

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

TO: Mayor and City Council

FROM: Andrew Martin, City Attorney

COPIES TO: Terry M. Brechtel, City Manager

SUBJECT: Municipal Campaign Finance Code

DATE: July 30, 2004

Summary

This ordinance would create a municipal campaign finance code to be enforced by the Ethics Review Board. The code will set limits on campaign contributions that a candidate for mayor or city council may accept when running for municipal office. The code also imposes time restrictions on individuals seeking "high-risk" contracts with the City of San Antonio to make campaign contributions. Candidates will also be required to provide monthly campaign account statements to the Ethics Review Board and calls for the development and implementation of a municipal electronic campaign finance system.

The draft ordinance is unchanged from the version discussed by the City Council in the "B" Session on April 1, 2004.

Procedural Background

On October 23, 2003, Mayor Edward D. Garza convened the Mayor's Committee on Integrity and Trust in Local Government. The Committee was charged with providing specific recommendations to correct weaknesses in existing ethics ordinances and code, with the "goal of strengthening a culture of service, integrity, trust and accountability." From October 2002 through January 2003, the Committee interviewed city staff, current and former city officials, members of the business community and citizen groups. On January 29, 2003, the Committee issued its report, which included its specific recommendations for the development and implementation of municipal campaign finance regulations. On January 30, 2003, the Committee presented its report to the City Council.

On October 30, 2003, the City Council considered the recommendations of the Mayor's Integrity Committee. Subsequent to this council meeting, the Council Campaign Finance Subcommittee was formed to further review and research campaign finance issues. The Subcommittee met on February 2, 2004 and February 9, 2004, February 24, 2004 and March

17, 2004. The recommendations of the Subcommittee in the form of a draft municipal campaign finance code are attached.

The recommendations and the draft ordinance were discussed by the City Council at a "B" Session held April 1, 2004.

Summary of Proposed Municipal Campaign Finance Code

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. A candidate for Mayor may not accept more than \$1000 from any individual or single entity (e.g. Political Action Committee) per election cycle. The following constitutes the proposed definition of the three separate election cycles during which a candidate may accept contributions:

- 1) for all candidates, beginning July 1 of the calendar year before the date of the regular municipal election, and ending on the date of the regular municipal election;
- 2) for a candidate in a run-off election, beginning the day after the regular municipal election, and ending on the date of the run-off election;
- 3) for all candidates, beginning either on the day after the regular municipal election or the day after the run-off election, as applicable, until June 30 of the calendar year before the next regular municipal election.

2) 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.

3) Cash Contributions. A candidate for Mayor or City Council may not accept campaign contribution or officeholder-account contribution in cash greater than \$50, including tickets to events.

4) Contributions by Minors. A minor child may make contribution only if done so knowingly and voluntarily with funds, goods or services owned or controlled exclusively by the child and not with proceeds of a gift where the purpose was to provide funds to be contributed. Minor shall submit form with contribution acknowledging minor status and that contribution is made in accordance with this provision.

5) Time Limits to Accept Donations. Candidates may not accept or deposit contributions after 5:00 PM on the fourth calendar day before the election or run-off election date. Contributions received during that time could be deposited during the next election cycle.

6) Limitation of Candidate Loans to Campaign Account. The Council Subcommittee recommends either setting a limit on the amount of loans a candidate may accept during an election cycle or setting a limit on the amount of campaign funds a

candidate may use to repay loans. The Subcommittee has referred the amount of the limits to the full Council.

7) Single Campaign Account. Candidates will deposit all campaign contributions into one specified bank account. Candidates must use this one account for all campaign deposits and expenditures. A copy of the monthly account statement is to be provided to the campaign finance enforcement authority.

8) Declaration of Candidacy. If a candidate seeks municipal office, he or she shall note which municipal office is being sought on the Appointment of Campaign Treasurer form filed under Texas Election Code Section 252.001. If the candidate subsequently decides to seek a different office, the candidate shall file an amended Appointment of Campaign Treasurer declaring the new office sought.

9) Transfer of Campaign Funds. If, after declaring a candidacy for any elected office, the candidate subsequently declares for an elected municipal position, he or she may maintain the same campaign finance account. However, if the candidate seeks a municipal office which is subject to lower contribution limits than the previously sought office, the candidate shall return all contributions in excess of the limits for the municipal office sought

10) Electronic Campaign Finance Filing. The Code will establish the goal that the City will implement an electronic filing system for candidates and political action committees as soon as is practicable. Representatives of the Information Technology Services Department (ITSD) advised the Subcommittee that development and implementation of a municipal electronic campaign finance system would cost approximately \$15,000 to \$20,000. If approved, development could be completed during the summer of 2004 for use during the July 1 – December 31, 2004 reporting period under the Texas Election Code.

