

The Campaign Finance Committee's Recommendation and Thoughts on the Process Going Forward on Campaign Finance for the Charter Revision Commission
January 11, 2018

Recommendation: We recommend the Charter Revision Commission (CRC) as a whole provide as soon as possible to the Campaign Finance Committee preliminary guidance on the basic approach you wish us to take, some input on major options, and that we come back in several weeks to the CRC with specific recommendations on details.

This recommended approach is similar to that implemented by the 2011-2012 Charter Revision Commission as to an independent citizen redistricting commission. In 2012, the CRC's Campaign Finance Committee made a 6-page general recommendation (without draft charter amendment language) on an independent redistricting commission based on California's model (because it was recognized as the state of the art and having been successful by experts). The Committee proposed some modifications adapted to Austin. See Final report of 2012 CRC, Appendix D, attached). The 2012 CRC had some minor preliminary discussions and then discussed the matter in depth at one hearing. It then voted 13-2 for the Committee's recommendation. The Final Report made a one paragraph recommendation (No. 18, p. 7) and attached the Committee's six-page report as an appendix.

We recommend a similar approach for the 2018 CRC: the CRC give the Committee guidance on the general approach and on some major options, and the Campaign Finance Committee return promptly with a specific, detailed recommendation based on that feedback. The CRC then would hear public testimony, discuss, revise, and vote. Then, if the CRC wishes, the Committee can present specific draft charter amendment, with help from experts, to the Commission for its approval.

If the CRC wishes, some of the specific amounts (expenditure limits, signature numbers etc.) and provisions can be left to an independent commission to adopt or be left as preliminary recommendations to Council. Community groups then could weigh in on their thoughts on these specific provisions to Council.

The Basic Direction: The first issue is which direction does the CRC wish the Committee to pursue preliminarily: 1) status quo; 2) raise limits and some tweaks; 3) Seattle-like vouchers and an independent ethics agency. If the CRC wishes to pursue the Seattle approach, then the Committee believes it should start with Seattle's ordinance because it was well-vetted by national experts and it worked. From that, with initial input and discussion from the CRC, we could come back with specific recommendations without specific ordinance language for the CRC. After that discussion, the Committee could provide, if the CRC wishes, a draft ordinance. Paul Ryan of Common Cause is willing to aid us in drafting based on the CRC's wishes. Also, Fred Lewis has drafted numerous campaign finance laws over the years, including state and local public financing laws and ethics commission laws, and is very familiar with the options.

Most of the potential adaptations to Austin would be well known approaches that are minor to the basic functioning of such a Democracy Vouchers program and Independent Ethics Commission. Working off the attached Seattle Law, which we believe was well vetted, here are areas Austin might consider amending:

1. **Number and Amount of Vouchers.** This is a balance between providing more voucher money for residents to participate with against the cost to taxpayers. Seattle has for every election four \$25 vouchers with 3-4 positions on the ballot depending on the election. Because Austinites can vote only for up to 2 positions in any election, holders could receive \$25 per race that they can vote on. So next year, $\frac{1}{2}$ the city would get 2 vouchers (5 districts and mayor), and $\frac{1}{2}$ the city 1 voucher (the mayor).
2. **Number of signatures and qualifying contributions.** This is a balance between not providing vouchers to candidates with no community support and giving several candidates per district a reasonable chance to qualify so there is competition. Seattle requires 600 signatures and \$10 plus contributions for mayor, 400 for at large council members, 150 per single member district and City Attorney (at large). Seattle requires $\frac{1}{2}$ signatures/contributions to be from district residents. The amount of money in Austin could be \$5 or \$10, but more than just a signature is typically required because a small contribution shows a real commitment. The number of signatures could be 600 like Seattle for mayor or a bit higher because our population is larger. Council residents per single member district are essentially the same in Seattle and Austin: 98,000 in Austin and 100,000 in Seattle. This number could remain 150. We could require all signatures/qualifying contributions to be from the district.
3. **Eligible Voucher holders.** Choices are registered voters, people eligible to vote but not registered, citizens but not eligible to vote, permanent legal foreign residents, or all residents of Austin. Arguments: Registered voters is easier to administer and costs less money; other choices are more inclusive. We would recommend the Campaign Finance Committee prepare a memo on this for later discussion by the CRC.
4. **Who Can Holders Give Vouchers to.** Seattle says to any participating candidate; we could say only from voucher holders to participating candidates they can vote for in their district.
5. **Spending Limits.** We can have spending limits for participating candidates, like Seattle, but they have some administration difficulties and arguably there is less need for them with small private contributions and vouchers. Spending limits polled well in Seattle and nationally. If expenditure limits are too low, candidates do not participate; if too high, the system is too expensive. Seattle's expenditure limits were \$400,000 per election for mayor (\$800,000 for the election cycle if you get in a runoff), \$75,000 per election for single district council candidates (\$150,000 for election cycle). We could adopt similar figures (which seem reasonable based on past Austin spending patterns) or have the commission adopt the levels. We could have an adjustment mechanism that is automatic (based on other systems) or a process for adjusting every 5 or 10 years.
6. **Waiver of Expenditure Limits.** Seattle allows them if the Commission finds there is a material excess of spending over the spending limits of participating candidates by non-participating candidates or independent expenditure group. This is decided by the Commission, which interprets material excess as any amount. This seems a reasonable approach but we could define material excess more precisely if we wish.
7. **Contribution Limits.** Seattle's private contribution limits are \$500 per election cycle (total for both general and runoff) for non-participating candidates; participating council candidates' limits are \$250 per election cycle and mayoral candidates are \$500. Austin's current limits are higher: \$700 per election cycle (\$350 for both general and runoff). For non-participating candidates, we could keep Austin's \$700 per cycle current limits or lower them like Seattle's. Also, we could adopt for participating candidate, like Seattle, \$250 per cycle for council and

