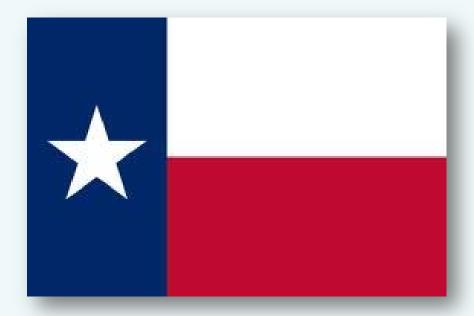
Elections for City Attorneys



Christina Worrell Adkins

Legal Director

Elections Division, Texas Secretary of State
February 2018



Topics Covered

- Resources
- Elections in General
- Candidacy Issues
- Oaths
- Post-Election Duties



RESOURCES



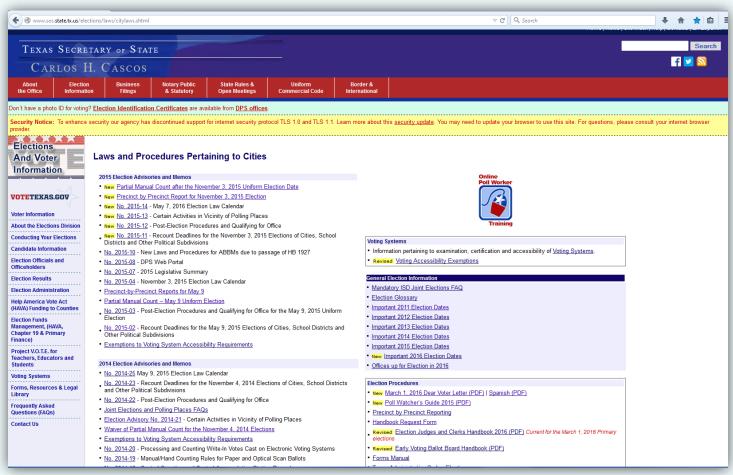
Secretary of State



- Chief Election Officer
- Official Forms
- Uniformity
- Assistance and Advice
- Voting Rights Hotline
- Referral of Criminal Complaints to OAG