11) Additional Contribution Reports. Upon implementation of the electronic campaign finance filing system, candidates will also, in addition to submitting finance reports required by the Texas Election Code, electronically report all contributions within five business days of filing the monthly campaign finance account statement. Further, by 5:00 PM on the third calendar day before an election or a run-off election, candidates will electronically update all contributions received through that election cycle.

12) Contractors' Contribution Restriction. 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 criteria¹, may not make a

¹ 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?

campaign or other contribution to any councilmember or candidate from the time a Request for Proposal (RFP) or Request for Qualifications (RFQ) is issued until 30 calendar days following the contract award. A candidate will have five business days after learning of contribution made in violation of this provision to return the contribution.

13) Enforcement Authority. The Ethics Review Board established pursuant to the charter amendments adopted by the voters in May will enforce these campaign finance regulations.

14) Elections and Campaign Finance Website. The city will create and maintain an elections and campaign finance website which will contain information about filing, candidate training, deadlines, regulations, contribution and expenditure reports and findings by the enforcement authority.

The Subcommittee recommended deferring consideration of sanctions and rules of civil procedure to a later time.

Financial Impact

This ordinance will result in additional personnel costs to the City Clerk's Office, which will serve as the repository for reports filed with the campaign finance enforcement authority. Additional support to the Ethics Review Board will be provided by the City Attorney's Office.



Andrew Martin
City Attorney

APPROVED:



Terry M. Brechtel
City Manager

(4) Community Interest. Will there be a high level of community or other exceptional interest in this agreement?

Part 1. Chapter 2 of the City Code of San Antonio, Texas is amended to adopt a new Article VII entitled "Campaign Finance Regulations" as follows:

ARTICLE VII. CAMPAIGN FINANCE REGULATIONS

DIVISION 1. GENERAL

Sec. 2-300 Statement Of Policy

It is essential in a democratic system that the public has confidence in the integrity, independence, and impartiality of those who are elected to act on their behalf in government. There is a public perception that a relationship exists between substantial contributions and access to elected officials. To diminish the perceived or actual connection between contributions and influence, the City adopts this Campaign Finance Code to promote public confidence and, it is hoped, a greater degree of citizen participation in the electoral process.

Sec. 2-301 Definitions

(a) Election Cycle: The following constitute separate election cycles:

- 1) for all candidates, beginning July 1 of the calendar year before the date of the regular municipal election, and ending on the date of the regular municipal election;**
- 2) for a candidate in a run-off election after the regular municipal election, beginning the day after the regular municipal election, and ending on the date of the run-off election;**
- 3) for all candidates, beginning either on the day after the regular municipal election or the day after the run-off election, as applicable, until June 30 of the calendar year before the next regular municipal election.**

{Note: Subsection (a)(3) has been adjusted so that there would not be any overlap between the cycles defined by (a)(1) and (a)(3). This wording will also accommodate contribution cycles whether two-year office terms or three-year terms are selected.}

{Note 2: At the February 24, 2004, the Campaign Finance Council subcommittee ("subcommittee") meeting, the beginning date of July 1 of the calendar year before the date of the municipal election was proposed as a beginning date for the first cycle, and June 30 of the calendar year before the following election was proposed as an end date for the third cycle. These beginning and ending dates provide dividing lines between the cycles, which also track the campaign finance reporting periods under the Texas Election Code.}

(b) Terms not defined in this chapter but defined in the Texas Election Code shall have the meanings assigned to them in the Texas Election Code.

DIVISION 2. CONTRIBUTION LIMITS

Sec. 2-302 Limitation Of Contributions To Candidates For Mayor Or Council

(a) A candidate for district office on the City Council may not accept more than \$500.00 from any individual or single entity **per election cycle**.

(b) A candidate for mayor may not accept more than \$1000.00 from any individual or single entity **per election cycle**.

(c) Political action committees, commercial entities, or campaign vendors cannot provide in-kind contributions with a commercial value to candidates or officeholders beyond the limits established in this section. Individuals may donate their time as campaign volunteers without limit. **"In-kind" contribution means goods or services provided to or by a person at no charge or for less than their fair market value.**

{Note: Addition of definition of "in-kind" proposed to improve clarity}.

