

ORDINANCE NO. 20120802-015

AN ORDINANCE ORDERING AN ELECTION TO BE HELD IN THE CITY OF AUSTIN ON NOVEMBER 6, 2012, FOR THE PURPOSE OF SUBMITTING A PROPOSED CHARTER AMENDMENT TO THE VOTERS.

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

PART 1. Ordinance No. 20120628-084 is repealed.

PART 2. A charter amendment election shall be held in the City on November 6, 2012 at which the ballot shall be prepared to permit voting "yes" or "no" on the following proposition:

Proposition ---

Shall the city charter be amended to provide for the election of council members from 10 geographical single-member districts, with the mayor to be elected from the city at large, and to provide for an independent citizens redistricting commission?

PART 3. If Proposition --- is approved by the majority of voters voting at the election, the City Charter is amended by adding the following:

CHARTER AMENDMENT TO THE CITY OF AUSTIN FOR GEOGRAPHIC REPRESENTATION AND AN INDEPENDENT CITIZENS REDISTRICTING COMMISSION

1. COUNCIL MEMBERSHIP.

(A) The council shall be composed of:

- (1) a mayor elected from the city at-large; and
- (2) ten (10) council members elected from single-member districts.

(B) The term "council member(s)" includes the mayor unless otherwise provided.

(C) The independent citizens redistricting commission, as prescribed below in Article 3, shall be empowered to divide the city into ten (10) geographical council districts for the election of council members. The commission shall designate each council district by a number or by other designation.

2. ELIGIBILITY OF COUNCIL MEMBERS.

(A) A candidate for mayor must meet all eligibility requirements of state law and must have resided continuously in the state for twelve (12) months and in the city for six (6) months immediately preceding the regular filing deadline for a mayoral candidate's application for a place on the ballot. If the mayor ceases to reside in the city, the mayor automatically resigns.

(B) A candidate for city council from a council district must meet all eligibility requirements of state law and must have resided continuously in the state for twelve (12) months and in the council district from which the member is seeking election for six (6) months immediately preceding the regular filing deadline for a council candidate's application for a place on the ballot. If a council member elected from a council district ceases to reside in the district as the boundaries of the district were drawn at the time of the council member's election, the council member automatically resigns.

3. REDISTRICTING.

(A) For purposes of this section, the following terms are defined:

(1) "Commission" means the Independent Citizens Redistricting Commission.

(2) "Day" means a calendar day, except that if the final day of a period within which an act is to be performed is a Saturday, Sunday, or holiday in which the City of Austin's offices are closed, the period is extended to the next day that is not a Saturday, Sunday, or holiday in which the City of Austin's offices are closed.

(3) "Panel" means the Applicant Review Panel of three (3) qualified, independent auditors that screens applicants for the Commission.

(4) "Qualified independent auditor" means an auditor who is currently licensed by the Texas Board of Public Accountancy and has been a practicing independent auditor for at least five (5) years prior to appointment to the Applicant Review Panel.

(5) "Substantial Neglect of Duty" means that an individual has disregarded a manifest duty, prescribed by this section, intentionally, knowingly, or negligently. Missing half or more of the meetings in a three (3) month period constitutes a substantial neglect of duty.

(6) "Spouse" means one's licensed marriage spouse, common law spouse, or recognized domestic partner.

(7) "Controlling Person" means an officer, director, manager, principal, or shareholder or member owning at least 10% ownership of a legal entity.

(B) In 2013 and thereafter in each year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Commission shall adjust the boundary lines of the ten (10) single-member districts in conformance with the standards and process set forth in this Article. The Commission shall be fully established no later than July 1, 2013, and thereafter no later than March 1 in each year ending in the number one (1) thereafter. The Commission shall not draw district lines at any other time, except if the districts must be redrawn because of a judicial decision invalidating the then existing district plan, in whole or in part, or the date of the city election is moved. If the date of the city election is moved, then the dates in this article shall be adjusted to ensure the commission has sufficient time to draw the lines prior to the election date.

