

CITY COUNCIL MEETING DATE: MAY 5, 2020



## CITY COUNCIL AGENDA ITEM #8

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**STAFF PREPARER:** Sylvia Carrillo, City Administrator, [scarrillo@sunsetvalley.org](mailto:scarrillo@sunsetvalley.org)

**SPONSOR:** Mayor Cardona, [rcardona@sunsetvalley.org](mailto:rcardona@sunsetvalley.org)/Administration  
[scarrillo@sunsetvalley.org](mailto:scarrillo@sunsetvalley.org)

**SUBJECT: ADMINISTRATION – RFQ SELECTION – LEGAL SERVICES**

**DESCRIPTION:** Presentation and selection of a law firm/attorney to serve as City Attorney pursuant to RFQ for Legal Services approved for issuance on January 7, 2020.

**BACKGROUND:** On January 7<sup>th</sup>, the City Council approved the Request for Qualifications for Legal Services. Two firms were responsive and both firms are presented here.

Scoring Criteria

The Attorneys were presented with four (4) questions presented here; however, given that both firms would be presented to Council, none of the questions were scored. Instead, the Council was asked to provide three (3) questions each they would like to ask each firm. The questions and their responses are provided as an attachment to this agenda item.

### ***Original Questions to Legal Firms***

1. *Tell us about your communication style to both the Council and to staff assigned.*
2. *Tell us about your experience with Zoning, Land Development Code, and other complex ordinance development.*
3. *Tell us about an incident where you were asked to provide information to only one member of the Council. How did you handle that?*
4. *How flexible is your work process and turnaround time for requests from either staff or elected officials?*

**APPLICABLE CODE SECTIONS:** NA

**FUNDING:** General Fund

**STAFF RECOMMENDATION:** Select and Appoint a Legal Firm

**SUPPORTING MATERIALS PROVIDED:** Council questions and firm responses

**The Knight Law Firm, LLP**  
*Attorneys at Law*

March 17, 2020

VIA Hand-Delivered

City of Sunset Valley  
Attn: City Administrator, Sylvia Carrillo-Trevino  
3205 Jones Road  
Sunset Valley, Texas 78745

Executive Office Terrace Suites  
223 West Anderson Lane  
Suite A-105  
Austin, Texas 78752  
Tel: 512.323.5778  
Fax: 512.323.5773  
[www.cityattorneytexas.com](http://www.cityattorneytexas.com)  
[attorneys@cityattorneytexas.com](mailto:attorneys@cityattorneytexas.com)

Re: Statement of Qualifications for City Attorney/Legal Services

Dear Mayor Cardona, City Council and Ms. Carrillo-Trevino:

Please accept this letter and attachments as The Knight Law Firm, LLP's Statement of Qualifications for the Request for City Attorney and Legal Services for the City.

The lawyers at The Knight Law Firm have specifically chosen, and have a particular expertise in, areas that support the critical needs of municipal and local governmental entities. The firm provides general counsel services for a number of general law and home rule cities, boards and commissions, as well as other political subdivisions and utility providers throughout Texas. Through our exceptional legal representation, our Firm provides a broad variety of municipal, litigation, and other governmental matters: from the routine to the unique.

Every city has different needs, and we adapt to each of them in order to fulfill those objectives. Not only will these high-cost projects be an exception rather than norm, but our institutional knowledge of the City's personnel, codes, and policies keep the costs of service low even in areas where the costs may seem high.

We realize that City business does not happen solely during regular business hours, so we make ourselves available 24/7. We can attend any or all of the City's meetings in person or "virtually" via video conferencing. Our attorneys take advantage of the technological and legal developments that make it practical and cost effective to represent cities across the state.

The Knight Law Firm, LLP offers unparalleled municipal representation, and we will be happy to meet with you, respond to further questions or provide any further information that may be desired. Please feel free to contact our office at (512) 323-5778 or via email through the address below.

Thank you for your consideration.

Respectfully,



Barbara Boulware-Wells  
Principal, Partner  
[barbara@cityattorneytexas.com](mailto:barbara@cityattorneytexas.com)

PRESENTED TO:



# SUNSET VALLEY *Texas*

City of Sunset Valley  
3205 Jones Rd.  
Sunset Valley, Texas 78745  
Telephone (512) 892-1383

PROPOSAL FOR CITY ATTORNEY LEGAL SERVICES

MARCH 17, 2020

SUBMITTED BY:

**Barbara Boulware-Wells**  
**Roxana L. Perez Stevens**  
**THE KNIGHT LAW FIRM, LLP**  
**Attorneys at Law**

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## TABLE OF CONTENTS

A. <u>Law Firm History and General Information.</u>	<i>See Tab 1</i>
B. <u>Firm Experience</u>	<i>See Tab 2</i>
C. <u>Proposed City Attorney Team</u>	<i>See Tab 3</i>
D. <u>Scope of Work.</u>	<i>See Tab 4</i>
E. <u>Accessibility and Responsiveness.</u>	<i>See Tab 5</i>
F. <u>Avoidance of Conflict of Interest.</u>	<i>See Tab 6</i>
G. <u>References.</u>	<i>See Tab 7</i>
H. <u>Resumes.</u>	<i>See Tab 8</i>

Tab 1

Law Firm History  
and  
General Information

## Law Firm History and General Information

### *Background/History*

The Knight Law Firm LLP was established in 2016 when Paige Saenz and Barbara Boulware-Wells took over the law firm of Knight and Partners. The firm was originally established in 1995 as Barney L. Knight and Associates when Barney decided to go into private practice after having served as City Attorney for the cities of Temple and Austin. Many of the firm's clients have been with Barney since that original creation date and Barney remains as "Of Counsel." With the transition in ownership, Paige and Barbara still wanted to honor the original founder and so became The Knight Law Firm, LLP. Although ownership may have changed, what has not changed, nor ever will change, is what is paramount to all the attorneys in the firm -- ensuring that all clients are treated with respect, served promptly, competently, ethically, and billed honestly.

The firm is in Austin and this central location affords the firm to be close to the City of Sunset Valley as well as the Legislature (when in session) and near virtually all administrative boards for any hearing that may arise. The firm continues to focus on local governmental entities including municipalities, development corporations, and utility districts. The firm's clients are from a wide range of locations, not just in Austin and the long-standing relationship with most of the clients is a testament to the loyalty we have built and sustain with them, as well as the dedication that we provide to them. Through the years we have been able to serve each one, large and small, within their budgets and, more importantly, within the parameters of our charge and promise under the ethical canons of our profession.

The Firms Official name and address is as follows:

**THE KNIGHT LAW FIRM, LLP**  
**Attorneys at Law**

223 West Anderson Lane, Suite A-105  
Austin, Texas 78752  
Telephone: (512) 323-5778  
Facsimile: (512) 323-5773

Tab 2

Firm Experience

## **Firm Experience**

The Knight Law Firm (KLF) has broad experience in municipal law, economic development entities, and other related local governmental entities, as well as many other related areas of law, and provides litigation representation. KLF serves as city attorney and general counsel or assistant city attorney for 29 cities extending from Spearman in the Texas Panhandle to Goliad in southern Texas, as well as many in the middle, including Leander, Manor, Kyle, Coupland, Lorena, Rockdale, Caldwell, Belton and Alvin. The full qualifications of the lead attorneys as well as the cities served are set out herein. Contact names and phone numbers are provided for your convenience to reach any of these entities.

All of our attorneys have a great deal of experience as general counsel including open government, elections, purchasing for both general and home rule cities. Except for bond work, the attorneys have specific expertise in virtually every area of municipal law, including land development, land use, subdivision, zoning and annexation. We have delved into infrastructure issues and worked on creative and innovative agreements to assist with the provisions of vital or necessary services for communities, including through special districts or interlocal agreements with outside districts. Many of the agreements drafted blend development with economic development matters to provide the City with the ability to attract new residents, new businesses or improved growth. In depth experience is brought to the table in the area of personnel matters, with our attorneys working with city administration to both protect the City if claims are filed as well as prevent claims from occurring in the first place. Among our unique services provided is redistricting. Our general services include water law, matters before all administrative agencies, and litigation. Finally, our attorneys have extensive municipal court experience as well as civil hearings and have assisted with training sessions to assist our judges and court clerks. The one area we do not provide services is as bond counsel but have ongoing relationships with several who perform those services.

The attorneys of the firm philosophically view our responsibility as being able to assist the City to accomplish its purposes in a manner that avoids litigation whenever reasonably possible, and to win when litigation cannot be avoided.



Tab 3

Proposed City  
Attorney Team

## Proposed City Attorney, Team

**Barbara Boulware-Wells, Roxana I. Perez Stevens, Jeff Ulmann and Veronica Rivera** would be initially assigned as the legal team for the City of Sunset Valley. Roxana, known as Roxy, and Barbara would be designated as the City's lead attorneys and will cover most general counsel projects, as well as administrative hearings. Jeff, in addition to being a solid general counsel, would also be responsible for Municipal Court and Veronica Rivera handles general counsel and land development issues. All the firm's attorneys may be called upon to assist when their expertise or time is required by the services requested or required. However, should the City of Sunset Valley wish to designate one of the other attorneys with the Firm to serve as lead counsel, we will make arrangements for that to take place. The attorneys that will be available to the City of Sunset Valley have (in addition to other experience) 90+ years of municipal law experience, including material experience in all areas of municipal law. Litigation representation outside of TMLIRP coverage will also be initially assigned to Roxy. Depending upon the complexity of the matter, other attorneys may be called upon to assist. Our firm has worked with numerous TMLIRP approved attorneys and firms and would bring that oversight and relationship to the City.

### *Overview of Attorneys*

#### **Owners:**

**Paige Saenz**, Principal, Partner, with nineteen (19) years' experience as an attorney, eighteen (18) of which have been with this law firm exclusively practicing municipal law. Paige's concentrated study of municipal law, together with her practical and logical approach, her ability to work with people to accomplish desired results in stressful situations and a penchant for prompt service, has resulted in very solid support from our clients. By client preference, Paige serves as the city attorney of several cities, e.g. Leander and Manor, and as General Counsel of the City of Austin Employee Retirement System. On a daily basis, Paige advises both general law and home rule cities on a wide range of topics, including, but not limited to elections, civil service, zoning, subdivision, contracts (including development agreements), ordinance drafting, code enforcement, personnel, open meetings, open records, ethics and conflicts of interest, economic development, and utility matters. Major projects that she has handled for cities include negotiating development agreements, wholesale utility agreements, MUD consent agreements, and applications to obtain or amend certificates of convenience and necessity (CCN's). Paige's resume is attached to this Proposal.

**Barbara Boulware-Wells**, Principal, Partner, has over twenty-nine (29) years' experience of which over twenty (20) are in the area of municipal and local government law. Current City Attorney services are being provided by Barbara to Goliad, Highland Haven, Dublin (including EDC), Lorena, San Saba, and Santa Anna, and she also serves as general counsel to Copperas Cove EDC and Post Oak Savannah Groundwater Conservation District. Barbara previously served as City Attorney for Bandera, Balch Springs, Castroville, Combine and Wortham and as Assistant City Attorney for Cedar Park, Round Rock, Hutto, and Elgin. Barbara's early career was spent as corporate counsel for an international environmental and engineering firm and then as staff attorney for the Texas Natural Resource Conservation Commission (now the Texas Commission on Environmental Quality) and the Texas Railroad Commission. She has provided legal representation in the areas of zoning, annexations, and land use, water and utility matters, and employment and labor law. She has

represented or been involved in the creation of various special districts and local governmental entities, including water districts, economic development corporations, municipal development districts, tax increment reinvestment zones and public improvements districts. Barbara has litigated in the areas of EEOC and other personnel claims and suits, eminent domain and other land use matters, open government matters and election contests and represented clients in administrative actions involving water, wastewater and environmental challenges, as well as SOAH hearings related to personnel issues. As with a large proportion of litigation cases involving municipalities, most that Barbara has been involved with were resolved in a favorable manner to the governmental entity represented with all but one being resolved short of a final Judgment being rendered. Some involved owners who had defaulted and a judgment was required to be reached and entered. The numerous eminent domain cases she has represented have also been resolved favorably and generally within the budget constraints established. Barbara currently serves on the Civil Service Commission of Cedar Park and has served on the Charter Review Commission and the 4(B) Economic Development Board. She has presented legal papers and has spoken at various state and local conferences and training seminars. She has testified during State Legislative sessions concerning land use matters and assisted in drafting legislation regarding zoning, vesting and land use. In 2009, Barbara also received the Certificate of Merit in Municipal Law from the Texas City Attorneys Association. Barbara's resume is attached to this proposal.

**Other Attorneys:**

**Roxana I. Pérez Stevens**, Litigation and General Counsel. Roxy brings over 17 years of extensive experience as a litigator and former senior assistant city attorney. She has experience in complex matters and has a way of helping her clients understand the case and achieve the best results. Roxy has practiced civil litigation her entire career. She has successfully litigated and negotiated contentious collective bargaining contracts for the City of Corpus Christi, Texas while at the same time building constructive and harmonious relationships with public safety labor unions. Roxy has handled major complex litigation including labor and employment, personal injury, civil rights, construction, annexation and public security bond matters to name a few. Roxy has also served as general counsel, special projects counsel for city councils and city management, and as the legal advisor to several Human Resource, Fire and Police departments to include civil service. Roxy has also advised clients regarding the full spectrum of matters that face a municipality and government organization. Her in-house city attorney experience provides a wide breadth of knowledge and skill that will benefit her clients. It is a well-known fact that when Roxy gets involved, the clients really mean business. Roxy's resume is attached to this proposal.

**Jeff Ulmann**, Municipal Prosecution and General Counsel, with fifteen (15) years of experience exclusively with this law firm practicing municipal law. Jeff serves as a city attorney and assistant city attorney for several of our municipal clients including Coupland, Hays, Ranger (including EDC), Rockdale. Jeff handles general municipal law matters for the firm daily and routinely interacts with the firm's clients. He advises city councils, city officials, staff, boards and commissions and prepares legal documents in all areas of municipal law. Jeff has been vital to the firm's redistricting efforts and DOJ matters, and has served as municipal prosecutor for numerous cities. He has extensive experience in annexation, real estate and land use matters. He assists the firm's clients in a wide range of matters including open government issues, open meetings, elections, employment, personnel, incorporations, contract drafting and review, administrative hearings, franchise

agreements, interlocal agreements, sales and use tax matters, risk management, dispute resolution and negotiations, ordinance drafting and review, economic development, eminent domain and condemnation, easement and rights-of-way acquisition. Jeff's service at this firm has given him the insight needed to work with city officials and staff to resolve issues from both legal and practical perspectives. Jeff excels in working through challenging, complex issues and negotiating reasonable outcomes for the firm's clients. Jeff's pre-law work includes experience as a personnel specialist for Dell Computers in Northern Europe, appraising real estate and as a licensed realtor. Prior to joining the firm in 2006, Jeff served as a legislative aide and counsel for a senator in Texas Legislature during the 79<sup>th</sup> session. Jeff's resume is attached to this proposal.

**Veronica Rivera**, Legislative and General Counsel. Veronica brings with her nearly twenty-two (22) years of legal experience in various areas. Veronica's municipal skills lie most strongly in the areas of real estate and land use development. She has assisted several of our clients with the complete negotiation of PIDs, development agreements and wholesale re-writes of zoning and subdivision ordinances. She is well versed in other areas including code enforcement, ordinance drafting, ethics, and conflict of interest. In addition to serving numerous municipal clients, Veronica served four (4) years as the executive director of the Association of Latino Administrators and Superintendents (ALAS), and prior to that was a legislative staff attorney and lobbyist for the Mexican American Legal Defense and Educational Fund (MALDEF) in Washington, D.C. where she specialized in the areas of education policy and civil rights. A former schoolteacher, Veronica previously was elected to the Austin Community College (ACC) Board of Trustees where she served as secretary and vice-chair. Her public service has also included serving as a Peer Reviewer and a Working Group for the U.S. Department of Education; and working in the State of Texas Office of the Governor, Criminal Justice Division. Veronica has also served in various organizations such as the past president of the Hispanic Bar Association of Austin, a member of the State Bar of Texas Women in the Profession Committee, planning a committee member of the UT Land Use Conference and a member of the Collaborative Council of the Travis County Model Court for Children and Families. She currently serves on the City of Austin's Board of Adjustment. Finally, Veronica is a noted speaker on the topics of real estate and land development, education policy reform, college and career readiness, parental and community engagement, and English Language Learners. Veronica's resume is attached to this proposal.

**Irene Montelongo**, General Counsel. Irene is our most recent hire, but she brings with her a seasoned resume. She has over 30 years of administrative and municipal law experience. She recently retired from the Public Utility Commission after serving as a Director and Administrative Law Judge. Irene managed electric, telecommunications and water utility cases affecting retail and wholesale rates, granting final approval on delegated rates, certification, tariff, and compliance matters. She has worked with the Texas Commission on Environment Quality where she coordinated activities affecting the administration of the water rights, utilities, district oversight, and drinking water programs. Irene started her legal career serving as an Assistant City Attorney for the City of Dallas. Irene's resume is attached to this proposal.

**Barney Knight**, Of Counsel, has over 50 years of experience in municipal law with sixteen (16) years' experience with the cities of Temple and Austin, and over thirty (30) years of private practice experience. During the first five (5) years of his career, Barney concentrated in construction, real estate, finance and related litigation. During the last twenty-five (25) years, he has concentrated his

practice in the representation of local governments; more particularly, in recent years Barney has concentrated in serving as city attorney, assistant city attorney or general counsel of local governments. During the 16 years with Temple and Austin, Barney served as Deputy City Attorney, City Attorney, Assistant City Manager, City Manager and Acting City Manager. A full copy of Barney's resume is available.

Tab 4

Scope of Work

## Scope of Work

The Knight Law Firm, LLP (KLF) in submitting this proposal, commits to City of Sunset Valley to provide the legal services necessary to assist the City in its ongoing legal needs. If engaged, The Knight Law Firm anticipates providing the following services to the City of Sunset Valley:

1. City Council and Staff: All desired legal services and support to the Mayor, Council, the City Administrator and staff in all areas of municipal law, including but not limited to attending council meetings, workshops and retreats if desired. Meeting minimally on a quarterly basis (or more frequently as may be desired) with Council and City management to ensure that our services are meeting the needs of the City as well as updating the Council on the status of outstanding projects and/or areas where the City may need our attention. Additionally, assisting with the drafting and implementation of Mayor and Council's directives or providing advice as to constraints that may impede the Mayor and Council in achieving such directives. Assisting with Agendas, including supporting documents, and Open Government issues that may arise in connection with meetings. Conducting any training, legislative briefings, or other educational services that may be desired or required to assist the Mayor, Council, and staff. Drafting and/or review of contracts, agreements, resolutions, deeds, easements, ordinances and other legal documents necessary to running the City efficiently. Provide legal advice on government operations, code enforcement, elections, City Ordinances, state law, property matters and real estate matters. Offer guidance and full range of services pertaining to human resources/personnel issues, including personnel policies and City Marshal or Fire Marshal issues or policies. There is not an item on the "Scope of Work" that KLF is unable to provide.
2. Municipal Court Prosecution. Our attorneys have long served in the role of Prosecutor when needed and are willing to provide such services to the City. We have also partnered with other attorneys or firms to provide back-up prosecutor services if that is more desirable for the City.
3. Boards and Commissions: General legal services to and attendance at meetings/hearings/workshops as desired or required for all boards and commissions of the City of Sunset Valley.
4. Administrative Hearings and Litigation: When necessary, provide litigation services to the City for condemnation, building code violations, personnel matters, tax assessment and collections, lawsuits not covered by the City's liability insurance provider, and any general civil matter.
5. Technology and training: KLF provides its attorneys the most effective and efficient tools for legal services in order to reduce time and City legal expense, including electronic legal research, electronic books and materials, continuing legal education training, electronic billing and accounting software, e-mail, facsimile and meeting attendance by telephone or video conferencing.
6. Other law firm joint venturing and association: KLF joint ventures and associates with other law firms that can provide services in other areas such as bond council representation. We also have connections and work well with Financial Consultants and other consultants in the development world.

Tab 5

Accessibility  
and  
Responsiveness



## **Accessibility and Responsiveness**

We understand that City of Sunset Valley's City Council meetings occur on the 1<sup>st</sup> and 3<sup>rd</sup> Tuesday of each month and our assigned attorneys have the capability of attending all regularly scheduled meetings, as well as any special called meetings as required. We are available by telephone, email and text virtually anytime, and can expedite many transactions, e.g. contracts, consent agreements, development agreements and economic development matters by offering to begin the work with any number of previous documents residing on our computers. We respond to requests for assistance as and when needed. Each of our attorneys' cell phone numbers are given to our clients to facilitate getting in touch whenever it is needed.

As attorneys are legally able to attend all public meetings via phone, conference calling is always an option if that becomes necessary. Some of our clients have recognized a cost savings in utilizing our services on short notice or due to travel constraints through "Go to Meeting," an internet based platform similar to "Skype" that allows us to interact with the client seamlessly at any time. The meetings can be with developers and applicants or staff, but most useful is attending meetings in a personal manner which allows both sides to see and be seen and, most importantly, receive information as though we were right there in the room. Our attorneys can work on the go with use of laptops and Dropbox.

The attorneys at KLF are in frequent interaction with our clients, generally limited to the Mayor and City Administrator unless specifically authorized to speak with others. We ask the City to provide the parameters as to who should be able to request our services, as well as who should be kept up to date on our progress. There are some cities that request that we work primarily with the administrative side and others where the Mayor must be kept in loop as well. As is usually the case, once we hear from legislative/policy aspects from the City Council we then work with the administrative side to ensure things are implemented (when our assistance is requested or necessary). If there are deadlines that may be required by others, those shall be noted up front and adhered to. For those matters that require an extended period to work through, we provide brief ongoing updates to the City Administrator and where necessary to the City Council.

Our Office Manager/Paralegal assists us with keeping deadlines and meetings dates coordinated. Within our firm, our workload can be shifted to ensure that those deadlines are met or where one attorney's expertise is beneficial for the client.

Even though our attorneys are often asked to speak at various conferences, they also attend conferences to enhance their knowledge and skills and bring that knowledge and training back to our clients. KLF also provides periodic newsletters to facilitate ongoing information, especially as we go into this next legislative session. Finally, KLF will provide training to our clients at no additional cost, especially in the areas of open government and personnel.

Tab 6

Avoidance of  
Conflict of Interest

## **Avoidance of Conflict of Interest**

We have generally limited our clients to local governments and quasi-governmental entities, e.g. WSCs, or agencies and instrumentalities of governments, e.g. non-profit corporations, TIRZs and similar organizations created by the state or a city in order to limit any conflicts. Our clients also include economic development corporations, a groundwater district and other related entities. Our firm and its attorneys have not filed litigation against any municipality or TML as the defendant. More specifically, our firm and its attorneys have not filed any litigation that would involve the City of Sunset Valley or its employees as named defendants.

Our attorneys take steps to avoid even the appearance of conflict, and all our attorneys maintain the highest ethical standards. We understand our role within the governmental body as legal advisors and counselors and provide the legal research, experience and options to the decision and policy makers for the City of Sunset Valley.

Municipal representation is our forte and we choose to remain loyal to that core set of clients. We run a background check with our attorneys to ensure that none has represented anyone who, to the best of our knowledge, has an interest contrary to the City's. As part of that, we review even current municipal clients who may pose a contrary interest. If there were any current client who would pose a "potential" conflict, we would inform you as the potential client, as well as the current clients to see if any felt it was, in fact, a conflict. However, since perception is critical, if any felt there was even a hint of a conflict, we would abstain from applying. If we already represented you, which we hope happens, we would advise you as a current client if we were approached for representation.

We have run a conflict check regarding the City of Sunset Valley and have no conflicts. We are not and have not represented anyone doing business with or anticipating doing business with the City of Sunset Valley. We have not represented anyone against the City of Sunset Valley or any of its employees. Should a conflict arise, the City of Sunset Valley and any other entity involved with the potential conflict would be notified and full disclosure of the possible conflict would be presented, with the City of Sunset Valley being allowed to decide whether to seek additional/outside counsel or not.

As the Legal Counsel to the City of Sunset Valley, the client is the City of Sunset Valley. All attorneys with KLF understand that they are held accountable to the City of Sunset Valley City Council, being appointed by and/or removed by a simple majority vote. All members of the firm comply with the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas. All members are in good standing, no grievance complaints are pending, and none of our attorneys are the subject of disciplinary proceedings by the State Bar of Texas. All our attorneys are graduates of an ABA accredited law school and admitted to the State Bar.

## Tab 7

## References

## References

Any of the below-referenced client contacts may be contacted as references. Since we have a mix of general law cities and home-rule cities, we want you to feel comfortable calling whomever you feel best fits.

Our firm has numerous clients that have been with us since the inception of our law firm. Names and contact information is provided below.

<b>CLIENT</b>	<b>CONTACT</b>	<b>PHONE NUMBER</b>
Caldwell, Texas	Camden White City Administrator	979.567.3271
Coupland, Texas	Jack Piper Mayor	512.856.2635
Dublin, Texas	Nancy Woolridge City Administrator	254.445.3331
Evant, Texas	Pat Parr City Secretary	254.471.3135
Goliad, Texas	Trudia Preston Mayor Kandi Hubert, City Administrator	361.645.3454
Hays, Texas	Larry Odem Mayor Connie Gibbens City Administrator	512.295.4792
Highland Haven, Texas	Olan Kelly Mayor	830.265.4366
Kyle, Texas	Scott Sellers City Manager R. James Earp Assistant City Manager	512.262.1010
Leander, Texas	Rick Beverlin	512.528.2700

CLIENT	CONTACT	PHONE NUMBER
	Interim City Manager	
Lorena, Texas	Joseph Pace City Manager	254.857.4641
Manor, Texas	Tom Bolt City Manager	512.272.5555
Meadowlakes, Texas	Johnnie Thompson City Manager	830.693.6840
Rockdale, Texas	John King, Mayor	512.446.2511
Post Oak Savannah Groundwater Conservation District	Gary Westbrook General Manager	512.455.9900
San Saba, Texas	Stan Weik City Manager	325.372.5145
Santa Anna, Texas	Harold Fahlender, Mayor	325.348.3403
Somerville, Texas	Danny Segundo City Administrator	979.596.1122
Spearman, Texas	Tobe Shields Mayor Suzanne Bellsnyder City Manager	806.659.2524
Sunrise Beach Village	Tommy Martin Mayor	325.388.6438
Trinidad, Texas	Terri R. Newhouse City Administrator	903.778.2525
Village of Bear Creek	Bruce Upham Mayor	512.217.3612

Tab 8

Resumes

**Barbara Boulware-Wells**  
**THE KNIGHT LAW FIRM, LLP**  
**Attorneys at Law**

Executive Office Terrace 223 West Anderson Lane, Suite A105 Austin, Texas 78752  
Telephone: (512) 323-5778 Mobile (512) 771-7171 Fax: (512) 323-5773  
E-mail: [bbw@cityattorneytexas.com](mailto:bbw@cityattorneytexas.com)

**Legal Experience:**

Barbara Boulware-Wells has concentrated her practice in providing complete representation to cities, counties, political subdivisions, and other governmental entities for majority of her 25 years of law practice. Over sixteen of those years have focused on service as general counsel of numerous cities throughout Texas.

Selected Experience- Provided legal counsel and advice to City Councils, Mayors, City Managers/Administrators, Boards and Commissions, and key officials and department heads.

Human Resources – Employees and employment issues involving hiring, terminations and policy during employment; successful EEOC and TCLEOSE negotiations and mediations. Service includes significant experience with civil service commissions and matters involving civil service for police and fire; including providing client specific personnel training.

Planning/Development/Zoning/Annexation – Zoning district modifications; corridor overlay; PUDs and specific use permits; development and phasing agreements; vested rights issues and concerns; religious land use; transportation and traffic issues, connectivity; parkland requirements; TIRZ and TIFs and downtown development districts; signs and sign boards; drafting economic agreements involving numerous parties and economic development corporations.

Environmental and Utilities (water, sewer, electric, gas, solid waste) – CCNs and service area issues, rate contests, water and sewer plant permits, including extensive administrative hearings and District Court appeals; partnerships between cities and water providers to ensure sufficient water capacity; extensive representation in areas of MUDs, WCIDs, SUDs, groundwater managements areas and PGMAs, water rights permits, easements and condemnations associated therewith.

Charter, ordinances and resolutions – extensive expertise in charter reviews, including service on two separate commissions, and charter elections, including drafting ballot language; drafting ordinances and resolutions on numerous topics; and codification assistance.

Courtroom experience–Litigation and municipal prosecution for over seven years, including condemnation/eminent domain proceedings, open government violations, employment matters, construction claims, declaratory judgment actions and contract disputes. This experience includes service as the prosecuting attorney in the Municipal Courts of more than 25 cities.

**Professional Experience:**



**Knight & Partners (now The Knight Law Firm, LLP)**, Partner/Principal 2014 to Present. Provide full legal counsel to all facets of local governmental entities; work closely with City Councils, Boards, City Managers and Administrators, and General Managers. Assist in providing timely answers and advice on both day-to-day issues, as well as complicated issues the entity may be facing. Work closely with department heads and other personnel to ensure that policies are being carried out in a legal manner. Assist with litigation services including election matters and eminent domain issues.

**McKamic, Krueger & Knight, LLP**, Partner, 2012 to 2014. Provided general legal advice and counsel to various cities and special districts, and worked closely with Mayors, City Managers and Administrators, City Councilmembers and department heads. This practice was concentrated in land use and development issues, eminent domain cases, human resource and labor matters, including administrative hearings, airport issues and economic development questions.

**Akers & Boulware-Wells, LLP**, Principal and Partner, 2007 to 2012. Provided general counsel services to city councils, mayors, administrators, and departments. General municipal representation and legal services related to advising all levels in day-to-day issues arising with both General Law and Home Rule cities. Collaborate with City personnel to achieve goals established by City Council and ensure legality of such actions. Respond to and advise City Council concerning questions about possible actions, best legal course of action, and legal ramifications of contemplated actions. Work with department heads to address concerns or questions that arise in achieving goals or following policies established by City Council or City Management.

**Bovey, Akers & Bojorquez**, Associate and Senior Litigator, 2006. Litigation and City Attorney services to several clients, including governmental challenges and litigation, several eminent domain cases successfully resolved, and drafting of legal appellate brief in annexation case. Other service included serving as the firm's municipal prosecutor for several cities, assisted with complete re-write of zoning ordinance, and successfully resolved enforcement of fire and building code provisions.

**Sheets & Crossfield, P.C.**, Associate, Assistant City Attorney, 2003 to 2006. Representation of municipalities, counties, and developers. Counseling on labor and employment matters, real estate purchases and sales; development and zoning, local government contracting; election issues; environmental permitting and enforcement; public information requests; and misdemeanor prosecutions.

