

Town Elections – Research Findings and Recommendations



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Overview

Citizens have expressed questions and concerns about how voters were determined for the various elections beginning with the incorporation vote for the Town of Poetry through the recent (November, 2022) vote for Sales and Use Tax. This memorandum is an attempt to explain how the voter rolls were determined for the previous elections and summarize how the rolls will be determined for Town votes moving forward.

While Messer, Fort and McDonald (MFM) were the Town Attorney firm, they were engaged to perform an independent fact-finding effort. This effort was begun by two Town Council Members and once the billing for this effort was released a discussion was held to determine whether this effort should continue to be funded by the Town. The Town Council asked for an estimation of how much additional time would be needed to conclude the fact-finding and that estimate was given as five (5) hours. In an effort at transparency and to answer legitimate questions from the citizenry the Council authorized that final five hours.

MFM was able to find a significant amount of information and offered some recommendations if the Town chose to move forward in a deeper investigation. This document outlines their findings and those recommendations.

It should be noted here that according to Texas Election Code Section 233.006, an election can be contested up to the "30th day after the date the election records are publicly available", meaning that any previous election in the Town of Poetry can no longer be contested and other legal remedies would need to be sought if such remedy is desired. More information concerning on this is in the Summary section.

Pre-incorporation

Approximately eighteen months prior to the incorporation vote a group of citizens gathered to discuss efforts to incorporate the community into a municipal entity - the Town of Poetry. This initial group consisted of approximately twenty people and the decision was made to move forward with the incorporation effort.

The membership in this group fluctuated as the effort progressed. Eventually, the effort culminated with a ballot initiative being introduced in Hunt and Kaufman Counties for the incorporation. A series of town hall style events took place to introduce the citizens of the area to the idea.

As part of the effort, a map of the Town borders was drawn using Geographic Information Mapping (GIS) system software. Dorothy Dillon, a GIS certified mapping specialist, created the boundaries and the mapping software developed a list of addresses within the proposed Town borders.

The attorney assisting the incorporation effort (Jim Shepherd) gave the advice that, "only what is within the boundary lines composing the city limits is in the city. I would not recommend taking the position that a home in the [Extra-territorial Jurisdiction] allows the occupants to claim residence in the city." With this advice, the GIS-generated list of addresses was edited by the incorporation team to exclude addresses which had no houses within the proposed municipal limits. This list of addresses was then sent to the counties to develop the voter rolls.

Once the addresses were determined by the incorporation group, Hunt County began the process of assisting with advising on finalizing the paperwork for the initiative. They also began the lead agency on the elections initiative and coordinated efforts with Kaufman County to ensure that there was proper alignment in the effort.

On at least one occasion, it was stated that Hunt County 'represented' the incorporation effort and that this is the reason that the relationship with Jim Shepherd was terminated as his counsel was no longer needed. Hunt County and Heather Carter, principle in the law firm representing on this matter, disputes the term 'represented' while acknowledging that the County provided advice similar to what they would provide to any other entity with a ballot initiative. Heather Carter states her firm exclusively represented Hunt County and never, directly, the incorporation effort.

It should be noted that Jim Shepherd's recollection is that he chose to terminate the relationship with the incorporation effort rather than the incorporation team terminating the arrangement. No documentation was produced to substantiate the rationale for Mr. Shepherd no longer working with the incorporation team so the best determination that could be made was that the relationship's ending was mutually agreeable to both parties.

Hunt County was eventually able to produce the OLRV file they sent to their vendors for the incorporation election. The OLRV file is the "Official List of Registered Voters" and is used to validate whether a voter is registered and on which initiatives they are eligible to vote. According to records produced by Hunt County, the initial voter rolls included 570 eligible voters based on the addresses given to the county. Kaufman County has been unable to provide the list of eligible voters for the incorporation vote.

It should be noted that prior to incorporation there was no municipal structure and thus no obligation to conform to state-mandated municipal recordkeeping regulations. The sequence of events described has been recreated from personal recollection of those involved and what documentation was kept and able to be retrieved.

Town Officials Election

After incorporation Hunt County reevaluated the voter rolls. Hunt County administrator, Jeannie Ash, determined that those voters who live on property that has even a portion of its footprint in the Town limits should be eligible to vote in Town matters, including the election of Town officials. Thus the voter rolls were expanded in Hunt County to conform to this new interpretation of who is an 'eligible' voter in the Town of Poetry. Hunt County, established that there were 981 voters based on the new determination. The MFM document summarizes the Hunt County data by saying, "[t]he fact that the number of eligible voters in the Town of Poetry, Hunt County, increased by over 70%, from 570 eligible voters in November 2020 to 981 Voters on June 01, 2021, suggest that different eligibility factors may have been used for the incorporation election."

Kaufman County has not produced a list or count of eligible voters thus there is no certainty around the previous count of eligible voters, the current count, and whether the count changed.

This new list of voters in Hunt County was used for the elections of Town officials. It is the expectation that this list will continue to be used going forward. Of course, Official List of Registered Voters is subject

to change with normal in-flows and out-flows of voters so it should be considered a 'living document'. Additionally, if there is a change in the law or legal interpretation, the OLRV would be expected to change accordingly. These disclaimers are only stated as an attempt at being thorough in establishing expectations.

After incorporation, once the official Town boundaries were established, the Counties have developed the voter lists based on the addresses within the Town limits. The Counties now maintain the voter rolls based on these established boundaries.

Recommendations from Legal Counsel

Previous counsel to the Town of Poetry, Messer, Fort and McDonald (MFM), stated that they used the full allotment of time to pursue this matter and that, due to the inability of the counties to produce the specific voter roles as of the date of the elections in question, a change in leadership at the county election offices and the lack of documentation about the decision making process for determining the voter rolls, they were unable to reach a final conclusion. As an example of this, MFM stated, "[i]n our conversations with Ms. Ash, she explained the process and statutes she follows for determining voter eligibility in any given election, but because she was not the Elections Administrator during the incorporation election, she could not confirm the statutory process was followed for that election," MFM, therefore, recommended that if the Town wanted such a final decision, further investigation by another entity would be necessary and a referral was made for such an investigative entity.

The recommendation from previous counsel, if this investigation is to continue, is to continue to pursue that OLRV to determine who was listed for eligibility for the vote in Kaufman.

Counsel also reiterated that there is no method of overturning the incorporation vote since the time to appeal that vote has passed. If there is an interest in overturning the incorporation, the only remedy at this point is to pursue a referendum for the purposes of dissolving the municipal entity - i.e. disincorporation.

The Town has an official survey of the Town boundaries. However, MFM recommends that the Town take the additional step of having a Professional Engineer-certified official Town Map adopted by Town Council through an ordinance to relieve any uncertainty about the Town's boundaries.

Summary

In summary, the methodology for creating the Official List of Registered Voters changed from the incorporation effort to the election of Town officers. The original list was created using the addresses of those in the proposed Town limits, based on legal advice to the incorporation team. The OLRV was then updated to include any who reside on property even if the residence is not in the Town based on the County's interpretation of the law.

Please note the OLRV from Hunt County has not been included as part of the memo, but as it is now a Town record as part of this effort, it can be requested from the Town. It has been excluded only in an effort to help preserve the privacy of those on the list. No similar list is in the possession of the Town at the time of the writing.