

March 12, 2026

Mayor and Members of the City Council
City of Brownfield
201 W. Broadway
Brownfield, Texas 79316
Via email

Matthew Murray
UNDERWOOD
Brownfield City Attorney
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**Re: Proposed Election on Sanctuary City for the Unborn Ordinance – Lack of
Charter Authority**

Dear Mayor and Council Members:

I write on behalf of my client, Right to Life Across Texas (RTLAT), to respectfully raise a serious legal concern regarding the reported proposal for the City Council to submit the proposed Sanctuary City for the Unborn ordinance to the voters of the City of Brownfield on City Council's own authority rather than in response to an initiative petition conducted under the Charter. This is of concern to RTLAT because, of course, they want to ensure not only that the ordinance is adopted but that it is on solid legal ground in terms of its procedure of adoption. In sum, the City has three options to adopt the ordinance. One would be for the Council to adopt the ordinance itself, in the same manner as any ordinance. The second option would be for Council to adopt the ordinance following a successful initiative petition. The third option would be ordering an election on the ordinance as stated in an initiative petition, but only in the event that Council either failed to adopt it verbatim as stated in the petition or adopted it in modified form. In other words, while Council can simply adopt the ordinance itself outright, it does not have any legal authority to send the matter to an election outside the context of an initiative petition under the City Charter. RTLAT suggests Council simply adopt the ordinance outright itself, but if not, an initiative petition would be required before an election is called.

While it is clear the City has authority to adopt the ordinance outright or to order an election in accordance with the initiative procedures, the City does not have authority to simply order an election outside of the initiative process.

This letter is intended to ensure that the Council is fully aware of the legal risks associated with ordering an election outside the initiative process and, importantly, the potential financial

consequences to the taxpayers of Brownfield should a court later determine that the Council acted outside its lawful authority in doing so.

I. Texas Law Requires Legal Authority to Hold an Election

Under Texas law, a political subdivision may hold an election only when authorized by law. *See City of Granite Shoals v. Winder*, 280 S.W.3d 550, 558 (Tex. App. 2009) (recognizing property owners' right to seek declaration that City lacked authority to order election on conversion to home-rule municipality for failing to meet population pre-requisites for election under art. XI, sec. 5 of the Texas Constitution). "[E]lections must be held by virtue of some legal authority, and an election held without affirmative statutory authority or contrary to a material provision of the law is universally held to be a nullity." *Smith v. Morton Indep. Sch. Dist.*, 85 S.W.2d 853, 857 (Tex. Civ. App.—Amarillo 1935, writ dismissed w.o.j.); *see also Setliff v. Gorrell*, 466 S.W.2d 74, 77 (Tex. Civ. App.—Amarillo 1971, no writ) (holding that the right to hold an election, rather than being inherent in the people, is dependent upon statutory authorization).

If an election is held without valid authority to order the election, it is subject to challenge before or after the election. "A void election is subject to collateral attack at any time. If a governmental entity was wholly without authority to call an election, the election held pursuant to such an order is void." *City of Sherman v. Hudman*, 996 S.W.2d 904, 911 (Tex. App.—Dallas 1999), *review granted, judgment vacated, and remanded by agreement*, No. 99-0769, 2000 WL 36750990 (Tex. Feb. 3, 2000). This is an important principle, including for those who support the measure at issue (here, the Sanctuary City for the Unborn ordinance), because, even if the ordinance is adopted in an election, if the Council lacked the necessary authority to order the election, the election and the ordinance can be nullified at any time. *See id.* ("An order for an election that is void for lack of authority to call that election cannot be valid for any purpose.").

There is no general authority for the City of Brownfield to order elections. Instead, authority to order an election arises from specific provisions governing particular types of elections. Such authority sometimes arises in the Texas Constitution (as for incorporation elections), or in state statutes (such as liquor elections), or in a city charter.

II. Article XI of the Brownfield Charter Establishes Petition-Driven Ordinance Elections

The Brownfield Home Rule Charter establishes detailed procedures governing initiative and referendum elections in Article XI of the Charter. These provisions set forth a specific process by which ordinances may be submitted to the voters through citizen petition.

The provision authorizing Council to order elections is article XI, section 105. This provision confers authority to order an election in three specific instances; namely, if the Council (1) "fail[s] to pass an ordinance proposed by the initiative petition"; (2) "pass[es] [an initiated ordinance] in a form different from that set forth in the petition therefore"; or (3) "fails to repeal a referred ordinance" (that is, fails to repeal an ordinance after a successful referendum petition). Section 105 provides affirmative authority, and even the duty, to order an election in these three circumstances. This provision does not provide Council the authority to order an election on an ordinance in general, *i.e.*, in the absence of an initiative or referendum petition.

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Article XI, section 99 does not provide for elections in any instances not already set out in section 105. Section 99 provides that “[t]he electors shall have power to approve or reject at the polls any ordinance passed by the Council, *or submitted by the Council to a vote of the electors*, such power being known as the referendum.” BROWNFIELD CHARTER art. XI, sec. 99 (emph. added). The italicized clause might sound confusing at first glance, but in context its meaning is clear. This section simply states the fact that voters have the power to approve or reject certain matters in an election. But the matters submitted to voters are the same identified in section 99. “Any ordinance passed by council” is subject to the referendum (category three in section 105); and the matters “submitted by the Council to a vote of the electors” would include initiative ordinances that Council either refused to pass or passed in modified form (categories one and two in section 105).

In short, the Charter contains no explicit authority for the City Council to unilaterally submit an ordinance to the voters outside of section 105. A court would likely reject the suggestion that section 99 should be read to confer additional affirmative authority because such reading would be in tension with the longstanding caselaw quoted above requiring express authority to order elections in specific instances rather than in general.

III. Risk of Ultra Vires Litigation

If the Council orders an election without clear legal authority, any resident, voter, or taxpayer of the City (who otherwise has legal standing) might bring suit seeking declaratory and injunctive relief on the grounds that the election is ultra vires. Texas courts recognize such claims at all stages of the election process, so this could mean a lawsuit to enjoin the election before it occurs, to declare it invalid after the election is conducted, or simply to prevent enforcement of the ordinance, whether immediately or long after the ordinance were to be adopted. As noted in the *City of Sherman* case quoted above, where an election is entirely void for lack of authority to order it, it is subject to collateral attack at any time, meaning such challenge would not have to be brought as an election contest (under the strict timetable applicable to such contests).

IV. Financial Consequences to the Taxpayers of Brownfield

Consequently, the most immediate concern is the financial burden that such litigation could impose on the citizens of Brownfield. Municipal election costs typically include election administration expenses; ballot preparation and publication; polling place operations; and staff time and administrative costs.

Should the election later be determined unlawful, those public funds would have been expended for an election that never should have occurred.

In addition, litigation challenging the election could require the City to expend further taxpayer funds on outside legal counsel, court costs, and City resources responding to the litigation. Even if the City ultimately prevails, these expenses would still be borne by the taxpayers of Brownfield.

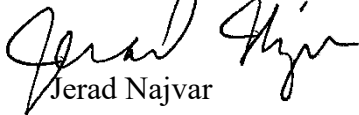
Simply put, ordering an election without clear legal authority creates a significant risk that public funds will be wasted defending an avoidable legal dispute. This risk is unnecessary because if the City simply allows the initiative petition process to play out, an election ordered pursuant to a successful petition would clearly be authorized under the Charter.

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This letter is provided in the spirit of ensuring that the City Council is fully aware of the potential legal and financial consequences before committing public resources to an election whose legal authority may later be challenged.

Please advise if you require any further information.

Very respectfully,


Jerad Najvar