

Canvassing and Post-Election Requirements



Overview

- Canvassing Elections
- Reporting Results
- Partial Manual Counts
- Preserving Records
- Qualifying for Office
 - Certificate of Elections
 - Statement of Elected Officer
 - Oath of Office
 - Bond

Note: Unless otherwise indicated all statutory references are to the Texas Election Code



Canvassing Elections



Canvassing Elections

- The “canvass” – is the official examination of the votes cast in an election
- Unavoidable duty
- Also called a “mandatory,” or “ministerial” duty



Who Conducts the Canvass?

- Political Subdivision's Governing Body – for an election ordered by an authority of a political subdivision (other than a county).
- Commissioners Court – for an election ordered by the governor or by a county authority.

[§ 67.002]



Time for Local Canvass

- Under TEC 67.003, the canvass must occur within a date range after the election, and **after** all ballots that should be counted are counted.
- Remember that some ballots that arrive or are accepted **after** election day should be counted.
- Who sets the time and date of the canvass within the accepted range?
 - the canvassing authority's **presiding officer**.
 - Usually mayor for city council, county judge for commissioners court



TEC 67.003: Date Range for Local Canvass

- The earliest day for a canvass in any election is the **3rd** day after Election Day (if all ballots that could be validly counted are counted)
- Latest day to canvass an election held on the date of the general election for state and county officers (Novembers of an even numbered year): the **14th** day after Election Day.
- (Latest Day to Canvass in November Odd Numbered Years and May Elections: No later than the **11th day** after Election Day. This is **not** the upcoming election.)



Ballots that Arrive after Election Day

- Sec. 67.003: Each local canvassing authority shall canvass . . . not earlier than the **later** of:
 - the third day after Election Day;
 - the date on which the early voting ballot board has verified and counted all provisional ballots, if a provisional ballot has been cast in the election;
 - the date on which all timely received ballots cast from addresses outside of the United States are counted, if a ballot to be voted by mail in the election was provided to a person outside of the United States; and
- Ballots received in defective and correctable carrier envelopes must also be counted.



Upcoming Election: Date for Local Canvass

Nov. 5, 2024

Friday, November 8, 2024

(3rd day after Election Day)*

Through

Tuesday, November 19, 2024

(14th day after Election Day)

*if no outstanding military, overseas, provisional ballots, or ballots contained in defective carrier envelopes that were or could be corrected by voters remain to be counted.



Deadline for Certain Ballots that Arrive After Election Day For November 5, 2024 Election:

- **Tuesday, November 12, 2024** is the deadline for certain ballots to arrive (or be accepted) and be validly counted:
 - ABBMs from applications with overseas mailing addresses.
 - FPCAs, whether from domestic military, overseas military, or overseas voters.
 - Provisional ballots can be accepted up to this date.
 - Voters have up until this date to correct mail ballots with defective carrier envelopes.
- Tuesday, November 12 is the date because Monday Nov. 11, 2024 is Veteran's Day, and the dates get pushed back by a holiday



Deadline for EVBB to Count Ballots

For November 5, 2024 Election:

- **Monday, November 18, 2024 (13th day after Election Day)**
- Early Voting Ballot Board must have processed and counted all:
 - ABBM ballots
 - FPCA ballots
 - Provisional Ballots
 - Ballots in Corrected Carrier Envelopes



Putting It All Together

For November 5, 2024 Election:

- **Monday, Friday, November 8, 2024:** First day to canvass (if no more ballots can be counted)
- **Tuesday, November 12, 2024:** Last day that certain ballots can arrive or be accepted and still be valid
- **Monday, November 18, 2024:** Deadline for EVBB to qualify and count all ballots
- **Tuesday, November 19, 2024:** Last day to canvass



Canvass Meeting

- Procedures for ordering, posting notice & conducting the canvass meeting should comply with Texas Open Meetings Act (Chapter 551, Texas Government Code)
- The canvass is an open meeting



Canvass Meeting

- Two members of the authority constitute a quorum for purposes of canvassing an election [§ 67.004]
- Two or more members of the governing body may perform the Election-Code based duties of the presiding officer if the office is vacant or the presiding officer fails to perform the duty unless:
 - a single member of the governing body designated by law to act in place of the presiding officer performs the duty; or
 - TEC specifies that the duty is to be performed by another authority acting in place of the presiding officer. [§ 31.121]



Canvass Procedure TEC 67.004

- Open returns for each precinct. The canvassing authority must prepare a tabulation stating, for each candidate, and for and against each measure:
 - (1) the total number of votes received in each precinct; and
 - (2) the sum of the precinct totals tabulated under Subdivision (1).
- The tabulation must also include, for each precinct, the total number of voters who cast a ballot for a candidate or for or against a measure in the election.



Political Subdivisions Using Paper Ballots

The precinct returns may be compared with the corresponding tally lists. If a discrepancy is discovered between the vote totals shown on the returns and those shown on the tally list for a precinct, the presiding judge of the precinct shall examine the returns and tally list and make the necessary corrections on the returns.

[§ 67.004]



Political Subdivisions Using Electronic Voting Systems

1. Automatic tabulating equipment produces one set of election returns.
2. Canvassing authority has no tally lists to compare, but they still must prepare a tabulation of the precinct returns.

[§ 67.004]



Canvassing: After Tabulation

- The Presiding Officer shall deliver:
 - the tabulation to the custodian of the local election register unless it is entered directly in the election register. [§ 67.004(e)]
 - The precinct returns, tally lists, and early voting precinct report used in the canvass to the custodian of election records. [§ 67.004(f)]
- The presiding officer of the canvassing authority shall note the completion of the canvass in the minutes or in the recording required by Section 551.021 of the Government Code.



Activities Prohibited At Canvass

- The canvassing authority may **not** open ballot boxes
- May **not** recount ballots
- May **not** compare the poll list with return sheet

See 67.004



Effect of Recount on Canvass

- If a recount is filed, it does **not** stop the canvass meeting. [Sec. 212.033]
 - Canvassing authority must make a note on the canvass that a recount has been requested.
- Recount **does halt** issuance of certificate of election. [212.0331].



Reporting and Posting Requirements

- Precinct-level reports due to SOS
- Reconciliation form for entities using a central counting station
- Internet-posting requirements



Precinct-Level Reports

- Under TEC § 67.017, the county clerk shall prepare a report of the number of votes in each county election precinct for each candidate for each of those offices:
 - United States President and Vice President
 - United States representative
 - state senator
 - state representative
 - a district office
 - a county office
 - precinct office
- **No** report is due to SOS for local offices



CCS Counties: Posting Reconciliation Form

The Texas Election Code requires that the presiding judge of the central counting station attest to a written reconciliation of votes and voters (127.131(f)):

- At the close of tabulation on election day (Form 12-1)
- **Again** after counting late mail/provisional ballots (canvass) (Form 12-2)
- Use SOS forms (current Forms 12-1 and 12-2)
 - <https://www.sos.state.tx.us/elections/forms/pol-sub/12-1f.pdf>
 - <https://www.sos.state.tx.us/elections/forms/pol-sub/12-2f.pdf>
- Post completed forms on your county website and your local website, if any
- Reminder: this is only required if using a central counting station



Posting Requirements: Web Posting

- TEC section 65.016 set outs the web-posting requirements for election results.
 - If a county contracts with a local entity to provide election services, **both** the county and the local entity must post
 - Information should be posted as soon as practicable after the election and must be accessible without having to make more than two selections (clicks) or view more than two network locations after accessing the home page.



Reporting Requirements: Web postings TEC § 65.016

Required information on websites:

- 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.



Partial Manual Count

- Friday, November 8, 2024 (3rd day after Election Day) is the last day to **begin** the PMC for entities using electronic voting systems for the counting of ballots (sec. 127.201)
- We will not cover PMC today, but have two upcoming presentations on it:
 - Thursday, October 17, 2024, 2:00 pm: Preparing for the Partial Manual Count
 - Thursday, October 24, 2024 2:00 pm: Conducting the Partial Manual Count
- And a presentation from seminar available at: <https://www.sos.state.tx.us/elections/forms/conducting-the-partial-manual.pdf>



Voted-Ballot Security

- During the preservation period, the voted ballots must be preserved securely in a locked ballot box inside a locked room for at least 60 days. [§ 66.058]
 - After 60 days, the general custodian of records may transfer voted ballots to another secure container for the remainder of preservation period.



Valid Reasons to Open the Ballot Box

- The ballot box with voted ballots may only be opened to:
 - complete partial manual count, if required;
 - comply with a court order;
 - complete official request for a recount; or
 - after 60 days, transfer the ballots.
- If an authorized entry is made into a ballot box during the preservation period, the box or container shall be relocked or re-secured, and the box and key or secure container returned to the custodian. [§ 66.058]



Voted-Ballot Access: Sec. 1.012

- Images of voted ballots (if maintained) and cast vote records shall be made available for public inspection beginning on the first day after the final canvass of an election is completed.
- On the 61st day after election day, the general custodian of election records shall make the **original** voted ballots available for public inspection.
- The OAG hotline for Public Information Act is (877) OPEN-TEX (673-6839).
- Please see our advisories on voter privacy (Advisory No. 2024-20) and public inspection of ballots (Advisory No. 2024-05)



Tied Votes in a Plurality Race

- When there is a tie after the canvass, such that you cannot determine the winner(s), the tie can be resolved by:
 - sworn withdrawal;
 - casting of lots;
 - automatic recount; or
- There must a second election.