**Sole Practitioner**, Assistant City Attorney for Cedar Park, 1999 to 2003. Assistant City Attorney services for City of Cedar Park, counseling on zoning and development; employment claims, litigation and training; local government contracting; election issues; real estate purchases and sales; environmental permitting and enforcement; public information requests; open meetings; e-mail policies; economic development; and misdemeanor prosecutions. Track and analyze legislation impacting municipal clients, including testifying at Legislative committees. Also handle real estate transactions, collections, and general civil practice matters.

**Railroad Commission of Texas**, Staff Attorney for General Law Division, 1999 – 2000. Counseled agency in state governmental contracting for site clean ups and well plugging, deposition and trial preparation of agency personnel, clearance deviation cases, legislative analysis, administrative rulemaking, public information, open meetings and ethics. Reduced contract review time by 60% by preparing form contracts to be used for different levels of risk. Advised the agency in numerous personnel matters.

**Texas Commission on Environmental Quality**, Staff Attorney, Remediation Div., 1997 - 1999 Representation of the division in state and federal response actions, remedial activities, Superfund, Voluntary Clean-up Program, Brownfields, and Petroleum Storage Tank issues, through state and federal contracting and procurement for remediation and cleanup activities. Counseled departments on resolution of claims associated with response actions and remediation activities. Drafted shell contracts for all forms of procurement, improving contract review time. Improved compliance with Historically Underutilized Businesses (HUB) statutes and regulations, and negotiated multi-agency (federal and state) Memorandum of Agreement for emergency response activities. Also, advised various departments on improving security procedures.

**RMT/Jones & Neuse, Inc.**, General Counsel, 1991 – 1996. General corporate and business counsel for a 250-person engineering and environmental consulting firm, with eight branch offices, including one in Mexico City. *Business and Corporate Loss Prevention and Risk Reduction Management*: Supervised contract administration, including negotiation, insurance underwriting, bonding, subcontracts, and debt collection. Overhauled contracting standards and forms and implemented training throughout firm that reduced company's liability. Counseled on employment claims, redrafted employee policies and trained personnel; conducted due diligence for acquisitions, mergers and divestitures; negotiated teaming and joint venture agreements, licensing agreements, confidentiality agreements and lease agreements; conducted software audits; coordinated sale of various corporate assets; counseled firm on international matters for foreign office, including contracts, insurance, payment provisions and tax issues; trained personnel in ethics and employment issues. *Litigation and Claims*: Oversight of outside counsel in civil litigation cases and OSHA claims. Conducted expert witness training, coordinated subpoena responses, facilitated OSHA inspections and reviews, and managed workers' compensation claims. *Environmental*: Reduced company's liability by co-authoring comprehensive site assessment policy. Researched regulatory compliance issues; and represented company in administrative and state court proceedings.

### **Licensed To Practice**

State of Texas

### **Memberships**

Texas City Attorney Association; State Bar of Texas Sections including Government, Environment and Natural Resources, and Administrative; Austin Bar Association and Williamson County Bar Association

### **Education**

Texas Tech School of Law (J.D.) 1991;

University of Arizona (BA – Education; Major in Political Science and English, Minor – Speech Communication) 1986

### **Selected Community Activities**

Chair, Cedar Park Civil Service Commission

Boy Scout Troop 158 Committee Chair

Girl Scout Troop 1980 Assistant Leader

Former member of Cedar Park 4B Board and Charter Review Committee.

### **Selected Example Papers Presented and Published**

UT Law 2016 The Land Use Fundamentals and The Land Use Conference, presentation of *Easements: From Acquisition to Termination*

UT Law 2015 Texas Water Law Institute, presentation of *Ethics – Devil In The Details: An Ethical Journey Toward Governmental Approvals In Water Law*

UT Law 2014 The Land Use Fundamentals and The Land Use Conference, presentation of *The Perfect Storm, or, How Green Was My Valley, Water Reclamation and Reuse of Water*

2009 William “King” Cole, Effective Local Government Series, MUNICIPAL LAW 101, Monte Akers presentation (co-author paper only) *Basic Municipal Laws and Issues for Texas City Officials*

UT Law 2010, The Land Use Fundamentals and the Land Use Conference, presentation of *Municipal Challenges in Managing Foreclosures*

Texas Municipal League, FACT Act Identity Theft Red Flags Policy Adopting Ordinance and Program Template

Numerous Open Government Trainings and Updates in case law.

**Paige H. Saenz**  
**THE KNIGHT LAW FIRM, LLP**  
**Attorneys at Law**

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E-mail: paige@cityattorneytexas.com

**Legal Experience:**

Extensive municipal law and local government experience for both home-rule and general law cities, with specific expertise in economic development, elections, public contracting and procurement, development agreements, construction, ethics, redistricting, open government laws, personnel, annexation, land use, zoning, and subdivision matters, and general ordinance drafting.

**Professional Experience:**

**The Knight Law Firm, Austin Texas.** Principal and Partner, September 2016 to present.

**Knight & Partners, Austin, Texas.** Partner, February 2014 - Present. Serve as the city attorney for several cities, assistant city attorney for other cities, general counsel of a public retirement system, and as the general counsel or assistant general counsel of multiple municipal related entities, e.g. economic development corporations and tax increment financing districts. Engaged in the practice of general municipal law, representation of municipalities on a daily basis in a variety of legal matters, including preparing and enforcing ordinances and codes; advising on election issues; public contracting and procurement; annexation; and zoning and subdivision-related issues; negotiating and drafting development agreements; attending city council meetings; training councils, boards and commissions; and assisting with administrative proceedings.

**McKamie Krueger & Knight, LLP (and Knight & Partners).** Partner, May 2012 to February 2014. Engaged in the practice of general municipal law and administrative law, and served as the city attorney for several cities, assistant city attorney for other municipal clients, and as general counsel or assistant general counsel for multiple municipal related entities, e.g. economic development corporations, emergency services districts, tax increment financing districts and a municipal retirement system.

**Knight & Partners, Austin, Texas.** Partner, November 2007 to January 31, 2012; Associate Attorney, November 2002 to November 2007. Served as the city attorney or assistant city attorney for numerous cities, general counsel of a public retirement system, and as the general counsel or assistant general counsel of multiple municipal related entities, e.g. economic development corporations and tax increment financing districts. Engaged in the practice of general municipal law, representation of municipalities on a daily basis in a variety of legal matters, including preparing and enforcing ordinances and codes; advising on election issues; public contracting and procurement; annexation; and zoning and subdivision-related issues; negotiating and drafting development agreements; attending city council meetings; training councils, boards and commissions; and assisting with administrative proceedings.

**Paige Harbison Saenz, Attorney, Austin, Texas.** August 2002 - November 2002. Engaged in the practice of law, representing parents and children in Texas Department of Protective and Regulatory Services proceedings and contract work involving family law cases, appellate work, and legal research for political campaigns.

**Walters & Turquand, Austin, Texas.** Associate Attorney, November 2001 - July 2002. Managed caseload of fifty family law cases with minimal supervision; prepared pleadings and final orders; dealt with opposing counsel and the needs of clients and litigated modifications, contempt motions, temporary orders hearings, and final hearings in divorce and custody matters as lead attorney.

**Licensed To Practice**

State of Texas

**Memberships**

Texas Bar Association

Texas City Attorneys Association

**Education**

The University of Texas School of Law, Doctor of Jurisprudence. 2001

Rice University, B.A. 1998

Universidad de Santiago, Chile, Fall 1996

**SELECTED EXAMPLE PAPERS/PRESENTATIONS GIVEN:**

**Zoning: The Basics;** *Lorman Seminar, November 2008*

**Subdivision Plats: How the Platting Process Works;** *Lorman Seminar, June 2008*

**Redistricting Process;** *Texas Municipal League Seminar, April 2011*

**Retaliation in the Workplace – An Overview of the Law: What You Can Do to Reduce Retaliation Incidents and What to Do If You Receive a Report of Retaliation;** *Texas Municipal League 100<sup>th</sup> Annual Conference and Exhibition, November 2012*

**Roxana I. Perez Stevens**  
**The Knight Law Firm, LLP**  
**Attorneys at Law**

Executive Office Terrace 223 West Anderson Lane, Suite A105 Austin, Texas 78752

Telephone: (512)323-5778 Mobile: (361)728-9009 Fax: (512)323-5773

Email: [roxv@cityattornevtexas.com](mailto:roxv@cityattornevtexas.com)

**Legal Experience:**

Extensive experience as a litigator and former senior assistant city attorney, with expertise in municipal law, labor and employment law and litigation, general civil litigation, collective bargaining, labor and employment arbitrations, human resources, civil service, independent investigations, civil rights, appellate law and public security bond validations.

**Professional Experience:**

**The Knight Law Firm, LLP.**, Attorney, 2018-Present. General Counsel and Litigation. Handles various labor and employment matters, including investigations, grievances, administrative hearings, and litigation. Continues to handle matters before civil service boards, as well as works closely with human resources and review of policies and procedures. Works closely with Police and Fire departments to ensure proper policies and procedures are adhered to, as well as EEOC and Texas Workforce Commission hearings.

**The City of Corpus Christi**, Corpus Christi, Texas. Supervising and Lead City Attorney. General Counsel for the City Council, City Management and City Departments. Assigned special projects by the City Management. Managed and handled all litigation and all labor and employment matters including labor negotiations, grievances, investigations, disputes, discipline, harassment, hostile work environment, retaliation, discrimination, civil rights, EEOC, TWC, employee and labor relations, labor contract issues, vendor contracts, benefits, civil service issues, civil service board hearings, arbitrations and fact findings, administrative proceedings, litigation and all claims for the Human Resources Department, City Manager, City Council, and other departments.

**Law Office of Roxana I. Perez Stevens**, Corpus Christi, Texas. Outside counsel for the Port of Corpus Christi. Handled labor and employment matters including human resources, policies, negotiations, union matters, grievances, discipline, discrimination, employee and labor relations, labor contract issues, EEOC, TWC, Department of Labor, arbitrations and fact findings, administrative proceedings, litigation and all claims.

**Huseman & Stewart, LLP**, Corpus Christi, Texas. Senior Attorney. Full civil litigation practice focusing on employment, labor, municipal law, commercial, business, personal injury, insurance coverage matters and civil rights, provided legal counsel, risk management and risk assessment for businesses and clients including creating budgets for such.

**McKibben, Woolsey & Villarreal, LLP**, Corpus Christi, Texas. Senior Associate Attorney. Full civil defense litigation practice focusing on personal injury, municipal law, government law, insurance coverage matters, civil rights, claims and lawsuits against municipalities and government agencies, labor, employment, general liability, risk management, commercial matters, contracts and medical malpractice, represented many municipalities and government agencies including the City of Corpus Christi in various legal matters.

**Law Office of Ralph M. Rodriguez**, Corpus Christi, Texas. Senior Associate Attorney. Full civil defense litigation practice focusing on personal injury and insurance coverage matters, managed and handled cases in their entirety: investigation, research, settlements, pleadings, discovery, motions, hearings, mediations, summary judgments, trials and appeals.

**Chaves, Resendez & Rivero, LLP**, Corpus Christi, Texas. Senior Associate Attorney. Full civil litigation practice including general liability, personal injury, workers' compensation, government and municipal law, insurance coverage, premises liability, toxic tort, labor, employment, oil and gas, product liability, contracts and commercial matters, advised corporate clients and general clients on general liability, risk management, business, personal injury, labor, employment, oil and gas, commercial, regulatory and contract matters.

**Gonzales Hoblit & Ferguson, LLP**, Corpus Christi, Texas. Associate-Senior Associate Attorney. Full civil litigation practice including general liability, personal injury, workers' compensation, government and municipal law, insurance coverage, premises liability, toxic tort, labor, employment, oil and gas, product liability, contracts and commercial matters.

**Law Offices of Luis R. Vera, Jr.**, Corpus Christi, Texas. Associate Attorney. Handled full caseload for a general litigation practice firm focusing on family, criminal, contract and personal injury law.

**Licensed to Practice**

State of Texas

**Memberships**

Texas Bar Association, Corpus Christi Bar Association, Former Corpus Christi Young Lawyers Association (Former Board of Directors), Coastal Bend Women's Law Association (Former Board of Directors), American Bar Association, National Public Employers Labor Relations Association (NPELRA), Texas Labor Management Association, Texas City Attorneys Association

**Education**

St. Mary's University School of  
Law St. Mary's University

**Jeffrey T. Ulmann**  
**The Knight Law Firm, LLP**  
**Attorneys at Law**

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E-mail: [jeff@cityattorneytexas.com](mailto:jeff@cityattorneytexas.com)

**Legal Experience**

Jeff is a partner and has been practicing for over 13 years exclusively with this firm and in virtually every area of municipal law. Jeff is presently serves as both city attorney and assistant city attorney. Jeff has been vital to the firm's redistricting experience and DOJ matters, and serves as municipal prosecutor for numerous cities. He has wide experience in economic development, annexation and land use matters, drafting of ordinances and resolutions, and helps the firm's clients with all forms of open government issues. Jeff's current practice involves providing advice and counsel in all areas of municipal law to the firm's clients.

**Professional Experience**

**The Knight Law Firm, LLP, Austin, Texas (formerly Knight and Associates).** General Counsel, February 2014 – Present. Engaged in the practice of general municipal law and serving as city attorney and assistant city attorney for the firm's municipal clients.

**McKamie, Krueger & Knight, LLP, Austin, Texas.** Associate Attorney, July 2006 – May 2012. Jeff became a partner in December 2014. Engaged in the practice of general municipal law and serving as an assistant city attorney for the firm's municipal clients. Providing assistance on a daily basis on a wide variety of legal matters, including the preparation of contracts, ordinances and agreements, land use matters, drafting and negotiating development agreements, annexations, economic development corporations, Department of Justice preclearance matters, redistricting, prosecution in municipal court.

**Senator Van de Putte, Dist. 26 - State Capitol, Austin, Texas.** Legislative Aide and Counsel - 79th Legislature 3rd Called Special Session Apr. 2006 - June 2006.

**Bexar County, County Court at Law Number 10, San Antonio, Texas.** Judicial Internship, Mar. 2004 - June 2004. Case research and assisted judge with opinions; Open court observation.

**S.T.H. Real Estate Company, Inc., Austin, Texas.** Residential Realtor; July 2001 - Aug. 2002. Assisted clients in home buying and leases; made sale first month on the job.

**Dell Computer Corporation - Northern Europe, Amsterdam, Netherlands.** Human Resources Department, Feb. 2001 - May 2001. Researched and presented cost analysis projects; created Power Point presentation for international meetings; responsible for the development of a data base detailing employee sick days; assisted in development of web site.



**Coastal Conservation Association - University of Texas Chapter, Austin, Texas.** Vice President/ Treasurer, Aug. 1998 - May 2001. Founding member of University of Texas Chapter; organized fundraising activities and banquets which raised over \$40,000 in three years; Recruited over 100 new members; kept detailed financial records of organization.

**Dublin Appraisal, Inc., Austin, Texas.** Appraisal assistant, Nov. 1997 - Feb. 1999. Learned basic appraisal principles through hands-on research and assistance in the field; played an integral part in the completion of over 200 appraisals; analyzed flood plain data.

**Licensed To Practice**

State of Texas

**Skills and Additional Licenses**

Working knowledge in Spanish and Dutch  
Licensed Texas Real Estate Salesperson

**Education**

**St. Mary's University School of Law**

May 2005 Doctor of Jurisprudence

**The University of Texas at Austin**

Dec. 2000 Bachelor of Arts, Economics with Business Foundations

**Selected Academic Honors and Achievements**

Envision Eanes, a future-focused committee to advise the Board of Trustees, E.I.S.D

Scholar Law Review for 2003 academic year

Scholar Editorial Board 2004-2005

Longhorn Bar Association, Service Chairman

General Scholarship Recipient

Member Business Economic Student Association (BESA)

Coastal Conservation Association-Founding Director-University of Texas Chapter

**Veronica Rivera**  
**The Knight Law Firm, LLP**  
**Attorneys at Law**

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Telephone: (512) 323-5778 Mobile (512) 922-3004 Fax: (512) 323-5773  
E-mail: [veronica@cityattorneytexas.com](mailto:veronica@cityattorneytexas.com)

**Legal Experience:**

Ms. Rivera focuses on municipal law with an emphasis on land use and real estate matters and lobbying on behalf of municipalities at the state level. Ms. Rivera represents home-rule and general law municipalities concentrating on real estate and land use development issues; drafting and rewriting subdivision and zoning ordinances; drafting legislation regarding real estate matters; negotiating and drafting development agreements; drafting policies; and assisting with the establishment of Public Utility Districts. Prior to representing municipalities, Veronica practiced in the area of civil rights law concentrating on education policy and lobbying on behalf of non-profit organizations at the federal level. Ms. Rivera has also previously represented clients in complex real estate transactions and in obtaining development approvals for commercial, office and residential developments in central Texas, which provides her with a unique expertise in municipal land use and real estate issues.

General Counsel to City Council, Planning and Zoning Commission, Administration and Departments – General municipal representation and legal services related to advising City Council, City Manager/Administrator, City Secretary, Planning and Zoning Commission, Planning Department, Public Works Department and Parks Department city personnel concerning day-to-day issues arising with both General Law and Home Rule municipalities. Work closely with department heads in the Planning, Public Works and Parks departments to ensure policies established by City Council or City Management are implemented properly.

Real Estate, Land Use Planning and Zoning – Represent clients in drafting real estate and land use documents such as earnest money contracts, easements, assignments, development agreements, deeds, and restrictive covenants; research and draft zoning ordinance amendments; overlay ordinance; sign ordinance; Planned Unit Developments and specific use permits; Public Improvement Districts; and draft and amend subdivision ordinances and handle platting matters, including vested rights issues and individualized determinations.

Water, Sewer, Electric, Gas – Assisted in revising CCNs for both water and sewer; represent municipal clients in negotiating franchise agreements with gas and electric service providers; represent clients in groundwater and water well management issues; experience with advising municipal clients on MUDs and WCIDs concerning rates and services; and extensive experience in the representation of municipal clients related to public utility, water and wastewater easements.

Economic Development Boards (4A) and (4B) – Negotiate and draft agreements concerning economic and community development projects, 360 Agreements; prepare documents for creation and dissolution of Economic Development Corporations.

Elections – Submitted DOJ pre-certification letters; and draft election documents including Ordinances calling for Special and General Elections, Notices and Ballot language.

Public Information Requests, Open Meetings – Review all public information requests and submit request for opinion to Texas Attorney General in response to such requests. Advise City Council and City staff on policies and procedures concerning requests for information and open meetings.

Legislature: Represent clients as a registered lobbyist at the state and federal level, testifying on various bills, and performing legislative analysis of proposed legislation impacting clients.

**Professional Experience:**

**The Knight Law Firm, LLP, Legislative and General Counsel, February 2017 – present**

Represent municipalities in real estate and legal matters including amending zoning and subdivision ordinances; drafting complex real estate documents for developments including public improvement districts, drafting deeds, easements and restrictive covenants; negotiating and drafting contracts; drafting cell node ordinances; attending staff, planning and zoning, and city council meetings.

**Association of Latino Administrators and Superintendents (ALAS), Washington, D.C. Executive Director, September 2012 – August 2016; Advisor, September 2016 – December 2016**

Provided leadership in furthering the mission of ALAS; negotiated business contracts and managed the daily operations of the organization; supervised and managed staff; prepared and monitored an annual operating budget that met the program and financial goals of ALAS; planned and facilitated meetings and retreats; complied with and managed foundation grants; developed and maintained liaison activities with ALAS' state affiliates; planned and executed an annual education conference with an operation budget of \$300,000.00; developed and implemented federal and state legislative strategies focusing on policy affecting K-12, underserved and diverse communities and higher education; served as the chief spokesperson and representative for ALAS programs to the U.S. Congress, Department of Education, national civil rights organizations, and the general public; and advocated ALAS's position at legislative hearings, educational conferences and meetings with various cabinet secretaries, department staff, legislative staff and Members of Congress.

**Akers & Boulware-Wells, L.L.P., Of Counsel, June 2008 – July 2009; December 2011 – September 2012**

Represented municipalities in real estate transactions and legal matters including drafting ordinances on various subject matters such as zoning and subdivisions; drafting real estate and land use documents; compliance with Texas Open Meetings Act; negotiating and drafting contracts; and attending staff, commission and city council meetings. Represented non-profit corporations in incorporation matters including drafting of Certificates of Formation, Bylaws, and Unanimous Consent of Directors in Lieu of Organizational Meeting. Represented clients on

educational matters including education reform legislation, state standards, parental and community engagement, and English language learners; and served as a consultant as part of the U.S. Department of Education's Race to the Top Expert Database.

**Mexican American Legal Defense and Educational Fund (MALDEF), Washington, D.C. Legislative Staff Attorney, July 2009 – December 2011**

Served as lead attorney collaborating with 10 national civil rights organizations to implement federal and state legislative strategies related to education law and policy affecting K-12 and higher education with a concentration on the adoption and implementation of the common core state standards and equitable services for English Language Learners; provided state and federal advocacy for education policy reform through the Campaign for High School Equity; served as the organization's liaison with the Department of Education's Office of Elementary and Secondary Education, developed and advocated organization's legislative agenda with the U.S. House of Representatives and the U.S. Senate as a registered lobbyist; provided presentations, briefings and media interviews on diversity and education equity on behalf of the organization in both English and Spanish; served as co-chair of the Hispanic Education Coalition Task Force consisting of 26 national organizations; supervised staff and managed organization's daily operations.

**Bovey & Bojorquez, L.L.P., Austin, Texas Attorney, September 2006 – June 2008**

Represented municipalities and economic development corporations in real estate transactions and legal matters including drafting ordinances for municipalities on various subject matters such as regulations for signs, wireless transmission facilities, animal control, zoning and subdivisions; creating and dissolving 4A and 4B corporations; preparing election materials; drafting real estate and land use documents such as earnest money contracts, easements, assignments, development agreements, deeds, and restrictive covenants; compliance with Texas Open Meetings Act; compliance with the Voting Rights Act; attending various city meetings.

**Sheets & Crossfield, P.C., Round Rock, Texas Attorney, January 2003 - August 2006**

Represented municipalities in real estate and legal matters including amending zoning and subdivision ordinances; drafting real estate documents such as earnest money contracts, deeds, easements and restrictive covenants; negotiating and drafting contracts; drafting resolutions and ordinances on various subject matters such as regulations for wreckers, wireless transmission facilities and tree preservation; compliance with Community Development Block Grant regulations; compliance with Texas Open Meetings Act; and attending staff, board and city council meetings.

**Minter, Joseph & Thornhill, P.C., Austin, Texas Attorney, November 1998 - January 2003**

Represented clients in complex real estate transactions and in obtaining development approvals for commercial, office and residential developments in central Texas. Also, represented clients before Austin City Council, Planning Commission, Board of Adjustment, and the state legislature as a registered local and state lobbyist.

**Office of the Governor, Criminal Justice Division, Austin, Texas Grants Analyst, March 1992 - August 1995**

Managed state and federal grants across south Texas under the 421 State Fund and the Juvenile Justice and Delinquency Prevention Act (JJDP) Fund. Assisted in the reviewing and monitoring

process of federal and state grants and in the presentation of grant application workshops. Organized meetings and activities for the Governor's Juvenile Justice Advisory Board. Assisted in revising the annual plan and guidelines for JJDP and the division. Coordinated the preparation of all JJDP announcements appearing in the Texas Register.

### **Licenses and Professional Development**

- Licensed attorney since 1998 (Texas)
- Teaching Certificate in Broad Social Studies (Texas)
- Leadership Austin, Greater Austin Chamber of Commerce, 2001-2002
- Hispanic Austin Leadership, Greater Austin Hispanic Chamber of Commerce, 1999-2000

### **Memberships**

State Bar of Texas  
Texas City Attorney Association  
Hispanic Bar Association of Austin

### **Education**

- *Doctor of Jurisprudence*, The University of Texas School of Law, Austin, Texas, May 1998
- *Master of Business Administration*, Texas State University, San Marcos, Texas, August 1995
- *Bachelor of Arts in Political Science with a Teaching Certificate in Broad Social Studies*, cum laude, St. Mary's University, San Antonio, Texas, May 1989

### **Selected Boards and Commissions**

- Serving as a member of the City of Austin's Board of Adjustment
- Member of the Hispanic Bar Association of Austin (HBAA); Immediate Past-President, 2003-2004; President, 2002-2003; President-elect, 2001-2002; Treasurer, 2000-2001
- Served as a member of the U.S. Department of Education, Office of Career, Technical and Adult Education's Advancing Equity in Career and Technical Education Technical Working Group.
- Served as planning committee member of the U.S. Department of Education, Office of Career, Technical and Adult Education's Advancing Equity in Career and Technical Education *National Advancing Equity in Adult, Community College, and Career and Technical Education Symposium*, 2016.
- Served as a member of the AASA/Howard University Urban Superintendents Academy Steering Committee, 2015.
- Served as a member of the Rio Grande Valley – Digital Divide Task Force, 2015.
- Served as a Peer Reviewer for the U.S. Department of Education *Race To The Top* District grant program, dedicated to ensure diverse pool of awardees, 2012.
- Served as a Peer Reviewer with expertise in diverse English Language Learners for the U.S. Department of Education for the second round of state waiver applications to the No Child Left Behind Act, 2012.
- Served as co-chair of the Hispanic Education Coalition consisting of 26 national civil and educational organizations, 2011.
- Elected and served as Trustee, Secretary and Vice-Chair on the Austin Community College Board of Trustees in Austin, Texas, 2004-2009.

- UT Annual Land Use Conference, Planning Committee Member, 2008-2009
- Served as Chair of the Joint City of Austin, Texas and Austin Independent School District Quality of Life and Education for Hispanic Students Task Force, 2006.

**Selected Presentations**

- UT 11th Annual Land Use Conference, 2007
- 10th Annual TCBA Land Development Seminar, 2002

**Language Skills**

- Fluent in oral and written Spanish

**Irene Montelongo**  
**The Knight Law Firm, LLP**  
**Attorneys at Law**

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E-mail: [irene@cityattorneytexas.com](mailto:irene@cityattorneytexas.com)

**Legal Experience:**

Extensive experience in the areas of Administrative Law, Electric, Telecommunications and Water utility cases, assisted with rulemaking, especially during transition of various divisions from Texas Commission on Environment Quality to Public Utility Commission of Texas, managed dockets of cases as an administrative law judge with also being the supervisor of the judges and their dockets.

**Professional Experience:**

**The Knight Law Firm, LLP**, Attorney, 2019 to Present. Provide legal counsel to all facets of local governmental entities. Assist in providing timely answers and advice on both day-to-day issues, as well as complicated issues the entity may be facing. Advises on administrative procedures, CCN and other water and utility regulatory matters, assists with analyzing policies for clients. Assists with administrative hearings, open government issues, legislative analysis and drafting papers for clients, personnel policies, wireless transmission facilities and other day-to-day items.

**Public Utility Commission of Texas**, Director and Administrative Judge, 2003 to 2019. Oversaw and directed the daily functions of the docket management section. Supervised team of judges and legal assistants in the processing of docketed applications and tariff matters. Conducted resource management functions and monitored compliance with the reporting services contract. Managed electric, telecommunications, and water utility cases affecting retail and wholesale rates, service provider certifications, acquisitions, and other transactions. Granted final approval on delegated rate, certification, tariff, and compliance matters. Established hearing schedules and entered rulings on motions to intervene, strike testimony, and produced documents.

**Texas Commission on Environmental Quality**, Manager, 2001 to 2003. Coordinated activities affecting the administration of the water rights, utilities, districts oversight, and drinking water programs. Directed rulemaking and special projects. Performed bill analysis and coordinated responses to legislative requests. Identified implications to programs from industry developments and changes in law. Provided assessments and direction on employment matters. Performed budget planning, development, and reporting duties.

**Texas Natural Resource Conservation Commission/TCEQ**, Senior Attorney, 1992-2001. Served as lead counsel on municipal waste and water program legal matters. Supervised and guided staff attorneys through the permitting, rulemaking, and contested hearing process. Drafted and analyzed legislative proposals, coordinated responses to legislative requests, and testified before committees. Participated on new program development and transfers from other state agencies.

**Texas Water Commission**, Staff Attorney, 1988-1992. Represented the executive director in hazardous waste, water utility, and district oversight proceedings. Prepared witnesses and evidence for contested hearings, conducted legal research, and drafted pleadings. Negotiated settlements in permit and enforcement cases.

**City of Dallas**, Assistant City Attorney, 1986-1988. Prosecuted misdemeanor cases involving traffic and city code violations in bench and jury trials. Drafted criminal complaints, conducted legal research, drafted legal opinions, and argued motions. Evaluated and negotiated the settlement of property damage claims.

**Licensed To Practice**

State of Texas

**Memberships**

Texas City Attorney Association; State Bar of Texas Sections including Government, Environment and Natural Resources, and Administrative.

**Education**

Thurgood Marshall School of Law (J.D.) 1986;  
Angelo State University (BA) 1980



PRESENTED TO:



# SUNSET VALLEY *Texas*

City of Sunset Valley  
3205 Jones Rd.  
Sunset Valley, Texas 78745  
Telephone (512) 892-1383

**RESPONSES TO FOLLOW UP QUESTIONS  
PROPOSAL FOR CITY ATTORNEY LEGAL SERVICES**

**THURSDAY, APRIL 30, 2020  
BY 3:00 P.M.**

**SUBMITTED BY:**

**Barbara Boulware-Wells  
Roxana I. Perez Stevens  
THE KNIGHT LAW FIRM, LLP  
Attorneys at Law**

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Austin, Texas 78752  
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# THE KNIGHT LAW FIRM, LLP - ATTORNEYS



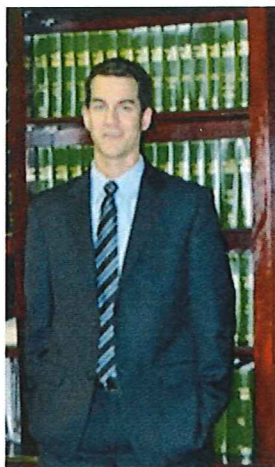
**BARBARA BOULWARE-WELLS**  
PRINCIPLE AND PARTNER



**PAIGE SAENZ**  
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**IRENE MONTELONGO**

## **FOLLOW UP QUESTIONS FROM THE CITY OF SUNSET VALLEY**

1. When you have been given a contract with a new municipality what typically are the areas of improvements in the legal process that you discover? Give examples and recommendations.