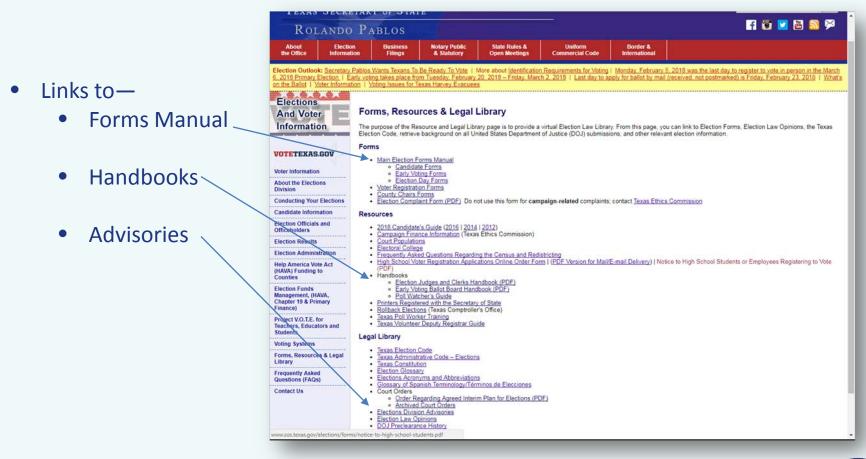
Conducting Your Elections



http://www.sos.state.tx.us/elections/laws/citylaws.shtml

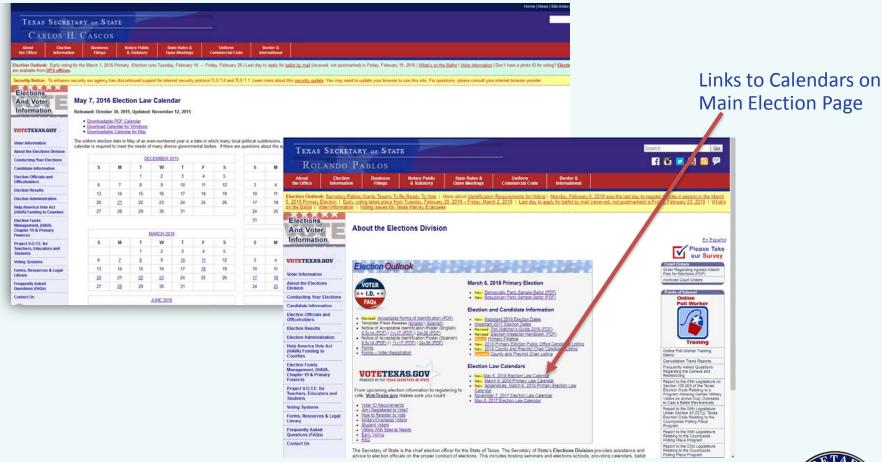


Forms, Resources and Legal Library





Election Law Calendars



https://www.sos.state.tx.us/elections/laws/may-5-election-calendar-2018.shtml



Contacting the SOS

Phone numbers

1.800.252.VOTE (8683) 512.463.5650 Option 3 for receptionist

Or

1.800.252.2216 Option 2 for legal

Physical Location

Rudder Building
1019 Brazos

Austin, Texas 78701

PO BOX 12060 Austin, Texas 78711

elections@sos.texas.gov



ELECTIONS IN GENERAL



Types of Elections

General Elections

- Regular Council Member elections (for full term of office)
- General Election for State and County officers
- Presidential Election

Special Elections

- Special Election to fill a Vacancy
- Tax Ratification Elections (TREs)
- Bond Elections
- Local Option Liquor Elections

Runoff Election



Plurality v. Majority

- Plurality: A candidate must receive more votes than any other candidate for the office.
- Majority: A candidate must receive more than 50% of the total vote.
 - 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)
- Elections that Require a Majority Vote
 - Election for an office of a city with a population of 200,000 or more.
 - City that has increased the term of its elected officials to more than two years (Article XI, Section 11)
 - Otherwise provided by law (Education, Water Code, etc.)



Local Election Officials

- Duties of Local Election Official (City Secretary/City Clerk)
 - Accepting and reviewing candidate applications & certifying candidates for a place on the ballot
 - Early Voting Clerk
 - Procuring, Ordering and Delivering Supplies
 - Preparing Ballots
 - Procuring Polling Places
 - Procuring and Training Election Judges
 - Election Night Duties, including Unofficial Vote Tallies
 - Maintaining Office Hours before and after election
 - Preparing and Delivering certain reports to SOS
 - Custodian of Flection Records
- All of these duties can be contracted away, except duty to accept and review candidate applications, certify candidates for a place on the ballot, and serving as custodian of election records.

Contracts/Joint Elections

Joint Elections

- 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 and share precincts, workers, and/or equipment, etc. (Chapter 271)
- City should be aware that a School District MUST hold joint election with a city (if there is one with overlapping territory) for the regular board member election

Contract for Election Services

 Contract between county election officer and entity holding election for various election services including the leasing of <u>voting system</u> equipment. (31.092)

CANDIDACY



Filing for Public Office- Deadlines

- First Day to File
 - General Elections (Uniform Election Date)
 - 30 days before filing deadline.
 - Notice of Deadline to File Applications for Place on the Ballot
 - Must be Posted 30 days before 1st day to file
- Filing Deadline
 - General Elections (Uniform Date)
 - Regular Candidates:
 - 5:00 pm, 78th day before election day.
 - Write-in Candidate Deadline
 - 5:00 pm, 74th day before election day.
- Applications can be delivered in person, by mail, or fax.

Method of Filing

- Applications can be delivered in person, by mail, or fax.
 - If by mail, must look at time of receipt <u>NOT</u> postmark.
 - Receipt = actual possession of filing authority or agent, or time deposited in the authority's mail box.
 - Can't submit via fax if application requires a filing fee.
 SOS recommends not using fax if application contains petition.
 - E-mail submission is NOT permitted under the Election Code.

Candidate Application

- Application for Place on General Election Ballot (AW 2-21)
- Application for Place on Special Election Ballot (AW 2-22)
- Declaration of Write-in Candidacy (AW 2-23)



Review of Candidate Application

Form, Content, and Procedure

- Review must be completed no later than 5th day after application is received (unless there is a petition).
- Accepting application does not preclude a later determination that there is a deficiency in the application.
- If rejecting, must do so <u>immediately</u> and deliver to candidate <u>written notice of rejection</u>.
- NEW LAW: (SB 44, 2017, RS) Cannot challenge after the day before any ballot by mail is mailed for the election.

Review of Accompanying Petition

Sec. 141.032 REVIEW OF APPLICATION; NOTICE TO CANDIDATE

- Petition is part of application and review should be completed as soon as practicable.
- Deficiency in petition can't be cured with information provided in application.
- Unless the petition is challenged, the authority is only <u>required</u> to review the petition for facial compliance with the applicable requirements as to form, content, and procedure.

Sec. 141.034. LIMITATION ON CHALLENGE OF APPLICATION.

