

Legal Q&A

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May 2009 Election Law Calendar

In the past, the Texas Municipal League legal staff has prepared an election calendar for general law cities. The calendar, which spelled out various deadlines for the May general election of city officers, appeared in each January issue of *Texas Town & City* magazine. Other groups annually prepare calendars as well. One of those groups is the Texas Municipal Clerks Association (TMCA), a TML affiliate. Because of the outstanding calendar prepared by TMCA, the League will no longer prepare a separate calendar. The TMCA calendar is available online at <http://municlerks.unt.edu/pdf/electioncal2009.pdf>. The League's legal staff remains available to answer election-related questions.

Q: What is the current state of cancellation of elections for cities?

A: Elections may only be canceled if: (1) each candidate whose name is to appear on the ballot is unopposed; and (2) no proposition is to appear on the ballot. TEX. ELEC. CODE § 2.051(a). Cancellation is not automatic, meaning that a city council must meet and vote to cancel an election and certify the election of the unopposed candidates. *Id.* at § 2.053(a). On election day, notice of the cancellation must be posted at each polling place that would have been used in an election. *Id.* at § 2.053(b).

A city that elects candidates at-large may cancel an election so long as the number of candidates is equal to or less than the number of positions up for election. If a city with single-member districts has a contested, at-large mayoral race or a proposition on the ballot, uncontested single member district elections may not be canceled. *Id.* at § 2.051(b).

For detailed information on cancellation of elections, including forms, please go to www.sos.state.tx.us/elections/laws/cancellation.shtml.

Q: Under what circumstances must a city seek preclearance from the U.S. Department of Justice (DOJ)?

A: Texas is one of nine states required to submit any changes in election procedures to the DOJ for review and approval under the Federal Voting Rights Act of 1965. Generally, when a practice or procedure that affects voting is altered, a city conducting an election must submit these changes for preclearance. Measures requiring preclearance include, among other things, changes in polling places or election precincts, changes in the terms of elected office, changes in voting qualifications or eligibility, and the discretionary setting of a date to hold a special election. *See* 28 C.F.R. § 51.13 (2008), 28 C.F.R. § 51.17 (2008). However, a cancellation of an election need not be submitted to the DOJ for preclearance.

Q: What is “coercion against candidacy”?

A: The Election Code prohibits a person from intimidating or coercing another person to not file an application for a place on the ballot. TEX. ELEC. CODE § 2.054. A person commits the crime of “coercion against candidacy” if he or she threatens, among other things, bodily harm or to bring about hatred, contempt, or ridicule to a potential candidate. *Id.*; TEX. PEN. CODE § 1.07.

Q: When must a city order the general election for city officers?

A: Chapter 3 of the Election Code provides that a city shall order an election not later than the 62nd day before election day. TEX. ELEC. CODE § 3.005(a). The provisions relating to the time period for ordering an election supersede city charter provisions to the extent of any conflict. *Id.*

Q: May a candidate in a municipal election assist a personal appearance early voter?

A: Yes. Under the Texas Election Code, a voter who is unable to prepare his or her ballot because of a physical disability or an inability to read may receive assistance from a person of the voter’s choice other than the voter’s employer or agent of the voter’s employer, or an officer or agent of a labor union of which the voter is a member. TEX. ELEC. CODE at §§ 64.031, 64.032(c). The Code also provides that an election officer may assist an early voter. *Id.* at § 85.035.

The person assisting must take the following oath:

I swear (or affirm) that I will not suggest, by word, sign, or gesture, how the voter should vote; I will confine my assistance to answering the voter’s questions, to stating propositions on the ballot, and to naming candidates and, if listed, their political parties; and I will prepare the voter’s ballot as the voter directs.

Id. at § 64.034. While chapter 64 of the Election Code does not expressly prohibit a candidate from assisting a voter, chapter 61 states that the presence of a candidate at a polling place for any purpose other than voting or official business in the building is prohibited unless the candidate is not within plain view or hearing of the voting area and is not engaged in campaign activity. *Id.* at §§ 61.001(a), 61.001(b). However, the secretary of state has determined that a candidate’s official business can include assisting a voter who is entitled to assistance, so long as the candidate leaves the polling place once the individual has voted.

Q: May a city hold early voting on a Saturday or Sunday?

A: Yes. The Texas Election Code expressly provides that the city secretary, whom the Code designates as the early voting clerk in a city election, may order early voting by personal appearance on one or more Saturdays or Sundays during the early voting period. TEX. ELEC. CODE § 85.006(a). The early voting period for personal appearance begins on the 17th day before the election and continues through the fourth day before election day. *Id.* at § 85.001(a). The city secretary determines the early voting hours and is required to post 72-hours notice for

the main branch, or five-days notice for temporary branch locations. *Id.* at §§ 85.007(c), 85.067(c).

Q: Must a city hold early voting on a Saturday or Sunday?

A: Under only one circumstance. A city must hold early voting on a Saturday or Sunday upon receipt of a written request signed by at least 15 registered voters of the territory covered by the election. The request must be submitted in time for the city secretary to give timely notice of the fact that voting on Saturday or Sunday is ordered. TEX. ELEC. CODE § 85.006(d).

Q: Is such early voting required to be on the Saturday or Sunday requested in the petition?

A: No. The authority ordering an election is not required to order that the voting take place on a particular date specified in the request, but must order that the voting take place on at least one Saturday if a Saturday is requested and on at least one Sunday if a Sunday is requested. TEX. ELEC. CODE § 85.006(d).

Q: When is an election decided by a majority vote instead of a plurality vote?

A: The Texas Election Code generally requires that a candidate for office must receive more votes than any other candidate, or a plurality of the vote, to be elected. However, this provision does not apply when another law provides otherwise. TEX. ELEC. CODE, § 2.001. In city elections, there are three situations when an election is decided by a majority vote. First, the Texas Constitution requires that an individual must be elected by majority vote when the term of office is more than two years. TEX. CONST. art. XI, § 11. Second, a candidate for a city office in a city with a population of 200,000 or more must receive a majority of the total number of votes cast to be elected to office. TEX. ELEC. CODE § 275.002. Finally, a majority vote may be required in a home-rule city, regardless of the city's population, if the city's charter requires a majority vote for the election to office.