

Ballot Study

**City of Austin  
Charter Proposition 1  
Open Government Online  
Amendment**

*May 13, 2006 General Election Ballot*

*Study Accepted*

by Liveable City Board  
April 22, 2006

**liveablecity**

Table of Contents

<b>Executive Summary</b>	2
1. Introduction	2
2. Open Government: A National Concern	3
3. Open Government in Austin	3
4. Examples	4
5. Supporting Arguments	6
6. Opposing Arguments	6
7. Section by Section Review of Amendment	7
8. Discussion	17
9. Study Team Recommendations	19
10. Conclusions	21
11. Amendment Language	22
<b>Appendix</b>	
1. Background on Charter Amendments	26
2. Understanding Police “G” Files	27
3. Persons Interviewed for Study	27

## **Executive Summary**

**Open Government Essential to Ensure Trust.** The Liveable City Ballot Study Team strongly believes that open government is essential to ensuring trust and participation in decisions affecting our community and the use of public resources. Recent incidents have highlighted the concerns of many in Austin to improve government transparency in critical areas including land use development, public safety, tax incentive negotiations and certain legal issues.

**Amendment's Lack of Clarity and Precision.** While the proposed amendment seeks to address these important issues, its lack of clarity and precision are problematic; more clearly defined language could effectively address the most critical goals of the amendment at a more reasonable cost. The arguments against the amendment are also problematic, warning of unintended consequences and huge costs, yet not defining how government might mitigate these consequences and control the costs. Both sides acknowledge that more open government is a good and common goal, but both sides are now so committed to their campaign views that the opportunity for a common solution is unlikely until after the May 13 election.

**Need for Implementation Plan and Citizen's Task Force.** Whether or not the amendment passes, the Liveable City Ballot Study Team recommends the City Council create a Citizen's Task Force to provide input and help balance competing priorities on the critical issue of local government openness and transparency. The Task Force, including broad representation from stakeholder groups, will conduct public hearings and present recommendations on how to move toward more open government. The Task Force's recommendations should specifically identify clear and reasonable priorities, the definition of terms, timely phase-in, fiscal constraints, a responsible and appropriate level of funding and funding strategies.

The Task Force could further refine what mechanism of implementation ensures the goals of the amendment are achieved, specifically in the areas of land use development, public safety, and communication to and from the City Council Members and the City Manager and staff reporting directly to the City Manager. The Task Force would balance these goals with reasonable and practical assumptions about applicability (for example, definition of "real-time", extent of citizen privacy protections, what kind of conversations remain private, etc.), cost to initiate and maintain (for example, if the scope of the amendment is more focused, one plausible scenario projects approximately \$3 million initial cost, and \$1 million/annually in maintenance), and opening "(g) files" (police personnel files) consistent with the standard practice in many cities.

## **1. Introduction**

During the fall of 2005, a coalition of Austin community organizations including the Save Our Springs Alliance and the ACLU (Austin chapter) circulated a petition to call a referendum on an 'Open Government' amendment to the City of Austin's Charter. The City Clerk determined that this petition contained enough valid signatures from currently registered voters--over 20,000--to be placed on the ballot for the May 13, 2006 election.

As public debate on this milestone issue grew strident, Liveable City became increasingly concerned that the discussion was producing more confusion in the community, rather than education about the tradeoffs, costs and benefits inherent in any Charter amendment. Subsequently, Liveable City designated a Study Team to prepare a ballot study to review the Open Government Charter amendment, including local context, arguments for and against, a section-by-section review of the pros and cons and recommendations for consideration.

We hope that this study, produced for the Liveable City Board and the residents of Austin, can highlight common ground amid contention and set us on a path to improve how government works with its residents to make important decisions that affect us all.

## **2. Open Government: A National Concern**

In recent years, the rise of the internet and other technologies has dramatically increased the level of potential governmental openness. A whole new field, often referred to as “e-gov”, has emerged over the past 20 years. E-gov is a national phenomenon, with more and more electronic access between various levels of government and between government and citizens.

Nationwide over the past several years, many Americans are increasingly concerned - even openly critical - about how their political system seems tilted to the well connected more than the average citizen. Recent scandals at the national level have increased the focus on who has access to decision-makers and information, and when, across the United States.

Liveable City’s Ballot Study Team has identified the following core values, which we believe are important on the national stage as well as in the Austin community, as key elements in the discussion of the Open Government Charter amendment:

- Fairness and level playing field for all citizens
- Allocation of public resources for the public interest vs. private interest
- Furthering democratic goals of engaging more citizens in decision making
- Effective community and government
- Equity in access to information
- Obligations of public leaders to residents on both openness and the right to privacy

## **3. Open Government in Austin**

The core values identified above each have their own histories in Austin. Dissatisfaction with the openness of local government has been building in the Austin area for many years across various arenas, but especially those related to development in environmentally sensitive areas and in neighborhoods, and in police/community relations. The challenge for Austin is how to balance the need for public review, when public resources and tradeoffs are in play, with the need for privacy, when discussing risk or personal information.

To meet this challenge, the City has steadily invested in e-government initiatives in recent years. The precise amount the City of Austin has already invested in e-gov initiatives is not clear, since many elements have been part of larger technology related purchases without specific line item costs or have been developed internally by City staff. Currently, the City of Austin has more than thirty thousand pages of information online, as well as a city website that has won national awards for its overall design. Yet even with these investments, much information of interest to the community - some of which is considered public information – is not available online.

We believe Austin’s existing level of openness works to an extent and is commendable. However, there is a strong belief in some segments of Austin’s community that the playing field is still not level in terms of what type of information is available, to whom and when, and how

this disparity affects decisions about the use of public resources. This perception of disparity in the decision-making process undermines efforts to engage a broad range of citizens in important issues and ultimately erodes trust in city policies.

Tensions about the openness and transparency of Austin government have built up over the years, most notably in the following areas:

- Land development and environmental protection;
- Public safety;
- General communication about city business between Council Members and their offices and the City Manager's office.

The Liveable City Ballot Study Team believes these long-standing tensions demonstrate that our community has not yet reached an optimum level of openness and transparency for our city government such that citizens feel their engagement will be meaningful and that they trust the decision-making process.

