

Cancellation of an Election

February 2022 Webinar
Secretary of State – Elections Division



Statutory Authority

The Texas Election Code requires the authority ordering an election to have specific statutory authority in order to cancel that election.

Tex. Elec. Code Sec. 2.082



CITIES, SCHOOLS, OTHER POLITICAL SUBDIVISIONS



General Election vs. Special Election

- For cancellation purposes, a special election of a political subdivision is considered to be a separate election from a general election held the same day by the same political subdivision.
 - **Example:** Measure Election
 - **Example:** Special Election to Fill a Vacancy

Tex. Elec. Code Sec. 2.051



Statutory Authority for Cancellation

- Section 2.051 allows a political subdivision to cancel an election if:
 - Members of the governing body are elected from territorial units (i.e. single-member districts); AND
 - Each candidate is unopposed and no at-large opposed race appears on the ballot
- Section 2.051 allows cancellation in a particular territorial unit even if there is an opposed race in another territorial unit (i.e. another single-member district)



At-Large vs. Single Member

- **Pure At-Large**
 - The candidates run as one group on the ballot
 - All the qualified voters in the political subdivision may vote in the race
- **At-Large by Place**
 - The candidates run in separate groups on the ballot, for each position or place
 - All the qualified voters in the political subdivision may vote in the race
- **Single Member**
 - The political subdivision is divided into districts and the candidates run in their district of residence
 - Only voters within that district may vote on the race that pertains to their district



Pure at-Large

- The candidates run as one group on the ballot.
- All qualified voters in the political subdivision may vote in the race.
- The top “vote-getters” win the number of positions available.
- Generally, **pure at-large is the “default” method of election** for cities and school districts, and it takes an action by the governing body (or a court) to change method of election.
 - Special Law Districts have method of election set by enacting legislation.



Pure at-Large

Ballot:

City of Bedrock General Election	
City Council Vote for none, one, two, or three	
<input type="radio"/>	Barney
<input type="radio"/>	Fred
<input type="radio"/>	Wilma
<input type="radio"/>	Bam Bam
<input type="radio"/>	Dino

Results:

Election Results May 7, 2022	
Candidates	Votes
Barney	61
Fred	122
Wilma	133
Bam Bam	71
Dino	85
TOTAL	472



At-Large By Place/Position

- The candidates run in separate groups on the ballot for each available position.
- All voters within political subdivision get to vote in all races.
- It generally takes an act of the governing body or a court order to move to this type of method of election.



At-Large By Place/Position

Ballot

Emerald Independent School District General Election	
Board of Trustees, Place 2	
<input type="radio"/>	Dorothy
<input type="radio"/>	Toto
<input type="radio"/>	Scarecrow
Board of Trustees, Place 5	
<input type="radio"/>	Tin Man
<input type="radio"/>	Lion

Results

Election Results May 7, 2022	
Place 2	
Candidates	Votes
Dorothy	57
Toto	122
Scarecrow	84
TOTAL	263
Place 5	
Candidates	Votes
Tin Man	171
Lion	85
TOTAL	256



Single Member District

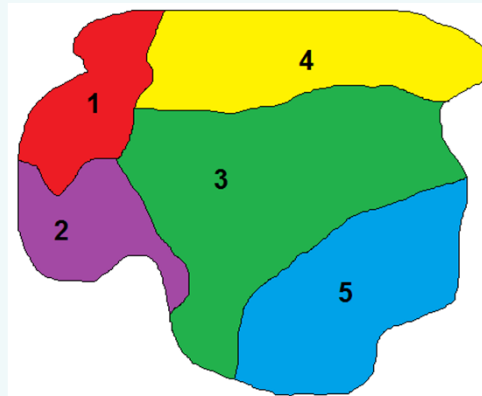
- The territory of the political subdivision is divided into districts, and candidates run in their district of residence.
- ONLY voters within the district can vote.
- It generally takes an act of the governing body or a court order to move to this type of method of election.



Single Member District

Example:

- City of Hoo
 - Home Rule City: 5 Single Member Districts
 - District 1 and District 3 positions expire in 2022
 - 3 people submit applications for District 1
 - 2 people submit applications for District 3



Single Member District

Ballot

City of Hoo General Election	
District 1	
<input type="radio"/>	Poe
<input type="radio"/>	O'Keefe
<input type="radio"/>	Byrd
District 3	
<input type="radio"/>	Marshburn
<input type="radio"/>	Melvin

Results

Election Results May 7, 2022	
District 1	
Candidates	Votes
Poe	125
O'Keefe	85
Byrd	175
TOTAL	385
District 3	
Candidates	Votes
Marshburn	101
Melvin	192
TOTAL	293



Example #1

- A school district has six trustees that are elected at large but hold specific place numbers. Places 1, 2 and 4 are currently up for election. There are two candidates for places 1 and 2 and only one candidate for place 4. May any race be cancelled in the election?



