

Statesman

For good or bad, petition elections a growing trend in Texas

By Philip Jankowski

Posted Jan 24, 2019 at 7:13 PM

Updated Jan 24, 2019 at 11:55 PM

The filing of a petition ostensibly created to undo a stadium deal between the city of Austin and the ownership of Austin's new Major League Soccer franchise has added fuel to the fire for many who think recent efforts have shown that it is too easy to add petitions to a ballot.

The latest petition has been heralded as direct democracy by a loose collective of activists, many of whom live near the stadium site in North Austin. But the campaign for it was backed by more than \$125,000 from Bobby Epstein, the man who likely stands to lose the most if a MLS club comes to Austin. Epstein is the head of Austin Bold FC, a fledgling United Soccer League franchise that would be largely overshadowed by its major league counterpart once Austin FC begins play in 2021.

To Austin Mayor Steve Adler, Epstein's role regarding the stadium petition reinforces Adler's belief that petition efforts, such as the 2016 one tied to city-mandated background checks for Uber and Lyft drivers, are too easily pushed across the finish line.

"The bar to get something on the ballot is too low," Adler said in a phone interview last week. "So it doesn't take that extraordinary item; it is just something that you can just hire a company, and in five weeks they can get all the signatures they need."

State law allows home-rule cities to create the rules governing petition elections. But the general rule applied to most cities, including Austin, is that petition organizers must gather signatures from either 5 percent of a city's registered voters or 20,000 people, whichever number is smaller. In Austin, the 20,000 requirement is fewer than 3 percent of the city's registered voters.

The appeal of direct democracy is nothing new in Austin. The legendary Save Our Springs fight in the 1990s included an election triggered by a petition. A petition election in 2007 nearly undid city subsidies for the Domain shopping center, which isn't far from the planned 20,000-seat stadium for Austin FC. And without a petition spurring a vote, the City Council would still be made up of seven at-large seats instead of 10 district-based members and an at-large mayor.

In recent years, petition campaigns have increasingly been funded by corporate interests, the case with the Uber and Lyft election, and, to a much lesser degree, the anti-CodeNext effort in 2018 that resulted in Proposition J. And some mysterious so-called dark money helped fuel the effort to place the third-party City Hall audit question, Proposition K, on November's ballot as well.

Critics of the system say it gives too much power to small, vocal groups. Proponents believe it is one of the purest forms of democracy, a direct chance for voters to judge for themselves the merits of a proposed or existing local law.

"Often city councils cannot accept that this process exists and that citizens can use it," said local attorney Fred Lewis, who was a main organizer behind the petition that led to Prop J. "There is generally a hostility to it."

In recent years, Austinites have rejected every petition ordinance by notable margins since the 10-1 City Council question passed in 2014. But elsewhere in Texas, petition elections had more success in 2018.

In Houston, voters approved a petition ordinance that will raise firefighter pay to match police pay, resulting in pay increases city officials there estimate could be as high as 29 percent. Mayor Sylvester Turner has said the pay increases will force the city to lay off hundreds of police officers and firefighters. In this instance, the petition effort was supported by hundreds of thousands of dollars in contributions from political action committees connected to firefighter unions, according to campaign finance reports.

In San Antonio, the local firefighters union also spent hundreds of thousands on a successful effort to apply term limits and a salary cap to the city manager. The same union also backed a petition that called for giving the union more power in negotiating the union's contract. A third citizen-driven ballot measure, which would have lowered the amount of signatures needed to put a petition on a

ballot, failed.

In Arlington, meanwhile, voters approved a petition-initiated proposition that created term limits for city council members, applying them retroactively. Campaign finance reports, though, appear to show little politically oriented fundraising for or against the item.

A 2008 survey by the Texas Municipal League found that 88 percent of home-rule cities — ones with more than 5,000 residents that have adopted a city charter — have provisions in place for initiative and referendum elections triggered by petitions. The survey also found that petition elections occurred in only 14 percent of those cities in the five years leading up to the study.

“We went years and years without seeing these happen,” Texas Municipal League Director Bennett Sandlin said. “All the sudden in the last couple of years, it has taken off.”

Changing the threshold for a petition ordinance would require amending Austin’s City Charter. That can only be done through an election, and there was no talk of changing those requirements during last year’s review of the charter. And no members of the City Council, which would have to order the election, have pushed for a change.

When a petition is certified, the City Council can either order an election or adopt the proposed ordinance outright.

In recent years, the Austin council has tended to resist petition ordinances, Lewis said. In the case of Lewis’ anti-CodeNext petition, the city refused to put the proposed ordinance on the ballot, which led to a lawsuit. Lewis and fellow lawyer Bill Bunch prevailed in that legal battle.

The City Council, however, was able to push back by adopting ballot language that many Prop J proponents said was biased against their cause. Similar complaints arose about the ballot language for Prop K as well. Again, the city was sued, but this time, the city won.

“There is minimal case law or common law control of (ballot language),” Lewis said.

That could come to an end in the 2019 Legislature. State Sen. Joan Huffman, R-Houston, filed a bill Jan. 10 that would require citizen-initiative ballot language to be approved by a city's regional appellate court if the city is located in a county with a population greater than 120,000 people. No action has been taken so far on Huffman's bill, SB 323.