



2180 North Loop West
Suite 255
Houston, TX 77018
www.najvarlaw.com

Jerad Wayne Najvar
O: 281.404.4696
F: 281.582.4138
jerad@najvarlaw.com

February 10, 2022

Ms. Theresa James
City Attorney
City of San Angelo
Via email: theresa.james@cosatx.us

RE: Action on petition for ordinance outlawing abortion in San Angelo

Dear Ms. James:

I write on behalf of the Initiating Committee for the proposed Ordinance outlawing abortion in San Angelo and declaring San Angelo a Sanctuary City for the Unborn. I am concerned because certain actions taken at the February 1 City Council meeting, particularly in light of disturbing declarations by Mayor Brenda Gunter, indicate that the interests of San Angelo citizens are being frustrated by apparent violations of the Texas Open Meetings Act (TOMA).

The City Clerk has certified the initiative petition as sufficient and delivered the petition to the Council, triggering the Council's responsibility to consider adoption of the Ordinance after the required public hearing. The Charter states that the Council has the option to adopt the Ordinance after the public hearing. SAN ANGELO, TEX. CHARTER § 47. In the event that the Ordinance is not adopted in full after hearing from the public, then the Initiating Committee has the right to demand an election on the Ordinance. *Id.* The Initiating Committee has made clear from the very beginning that if the Ordinance were not adopted in full by the Council, it would indeed exercise its option to require an election, and that it wanted that election to occur in May 2022.

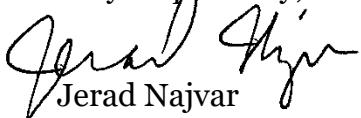
While the Council recognized the sufficiency of the petition at the February 1 meeting, it then summarily foreclosed the possibility of a May election—if, indeed, an election becomes necessary—by scheduling the public hearing a month later, on March 1. This forecloses the opportunity for a May election because any order for an election on the May ballot must be approved by February 18. There was plenty of time for Council to publish a copy of the ordinance as required by the Charter and hold the public hearing on or before February 18, enabling a May election if Council does not approve the Ordinance itself. My clients and, it is safe to say, the thousands of citizens who signed the petition, remain disappointed by Council's summary decision to delay the public hearing until March 1, without any explanation as to why it could not be done sooner.

But the delay and expense of an election are only necessary if the Council declines to adopt the Ordinance itself after public hearing. In this respect, Mayor Gunter's blunt comment immediately after the vote is even more concerning. Immediately after Council voted 4-1 to hold the public hearing on March 1, Mayor Gunter stated that the Ordinance "will be on the November ballot."¹ This statement is peculiar, because the Charter first requires the Council, as a body, to decide after the public hearing whether to adopt the Ordinance itself. Yet, on its face, the Mayor's statement reflects at least *her* confidence that the Council has *already decided* that it will not adopt the Ordinance in full, thus necessitating an election. If the Council has already decided it will not adopt the Ordinance, then this decision was made in violation of TOMA, whether it was done in an informal meeting with a quorum or in a series of communications undertaken to avoid a quorum being present at any one time. *See Tex. Gov't Code § 551.143* (setting out offense for prohibited series of communications, formerly known as a "walking quorum"). Unfortunately, February 1 was not the first time Mayor Gunter has indicated at least her belief that the Council has pre-judged this issue. In June 2021, when pro-life citizens first approached Mayor Gunter about the possibility of San Angelo declaring itself a Sanctuary City for the Unborn, she represented that it had already been decided that, if this issue ever came up, the City would require an election, like Lubbock. Mayor Gunter did not specifically claim to be speaking for any particular Councilmember, but she made this matter-of-fact statement then, as she did again on February 1.

This Ordinance has overwhelming support in San Angelo, as demonstrated by the ease with which the Initiating Committee collected far more signatures than required. San Angelo citizens are entitled to the fair consideration of each member of Council. In that respect, I assume you can understand our concern with the Mayor's statement. If Council has already decided not to adopt the Ordinance, then the public hearing will be a sham. It cannot be a sham; citizens are entitled to be heard and to view the deliberations of the Council. We will be watching closely and expect that the Council will fairly consider adopting the Ordinance after the public hearing, which would avoid the delay of an election entirely.

Further, I respectfully request confirmation that there has not been, and there will not be, an improper "series of communications" in violation of TOMA designed to pre-judge this issue. I look forward to your prompt response.

Very respectfully,



Jerad Najvar

¹ See Feb. 1, 2022 City Council Meeting at approx. 26:45, <https://www.youtube.com/watch?v=tUfMTYGm28E>.