- "Form, content and procedure" requirements may not be challenged after the day before any ballots by mail have been mailed.
- Challenge must state with specific how the application doe not apply.
- Authority's review of challenge is limited to specific items challenged.
 Challenged candidate can file response with the authority.
- This section does not apply to a determination of a candidate's eligibility



Review of Accompanying Petition

Sec. 141.065. AFFIDAVIT OF CIRCULATOR.

- May rely on affidavit of circulator to determine validity of petition.
- A single notarized affidavit by any person who obtained signatures is valid for all signatures gathered by the person if the date of notarization is on or after the date of the last signature obtained by the person.
- In Re Pena found there was insufficient proof that the challenged signatures were not of registered voters

Challenging Petition Contents

- Challenge should be made in writing.
- Challenge must specify each signature challenged and reason for challenge.
- Filing Authority should notify candidate whose petition is challenged, preferably in writing.
- Filing authority considers evidence presented by challenging individual and any response submitted by challenged applicant.
- Deadline to make challenge and for challenge to be decided is day before 1st ballot has been mailed. Challenge made or decided after that date has no legal effect.
 - Challenger who waits until deadline to make the challenge will likely miss the window.

Administration Declaration of Ineligibility

- Eligibility
 - MAY administratively declare candidate ineligible if:
 - Information on candidate application indicates ineligible for office, OR
 - Conclusive public record shows ineligible.

NOTE: There is NO public record that **conclusively** establishes residency.

Candidate must be given written notice of the declaration of ineligibility.



Administrative Declaration of Ineligibility

- Candidate MAY be declared ineligible:
 - By filing authority before early voting in person begins, OR
 - By presiding officer of final canvassing authority after polls close and before certificate of election is issued.
- Candidate must be given written notice of the declaration of ineligibility.

Withdrawal

- To be effective, withdrawal <u>MUST</u> be:
 - In writing, signed, and notarized, AND
 - Timely filed with the filing authority [Sec. 145.092(f) and 145.094(a)(4)].
 - Uniform Election Dates: 5 pm, 71st day before election day (<u>Friday, February 23, 2018</u> for May 5, 2018 election date).
 - Runoff Elections: 5 pm, third day after canvass of main election
 - Other elections: 5 pm, fifth day after application deadline.



Withdrawal

- If withdrawal submitted too late, candidate's name remains on ballot and withdrawal has no effect.
 - EXCEPTION: NEW LAW, HB 1661 (2017), Untimely withdrawal can still remove name from ballot <u>if ballots</u> have not been prepared at the time candidate files withdrawal.
 - May allow cancellation of election if candidate unopposed and other requirements met.

Cancellation

Cancellation outline:

http://www.sos.state.tx.us/elections/laws/cance llation.shtml

Call us!



OATHS



Oaths

- Statement of Officer/Constitutional Oath of Office, (Article XVI, Section 1)
- Statutory Oath of Office (62.003)
- NEW Oath for Early Voting Ballot Board/Central Counting Station (87.006, 127.0015)

Advisory:

http://www.sos.state.tx.us/elections/laws/advisory201

7-10.shtml

Oaths

- Statement of Officer/Constitutional Oath of Office,
 - Texas Attorney General Opinion, <u>KP-140 (PDF)</u>.
 - All presiding judges, alternate judges and early voting clerks must complete the statement of officer and take the constitutional oath of office.
 - Nepotism Implications
- NEW Oath for Early Voting Ballot Board/Central Counting Station (87.006, 127.0015): HB 1735 (85th Legislature, RS, 2017)
 - All members of the Early Voting Ballot Board and the Central Counting Station.

Advisory: http://www.sos.state.tx.us/elections/laws/advisory2017-10.shtml

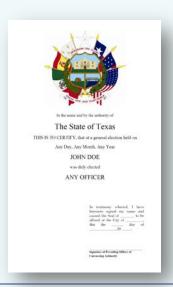


POST-ELECTION PROCEDURES



Post-Election Procedures

- Canvass
- Qualifying for Office
 - Certificate of Election (67.016)
 - Statement of Elected Officer (Art XVI, Sec. 1, Tex. Const.)
 - Oath of Office, Chapter 602, Texas Government Code
 - Filed locally.









Post-Election Procedures

- Recounts (Title 13, Election Code)
 - Petition for a Recount
 - Automatic Recount
 - www.sos.state.tx.us/elections/laws/recounts.shtml
- Election Contests (Title 14, Election Code)
 - Action occurs in district court.
 - Losing candidate files suit against the winning candidate.



Reports to SOS

- Precinct by Precinct Report
- Partial Manual Count
- Annual Voting Systems Report



Websites

www.sos.texas.gov /elections

www.votetexas.gov

elections@sos.texas.gov

