RESOLUTION NO. _____

WHEREAS, on September 22, 2011, Council deliberations included selection of the 2012 City Council general election date, a discussion prompted by changes in the application of a series of federal and state laws; and

WHEREAS, specifically, the federal Help America Vote Act of 2002 (HAVA, 42 U.S.C. §15481(a)(3)) mandates that – for elections in which a federal office is on the ballot – each polling place must be equipped with an electronic voting machine to facilitate voting by those with disabilities, and the Texas Legislature expanded the scope of the electronic voting machine requirement to apply to any election held in the state, with limited exceptions; and

WHEREAS, the federal Military and Overseas Voter Act of 2009 (MOVE, 42 U.S.C. §1973ff-1) mandates that absentee ballots be transmitted to uniformed and overseas citizens at least 45 days prior to an election, and the Texas Legislature implemented MOVE in 2011 with the passage of Senate Bill 100 (effective September 1, 2011); and

WHEREAS, in spring of even-numbered years, there are usually four elections in Texas – the primary, the primary runoff, the uniform general election, and the uniform general election runoff; and

WHEREAS, under SB100, in spring of even-numbered years, the period for the primary and primary runoff election is overlaid upon the uniform general election date for the municipal general election, which is the second Saturday in May; in 2012, the overlay results in a Saturday, May 12 uniform general election date followed ten days later by a Tuesday, May 22 primary runoff date, with early vote for the uniform general election date from April 30 to May 8 and early vote for the primary runoff from May 14 to May 18; and

WHEREAS, the electronic voting machines used for the May 12, 2012 election cannot be used for the May 22, 2012 primary runoff, because the Texas Secretary of State in Election Advisory 2010-12 mandated that the results held on an electronic voting system device "shall be preserved until the local canvass of the returns", and under Texas Election Code Section 67.003 the canvass of the May 12 election occurs as late as May 23; election administrators must have two full sets of electronic machines—one for the May 12 election and one for the May 22 election; and

WHEREAS, the City of Austin has precincts in Travis, Hays, and Williamson counties, and in the spring of even-numbered years, the Williamson County Election Administrator provides the City with election administration services for the portion of the City of Austin that lies within Williamson County utilizing the ES&S iVotronic system, and the Travis County Clerk provides the City with election administration services for the portion of the City of Austin that lies within Travis and Hays County utilizing the Hart InterCivic ESlate system; and

WHEREAS, the Williamson County Election Administrator has advised the City that for the May 2012 election, Williamson County has sufficient machinery to meet all May election obligations for the portion of the City of Austin that lies within Williamson County; and

WHEREAS, the Travis County Clerk's office has advised the City that for the May 2012 election, Travis County does not have sufficient machinery to meet all May election obligations for the portion of the City of Austin that lies within Travis and Hays County, nor does the Travis County Clerk's office currently have sufficient staff or space to house and administer two separate and nearly simultaneous May elections, thereby creating a financial, administrative, and logistical challenge; and

WHEREAS, the Travis County Clerk has advised the City that for a May 2012 election, it will be necessary to purchase additional electronic voting system components for the May 12 election date at a cost estimated by the City of at least $346,500; it may also be necessary to purchase additional electronic voting system components for a runoff (if any), to guard against election contest complications and to ensure Travis County can meet all election obligations; and

WHEREAS, the cost of the extra machines will be borne by the political subdivisions utilizing the May uniform election date, and it is unknown at this time whether the City of Austin would share the cost of the machines or bear the cost alone; and

WHEREAS, Travis County is preparing to replace its election system, and as a result the additional machines purchased by the County for a May 2012 election administered by the County will not be utilized in any future election; and

WHEREAS, the Travis County Clerk recommends a November general election date; the Clerk cautions Council that a May general election date may confuse voters regarding when and where to vote for the general

election and the primary runoff, and that the compressed time frame may create logistical challenges that could increase the potential for errors, and

WHEREAS, the Texas Legislature included in SB100 at Section 5 (now codified at Texas Election Code § 41.0052) a mechanism for political subdivisions to avoid the challenges raised by SB100 by granting political subdivisions the option of holding either a May or November uniform election date general election and authority to change by Resolution the date on which a city holds its general election from the May uniform election date to the November uniform election date; and

WHEREAS, Section 5 of SB100 provides that such a change of election date from May to November by Resolution supersedes a city charter provision that requires a different general election date; and

WHEREAS, Section 5 of SB100 provides that members of a governing body of a city staying in office until November constitutes a holdover, not a vacancy; and

WHEREAS, Section 51 of SB100 repeals Texas Election Code Section 41.0053 that previously limited the City of Austin to May uniform election date general elections; and

WHEREAS, the legislative intent of SB100 was to open a window for all political subdivisions to shift the date of their May general elections away from the period between the primary and primary runoff election dates; and

WHEREAS, the City of Austin Charter states at Article 3 Section 2, "The regular election of the Mayor and councilmembers shall be held on the May uniform election date authorized by state law"; the City currently holds its general election on the uniform election date on the second Saturday in May, which regularly falls in the even-numbered years which are affected by SB100 as described above; and

WHEREAS, the November 2012 election calendar will include only two elections – the November uniform election date and any related runoff; does not include closely scheduled election dates as May does; will include Vote Centers in Travis County and Williamson County for more voting location options on election day; and will not require an electronic voting system components purchase; and

WHEREAS, it is to the advantage of the City, its citizens, and the pursuit of democracy to pass this resolution moving the general election to the November uniform election date in an effort to: 1) reduce potential voter confusion; 2) prevent the administrative and legal risks associated with the

compressed May election calendar; and 3) prevent the financial risk that a

May election would require the allocation of City funds towards the purchase

and one-time use of additional election machines; **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF

AUSTIN, UNTIL LATER MODIFIED BY AMENDMENT OF THE CITY

CHARTER OR OTHER LAWFUL ORDER:

Under the authority of SB100, the City of Austin general elections shall

be held on the state uniform election date in November.

BE IT FURTHER RESOLVED:

Under the authority of SB100, the City of Austin councilmembers

serving as Mayor, and in Places 2, 5, and 6 shall holdover until the November

2012 general election and successors take office, and the City of Austin

councilmembers serving in Places 1, 3, and 4 shall holdover until the

November 2014 general election and successors take office.

ADOPTED: <u>September 22</u>, 2011 **ATTEST:** _____

Shirley A. Gentry
City Clerk