

Called meeting of the City Council, Austin, Texas, March 5th 1909 .

Hon F M Maddox, Mayor presiding: Roll called .

Present Aldermen Cuneo, Haynes, Miller, Moreland, Petri, Redd, Scott & Wilhelm 8

Absent Aldermen Armstrong, Crocker, Meredith, Moore, Smith & Sutor 6

Alderman Cuneo moved a call of the Council, which was seconded and the Marshal directed to bring in the absentees.

On motion Aldermen Meredith, Moore & Sutor, being out of the City, were excused.

Alderman Smith entered the Council chamber and answered to his name .

On motion of Alderman Cuneo the call was suspended.

The following call of the Council was read:

Austin, Texas, March 4th , 1909.

To the members of the City Council, Austin, Texas.

Gentlemen :

A special meeting of the City Council of the City of Austin is hereby called to meet in the Council chamber at eight o'clock P M on March 5th , 1909, to there consider and take such steps as may be necessary to amend the City charter of the City of Austin, in accordance with the recommendations of the City Attorney this day submitted to me .

Respectfully yours ,

F M Maddox

Mayor of the City of Austin.

We hereby join in the above call

H L Haynes, Tom D Smith, F A Scott, C J Armstrong

C J Wilhelm Aldermen.

Austin, Texas, March 5th 1909.

I hereby certify that I have served the above call for a special meeting of the City Council of the City of Austin by having same read by Officers Griffin and Mayfield to each of the following named Aldermen to wit: W C Redd, W D Miller, A E Cuneo, Tom D Smith, L M Creeker, C J Armstrong, Henry Petri, C J Wilhelm, H L Haynes, F A Scott, C B Moreland, and by leaving a copy of same at the residence of J M Meredith, C W Moore and W J Sutor, they being out of the City .

W J Morris, City Marshal.

The Mayor laid before the Council the following communication.

Austin, Texas, March 4th 1909.

Hon F M Maddox, Mayor of the City of Austin.

Dear Sir:

Within the last several days I have had occasion to look carefully into the new charter granted to the City of Austin, with reference especially to the tax provisions thereof, and in my judgement there are certain matters connected with this charter which it is proper for me to call to your attention, as the chief Officer of the City .

1. As you are aware the City of Austin has for the last eighteen years had every question raised that could possibly be raised to defeat the levy and collection of taxes by the City. Under the administrations of City Attorneys of the City of Austin during that period there has, from time to time, come up questions in regard to the assessment and collection of taxes that showed the charter provisions were ineffectual in many respects, and to meet these defects suggestions were made by the different City Attorneys, including Mr George F Pendexter,

*Amended  
to be  
referred to  
the Council  
on 3/9/09*

Judge T B Cochran and Judge V L Brooks, and acting on these suggestions the Legislatures have from time to time passed provisions, in the way of amendments to the charter to the City of Austin, or inserted in new charters granted a great many provisions, what, in my opinion, are absolutely essential to the enforcement of collection of taxes, and as you are perhaps aware, the City of Austin has a less amount of back taxes due than any City of its size in the State, and this can be traced almost directly to the charter provisions that have existed heretofore providing penalties, providing procedure in suits that are brought for taxes and matters of that kind.

In the new charter that was recently granted to the City of Austin and now in force, there are no adequate provisions for the levy, assessment and collection of taxes and no provision for interest or penalty for failure to pay taxes; and no dates fixed for such taxes to become due. The only attempt to cover what occupies five or six printed pages of the old charter in regard to the levy, assessment and collection of taxes are these provisions, which are sections 3 and 5, Article 12, as follows:

" Section 3. All laws and parts of laws now in force, providing for the levying and collection of taxes, not in conflict with this charter, relating to the City of Austin, are hereby continued in full force and effect.

Section 5. All laws and parts of laws pertaining to the assessment and collection of taxes now in force and not in conflict with the provisions of this charter, are hereby continued in full force and effect"

These, in my opinion, are wholly insufficient because when this act became a law, granting the City of Austin a new charter, it took the place of all special laws pertaining to the City of Austin, and no special law could be retained in force by reference to such law in the most specific terms, much less, therefore, could any law be continued in force by a general reference, as is done here.