(C) The commission shall:

- (1) conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines;
- (2) draw district lines according to the redistricting criteria specified in this Article; and
- (3) conduct themselves with integrity and fairness. This selection process is designed to produce a commission that is independent from influence by the city council of the City of Austin and is reasonably representative of this City's diversity.

(D) The commission shall consist of 14 members.

- (1) Each commission member shall be a voter who has been continuously registered in the City of Austin for five (5) or more years immediately preceding the date of his or her appointment. Each commission member, except the student member described below, shall have voted in at least three (3) of the last five (5) City of Austin general elections immediately preceding his or her application. One commission member shall be a student duly enrolled in a community college or university in the City of Austin and who resides and is registered to vote in the City of Austin.
- (2) The term of office of each member of the commission expires upon the appointment of the first member of the succeeding commission in the year following the year in which the national census is taken.
- (3) Nine (9) members of the commission shall constitute a quorum. Nine (9) or more affirmative votes shall be required for any official action, including approval of a final plan establishing the boundaries of any council district.

(4) Each commission member shall apply this article in a manner that is impartial and that reinforces public confidence in the integrity of the redistricting process. A commission member shall be ineligible, for a period of 10 (ten) years beginning from the date of appointment, to hold elective public office for the City of Austin. A member of the commission shall be ineligible, for a period of three (3) years beginning from the date of appointment, to hold appointive public office for the City of Austin, to serve as paid staff for or as a paid consultant to the City of Austin, the city council of the City of Austin or any member of the city council of the City of Austin, or to receive a non-competitively bid contract with the City of Austin. This three (3) year ban on having a paid consultancy or entering non-competitively bid contracts applies to the member individually and all entities for which the member is a controlling person.

(E) The commission shall establish the boundaries of the council districts for the City of Austin in a plan using the following criteria as set forth in the following order of priority:

(1) Districts shall comply with the United States Constitution. Each council district shall have reasonably equal population with other districts, except where deviation is required to comply with the federal Voting Rights Act or allowable by law.

(2) Districts shall comply with the federal Voting Rights Act (42 U.S.C. Sec. 1971 and following) and any other requirement of federal or state law.

(3) Districts shall be geographically contiguous.

(4) The geographic integrity of any local neighborhood, or local community of interest shall be respected in a manner that minimizes their division to the extent possible without violating the requirements of any of the preceding subsections. A community of interest is a contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) To the extent practicable, district boundaries shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant populations.

(6) To the extent practicable, district boundaries shall be drawn using the boundaries of existing election precincts.

(7) To the extent practicable, district boundaries shall be drawn using geographically identifiable boundaries.

(F) The place of residence of any incumbent or potential political candidate shall not be considered in the creation of a plan or any district. Districts shall not be drawn for the purpose of favoring or discriminating against any incumbent, political candidate, or political group.

(G) By December 1, 2013, and by November 1 in each year ending in the number one (1) thereafter, the commission shall adopt a final plan for the City of Austin specifically describing the district boundaries for each of the council districts prescribed above. Upon adoption, the commission shall certify the plan to the city council of the City of Austin. The city council may not change the plan. The plan shall have the force and effect of law.

(1) The commission shall issue a report that explains the basis on which the commission made its decisions in achieving compliance with the criteria listed above and shall include definitions of the terms and standards used in drawing the final plan.

(2) If the commission does not adopt a final plan by the dates in this section, the city attorney for the City of Austin shall immediately petition state court for an order prescribing the boundary lines of the single-member districts in accordance with the redistricting criteria and requirements set forth in this Section. The plan prescribed by the court shall be used for all subsequent city council elections until a final plan is adopted by the commission to replace it.

