

ORDINANCE NO. 2020-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, REPEALING ORDINANCE NO. 2020-16 THAT ORDERED A SPECIAL ELECTION TO BE HELD ON MAY 2, 2020 FOR THE PURPOSE OF FILLING A VACANCY FOR THE REMAINDER OF THE UNEXPIRED TERM OF OFFICE OF CITY COUNCIL PLACE FIVE; GIVING PUBLIC NOTICE THAT A NEW DATE FOR CONDUCTING A SPECIAL ELECTION TO FILL THE VACANCY WILL BE ORDERED BY ADOPTION OF A SUBSEQUENT ORDINANCE, WITH NEW FILING DEADLINES, DUE TO THE CURRENT COVID-19 PANDEMIC; DECLARING AN EMERGENCY CREATING THE NEED TO ADOPT THIS ORDINANCE WITH ONLY ONE READING; AND PROVIDING AN EFFECTIVE DATE

RECITALS:

1. On March 17, 2020 the San Marcos City Council adopted Ordinance No. 2020-16 ordering a special election to be held on May 2, 2020 to fill a vacancy in the office of City Council Place 5 caused by a letter of resignation submitted by Dr. Jocabed Marquez. It was the intention of the City Council to have the special election held on that uniform election date concurrently with other elections to be conducted in Hays County by the Hays County Elections Administrator.
2. Under the provisions of Article 16, Section 17 of the Texas Constitution, Dr. Marquez shall “hold over” and continue to perform the duties of her office until her successor is elected and qualifies.
3. Due to the COVID-19 pandemic, Texas Governor Greg Abbott issued a proclamation on March 18, 2020 allowing, but not requiring, certain political subdivisions with elections set for the May 2, 2020 uniform election date to postpone their elections to the next uniform election date occurring on November 3, 2020.
4. On March 18, 2020 the office of the Texas Secretary of State (SOS) issued “Election Advisory 2020-12 for the May 2, 2020 Uniform Election Date” that declared the filing period for elections postponed pursuant to the Governor’s proclamation to be irrevocably closed as of 5:00 p.m. on March 23, 2020.
5. On March 24, 2020, SOS issued a clarification of Governor Abbott’s proclamation. According to SOS, the Governor’s proclamation does not apply to and does not authorize a political subdivision with a special election to fill a vacancy set for May 2, 2020 to postpone the election to November 3, 2020 and it did not waive requirements in Article 11, Section 11 of the Texas Constitution for filling such vacancies.

6. The provisions of “Election Advisory 2020-12 for the May 2, 2020 Uniform Election Date” declaring the filing period for an election previously ordered for May 2, 2020 to have been irrevocably closed as of 5:00 p.m. on March 23, 2020 do not apply and cannot apply to a special election ordered after that date.
7. Due to the health risks posed by the COVID-19 pandemic, the existence of community spread of the virus within Hays County, and in reliance on Governor Abbott’s proclamation, the Hays County Election Office provided written notice via email to Interim City Clerk Tammy K. Cook on March 25, 2020 that Hays County will not conduct any city, school, or water district election previously set within Hays County for the May 2, 2020 uniform election date.
8. At the time of adoption of this ordinance, all persons living within Hays County are subject to a “Stay Home-Work Safe” order issued by Hays County Judge Ruben Becerra on March 25, 2020 in response to community spread of COVID-19.
9. The San Marcos City Council finds that conducting a special election on May 2, 2020 - with early voting beginning on April 20, 2020 - would pose an unwarranted and unreasonable threat to the health and safety of poll workers and voters and promote the spread of COVID-19 throughout Hays County.
10. The City of San Marcos has no current capability to independently conduct a separate special election to fill the vacancy in Council Place 5 on May 2, 2020.
11. For the reasons herein stated, the San Marcos City Council deems it necessary to repeal Ordinance No. 2020-16 that previously ordered a special election to be held on May 2, 2020 to fill the vacancy in City Council Place 5 and to provide public notice that a new date for the special election, with new filing deadlines, will be set by subsequent ordinance due to the current COVID-19 pandemic.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE  
CITY OF SAN MARCOS, TEXAS:**

SECTION 1. The City Council finds that the recitals above are true and they are hereby adopted as a matter of public record. The recitals shall become a part of the legislative history pertaining to the adoption of this ordinance and shall serve to document the extraordinary circumstances existing at the time of its approval.

SECTION 2. Ordinance No. 2020-16, adopted on March 17, 2020 to order a special election to fill a vacancy in City Council Place Five on May 2, 2020, is hereby repealed.

SECTION 3. An ordinance ordering a special election to fill the vacancy in City Council Place 5 shall be prepared and presented for consideration by the council to set a new date for the special election and new election deadlines, including a new deadline to file an application for a place on the ballot. The proposed special election date shall reflect a careful assessment of the current COVID-19 pandemic, available personnel and equipment resources to

conduct the election, the potential for any assistance to be provided by the Hays County Election Administrator, and legal requirements for conducting a special election to fill a vacancy.

SECTION 4. Public notice of the adoption of this ordinance shall be given within San Marcos and Hays County, on the home page of the city's internet website, to media outlets, and to each person who previously filed an application for a place on the ballot for the special election ordered by Ordinance No. 2020-16 but cancelled by the adoption of this ordinance.

SECTION 5. If any portion of this ordinance is held invalid by a court of competent jurisdiction, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 6. The importance of this ordinance creates an emergency and an imperative public necessity, and the provisions of the San Marcos City Charter requiring that ordinances be presented at two separate meetings are hereby waived and, this ordinance will take effect immediately upon adoption.

CONSIDERED, APPROVED, AND ADOPTED on March 31, 2020.

Jane Hughson  
Mayor

Attest:

Approved:

Tammy K. Cook  
Interim City Clerk

Michael J. Cosentino  
City Attorney