

Background

City Council Resolution 20230309-025 establishing the 2024 Charter Review Commission to make recommendations to the Council to, in part, “improve and enhance transparency and the general functions of city government....”

Through the regular electoral process, candidates for mayor and City Council must comply with limits on campaign funds, contributions, and expenditures imposed in the City Charter, Article III Section 8. The following are some, but not all, of these limitations: limits on individual campaign contributions and a limit on the total amount of contributions received outside of Austin, limitations on contributions from political committees, and the prohibition of soliciting and accepting campaign contributions outside of the 180-day period preceding of an election for mayor or council member, or the recall election of the mayor or a council member.

The City Charter does not currently require any public disclosure or campaign finance reporting on contributions received or expenditures made in connection with collecting petition signatures in order to recall a mayor council member, or for any kind of petition, which means that it is generally not possible to determine which interests are backing the use of petitions to change policy or to recall the representatives that Austinites elect to serve them on City Council.

Recommendation

Added language for City Charter Article IV, Sec. 6:

Any person or entity responsible for initiating and submitting a petition (“the petitioner”) to recall the mayor or a council member shall file a campaign treasurer appointment with the City Clerk, and shall submit reports of all contributions received and expenditures made in connection with a recall petition per the City of Austin’s campaign finance rules.

Additionally, petitioners for the recall of the mayor or a council member shall comply with limits on campaign contributions and expenditures, similar to those described in City Charter Article III, Sec. 8, to the extent allowed by applicable law.

If any provision of this section, or the application of that provision to any persons or circumstances, shall be held invalid, then the remainder of this section, to the extent that it can be given effect, and the application of that provision to persons or circumstances other than those to which it was held invalid, shall not be affected thereby, and to this extent the provisions of this section are severable.

Policy Reasons for the Recommendation

The expressed intent of collecting petition signatures is to place an item on the ballot for consideration by Austin voters, and thus all citizen-initiated petitions are directly related to City elections. Contributions and expenditures made in connection with these efforts are political contributions and political expenditures. As with other political contributions and expenditures, the donors and expenses for these efforts should be publicly disclosed in the method that exists for such disclosures: campaign finance reporting.

The number of signatures collected for a petition and the ability to collect them are in part functions of the money available to hire canvassers and to organize the effort. Limitations on contributions by individuals and committees toward recall petition efforts protect recall as a legitimate tool of direct democracy for Austinites who may have a legitimate reason to seek the recall of their own elected representative. Without limitations, a single or small number of wealthy donors, who may or may not even live in Austin or the relevant council district, may funnel money into a petition effort, undermining the right of the Austin residents to decide for themselves who represents them in City government.

Austin has an existing model in the Charter for limits on contributions as it applies to candidates for City office, and so the intent of this draft recommendation is to mirror this existing model as closely as possible. The nature of campaign finance for candidates, however, is different from finance for a petition effort, which would likely be reported by a political committee, so while the goal is to mirror this model, there may be a need for some amendment or adjustment. This draft recommendation does not outline the specific limitations that should be in place in anticipation of the need for consultation with the City Attorney in order to prevent the inclusion of terms in the Charter that are not legally sound or tenable.

Should the resulting limitations be challenged in court, a severability clause should allow for the disclosure and reporting requirements to remain in place.

Fiscal Impact

No fiscal impact is anticipated.

Impact of the Recommendation on Existing City Laws, Rules, Practices and Procedures

City Charter Article IV Sec. 6 will be amended with new language.

Proposed Ballot Language

The proposed ballot language below is subject to review and edit by the City Attorney.

Shall the City Charter be amended to extend the same limitations on political contributions applicable to candidates for Mayor and City Council to recall petition efforts?

Appendix: City Charter Article III Sec. 8

§ 8. LIMITS ON CAMPAIGN CONTRIBUTIONS AND EXPENDITURES.

(A) Limits On Contributions To Candidates.

- (1) No candidate for mayor or city council and his or her campaign committee shall accept campaign contributions in excess of \$300 per contributor per election from any person, except for the candidate and small-donor political committees. The amount of the contribution limit shall be modified each year with the adoption of the budget to increase or decrease in accordance with the most recently published federal government Bureau of Labor Statistics Indicator, Consumer Price Index (CPI-W U.S. City Average) U.S. City Average. The most recently published Consumer Price Index on May 13, 2006, shall be used as a base of 100 and the adjustment thereafter will be to the nearest \$50.00.
- (2) Each candidate may authorize, establish, administer, or control only one campaign committee at one time.
- (3) No candidate and his or her committee shall accept an aggregate contribution total of more than \$30,000.00 per election, and \$20,000.00 in the case of a runoff election, from sources other than natural persons eligible to vote in a postal zip code completely or partially within the Austin city limits. The amount of the contribution limit shall be modified each year with the adoption of the budget to increase or decrease in accordance with the most recently published federal government Bureau of Labor Statistics Indicator, Consumer Price Index (CPI-W U.S. City Average) U.S. City Average. The most recently published Consumer Price Index on May 13, 2006, shall be used as a base of 100 and the adjustment thereafter will be to the nearest \$1,000.00.