Even if that were true, the provisions of this charter are that the laws and parts of laws pertaining to assessment and collection of taxes now in force, and not in conflict with the provisions of this charter, are hereby continued in full force and effect.

There are a great many provisions of the State laws in regard to levy, assessment and collection of taxes that are in conflict with the provisions of the Austin City charter and you are, therefore, met with the question of which provision shall control, the State law or the old City charter. But as stated, in my opinion, a reference to the existing laws in general terms, and an act which on its face seeks to give to the City of Austin a new charter, is absolutely inadequate to retain in force any special laws, such as were contained in the old charter.

2. In addition to this you will remember the great trouble, expense and litigation the city of Austin had with reference to refunding

her bonded indebtedness, and will remember that the provisions under which all of the existing bonds of the City were issued and refund made and amendments to the charter approved September 21st, 1901. This amendment was drawn by eminent lawyers in New York representing the bondholders of the City of Austin, and supervised by Mr C H Miller and Judge V L Brooks, and a copy of this provision is inserted, as I understand, in each of the refunding bonds issued under its provisions. While the City might not be able to change the obligations so incurred by the issuance of these bonds by having passed at this time a new charter, or an amendment to its charter changing these terms, nor would such action invalidate in any way, in my opinion, the bonds thus issued, yet, for business reasons that are apparent, I think it unwise to change in any manner, form or fashion, the provisions of the charter for the levy, assessment and collection of taxes for the purpose of paying interest and sinking fund on the bonded indebtedness of the City as long as these refunding bonds are outstanding. As you know, in a short while, these bonds will begin to bear five per cent interest, and it has always been the hope of the City authorities that before these bonds did bear such interest, a new issue could be made at a lower rate, and call in all of the bonds now outstanding, which will in a short time begin to bear five per cent, as they are all subject to call at par value. In view of the fact that a lot of these bonds are held by monied institutions in the East, that they were issued under charter provisions, drawn by counsel representing them, and it was insisted that the City should keep the utmost good faith with them, any suggestions contained in a new charter, or amendment that the exact provisions were not to be kept in force that were in force at the time these bonds were issued, will, in my opinion, affect the credit of the City, because the City is only slowly recovering from an attempted repudiation of this debt a good many years ago.

For these reasons I think that an amendment should be offered to the bill now pending in the Legislature, which seeks to amend the charter of the City, in order that the provisions governing the levy, assessment and collection of taxes may be reenacted as they were before the granting of the new charter, and that the provisions governing the levy, assessment and collection of taxes for the payment of the interest on the bonded indebtedness, and provide a sinking fund therefor, and the provisions regulating the issuance of any refunding bonds should be reenacted in the exact language of the amendments to the charter passed in 1901.

I feel it my duty to call your attention, and through you the City Council's attention, to these matters so that it might be remedied before another levy of taxes is made and before any proceedings have been taken to collect any of the taxes, and also to provide when taxes may become due and payable, and to provide interest and penalties for failure to pay taxes when they become due.

Respectfully yours,

W D Hart, City Attorney.

On motion the communication was received and ordered filed with the call of the Council.

Alderman Armstrong entered the Council chamber.

Alderman Maynes offered the following resolution.

Be it resolved by the City Council of the City of Austin that the following

amendment to the present charter of the City of Austin, as passed by the thirty first Legislature of the State of Texas, on the 19th day of January A D 1909, approved Feb'y 3rd 1909, be sent to the Senator and Representatives of Travis County in the Legislature with the request that they have a bill prepared embracing this amendment, and passed at once

The resolution, after discussion, was passed by the following vote :

Yeas Aldermen Armstrong, Cuneo, Haynes, Miller, Moreland, Petri, Radd, Scott, Smith & Wilhelm 10

Nays none .

Alderman Cuneo moved that a Committee of three Aldermen, the Mayor, the City Attorney and three Citizens be appointed to present this resolution to our Senator and Representatives, and to assist them in any way in securing the passage through the Legislature of these amendments, which motion prevailed.

The Mayor appointed Aldermen Scott, Haynes and Moreland on the part of the Council and Messrs Shipe, Eilers and H Harrell on the part of the Citizens as such committee.

On motion the Council adjourned .

  
City Clerk.