(H) The commission has the sole legal standing to defend any action regarding a certified final map, and shall inform the city council of the City of Austin if it determines that funds or other resources provided for the operation of the commission are not adequate. The city council of the City of Austin shall provide adequate funding to defend any action regarding a certified map. The commission has sole authority to determine whether the city attorney or other legal counsel retained by the commission at its discretion shall represent the commission in defense of a certified final map.

(I) Commission Selection Process.

(1) No later than December 1, 2012, and by June 1 in each year ending in the number zero (0) thereafter, the City of Austin Auditor shall initiate and widely publicize an application process, open to all registered City of Austin voters who meet the requirements of subsection 3(D)(1) above, in a manner that promotes a large, diverse (by race, ethnicity, gender, and geographic) and qualified Commissioner applicant pool. The City Auditor shall take all reasonable and necessary steps to ensure that the pool has the requisite numbers, diversity, and qualifications. This process shall remain open until February 1, 2013 or until September 30 in each year ending in the number zero (0) thereafter.

(2) No later than December 1, 2012 and by June 1 in each year ending in the number zero (0) thereafter, the City of Austin Auditor shall initiate and widely publicize an application process, open to all qualified independent auditors that reside in the City of Austin and who meet the requirements of subsection 3(A)(4) above, in a manner that promotes a large pool of applicants and applicant diversity by race, ethnicity, gender, and geography. This process shall remain open until February 1, 2013, or until September 1 in each year ending in the number zero (0) thereafter.

(3) The City of Austin Auditor shall remove from the commissioner or independent auditor applicant pool any person with conflicts of interest including:

(A) Within the 5 years immediately preceding the date of application, either the applicant or their spouse, shall have done any of the following:

(i) Been appointed to, elected to, or have been a candidate for state or city office.

(ii) Served as an officer, employee, or paid consultant of a political party or of the campaign committee of a candidate for elective state, county or city office.

(iii) Been a registered state or local lobbyist.

(iv) Contributed or bundled one thousand dollars (\$1,000) or more in aggregate to candidates for City of Austin elective office in the last City election.

(B) A person who has been, within the three (3) years immediately preceding the date of application: a paid employee of the City of Austin; person performing paid services under a professional or political contract to the City of Austin, to the city council of the City of Austin, or to any member of the city council of the City of Austin; any Controlling Person of any such consultant; or a spouse of any of the foregoing.

(4) No later than February 15, 2013, and no later than October 1 in each year ending in the number zero (0), the City of Austin Auditor shall review the auditor review panel applicants and remove those who do not meet the prescribed qualifications in subsection 3(a)(4) or have conflicts of interest as defined by subsection 3(I)(3). No later than February 15, 2013, and no later than October 1 in each year ending in the number zero (0), the City of Austin Auditor shall at a public meeting randomly draw the names of three (3) qualified independent auditors from a pool consisting of all qualified independent auditors, without conflicts of interest, that have applied to serve on the Applicant Review Panel. After the drawing, the City Auditor shall notify the three (3) qualified independent

auditors whose names have been drawn that they have been selected to serve on the panel. If any of the three (3) qualified independent auditors declines to serve on the panel or is disqualified because of any conflict of interest prescribed above in subsection 3(I)(2), the City of Austin Auditor shall resume the random drawing at a public meeting as soon as possible until three (3) qualified independent auditors who meet the requirements of this section have agreed to serve on the panel.

(5) No later than March 1, 2013, and no later than October 31 in each year ending in the number zero (0) thereafter, the City of Austin Auditor shall have reviewed and removed individuals with conflicts of interest as defined in subsection 3(I)(3), or fail to meet the qualification prescribed in subsection 3(D)(1), from among the commission applicants, and then shall publicize the names in the applicant pool and provide copies of their applications to the Applicant Review Panel.

