



CITY OF EL PASO

City of El Paso Citizen Led Climate Charter Petition

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June 2023

Charter Amendments

TX Loc Gvt Code Section 9.004(a)

- Governing body of a municipality **may** submit charter amendments to the municipality's qualified voters for their approval
- The governing body **shall** submit a proposed charter amendment to the voters for their approval at an election if supported by a petition signed by at least 5% of qualified voters OR 20,000 signatures of qualified voter whichever is less.

Climate Petition Summary

- On July 25, 2022, Ground Game Texas submitted a petition to the City proposing amendments to the City's home rule charter creating Article IX titled "**Climate Policy.**"
- The proposed amendments would create a detailed "climate policy" comprised of 15 articles added into Title IX of the Charter.



Timeline

January 17, 2023

- Council advised of ministerial obligation: proposed amendments *must* go on the ballot; legality is determined if measure passes

February 7, 2023

- Council passed ordinance ordering election, with one ballot proposition for the full proposal

April 24, 2023

- Legal Counsel advising regarding next steps and legal options

May 6, 2023

- Election

Lessons Learned

Timing requirement for City Clerk to count signatures

City Council's obligation to order election

Ballot Requirements

Recourse for invalid signatures

Pitfalls for fiscal impact requirements



Timing Requirements to Act on Proposition

July 25, 2022: Ground Game files Climate Policy petition wanting certification within 2 weeks to post on the November 2022 election.

Legal Question:

What was the City's obligation to certify the petition and order the election?



Verify Signatures

Election Code Section 277

- The City Clerk/Secretary is charged with authenticating the signer's
- Signature (must appear in signer's own handwriting)
- Name
- DOB or Voter Registration Number
- Residential address

Timing Requirements to Act on Proposition

- There is a ministerial duty to certify the petition and count the signatures.
- Our charter doesn't set a time limit for City Clerk/Secretary to certify the petition.
- The petition we received had approximately **36,360** signatures that needed to be verified.

City of Plano v. Carruth

2017 WL 711656

- Per **City of Plano v. Carruth**, City Council had no duty to act on the petition until the petition was actually presented by the City Clerk/Secretary.
- In **City of Plano v. Carruth** the petitioners gave the City Secretary more than **2 months** to certify the petition before filing suit, and it is unclear whether the City Secretary made any attempts to certify the petition.
- In our case, the request was to certify the petition within **2 weeks**. The City's November Charter Amendment election was postponed, and the petition was certified in November 2022.

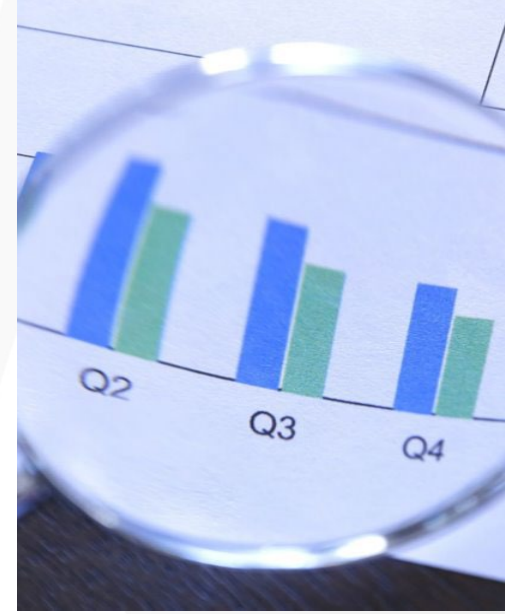


Verifying Signatures Statistical Sampling

Elections Code 277.003

Petition with more than 1,000 signatures maybe use any reasonable statistical sampling method in determining whether the petition contains required number of signatures

Sample may not be less than 25% of the total number of signatures appearing on petition or 1,000 whichever is greater



Ministerial Obligation to Order an Election

In **Coalson v. City Council of Victoria**, 610 S.W.2d 744 (TXSC 1980) the court held that, “[t]he City Council's duty is clear, and its compliance with the law is ministerial in nature. The City Council's refusal to submit the proposed amendments to the vote of the people thwarts not only the legislature's mandate but the will of the public.”



Legality of Climate Policy Charter

- Prohibited hiring a climate director who had worked in fossil fuel industry
- Prohibited the sale of water to fossil fuel businesses
- However, the law is clear regarding the requirement to place the proposed amendments on the ballot.
- If sufficient signatures are presented to the City, then the City Clerk must place the proposed amendments on the ballot for consideration of the public per **In re Woodfill 470 S.W.3d 473 (TXSC 2015)**

Ministerial Obligation to Order an Election-Case cont.