(d) An individual cannot contribute to candidate or candidate committee and a candidate for Mayor or City Council cannot accept campaign contributions or officeholder contributions in cash exceeding \$50, from a single donor during a campaign finance reporting period as defined in the Texas Election Code §253.033, including tickets to fund-raising events.

{Note: this provision was amended at the February 25, 2004 the subcommittee meeting to limit cash contributions during a campaign finance reporting period as defined by the Texas Election Code rather than using the election cycles defined by this code. Because state law limits cash contributions, using the state reporting cycles facilitates compliance with both state and municipal regulations.}

(e) A person may not knowingly make or authorize a political contribution in the name of or on behalf of another, 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.

(f) A minor may make a contribution only if done so knowingly and voluntarily with funds, goods or services owned or controlled exclusively by the minor and not with proceeds of a gift where the purpose was to provide funds to be contributed. The minor shall submit a form with the

contribution acknowledging his or her minor status and that his or her contribution complies with this provision.

(g) A "coordinated campaign expenditure" shall be considered a contribution subject to the limits set forth within this section and subject to the disclosure requirements for campaign contributions made to a candidate for elected city office. As used in this subsection, the term "coordinated campaign expenditure" means a payment, other than a direct contribution, for an activity, service or product that contains express advocacy for the election or defeat of a clearly identified candidate(s) for city office and is made in cooperation, consultation, or concert, with or at the request or suggestion of, a candidate(s) for city office or a candidate's representative, agent or employee.

Coordinated campaign expenditures shall include, but not be limited to the following:

- 1) Voter identification and/or get-out-the-vote activity on behalf of a specific candidate(s) for city office;**
- 2) A public communication that refers to a clearly identified candidate(s) for city office and that promotes or supports a candidate(s) for that office, or attacks or opposes a candidate(s) for that office, or is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate(s).**

The following is not considered a coordinated campaign expenditure:

- 1) Direct monetary contributions made to a candidate for city office;**
- 2) In-kind contributions made to a candidate for city office;**
- 3) Payment by an individual or organization for the individual's or organization's overhead expenses including but not limited to rent, utilities, taxes, office supplies or salaries;**
- 4) Volunteer (unpaid) activity(ies) on the part of the individual or members of the organization.**

{Note: this provision modeled after Houston City Code Sec. 18-39.}

Sec. 2-303 Time Limitation To Accept Donations

(a) A candidate for Mayor or City Council shall not accept nor deposit campaign contributions after 5:00 P.M. on the 4th calendar day before the regular municipal election date.

(b) During a run-off election, a candidate for Mayor or City Council shall not accept nor deposit campaign contributions after 5:00 P.M. on the 4th calendar day before the date of the run-off election.

{Note: It was originally proposed that the freeze on accepting campaign contributions should be in place three business days before the date of the election. Using "5:00 P.M. on the 4th business day preceding the date of the election" creates that three-day moratorium and clearly specifies the deadline for accepting and depositing. At the February 25, 2004 subcommittee meeting, this was changed to 4th calendar day to prevent inconsistencies between elections held on Saturdays and during the regular workweek.

Any contributions received after 5:00 P.M. or not deposited by 5:00 P.M. could be held and deposited after the election. These deposits would then be part of the tally of contributions for the post-election (or run-off) contribution cycle. To make this clear, subsection (c) is proposed:

(c) Contributions received after the deadlines set out in (a) and (b) of this section or contributions not deposited by these deadlines may be deposited during the subsequent election cycle. Such contributions will be subject to limitations for the election cycle during which they are deposited.

Sec. 2-304 Limitation Of Candidate Loans To Campaign Account

{Note: The Integrity Committee proposed a limit on the total amount of loans. As an alternative to a loan cap, the Council subcommittee considered instead imposing a limit on the use of campaign contributions to repay loans. See footnote for summary regarding treatment of loans under federal law.¹

{Subsection (a) and Alternate Subsection (a) below propose two alternatives to the treatment of loans for council candidates:

¹ Summary of federal regulations regarding loans:

- 1) For loans a candidate makes to his or her own campaign using his or her own personal funds:

For loans of less than \$250,000 that a candidate has made to his or her own campaign, candidate may repay that loan with campaign contributions before or after an election.

