
ELECTIONS FOR CITY ATTORNEYS

The outline that follows contains citations and references to various sources of law that provide guidance on how to conduct Texas elections. Generally, all references are to the Texas Election Code, unless otherwise stated. Additionally, the Texas Secretary of State has numerous outlines and advisories that provide details and in-depth analysis on specific election related issues. These additional resources can be found at www.sos.texas.gov/elections.

1. SOURCES OF LAW

A. TEXAS CONSTITUTION

I. SELECTED RELEVANT PROVISIONS

1. Article VI, Section 3. Municipal Elections; qualifications of voters
2. Article XI, Section 5. Cities of more than 5,000 populations; adoption or amendment of charters; taxes debt restrictions.
3. Article XI, Section 11. Term of office exceeding two year in home rule and general law cities; vacancies.
4. Article XVI, Section 17: Officers to serve until successors qualified.
 - a. "Holdover provision"
5. Article XVI, Section 65.

B. TEXAS ELECTION CODE

C. TEXAS ADMINISTRATIVE CODE

- i. Title 1, Part 4, Chapter 81
- ii. <http://info.sos.state.tx.us/pls/pub>

D. ADVISORIES/OPINIONS

- i. Advisories: <http://www.sos.state.tx.us/elections/laws/citylaws.shtml>
- ii. Opinions: <http://www.sos.state.tx.us/elections/elo/index.shtml>

E. OFFICE OF THE ATTORNEY GENERAL OPINIONS

F. OTHER RELEVANT TEXAS STATUTES

- i. Local Government Code
- ii. Government Code
- iii. Code of Criminal Procedure
- iv. Penal Code
- v. Alcoholic Beverage Code

G. HOME RULE CITY CHARTER, IF APPLICABLE.

2. ELECTION OFFICIALS

a. Secretary of State

- i. Chief Election Officer for the State: (Sec. 31.001)
 1. The Secretary of State (SOS) is required by law to have adequate staff to enable the secretary to perform the secretary's duties as the chief election

officer and may assign staff any duties relating to the administration of elections that falls under the secretary's jurisdiction.

ii. Official Forms: (31.002)

1. SOS prescribes design and content of forms necessary for administration of the Election Code (except for Title 15 – Campaign Finance). SOS is required to furnish these forms to the authorities that have administrative duties under this code and other individuals that request copies of these forms. Forms are to be furnished free of charge.
2. SOS has the authority to approve alternative versions of official forms on a case-by-case basis.
3. Any official form that comes in contact with a voter must be printed in Spanish as well as English. Some counties have additional language requirements based on their population. (Chapter 272, Texas Election Code)

iii. Uniformity: (31.003)

1. The SOS shall obtain and maintain uniformity in the application, operation, and interpretation of this code and of the election law outside of this code.
 - a. Written directives and instructions related to and based on the Code (Advisories and Memos).

iv. Assistance and Advice: (31.004)

1. The SOS shall assist and advise all election authorities with regard to the application, operation, and interpretation of the code and of the election laws outside this code.
2. The SOS shall maintain an informational service for answering inquiries of election authorities relating to the administration of the election laws, or the performance of their duties.

v. Voting Rights Hotline: (31.055)

1. 1-800-252-8683.
2. SOS Elections email address: elections@sos.texas.gov

vi. Referral of complaints to Attorney General: (31.006)

1. If there is reasonable cause to suspect criminal conduct occurred, SOS will refer to AGs office along with all pertinent documents.

b. County Election Officials - Administrative

i. County Clerk: The duties of the County Clerk are outlined in the following sections: 31.091-31.100, 31.032, 31.122, 32.113-32.114, 42.037, 51.002, 51.003, 51.004, 66.001, 67.017, 83.002, 64.017, 68.034, 172.118, 172.126, 271.001

1. The County Clerk is responsible for the duties outlined in the sections above ONLY in county elections unless designated those duties by contract or joint election agreement.

ii. Tax-Assessor Collector as Voter Registrar:

