

**CITY OF SAN ANTONIO  
EXTERNAL RELATIONS DEPARTMENT  
CITY COUNCIL AGENDA MEMORANDUM**

**TO:** Mayor and City Council

**FROM:** Christopher J. Brady, Assistant City Manager

**SUBJECT:** Addendum to the State Legislative Program for the 79<sup>th</sup> Legislature

**DATE:** January 6, 2005

**SUMMARY AND RECOMMENDATION**

An ordinance approving an addendum to the City's State Legislative Program for the 79<sup>th</sup> Legislature that was adopted by Ordinance No. 99966, passed and approved on November 4, 2004.

Staff recommends approval.

**BACKGROUND INFORMATION**

Prior to the convening of each regular session of the Texas Legislature, the City of San Antonio identifies legislative priorities that it believes should be addressed by state lawmakers. In July 2004, staff from the External Relations department began working with the City Council Intergovernmental Relations Committee, City departments and agencies, the Texas Municipal League and the City's governmental affairs consultants, to develop the City's state legislative program for the 79<sup>th</sup> Legislative Session. Since the adoption of the City's program on November 4, 2004, additional endorsements have been submitted and reviewed by staff, its consultants and the City's Intergovernmental Relations Committee.

The City's legislative program is organized into two distinct issue categories. With an *initiative*, the City will actively seek introduction and passage of an issue that meets one of the following three criteria: (1) addresses an issue that is San Antonio-specific, (2) addresses an issue where San Antonio is disproportionately affected, or (3) addresses an issue that is universal in effect, but to ensure success, San Antonio must take primary responsibility in seeking its adoption. With an *endorsement*, however, the City does not play a primary advocacy role, but will work collectively with other affected parties by communicating its support for issues in this category.

**POLICY ANALYSIS**

The proposed addendum consists of six *endorsements* that have been reviewed and recommended by the City Council Intergovernmental Relations Committee, which is chaired by Julian Castro, and includes Councilmembers Enrique Barrera, Christopher "Chip" Haass, Carroll Schubert, and Joel Williams.

The proposed *endorsements* include the following:

1. To amend Chapter 143 of the Texas Civil Service Code to allow the reappointment of fire and police civil service commissioners;
2. To seek legislation that will clarify that the Public Utility Commission's jurisdiction is limited to ratemaking, and not to police power or zoning ordinances;
3. To amend the Texas Local Government Code by clarifying that during city construction projects, if requested by a city, utilities which are located in the rights-of-way must relocate at their own cost and have the authority to impose financial penalties for utilities that fail to relocate their facilities within a stated time period, as stipulated in the agreement;
4. To amend the Texas Local Government Code by providing that dangerous building orders be filed in the official deed records of the county, so that any subsequent purchaser or lien holder of the property will buy that property subject to the orders rendered;
5. To amend the Texas Election Code by allowing municipal candidates to file their campaign finance reports electronically; and
6. To amend the Texas Open Records Act by adding an exception for city manager applicants of a home-rule city.

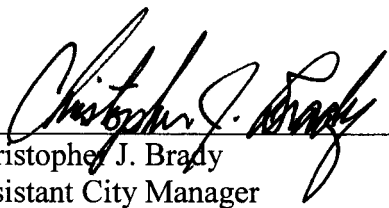
Attached is a more detailed description of each proposed endorsement.

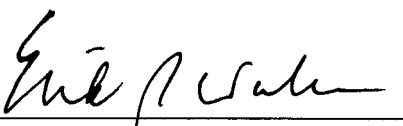
### **FINANCIAL IMPACT**

There is no financial impact with this action.

### **COORDINATION**

This item has been coordinated with the Public Utilities Office and the City Attorney's Office.

  
Christopher J. Brady  
Assistant City Manager

  
J. Rolando Bono  
Interim City Manager

# **Proposed Addendum – Endorsements**

## ***Reappointment of Fire and Police Civil Service Commissioners***

### **Proposal:**

To amend Chapter 143 of the Civil Service Code to allow the reappointment of fire and police civil service commissioners.

### **Background:**

An attorney general opinion issued on September 2, 2004, (Op. Tex. Att’y Gen No. GA-246) interprets a provision of Chapter 143 to prevent civil service commissioners from being appointed by the mayor and council to consecutive terms. The statute in question states that appointees may “not have held a public office within the preceding three years.” According to the opinion, the position of civil service commissioner is a public office, and thus, subsequent terms are not permissible.

It is unlikely that the intent of the statute was to prevent subsequent commission appointments. Some civil service cities have already expressed concern that the opinion will make it difficult for them to find qualified applicants to serve on these commissions.

### **Financial Impact:**

The proposed change would not impose a fiscal impact on state or local units of government.

## ***Public Utilities Commission Jurisdiction***

### **Proposal:**

To clarify that the Public Utility Commission's (PUC) jurisdiction is limited to ratemaking and not to police power or zoning ordinances.

### **Background:**

The *City of Allen v. the Texas Public Utility Commission* involves an appeal by the City of Allen arguing that the PUC improperly asserted jurisdiction over a city's police power authority by overturning screening and underground location requirements contained in the City of Allen right-of-way management ordinances. The PUC determined that the city is prohibited from adopting an ordinance regulating the location of utility facilities in the right-of-way if implementation is too costly. However, the ordinances do not prevent the utility from recovering expenses for underground placements. While the PUC has the authority to determine how costs are recouped, it has no authority to determine what right-of-way regulations are appropriate in a city.

Secondly, the PUC determined that landscape screening requirements imposed by the city on private property increase the cost of meter-reading and should not be allowed. This ruling puts current and future screening ordinances in jeopardy since nothing would prevent the PUC from not allowing any other city requirement that may result in a cost to utilities.

### **Financial Impact:**

The financial impact of this item is yet to be determined.

## ***Cost of Relocating Utility Facilities***

### **Proposal:**

To amend the Local Government Code by clarifying that during city construction projects, if requested by the city, utilities which are located in the right-of-ways must relocate at their own cost and have the authority to impose financial penalties for utilities that fail to relocate their facilities within a stated time period, as stipulated in the agreement.

### **Background:**

Historically, most utilities were required by franchises to relocate their facilities at their cost when the relocation was required for a city public works project. Additionally, pre-1975 case law held that utilities are in the right-of-way only as a privilege and they are generally subject to the relocation of those facilities at their cost for a city public works project. In the last few years, telecommunications companies and then electric companies have asserted that they only have to relocate their facilities at their cost for projects involving the widening or straightening of streets.

The telecommunications companies' position was precipitated, in large part, after the enactment of Chapter 283, Local Government Code (H.B. 1777) ended the practice of Texas cities granting franchises to PUC certificated telecommunication providers and allowed the franchise in effect in 1999 to be unilaterally terminated by the telephone utility. They argue that because Section 54.203(c), Utilities Code, specifies that cities may require telecommunications providers to relocate facilities at their cost for widening and straightening projects, and that such projects are the only one for which the utility must pay the costs for relocation. Electric utilities rely upon Section 37.101(b), Utilities Code, which contains a relocation provision for electric utilities that is similar to that in Section 54.203(c) for telecommunications companies. Both statutes, however, pertain principally to continuing service in an annexed or newly incorporated area.

### **Financial Impact:**

Cities may incur significant costs if required to subsidize the relocation costs for utilities. However, cities may actually gain revenue if allowed to levy financial penalties to utility companies failing to relocate within a specified amount of time.

## ***Substandard or Dangerous Properties***

### **Proposal:**

To amend the Local Government Code by providing that dangerous building orders be filed in the official deed records of the county, so that any subsequent purchaser or lien holder of the property will buy that property subject to the orders rendered.

### **Background:**

Chapter 214 of the Local Government Code allows cities to take action regarding substandard and dangerous properties in a court of appropriate jurisdiction or with a citizen's commission or board. State law allows the notice of hearings for dangerous buildings to be filed in the official real property deed records of the county in which the property is located but does not give the authority to file the subsequent orders of property hearings.

The proposed change would prevent dangerous building owners from escaping the consequences of orders to repair, remove or demolish structures by transferring dangerous property.

### **Financial Impact:**

The proposed change would not impose a fiscal impact on state or local units of government.

## ***Electronic Campaign Finance Filing***

### **Proposal:**

To amend the Texas Election Code by allowing municipal candidates to file their campaign finance reports electronically.

### **Background:**

Under the Texas Election Code, candidates for public office in the State of Texas are required to file campaign contribution and expenditure reports. These reports list, among other things, the names of campaign contribution donors, the amounts of donations and the candidate's expenditures made in connection with his or her political campaign. Electronic filing is required for candidates that file their reports with the Texas Ethics Commission (i.e. state office candidates, district court judge candidates.)

As candidates for local office, city council candidates file their campaign contribution and expenditure reports with the Office of the City Clerk, rather than the Texas Ethics Commission. Texas Election Code §254.036(a) governs the form of reports filed with authorities other than the Texas Ethics Commission and currently states that reports must be on a form prescribed by the commission and must be written in black ink or typed with black typewriter ribbon unless the report is a computer printout. If the report is a computer printout, the printout must conform to the same format and paper size as the form prescribed by the commission.

On August 5, 2004, the San Antonio City Council passed an ordinance enacting a code of municipal campaign finance regulations. Within that ordinance, the City Council directed city staff to research the development and implementation of electronic campaign finance reporting. It is anticipated that large municipalities, like San Antonio, will seek to improve the process of reporting campaign finance activity through the use of enhanced technology. The proposed revision to Texas Election Code §254.036(a) better reflects that anticipated trend.

### **Financial Impact:**

A municipality that chooses to move toward electronic campaign finance filing would have to invest resources in designing and implementing technology so that reports can be filed in compliance with the format prescribed by the Texas Ethics Commission. The anticipated cost for the City of San Antonio's electronic filing system is approximately \$30,000.

## ***Open Records Exception for City Manager Applicants***

### **Proposal:**

To amend the Open Records Act by adding an exception for City Manager applicants of a home-rule city.

### **Background:**

Amendments to the Public Information Act allow for an exception to the release of names of candidates for chief executive officers of institutions of higher education and superintendents of public school districts, so long as the list of finalists being considered for the position be posted at least 21 days before the date of the meeting at which a final action or vote is to be taken on the employment of the person.

With various Texas cities currently undergoing searches for city managers, the need to exempt the names of candidates for these positions has been identified. When the City of Dallas was in the initial stages of their process, approximately 30% of the candidates that had submitted their names for consideration withdrew their candidacy upon being notified that their names would be released. It is very likely that a number of potential candidates were already aware of this requirement and therefore did not submit an application.

City managers are under enormous political pressure and conscious of the perception created by their candidacy for this post in another municipality. To ensure cities are able to conduct open and effective searches for the best qualified professionals in the field, potential applicants should be reassured their candidacy will be kept confidential, until they are identified as a finalist for the position.

### **Financial Impact:**

The proposed change to the Public Information Act would not impose a fiscal impact on state or local units of government.