(B) Small-Donor Political Committees.

- (1) A small-donor political committee is a political committee which has accepted no more than \$25.00 from any contributor during any calendar year, has had at least 100 contributors during either the current or previous calendar year, has been in existence for at least six months, and has never been controlled by a candidate.
- (2) Such a committee shall not contribute more than \$1,000.00 per candidate per election for the offices of mayor and city council.

(C) Coordinated Expenditures.

Any expenditure supporting the election of a candidate or opposing the election of an opponent made with the prior consent of the candidate or his or her committee, or with cooperation or strategic communication between the candidate or his or her committee and the person making the expenditure, is considered a contribution and an expenditure.

(D) Contributions Considered To Be From One Committee.

Contributions made by separate political committees established, administered, maintained, or controlled by the same person or persons, including any parent, subsidiary, branch, division, department or local unit of the person, or by groups of those persons, shall be considered to be made by a single political committee.

(E) Responsibility Of Candidate To Prevent Violations.

The candidate, or his or her committee, shall determine whether accepting each contribution would violate this section before accepting the contribution.

(F) Time Restrictions On Candidate Fundraising; Officeholder Accounts.

- (1) In this section terms have the same meaning as they have in Title 15 of the Texas Election Code. The term "officeholder account" means an account in which funds described by subsection (F)(4) must be kept. "Officeholder" means the mayor or a council member.
 - (2) An officeholder, a candidate for mayor or city council, or an officeholder's or candidate's committee may not solicit or accept a political contribution except during the last 180 days before an election for mayor or council member or in which an officeholder faces recall.
 - (3) Except as provided by subsection (F)(6), no later than the 90th day after an election, or if a candidate is in a runoff election no later than the 90th day after the runoff, a candidate or officeholder shall distribute the balance of funds received from political contributions in excess of any remaining expenses for the election:
 - (a) to the candidate's or officeholder's contributors on a reasonable basis,
 - (b) to a charitable organization, or
 - (c) to the Austin Fair Campaign Fund.
 - (4) An unsuccessful candidate who, after an election, has unpaid expenses remaining, or who has unreimbursed campaign expenditures from personal funds that were made with the intent to seek reimbursement from political contributions, may solicit and accept political contributions after the election until the unpaid expenses are paid and the unreimbursed expenditures are reimbursed.
 - (5) An officeholder who, after an election, has unpaid expenses remaining, or who has unreimbursed campaign expenditures from personal funds that were made with the intent to seek reimbursement from political contributions, may solicit and accept political contributions after leaving office until the unpaid expenses are paid and the unreimbursed expenditures are reimbursed. An officeholder may also pay the unpaid expenses and reimburse the unreimbursed expenditures from political contributions received during a subsequent campaign.
 - (6) An officeholder may retain up to \$20,000.00 of funds received from political contributions for the purposes of officeholder expenditures.
 - (7) An officeholder shall keep funds retained under subsection (F)(6) in an account separate from any other funds including personal funds of the officeholder and any other political funds of the officeholder. The funds kept in an officeholder account may be used only for officeholder expenditures. The funds kept in an officeholder account may not be used for campaign expenditures. The funds kept in an officeholder account may not exceed \$20,000.00 at any time.
 - (8) When an officeholder leaves the council, the funds remaining in an officeholder account must be paid to the Austin Fair Campaign Fund.
- (G) Applicability To Council Members. Any incumbent mayor or council member is subject to the regulations applied to candidates for the office he or she holds.
- (H) Criminal or Civil Litigation Fund.

Nothing in this article applies to the solicitation, acceptance, or use of contributions for:

- (1) defending a criminal action or prosecuting or defending a civil action brought by or against the person in the person's status as a candidate or officeholder; or
- (2) participating in an election contest or participating in a civil action to determine a person's eligibility to be a candidate for, or elected or appointed to, a public office in this state.
- (I) Enforcement. The city council may by ordinance adopt penalties and enforcement procedures for violations of this article.
- (J) Severability.

If any provision of this section, or the application of that provision to any persons or circumstances, shall be held invalid, then the remainder of this section, to the extent that it can be given effect, and the application of that provision to persons or circumstances other than those to which it was held invalid, shall not be affected thereby, and to this extent the provisions of this section are severable.

Amendment note:Section 8 appears as amended at the election of May 13, 2006. This section was added at the election of November 4, 1997. It took effect on November 7, 1997, the date of the canvass.

Source: Ord. No. 20180809-113 , Pt. 7, 8-20-18/election of 11-6-18.