### **RESPONSE:**

**The areas of improvement that we have most identified when taking on a new municipal client is in the area of communication. Communication between the client and the attorney are the backbone to ensuring that the attorney provides meaningful, quality and easy to understand legal advice and resources needed for the City to accomplish its goals. Communication is the key to further identifying processes within the City that need improvement. Communication is also the key for developing mutual respect and trust. In order to facilitate a solid base of communication, we would initially meet with the City Administrator and the Mayor to discuss the areas of communication that should be established. We would establish a regularly occurring meeting with the City Administrator and also do so with the Mayor when needed. If communication needs to be made with the entire City Council, we have the ability to do so by a legal memo that can be sent electronically in a way that is in compliance with the open meetings act and preserves the attorney/client privileges, in addition to follow up with executive sessions if necessary.**

**An example of improving communications is when we were dealing with an issue that was complex and required the City Council to make difficult decisions, we had an executive session scheduled with the City Council so that we could offer legal advice and briefing on the issues and determined a schedule to continue to do so in order keep the council advised, answer questions and obtain direction with regarding to strategy.**

**Another example of improving communications is establishing a base line of communication process between the attorney and the client in the form of recurring meetings, briefings on the status of assignments and identifying areas of communication that should regularly occur between the City administration and the Council.**

**Other areas of improvement that we have also identified are processes and responsiveness, including the progression of assignments. In regard to processes, we have revamped internal processes to make them more efficient and compliant with the law. We have also created tasks lists with expected deadlines for response to keep up with the assignments for which the City Attorney is responsible.**

2. How do you prepare for attendance at Council meetings?

**RESPONSE:**

**In preparing for attendance at Council meetings, it is important to maintain an awareness and knowledge of the major issues that are being considered and that are potentially on upcoming agendas.**

**Preparation includes:**

- **preparation meetings with the City Administrator, and if necessary, the Mayor or any other Council Member or City Staff member, prior to the council meetings;**
- **identification of potential legal questions and issues that may arise;**
- **review of the agenda and the supporting documents;**
- **identification of any issues that may need to be discussed in executive session;**
- **document preparation of any motions, ordinances and /or resolutions or other instruments for the upcoming meeting;**
- **make sure that responses and statuses have been provided for previously posed questions and issues;**
- **any other specific preparations as may be required by the upcoming meetings.**

3. Give an example of a legal brief (with appropriate redactions) that you prepared for council.

**RESPONSE:**

**Please see attached example legal briefs that have been prepared for other City Councils.**

4. Please define whom you believe to be your client when working for the City of Sunset Valley.

**RESPONSE:**

**The City Attorney represents the City as a whole. The best way to define the client is that the City Attorney represents “the best interest of the City of Sunset Valley”. The City Attorney’s professional obligation is to the City as an entity, and not to any individual elected official or staff member. The City Attorney’s ethical obligations to the City are set out in the State Bar of Texas’ Rules for Professional Conduct.**

**The City Attorney's duty of loyalty and confidentiality is owed to the City and the City Council as a whole, rather than to an individual. The City Attorney must always resolve an issue in favor of the best interest of the City.**

5. Does your firm believe it is important to have appropriate information that goes to the Mayor and City Administrator go to all of Council and if so, do you have processes in place to facilitate that end?

**RESPONSE:**

**Yes, we believe it is best practice that the opinions we provide are shared with the City Administrator and entire City Council.**

**There are some instances where the legal advice and counseling is relevant to issues being considered by the City Council as the governing body and it is important that City Council, in addition to the Mayor and the City Administrator, receive all the relevant information and recommendations.**

**A process that would be recommended is that the question be identified as something that is relevant for the entire council's consideration. In that, the questions can be forwarded to the City Attorney, where a confidential and privileged legal memorandum will be drafted, to include a short answer (if possible) and recommendation. Such legal memorandum will then be electronically emailed to each council member in a way where they will not be able to reply. This maintains the attorney/client privileges and maintains compliance with the Open Meeting Act. We would follow up with an executive session providing legal advice if necessary.**

**If the issue or answer is relatively simple, a brief email response can be given to the City Administrator and Council. We will work with the City on the format of the response to provide the most effective communication and to be efficient with resources.**

6. How does your firm work with the City to keep legal costs at a minimum?

**RESPONSE:**

**Our law firm utilizes the knowledge and expertise within our firm to provide the City with the most efficient and quality legal advice. We provide different options on how to tackle an issue. If the issue requires leg work, we can determine with the City whether the staff or the law firm should handle the leg work required for the issue. We are also cognizant of the budgetary limitations that the City faces and understand that the City must be good stewards of its taxpayer's dollars. With that in mind, during our regular meetings with the City Administrator, the legal costs should be a subject that we discuss so that we not only remain within budget but also explore the most valuable use of the**

**City Attorney time. If there is an assignment or project that requires extensive time, that will be discussed with the City Administrator at the initiation of the project. We will follow all the requirements of the City in getting the assignments and time approved. Further, we will ensure that, when appropriate, developers will pay for the expenses of development agreements.**

7. What things do you value most about your law firm?

**RESPONSE:**

**What we value most in our law firm in our practical and collaborative approach to serving clients. This helps us in providing efficient and competent legal services to our clients. Although, the City would have designated attorneys that will always be available, behind those attorneys is a team of attorneys who are also available and provide a vast array of knowledge, experience and best practices. We also provide you with not only general counsel but the benefit of an evaluation of every issue from a litigation standpoint. This provides a clear analysis of how to mitigate the risks for the City on any issue. We view our responsibility as assisting the City in accomplishing its purposes and goals in a manner that avoids litigation whenever reasonably possible and to be in the best defense position is litigation cannot be avoided. Our firm has a long history of providing municipalities with easy to understand and practical legal advice.**

8. Describe some council meetings you have experienced as being well run and effective. What were the elements that really stood out? How do you feel about the use of your time?

**RESPONSE:**

**There are many “ingredients” to a well-run and effective council meeting. Process is one of the most important which includes a well-prepared agenda, management of that agenda and the structure of the meeting, management of the time. Another ingredient is the style of the meeting which includes the appropriate attention to content and processes, professionalism, trust and respect.**

**With regard to the City Attorney’s time, we are well aware of the importance of budget and increasing the value of the City Attorney’s time without increasing the cost. With that in mind, we have included in our proposal the attendance at City Council meetings which we feel is extremely important.**

9. Describe your ideal working relationship with a municipal government client. What type of communication works well in this relationship?

**RESPONSE:**

**Our law firm philosophy in regard to advising and counseling a municipal government client, including the Mayor, City Council members, City Administrator and Department Leaders is to be prepared, ask questions, be honest, identify, understand and learn the client's goals, provide ideas in executing the accomplishment of those goals. A key aspect in advising and counseling clients is to listen carefully to what the client needs and wants, helping the clients understand their options and communicating recommendations and advice in easy to understand and plain language. We are best able to assist in helping you meet your goals when the goals and vision of the City are clearly defined. We enjoy being part of the collaborative effort in reaching those goals. We also work best when we've developed a good working relationship with the Council, City Administrator, and other authorized contacts that allow us to have difficult and sometimes heated discussions, if needed, and have you understand that we are trying to assist you in reaching your goals and don't have hidden agendas, even if you don't like what you are hearing from us. It also helps us to know whether you prefer us to speak to a single point of contact with the City or allow multiple points of contact. We believe it is best practice that the opinions we provide are shared with the City Administrator and entire City Council.**

**Our goal, if chosen to provide the City of Sunset Valley with legal services, is to meet the evolving legal needs of your City by providing the highest quality legal services with uncompromising ethical standards. Ideally, that includes regularly recurring meetings with the City Administrator and the City Mayor, as well as appropriate department personnel. Informal exchanges of needs, options, deadlines and advice might occur during a telephone call or quick email exchange. More formal exchanges would include the above but be facilitated with more detailed emails to ensure knowledge of the question and providing options and advice with more detail in a memorandum. The client is generally the driver of the style of the communication desired.**

10. Is there a legal *requirement* for a city to conduct a Utility cost of service study? If so, where can I find the info.

**RESPONSE:**

**Generally, there are no legal requirements for a city to specifically conduct a Utility cost of service study. Yet, pursuant to statutes, there are certain factors and data that need to be part of the evaluation of any changes to any rates especially if the rate change is challenged. It is usually best practice to conduct a Utility cost of service study for mitigation of risk, transparency, accountability in the defense of the reason for the rate changes to any potential challenges. There are several places to look with regard to the requirements for any potential rate changes. For instance, with regard to water, you**

would look at the Texas Water Code, Title 2, Subtitle B, Chapter 13 and the Texas Administrative Code Title 16, Part 2, Chapter 24, Subchapter B, including more specifically Section 24.41.

If our law firm is given the opportunity to serve as the legal counsel for the City of Sunset Valley, we would further clarify with the Council the issues on which the City needs clarity and provide you with the more specific legal requirements, legal advice and best practice.

11. What are some of the nuances that you have picked up on in your dealing with City Council of small cities?

**RESPONSE:**

Though not always true, City Councils in small cities tend to be more hands on than City Councils of larger cities, due to operating with a small staff, which creates a different working dynamic than a City that delegates more decision-making to City staff. Smaller cities tend to be general law cities, meaning that the Mayor is the Chief Executive Officer of the City (unless the City has adopted the City Manager form of government by election). When there is a City Administrator on staff, it is important to clearly defined the duties of the Mayor and City Administrator, consistent with statute, to preserve good working relationships. Small cities sometimes have to be more creative with resources, methods of achieving their goals, and ways to have their voices heard, since resources are often focused on larger cities. Legal creativity is sometimes needed as well, since general law cities must look to the law for authority to take the actions they wish to take.

Further, City Councils in small cities are first and foremost made up of citizens that live, socialize (when able), attend church and events, within the community. In other words, they are from there and know the people, the families and the impact decisions have. Many have run for Council due to issues they faced and decided to become involved as a result. Frequently, these experiences shape their outlook on how a city needs to “behave.” Councilmembers usually have a pretty good idea what is going on, how changes will be perceived or accepted, and they often have the closeness with the community to passionately articulate the concerns and needs of those living there. “Outside” legal advice is frequently viewed with a bit of skepticism initially. Our firm, through the sheer years of experience with small cities, has seen much and is aware of our role. Our advice and guidance may have a bigger impact on small cities more than in larger ones and while we are conscious of this, we still advise as required but with the understanding that you, the members of City Council and staff, need to go back to your homes, greet your neighbors and answer their questions about the whys for particular decisions.



12. What is a story you can share with us without using names that we should never emulate?

**RESPONSE:**

**Don't try to limit the number of animals a person can keep in their home. It will bring all of the responsible pet owners to your meeting to speak against the ordinance. More seriously, Council should do their best to maintain cordial relationships with each other and the City Administrator and to handle disagreements in a functional, civil way. Discord at that level of the organization impacts the morale of the employees and the community. It also impacts the productivity of the City and can keep the City from creating and achieving positive vision and goals. Every city has grappled with this dynamic at one point or another in its history.**

**As noted in Item 11 above, a City Council is comprised of citizens who at various times in their life decided to run for or possibly be appointed to some facet of city government. Sometimes the decisions to do this are based on very personal reasons. We have seen "story" after "story" in which a councilmember brings their personal issues to the Council meetings and to decisions on City matters. Individuals who become public officers often fail to realize they also take on the fiduciary responsibility to serve the City and *all* the citizens. The general thread in these unfortunate stories is that the vision of some is clouded by their personal issues and their decisions and actions may result in not doing what is best for the community but what is best for them even if contrary to the community. That generally doesn't work out well for the Council and the community they serve.**

# EXAMPLES OF LEGAL BRIEFS

# LEGAL MEMORANDUM

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**To:** City Council  
**Thru:** ██████████ City Manager  
**Thru:** ██████████ City Attorney  
**From:** Roxana I. Perez Stevens, Assistant City Attorney  
**Date:** ██████████  
**Subject:** Emergency Services Districts (ESDs) – Voter Review

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**Issue:**

**Can the city take the Emergency Services Districts to the voters for review and what details would that encompass?**

**Short Answer:**

There is no legal mechanism for the City of ██████████ to take the Emergency Services Districts (ESDs) to the Voters for review. There are mechanisms, however, where the City may remove ESD territory that is within the City Limits from the ESD but it requires written notice and immediate mandatory compensation. TEXAS HEALTH AND SAFETY CODE §775.022.

There are also mechanisms whereby:

1. The ESD Board of Commissioners may exclude the territory that falls within the City Limits by their own motion; or
2. The ESD Board of Commissioners may hold a hearing to exclude the territory that falls within the City Limits; or
3. A petition by at least five percent of the qualified voters who own taxable property in the district forces the ESD Board of Commissioners to hold a hearing to exclude the territory that falls within the City Limits.

TEXAS HEALTH AND SAFETY CODE §775.021.

If a hearing is held then:

1. After the hearing, the ESD Board of Commissioners (Board) may either order and election on the question of exclusion of the territory or may declare by resolution the territory excluded from the district. However, the Board may not declare the territory excluded if the owners of at least three percent of the property located in the district protest the exclusion; or
2. The Board shall order an election on the question of exclusion if:

- i. the owners of at least three percent of the property located in the district protest the exclusion; or
- ii. the board:
  1. despite the lack of a protest, refuses to exclude the territory; and
  2. after refusing to exclude the territory, receives a petition requesting an election that is signed by a majority of the qualified voters who own taxable real property in the territory proposed to be excluded.

TEXAS HEALTH AND SAFETY CODE §775.021.

### **Analysis:**

Emergency Services Districts (ESDs), including ESD No. 1 – [REDACTED] and ESD No. 2 – [REDACTED], are independent governmental taxing entities and separate political subdivisions of the State of Texas. They are established under Texas Statute and maintain their autonomy and taxing authority. TEXAS HEALTH AND SAFETY CODE Chapter 775. An ESD generally supports or provides local emergency service which may include fire protection services as well as emergency medical services. An ESD has the ability to impose a sales and use tax and a property tax to support or provide emergency services within the district. TEXAS HEALTH AND SAFETY CODE §§775.0074, 775.0751. An ESD sales and use tax can range from between one-eighth of one percent to two percent while an ESD's property tax may not exceed ten cents per one hundred dollars of property valuation. TEXAS HEALTH AND SAFETY CODE §775.0751(a). TEXAS CONSTITUTION Article III §. 48-e.

ESD No. 1- [REDACTED] and ESD No. 2- [REDACTED] previously existed in territories that were not within the City Limits of [REDACTED]. At the time of annexation of the [REDACTED] areas by the City, the City [REDACTED] would provide and continues to provide consistent and comparable Fire and EMS services to all portions of the City, including the newly annexed areas, as the City is legally obligated to provide. TEXAS LOCAL GOVERNMENT CODE §43.056.

Texas Law does not provide a mechanism for the City to force an election for review of an ESD by the voters but it does have the option to remove the territory that is in the City Limits from the ESD after an annexation which can prove costly. Texas Law allows for a municipality such as the City to remove certain territory from an ESD simply by sending written notice by certified mail to the Secretary of the ESD Board of Commissioners to inform the ESD Board of Commissioners that the City will be removing the ESD territory within the City Limits. TEXAS HEALTH AND SAFETY CODE §775.022(a). Upon receipt of the notice, the ESD Board of Commissioners must immediately change its records to show that the territory has been disannexed from the ESD and shall cease to provide further services to the residents in the newly-annexed area. TEXAS HEALTH AND SAFETY CODE §775.022(a). A City that annexes territory that is included in an ESD may remove the territory from the ESD if the City complies with all procedures necessary to annex territory in the district and if the City intends to become the sole provider of emergency services to the annexed territory by the use of City personnel or by some method other than by use of the ESD. TEXAS HEALTH AND SAFETY CODE §775.022(a). It does, however, require mandatory compensation by the City to the ESD immediately for an amount equal to the annexed territory's pro rata share of the ESD's bonded and other indebtedness as computed by a statutory formula. TEXAS HEALTH AND SAFETY CODE §775.022. The statutory formula consists of multiplying the district's total indebtedness at the time of annexation by a

fraction the numerator of which is the assessed value of the property to be annexed based on the most recent certified county property tax rolls at the time of annexation and the denominator of which is the total assessed value of the property of the district based on the most recent certified county property tax rolls at the time of annexation. TEXAS HEALTH AND SAFETY CODE §775.022(e). The City must also purchase from the ESD any real or personal property used to provide emergency services in the annexed territory at fair market value. TEXAS HEALTH AND SAFETY CODE §775.022(a). If the ESD and the City cannot agree on that amount, it must be taken to a mandatory binding arbitration in which an Arbitrator would determine the amount of compensation. TEXAS HEALTH AND SAFETY CODE §775.022(d).

Although the statute gives the City this option, the statute is silent and to when the City may exercise the removal of ESD territory. The annexation of the [REDACTED] areas occurred [REDACTED]. Pursuant to the law, the City has fulfilled the conditions that must be met to exercise the removal mechanism. Therefore, since that statute does not have an expiration date on the when a City may exercise this option, this is a viable albeit costly option.

There are also other mechanisms provided by Texas Statute for the exclusion of ESD territory that is within the City Limits including:

- (1) The ESD Board of Commissioners on their own motion may exclude from the district the territory located within the boundaries of another taxing authority that provides the same services to the territory such as the City of [REDACTED].
- (2) The ESD Board may, at its discretion, hold a hearing to consider the exclusion of the territory.
- (3) The ESD Board shall hold a hearing to consider the exclusion of territory if the Board receives a petition requesting a hearing on the issue that is signed by at least five percent of the qualified voters who own taxable real property in the district. A petition must describe the proposed new boundaries of the district or describe the boundaries of the territory to be excluded from the district.
  - a. After the hearing, the Board may either order an election on the question of exclusion of the territory or may declare by resolution the territory excluded from the district. However, the board may not declare the territory excluded if the owners of at least three percent of the property located in the district protest the exclusion.
  - b. The Board shall order an election on the question of exclusion if:
    - i. the owners of at least three percent of the property located in the district protest the exclusion; or
    - ii. the board:
      1. despite the lack of a protest, refuses to exclude the territory; and

2. after refusing to exclude the territory, receives a petition requesting an election that is signed by a majority of the qualified voters who own taxable real property in the territory proposed to be excluded.

TEXAS HEALTH AND SAFETY CODE §775.021.

### **Conclusions**

The City does not have a legal mechanism available to bring the ESDs to a voter review. The City does have the option of removing the ESD territory located within the City Limits of [REDACTED] but it requires immediate mandatory compensation.

There are other mechanisms where either the ESD Board of Commissions or a certain number of qualified voters who are property owners within the ESD district may bring the ESD territory issues to a hearing and even an election to be decided by the voters in that ESD. These additional mechanisms are not available to the City.

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INTEROFFICE LEGAL MEMORANDUM

PRIVILEGED AND CONFIDENTIAL ATTORNEY/CLIENT  
COMMUNICATIONS AND ATTORNEY WORK PRODUCT

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**TO:** MAYOR AND CITY COUNCIL  
██████████, CITY ADMINISTRATOR  
CITY OF XXX, TEXAS

**THRU:** PAIGE SAENZ, CITY ATTORNEY

**FROM:** ROXANA I. PEREZ STEVENS, ASSISTANT CITY ATTORNEY

**SUBJECT:** MUNICIPALITY OWNING A BUSINESS – FIREWORK STAND

**DATE:** AUGUST 15, 2018

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PRIVILEGED AND CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATIONS AND  
ATTORNEY WORK PRODUCT

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**ISSUE:**

May a municipality such as the City of ██████ own a business to generate revenue? If so, may the municipality own a firework stand even though there is a fireworks ordinance prohibiting the use of fireworks within the city limits?

**SHORT ANSWER:**

Yes, the City may own a business to generate revenue. With regards to the City owning a firework stand, the risks and liabilities would most likely outweigh any benefit derived from the potential generation of revenue. The owning of a business would most likely waive any governmental immunities enjoyed by the City and open it up to the same risks and liabilities as any private person or business entity. The City also currently has an ordinance banning the use and discharge of fireworks within the city limits. Best practices would dictate that the City not engage in the business of owning a firework stand in light of the waiver of immunities and the current ordinance prohibiting the use and discharge of fireworks within the city limits.

**BACKGROUND AND FINDINGS:**

The question has been posed as to whether the City of ██████ can own a business to generate additional revenue. The business that has been suggested is a firework stand.

## BACKGROUND

The City of [REDACTED] currently has an ordinance regarding fireworks that states the following:

### § 91.01 FIREWORKS.

(A) *Findings.* All of the premises and findings of fact recited with the ordinance codified herein are found to be true and correct and are incorporated into the body of this section as if copied in their entirety.

(B) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

*FIREWORKS.* Any device that can be used to produce or intended for use in obtaining visible or audible pyrotechnic display or a combination of those by the combustion of explosive or flammable composition and includes any firecrackers, cannon crackers, skyrockets, torpedoes, Roman candles, black cats, sparklers; squibs, fire balloons, star shells or any other substance in whatever combination by any designated name and includes all articles or substances within the commonly accepted meaning of *FIREWORKS*, whether specifically designated and defined in this section or not.

(C) *Sale of fireworks authorized; permit required.* Upon obtaining a permit from the city, it shall be lawful within the city limits of the city to operate or maintain a firework stand and to engage in the business of offering fireworks for sale to the general public.

(D) *Use of fireworks prohibited; declared a nuisance.*

(1) It shall be unlawful for any person to use, discharge, ignite, detonate, fire, light or otherwise set in action fireworks of any kind within the city limits of the city; except that mass fireworks displays under the supervision of Police and Fire Departments, may be held or performed by bonded and insured persons within the city after obtaining approval from the City Council.

(2) It shall be unlawful for any parent or guardian of any minor child below the age of 18 years of age, to permit or allow such a minor child to use, discharge, ignite, detonate, fire, light or otherwise set in action any fireworks within the city limits of the city.

(E) *Permit.* Any person, entity or retailer engaged in the sale of fireworks within the city limits of the city shall first seek approval from the city by obtaining a permit. Approved permits shall cost \$25 and be valid for six months from the date of issuance.

(Ord. 2012-009, passed 8-21-2012) Penalty, see § 91.99



**§ 91.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

(B) Any person who violates any of the provisions of § 91.01 shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$2,000.

(C)

(1) Any person who shall violate any of the provisions of §§ 91.15 through 91.21 or shall fail to comply therewith, or with any of the requirements thereof, within the city limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of \$2,000. Each day the violation exists shall constitute a separate offense. The penalty shall be in addition to all the other remedies provided herein.

(2) It shall be a violation of §§ 91.15 through 91.21 to interfere with a firefighter in the performance of his or her duties. As soon as possible, a duly commissioned peace officer shall be sent to the scene to investigate the nature of the fire. If, in the opinion of the officer on the scene and/or the Fire Chief, the goal of prohibitions established by this order, the officer may, at his or her discretion, notify the party about the provisions of this order and request compliance with it. In such instances, an entry of this notification shall be made in his or her log, and notice containing the date, time and place of the warning shall be forwarded to the office of the City Judge. At the discretion of the officer and/or Fire Chief, second or flagrant violations of this order may be prosecuted as a misdemeanor offense punishable by a fine not to exceed \$500.

(Ord. 991025, passed 10-25-1999; Ord. 991214, passed 12-14-1999; Ord. 2012-009, passed 8-21-2012)

The City Council passed this Ordinance No. 2012-009 finding that the regulation of firework use within the City is necessary for the general health, safety and welfare of the community. This Ordinance requires permits to be obtained from the City for operation or maintenance of a fireworks stand within the city limits and to engage in the business of selling fireworks to the general public. This Ordinance further states that it is unlawful for anyone to use fireworks within the city limits except for fireworks displays that meet certain criteria. A violation of the Ordinance is a misdemeanor and punishable by a fine up to \$2,000.00.

The City does not have an ordinance addressing the City's ability to own or engage in a business.

The City and the County are also currently under a burn ban.

## FINDINGS

There is no case law on this specific issue. There is also no statutory prohibition to a municipality owning and operating a business. However, there is an Attorney General Opinion on this general issue. Attorney General Opinions are not law and are not binding on a Court of Law but they do provide persuasive direction to the Courts.

The Texas Attorney General was asked whether a municipality could own and operate a compost/mulch business and sell it outside the city limits. Although this request to the Attorney General was for a home-rule city, specific to the compost/mulch business and engaging in business outside the city limits, the Attorney General addresses in general the ability of a municipality to own and engage business and commerce. The Attorney General found no state or federal constitutional provision that prohibited or restrained a city from acting as a “market participant” in the engagement of business. Tex. Op. Att’y Gen. No. GA-0506; *Proctor v. Andrews*, 972 S.W.2d 729, 733 (Tex. 1998) (citing Tex. Const. art. XI, section 5). Texas Constitution article XI section 4 which applies to Type A General Law municipalities states that the city can be chartered alone by general law. The Texas Local Government Code section 51.012 states that a Type A general law municipality may adopt an ordinance, act, law or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the municipality as the body politic.

That being said, a municipality provides governmental functions and proprietary functions. A municipality performs a governmental function when it acts “as the agent of the State in furtherance of general law for the interest of the public at large.” *Gates v. City of Dallas*, 704 S.W.2d 737, 738–39 (Tex.1986) (internal quotations omitted), *superseded by statute on other grounds as stated in City of Terrell v. McFarland*, 766 S.W.2d 809, 813 (Tex.App.-Dallas 1988, writ denied). Given that the municipality is effectively acting on behalf of the state when it performs a governmental function, it is imbued with the state’s sovereign immunity, and therefore is entitled to governmental immunity. *Id.* By contrast, “[p]roprietary functions are those functions performed by a city, in its discretion, primarily for the benefit of those within the corporate limits of the municipality.” *Id.* Because the municipality is not acting on behalf of the state when it performs proprietary functions, the municipality traditionally is not entitled to governmental immunity for those functions, and thus has “the same duties and liabilities as those incurred by private persons or corporations.” *Id.*; see also *Bailey v. City of Austin*, 972 S.W.2d 180, 192–93 (Tex.App.-Austin 1998, pet. denied) (concluding that city’s provision of health insurance to its employees is proprietary function for which governmental immunity does not apply). The operation of a fireworks stand would most likely be found to be a proprietary function which would remove the protection of any governmental immunities in regard to that business. That opens up the City to liability and risks that would apply to any private individual or business entity.

Further, Ordinance No. 2012-009 outlined above prohibits the use and discharge of fireworks within the city limits. Although it allows the sale of fireworks within the city limits with a permit, the prohibition of the use and discharge of fireworks can be problematic for the City. The City would have to issue itself a permit and it may be seen as encouraging the use of fireworks. Further, in defense of citations received by individuals

who are in violation of the ordinance prohibiting the use and discharge of fireworks within the city limits, those individuals may use that fact that they bought them from a City owned firework stand as a defense to the citation. The defense may not be a strong one, but it would have to be one that the City would have to fight nonetheless.

Best practices would dictate that the City limit or eliminate any potential risks and liabilities that would cost taxpayer dollars. The risks and liabilities of the City owning a firework stand would most likely outweigh any benefit derived from the potential generation of revenue. The owning of a business would most likely waive any governmental immunities enjoyed by the City and open it up to the same risks and liabilities as any private person or business entity. The City would be subject to potential lawsuits; for example, for selling defective fireworks, personal injury, etc. The City also currently has an ordinance banning the use and discharge of fireworks within the city limits. Best practices would prescribe that the City not engage in the business of owning a firework stand in light of the waiver of immunities and the current ordinance prohibiting the use and discharge of fireworks within the city limits.

This memorandum does not address the general business and economic risks of running a firework stand business.

**CONCLUSION:**

Although there is no law, statutory or common, prohibiting the City of [REDACTED] to own a business, the risk and liabilities that the City of [REDACTED] would face in owning a fireworks stand would far outweigh any potential benefit derived from the generation of revenue.

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**INTEROFFICE LEGAL MEMORANDUM**

**PRIVILEGED AND CONFIDENTIAL ATTORNEY/CLIENT  
COMMUNICATIONS AND ATTORNEY WORK PRODUCT**

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**TO:** MAYOR AND CITY COUNCIL  
XXXXXXXXXXXXXXXXXX, CITY MANAGER  
XXXXXXXXXXXXXXXXXXXXXXXX, CITY SECRETARY  
CITY OF █████, TEXAS

**FROM:** ROXANA I. PEREZ STEVENS, ASSISTANT CITY ATTORNEY

**SUBJECT:** CHARTER AMENDMENT REGARDING HOLDING MULTIPLE  
PUBLIC OFFICES

**DATE:** JANUARY 11, 2019

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**PRIVILEGED AND CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATIONS AND  
ATTORNEY WORK PRODUCT**

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**ISSUES:**

1. The City Council is considering a Charter Amendment to do away with the restriction for City Council members to hold other public offices. The Charter currently states that a City Council member cannot hold any other elected office.
  - a. What is the law on this issue?
  - b. Does the term "public offices" cover both elected offices and appointed offices?
  - c. How does this affect a City Council member being appointed a director of the █████?

**SHORT ANSWER AND CONCLUSION:**

With regard to the █████, if the City Charter is amended to remove the prohibition that a City Council Member may not hold another public office, a █████ City Council Member may serve on the █████ Board of Directors as expressly allowed in the statute and subject to the expressed limitations.

If the City Council is considering any other appointments, it is prudent to seek a legal opinion on that appointment as different laws may apply to different appointments. If necessary, it is also possible to seek the Texas Attorney General's opinion on the specific appointment on the issue of incompatibility.

**ANSWER AND CONCLUSION:**

The issue regarding a City Council member holding another public office would have to be evaluated through the laws regarding dual office holding and the doctrine of incompatibility. Although, there is no blanket answer that would apply to all the possible appointments of City Council Members made by the City Council, in this case the laws regarding dual office holding do not apply to the City Council members because they do not receive an emolument, or compensation, for the serving. That being said, each appointment to another public office would have to be evaluated separately to consider whether the common law doctrine of incompatibility applies and if it does, whether the appointment of a Council Member would be against the common law doctrine of incompatibility (conflicting loyalties, self-appointment, and/or self-employment). Public office may cover both elected offices and appointed offices.

It is very important to understand that the acceptance of a second public office can result in an automatic resignation from a person's current public office. Therefore, if a City Council Member accepts an appointment to a second public office, it can effectively be an automatic resignation as a City Council Member.

The proposed change in the City Charter does not change the state law and the authorities that the City must follow. The City Charter may be amended to delete the prohibition of City Council members holding other public offices but it cannot be amended to conflict with state and/or common-law. Even with the deletion of the prohibition against holding other public offices, City Council members may not hold offices where the common law doctrine of incompatibility applies and that position results in conflicting loyalties, self-appointment and/or self-employment. Each appointment has to be evaluated separately to determine whether it qualifies as a public office, whether the common law doctrine of incompatibility applies and it is does, whether the appointment would be in violation of the common law doctrine of incompatibility.

The City of [REDACTED] has the following Boards, Commissions and/or Districts that are appointed by the City Council.

