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Dear Mr. Bojorquez:

What follows is our recommendation for how the City of Lakeway could handle their general election to be held on May 5, 2018, given that place numbers have not been assigned and as a consequence, no candidates filed for specific places, and it will not be possible for the candidates to be elected by majority vote, as required by Article XI, Section 11 when terms of office are more than 2 years.

We do recommend that the city pass an ordinance officially to postpone implementation of the 2014 charter amendment giving the council 3-year terms and to go back to 2 year terms until a place system has been implemented, or preferably, single member districts (SMDs) drawn. The city cannot implement the 3 year term without assigning places (or having SMDs), due to the constitutionally-mandated majority vote requirement. Although we agree that the charter eventually should be amended to add the place system/SMDs, we think it may be possible to initially add at least a place system by ordinance.

We discussed such a possibility with the Texas Municipal League (TML) recently in regards to another city with the same issue, and TML was of the belief that the place system could be implemented via ordinance. You may want to visit

Untitled

with TML about that process. We note that the next opportunity to have a charter amendment election will be in November of 2020. Unfortunately, the uniform election date of May 2, 2020 falls a few days short of the constitutional requirement to wait until two years after May 5, 2018.

Additionally, if the council enacts an ordinance that delays the implementation of the 3-year terms and reverts back to 2 year terms, this will remove the requirement for the city to hold a special election under Article XI, Section 11 of the Texas Constitution, that was triggered when one of the sitting council members decided to file a candidate application for Mayor. If the individual who appeared to have triggered that is not elected as Mayor on May 5, 2018, then she may continue to serve as a council member.

We reviewed the elections held by the city since 2015 onward to try to determine what the current schedule should be and which places should be on the ballot. It is not really possible to make exact determinations of which specific individuals should be on the ballot this time, since there are no place numbers or other seat assignments, with the exception of the office of Mayor. In reality, all of the offices arguably are vacant and the

Untitled

sitting members are serving as hold-overs. This is due to two things. First, the council members were improperly “elected” by plurality to three year terms. Second, the 2016 election was apparently cancelled despite the stagger set forth in the city’s charter providing that in 2016, the top 2 vote-getters would be elected to three year terms and the third-highest vote-getter being elected to a 2 year term. We do not know how the city eventually determined which of the three individuals declared elected in 2016 would have the 3-year terms and which the 2-year term. However that determination was made, it appears it was not in compliance with the city charter’s transition schedule. As outlined below, the existence of vacancies due to the failure to follow the constitution and election law sets up a very complex situation, which is difficult to remedy. This brings us to the conclusion that the best way forward is to essentially re-set things, beginning with this election.

The current election has 2 at-large council member positions on the ballot, as well as the office of Mayor. We suggest that the two individuals who receive the most votes for city council be deemed to have been elected to 2 year terms (to expire in 2020). For the office of Mayor, we suggest that

Untitled

whomever is elected as Mayor be deemed to have been elected to an unexpired term of one year, and the office must go on the ballot again in 2019. The reasons for this are as follows:

The office of Mayor was last up for election in 2015. From a review of the ballot at that time, the mayoral candidate was unopposed, and the ballot reads that the unopposed candidate for mayor is declared elected. We can find no evidence of an ordinance that actually declared that individual elected and cancelled that portion of the general election. Regardless, we note that it was not legal for that individual to have declared elected and that portion of the election to have been cancelled, as there were still opposed at large offices on the ballot. No portion of a general election may be cancelled when there are still opposed at-large candidates on the ballot. See TEC Section 2.051. The office of Mayor should have been on the ballot, and the lone candidate for that office must have received at least one vote in order to be elected. As this did not occur, the individual was not elected to office. If the individual was an incumbent, he has been holding over since that time. If the city now determines that they are going to postpone implementation of the charter amendment going to 3-year terms, and

Untitled

applies that retro-actively (which we recommend), then the office of Mayor should have been on the ballot for a full term in 2017 (putting aside that it should have been filled by appointment or by special election since the individual was not actually elected due to not appearing on the ballot). Since the office of Mayor was not on the ballot in 2017, then we believe the safest and most challenge-free position to take is that the office of Mayor is now on the ballot for the remainder of the term (1 year), and the office of will then go on the ballot again for the full term in 2019. See Tex. Att'y Gen. Op. No. 0-497 (1939); Sec'y State Op. No. JWF-36 (1984) (if nobody is elected at the scheduled election, this creates a vacancy).

After this election, we recommend that the city council then pass an ordinance assigning place numbers to the council members. We recommend assigning place 1 and place 2 to the two individuals who will just have been elected, and then assigning places 3-6 to the remaining council members. We further recommend that the council order a special election to fill a vacancy (as allowed by the city's charter), to fill the positions where individuals are holding over, which will be for places 3-6. We recommend that the city include in the ordinance designating the place

Untitled

numbers and also in the order of the election the staggering of these terms, so that places 4-6, filled at a special election in November 2018, must go on the ballot again in May 2019, along with the office of Mayor. At that time, the charter provision for three year terms could be implemented, with these council members and the Mayor being elected by majority to three year terms beginning in May 2019. The individual who is elected to Place 3 in the special election in November 2018 would serve until May of 2020. Then, in May 2020, the council members in Places 1-3 would be elected by majority to three year terms. This will allow the city to proceed with a stagger of "4-3-none," so that elections are held two years in a row and then skip a year. For example, Places 4-6 and Mayor would be up in May 2019 for three year terms, then again in 2022. Places 1-3 would be up in 2020 for three-year terms, and again in 2023. No general election would be held in 2024, and then the order would be repeated

This is a proposed transition schedule we reached after discussing with our legal staff. If you have additional or corrected information, we would be glad to review it. We stand ready to discuss any variations of this schedule (e.g., having a special election in November 2018, and then having the

Untitled

whole council up in 2020). However, our basic advice remains the same. The city officials should refrain from implementing three-year terms for the mayor or council until they have a mechanism for majority vote.

I hope this is helpful.

Sincerely,

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