

RESOLUTION NO. 34-2007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, CALLING A SPECIAL ELECTION /LOCAL OPTION ELECTION TO BE HELD NOVEMBER 6, 2007, SAID DATE BEING A UNIFORM ELECTION DATE, FOR THE PURPOSE OF DETERMINING WHETHER TO LEGALIZE THE FOLLOWING LOCAL OPTION ELECTION ISSUES: (1) THE LEGAL SALE OF MIXED BEVERAGES IN RESTAURANTS BY FOOD AND BEVERAGE CERTIFICATE HOLDERS ONLY AND (2) THE LEGAL SALE OF BEER AND WINE FOR OFF-PREMISE CONSUMPTION ONLY, AND DECLARING AN EFFECTIVE DATE.

WHEREAS, applications for petitions were made in accordance with Section 501.023(a) of the Texas Election Code, and on June 8, 2007, the City Secretary's office issued petitions as required by such section for the signatures of qualified voters desiring that a local option election be called to permit voting for or against the legal sale of mixed beverages in restaurants by food and beverage certificate holders only and the legal sale of beer and wine for off-premise consumption only; and

WHEREAS, on August 1, 2007, the City Secretary received the petitions and on August 17, 2007, verified that each petition contained the requisite number of signatures from qualified voters of the City of Mesquite, Texas, requesting that a local option election be called on each issue and the City Secretary has certified to the City Council of the City of Mesquite that the number of valid signatures of qualified voters contained in said petitions is equal to or greater than 7,584, that number being 35 percent of the registered voters in the City of Mesquite who voted in the most recent gubernatorial election as determined by the Dallas County Elections Department and Kaufman County Elections Department, such certification being attached to this resolution and made a part hereof for all purposes as Exhibit "A;" and

WHEREAS, in accordance with the provisions of Section 501.033 of the Texas Election Code and the opinions of the Secretary of State attached hereto as Exhibit "B" and of the City Attorney's office attached hereto as Exhibit "C," each of which is made a part hereof for all purposes, in addition to the date and action taken on such petitions, the names of the signers of the petitions shall be made a part of the minutes of the meeting in which the action on such petitions takes place, by way of incorporation by reference as set forth in such opinions; and

WHEREAS, Section 501.032 of the Texas Election Code provides that the governing body of the municipality shall order a local option election on the issue set out in a petition at the next regular session on or after 30 days after the date a petition for a local option election is filed with the City Secretary's office; and

WHEREAS, Section 41.001(a) of the Texas Election Code provides that such election must be held on a uniform election date; and

WHEREAS, pursuant to Section 3.005 of the Texas Election Code, an election shall be ordered not later than the 62nd day before election day except as provided in Section 1.006(a) of

the Texas Election Code if the 62nd day is a Saturday, Sunday or holiday, the election shall be ordered the next regular business day.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the foregoing recitals are incorporated into this ordinance by reference as findings of fact as if expressly set forth herein.

SECTION 2. That the following local option election issues shall be submitted to the voters of the City of Mesquite at a special election/local option election to be held by the City of Mesquite, Texas, on November 6, 2007:

The legal sale of mixed beverages in restaurants by food and beverage certificate holders only.	FOR AGAINST
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AND

The legal sale of beer and wine for off-premise consumption only.	FOR AGAINST
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SECTION 3. That notice of such election shall be published at least once not earlier than the 30th day or later than the 10th day before election day as provided in Section 4.003 of the Texas Election Code.

SECTION 4. That said election shall be administered by the Dallas County Elections Department and Kaufman County Elections Department and held in accordance with the Election Code of the State of Texas, the Statutes of the State of Texas and the Charter and Ordinances of the City of Mesquite and shall be in conformity with the procedures set forth herein.

SECTION 5. That early voting by personal appearance shall be conducted by the Dallas County Elections Department and Kaufman County Elections Department. Judy Womack, City Secretary, City of Mesquite, is hereby appointed clerk of early voting in compliance with Section 271.006 of the Texas Election Code. Bruce R. Sherbet, Dallas County Elections Administrator, and Dick Murphy, Kaufman County Elections Administrator, are hereby appointed as Chief Deputy Early Voting Clerks. Any qualified voter for the election may vote early by personal appearance.

