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MEMORANDUM

TO: Thomas Leeper, City Attorney, City of Bryan, Texas
FROM: Alan Bojorquez, Managing Partner, Bojorquez Law Firm
DATE: October 7, 2026
RE: **ELECTIONS: Charter: Proposition One – Texas Avenue median removal**



SUMMARY

The initiative petition regarding the Charter Amendment is complete and valid. Therefore, the City Council of Bryan (the “Council”) was obligated to order the special election, and the City of Bryan (the “City”) must conduct the election on November 3, 2026.

Regardless of the outcome of the special election, it is unlikely the City of Bryan has the legal authority to unilaterally make any modifications to the medians on Texas Avenue or to remove them completely. The City would probably violate the Texas Transportation Code if it attempted to remove or alter the medians on Texas Avenue without the Texas Department of Transportation’s (“TxDOT”) written consent or an agreement delegating control over the medians to the City.

If the Charter Amendment is passed by voters, it is unclear that the City has lawful capacity to ultimately effectuate the removal of the relevant medians on Texas Avenue. It is probable that the duty imposed by the Charter Amendment conflicts with state law absent an express grant of authority by TxDOT. Accordingly, litigation or an opinion from the Office of the Attorney General of Texas may be necessary to determine if the City has the authority to comply with the Charter Amendment, and if so, how to reconcile that authority with state law establishing TxDOT’s exclusive authority over the state highway system.

BACKGROUND

On June 30, 2026, a voter initiative petition to amend the City’s home-rule charter was filed with the City Secretary. The petition called for the City’s home-rule charter to be amended by adding Section 35 to the charter, entitled “Texas Avenue Medians Removal” (the “Charter Amendment”), which would read as follows:

The medians on Texas Avenue, Bryan, TX, shall be removed from the intersection of Texas Avenue and Rosemary Dr. to approximately 600 feet south of the intersection of Texas Avenue and State Highway 21.¹

On July 16, 2026, the City Secretary issued a Certificate of Sufficiency of Initiative Petition, determining that the voter initiative petition submitting the Charter Amendment satisfied all requirements of state law and was therefore valid.² On August 11, 2026, the Council considered the matter and voted to approve Ordinance No. 2800 calling a special election for November 3, 2026.³ At this time, an election is scheduled for November 3, 2026, with early voting starting on October 19, 2026.

DISCUSSION

A. The initiative petition calling for the Charter Amendment is valid.

The initiative petition submitting the Charter Amendment to the City's qualified voters appears to be valid and contains all the necessary elements to trigger a special election.

The Texas Local Government Code requires that a voter-initiated petition to amend a city's charter must be (1) signed by a number of qualified voters of the city equal to at least five percent of active voters of the city or 20,000 active voters, whichever number is smaller, and (2) the Charter Amendment only contains one subject.⁴ Additionally, because a voter-initiated petition to amend a city charter is submitted pursuant to the Local Government Code, a voter-initiated petition must also comply with Chapter 277 of the Texas Election Code, which prescribes the signature requirements for an election-related petition submitted under a law other than the Election Code.⁵ For a signature on a voter-initiated petition to be valid, in addition to the handwritten signature itself, the petition must include:

1. The signer's printed name;
2. The signer's date of birth or the signer's voter registration number and county of registration if the city is located in more than one county;
3. The signer's address; and
4. The date of the signature.⁶

The initiative petition submitting the Charter Amendment to the City contained 2,868 total signatures. According to the City Secretary, the City had 46,055 active voters at the time the initiative petition was filed, so the petition would need at least 2,303 valid signatures to meet the five percent threshold. The City Secretary checked 2,520 signatures and determined that 2,496 signatures belonged to qualified voters of the City and complied with the Election Code. The

¹ See Attachment "A."

² See Attachment "B."

³ See Attachment "C."

⁴ See Tex. Local Gov't Code §§ 9.004(a), (d).

⁵ Tex. Elec. Code § 277.001.