For personal loans of more than \$250,000, the candidate may use contributions made before the election to repay the entire loan amount;

However, for loans exceeding \$250,000, he or she will be limited to using \$250,000 to repay personal loans with contributions made after the date of the election.

For loans exceeding \$250,000, the candidate has 20 days after the election to repay the loans with contributions. If not repaid, loan amount exceeding \$250,000 is treated as contribution.

- 2) Under federal law, for loans made to a candidate by any other person, these are treated as contributions and are subject to the contribution limits. If loans are repaid within an election cycle, the donor's limit is reset. Under Texas Election Code, loans are included within the general definition of the term "contribution," as a thing of value. Texas Election Code 251.001.

Subsection (a) imposes a straight cap on the amount a candidate may accept in loans to support a campaign. The amounts of \$5000 and \$20,000 have been discussed, but the subcommittee has referred consideration of a specific amount to the entire Council. The Integrity Committee originally proposed that repayment of loans should not affect the calculation of the total amount of loans accepted by a candidate, i.e. once a candidate has accepted \$5000 in loans, the candidate could not accept additional loans, even if the previous loans were repaid. Under the federal system, loans are subject to the contribution limits, though if loans are repaid within an election cycle, the donor's limit is reset. The subcommittee recommends allowing repayment of loans to reset the loan total.

Alternate Subsection (a) proposes a limit on the amount of campaign funds that a council candidate can use to repay loans. This means that a candidate can accept an unlimited amount in loans, but will be restricted in how much he or she can repay those loans using campaign funds. For loans exceeding the limit, the candidate will be personally liable for repayment. This approach raises the issue of how to treat loans in excess of the limit that the candidate fails to repay, i.e. do these loans become contributions? If so, what if these contributions exceed the contribution limits? As with Subsection (a), the subcommittee has referred the issue of the specific amount for a loan repayment limit to the entire Council.

(a) **Loan Limit.** A candidate for City Council cannot accept or deposit any loan from himself or herself or any person, persons, entity or entities for more than { \$ _____ } total into the candidate's campaign account during any election cycle. This limitation applies to the cumulative total from one or all combined loans. Repayment of a loan does not affect the calculation of the total amount loaned to a candidate.

alternate (a)

(a) Loan Repayment Limit. A candidate for City Council cannot repay loans to himself or herself or to any authorized committee of the candidate or to any person, persons, entity or entities for more than { \$ _____ } in the aggregate with campaign or officeholder funds during any election cycle. This limitation applies to the cumulative total from one or all combined loans. Repayment of a loan {does} ~~{does not}~~ affect the calculation of the total amount loaned to a candidate.

{Subsection (b) and Alternate Subsection (b) below propose two alternatives to the treatment of loans for mayoral candidates. Again, as with the proposed provisions for council candidates, the subcommittee had no specific recommendation on the amount. The amounts of \$10,000 and \$40,000 have been discussed.}

(b) **Loan Limit.** A candidate for Mayor cannot accept or deposit any loan from him or herself or any person, persons, entity or entities for more than { \$ _____ } total into the candidate's campaign account during any election cycle. This limitation applies to the cumulative total from one or all combined loans.

Repayment of a loan does not affect the calculation of the total amount loaned to a candidate.

alternate (b)

(b) Loan Repayment Limit. A candidate for Mayor cannot repay loans to himself or herself or to any authorized committee of the candidate or to any person, persons, entity or entities for more than {\$ } in the aggregate with campaign or officeholder funds during any election cycle. This limitation applies to the cumulative total from one or all combined loans. Repayment of a loan {does} {does not} affect the calculation of the total amount loaned to a candidate.

{Note: The subcommittee had no specific recommendation for deadline for repayment of loans. The Integrity Committee recommended requirement to repay loans by December 31 following the election cycle during which the loan was accepted and deposited. Comments during October 31, 2003 Council meeting and subsequent Governance and Campaign Finance subcommittee meetings note that timeline may be impractical. See following provision, Subsection (c).}

~~(c) Candidates, whether successful in the election or not, 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} {within _____ months of receiving loan} {by the end of the third election cycle as defined in this chapter}.~~

~~(d) If the candidate fails to repay a loan by {December 31 following the election cycle in which a candidate accepted and deposited a loan} {within _____ months of receiving loan} {by the end of the third election cycle as defined in this chapter}, the loan becomes a donation to the campaign.~~

(e) A candidate cannot accept a loan made in cash.