\$500 for mayor. The contribution limit is a balance between the needs of candidates for funding with the problems of the appearance of corruption and a few affluent districts dominating contributions.

8. **Limit self-funding and/or loans to campaign.** There are two issues: restricting self-funding for participating candidates; and restricting self-funding of non-participating candidates to non-reimbursable donations (and not allow large self-loans that can be reimbursed by contributors). In Seattle, participating candidates can make contributions to their own campaign and can use vouchers to repay loans that they make to their own campaign up to only \$6000 (pursuant to Washington state law for all candidates). We could say participating candidates can't use vouchers to self-fund, repay their self-loans, or limit it strictly. As for non-participating candidates, we could cap the loan repayment amount at \$6000 or another figure. Candidates have a constitutional right to self-fund their campaign; they have no such right to be reimbursed by contributors for their loaning.
9. **Seed Money.** Seattle does not provide initial seed money for qualifying candidates. However, in clean elections full public financing, there have been systems with small initial grants to participating candidates of \$2500 to \$5000.
10. **Delivering Vouchers.** Seattle requires vouchers to be mailed to recipients until it is technically feasible to do it electronically over the internet. This appears reasonable.
11. **Bundling.** To prevent organizations from gaming the system, we could prevent bundling of vouchers by third parties. Seattle doesn't appear to prevent bundling, but does prohibit participating candidates from soliciting campaign contributions for any other organization or candidates.
12. **Waiting Period Before Fundraising.** Austin candidates currently can't fundraise until one year before the election. This arguably benefits incumbents and those without ability to raise big money. We could lengthen the period to fundraise.
13. **Anti-Fraud Provisions.** Austin should adopt through an independent commission regulations with similar tough anti-fraud provisions to Seattle's. Also, Austin should have an effective enforcement process.
14. **Municipal Penalties.** State law makes the maximum violation of a city law, such as a campaign finance law, a Class C Misdemeanor. This allows for only fines up to \$500 per violation per day. We could add for candidates with serious violations that they can't participate in the voucher program in the future, serve on a city board etc. for a period. Similarly, for voucher holder violators, we can ban them from receiving vouchers or serving on boards for a period.
15. **State Penalties.** However, making a false statement on a government form (the voucher) is potentially perjury and/or tampering with a government record. Texas Penal Code Chapter 37. Perjury is a Class A Misdemeanor (a fine up to \$4000 and/or up to 1 year in jail). Tampering (making a false statement on a government record) is generally a Class A Misdemeanor, but can be a state felony in aggravating circumstances (up to \$10,000 fine and a minimum of 180 days in jail and a maximum of 2 years). In addition, selling or misusing vouchers can be theft of government property under Chapter 31 of the Penal Code. Depending on the amount of the theft, penalties vary from Class C Misdemeanors to Felonies.
16. **Reassessment.** Seattle's Ethics Commission and other cities' independent commissions often are required to present recommendations for changes.
17. **Administration.** We believe administration, interpretation, regulations, and enforcement should be done by an independent commission.

18. **Budget limit.** Seattle has a \$3 million a year cap on property taxes for its program. We could adopt some sort of a cap as well.
19. **Source of Funds.** Basically, public financing usually includes general revenue, charitable contributions, lobbyist fees, candidate filing fees, campaign finance/ethics fines, and utility or tax checkoff. Also, sometimes, a portion of government criminal fines, say parking.