For City of Mesquite registered voters in Dallas County, early voting by personal appearance will be conducted at Dunford Recreation Center, 1015 Green Canyon Drive, Mesquite, Texas, on weekdays beginning Monday, October 22, 2007, through Friday, October 26, 2007, between 8:00 a.m. and 5:00 p.m.; Saturday, October 27, 2007, between 8:00 a.m. and 5:00 p.m.; Sunday, October 28, 2007, between 1:00 p.m. and 6:00 p.m.; Monday, October 29, 2007, through Wednesday, October 31, 2007, between 8:00 a.m. and 5:00 p.m.; and Thursday, November 1, 2007, through Friday, November 2, 2007, between 7:00 a.m.

and 7:00 p.m. For City of Mesquite registered voters in Kaufman County, early voting by personal appearance will be conducted at the Kaufman County Courthouse Annex, 100 N. Washington Street, Kaufman, TX 75142; the Forney Sub Courthouse, 200 E. Main Street, Forney, TX 75126; the Terrell Sub Courthouse, 408 E. College Street, Terrell, TX 75160; the Kemp Sub Courthouse, 103 N. Main Street, Kemp, TX 75143; and the Crandall/Combine Community Center, 500 W. Lewis/FM 3039, Crandall, TX 75114. In Kaufman County, early voting will be held beginning Monday, October 22, 2007, through Friday, October 26, 2007, between 8:00 a.m. and 5:00 p.m.; Saturday, October 27, 2007, between 8:00 a.m. and 5:00 p.m. (Kaufman County Courthouse Annex and Forney Sub Courthouse only); Monday, October 29, 2007, through Friday, November 2, 2007, between 8:00 a.m. and 5:00 p.m. Extended hours will be provided for early voting between 8:00 a.m. and 8:00 p.m., at the Kaufman County Courthouse Annex, Forney Sub Courthouse and Crandall/Combine Community Center on Thursday, November 1, 2007, and Friday, November 2, 2007.

That qualified voters for the special election/local option election may vote early by personal appearance at either the main early voting location or at any of the branch locations within the county in which they live. The main early voting polling place in Dallas County is:

Dallas County Records Building
509 Main Street
Dallas, Texas 7202

The main early voting polling place in Kaufman County is:

Kaufman County Courthouse Annex
100 N. Washington Avenue
Kaufman, TX 75142

For residents in Dallas County, applications for ballots by mail shall be mailed to:

Bruce R. Sherbet
Chief Deputy Early Voting Clerk
Dallas County Elections Department, Eighth Floor
2377 N. Stemmons Freeway
Dallas, Texas 75207

For residents in Kaufman County, applications for ballots by mail shall be mailed to:

Dick Murphy
Chief Deputy Early Voting Clerk
Kaufman County Elections Department
P. O. Box 339
Kaufman, TX 75142

Applications for ballots by mail must be received no later than the close of business on October 30, 2007.

SECTION 6. That this resolution shall take effect from and after its adoption.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 4th day of September, 2007.



David Paschall
Mayor Pro Tem

ATTEST:

APPROVED:



Judy Womack
City Secretary



B. J. Smith
City Attorney

MESQUITE

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CERTIFICATION BY CITY SECRETARY - CITY OF MESQUITE, TEXAS


I, Judy Womack, City Secretary for the City of Mesquite, Texas, hereby certify that the City Secretary Department has verified the signatures on the two **PETITIONS FOR LOCAL OPTION ELECTION ISSUES TO LEGALIZE**, as follows: (1) "The Legal Sale of Mixed Beverages in Restaurants by Food and Beverage Certificate Holders Only" and (2) "The Legal Sale of Beer and Wine for Off-Premise Consumption Only." The petitions, requesting that a Local Option Election be called to consider whether to legalize the sale of alcoholic beverages per these two options, were received in my office on August 1, 2007.

The total number of City of Mesquite voters who voted in the last Gubernatorial Election (November 2006) as reported by the Dallas County Elections Department and Kaufman County Elections Department, and the number of signatures of registered voters required to call a Local Option Election, are as follows:

Dallas County	21,648	X	35%	=	7,577
Kaufman County	20	X	35%	=	<u>+7</u>
Total					7,584

It has been determined that the number of signatures of qualified voters required for each of these petitions to be sufficient is **7,584**. I certify that all signatures were verified and a number of signatures in an amount greater than 7,584 were determined to be qualified voters on each of these two petitions in order for the City Council to consider calling an election to be held November 6, 2007.

