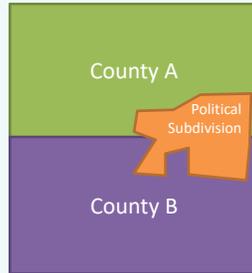


# Contracting and Joint Elections for the May 7, 2022 Election

Including entities in more than one county



# Contracting and Joint Elections



## Three Ways to Have an Election

- A city, school district, or other political subdivision can have an election:
  - By itself
  - By contracting for election services with the county (Ch. 31); or
  - By holding a joint election (Ch. 271).



## Practical Considerations

- The local entity must decide whether they have the time, manpower, and expertise to conduct their own election.
  - **Consider:** Equipment (obtaining, programming, testing); ordering ballots; hiring and training workers (election day, early voting ballot board, central counting); publishing notice of election; tabulating results and canvassing election; etc.



## Countywide

- Is the political subdivision located in any county that is part of the countywide polling place program?
  - If yes, **and the county is using countywide for the election**, the entity should consider contracting or conducting a joint election with the county
    - Political subdivisions holding joint elections with a countywide county must have a presence at ALL countywide polling locations – this includes polling locations outside the footprint of the political subdivision
  - Note for Entity Runoffs – if a political subdivision holds an election jointly with a countywide county, the entity is not required to use countywide for the runoff and may instead use only the polling places located in the territory of the political subdivision



## Contract for Election Services

### Ch. 31

- A ***contract for election services*** is a contract between the political subdivision holding an election in the county and the **county election officer** for specific election services that the county election officer would perform in a countywide election (equipment, ballot programming, etc.).



## Joint Election Agreement

Ch. 271

- A **joint election agreement** is when two political subdivisions, who are holding elections on the same day in the same county, jointly hold their elections in common precincts. The joint election agreement must be approved by the governing bodies of all participating political subdivisions.



## Lease for Equipment

Ch. 123

- A political subdivision may lease election equipment from the county or may purchase or lease the equipment from any other source. (Sec. 123.032)



TEXAS SECRETARY OF STATE

## Contracting vs. Joint Election

	Contract for Services	Joint Election Agreement
<b>Parties</b>	County, Political Subdivision	Two or more political subdivisions (including county)
<b>Approval</b>	<ul style="list-style-type: none"> <li>• County election officer <b>and</b> subdivision governing body.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Both</b> governing bodies.</li> </ul>
<b>Duty</b>	<ul style="list-style-type: none"> <li>• <b>Yes</b>, if elections administrator, <b>except</b> in May of even-numbered year.</li> </ul>	<ul style="list-style-type: none"> <li>• Education Code requires school districts to have joint elections.</li> </ul>

3/17/2022
Texas Secretary of State Elections Division
9

TEXAS SECRETARY OF STATE

## Nontransferable Functions

- An election services contract may NOT change:
  - The authority with whom applications of candidates for a place on a ballot are filed;
  - The authority with whom documents are filed under Title 15;
  - The political subdivision’s requirement to maintain office hours
    - NEW LAW (HB 3107) - Political subdivisions, including cities, may contract with the county to be the custodian of voted ballots.

[Sec. 31.096]

3/17/2022
Texas Secretary of State Elections Division
10

## Contract for Election Services



## Parties to the Contract

*Contract for Election Services*

- The **county election officer**:
  - County Elections Administrator
  - County Tax Assessor-Collector (or deputy)
  - County Clerk (or deputy)
- The governing body of a political subdivision located wholly or partly in the county.

Sec. 31.092



## Duty to Contract

### *Contract for Election Services*

- If the county election officer is:
  - County Clerk
  - County Tax Assessor-Collector
- Then there is generally no duty to contract in the Code.

Sec. 31.093

3/17/2022

Texas Secretary of State Elections Division

13



## Duty to Contract

### *Contract for Election Services*

- If it's the **County Elections Administrator**:
  - They must contract to 'furnish services requested.'
  - Except:
    - Election on May uniform date in even-numbered year.
    - Training of election judges and clerks.

Secs. 31.093, 41.001(d)

3/17/2022

Texas Secretary of State Elections Division

14



## Approval of Contract

### *Contract for Election Services*

- Does **not** need to be submitted to the commissioners court for approval.
- The political subdivision will need to check its own laws/rules regarding contract approval.

