

**ORDINANCE NO.**

**AN ORDINANCE ORDERING AN ELECTION TO BE HELD IN THE CITY OF AUSTIN ON NOVEMBER 4, 2008, TO SUBMIT TWO PROPOSED CHARTER AMENDMENTS TO THE VOTERS; PROVIDING FOR THE CONDUCT OF THE ELECTION; AND PROVIDING FOR EMERGENCY PASSAGE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** A charter amendment election shall be held in the City of Austin on November 4, 2008, at which the ballot shall permit voting “yes” or “no” on the following proposition:

Proposition 1

Shall the City Charter be amended to provide that city council appoint a city auditor for a five-year term, during which term the city auditor may only be removed by a vote of three-fourths of the city council, and at the conclusion of the term, by a majority of the city council?

**PART 2.** A charter amendment election shall be held in the City of Austin on November 4, 2008, at which the ballot shall permit voting “yes” or “no” on the following proposition:

Proposition 2

Shall the City Charter be amended to limit the city council’s ability to enter into economic development agreements with financial incentives for projects that will sell consumer or commercial goods directly to the public?

**PART 3.** The election shall be conducted between the hours of 7:00 a.m. and 7:00 p.m. The precincts and locations of the election day polling places; the dates, hours, and locations of the early voting places; and the names of the officers appointed to conduct the elections are provided in Exhibits A–E attached and incorporated as a part of this ordinance.

**PART 4.** A direct electronic recording voting system, as the term is defined in Title 8 of the Texas Election Code, shall be used for early voting and for voting conducted on election day. The central counting station is established at the Travis County Elections Division, 5501 Airport Boulevard, Austin, Texas.

1 **PART 5.** Notice of this election shall be given by posting and publishing a copy of this  
2 ordinance in both Spanish and English. The posted notice shall be posted at the City Hall  
3 notice kiosk not later than the 21<sup>st</sup> day before election day. The copy of this ordinance  
4 posted at City Hall shall be accompanied by a cover page, at the top of which shall appear  
5 the words "A MUNICIPAL ELECTION, NOVEMBER 4, 2008". The ordinance shall  
6 also be published in a newspaper of general circulation in the City of Austin not earlier  
7 than the 30<sup>th</sup> day and not later than the 10<sup>th</sup> day before election day.

8 **PART 6.** In accordance with Chapter 271 of the Texas Election Code, the November 4,  
9 2008, municipal election may be held jointly with the various political subdivisions that  
10 share territory with the City of Austin and that are holding elections on that day. The  
11 City Clerk may enter and sign joint election agreements with other political subdivisions  
12 for this purpose.

13 **PART 7.** If Proposition 1 is approved by the majority of the voters voting at the election,  
14 Section 17 of Article VII (*Finance*) of the City Charter is amended to read:

15 **§17. CITY AUDITOR**

16 There shall be a city auditor who shall be appointed by the city council. The  
17 city auditor may be removed at the conclusion of a five-year term of office [only]  
18 by a majority of the city council, or during the five-year term by a vote of three-  
19 fourths of the city council. The auditor shall report to the city council through an  
20 audit committee of the council. The auditor shall have such duties, responsibilities  
21 and staff as determined by ordinance including the responsibility to conduct, or  
22 cause to be conducted, financial, performance, investigative, and other audits  
23 following government auditing standards as promulgated by the Comptroller  
24 General of the United States. The city auditor shall assist the city council in  
25 establishing accountability and in improving city system and service delivery.

26 **PART 8.** If Proposition 2 is approved by the majority of the voters voting at the election,  
27 Section 13 of Article XII (*General Provisions*) of the City Charter is added to read:

28 **§13. PROHIBITION ON SPECIAL BENEFITS FOR RETAIL PROJECTS**

29 (a) **Statement of Intention.** The city is authorized by Tex. Loc. Gov't. Code  
30 Chapter 380, and other applicable law to enter into economic development  
31 agreements to encourage or foster economic growth. Notwithstanding the  
32 foregoing, it is the intention of this section to restrict the use or expenditure  
33 of tax revenues or other resources of the city to provide subsidies, financial  
34 benefits or advantages for development of real property that includes one or  
35 more Retail Uses. It is the intention of this section to ensure fair and equal  
36 treatment as between operators of Retail Uses, and particularly to ensure that

small retail businesses are not disadvantaged by subsidies and financial benefits given by the city to competing Retail Uses.