Resolving a Tie Without a Second Election

- The candidates may agree to cast lots (Sec. 2.002(f))
 - The agreement must be in writing and filed with the authority responsible for ordering the election
 - The ordering authority (or its presiding officer, if it's a body) supervises casting of lots
- One candidate may withdraw (Sec. 2.002(g))
 - A tied candidate may withdraw by a sworn written statement filed with the authority responsible for ordering election
 - The remaining candidate is the winner and no casting of lots or second election is held



Resolving a tie without a second election

- If the tie is not resolved through a withdrawal or a casting of lots, then there is an automatic recount.
- If a 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 by sworn withdrawal not later than 5 p.m. of the day after the date the recount is held (Sec. 2.002)



Ordering 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, if applicable) the authority responsible for ordering the first election shall order the second election
- The second election shall be held not earlier than the 20th day or later than the 45th day after the date the automatic recount (or the final canvass following the automatic recount) is completed
- The order of the candidates' names on the second-election ballot is the relative order of names on the original ballot—there is no need to do a new drawing [Sec. 2.002]



Order of Events After 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 take the Oath of Office.
- After taking the Oath of Office, newly sworn officers may assume the duties of their office.



Certificate of Election

- The presiding officer of the local canvassing authority prepares the certificate for each candidate who is elected to an office for which the official result is determined by that authority's canvass. (Sec. 67.016)
- Who is the presiding officer of the canvassing authority?
 - Municipal elections: Mayor
 - County elections: County Judge
 - Primary elections: County Chair
 - All other political subdivisions elections: Board President



Contents of Certificate of Election

- **What does the Certificate of Election contain?**
 - The candidate's name;
 - The office to which the candidate is elected;
 - A statement that the candidate has been elected to an unexpired term, if applicable;
 - The date of election;
 - Signature of the officer preparing the certificate;
 - Any seal used by the officer preparing the certificate to authenticate documents that the officer executes or certifies. [Sec. 67.016]



Certificate of Election

- **Note:** A sample certificate-of-election form is available online. Entities may also use this as a model to make their own.
 - Form 23-1: <https://www.sos.state.tx.us/elections/forms/pol-sub/23-1f.pdf>
- We recommend that the presiding officer issue the Certificate of Election **at** the canvass meeting.



Type A Cities

- Under Sec. 22.006 of the Local Government Code, a newly elected municipal officer of a Type A city may exercise the duties of office beginning on the **fifth** day after the date of the election, excluding Sundays.



Certificate of Elections: Cancelled Elections

Nov. 5, 2024 Election

- Note that under Sec. 2.053(e), the certificate of election “shall be issued to each candidate in the same manner and at the same time as provided for a candidate elected at the election.”
- So for cancelled elections, the first day candidates can receive the certificate of election and take office is the first possible canvass day, Friday, November 8, 2024 (with a few exceptions, such as Type-A cities)



Statement of Officer

- Before an elected (or appointed) officer may assume the duties of the office, the officer must first file a Statement of Officer with the official records of the governing body. [Tex. Const. Art. XVI, § 1].
- Statement of Officer: form 23-3
 - <https://www.sos.state.tx.us/elections/forms/pol-sub/23-3f.pdf>
- Filing Authority:
 - For district and state officers: Secretary of State
 - For county and precinct offices: County Clerk
 - For city officers: City Secretary
 - For all other elections: Custodian of Election Records



Oath of Office

- **All** elected or appointed officers shall take the Oath of Office before they begin their duties. [Tex. Const. Art. XVI, § 1]
- Who can administer the oath? A partial list:
 - A judge, clerk, or commissioner of a court of record; justice of the peace, or clerk of a justice court;
 - The secretary or clerk of a municipality in a matter pertaining to the official business of the municipality;
 - A notary public;
 - A member of the legislature or a retired legislator;
 - A judge, retired judge, or clerk of municipal court.
- Full list is in Chapter 602 of the Government Code



Oath of Office: Water Districts

- **NOTE:** Special procedures apply to a newly elected director of a water district governed by Chapters 36 or 49 of the Texas Water Code. A duplicate original of the oath 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).



Warning for Type A Cities

- In a Type A city, the office is vacant if the officer is not sworn in by the 30th day after election day. Thus, timely swearing in is critical for a Type A city official (§22.007, Local Government Code)



Bond

- If a bond is required, the bond **must** be executed before the officer assumes his or her duties.
 - **Water Districts:** Officers must execute a bond for \$10,000 payable to the district. (Water Code, Sec. 49.055(c)).
 - **Type C municipalities:** Mayor and Commissioners must execute a bond for \$3,000 payable to the municipality. (Loc. Gov't Code, Sec. 24.024).
 - Section 22.072 of the Local Government Code states that **Type A cities** have authority to require a bond.



Holdover

- Until the new officers are qualified, the old members of the governing body hold over and continue to perform the duties of their office.
[Tex. Const. Art. XVI, § 17].



Questions?

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