Sec. 31.092

3/17/2022

Texas Secretary of State Elections Division

15



## Contents of Contract

### *Contract for Election Services*

- The contract may provide for the county election officer to perform or to supervise the performance of **any or all** of the duties that the officer performs in a countywide election ordered by the commissioners court.
  - This may include testing and programming of election equipment as well as reporting results to SOS.

Sec. 31.094

3/17/2022

Texas Secretary of State Elections Division

16



## Compensation in Contract

### *Contract for Election Services*

- The contract must include a cost schedule that is agreed to by both parties
- The county may only use funds for expenses **directly attributable** to the contract.
- Any advance funds over the actual expenses must be **refunded** to the political subdivision.

Sec. 31.100

3/17/2022

Texas Secretary of State Elections Division

17



## Compensation in Contract

### *Contract for Election Services*

- The **county election officer** cannot:
  - Charge for duties that must be performed by law.
  - Be personally paid for services under contract.
- The **county election officer** can:
  - Charge up to 10% of the total amount of the contract for general supervision of the election.

Sec. 31.100

3/17/2022

Texas Secretary of State Elections Division

18



## Joint Election Agreement



## Parties to the Contract

### *Joint Election Agreement*

- Two or more political subdivisions can enter into a joint election agreement if the election:
  - Is held on the **same day**.
  - Is held in **all or part of same county**.
- The joint election only covers precincts that can be served by **common polling places**.

Sec. 271.002



## Parties to the Contract

### *Joint Election Agreement*

- A political subdivision and county may hold a joint election if the county is holding an election that:
  - Is held on the **same day**.
  - Is held in **all or part of same county**.
- The joint election only covers precincts that can be served by **common polling places**.

Sec. 271.002



## Duty to Contract

### *Joint Election Agreement*

- **School district** must have joint election with:
  - **City** in the district electing governing members;
  - **County** electing state and county officers;
  - **Public junior college district** that is electing board members, if school is in district;
  - **Hospital district** electing board members, possibly.

Education Code 11.0581



## Approval of Contract

### *Joint Election Agreement*

- The terms of a joint election agreement must be stated in an **order, resolution, or other official action** adopted by the governing body of each participating political subdivision.

Sec. 271.002



## Contents of Contract

### *Joint Election Agreement*

- **Polling places:**
  - County polling place can be used as common polling place.
  - An entity may use a common polling place located outside their own territory if adequately and conveniently serves affected voters **and** facilitates orderly election.
- **Election officers:**
  - If they are eligible to serve as election workers for **one** entity, they can serve **all** participating entities.

Secs. 271.003, 271.005



## Contents of Contract

### *Joint Election Agreement*

- **Early voting:** Decide whether doing it jointly.
  - If jointly:
    - Appoint **one** early voting clerk as **joint** early voting clerk.
    - Must keep normal early voting locations and hours.
    - Regular early voting clerks must get **apps** for mail ballot.
    - Other mail voting procedures can be done by **either**:
      - The entity's regular early voting clerk; or
      - The joint early voting clerk.

Sec. 271.006

3/17/2022

Texas Secretary of State Elections Division

25



## Contents of Contract

### *Joint Election Agreement*

- **Early voting:** Decide whether doing it jointly.
  - If **not** jointly:
    - Normal early voting laws apply.
    - Except: Early voting at common polling places.

Sec. 271.006

3/17/2022

Texas Secretary of State Elections Division

26



## Contents of Contract

### *Joint Election Agreement*

- **Ballots:**
  - Can have a joint ballot.
  - But have separate ballots available to avoid ineligible voting or facilitate provisional voting.
- **Form and records:**
  - Can combine in any manner convenient and adequate to record and report results of election.

Secs. 271.007, 271.008, 271.009

3/17/2022

Texas Secretary of State Elections Division

27



## Compensation in Contract

### *Joint Election Agreement*

- The expenses of a joint election are **allocated as provided** by the joint election agreement.