1. County Tax Assessor-Collector is the VR unless the County EA or CC is designated VR (12.001). The duties of the VR are outlined in the following sections: 12.001, 13.001-13.145.
 2. VR's office is required to remain open during the hours the polls are required to be open for voting for primary elections or general election in which a statewide office appears on the ballot or any other election held in the county on a uniform election date. (12.004)
 3. VR may establish branch offices within the county for VR activities. (12.005)
 4. VR is required to provide copies of the Statement of Residence form for each election. (63.0011)
 5. Deputy Registrars: (12.006)
 - a. Appointed by VR.
 - b. May not hear or determine a challenge on a person's VR.
 - c. Must meet requirements of qualified voter, but does not have to be a registered voter.
 - d. Must undergo training prescribed by Sec. 13.047, Texas Election Code.
 6. Volunteer Deputy Registrars (Subchapter B, Chapter 12, Texas Election code)
 - a. A volunteer deputy registrar may distribute and accept a voter registration application from new voters and from voters who wish to change or correct information on their voter registration certificate form from any resident of the county.
 - b. Counties may allow VDRs to take SOS on-line training in lieu of in person training. Such VDRs must take in-person exam at VR's office, (**NEW LAW**: SB 142, 84th Legislature)
 - c. Volunteer Deputy Registrar Guide:
<http://www.sos.state.tx.us/elections/pamphlets/deputy.shtml>
- iii. County Elections Administrator: (Subchapter B, Chapter 31, Texas Election Code)
1. Position is created by written order of the Commissioners Court; Must be a qualified voter of the State.
 2. Duties of EA: (31.043)
 - a. Duties and functions of VR
 - b. Duties and functions placed on CC under the Election Code.
 - c. Duties and Functions of EA under the Election Code
 3. Duty to Contract: If requested by a political subdivision or political party, the county EA is required to enter into a contract to furnish election services requested. However, there is no duty to contract for the May election in even numbered years. While the duty to contract is required under the Texas Election Code, the EA has a lot of discretion in the formation of their contract.

NOTE: After an appointment of an EA, when an entry in the Election Code reads "county clerk" it is acceptable to substitute "election administrator" because all duties defined in terms of a county clerk are transferred to the EA.

iv. Local Election Official:

1. The person within the political subdivision that is responsible for the following duties:
 - a. Custodian of Election Records (66.001)
 - i. Municipal Elections = City Secretary
 - ii. Other elections = Secretary of the political subdivision's governing body. If no secretary, governing body's presiding officer.
 - b. Early Voting Clerk
 - i. Municipal Elections = City Secretary (83.002)
 - ii. Other Elections = Authority ordering election appoints EV Clerk.
 - c. Procuring, ordering, and delivering election supplies. (51.003, 51.004)
 - i. Municipal Elections = City Secretary
 - ii. Other Elections = Secretary of the political subdivision's governing body. If no secretary, governing body's presiding officer.
 - d. Preparing Ballots (52.002)
 - i. Municipal Elections = City Secretary
 - ii. Other Elections = Secretary of the political subdivision's governing body. If no secretary, governing body's presiding officer.
 - e. Maintain office Hours before and after election: (31.122)
 - i. Municipal Elections = City Secretary
 - ii. Other Elections = Secretary of the political subdivision's governing body or the authority performing duty of secretary under the Election Code.
 - f. Receive Candidate Applications
 - i. Municipal Elections = City Secretary (143.006)
 - ii. Other Elections = Secretary of the political subdivision's governing body. If no secretary, governing body's presiding officer. (144.004)
 - g. Preparing and Delivering certain reports to SOS
 - i. Precinct by Precinct = Presiding Officer of Canvass Authority (67.017)
 - ii. Partial Manual Count = General Custodian of Election Records (127.201)

NOTE: Some political subdivisions will appoint someone as the “election administrator” of the political subdivision to administer the above-mentioned duties. This “election administrator” is different from a County Election Administrator (EA) who has specific duties outlined in the code.

c. **Election Officials – Early Voting/Election Day**

- i. Early Voting Clerk: (83.001)
 1. Conducts the early voting in each election.

