

City of _____, Texas

**Submission
Under Section 5 of the Voting Rights Act**

January 14, 2009

Carls, McDonald & Dalrymple, LLP
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January 14, 2009

Via Overnight Mail Service

CHRISTOPHER COATES
CHIEF, VOTING SECTION
CIVIL RIGHTS DIVISION
ROOM 7254-NWB
DEPARTMENT OF JUSTICE
1800 G STREET, N.W.
WASHINGTON, D.C. 20006

Re: Request for Pre-clearance under Section 5 of the Voting Rights Act for the City of _____, _____ County, Texas

Dear Chief:

On behalf of the City of _____, Texas, we hereby submit the following designation of an election date for a general election for Council members of the City of _____ City Council (Single Member Districts _ and _).

The City of _____ (hereinafter referred to as "_____") has called a general election for May 9, 2009 for the following items:

Election of a City Council Member for District _ of the _____ City Council; and

Election of a City Council Member for District _ of the _____ City Council.

In compliance with 28 C.F.R. Part 51, we are supplying the following information on behalf of _____:

28 C.F.R. Section 51.27

(a) A copy of any ordinance, enactment, order or regulation embodying a change affecting voting.

A copy of the Resolution calling the general election as passed by the

_____ City Council (hereinafter referred to as "City Council") on January 13, 2009 is attached hereto as *Exhibit "A."*

(b) A copy of any ordinance, enactment, order or regulation embodying the voting practice that is proposed to be repealed, amended, or otherwise changed.

The City Council Resolution attached hereto as *Exhibit "A"* adopts early voting and election day locations and times, and run-off days and times if necessary. The Resolution also adopts new Council District boundaries to accommodate the annexations that are discussed below. State law controls early voting and Election Day dates and times. The City Charter controls run-off dates.

Subchapter D of Chapter 31 of the Texas Election Code provides that a city may contract with the County Elections Officer for election services if the city is located in whole or in part in the county. This General Election, and possible Runoff Election, is a joint election, and will be conducted under the terms and conditions of an Election Services Agreement between the City of _____, _____ County, and the other entities having elections. The Election Services Agreement is attached to *Exhibit "A"* and is marked as Exhibit C to that Resolution.

Maps showing the Council District boundaries for the entire city, as well as for Council Districts _ and _ are attached to *Exhibit "A"* and are marked as Exhibits A , B and C to that Resolution.

(c) If the change affecting voting either is not readily apparent on the face of the documents provided under paragraphs (a) and (b) of this section or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and the proposed situation with respect to voting.

The City has participated in Joint Elections with other entities that have also contracted with the _____ County Elections Administrator, as has been the case for the past several elections. The DOJ has previously determined that, with regard to the use of county voting precincts and polling places on a uniform election date, the City exercised no discretion because these changes were mandated by previously precleared state legislation. (*See DOJ letter to the City dated October 23, 2006, copy enclosed.*) The DOJ has also previously determined that joint election procedures, including conduct with the County, is a recurrent practice and does not require preclearance. (*See DOJ letter to the City dated April 5, 2007, copy enclosed.*)

(d)The name, title, address and telephone number of the person making this submission.

The person making this submission is Patricia E. Carls at the law firm of CARLS, McDONALD & DALRYMPLE, Barton Oaks Plaza 2, 901 S. Mopac Expressway, Suite 500, Austin, Texas

78746, (512) 472-4845.

(e) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

The submitting authority is the City of _____, Texas.

(f) If the submission is not a state or county, the name of the county and state in which the authority is located.

The City of _____ is located in _____ County, Texas.

(g) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of state legislature, ordinance of city council, administrative decision by registrar).

The City Council of the City of _____ is responsible for calling the election on one of the two legislatively prescribed uniform election days that conforms to the election schedule in the City Charter. The City Council's Resolution and the Election Services Agreement, and the Joint Election Agreement delegated the authority to make limited changes affecting the conduct of the election to the _____ County Elections Administrator.

(h) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

The City Council is authorized to call the general election under the _____ Charter and the Texas Election Code.

Section 41.001(a) of the Texas Election Code establishes the dates when an election may be held. H.B. 57, (79th Texas Legislature, Regular Session, 2005), amended Section 41.001(a) to reduce the number of uniform election days from four to two, with one of those days being the second Saturday in May.

Establishment of early voting times and locations is governed by Chapter 85 of the Election Code, and these were also amended in 2005 by H.B. 57, as well as by H.B. 2309.

Authority of the city to designate polling places and election precincts is found in Section 42.061 and 43.004 of the Election Code.

Copies of the City's Charter provisions and applicable statutes and legislation are attached as

Exhibit "C."

(i) The date of the adoption of the change affecting voting.

The City Council ordered the general election on January 13, 2009 and a copy of the Resolution calling the election is attached hereto as Exhibit "A."

(j) The date on which the change is to take effect.

The election is scheduled to be held May 9, 2009. Any changes will be in effect for all voting (Early Voting and Election Day) for that election.

(k) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

The change has not yet been enforced or administered.

(l) Where the change will affect less than the entire jurisdiction, and explanation of the scope of the change.

The scope of the change will not affect less than the entire jurisdiction of the City or of the affected Council Districts. Although the May 2009 election is for Council Members in Districts 1 and 5 only, the City is requesting preclearance of all of the annexations and associated Council District boundary changes that are discussed below.

(m) A statement of the reasons for the change.

The reasons for the change are to approve the annexations and associated Council District boundary changes.

(n) A statement of the anticipated effect of the change on members of racial or language minority groups.

It is not anticipated that the election changes will have any adverse impact on the ability of minority citizens to participate in the electoral process.

Looking specifically to the standard for analysis under Section 5, *see Miller v. Johnson*, 115 S. Ct. 2475, 2492-93 (1995), it is apparent that there is no retrogression caused by any of the changes set out in the City's orders. *See* 28 C.F.R. § 51.544(b).

A comparison of the election precincts and polling places between the most recent previous City elections and the May 9, 2009 election do not create or cause any substantial adverse effect on members of racial or language minority groups.

(o) A statement identifying any past or pending litigation concerning the change or related voting practices.

None.

(p) A statement that the prior practice has been pre-cleared (with the date) or is not subject to the pre-clearance requirement and a statement that the procedure for the adoption of the change has been pre-cleared (with the date) or is not subject to the pre-clearance requirement, or an explanation of why such statements cannot be made.

Pre-clearance letters for prior city elections are included with Exhibit "D."

28 C.F.R Section 51.28

(a) Demographic information.

(1) Total and voting age population of the affected area before and after the change, by race and language group.

According to 2000 census data, the population and voting age population by racial and ethnic group for the City is:

Total Population and Ethnic Composition of the City of _____

Total Population	Hispanic	Black	Other	Anglo
28,277	5,121	929	522	21,705
	18.11%	3.29%	1.84%	76.76%

Total Voting Age Population and Ethnic Composition of the City of _____

Total Population	Hispanic	Black	Other	Anglo
21,645	3,291	674	361	17,319
	15.20%	3.11%	1.68%	80.01%

(2) The number of registered voters for the affected area by voting precinct before and after the change, by race and language group.

The change does not affect voter registration.

(3) Any estimates of population, by race and language group, made in connection with the adoption of the change.

See item 1(a), above.

(b) Maps

(1) The prior and new boundaries of the voting unit or units.

This General Election is held to elect the Councilmembers for City of _____ Single-Member Districts _ and _. The boundaries for Single-Member Districts 1 and 5 have been updated to include newly annexed lands referenced in item (c) below. Maps showing the updated boundaries of Districts _ and _ are attached to the Resolution calling the election in *Exhibit "A"* and are referred to in that Resolution as Exhibits A and B. A map of all of the City Council Districts is attached as Exhibit C to that Resolution. These maps have been adopted as the Official Council District Maps and are used to determine the qualification of the candidates to serve and shall govern the qualification of the voters to vote in said election.

(2) The prior and new boundaries of voting precincts.

As previously approved in the preclearance submission for many previous City elections, the County precincts will be used to determine which polling places a City resident will use to vote at in the election. Newly annexed lands referenced in item (c) below have been added to the appropriate Council District.

(3) The location of racial and language minority groups.

Maps showing the location of racial and language minority group concentrations are attached as *Exhibit "E."*

(4) Any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units.

The voting precinct boundaries are governed in large part by state and interstate highways and city and county roads.

(5) The location of the prior and new polling places.

See response to 28 C.F.R. Section 51.27(C), above.

(6) The location of prior and new voter registration sites.

The change in election dates and designation of new polling locations does not affect voter registration sites.

(7) Additional maps and demographic information.

None.

(c) Annexations.

Copies of the annexation ordinances as well as a map showing all of the areas annexed since the last preclearance submittal are attached hereto as Exhibit "F".

(d) Election returns.

Not applicable.

(e) Language usage.

The ballot language will be translated into Spanish by a qualified interpreter. All ballots and notices of the election will be published in English and Spanish. A copy of the Spanish translation is not available as of the date of this submission, but can be submitted if requested by the Department of Justice.

(f) Publicity and Participation.

(1) Copies of newspaper articles discussing the proposed change.

There are no newspaper articles discussing the proposed change at this time. If newspaper articles are generated, they can be submitted if requested.

(2) Copies of public notices that describe the proposed change and invite public comment or participation in hearings and statements regarding where such public notices appeared; (e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups.)

In accordance with the requirements of the Texas Election Code, _____ will publish notice of the election. Any information required to be posted will be posted in accordance with the Texas Election Code and the applicable sections of the Local Government Code. The notices have not been posted as of the date of this submission, but can be submitted if requested by the Department of Justice.

(3) Minutes or accounts of public hearings concerning the proposed change.

The minutes of the meetings at which the election was called are available upon request. The Resolution calling the General Election is attached hereto as Exhibit "A". Supplemental

information, if required, will be submitted as soon as it is available.

(4) Statements, speeches, and other public comments concerning the proposed change.

None at this time.

(5) Copies of comments from the general public.

None at this time.

(6) Excerpts from legislative journals containing a discussion of a submitted enactment, or other materials revealing its legislative purpose.

None at this time.

(g) Availability of the Submission.

_____ will publish and post notice in accordance with the Texas Election Code advising the public of the election, and the voting precincts, and the polling locations. A complete duplicate copy of this submission is available for public inspection during normal business hours at the City of _____, City Hall, _____, _____, Texas 7_____

(h) Minority Group Contacts.

Minority group contacts are included in Exhibit "G."

It has been the purpose of this submission to provide available relevant information that will be helpful to the Department without unduly burdening the record. The election is set for May 9, 2009. Please let me know if there is any underlying data or other information that the Department would find helpful when reviewing this submission.

Respectfully submitted,
CARLS, McDONALD & DALRYMPLE, LLP

Patricia E. Carls
City Attorney for
City of _____, Texas

Attachments:

- Exhibit A Resolution Calling General Election
- Exhibit B Election Day Poll Sites
- Exhibit C Statutory Authorities and City Charter Provisions
- Exhibit D Copies of Previous Preclearance Letters
- Exhibit E Map of Location of Language and Racial Minority Groups
- Exhibit F Annexations
- Exhibit G Minority Group Contacts

cc: (w/ attachments)
City Secretary