

RESOLUTION NO. 11R-39

A RESOLUTION OF THE CITY OF HARLINGEN, TEXAS ORDERING A SPECIAL ELECTION TO BE HELD ON DECEMBER 16, 2011 BETWEEN THE HOURS OF 7:00 A.M. AND 7:00 P.M. CENTRAL STANDARD TIME FOR THE PURPOSE OF ELECTING ONE (1) CITY COMMISSIONER FOR CITY OF HARLINGEN DISTRICT 1; DESIGNATING THE ELECTION PRECINCTS FOR DISTRICT 1; ESTABLISHING SEPTEMBER, 22, 2011 AS THE FIRST DAY TO FILE FOR A PLACE ON THE OFFICIAL BALLOT AND OCTOBER 20, 2011 AT 5:00 P.M. CENTRAL STANDARD TIME BEING THE LAST DAY TO FILE FOR A PLACE ON THE BALLOT; ESTABLISHING OCTOBER 21, 2011 AS THE FIRST DATE TO FILE FOR DECLARATION AS A WRITE-IN CANDIDATE AND OCTOBER 26, 2011 AT 5:00 P.M. CENTRAL STANDARD TIME BEING THE LAST DAY TO FILE FOR DECLARATION AS A WRITE-IN CANDIDATE; DIRECTING THE CITY SECRETARY TO PREPARE THE OFFICIAL BALLOT FORM; ADOPTING THE USE OF PAPER BALLOTS FOR SPECIAL ELECTION DAY ON DECEMBER 16, 2011 AND FOR EARLY VOTING BY PERSONAL APPEARANCE BEGINNING DECEMBER 1, 2011 AND ENDING ON DECEMBER 9, 2011 WHICH INCLUDES TWO (2) TWELVE (12)-HOUR DAYS OF VOTING AS REQUIRED BY STATE LAW; PROVIDING FOR APPOINTMENT OF A PRESIDING JUDGE, ALTERNATE PRESIDING JUDGE AND CLERKS FOR THE SPECIAL ELECTION DAY POLLING PLACE; ORDERING PUBLICATION AND POSTING OF NOTICE OF THE SPECIAL ELECTION FOR DISTRICT 1; PROVIDING FOR THE EARLY VOTING DATES, TIMES, AND POLLING PLACE; PROVIDING FOR EARLY VOTING BY MAIL; PROVIDING FOR THE SPECIAL ELECTION DAY POLLING PLACE; APPOINTING THE CITY SECRETARY TO BE THE EARLY VOTING CLERK; CREATING THE EARLY VOTING BALLOT BOARD; PROVIDING FOR CANVASSING OF THE SPECIAL ELECTION RESULTS; AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING.

WHEREAS, on May 8, 2010 Gustavo Ruiz was elected by a majority vote of qualified voters in the City of Harlingen Commission District 1 to be their City Commissioner for a term to expire on May 11, 2013;

WHEREAS, on September 2, 2011, Gustavo Ruiz made an explicit and public statement announcing his candidacy to run for Texas State Representative District 43;

WHEREAS, pursuant to Tex. Const. art XVI, §65(b) and art. XI, §11(a), holders of certain offices, including city commissioners, automatically resign their position if they announce their candidacy or become a candidate in fact for any other elected office, unless their unexpired portion of their current term is one year or less;

WHEREAS, pursuant to Tex. Const. art. XVI, §17, all officers within this State, which includes city commissioners, shall continue to perform their duties until their successor is elected;

WHEREAS, pursuant to Tex. Const. art XI, §11(b) and XVI, §27 and Harlingen City Charter Art. IV, §4, a vacant city commissioner position cannot be filled by an appointment, but shall be elected by a majority vote of qualified voters from the District within 120 days from the date of resignation and the elected successor fills the unexpired term only;

WHEREAS, the Elective Commission of the City of Harlingen finds that it is the best interest of the citizens of Harlingen to order a Special Election to fill the vacancy for City Commissioner District 1;

WHEREAS, the Elective Commission of the City of Harlingen has determined that holding such Special Election on the date hereinafter provided is in the best interest of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF HARLINGEN:

1. The Elective Commission of the City of Harlingen hereby orders a Special Election of the City of Harlingen to be held on the 16th day of December, 2011, between the hours of 7:00 a.m. and 7:00 p.m. Central Standard Time, such Special Election to be held for the purpose of electing one (1) City Commissioner for District 1.

The election precincts for City Commission District 1 shall be based on the 2010 Census Redistricting map approved by the Elective Commission of the City of Harlingen.

All residents of the City of Harlingen for the legally required time prior to the date of said Special Election that are: (1) citizens of the United States; (2) qualified to vote in a state or county election; and (3) reside in City Commission District 1 shall be qualified to vote in such Special Election.

The Elective Commission of the City of Harlingen hereby appoints the City Secretary as the custodian of records for the District 1 Special Election.

2. **Special Election Calendar**

Candidates for such office of Commissioner shall meet the qualifications set forth in the Charter of the City of Harlingen and the laws of the State of Texas. Any candidate desiring to qualify to have his or her name placed upon the official Special Election ballot shall do so by complying with the provisions and procedures of the Texas Election Code and the Harlingen City Charter. Such candidate shall file his or her own sworn application with the City Secretary of the City of Harlingen. The first date to file for such position is September 22, 2011. The final date to file for such position is October 20,

2011 at 5:00 p.m. Central Standard Time. The first date for filing declaration of write-in candidacy is October 21, 2011. and the last date is October 26, 2011 at 5:00 p.m. Central Standard Time for a write-in candidate to declare candidacy. The drawing for placement on the official ballot shall be on October 26, 2011 at 5:30 p.m. Central Standard Time at a location to be determined.

3. **Official Ballot**

The City Secretary shall be and is hereby directed to prepare the necessary documents and to proceed to acquire the ballot such that the vote shall be held upon an official ballot prepared in such a manner as will permit the qualified voters of District 1 in the City of Harlingen to vote for one candidate for District 1.

Qualified voters who reside in City Commission District 1 shall use paper ballots on Special Election Day for voting. The obtaining and use of such paper ballots shall be in accordance with the applicable provisions of the election laws of the State of Texas. All ballots shall be prepared in accordance with the Texas Election Code. Optical scan ballots shall be used for early voting by mail and early voting by personal appearance and voting on the Special Election Day. All ballots shall be in compliance with the requirements as set out by the Texas Election Code.

4. **Voting Machines**

The Harlingen Elective Commission hereby adopts for use in early and Special Election Day voting the ES & S AutoMark Voter Assist Terminal and Model M-100 Scanners, as approved by the Texas Secretary of State to comply with Help America Vote Act requirements.

5. **Polling Place Presiding Judge, Alternate Presiding Judge and Polling Clerks**

There shall be a Presiding Judge, an Alternate Presiding Judge, and a number of clerks to serve in the polling place for the designated precincts. The Presiding Judge and Alternate Presiding Judge for the polling place shall be appointed by a separate resolution by the Mayor and City Commission of the City of Harlingen in accordance with the Texas Election Code. The Presiding Judge of the polling place shall appoint not less than two nor more than four clerks to serve in the respective polling place.

6. **Notice of Special Election for District 1**

Notice of the Special Election shall be given by the publication of notice thereof, pursuant to Section 4.003 of the Texas Election Code one (1) time in accordance with the time limit as presented in the Texas Election Code, after the enactment hereof, in a newspaper of general circulation in Harlingen, Texas known as the Valley Morning Star. The Mayor (or his designee) of the City of Harlingen shall post notice of such Special Election, with a copy of this resolution forming a part thereof, upon: (1) the bulletin board located at Harlingen City Hall in Harlingen Texas no later than 21 days prior to said Special Election Day; and (2) the polling location no later than the 10th day prior to the Special Election Day. Said Special Election shall be held in accordance with the Texas Election Code and the Federal Voting Rights Act of 1965, as amended and the City Charter of the City of Harlingen, Texas, as amended.

7. **Early Voting Dates, Times and Polling Place**

All early voting, except early voting by mail, shall take place in the City Hall (Town Hall located on the 2nd floor), 118 E. Tyler Street, Harlingen, Texas between the hours of 8:00 a.m. and 5:00 p.m. Central Standard Time Thursday through Friday beginning December 1, 2011 and ending on December 9, 2011. As required under Section 85.005(d) of the Texas Election Code, early voting by personal appearance at the early voting polling place shall be conducted for at least 12 hours on two weekdays if the voting period consists of six or more weekdays; therefore, early voting by personal appearance shall be conducted for 12 hours on December 6, 2011 and on December 8, 2011 from 8:00 a.m. till 8:00 p.m. Central Standard Time.

8. **Special Election Day Polling Place**

There is herewith and hereby designated one (1) polling place for voting in this Special Election for City Commissioner District 1. The polling place for the District 1 Special Election shall be the Long Elementary School located at 2601 N. 7th Street, Harlingen, Texas.

9. **Early Voting Ballot Board**

The Elective Commission of the City of Harlingen hereby appoints the City Secretary to be the Early Voting Clerk for the early voting Special Election in District 1.

In accordance with Chapter 87 of the Texas Election Code, the Elective Commission of the City of Harlingen hereby creates an Early Voting Ballot Board to process the early voting results from the District 1 Special Election. The Elective Commission of the City of Harlingen shall appoint by a separate resolution the Presiding Judge to serve on the Early Voting Ballot Board. The Early Voting Ballot Board Presiding Judge shall appoint at least two other members to serve on the Early Voting Ballot Board.

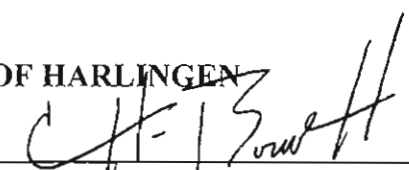
10. **Canvassing of Votes**

In addition to and cumulative of all the provisions herein provided for said Special Election, including the canvassing hereof shall be held and conducted in accordance with the Election Code of the State of Texas and the City Charter of the City of Harlingen, Texas.

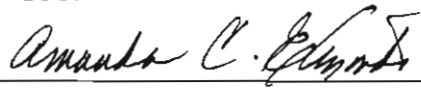
FINALLY ENACTED THIS 21st day of September, 2011 at a regular meeting of the Elective Commission of the City of Harlingen, Texas at which a quorum was present and which was held in accordance with TEXAS GOVERNMENT CODE, TITLE 5, SUBTITLE A, CHAPTER 551.

CITY OF HARLINGEN

BY: _____


Chris Boswell, Mayor

ATTEST:



Amanda Elizondo, City Secretary

APPROVED AS TO FORM:



Roxann Pais Cotroneo, City Attorney