

AUSTIN INDEPENDENT ETHICS COMMISSION

Subchapter I - Commission

1.01. Commission Jurisdiction.

The Austin Independent Ethics Commission is established to impartially and effectively administer and enforce all city laws relating to ethics, campaign finance, campaign disclosure, conflicts of interest, financial statement disclosure, lobbyist regulations, revolving door, disqualification of members of city boards, and other responsibilities assigned the Commission.

Comment: The Commission's jurisdiction is drafted broadly to provide the Austin Independent Ethics Commission (EC) authority over all City ethics-related laws.

1.02. Commission Membership

The Commission shall be composed of five (5) members, whom shall be selected per Subchapter V below. The Commission shall select its chair from among its members.

Comment: Most cities have 5-7 Ethics Commissioners, rather than out current 11 Ethics Review Commissioners (ERC, because a smaller size tends to be more productive than a larger commission, in a specialized subject area such as ethics.

1.03. Qualifications.

All Commissioners shall be registered voters and be residents of Austin for at least 5 years prior to appointment. All Commissioners shall not have served for three years before their appointment as an elected official, political consultant, officer or employee in a political party (other than a precinct chair), lobbyist, City of Austin employee, City of Austin contractor, or candidate for state or local government. All Commissioners shall have demonstrated impartiality and have expertise in ethics, transparency, campaign finance, investigations, enforcement, or other relevant subject matters. All Commissioner shall attest to their support for administering and enforcing all laws under the Commission's jurisdiction; no person shall be appointed who has a history of opposing the Commissions laws or similar laws. Commissioners not maintaining these qualifications automatically forfeit their office and can no longer serve on the Commission in any capacity.

Comment: These qualifications are similar to those for Ethics Commissioners in other cities and for the Austin Independent Citizens Redistricting Commissioners. The period of time for various qualification can be adjusted as well as the scope of the restrictions. We thought it best city employees and city contractors not serve as Commissioners, but those provisions are not as typical.

1.04. Terms.

Members of the Commission shall serve for a term of five (5) years ending on May 1 of the fifth year of such term and until their successors are appointed and qualify; except the initial five commissioners to be appointed shall by lot classify their terms so that the term of one commissioner shall expire at on each of the second, third, and fourth anniversaries of their terms

on May 1 of such year respectively and two commissioners on the 5th anniversary of their terms on May; and, on the expiration of these and successive terms of office, the appointments shall be made for five-year terms. The initial shortened terms shall be appointed from the Commissioners from the existing applicant pool pursuant to subchapter 5. **No person may serve more than one five-year term as a member of the Commission**, provided that persons appointed to fill a vacancy for an unexpired term with three years or fewer remaining or appointed to an initial term of three years or fewer shall be eligible to be appointed to one additional five-year term.

Comment: Terms vary by City Ethics Commissions from 3-6 years generally, are typically staggered, and cities are split between allowing reappointment or not.

1.05. Vacancy and Removal

A. In the event of substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office, a member of the commission, having been served written notice and provided with an opportunity for a response and hearing, **may be removed by a vote of at least 3 of all the Commissioners.**

B. Any vacancy, whether created by removal, resignation, or absence, shall be filled by the Commission within 60 days after the vacancy occurs, from the remaining pool of applicants. At least three Commissioners must agree to the appointment.

Comments: To ensure independence, we suggest not allowing for removal of Commissioners by the Council. For accountability, we propose at least 3 votes of Commissioners be required to remove another Commissioners for specific good cause. Vacancies will be filled similarly to appointments from an applicant pool of qualified, diverse people.

1.06. No Compensation.

Members of the Commission shall serve without compensation. Members shall be reimbursed their reasonable and necessary expenses incurred in the performance of the duties of their office.

