

03/09/06
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ORDINANCE NO.

AN ORDINANCE ORDERING AN ELECTION TO BE HELD IN THE CITY OF AUSTIN ON MAY 13, 2006, FOR THE PURPOSE OF SUBMITTING A PROPOSED CHARTER AMENDMENT TO THE VOTERS; AND PROVIDING FOR THE CONDUCT OF THE ELECTION.

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

PART 1. A charter amendment election shall be held in the City on May 13, 2006, at which the ballot shall be prepared to permit voting "yes" or "no" on the following proposition:

Shall the city charter be amended to require that the City create and maintain at City expense, which may include tax revenue, a "real time" online electronic document data system for written electronic communication relating to most city business, including personal correspondence with public officials, permit applications, complaints, appointments calendars for elected officials and certain City employees, and other information of a "significant public interest", prohibit the City from exercising state law protection for information that could expose the City to greater financial liability, require the City to maintain all City records beyond state law requirements, and require that companies seeking to do business with the City waive their right to protect proprietary business information submitted to the City?

PART 2. If this proposition is approved by the majority of the voters voting at the election, the City Charter shall be amended to add a new Article XIV to read:

ARTICLE XIV. OPEN GOVERNMENT ONLINE.

§ 1. POLICY.

The citizens of the City of Austin establish Austin as a leader in open, online, and participatory government. An open and online government allows our community to benefit from and respond to the wisdom, knowledge, experience and interests of everyone. The Austin community is ideally suited to utilize technology to open our city government to greater public oversight and participation. Public oversight and participation require that public servants do not have the right to decide what is good for the citizens to know and what is not good for them to know. The citizens insist on remaining informed so they may retain control over the instruments of government they have created. The purpose and subject of this amendment is to assure open government.

1 This amendment and other open government laws shall always be liberally construed to
2 favor openness.

3 **§ 2. PRIVACY PROTECTED.**
4

5 Nothing within this amendment should be interpreted in a manner that would
6 violate an individual's existing constitutional or common law rights to privacy.
7

8 **§ 3. OPEN GOVERNMENT ONLINE.**
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10 The City must, as expeditiously as possible and to the greatest extent practical,
11 make all public information available online in real time and accessible to the public.
12 This move to online access is a more efficient, timely, and open substitute for the manual
13 and slow processing of public information requests. The City's actions to make public
14 information accessible should be integrated with a move to carry out city business online,
15 so that the processes of managing and governing the city and of public disclosure become
16 one and the same.
17

18 **(A) OPEN ACCESS TO CITY BUSINESS.**

- 19 (1) Within one year of the date this Amendment takes effect, applications
20 and proposals for any permit or contract of significant value must be
21 provided to the City in an electronic format.
- 22 (2) The City must assign a name and number and create a website or similar
23 online electronic format to manage all matters that seek:
- 24 (a) a permit for development of more than two acres or for
25 development anticipating development costs of more than \$1
26 million;
- 27 (b) a contract involving the expenditure of \$500,000 or more of city
28 funds;
- 29 (c) economic development assistance of more than \$50,000 in value;
30 and
- 31 (d) all other instances where it is reasonably anticipated that there is
32 significant public interest in the matter.
- 33 (3) With respect to each matter subject to Section 3(A)(2), the City must
34 maintain a system for electronic notification (such as email lists) to
35 interested persons of any event or new information relating to the matter.
36 Any individual or organization may register as an interested person.

- 1 (4) All public information concerning the matter subject to Section 3(A)(2)
2 must be posted to the website. All written communications between the
3 City and the applicant relating to the matter must be posted online in real
4 time in a manner searchable by the public.