In **Green v. City of Lubbock**, 627 S.W.2d 868 (1981) the Amarillo Court of Appeals considered when a party's complaints about a charter amendment should be litigated.

Relying on the Texas Supreme Court's opinion in **Coalson** the court concluded that “when article 1170 is satisfied, the election is held first and questions concerning the amendments are litigated later.”

Ministerial Obligation to Order an Election

- The questions on the legality of the amendments would have to be litigated after the election, should the amendments be adopted.
- If the amendments were to be approved by the voters, which City Council believed were legally unenforceable, two courses of action would be available.

Subject Matter and Ballot Requirements

- The Climate Policy was **6** pages long, and there was a question on whether the proposed proposition could be divided into separate propositions.
- The City Council is given broad discretion in determining the ballot language for proposed charter amendments. All cases reviewed regarding this issue have been resolved in favor of the authority ordering the election.

Single Subject Matter and Ballot Requirements

- **Texas Local Government Code Section 9.004(d)** provides that a charter amendment must be limited to a single subject.
- The ballot shall be prepared so that a voter may approve or disapprove any one or more amendments without having to approve or disapprove all the amendments.
- What constitutes the same subject matter and requirements for the ballot are generally construed broadly. City Council is responsible for prescribing the language of a proposition that is to appear on the ballot.

Recourse if we believed the signatures were not valid...

- **Galena Park v. Ponder** 503 S.W.3d 625 (Houston, 14th)
- In this case, the Court stated the manner of submission of the election petition materials left it unclear whether the petition submitted was the one supported by the signatories because there was no evidence that conclusively showed that the petition was the one the signatories supported.

Differences from *Galena Park*

In our situation, when the signatures were being gathered, the signatories were given a copy of the entire climate policy being proposed, and the proposed amendments were attached to the signature pages.

The signature pages had this description of the amendments:

" A petition to amend the City Charter of El Paso to adopt a climate policy that would create jobs, conserve water, encourage solar power generation, and reduce the City's contribution to climate change. Full text of proposed charter amendment attached. By signing, you agree to receive an updated voter registration form if your registration is not current."

Differences from *Galena Park*



- Unlike *Galena Park*, a court would have to consider whether there was evidence that supported conclusively that the petition was the one the signatories supported.
- The Court would need to determine whether the proposed amendments presented were the actual amendments that the signatories were demanding be placed on the ballot.

Ethics Complaint

- **TX Local Government Code Section 9.004 (c)(2)** include an estimate of the fiscal impact a proposition may have.
- The City received an ethics complaint stating we were advocating against the Climate Policy Initiative by providing a fiscal impact.



Ethics Complaint

Per past cases the Ethics Commission has considered, providing this fiscal impact estimate is not likely to be a violation of the penal or ethics code. The critical question was whether the information provided supported or opposed a measure.



Opinion No. 538

(AOR-610) April 8, 2016



- In this opinion by the Ethics Commission, the City wanted to release information in the form of a brochure to answer questions regarding the election. The question considered was whether the brochure constituted “political advertising.”
- It was held that although the brochure included information beyond a factual description of the measure, it was not political advertising. The brochure did not promote an outcome of the measure and therefore did not constitute political advertising as defined in section 251.001(16) of the Election Code.

Opinion No. 526

(AOR-594) April 16, 2015

The election to be held was whether the city should adopt a “Type B” economic development sales and use tax within the city.

- The city prepared three separate communications to inform voters of the facts pertinent to the election, including a newsletter/ “independent mailer.”
- It was held that the newsletter includes information beyond a factual description of a measure. However, in the Texas Ethics Commission’s opinion, “the newsletter provides information and discussion of a measure without promoting the outcome of the measure and does not constitute political advertising as the term is defined in section 251.001(16) of the Election Code.” Ethics Advisory Opinion No. 526 (AOR-594) April 16, 2015.

Thank You!

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MISSION



Deliver exceptional services to support a high quality of life and place for our community.

VISION



Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government.



VALUES

Integrity, **R**espect, **E**xcellence,
Accountability, **P**eople

MISIÓN



Brindar servicios excepcionales para respaldar una vida y un lugar de alta calidad para nuestra comunidad

VISIÓN



Desarrollar una economía regional vibrante, vecindarios seguros y hermosos y oportunidades recreativas, culturales y educativas excepcionales impulsadas por un gobierno de alto desempeño



VALORES

Integridad, Respeto, Excelencia,
Responsabilidad, Personas