1.07. Impartiality During and After Commission Service.

No member of the Commission **shall during their term of office, or for two years after** their service ends:

- A. Hold or campaign for elective office;
- B. Be an officer of any political party (except precinct chair), or campaign treasurer or principal of any political committee;
- C. Permit his or her name to be used, bundle, or make contributions, in support of or in opposition, to any candidate for City office or ballot measure in a City election;
- D. Participate in any City election campaign;
- E. Be a political consultant for any candidate or campaign;
- F. Participate in any committee that provides ratings of candidates for City office; or

G. Lobby the City or assist such a lobbyist.

Comments: To ensure impartiality, we suggest Commissioners for a period of two years after leaving not be allowed to engage in certain conduct which may lead the public to question their impartiality during their Commission service. Cities usually have provisions such as this and they vary on the period and scope of restrictions.

Subchapter II - Commission Powers and Duties

2.01. Powers and duties

The Commission shall have the following powers:

A. To administer all City charter amendments, ordinances, regulations and laws related to ethics, campaign finance, conflicts of interest, financial statement disclosure, lobbyist regulations, revolving door, disqualification of members of city boards, and other matters assigned to the Commission (collectively "Commission-administered laws");

Comment: Subsection A generally defines the scope and authority of the EC and the following subsections provide typical specific, Ethics Commission duties.

B. To receive and maintain all documents required to be filed pursuant to Commission-administered laws, including financial statements, lobbyist filings, conflict of interest forms, campaign finance reports and data, revolving door documents and all other information. To maintain and control the City's websites and databases related to Commission-administered laws;

C. To prescribe and promulgate all forms, to publish informative publications, to conduct trainings, and to provide advice related to Commission-administered laws to the public, City employees and campaigns;

D. To provide training and assistance to City officials and employees in complying with conflict of interest, financial statement disclosure, ethics, and other Commission-administered laws.

E. To make recommendations on proposed changes to the Council concerning Commission-administered laws at least every three years;

Comment: This is a typical responsibility of Ethics Commissions and is to ensure periodic recommendations for updating the laws.

F. To annually adjust the contribution limitation thresholds required by City law to reflect any increases or decreases in the Consumer Price Index formula; to adjust any expenditure limits and participating candidate thresholds one year before any regularly scheduled city candidate election so as to ensure the purposes of the applicable provisions are served;

Comment: This provision allows the Commissioners to adjust the thresholds of participating candidates, if any, to fulfill the purposes of the laws as times change.

G. To promulgate, amend and rescind rules and regulations to define Commission-administered laws, to establish the Commission's procedures, and to administer the Commission;

Comments: Most cities allow Commissions to promulgate regulations (consistent with the charter provisions and ordinances) to flesh out their procedures and definitions of terms. Some cities allow no council review, some allow Council to vote only up or down on Commission rules, and some require a 2/3rds Council vote to reject any Commission proposed rules. We think the approach of the Texas Ethics Commission is best: the Commission, with its expertise and independence, should promulgate the regulations on ethics. Similarly, the Independent Citizens Redistricting Commission charter amendment provided Council could not change the Commission's maps. City of Austin Charter, Article II, section 3(G).

H. To enforce all Commission-administered laws by receiving and initiating complaints, authorizing and conducting investigations, holding hearings, making findings of fact and conclusions of law, levying sanctions, fees and administrative fines, issuing and enforcing administrative orders to compel reports and other required filings, seeking and enforcing injunctions, prosecuting criminal violations, making referrals to other agencies, suing in court, and all other necessary authority to enforce Commission-administered ordinances.

Comment: This is common except some Commissions allow the City Attorney to prosecute criminal and civil violations. We believe to ensure that the Commission's legal representation is and appears independent, that its lawyers work for the Commission. The Austin Independent Citizens Redistricting Commission was empowered to select its own private attorneys and consultants. City of Austin Charter, Article II, Section 3(H),(K)(5).

I. To administer oaths and affirmations, examine witnesses, compel depositions and interrogatories, require attendance at hearings of persons, subpoena and compel production of any and all documents, papers, books, accounts, letters, and records, and use any other lawful investigatory and evidentiary tools;

J. To appoint an Executive Director and set their salary;

K. To develop an annual budget that has the resources and staff to efficiently and effectively fulfill all the Commission's duties so that the City has a model, state of the art Commission; to recommend and approve its annual budget and make expenditures authorized in its annual budget; to submit annually a proposed budget for review and approval by the City Auditor, which shall review and approve the Commission's budget. The City Council shall approve this budget by the start the new fiscal year and shall fully appropriate the funds to meet all the operational costs of the Commission. To recommend as needed supplemental appropriations for additional or unanticipated budget items to the City Auditor for prompt review and approval, which shall then be funded in full within 10 business days by the City Council;

Comments: It is crucial that the Ethics Commission have budget independence and sufficient staff and resources to do its job well. Some jurisdictions (California and Alabama for example) allow the Commission alone to set their budget based on a formula and review by an independent body. We think the best approach is allowing the EC to make a budget recommendation, which the City Auditor reviews and approves, and then the council must fund at that level. The Austin Independent Ethics Commission required a similar mandatory funding provision but without a budget process: "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.” City Charter of Austin, Article II, Section 3(K)(9).

L. To have full charge and control of its office, employees, and supplies; to adopt Commission personnel and other policies, including strict conflicts and financial disclosure laws; to be solely responsible for the Commission’s proper, impartial, and independent administration and enforcement of Commission-administered laws; to retain expert, legal, special prosecutor, and consultant services in its sole discretion; to use in its sole discretion the services of the City Auditor or other City services as it deems appropriate, except all legal matters shall be handled by the Commission’s hired staff attorney(s) or hired outside counsel, and not by the City Attorney’s Office or other city staff.

Comment: We think it best that the Commission have its own attorneys and staff to ensure independence and impartiality, similar to the Austin Independent Citizens Redistricting Commission, Article II, Section 3 (K)(5).

M. To comply with all state laws, including Texas Government Code, Chapters 551 and 552, and Texas Local Government Code, Chapters 171 and 176. The Commission may adopt rules and regulations allowing greater transparency and stronger conflicts of interest, recusal, and financial statement disclosure for the Commissioners and staff; and

N. To be annually audited financially by the City Auditor; to have a performance audit conducted every three years by the City Auditor, or as such other times and audits as the City Auditor deems necessary.

Comment: We think this is a useful check and balance to have annual audits and periodic performance audits of the Ethics Commission by the City Auditor, which is also an independent City entity.

2.02. Quorum.

Three (3) members of the Commission shall constitute a quorum for the conduct of all business and proceedings, except removal of the Executive Director or Commissioner.

2.03. Meetings.

The chairperson or any three (3) members of the Commission may call a meeting of the Commission.

2.04. Advisory Opinions.

Any person may request that the Commission, or the Commission may on its own initiative, issue a written advisory opinion with respect to legal requirements under any

Commission-administered law. The commission shall, within 30 days, either issue a written opinion or advise the person who made the request whether and when an opinion will be issued. No person who reasonably acts in good faith on a written advisory opinion issued to them by the Commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The commission's opinions shall be public records and shall be published.

Comment: It is a typical provision to allow ethics commissions to publish written advisory opinions.

Subchapter III - Executive Director

3.01. Executive Director and Qualifications.

A. There shall be an Executive Director, appointed by the Commission. The Executive Director shall be a licensed attorney, have been a lawyer at least 5 (five) years, and have expertise in ethics, campaign finance, conflicts of interest, and/or enforcement. The position of Executive Director shall be exempt from the municipal civil service laws. The term for the Executive Director position is five (5) years. The Commission may reappoint the Executive Director for subsequent terms.

Comment: We think requiring the Executive Director to have a law license and 5 years legal experience is important in this legally technical area. Some cities' terms for Executive Director vary from 5 years.

B. The Executive Director shall not have served for three years before their appointment as an elected official, political consultant, officer or employee in a political party (other than a precinct chair), lobbyist, or candidate for state or local government.

Comment: Some sort of provision like this is common. We didn't exclude a city employee or contractor from appointment as Executive Director.

C. Notwithstanding any other law, only the Commission may remove its Executive Director for cause upon a majority vote of its entire membership.

