

**CITY OF SAN ANTONIO  
INTERDEPARTMENTAL MEMORANDUM  
CITY ATTORNEY'S OFFICE**

TIME CERTAIN  
ITEM NO. **5(A)**  
**4:00 PM**

**TO:** Mayor and City Council

**FROM:** Andrew Martin, City Attorney

**THROUGH:** Terry M. Brechtel, City Manager

**COPIES:** Yolanda Ledesma, City Clerk; File

**SUBJECT:** Recommendations of the Mayor's Committee on Integrity and Trust in Local Government for Municipal Campaign Finance Regulations

**DATE:** October 30, 2003

**Introduction**

On September 3, 2003, the Council Governance Committee met with members of the Mayor's Committee on Integrity and Trust in Local Government and discussed the possible development of municipal campaign finance regulation. The Governance Committee members indicated a desire to continue the discussion with the other members of the City Council at a "B" session.

On October 16, 2003, the City Attorney's Office presented an overview of the recommendations of the Mayor's Committee on Integrity and Trust in Local Government regarding municipal campaign finance regulation. The council directed that the issue be placed on the agenda for the October 30, 2003 City Council "B" Session for further consideration.

This memorandum sets out an excerpt from the report of the Mayor's Integrity Committee to facilitate this additional discussion. Also, attached to this memorandum is a matrix providing an overview of municipal campaign finance regulation in other jurisdictions.

**Excerpt from the Report of the Mayor's Commission on Integrity and Trust in Local Government**

**A. Proposed Regulations Regarding Campaign Contributions.**

**1) Limitation of Contributions to Candidates for Mayor or Council.** A candidate for District Office on the City Council may not accept more than \$500 from any individual or single entity (e.g. Political Action Committee) per election cycle. This limitation on contributions means that a candidate may accept a maximum of \$500 for the general election, currently conducted every two years, plus a maximum of \$500 during and for a runoff election, should one occur.

A candidate for Mayor may not accept more than \$1000 from any individual or single entity (e.g. Political Action Committee) per election cycle. This limitation on contributions means that a candidate may accept a maximum of \$1000 for the general election from any individual or single entity, plus a maximum of another \$1000 during and for a runoff election, should one occur.

***Rationale:** The Committee had to balance factors that would stop large contributions from generating undue influence in governance against the need for candidates to communicate their messages to the public in districts with more than 100,000 residents. Every person testifying before the Campaign Finance Reform Subcommittee supported campaign contribution limits. Adopting a contribution limit serves many purposes associated with integrity and trust in governance. It limits the influence of money on access to government officials and governmental decision-making.*

*Given past experience, having a limit will foreclose the possibility that an elected member of or candidate for council could contend that an amount of money given to her or him above \$500 was a campaign or officeholder-account contribution and that she or he simply forgot to report during the relevant reporting period, or that it was an accounting error. The committee felt that \$500 was an appropriate limit that would not impede the communication of a candidate's campaign message, while maintaining appropriate integrity in the electoral and governing process.*

*The full Committee was somewhat divided between recommending the \$500 amount for both district and mayoral candidates or increasing the amount to \$1000 for mayoral candidates. Based on a one-vote margin, the Committee decided that a higher limit was necessary for mayoral candidates. The vast majority of the Committee believed that the limit should be no higher than \$1000.*

**2) "Pay-to-Play" Prohibition.** Any person or company official, acting as a legal signatory for a proposed contractual relationship that applies for a "high-risk" discretionary contract, as defined by the contractual risk criteria<sup>1</sup>, may not make a campaign or other contribution to any councilmember or candidate at any time from the start of the design of an RFP through the contract award.

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<sup>1</sup> Contractual Risk Criteria:

- (1) Contract Value. Over the life of the contract, will the contract value exceed \$1 million?
- (2) Procurement Method. If the contract value exceeds \$25,000, will agreement be obtained without a competitive solicitation?
- (3) Contract Complexity. Is the service/good of a highly complex nature, or will the contract items be non-standard?
- (4) Community Interest. Will there be a high level of community or other exceptional interest in this agreement?

