



**Frank Madla**

Texas State Senate  
District 19

1313 S.E. Military Dr., Suite 101  
San Antonio, Texas 78214-2850  
(210) 927-9464  
FAX (210) 922-9521  
P.O. Box 12068  
Austin, Texas 78711  
(512) 463-0119  
FAX (512) 463-1017  
Dial 711 For Relay Calls

January 21, 2004

**RQ-0171-GA**

**RECEIVED**

**JAN 26 2004**

**OPEN RECORDS DIVISION**

The Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

**RECEIVED**

**FILE #** ML-43457-04  
**I.D. #** 43457

**JAN 27 2004**

**OPINION COMMITTEE**

Dear General Abbott:

On September 13, 2003, the voters of the State of Texas gave approval to Proposition 13 which amended the Texas Constitution to authorize a county, a city or town, or a junior college district to establish an ad valorem tax freeze on residence homesteads of persons with disabilities and persons sixty-five years of age or older. Please accept this letter as one of request for an Opinion on the questions raised in the attached letter to Senator Kim Brimer relating to inquiries regarding the implementation of provisions included in Proposition 13.

Thank you for your consideration of this request. Your prompt attention to this issue would be greatly appreciated. Please do not hesitate to contact me, or Jason Anderson on my staff, should you have any questions or require additional information.

Yours truly,

  
Frank Madla

FM/JA/ts

Enclosure

cc: The Honorable Kim Brimer, Texas Senate  
The Honorable Rick Hurt, Mayor, City of Bedford



**Committees:**

Intergovernmental Relations, Vice Chair  
Business and Commerce  
Finance  
Government Organization



**Capitol Office:**

P.O. Box 12068  
Austin, Texas 78711  
Room E1.712  
(512) 463-0110  
Fax: (512) 475-3745  
Dial 711 For Relay Calls

**The Senate of Texas**  
**Senator Kim Brimer**  
**District 10**

**District Office:**

1600 W. 7th  
Suite #650  
Ft. Worth, Texas 76102  
(817) 332-8269  
Fax: (817) 332-8761

December 19, 2003

The Honorable Frank L. Madla  
P.O. Box 12068  
Capitol Station  
Austin, Texas 78711

Dear Senator Madla,

We received the enclosed letter from the City of Bedford concerning questions regarding the implementation of Proposition 13. The questions are related to property tax freezes and affect all cities in Texas. I respectfully ask that you request an Attorney General Opinion regarding this matter.

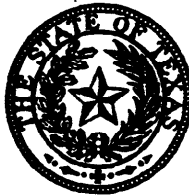
Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim Brimer".

Kim Brimer  
KKB/jp

cc: Mayor Rick Hurt  
enclosure



**CITY OF BEDFORD  
OFFICE OF THE MAYOR**

December 10, 2003

**R. D. "RICK" HURT  
MAYOR**

The Honorable Kim Brimer, State Senator  
Senate District 10  
1600 W. 7<sup>th</sup> Street, Suite 650  
Fort Worth, TX 76102

Re: Request for Attorney General Opinion – Tax Freeze -- City of Bedford, Texas

Dear Senator Brimer:

On September 13, 2003, the voters of the State of Texas gave approval to Proposition 13.<sup>1</sup> Proposition 13, as approved by the voters, amended the Texas Constitution to authorize a county, a city or town, or a junior college district to establish an ad valorem tax freeze on residence homesteads of the disabled and persons sixty-five (65) years of age or older ("the Tax Freeze").

The methods by which Tax Freeze can be implemented are:

1. by *official action* of the governing body (emphasis added), or
2. as an alternative, an election called by the governing body upon receipt of a petition signed by five percent (5%) of the registered voters of the county, the city or town, or the junior college district.<sup>2</sup>

Following the passage of Proposition 13, many municipalities in Tarrant County and throughout the State have researched, and received input from citizens on, the merits and ramifications of implementing the Tax Freeze. The City of Bedford (the "City") is one of those cities. During the City's review and research process, however, several questions have arisen which necessitates the City's request for an opinion to the Attorney General.