5 **(B) OPEN ACCESS TO CITY CALENDARS.**

- 6 (1) For all matters involving City business, the following people must
7 maintain calendars of all meetings and maintain logs of all telephone
8 calls:
- 9 (a) City Councilmembers and their staff;
 - 10 (b) City Manager and his or her staff;
 - 11 (c) Assistant City Managers and their staff; and
 - 12 (d) all department heads.
- 13 (2) These calendars and logs must contain the time, date, subject matter, and
14 persons involved in all meetings and telephone calls involving City
15 business. These calendars must be used to schedule and record all past
16 and future meetings that occur after the implementation date of this
17 section.
- 18 (3) Calendars and logs must be posted online in real time and be accessible
19 to the public.
- 20 (4) "Meetings" includes all informal and formal meetings including but not
21 limited to telephone conferences, videoconferences, happy hours, and
22 luncheons.
- 23 (5) This provision must be implemented within six months of approval of
24 this amendment.

25 **(C) OPEN ACCESS TO CITY ELECTRONIC COMMUNICATIONS.**

- 26 (1) In order to better preserve written electronic communication for public
27 disclosure, the City must establish a system that automatically archives
28 all incoming and outgoing electronic communication that deals with City
29 business to and from the following people in their official capacity:
- 30 (a) City Councilmembers and their staff;
 - 31 (b) City Manager and his or her staff;

(c) Assistant City Managers and their staff; and

(d) all department heads.

(2) The above people are prohibited from discussing City business via any form of written electronic communication, such as a private email account, that is outside of the City's automatic archiving system.

(D) OPEN ACCESS TO CITY FUNCTIONS. Within six months of approval of this Amendment, the City must maintain online in a manner directly accessible to the general public the following:

- (1) A chart showing the organizational structure of the City and its staff along with phone numbers and other contact information together with statements of the general course and method by which City functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;
- (2) Statements of general policy or interpretations of general applicability;
- (3) Administrative staff manuals and instructions to staff of general applicability that affect a member of the public;
- (4) All public information requests made to the City and all communications to the Attorney General or to the requestor regarding these public information requests, except to the extent the City is otherwise entitled to withhold and keep confidential specific documents or portions of documents;
- (5) All public information that has previously been released to someone making a public information request and which, because of the nature of the subject matter, the City determines is or is likely to become the subject of a subsequent public information request for substantially the same information;
- (6) The style, docket number, and a short description of the subject matter of any litigation in which the City is a party, together with all court-filed pleadings in any litigation that the City is a party; and
- (7) Agendas, minutes, and transcripts or recordings, except for executive sessions, of all meetings of the City Council, City Boards, and City Commissions.

(E) EFFECTIVE ACCESS TO INFORMATION. The City must create and maintain online tables of contents and indexes to enable the general public to

1 easily find and access online City documents and public information.
2 Information must be searchable, and be able to be located by author/submitter,
3 individual recipient, date, and subject matter.

4 **§ 4. PUBLIC INFORMATION.**

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6 The term "public information" means information that is required to be produced
7 under Texas Government Code § 552.021. Public information also includes the following
8 categories that must be produced in response to a public information request:
9

10 (A) **INFORMATION RELATING TO CIVIL LITIGATION.** That the City is
11 a party to litigation does not render information relating to that litigation less
12 important; rather it often means the information is a matter of heightened
13 public interest. Therefore, the City must not withhold information relating to
14 civil litigation under Texas Government Code § 552.103, but it may withhold
15 under other Public Information Act exceptions.

16 (B) **ECONOMIC DEVELOPMENT INFORMATION.** Information relating to
17 economic development assistance or incentives is public information to which
18 the public has a right of access.

19 (1) The City must require all businesses and individuals seeking to engage
20 in the type of economic development negotiations referenced in Texas
21 Government Code § 552.131 to execute and deliver to the City a waiver
22 of any rights to prevent the public disclosure of all information
23 exchanged with the City. The City is without authority to engage in
24 economic development negotiations with any company that has not first
25 executed a waiver.

26 (2) The City is without authority to shield economic development offers
27 under Texas Government Code § 552.131(b).

28 (3) Nothing in section 4(B) prevents a City from withholding documents
29 under Texas Government Code §§ 552.104, 552.105, or 552.108.

30 (C) **AGENCY MEMORANDA.** Open government in Austin ensures the people
31 have access not only to the final decisions made by government officials but
32 also to the process by which those decisions are made. The City must not use
33 Texas Government Code § 552.111 to withhold information reflecting advice,
34 opinion, and recommendations on policymaking matters, except the City may
35 withhold attorney work product.