2. Required to keep office open for early voting activities during the hours the polls are required to be open on election date.
3. Same duties and authority with respect to early voting as a presiding election judge has with respect to early voting.
4. Who serves as EV Clerk?
 - a. The County Clerk is the EV Clerk in the general election for state and county officers, elections held at a counties expense, primary elections, elections ordered by the Governor. (83.002)
 - b. The City Secretary is the early voting clerk for elections ordered by an authority of a city. (83.005)
 - c. For political Subdivisions, other than a city or county, the authority ordering the election shall appoint the EV clerk.
 - i. To be eligible for appointment, a person must meet the requirements of a presiding judge, EXCEPT:
 1. Appointee must be a qualified voter of the political subdivision and is not required to be a qualified voter of any other particular territory
 2. If an officer of the political subdivision is a candidate, an appointees status an employee does not make the appointee ineligible for appointment as EV clerk, and
 3. An appointee who is a permanent employee of the political subdivision and a qualified voter of any territory is not required to be a qualified voter of the political subdivision. (83.006)
5. Authority to appoint Deputy Clerks.
 - a. Must meet requirements of presiding election judge.
 - b. If employee of political subdivision, the EV is not required to be qualified voter of the territory holding the election.
 - c. If not employee, must be qualified voter of larger territory, but nothing specific within larger territory.
- ii. Presiding Judge/Alternate Judge: (Chapter 32, Subchapter A, Texas Election Code)
 1. Other Political Subdivisions: The governing body appoints judges either for single election or for a term not to exceed two years. (32.005)
- iii. Election Day Clerks: (Chapter 32, Subchapter B, Texas Election Code)
 1. Appointed by presiding judge.
 2. Number of clerks is set by the authority that appoints election judges.
- iv. Early Voting Ballot Board: (87.002)
 1. Created in each election to process early voting ballot and provisional ballots.
 2. Must consist of a Presiding Judge and at least two other members. Presiding Judge is appointed in the same manner as a presiding election judge.

3. VOTER REGISTRATION

a. Eligibility to Vote (11.001)

- i. A person must be a **qualified voter** on the day the person offers to vote.
- ii. A person must be a resident of the territory covered by the election for the office or measure upon which a person desires to vote, and;
- iii. A person must satisfy all other requirements by law for that election.
- iv. **If a person resides on property located in more than one territory, the person is required to choose which territory the residence of the person is located.**

b. Qualified Voter (11.002)

- i. 18 years of age,
- ii. U.S. Citizen,
- iii. Not determined by a final judgment of a court exercising probate jurisdiction to a totally mentally incapacitated, or partially mentally incapacitated without the right to vote,
- iv. Not finally convicted of a felony. If a person has a felony conviction, they can regain their right to vote when the person's sentence is fully discharged, including any term of incarceration, parole or supervision or completed a period of probation or if the person has been pardoned or released from the resulting disability to vote.
- v. Resident of the State, and;
- vi. Registered voter.

c. Application Required for Registration (13.002)

- i. In writing, signed by the applicant, and
- ii. Submitted by personal delivery, mail, or fax transmission. If submitted by fax, the application must be followed by a hard copy of original application by the fourth day after submission.

d. Registration Certificate (13.144)

- i. Issued by the voter registrar upon registration.
- ii. Renewal certificates are issued on or after November 15, but before December 6 of each odd-numbered year.
- iii. Renewal certificates may only be issued by mail. (14.002)

e. Voter Registration Lists

- i. Generate all lists from TEAM (18.061)
- ii. Official List of Registered Voters "OLRV"
 1. Original List of Registered Voter (18.001)
 2. Supplemental List of Registered votes (18.002)
 3. Registration Correction List (18.003)
 4. Revised Original List (18.004)

f. Application for Disability Exemption (13.002)

- i. In writing, signed by the applicant,
- ii. Includes a copy of the qualification documents.
- iii. Must be submitted by personal delivery, mail, or fax.