In this regard, on behalf of the City Council, I respectfully request your assistance in seeking an Attorney General's opinion on the following questions:

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<sup>1</sup> H.J.R. No. 16, as passed by the Texas Legislature during the 78<sup>th</sup> Regular Session, submitted the proposed constitutional amendment to the voters on September 13, 2003.

<sup>2</sup> See Article VIII, Section 1-b (h) of the Texas Constitution, which was amended by the passage of Proposition 13 on September 13, 2003, as submitted to the voters by H.J.R. No. 16

### **Question No. 1**

Can a home-rule municipality, such as the City, call an election on the approval or disapproval of the Tax Freeze, when no petition has been presented by 5% of the registered voters?

### **Discussion**

Article VIII, Section 1-b (h) of the Texas Constitution, as amended on September 13, 2003, by the passage of Proposition 13, allows, as a local option, a city to enact the Tax Freeze by either of two (2) methods. One of those methods is by "*official action*" of the governing body. The term "official action" is not defined. Does "official action" allow a city council to call an election?

A review of other statutory authority clearly indicates that the calling of an election is an official act of the governing body. Specifically, the Texas Election Code directs that the calling of local election is an "official act" of a city council in the State of Texas.<sup>1</sup> Thus, it stands to reason that a home-rule municipality may call a Tax Freeze election by "official action" of the city council.

### **Question No. 2**

If the Tax Freeze is implemented, whether by "official action" of the governing body or an election called following receipt of a petition of 5% of the registered voters, can it be repealed at any future time by the voters of the City?

### **Discussion**

Article VIII, Section 1-b (h) of the Texas Constitution, as amended on September 13, 2003, by the passage of Proposition 13, states in part:

"The governing body of a county, city or town, or a junior college district may not repeal or rescind a tax limitation established under this section."

It appears clear that a governing body cannot ever repeal or rescind the Tax Freeze – irrespective of whether the Tax Freeze was implemented by "official action" of the governing body or by an election. What is unclear is whether an election can ever be held to repeal a Tax Freeze. By applying the elements of statutory construction, it would appear that the answer is no since the constitutional provision in question is silent.

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<sup>1</sup>See Tex. Election Code § 3.005 (b)

**Question 3**

If the answer to Question No. 2, above, is yes, how is an election brought forward?

**Discussion**

The constitutional amendment is silent on this issue.

**Conclusion**

The City, along with many other cities and political subdivisions throughout the State of Texas, are being faced with the decision of implementing the Tax Freeze. On behalf of the City, I hereby respectfully request that these questions be submitted to the Honorable Greg Abbott for his consideration and opinion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. D. Hurt", with a stylized flourish at the end.

R. D. "Rick" Hurt  
Mayor, City of Bedford

cc: Members of the Bedford City Council  
Charles P. Barnett, City Manager  
L. Stanton Lowry, Boyle & Lowry, L.L.P., City Attorney

Robert E. Talton



□ CAPITOL OFFICE:  
P.O. Box 2910  
AUSTIN, TEXAS 78768-2910  
(512) 463-0460

✓ DISTRICT OFFICE:  
P.O. Box 5661  
PASADENA, TEXAS 77508  
(281) 487-8818

District 144  
House of Representatives

January 20, 2004

RECEIVED  
JAN 26 2004  
OPEN RECORDS DIVISION

The Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

RECEIVED

JAN 28 2004

OPINION COMMITTEE

FILE # ML-43462-04  
I.D. # 43462

Dear General Abbott:

House Bill 136 of the 78th Regular Session amended the Tax Code to require that the residence homestead of a person who is 65 years or age or older or disabled be appraised and taxed based on the property qualifying for a limitation of county, municipal or junior college district taxes that may be imposed. Voters have approved the constitutional amendment set forth in the bill.

On January 13, 2004, the City of Pasadena finalized by ordinance a measure implementing the residential homestead cap. A question arose as to what year, 2003 or 2004, may be used for the base tax year. Enclosed please find a copy of the City of Pasadena ordinance.

I request an Attorney General's opinion addressing this issue of whether a city may use a tax base year prior to the enactment of the law.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Talton".

Robert E. Talton  
State Representative

RET:ch



CHAIRMAN, URBAN AFFAIRS COMMITTEE

REDISTRICTING COMMITTEE

CRIMINAL JURISPRUDENCE COMMITTEE

# AGENDA REQUEST

2B

☒ ORDINANCE

☐ RESOLUTION

NO: 2004- 01

**CAPTION:** An Ordinance establishing procedures for the City of Pasadena to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses.

**RECOMMENDATIONS & JUSTIFICATION:** Authorized by passage of Proposition 13 in 2003. This will freeze the amount of taxes due beginning in tax year 2005 based on the amount that will be paid in the 2004 tax year. (If the tax freeze had been approved using tax year 2002 as the base year, a total of 6,631 over 65 and disabled homeowners would have qualified for an estimated total of \$197,124 in tax relief in the current year.) Administrative costs are yet to be identified and may require future Council action. If the recommended ordinance is approved, all qualified over 65 and disabled homestead residents as of January 1, 2004 will become eligible for the limitation beginning in tax year 2005 (Section 11.261-State Property Tax Code). See attachments for additional information on the limitation.

(IF ADDITIONAL SPACE IS REQUIRED, PLEASE ATTACH SECOND PAGE)

**COST:** \$0.00

**TASK NO:**

**BUDGETED:** YES ☐ NO ☒

**ACCOUNT NUMBER(S):**

**REQUESTING DEPARTMENT:** Tax Dept.

**APPROVED:**

**COUNCIL ACTION**

Robert H. Allen DATE: 12/30/2003

REQUESTING PARTY (TYPED)

FIRST READING:

FINAL READING:

REQUESTING PARTY (SIGNATURE)

MOTION

MOTION

CONTROLLER CERTIFICATION

SECOND

SECOND

CITY ATTORNEY

DATE

DATE

MAYOR

DEFERRED:

**ORDINANCE NO. 2004-01**

**An Ordinance establishing procedures for the City of Pasadena to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses.**

WHEREAS, a joint resolution of the Texas Legislature was passed proposing a constitutional amendment (Proposition 13) to authorize a county, a city or town, or a junior college district to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses; and

WHEREAS, such Proposition 13 reads as follows: "The constitutional amendment to permit counties, cities and towns, and junior college districts to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses"; and

WHEREAS, effective January 1, 2004, Section 11.261 of the Texas Tax Code governs the procedure under which a municipality or other taxing entity may adopt an ad valorem tax freeze; and

WHEREAS, the City Council believes it would be in the best interest of the citizens of the City of Pasadena to provide for a tax freeze on the amount of property taxes on the homesteads of disabled individuals or individuals age sixty-five or older; NOW, THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PASADENA:

SECTION 1. That the City Council hereby establishes the ad valorem tax freeze on the residence homesteads of the disabled and of the elderly as authorized by the aforesaid constitutional amendment.

TaxAdValorem.Freeze03



SECTION 2. The Tax Assessor-Collector of the City of Pasadena, Texas is hereby authorized to implement the necessary procedures to freeze the taxes to the 2003 Harris County Appraisal District Records, if it is legal to freeze at the year 2003.

SECTION 3. The wording of the above Section 2 stating "to freeze the taxes to the 2003 Harris County Appraisal District Records, if it is legal to freeze at the year 2003" is contingent on a requested ruling by the Texas Attorney General as to whether the wording is legal or whether Section 2 should state "based upon the 2004 Harris County Appraisal District Records". Upon receipt of such opinion and attachment to this ordinance, this ordinance shall automatically reflect without further amendment the correct years as determined by such Attorney General ruling.

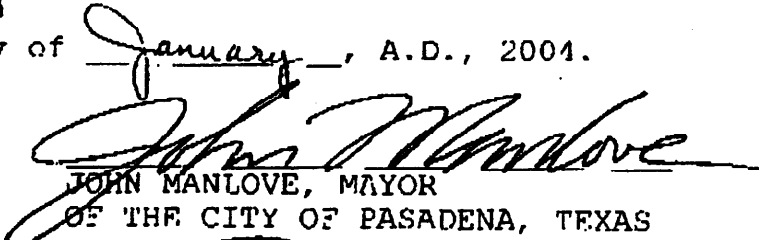
SECTION 4. That the City Council officially determines that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further confirms such written notice and the contents and posting thereof.

(SIGNATURE AND APPROVAL. NEXT PAGE)


TaxAssV.Lorem.Freeze01

PASSED ON FIRST READING by the City Council of the City of  
Pasadena, Texas in regular meeting in the City Hall this the  
6<sup>th</sup> day of January, A.D., 2004.


APPROVED this the 6<sup>th</sup> day of January, A.D., 2004.

  
JOHN MANLOVE, MAYOR  
OF THE CITY OF PASADENA, TEXAS

ATTEST:

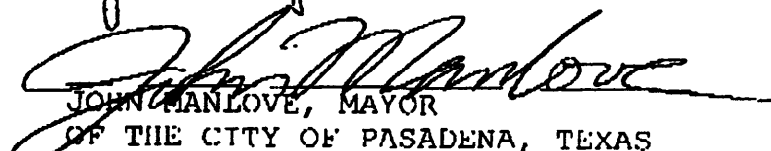
  
LYNNE SUMMERS  
CITY SECRETARY  
CITY OF PASADENA, TEXAS

APPROVED:


  
LEE CLARK  
CITY ATTORNEY  
CITY OF PASADENA, TEXAS

PASSED ON SECOND AND FINAL READING by the City Council of the  
City of Pasadena, Texas in regular meeting in the City Hall  
this the 13<sup>th</sup> day of January, A. D., 2004.


APPROVED this the 13<sup>th</sup> day of January, A.D., 2004.

  
JOHN MANLOVE, MAYOR  
OF THE CITY OF PASADENA, TEXAS

ATTEST:

  
LYNNE SUMMERS  
CITY SECRETARY  
CITY OF PASADENA, TEXAS

APPROVED:

  
LEE CLARK  
CITY ATTORNEY  
CITY OF PASADENA, TEXAS

TaxAdValorem.Freeze03



John Manlove, Mayor

January 8, 2004

State Representative Robert Talton  
Texas House of Representatives District 144  
3622 Fairmont  
Pasadena, Texas 77504

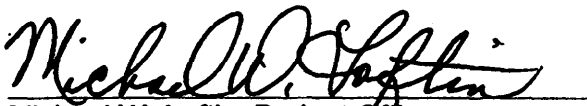
Dear Representative Talton:

This is to provide you a package of materials on the City of Pasadena's proposed ordinance enacting the property tax freeze for homeowners who are 65 and older or disabled.. As you know, the voters approved a constitutional amendment in September that made this a local option for cities, counties and junior college district effective January 1, 2004. On Tuesday, the City Council passed an ordinance on first reading that effects the freeze (see attached Council packet).

However, there is a need to clarify the city's options regarding the matter of the timing of the freeze. The freeze involves establishing a base year that will be used as the year in which the tax paid will serve as the amount for future years unless the taxes levied drop because of lowered value or tax rates. The actual freeze then takes place in the second year using the first year's tax amount as the reference point. The law explicitly states that it takes effect January 1, 2004, but is not explicit as to whether the effective date is the first or second year for purposes of determining taxpayer eligibility and then freezing taxes as discussed above.

The proposed ordinance was prepared using guidance published by the State Comptroller's Office in their 2002 Annual Property Tax Report issued in November 2003. A copy of page 10 of that Report was provided to Council in their packet. The Comptroller's material indicates that the freeze year would have to be based on 2004 taxes and 2005 taxes would be the first year in which taxes would be frozen. Because of ambiguity in the law, the Council chose to amend the proposed ordinance to use the 2003 tax year as the basis for the freeze and make 2004 the first year in which taxes would actually be frozen. The amended ordinance also provided that this would be the approach if it is deemed legal.

Subsequent to the Council meeting, we spoke with Connie Rose in the Comptroller's Office and she assured us that the Comptroller's interpretation is unchanged. Their reading is that eligibility was not established for any taxpayer until January 1, 2004 when the law took effect, and that the original form of the ordinance was correct. It is our thought that an Attorney General's ruling may be needed to clear this matter up. Hundreds of jurisdictions around the state will face this issue as they consider taking action on this important issue. We appreciate your interest in this matter.

  
Michael W. Loftin, Budget Officer  
City of Pasadena