- Airport Board
- Cemetery Committee
- Library Board
- Municipal Development District
- Park Board
- Planning & Zoning Commission

An evaluation of the [REDACTED] Municipal Development District yields the following legal opinion pursuant to the current laws, court rulings and Texas Attorney General Opinions:

**[REDACTED] Municipal Development District ([REDACTED])**

The [REDACTED] Municipal Development District was created by the voters in May 2010 and is a taxing entity and governed by Chapter 377 of the Texas Local Government

Code. The boundaries of the [REDACTED] contain all of the city limits and all of the city's extraterritorial jurisdiction. The [REDACTED] is a separate political subdivision of the state of Texas and of the City of [REDACTED] pursuant to Chapter 377 of the Texas Local Government Code. The [REDACTED] is also governed by a board of at least 4 directors appointed by the City Council and who receive no compensation. TEX. LOCAL GOVT. CODE §377.051(a) and (b). The office of [REDACTED] Director would be considered a public office. An employee, officer or member of the governing body of the municipality may serve as a director but may not have a personal interest in a contract executed by the district other than as an employee, officer or member of the governing body. TEX. LOCAL GOVT. CODE §377.051(d). When considering the common law doctrine of incompatibility in this case, the statute expressly allows for a City Council member to serve as a director on the municipal development district with certain limitations. Common-law doctrine may be overcome by statute as in this case the statute expressly allows for a Council member to serve as a director. Therefore, if the City Charter is amended to remove the prohibition that a City Council Member may not hold another public office, a [REDACTED] City Council Member may serve on the [REDACTED] Board of Directors as expressly allowed in the statute and subject to the expressed limitations.

An evaluation of the other possible appointments that City Council may make is not being done at this time. If there is a specific appointment wherein the City Council Members want to appoint one of their own, it is prudent to seek a legal opinion on that appointment. If necessary, it is also possible to seek the Texas Attorney General's opinion on the specific appointment on the issue of incompatibility.

## **BACKGROUND AND AUTHORITIES:**

### **BACKGROUND**

The City of [REDACTED], Texas is a home rule municipality with the following Charter Provision:

#### **ARTICLE IV. THE AUTHORITY AND LIMITATIONS OF THE CITY COUNCIL**

Section 4.05. Prohibitions. The council shall have powers only as a body meeting with a quorum present and no member shall have power to act individually except where that power may be conferred upon the member in this charter or by written council resolution; provided that each member is expected to serve his or her constituency and shall have the right to inquire through an officer appointed by the council into any matter whether or not such matter is brought before the council in order that he or she may so serve as an independent member of the council.

No member of the council shall hold any other city office or city employment during his or her term of office, and no former member of the council shall hold any city office with compensation until one (1) year after the expiration of the full term of office to which such member was appointed or elected.

Neither the city council nor any of its members shall direct the appointment of any person to office by the city manager or any of his/her subordinates. No member of the council shall give orders directly to any city employee, except when empowered to do so by an emergency proclamation, and all members of the council shall, except for officers appointed by the council, deal with the non-elective officers, employees and administrative offices of the city solely through the city manager.

The City Charter also states in part in Article I "INCORPORATION, FORM OF GOVERNMENT AND POWERS OF THE CITY" Section 1.04 "General Powers" that the City shall not have any authority or power that conflicts with state law.

The City Charter further states in part in Article III "CITY COUNCIL" that no candidate for or member of the council shall hold any other elective public office and that the Council and Mayor elected shall serve without pay, provided that any actual and necessary expense incurred while discharging their duties will be reimbursed as approved by the Council.

The City of [REDACTED] has the following Boards, Commissions and/or Districts that are appointed by the City Council.

- Airport Board
- Cemetery Committee
- Library Board
- Municipal Development District
- Park Board
- Planning & Zoning Commission

The City Council and the Mayor also appoint members to the Building Standards Commission and the [REDACTED] Housing Authority. The Building Standards Commission is a quasi-judicial board that has the Council as their appeal process. There are not many cases that go to the Building Standards Commission. The last hearing was held in 2013.

None of these boards and commissions receive any type of compensation for their duties. The [REDACTED] Municipal Development District and the Housing Authority have their own directors who answer to their own Boards.

## **AUTHORITIES**

The simultaneous holding of two public offices may be prohibited under either the constitutional restriction against holding two civil offices of emolument (dual office holding) or under common-law incompatibility standards that apply to holding two incompatible positions (the common-law Doctrine of Incompatibility). Texas law generally prohibits a public servant from holding two or more public offices at the same time, a practice known as "dual office holding." Dual office holding refers to an aspect of Texas law that prevents a person from holding two or more public offices at the same time. The restrictions on dual office holding are primarily derived from two sources: Texas constitutional restrictions on holding two civil offices of emolument; and Attorney general opinions and court cases that have found the dual holding of certain offices to be

incompatible and therefore invalid. It is important to be aware of these issues because the acceptance of a second public office can result in an automatic resignation from a person's current public office.

### **Public Office**

The Texas Supreme Court case *Aldine Independent School District v. Standley*, 280 S.W.2d 578 (Tex. 1955) establishes that "the determining factor which distinguishes a public officer from an employee is whether any sovereign function of the government is conferred upon the individual to be exercised by him for the benefit of the public largely independent of the control of others. *Id.* At 583. Public office is discussed more in the dual office holding authorities.

### **Dual Office Holding**

Article XVI, section 40 of the Texas Constitution prohibits a person from simultaneously holding more than one "office of emolument." TEX. CONST. art. XVI, § 40(a). "An 'emolument' is compensation paid to the officer and does not include reimbursement for actual expenses." Tex. Att'y Gen. Op. No. KP-0023 (2015) at 1. In basic terms, to hold "more than one civil office of emolument" means to hold two paid public offices. A public officer, unlike a public employee, exercises a sovereign function of government largely independent of the control of others for the public benefit. This distinction recognizes the essential elements of public office: first, the officeholder's authority to exercise governmental power for the benefit of the public; and second, the officeholder's independence from the control of other governmental entities or officials. *Aldine Independent School District v. Standley*, 280 S.W.2d 578 (Tex. 1955); Op. Tex. Att'y Gen. No. GA-365 (2005). A mere employee does not hold a public office. Also, a person who holds a position with a private nonprofit association (e.g., a board member of a nonprofit association) is not considered a public officer for purposes of dual office holding. Op. Tex. Att'y Gen. DM-303 at 1 (1994). Only public offices raise constitutional dual office holding concerns.

A person does not have to be elected to a position to be considered an officer. *See generally Irwin v. State*, 177 S.W.2d 970 (Tex. Crim. App. 1944). For example, the Local Government Code and most home rule charters state that the city manager, city secretary, and certain other city department heads are considered officers.

A person who serves in a merely advisory capacity or on a purely advisory board is not considered an officer for purposes of the dual office holding limitations. However, it is important to note that if the board has any rule making or quasi-judicial powers, or the board's recommendations are generally approved in whole by another governmental entity, the board may well be found to be more than purely advisory. Tex. Att'y Gen. LO-94-21.

For the City of [REDACTED], the City's Charter provided that its Mayor and Council Members do not receive compensation, although it does receive certain reimbursements. See City of [REDACTED], Texas, Code of Ordinances, art. III, §3.08 (2016) (Home Rule Charter). Reimbursement for approved actual expenses alone does not qualify as an emolument.



Thus, a city council position in the City of █████ is not one of emolument. Accordingly, with the proposed amendment of the City Charter lifting the prohibition of a council member holding more than one public office, article XVI, section 40(a) does not bar one person holding the two public offices. Tex. Att’y Gen. Op. No. KP-0125; *See State ex rel. Hill v. Pirtle*, 887 S. W.2d 921, 931 (Tex. Crim. App. 1994) (recognizing that both positions must be civil offices of emolument for article XVI, section 40(a) to be applicable); see also Tex. Att’y Gen. Op. No. KP-0032 (2015) at 1.

### **Doctrine of Incompatibility**

Common-law incompatibility refers to the prohibition against a person holding certain public offices at the same time because of the practical conflicts of interest that might arise. For example, the doctrine of incompatibility prevents a person from holding two public offices if a person could use the power in one office to impose policies that impact the other office. Common-law incompatibility also may be implicated if there is the potential that a person’s actions in one office could control the other office. The concept of common-law incompatibility is derived from a series of court cases and attorney general opinions that have prohibited the holding of multiple public positions in particular situations. Whether the holding of two public offices would violate common law incompatibility requires a factual consideration of the duties of each position and must be considered on a case-by-case basis.

Common-law incompatibility occurs when there are inherent conflicts in one person holding two particular public positions at the same time. The three types of common-law incompatibility are:

- 1) self-appointment prohibition: Prevents a governing body from appointing one of its own members to a public office;
- 2) self-employment prohibition: Prevents a governing body from employing one of its own members as a public employee; and
- 3) conflicting loyalties prohibition: Prevents a person from holding two public offices when the interests of the two entities may conflict and when voting on behalf of one public entity would possibly compromise the interests of the other public entity. In other words, the official would have to choose between the conflicting interests of the two public entities.

The prohibition against self-appointment prevents a local governing body from appointing one of its own members to a public office or position. The common law has been adopted in this state "only insofar as it is not inconsistent with the laws of the state, or until altered or amended by the Legislature." *McCloskey v. San Antonio Traction Co.*, 192 S.W. 1116, 1118 (Tex. Civ. App.--San Antonio 1917, writ ref'd); see CIV. PRAC. & REM. CODE § 5.001 (adopting as rule of decision "those portions of the common law of England that are not inconsistent with the constitution or the laws of this state, the constitution of this state, and the laws of this state"). Incompatibility, then, being a common-law doctrine, does not apply where the legislature has enacted a contrary law. *See Lindner v. Hill*, 673 S.W.2d 611, 616 (Tex. App.--San Antonio 1984) (common law controls where no statute applies), *aff'd*, 691

S.W.2d 590 (Tex. 1985); *Houston Pipe Line Co. v. Beasley*, 49 S.W.2d 950, 952 (Tex. Civ. App.--Galveston 1932, no writ). The prohibition against self-appointment may be overcome by a city charter provision (for a city position, not an office in another entity) or a state or federal law that allows a city to appoint one its own members to a particular public office. Tex. Att'y Gen. Op. No. LO 95-052. For example, Chapter 377 section 377.051(d) of the Texas Local Government Code expressly allows an employee, officer or member of the governing body of the municipality to serve as a director of a municipal development district but may not have a personal interest in a contract executed by the district other than as an employee, officer or member of the governing body. TEX. LOCAL GOVT. CODE §377.051(d). Therefore, the City Council could appoint its own members to these positions without creating a self-appointment problem. A local entity may not rely on an ordinance or its own adopted policy to overcome the prohibition against self-appointment. The entity must be able to point to a state or federal law or a city charter provision, in the case of home rule cities, that allows the local governing body to appoint its own members to a public office. The prohibition against self-appointment does not limit the authority of a local governing body to appoint its own officer to a position that is not a public office.

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Jeffrey T. Ulmann

### MEMORANDUM

**TO:** Mayor and City Council, City of [REDACTED]

**FROM:** Barbara Boulware-Wells, City Attorney

**DATE:** January 22, 2016

**RE:** Credit Cards and Charges Associated Thereto

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#### Issue:

Question has been raised as to whether the City is able to charge individuals for using of credit cards.

#### Discussion:

The Texas Finance Code prohibits private businesses from “penalizing” a person for paying with a credit card. *See*, Section 339.001, Texas Finance Code. Thus, a question was raised as to whether municipalities were prohibited as well. Both Section 339.001(b), Texas Finance Code and Section 132.002(b), Texas Local Government Code specifically provide that cities ARE able to “collect a fee for processing the payment by credit card.”

#### Finance Code

Sec. 339.001. IMPOSITION OF SURCHARGE FOR USE OF CREDIT CARD. (a) In a sale of goods or services, a seller may not impose a surcharge on a buyer who uses a credit card for an extension of credit instead of cash, a check, or a similar means of payment.

(b) This section does not apply to:

(1) a state agency, county, local governmental entity, or other governmental entity that accepts a credit card for the payment of fees, taxes, or other charges; or

(2) a private school that accepts a credit card for the payment of fees or other charges, as provided by Section [111.002](#), Business & Commerce Code.

(c) The consumer credit commissioner has exclusive jurisdiction to enforce this section.

(d) The Finance Commission of Texas may adopt rules relating to this section. Rules adopted pursuant to this section shall be consistent with federal laws and regulations governing credit card transactions described by this section.

(e) This section does not create a cause of action against an individual for violation of this section.

### **Local Government Code**

Sec. 132.002. PAYMENT OF FEES OR COSTS BY CREDIT CARD OR ELECTRONIC MEANS.

(a) The commissioners court of a county may authorize a county or precinct officer who collects fees, fines, court costs, or other charges on behalf of the county or the state to accept payment by credit card, the electronic processing of checks, or other electronic means of a fee, fine, court costs, or other charge. The commissioners court may also authorize a county or precinct officer to collect and retain a fee for processing the payment by credit card, the electronic processing of checks, or other electronic means.

(b) The governing body of a municipality may authorize a municipal official who collects fees, fines, court costs, or other charges to:

(1) accept payment by credit card of a fee, fine, court cost, or other charge; and

(2) collect a fee for processing the payment by credit card.

(c) The governing body of a municipality may authorize the acceptance of payment by credit card without requiring collection of a fee.

(d) The commissioners court may authorize a county or precinct officer who collects fees, fines, court costs, or other charges on behalf of the county or the state to accept payment by electronic means of a fee, fine, court costs, or other charge. The commissioners court may also authorize a county or precinct officer to collect and retain a handling fee for processing the payment by electronic means.

(e) A commissioners court may authorize the acceptance of payment by credit card or by electronic means without requiring collection of a fee.

(f) The director of a community supervision and corrections department, with the approval of the judges described by Section [76.002](#), Government Code, may authorize a community supervision official who collects fees, fines, court costs, and other charges to:

(1) accept payment by debit card or credit card of a fee, fine, court cost, or other charge; and

(2) collect a fee for processing the payment by debit card or credit card.

These provisions were enacted to allow governmental entities to recoup fees charged due to private individual's preference to use credit or debit cards. Since no city is allowed to use public funds for private purposes, it is important to recoup such fees.

### **Attorney Generals Statements**

In further support of this, the Attorney General's website has contained two different sections related to charges for use of credit cards under its Consumer Protection section. Former Attorney General, now current Governor Greg Abbott previously had stated:

## Charging Extra For Credit Card Use

In Texas, a business can not penalize you for paying with a credit card. Businesses that add a surcharge to those who pay by credit card might be violating provisions of the Texas Finance Code.

However, businesses can discount the regular retail price of an item for consumers who pay cash. If you believe a business is charging extra for credit card purchases, please file a consumer complaint with our office.

Credit card fees can be charged by government entities, such as for the payment of property taxes or other fees required by government agencies.

(a) In a sale of goods or services, a seller may not impose a surcharge on a buyer who uses a credit card for an extension of credit instead of cash, a check, or a similar means of payment.

(b) This section does not apply to:

(1) a state agency, county, local governmental entity, or other governmental entity that accepts a **credit card for the payment of fees, taxes, or other charges; or**

(2) a private school that accepts a credit card for the payment of fees or other charges, as provided by Section 111.002, Business & Commerce Code.

Ken Paxton, as the current Attorney General modified the language slightly but equally supportive of the City's position:

## Charging Extra For Credit Card Use

In Texas, a business can not penalize you for paying with a credit card. Businesses that add a surcharge to those who pay by credit card might be violating provisions of the Texas Finance Code. However, businesses can discount the regular retail price of an item for consumers who pay cash. If you believe a business is charging extra for credit card purchases, please file a consumer complaint with our office.

Credit card fees can be charged by government entities, such as for the payment of property taxes or other fees required by government agencies.

### City's Current Provision

The City's imposition of credit card charges are set out in the City's Fees Schedule as part of Section 1.100, Administrative Fees in subsection (e):

#### **Sec. 1.100 Administrative Fees**

(e) Credit/debit card payments (not applicable to municipal golf course with the exception of membership payments): 3.00%. (Ordinance O-25-14 adopted 9/18/14)

### Other Cities

Other cities charge credit card fees, an example of which is City of Leander as noted below – please note that they cite to the same Local Government Code provision as mentioned above,

Chapter 132, Local Government Code. Additionally, and as allowed under Section 132.003(b), the City of Leander charges the maximum amount of five percent (5%):

## **City of Leander**

### **Sec. 1.02.003 Payment of fees, fines or other charges by credit card**

- (a) The city will accept credit cards as a means for paying fees, fines, court costs, or other charges.
- (b) The city will contract with a financial institution for the processing of credit cards.
- (c) The city will charge a fee of five (5) percent as a handling fee.
- (d) Any fees collected in excess of handling charges will be placed in the city's general fund.

(2003 Code, sec. 1.1102)

**State law reference**—Payment of fees, fines, court costs or other charges by credit card, V.T.C.A., Local Government Code, ch. 132.

### **Conclusion:**

The City is clearly allowed to recoup the costs associated with using credit cards by way of imposition of credit card fees so long as the imposition is in conformance with Chapter 132. Currently, the City has imposed a three percent (3%) fee which is under the maximum amount of five percent (5%) allowed. It is advisable to not have exceptions to such charges.

As always, I remain available for questions or comments.

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**MEMORANDUM**

TO: Mayor and City Commissioners  
City Manager

FROM: Barbara Boulware-Wells  
City Attorney's Office

DATE: November 29, 2018

Re: Dual Office Holding and Doctrine of Incompatibility – City Manager and Interim Police Chief

---

**Inquiry:**

An inquiry has been presented to the City as to whether the current City Manager, [REDACTED], has violated any laws in holding the positions of City Manager and Interim Police Chief. The City of [REDACTED] is a home-rule city. The Charter of the City was adopted in 1919 and it has undergone a few amendments through the years.

**Finding:** The City Manager is allowed to hold both positions without violating Dual Office Holdings provisions or the Doctrine of Incompatibility.

**Analysis:** I undertook a thorough review of the Charter, personnel policies, as well as case law and Attorney General Opinions. The following is a synopsis of my findings with each which lead me to the conclusion stated:

**Charter**

Pertinent provisions related to both the office of City Manager and the Police Chief are as follows (emphasis added):

Article V, Section 20 is permissive as to the appointment of a City Manager:

**SECTION 20. CITY MANAGER:** The City Commission *may* appoint a City Manager, who shall be the administrative head of the municipal government, and shall be responsible for the efficient administration of all departments; he shall be a resident of the City of [REDACTED] when appointed, and shall hold his office two (2) years unless sooner removed from same. *He shall be removable from office by the Commission after a public hearing before the full Commission for good cause shown upon charges duly filed for incompetence, habitual neglect of duty, or misfeasance or malfeasance in office. If the City Commission shall fail or refuse to appoint a City Manager, or should there, for any reason, be a vacancy in the office of City Manager, the Mayor of said city shall discharge all of the duties imposed by the terms of this Charter upon the City Manager until such vacancy be filled, or until such time as the City Commission may, in its discretion, appoint a City Manager.* As amended at an election held on May 23, 1921.

Article V, Section 21 discusses the duties of a City Manager, should the City appoint one:

**SECTION 21. POWERS AND DUTIES OF THE CITY MANAGER:** The City Manager shall see that the laws and ordinances of the city are enforced;

Appoint all appointive officers or employees of the city, *with the advice and consent of the Commission (such appointments to be upon the merit and fitness alone)*, and remove all officers and employees appointed by him:

Attend all meetings of the Commission, with a right to take part in the discussion, but having no vote;

Recommend in writing, to the Commission such measures as he may deem necessary or expedient;

Keep the Commission fully advised as to the financial condition and needs of the city, and perform such other duties as may be prescribed by this Charter, or be required of him by ordinance or resolution of the Commission.

Article II, Section 22 allows for a Police Department to be created:

To establish and maintain the City Police Department, prescribe the qualifications and duties of policemen and regulate their conduct.

Article V, Section 23 allows for the City Commission to determine departments of the City:

**SECTION 23. DEPARTMENTS:** *The Commission shall create and consolidate such offices and may divide the administration of the City's affairs into such offices or departments at their discretion.* As amended at an election held on May 23, 1921.

### **Texas Constitution**

The provision that is cited by the inquiry provided to the City is from Article 16, General Provisions, Texas Constitution:

Sec. 40. HOLDING MORE THAN ONE PUBLIC OFFICE; EXCEPTIONS; RIGHT OF OFFICEHOLDER TO VOTE. (a) *No person shall hold or exercise at the same time, more than one civil office of emolument, except that of Justice of the Peace, County Commissioner, Notary Public and Postmaster, Officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States and enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, and retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and officers and enlisted members of the Texas State Guard and any other active militia or military force organized under state law, and the officers and directors of soil and water conservation districts, unless otherwise specially provided herein.*

### **Review of the Law: Cases and Attorney General Opinions:**

Various Attorney General opinions, as well as legal cases, have reviewed and interpreted what the Texas Constitutional provision means and how that implicates particular positions. The inquiries generally start with a review of dual office holding and/or doctrine of incompatibility. In order for the dual office holding prohibition to be triggered, the positions involved must both be **offices** and each must be an **office of emolument**. For purposes of section 40 of article XVI of the Texas Constitution, the term "emolument" signifies a pecuniary profit, gain, or advantage. [Irwin v. State, 177 S.W.2d 970 \(Tex.Crim.App.1944\)](#). As noted in GA-0766, "[p]rior



opinions from this office have concluded that "a person is not ordinarily an officer if his or her actions are subject to control by a superior body, for in such instance," the person is not exercising authority "largely independent of the control of others." Tex. Att'y Gen. Op. No. GA-0169 (2004) at 3." As to the common law doctrine of incompatibility, one must determine that there is a civil office of emolument involved first and then there are three aspects that need to be reviewed, individually, to determine whether there is a violation of such doctrine: self-appointment, self-employment; or conflicting loyalties.

The inquiry provided GA-0536 as one source to support the position that Mr. Roberts holding the positions of City Manager and Interim Police Chief is problematic. In such opinion, the Attorney General was asked to review a situation where the City had an Assistant Chief of Police who had been asked to serve as City Administrator. As noted above, the Attorney General notes that the Texas Constitution's prohibition from serving simultaneous civil offices of emolument. The note that "the determining factor which distinguishes a public office from an employee is whether any sovereign function of the government is conferred upon the individual to be exercised by him for the benefit of the public largely independent of the control of others." The Attorney General finds that the Assistant Chief of Police is not a "public officer" and thus he does not occupy more than one "office of emolument." The opinion then turns to the common law doctrine of incompatibility which has three components: (1) self- appointment; (2) self -employment; and (3) conflicting loyalties. This particular case found that self-appointment was not met. It also found that conflicting loyalties was not met because both positions must be civil offices and the Assistant Chief of Police does not. That leaves the aspect of self-employment. Past AG opinions have noted the key aspect of this component is supervision – and in this case found that because the City Administrator is head of the administrative department and has supervision over all administrative offices and employees, the City Administrator had supervisory authority over the position of the Assistant Chief of Police. The inquiry also cited to Letter Opinion 89-002 as holding similarly, which it does, but such Letter Opinion contains a very large caveat clearly stated: *"If the city charter of Dublin gives the city manager authority to supervise the police chief, the doctrine of incompatibility would prevent one person from holding both positions since otherwise the city manager would be in the position of supervising himself."*

### **Other Opinions**

The Attorney General Opinion GA-0849 discusses the position of a City Manager and finds that the City Manager at issue in that opinion was appointed by the City Council as the chief administrative and executive officer and he is "responsible to the City Council for the administration of all affairs of the City." The AG ultimately concludes in that Opinion that the City Manager who is appointed by and subject to termination by the city council is not an officer (civil office) within the common-law doctrine of incompatibility.

A similar opinion, GA-0538, held that even with an employment agreement, if the employment agreement allowed the City Manager to be terminated at any time, that City Manager did not hold an office and thus was not barred by the common-law doctrine of incompatibility.

### **Applying to the Positions Inquired About**

As noted above, the City is allowed, not required to appoint a City Manager. It has only done so in the last 5 years or so. Prior to such time, the Mayor was the sole individual handling the administrative functions; the addition of the City Manager position does not remove the Mayor's responsibilities, but allows some to be handled on a day-to-day basis by another. Further, if the City of [REDACTED] does appoint a City Manager, it is to assign him/her the duties enumerated including: Appoint all appointive officers or employees of the city, *with the advice and consent of the Commission (such appointments to be upon the merit and fitness alone)*, and remove all officers and employees appointed by him. It is clear that by that directive from the Charter, that the City Manager does not act independently, but acts only in conformance as to what the Commission allows. This is supported by discussions with the Mayor wherein he notes that he still works with and oversees the City Manager's position. The City's Charter has a two year term for the position of City Manager but the City Manager also has a contract.

Most cities with a City Manager position have such a contract. However, his agreement still allows that he is subject to termination by the City Commission. Thus, it would be difficult in the case at hand to overcome the finding held in GA-0849 - that the City Manager is not an officer within the common-law doctrine of incompatibility. He simply does not have full sovereign powers that can be exercised independently of the City Commission.

As to the office of Interim Police Chief, the City Charter provisions allow the City Commission to create a Police Department, which it has. The City Commission continues to be in charge of such department and such Police Chief is responsive to the City Commission. Thus, the *supervision* aspect that is discussed above as part of the doctrine of incompatibility would not be met. In the past, the City Commission is who has filled the Police Chief position, so the *self-appointment* is also not met. Finally, the *conflicting loyalties* provision does not apply unless both are civil "offices" which they are not.

### **Critical Provision**

The City's Charter also allows the City Commission to "*create and consolidate such offices and may divide the administration of the City's affairs into such offices or departments at their discretion*" as noted in Section 23 of Article V of the Charter. Thus, although the office of the Police Chief is presently held by the City Manager as an interim, the City Commission would be within its power to combine such offices as they desired. Further, in this particular instance, the City Manager is well qualified to hold the Police Chief position, with a Bachelor of Science in Criminal Justice Administration, over 20 years' experience and holding a Master Peace Officer license, together with being certified as a police chief through TCOLE. The vacancy in the office has occurred since the last Police Chief left in July 2017. During such month, the City Commission unanimously named the City Manager as the Interim Police Chief. Although the City Commission has advertised for a new chief, no candidates who satisfy the City Commissioners have been found.

### **Conclusion**

While I understand the initial inquiry, I believe a thorough review of case law and Attorney General Opinions reveals that the case at hand is not unheard of nor uncommon, let alone illegal or in violation of the State Constitution. At all times, the City Commission is who is controlling the positions held by the current City Manager, both as the City Manager and the Police Chief.

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**MEMORANDUM**

TO: Board of Directors, [REDACTED] EDC  
[REDACTED], Interim City Manager  
[REDACTED], Director HR

FROM: Barbara Boulware-Wells, General Counsel, [REDACTED]

DATE: June 27, 2018

RE: Health Insurance Benefits for [REDACTED] employees

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Issue: A question was raised about the City being able to offer health insurance benefits to the proposed [REDACTED] employees (if approved by City Council) otherwise allowed to be offered to them pursuant to Section 501.067, Texas Local Government Code. [REDACTED] [REDACTED] had informed me of various hoops that need to be jumped through and concerns arising from IRS Reporting requirements due to the Affordable Care Act provisions. Violating these provisions could result in penalties being assessed against the City and/or possibly the [REDACTED].

Response: I researched the various provisions that Mr. [REDACTED] had offered as being problematic and spoke with accountants, other EDCs, and even IRS to get direction on where I might find the answer. At the IRS, I started with Applicable Large Employer ("ALE") regulations as they pertained to local governmental entities to determine whether two or more entities that have a certain level of common or related ownership may be combined for purposes of determining whether they are ALEs. There is direction given in the Code, Section 414, that if two more businesses have commonality, that they can be combined for purposes of the employer shared responsibility provisions. However, they indicate that specific rules under Section 414 have not yet been developed for government entities and Section 414 more relates to common or related ownership and government entities are not typically "owned," it gives government entities the ability to apply a good faith reasonable interpretation of section 414 to determine whether they should be combined.

In application of this allowance of interpretation, I offer that because Section 501.067, Texas Local Government Code allows for a City to offer its health and other benefits to its Economic Development Corporation, that provision gives the City the basis for the

good faith interpretation that for those purposes, they are jointly owned and may be offered the same benefits as those who work for the City.

I posed this to Mr. [REDACTED] at a transition meeting and he indicated that he had been looking for such "safe harbor" interpretation because there are no clear directives and this gave it to him to concur that the City may offer such benefits pursuant to the Texas Local Government Code provisions. I've attached copies of such provisions located.



**RESPONSE TO REQUEST FOR QUALIFICATIONS  
FOR  
PROFESSIONAL SERVICES –  
CITY ATTORNEY/LEGAL SERVICES**

**SUBMITTED BY  
DENTON NAVARRO ROCHA BERNAL & ZECH  
A PROFESSIONAL CORPORATION**

**Charles E. Zech, Partner/Shareholder**  
*cezech@rampagelaw.com*



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## TABLE OF CONTENTS

### Tab 2

**Letter of Transmittal.....Page 1**

### Tab 3

**Qualifications.....Page 2-46**

- A. Firm's name, including the address of office in which the work will be performed
- B. (1) Number of years the firm has been in business, list of principals in the firm, biographical sketch with education, years of legal experience, years of municipal legal experience and any other areas of specialty within the field of municipal law. (2) Statement identifying the principal anticipated to be the attorney with responsibility for providing the City of Sunset Valley with City Attorney Services
- C. List of supporting attorneys who will provide legal services in rank order, any attorney anticipated to represent the City of Sunset Valley, complete with educational and credentialing information, years of legal experience, years of municipal legal experience, and information of any areas of specialty within the field of municipal law
- D. Summary of qualifications, specializations, experience, professional affiliations, special training
- E. Number of staff, by discipline, in your law office and copies of their resumes

### Tab 4

**References.....Page 47**

- A. Five (5) professional references, including current municipal clients that the firm has represented in the past five (5) years to include contact person and telephone number

### Tab 5

**Conflicts of Interests and Litigation in the past five years.....Page 48**

- A. List of clients that the Firm currently represents and employees whether contract/part-time or full-time that could cause a conflict of interest and the Firm's ability to provide neutral

and authentic advice to the City of Sunset Valley. If one exists, how would the Firm resolve the conflict or any future conflicts of interest

- B. Any litigation the firm has filed in the past five years in which either the City of Sunset Valley or one of its employees was named as a defendant, description of case(s)
- C. Any litigation filed in the past five years in which a municipality was a defendant, description of case(s)

**Tab 6**

**Additional Information.....Page 49-51**

- A. Additional documentation which the Firm deems necessary which will detail the firm's professional experience
- B. Summary detailing the experience and understanding of the role of providing consulting legal services as City Attorney
- C. Municipal Clients List



Denton Navarro Rocha Bernal & Zech, P.C.  
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March 17, 2020

City of Sunset Valley  
Attn: Sylvia Carrillo-Trevino, City Administrator  
3205 Jones Rd.  
Sunset Valley, TX 78745

Re: RFQ – City Attorney/Legal Services

Dear City Administrator Carrillo-Trevino,

It is our pleasure to respond to the Request for Qualifications for the City Attorney of the City of Sunset Valley. Our firm specializes in representing local governments and we are well-positioned to offer the City of Sunset Valley high-quality and proactive legal services. Enclosed is our Response to the Request for Qualifications.