4. GENERAL ELECTION INFORMATION

a. Uniform Election Dates –(41.001)

- i. Each general or special election is required to be held on one of the following dates:
 1. First Saturday in May in an odd-numbered year;
 2. First Saturday in May in an even numbered year (for political subdivisions other than a county; OR
 3. First Tuesday after the First Monday in a November.
- ii. EXCEPTIONS:
 1. Runoff election
 2. Elections that result from a court order
 3. Emergency election under Section 41.0011
 4. Election to fill vacancy in the legislature under Section 203.013
 5. **Election held under a statute that expressly provides that the requirement of Subsection (a) does not apply to the election,**
 6. Initial election for the members of the governing body of a newly incorporated city.
- iii. Only a statute can make an exception to the requirement to use uniform election dates. A city charter does not have the authority to do so.

b. Types of Elections

- i. General Election: Election, other than a primary, that occurs at regularly fixed dates.
 1. Examples:
 - a. Presidential Election,
 - b. General Election for State and County Officers,
 - c. Regular Officer Elections for Cities, School Districts, Water Districts, Hospital Districts, Library Districts, etc.
- ii. Special Election: Election that is not a general election or primary election.
 1. Examples:
 - a. Constitutional Amendment Elections,
 - b. Special Election to fill a vacancy,
 - c. Local Option Elections,
 - d. Rollback Elections,
 - e. Bond Elections,
 - f. Petition initiated Elections.

c. Plurality v. Majority (Chapter 2, Texas Election Code)

- i. Plurality: Except as otherwise provided by law, to be elected to public office, a candidate must receive more votes than any other candidate for the office.
- ii. Majority Vote:
 1. Runoff Election: If no candidate received the vote necessary to be elected in an election requiring a majority vote, a runoff election is required. (2.021)
- iii. Elections that Require a Majority Vote:
 1. Primary election (172.003)
 2. Special election to fill vacancy in legislature or Congress (203.003, 204.005, 204.021)

3. Election for an office of a city with a population of 200,000 or more.
4. City that has increased the term of its elected officials to more than two years (Article XI, Section 11)
5. Otherwise provided by law – (Education, Water Code, etc.)

d. **Contracts/Joint Elections**

- i. Joint Election Agreement: If two or more entities are holding an election on the same day in a particular territory, then they may enter into a joint election agreement. (Chapter 271)
- ii. Contract for Election Services: The county election officer may enter into a contact with the governing body of a political subdivision located wholly or partly in the county to perform election services. (31.092)

e. **Electioneering (61.003, 85.036)**

- i. The entity that controls a building may enact reasonable regulations concerning the time, place, and manner of electioneering.

5. PRE-ELECTION PROCEDURES:

a. **Order of Election (3.001)**

i. Election ordered by Governor (3.003)

1. General election for officers of state government, members of U.S. Congress, and electors for president and vice-president.
2. Constitutional amendments
3. Special election to fill a vacancy in the legislature or in Congress.

ii. Elections ordered by Political Subdivisions (3.004)

1. General election for officers of State government: County Judge:
2. General election for city officers in a city with a population of 1.9 million or more: Mayor
3. Other Elections: Governing body of political subdivision for entity holding election.
4. If the law providing for an election of a political subdivision does not designate the authority to order an election, it defaults to the governing body of the political subdivision.

iii. Deadline for Ordering Election (3.005)

1. Other Uniform Election Date (78th day before the election) (NEW LAW: HB 1703, 84th Legislature)
2. All other elections (62nd day before the election)

b. **Candidate Applications**

i. **Candidate Filing Period**

1. Notice of Regular Filing Period
 - a. 30th day before the first day to file. (141.040)
2. City Secretary has responsibility to verify facial validity.
3. City Secretary has authority to administer oath.
4. (NEW LAW: HB 484, 84th Legislature) Candidates are now required to be registered voter of the territory they are seeking office.