If the signatory legally entering the contract has made such a contribution, the city may not award the contract to that contributor's business entity. Any such signatory who receives a contract falling within the contractual risk criteria may not make a campaign or other contribution to any councilmember or candidate except to a candidate for whom that individual may vote in the next election and runoff cycle.

***Rationale:** This recommendation addresses the substance and appearance of integrity concerning the relationship between campaign contributions and decisions by elected officials.*

**3) Minimum Age for Contributors.** A candidate for Mayor or City Council may not accept contributions from persons less than 18 years of age.

***Rationale:** The purpose of this recommendation is to prohibit the circumvention of the \$500 and \$1000 campaign contribution limits by individuals passing money above the limits to candidates through their children. Since spouses or adult family members can differ on candidate preferences, the Committee did not recommend a limit for family contributions since we believe that would constitute unfair and unconstitutional practice.*

**City Attorney's Office Note:** A similar provision in the McCain-Feingold Act was found unconstitutional in McConnell v. Federal Election Commission, 251 F. Supp. 2d 176 (D.D.C. 2003). The matter is currently pending before the United States Supreme Court. Some states require that contributions by an unemancipated minor child will be treated as a contribution by his custodial parent. The Texas Election Code Section 253.001 prohibits contributions or expenditures in the name of another. A passage could be added to make clear that parents cannot make contributions in the name of their minor children:

*A person may not knowingly make or authorize a political contribution in the name of or on behalf of another, e.g. a parent making a contribution in the name of a dependent child, unless the person discloses in writing to the recipient the name and address of the person actually making the contribution in order for the recipient to make the proper disclosure.*

*A person may not knowingly make or authorize a political expenditure in the name of or on behalf of another, e.g. a parent making a contribution in the name of a dependent child, unless the person discloses in writing to the recipient the name and address of the person actually making the contribution in order for the recipient to make the proper disclosure.*

**4) In-Kind Contributions.** PACS, commercial entities, or campaign vendors cannot give "in-kind" contributions with a commercial value to candidates or officeholders beyond the \$500 or \$1000 limitations. Individuals may donate their personal time as volunteers to a campaign without reporting requirements.

## **5) Limits on Candidate Loans to Campaign Account.**

(a) A candidate for Mayor or City Council may not accept or deposit any *loan* from oneself or any person, persons, entity or entities for more than \$5000 total (meaning cumulative total from one or all combined loans) into the campaign account during any election cycle.

(b) Candidates must repay any loan, operating under the normal rules of campaign finance, before the close of December 31 following the election cycle in which the candidate accepted and deposited the loan. This applies to candidates whether winning or losing the election. If the candidate fails to repay such loan within that timeframe, it becomes a donation to the campaign. Even when a candidate repays the amount of a loan or loans, that individual may not accept another loan if they have already accepted the maximum \$5000 amount for that election cycle. Any *other* amount deposited to a campaign account must be a donation. No loan may be made in cash.

***Rationale:** Campaign finance rules cannot prohibit a wealthy candidate from donating money to their own campaign due to constitutional issues presently. Prohibiting candidates and their supporters from making loans to campaign coffers of more than \$5,000 will eliminate the practice by which massive loans ranging into the tens and hundreds of thousands of dollars are made to campaigns, influencing the elections, which then, after victory, are repaid to the candidate or supporters.*

*The rule above should have a chilling effect on wealthy candidates or individuals skewing elections through loans at no cost to themselves ultimately. This should bar the practice of making a loan to oneself, influencing the election, then repaying it after victory.*

**6) No cash contributions.** A candidate for Mayor or City Council may not accept campaign contribution or officeholder-account contribution in cash, including tickets to events.

