While an independent commission will not provide the perfect answer for all potential problems, the CRC Working Group believes it offers a critical path to ensure voter trust and engagement if or when Austin transitions to a district system for city elections.

Need for Independent Commission

For decades, Austin residents have observed firsthand the many serious, well-documented problems of disenfranchisement and conflicts of interest that are inherent in state and federal redistricting processes that allow district lines to be drawn by the same elected officials that seek to run in these districts. At best, the process has distracted officeholders from other pressing public business, as critical issues such as school finance take a back seat to map wars. At worst, it has provided a venue for self-serving gerrymandering, petty vendettas, and multiple lawsuits. It has contributed to deep public cynicism about our democratic process, with elected officials picking their voters rather than voters choosing their public servants. The legal quagmire that currently disrupts our state primaries provides a case in point.

We see no reason to recreate this same troubled system at the city level, nor do national legal experts. Since 2008, the American Bar Association has urged all states to enact independent commissions for redistricting.¹ Similarly, a report by the Brennan Center for Justice cites independent commissions as likely the only effective means to “avoid motivation for shenanigans” in redistricting.²

An independent commission does not provide the perfect answer for all potential problems because complete independence is often impossible to obtain and the necessity of balance exists so that citizens who are engaged and involved in their city government may participate. Nevertheless, the CRC Working Group believes that these commissions introduce a level of impartiality that is a critical improvement over allowing elected officials or their appointees to draw their own districts. We strongly recommend the creation of an independent commission, with mandatory redistricting criteria included in the charter, as the best path to ensure voter trust and engagement if or when Austin transitions to a full or partial district system for city elections.

For those who wish to undertake an in-depth examination of redistricting practices generally, there are a number of nonprofit websites devoted to this topic including *Redrawing the Lines*, a project of the NAACP Legal Defense Fund³, or *Redistricting Online*, a nonpartisan redistricting resource⁴. Materials provided the committee by Steve Bickerstaff, a national expert on independent redistricting commissions, are also available on the committee’s website.

¹ ABA H. Delegates, *Daily Journal: 2008 Midyear Meeting*, Report No. 102A (2008), at http://www.abanet.org/leadership/2008/midyear/docs/Daily_Journal.doc; see also A.B.A. Sec. Admin. L. Reg. Prac., *Report to the House of Delegates*, No. 102A (2008), at http://www.abanet.org/leadership/2008/midyear/updated_reports/hundredtwoa.doc.

² Levitt, Justin. *A Citizen’s Guide to Redistricting, 2010 Edition* (VII. Suggestions for Reform, 75). Brennan Center for Justice.

http://www.brennancenter.org/content/resource/a_citizens_guide_to_redistricting_2010_edition/

³ <http://www.redrawingthelines.org/redistrictingreform>

⁴ <http://redistrictingonline.org/>

Independent Redistricting Models

California and Arizona currently have the two most respected independent redistricting commission models in the United States. Both use transparent, open processes and clear mandatory line-drawing criteria, which are key parts of an independent redistricting commission. The CRC Working Group has based its recommended framework for an Austin commission largely on the California system. This model offers a more impartial selection process for commissioners and provides a larger, more diverse body, as recommended by the Brennan Center for Justice.⁵

Recommended Elements of an Independent Citizens Redistricting Commission

The CRC Working Group recommends the following elements for an Austin independent redistricting commission, to be included in the charter where specified:

1. A proposed amendment to the Austin City Charter establishes a 14-member Independent Citizens Redistricting Commission.

(a) The commission will be charged with the responsibility of drawing districts for Austin City Council positions once every ten years based on federal census data and other laws and provisions specified below.

2. An application process, conducted by the City Auditor, identifies a preliminary group of qualified, diverse, impartial applicants as follows:

(a) Any resident of Austin who has been registered to vote for at least 5 years and has voted in 3 of the 5 most recent city elections may apply to serve on the commission. Any full-time student enrolled in an Austin college or university who is a registered voter is exempt from the requirement to have voted in 3 of 5 elections.

(b) In the previous 5 years, applicants may not have served in any of the following capacities: paid political consultant for a city or county candidate or officeholder; paid employee of a political campaign in a city or county election; candidate in an election for city office; elected city officeholder; registered city lobbyist; city employee; recipient of a non-competitively bid city contract over \$50,000 or recipient of a competitively bid city contract in an amount large enough to reasonably create the appearance of a conflict of interests; or a person who has bundled more than \$1750 in campaign contributions for any one city candidate in the last election.