DIVISION 3. CAMPAIGN ACCOUNTS AND REPORTS

Sec. 2-305 Single Campaign Account

(a) A candidate for Mayor or City Council must deposit each and every campaign contribution into one and only one specified bank account. This single account must be used for all campaign deposits and campaign expenditures.

~~(b) A candidate may not transfer campaign funds into the campaign account from any other account or fund. Persons with established campaign accounts before the date this code goes into effect can transfer funds into the campaign account.~~

{Note: Proposed change to this recommendation provides a "grandfather clause" that would allow candidates to retain all funds received before this ordinance goes into effect.

(c) At the time a candidate files the Appointment of Campaign Treasurer pursuant to Texas Election Code Section 252.001, the candidate shall declare the municipal office sought. If candidate subsequently decides to seek a different office, the candidate shall file an amended Appointment of Campaign Treasurer declaring the new office sought.

(d) If a candidate who has filed a campaign treasurer appointment decides to seek a different office that would require the appointment to be filed with another authority, a copy of the appointment certified by the authority with whom it was originally filed must be filed with the other authority in addition to the new campaign treasurer appointment, in accordance with the requirements of Texas Election Code Section 252.010.

{Note: Melinda Lopez of the City Clerk's Office consulted the Texas Ethics Commission which advised that if a person submits the initial campaign treasurer appointment and does not indicate which office is sought, an amendment to the treasurer appointment form should be submitted once a decision or declaration for a particular office is made. If the person has filed a treasurer appointment form and declared his or her intent to run for a particular office and then later decides to run for a different office, the candidate should also file an amendment and indicate the change.

Subsection (d) tracks Texas Election Code Section 252.010 and addresses requirements for candidates who seek a non-municipal office for which they filed their treasurer appointment with the state, but later declare a candidacy for a municipal office.

Note: Federal law allows a person to raise money to "test the waters" without registering as a candidate, even if that person raises or spends more than the \$5000 – the dollar threshold that normally triggers candidate registration. A person "testing the waters" however is still obligated to comply with federal contribution limits and prohibitions.

According to the FEC Campaign Guide, examples of permissible "testing the waters" activities include polling, travel and telephone calls made to assess the viability of a candidacy. Candidates are considered to be campaigning, as opposed to "testing the waters," when they

- make or authorize statements that refer to themselves as candidates,*
- use general public political advertising to publicize their intent to run for a particular office*
- raise more money than is reasonably necessary to test the waters.*

(d) If, after declaring a candidacy for any elected office, the candidate subsequently declares his or her candidacy for any elected municipal office, he or she may maintain the same campaign finance account.

However, if the candidate seeks a municipal office which is subject to lower campaign contribution limits than the previously sought office, the candidate shall return all contributions in excess of the limits for the municipal office sought.

(1) The transferor committee's available funds shall be viewed as those contributions most recently received that add up to the amount of cash on hand.

(2) Contributions transferred must be aggregated with any contributions made by the same donor to the committee receiving the transfer. Amounts that would cause a contributor to exceed his or her per-election cycle contribution limit must be excluded from the transfer.

{Subsection (d)(1) and (d)(2) modeled from 11 CFR 110.3(c)(5)(ii).}

{Note: The subcommittee requested information regarding the treatment of transferring campaign funds under federal law. In short, campaign funds raised under authority of non-federal law cannot be transferred into a federal campaign account. It is regarded as prohibited "soft-money." A candidate who accepted contributions for a non-federal campaign could refund those contributions and then solicit those same contributors to donate to the federal campaign.}

A candidate may run for more than one federal office. If a candidate does run for multiple federal offices, the candidate must establish separate principal campaign committee and maintain separate organizations. Contributions cannot be transferred from one campaign to the other while the candidate was "actively seeking more than one office." Once candidate is no longer "actively seeking" an office, the candidate can transfer contributions from the inactive campaign to the active campaign. Contributions transferred must be aggregated with any contributions made by the same donor to the recipient committee. Amounts that exceed limit must be excluded from transfer.

Contributions received during a campaign for one federal office may be transferred to a campaign for another federal office in a different election cycle. The FEC uses the example of a candidate running for the House in 2002 and then for the Senate in 2008. That candidate may transfer surplus contributions from the 2002 election for the 2008 election.

Under Texas Election Code, candidate is not required to declare office at the time he or she files for the appointment of a campaign treasurer. This means a candidate can receive donations without identifying which office will be sought. The candidate is only required to declare the office sought at the time he or she submits application to be placed on the ballot for a particular election.

Under the federal framework, once candidate exceeds \$5000 threshold for contributions or expenditures or engages in activity that indicate he or she is actively campaigning rather than "testing the waters," the candidate must register as a candidate and declare the specific office sought. As noted above, if more than one office is sought during the same election, the candidate must maintain separate accounts and organizations.}

Sec. 2-306 Campaign Account Statements

(a) A candidate for Mayor or City Council or the campaign treasurer must send a campaign account statement directly to the designated campaign finance enforcement authority once a month within five business days of receiving the statement from the financial institution. The candidate may choose to direct the financial institution to send a copy of the statement directly to the campaign finance enforcement authority.

The City Clerk's Office shall serve as the official records repository for the municipal campaign finance authority.

{The Integrity Committee originally recommended filing the campaign finance account statement twice a month. The subcommittee concluded that filing once a month would be a sufficient additional disclosure requirement for providing information about campaign finance activity.}

Sec. 2-307 Electronic Campaign Finance Filing

(a) The City Council shall direct staff to research the development and implementation of electronic campaign finance filing system. The City Council, as soon as is practicable, shall authorize funding and implementation of this system.

{ITSD has advised that it can develop an electronic campaign finance reporting system similar to that used by the state. This system can be designed to generate paper reports for official filing in compliance with Title 15 and be used for rapid electronic posting on the city's website. ITSD estimates a cost of \$15,000 to \$20,000 to create this system.}

(b) Upon implementation of the electronic campaign finance filing system, candidates for Mayor or City Council will file and update electronic reports with the campaign finance enforcement authority. The reports must identify deposited campaign contributions and current campaign expenditures and must list the name, address, principal occupation, and principal employer of the contributor. All contributions must be reported within five business days of filing monthly campaign account statement required by Section 2-306.

(c) In general and runoff elections, the final campaign finance report must be filed no later than 5:00 P.M. on the third calendar day preceding the general or run-off election day.

{Note: The subcommittee recommended setting the deadline for the final 3-day posting of contributions for 5:00 P.M. of the third day preceding the election to allow candidates and/or their staff time to electronically input the contributions accepted and deposited by 5:00 P.M. of the fourth calendar day preceding the election per the contribution freeze under 2-303.}

{The subcommittee noted that contribution limits in conjunction with the filing of monthly account statements under 2-306 and monthly electronic updating under 2-307(b) may reduce the necessity or usefulness of the addition of this final 3-day posting under 2-307(c).}

(c) The City will provide access to computer equipment for candidates to file the electronic reports. **A candidate, officeholder, or political committee that is required to file electronic reports under this chapter may apply for an exemption if**

(1) the candidate, officeholder, or campaign treasurer of the committee files with the commission an affidavit stating that the candidate, officeholder, or committee, an agent of the candidate, officeholder, or committee, or a person with whom the candidate, officeholder, or committee contracts does not use computer equipment to keep the current records of political contributions, political expenditures, or persons making political contributions to the candidate, officeholder, or committee; and

(2) the candidate, officeholder, or committee does not, in a calendar year, accept political contributions that in the aggregate exceed \$20,000 or make political expenditures that in the aggregate exceed \$20,000.

{Modeled after Texas Election Code Section 254.036.}

(d) The City of San Antonio will post the candidates' electronic campaign finance reports through a designated Elections Website.

(e) These reporting requirements are in addition to the reporting requirements under the Texas Election Code.

Division 4. POLITICAL ACTION COMMITTEES

Sec. 2-308 Registration

~~All political action committees (PACs) or groups spending money on campaign activity or advertising associated with a city candidate or measure election, or specially designated City Council agenda item), must register with the city and report the contributions and expenditures connected with this campaign.~~

Sec. 2-309 Expenditure Reports

~~All political action committees (PACs) or groups spending money on campaign activity or advertising associated with a city election, including referenda, or~~

~~pecially designated City Council agenda item must file a report with the City reporting the financial contributions to and expenditures for a campaign.~~