But as always, the devil is in the details. The wording and language of any charter amendment, including the Open Government amendment, is just the start of how a charter amendment affects the evolution of the City. Time, interpretation, litigation and degree of community consensus may also play a role in how a charter amendment is ultimately applied. Each will need to be carefully addressed if Austin is to truly benefit from increased openness in its governmental processes.

Greater openness will have consequences that must be anticipated and mitigated as much as possible. For instance, jurisdictions surrounding Austin may not have similar levels of open government. And of course, there are also hard financial costs related to any increase in the amount of information that our government makes available to citizens.

#### **4. Examples**

The Liveable City Study Team believes that the following examples reveal a common pattern where special interests meet with Council members, city staff and/or City management for months to work out the key details of complex negotiations, finally releasing them to the public -- including to affected neighbors or stakeholder groups -- only a short time before they are to be voted on at a City Council meeting.

Defenders of this approach argue that confidentiality in these negotiations is necessary and beneficial, allowing the City to hear a proposal's details, evaluate options, and determine a best direction on which the City should seek public input. Critics argue that opening up these discussions to public input earlier could have resulted in greater public trust of the decision making process, even if the final outcome was exactly the same. We believe this pattern is the systemic way Austin city government functions on large projects, and the chronic nature of the pattern is certainly one of the prime reasons behind the Open Government Charter amendment

The following recent examples of this pattern are provided here in broad summary only. For more details and references please contact the Liveable City Ballot Study Team at [info@liveablecity.org](mailto:info@liveablecity.org):

- **COA/LCRA Water Agreement.** A deal in 1999 between the City of Austin and the Lower Colorado River Authority to secure 50-years of water supply at a cost of \$100 million aspired to address a critical resource need for a growing city. But the lack of public notice and input raised questions about the legitimacy of the process, and left unanswered questions about environmental and fiscal trade-offs.

- **AMD Move.** Still in the headlines, the decision by Advanced Micro Devices (AMD) to relocate from East Austin to an environmentally sensitive site reopened a hostile debate about community priorities and the city's role with major employers. Certainly it is important to retain a Fortune 500 company headquarters central to our regional economic picture and a major community philanthropist, but also important is to preserve lands critical to maintaining water quality and the health of Barton Springs.

Proponents of more open government argue that had the public known when AMD first began meeting with individual Council members and City staff to discuss this move, key stakeholder groups would have had an equal opportunity to weigh in and work towards an alternative site and community consensus. Defenders of the current system argue that some members of the public would not have worked toward consensus, but rather just toward trying to kill the deal. The opportunity lost to both sides is the discussion about what consensus and success looks like for both our regional economy and the health of Barton Springs.

- **Green Water Treatment Plant Relocation.** Most recently, the Austin Water Utility's announcement of its proposal to move the Green Water Treatment Plant, long understood to be closed and redeveloped, to Guerrero Park in East Austin clearly surprised citizens of East Austin, non-profits that advocate for environmental justice and for public parks, and even the City's own Parks Board. Lack of timely public notice and full information about alternative sites hampered the chance to build consensus.

We do note the recent action that Council declined to pursue the Guerrero Park site. We hope the coming months will reveal a more open process of sharing information about the technical and fiscal constraints of the Water Utility as well as gathering of community input on how to answer the tough questions around where to locate major infrastructure facilities.

- **Neighborhood Infill.** More than one Austin neighborhood can point to a project, from parking garages to big boxes to outsized apartment buildings, where many ordinary residents feel their wishes were ignored in favor of the desires of well-connected developers. In many of these cases, a natural tension exists between citizens working to protect and shape the character of their neighborhoods, developers desiring to maximize their profit, and the City aiming to ease Austin's growing pains with more infill housing and hoped-for sales tax revenue.

- **Austin Police Officer Negotiations.** While the details of the "meet and confer" negotiations between the City and its police officers are known to only a few, the ramifications of these negotiations on the City's annual operating budget affect all Austin citizens. The City has a mandate to protect the health and safety of all its citizens and having a well compensated, well-equipped police force is one of the most visible and important ways to meet this mandate. However, greater public debate would seem necessary when such negotiations impact the city budget and severe constraints exist on the funding available for other City programs over many years.

Similarly, the details of why APD "G files" related to individual police officer conduct remain closed to public review are known mostly only to those familiar with the details of the meet and

confer negotiations. However, knowing the police department will hold its own accountable when appropriate is an important factor in building and maintaining public trust in the police force. Suggesting APD processes be more open is not meant to question the integrity of our entire police force, only to ensure that those few who abuse their roles can be held accountable by the public they serve.

## **5. Supporting Arguments for the Amendment**

The Open Government Amendment supporters hope to achieve the following specific goals:

- Expand the ability for Austin citizens to participate in community decisions
- Generally increase public access to information that is currently either not available at all or not available in a timely manner
- Specifically open up six areas that have proved highly controversial over the past several decades:
  - Police Meet and Confer negotiations
  - Police Misconduct Files
  - Corporate tax incentives negotiations
  - City legal settlements before they are finalized
  - Agency memoranda, not including legal work product
  - Major land use or development proposals

## **6. Opposing Arguments for the Amendment**

Opponents of the Open Government Amendment are focused on the following problems with the Amendment:

- Poorly drafted document that is internally contradictory, overly broad and does not prioritize how the City should interpret the amendment
- City staff estimate of over \$36 million initial cost to implement and \$11-\$12 million annually to sustain
- Conflicts with existing state law
- Conflicts with citizen's right to privacy, including waiving confidentiality safeguards such as protection for persons reporting illegal conduct
- Cost and time necessary for associated litigation
- Waives city's confidentiality rights for litigation and memos with legal opinions and advice
- Would require too much "tracking" of time by City employees
- Would require postponement of bond election scheduled for November 2006

**7. Section by Section Review of Proposed Amendment**

In a point-by-point format, the following matrix sets forth the amendment language and outlines corresponding key arguments raised by amendment supporters and opponents in the debate about the Open Government Amendment.

<b>SECTION 1: Policy</b>		
<p>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. This amendment and other open government laws shall always be liberally construed to favor openness.</p>		
<b>SECTION 2: PRIVACY PROTECTED</b>		
<b>Amendment Language</b>	<b>Pro Argument</b>	<b>Con Argument</b>
<p>Nothing within this amendment should be interpreted in a manner that would violate an individual's existing constitutional or common law rights to privacy.</p>	<p>This section reiterates that this amendment will not trump or pre-empt or limit statutory privacy rights granted under state and federal laws like medical privacy, criminal investigation protections, or any other state or federal privacy law or right.</p>	<p>Even though the intent of this section appears to be protection of the privacy of individuals whose email or other communications with the City would be made public, it is in conflict with other sections of the amendment where "all" communications must be made public "online" and in "real time."</p> <p>The legal interpretation of this short section is at the heart of much of the opposition to this amendment on individual privacy grounds. The amendment states an intent to protect common law and constitutional privacy rights, but not statutorily (by state or local law) created privacy rights, which is a much broader area.</p>

<b>SECTION 3: OPEN GOVERNMENT ONLINE</b>		
<b>Amendment Language</b>	<b>Pro Argument</b>	<b>Con Argument</b>
<p>The City must, as expeditiously as possible and to the greatest extent practical, make all public information available online in real time and accessible to the public. This move to online access is a more efficient, timely, and open substitute for the manual and slow processing of public information requests. The City's actions to make public information accessible should be integrated with a move to carry out city business online, so that the processes of managing and governing the city and of public disclosure become one and the same.</p>	<p>This sets a general policy that the City attempt to do more of its business online on a 'possible and "practical" standard. The city is already moving in that direction with some programs like AMANDA, but has not moved towards giving the public access to those systems.</p>	<p>There are no definitions of key terms such as "expeditiously as possible," "greatest extent practical," "real time." Because these definitions are lacking (and perhaps have been strategically left undefined) the City must assume a liberal interpretation, per Section 1, which is what drives cost estimates of initial implementation over \$30 million dollars. In addition, the city will likely have to interpret the charter amendment literally and liberally because prohibitive cost alone does not make implementation "impractical" for a governmental body.</p>
<b>(A) OPEN ACCESS TO CITY BUSINESS</b>		
<p>(1) Within one year of the date this Amendment takes effect, applications and proposals for any permit or contract of significant value must be provided to the City in an electronic format.</p> <p>(2) The City must assign a name and number and create a website or similar online electronic format to manage all matters that seek: (a) a permit for development of more than two acres or for development anticipating development costs of more than \$1 million; (b) a contract involving the expenditure of \$500,000 or more of city funds; (c) economic development assistance of more than \$50,000 in value; and (d) all other instances where it is reasonably anticipated that there is significant public interest in the matter.</p> <p>(3) With respect to each matter subject to Section 3(A)(2), the City must maintain a system for electronic notification (such as email lists) to interested persons of any event or new information relating to the matter. Any individual</p>	<p>Everyone wishing to do significant business with the City provide their documents electronically, saving the City the costs of scanning paper documents. E-filing is an emerging trend in some other parts of the country. A minor redesign of the AMANDA system, for instance, would allow public review of development documents not currently easily available.</p>	<p>While these clauses add some shape to the nature of what specific information is desired, there are no clauses saying what information would <i>not</i> be subject to open access, therefore the City must assume "all" information should be made open. By mentioning only "constitutional and common law privacy" the amendment may be implicitly declining to protect other privacy rights and waiving other discretionary safeguards of confidentiality currently existing under the Texas Public Information Act (TPIA).</p>

<p>or organization may register as an interested person.</p> <p>(4) All public information concerning the matter subject to Section 3(A)(2) must be posted to the website. All written communications between the City and the applicant relating to the matter must be posted online in real time in a manner searchable by the public.</p>		
<p><b>(B) OPEN ACCESS TO CITY CALENDARS</b></p>		
<p>(1) For all matters involving City business, the following people must maintain calendars of all meetings and maintain logs of all telephone calls: (a) City Councilmembers and their staff; (b) City Manager and his or her staff; (c) Assistant City Managers and their staff; and (d) all department heads.</p> <p>(2) These calendars and logs must contain the time, date, subject matter, and persons involved in all meetings and telephone calls involving City business. These calendars must be used to schedule and record all past and future meetings that occur after the implementation date of this section.</p> <p>(3) Calendars and logs must be posted online in real time and be accessible to the public.</p> <p>(4) "Meetings" includes all informal and formal meetings including but not limited to telephone conferences, videoconferences, happy hours, and luncheons.</p> <p>(5) This provision must be implemented within six months of approval of this amendment.</p>	<p>This creates a "lobby log" for the top level staff and Council members in order to give the public a clear picture of how city officials made decisions and from whom they get their information and input.</p> <p>The amendment gives broad flexibility to decide the "subject matter" and would also be free to establish a protocol whereby it would be the responsibility of any commercial interest/lobbyist to register their calls and meetings.</p>	<p>The calendars of these individuals are public information and so are already subject to open records requests, even though maintaining a calendar is currently discretionary. Failure to maintain the calendar with all the details mentioned in the amendment – as defined by whoever is reviewing the calendar (could a city official ever again have a private, "informal" conversation?) – could result in a \$500 penalty.</p> <p>Again, while appearing to add shape to the intent of open access and the deceptively simple idea of just wanting to know who is speaking to the City when and about what, several phrases seems unreasonable and strategically overreaching, such as retroactive application to "all past" meetings, "real time" posting (again, a problem due to lack of definition), and all informal meetings including "happy hours."</p> <p>The six month timeline for implementation also constrains the City and increases cost assumptions.</p>

<b>(C) OPEN ACCESS TO CITY ELECTRONIC COMMUNICATIONS</b>		
<p>(1) In order to better preserve written electronic communication for public disclosure, the City must establish a system that automatically archives all incoming and outgoing electronic communication that deals with City business to and from the following people in their official capacity: (a) City Councilmembers and their staff; (b) City Manager and his or her staff; (c) Assistant City Managers and their staff; and (d) all department heads.</p> <p>(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.</p>	<p>This only requires archiving of email for top City officials, not all City employees. It also prohibits the use of non-city email accounts for conducting city business.</p>	<p>Archiving is consistent with current City policy.</p>
<b>(D) OPEN ACCESS TO CITY FUNCTIONS</b>		
<p>Within six months of approval of this Amendment, the City must maintain online in a manner directly accessible to the general public the following:</p> <p>(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;</p> <p>(2) Statements of general policy or interpretations of general applicability;</p> <p>(3) Administrative staff manuals and instructions to staff of general applicability that affect a member of the public;</p>	<p>This would put online information that is already considered public information including documents related to how the City handles public information requests with the Attorney General's Office, court-filed pleadings either by or against the City, and "previously requested" public information.</p>	<p>The City strives to make available extensive information about City functions while still protecting the City's ability to pursue legal opinions confidentially which enables the City to protect the rights of all citizens, including those who disagree with the City. Again, the six month timeline drives high implementation costs.</p>

<p>(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;</p> <p>(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;</p> <p>(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</p> <p>(7) Agendas, minutes, and transcripts or recordings, except for executive sessions, of all meetings of the City Council, City Boards, and City Commissions.</p>		
<p><b>(E) EFFECTIVE ACCESS TO INFORMATION</b></p>		
<p>The City must create and maintain online tables of contents and indexes to enable the general public to easily find and access online City documents and public information. Information must be searchable, and be able to be located by author/submitter, individual recipient, date, and subject matter.</p>	<p>Information provided online should be easy to find.</p>	<p>The City always strives to make easily accessible all information provided online.</p>

<b>SECTION 4: PUBLIC INFORMATION</b>		
<b>Amendment Language</b>	<b>Pro Argument</b>	<b>Con Argument</b>
<b>(A) INFORMATION RELATING TO CIVIL LITIGATION</b>		
<p>That the City is a party to litigation does not render information relating to that litigation less important; rather it often means the information is a matter of heightened public interest. Therefore, the City must not withhold information relating to civil litigation under Texas Government Code § 552.103, but it may withhold under other Public Information Act exceptions.</p>	<p>Some exceptions to disclosure of public information are not mandatory. This section requires the City to use its discretion on these exceptions in favor of openness in one situation – information that is “related to” litigation but not otherwise protected as attorney work product or under attorney client privilege.</p> <p>This section intends to reduce disputes between the City and requestors over information that can be released with no harm to the City’s position in litigation.</p>	<p>The City faces many types of civil litigation. To broadly say the City the “must not withhold” any information the City might deem “related to” such litigation will greatly undermine the City’s ability to win civil suits, regardless of the parties involved. Currently such information is available through a legal process called “discovery” in which the city could raise legal objections to releasing vital information. The amendment would allow adversaries of the city to simply file open records requests and obtain sensitive information regardless of potential reasonable legal objections that could be raised in court. This could have great unintended consequences that ultimately hurt the City’s ability to protect the public interest – even those interests of the proponents.</p>
<b>(B) ECONOMIC DEVELOPMENT INFORMATION</b>		
<p>Information relating to economic development assistance or incentives is public information to which the public has a right of access.</p> <p>(1) The City must require all businesses and individuals seeking to engage in the type of economic development negotiations referenced in Texas Government Code § 552.131 to execute and deliver to the City a waiver of any rights to prevent the public disclosure of all information exchanged with the City. The City is without authority to engage in economic development negotiations with any company that has not first executed a waiver.</p> <p>(2) The City is without authority to shield economic development offers under Texas</p>	<p>This intends to reestablish the decision-making process of offering tax abatements and other public benefits to the public realm. To be effective, this change also requires that businesses must waive confidentiality on information if they wish to negotiate with the City for tax abatements and other incentives.</p>	<p>Forcing the City to make potential economic development partners waive their right to strategic company information will undermine the City’s ability to compete in the global marketplace – major employers, including “good” ones – will be less likely to want to continue to do business with the City and may just move to the jurisdiction next door where no such rules exist. The community will never get to have the public conversation about improving incentives policy, because the most desirable and competitive employers will not want to subject themselves to this degree of public scrutiny.</p> <p>Many of these other clauses broadly “waive” the City’s rights to protect certain types of</p>

<p>Government Code § 552.131(b).  (3) Nothing in section 4(B) prevents a City from withholding documents under Texas Government Code §§ 552.104, 552.105, or 552.108.</p>		<p>information which is a right intended to be applied on a case by case basis – broad waiving of this right will have severe unintended consequences.</p>
<p><b>(C) AGENCY MEMORANDA</b></p>		
<p>Open government in Austin ensures the people have access not only to the final decisions made by government officials but also to the process by which those decisions are made. The City must not use Texas Government Code § 552.111 to withhold information reflecting advice, opinion, and recommendations on policymaking matters, except the City may withhold attorney work product.</p>	<p>Again, this requires the City to use its discretionary rights on certain information in favor of openness. This requires the City to make PUBLIC not only its final decision public, but also the process and factual information used to arrive at that FINAL decision.</p>	<p>While the nod to “attorney work product” is important, this clause opens strategy, opinion, and advice documents to anyone (unless they fall under another TPIA exception such as attorney client privilege). There are good policy reasons for city officials to seek frank advice from staff and advisors. Such advice may not be forthcoming or candid if it will be widely disseminated. This clause could more greatly benefit those wishing to do the City harm than to protect it.</p>
<p><b>(D) PERSONNEL FILES</b></p>		
<p>The City of Austin must not maintain an optional personnel file as authorized under Texas Local Government Code § 143.089(g) for employees of the Austin Police Department, nor does the City have authority to enter into any meet and confer or other agreement with any police officer association that requires creation or maintenance of a separate file that is closed to the public.</p>	<p>Improves the accountability of the Austin Police Department by eliminating secret personnel files that describe officer misconduct, if any, and the response to misconduct by police management, if any.</p>	<p>Texas law specifically allows for the maintenance of non-public disciplinary files for use in internal police personnel matters. This practice protects the rights of individual officers while allowing for appropriate oversight by police management charged with reviewing officer conduct. Officers who are formally disciplined have documentation placed in their permanent files, which are open to public review.</p>
<p><b>(E) EMAILS RELATED TO CITY BUSINESS</b></p>		
<p>Email or other written electronic communication to or from a public official concerning City business is public information, including communications to or from privately owned email accounts or computers.</p>	<p>This section acts as a reminder that City officials cannot delete email, even if they are using a non-City, private account. It encourages city officials to only use their city email accounts for city business.</p>	<p>This appears to be redundant and inconsistent to language in earlier sections related to email content and privacy exemptions which creates confusion as to which section should be interpreted. It could mean that all described emails must be made public, regardless of privacy concerns, or that all emails (thousands daily) will first have to be screened for privacy concerns before going online.</p>

<b>SECTION 5: OPEN MEETINGS</b>		
<b>Amendment Language</b>	<b>Pro Argument</b>	<b>Con Argument</b>
<b>(A) SETTLEMENTS</b>		
In any litigation or pre-litigation matter of public interest, no settlement shall be given final approval without at least one public hearing. All terms proposed for settlement must be posted online at least seven days prior to the public hearing.	The city often ends up setting policy through settlement agreements, having open meetings on such agreements will allow more effective public participation in how such policy by settlement occurs.	Not all litigation settlements call for a public hearing, provided that the council properly posts the matter and takes a vote.
<b>(B) ECONOMIC DEVELOPMENT</b>		
Negotiations related to economic development agreements, grants, loans, or programs from the City involving more than \$500,000 will be undertaken in meetings open to a public audience with 72 hours prior notice provided to the public. All presentations of information to the City Council and consideration or deliberation by the City Council of any proposed economic development agreement, grant, loan or other program must occur in lawfully noticed public meetings.	This will prevent the city from creating large incentive packages in private and allow for public input to help shape more cost effective economic development package that are more closely tied to community issues such as affordable housing, environmental and noise standards.	This could hamper the ability of the city and its economic development partners to conduct frank, candid negotiations. Such negotiations last for months and require many meetings – sometimes with several parallel discussions. While there are certainly key decision points where public input is most beneficial, it may not be beneficial at every single step along the way.
<b>(C) MEET AND CONFER NEGOTIATIONS</b>		
Deliberations relating to a meet and confer agreement or proposed agreement between representatives of the City and representatives of any police officers association must be open to the public. The City is without authority to enter into any agreement to close these meetings.	Open meetings for meet and confer will allow more public input on negotiations that could obligate large portions of the general fund budget.  Open meetings could also allow for more effective police oversight through public debate about concessions, such as keeping private police officer misconduct in the “g” files.	Labor negotiations are seldom conducted in public. Private deliberation allows both parties to avoid the need to posture and encourages exploration of all options for addressing interests. Final agreements are made public prior to ratification by city officials

<b>SECTION 6: RETENTION OF PUBLIC INFORMATION</b>		
<b>Amendment Language</b>	<b>Pro Argument</b>	<b>Con Argument</b>
<p>(A) The City must preserve in perpetuity all recordings and minutes of City Council, board, and commission meetings and all documents reviewed at these meetings. All executive sessions must be recorded by video and audio.</p> <p>(B) The City will create a records retention schedule as prescribed by the Local Government Code that retains all public information for a minimum of ten years.</p> <p>(C) The City must make a good faith effort to preserve all electronic information in a sustainable format so that future generations may have access. To reach this goal, the City, wherever practical, must use open formats.</p>	<p>Increases record retention and preservation of public information so that citizens making open records requests in the future will be able to understand how decisions were made in the past.</p>	<p>Archiving is consistent with current City policy. The City has been making a “good faith” effort for many years to make information available.</p>
<b>SECTION 7: ONLINE ACCESS</b>		
<b>Amendment Language</b>	<b>Pro Argument</b>	<b>Con Argument</b>
<p>All references within this article to “online” refer to the Internet or future similar technology. Any fees for access to City public information databases and search functions must be waived for individuals, non-profit organizations, and registered neighborhood groups. The City Public Information Officer must assist persons without access to online resources to obtain timely access to online public information.</p>	<p>This is standard implementation language for charter amendments.</p>	<p>It seems odd that the amendment would define “online” yet not define “real time;” adding traction to the idea that such definitions are strategically omitted.</p> <p>Waiving the City’s ability to charge any fees, even nominal fees, undermines the City’s ability to recoup the costs necessary to implement the amendment. Current state law only allows a city to recover its real costs, such as programming time and computer time for major information requests – this amendment would shift those costs to the taxpayers. It would be very beneficial for individuals who request information for commercial purposes or for adversaries searching city data for purposes of litigation or harassment.</p>

<b>SECTION 8: ENFORCEMENT</b>		
<b>Amendment Language</b>	<b>Pro Argument</b>	<b>Con Argument</b>
<p>Noncompliance by the City, any City official, or City employee with this Amendment is enforceable by an action for injunction or mandamus. In addition, each official or other person found to have knowingly and willfully violated this Amendment is liable for a \$500 civil penalty for each violation.</p>	<p>This is standard implementation language for charter amendments.</p>	<p>Noting that the amendment twice mandates a six-month implementation schedule - which is aggressive at best, impossible at worst – this clause intends to be a motivation for the City to not remain inactive, but instead seems as likely to result in litigation about the City’s effort to implement to the plaintiff’s satisfaction rather than a reasonable, prioritized effort to open government itself.</p>
<b>SECTION 9: Severability.</b>		
<p>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 or phrases of this charter amendment are severable for that purpose.</p>	<p>This is standard implementation language for charter amendments.</p>	
<b>SECTION 10: Adoption And Implementation.</b>		
<p>Upon approval by the voters of the City of Austin, this amendment shall take effect immediately. In the event of any conflict with other provisions of the Austin City Charter, the provisions of this Open Government Online Amendment will prevail. The sections of this Amendment must be codified together as a separate Article of the Austin City Charter captioned “Open Government Online”. Any references to state statutes in this Amendment should be updated in the event that they are re-numbered.</p>	<p>This is standard implementation language for charter amendments.</p>	

## **8. Liveable City Study Team Discussion**

The Liveable City Study Team believes government should be as open and accessible as needed to ensure that citizen participation is meaningful and that citizens can trust the decision-making process about how public resources are used.

Ongoing national stories about privacy rights, the access of lobbyists and private interests to government, and the influence of money on government are reflected in similar accounts closer to home. These serious national and local concerns have done much to shape the current context in which the Open Government Charter amendment goes before voters. While the frustrations that led to the drafting of the proposed amendment have been brewing for years, the City has in fact been moving in the right direction of increasing access to information – albeit too slowly to satisfy many in the community.

The Liveable City Study Team believes the Open Government Amendment, whether or not it passes, is an important step in raising these concerns and moving toward a city government culture that is even more equitable with respect to public involvement in decision-making.

### ***Problems with the Language and Lack of Pragmatism***

The Liveable City Study Team agrees that the amendment aims to address an important community issue. However, we observe that the language appears to be overly broad in some areas and very specific in others and has not been well scoped or prioritized from an implementation standpoint, although we hypothesize this may be intentional in some areas. The amendment is not as well crafted as it could have been and may represent a certain degree of "overreaching."

The drafters left many questions conspicuously unanswered, such as the definition of "real time," which greatly affects understanding the scope of the amendment and thus the true cost of implementing it. In general, the proposal would have benefited from more expertise regarding scope, priorities and recommended funding strategies.

These shortcomings in the amendment's language lend merit to the argument that certain questions have been left intentionally unanswered in order to set the stage for how the amendment is interpreted through litigation. From the Study Team's standpoint, litigation should be the last resort, not the default mechanism for achieving important community goals. The community needs, expects and deserves more clarity from its leading community advocates.

### ***Problems with City's Reaction to the Language***

The Austin City Council and staff have missed the mark by making extreme assumptions, even if made based on a literal reading of the amendment language, rather than prioritizing the amendment's directives from a pragmatic standpoint. They have tried, but not succeeded in working closely with drafters to devise a practical funding approach and set of definitions, an effort that could have- and should have - been achieved early on in this process.

We are especially disappointed at the city's implication that other priorities, such as a general obligation bond package, would become impossible if the amendments pass. The state of the caption language recently struck down by the courts and sent back to the City for redrafting, highlights the missed opportunity for the city to reframe for the community some of the

vagueness in the original language and to offer pragmatic solutions. Instead the City appears to be fighting transparency to its own citizens, a difficult position at best for a government to defend.

A technology industry truism is that “scope drives content and content drives cost.” Opponents of the amendment, including the City of Austin, argue that the scope of the amendment is so vague that the City must assume that all city documents must be available online immediately, including all citizen emails to council and staff while protecting privacy. For the resulting \$36 million initial cost, Austin taxpayers would get online access to many thousands of pages of information that has not been prioritized in any way and that is generally irrelevant to their needs. For example, there is no pressing public need to post the City’s “vehicle fleet maintenance schedules.”

The drafters of the amendment point to numerous “qualifying phrases” such as “to the greatest extent practical” in an effort to negate the need for assuming the scope is wide open. These phrases are not definitional. The opponents assume the worst-case scenario instead of suggesting a pragmatic solution. The lack of consensus about simple definitional terms and basic scoping issues is what makes the rhetoric around the campaigns for and against the amendment so confusing and, ultimately, so unproductive.

### ***The Heat of the Battle***

Sadly, it appears that any potential step forward initiated by either the drafters or the City has been severely crippled because both sides seem focused on political one-upmanship instead of pragmatic give and take. Both sides have allowed campaign rhetoric to replace reason and realism. The Study Team finds it frustrating that real discussion and dialog have so far been grossly obscured. This issue and the Austin community need and deserve better. We hold out hope that, in the weeks before the May 13 election, a more productive debate may yet ensue.

Setting aside the pros and cons of this particular amendment's language, its implementation challenges, the quality of the debate to date and even whether or not the amendment passes, the stage is set for continued debate on this topic. How we act on that stage will be our community legacy.

We note that in the days before finalizing this study, there are some indications that City Council, along with some community members, intend to begin drafting possible ordinance language aimed at defining a practical approach to achieving some of the amendment’s primary goals. Of course, these efforts should be viewed both as intended to influence voters prior to May 13, but more importantly as beginning to set the stage for what happens after May 13.

## **9. Study Team Recommendations**

The Liveable City Study Team advocates for pragmatic, cost-effective and timely improvements to the open government process in Austin. To do this will require a strong sense of community priorities, effective funding strategies and meaningful cooperation between the City and all segments of the community.

The Liveable City Study Team recognizes that the full impact of any charter amendment can only be established over time by the amendment language itself, by applicable state and federal law, by city council ordinance, by administrative action, and in some cases by litigation.

**(1) The Study Team believes that, whether or not the proposed Open Government amendment passes, the Council can and should, through a well-crafted ordinance, meet the intent of the amendment while minimizing administrative costs and reducing the degree of litigation.**

Such an ordinance should not attempt to implement the amendment as broadly as its opponents have depicted it (the online publication of every city document and email at a high cost to the city). Rather, the ordinance should lay out an implementation strategy that prioritizes the areas of most concern to amendment proponents--land development issues, police records, incentive negotiations, and City Council and high level city staff meetings and communications on pending city business of significant value. Information about these areas should be put online as expeditiously as possible.

For example, the Study Team estimates, and has confirmed with the City, that under a scenario that prioritizes the above information and that we believe would satisfy the current supporters of the amendment, capital cost could be in the \$2 to \$3 million dollar range, with recurring costs in the under \$1 million per year range. This would result in a dramatically improved bottom line, well under the opponents' current projected \$36 million in capital costs and up to \$12 million annually.

The community could further restrict the need for openness to transactions over a specified dollar amount and/or those that will or could appear on the City Council agenda, or do not contain personal information covered under existing privacy laws.

In our view, the city cannot and should not spend \$36 million to achieve the broadest goals of open government – but it likely can spend a tenth of that to achieve nearly all of what the current advocates consider most critical, if there is community consensus for such a move.

**(2) The Liveable City Study Team further recommends that—whether or not the voters approve this amendment-- the City Council establish a Citizen’s Task Force with the purpose of presenting a set of implementation recommendations on how to move towards more open government, including priorities and fiscal constraints.**

The Task Force should include representatives from key stakeholder groups including: neighborhood associations, environmental groups, public safety and civil liberty organizations; the business community; and at least one public or private sector Chief Information Officer (CIO) or equivalent. The Task Force should conduct a series of public meetings to take citizen input before completing its recommendations.

Council should direct the Task Force to give definition to terms in the amendment language such as “real time” and “significant city business”, recommend a plan to phase in the requirements of the amendment in a way that prioritizes the areas of most concern to amendment proponents in a fiscally prudent manner; establish guidelines on how to screen electronically emails from citizens to determine which ones should be posted online and which ones archived; and establish criteria to determine what kinds of “informal meetings” need to be reported on-line.

If the open government charter amendment passes, this Task Force should present its recommendations to the Council within one month, to allow the City to meet the deadlines of the charter amendment in a timely fashion.

If the charter amendment does not pass, this Task Force should make its recommendations to the Council within three months. Council should give due consideration to incorporating these recommendations into an ordinance.

Ideally, the City Manager and City Council would also work with the Task Force to come to consensus with the Austin community on the costs and benefits of opening government. While we recognize that this level of cooperation is unlikely to coalesce before the May 13 election, we believe it is not too early to set the stage for these much-needed next steps.

## **10. Conclusions**

Liveable City Study Team believes that the concept of the proposed Open Government amendment is valid and that it is intended to address critical community concerns and values. We further believe that our City would be better served if our city government were more open. Cogent arguments exist on both sides about how well the language of the current proposal will address these issues and at what cost.

We recommend that the community insist on an end to the escalating rhetoric surrounding the current amendment and ask instead for more consensus and pragmatism. As a community, we can best move forward toward the amendment's goals with concrete dialog about implementation priorities and funding strategies.

The Liveable City Study Team calls on our elected officials, as well as community leaders, to continue to work purposefully toward a more open government. We present this ballot study as a hopeful first step in that direction.

Whether or not the amendment passes, the Study Team recommends the City Council create a Citizen's Task Force to provide input and help balance competing priorities on the critical issue of local government openness and transparency. The Task Force, with broad representation from stakeholder groups, will conduct public hearings and present recommendations on how to move toward more open government. The Task Force's recommendations should specifically identify clear and reasonable priorities, the definition of terms, timely phase-in, fiscal constraints, a responsible and appropriate level of funding and funding strategies.

The Task Force could further refine what implementation mechanisms are needed to ensure that the goals of the amendment are achieved, specifically in the areas of land use, public safety, and communication to and from the City Council and the upper City management. The Task Force would be charged with balancing transparency with reasonable and practical assumptions of "real-time", extent of privacy protections, and implementation and maintenance costs. One plausible scenario found if the scope of the amendment was more focused the total costs were approximately in the \$3 million, with \$1 million/annually in maintenance, instead of the \$36 million dollar costs that have been publicized. Finally, the Task Force opening "G files" (police personnel files) consistent with standard practices in many other Texas cities.

**Respectfully submitted, Liveable City Ballot Study Team:**

David Foster  
Robin Rather  
Jim Walker

A PETITION TO AMEND THE CITY OF AUSTIN CHARTER TO ADD THE "OPEN GOVERNMENT ONLINE" AMENDMENT, THE ENTIRE TEXT OF WHICH READS: THE CITY CHARTER FOR THE CITY OF AUSTIN IS AMENDED TO INCLUDE THE FOLLOWING "OPEN GOVERNMENT ONLINE" AMENDMENT.

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

**SECTION 2: Privacy Protected.** Nothing within this amendment should be interpreted in a manner that would violate an individual's existing constitutional or common law rights to privacy.

**SECTION 3: Open Government Online.** The City must, as expeditiously as possible and to the greatest extent practical, make all public information available online in real time and accessible to the public. This move to online access is a more efficient, timely, and open substitute for the manual and slow processing of public information requests. The City's actions to make public information accessible should be integrated with a move to carry out city business online, so that the processes of managing and governing the city and of public disclosure become one and the same.

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

- (1) Within one year of the date this Amendment takes effect, applications and proposals for any permit or contract of significant value must be provided to the City in an electronic format.
- (2) The City must assign a name and number and create a website or similar online electronic format to manage all matters that seek: (a) a permit for development of more than two acres or for development anticipating development costs of more than \$1 million; (b) a contract involving the expenditure of \$500,000 or more of city funds; (c) economic development assistance of more than \$50,000 in value; and (d) all other instances where it is reasonably anticipated that there is significant public interest in the matter.
- (3) With respect to each matter subject to Section 3(A)(2), the City must maintain a system for electronic notification (such as email lists) to interested persons of any event or new information relating to the matter. Any individual or organization may register as an interested person.
- (4) All public information concerning the matter subject to Section 3(A)(2) must be posted to the website. All written communications between the City and the applicant relating to the matter must be posted online in real time in a manner searchable by the public.

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

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

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

- (1) In order to better preserve written electronic communication for public disclosure, the City must establish a system that automatically archives all incoming and outgoing electronic communication that

deals with City business to and from the following people in their official capacity: (a) City Councilmembers and their staff; (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 easily find and access online City documents and public information. Information must be searchable, and be able to be located by author/submitter, individual recipient, date, and subject matter.

#### **SECTION 4: Public Information.**

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

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

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

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

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

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

(C) AGENCY MEMORANDA. Open government in Austin ensures the people have access not only to the final decisions made by government officials but also to the process by which those decisions are made.

The City must not use Texas Government Code § 552.111 to withhold information reflecting advice, opinion, and recommendations on policymaking matters, except the City may withhold attorney work product.

(D) PERSONNEL FILES. The City of Austin must not maintain an optional personnel file as authorized under Texas Local Government Code § 143.089(g) for employees of the Austin Police Department, nor does the City have authority to enter into any meet and confer or other agreement with any police officer association that requires creation or maintenance of a separate file that is closed to the public.

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

**SECTION 5: Open Meetings.**

(A) SETTLEMENTS. In any litigation or pre-litigation matter of public interest, no settlement shall be given final approval without at least one public hearing. All terms proposed for settlement must be posted online at least seven days prior to the public hearing.

(B) ECONOMIC DEVELOPMENT. Negotiations related to economic development agreements, grants, loans, or programs from the City involving more than \$500,000 will be undertaken in meetings open to a public audience with 72 hours prior notice provided to the public. All presentations of information to the City Council and consideration or deliberation by the City Council of any proposed economic development agreement, grant, loan or other program must occur in lawfully noticed public meetings.

(C) MEET AND CONFER NEGOTIATIONS. Deliberations relating to a meet and confer agreement or proposed agreement between representatives of the City and representatives of any police officers association must be open to the public. The City is without authority to enter into any agreement to close these meetings.

**SECTION 6: Retention of Public Information.**

(A) The City must preserve in perpetuity all recordings and minutes of City Council, board, and commission meetings and all documents reviewed at these meetings. All executive sessions must be recorded by video and audio.

(B) The City will create a records retention schedule as prescribed by the Local Government Code that retains all public information for a minimum of ten years.

(C) The City must make a good faith effort to preserve all electronic information in a sustainable format so that future generations may have access. To reach this goal, the City, wherever practical, must use open formats.

**SECTION 7: Online Access.** All references within this article to “online” refer to the Internet or future similar technology. Any fees for access to City public information databases and search functions must be waived for individuals, non-profit organizations, and registered neighborhood groups. The City Public Information Officer must assist persons without access to online resources to obtain timely access to online public information.

**SECTION 8: Enforcement.** Noncompliance by the City, any City official, or City employee with this Amendment is enforceable by an action for injunction or mandamus. In addition, each official or other person found to have knowingly and willfully violated this Amendment is liable for a \$500 civil penalty for each violation.

**SECTION 9: 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 or phrases of this charter amendment are severable for that purpose.

**SECTION 10: Adoption and Implementation.** Upon approval by the voters of the City of Austin, this amendment shall take effect immediately. In the event of any conflict with other provisions of the Austin City Charter, the provisions of this Open Government Online Amendment will prevail. The sections of this Amendment must be codified together as a separate Article of the Austin City Charter captioned "Open Government Online". Any references to state statutes in this Amendment should be updated in the event that they are re-numbered.

## **Background on Charter Amendments**

The City of Austin was originally chartered in 1909 under a Legislative Act which the City later amended to assume home rule status as allowed in the Texas Constitution. An election held on February 12, 1953, totally revised the Charter. The Charter includes a preamble, twelve articles and an appendix. Our Charter establishes the form of government for the City of Austin and lays out the powers and limitations of government. The Charter of any city, and similarly the Constitution of the state, may be amended by citizen petition as allowed in Article IV, Section 1 of the Charter. See Appendix for select sections of the Charter, the full text of the Charter can be found at [www.amlegal.com/austin\\_tx/](http://www.amlegal.com/austin_tx/).

Charter campaigns, as with campaigns to enact ordinances or other legislation affecting city government, represent important milestones in a community's evolution – even when not passing they often point the way towards changing community values, expanding freedom or tightening existing loopholes

Amendments to the Charter are different from ordinances in that the Charter describes the form and obligations of city government whereas ordinances describe how the government will go about meeting those obligations. When a referred (citizen petition), authorized (enough petition signatures are deemed valid) amendment to the Charter passes, the Council then is obligated to enact the ordinance as described in the petition language.

How charter amendments are written is important – the written word sets the policy intention and the legal framework. For purposes of succinct description on a ballot, Council must create a “caption” of the amendment language – the wording of the caption was the subject of recent news headlines and court action. Regardless of the caption language, if the amendment is passed, the language used in the petition shall guide interpretation of the amendment by the city. Once a charter amendment passes it immediately becomes effective.

Charter amendments are often litigated and interpreted over time, which is why the petition language is critical. Legal and administrative interpretation of the amendment language is often the subject of debate as intense as the original petition.

### **Understanding Police “(g) files”**

The Open Government amendment seeks to achieve two goals in the area of transparency in matters of public safety, specifically in the area of Austin’s police department. The two goals are to open to public scrutiny the “meet and confer” negotiations, as well as provide greater access to police “(g) files.” The latter is discussed here in greater detail.

### **Understanding “(g) files” in Austin**

The Austin Police Department maintains two kinds of personnel records. The “(a) files” are public, and contain information about commendations, personnel evaluations, and disciplinary actions taken against individual officers. The “(g) files” are not available to the public, and contain, among other things, copies of misconduct complaints submitted by citizens or by other officers and the files of subsequent investigations by the Police Department. Because the vast majority of complaints do not result in disciplinary action (defined in Austin as a suspension of three or more days), only 3% to 7% of complaints are available in the public “(a) files.”

The vast majority of complaints are not available to the public because Austin has adopted Chapter 143 of the Local Government Code, “Municipal Civil Service for Firefighters and Police Officers,” along with about 20 other Texas cities, including Houston and San Antonio. All Chapter 143 cities are required to restrict access to “(g) files.” However, over 2,000 other Texas public safety agencies, including the Travis County Sheriff’s Department, did NOT opt in to Chapter 143 and thus have close to 100% of their personnel information available to the public.

The public interest in access to “(g) files” revolves around the following:

- Understanding performance patterns of individual police officers;
- Understanding performance patterns of the overall police force;
- Understanding the management responses to complaints in general as well as particular types of complaints.

There are also inherent risks in greater access to files, including increasing the fear of potential retribution for filing a grievance against the police and increasing concerns about privacy.

### **List of Interviews**

The following persons responded to questions from the Liveable City study team in person, by telephone and/or by email:

#### **Proponents**

Bill Bunch – Executive Director Save Our Springs Alliance  
Kathy Mitchell – American Civil Liberties Union, Austin Chapter  
Scott Henson – American Civil Liberties Union, Austin Chapter  
Jordon Hatcher - Electronic Frontier Foundation  
Glen Maxey – Campaign consultant, former member, Texas House of Representatives

#### **Opponents**

Jim Cousar – Thompson and Knight LLP, for Coalition for Austin’s Future PAC  
Lynda Rife – Campaign consultant for Coalition for Austin’s Future PAC  
Carl Richie – Greater Austin Chamber of Commerce  
George Cofer – Hill Country Conservancy  
Ted Siff – Treasurer, EDUCATE PAC

*Liveable City Ballot Study: Open Government*  
**Appendices**

Mike Blizzard – Grassroots Solutions Consulting

**City of Austin**

Betty Dunkerley – Councilmember, City of Austin

Toby Futrell - City Manager, City of Austin

Peter Collins – Chief Information Officer, City of Austin

For more information or questions related to this study contact the Liveable City Study Team at [info@liveablecity.org](mailto:info@liveablecity.org).

### **About Liveable City**

Liveable City is nonpartisan, nonprofit research, communications, capacity building and advocacy organization working to advance public policies that balance Austin's growth with our community's well being. The board is composed of experienced community advocates whose skills include neighborhood, business, academic, political, and environmental perspectives among others.

Liveable City's mission is to support solutions that address Austin's long-term social, environmental, and economic needs by focusing on the interconnections among issues while educating, informing and empowering citizen advocacy to improve quality of life.

Liveable City 611 S. Congress, Suite 200 A  
Austin, Texas, 78704

Telephone 512.326.3331  
[info@liveablecity.org](mailto:info@liveablecity.org)  
[www.liveablecity.org](http://www.liveablecity.org)

For questions: [info@liveablecity.com](mailto:info@liveablecity.com) or Wendi White at 512.326.3331

Copyright 2006