5. Special election to fill vacancy deadlines governed by Section 201.054. See calendar for specific calculations.
- c. **Ballot Drawing/Certification (Chapter 52)**
 - i. Authority preparing the ballot (52.002)
 1. City Attorney is responsible for preparing ballot for city elections.
 - ii. Order of parties, offices, names, and Propositions (Subchapter D, Chapter 52)
 - iii. Ballot Drawing (52.094)
 1. Occurs when there are candidates without party affiliation on a ballot.
 2. Authority responsible for having ballot prepared is responsible for drawing.
 - d. **Notice of Election (4.001)**
 - i. Authority responsible for giving notice: (4.002)
 1. City Council in City elections.
 - ii. Method of Giving Notice (4.003)
 1. Publication in a newspaper,
 2. Posting a copy of notice at a public place in each election precinct,
 3. Mailing a copy of the notice to each registered voter of the territory, or
 4. Posting copy of the notice on a bulletin board use for posting notices of meetings of the governing body of the political subdivision.
 5. **REQUIRED:** Entity's own website, if available. (**NEW LAW:** HB 2720, 84th Legislature)
 6. **REQUIRED:** SOS website for primary election and General election for state and county officers (**NEW LAW:** HB 2720, 84th Legislature)

NOTE: In an election ordered by the commissioners court or by an authority of a city or school district, the notice of election must be published in a newspaper in accordance with 4.003(a)(1).

- iii. Contents of Notice: (4.004)
 1. The type and date of the election;
 2. The location of each polling place;
 3. The hours the polls will be open;
 4. The location of the main early voting polling place;
 5. The regular dates and hours for early voting by personal appearance;
 6. The dates and hours of any Saturday or Sunday early voting, if any; and,
 7. The early voting clerk's mailing address.
 8. Early Voting Clerk's email address (**Recommended**)
- e. **Early Voting** (Title 7, Election Code)
 - i. State Law requires EV be conducted in person and by mail.
 - ii. Dates of Early Voting:
 1. General Rule: 17th day to 4th day before Election Day.
 2. Special runoff election for state senator, state representative or primary runoff: begins on the 10th day before the elections and ends on the 4th day.
 3. Uniform Election Date in May and resulting runoff: 12th day to 4th day before election.

- iii. If first day falls on a Saturday, Sunday, or legal holiday, EV begins on the next regular business day. (85.001)
- iv. Application for Ballot by Mail (ABBM)
 - 1. Must submit an application for a ballot by mail (ABBM) no later than the close of regular business on the 11th day. (**NEW LAW** : HB 1927, 84th Legislature)
 - 2. Applications must be submitted to the EV clerk by the following methods:
 - a. Mail
 - b. Common or contract carrier
 - c. Telephone facsimile machine, if available.
 - d. Electronic transmission of scanned application containing an original signature. (**NEW LAW**: HB 1927, 84th Legislature)
 - e. Under 86.0015, a person may submit one ABBM annually in certain conditions. Annual ABBM must now be forwarded to other political subdivisions holding elections. (**NEW LAW**: HB 1927, 84th Legislature)
 - 3. Reasons to Vote by Mail:
 - a. Age (65 years or older)
 - b. Disability
 - c. Outside of the County of Residence during EV and Election Day
 - d. Confinement in jail
- v. Federal Postcard Application (FPCA) (Chapter 101)
 - 1. Used by members of the armed forces/merchant marines and their spouses/dependents, and U.S. citizens temporarily living abroad.
 - 2. Can also serve as a voter registration document.
 - 3. FPCAs must be forwarded to cities and school districts.

