

# Ballot Study

## **Open Government Online Charter Amendment**

*May 13, 2006 General Election Ballot*

***Study Accepted***

by Liveable City Board  
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**liveablecity**

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## **Executive Summary**

- ***Open Government Essential to Ensure Trust.*** *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, defined terms, timely phase-in, fiscal constraints, a responsible and appropriate level of funding and funding strategies.

For example, 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 Plan 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) consistent with standard practice in Texas as well as the "meet and confer" negotiations.

## **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 Deal.** 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 might 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. Of course, defenders of the current system might 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 and the desire of the City to ease Austin's growing pains with more infill housing and hoped-for sales taxes.

- **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