⁶ *Id.* § 277.002(a)(1).

initiative petition contained enough valid signatures. Additionally, the initiative petition only pertains to the Charter Amendment.

Therefore, because the initiative petition submitting the Charter Amendment complied with the Local Government and Election Codes, the City Secretary was correct to certify that the initiative petition submitting the Charter Amendment was sufficient and valid.

B. The City Council's election order is valid.

The Council appropriately ordered a Special Charter Amendment Election on August 11, 2026, with the special election to be held on November 3, 2026.

Under Chapter 9 of the Local Government Code, a city must order an election on a proposed Charter Amendment if the amendment is supported by a valid voter-initiated petition.⁷ Even if there are questions regarding whether an amendment is valid or conflicts with state law, if the voter-initiated petition itself is valid, then "the election is held first, and questions concerning the amendments are litigated later."⁸ The City Secretary correctly determined that the initiative petition for the Charter Amendment was sufficient on July 16, 2026.

Consequently, in accordance with state law and the City's Charter, the Council was obligated under the law to order the election, and the City is required to conduct the election. Doubt regarding the City's legal ability to abide by the proposed Charter Amendment (if approved by the voters) did not justify a delay in ordering the special election.

C. If voters approve the Charter Amendment, it is doubtful that the City individually possesses the current authority to comply with it.

(1) City and TxDOT authority over the medians on Texas Avenue.

In the absence of an agreement with TxDOT delegating control or ownership of the medians to the City, it is unlikely that the City presently possesses the lawful ability to remove the medians without TxDOT's consent.

Cities often have significant authority over public highways, streets, and rights-of-way within their corporate boundaries.⁹ City authority over municipal streets includes controlling, regulating, or removing obstructions, opening new streets, changing existing streets, and generally

⁷ *Id.* § 9.004(a).

⁸ *Green v. City of Lubbock*, 627 S.W. 2d 868, 872 (Tex. App. – Amarillo 1981) (When a charter amendment petition is valid, "the election is held first, and questions concerning the amendments are litigated later."); *see also* Texas Municipal League, Home-Rule Charters Legal Q&A (2020).

⁹ *See* Texas Municipal League, Street Regulation Legal Q&A (2021); *see also* Texas City Attorneys Association, Street Smart: An Everyday Guide & Update to Everything "City Street" (2020).

improving streets of the municipality.¹⁰ An exception to the default authority cities enjoy over streets within their city limits are improvements to roads within the *state highway system*.

Chapter 224 of the Texas Transportation Code provides that TxDOT “has exclusive and direct control of all improvement of the state highway system.”¹¹ The Texas Supreme Court has specifically recognized that TxDOT’s authority over improvements to the state highway system “render[s] inexclusive the dominion of any city or town with respect to the specific streets, alleys or other public ways affected thereby.”¹²

TxDOT and cities have the ability to enter into an agreement that governs a state highway in the municipality, including delegating who has control of the portion of the state highway, establishing responsibilities and liabilities, or generally providing for the location, relocation, improvements, and regulations of the highway.¹³ However, when TxDOT does not enter into an agreement with the relevant municipality, or enters into an agreement but chooses to retain control over the designated state highway, then a city does not have authority or ownership over the portion of the state highway within its limits.¹⁴

In the absence of an agreement between the City and TxDOT that delegates ownership or control over the medians on Texas Avenue to the City or gives the City the power to remove the medians, it is improbable that the City possesses sufficient authority to unilaterally alter or remove the medians on Texas Avenue without TxDOT’s consent and involvement.

(2) Litigation or an Attorney General opinion may be necessary to determine if the Charter Amendment conflicts with state law.

The language of the Charter Amendment provides that “THE MEDIANS ON TEXAS AVENUE... **SHALL BE REMOVED...**” The term ‘shall,’ when used in a piece of legislation, such as a home-rule charter, imposes a duty on the person or entity complying with the provision and “[b]y its plain and common meaning, ‘shall’ denotes mandatory action.”¹⁵ The Charter Amendment, if passed, would impose a mandatory duty on the City to remove the medians on Texas Avenue. In the absence of an agreement providing otherwise, TxDOT possesses exclusive control and authority over the medians on Texas Avenue.¹⁶ Consequently, it is probable that the

¹⁰ Tex. Transp. Code §§ 311.001(a) – (b); *see also City of Laredo v. Webb Cnty.*, 220 S.W.3d 571, 580 (Tex. App.—Austin 2007, no pet.).

