



DATE: June 8, 2011

TO: City Manager Glasscock

FROM: City Secretary Zucco

RE: Senate Bill 100

With regard to the passage of SB 100, I offer the following information.

While some sections of the bill revise dates for filing and ordering elections, of particular interest to the City of Plano are those that impact the uniform election dates and terms of office. It is important to note that SB 100 takes effect on September 1, 2011, and while it does not impact November 2011 elections, the County will not be providing services for a May 2012 election (even-numbered year).

Section 4 of the bill sets out the uniform election dates as:

- 2nd Saturday in May in odd-numbered years
- 2nd Saturday in May in even-numbered years (County will not be required to contract)
- 1st Tuesday after 1st Monday in November

Alternatives

Option #1 - The City of Plano could **retain the current structure** of holding May elections every year with staggered terms.

- Contract with Collin County in odd-numbered years
- Plano would conduct its own election in even-numbered years
 - No guarantee of machine availability
 - Different electronic voting machines (our type is not available for rental)
 - No guarantee of any other entities cost sharing (cities/schools)
 - Approximately 4x current costs as a stand-alone entity (\$130,000 utilizing rentals) with an even higher price for purchase
 - In 2012, the Primary Run-off would overlap with Plano's General Election
 - City would need to obtain voter registration lists (cost)
 - Departmental impact: Appointment of judges/clerks, training, coordinating delivery of supplies/equipment, processing mailed ballots, and compiling reports.

Option #2 - The City of Plano could **retain staggered terms and move to a November election**

- Collin County has advised that they would list municipalities at the top of the ballot
- Plano would need to contract with both Collin County and Denton County and use their sites. Collin County plans to utilize Vote Centers in November and we would share charges for both early and election day ballots. Anticipated costs of \$80,000-\$125,000
- Costs could be similar to current rates or increased based on overall participation by other entities (cities/schools/county).

Section 5 of the bill allows for a change in the election date and addresses holdover provisions through passage of a resolution superseding charter provisions. Please see the accompanying memo from City Attorney Wetherbee related to her concerns and advising that charters can only be amended by election.

Section 47 speaks to the length of terms, but covers only General-Law Municipalities.

Section 52 applies to political subdivisions that elect members to terms consisting of an odd-number of years and allows for a resolution changing their terms to an even-number of years through passage of a resolution. As noted in Ms. Wetherbee's memo, charter restrictions apply and alteration may not be made without voter approval.

TML is planning a one-hour Webinar on June 29th to explain the bill, adjustments that can be made and answer questions regarding implementation.

Please let me know if I can provide any additional information.

MEMORANDUM

DATE: June 2, 2011
TO: Diane Zucco
FROM: Diane C. Wetherbee, City Attorney
SUBJECT: SB 100 Changes to the Election Code-Revised

Following up to our discussion yesterday regarding SB 100, below is a brief analysis of the select provisions we discussed.

Section 5 of this bill amends election Code 41.0052 Changing Election Date. Subsection (c) of that section provides that a home rule city may implement the change to the November election date **or** provide for the election of all members at one time by adopting a resolution. **That resolution would supersede any charter provision that requires staggered terms.** Plano could choose the November election date but must act by December 31, 2012. My concern is the language in this bill that seemingly authorizes a council to decide whether to have an election for all council members if such action is contrary to the city's charter.

Our city charter provision requires four council members be elected in even numbered years and the remaining four in odd numbered years, thereby resulting in staggered terms. Charter Section 3.0. In my opinion, if a council enacted a resolution as highlighted above, it will be acting beyond its authority notwithstanding this bill's language. The reason for my concern is that Article II section 5 of the Texas Constitution authorizes a home rule city to adopt charter provisions by citizen approval through an election. Charters can only be amended by election. This portion of the bill is an attempt to give a council **discretion** to change the will of the voters. Thus, the bill's language is contrary to what our Constitution requires for a charter amendment.

The legislature cannot give greater power to the council than what the Constitution has permitted. In this instance, because Plano voters approved a charter provision for staggered terms, it cannot be amended by simply allowing council to do so by resolution without risking a challenge.

I recognize there are instances that state law will preempt or supersede charter provisions. An example is if a charter provision prescribed a certain date for an election and the Election Code prohibited that date. In that instance, the

state law clearly preempts the charter provision, as city law is subordinate to state law. But in this case, there is not a mandate to prohibit staggered terms. It is merely an option that may be adopted by the council. The fact that it is a discretionary decision by the Council makes this provision constitutionally suspect with regard to the authority to amend a charter mandate in this manner.

Similar concerns exist with Section 52 of this bill. It purportedly allows a council to change terms of its members from an odd number to an even number. Because council member terms were approved in a charter amendment election, council may not alter those without voter approval.

Section 47 of the bill regarding terms only applies to general law cities so its provisions have no impact on Plano.

If you have any questions or wish to discuss further, please let me know.

C: City Manager Bruce D. Glasscock.