***Rationale:** Allowing cash contributions could permit large amounts of money to come into campaigns under the disclosure radar screen. For example, an individual may purchase 400 tickets to an event for \$25 in cash each and then distribute the tickets as complimentary. This could result in a \$10,000 cash contribution by the ticket buyer that goes unreported by the candidate.*

**7) Single Campaign Account Rule.** A candidate for Mayor or City Council must deposit each and every campaign contribution into one and only one specified bank account. Candidates must use this one account for all campaign deposits and expenditures.

***Rationale:** The Committee believes this is essential for monitoring, clean accounting practices, and campaign finance transparency.*

**8) Bank Statements to be Provided to Enforcement Authority.** A candidate for Mayor or City Council or the campaign treasurer must send a campaign account statement directly to the designated campaign finance enforcement entity twice a month from February 1 through June 30 every election year. At all other times, account statements must be provided monthly. The candidate or campaign treasurer must make these arrangements at the time of the first deposit or earlier. See notes on independent auditor recommendation below.

*Rationale: This requirement will facilitate truth-in-finance monitoring and disclosure.*

**9) Prohibition on Fund Transfers.** A Candidate for Mayor or City Council may not transfer campaign funds into the campaign account from any other account or fund, except as allowed under the rules regulating campaign finance for candidates. ["Grandparent" Clause: Persons with established campaign accounts before the date the new regulations go into effect can transfer dollars into the official campaign account only within dollar limitations described above and only in compliance with the new rules.]

*Rationale: This rule promotes campaign-finance integrity, decreases campaign-finance hide-and-seek games, and facilitates disclosure compliance and monitoring. The grandparent rule attempts to decrease injury to those candidates with existing campaign accounts accumulated before the new rules come into effect. This would apply only once.*

**10) Time Limitation to Accept Donations.** A candidate for Mayor or City Council may neither accept nor deposit campaign contributions past 5 p.m. on the Monday preceding the election day (not early voting). During the runoff election, a candidate for Mayor or City Council may neither accept nor deposit contributions past 5 p.m. on the Wednesday preceding the election day.

*Rationale: This provision would ensure that the voting public and the media would have meaningful access to final information about contributions before the election takes place.*

**11) PAC's Must Register Campaign Expenditures.** All PACs or groups spending money on campaign activity or advertising associated with a city election, including referenda, (or specially designated City Council agenda item), must register with the city, reporting the financial contributions to and expenditures for this campaign. The sponsor of any advertising relating to an election, or candidate must identify itself in clear and visible language.

**12) Electronic Campaign Finance Filing.** A candidate for Mayor or City Council must file and update electronic reports with the designated enforcement entity for campaign finance compliance. The e-reports must identify deposited campaign contributions and current campaign expenditures. E-reports must contain all designated information set out below, in designated spreadsheet form, entered into any acceptable spreadsheet or word

processing program prescribed by or provided through the city. The city will post the candidate's financial disclosure e-reports through the city's Elections Website. Candidates will still have to submit written, hard copy reports to the city in accordance with state election law. The electronic filing will provide a different, ongoing disclosure function.

A candidate for Mayor or City Council must e-report a campaign contribution within 72 hours of its deposit into the candidate's one campaign account. Exception: In runoff elections, the final campaign finance report must be submitted by Thursday evening at 6 p.m. preceding the runoff election day.

The e-report must list the name, address, principal occupation, and principal employer of the contributor. Candidates should not deposit any contribution without obtaining this information for purposes of reporting.

***Rationale:** Electronic filing allows citizens and the government to monitor contributions (and expenditures) easily and consistently. The system above will promote transparency in the handling of money. The passage of money between candidates or officeholders and financiers of campaigns, operating in the past manner, has led to distrust, injury to governmental reputation, and illegalities. This system will help to illuminate most aspects of money transfers to and from politicians. City officials should work with state officials to get authorization to accept campaign finance information electronically.*

**13) City Website Should Include Election and Contribution Information.** The city should create a Website dedicated to elections information and activities linked from the city's Internet home page. This site would contain information about filing, training sessions, deadlines, rules, contribution and expenditure reports of candidates, and any negative findings of or sanctions imposed by the enforcement entity for campaign finance compliance.