Very truly yours,

Denton Navarro Rocha Bernal & Zech, P.C.  
attorneys & counselors at law • rampagelaw.com



**3. Qualifications**

**A. Firms name, including the address of office in which the work will be performed**

The Firm proposes to designate Shareholder, Charles E. Zech, as the primary City Attorney and appoint all other attorneys in the Firm as Assistant City Attorneys. The Austin office and team will be assigned to the City of Sunset Valley. The address is below:

Denton Navarro Rocha Bernal & Zech, P.C.  
2500 W. William Cannon Drive, Suite 609  
Austin, Texas 78745-5320

**B. (1) Number of years the firm has been in business, list of principals in the firm, biographical sketch with education, years of legal experience, years of municipal legal experience and any other areas of specialty within the field of municipal law.**

DNRB&Z was founded in 1990 and has been in continuous operation for thirty years with offices located in San Antonio, Harlingen, Austin and League City.

**List of Principals**



**Lowell F. Denton** is the Founding Partner/Shareholder. Mr. Denton earned his Bachelor of Arts from Baylor University and his Juris Doctor from Baylor University School of Law in 1978. He was admitted to the State Bar of Texas in 1978. He has 41 years of municipal legal and civil litigation experience. He is experienced in local government and municipal law, with expertise in civil litigation, land use, civil rights (including police and employee litigation), public sector labor negotiation, civil service, first amendment, voting rights issues, and religious freedom claims. Mr. Denton is Board Certified in Civil Trial Law by the Texas Board of Legal Specialization. He is admitted to practice before the United States Supreme Court, Supreme Court State of Texas, United States Court of Appeals Fifth Circuit, United States District Courts for the Southern District of Texas, Western District of Texas, and Northern District of Texas. Mr. Denton has been recognized as a Texas Super Lawyer each year since 2008 for Government, Cities, Municipalities, Employment and Labor.



**Ricardo J. Navarro** is a Partner/Shareholder and Managing Partner of the Rio Grande Valley office. Mr. Navarro earned his Bachelor of Arts from the University of Texas at Austin in 1978 and his Juris Doctor from the University of Texas School of Law in 1984. He was admitted to the State Bar of Texas in 1985. He has 35 years of legal experience. He is experienced in local government and municipal law, with expertise in civil litigation in state and federal courts, labor and employment law, municipal and county civil service law and practice, public sector labor negotiations, and general counsel representation of local government entities. Mr. Navarro is

admitted to practice before the United States Supreme Court, the United States Court of Appeals Fifth Circuit, and the United States District Courts for the Southern and Western Districts of Texas.



**Patrick C. Bernal** is a Partner/Shareholder. Mr. Bernal earned his Bachelor of Arts from Texas A&M University in 1979, his Master of Public Affairs from the University of Texas at Austin in 1983, and his Juris Doctor from the University of Texas School of Law in 1983. He was admitted to the State Bar of Texas in 1983. He has 36 years of municipal legal experience. Mr. Bernal is experienced in local government and municipal law, with expertise in litigation in state and federal courts, local government defense, employment law, land use, annexation, flooding, civil rights, torts, contracts, personal injury and property damage claims. Mr. Bernal is admitted to practice before the Fifth Circuit Court of Appeals, and for the Western and Southern Districts of Texas.



**Charles E. Zech** is a Partner/Shareholder. Mr. Zech earned his Bachelor of Business Administration from Southwest Texas State University in 1995, his Juris Doctor from St. Mary's School of Law in 1998, and his Masters of Public Administration from Texas State University in 2008. He was admitted to the State Bar of Texas in 1998. He has 21 years of legal experience, 18 years of municipal legal experience, and 18 years of economic development legal experience. Mr. Zech is experienced in local government and municipal law, Texas Public Information Act, Open Meetings Act, ordinance and resolutions drafting, with expertise in interpreting, defending, reviewing, and analyzing charters, municipal land use, contracts, and Chapter 380 economic development agreements. Mr. Zech is admitted to practice before all County and District Courts of Texas, the Texas Supreme Court, the United States District Court, Western District of Texas, and the United States Global District Court, Northern District of Texas. Mr. Zech also has 2 years of experience as a Deputy City Manager.

**(2) Statement identifying the principal anticipated to be the attorney with responsibility for providing the City of Sunset Valley with City Attorney Services.**

It is the Firm's approach to designate a shareholder as City Attorney and all other lawyers within the Firm as Assistant City Attorneys. We provide legal services using a team approach so that our clients can connect with the lawyer best suited for a particular issue. This approach also ensures our availability for any meeting, or to address any issue which may arise, if the primary designated Attorney is unavailable. For the City of Sunset Valley, the Firm would propose that Mr. Zech be designated as the City Attorney, and that Megan Santee be designated as primary attorney for services provided to the City. Megan Santee is available to attend City Council meetings scheduled for the first and third Tuesday of every month. The Austin office and team will be assigned to the City of Sunset Valley as the primary office to promote continuity of representation and familiarity with the City. However, lawyers from each office will be utilized when their use would promote cost savings or efficiency for work. This team approach allows flexibility and makes us more

adaptable to the City of Sunset Valley's needs. Internally, the Firm holds a weekly team meeting where all lawyers are advised of issues currently being addressed among our clients to ensure all lawyers understand all client needs.

**C. List of supporting attorneys who will provide legal services in rank order, any attorney anticipated to represent the City of Sunset Valley, complete with educational and credentialing information, years of legal experience, years of municipal legal experience and information of any areas of specialty within the field of municipal law**

**Scott M. Tschirhart** is a Partner. Mr. Tschirhart earned his Bachelor of Arts in Criminal Justice University of Texas at San Antonio (Magna Cum Laude) in 1996 and his Juris Doctorate from Baylor University School of Law (Cum Laude) in 1999. He was admitted by the State Bar of Texas in 1999. He has 18 years legal experience and 11 years of municipal legal experience. His experience includes municipal prosecution, litigation, handling cases ranging from police-involved shooting incidents to USERRA and other employment issues. Mr. Tschirhart is currently the Assistant City Attorney for the City of Rosenberg, Texas and handles many of the Firm's civil litigation cases. Mr. Tschirhart was admitted by the Northern, Southern, Eastern and Western U.S. District Courts of Texas in 1999.

**Sarah M. Griffin** is a Senior Associate. She earned her Bachelor of Arts in English from Trinity University in 1986, and her Juris Doctorate from St. Mary's School of Law in 1989. She has 28 years of municipal legal experience. Her experience includes general municipal law including, but not limited to, employment, land use, economic development, constitutional law, ordinance, and code provisions, development agreements, and public-sector labor negotiations.

**Megan R. Santee** is a Senior Associate. She earned her Bachelor of Arts from Baylor University in 1991, and her Juris Doctorate from Texas A&M University School of Law in 1997. She has 20 years of legal experience. Her experience includes general municipal law including, but not limited to, employment, land use, economic development, constitutional law, ordinance and code provisions, and development agreements. Prior to joining the firm, Mrs. Santee served as the Assistant Director of Planning and Community Services, Assistant to the City Manager for Special Projects, and Director of Public Works for the City of Abilene.

**Robyn Fae Katz** is an Associate. She earned her Bachelor of Science from the University of Michigan in 2003, her Masters of Education from the University of Texas in 2004, and her Juris Doctorate from Texas Tech School of Law in 2010. She has 9 years of legal experience, including 5 years as a state prosecutor in Justice of the Peace, misdemeanor, and felony level courts, and 4 years practicing civil law. She is experienced in municipal law and prosecution which includes but is not limited to criminal law, animal law, legislation, and ordinance drafting.

**Clarissa M. Rodriguez** is a Partner. She earned her Bachelor of Arts in Speech Communication from the College of Liberal Arts - Texas A&M University in 1998, Master of Public Administration from the University of Texas at San Antonio in 2001, and her Juris Doctorate from Drake University School of Law in 2006. She has 12 years of legal experience. She handles representation of clients in state and federal litigation, matters in civil defense litigation, including

motions practice, discovery, and depositions for governmental entities. Her experience includes general municipal law including, but not limited to employment, land use, economic development, constitutional law, ordinance and code provisions, and development agreements.

**T. Daniel Santee, II** is a Partner. He earned his Bachelor of Arts-Psychology from Baylor University in 1991, and his Juris Doctorate from St. Mary's University School of Law in 1994. He has 22 years of municipal legal experience. His experience includes general municipal law to include employment, land use, economic development, constitutional law, ordinance and code provisions, and development agreements. He holds merit certification for distinguished service in municipal law.

**Adolfo Ruiz** is a Senior Associate. He earned his Bachelor of Arts from The University of Texas at Austin, Texas and Juris Doctorate from The University of Texas Austin, Texas in 1983. He has 30 years governmental legal experience and practices in the areas of municipal law and civil litigation. His experience includes water law, city attorney and general counsel.

**Matthew Jacob Longoria** is an Associate. Mr. Longoria earned his Bachelor of Arts-Film and Digital Media, Production from the University of California, Santa Cruz in 2008 and his Juris Doctorate from St. Mary's University School of Law in 2016. He also attended the Institute on Chinese Law and Business at Beihang University in Beijing, China. He is experienced in litigation, appeals, local government and municipal law, Texas Public Information Act, Open Meetings Act, ordinance and resolutions drafting, and municipal prosecuting.

**Cynthia X. Trevino** is an Associate. She earned her Bachelor of Arts in Psychology from Texas A&M University – San Antonio in 2009, and her Juris Doctorate from St. Mary's University School of Law in 2013. She has 5 years of municipal legal experience. In addition, as a former City Secretary, she has an additional 5 years of municipal experience. Her legal experience includes general municipal law, employment law, land use, economic development, constitutional law, ordinance and code provisions, and development agreements.

**Robert L. Drinkard** is a Partner. He earned his Bachelor of Arts from The University of Texas at Austin in 1995 and his Juris Doctorate from the University of Texas School of Law at Austin in 1998. He has 17 years of legal experience in municipal law. His experience includes representation of governmental entities, public officials in constitutional claims, civil rights, employment law, deceptive trade practices, planning and zoning and torts.

**Rebecca S. Hayward** is a Partner. She earned her Bachelor of Arts and Sciences from Texas A & M International University in Laredo, Texas in 2008 and her Juris Doctorate from Ave Maria School of Law in Naples, Florida in 2011. She has over 7 years of municipal law experience. Her practice includes civil litigation, general counsel, her experience also involves collective bargaining negotiations and Texas Civil Service Act including contested disciplinary proceedings.

**Allison A. Bastian** is an Associate. She earned a Bachelor of Arts in Visual Communication from the University of Oklahoma in 1994 and received her Juris Doctorate from Oklahoma City University in 2007. During law school, she earned the Computer Aided Legal Instruction (CALI)

awards for the highest grades in Constitutional Law I and Legal Ethics. She has over 10 years of municipal legal experience. Her experience includes real estate transactions, regulation of land use, and contracts for municipalities and governmental entities.

**John-Michael Hayward** is an Associate. He earned his Bachelor of Science in Criminology from California State University in Fresno, California in 2008, and his Juris Doctorate from Ave Maria School of Law in Naples, Florida in 2013. He has 3 years municipal law experience. His experience includes State and Federal personal injury, labor, and employment civil litigation matters

**Beverly Diane West** is a Senior Associate. Ms. West earned her Bachelor of Political Science in 1998 from the University of North Texas and her Juris Doctorate from St. Mary's University School of Law in 2001. She has 18 years of legal experience representing cities, counties and school districts either as in-house or outside counsel. She is experienced in litigation; contract negotiation; advice and counsel; ordinance, resolution and policy drafting; and in training elected officials, department directors and employees on parliamentary rules, social media, employee discipline and investigations.

**D. Summary of qualifications, specializations, experience, professional affiliations, special training**

DNRB&Z has over a quarter-century of experience as a firm, with lawyers who have primarily represented local government interest during their careers. The firm is dedicated to the practice of "public law" and called upon geographically to serve communities in every major metropolitan area and throughout the entire State of Texas. We have the true competency needed to provide the best legal services to your municipal corporation, its officials and employees. DNRB&Z, P.C. holds merit certification in municipal law from the Texas City Attorneys Association.

With locations strategically placed in Austin, San Antonio, Rio Grande Valley, and Texas Gulf Coast coupled with the use of today's technology, we are pleased to apply our collective experience to meet your needs. Our firm structure enables us to offer a customized service to local governments in need with infinite possibilities, as every attorney in our firm has experience in multiple practice areas. Our legal team works collaboratively to give you the best of who we are and what we have to offer at the best value. Our approach to providing legal services ensures that you have access to the attorney on our legal team with the most appropriate experience to meet your needs, which reduces time spent on a project and saves the city money. Our responsiveness to our clientele is validated every day by every lawyer and legal professional at DNRB&Z, and our philosophy of providing our clients with the most experienced and best prepared attorneys in the municipal field means that no other firm practicing in the field of municipal law can match the combined multi-group experience and value that the lawyers in our firm possess and provide.

In general, but without limitation, the following are examples of qualifications and experience in various areas in municipal work:

**Experience with City Councils, Boards and Commissions:** DNRB&Z assists Elected and Appointed Officials, their Boards and Commissions with agendas and postings under the Texas Open Meetings Act and the Texas Public Information Act. Our attorneys are very familiar with both Acts and deal with various questions from our City Councils, their Boards and Commissions on a daily basis regarding compliance. Because the Firm represents only governmental entities, every lawyer in our firm has experience dealing with City Councils and the various boards and commissions that exist within local government.

**Land Use:** DNRB&Z has extensive experience with platting and zoning, including representing City Councils, Planning and Zoning Commissions and Boards of Adjustment.

**Contracts:** The Firm has all-encompassing experience with contract negotiation, drafting and review of contracts including, but not limited to: economic development agreements, contracts for the sale of goods and services, architectural and engineering services, independent contractor agreements, information technology services, franchise agreements, easement, rights-of-way access agreements, and many others.

**Human Resources:** DNRB&Z routinely advise cities on the hiring, discipline, and termination of city employees. The Firm counsels and successfully defends local governments in this practice area. Additionally, the Firm collaborates and utilizes its experience from multi-city representation to provide a “best practice” approach to our clients in an effort to avoid potential liability and risk through improving internal practices and policies.

**Open Government:** The Firm routinely counsels cities on issues relating to the Texas Open Meetings Act and the Texas Public Information Act. Our attorneys and staff are experienced in handling requests for various types of public information, meeting statutory deadlines associated with those requests, and advocating before the Office of the Attorney General.

**Municipal Court Prosecutor Services:** Our firm provides comprehensive Municipal Court prosecution services for cities both large and small. The scope of our practice includes staying abreast of all legislative updates, working with cities to provide efficient management of dockets, trials, discovery related matters and more.

**Utilities:** The Firm routinely advises cities on legal issues related to municipal utilities, water, wastewater, and electric utilities. Lawyers in the Firm have negotiated multiple water contracts in the purchase and lease of water rights. In its capacity as City Attorney for the City of Schertz, the firm actively plays an important role in the Schertz Seguin Local Government Corporation, which was specifically created for the purpose of water acquisition and distribution for its community.

**Public Safety:** The Firm is well versed in the legal issues impacting police departments and law enforcement entities. Our attorneys have significant experience covering the spectrum of law enforcement and other public safety issues – from establishing a police department and advising

officers on substantive procedural matters, to handling personnel matters and defending departments in litigation. The Firm represents cities such as Abilene, Houston, Austin and other cities in meet and confer and collective bargaining negotiations.

**Economic Development:** As General Counsel for Development Corporations and in our role as City Attorneys and Special Project counsel, our Firm helps negotiate and draft numerous incentive agreements, industrial district agreements, tax abatements and other economic development packages all of which are vital to supporting and expanding a municipality's tax base. In this context, the Firm is well versed in the areas of tax increment financing, tax abatements, hotel occupancy tax, reinvestment zones, 380 agreements, development agreements, industrial districts and other alternative urban renewal and economic development laws and projects.

**Annexation:** The Firm assists cities with the annexation process as well as defending lawsuits brought by property owners challenging annexations. Our firm was successful in striking down an unconstitutional state law which would have prevented the City of San Antonio from annexing certain portions of its IH 10 corridor.

**Municipal Litigation:** DNRB&Z offers litigation defense services which includes representation in cases involving EEOC discrimination claims, whistleblower claims, personal injury and property damage, First Amendment and defamation, land use/vested rights claims, federal and state overtime pay, FMLA claims, ADEA and ADA claims, labor contract arbitrations, as well as negotiations of collective bargaining/meet and confer agreements, annexation and extra territorial jurisdiction challenges. DNRB&Z is an approved litigation defense counsel firm for both the Texas Municipal League Intergovernmental Risk Pool and the Texas Association of Counties Risk Pool.

**Charter Creation, Review and Amendments:** DNRB&Z assists cities with the development and adoption of their initial Home Rule Charters and in the periodic amendment of Home Rule Charters. Mr. Zech is the author of a research project designed to assist the Texas Municipal League in an update to Terrell Blodgett's monograph Texas Home Rule Charters and is considered to be one the leading authorities in the area.

**Training:** The Firm offers training sessions to our Elected and Appointed Officials on the laws that govern their conduct and impact city operations including conflict of interest statutes, mandatory financial disclosure, open meetings, public information, nepotism, competitive bidding, land use regulations, ethics, legislative updates and much more based on changing laws. These statutes apply specifically to Elected and Appointed Officials and often have civil and criminal penalties. The Firm also provides general training for City employees and Elected and Appointed Officials on such areas as planning and zoning, sexual harassment, ethics, tax increment financing, economic development, procurement, and other areas affecting governmental entities.

**Specializations:**

Mr. Denton is Board Certified in Civil Trial Law by the Texas Board of Legal Specialization.

**Professional Affiliations:**

The Firm's affiliations include the Texas City Attorneys Association (TCAA), the International Municipal Lawyers Association (IMLA), Texas Municipal League (TML), the San Antonio Bar Association (SABA), Texas City Management Association (TCMA), the Texas State Bar, Fifth Circuit Bar Association, American Bar Association, Bexar County Women's Bar Association (BCWB), Texas Young Lawyers' Association, Bexar County Bar Association, the Federal Bar Association, the Travis County Bar Association, the Waco-McLennan County Bar Association, and the American Board of Trial Advocates.

**Special Training:**

Our attorneys attend the annual Texas City Attorneys Association Conference and the annual Texas City Managers Association Conference. In an effort to remain informed on current law and legislative updates, our attorneys may attend various continuing legal education conferences based on their specialty area of practice and conference availability.

**Texas Bar Certification:**

All attorneys in the Firm are licensed to practice in the State of Texas and are in good standing with the State Bar.

**E. Number of staff, by discipline, in your law office and copies of their resumes**

The Firm consists of four shareholders, five partners, three senior associates and six associate attorneys.

Attached are their resumes:



# LOWELL F. DENTON

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**Lowell F. Denton** is the Founding and Equity Partner/Shareholder of the Firm which was established in 1990. Mr. Denton has dedicated his career to the representation and legal defense of local governments and is an experienced litigator, with an expertise in helping city officials avoid litigation where possible and try cases effectively when necessary. His expertise in the area of municipal defense and litigation is widely known, and he served as the lead attorney in a number of recognizable cases establishing municipal law principles, including the landmark case *City of Boerne v. P. F. Flores, Archbishop of San Antonio, and United States*, 117 S. Ct. 2157 (1997) involving the Religious Freedom Restoration Act (RFRA).

Mr. Denton also specializes in the negotiation of collective bargaining and meet and confer agreements with Fire, Police and Sheriff Employee Associations. He has served as the Lead Chief Negotiator for the City of San Antonio, City of Houston, City of Fort Worth, City of Austin, City of Galveston, City of Laredo, City of Waco, City of Corpus Christi, Bexar County, and Hays County. In addition, Mr. Denton has worked on post contract issues that became disputes, grievances or issues that ultimately became lawsuits for both the Fire and Police contracts.

Mr. Denton has been recognized as a Texas Super Lawyer each year since 2008 for Government/Cities/Municipalities, Employment & Labor. Mr. Denton is Board Certified in Civil Trial Law by the Texas Board of Legal Specialization and has practiced law in the area of local government litigation defense for nearly 40 years. Mr. Denton has been practicing law since 1978.

## Areas of Practice

Arbitration: Contract and Discipline – Public Sector

Civil Appeals – State & Federal Court

Civil Rights Litigation/Constitutional Litigation

Including §1983, excessive force, takings, First Amendment, Due Process, etc.

Civil Trial – State & Federal Court

Collective Bargaining & Civil Service

Construction Litigation

Labor & Employment Litigation

Includes Title VII, Whistleblower, ADA, FLSA, etc.

Land Use, Annexation & Code Compliance Litigation

Including zoning, vested rights, etc.

Municipal Incorporation Litigation

Texas Tort Claims Act Litigation

## Bar Admissions

State Bar of Texas, 1978

U.S. Court of Appeals 5<sup>th</sup> Circuit, 1982

U.S. District Court Northern District of Texas, 1983

U.S. Supreme Court, 1983

State Bar No. 05764700

U.S. District Court Western District of Texas, 1985  
U.S. District Court Southern District of Texas, 1987

### **Board Certified**

Civil Trial Law – Texas Board of Legal Specialization, 1992

### **Employment Experience**

<i>Denton Navarro Rocha Bernal &amp; Zech, P.C.</i> Founder and Equity Partner/Shareholder.	1990 to Present
<i>Heard, Goggan, Blair &amp; Williams</i> Litigation and Management responsibilities for cities, counties, and schools.	1986 - 1990
<i>City Attorney for the City of San Antonio</i>	1984 - 1986
<i>City Attorney for the City of College Station</i>	1980 - 1984

### **Professional Associations and Memberships**

The State Bar of Texas  
The Texas Municipal League  
Texas City Attorneys Association  
State Bar College  
American Board of Trial Advocates  
International Municipal Lawyers Association  
American Bar Association

### **Education**

*Baylor University School of Law, Waco, Texas*  
Juris Doctor – 1978

*Baylor University, Waco, Texas*  
Bachelor of Arts – 1976

# RICARDO J. NAVARRO

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**Ricardo J. Navarro** is and has been an Equity Partner/Shareholder of the Firm since June 1991. He has been the Managing Partner of the Firm's Rio Grande Valley office, located in Harlingen, Texas, since May 1999. Mr. Navarro's practice specialty is local government, municipalities, counties, special purpose districts, and their elected and appointed representatives. Mr. Navarro has been practicing law since 1985.

## Areas of Practice

### Civil Litigation – State and Federal Court

Including but not limited to litigation under Section 1983 litigation, Title VII, ADA, and state law civil rights litigation.

### Civil Service Law – Municipal and County

Including advising civil service boards, as well as handling disciplinary appeals, arbitrations, and grievances.

### Labor Negotiations

Including contract negotiations under Chapter 174, Texas Local Gov't Code, as well as contract grievance arbitrations and associated litigation under state or federal law.

### General Counsel Advisory Work – All Entities

The Firm serves in a General Counsel or Special Counsel capacity with certain local government entities.

## Bar Admissions

State Bar of Texas, 1985

State Bar No. 14829100

Supreme Court, State of Texas, 1985

U.S. Supreme Court, 1992

U.S. Court of Appeals - Fifth Circuit, 1986

U.S. District Court Western District of Texas, 1986

U.S. District Court Northern District of Texas, 1986

## Employment Experience

*Denton, Navarro, Rocha, Bernal & Zech, P.C.*

1991 to Present

Equity Partner/Shareholder. Managing Partner for Firm's Rio Grande Valley Office.

*Bexar County District Attorney's Office*

1989 - 1991

Chief, Civil Section, Fred G. Rodriguez, Criminal District Attorney for Bexar County as Chief of the Civil Service Commission, supervised ten in-house attorneys and five outside law firms. Civil Section, handled state and federal litigation in state and federal court. Much of this work was for the Sheriff's Office, including defense of jail lawsuits.

*Bexar County District Attorney's Office*

1987 - 1991

Hired as a Section 1983 federal litigator for Bexar County and all its elected and appointed officials, including the judges.

*U.S. Court of Appeals, Fifth Circuit,* 1985 - 1986  
Briefing Attorney for the Honorable Reynaldo G. Garza, Senior Circuit Judge, located in Brownsville, Texas.

### **Professional Experience**

*Grievance Committee for Attorney Misconduct,*  
*State Bar District 12, Texas Supreme Court* 2009 - 2015  
Served Years (two 3-year terms; Grievance Board Chair 1 year)

*Admission Committee for the U.S. District Courts*  
*For the Western District of Texas – San Antonio Division* 1995 - 1998

### **Professional Associations and Memberships**

State Bar of Texas  
American Bar Association  
Texas City Attorneys Association  
Cameron County Bar Association  
Hidalgo County Bar Association  
International Municipal Lawyers Association

### **Education**

*University of Texas School of Law, Austin, Texas*  
Juris Doctor – 1984

*University of Texas, Austin, Texas*  
Bachelor of Arts – 1978

*University of Michigan, Ann Arbor, Michigan*  
Undergraduate Student – 1975-1976

*Universidad de las Americas, Cholula, Puebla, Mexico*  
Undergraduate Student – 1974-1975

# PATRICK C. BERNAL

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**Patrick C. Bernal** is and has been an Equity Partner/Shareholder of the Firm since 2001. Mr. Bernal practices primarily in the areas of municipal law and litigation. He has practiced civil trial law in the area of local government defense since joining the Firm in 1991 and has handled a variety of cases ranging from employment law, land use, annexation, flooding, civil rights, torts, contracts, personal injury and property damage claims in Federal and State courts at the trial and appellate levels. Mr. Bernal has been practicing law since 1983.

## Areas of Practice

Civil Appeals – State and Federal Court

Civil Rights Litigation/Constitutional Litigation

Includes §1983, excessive force, takings, First Amendment, Due Process, etc.

Civil Trial – State & Federal Court

Labor & Employment Litigation

Including Title VII, Whistleblower, ADA, FLSA, etc.

Land Use, Annexation & Code Compliance Litigation

Including zoning, vested rights, etc.

Texas Tort Claims Act Litigation

## Bar Admissions

State Bar of Texas, 1983

State Bar No. 02208750

U.S. District Court Western District of Texas, 1989

U.S. Court of Appeals 5<sup>th</sup> Circuit, 1994

U.S. District Court Southern District of Texas, 2002

## Employment Experience

*Denton Navarro Rocha Bernal & Zech, P.C.*

1991 to Present

Equity Partner/Shareholder. Specializing in the representation of governmental entities in practice areas listed above. Complex litigation in state and federal courts, including the Western and Southern Districts of Texas, and appellate federal and state courts. Administrative proceedings before the Equal Employment Opportunities Commission (EEOC), Texas Work Force Commission on employment discrimination matters and unemployment benefits, and other state and federal agency matters. General Counsel Representation of public entities, including attending meetings of governing bodies, handling general legal matters and investigations of personnel matters.

*Heard, Goggan, Blair and Williams*

1988 - 1991

Litigation involving collection of *ad valorem* property taxes in state and federal bankruptcy courts. Also represented governmental entities in general litigation matters in practice areas listed above.

*City of San Antonio*

1983 - 1988

General Counsel Representation as an Assistant City Attorney, providing legal advice to numerous city

departments covering a broad range of topics.

### **Professional Associations and Memberships**

State Bar of Texas  
San Antonio Bar Association  
Texas City Attorneys Association  
Fifth Circuit Bar Association  
International Municipal Lawyers Association

### **Education**

*The University of Texas School of Law, Austin, Texas*  
Juris Doctor – 1983

*The University of Texas, Austin, Texas*  
Master of Public Affairs – 1983

*Texas A & M University, College Station, Texas*  
Bachelor of Arts – 1979

# CHARLES E. ZECH

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**Charles E. Zech** is and has been an Equity Partner/Shareholder of the Firm since 2011. He is the Managing Partner of the Firm's Austin office and manages the San Antonio office's City Attorney practice, which focuses on the representation of local governments. In addition to his general local government practice, Mr. Zech has experience in municipal land use, contract, economic development and other aspects of local government law. Mr. Zech handles all aspects of representation for local governmental agencies across Texas by providing representation and legal advice to various city councils, commissions, boards and development corporations. Mr. Zech has drafted and negotiated numerous agreements including industrial district agreements, tax abatement agreements, Chapter 380 economic development agreements, land use development agreements and many others. Mr. Zech has been practicing law since 1998 and has been representing governmental entities since 2001.

## Areas of Practice

City Attorney/General Counsel  
Ordinance Drafting  
Economic Development  
Special Counsel Projects  
Home Rule Charter Commission  
Open Meetings and Public Information  
Land Use and Annexation  
Labor Issues

## Bar Admissions

State Bar of Texas, 1998  
All County and District Courts, State of Texas, 1998  
Texas Supreme Court, 1998  
U.S. District Court Western District of Texas, 1998  
U.S. District Court Northern District of Texas, 1998

State Bar No. 50511785

## Employment Experience

*Denton Navarro Rocha Bernal & Zech, P.C.* 2006 to Present  
Equity Partner/Shareholder. Managing Partner for Firm's Austin office, Managing Partner of the City Attorney practice in the San Antonio office. Handling all aspects of local governmental representation, representing city councils, commissions and other boards in a variety of complex and non-complex issues, with an emphasis on contract law, local government law, zoning, land use and planning; open meetings, open records, contract drafting and negotiations, conducting statutory research and analyzing all laws and regulations regarding local governments.

*City of New Braunfels Deputy City Manager* 2004 - 2006  
Handled all aspects of municipal management, with supervisory responsibility for Finance, Human Resources, Municipal Court, Technology and City Secretary's Office.

*City of New Braunfels City Attorney*

2001 - 2006

Handled all aspects of municipal representation, represented the City of New Braunfels and the City Council in a variety of complex and non-complex issues, with an emphasis on contract law, local government law, zoning, land use and planning; conduct statutory research and analyze all laws and regulations regarding municipalities, advising the City of New Braunfels, City Council, the Economic Development Corporation and City employees on a wide variety of legal issues and litigation.

*Law Office of Charles E. Zech*

2000 - 2001

Sole Proprietor. Trial lawyer, handling all aspects of running a solo practice, representing plaintiffs in a variety of complex and non-complex claims, with an emphasis on Personal Injury, Breach of Contract, Workers Compensation-Non-Subscriber claims, Consumer Litigation, Deceptive Trade Practices Act (DTPA) violations, Retaliatory Discharge, Residential Construction Act violations, Nursing Home Neglect and Medical Malpractice.

*Law Offices of George W. Mauze, II, P.C.*

1997 - 2000

Associate Attorney (May 1998 – September 2000)

Law Clerk (June 1997 – May 1998)

Trial Lawyer handled all aspects of complex litigation in both federal and state courts. Representing plaintiffs in a variety of claims with an emphasis on Personal Injury, Breach of Contract, Workers Compensation-Non-Subscriber claims, Consumer Litigation, Deceptive Trade Practices Act (DTPA) violations, Retaliatory Discharge, Residential Construction Act violations, Nursing Home Neglect and Medical Malpractice.

### **Professional Associations and Memberships**

Texas Bar Association

San Antonio Bar Association

Travis County Bar Association

Texas City Managers Association

Texas City Attorneys Association, Past President 2010-2011

The College of the State Bar Association, 2002 to Present

International Municipal Lawyer's Association 2001 to Present; Chair: Ethics Section, 2003-2005 Suing and Defending Governmental Entities Faculty, 2004; Local Government Fellow, 2007; University of Texas Land Use Faculty, 2008 to present

### **Education**

*Texas State University, San Marcos, Texas*

Master of Public Administration – 2008

*St. Mary's University School of Law, San Antonio, Texas*

Juris Doctor – 1998



*Southwest Texas State University, San Marcos, Texas*  
Bachelor of Business Administration – 1995

# ROBERT L. DRINKARD

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**Robert L. Drinkard** is a Partner. He joined the Firm in 2002, and his litigation practice involves defending governmental employers in labor and employment issues including Whistleblower Act, First Amendment, due process, FMLA, and discrimination and harassment claims made pursuant to Title VII, ADEA, ADA and various state laws. Mr. Drinkard defends governmental entities in federal civil rights claims, state law tort claims, and takings claims. Mr. Drinkard also represents governmental entities as general and special projects counsel. He has been practicing municipal law since 2002.

## Areas of Practice

Civil Trial - State & Federal Court  
Civil Appeals - State & Federal Court  
General Counsel - Governmental entities

## Bar Admissions

State Bar of Texas, 1998  
Texas Supreme Court, 1998  
U.S. District Court, Southern District of Texas, 2001  
U.S. Court of Appeals 5<sup>th</sup> Circuit, 2003

State Bar No. 24007128

## Employment Experience

*Denton Navarro Rocha Bernal & Zech, P.C.* 2002 to Present  
Partner. Trial and appellate practice in state and federal courts involving the representation of governmental entities and public officials in a variety of areas of law, including constitutional, civil rights, employment, zoning/planning/land use and torts.

## Professional Associations and Memberships

State Bar of Texas  
Texas City Attorneys Association

## Education

*The University of Texas School of Law, Austin, TX*  
Juris Doctor - 1998

*The University of Texas, Austin, TX*  
*With Honors*  
*Liberal Arts Honors*  
Bachelor of Arts - 1995

# CLARISSA M. RODRIGUEZ

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**Clarissa M. Rodriguez** is a Partner. She joined the Firm in 2008, and her litigation practice involves employment issues, land use, municipal infrastructure issues, premises liability, personal injury, and constitutional issues. She is experienced in representing municipalities as City Attorney and General Counsel, with expertise in tracking legislation for municipal entities and associations. She also has experience in Police and Fire civil service issues. Ms. Rodriguez has been practicing law since 2006 and has been practicing municipal law since 2008.

## Areas of Practice

City Attorney/General Counsel

Civil Appeals – State & Federal Courts

Civil Rights Litigation/Constitutional Litigation

Including §1983, excessive force, takings, First Amendment, Due Process, etc.

Civil Trial – State & Federal Courts

Development Agreements

Economic Development

Labor & Employment Litigation

Including Title VII, Whistleblower, ADAAA, FLSA, etc.

Land Use, Annexation & Code Compliance Litigation

Including zoning, vested rights, etc.

Municipal Incorporation Litigation

Municipal Prosecutions

Ordinance Drafting

Special Counsel Projects

Texas Tort Claims Act Litigation

Texas Public Information Act – Open Records

## Bar Admissions

State Bar of Texas, 2006

State Bar No. 24056222

U.S. District Court Southern District of Texas, 2009

U.S. District Court Western District of Texas, 2007

U.S. Court of Appeals 5<sup>th</sup> Circuit, 2011

## Employment Experience

*Denton Navarro Rocha Bernal & Zech, P.C.*

2008 to Present

Partner. Assists with representation of clients in State and Federal litigation matters in civil defense litigation, including motion practice, discovery and depositions for governmental entities. Assists with representation of municipalities, economic development corporations, and counties as City Attorney and General Counsel. Researches legislation, statutes, performs statutory interpretation, and assists with

negotiations in municipal and state government relations in lobbying for municipal and governmental entities.

*Shelton & Valadez, P.C.*

2006 - 2008

Associate Attorney. Assisted with representation of clients in state and federal trial and arbitration matters in a wide range of commercial, work injury and civil defense litigation disputes. Extensive written discovery, depositions and motion practice experience, including appearances in federal and state trial courts. Researched statutes, performed statutory interpretation, contract interpretation and assisted with negotiations in municipal and state government relations for multiple clients within the law firm.

*Denton, Navarro, Rocha, & Bernal, P.C.*

2004 and 2005

Summer Law Clerk. Served as a law clerk during law school. Analyzed and drafted memoranda regarding employment law, 11<sup>th</sup> Amendment, sovereign, and official immunity, premises liability, and civil procedure issues.

### **Professional Associations and Memberships**

State Bar of Texas

San Antonio Bar Association

American Bar Association

Texas City Attorneys Association

### **Education**

*Drake University School of Law, Des Moines, Iowa*

Juris Doctor – 2006

Legislative Practice Certificate – 2006

*The University of Texas at San Antonio, San Antonio, Texas*

Master of Public Administration – 2001

*Texas A&M University, College Station, Texas*

Bachelor of Arts – 1998

# T. DANIEL “DAN” SANTEE, II

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**T. Daniel Santee, II** is a Partner. He joined the Firm in 2015 and handles city attorney and general counsel matters. Mr. Santee has experience in municipal land use and economic development and has provided advice and guidance to numerous boards, commissions and departments. He has drafted ordinances and code provisions as well as development agreements. He has practiced law since 1995, and has 22 years of municipal legal experience and 20 years economic development legal experience. Prior to joining the firm, Mr. Santee served as the City Attorney for the City of Abilene. Mr. Santee has been practicing municipal law since 1995 and holds merit certification in municipal law.

## Areas of Practice

City Attorney/General Counsel  
Development Agreements  
Economic Development  
Land Use and Annexation  
Open Meetings and Public Information  
Ordinance Drafting  
Real Estate Transactions  
Special Counsel Projects

## Bar Admissions

State Bar of Texas, 1995

State Bar No.00792816

U.S. District Court Northern District of Texas, 1998

## Employment Experience

*Denton Navarro Rocha Bernal & Zech, P.C.*

2015 to Present

Partner. Handles City Attorney, Special Counsel and General Counsel matters.

*City of Abilene*

1997 - 2015

City Attorney (6/2007-10/2015) Interim City Attorney (12/2006-6/2007) First Assistant City Attorney (2002-2006) Assistant City Attorney (1997-2002). As City Attorney, handled every aspect of legal representation for the City with a staff of four attorneys and three paralegals. Direct legal advisor for the City Council, Planning and Zoning Commission, Zoning Board of Adjustment, Airport Development Board and Development Corporation of Abilene. While serving in the capacity of Assistant City Attorney and then First Assistant City Attorney, prosecuted cases in municipal court, litigated civil cases in state and federal court, engaged in civil service negotiations and handled civil service disciplinary appeals as well as all briefing on requests under the Public Information Act. Also served as legal advisor to the Police and Fire Departments, Parks and Recreation Department and Planning and Development Services Department.

*Henderson County*

1995 - 1997

Assistant County Attorney. Handled misdemeanor and juvenile prosecution, emergency commitments, and civil litigation; advised the Henderson County Commissioners Court and County Departments on legal matters.

*Hardin-Simmons University/Cisco Junior College/Trinity Valley Community College* 1997 - 2015  
Adjunct Professor. Taught criminal justice, state and local government, federal government and public administration.

### **Professional Associations and Memberships**

Texas Municipal League  
International Municipal Lawyers Association  
State Bar of Texas  
Delta Theta Phi Legal Fraternity  
Bar Association of the Fifth Federal Circuit  
St. Mary's University Law Alumni Association  
San Antonio Bar Association  
Tau Delta Epsilon Christian Service Fraternity  
Texas City Attorneys Association  
Baylor Alumni Association – Life Member

### **Education**

*St. Mary's University School of Law, San Antonio, TX*  
Juris Doctor – 1994

*Baylor University, Waco, TX*  
Bachelor of Arts – 1991

# SCOTT M. TSCHIRHART

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**Scott M. Tschirhart** is a Partner. He joined the Firm in 2013. His practice involves civil litigation in state and federal courts in Texas, as well as City Attorney work and Special Counsel projects, with expertise in handling cases ranging from police-involved shooting incidents to USERRA, and employment issues. Mr. Tschirhart has been practicing law since 1999 and governmental entities since 2004.

## Areas of Practice

Civil Rights Litigation  
General Litigation representing governmental entities  
Police Legal Advisor

## Bar Admissions

State Bar of Texas, 1999  
U.S. District Court Eastern District of Texas, 1999  
U.S. District Court Northern District of Texas, 1999  
U.S. District Court Southern District of Texas, 1999  
U.S. District Court Western District of Texas, 1999  
U.S. Court of Appeals 5<sup>th</sup> Circuit, 2015  
U.S. Supreme Court, 2018  
State Bar No. 24013655

## Employment Experience

*Denton Navarro Rocha Bernal & Zech, P.C.* 2013 to Present  
Partner. Provides general legal counsel to public entities, with an emphasis in representing municipalities, county governments, water districts, and other governmental entities in litigation.

*The Tschirhart Law Firm, P.C.* 2009 - 2013  
Litigation as of Counsel in personal injury, real estate disputes and general business litigation.

*Earl & Associates* 2006 - 2009  
City Attorney for Castroville, Texas; Assistant City Attorney for Helotes, Texas, St. Hedwig, Texas, and Stockdale, Texas; Municipal Prosecutor for Grey Forest, Texas and general real estate litigation for public and private clients.

*Gonzales, Hoblit, Ferguson* 2004 - 2006  
Nursing home defense and litigation for small public entities.

*Naman Howell Smith & Lee* 1999 - 2004  
Insurance defense and general litigation – medical malpractice.

*Medina County Sheriff's Office* 1991 - 1996

Deputy Sheriff.

*Houston Police Department*  
Police Officer

1983 - 1989

### **Professional Associations and Memberships**

State Bar of Texas  
Texas City Attorneys Association  
American Bar Association  
Austin Bar Association  
Waco-McLennan County Bar Association  
ABA Regional Negotiations Team for Baylor Law School  
ABA Regional and National Client Counseling Team for Baylor Law School  
Board for Central Christian Church, Vice Chair  
McLennan Community College, Guest Lecturer  
Bar Association of the 5<sup>th</sup> Federal Circuit

### **Education**

*Baylor University School of Law, Waco, Texas*  
Juris Doctor *Cum Laude* – 1999

*Law Review: Baylor Law Review*  
1998 – 1999

*University of Texas at San Antonio, San Antonio, Texas*  
Bachelor of Arts *Magna Cum Laude* – 1996



# SARAH M. GRIFFIN

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**Sarah M. Griffin** is a Senior Associate. She joined the Firm in 2016, and she handles representation of municipalities, economic development corporations, and counties as City Attorney and General Counsel, with expertise in water rights, employment issues, economic development, zoning, and drafting legislation and ordinances. She also has experience in negotiating union contracts with the Fire, Police, and American Federation of County and Municipal Employees. Prior to joining the firm, Ms. Griffin served as the City Attorney for the City of Leon Valley and the City of Freeport, Illinois. Ms. Griffin has been practicing municipal law since 1989.

## Areas of Practice

City Attorney/General Counsel  
Water Rights  
Economic Development  
Employment Law  
Open Meetings and Public Information  
Ordinance Drafting  
Zoning  
Negotiations

## Bar Admissions

State Bar of Texas, 1989  
State of Illinois (inactive)  
U.S. District Court Western District of Texas, 1998

State Bar No. 13976520

## Employment Experience

*Denton Navarro Rocha Bernal & Zech, P.C.* 2015 to Present  
Senior Associate. Handles City Attorney and General Counsel matters, litigation counsel, and outside counsel for collective bargaining.

*City of Freeport, Illinois* 1999 - 2015  
Corporation Counsel for home rule municipality. Superintend and conduct all legal affairs of the City, and advise the City in all matters connected with the administration of City government.

*City of Leon Valley, Texas* 1996 - 1999  
City Attorney. Provided legal advice to the City Manager, all Department Heads, City Council, Zoning and Land Use Commission, and Board of Adjustment. Prepared ordinances, leases, deeds, contracts, and other legal instruments, and represented City in criminal prosecutions in Municipal Court.

*City of Leon Valley, Texas*

1989 - 1996

Assistant City Attorney. Under direction of City Attorney, provided legal advice to the City Manager, all Department Heads, City Council, Zoning and Land Use Commission, and Board of Adjustment. Prepared ordinances, leases, deeds, contracts, and other legal instruments, and represented City in criminal prosecutions in Municipal Court.

### **Professional Associations and Memberships**

Texas State Bar Association

Austin Bar Association

American Bar Association

National Public Employer Labor Relations Association

Texas Municipal Human Resources Association

Austin Human Resource Management Association

Texas City Attorney Association

### **Education**

*Saint Mary's University, San Antonio, Texas*

Juris Doctor - 1989

*Trinity University, San Antonio, Texas*

Bachelor of Arts - 1986

# MEGAN R. SANTEE

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**Megan R. Santee** is a Senior Associate. She joined the Firm in 2016 and handles general counsel work advising cities and other local governmental entities on employment, as well as planning and land use issues. Prior to joining the firm, Mrs. Santee served as the Assistant Director of Planning and Community Services, Assistant to the City Manager for Special Projects, and Director of Public Works for the City of Abilene. Mrs. Santee has been practicing municipal law for over 10 years.

## Areas of Practice

City Attorney/General Counsel

Civil Appeals – State & Federal Courts

Civil Rights Litigation/Constitutional Litigation

Including §1983, excessive force, takings, First Amendment, Due Process, etc.

Construction Litigation

Development Agreements

Labor & Employment Litigation

Including Title VII, Whistleblower, ADA, FLSA, etc.

Land Use, Annexation & Code Compliance Litigation

Including zoning, vested rights, etc.

Municipal Court Prosecutions

Open Meetings and Public Information

Ordinance Drafting

Real Estate Transactions

Texas Public Information Act – Open Records

## Bar Admissions

State Bar of Texas, 1997

State Bar No. 24002893

U.S. District Court Northern District of Texas, 2000

## Employment Experience

*Denton Navarro Rocha Bernal & Zech, P.C.*

2016 to Present

Senior Associate. Assists with representation of municipalities, economic development corporations, and counties as City Attorney and General Counsel. Assists with representation of clients in state and federal litigation matters in civil defense litigation, including motion practice, discovery and depositions for governmental entities.

*City of Abilene*

2009 - 2015

Director of Public Works.

<i>City of Abilene</i> Assistant Director of Planning and Community Services and Assistant to the City Manager for Special Projects.	2007 - 2009
<i>City of Abilene</i> Assistant City Attorney.	2000 - 2007
<i>Research and Writing Consultant, Abilene, Texas</i>	2000 - 2011
<i>Law Office of Loren Williams, Albany, Texas</i> Associate.	1998 - 2000
<i>Eleventh District Court of Appeals, Eastland, Texas</i> Briefing Attorney.	1997 - 1998

### **Professional Associations and Memberships**

State Bar of Texas  
Texas City Attorney Association

### **Education**

*Texas State University, San Marcos, Texas*  
Certified Public Manager – June 2011

*Texas A&M University of Law School*  
*(Texan Wesleyan University School of Law)*  
Juris Doctor – 1997

*South Texas College of Law*  
1994 - 1995

*Baylor University*  
Bachelor of Arts – 1991

# ADOLFO RUIZ

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**Adolfo Ruiz** is a Senior Associate. He joined the firm in 2018, and his practice includes litigation, and general counsel work advising cities and other local governmental entities on employment, and planning and land use issues. Mr. Ruiz has been practicing law since 1984 and has over thirty years of municipal law experience.

## Areas of Practice

Arbitration: Contract and Discipline – Public Sector  
City Attorney/General Counsel  
Civil Appeals – State & Federal Courts  
Civil Litigation  
Civil Rights Litigation/Constitutional Litigation  
    Including §1983, excessive force, takings, First Amendment, Due Process, etc.  
Civil Trial – State & Federal Courts  
Collective Bargaining & Civil Service  
Construction Litigation  
Development Agreements  
Economic Development  
Ethics Compliance and Public Integrity Investigations  
Home Rule Charter Commission  
Land Use, Annexation & Code Compliance Litigation  
    Including zoning, vested rights, etc.  
Municipal Civil Service  
Municipal Court Prosecutions  
Public Sector Labor Negotiation and Contract Arbitration

## Bar Admissions

State Bar of Texas, 1984  
U.S. District Court Southern District of Texas, 1990  
U.S. District Court Northern District of Texas, 1995  
U.S. Supreme Court, 1996  
U.S. Court of Appeals 5<sup>th</sup> Circuit, 2012  
U.S. District Court Eastern District of Texas, 2016

State Bar No. 17385600

## Employment Experience

*Denton Navarro Rocha Bernal & Zech, P.C.* 2018 to Present  
Senior Associate. Representation of governmental entities in practice areas listed above. Complex litigation in state and federal courts. General Counsel representation of public entities, including attending meetings of governing bodies, handling general legal matters and investigations of personnel matters.

*McKamie Krueger, LLP*

2010 - 2018

Partner/Trial Attorney/General Counsel. Represented municipalities and governmental entities in State and Federal Court. Assisted with representation of municipalities, economic development corporations, and counties as City Attorney and General Counsel. Provided training for city council members and city staff regarding compliance with the law and ethical requirements and provides recommendations for implementation of policies and municipal regulations.

*Clark, Miller & Campbell*

2010 -2010

Trial Attorney. Responsible for the defense of personal injury and property damage lawsuits for Farmers Insurance, from inception to trial/resolution. Handled a large volume of litigation cases. Coordinated reports to Claims Adjuster regarding legal strategy and resolution of case.

*Bexar Metropolitan Water District*

2005 - 2008

Provided legal assistance by way of drafting, reviewing, and negotiating agreements ranging from real estate to professional services, engineering, construction, operation and maintenance, information technology, purchase and sale, leases, goods and services, interlocal and memorandums of understanding. Drafted contracts regarding sale of water systems. Prepared board resolutions, memorandums and bylaws. Prepared and presented governmental training workshops to the elected Board of Directors.

*Villarreal, Moreno & Ruiz*

1990 - 2005

Partner/Trial Attorney. Provided litigation defense for governmental and private corporations. Represented other self-insured public entities/utilities in State and Federal Court involving Section 1983 claims, employment, real estate, personal injury litigation, property damage claims, workers' compensation claims, municipal ordinance litigation, contract issues, ad valorem tax suit cases, Open Records Act and Open Meetings Act violation claims and claims under the Texas Tort Claims Act.

### **Professional Associations and Memberships**

State Bar of Texas

Government Lawyers Section of the State Bar of Texas

Texas City Attorneys Association

Participant in the San Antonio Chamber of Commerce

MALDEF Leadership Programs

### **Education**

*University of Texas, Austin Texas*

Juris Doctor, 1983

*University of Texas, Austin Texas*

Bachelor of Arts, 1980

# BEVERLY WEST

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**Beverly West** is a Senior Associate. She joined the Firm in 2019, and handles labor and employment issues including advice, counsel and training on Title VII, FLSA, USERRA, ADA, ADEA, FMLA, worker's compensation, employee benefits, ACA and the Texas Whistleblower Act. Her expertise is in labor and employment matters as well as contract negotiation. Ms. West has been representing governmental entities since 2001.

## Areas of Practice

Civil Trial – State & Federal  
Civil Appeals – State & Federal  
Labor & Employment Litigation (Title VII, Whistleblower, ADA, FLSA, etc.)  
Texas Tort Claims Act Litigation  
Collective Bargaining & Civil Service  
Arbitration: Contract Grievances and Chapter 143 Disciplinary Appeals to Third Party  
Civil Service Laws  
Texas Open Meetings Act  
Roberts Rules  
Texas Public Information Act  
Texas Local Government Code

## Bar Admissions

State Bar of Texas, 2001 State Bar No. 24032459  
U.S. District Court Southern District of Texas, 2004  
U.S. District Court Western District of Texas, 2002  
Fifth Circuit Court of Appeals, 2003

## Employment Experience

*Denton Navarro Rocha Bernal & Zech, P.C.* 2019 to Present  
Senior Associate. Handles labor and employment issues including advice, counsel and training on Title VII, FLSA, USERRA, ADA, ADEA, FMLA, worker's compensation, employee benefits, ACA and the Texas Whistleblower Act.

*County of Galveston* 2015 - 2019  
Senior Staff Attorney. Advised and counseled elected and appointed officials and department heads on local, state and federal law; researched, drafted and advised on open government, county government, tort, contract, employment, constitutional and election laws; managed litigation and third party claims; drafted, reviewed, revised and interpreted contracts, county policies and interlocal agreements; advised, reviewed and revised employment policies; advised on employee discipline, employment investigations and decisions including FMLA, ADA, ACA, employee compensation and benefits; represent employer in TDI and SOAH hearings; represented County and its officials and employees in litigation.

*City of Austin* 2011 - 2015  
Assistant City Attorney. Advised, counseled, and trained on local state and federal law and potential legislation; policy, rule and procedure development; agenda review, ordinance and resolution development and drafting; contract negotiations and development; personnel investigations and brief writing in response to state and federal agency discrimination complaints; represented management in employee administrative hearings before Civil Service Commission, independent hearing examiners, and state and federal agencies; and advised City Council, City Boards and Commissions in all areas of municipal law.

*Floyd, Pfluger & Ringer, P.S.* 2010 - 2011  
Associate Attorney. Advised and defended municipalities, school districts, fire districts, store owners, business owners, tribes, insurance companies, health care providers and contractors in premises liability and personal injury litigation.

*Tierney & Blakney, P.C.* 2008 - 2010  
Associate Attorney. Advised and defended municipalities, school districts, fire districts and contractors in land use claims, discrimination complaints, employment and personnel issues, contract issues and tort claims.

*City of San Antonio* 2005 - 2008  
Assistant City Attorney. Advised and counseled police and fire departments in collective bargaining negotiations and general contract negotiation and drafting, public information requests, including representing the Departments in court on subpoenas for disclosure of Department personnel files and criminal investigation files; represented Ground Transportation and Transportation Advisory Board (taxi cabs, shuttles, towing services, vehicle storage, public works projects, contract negotiations and drafting, board presentations, taxi driver disciplinary appeals, taxi permit allocation appeals, code violations and amendments); advised Fire and Police Civil Service Commission on collective bargaining agreements, proposed legislation, and employment matters.

*Sanchez & Wilson, P.L.L.C.* 2001 - 2005  
Associate Attorney. General civil litigation, advised, counseled and trained: outside counsel for school district and community college district (litigation and appeals, parliamentary matters, elections, contract negotiations, employment – disciplinary hearings and investigations, arbitrations, grievances, employee and student policies); housing authority and water district; and plaintiff and defense litigation – employee/employer, personal injury, medical malpractice, family law and commercial.

### **Professional Associations and Memberships**

State Bar of Texas  
Galveston Bar Association  
Texas City Attorney Association

### **Education**



*St. Mary's University School of Law*, San Antonio, Texas  
Juris Doctor – 2001

*The University of North Texas*, Austin, Texas  
Bachelor of Arts – Political Science – 1998

# CYNTHIA X. TREVINO

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**Cynthia X. Trevino** is an Associate. Ms. Trevino joined the Firm in 2014 and handles representation of municipalities, economic development corporations, and counties as City Attorney and General Counsel. Ms. Trevino has been practicing municipal law since 2014.

## Areas of Practice

City Attorney/General Counsel  
Development Agreements  
Economic Development  
Municipal Court Prosecutions  
Special Counsel Projects

## Bar Admissions

State Bar of Texas, 2013

State Bar No.24088546

U.S. District Court Western District of Texas, 2015

## Employment Experience

*Denton Navarro Rocha Bernal & Zech, P.C.*

2014 to Present

Associate. Handles Municipal Prosecutions, City Attorney and General Counsel matters for the Firm.

*The Smeberg Law Firm, PLLC*

2013 - 2014

Law Clerk/Associate Attorney. All stages of litigation. Negotiate and prepare commercial lease documents and post judgment agreements; draft bankruptcy adversary pleadings, claim objections, and various motions and orders for relief; draft and respond to discovery requests; research application of various state laws to bankruptcy proceedings; prepare wills and related estate planning documents.

*St. Mary's University School of Law*

2012 - 2013

Center for Terrorism Law San Antonio, Texas Research Fellow. Researched issues related to terrorism, counterterrorism and cyber security; edited sections of Terrorism Law textbook, law review articles and newsletter; worked on and edited legal briefings for judicial and non-judicial proceedings providing pro-bono support for military service members wrongfully accused of misconduct in the performance of their duties.

*City of Jourdanton*

2005 - 2009

City Secretary. Prepared City Council, Commission and Board meeting agendas and minutes; drafted city ordinances and resolutions; coordinated a comprehensive records' management program; coordinated and administered all phases of city elections; served as tax collector; researched assignments as required for completion of Economic Development Program and U.S.D.A. grant projects; responded to Texas Public Information Act requests; supervised utility billing department.

## **Professional Associations and Memberships**

State Bar of Texas  
Bexar County Women's Bar Association  
San Antonio Bar Association  
Texas City Attorneys Association

## **Education**

*St. Mary's University School of Law*, San Antonio, Texas  
Juris Doctor, 2013

*Texas A&M – San Antonio*, San Antonio, Texas  
Bachelor of Arts, 2009

# REBECCA S. HAYWARD

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**Rebecca S. Hayward** is a Partner. Mrs. Hayward joined the firm in 2012, and her litigation practice involves defending governmental employers in labor and employment issues including Whistleblower Act, First Amendment, due process, FMLA, and discrimination and harassment claims made pursuant to Title VII, ADEA, ADA and state laws. She also defends governmental entities in federal civil rights claims, state law tort claims and takings claims. Mrs. Hayward has represented governmental entities as general and special projects counsel since 2011.

## Areas of Practice

Civil Trial – State and Federal Courts  
Municipal Civil Service  
Municipal Prosecutions

## Bar Admissions

State Bar of Texas, 2012  
U.S. District Court, Southern District of Texas, 2012  
U.S. District Court, Western District of Texas, 2018  
U.S. Fifth Circuit Court of Appeals, 2018

State Bar No.24080709

## Employment Experience

*Denton Navarro Rocha Bernal & Zech, P.C.* 2011 to Present  
Partner. Trial practice in state and federal court involving the representation of governmental entities and public officials in a variety of areas of law, including constitutional, civil rights, employment law, zoning, planning and land use, and torts. Counsel and advisor to municipalities and other local governmental entities on employment matters, ordinance issues; Texas Municipal Civil Service disciplinary appeals and related litigation; public sector labor negotiations with firefighting and law enforcement unions and related contract arbitration.

## Professional Associations and Memberships

State Bar of Texas  
Texas City Attorneys Association

## Education

*Ave Maria School of Law*, Naples, FL  
Juris Doctor – 2011

*Texas A & M International University*, Laredo, TX



# JOHN-MICHAEL HAYWARD

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**John-Michael Hayward** is an Associate. He joined the Firm in 2014 and handles labor and employment and civil litigation matters, as well as municipal prosecutions. He also served with the U.S. Marine Corp starting in 2001, and he was honorably discharged in 2006. He has been practicing municipal law since 2014.

## Areas of Practice

Civil Appeals – State & Federal Courts  
Civil Litigation  
Civil Rights Litigation/Constitutional Litigation  
Including §1983, excessive force, takings, First Amendment, Due Process, etc.  
Civil Trial – State & Federal Courts  
Municipal Court Prosecutions

## Bar Admissions

State Bar of Texas, 2013 State Bar No. 24087693  
U.S. District Court, Southern District of Texas, 2014  
U.S. District Court, Western District of Texas, 2018  
U.S. Fifth Circuit Court of Appeals, 2015

## Employment Experience

*Denton Navarro Rocha Bernal & Zech, P.C.* 2014 to Present  
Associate Attorney. Handles labor and employment and civil litigation matters for governmental and municipal entities.

*The Law Offices of Thomas J. Henry* 2013 – 2014  
Pre-Litigation Attorney. Handled all aspects of litigation.

*United States Marine Corps* 2001 - 2006  
Sergeant.

## Professional Associations and Memberships

State Bar of Texas  
Texas City Attorneys Association

## Education

*Ave Maria School of Law*, Naples, Florida  
Juris Doctor - 2012

*California State University, Fresno, California*  
Bachelor of Science – 2008

# ALLISON A. BASTIAN

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**Allison A. Bastian** is a Senior Associate. She joined the Firm in 2018 and handles real estate transactions, regulation of land use, and contracts for municipalities and governmental entities. She also provides general legal support in the Firm's City Attorney and General Counsel practice areas, including open meetings and elections issues, ordinance drafting, and public information requests. Prior to joining the firm, Ms. Bastian served as the Deputy City Attorney and a Planner for the City of Brownsville. She has been practicing municipal law since 2009.

## Areas of Practice

City Attorney/General Counsel  
Development Agreements  
Land Use, Annexation & Code Compliance Litigation  
    Including zoning, annexation, etc.  
Labor & Employment Litigation  
    Including Title VII, Whistleblower, ADA, FLSA, etc.  
Municipal Court Prosecution  
Open Meetings and Public Information  
Ordinance and Resolution Drafting  
Real Estate Transactions

## Bar Admissions

State Bar of Texas, 2007  
Texas Supreme Court, 2007  
State Bar No. 24061107

## Employment Experience

*Denton Navarro Rocha Bernal & Zech, P.C.* 2018 to Present  
Senior Associate. Provides General and Special Counsel services to clients in various real estate and zoning and land use matters, contracting, and economic development agreements; also draft and review municipal ordinances and resolutions, prosecutorial services in municipal courts, resolution of open meetings issues, and responses to public information requests.

*City of Brownsville* 2015 - 2018  
Deputy City Attorney. Assist and stand in for the City Attorney in various general counsel matters, including but not limited to real estate, land use, and contract issues; attend City Commission and other city board meetings as legal counsel; review and draft various contracts, ordinances, and resolutions.

*City of Brownsville* 2009 - 2015



Assistant City Attorney. Provide support to various departments regarding a variety of municipal legal issues, including developing and interpreting ordinances; reviewing contracts; and conducting legal research.