6. VOTING

- a. **In Person Voting** (Chapter 63, Texas Election Code)
 - i. Early Voting or Election Day
 - ii. Present Photo identification or exemption listed on VR certificate
 - 1. Texas driver license issued by the Texas Department of Public Safety (DPS)
 - 2. Texas Election Identification Certificate issued by DPS
 - 3. Texas personal identification card issued by DPS
 - 4. Texas concealed handgun license issued by DPS
 - 5. United States military identification card containing the person's photograph
 - 6. United States citizenship certificate containing the person's photograph
 - 7. United States passport
- b. **By Mail** (Chapter 84, 86, Texas Election Code) See Pre-Election Procedures for additional details.
- c. **Curbside Voting** (85.034; 64.009)

- i. If physically unable to enter a polling place, a voter is entitled to ask an election worker to bring a ballot to the entrance of the polling location or to their car curbside.
 - d. **Provisional Voting** (63.011, TAC 81.172-81.176)
 - i. Provisional voting is a process available to a person whose name does not appear on the list of registered voters and who does not present a valid voter registration certificate, or who does not present any form of photo identification at the polls. Provisional voters are qualified and counted after election day by the EVBB.
 - e. **Accessibility Requirements** (Chapter 61.012)
 - i. All polling places in Texas must be accessible. (43.034)
 - ii. A voter is entitled to receive assistance if the voter cannot read/write or the voter has a physical disability that prevents the voter from reading or marking the ballot.
 - iii. Unless certain exemptions apply, each polling place must provide at least one voting station that provides a means for voters with physical disabilities to cast a secret ballot (Sections 61.012 and 61.013, TAC Sections 81.55 and 81.57.)
 - iv. Entities that control public building shall make the building available for use as a polling place in elections located within their territory. (43.031)

7. POST-ELECTION PROCEDURES

- a. **Canvassing Elections** (Chapter 67, Texas Election Code)
 - i. Ministerial duty
 - ii. Local Canvass
- b. **Qualifying for Office**
 - i. Certificate of Election (67.016)
 - 1. After the canvass, the presiding officer of the local canvassing authority prepares the certificate of election for each candidate who is elected to an office for which the official result is determined by that authority's canvass.
 - ii. Statement of Elected Officer (Art XVI, Sec. 1, Tex. Const.)
 - iii. Oath of Office, Chapter 602, Texas Government Code
- c. **Recounts** (Title 13, Election Code)
 - i. The process for verifying the vote count in an election.
 - ii. Candidates can petition for a recount for a limited period of time.
 - iii. Automatic recount in case of a tie
 - iv. Can't recount a recount.
 - v. If there is a change in the vote totals, governing authority must re-canvass the results.
- d. **Contests** (Title 14, Election Code)
 - i. Conducted in District Court.
 - ii. Losing Candidate files suit against the winning candidate.

8. REPORTS

- i. Precinct by Precinct Report [after each election] (67.017)
- ii. Partial Manual Count Report (127.201)
- iii. Annual Voting Systems Report (Subchapter C, Chapter 122)
- iv. Election Assistance Commission Survey

- 9. VOTING SYSTEMS** (Title 8, Election Code)
- a. **Voting System Standards** (122.001)
 - i. **Must be approved by SOS**
 - 1. Initial certification examination (Subchapter B)
 - 2. Modifications to existing system must also be approved (Subchapter C)
 - b. **Acquisition of a Voting System**
 - i. Contract to Acquire voting systems must be approved by SOS (123.035)
 - c. **Adoption of a Voting System**
 - i. Governing body must adopt a system by official action. (123.001)
 - ii. Adoption action must include details about the type of voting system being used and in what capacity it will be used.
 - d. **Types of Systems**
 - i. DRE: Direct Recording Electronic Voting Systems
 - ii. Paper ballots counted with a digital or optical Scanner
 - iii. “Regular Paper Ballots”
 - e. **Testing Requirements**
 - i. Acceptance Testing (129.021)
 - ii. Hardware Diagnostics Test (Sec. 129.022)
 - iii. Testing of Tabulation Equipment/ Logic and Accuracy Testing of Voting System
(Chapter 127, Subchapters C & D)
 - 1. Public Test
 - 2. Test Two (Tabulation Equipment)
 - 3. Test Three (Tabulation Equipment, completed after votes are counted)