{Note: These provisions are largely redundant to existing state law provisions. Under state law, though, registration requirement is not triggered until PAC spends \$500 in connection with an issue. In addition, issues related to state or county issues in conjunction with city issue may require registration with the state as a General Purpose PAC, instead of the city as a Single Purpose PAC. It's up to the PAC to determine if it's a single purpose PAC which must register with the city or a general purpose PAC which must register with the state. The subcommittee recommended declining to adopt this provision because registration and reporting requirements already exist under state law. In its place, though, the subcommittee recommended that PACs that file with the municipality in accordance with the Texas Election Code, also file their reports electronically for posting on the city website.}

Sec. 2-308 Political Action Committees

All political action committees (PACs) or groups spending money on municipal campaign activity or advertising associated with a city candidate or measure election, or specially designated City Council agenda item shall also, in addition to compliance with reporting requirements under the Texas Election Code, submit such reports electronically with the municipal campaign finance authority. Deadlines and contents of reports for political action committees shall be set in accordance with the Texas Election Code.

Division 5. CITY CONTRACTORS

Sec. 2-309 Contribution Prohibitions

(a) 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 City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from time a Request for Proposal (RFP) or Request for Qualifications (RFQ) is issued until 30 calendar days following the contract award.

(b) If the signatory legally entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor's business entity.

~~(c) Any signatory who receives a "high-risk" discretionary contract may not make a campaign contribution to any councilmember or candidate except to a candidate for whom the individual may vote in the next election.~~

{Note: subsection (c) removed at February 9, 2004 subcommittee meeting}

(c) In the event that a candidate unknowingly accepts a contribution in contravention of the provisions of this section, then it shall be the duty of the candidate to return the contribution within 5 business days after he or she becomes aware of the violation.

(d) The Department of Asset Management shall determine whether a contract is "high risk." The criteria for designation as a "high-risk" contract are:

(1) Value of the contract over the life of the contract will exceed \$1 million;

(2) Contracts with value exceeding \$25,000 to be obtained without competitive solicitation;

(3) Contract is for goods or services of a highly complex nature or for non-standard items;

(4) Contracts with exceptional community interest.

{The subcommittee requested that staff address question of whether RFP's have built-in deadlines and whether some RFP processes can or do become "stale."}

DIVISION 6. REPORTING AND ENFORCEMENT

~~Sec. 2-310 Campaign Finance Auditor~~

~~Until an enforcement authority is established, the City Manager shall select an independent auditor to review the reports required under this Code and to register violations or issues associated with reporting and finance rules. The auditor's findings shall be posted on the city's Elections and Campaign Finance Website. The auditor will forward findings to the Ethics Review Board for corrective action and enforcement.~~

alternate Sec. 2-310

Sec. 2-310 Campaign Finance Enforcement Authority

The Ethics Review Board shall have authority to review reports required under this chapter and shall have the jurisdiction to investigate, make findings, issue rulings and assess sanctions concerning any alleged violation of this chapter, by any person subject to these provisions.

~~Sec. 2-311 Elections And Campaign Finance Website~~

~~The city shall create and maintain an Elections and Campaign Finance Website. The site will contain information about filing, candidate training, deadlines, rules, contribution and expenditure reports and any negative findings of or sanction imposed by the enforcement entity for campaign finance compliance.~~

~~Sec. 2-312 Enforcement Mechanisms~~

~~Until the Office of Citizen's Trustee can be created pursuant to City Charter for the purpose of monitoring and enforcing the municipal campaign finance regulations, the City Manager shall name an independent auditor to review campaign finance reports and register violations. The auditor shall post findings on the city campaign finance website and deliver a copy to the City's Ethics Review Board for corrective action, enforcement or prosecution.~~

~~Until the Office of the Citizen's Trustee is created, the Ethics Review Board has jurisdiction to enforce the municipal campaign finance regulations in accordance with the procedures set out for Ethics Code violations in the City's Ethics Code.~~

{Provisions may be unnecessary if Ethics Review Board is designated as authority. See Section 2-310. The Council may establish the Ethics Review Board as the enforcement authority by ordinance. Proposition 3 for the charter revisions would also, if approved by the voters, would give jurisdiction to the Ethics Review Board over municipal campaign finance code.

The subcommittee has deferred discussion of requisite mental state for violations, sanctions, and procedural rules until after these substantive provisions of the municipal campaign finance ordinance have been established by the full City Council.

DIVISION 7. EFFECTIVE DATE

Sec. 2-311 Effective Date

This Article shall become effective July 1, 2004.

{The Council Finance Subcommittee has deferred development of sanctions and civil procedure provisions}