



**RCA
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 5
AGENDA DATE: Thu 03/09/2006
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SUBJECT: Approve an ordinance ordering an election for the purpose of submitting a citizen's initiative charter amendment to the voters related to development in the Barton Springs Edwards Aquifer watershed.

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

**REQUESTING CMO / Agenda Office DIRECTOR'S
DEPARTMENT: AUTHORIZATION: Toby Futrell**

FOR MORE INFORMATION CONTACT:

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

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:

Proposition X.

Shall the city charter be amended to limit infrastructure improvement in the Barton Springs Zone, disqualify certain individuals from exercising their property rights under state law, limit the city's ability to influence development in proposed special districts in the extraterritorial jurisdiction, make all 'grandfathering' decisions under state law subject to city council approval after a public hearing, limit the city's ability to enter into economic development agreements, and prohibit the city from participating in or supporting certain road projects?

PART 1. If Proposition X is approved by the majority of the voters voting at the election, the City Charter shall be amended to add a new Article XIII to read:

ARTICLE XIII. SAVE OUR SPRINGS AMENDMENT

§ 1. POLICY.

(A) This Amendment reaffirms and extends City of Austin policies and commitments to assure that the quality and quantity of Barton Springs Edwards Aquifer flows are preserved and sustained. The economic prosperity of the Austin area is best served by preventing the pollution and depletion of the Barton Springs Edwards Aquifer caused by urbanization and by preserving the native soils and vegetation of the scenic Hill Country watersheds that supply the Aquifer and Springs.

(B) "Governments, private corporations, and citizens should act promptly to direct urban development away from the Edwards Aquifer's recharge and

contributing zones through control of infrastructure investment. . .” Impervious cover must be restricted in the Aquifer’s watershed “to levels that will sustain existing water quality.” (Quoting “Protecting the Edwards Aquifer: A Scientific Consensus,” as written and endorsed by Central Texas scientists, environmental engineers, and planners in August, 1997).

(C) The citizens of Austin object to actions by the Texas Legislature to undermine traditional home rule powers exercised by the City Council and the citizens of Austin to, among other purposes, protect the Barton Springs watershed. Long term and perpetual grandfathering of development as it applies in the Barton Springs watershed is contrary to home rule and the right and duty to protect public and private property and human health and safety and the further obligation to refrain from abdicating these continuing rights and duties. The policy of the City of Austin is to minimize and, where possible, to eliminate grandfathering and long-term development agreements that evade current rules and ordinances that strengthen water quality, recharge and spring flow protection in the Barton Springs watershed.

§ 2. CONSERVATION MEASURES.

In furtherance of the above, the City of Austin and its elected officials must take action -- and the citizens of Austin request that private corporations, other governmental agencies, other state, local and federal elected officials, and interested persons also act, as appropriate -- to implement the following Aquifer conservation and sustainability measures:

(A) DIRECT DEVELOPMENT DOWNSTREAM. The City must prioritize investments in roads, utilities, and other infrastructure extensions and capacity expansions that support private development in areas located outside of the Barton Springs Edwards Aquifer watershed. City actions and policies on highways and roads within the Barton Springs watershed must prioritize watershed protection, along with safety and efficient transportation for existing residents, and not significant capacity expansion.

(1) Before the City expends any significant funds on any major development infrastructure extensions or expansions within the Barton Springs watershed, the City Manager shall prepare an economic, social, and environmental impact analysis on the proposal and on alternatives that would meet the needs of existing residents, including non-structural alternatives such as buying out proposed development lands that would otherwise generate traffic, utility demands, and pollution if left to develop. Such analysis shall be subject to public hearing before the Council.

(2) The City must not support any toll road project, as an expansion, extension or conversion of a roadway located in or leading to the Barton Springs watershed, that relies on projections of toll revenue collections that predict any significant traffic increase from or over the Barton Springs watershed to support financing of all or part of the project.

(3) The citizens of Austin respectfully request that major employers, including Advanced Micro Devices, locate major employment centers outside the Barton Springs watershed and further request the Chamber of Commerce and others work with our city and citizens to direct significant urban and suburban development away from the Barton Springs watershed and into Austin's Desired Development Zone.

(B) LIMITATIONS ON SUBSIDIES. The City of Austin is without authority to enter into any development, delay of annexation, or other types of agreements that have the effect of subsidizing private development within the Barton Springs watershed through, for example and without limitation, granting tax abatements, infrastructure commitments, fee waivers, consent to creation of utility or other special districts, or other measures.

(1) Any City economic development agreement for development outside the watershed must require the recipient or beneficiary to repay the full value of the package if it or any subsidiary, parent, spin-off, or affiliate company builds or occupies any facility in the Barton Springs watershed that was built subject to any "grandfather" claim to avoid current water quality protection standards, or locates a major employment center in the Barton Springs watershed.

(2) The City is without authority to enter into any economic development agreement providing tax abatements or other subsidies to assist development outside the Barton Springs watershed where any subsidiary, parent, spin-off, or close affiliate of the beneficiary of the proposed recipient company has built, is currently building or seeks to build or occupy a major employment center in the Barton Springs watershed. However, this provision shall not restrict the City from entering into an incentive agreement with a company that has a significant number of employees located in the watershed and the agreement includes a binding commitment to promptly move at least two-thirds of the employees located in the watershed to a site or sites located outside the watershed.

(3) Nothing in this charter amendment shall prevent the City from taking actions to encourage or support rural-scale, conservation-oriented

development in the Barton Springs watershed.

(C) ELIMINATE GRANDFATHERING.

(1) In order to protect against the imminent destruction of property or injury to persons, the City Council and City Staff are without authority to recognize any "grandfather" claim seeking to avoid compliance with the Save Our Springs ordinance unless the claimant affirmatively shows and at least two-thirds majority of the City Council finds that the "initial application" or other basis for "grandfather" claim defined a specific development plan and that plan has not changed and further finds that recognizing the grandfather claim is mandated by superior state law.

(2) The City Council and staff are without authority to recognize any "grandfather" claim, regardless of whether the section (C)(1) finding is made, where any applicant or permit holder in the series of applications has filed for bankruptcy protection under Federal bankruptcy laws.

(3) In order to preserve recharge and prevent downstream erosion and flooding that damages the Aquifer, and in order to prevent imminent destruction of property and injury to persons, the City must require any new development or redevelopment grandfathered from the Save Our Springs ordinance to include a stormwater capture and treatment system that prevents any annual increase in the volume of stormwater runoff from the developed site as compared with the undeveloped site. The City must assure that this requirement complies with § 245.004(11), Texas Local Government Code.

(D) OTHER MEASURES. These measures approved by the citizens of Austin to save our springs are intended to serve as a guide and inspiration to the Austin City Council and the City Manager to take other actions necessary or appropriate for the conservation and preservation of the Barton Springs Edwards Aquifer.

§ 3. SEVERABILITY.

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

§ 4. ADOPTION AND IMPLEMENTATION.

Upon approval by the voters of the City of Austin, this charter amendment shall take effect immediately. In the event of any conflict with other provisions of the Austin City Charter, the provisions of this Save Our Springs Amendment shall prevail. This Amendment shall be codified together and as a separate article of the Austin City Charter.

PART 2. The election shall be conducted as provided in Ordinance No. 2006____. The provisions of Ordinance No. 2006____ relating to the conduct of the election are incorporated by reference as part of this ordinance.

PART 3. 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