CITY OF MESQUITE, TEXAS


 Judy Womack, City Secretary

8-22-07
 Date

Judy Womack

From: Cristina Blanton [CBlanton@sos.state.tx.us]
Sent: Friday, July 27, 2007 3:55 PM
To: jwomack@ci.mesquite.tx.us
Subject: ****SPAM**** Local Option Liquor Petition Signatures

Dear Judy:

Thank you for your inquiry over the telephone regarding Section 501.033 of the Texas Election Code (names of signers on a liquor petition). As requested, please review our opinion regarding the options an entity has in attempting compliance with the referenced section of the Election Code:

It is our consensus that you have 2 options which your county may choose from to comply with the above referenced section. The first way is to incorporate the petition by reference in the minutes as specifically as possible, then keep the petition itself as long as record retention requires you to keep the minutes or as long as any other law requires you to keep the petition, whichever is longer and as long as you think it is conceivable to get an open records request based on the minutes or the petition. The degree of specificity with which you reference the petition in your minutes will be up to your county, we do not currently have a set threshold, but in keeping and maintaining the intent of Section 501.033, the reference should describe the petition in as much detail as possible.

The second option your county has is to follow the method I provided to you in our phone conversation earlier this morning, and that is to attach a copy of the petition which includes all the signatures with the minutes from the meeting. We do realize that this may be a large undertaking, considering the amount of signatures your county has; however, this method will provide compliance with Section 501.033 and uphold the intent of the law regarding availability of information for an open records request.

Judy, please keep in mind that the above referenced options were primarily to assist entities dealing with an extremely large petition (i.e. over 7,000 pages of one petition). We would advise that the strict letter of the law be followed if your entity's petition is not extremely large. We hope this information provides some guidance regarding Section 501.033 and compliance with such section. Should you require further information, please contact our office: 1-800-252-8683 (VOTE).

Sincerely,

Cristina Ruiz Blanton
Staff Attorney
Office of the Secretary of State

8/24/2007

LEGAL OPINION

August 27, 2007

TO: Judy Womack, City Secretary
FROM: Elizabeth A. Lunday, Deputy City Attorney
SUBJECT: Requirement of Election Code Section 501.033.

Question Presented: Section 501.033, relating to petitions for local option elections, requires, in part, that the names of the signers of the petitions be entered in the minutes of the governing body. Each of the two petitions that have been filed with the City seeking a local option election contains approximately 1,600 legal sized pages of signatures. Is there an option for meeting the requirement of § 501.033 other than including the entirety of the petition in the minutes of the City Council meeting?

Short Answer: Yes.

Discussion and Legal Rational

Section 501.033 of the Texas Election Code, which became effective September 1, 2005, added a requirement relating to petitions for local option elections as follows:

§ 501.033. Record in Minutes.

The date a petition is presented, the names of the signers, and the action taken with respect to the petition shall be entered in the minutes of the commissioners court¹.

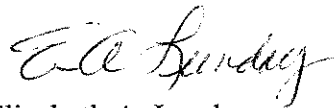
In response to an inquiry from Brazoria County involving petitions containing 7,000 pages, the Texas Secretary of State's office provided an opinion stating that the County had 2 options to choose from to comply with § 501.033. The first was to incorporate the petition by reference into the minutes of the governing body² and retain the petition for the period of time record retention requires keeping minutes. The second option was to attach a copy of the petition containing all of the signatures to the minutes of the meeting. In response to your inquiry to the Secretary of State concerning compliance with § 501.033, the Secretary of State's office responded by reiterating the language from their above reference opinion to Brazoria County, cautioning that the options stated in that opinion were to assist entities dealing with an extremely large petition.

¹ Because we are a municipality that is located in more than one county, a reference to the commissioners court is considered to refer to the governing body of the municipality (Election Code § 501.109 (b) (2)).

² The degree of specificity of the reference was left up to the county.

Conclusion

The statutory requirement of §501.033 is that the names of the signers of a petition for a local option election be entered in the minutes of the governing body. The Secretary of State has opined that where entities are dealing with an extremely large petition, compliance may be accomplished by reference to the petition in the minutes. While the size of the local option election petitions submitted to the City does not equal the 7,000 per petition filed with Brazoria County, 3,200 legal-sized pages of signatures is arguably an extremely large number of pages to physically incorporate into the minutes of a meeting. Thus, the City may follow the option provided for in the opinion of the Secretary of State to incorporate the petitions by reference. The reference in the minutes should describe each petition in as great of detail³ as possible and state where the petition will be placed and filed and when they may be viewed. The reference should also provide that the petition will be maintained for the period of time record retention requires keeping the minutes.



Elizabeth A. Lunday

APPROVED:



B.J. Smith, City Attorney

³ For example, the ballot issue applicable to the petition(s), the dates circulated, the number of signatures, the number verified and any other information descriptive to the petition(s).