*City of Brownsville*

2007 - 2009

Planner II. Assisted with land use, zoning, and annexation matters for the City; provided support in the update of impact fees and interpretation of state and local land use law.

### **Professional Associations and Memberships**

State Bar of Texas

Government Lawyers Section of the State Bar of Texas

Real Estate, Probate and Trust Law Section of the State Bar of Texas

Texas City Attorneys Association

Cameron County Bar Association

Hidalgo County Bar Association

International Municipal Lawyers Association

State Bar of Texas Real Estate Forms Committee (Appointed for 2019-2022)

### **Education**

*Oklahoma City University School of Law*

Juris Doctor – May 2007

*University of Oklahoma*

Bachelor of Fine Arts - 1994

# MATTHEW J. LONGORIA

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**Matthew J. Longoria** is an Associate. He joined the Firm in 2019 and handles litigation, appeals, local government and municipal law, Texas Public Information Act, Open Meetings Act, ordinance and resolutions drafting, municipal prosecuting. He has been practicing law since 2017.

## Areas of Practice

City Attorney/General Counsel  
Civil Litigation  
Municipal Court Prosecutions  
Open Meetings and Pubic Information  
Ordinance Drafting  
Special Counsel Projects  
Texas Public Information Act – Open Records

## Bar Admissions

State Bar of Texas, 2017

State Bar No. 24087035

## Employment Experience

*Denton Navarro Rocha Bernal & Zech, P.C.* 2019 to Present  
Associate. Prosecution of Class C misdemeanors; counsel and advisor to municipalities and other local governmental entities on ordinance issues; defense of injury claims, employment claims, land use claims; handling of electronic discovery.

*Denton Navarro Rocha Bernal & Zech, P.C.* 2017 - 2019  
Law Clerk. Legal research on dynamic employment, land use, and injury issues including TTCA, HIPAA, and discrimination and harassment claims made pursuant to Title VII, ADEA, ADA, and state laws.

*Center for Legal & Social Justice* 2015 - 2016  
Student Attorney. Represented landowner in complex, consumer law litigation; legal research and analysis including the Truth in Lending Act and claims made pursuant to state constitutional violations.

*Kangxin Partners, P.C.* 2014  
Summer Intern. Analyzed trademark and copyright discovery reports for potential infringements; reviewed trademark classes and aided in securing registration; prepared a copyright workshop and made presentation for law firm panel.

## **Professional Associations and Memberships**

State Bar of Texas  
San Antonio Bar Association  
San Antonio Young Lawyers Association  
Texas City Attorneys Association  
Texas Young Lawyers Association

## **Education**

*St Mary's University School of Law*  
Juris Doctor – 2016

*Beihang University Institute on Chinese Law and Business, Beijing, China*  
Study Abroad Program - 2014

*University of California, Santa Cruz*  
Bachelor of Arts - 2008

# ROBYN KATZ

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**Robyn Katz** is an Associate. She joined the Firm in 2019 and handles municipal law, municipal prosecution and Texas Public Information Act. Prior to joining the Firm, Ms. Katz worked as a state prosecutor, and handled other civil matters including those related to animal law and legislation. She has been practicing law since 2010.

## Areas of Practice

Municipal Law  
Municipal Court Prosecutions  
Texas Public Information Act – Open Records  
Civil Trial – State and Federal Court  
Criminal Trial – State and Federal Court

Civil Appeals – State & Federal Court  
Civil Rights Litigation/Constitutional Litigation  
Including §1983, excessive force, takings, First Amendment, Due Process, etc.  
Civil Trial – State & Federal Court  
Ordinance Drafting

## Bar Admissions

State Bar of Texas, 2010	State Bar No. 24060985
U.S. District Court Western District of Texas, 2012	
State Bar of New Jersey, 2018	State Bar No. 289372018
State Bar of Colorado, 2019	Registration No. 53714

## Employment Experience

*Denton Navarro Rocha Bernal & Zech, P.C.* 2019 to Present  
Associate. Specializing in municipal law, municipal prosecution and Texas Public Information Act.

*Comal County District Attorney's Office* 2017 - 2019  
Assistant Criminal District Attorney. Prosecuted misdemeanor and felony cases, including Protective Orders, jury trials, and bench trials. Also provided CLEs and trainings to local law enforcement and state prosecutors related to animal cruelty and civil seizures.

*Katz Law Firm* 2012 - 2017  
Owner and solo practitioner. Family law and other civil litigation, in addition to animal-law related litigation. Assisted state representatives with legislation concerning domestic violence and animal cruelty offenses.

*Bexar County District Attorney's Office*

2010 - 2012

Assistant District Attorney. Focusing on family violence cases and animal cruelty cases.

### **Professional Associations and Memberships**

State Bar of Texas, Animal Law Section, Chair

Texas City Attorney Association

Adjunct Law Professor, St. Mary's School of Law

### **Education**

*Texas Tech School of Law*, Lubbock, Texas

Juris Doctorate – 2010

*The University of Texas*, Austin, Texas

Master of Education – 2004

*University of Michigan*, Ann Arbor, Michigan

Bachelor of Science – 2003

**4. References**

**A. Provide five (5) professional references, including current municipal clients that the firm has represented in the past five (5) years to include contact person and telephone number**

Michael Dyson, Mayor  
City of Rollingwood  
403 Nixon Drive  
Rollingwood, Texas 78746  
Telephone: (512) 327-1838  
[michaeldyson@cityofrollingwood.com](mailto:michaeldyson@cityofrollingwood.com)

Robert Gregory, Mayor  
City of La Vernia  
102 E. Chihuahua  
La Vernia, TX 78121 - 0225  
Telephone: (830) 779-4541  
[rgregory@lavernia-tx.gov](mailto:rgregory@lavernia-tx.gov)

Nancy Cain, City Administrator  
City of Garden Ridge  
9400 Municipal Parkway  
Garden Ridge, TX 78266  
Telephone: (210) 651-6632  
[administrator@ci.garden-ridge.tx.us](mailto:administrator@ci.garden-ridge.tx.us)

Clint Garza, City Manager  
City of Bee Cave  
4000 Galleria Parkway  
Bee Cave, Texas 78738  
Telephone: (512) 767-6611  
[cgarza@beecavetexas.gov](mailto:cgarza@beecavetexas.gov)

Shawn Cox  
City of Wimberley  
221 Stillwater  
Wimberley, TX 78626  
Telephone: (512) 847-0025  
[scox@cityofwimberley.com](mailto:scox@cityofwimberley.com)

**5. Conflicts of Interest and Litigation in the past five years**

- A. List of clients that the Firm currently represents and employees whether contract/part-time or full-time that could cause a conflict of interest and the Firm’s ability to provide neutral and authentic advice to the City of Sunset Valley. If one exists, how would the Firm resolve the conflict or any future conflicts of interest.**

We are not currently aware of any preexisting client relationship that would establish a legal conflict of interest with our responsibilities for the City of Sunset Valley.

**Describe how you would be willing to resolve these or any future conflicts of interest.**

The Firm and the Attorneys of the Firm comply fully with the Texas Disciplinary Rules of Professional Conduct for lawyers. This includes our obligations under the Client-Lawyer relationship and conflicts of interest.

- B. Any litigation the firm has filed in the past five years in which either the City of Sunset Valley or one of its employees was named as a defendant, description of case(s)**

None.

- C. Any litigation filed in the past five years in which a municipality was a defendant, description of case(s)**

None.

**6. Additional Information**

**A. Additional documentation which the Firm deems necessary which will detail the firm's professional experience**

Client confidentiality is of the upmost importance to DNRBZ. For internal communication such as legal memorandums and opinion letters to a client, DNRBZ clearly marks these documents as "CONFIDENTIAL/ATTORNEY-CLIENT COMMUNICATION/NOT A PUBLIC RECORD". Emails that are confidential are also marked "CONFIDENTIAL" or "PRIVILEGED" or "ATTORNEY-CLIENT COMMUNICATION". DNRB&Z uses a secure server for obtaining and providing documents between a client and the Firm. For information requested through the Texas Public Information Act, DNRBZ reviews all documents provided by a client to ensure that any responsive document is not excepted from disclosure to the public as a result of its confidentiality.

DNRBZ's communication approach is simply "flexible and adaptable to your needs". The City Attorney's Office is a resource to support and assist the Mayor, City Council and City staff in the provision of services to the public and to defend and protect the City's interests. Therefore, we typically work with the City to establish a cost-effective communication method that meets the City's needs. In some cases, the Mayor, Councilmembers and key City staff are granted access to the legal department on an as-needed basis. In others, it may only be the City Manager/Administrator and Mayor who manage legal services. To convey legal advice, we will communicate with those people designated by the City, consistent with the specialized Texas State Bar rules governing the practice of law with a governmental body. We are capable of utilizing video conferencing to reduce travel costs and will share documents and ideas in real time. If the City prefers written status reports, DNRBZ is amenable to providing such reports to the City of Sunset Valley. In addition, key personnel, as determined by City Council and/or City Management, are provided cell phone numbers for our lawyers who are available 24 hours a day, seven days a week to handle any legal issue which may arise.

**B. Summary detailing the experience and understanding of the role of providing consulting legal services as City Attorney**

As established in this response DNRBZ has the experience and understanding of the role of providing consulting legal services as a City Attorney. Our firm focuses its entire practice on providing legal guidance to local governments. We regularly and continually draft, negotiate and review agreements, deeds, easements, ordinances, and resolutions. We assist in the drafting and creation of supporting materials for City Council meetings and attend City Council meetings, planning and zoning meetings, board of adjustment meetings and other meetings of municipalities in addition to providing legal advice to those boards and commissions. We are familiar with applicable state and federal laws regarding local government. We take a proactive approach to our representation of municipalities to discover and solve issues before they become problems.



## 6. C. Client List

### **1 REPRESENTATIVE CLIENT LIST FOR CURRENT CITY ATTORNEY**

#### **APPOINTMENTS:**

City of Bandera 873 pop.  
City of Bee Cave 6,739 pop.  
City of Brady 5,425 pop.  
City of Burnet 6,359 pop.  
City of Castroville 3,018 pop.  
City of Charlotte 1,824 pop.  
City of China Grove 1,311 pop.  
City of Christine 415 pop.  
City of Copperas Cove 32,808 pop.  
City of Fair Oaks Ranch 8,645 pop.  
City of Falls City 656 pop.  
City of Garden Ridge 3,957 pop.  
City of Gonzales 7,660 pop.  
City of Gregory 1,942 pop.  
City of Harlingen 65,539 pop.  
City of Ingram 1,854 pop.  
City of Jourdanton 4,327 pop.  
City of Kenedy 3,388 pop.  
City of La Feria 7,271 pop.  
City of La Vernia 1,409 pop.  
City of Leon Valley 11,426 pop.  
City of Live Oak 15,749 pop.  
City of Mountain City 745 pop.  
City of Natalia 1,520 pop.  
City of New Berlin 578 pop.  
City of Pflugerville 59,245 pop.  
City of Poth 2,213 pop.  
City of Prairie View 6,442 pop.  
City of Rio Hondo 2,776 pop.  
City of Rockport 10,555 pop.  
City of Rollingwood 1,560 pop.  
City of Santa Fe 13,442 pop.  
City of Schertz 39,453 pop.  
City of St. Hedwig 2,406 pop.  
City of Sterling 888 pop.  
City of Stockdale 1,442 pop.  
City of Taft 3,023 pop.  
City of Tye 1,293 pop.  
City of Universal City 20,359 pop.  
City of Waelder 1,123 pop.  
City of Wimberley 2,626 pop.

### **CURRENT GENERAL COUNSEL**

#### **APPOINTMENTS:**

Austin Urban Renewal Agency  
Central Appraisal District of Bandera County  
Comal County Emergency Services District #1  
Cow Creek Groundwater Conservation  
District  
Dickinson Management District No. 1  
Eagle Pass Housing Authority  
El Paso Housing Authority  
Pflugerville -Tax Increment Reinvestment  
Zone No. 2  
Schertz – Tax Increment Reinvestment Zone  
No. 1  
Seguin Housing Authority

### **CURRENT MUNICIPAL PROSECUTOR**

#### **APPOINTMENTS:**

City of Bee Cave  
City of Brady  
City of Burnet  
City of Charlotte  
City of Copperas Cove  
City of Fair Oaks Ranch  
City of Gonzales  
City of Harlingen  
City of Hitchcock  
City of Ingram  
City of Jourdanton  
City of Kenedy  
City of La Feria  
City of La Vernia  
City of Leon Valley  
City of Live Oak  
City of Pflugerville  
City of Rio Hondo  
City of Santa Fe  
City of Stockdale  
City of Tye  
City of Waelder

**CURRENT EDC AND MDD GENERAL COUNSEL APPOINTMENTS:**

Bastrop Economic Development Corporation  
City Development Corporation of El Campo  
Dickinson Economic Development Corporation  
Kenedy Economic Development Corporation  
Live Oak Economic Development Corporation  
Poth Economic Development Corporation  
Schertz Economic Development Corporation  
Fair Oaks Ranch Municipal Development District  
La Vernia Municipal Development District  
Natalia Municipal Development District  
Prairie View Economic Development Corporation  
Stockdale Economic Development Corporation  
Sweetwater Economic Development  
Universal City Economic Development Corporation



Please review the questions submitted by the Sunset Valley City Council. They are part of a packet the Council will review when making their final selection. Please limit your responses to 1 page in length per question

### Responses Required 1-12

- 1) When you have been given a contract with a new municipality what typically are the areas of improvement in the legal process that you discover? Give examples of recommendations.

Each City is different, and it is not our practice to come to a City and disrupt standard operating procedure purely for the sake of change. However, one area where we will typically find areas of improvement is in the agenda process. One of the first documents we review are the city council agendas to ensure compliance with the Texas Open Meetings Act. It is not unusual during this review to find a practice that is not consistent with the law and we will address those issues. In addition, we recommend a regular agenda review conference, as discussed in question 2. This regular review of the agenda will usually identify legal issues far enough in advance to head off potentially expensive problems. Ultimately, however, the key to the provision of successful legal services is based on good communication. As a baseline, without clear and concise communication between the attorney and the entity and its constituents, most projects are doomed to inefficiency at best or failure at worst. As such, we work on improving the existing communication structure to ensure all parties are on the same page as to expectations, decisions and direction.

2) How do you prepare for attendance at Council meetings?

It is our practice to request an agenda conference with the appropriate administrative officer prior to the posting of the agenda for city council meetings. This meeting allows us to discuss the agenda items for consideration, ask any questions we have regarding issues to be presented, ensure that the agenda is in compliance with the Texas Open Meetings Act and that the agenda is worded to ensure City Council may take any anticipated action. Prior to the meeting the attorney will review the agenda and relevant back-up documents to refresh their memory regarding any specific issues that may necessitate input and to ensure that, with respect to anticipated and known questions which may arise, they can be fully prepared to respond at the meeting. Finally, each week our lawyers meet as a group for an internal discussion of legal issues for our clients to ensure that input is received for unique issues and all lawyers are up to date on what is going on for all clients. The City is not billed for the time spent in these internal weekly meetings.

- 3) Give an example of a legal brief (with appropriate redactions) that you prepared for council.

The legal opinion attached hereto as "Exhibit A" was made public by the client and approval was previously obtained to attach this document to responses to requests for qualifications and proposals when sample legal briefs are requested. The legal conclusions provided for in the opinion were affirmed by the 13<sup>th</sup> Court of Appeals as shown in the attached "Exhibit B". The conclusion of the Court is highlighted for your convenience.

- 4) Please define whom you believe to be your client when working for the City of Sunset Valley.

The firm fully complies with the Texas Disciplinary Rules of Professional Conduct in its representation of municipalities. In that context Rule 1.2 “Organization as a Client” provides the guidance under which we must comply as attorneys. Rule 1.12 provides that a “lawyer employed or retained by an organization represents the entity.” Comment 1 to the rule provides additional guidance as to who the client is by providing that a “lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members, shareholders or other constituents.”

Based on this guidance the City of Sunset Valley is the client rather than any individual council member or employee. While we may, in the ordinary course of working relationships with a city report to, and accept direction from, the City’s duly authorized constituents such as a City Administrator, Mayor or others as directed by the City Council, we are obligated to proceed as reasonably necessary in the best interest of the City, as opposed to the best interests of any individual constituent, within the guidelines provided for under our rules professional conduct. Put simply, it is the best interest of the City that we represent.

- 5) Does your firm believe it is important to have appropriate information that goes to the Mayor and City Administrator go to all of Council and if so, do you have processes in place that facilitate that end?

As discussed earlier good communication is key to the successful provision of legal services. All "appropriate" information should be communicated to all of Council, the Mayor and the City Administrator. However, it is important to remember that information has levels of importance. On occasion, it is necessary that some information be communicated equally amongst the entire organization while other information may not be as important to disseminate as broadly and, in fact, could create information overload for the recipients. With that said a clear policy should be established, dictating when and how information is communicated between Council Members, staff and the office of the City Attorney. In the creation of that policy some discretion must be allowed for the City Attorney, as situations may arise where the City Attorney's ethical obligations to the entity would preclude them from either providing information to a particular individual, where the City Attorney would be obligated to provide information in such a way as to ensure the organization is not unduly disrupted, or where an obligation to inform the City Council as a whole is required even where the policy does not direct that outcome.

6) How does your firm work with the City to keep legal costs at a minimum?

We recognize that our fees are paid for by City tax dollars and to that extent ensuring that those tax dollars are spent wisely and for value, is a top priority for us. First, as a general matter it is our experience that, after the initial settling in period, average monthly legal costs for our clients typically go down. This is based on our depth of experience in the practice of municipal law. Since we focus our practice solely on the representation of local government and we have over 30 years of experience in representing municipalities across the state, it is rare that an issue arises with which we are not familiar. As a result, we do not have to conduct in depth research or “figure” out an answer to a question. We can provide most answers to legal questions quickly and efficiently without spending time on research, resulting in lower legal costs. In addition, because we represent so many cities across the State, we bring economies of scale to our clients. The current COVID19 pandemic is a good example of this concept playing out. As the Governor issued executive orders, we had multiple lawyers analyzing the orders and the legal implications associated with those orders. However, because we represent so many cities, we were able spread that cost of that analysis amongst all our clients rather than place that burden on a single client. Finally, at the onset of our representation we usually spend several hours, at no charge to the client, with the appropriate appointed individuals discussing outstanding legal issues and concerns of the client. We then develop a joint approach to providing our legal services that fits the budget and needs of the client.



7) What things do you value most about your law firm?

We are a family dedicated to each other and our clients. Every lawyer in our firm has made a conscience decision to represent local governments and to do so with our law firm. We **ENJOY** representing local governments and we **ENJOY** spending time with each other and attending to our client's legal needs. The representation of local government is our **chosen vocation**...While a career holds its own importance—the most obvious is earning an income—a person's vocation evokes one's gifts, abilities, passions, dreams and broader life purpose. While we chose the career of law our chosen vocation, the representation of local governments is intentional. It is why we refuse to expand our legal practice to include the representation of developers or private parties even though such an expansion would be at higher billable rate. We are dedicated, as a family, to be the best municipal law firm in Texas and every decision we make is based on this dedication.

- 8) Describe some council meetings you have experienced as being well run and effective. What were the elements that really stood out?

Well run and effective council meetings are those meetings where the members of the governing body come to the meeting with the right mindset and fully prepared to conduct the business of the city. Simple and clear meeting procedures are adopted, followed and respected. Each city council member reads the packet before the meeting and shares any possible questions or concerns with staff and legal counsel ahead of time. Council members disagree without being disagreeable and they respect each other and each other's positions even though they may not always agree with them. Every member of city council approaches every agenda item with the belief that everyone has something to contribute and likely has information that they do not have. The focus of the meeting is on progress toward the overall goals of the city and not individual positions or politics. Finally, unless there is a legal item on the agenda, if the attorney is a silent participant, the meeting was well run and effective. It reflects the appropriate preparation was done prior to the meeting by all participants.

- 8.a) How did you feel about the use of your time?

If a City Council meeting is well run it is a very efficient use of our time to be present at those meetings. Not only does it keep our office in the loop as to the issues being discussed and the policy direction of the client, our presence allows us to identify legal issues in advance and either, stop an action before it creates an expensive problem or provide a solution to a "simple" problem before it elevates to a more complex and expensive problem. That said, if a Council meeting is fraught with political in-fighting and our presence is being used as an attempt to control meeting outcomes and manage meeting structure it is not an appropriate use of our time.

- 9) Describe your ideal working relationship with a municipal government client.

The ideal working relationship is a relationship where the City Council, the City Staff and the constituents understand and respect the role of the City Attorney, which is to provide legal advice. Often a client will inquire as to our opinion on policy. It is not the City Attorney's role to guide policy other than through the provision of legal advice upon which the client can then make a policy decision. In fact, comment 6 to Rule 1.12 of our Disciplinary Rules of Professional Conduct specifically provide that "[w]hen constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province."

- 9.a) What type of communication works well in this relationship?

In this context communication between the attorney, City Council and its constituents should include the common elements to all successful communication relationships. The parties should be active and engaged listeners, judgments about ideas, values or personalities should be set aside, and an understanding of the roles of the various parties should be at the forefront. Finally, as to on the ground day-to-day communications, honesty and trust are the key. The best attorney/client communication relationship exists when the attorney and the client are communicating honestly and with trust. Honesty as to facts, true objectives and motives, and desired outcomes and with trust that everyone has only the best interest of the City at the heart of their communications.

- 10) Is there a legal *requirement* for a city to conduct a Utility cost of service study? If so, where can I find the info.

There is no statutory requirement that a City conduct a "utility cost of service study". However, as a general matter utility rates have two components. The cost to bring the utility to the meter or point of taking, and the usage. In that general context there are also certain regulatory rate setting requirements which must be complied with when setting utility rates, whether water, wastewater or electric utilities. A rate study is the tool which gives the City the information and evidence necessary to comply with those regulatory requirements. For example, with respect to water rates a city council has exclusive original jurisdiction to adopt rates within its jurisdictional limits that are "fair, just and reasonable" [Texas Water Code 13.042 (a)]. In addition, water

rates shall not be unreasonably preferential, prejudicial or discriminatory, but shall be “sufficient, equitable, and consistent in application to each class of customers” [Texas Water Code 13.182]. The burden of proof is on the City to demonstrate that their rates are just and reasonable [Texas Water Code 13.184(c)]. An appropriately conducted rate study ensures that a City has met its burden of proof with respect to these regulatory requirements and ensures that a city is not subsidizing the cost of delivering the service from the general fund. Hence, the rates should cover the “cost of service”.

- 11) What are some of the nuances that you have picked up on in your dealing with City Council of small cities?

Many of our attorneys grew up in small towns and understand the nuances well. In small towns, even before cell phones and social media, your parents knew what you did before you got home. In today's world, everyone knows, or believes they know, exactly what the city staff and city council SHOULD have done as soon as a decision is made. They share those opinions on social media. The local media often look to the local government scene to drive the hits for their media sites. As a result, things are often magnified greater, and escalated faster. In such an environment, it is often advisable to be as clear and transparent as possible. The agenda needs to tell a story, staff reports...if included...need to be written and shared as if they would be a story in the paper, and council discussion should be thorough, and in public. It is critical in a small town that the city drive its own message and that staff and council tell a story that is accurate, truthful and positive. In doing so, the city staff and the city council are seen by the public as unified, attentive to the community needs, and committed to making decisions that serve everyone's best interest. In our experience this builds confidence among the constituents. Too often today there is distrust in government and a belief that decisions are made before meetings, among a select few. This belief can be strongest in small communities which makes it imperative to be conscientious of that tendency and intentional about contradicting it.

- 12) What is a story you can share with us without using names that we should never emulate?

I am not comfortable sharing a story because even if names are not used it is possible that the story could make its way to my client through no fault of anyone. And I would never want to place one of my clients in a position of having to read that I used them as a bad example without first obtaining their permission, as many of them would probably happily give their permission. However, I will say that probably 90 percent of the times that things have gone in a direction that I would not recommend that you emulate it is based on either politics or personalities. In our experience that when politics or personalities become the focus of a situation common sense, reason and logic tend to leave the room. The result is almost always a bad outcome, where there is no real winner, and a substantial increase in legal fees. The seeds of this issue often begin before an individual is elected to City Council, specifically when individuals run for city council with any personal agenda of any sort. Supporting some missions or causes of a city more than others are fine, but when the service is for personal interest rather than a shared vision, it leaves a gap that then allows politics and personalities to influence decisions. City Councils act and govern as a body and have no authority individually. Members who only have a personal agenda tend to be frustrated and discouraged by this fact, but they have earned their seat. The best functioning councils find ways they can all contribute, they engage in team building and in training that helps them avoid the pitfalls that come from pursuing personal agendas rather than city council goals they have set as a group.

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**ATTORNEY CLIENT PRIVILEGE  
NOT A PUBLIC RECORD  
MEMORANDUM**

October 19, 2016

Miles Risley  
City Attorney  
City of Corpus Christi  
PO Box 9277  
Corpus Christi, Texas 78469

Via Email: [milesr@cctexas.com](mailto:milesr@cctexas.com)

Mr. Risely:

You have asked my office to supplement our previous opinion by addressing the effect of the one and one-half year (1½) year term served by Council member Scott on the City's term limits.

In preparation for this supplemental opinion, I have conducted additional case law research, relied on the previously researched and stated relevant case law, statutory, and constitutional provisions and have reviewed the following documents:

1. The City Charter;
2. 1992 City Charter Committee Report;
3. Ordinance 028733 ordering the 2010 Charter Election;
4. Ordinance 028838 canvassing the 2010 Election;
5. City Council Minutes of April 27, 2010;
6. City Council Minutes of May 18, 2010;
7. City Council Agenda Memorandum of August 11, 2010;
8. City Council Minutes August 17, 2010;
9. City Council Agenda Memorandum of August 24, 2010;
10. City Council Minutes August 24, 2010;
11. City Council Minutes of November 11, 2010 canvassing the Election;
12. Excerpt from 1993 Election Supplement; and
13. Email correspondences related to City Council terms.

**Facts:**

In November of 2010 the Citizens voted on a charter amendment which created a term of one and one-half years (the “shortened term”). Council member Scott was elected to an at-large council member position in May of 2009. Council member Scott was subsequently reelected to an at-large council member position for terms beginning May of 2011, November of 2012 and November of 2014. Council member Scott’s second term of office, which began in May of 2011 and ended in November of 2012, was the shortened term.

**Applicable Law:**

In addition to the general law cited in our legal opinion of October 3, 2016 the following specific legal principles’ are applicable to the issue presented. While City Councils are permitted broad discretion in many instances in the exercise of its powers and authority, the City Council must respect the express provisions of the charter in instances where they are applicable. *Cent. Power & Light Co. v. City of San Juan*, 962 S.W.2d 602, 612–13 (Tex. App.—Corpus Christi 1998, *pet. dismiss’d w.o.j.*). It is a well-settled rule that the governing authorities of cities can express themselves and bind the cities only by acting together in a meeting duly assembled. *Id.* A city council may transact a city’s business only by resolution or ordinance, by majority rule of the council. *Id.* A municipal governing body expresses itself through its official proceedings, as manifested in orders, resolutions, and minutes. *Whittington v. City of Austin*, 174 S.W.3d 889 (Tex. App. Austin 2005), *petition for review filed*, (Nov. 23, 2005). A City’s contract with voters does not include extraneous documents that are not approved or authorized by city council. *Taxpayers for Sensible Priorities v. City of Dallas*, 79 S.W.3d 670 (Tex. App.—Dallas 2002, *pet. denied*). It is well settled law, and the courts have repeatedly recognized the principle, that any constitutional or statutory provision which restricts the right to hold office must be strictly construed against ineligibility. *Brown v. Meyer*, 787 S.W.2d 42 (Tex.1990); *Hall v. Baum*, 452 S.W.2d 699, 702 (Tex.1970), *appeal dismissed*, 397 U.S. 93, 90 S.Ct. 818, 25 L.Ed.2d 79 (1970); *Willis v. Potts*, 377 S.W.2d 622, 623 (Tex.1964).

No person shall serve more than four two-year terms consecutively as a council member, or four two-year terms consecutively as mayor, or six two-year terms consecutively in any combination of such offices. *Corpus Christi Home Rule Charter Article II, Section 1(d)*.

**Discussion:**

Ordinance No. 028733, adopted by City Council on August 24, 2010, ordered an election on charter amendment no. 6 which provided as follows:

CHANGING THE CITY COUNCIL ELECTION DATE FROM THE SECOND SATURDAY IN MAY TO THE NOVEMBER UNIFORM ELECTION DATE OF EVEN NUMBERED YEARS AND TO ALLOW FOR A TRANSITION ELECTION IN MAY 2011, WITH A SHORTENED TERM OF A YEAR AND A HALF



In addition the ordinance included the following charter language which would be revised and adopted upon the approval of charter amendment no. 6 by the voters:

Section 1, Membership and Term.

b) The mayor and members of the city council shall be elected for terms of two years and shall hold office until their respective successors have been elected and qualified. The regular election shall be held ~~in~~ on the November uniform election date of even -numbered years as authorized by State law: provided that, a transition election shall be held on the second Saturday in May, 2011 for terms expiring upon the final canvass of the elections in November 2012. ~~Odd-numbered years on the first Saturday in April unless the City council designates an alternative Saturday in April or the next available uniform election date allowed by state law at least three months prior to the regular election.~~

The adopted charter amendment is silent as to effect of the shortened term on the charter's term limits. No evidence of official action taken by City Council dictating that the shortened term counts towards the charter's term limits exists in Ordinance No. 028733 which ordered the charter amendment election, the minutes from its first reading of August 17, 2010 or the minutes from its second reading of August 24, 2010. Neither were any other resolutions, ordinances or minutes, approved by City Council provided to our office which dictates that the shortened term shall be counted towards the charter's term limits. I have reviewed emails which declare individual opinions that it was City Council's intent that the shortened term shall count towards the charter's term limits. However, Texas law is very clear that external publications and individual expressions of intent are not an official expression of the governing body unless adopted by the majority of the governing body. Finally, there is no document, ordinance, resolution, or meeting minutes which has been adopted by City Council which states, discusses, or even intimates, that the shortened term shall be counted towards the charter's term limits.

Texas law requires a City Council to respect the express provisions of its charter in instances where they are applicable and that any constitutional or statutory provision which restricts the right to hold office must be strictly construed against ineligibility. The City's Charter expressly states that "no person shall serve more than four two-year terms consecutively as a Council member, or four two-year terms consecutively as Mayor, or six two-year terms consecutively in any combination of such offices." Neither the ordinance adopted by City Council ordering the shortened term limits to be placed on the ballot, the language of the charter amendment itself, or the minutes adopted by City Council from the meetings where the ordinance was read and adopted provide that the shortened term shall apply towards term limits. Based on the facts and the cited guiding legal principles in statutory and charter interpretation, including the well settled legal principle that that any question regarding a restriction on the right to hold office must be strictly construed against ineligibility, it is our opinion that the shortened term is not included in calculating consecutive terms for purposes of the charter's term limits. Had it been City Council's intent to count the shortened term towards the charter's term limits City Council would have had to specifically express that intent in its official capacity, for example, the charter

amendment could have included language stating “the one and one-half year term shall count as a two year term for purposes of term limits.”