- (b) **Restriction.** The city shall neither provide nor enter into an agreement to provide any Financial Incentive in connection with the development or re-development of any real property that includes one or more Retail Uses.
- (c) **Applicability.** Upon adoption of this Section 13, the restriction provided in this Section 13 shall apply to any pending agreement for the payment of a Financial Incentive by the city in connection with any Retail Use if such agreement provides that the obligation to pay a Financial Incentive pursuant to such agreement is contingent on or subject to the city's appropriation of funds for the payment of the Financial Incentive.
- (d) **Definitions.** As used in this Section 13, the following terms shall have the following meanings:
- (1) "Financial Incentive" means: (i) any payment or rebate of any general or special sales tax or ad valorem tax, whether assessed against property proposed to be developed or re-developed or resulting from taxable activity on such property; (ii) a donation of an interest in real property owned by the city; (iii) a special right of use, without fair compensation therefore, of any park land or undeveloped land owned by the city that is a right or use not provided for the benefit of all property located in the city; (iv) forgiveness or discharge of a loan or any part of a loan made by the city; or (v) a grant of funds. Notwithstanding the foregoing, the following shall not constitute a Financial Incentive: (i) cost participation by the city in constructing street or utility improvements (as, for example, oversizing of utility improvements to accommodate future development) consistent with generally applicable city policies and practices, provided that the developer's or owner's share of such costs fairly and reasonably approximates the cost of construction of such improvements suitable to serve the improvements and uses intended by the developer or owner of a Retail Use benefited thereby; (ii) a grant or loan to a small business, whose principal office is in Austin, Texas, pursuant to a generally applicable local small business loan or grant program; (iii) an expenditure of funds (other than a tax abatement) pursuant to the Tax Increment Financing Act, Tex. Tax Code Chapter 311 or tax increment financing effected pursuant to Tex. Loc. Gov't Code Chapter 374, as amended from time to time; (iv) subsidies or incentives given to promote efficient energy use, the use of renewable energy, or decreased water usage pursuant to a program adopted by the city for such purpose; (v) a grant of funds which are provided either by the State of Texas or by an agency of the

1 federal government, whether directly to the city, or for the expenditure of  
2 which the city must give approval or authorization; (vi) an expenditure of  
3 funds charged by the city and paid by developers of real property for  
4 regional drainage detention, regional water quality facilities, or other public  
5 improvements; or (vii) an expenditure of funds pursuant to an economic  
6 development program adopted by the city council for the revitalization of  
7 economically distressed areas of the city or areas of the city experiencing  
8 high rates of unemployment for the development or redevelopment of a  
9 project with a total of not more than 25,000 square feet of habitable  
10 improvements.  
11

12 (2) “Retail Use” and “Retail Uses” shall mean the use or proposed use of  
13 improvements to real property for the sale directly to the public of any  
14 commercial or consumer goods, including but not limited to the sale directly  
15 to the public of clothing, appliances, jewelry, furniture, pets, building  
16 materials, plants, drugs and personal hygiene goods, home accessories,  
17 household items, packaged or prepared food and beverages, recorded music,  
18 office supplies, and any other goods sold directly to the public. “Retail  
19 Uses” shall not include a wholesale or distribution center or manufacturing  
20 or assembly facility in which goods are stored, assembled, or manufactured  
21 for transport off-site for later sale; daycare services; medical, counseling, or  
22 nursing care facilities; any enterprise operated by a non-profit corporation or  
23 a governmental entity; public or private educational facilities; performing  
24 arts venues; museums; or libraries.  
25

- 26 (e) **Enforcement.** Any resident of the City of Austin shall have standing to  
27 assert a claim for declaratory or injunctive relief in any court of competent  
28 jurisdiction arising out of a violation of this Section 13.  
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30 **PART 9.** The Council finds that the need to immediately begin required preparations for  
31 this election constitutes an emergency. Because of this emergency, this ordinance takes  
32 effect immediately on its passage for the immediate preservation of the public peace,  
33 health, and safety.

**PASSED AND APPROVED**

\_\_\_\_\_, 2008

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Will Wynn  
Mayor

**APPROVED:** \_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Gentry  
City Clerk