(6) No later than May 1, 2013, and by January 15 in each year ending in the number one (1) thereafter, the Applicant Review Panel shall select a pool of sixty (60) applicants from among the qualified applicants. These persons shall be the most qualified applicants on the basis of relevant analytical skills, ability to be impartial, residency in various parts of the City, and appreciation for the City of Austin's diverse demographics and geography. The members of the Applicant Review Panel shall not communicate directly or indirectly with any elected member of the Austin City Council, or their representatives, about any matter related to the nomination process or any applicant prior to the presentation by the panel of the pool of recommended applicants to the council of the City of Austin.

(7) No later than May 2, 2013, and by January 16 in each year ending in the number one (1) thereafter, the Applicant Review Panel shall submit its pool of sixty (60) recommended applicants to the council of the City of Austin. Each member of the council of the City of Austin within five (5) days in writing may strike up to one (1) applicant from the pool of applicants. No reason need be given for a strike. Any applicant struck by any member of the council of the City of Austin must be removed from the pool of applicants. No later than May 8, 2013, and by January 22 in each year ending in one (1) thereafter, the Applicant Review Panel shall submit the pool of remaining applicants to the City of Austin Auditor.

(8) No later than May 9, 2013 and by January 23 in each year ending in the number one (1) thereafter, the City of Austin Auditor shall randomly draw at a public meeting eight (8) names from the remaining pool of applicants. These eight (8) individuals shall serve on the Citizens Redistricting Commission.

(9) No later than June 30, 2013, and by February 28 in each year ending in the number one (1) thereafter, the eight (8) commissioners shall review the remaining names in the pool of applicants and, from the remaining applicants in that pool, shall appoint six (6) applicants to the commission. These six (6) appointees must

be approved by at least five (5) affirmative votes among the eight (8) commissioners. These six (6) appointees shall be chosen to ensure that the commission reflects the diversity of the City of Austin, including, but not limited to, racial, ethnic, and gender diversity. However, it is not intended that formulas or specific ratios be applied for this purpose. Applicants shall also be chosen based on relevant analytical skills and ability to be impartial. As for geographic diversity, for the first redistricting in 2013, the eight (8) commissioners shall appoint the remaining six (6) members to ensure geographic diversity and that at least three (3) commissioners come from each of the four (4) existing Travis County Commissioners districts, to the extent feasible with the remaining six (6) open seats. As for the redistricting in each year ending in the number one (1) thereafter, the eight (8) commissioners shall ensure that at least one (1) commission member resides in each of the then current council districts, to the extent feasible with the remaining six (6) open seats.

(10) Once constituted, the commission shall conduct hearings and adopt a plan for the boundaries of the city's council districts as required by the charter of the City of Austin.

(J) Citizens Redistricting Commission Vacancy, Removal, Resignation, or Absence.

(1) In the event of substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office, a member of the commission, having been served written notice and provided with an opportunity for a response, may be removed by a vote of ten (10) of the Commissioners.

(2) Any vacancy, whether created by removal, resignation, or absence, in the fourteen (14) commission positions shall be filled by the Commission within fifteen (15) days after the vacancy occurs, from the remaining pool of applicants and in compliance with the applicant requirements of subsection 3(1)(8). Nine (9) members must agree to any appointment.

(K) The activities of the Citizens Redistricting Commission are subject to all of the following:

(1) The commission shall comply with all state and city requirements for open meetings.

(2) The records of the commission and all data considered by the commission are public records that will be made available in a manner that ensures immediate and widespread public access.

(3) Commission members and commission staff may not communicate with or receive communications about redistricting matters from anyone outside of a public hearing. This paragraph does not prohibit communication between

commission members, commission staff (which shall exclude staff of any council members), legal counsel, and consultants retained by the commission that is otherwise permitted by state and city open meeting requirements.

(4) The commission shall select one of its members to serve as the chair and one to serve as vice chair. The chair and vice chair shall remain voting members of the commission.