3.02. Powers and Functions of Executive Director.

Under the supervision of the Commission, the functions of the Executive Director include:

A. Enforcing and implementing Commission-administered laws and programs;

Comments: Subsection A provides broad general authority for the Executive Director to execute all the EC's laws and the subsections below delineate the Executive Director's specific duties. These provisions also specify when the Executive Director requires the Commission Board's approval to act.

B. Hiring, setting salaries, and removing staff; hiring and terminating vendors and contractors, including special prosecutors; supervising their work; making and enforcing

contracts; drafting rules, regulations, recommendations, and policies for Commission approval; drafting advisory opinions for Commission approval; coordinating with City Departments; conducting education, assistance and information programs about Commission-administered laws; and implementing all other duties and policies of the Commission;

Comment: We thought it best the Executive Director hire the staff; some cities, however, have the Commissioners hire the Executive Director and the staff.

C. Overseeing all investigations and enforcement; initiating and conducting investigations; issuing subpoenas and interrogatories; drafting preliminary findings of fact and conclusions of laws as to probable cause for criminal violations; making presentations and presenting evidence at hearings; recommending lawsuits, injunctions, sanctions, and prosecutions for Commission approval, and implementing their decisions; levying on their own administrative and late fines and compelling administratively required reports and information;

D. Developing and recommending an agency budget to the Commission for approval; implementing the budget and all agency policies and procedures; disbursing Commission funds as authorized by its budget and by law; accepting and collecting all funds due to the Commission, which includes fees and fines; implementing with Austin Energy a utility check-off and collecting all the gross funds; accepting appropriate charitable donations and grants, as approved by the Commission's Board; and depositing funds received into the Commission's treasury account; and

Comment: This provision makes clear the Commission receives and collects certain fees and fines, shall implement a utility checkoff, and may accept grants and other appropriate funds.

E. Executing all other powers and functions pursuant to Commission-administered or other related laws, or as assigned by the Commission's Board.

3.03. Impartiality During and After Commission Service.

The Executive Director, and no member of the staff of the Commission, shall during their Commission service and for two years thereafter:

- A. Hold or campaign for elective office;
- B. Be an officer of any political party (except precinct chair) or campaign treasurer or principal of any political committee;
- C. Permit his or her name to be used, bundle, or make contributions, in support of or in opposition, to any candidate for City office or ballot measure in a City election;
- D. Participate in any City election campaign;
- E. Be a political consultant for any candidate or campaign;
- E. Participate in any committee that provides ratings of candidates for City office;
- F. Lobby the City or assist such a lobbyist.

Comment: Some sort of provision like this is typical, all the provisions vary some.

Subchapter IV- Investigations and Enforcement Proceedings

4.01. Commission Enforcement Authority.

The Commission shall have authority to conduct investigations, seek injunctions, and prosecute alleged civil, criminal and other violations of all Commission-administered laws.

4.02 Investigations.

A. If the Commission, upon the sworn complaint of any person or on its own initiative, determines in its discretion that there is sufficient cause to conduct an investigation, it shall investigate alleged violations of Commission-administered laws.

Comment: Broad authority is allowed to the Commission to investigate, which is common, and the investigation stage, subsection b below, is confidential.

B. The investigation shall be conducted in a confidential manner consistent with the Commission's responsibility to conduct a thorough investigation. Records of any investigation shall be considered confidential information pursuant to law enforcement, attorney-client, work product, and other pertinent privileges. The unauthorized release of confidential information shall be sufficient grounds for the termination of the employee or removal of the Commissioner responsible for the release.

C. The Executive Director, or their designee, may subpoena witnesses, compel their attendance and testimony for an investigation or for a hearing, administer oaths and affirmations, compel answers to written interrogatories, take evidence, and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or exercise of its powers.

Comment: We suggest that the Commission can conduct depositions and compel evidence during the investigation stage as well as for hearings. This should help the Commission get needed evidence and facilitate settlements.

4.03. Preliminary Hearing.

A. If the Executive Director determines that there is a reasonable basis to believe that that there has been a violation of Commission-administered laws involving criminal penalties, injunctive relief, or civil sanctions, the Executive Director shall cause a preliminary hearing notice of alleged violations to be sent to the alleged violators. The persons alleged to have committed the violations shall receive at least 10 business days' notice of the hearing, a copy of the complaint, and be informed of their right to be present in person and represented by counsel. All preliminary hearings shall be held in accordance with the Commission's procedures and be public.