NO RACE MAY BE CANCELLED IN THIS ELECTION

Remember that to cancel an election, there must be no at-large opposed races on the ballot. Here, Place 1 and Place 2 are opposed races and are both at-large.



Example #2

- A groundwater district has five directors. One director is elected at-large and the remaining four directors are elected from their respective commissioners precincts. Directors 1 and 3 are up for election. The at-large director position is not up for election. There are two candidates for Director 1 and one candidate for Director 3. May any race be cancelled in the election?



YES. THE RACE FOR DIRECTOR 3 MAY BE CANCELLED.

There is no at-large race and two single-member district races on the ballot. Only one single-member district race (Director 1) is opposed. The unopposed race (Director 3) may be cancelled in this instance. Remember that the Code allows a single-member district race to be cancelled even if there is an opposed race in another single-member district.

**Example #3**

- In the same groundwater district at next year's election, the at-large director position and Director 2 and Director 4 are on the ballot. The at-large director position is opposed while the other two director positions are unopposed. May any race be cancelled in the election?



NO RACE MAY BE CANCELLED IN THIS ELECTION

The at-large director race is opposed, which means that no unopposed races may be cancelled in the election.



Example # 4

- In a city general election, the mayor is opposed; the other at-large councilmembers are unopposed. May any race be cancelled in the election?



NO RACE MAY BE CANCELLED IN THIS ELECTION

Nothing can be cancelled. All the at-large candidates must appear on the ballot, because the at-large race for mayor is opposed.



Statutory Authority for Cancellation

- A political subdivision may cancel an election on a measure if it has been determined that the action to be authorized by the election may not be taken, regardless of the outcome of the election.

Tex. Elec. Code Sec. 2.081



Certification of Unopposed Candidate Status

- Section 145.098 allows a candidate to withdraw from an election after the statutory deadline for withdrawal if:
 - The candidate files a valid withdrawal request (except for its untimeliness);
 - Ballots for the election have not been prepared; and
 - If using a voting system, public notice of the Logic and Accuracy Test has not been published.
- This law gives the authority responsible for preparing the ballot the discretion to accept the untimely withdrawal and omit the candidate's name from the ballot (and cancel the election if otherwise able to do so), as long as ballots have not been prepared for the election AND if using a voting system, public notice of the Logic and Accuracy Test has not been published.

Tex. Elec. Code Sec. 145.098



Certification of Unopposed Candidate Status

- The authority responsible for having the ballot prepared in an election shall certify, in writing, that a candidate is unopposed in an election for office.
- Such certification must be made to the governing body of the political subdivision as soon as possible after the filing deadlines for applications for place on the ballot and write-in candidate declarations.

Tex. Elec. Code Sec. 2.052



Action Following Certification

- Upon receiving certification that candidates are unopposed, the governing body of the political subdivision must, by order or ordinance, declare such unopposed candidates elected.
- If the candidates are declared elected, the election is not held. The governing body must post a copy of the order or ordinance declaring the unopposed candidates elected at each polling place that would have been used in the election.

Tex. Elec. Code Sec. 2.053



Action Following Certification

NEW LAW: Senate Bill 1 (2021)

Although cancellation is not automatic in the sense that you **must** have your governing body meet in an open meeting, effective December 2, 2021, if a **proper certification** of unopposed status is presented by the filing authority to the governing body, the governing body **must** cancel the election.

Tex. Elec. Code Sec. 2.053



Action Following Certification

It is imperative that the law previously addressed be properly followed. The governing body must have authority to cancel the election. To recap, if there is an opposed at-large race within a general election or within a special election, **you cannot cancel the election. The unopposed candidates appear on the ballot in the traditional manner, and must receive at least one vote to win.**



Action Following Certification

- If a separate election is being held at the same time as a cancelled election, the unopposed candidates must be listed on the ballot for that separate election under the heading "Unopposed Candidates Declared Elected". The candidates shall be grouped in the same relative order prescribed for the ballot generally. No votes are cast in connection with the candidates.

