

Charter Review Commission Draft Charter Amendment of An Independent Ethics Commission (As of the end of the Commission's March 12, 2018 Hearing)

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 campaign finance, campaign disclosure, conflicts of interest, financial statement disclosure, lobbyist regulations, revolving door, disqualification of members of city boards, certain conflict of interest and ethics laws, and other responsibilities assigned the Commission.

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.

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 relevant subject matters, including without limitation, ethics, conflicts of interest, transparency, campaign finance, investigations, or enforcement. All Commissioner shall attest to their support for administering and enforcing all laws under the Commission's jurisdiction. Commissioners not maintaining these qualifications automatically forfeit their office and can no longer serve on the Commission in any capacity.

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.

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.

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 actively in any committee that provides ratings of candidates for City office; or
- G. Lobby the City or assist such a lobbyist.

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");

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;

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;

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;

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. The City Auditor shall have sole jurisdiction to investigate and present alleged ethics and conflict of interest violations involving current and former city employees, and the City Auditor shall have initial and concurrent jurisdiction with the Commission to investigate City Board and task force members' alleged ethics and conflicts of interest violation; except the Commission shall have sole jurisdiction to investigate, present and pursue alleged ethics and conflict of interest violations by the City Council, the Council members' direct staff, the City Manager, the City Clerk, and the Clerk of the Municipal Court.

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 fulfill all the Commission's duties so that the City has an effective, well-functioning Commission; to recommend and approve its annual budget and make expenditures authorized in its annual budget. The City Council shall approve the Commission's recommended budget as is by the start of the new fiscal year and shall fully appropriate the funds to meet all the operational and other

costs of the Commission, unless by 2/3rds vote of the entire Council they find the Commission's recommended budget unreasonable or unnecessary.

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 Commissions' 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 as appropriate in its sole discretion the services of the City 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.

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 an outside, impartial auditor as selected by the City Auditor; to have a performance audit conducted every five years by an outside, impartial auditor as selected by the City Auditor, or as such other times and other outside, impartial audits as the City Auditor deems necessary.

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.

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 in Texas, 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.

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.

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;

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;

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 revenue, funds, and fees due to the Commission;; accepting appropriate charitable donations and grants, as approved by the Commission's Board; and depositing funds received into the Commission's separate treasury account; and

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 actively 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.

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, except the Commission's investigatory authority on alleged conflicts of interest and ethics violation shall be limited as specified in Section 2.01(H).

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.

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.

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.

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.

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.

D. The Commission shall have no jurisdiction to hear matters under the jurisdiction of the City's Municipal Civil Service Commission.

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.

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.

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.

E. 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 has sufficient applicant numbers, diversity, and qualifications. The Council shall provide all funding needed for the City Auditor to fulfill these duties. This process shall remain open until February 28, 2019.

5.02. Initial Applicant Review Panel.

No later than February 15, 2019, the City Auditor shall appoint three (3) qualified independent auditor contractors, who shall begin reviewing all applications. The qualified independent auditors shall each be licensed by the Texas Board of Public Accountancy and have been a practicing independent auditor for at least five (5) years prior to appointment. In addition, each auditor 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. These auditors shall constitute the Applicant Review Panel. The Applicant Review Panel first shall remove those applicants who lack the qualifications required in Section 1.03. Thereafter, they shall select an applicant pool of 12 (twelve) by no later than April 15, 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. The City Council shall fund the auditor's services.

5.03. Selection of 5 Initial Commissioners.

A. No later than April 20, 2019, the City of Austin Auditor shall randomly draw at a public meeting three names from the pool of twelve (12) selected applicants. These three individuals shall serve on the Independent Ethics Commission.

B. No later than May 30, 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 June 15, 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. No later than January 31, the City Auditor shall appoint an Applicant Review Panel of three (3) qualified, independent auditors, who shall begin reviewing all applications pursuant to the process in Sections 5.02 and 5.03. No later than March 15, the City of Austin Auditor shall randomly draw at a public meeting three names from the pool of twelve (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 to establish an Applicant Review Panel of 3 qualified independent auditors consistent with Sections 5.02 and 5.03 to replenish the applicant pool to have 12 applicants within 4 months of such request.