

The State of Texas



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ELECTION ADVISORY **NO. 2021-05**

TO: All Cities, School Districts, and Other Political Subdivisions
FROM: Keith Ingram, Director of Elections 
DATE: May 1, 2021
RE: Post-Election Procedures and Qualifying for Office for the May 1, 2021 Uniform Election

Overview and Quick Reference:

UPDATE: We will outline the usual statutory procedures first, then address certain circumstances affected by COVID-19 (Coronavirus) conditions.

Forms

The following is a list of forms relevant to events after the May 1, 2021 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 4, 2021 and Wednesday, May 12, 2021.*

***NOTE:** The canvass may not be conducted until the early voting ballot board has: 1) verified and counted all provisional ballots, if a provisional ballot has been cast in the election, AND 2) counted all timely received ballots cast from addresses outside the United States, if a ballot by mail was provided to a person outside the United States. (Note: Monday, May 3, 2021 is the last day to

receive carrier envelopes placed in the mail by 7:00 p.m. on Election Day from non-military voters who are voting from **within** the United States. Thursday, May 6, 2021 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 7, 2021 is the last day to receive carrier envelopes mailed domestically or overseas from voters who submitted an 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. Monday, May 10, 2021 is the last day for the early voting ballot board to verify and count provisional ballots.) Sections 65.051, 67.003, 86.007(a)(2), 86.007(d)(3) & 101.057 of the Texas Election Code (“Tex. Elec. Code”).

Qualifying For Office:

Canvass Meeting

The canvass must be conducted at an open meeting of the governing body between Tuesday, May 4, 2021 and Wednesday, May 12, 2021. Pursuant to the Code, 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).

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.

***NOTE:** 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 7, 2021). Tex. Loc. Gov't Code § 22.036. However, 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). 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. Also, your source law might require a bond. For example, 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.

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 Recount Procedures 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 complete list.

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.

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 1, 2021 election, pursuant to the [order or ordinance] issued on [date], cancelling the election that was scheduled to be held on May 1, 2021” 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 expect to be leasing county voting equipment in order to ensure the availability of that equipment.

Section 2.002 of the Texas Election Code governs tie votes for officers. 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 (**based on official canvassed results**), a second election to fill the office shall be held. However, before the second election is ordered, the tying candidates may agree to cast lots or withdraw to resolve the tie. Tex. Elec. Code § 2.002. If the tie vote is not resolved by a withdrawal or lot drawing, an automatic recount shall be conducted in accordance with Chapter 216 of the Texas Election Code before the second election is held. If the automatic recount resolves the tie, the second election is not held. If the tie is unresolved following the automatic recount, 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 30th day after the date the automatic recount is completed or the final canvass following the automatic recount is completed, if applicable. For more details, see Section 2.002 and Chapter 216 of the Texas Election Code.

A tie vote in a runoff election (based on official canvassed results) triggers an automatic recount under Chapter 216 of the Texas Election Code. If the result is still tied, the election is resolved by the casting of lots under Section 2.028 of the Texas Election 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 Texas Election Code, which regulates automatic recounts, only applies to candidate elections.

Note about Joint Elections and Contracts for Election Services

The procedures above outline the general rules; however, many entities may be holding joint elections in May (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.

See Election Advisory No. 2020 - 15 – Recount and Canvass Deadlines for the May 1, 2021 Elections for Cities, School Districts, and Other Political Subdivisions.

File Returns with Secretary of State ?

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. The source law for certain elections (such as a sales tax election) might require reporting returns to an agency like the comptroller.

COVID-19 (CORONAVIRUS) CONCERNS ABOUT OATH-TAKING AND RELATED ISSUES

Administering Oath of Office

Election officials have asked about administering the oath of office, given general concerns about social distancing and minimizing face-to-face contact. **We think it is possible to swear someone in to office in a teleconferenced open meeting (such as the canvass or other virtual meeting) if you follow certain procedures.** Please note that entities have various teleconferencing options,

including web-based and telephonic options. We will refer to a “virtual meeting” for all these options.