Sec. 271.004

3/17/2022

Texas Secretary of State Elections Division

28



## Elections for Entities in More than One County



## Different Ways The Election Can be Handled

- 1. The political subdivision conducts its own election**
- 2. The political subdivision contracts or conducts the election jointly with one county**
- 3. The political subdivision contracts or conducts the election jointly with each county**



Whatever you decide...let the  
counties know!



## Who is the Early Voting Clerk?

- **If the political subdivision is running the election then the early voting clerk is:**
  - Cities: City secretary [Sec. 83.005]
  - Other political subdivisions: the person appointed by the authority ordering the election [Sec. 83.006]
- **If the political subdivision contracts or conducts the election jointly with one county:**
  - Appoint **one** early voting clerk as joint early voting clerk.
  - Regular early voting clerks must continue accepting applications for ballot by mail.
- **If the political subdivision contracts or conducts the election jointly with each county:**
  - An early voting clerk must be appointed for each joint agreement in which the entities have agreed to run early voting together
  - Regular early voting clerks must continue accepting applications for ballot by mail.



## Voter Registration

- **If the political subdivision is running the election:**
  - Must gather a list of registered voters in the territory from each county in which the political subdivision is wholly or partly located
- **If the political subdivision contracts or conducts the election jointly with one county:**
  - The early voting clerk will have to obtain a list of registered voters from the county that is not involved in conducting early voting for the political subdivision, so that the clerk has the entire list of registered voters in the political subdivision, from both County A and County B [Sec. 18.001]
- **If the political subdivision contracts or conducts the election jointly with each county:**
  - Each county would maintain its own list of registered voters, sign-in sheets, ballots, early voting rosters, etc., for its portion of the election



## Notice of Election

- The entity that orders an election **MUST** deliver the notice of election to the county clerk/elections administrator and voter registrar of each county in which the political subdivision is located **not later than the 60<sup>th</sup> day before election day.**
- Section 4.003 requires that counties post on the county's website the notice and list of polling locations of ANY political subdivision that delivers their notice to the county under Section 4.008.
  - **This is regardless of whether the county is contracting with the entity!**



## Notice of Election

Election Notice **must** state:

- The type and date of the election;
- The location of the main early voting polling place, **including the street address, room number, and building name. The notice must designate which location is the main early voting polling place;**
- The location of each polling place, **including the street address, room number, and building name;**
- The hours the polls will be open;
- The regular dates and hours for early voting by personal appearance;
- The dates and hours of any Saturday or Sunday early voting;
- The early voting clerk's official mailing address or street address at which the clerk may receive delivery by common or contract carrier, if different, **phone number, e-mail address, and the Internet website**, if the early voting clerk has an Internet website;
- We **recommend** that the information regarding branch early voting locations be included as part of your notice; and
- Any other information required by other law.

Additionally, the notice **must** be posted on your website!

[Sec. 4.004]

3/17/2022

Texas Secretary of State Elections Division

35



## Notice of Election

- Cities and other political subdivisions **MUST** include the days and hours of any extended weekday or weekend early voting in the original order and notice of election
  - NOTE – If the entity is contracting with the county or conducting a joint election with the county, and the county orders extended weekday or weekend early voting after the deadline to order an election, then the entity may amend the order and notice of election to reflect the county's voting hours.

3/17/2022

Texas Secretary of State Elections Division

36



## Notice of Election

If a political subdivision is located in a county that is part of the Countywide Polling Place Program the Notice of Election needs to, ***at minimum***, include a list of polling places located in the footprint of the territory and a link to where voters can find a complete list



## Election Workers – Early Voting

- **If the political subdivision is the early voting clerk:**
  - The early voting clerk may appoint deputy early voting clerks that meet the eligibility requirements for a presiding judge
    - The person must be a qualified voter of the territory covered by the election, unless
    - If the person is a permanent employee of the authority holding the election, then they must be a qualified voter of any territory [Sec. 83.032 and 83.033]
- **If the political subdivision contracts or conducts the election jointly with a county also conducting a county election:**
  - If the county is the early voting clerk then the county may appoint permanent deputies as deputy early voting clerks. In addition to permanent deputy early voting clerks, the County Clerk/EA or City Secretary may appoint temporary early voting clerks that meet the eligibility requirements for a presiding judge, except that:
    - The person must be a qualified voter of the city, if appointed by City Secretary; or county if appointed by County Clerk/EA; but
    - If the person is a permanent employee, they must only be a qualified voter of any territory
  - November 2022 – county must use the list procedure under Section 85.009



