

Independent Ethics Commission

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2024 Charter Review Commission

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“Ethics commissions work to ensure voters’ trust in policymakers and political institutions through external oversight and transparency. . . One of the greatest challenges to ethics committees is maintaining their credibility with the public.”

Comlossy, Ethics Commissions: Representing the Public Interest (Center for Ethics in Government; National Conference of State Legislatures 2013), p. 1

Background

- This commission won't need to reinvent the wheel to recommend an Independent Ethics Commission
- The 2018 Charter Review Commission passed a recommendation for an Independent Ethics Commission
- Today's backup includes
 - Preliminary committee report recommending an independent ethics commission (with rationale)
 - Everyday Ethics for Local Officials Understanding the Role of Ethics Commissions
 - Draft Charter Amendment of An Independent Ethics Commission
- City Council did not consider this and several other recommendations from the 2018 Charter Review Commission

Current situation in Austin

- Four entities are involved in ethics matters:
 - City Clerk – hired by City Council
 - City Attorney – hired by City Manager
 - City Auditor – hired by City Council
 - Ethics Review Commission – appointed by City Council
- No advisory opinions are provided for candidates, political committees, or the public
- Complaints are initiated by members of the public
- There is little enforcement and no fines for violations (except for lobbyist late fees)

City Clerk

- The Clerk accepts campaign finance reports, financial statements, and lobbyist filings
- Nothing happens when required campaign finance reports or personal financial statements are not filed
- Reminders and fines (up to \$500) for lobbyist quarterly reports
- The Clerk provides a detailed candidate packet, but the contents cannot be considered legal advice

City Attorney

- Provides legal advice to the City Clerk and Ethics Review Commission
- Does not issue advisory opinions to candidates or give advice to the public
- Only enforcement action possible is to prosecute a Class C misdemeanor for a maximum fine of \$500
- Has never taken ethics or campaign finance enforcement action

City Auditor

- Investigates ethics complaints against Council, board members, and city employees
- If the city auditor investigates an allegation and finds a violation by a member of the city council or their direct staff or board appointee, the city auditor shall submit the results to the Ethics Review Commission
- If the city auditor investigates and finds a violation of other city employees, a report is submitted to the City Council
- The city auditor randomly audits at least 5% of lobbyist filings per year. (This may have recently changed to a 3 year review)

Ethics Review Commission

- Eleven commissioners are appointed by the City Council
- They have no required expertise in ethics, campaign finance, or enforcement (When the commission requested training from staff, only information about ethics was provided)
- There are no qualification restrictions for members related to running for office, participating in campaigns, etc.
- In the last two years, the commission has had no cases go to a Final Hearing although there were 2 letters of notification and 1 letter of admonition resulting from Preliminary Hearings where the charges were not contested
- Failures to proceed to a final hearing have occurred because of split votes, lack of understanding of the standard, and complaints that incorrectly listed the alleged violation
- Considers proposed code changes for §2-2, 2-7, and 4-8

Role of the Mayor and City Council

- The Mayor and City Council hire the Clerk, Manager, and Auditor
- They also appoint the members of the Ethics Review Commission INCLUDING a first degree relative of a current City Council member
- Many of the complaints filed by the public are against Council members and their appointees. Three current council members have been sanctioned
- 2018 City Council did not consider the Charter Commission recommendation for an Independent Ethics Commission
- The City Council did not consider recommendations from the Ethics Review Commission (made in 2021) to increase transparency about CM's real estate holdings

Complaints must be filed by the public

The Austin Bulldog has reported on numerous violations that have not resulted in complaints

- More than a third of candidates failed to file required personal financial reports that allow the public to monitor for possible conflicts of interest <https://theaustinbulldog.org/want-to-get-elected-but-not-be-accountable/>
- 17 candidates—exactly half the number who filed applications for a place on the ballot—failed to file the campaign finance reports that were due January 17th (2023).
<https://theaustinbulldog.org/austins-got-a-2-million-dollar-mayor/>
- Six council members and numerous lobbyists appear to have criminally violated city's lobby law
<https://theaustinbulldog.org/lobbyists-run-wild-at-city-hall/>

Recommendations

1 One Agency

The Ethics Commission will be more effective if all tasks are handled by one agency instead of four

2 Independent Agency

- The Ethics Commission does not answer to the City Attorney, City Manager, or City Council.
- Members would be selected in a manner similar to the members of the Independent Citizens Redistricting Commission
- The Commission hires an Executive director and staff who administer all campaign finance, conflict of interest, revolving door, and lobbyist disclosure laws

Recommendations (continued)

- ③ **Terms, Qualifications, and Restrictions of Commission members**
 - Terms would be staggered and up to 5 years
 - Members cannot be lobbyists, candidates, contributors, political consultants, etc for a period of time before and after their service
 - Members would have expertise in campaign finance, ethics, conflict of interest, and/or enforcement
- ④ **Budget Independence and Sufficiency**
 - Commission funding must be sufficient to do its job and not subject to retribution for taking action
 - The City Auditor can provide current spending data and recommendation for an initial budget.
 - Cost of living and work load adjustments will be made annually

Recommendations (continued)

5 Enforcement Process

- Enforcement personnel (investigators, lawyers, etc) work for the independent commission and not the City Attorney or City Manager
- Commission's lawyers work on pro-active audits and investigation without a requirement for complaints to be filed by the public
- The Executive director and staff would have authority to investigate with subpoena power before hearings
- The Ethics Commission would hold hearings, set fines, etc.

Conclusion

- The public has the right to transparency and accountability from our public officials, candidates, and political action committees
- An independent ethics commission that is free to operate without fear or favor would help us achieve this goal
- Dispassionate administration reduces frivolous complaints against public servants
- The 2018 Charter Commission provided a detailed ten page recommendation covering
 - commission membership, terms, and qualifications
 - powers and duties
 - the executive director and staff
 - investigations and enforcement, and
 - selection of commissioners initially and subsequently

Dates and a few details would need to be updated