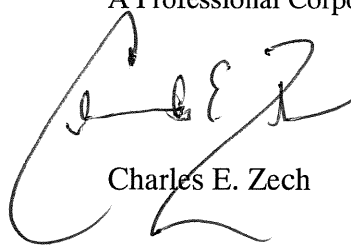
**Conclusion:**

Council member Scott’s shortened term does not count towards the charter’s term limits which prohibit serving consecutive two-year terms.

If you have any questions regarding this opinion please do not hesitate to contact me.

DENTON NAVARRO ROCHA BERNAL HYDE & ZECH

A Professional Corporation

A handwritten signature in black ink, appearing to read 'C. E. Zech', is written over a large, stylized, handwritten 'Z' that spans across the signature and extends downwards.

Charles E. Zech

2017 WL 1173829

Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR  
DESIGNATION AND SIGNING OF OPINIONS.

Court of Appeals of Texas, Corpus Christi-Edinburg.

IN RE Mark SCOTT

NUMBER 13-17-00148-CV

Delivered and filed March 29, 2017

**On Petition for Writ of Mandamus.**

**Attorneys and Law Firms**

Van Huseman, Eric S. Stewart, Huseman & Stewart., PLLC,  
Corpus Christi, TX, for the Relator.

Arthur Pertile III, Charles Williams, Eric C. Farrar, Olson &  
Olson LLP, Houston, TX, Miles Risley, City Attorney, Corpus  
Christi, TX, for the Respondent.

Before Justices Contreras, Benavides, and Longoria  
Memorandum Opinion by Justice Benavides

**MEMORANDUM OPINION**

GINA M. BENAVIDES, Justice

\*1 Relator Mark Scott filed a petition for writ of mandamus in the above cause on March 16, 2017. Through this original proceeding, Scott seeks to compel Rebecca L. Huerta, City Secretary of Corpus Christi, Texas to: (1) find Scott eligible to run for the position of mayor of the City of Corpus Christi, Texas; and (2) grant his application for a place on the ballot for the May 6, 2017 mayoral election. Applying a de novo review to the relevant provisions of the Corpus Christi City Charter, we conclude that principles of statutory construction establish that Scott is eligible to run for the position of mayor. Accordingly, we conditionally grant the petition for writ of mandamus.

**I. BACKGROUND**

This case concerns the term limits applicable to the mayor and council members for the City of Corpus Christi. On November 2, 2010, Article II, Section 1 of the Corpus Christi City Charter (City Charter) was amended in two respects relevant to this matter. The amendments: (1) changed the election date from May to November, thereby shortening the two-year terms of office for the mayor and council members elected in May 2011 by approximately six months; and (2) increased the required break in service for the mayor and city council members from one term to three consecutive terms. The current portions of the City Charter that are at issue here provide:

(b) The mayor and members of the city council shall be elected for terms of two years and shall hold office until their respective successors have been elected and qualified. The regular election shall be held on the November uniform election date of even-numbered years as authorized by State law; provided that, a transition election shall be held on the second Saturday in May, 2011 for terms expiring upon the final canvass of the elections in November 2012.

....

(d) No person shall serve more than four two-year terms consecutively as a council member, or four two-year terms consecutively as mayor, or six two-year terms consecutively in any combination of such offices. A person who has reached the limitation on terms provided in this section shall not be eligible for election or appointment to the City Council until three consecutive terms of office for the council have expired.

CORPUS CHRISTI, TEX., CITY CHARTER, art. II, § 1. Scott was elected as an at-large city council member in May 2009, May 2011, November 2012, and November 2014. Scott thus served four terms on the city council as a city council member and his total time served in that office comprised seven years and six months.

On February 28, 2017, the City Council of Corpus Christi called for a special election to be held on May 6, 2017, to fill the vacancy in the office of the mayor after former Mayor Dan McQueen resigned from office. On March 6, 2017, Scott applied for a place on the ballot.

On March 10, 2017, the City Council passed a resolution regarding Scott's eligibility to run in the special election. This resolution reads as follows:

**Whereas**, by election held on April 3, 1993, the Corpus Christi voters approved Charter Amendment 3 to amend Article II Section 1 of the City Charter to add an additional subsection (d) regarding term limitations to read as follows:

\*2 “(d) No person shall serve more than four two-year terms consecutively as a council member, or four two-year terms consecutively as mayor, or six two-year terms consecutively in any combination of such officers. A person who has reached the limitation on terms provided in this section shall be eligible for election or appointment to the city council after not serving on the city council for one full term of office. (This provision shall take effect beginning with the terms of office commencing in April 1993. Terms of office served prior to such date shall not count toward this limitation.)”

**Whereas**, by election held on November 2, 2010, the Corpus Christi voters approved Charter Amendment No. 2 to amend Article II Section 1 subsection (d) of the City Charter to increase the waiting period from one term (2 years) to three terms (6 years) before a person becomes eligible to serve again and modifying subsection (d) to read as follows:

“(d) No person shall serve more than four two-year terms consecutively as a council member, or four two-year terms consecutively as mayor, or six two-year terms consecutively in any combination of such offices. A person who has reached the limitation on terms provided in this section shall not be eligible for election or appointment to the city council until three consecutive

terms of office for the council have expired.”

**Whereas**, also by election held on November 2, 2010, the Corpus Christi voters approved Charter Amendment No. 6 to change the City Council election date from the second Saturday in May to the November uniform election date of even numbered years and to allow for a transition election in May 2011, with a shortened term of a year and a half, and amending Article II Section 1 (b) of the City Charter to read as follows;

“(b) The mayor and members of the city council shall be elected for terms of two years and shall hold office until their respective successors have been elected and qualified. The regular election shall be held on the November uniform election date of even-numbered years as authorized by State law; provided that, a transition election shall be held on the second Saturday in May, 2011 for terms expiring upon the final canvass of the elections in November 2012.”

**Whereas**, Mark Scott was elected to an at-large council member position in May of 2009; May 2011; November 2012; and November 2014;

**Whereas**, on September 14, 2016, City Council Member Mark Scott announced his resignation from office prior to the expiration of his term of office in order to avoid City Charter term limit requirements;

**Whereas**, on September 14, 2016, Mark Scott submitted a written letter of resignation from office, to be effective 5 p.m. on September 14, 2016;

**Whereas**, Council Member Mark Scott was absent from the City Council meetings of September 20, 2016, September 27, 2016, October 11, 2016, October 18, 2016, and October 25, 2016;

**Whereas**, Council Member Mark Scott attended the November 1, 2016, November 15, 2016, and November 21, 2016 City Council meetings;

**Whereas**, on November 1, 2016, Corpus Christi City Council approved Resolution No. 031000 “City Council Resolution of Reprimand for Council Member Mark Scott” which declared that it was the belief of the Corpus Christi City Council that the intent of the 2010 Charter amendments was to count the shortened City Council term towards the term limits;

**Whereas**, Corpus Christi City Charter Article II Section 8 provides:

“Sec. 8. Judge of Elections.

The city council shall be the judge of the election and qualification of its own members, subject to review by the courts in case of contest.”

**\*3 Whereas**, the general City Council election was held on November 8, 2016 for the election of the Mayor and Council Members;

**Whereas**, Mark Scott did not file to run in the November 8, 2016 election;

**Whereas**, Dan McQueen was elected mayor on November 8, 2016;

**Whereas**, the Mayor and City Council took office on December 13, 2016;

**Whereas**, Mayor Dan McQueen resigned from office on January 18, 2017 and City Council accepted his resignation on January 24, 2017;

**Whereas**, Corpus Christi City Charter Article II Section 12(a) provides that the remaining City Council members shall call a special election to fill a vacancy in the office of Mayor in the event more than one year remains until the next regular city council election;

**Whereas**, on February 28, 2017, the Corpus Christi City Council called a special election to be held on May 6, 2017 to fill the vacancy in the office of the Mayor;

**Whereas**, Mark Scott filed application for a place on the ballot on March 6, 2017;

**Whereas**, Texas Election Code Section 145.003(f) provides:

“(f) A candidate may be declared ineligible only if:

(1) the information on the candidate's application for a place on the ballot indicates that the candidate is ineligible for the office; or

(2) facts indicating that the candidate is ineligible are conclusively established by another public record.”

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:**

**Section 1.** That the Corpus Christi City Council finds that Mark Scott has served four two-year terms consecutively as a council member.

**Section 2.** That the Corpus Christi City Council finds that Mark Scott has reached the limitation on terms provided in City Charter Article II Section 1(d) and therefore, is not eligible for election or appointment to City Council until three consecutive terms of office for the council have expired.

**Section 3.** That the City Secretary is directed to utilize this Resolution and the facts stated herein to administratively declare Mark Scott ineligible for election or appointment to the City Council until three consecutive terms of office for the council have expired.

**Section 4.** The City Secretary is authorized to Issue an administrative declaration of ineligibility to Mark Scott regarding the May 6, 2017 special election.

Corpus Christi, Tex., Ordinance 031086 (Mar. 10, 2017) (emphasis in the original).

On March 10, 2017, Huerta notified Scott that he was ineligible to be placed on the ballot. This notification provides:

Mark Scott is hereby DECLARED INELIGIBLE pursuant to the provision of the Texas Election Code Section 145.003(f)(2) for the following reasons:

1. The City of Corpus Christi public records include Resolution No. 031086 dated March 10, 2017 passed by the duly elected City Council of the City of Corpus Christi. Said resolution resolves that the Corpus Christi

City Council finds that Mark Scott has served four two-year terms consecutively as a council member. This resolution makes Mark Scott ineligible for election to the position of Mayor.

2. The City of Corpus Christi public records include Ordinance Nos. 028115, 029069, 029676, and 030328 passed by the duly elected City Council of the City of Corpus Christi. Said ordinances reflect that Mark Scott has served four consecutive terms, and thus has reached the limitation of terms as provided in Article II, Section 1 of the Corpus Christi City Charter. Subsection (d) of said section provides as follows: “A person who has reached the limitation of terms provided in this section shall not be eligible for election to the city council until three consecutive terms of office for the council have expired”.

**\*4** Based on the foregoing and the legal authority cited Mark Scott is DECLARED INELIGIBLE for election to the position of Mayor and his Application for a Place on the Ballot is DENIED.

In response, Scott filed this original proceeding. By one issue, Scott asserts that Huerta violated a duty imposed by law or committed an abuse of discretion by declaring him ineligible to run for the position of mayor for the City of Corpus Christi. This Court requested that the real parties in interest, the “Citizens of the City of Corpus Christi” as identified in the petition, Huerta, the City Council of Corpus Christi, or any others whose interest would be directly affected by the relief sought, file a response to the petition for writ of mandamus. See TEX. R. APP. P. 52.2 (governing the designation of parties to an original proceeding).

We received a response to the petition for writ of mandamus from Huerta, in her official capacity as the City Secretary for the City of Corpus Christi, Texas. Huerta contends that the City Charter prohibits a person from serving more than four consecutive terms as a city council member or mayor, and if Scott were to be elected to the office he currently seeks, he would have been elected to five consecutive terms. Huerta alleges that this result would be “clearly inconsistent with the will of the City’s voters as expressed by their approval of the relevant charter provisions limiting a council member to no more than four consecutive terms in office.” Huerta further contends that the voters’ intention in adopting a charter amendment providing for a new date for the City’s general election and for a shortened term of office to make the transition was not to create an exception to the four-term limit.

## II. MANDAMUS STANDARD OF REVIEW

Mandamus is an extraordinary remedy. *In re H.E.B. Grocery Co., L.P.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam). Section 273.061 of the Texas Election Code authorizes a court of appeals to issue a writ of mandamus “to compel the performance of any duty imposed by law in connection with holding an election ... regardless of whether the person responsible for performing the duty is a public officer.” TEX. ELEC. CODE ANN. § 273.061 (West, Westlaw through 2015 R.S.); see *In re Woodfill*, 470 S.W.3d 473, 481 (Tex. 2015) (orig. proceeding) (per curiam). Mandamus does not issue unless the relator has a clear legal right to performance of the acts he or she seeks to compel, and the duties of the persons sought to be compelled are clearly fixed and required by the law. *In re Watkins*, 465 S.W.3d 657, 659 (Tex. App.—Austin 2014, orig. proceeding); *In re Cercone*, 323 S.W.3d 293, 295 (Tex. App.—Dallas 2010, orig. proceeding).

Thus, mandamus may issue to compel public officials to perform ministerial acts, as well as to correct a clear abuse of discretion by a public official. *In re Williams*, 470 S.W.3d 819, 821 (Tex. 2015) (orig. proceeding); *Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991) (orig. proceeding). “An act is ministerial when the law clearly spells out the duty to be performed by the official with sufficient certainty that nothing is left to the exercise of discretion.” *Anderson*, 806 S.W.2d at 793; see *In re Williams*, 470 S.W.3d at 793. In this regard, city officials must perform their ministerial duties. *In re Woodfill*, 470 S.W.3d at 475; see *Anderson*, 806 S.W.2d at 793. When officials refuse to do so, and when there is no adequate remedy by appeal, mandamus may issue. *In re Woodfill*, 470 S.W.3d at 475.

## III. STATUTORY CONSTRUCTION

**\*5** The analysis in this case revolves around the appropriate construction and interpretation of the City Charter and the ordinances passed by the City Council. We construe a city charter provision according to the rules governing the interpretation of statutes generally. *In re Arnold*, 443 S.W.3d 269, 274 (Tex. App.—Corpus Christi 2014, orig. proceeding); *City of Houston v. Todd*, 41 S.W.3d 289, 297 (Tex. App.—Houston [1st Dist.] 2001, pet. denied); *Rossano v. Townsend*, 9 S.W.3d 357, 363 (Tex. App.—Houston [14th Dist.] 1999, no

pet.). Further, we apply the same principles used to construe statutes to construe municipal ordinances. *BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 20 (Tex. 2016); *Bd. of Adjustment of City of San Antonio v. Wende*, 92 S.W.3d 424, 430 (Tex. 2002); *Howeth Invs., Inc. v. City of Hedwig Vill.*, 259 S.W.3d 877, 904 (Tex. App.—Houston [1st Dist.] 2008, pet. denied).

We review statutory construction de novo. *Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 389 (Tex. 2014). In other words, statutory construction is a question of law for the court to decide. *Tex. Dep't of Transp. v. Needham*, 82 S.W.3d 314, 318 (Tex. 2002). In this regard, constitutional or statutory provisions that restrict the right to hold a public office are strictly construed against ineligibility. *See In re Francis*, 186 S.W.3d 534, 542 (Tex. 2006) (orig. proceeding); *Dawkins v. Meyer*, 825 S.W.2d 444, 448 (Tex. 1992); *Hall v. Baum*, 452 S.W.2d 699, 702 (Tex. 1970); *In re Cullar*, 320 S.W.3d 560, 563–64 (Tex. App.—Dallas 2010, orig. proceeding).

In construing statutes our primary objective is to give effect to the enacting body's intent. *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 164 (Tex. 2016); *Tex. Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex. 2010); *Bolton v. Sparks*, 362 S.W.2d 946, 951 (Tex. 1962); *Howeth Invs., Inc.*, 259 S.W.3d at 904. To discern that intent, under well-settled principles of statutory construction, we begin with the statutory language itself. *BCCA Appeal Group, Inc.*, 496 S.W.3d at 20; *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006). “The plain meaning of the text is the best expression of legislative intent unless a different meaning is apparent from the context or the plain meaning leads to absurd or nonsensical results.” *Molinet v. Kimbrell*, 356 S.W.3d 407, 411 (Tex. 2011); *see Colorado Cnty. v. Staff*, No. 15–0912, 2017 WL 461363, at \*6, — S.W.3d —, — (Tex. Feb. 3, 2017). We further presume the enacting body chose statutory language deliberately and purposefully. *Crosstex Energy Servs., L.P.*, 430 S.W.3d at 390. We endeavor to interpret each word, phrase, and clause in a manner that gives meaning to them all. *Levinson Alcoser Assocs., L.P. v. El Pistolón II, Ltd.*, No. 15–0232, 2017 WL 727269, at \*4, — S.W.3d —, — (Tex. Feb. 24, 2017); *PlainsCapital Bank v. Martin*, 459 S.W.3d 550, 556 (Tex. 2015). We read statutes as a whole so as to render no part inconsistent, superfluous, or devoid of meaning. *Levinson*, 2017 WL 727269, at \*4.

If a statute is clear and unambiguous, we must apply its words according to their common meaning without resorting to rules of construction. *Shumake*, 199 S.W.3d at 284. If a statute is ambiguous—i.e., there is more than one reasonable interpretation—we give “serious consideration” to the construction of the statute by the administrative agency charged with its enforcement, “so long as the construction is reasonable and does not conflict with the statute's language.” *R.R. Comm'n v. Tex. Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 628–30 (Tex. 2011); *Tex. Ass'n of Acupuncture & Oriental Med. v. Tex. Bd. of Chiropractic Exam'rs*, No. 03–15–00262–CV, 2017 WL 672455, at \*4, — S.W.3d —, — (Tex. App.—Austin Feb. 17, 2017, no. pet. h.); *Howeth Invs., Inc.*, 259 S.W.3d at 905. However, “deferring to an agency's construction is appropriate only when the statutory language is ambiguous.” *Sw. Royalties, Inc. v. Hegar*, 500 S.W.3d 400, 404 (Tex. 2016); *see Paxton v. City of Dallas*, No. 15–0073, 2017 WL 469597, at \*7, — S.W.3d —, — (Tex. Feb. 3, 2017) (“We reject the limitations the Attorney General champions because they are not textually supportable.”); *Boeing Co. v. Paxton*, 466 S.W.3d 831, 838 (Tex. 2015) (“While the Attorney General's interpretation of the [PIA] is entitled to due consideration, as with other administrative statutory constructions, such deference must yield to unambiguous statutory language.”).

#### IV. ANALYSIS

\*6 Scott contends that Huerta has a duty to place his name on the May 2017 ballot for the office of mayor because he is eligible as a matter of law to serve in that position. Scott argues that this case is governed by “plain language, plain math.” Scott asserts that there is no dispute that he has served three “two-year” terms and one shortened term of eighteen months as a member of the city council. Scott contends that an eighteen-month term does not constitute a “two-year term” as specified in the term limits provision of the City Charter. *See* CORPUS CHRISTI, TEX., CITY CHARTER, art. II, § 1(d). In support of this argument, Scott asserts that the Charter amendments to subsections (b) and (d) of Section 1 in Article II of the Charter were made contemporaneously, so these provisions should be construed together. *See id.* § 1(b),(d). He contends that if the term limitation in subsection (d) were to apply to all “terms,” no matter the specified term length, then the “two-year” modifier in subsection (d) is meaningless. He further asserts that this interpretation runs contrary to the rule of statutory construction that disfavors surplusage. *See, e.g.,*

*TIC Energy & Chem., Inc. v. Martin*, 498 S.W.3d 68, 74 (Tex. 2016).

Huerta asserts that she has no duty to place Scott's name on the ballot because he has reached his term limit and he is ineligible to serve until three consecutive terms of office for the council have expired. Huerta argues that the record conclusively establishes Scott's ineligibility because he has held four consecutive terms as a city council member. Huerta contends that we should construe the City Charter as a whole and not by isolated provisions, and that the language regarding "two-year terms" found in Section 1(d) is redefined and expanded by Section 1(b). According to Huerta, Section 1(b) "establish[es] a single, transitional term of office beginning in May 2011 and ending in November 2012 to adjust the terms of office to meet the state election law requirements." See TEX. ELEC. CODE ANN. § 41.052(b) (West, Westlaw through 2015 R.S.). Huerta contends that Sections 1(b) and 1(d) of the City Charter are of "equal dignity" and "each must be given effect as a legislative act of the voters of the City of Corpus Christi." In other words, Huerta argues that the 2010 amendments to the City Charter established two "new" types of terms of office—the new uniform term beginning in November 2012 and a "single transitional term of office" from May 2011 to November 2012. Huerta contends that Scott's interpretation would "render meaningless the clear intent to impose term limits of four consecutive terms."

In a separate argument, Huerta further contends that changes to the Texas Election Code control over any inconsistent City Charter provisions. Huerta argues that the City was required to change its election date to a uniform November date to comply with a general statewide mandate, and that it had the duty to adjust the terms of office to conform to the new election date. See TEX. CONST. art. XI, § 5 (providing that "no charter ... shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State").<sup>1</sup> Huerta thus argues that "[u]pon the voters' approval of a charter amendment to change the election date, the City Council was authorized to enforce the terms of office of its members, including a discretion to declare ineligible any council member who had served as a council member more than four terms of office as redefined by the 2010 amendment to Article II, Section 1(b)."

\*7 We conclude that this case is controlled by the plain language of Article II, Section 1, subsection (d) of the City Charter, which provides that "[n]o person shall serve more

than four two-year terms consecutively as council member, or four two-year terms consecutively as mayor, or six two-year terms consecutively in any combination of such offices." All parties agree that one of Scott's terms of office as a city council member was truncated from two years to eighteen months when the City Charter was amended to provide uniform election dates in accordance with the provisions of the Texas Election Code. There is no factual dispute regarding the fact that Scott served four terms as a member of the city council, or that three of these terms were "two-year terms" and one term comprised a period of eighteen months. Thus, Scott's terms of office encompassed a total period of seven and one half years.

The express statutory language of the City Charter provision governing the term limits for council members and the mayor refers to "two-year terms." See *Houston Belt & Terminal Ry. Co.*, 487 S.W.3d at 164. Specifically, the City Charter states that "[n]o person shall serve more than four two-year terms consecutively as a council member, or four two-year terms consecutively as mayor, or six two-year terms consecutively in any combination of such offices." This language is not ambiguous. Accordingly, while the City Council's interpretation of the City Charter is entitled to due consideration,<sup>2</sup> such deference must yield to the unambiguous language of the City Charter. See *Boeing Co.*, 466 S.W.3d at 838. Contrary to Huerta's arguments, subsection (b) of Article II, Section 1, does not impact our analysis of subsection (d) insofar as it refers to "terms of two years" and implements a regular election and a transition election. On its face, subsection (b) does not affect or implicate the definition of a term for the purposes of term limits. Under the plain meaning of the Charter, Scott has not served four "two-year terms," and thus remains eligible to run for the office of mayor. See *Colorado Cnty.*, 2017 WL 461363, at \*6. To hold otherwise would be to render the phrase "two-year terms" superfluous and meaningless. See *Levinson*, 2017 W. 727269, at \*4. And, while the provisions of the Texas Election Code clearly mandated and authorized the change in election dates and the adjustment in terms of office necessary to accomplish the change in election dates, the relevant provisions neither define term limits nor affect the term limits provision of the City Charter. See TEX. ELEC. CODE ANN. §§ 41.001(a) (West, Westlaw through 2015 R.S.) (establishing uniform election dates); *id.* § 41.0052 (West, Westlaw through 2015 R.S.) (providing that a governing body changing an election date "shall" adjust the terms of office to conform to the new election date).



Moreover, the parties to this proceeding have focused exclusively on the statement in section 1(d) that “[n]o person shall serve more than four two year terms consecutively as a council member” in debating Scott's eligibility for placement on the ballot. CORPUS CHRISTI, TEX., CITY CHARTER, art. II, § 1(d). Leaving this provision aside, the City Charter also states that “[n]o person shall serve more than ... six two-year terms consecutively in any combination” of the offices of council member or mayor. *See id.* Because we are considering Scott's eligibility to serve as mayor after serving four terms as a city council member, the “six two-year” term limitation would apply in this case because we are examining the term limits applicable to “any combination” of the offices of mayor and city council member. *See id.* Thus, even if we were to construe the City Charter such that Scott's shortened term of office as a council member counted as a two-year term for term limit purposes, which we do not, Scott's four terms would not meet the term limit of “six two-year terms consecutively” in the combination of offices so as to prevent Scott from running for mayor. *See id.*

\*8 Applying rules of statutory construction, we conclude that the plain language of the City Charter establishes Scott's eligibility as a candidate for mayor of the City of Corpus Christi, Texas. Therefore, Huerta violated her ministerial duty and abused her discretion in declaring him ineligible for office and refusing him a place on the ballot for the May 2017 mayoral election. *See generally* TEX. ELEC. CODE ANN. § 145.003 (West, Westlaw through 2015 R.S.).

#### Footnotes

- 1 The Texas Election Code requires elections to be held on uniform election dates. *See* TEX. ELEC. CODE ANN. §§ 41.001(a) (West, Westlaw through 2015 R.S.). The Code allows the governing body of a political subdivision, other than a county or municipal utility district, which holds its general election for officers on a date other than the November uniform election date, to change the date on which it holds its general election for officers to the November uniform election date. The Code further provides that a governing body changing an election date under this section “shall” adjust the terms of office to conform to the new election date. *See generally id.* § 41.0052 (West, Westlaw through 2015 R.S.).
- 2 In this regard, we note that the City Council's Resolution No. 031000 declared that it was the belief of the City Council that the intent of the 2010 Charter amendments was to count the shortened City Council term towards the term limits. We further note that the City Charter itself provides that “[t]he city council shall be the judge of the election and qualification of its own members, subject to review by the courts in case of contest.” CORPUS CHRISTI, TEX., CITY CHARTER, art. II, § 8.

## V. CONCLUSION

We understand that the City Council has faced a difficult question in determining the correct application of the term limits contained in the City Charter when construed in conjunction with the requirements of the Texas Election Code and in context of the complexities caused by the change in election dates. Nevertheless, we conclude that the plain language of the City Charter supports Scott's contention that his seven and one half years of service as a City Council member does not render him ineligible to serve without the mandated hiatus contemplated by the Charter. Consequently, Scott is eligible to be on the ballot and Huerta had a duty to declare that he was eligible and allow him a place on the ballot.

Therefore, the Court, having examined and fully considered the petition for writ of mandamus, the response, and the applicable law, is of the opinion that Scott is entitled to relief. We conditionally grant mandamus relief and order Huerta to grant Scott's application for a place on the ballot for the May 6, 2017 mayoral election. We are confident that Huerta will comply, and our writ will issue only if she does not.

#### All Citations

Not Reported in S.W. Rptr., 2017 WL 1173829

## Qualifications

**Charles E. Zech** has 21 years of legal experience, 18 years of municipal and economic development legal experience. Mr. Zech is experienced in all matters related to local government and municipal law, Texas Public Information Act, Open Meetings Act, ordinance and resolution drafting, with expertise in interpreting, defending, reviewing, and analyzing charters, municipal land use, contracts, and Chapter 380 economic development agreements.

**Megan R. Santee** has 14 years of municipal legal experience, 6 years of economic development legal experience and 8 years of collective prior municipal experience as the Executive Director of a Municipal Housing Authority, Assistant Director of Planning and Community Development and as a Director of Public Works. Her experience includes general municipal law including, but not limited to, city attorney, employment, land use, economic development, constitutional law, ordinance and code provisions, and development agreements.

**Sarah M. Griffin** has 30 years of municipal legal experience and 20 years of economic development legal experience. Her experience includes general municipal law including, but not limited to, city attorney, employment, land use, economic development, constitutional law, ordinance, and code provisions, development agreements, and public-sector labor negotiations.

**Scott M. Tschirhart** has 18 years legal experience and 11 years of municipal legal experience. His experience includes city attorney, municipal prosecution, litigation, handling cases ranging from police-involved shooting incidents to USERRA and other employment issues.

**Robyn Fae Katz** has 10 years of legal experience, including 5 years of prosecution experience and 4 years municipal legal experience. Her experience includes city attorney, general municipal law and prosecution, including, criminal law, animal law, legislation, and ordinance drafting.

**Lowell F. Denton** has 41 years of municipal legal and civil litigation experience. He is experienced in local government and municipal law, with expertise in civil litigation, land use, civil rights (including police and employee litigation), public sector labor negotiation, civil service, first amendment, voting rights issues, and religious freedom claims.

**Patrick C. Bernal** has 36 years of municipal legal experience. Mr. Bernal is experienced local government and municipal law, with expertise in litigation in state and federal courts, local government defense, employment law, land use, annexation, flooding, civil rights, torts, contracts, personal injury and property damage claims.

**Adolfo Ruiz** has 35 years of legal experience and 31 years of municipal legal experience. He is experienced in civil litigation and local government and municipal law, Texas Public Information Act, Open Meetings Act, ordinance and resolutions drafting, and municipal prosecuting, with expertise in with expertise in water rights.

**Clarissa M. Rodriguez** has 13 years of legal experience and 11 years of municipal and economic development legal experience. She handles representation of clients in state and federal litigation,

matters in civil defense litigation, including motions practice, discovery, and depositions for governmental entities. Her experience includes general municipal law including, but not limited to employment, city attorney, land use, economic development, constitutional law, ordinance, and code provisions, and development agreements.

**T. Daniel Santee, II** has 24 years of legal experience, 22 years of municipal legal experience and 20 years economic development legal experience. His experience includes general municipal law to include city attorney, employment, land use, economic development, constitutional law, ordinance and code provisions, and development agreements.

**Cynthia X. Trevino** has 6 years of legal experience, 5 years of municipal and economic development legal experience. In addition, as a former City Secretary, she has an additional 5 years of municipal experience. Her legal experience includes general municipal law, employment law, land use, economic development, constitutional law, ordinance and code provisions, and development agreements.

**Matthew Jacob Longoria** has 4 years of municipal legal experience. He is experienced in city attorney, litigation, appeals, local government and municipal law, Texas Public Information Act, Open Meetings Act, ordinance and resolutions drafting, and municipal prosecuting.

**Ricardo J. Navarro** has 35 years of legal experience and 33 years of municipal legal experience. He is experienced in local government and municipal law, with expertise in civil litigation in state and federal courts, labor and employment law, municipal and county civil service law and practice, public sector labor negotiations, and general counsel representation of local government entities.

**Robert L. Drinkard** is has 18 years of legal experience and 17 years of municipal legal experience. His experience includes representation of governmental entities, public officials in constitutional claims, civil rights, employment law, deceptive trade practices, planning and zoning and torts.

**Rebecca S. Hayward** has over 7 years of municipal legal experience. Her practice includes civil litigation, general counsel, her experience also involves collective bargaining negotiations and Texas Civil Service Act including contested disciplinary proceedings.

**Allison A. Bastian** has over 10 years of municipal legal experience. Her experience includes real estate transactions, regulation of land use, and contracts for municipalities and governmental entities.

**John-Michael Hayward** has 3 years municipal legal experience. His experience includes State and Federal personal injury, labor, and employment civil litigation matters