

LEWIS EDITS

To appendix add memos of MALDEF, Richards and Bickerstaff.

## 2012 CHARTER REVISION COMMITTEE OVERVIEW

The Austin City Council established the 2012 Charter Revision Committee per Resolution 20110804-028 on August 4, 2011. Council directed the body to make recommendations regarding the proposed City Charter amendments laid out in Resolutions 20100624-078, 20110428-048, and 20110623-094; make recommendations regarding the proposed single member district maps presented to Council on June 9 and on any additional maps conforming with Resolutions 20110526-024 and 20110526-025 that may be brought forward by the public; and submit a final report by spring 2012.

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Appointments to the body included Gonzalo Barrientos, Ann Kitchen, David Butts, Fred Cantu, Delia Garza, Richard Jung, Delores Lenzy-Jones, Fred Lewis, Nelson Linder, Dr. Fred McGhee, Margaret Menicucci, Susan Moffat, Ken Rigsbee, Ted Siff, and Kathleen Vale. The body chose Gonzalo Barrientos as Chair and Ann Kitchen as Vice Chair.

The Committee met for the first time on September 15, 2011. Over the course of the next six months, the body met approximately every two weeks at well-attended meetings all over the city and heard from over 100 speakers.

The Committee also immediately created a Working Group made up of Vice Chair Kitchen and Committee Members Siff, Moffat, Lewis, and Menicucci that assessed the proposed charter amendments and other related charter proposals, and periodically brought summary reports to the larger body for consideration and discussion. This approach allowed the Committee to take a vote on election administration and personnel amendments on October 13, campaign finance amendments on December 8, a Planning Commission and additional campaign finance amendments on January 19, and an independent redistricting committee item on February 2. While some of the recommendations could be achieved by a code change, the Committee sees the Charter as the most secure place to make these important amendments.

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At every meeting, the Committee as a whole worked through issues related to the pros and cons of the range of maps proposed by council and presented by members of the public. Invited speakers included Atty. Sydney Falk, Bickerstaff Heath Delgado Acosta LLP; Ryan Robinson, City Demographer; Luis Figueroa, MALDEF; Gary Bledsoe, Texas NAACP; Atty. David Richards, Richards Rodriguez & Skeith LLP; and Prof. Steve Bickerstaff. The Committee focused its February 2 meeting on the issues of an independent districting commission and council structure, voting 13-2 in support of recommending an independent districting commission and 8-7 in support of a 10-1 plan (10 single member districts, mayor at-large).

The Committee held a final meeting on Thursday February 16 to finalize its report to council in fulfillment of its obligations. Though the Committee has dissolved with submission of this report, the former members remain a resource going forward.

The Committee wishes to thank City staff from the Law Department, Library Department, CTM, and the Emma S. Barrientos Mexican American Cultural Center for their support at many meetings; Austin Community College and the Lord's Church of Austin for opening their doors to provide locations for Committee meetings; and the many individuals who shared their comments, materials, and recommendations with the body.

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# RECOMMENDATIONS SUMMARY

At the October 13, 2011 Committee meeting, the Working Group made recommendations regarding election administration and personnel. [\(Its detailed memos on all its recommendations are attached in the appendix for your convenience\)](#). The body voted to recommend these [charter amendments](#), in addition to a separate 'single member district' item on the same ballot (see also February 2 recommendations):

1. [Move date of Austin's municipal elections from May to November \(no change to stagger, term length, or term limits; no decision regarding whether terms should be cut short or lengthened for May-to-November transition\). \(Please make the clarification Susan Moffat suggested\)](#)
2. Prohibit Council members from switching places for the purpose of avoiding term limits.
3. Make the number of required initiative and referendum petition signatures the same as the number required for petitions for charter amendments. Specify number of signatures as five percent of the number of the municipality's qualified voters.
4. Council appoints the City Attorney and City Attorney appoints deputy city attorneys.
5. Council appoints Council staff.
6. City Clerk appoints deputy clerks; eliminate council authority to appoint deputy clerk.
7. City Auditor appoints deputy auditors.

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[Please put vote numbers by each item on this page as Susan suggested for council convenience.](#)

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At the December 8 Committee meeting, the Working Group made recommendations regarding campaign finance [charter amendments](#). The body voted to make the following recommendations:

8. Create a new 30-day fundraising period following elections with additional restrictions on officeholder accounts. Motion passed 9-5-1.
9. Increase the amount allowed in officeholder accounts [to \\$40,000](#), with additional use restrictions (no use in campaigns). Motion passed 12-2.
10. [Mandate](#) that jurisdiction and enforcement powers of the City Ethics Review Commission include alleged violations of city campaign finance law.
11. Report within 1 business day those campaign contributions and expenditures exceeding \$2500 made within 9 days of an election.
12. Enhance disclosure via reporting and disclaimer of independent expenditures, including express advocacy and electioneering, [especially as it relates to corporate expenditures](#).
13. Create a public searchable and downloadable database of all electronic campaign finance reports, lobbying reports, and independent expenditures.
14. Require a city election to approve major new revenue bonds over the \$50 million dollar amount, with a cost of living adjustment. Motion passed 10-3-1.

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There was no action regarding increasing contribution limits, because the amount already increases with inflation; the motion to table this item passed 11-3. There was no action regarding the recommendation that the charter state that campaign contributions for a run-off may only be collected after general election's election day, because this is already the Committee's understanding of current law.

| At the January 19 meeting, the Working Group made [charter amendment](#) recommendations regarding a Planning Commission and additional campaign finance amendments. The body recommended as follows.

- | 15. Ex-officio members of [the](#) Planning Commission are non-voting members whose attendance does not affect quorum requirements.
- | 16. Revise the City bundl[ing laws and forms](#) to provide additional information.
- | 17. Limit the amount that a registered City lobbyist can bundle, to a maximum of \$1,750 per council candidate per election cycle (5 contributors at current maximum amount), and limit the amount registered firms can bundle, to a maximum of \$3,500 per council candidate per election cycle (10 contributors at current maximum amount). Motion passed on a vote of 12-1.

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| At the February 2 meeting, the body discussed and voted on the following [charter amendment](#) recommendations.

- | 18. Utilize an independent redistricting commission [to draw maps](#).
- | 19. Change the current 7-seat system of all at-large council seats to a 10-1 system with ten single member districts and the mayor elected at-large.

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# RECOMMENDATIONS OVERVIEW

1. Move date of Austin's municipal elections from May to November (no change to stagger term length, or term limits; no decision regarding whether terms should be cut short or lengthened for May-to-November transition). [Please change as Susan suggested](#)

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In making this recommendation to move elections from May to November, the body did not advocate for whether City elections should be moved to November of even or odd numbered years, because retaining the stagger necessitates elections in Novembers of both even and odd numbered years.

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2. Prohibit Council members from switching places for the purpose of avoiding term limits.

This item is a Committee-proposed amendment, intended to ensure that Council members do not circumvent term limits by running for different council seats.

3. Make number of required initiative and referendum petition signatures the same as number required for petition for charter amendments. Specify number of signatures as five percent of the number of the municipality's qualified voters.

Council's proposal on this item suggested making the number of required petition signatures for initiative and referendum match the required number of petition signatures for city charter changes contained in state law. The Committee recommended this proposal, with the change that the number of signatures be specified across the charter as 5% of the city's voters, as opposed to pegging the standard to state law.

4. Council appoints City Attorney; City Attorney appoints deputy city attorneys.

The Committee recommended that Council's two separate City Attorney-related proposals -- that the City Attorney report directly to Council and that the City Attorney be authorized to directly appoint deputy city attorneys -- be combined as one ballot item.

5. Council appoints Council staff.

This recommendation was intended to assist Council with effective administration of their offices.

6. City Clerk appoints deputy clerks; eliminate council authority to appoint deputy clerk.

The Committee recommended that Council's two separate City Clerk-related proposals -- that the City Clerk be authorized to directly appoint deputy city clerks and that council authority to appoint deputy clerks be eliminated -- be combined as one ballot item.

7. City Auditor appoints deputy auditors.

This recommendation was intended to assist the City Auditor with effective administration of their office.

8. Create a new 30-day fundraising period following the election, with additional restrictions on officeholder accounts. Motion passed 9-5-1 (Garza, Vale, Cantu, Barrientos, and Butts voting nay; Jung abstaining).

The Committee supported creation of a 30-day post-election fundraising period to ensure newly elected or re-elected councilmembers can focus on job responsibilities rather than be concerned by lingering personal debt or unpaid campaign bills. However, officeholder accounts should not be used for expenses, such as contributions to nonprofit organizations, membership dues, advertising, or newsletters; these expenditures could serve a political purpose and should be prohibited. Councilmembers may use their city-approved budget for these expenditures, if they are an appropriate use of city resources (e.g., use city budget for a newsletter). Members Barrientos, Butts, and Cantu voted nay based on concerns that councilmembers would be pressed to make these community expenditures from personal funds, and the restrictions would place wealthy councilmembers in a better position to pay from personal funds.

9. Increase the amount allowed in officeholder accounts, with additional use restrictions on officeholder accounts, including no use of an officeholder account balance for a subsequent campaign. Motion passed 12-2 (Jung, Rigsbee voting nay).

The Committee supported increasing the amount that may be retained in an officeholder account from the current \$20,000 to \$40,000. The cost of living in Austin has increased, and Councilmember need additional funds to discharge the duties of their public office. However, officeholder accounts should not be used for non-officeholder expenditures such as contributions to nonprofit organizations, membership dues, advertising, newsletters; these expenditures could serve a political purpose and should be prohibited. Councilmembers may use their city-approved budget for these expenditures, if they are an appropriate use of city resources (e.g., use city budget for a newsletter). Also, the balance of an officeholder account could not be used in a subsequent campaign.

10. Mandate that jurisdiction and enforcement powers of the City Ethics Review Commission include alleged violations of city campaign finance law.

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The City for years has interpreted the City Code as providing, the Council-appointed citizen Ethics Review Commission without jurisdiction, to hear campaign finance complaints. As with its current Code authority to hear ethics and conflict of interest allegations, the Ethics Review Commission would be given the authority to hear evidence and make a recommendation to the City Attorney as to whether a violation has probably occurred. It also would be given the authority, in its discretion, to engage a special prosecutor in cases where the Ethics Review Commission believes the City Attorney may have a conflict of interest.

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11. Report within 1 business day those campaign contributions and expenditures exceeding \$2500 made within 9 days of an election.

City Code does not currently require candidates and political action committees to report contributions and expenditures made in the last nine days before a city election until after election day has passed-- defeating the purpose of disclosure. For ten years, state law has required reporting in the last 9 days, but this applies only to state candidates and political committees. Likewise, the CRC recommends that city candidates should file a report when contributions or expenditures in aggregate exceed \$2,500. Political action committees should file a report when contributions, expenditures, or independent expenditures in aggregate exceed \$2,500, or when political action committees make independent expenditures opposing a specific candidate that exceed \$1,000.

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12. Enhance disclosure via reporting and disclaimer of independent expenditures, including express advocacy and electioneering.

This recommendation would modernize the City's 1994 provisions regarding independent expenditures to ensure, after the *Citizens United* case, that corporate and union monies spent on political activities are disclosed, to the extent constitutionally permissible, fully and timely to the electorate. The recommendation requires disclosure of electioneering communications ('issue advertisements' that do not explicitly state 'vote for' or 'vote against' but influence the election) and independent expenditures (both express advocacy and electioneering communications) by all persons, including corporations, unions, nonprofit organizations, unincorporated associations, and individuals. Reporting would occur within 5 business days if made more than 60 days before an election, within 48 hours if made between 60 days and 10 days before an election, and within 24 hours if made within 9 days before an election. A city disclaimer would be required as well, with additional disclosure of the five largest contributors to the entity within the preceding 12 months. These recommendations come from recent enactments in other jurisdictions and leading scholarly institutions, such as the Brennan Center.

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13. Create a public searchable and downloadable database of all electronic campaign finance reports, lobbying reports, and independent expenditures

Current city code from 1994 currently requires candidates, candidate committees, political action committees, bundlers, lobbyists, or any entity engaged in independent expenditures to report electronically, but not in a form that is searchable or downloadable by the general public. The amendment would require that a modern searchable, downloadable database with filing information be fully operational no later than six months after voter approval of this proposition.

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14. Require a city election to approve major new (non-refinanced) revenue bonds over the \$50 million dollar amount, with a cost of living adjustment. Motion passed 10-3-1 (Lenzy-Jones, Menicucci, and Siff voting nay; Jung abstaining).

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, which had four attorneys, also conveyed to the full body their understanding that state law allows the city, the option 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.

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15. Ex-officio members of Planning Commission are non-voting members whose attendance does not count for quorum.

The Charter currently creates four ex-officio members of the Planning Commission. Council has acted to amend the code to indicate ex-officio members are not voting members, and this amendment is intended to clarify the matter at the Charter level.

16. Revise the City bundling laws and forms to provide additional information.

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City Code currently requires candidates to report the name and address of any person who bundles (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. With this amendment, bundlers would also need to report to the candidates their employer and occupation; names of all registered lobbyists, if any, employed by the bundler and his/her firm or employer; occupation and employer of each individual contributor; the total amount delivered to each candidate for that reporting period; and the cumulative amount delivered to each candidate for the current election cycle. In addition, bundlers and their contributions would be listed on a separate reporting schedule with candidate campaign reports.

17. Limit the amount that a registered City lobbyist can bundle, to a maximum of \$1,750 per council candidate per election cycle (5 contributors at current maximum amount), and limit the amount registered firms can bundle, to a maximum of \$3,500 per council candidate per election cycle (10 contributors at current maximum amount). Motion passed on a vote of 12-1 (Menicucci voting nay).

City Code currently limits registered city lobbyists to \$25 campaign contributions, but allows lobbyists to bundle contributions without limit. With this amendment, lobbyists would be limited in their bundling activity, as they are limited in their contribution activity.

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18. Utilize an independent redistricting commission.

The Committee recommends the city utilize a 14-member independent redistricting commission for initial districting and redistricting following each census. The proposal is

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based on the California independent redistricting model, which was recommended by expert Professor Steve Bickerstaff and in a number of expert publications. The City Auditor's office would publicize widely for applicants and make sure that they met minimum qualifications and satisfied conflict of interest provisions. An Applicant Review Panel, consisting of 3 independent, qualified auditors selected at random by the City Auditor, would then select a pool of 60 qualified, diverse applicants. The City Auditor then would chose in public at random 8 commissioners from this pool. These 8 commissioners would then choose 6 additional members, to ensure diversity, from the remaining applicants in the pool. The redistricting criteria would be mandatory and must be followed by the Commission. The Commission could not consider the address of incumbents or partisanship in drawing lines. There would be considerable public input and hearings before final adoption of maps. The Commission would have to adopt the maps by a hard super-majority of 9 members. The related Working Group January 30 agenda backup document for discussing this recommendation includes lengthy guidance for what would constitute a qualified applicant, the selection process generally, and many other provisions.

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19. Change the current 7-seat system of all at-large council seats to a 10-1 system with ten single member districts and the mayor elected at-large.

Discussion on this item began with a 14-1 vote to change the current council structure to include some form of geographic representation. This was followed by an unsuccessful 7-8 vote on a 10-2-1 council structure, and a successful 8-7 vote on a 10-1 council structure. Discussion regarding the pros and cons of each format included consideration of whether or not retaining some at-large seats would fairly serve the needs of minority communities that are evenly distributed across the city, such as the Asian-American community, and whether or not retaining some at-large seats would continue the negative aspects of the current at-large system and dilute the influence of under-represented areas and protected minorities.

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