

ORDINANCE NO. 2021-10-12-002

AN ORDINANCE OF THE CITY OF KEMPNER, TEXAS, ESTABLISHING THE MANNER IN WHICH MUNICIPAL ELECTIONS SHALL BE ORDERED; THE MANNER IN WHICH THE CANVASSING OF ELECTIONS SHALL TAKE PLACE; ESTABLISHING A PENALTY, PROVIDING OPEN MEETINGS AND SEVERABILITY CLAUSES; ESTABLISHING AN EFFECTIVE DATE AND OTHER RELATED MATTERS.

WHEREAS, the City of Kempner is a Type A General Law Municipality, as defined by Texas Local Government Code Section 5.001;

WHEREAS, a historical search of records of the City of Kempner found no Ordinance had been adopted that sufficiently Governs the elections of the City of Kempner City Council members;

WHEREAS, historical research revealed the City of Kempner placed the offices of Mayor, Alderman Place 1 and Alderman Place 5 on the election ballot each even-numbered year;

WHEREAS, historical research revealed the City of Kempner placed the offices of Alderman Place 2, Alderman Place 3 and Alderman Place 4 on the election ballot each odd numbered year.

WHEREAS, historical research found that a vacancy occurred in the office of Mayor during the year of 2015, which was filled by appointment;

WHEREAS, historical research resulted in learning the appointed Mayor served a two year term beginning in 2015, thereby changing the election of the office of Mayor to odd numbered years,

WHEREAS, historical research reflects that in the year 2019, the position of Alderman Place 2 was duly placed on the ballot and a citizen was elected to fill the position for an unexpired term.

WHEREAS, historical research reflects the elected Alderman for place 2 resigned on June 24th 2019,

WHEREAS, historical research reflects an appointment was made to fill the vacancy in place 2 in 2019,

WHEREAS, historical research reflects the appointed party resigned November 12, 2019 from the appointed position of Alderman place 2,

WHEREAS, historical research reflects another party was appointed for the unexpired term of Alderman Place 2,

WHEREAS, historical research reflects the laws governing the situation described above mandated an election take place for the unexpired term to occur in May of 2020 during the general election for the City of Kempner,

WHEREAS, historical research reflects the Mayor serving the term of May 2019 to May 2021 refused to put the unexpired position of Alderman Place 2 on the ballot,

WHEREAS, historical research reflects the position was finally placed on the ballot, for election, as an "unexpired term" after citizens contacted the Texas Secretary of State regarding the refusal of the Mayor to perform his duties,

WHEREAS, historical research reflects the May general election that was to occur in the year of 2020 was lawfully delayed until the November general elections due to the COVID 19 pandemic,

WHEREAS, historical research reflects a new party was elected to fill the unexpired term of Alderman Place 2 in November of 2020,

WHEREAS, historical research reflects the Local Government Code, as adopted, in 2020, required the position of Alderman Place 2 to be on the general election ballot for the May 2021 uniform election date,

WHEREAS, historical research reflects the Mayor serving from May 2019 to May 2021 again refused to follow state law and furthermore refused to place the position of Alderman Place 2 on the election ballot for the May 2021 uniform elections,

WHEREAS, historical research reflects the elections for the positions of Alderman and Mayor have not been handled in accordance with state law.

WHEREAS, historical research reflects the City spent needless tax dollars in legal fees on this matter due to the lack of a sufficient Ordinance on the Elections of the City of Kempner governing body members,

WHEREAS, consultation with the City legal advisor and the Secretary of the State has offered no legally required corrective measure for this matter,

WHEREAS, although state law prescribes the manner in which elections are to take place and when they are required, there is no penalty established under state law for the refusal of a Mayor to cause a lawful and legal election to occur.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KEMPNER, TEXAS, THAT:

Section 1. Purpose and Intent of Ordinance. This ordinance is hereby adopted to prevent the following:

- I. The unintentional failure to order the elections rightfully and lawfully for the governing body of the City of Kempner,
- II. The intentional disregard for law relating to the ordering of the elections for the City of Kempner governing body, and
- III. To establish a penalty for any Mayor who intentionally refuses to comply with State Law and this ordinance regarding the ordering of elections.

Section 2. Elections Required. The City of Kempner will abide by established state law regarding the elections of the City of Kempner for those serving on the Governing body.

Section 3. Announcement of Elections. The City of Kempner shall comply with established state law regarding the date of the election.

- I. The City Manager shall cause the election notification to be placed on the City message board, Webpage and City Social Media platforms no less than 30 days prior to the opening of the election process. For the purposes of this section, the “opening of the election process” is considered the first day in which an application to be placed on the ballot can be lawfully received by the City Secretary. If state election laws supersede this 30 day requirement, the City Manager shall follow such state law.

Section 4. Offices, Terms. The City of Kempner shall hold elections annually, during the uniform election day authorized by law for the respective offices listed below:

- I. Mayor, Alderman Place 3 and Place 4 shall be placed on the ballot in each odd numbered year.

- II. Alderman Place 1, Place 2 and Place 5 shall be placed on the ballot in each even numbered year.