## Election Workers – Election Day

- **If the political subdivision is running the election:**
  - Presiding Judge – must be a qualified voter of the election precinct they are working
    - If unable to locate an eligible qualified voter of the precinct may use a person that meets the qualifications for an election clerk
  - Election Clerk – must be a qualified voter of the political subdivision
- **If the political subdivision contracts or conducts the election jointly with a county also conducting a county election:**
  - The joint election agreement must address how the appointments of election precinct presiding and alternate judges will be made.
  - May\* and November 2022 – county must use list procedure under Section 32.002
    - \* Constitutional Amendment election

3/17/2022

Texas Secretary of State Elections Division

39



## Polling Locations – Early Voting Main Early Voting Polling Place

- **If the political subdivision is running the election then:**
  - The authority appointing the early voting clerk shall designate the location of the main early voting polling place
  - Cities – main early voting polling place must be located in any room in the building that houses the main business office of the city secretary
- **If the political subdivision contracts or conducts the election jointly with one county:**
  - Joint early voting: If the county is acting as the early voting clerk then the main early voting polling place would be the county election office.
  - No joint early voting: The authority appointing the early voting clerk shall designate the location of the main early voting polling place
- **If the political subdivision contracts or conducts the election jointly with each county:**
  - Joint early voting: If the county is acting as the early voting clerk then the main early voting polling place would be the county election office.
    - Will have more than one main early voting polling place
  - No joint early voting: The authority appointing the early voting clerk shall designate the location of the main early voting polling place

3/17/2022

Texas Secretary of State Elections Division

40



## Polling Locations – Early Voting

- In May elections, local entities generally have the authority to decide where to place each of their early voting locations

[Sec. 85.010]



## Polling Locations – Early Voting Temporary Branch Polling Places

- Entities in a county with a population of **100,000 or more**
  - In an election in which the territory served by the early voting clerk is situated in more than one county, if the sum of the populations of the counties is 100,000 or more
  - Early voting at any temporary branch polling place **MUST** be conducted on the same days that voting is required to be conducted at the main early voting polling place and **MUST** remain open for at least **eight** hours each day
    - Exception: Political subdivision other than city or county - if the territory has fewer than 1,000 registered voters, the temporary branch polling place(s) must be open for at least **three** hours each day
- Entities in a county with a population **less than 100,000**
  - In an election in which the territory served by the early voting clerk is situated in more than one county, if the sum of the populations of the counties is less than 100,000
  - Early voting at any temporary branch polling place may be conducted on any days and during any hours of the period for early voting by personal appearance
  - Voting at a temporary branch polling place must be conducted on at least **two** consecutive business days and for at least **eight** consecutive hours on each of those days

[Secs. 85.064 and 85.065]



## Polling Locations – Election Day

- **If the political subdivision is running the election:**
  - May Election – must have a polling place in each election day precinct established by the authority of the political subdivision [Sec. 42.062]
    - A political subdivision may establish only one election precinct if they choose and the polling place would adequately serve the voters
      - Best practice - a voter should not have to drive more than 25 miles to get to a polling place
  - November Election – political subdivision must use county election day precincts and have a polling place in each precinct [Sec. 42.0621]

3/17/2022

Texas Secretary of State Elections Division

43



## Polling Locations – Election Day

- **If the political subdivision contracts or conducts the election jointly with one county:**
  - The early voting clerk would serve the entirety of the political subdivision
    - May Election - a voter could go to any voting site run by County A, regardless of whether that site is physically located in County A or County B, and regardless of whether the voter is registered in County A or County B, as long as the individual is a registered voter of the political subdivision
    - November Election – a voter could only vote in County B, and County A would have to establish a polling place in County B
- **If the political subdivision contracts or conducts the election jointly with each county :**
  - Voter may only vote on the political subdivision's ballot in the county in which the voter is registered (County A voter = County A only)