Presuming the results are canvassed first, the certificate of election will need to be issued, as outlined above. We think it is sufficient if the presiding officer issues the certificate of election; ideally, in a way that can be observed by the officer-elect in the virtual meeting. In other words, what matters is that the certificate of election has been issued (analogous to a diploma), and that the officer-elect knows it has been issued. The certificate can then be mailed or otherwise physically delivered to the officer-elect later. The officer-elect will need to complete and sign the Statement of Elected Officer, and file this with the authority **before** being sworn in. The Statement must be signed, in writing, but need not be notarized. We think the Statement can be prepared, signed, scanned, and then faxed or emailed to the authority. This step can be done before the certificate of election is issued, if this would be helpful. However, the Certificate of Election must be issued and the Statement of Elected Officer must be on file, before the officer-elect can be sworn in.

Once these steps are accomplished, the officer-elect can be sworn in as follows. The oath is traditionally sworn and subscribed to (signed, in writing) before a notary public or other authorized person. However, the constitutional oath of office does not require a written document. Tex. Const. Art. XVI, § 1. The minimum requirement is that a person authorized to administer the oath to the officer-elect do so before witnesses (if there is no hardcopy). In other words, you can use a verbal, traditional “repeat after me” ceremonial format with others (virtually) present. Most entities do not require that the oath be administered at a meeting. However, given the need for witnesses, transparency, and the lack of the usual hardcopy oath, we recommend swearing in at an open meeting. If this occurs at an open meeting, further memorialize the oath in the minutes, in addition to any audio or video recording. For example, in a Type A city, the oath takes place at a meeting, and the office is vacant if the officer was not sworn in by the 30th day after election day. Thus, the date of swearing-in is critical for a Type A city official.

Miscellaneous Attendance Concerns

Even with the option of virtual meetings, there might be issues with sufficient attendance at meetings. As noted above, any two members of the governing body are enough for a quorum for a canvass. Additionally, Section 31.121 of the Texas Election Code provides that any two members of the governing body can act in lieu of the presiding officer to perform a duty placed on the presiding officer by the Election Code (unless outside law provides for a substitute). For example, any two members could act in lieu of the presiding officer to issue the certificate of election.

Generally, our advice is to accomplish as much as possible at the canvassing meeting, so that the newly-elected officers can proceed expeditiously. That said, these are ministerial actions. This means your governing body has to perform them, even if they do so late. As long as the steps are accomplished before taking the oath, the oath may be given at a different, later meeting. Though we advise against a long delay (even under these circumstances), it is not uncommon for new officers (**who do not have a deadline to be sworn in**) to be sworn in at a June meeting. It is also possible, for example, that all the steps except swearing in are accomplished, and the officer-elect decides to proceed with locating someone who can give them the oath later, but before the next meeting. For most entities, once the certificate of election has been issued, the officer-elect can

go to any notary or any other authorized person. If this happens, the officer-elect should immediately advise the governing body. Under the hold over provision, the incumbent (if different) serves until the successor is sworn in. Tex. Const. Art. XVI, § 17.

Statement of Elected Officer Question

As outlined above, the usual sequence is to canvass and issue the certificate of election; then, the officer-elect completes the Statement of Elected Officer before taking the constitutional oath. However, if you are trying to organize things so that you can administer the constitutional oath from a virtual open meeting, you may wish to have the Statement of Elected Officer pre-filed. The Statement is not required to be sworn to; however, it must be signed. Once completed with an original, nondigital, “wet” signature, the completed Statement can be scanned and faxed or emailed. In light of the circumstances, we think a candidate may proceed with completing and pre-filing the Statement to the local election authority before the canvassing meeting.

Authority to Administer Oath

Even with the many options available during this health crisis, you still need someone who is authorized to administer an oath under Texas law. Most of these are outlined in Government Code Chapter 602. Please note that not all of these officials can administer an oath in every situation. For example, a city secretary can administer an oath, but only for matters concerning city business; i.e., a city secretary could swear in city councilmembers, but not members of other governing bodies.

Water Districts

As noted, we do not interpret the Texas Constitution to require that the oath be in writing. However, the Water Code presumes the oath is in writing for purposes of filing duplicate originals of the oath with our office. Please contact our office if you are unable to file such oaths within the prescribed timeframe due to the COVID-19 crisis.

We appreciate you reviewing these materials. If you have any questions, please contact the Elections Division toll-free at 1-800-252-VOTE(8683).

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