¹¹ Tex. Transp. Code § 224.031.

¹² *State v. City of Austin*, 160 Tex. 348, 353 (Tex. 1960) (“The Legislature acting for the state has primary and plenary power to control and regulate public roads and streets. It may delegate that power to counties or municipal corporations, but such a grant of authority may be revoked or modified at any time.”)

¹³ Tex. Transp. Code § 221.002; *see also City of Fort Worth v. Alvarez*, No. 02-20-00408-CV, 2022 WL 405897, at *4 (Tex. App.—Fort Worth Feb. 10, 2022, no pet.).

¹⁴ *Sipes v. City of Longview*, 925 S.W.2d 764, 767 (Tex. App.—Texarkana 1996, writ denied); *see also City of Jersey Vill. v. Killough*, No. 01-20-00823-CV, 2021 WL 5903988, at *7 (Tex. App.—Houston [1st Dist.] Dec. 14, 2021, no pet.); *City of Wichita Falls v. Romm*, No. 2-09-237-CV, 2010 WL 598678, at *4 (Tex. App.—Fort Worth Feb. 18, 2010, no pet.).

¹⁵ *Perryman v. Spartan Tex. Six Capital Partners, Ltd.*, 546 S.W.3d 110, 131 (Tex. 2018) (citing Tex. Gov’t Code § 311.016(2)).

¹⁶ *Sipes*, 925 S.W.2d at 767.

duty the Charter Amendment would impose on the City (if passed) would impermissibly conflict with state law because it would mandate that the City unilaterally undertake an action that conflicts with TxDOT's sole authority over the medians under the Transportation Code.

Even if the City could ultimately effectuate the removal of the medians by negotiating with TxDOT to allow the City to remove them, it is unclear by the language of the Charter Amendment how much time the City would have to complete the removal of the medians. The City would need time to negotiate timelines with TxDOT. Additionally, in the event that TxDOT contractually agrees to allow the City to remove the medians, the City would need time to arrange financing for the removal of the medians and perform any additional legal work related to the Charter Amendment. Because the City does not currently possess the authority or the means to accomplish the removal of the medians, it is unclear if the City can adequately comply with the language of the proposed Charter Amendment should it pass.

Accordingly, efforts to enforce the amendment would probably necessitate either a court ruling (during the course of litigation) or an opinion from the Attorney General to determine whether the City can comply with the amendment or if the amendment conflicts with state law.¹⁷

CONCLUSION

Both the initiative petition and Council's election order regarding the Charter Amendment were valid and comply with applicable state law. Thus, the City is legally obligated to conduct the special election.

If the proposed Charter Amendment is passed by voters in the November Election, it is doubtful that the City will have the legal authority to comply with the amendment at that time. Hypothetically, should the amendment pass, for the City to satisfy the amendment TxDOT would need to be persuaded to agree to convey authority to the City via an agreement. If the amendment passes, the City may be put in the position of seeking guidance from either a court or the Attorney General.

This opinion relies on specific factual information provided to our office by the City. Should the particular facts of this situation change, it may necessary to alter our opinion.

¹⁷ See *Terrazas v. Ramirez*, 829 S.W.2d 712, 723 (Tex.1991); see also Tex. Att'y Gen. Op. No. GA-0217 (2004) (The Attorney General generally refrains from interpreting city charters and ordinance, unless "the question is whether a charter provision or ordinance is in conflict with state or federal law."); see also Tex. Att'y Gen. Op. No. GA-0433 (2006) (concluding that a charter amendment approved by voters to give a city commission authority to amend their charter by ordinance was invalid because it conflicted with state law).