3/17/2022

Texas Secretary of State Elections Division

44



## Voting Equipment

- As a general rule, a county or a political subdivision **MUST** provide **at least one** accessible voting machine in each early voting and election day polling place [Sec. 61.012]
- However, for all elections in which a federal office is NOT on the ballot, a county or a political subdivision located within a county with a population less than 20,000 may qualify for an exemption
  - Deadline is 90 days before the election
    - Deadline for May 2022 election was February 7, 2022

For more information please see our [2021-02 Advisory](#)



## Voting Equipment

- **If the political subdivision is running the election:**
  - A political subdivision may lease election equipment from the county or may purchase or lease the equipment from any other source. [Sec. 123.032]
    - If purchasing equipment the contract must be approved by our office
- **If the political subdivision contracts or conducts the election jointly with one county:**
  - Assuming County A has enough voting system equipment to cover such an expanded territory
    - May - County A could set up in County B, if needed to best serve voters
    - November – County A would **need** to set up voting equipment in County B polling locations
- **If the political subdivision contracts or conducts the election jointly with each county:**
  - Each county would set up equipment at polling locations



## Early Voting Ballot Board

- **If the political subdivision is running the election:**
  - The political subdivision would establish its own EVBB to qualify and count mail ballots
- **If the political subdivision contracts or conducts the election jointly with one county:**
  - Joint early voting: The county's EVBB would qualify (and count if applicable) all mail ballots for the political subdivision
  - No joint early voting: the political subdivision would establish its own EVBB to qualify and count mail ballots
- **If the political subdivision contracts or conducts the election jointly with each county:**
  - Joint early voting: Each county's EVBB would qualify (and count if applicable) mail ballots for the portion of the political subdivision located in their county
  - No joint early voting: the political subdivision would establish its own EVBB to qualify and count mail ballots

3/17/2022

Texas Secretary of State Elections Division

47



## Early Voting Roster

- Best practice for entities:
  - **If not contracting with the county** – the early voting roster must be posted on the entity's website
  - **If contracting with a county** – the early voting roster must be posted on the county website and the entity should provide a link to that list on the entity's website.

3/17/2022

Texas Secretary of State Elections Division

48



## Election Results

- **NEW LAW:** A county that holds an election or provides election services for an election for a public entity must post certain information on their website.
- A city or independent school district that holds an election and maintains an Internet website **MUST** also post certain information on its website related to election results even if the county is posting such information.
  - Information should be posted **as soon as practicable** after the election; and
  - **MUST** be accessible without having to make more than two selections or view more than two network locations after accessing the home page of the county, city or school district, whichever is applicable (two click rule)

[Sec. 65.016]

3/17/2022

Texas Secretary of State Elections Division

49



## Election Results

- **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.

[Sec. 65.016]

3/17/2022

Texas Secretary of State Elections Division

50



## Canvassing

- The canvass must be conducted at an open meeting of the governing body.
- The political subdivision **MUST** canvass their election
  - The county cannot canvass an election for a political subdivision even if the political subdivision contracts or conducts the election jointly with one or more county(s)
  - Exception: unless the joint election agreement designates a joint canvassing authority [Sec. 271.011]



## Records Retention

- **If the political subdivision is running the election:**
  - The secretary of the political subdivision is the general custodian of election records and would retain records in accordance with the retention schedule [Sec. 66.001]
- **If the political subdivision contracts or conducts the election jointly with one county:**
  - Can have a joint custodian, therefore county can retain voted ballots and other election records
  - Election results would remain with the political subdivision
  - Candidate applications would remain with the political subdivision
- **If the political subdivision contracts or conducts the election jointly with each county:**
  - Can have a joint custodian, therefore county can retain voted ballots and other election records
  - Election results would remain with the political subdivision
  - Candidate applications would remain with the political subdivision



## Partial Manual Count

- **If the political subdivision is the general custodian of election records:**
  - The political subdivision is responsible for completing the partial manual count
- **If the political subdivision contracts or conducts the election jointly with a county also conducting a county election:**
  - The partial manual count conducted by the county can serve as the partial manual count for the political subdivision
    - No need to count the same ballots twice

See most recent Partial Manual Count email/advisory for details!



## Any Questions?

[Elections@sos.texas.gov](mailto:Elections@sos.texas.gov)