**14) Auditor to Review Finance Reports.** This subcommittee believes that these municipal campaign finance regulations should be enforced by a Citizen Trustee or Public Advocate's Office. Until a charter review committee reviews the matter of establishing such an enforcement entity, the Committee recommends that an outside, independent auditor, named by the City Manager, review campaign finance reports and register violations or issues associated with reporting and finance rules. The auditor should post findings on the city campaign finance reports/ethics Website for public scrutiny and deliver a copy to the City's Ethics Review Board for corrective action, enforcement or prosecution.

***Rationale:** The current system cries out for an enforcement agent. Currently, the finance reports are filed without extensive scrutiny. This component is essential to systemic reform.*

**B. Long-Term Recommendations.** In addition to the discussion of charter reform issues set out in above in Section III of this report regarding Long-Term Recommendations, this

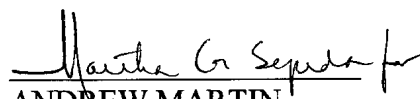
subcommittee would like to emphasize that any future charter reform commission should give serious consideration to the creation of an independently elected office of Citizens' Trustee or Public Advocate, with salary, providing to that office the authority to conduct research, formulate initiatives, audit and administratively enforce the municipal campaign finance regulations.

Further, while the Committee has no actionable recommendation on term limits in this report, the city's term limits provision was found to amplify the role of money and influence in campaigns. Needed name recognition for new candidates and seeking funds for the reelection of incumbents is a continuous process given San Antonio's term limits provision. Many citizens commented on the relationship of term limits and campaign finance reform. In one credible study, term limits were also found to depress voter turnout in San Antonio as well. This issue deserves further study by a charter revision commission.


Also, this subcommittee heard extensive testimony and reviewed many articles and letters regarding the subject of publicly financed elections. The issue is complex and there was not agreement in interviews and in public hearings on this issue. However, advocates of publicly financed elections provided credible evidence of the success of such programs in other cities in the United States. Any future charter revision commission should study and consider this issue in greater depth.

### **Summary**

The development of campaign finance regulation is currently under consideration by the City Council. The issues of term limits and council compensation have been assigned to the Charter Subcommittee.

  
ANDREW MARTIN  
City Attorney

APPROVED:

  
TERRY M. BRECHTEL  
City Manager

# Campaign Finance Matrix

<b>Jurisdiction</b>	<b>Council or Legislative Compensation</b>	<b>Contribution Limits (Individuals)</b>	<b>Contribution Limits (PACs, etc)</b>	<b>Cash Contributions</b>	<b>Information Required re: Contributors</b>	<b>Loans to Campaign Limits</b>
<b>Houston</b> pop. 1,953,631 4 <sup>th</sup> largest city	Mayor: \$150,000 Council: \$44,000	\$5,000 per election. (Includes "coordinated campaign expenditures")	\$10,000 per election (Includes "coordinated campaign expenditures")			Mayor: \$75,000 At-Lrg Council: \$15,000 Dist. Council: \$5,000
<b>Austin</b> pop. 656,562 16th largest city (reg'd by charter and city code)	Mayor: \$53,000 Council: \$45,000 (plus \$5,400 car allowance)	Mayor: \$100 per election Council: \$100 per election (Includes "coordinated campaign expenditures")  (\$15,000 aggregate contribution total limit from individuals not eligible to vote in Austin)	Small-donor PAC* may contribute \$1000 per candidate. (Includes "coordinated campaign expenditures")  (*100 or more contributors who are ltd to \$25 contrib.)  PAC cannot accept contributions greater than \$100 per person	Must keep receipt book for cash contributions, listing name, address, dates.	Name, employer of contributors giving \$250 or more; Name/address of person who solicits contribs, on behalf of candidate of \$100 or more from 5 or more individuals	
<b>Los Angeles</b> pop. 3,694,820 2 <sup>nd</sup> largest city		Mayor: \$1000 per election Council: \$500 per election  Contributors limited in total contributions. Limit varies. 2005 limit = \$7000.	Total contributions from non-individuals: Mayor: \$900,000 Council: \$150,000	\$25 limit	Must rpt name, address, occupation and employer b/4 deposit	Loans subject to contribution limits unless from commercial lending institution.



# Campaign Finance Matrix

<b>Jurisdiction</b>	<b>Contribution Restrictions - Contractors</b>	<b>Contribution Restrictions – Lobbyists</b>	<b>Fundraising Window</b>	<b>Enforcement Authority</b>	<b>Sanctions</b>
<b>Houston</b> (cont'd)	Contractors may not contribute during contract award period.		Begins the first day of February before election and ends on the 4 <sup>th</sup> day of March following election.		\$500 maximum fine. Each day any violation continues constitutes a separate offense.
<b>Austin</b> (cont'd)		Ltd to \$25 contributions	May solicit contributions during the last 180 days preceding election.  Excess funds distr'd to contributors or Camp Fund w/in 90 days after election		Forfeiture of office; "C" misdemeanors for code violations
<b>Los Angeles</b> (cont'd)			18 months before election and up to 9 months after election but only to retire debt	City Ethics Commission	Misdemeanor prosecution; Up to \$5000 civil fine; disbarment as lobbyist or contractor

# Campaign Finance Matrix

<b>Jurisdiction</b>	<b>Council or Legislative Compensation</b>	<b>Contribution Limits (Individuals)</b>	<b>Contribution Limits (PACs, etc)</b>	<b>Cash Contributions</b>	<b>Information Required re: Contributors</b>	<b>Loans to Campaign Limits</b>
<b>San Diego</b> pop. 1,223,400 7 <sup>th</sup> largest city	Mayor: \$95,680 Council: \$71,796	\$250 per election	Unlawful for candidate or committee to accept contribution from any person other than an individual, i.e. no contributions from organizations	Must keep photocopy of bank deposit of cash contributions	Name, address, amount and date of contribution. Also must keep record of contributions refused or returned.	No limit on amt candidate may loan to own campaign
<b>Phoenix</b> pop. 1,321,045 6 <sup>th</sup> largest city (Camp Fin. reg'd by state law. AZ also has public campaign finance program w/ additional restrictions for participating candidates)	Mayor: \$56,000 Council \$36,000	\$350 in local elections. Individuals ltd to making a total of \$3,360 in contributions, except to political parties.	\$350 in local elections by PACs; \$1800 from "Super PAC."  Total contributions from all PAC's other than political parties ltd to \$8,990.		Individuals who contribute more than \$25	Loan within contribution limit is a contribution to the extent loan is unpaid.
<b>Denver</b> pop. 554,636 25 <sup>th</sup> largest city	Mayor: \$99,612 Council: \$43,164	Mayor: \$3000 At Lrg Council: \$2000 District Council: \$1000	Contributions to PACs limited to \$50	No more than \$50.	Name, address of those who contribute \$50 or more	No limit on amount candidate may loan to own campaign

# Campaign Finance Matrix

Jurisdiction	Contribution Restrictions - Contractors	Contribution Restrictions – Lobbyists	Fundraising Window	Enforcement Authority	Sanctions
San Diego (cont'd)				Enforcement Authority	Misdemeanor; forfeiture of funds; ineligible to hold city office for 5 years
Phoenix/Arizona (cont'd)				Election Commission.	Up to a \$1000 fine
Denver (cont'd)				Election Commission (has subpoena power)	Forfeiture of office, civil fine

# Campaign Finance Matrix

## Other jurisdictions considered:

### No Municipal Campaign Finance Regulations

Dallas

New Orleans

### Campaign Finance Regulations Tied to Public Campaign Finance Programs

Miami-Dade