(c) Applicants must agree not to run for elected city office for a period of 10 years after serving on the commission, and must agree not to engage in any of the following

⁵ Levitt, 75. The Arizona model allows the two major political parties to select 4 of the 5 commission members. This method involves partisan political involvement that is both inconsistent with the non-partisan City of Austin elections and less impartial than the California system.

activities for 3 years after serving on the commission: paid political consultant for a city or county candidate or officeholder; paid employee of a political campaign in a city or county election; registered city lobbyist; city employee; recipient of a non-competitively bid city contract over \$50,000 or recipient of a competitively bid city contract in an amount large enough to reasonably create the appearance of a conflict of interests; or person who bundles more than \$1750 in campaign contributions for any city candidate.

(d) Applicants will provide specific information to enable selection of a diverse well-qualified commission that fully represents all segments of Austin. At a minimum, required information must include: current occupation; gender; race or ethnicity; sexual orientation at applicant's discretion; age; home address; relevant professional expertise, skills, and/or experience such as statistical analysis, community or neighborhood involvement, advocacy of issues of importance to the city including but not limited to housing, land use, environment, healthcare, energy, social services, transportation and the arts. All applicants must sign a written commitment to act impartially in the best interests of the community as a whole.

3. The Applicant Review Panel, consisting of 3 independent, qualified auditors selected at random by the City Auditor, uses specified criteria included in the charter to identify a pool of 60 highly qualified applicants and selects 8 commissioners at random from this pool.

(a) The Applicant Review Panel reviews applications and selects a pool of the 60 most qualified applicants who represent a diverse range of Austin citizens and meet criteria for qualifications. The auditor will use criteria specified in the charter which includes: (1) diverse representation (gender, race, ethnicity, age, student status, sexual orientation, home address) and (2) professional expertise, skills and/or experience (statistical analysis, community or neighborhood involvement, advocacy of issues of importance to the city including but not limited to housing, land use, environment, healthcare, energy, social services, transportation and the arts), to ensure a diverse and well qualified commission.

(b) The City Auditor randomly selects in public the first 8 commissioners from this pool of 60.

(c) The City Auditor, or members of the Applicant Review Panel, may not communicate to the mayor or City Council or their staff on any matters related to the independent commission or redistricting except in a public forum or in written communications available to the public.

4. These 8 randomly selected commissioners will examine all remaining applications in the 60-person pool and select 6 additional commissioners with the goal of ensuring a fully diverse commission, racially, ethnically, geographically, and by gender, sexual orientation, student status, and professional expertise, skills, and experience.

(a) The 8 randomly selected commissioners will use the same criteria as the City Auditor to ensure a diverse and well-qualified commission and must agree on the 6 additional commissioners by at least 6 votes out of 8.

5. Commissioners must follow all applicable constitutional and statutory provisions, as well as additional criteria specified in the charter, as follows, in drawing district lines.

(a) Commissioners must follow all relevant provisions of federal, state, and city laws, including the U.S. Constitution and the Voting Rights Act. In addition, commissioners will consider the following criteria in determining district boundaries:

(b) Districts must be contiguous and compact.

(c) Districts should respect communities of interest and neighborhood association boundaries.

(d) Districts should not cross precinct lines.

(e) Commissioners shall not consider the home addresses of incumbents in drawing district boundaries.

(f) Commissioners shall not favor, or discriminate against, any city candidate, officeholder or political organization.

(g) Commissioners shall not communicate with any city elected officials or city candidates, or their respective staff members, regarding redistricting matters.

6. The commission must operate openly and transparently with substantial, well-publicized opportunities for public input and review at all stages of the redistricting process.

(a) All commission meetings and communications will be subject to the Open Meetings Act and Open Records Act.

(b) Commissioners and staff are prohibited from receiving communications about redistricting matters from anyone outside of a public hearing, other than exceptions permitted under the Open Meetings Act.

(c) The commission will establish an open hearing process for public input, subject to public notice and promoted through a thorough outreach program to solicit broad public participation in the redistricting public review process. The hearing process shall include hearings to receive public input before the commission draws any maps and

hearings following the drawing and display of any commission maps. Maps will be made available for public comment in a manner designed to achieve the widest public access reasonably possible, and comment shall be taken for at least 14 days from the date of public display of any map.

(d) Any action by the commission requires a supermajority vote of at least 9 of the 14 commissioners.

(e) The commission shall hire independent staff to provide, legal, technical and facilitation support for the meetings and business of the commission, which the City shall fund.

(f) The commission will adopt rules of organization including a process to replace or remove commission members.

7. The commission will clearly communicate all review and accountability options to the public for redistricting decisions.

(a) In addition to the public review process outlined above, the commission will provide information regarding the U.S. Department of Justice review and preclearance of redistricting maps, as well as any additional options for public or judicial review.