Tex. Elec. Code Section 2.053



Action Following Certification

- Unopposed candidates who are declared elected are issued certificates of election in the same manner as candidates who are elected.
- Unopposed candidates who are declared elected must qualify for office in the same manner as candidates who are elected.
 - An unopposed candidate who is declared elected may not qualify for office until after the regular canvass takes place (or would have taken place).



Coercion

- A person may not intimidate or coerce another person in order to influence or attempt to influence the other person to not file an application for place on the ballot or declaration of write-in candidacy or to withdraw an application or declaration.
- This is a Class A misdemeanor unless the intimidation or coercion is a threat to commit a felony, then it is a third degree felony.

Tex. Elec. Code Section 141.101



Important Considerations

- Remember that the cancellation procedure only applies to a political subdivision with a write-in deadline for candidates.
 - If the law is silent with respect to write-in candidates for your election, there is no write-in deadline and your elections may not be cancelled.



Important Considerations

- **Can an election with only at-large races ever be cancelled?**
 - Yes. If an at-large election has the same number of candidates as the number of offices to be filled, that election may be cancelled.



Important Considerations

- An election must be cancelled by official action of the governing body ordering the election after certification of unopposed candidate status has been made.
 - This means at a meeting of the governing body subject to open meetings law (e.g. 72 hours notice)



Important Considerations

- Remember that candidates who have been declared elected in a cancelled election may not qualify for or take office until after the election would have been canvassed if it had taken place.
 - For Type A general law municipalities, this also means officers must wait until the 6th day after the election to qualify and take office.



Important Considerations

- If an election is cancelled because no one filed for office rather (in contrast to all offices being unopposed), vacancies are declared during the statutory canvassing period and are filled in accordance with the political subdivision's vacancy filling procedure.



PARTY OFFICES



Cancellation for Precinct Chair

- Section 171.0221 of the Texas Election Code provides that if only one candidate's name is to be placed on the ballot for the office of **precinct chair**, the election for that office is not held, and the unopposed candidate, if otherwise eligible, shall be declared elected to the office.
- NOTE: There is NO method to declare an unopposed candidate for **county chair** elected.

[Sec. 171.0221]



Certification

- The county chair shall prepare a document that shall be posted that states "Pursuant to Section 171.0221, Election Code, insert name of unopposed candidate for precinct chair), if otherwise eligible, shall be declared elected to the office of precinct chair at the time of the local canvass."

[Sec. 171.0221]



Action Following Certification

- The county chair or county election officer contracted to hold the election shall distribute copies of the document to the presiding judge of the election precinct with the other election supplies. An election officer shall post the document in one or more locations in the polling place where it can be read by persons waiting to vote.
- The county chair shall post the name of a candidate declared elected at a public place in the election precinct.

[Sec. 171.0221]



GENERAL ELECTION FOR STATE AND COUNTY OFFICERS



Cancellation of Election - Counties

- Section 2.056 requires the certifying authority declare a candidate elected to an office of the state or county government if, were the election held, only the votes cast for that candidate in the election for that office may be counted. **This only applies to the general election for state and county officers.**
- NOTE: Candidates for public office may NOT be declared nominated if they are unopposed in the primary election.

[Sec. 2.056]

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Certification

- The certifying authority must certify, in writing, that a candidate is unopposed in an election for office. The certifying authority means:
 - The secretary of state, for a statewide or district office; or
 - The county clerk, for a county or precinct office

[Sec. 2.056]

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Action Following Certification

- If an unopposed candidate is declared elected by the certifying authority, the election for that office is not held and the name of the candidate is listed on the ballot as elected to the office.
- Offices and names of any candidate declared elected shall be listed separately after the contested races in the election under the heading “Unopposed Candidates Declared Elected”.
 - The candidates shall be grouped according to their respective political party affiliations or status as independents in the same relative order prescribed for the ballot generally.
 - No votes are cast in connection with the candidates.

[Sec. 2.056]

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After the Cancellation

- The certifying authority shall issue certificates of election to an unopposed candidate declared elected in the same manner as candidates who are elected at the election.
- An unopposed candidate who is declared elected may not qualify for office until after the regular canvass takes place (or would have taken place).

[Sec. 2.056]

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Resources

- **Elections Forms Index**
<https://www.sos.state.tx.us/elections/forms/pol-sub/index.shtml#photo-id>
- **Conducting Your Elections Page**
<https://www.sos.texas.gov/elections/laws/local-laws.shtml>
- **Texas Election Code**
<https://statutes.capitol.texas.gov/>
- **Cancellation of Election Outline**
<https://www.sos.texas.gov/elections/laws/cancellation.shtml>



Questions?

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