B. The Commission shall determine at the preliminary hearing whether there is probable cause to find a violation or need for injunctive relief; and if there is such a finding, the Executive Director shall prosecute the violation or seek an injunction. Notwithstanding the above, if the Commission finds an emergency basis to seek immediate injunctive relief, it may do so upon a written finding by the Commission without any or shortened notice, at its

discretion, and file for such injunctive relief in any court of competent jurisdiction.

Comment: We suggest the Commission have the power to seek injunctive relief if warranted to stop violations. This is fairly common.

4.04. Final Hearings.

A. All criminal final hearings shall be heard by the City's Municipal Courts and prosecuted by the Commission's attorneys.

Comment: Campaign finance and ethics violation are required by state law at this time to be criminal Class C Misdemeanors (a fine up to \$500), and therefore, should be heard in Municipal Court.

B. Injunctive or mandamus actions may be heard in any court of competent jurisdiction and handled by the Commission's attorneys.

C. All civil sanctions shall be heard by the Commission at public, evidentiary final hearings in accordance with Commission procedures. There shall be notice to the respondent of at least 15 business days with a copy of the complaint and a brief summary of the evidence. The Commission shall issue findings of fact based on a preponderance of the evidence and conclusions of laws, and its sanctions or order to compel reports, statements, documents or other information required by law by a certain date.

4.05. Penalties, Sanctions, Fines, and Other Relief

A. Criminal Penalties. A person commits an offense who violates intentionally and knowingly violates any Commission-administered law, or who causes any other person to violate any such law, or who aids and abets any other person in a violation. An offense under this Chapter is a Class C misdemeanor punishable as provided by state law. Each failure to file a report, failure to disclose or provide required information, failure to perform a required act, or commission of a prohibited act, is a separate offense. Each day that a violation persists is a separate offense. The penalties provided for in this section are in addition to any other remedies available under city or state law.

Comments: These provisions are similar to Austin's recent language for criminal penalties under the new lobbyist disclosure ordinance. Most cities in other states have higher fines than \$500, but that is the maximum allowed for cities under Texas state law. We also required that a violation be intentional or knowing, i.e., the person knew they were doing the act (not that they knew it was illegal). Many city criminal laws are strict liability, meaning violations occur without knowledge or negligence.

B. Injunctive Relief. Injunctive and mandamus relief in court may be sought to enforce an ongoing or threatened violation of Commission-administered laws. A violation of Commission-administered laws is presumed as a matter of law to be irreparable harmful without any other evidentiary showing.

C. Sanctions. If the Commission determines that a civil violation has occurred, or removal or recall from office is warranted, the Commission may impose or recommend the following sanctions as it deems appropriate: a letter of notification, a letter of admonition, a reprimand, a recommendation of removal from office or a recommendation of suspension from office, letter of censure, or a recommendation of recall. If the Commission recommends removal or recall, the Executive Director shall take all actions, including filing suit in a court of competent jurisdiction, to accomplish that directive. The Commission shall delineate when these sanctions are appropriate by written rules or policies.

Comment: The civil and other sanctions come from Austin City Code Article 2-7-48(C).

- D. **Compelled Required Commission Documents.** The Executive Director may issue an administrative order to compel any person to produce reports, statements, documents or other information to the Commission within a reasonable time-period. The Commission may file an action in any court of competent jurisdiction to enforce such order.

D. **Late Fines.** A person responsible for filing a late report, statement, document, information, or fee is liable to the City for payment of a late fee. Reports and documents subject to a fee, for which the fee is not paid timely, are considered filed late and in violation.

The amount of the late filing fee shall be set by rules and regulations of the Commission. A late filing fee is not penal in nature and is in addition to any other available sanction or remedy for a late filing of a report. A person's payment of a late fee under this section does not discharge a person's liability for a criminal offense under this chapter. The Executive Director shall determine whether a report under this chapter is late. On making a determination that a report is late, the Executive Director shall promptly send a notice of the determination to the person responsible for the filing, notifying the person of the fee for late filing or fee payment, and charging the late fee. If the fee and late fee is not paid before the 10th day after the date on which the notice is received by the person responsible for filing the report, the person is liable to the City for additional late fees periodically as determined by rules and regulations of the Commission.

Subchapter V- Selection of Commissioners

5.01. Publicizing Initial Commissioner Application Process.

No later than December 1, 2018, **the City Auditor shall initiate and widely publicize a Commissioner application process,** open to all residents who meet the requirements of Section 1.03 above, in a manner that promotes a diverse and qualified Commissioner applicant pool. The City Auditor shall take all reasonable and necessary steps to ensure that the pool sufficient applicant numbers, diversity, and qualifications. This process shall remain open until February 1, 2019.

Comments: Most jurisdictions' Ethics Commissioners are appointed by a variety of elected officials, such as mayors, council, city attorneys, auditors etc. Atlanta, and some other cities

have commissioners recommended from outside entities. For example, in Atlanta, one ethics commissioner each is recommended by the local League of Women Voters, Chamber of Commerce, 6 area Universities collectively, the Atlanta Bar, the historically African-American local Bar, the Business League, and Planning Advisory Board. We recommend using an abbreviated, modified version of the process used to select the Austin Independent Citizens Redistricting Commissioners, which we believe worked well here and has worked well in other jurisdictions with independent redistricting commissions. To shorten the Austin Independent Redistricting Commission selection process, we recommend that the 3 outside auditor panel be eliminated and the City Auditor be allowed to appoint 3 of her experienced, disinterested auditors.

5.02. Initial Applicant Review Panel.

On January 15, 2019, the City Auditor shall appoint 3 experienced staff auditors, who shall begin reviewing all applications. These auditors shall not have served for three years before their appointment as an elected official, political consultant, officer or employee in a political party (other than a precinct chair), lobbyist, or candidate for state or local government. They first shall remove those applicants who lack the qualifications required in Section 1.03. Thereafter, they shall select an applicant pool of 12 by no later than March 14, 2019. The 12 selected applicants shall be the most qualified applicants on the basis of expertise set out in Section 1.03. The members of the Applicant Review Panel shall not communicate directly or indirectly with any elected member of the City Council, Council staff, City management, or city employees, or their representatives, about any matter related to the selection process or any applicant.

5.03. Selection of 5 Initial Commissioners.

A. No later than March 15, 2019, the City of Austin Auditor shall randomly draw at a public meeting three names from the pool of 12 selected applicants. These three individuals shall serve on the Independent Ethics Commission.

B. No later than April 15, 2019, the three selected Commissioners shall review the remaining names in the pool of applicants, and from that pool, shall appoint two applicants to the commission. These two appointees must be approved by at least two of the three commissioners. These two appointees shall be chosen to ensure that the Commission has the full complement of expertise specified in Section 1.03 and to reflect the diversity of the City of Austin.

(10) Once constituted, the Commission shall proceed with its operations no later than May 1, 2019.

5.04 Subsequent Selection of Commissioners.

No later than October 1 of 2023, and every five years thereafter, the City Auditor shall initiate and widely publicize a Commissioner application process as specified in Section 5.01, which shall remain open till the subsequent January 31. On that January 31, the City Auditor shall appoint 3 experienced staff auditors, who shall begin reviewing all applications pursuant to the process in Sections 5.02 and 5.03. No later than the subsequent March 15, the City of Austin Auditor shall randomly draw at a public meeting three names from the pool of 12 selected applicants per the process in Section 5.03. Two of these individuals shall serve on the Commission as of the subsequent May 1, and one individual the following May. The next two

term-limited Commission openings shall be selected from the new applicant pool per Section 5.03. Should any initial or subsequent applicant pool contain less than 4 remaining applicants willing and able to serve, the Commission shall direct the City Auditor consistent with this Chapter to replenish the applicant pool to have 12 applicants within 4 months of such request.

Draft