36 (D) **PERSONNEL FILES.** The City of Austin must not maintain an optional
37 personnel file as authorized under Texas Local Government Code §

1 143.089(g) for employees of the Austin Police Department, nor does the City
2 have authority to enter into any meet and confer or other agreement with any
3 police officer association that requires creation or maintenance of a separate
4 file that is closed to the public.

- 5 (E) **EMAILS RELATED TO CITY BUSINESS.** Email or other written
6 electronic communication to or from a public official concerning City business
7 is public information, including communications to or from privately owned
8 email accounts or computers.

9 **§ 5. OPEN MEETINGS.**

- 10
11 (A) **SETTLEMENTS.** In any litigation or pre-litigation matter of public interest,
12 no settlement shall be given final approval without at least one public hearing.
13 All terms proposed for settlement must be posted online at least seven days
14 prior to the public hearing.
- 15 (B) **ECONOMIC DEVELOPMENT.** Negotiations related to economic
16 development agreements, grants, loans, or programs from the City involving
17 more than \$500,000 will be undertaken in meetings open to a public audience
18 with 72 hours prior notice provided to the public. All presentations of
19 information to the City Council and consideration or deliberation by the City
20 Council of any proposed economic development agreement, grant, loan or
21 other program must occur in lawfully noticed public meetings.
- 22 (C) **MEET AND CONFER NEGOTIATIONS.** Deliberations relating to a meet
23 and confer agreement or proposed agreement between representatives of the
24 City and representatives of any police officers association must be open to the
25 public. The City is without authority to enter into any agreement to close these
26 meetings.

27 **§ 6. RETENTION OF PUBLIC INFORMATION.**

- 28
29 (A) The City must preserve in perpetuity all recordings and minutes of City
30 Council, board, and commission meetings and all documents reviewed at these
31 meetings. All executive sessions must be recorded by video and audio.
- 32 (B) The City will create a records retention schedule as prescribed by the Local
33 Government Code that retains all public information for a minimum of ten
34 years.
- 35 (C) The City must make a good faith effort to preserve all electronic information
36 in a sustainable format so that future generations may have access. To reach
37 this goal, the City, wherever practical, must use open formats.

1 **§ 7. ONLINE ACCESS.**

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3 All references within this article to "online" refer to the Internet or future similar
4 technology. Any fees for access to City public information databases and search
5 functions must be waived for individuals, non-profit organizations, and registered
6 neighborhood groups. The City Public Information Officer must assist persons without
7 access to online resources to obtain timely access to online public information.
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9 **§ 8. ENFORCEMENT.**

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11 Noncompliance by the City, any City official, or City employee with this
12 Amendment is enforceable by an action for injunction or mandamus. In addition, each
13 official or other person found to have knowingly and willfully violated this Amendment
14 is liable for a \$500 civil penalty for each violation.
15

16 **§ 9. SEVERABILITY.**

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18 If any provision or phrase of this charter amendment, or the application of the same
19 to any person, property, or set of circumstances is for any reason held to be
20 unconstitutional, void, or otherwise invalid, the validity of the remaining portions of this
21 charter amendment shall not be affected by that invalidity; and all provisions or phrases
22 of this charter amendment are severable for that purpose.
23

24 **§ 10. ADOPTION AND IMPLEMENTATION.**

25
26 Upon approval by the voters of the City of Austin, this amendment shall take effect
27 immediately. In the event of any conflict with other provisions of the Austin City Charter,
28 the provisions of this Open Government Online Amendment will prevail. The sections of
29 this Amendment must be codified together as a separate Article of the Austin City
30 Charter captioned "Open Government Online". Any references to state statutes in this
31 Amendment should be updated in the event that they are re-numbered.
32

33 **PART 3.** The election shall be conducted as provided in Ordinance No. 20060302-002.
34 The provisions of Ordinance No. 20060302-002 relating to the conduct of the election are
35 incorporated by reference as part of this ordinance.

36 **PART 4.** This ordinance takes effect on _____, 2006.

PASSED AND APPROVED

_____, 2006

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§
§

Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk