

# The State of Texas



Elections Division  
P.O. Box 12060  
Austin, Texas 78711-2060  
www.sos.state.tx.us

Phone: 512-463-5650  
Fax: 512-475-2811  
Dial 7-1-1 For Relay Services  
(800) 252-VOTE (8683)

John B. Scott  
Secretary of State

## **ELECTION ADVISORY** **No. 2022-19**

TO: All Cities, School Districts, and Other Political Subdivisions

FROM: Keith Ingram, Director of Elections 

DATE: May 2, 2022

RE: Post-Election Procedures and Qualifying for Office for the May 7, 2022  
Uniform Election Date

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### **I. OVERVIEW AND QUICK REFERENCE**

All statutory references in this advisory are to the Texas Election Code (“the Code”), unless otherwise indicated.

#### **Forms**

The following is a list of forms relevant to events after the May 7, 2022 elections. Samples of these forms can be accessed from our website:

- [Appointment of Representative Form \(PDF\)](#)
- [Recount Request Form \(PDF\)](#)
- [Statement of Officer Form \(PDF\) \(Word\)](#)
- [Certificate of Election Form \(PDF\) \(Word\)](#)
- [Oath of Office Form \(PDF\) \(Word\)](#)

#### **Brief Reminders**

- Statements of Officer are filed locally, NOT with the Secretary of State’s office.
- Canvass must be conducted between Tuesday, May 10, 2022 and Wednesday, May 18, 2022.\*

**\*NOTE:** The canvass may not be conducted until the early voting ballot board has: 1) qualified and counted all provisional ballots, if a provisional ballot has been cast in the election, AND 2) counted all timely received late-arriving ballots (see details below).

- Monday, May 9, 2022 at 5:00 p.m. is the last day to receive “late domestic ballots” placed in the mail by 7:00 p.m. on Election Day from voters who are voting from **within** the United States and who submitted an Application for Ballot by Mail (“ABBM”).

- Thursday, May 12, 2022 is the last day to receive carrier envelopes placed in the mail by 7:00 p.m. on Election Day from voters who are voting **outside** the United States.
- Friday, May 13, 2022 is the last day to receive carrier envelopes mailed domestically or overseas from voters who submitted a Federal Post Card Application (“FPCA”) and who are members of the armed forces of the United States, or the spouse or a dependent of a member of the armed forces, members of the merchant marines of the United States, or the spouse or a dependent of a member of the merchant marine, members of the Texas National Guard, or the spouse or a dependent of a member of the Texas National Guard, a member of the National Guard of another state, or the spouse or a dependent of a member of the National Guard of another state, or members of the Reserves, or the spouse or a dependent of a member of the Reserves.
- Monday, May 16, 2022 is the last day for the early voting ballot board to qualify and count the above-referenced ballots, as well as provisional ballots. Tex. Elec. Code §§ 65.051, 67.003, 86.007(a)(2), 86.007(d)(3), 101.057.

For additional information regarding ballot by mail deadlines, please see our election law calendar here: [May 7, 2022 Election Law Calendar](#).

## **II. QUALIFYING FOR OFFICE**

### **Canvass Meeting**

The canvass must be conducted at an open meeting of the governing body between Tuesday, May 10, 2022 and Wednesday, May 18, 2022. Only two officers are needed for a quorum for a canvassing meeting. Tex. Elec. Code § 67.004(a).

The canvassing authority shall prepare a tabulation stating the following:

1. Each candidate
  - a. Total number of votes received in each precinct
  - b. Sum of precinct totals tabulated
2. Votes FOR and AGAINST each measure
  - a. Total number of votes received in each precinct
  - b. Sum of precinct totals tabulated
3. Total number of voters in each precinct who cast a ballot for a candidate or for or against a measure in the election

Tex. Elec. Code § 67.004(b), (b-1). See information about Reconciliation Forms in Section III of this advisory.

The tabulation may be prepared as a separate document or may be entered directly into the local election register maintained for the authority. The authority shall either attach or include as part of the tabulation the report of early voting votes by precinct. The early voting report is to be delivered to the local canvassing authority no later than the time of the local canvass. Tex. Elec. Code § 87.1231. For more details, see the procedure for the local canvass in Section 67.004 of the Texas Election Code. The election register shall be preserved as a permanent record. Tex. Elec. Code § 67.006.

## **Certificate of Election, Statement of Officer, and Oath of Office**

Questions often arise about the order of events following the election. We recommend that post-election procedures occur in the following sequence:

- Election is canvassed at an open meeting.
- Certificate of Election is issued to newly-elected officers.
- Statement of Officer is completed (to be filed locally).
- Newly-elected officers may take the Oath of Office.
- After taking the Oath of Office, newly-sworn officers may assume the duties of their office.

Tex. Const. Art. XVI, § 1; Tex. Elec. Code §§ 67.004 – 67.006, 67.016, 67.017.

No newly elected official may qualify for office before the official canvass of the election has been conducted (or would have been conducted, in the event of a cancelled election).

Before an elected (or appointed) officer may assume the duties of the office, the officer must first file a Statement of Officer for the official records of the governing body. Tex. Const. Art. XVI, § 1.

We recommend that the presiding officer issue the Certificate of Election at the canvass. The presiding officer of the canvassing authority prepares the Certificate of Election. Tex. Elec. Code § 67.016. The form we provide is only a sample; many entities like to create their own.

If a recount request has been filed, this does not halt the canvass. However, the canvassing authority must make a note on the canvass that a recount has been requested. Filing a recount petition delays the issuance of a certificate of election and qualification for the office involved in the recount pending completion of recount. Tex. Elec. Code §§ 212.033, 212.0331. See our current Recount advisory and our [Recounts](#) outline for deadlines and additional details.

## **Who Can Administer an Oath of Office**

The Oath of Office must be administered by someone authorized to administer an oath under Texas law. The most commonly used person to administer oaths is a notary public. Additionally, Section 602.002 of the Texas Government Code authorizes all city secretaries to administer oaths for matters relating to city business. In a Type A general law city, the mayor may also administer the oath to Type A officers-elect. Tex. Loc. Gov't Code § 22.042. Other officials who may administer an oath include: a judge, retired judge, senior judge, clerk of a court of record, justice of the peace or clerk of a justice court, legislator or retired legislator. Please note that some persons authorized to administer an oath are limited in their authority, and can only administer an oath in certain situations. *See* Chapter 602 of the Texas Government Code for the most extensive list.

## **Rules Specific to Certain Cities and Other Entities**

In some political subdivisions, the newly-elected officers may not assume the duties of office until a certain date. For example, officers in a **Type A general law city** may not assume office

until at least the fifth day after the election, excluding Sundays (Friday, May 13, 2022). Tex. Loc. Gov't Code § 22.036. Section 22.036 of the Texas Local Government Code further requires that the newly-elected governing body of a Type A municipality “meet at the usual meeting place and shall be installed.” Tex. Loc. Gov't § Code 22.036. Type A cities have authority to require a bond. Tex. Loc. Gov't Code § 22.072. Additionally, if a Type A officer-elect fails to qualify for office (be sworn in) within 30 days after the date of the officer's election, the office is considered vacant. Tex. Loc. Gov't Code § 22.007.

Also, your source law might require a bond. For example, in **Type C cities**, the mayor and commissioners must execute a bond for \$3,000 payable to the municipality. Tex. Loc. Gov't Code § 24.024. In **most water districts**, officers must execute a bond for \$10,000 payable to the district. Tex. Water Code § 49.055(c).

If a bond is required, the bond **must** be executed before the officer assumes his or her duties.

### **Oaths and Water Districts, Chapters 36 & 49 of the Texas Water Code**

Please note that special procedures apply to a newly elected director of a water district that is governed by Chapters 36 or 49 of the Texas Water Code. A duplicate original of the oath (but not the statement of elected/appointed officer) shall also be filed with the Secretary of State within 10 days after its execution and need not be filed before the new director begins to perform the duties of office. Tex. Water Code §§ 36.055, 49.055.

## **III. OTHER PROCEDURES AND QUESTIONS**

### **Cancellation Procedures**

#### **Unopposed Candidates**

Many entities have used the “cancellation” procedures in Sections 2.051-2.053 of the Texas Election Code to declare unopposed candidates “elected” to office. The Statement of Elected Officer must be completed and filed at any time after the meeting at which the candidates were declared elected. The remaining steps of the Certificate of Election and the Oath of Office, however, must be performed after Election Day in the usual manner; that is, not before the date the official canvass would normally be conducted. On the Certificate of Election, instead of the election date language, substitute “John Doe was duly elected for purposes of the May 7, 2022 election, pursuant to the [order or ordinance] issued on [date], cancelling the election that was scheduled to be held on May 7, 2022” or similar language. Tex. Elec. Code § 67.016. Please note that [cancellation forms](#) can be obtained from our office or by accessing our website.

#### **What if Nobody Filed?**

If no one filed for an office (and your jurisdiction does not have open write-ins), the appropriate time to declare the official result — that no one filed and that no one won — is at the canvass. Even if the election was cancelled due to uncontested races, a vacancy in the office for which no one filed is declared at the meeting held after Election Day. The vacancy is then filled by the vacancy-filling procedures for that entity. *See* Tex. Att’y Gen. Op. No. [O-497](#) (1939); Sec’y State Op. No. [JWF-36](#) (1984). Two officers constitute a quorum for canvassing the election

results and declaring any resulting vacancy. To fill the vacancy, however, you will need to meet the regular quorum requirements.

### **Tie Votes, Runoffs**

A runoff election is required if the political subdivision requires majority vote (rather than plurality) and no candidate has received over half the total votes (e.g., 50.1% is more than half). (Tex. Elec. Code § 2.021). The general rule is that runoff elections are ordered for a date between 20 and 45 days after the final canvass. (Tex. Elec. Code § 2.025).

We encourage political subdivisions to confer with their county election officer before setting a runoff election date if they are contracting with the county, or expect to be leasing county voting equipment, in order to ensure the availability of that equipment.

Tie votes for officers (**based on official canvassed returns**) are governed by Section 2.002 of the Code. In an election requiring a **plurality vote** (i.e., the person with the most votes wins, even if it is not more than 50% of the votes cast), if two or more candidates for the same office tie for the number of votes required to be elected, a second election to fill the office shall be held.

**NEW LAW:** The order of events has been amended by [House Bill 3107](#) (87<sup>th</sup> Leg., R.S., 2021). Under prior and current law, the candidates may choose to withdraw or cast lots to resolve the tie before the automatic recount is held. If the tie vote is not resolved by a withdrawal or lot drawing (at this first opportunity), an automatic recount shall be conducted in accordance with Chapter 216. Under amended law, if an automatic recount does not resolve a tie, the tied candidates may (1) cast lots not later than the day before the date the authority must order the second election; or (2) withdraw from the election not later than 5 p.m. of the day after the date the automatic recount is held. In sum, there is now a clear second opportunity to withdraw or cast lots before the second election is held. Tex. Elec. Code § 2.002.

If the tie is still unresolved following these procedures, the authority responsible for ordering the first election shall then order the second election (not later than the fifth day after the date the automatic recount is completed or the final canvass following the automatic recount is completed). The second election shall not be held earlier than the 20th day or later than the 45th day after the date the automatic recount is completed or the final canvass following the automatic recount is completed, if applicable. [House Bill 3107](#) changed the last day to hold the second election from the 30th day to the 45th day. For more details, see Tex. Elec. Code § 2.002 and Chapter 216.

**NEW LAW:** A tie vote **in a runoff election (based on official canvassed returns)** triggers an automatic recount under Section 2.028 and Chapter 216 of the Code. The procedure has also been amended by [House Bill 3107](#). In a tie vote in a runoff election, if a candidate withdraws before the automatic recount is conducted, the remaining candidate is the winner and the automatic recount does not need to occur. If a withdrawal is received by 5 p.m. the day after the date of the automatic recount is conducted, the remaining candidate is the winner. If the automatic recount proceeds, and the result is still tied, the election is resolved by the casting of lots under Section 2.028 of the Code.

A tie vote in an election on a measure (i.e., a proposition election with for-against votes) means the measure failed, because there were not more votes For than Against. There is no automatic

recount procedure, since Chapter 216 of the Code, which regulates automatic recounts, only applies to candidate elections.

### **Post Returns on Website (Certain Entities)**

**NEW LAW:** Senate Bill 1116 (87th Leg., R.S., 2021) added Section 65.016 of the Code regarding election results information which must be posted on county, city, and school district websites. Specifically, a county that holds an election or provides election services for an election for a public entity must post certain information on their website. A city or independent school district that holds an election and maintains an Internet website must also post certain information on their website related to election results, even if the county is also posting such information. Information should be posted as soon as practicable after the election and must be accessible without having to make more than two selections or view more than two network locations after accessing the home page of the county, city or school district, whichever is applicable. Required information on the websites must include:

- the results of each election;
- the total number of votes cast;
- the total number of votes cast for each candidate or for or against each measure;
- the total number of votes cast by personal appearance on election day;
- the total number of votes cast by personal appearance or mail during the early voting period; and
- the total number of counted and uncounted provisional ballots cast. Tex. Elec. Code § 65.016.

**NOTE:** Some (but not all) of this information is also included in the reconciliation form, as described below. It is possible to post this information on the same web page as your reconciliation form, if both requirements apply to you. Please note that the SB 1116 requirement applies to the entities described above, regardless of whether there is a central counting station.

### **Reconciliation Forms (Elections With Central Counting Station)**

**NEW LAW:** Senate Bill 1 (87th Leg., 2nd C.S., 2021) added Section 127.131(f) of the Code to require the presiding judge of the central counting station to prepare a preliminary reconciliation form on election night and a final reconciliation form after the canvass. These forms must be posted on the county website with your election returns and results after they are completed and signed. This posting requirement applies regardless of whether your local entity is contracting with the county for election services. We recommend posting the reconciliation form on your entity's website, if you maintain one.

Please note that Section 127.131(f) applies to entities that conducted voting in such a manner that they had a central counting station. For example, it would not apply to an entity that used an Automark to comply with accessible vote-casting, where ballots were hand-counted.

**File Returns with Secretary of State (Counties)**

Counties are required to file electronic precinct-by-precinct returns with the Secretary of State's Elections Division not later than Monday, June 6, 2022 (the 30th day after election day). Tex. Elec. Code § 67.017. Local political subdivisions, other than a county, do not have to file electronic precinct-by-precinct returns with the Secretary of State's office. Tex. Elec. Code § 67.017.

**Note about Joint Elections and Contracts for Election Services**

The procedures above outline the general rules; however, many entities may be holding joint elections (and/or have some type of contract for various election services with the county). You should make every effort to be sure that everyone involved knows when, where, and by whom the various election records are to be prepared, delivered, and stored.

CC: County Clerks/Elections Administrators

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