All elected officials serve a term of two years. If an elected or appointed Alderman or Mayor resigns, the position may be filled in accordance with State law for the unexpired term. The person appointed to fill the vacancy serves in that position until the next regular municipal election, in which that position shall be placed on the ballot for the unexpired term. Should the appointment be during the last year of the unexpired term, the position shall be on the ballot for a regular election.

Example: Alderman place 2 was elected during the regular elections in May of 2022. The alderman resigns during their term. The council may appoint an alderman to fill the position, however that position must be placed on the next ballot in the following manner:

- a. *If the vacancy occurs prior to the next election occurring in May of 2023, the position shall be on the ballot for the unexpired term in May of 2023 AND the unexpired term in May of 2024.*
- b. *If the vacancy occurs after the May 2023 election, the appointment shall be for the unexpired term and the position shall be placed on the ballot in the May 2024 elections as a regular election.*

Section 5. Ordering the Elections.

- I. The Mayor of the City of Kempner has no authority to unilaterally order the election on their own behalf and therefore is hereby required to present this task as an item before the Council for formal action during an open meeting, in accordance with state law and this ordinance.
- II. The Mayor shall cause an item to be placed on the agenda for a regularly stated meeting which permits the Council to take formal action on the ordering of an election.
- III. The Mayor may not, without cause, call a special called meeting to have the Council order the elections.
 - a. For the purpose of this subsection, if the Mayor calls a special called meeting for the purpose of compliance with this ordinance, the Mayor shall state the reasons why this action was not placed on the agenda of a regularly called meeting. These reasons shall be in writing and delivered to the Council during the special called meeting.
 - b. The Council shall evaluate the reasons listed by the Mayor and make a determination as to whether the need for a special called meeting was due to circumstances outside the control of the Mayor. If the council finds this to be true, the Council shall make such findings and those findings shall be recorded in the meeting minutes.
 - c. If the Council, by majority vote, determines the reason for the special called meeting is not due to circumstances outside the Mayor's control, the Council shall make such findings and those findings shall be recorded in the meeting minutes.
- IV. The ordering of the election shall be in accordance with the deadlines found in the Texas Election Code.
- V. Once the Council orders the election, the Mayor shall sign the order and deliver the order to the City Secretary for proper filing. This shall be done on the same date as the meeting in which the Council orders such election.
- VI. This ordinance shall not be construed as to cause an election during situations in which a race is not contested, however such findings shall be made known in an ordinance cancelling the election for that reason.

Section 6. Canvassing of the elections/ Installation of Officers. The Mayor shall call a special called meeting to canvass the elections if the Council does not have a regularly called meeting within 14 calendar days of the date of the election. For the purpose of this section, the date upon which the election authority presents the results to the City Secretary, Mayor or City Manager in written form marks the first day of the 14-day meeting requirement. If the Council does not have a regularly scheduled meeting within the 14 calendar day requirement, the Mayor must call a special called meeting within those 14 calendar days. A Mayor who refuses to call the special called meeting for the purpose of complying with this ordinance is in violation of such ordinance. This section shall prevail over any ordinance establishing the dates and times of the meetings of the City of Kempner to which any conflict exists.

During the meeting to canvass the elections results, the Mayor shall:

- a. Announce, or cause to be announced by the City Secretary or City Manager, the certified results of the election.
- b. Administer, or cause to be administered, the oath of office for those duly elected.

For the purposes of this section, a newly elected official may have any authorized person of their choosing administer the oath of office. The Mayor shall not be deemed to be in violation of this ordinance (regarding their duty to administer an oath of office) if an individual requests another person to administer the oath of office, so long as such person is authorized by law to administer oaths. A Mayor shall be considered in violation of this ordinance if he/she interrupts or otherwise impedes an elected official from taking their oath of office once the newly elected official provides notice to the Mayor of their intent to take the oath by another person who is authorized to administer oaths by law.

Section 7. Penalty. (a) Any Mayor of the City of Kempner, who intentionally refuses to comply with the provisions of this ordinance shall be punished by a fine not to exceed the sum of five hundred dollars (\$500.00).

(b) each day the Mayor intentionally refuses to comply with the provisions of this ordinance shall constitute a new violation.

Section 8. Severability. Should any section or part of this ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion of portions thereof; but as to such remaining portion or portion. The same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

Section 9. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of state law.

Section 10: Open Meetings Finding. It is hereby officially found and determined that the meeting at with this ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED THIS THE 12th DAY OF October 2021

[Signature]
Approved by Mayor John (JW) Wilkerson

10/12/21
Date

For

Against

(N/A)

[Signature]
Attested by City Secretary Hayleigh Talasek

10/12/21
Date

[Signature]
Place 1 Vance Rodgers

10/12/2021
Date

(For)

Against

Abstain

Place 2 (vacant)

Date

For

Against

Abstain

[Signature]
Place 3 Rob Green

10-12-21
Date

(For)

Against

Abstain

[Signature]
Place 4/Mayor Pro-Tem Dan Long

10/12/21
Date

(For)

Against

Abstain

[Signature]
Place 5 Melba Vandever

10-12-21
Date

(For)

Against

Abstain