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July 21, 2020

Craig Morgan
Mayor, City of Round Rock
221 E. Main St.
Round Rock, Texas 78664

Re: Legal memorandum related to the May 2020 election.

Dear Mayor Morgan:

You have requested that I summarize the relevant state statutes, the Round Rock Home Rule Charter, and the Round Rock Code of Ordinances with respect to holding City of Round Rock city elections. It is my understanding that this memo is for the benefit of the City Council, as well as for members of the public who have raised questions regarding the Council's recent decision with respect to the May 2020 general election that was postponed because of Governor Abbott's proclamation.

The City of Round Rock Home Rule Charter includes a provision regarding the holding of City elections. Sec. 5.01(a) of the Charter reads as follows:

Sec. 5.01. City elections.

- (a) *Schedule. The regular City Election will be held annually in accordance with the provisions of V.T.C.A., Election Code ch. 41. The City Council shall, by ordinance, establish the general election date.* Elections for candidates who are unopposed may be canceled in accordance with the provisions of V.T.C.A., Election Code, ch. 2, subch. C. The City Council shall be responsible to specify places for holding such election. (Emphasis added.)

Over 40 years ago, in compliance with the above section of the Charter, the City Council adopted an ordinance establishing the first Saturday in May as the uniform election date for City elections. Sec. 2-25(a) of the Round Rock Code of Ordinances reads as follows:

Sec. 2-25. General city elections and commencement of terms.

- (a) Pursuant to section 5.01(a) of the City Charter, *the general election will be held annually in May on the uniform election date established in accordance with the provisions of V.T.C.A., Election Code ch. 1 et seq.* (Emphasis added.)

Both sections of the Charter and Code of Ordinances referenced the Texas Election Code. Among other things, Chapter 41 of the Texas Election Code establishes the uniform election dates on which governmental entities are permitted to hold elections. Section 41.001(a) reads as follows:

(a) Except as otherwise provided by this subchapter, each general or special election in this state shall be held on one of the following dates:

- (1) *the first Saturday in May in an odd-numbered year;*
 - (2) *the first Saturday in May in an even-numbered year,* for an election held by a political subdivision other than a county; or
 - (3) *the first Tuesday after the first Monday in November.*
- (Emphasis added.)

Sec. 41.0052 of the Texas Election Code granted governmental entities the limited authority to change their election date from May to November. However, there was an absolute statutory deadline for doing so. Sec. 41.0052 reads as follows:

Sec. 41.0052. CHANGING GENERAL ELECTION DATE. (a) The governing body of a political subdivision, other than a county or municipal utility district, that holds its general election for officers on a date other than the November uniform election date may, ***not later than December 31, 2016,*** change the date on which it holds its general election for officers to the November uniform election date.

Therefore, after December 31, 2016 the Texas Election Code prohibits the City of Round Rock from changing its election date from the first Saturday of May to November.

On January 23, 2020, in compliance with the Texas Election Code, the Charter, and the Code of Ordinances, the City Council ordered the general election for 2020 to be held on May 2, 2020.

On March 18, 2020, in response to the Covid-19 pandemic, Governor Greg Abbott issued a proclamation suspending Texas Election Code, Sec. 41.0052(a) as follows:

... to the extent necessary to ***allow*** political subdivisions that would otherwise hold election on May 2, 2020, to move their general and special election for 2020 only to the next uniform election date, occurring on November 3, 2020. . . . (Emphasis added.)

It is important to note that Governor Abbott did not order elections to be held on November 3, 2020. It merely allowed them to be moved.

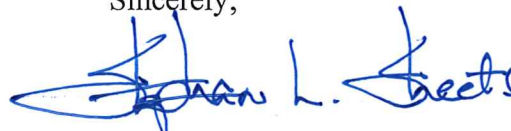
It is equally important to note that while Governor Abbott has the authority to suspend provisions of the Texas Election Code, he does not have the authority to suspend duly adopted home rule charters or city ordinances.

In spite of the Governor's Proclamation, Round Rock could have continued holding its 2020 general election on May 2 but for the Governor's suspension of additional sections of the Texas Election Code that require county election officers to furnish election services to political subdivisions. As a result of the Governor's suspension, the Travis and Williamson County election officers notified the City that they declined to furnish the election services for a May 2 election.

Once the City of Round Rock's May 2, 2020 election was postponed as a result of the Governor's and the County Election Officers' actions, the Charter and Code of Ordinances provide that the election must then be held on the first Saturday of May, 2021.

Let me know if you have any other questions regarding this matter.

Sincerely,



Stephan L. Sheets
City Attorney

cc:

Writ Baese, Mayor Pro-tem

Tammy Young, Council Place 1

Rene Flores, Council Place 2

Matt Baker, Council Place 3

Will Peckham, Council Place 4

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Laurie Hadley, City Manager