(5) The commission shall hire commission staff, legal counsel, and consultants as needed; provided, however, that compensation of such persons shall be limited to the period in which the commission is active. The commission shall establish clear criteria for the hiring and removal of these individuals, communication protocols, and a code of conduct. The commission shall apply the conflicts of interest listed in subsection 3(1)(3) to the hiring of staff, legal counsel, and consultants. The commission shall require that at least one of the legal counsel hired by the commission has demonstrated extensive experience and expertise in implementation and enforcement of the federal Voting Rights Act of 1965 (42 U.S.C. Sec. 1971 and following). The commission shall make hiring, removal, or contracting decisions on staff, legal counsel, and consultants by nine or more affirmative votes.

(6) Notwithstanding any other provision of law, no employer shall discharge, threaten to discharge, intimidate, coerce, or retaliate against any employee by reason of such employee's membership on the commission or attendance or scheduled attendance at any meeting of the commission.

(7) The commission shall establish and implement an open hearing process for public input and deliberation that shall be subject to public notice and promoted through an extensive outreach program to solicit broad public participation in the redistricting public review process. The hearing process shall begin with hearings to receive public input before the commission votes and approves a preliminary redistricting plan. In 2013, there shall be at least two (2) such public hearings, before the commission votes on a preliminary plan, in each of the four (4) Travis County Commissioner Precincts, and in each year ending in the number one (1) thereafter, there shall be at least one (1) such public hearing, before the commission votes on a preliminary redistricting plan in each of the then existing ten (10) council districts. In addition, these hearings shall be supplemented with all other appropriate activities to further increase opportunities for the public to observe and participate in the review process.

Following the commission's vote approving the preliminary plan, there shall be at least four (4) public hearings, geographically dispersed with at least one hearing in each of the four Travis County Commissioners' precincts and hearing shall be held on a different date. The commission also shall display the approved preliminary

plan for written public comment in a manner designed to achieve the widest public access reasonably possible. Written public comment shall be taken for at least fourteen (14) days from the date of public display of the approved preliminary plan. The commission then shall vote on a proposed final plan and then it shall hold two subsequent public hearings, one north of Lady Bird Lake and one south of Lady Bird Lake and take at least five (5) days of written public comments. The Commission then shall be finished with all hearings and adopt a final plan by no later than December 1, 2013, and by November 1 in each year ending in the number one (1) thereafter.

(8) Members of the commission shall not be compensated for their service. Members of the panel and the commission are eligible for reimbursement of reasonable and necessary personal expenses incurred in connection with the duties performed pursuant to this act.

(9) The council of the City of Austin shall appropriate sufficient funds to meet the operational cost of the commission and the cost of any outreach program to solicit broad public participation in the redistricting process.

(10) The commission shall remain inactive except when necessary to comply with its duties under this ordinance and the charter of the City of Austin.

4. TRANSITION.

(A) This section provides for a transition from the seven (7)-member council elected at large to the eleven (11)-member council provided by this article. Except as provided in this section, and after the transition as prescribed in this section, the mayor and council members shall serve three (3)-year terms.

(B) The three (3) council members elected at large in May 2011 shall serve three (3)-year terms. The mayor and three (3) council members elected at-large in the May 2012 general election shall serve two (2)-year terms.

(C) A general election shall be held for the council in May 2014, at which the mayor and the ten (10) council members elected from council districts shall be elected.

(D) As soon as practicable after assuming office after the May 2014 general election, the City Clerk shall divide at a public hearing the council members elected from council districts into two (2) classes by drawing lots. Class One shall consist of five (5) council members who shall serve initial two (2)-year terms. Class Two shall consist of five (5) council members who shall serve three (3)-year terms.

(E) At the May 2016 general election, the five (5) Class One council members elected by districts will be elected for three (3)-year terms.

(F) At the May 2017 general election, the Mayor and five (5) Class Two council members elected by districts will be elected for three (3) year terms, marking the end of the transition period.

PART 4. This ordinance takes effect on August 13, 2012.

PASSED AND APPROVED

_____, August 2, 2012

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§ _____
Lee Loffingwell
Mayor

APPROVED: _____
Karen M. Kennard
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk