

Bond Elections & VATREs: Extra Special Elections

Texas Secretary of State
36th Annual Election Law Seminar
for Cities, Schools, and Other Political Subdivisions

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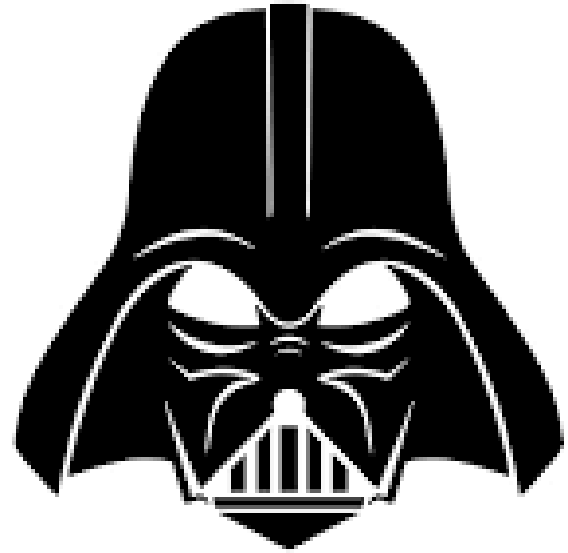
Nice To Meet You



What's In A Name?



Call me Rose



DARTH
VADER

Call me vat-tree

Agenda

- Common themes for bond elections and VATREs:
 - Ethics
 - Measures versus propositions
 - Notice generally
- Bond elections and voter-approval tax rate elections (VATREs):
 - Background
 - Calling the election
 - Notice of election
- Q&A if time permits

Glossary

CSO	City, School, Other Political Subdivision
EC	Texas Election Code
Ed. C	Texas Education Code
GC	Texas Government Code
SD	Texas Special District Local Laws Code
TAC	Texas Administrative Code
TC	Texas Tax Code
Tex. Const.	Texas Constitution
USC	United States Code
WC	Texas Water Code





Everything is subject to legislative action, but 2025 legislation may impact this topic.

Elections Involving Taxes Are Particularly Sensitive



No Political Advertising Once The Election Is Ordered

- Officers or employees **cannot** spend public resources on political advertising.
 - Resources include time, copiers, computers, phones, etc.
- Information is ok, but any subjective words can be construed as advocacy.
 - Beware tone and *emphasis!*
 - Pictures and graphics may be inappropriate. Such as: 
 - Slogans created for the election are usually inappropriate.
- Texas Ethics Commission 

Sources: Tex. Const. art. III, § 51, § 52(a); EC § 255.003; Ed. C § 11.169.

When Do We Need The Ballot Language?

When a special election is “called” (that is, ordered):

- The order/ordinance must contain at least one measure.
- The order/ordinance should also contain at least one proposition.

Sources: EC § 3.006 (requires the “measure” but see the relationship to “proposition”); authorizing law for the election at issue (for example, EC § 3.006 (“debt obligation orders”)); see also SOS Forms 1-7 to 1-9.

Measures Versus Propositions

- A “measure” is the legal question submitted to the voters.
- A “proposition” is the summary of the measure that appears on the ballot.

Sources: EC § 1.005(12 & 15).

More About Propositions

- The proposition is a single statement *unless* otherwise provided by law.
- The wording is discretionary *unless* otherwise provided by law.
- Each proposition is assigned a unique *letter* with the CSO's name.
- The CSO has discretion to list multiple measures/propositions in the order it prefers.
- If a concurrent general election is cancelled, then the unopposed candidates must be listed under the heading “unopposed candidates declared elected.”
- Propositions should:
 - Contain the measure’s “chief features,” showing its “character and purpose.”
 - Be “formal and sure.”
 - Capture the measure’s “essence.”

Sources: EC § 52.072, § 52.095, § 2.053; *Dacus v. Parker*, 466 S.W.3d 820 (Tex. 2015).

Bond Elections & Closely Related



Background

Most Public Securities Do *Not* Require Elections

Ad Valorem Tax-Backed Securities

- General Obligation Bonds (GOs)*
- Certificates of Obligation (COs)**
- Tax Notes
- Refunding Bonds

Revenue-Backed Securities

- Revenue Bonds
- Certificates of Obligation
- Anticipation Notes
- Revenue Refunding Bonds

Compare the asterisks with the next slide.

But Some Do

* GOs require an election.

- If a bond measure fails, COs generally cannot issue for “the same purpose” for the next 3 years.



** COs might require an election.

- 1st of 2 published notices appear at least 45 days before issuance.
- 5% of qualified voters can submit a petition before issuance.
- If the governing body wants to use COs, then the authorizing election is conducted like a bond election.
 - Abandon the project.
 - Use another financing method.
 - Order a bond election.

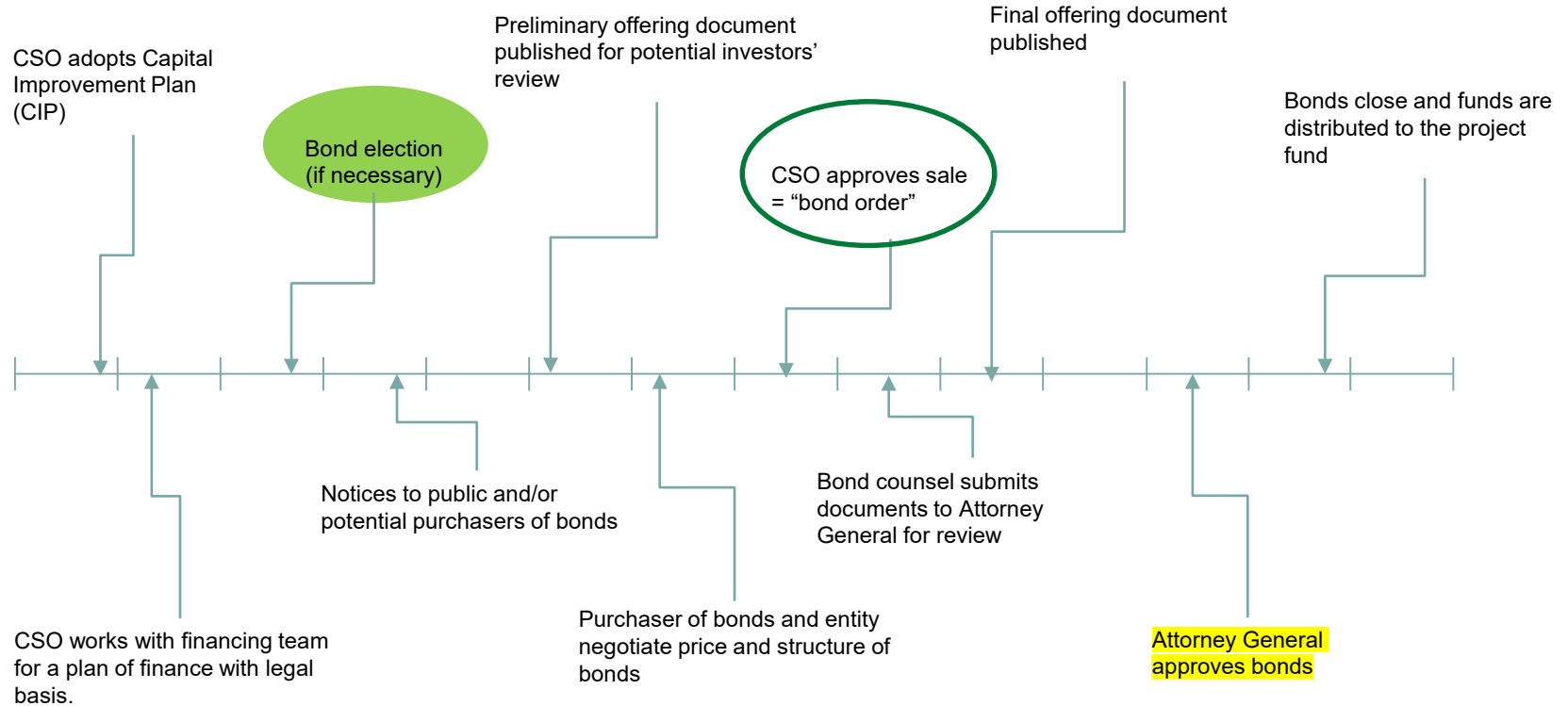
Sources: LGC § 271.049; GC § 1251.001, § 271.047.

What Are GOs and COs?



- They're promissory notes like a mortgage or car loan.
- Most governmental bonds are issued on a tax-exempt basis.
 - Therefore, the bondholder does not pay tax on interest income.
 - This perk is the main reason investors buy them.

Timeline For Issuing Bonds

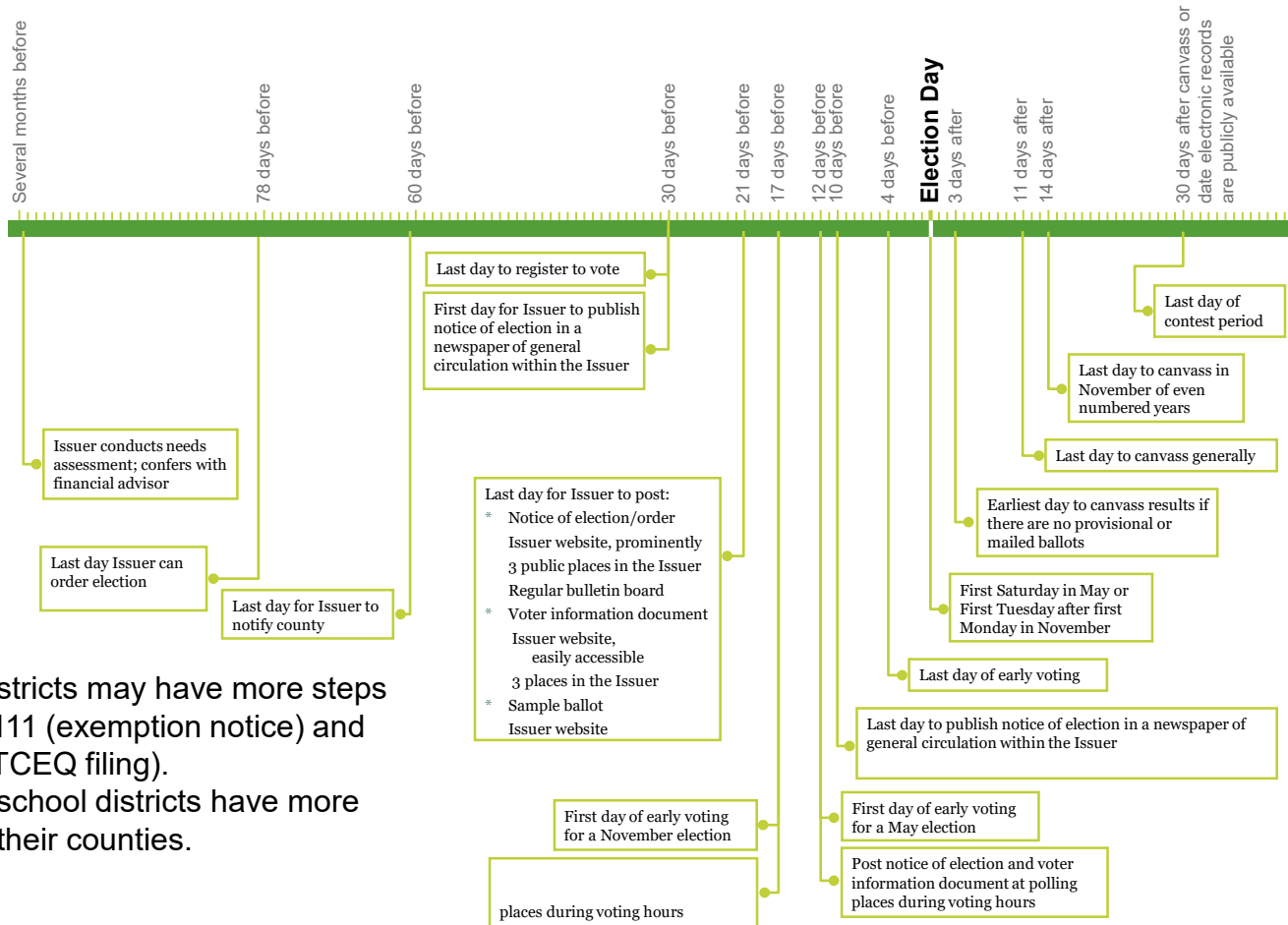


The Texas Attorney General Grades The Papers

- Confirmation the election was properly ordered and canvassed.
- Confirmation the election was properly noticed:
 - Affidavit or certificate of posting by the CSO.
 - Affidavit of publication from the newspaper with tear sheet.
 - Affidavit or certificate of posting by the county.
- Special districts:
 - Proof of creation and boundaries.
 - TCEQ approvals.
- Surprise requirements:
 - Crisp seals.
 - Blue ink.

Sources: GC § 1202.003, § 1202.004 (fee); 1 TAC ch. 53.

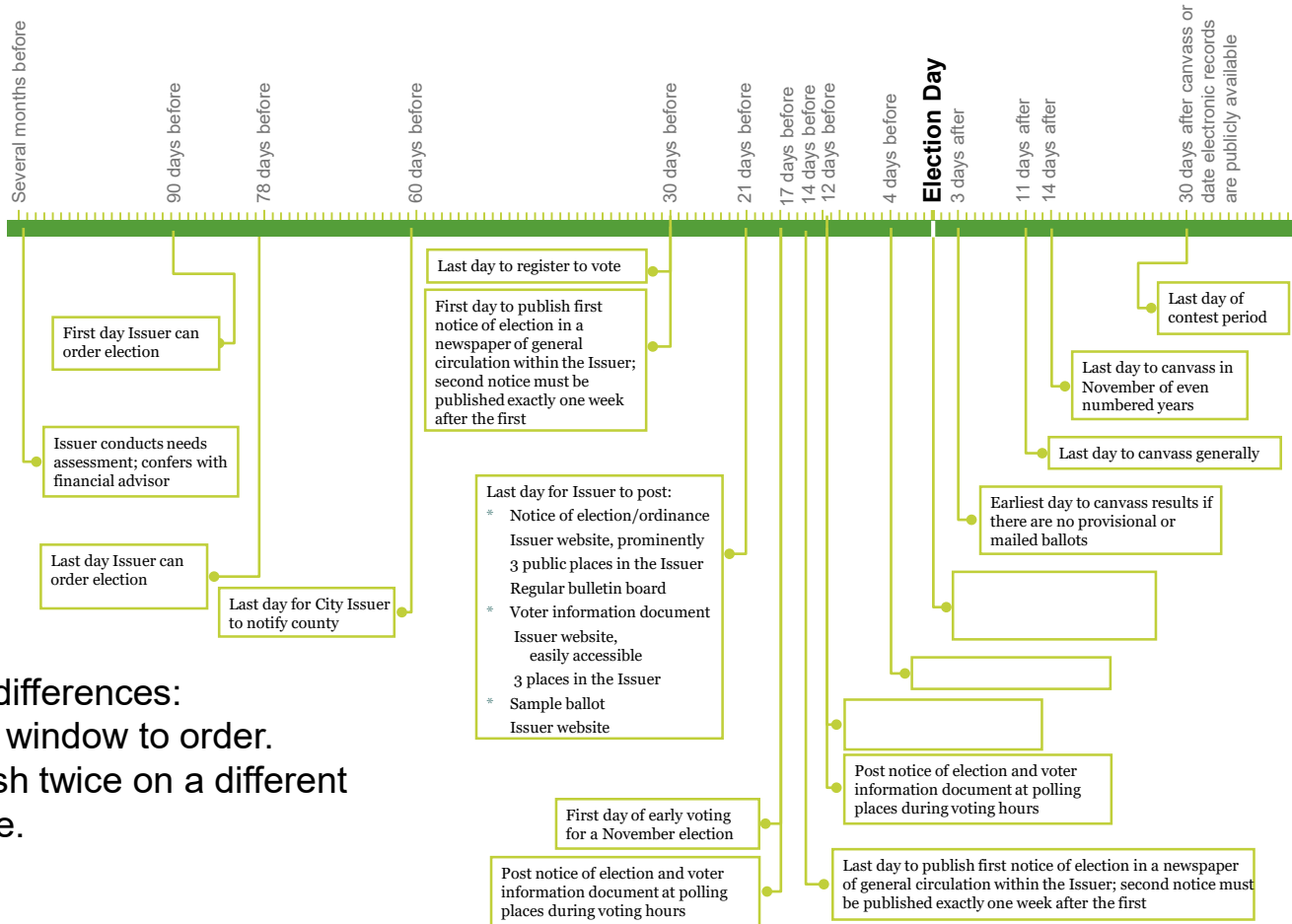
Bond Election Process For Schools & Special Districts*



*Special districts may have more steps (WC § 49.111 (exemption notice) and § 49.054 (TCEQ filing).

*Common school districts have more steps with their counties.



Bond Election Process For Cities & Counties*



*Main differences:
Short window to order.
Publish twice on a different timeline.

Ordering A Bond Election

The “Call” Deadline May Not Be Simple

- The deadline to order a special election is not later than 78 days before a uniform election day.
 - Bond elections may occur on *either* the May or November uniform date, regardless of when the CSO conducts its general election (note May versus November differences). 
 - There is no waiting period between failed bond elections. 
 - For some entities, there is no “start date.”
- But there is a “start date” for cities and counties resulting in a tight “call window”:
 - Not more than 90 days or less than 78 days before election day.
 - Ensure all readings occur before the deadline *if* needed; you can skip multiple readings.
- Special districts may have prerequisites before the call:
 - Engineering report (common for districts controlled by the Water Code).

Sources: EC § 3.005(b), § 3.002; GC § 1251.003(c), § 1201.028; WC § 49.106.

Regular Contents Of Election Orders/Ordinances

- Date of the election
- Measure(s) to be voted on
- “Any other” required elements:
 - Early voting clerk’s contact information
 - Location of the main early voting place
 - Dates and hours of early voting

Sources: EC § 3.006, § 83.010, § 85.004, § 85.007.

Contents Of “Debt Obligation” Orders/Ordinances

For bond elections and elections authorizing COs, include the following financial information, which overlaps with the “voter information document.”

- Ballot *proposition* (see sample next slide)
- Purpose of the authorization (statutory)
- Amount of debt to be authorized
- Taxes sufficient to pay the principal and interest will be imposed
- Estimated tax rate *or* the maximum interest rate
- Maximum maturity (not to exceed 40 years)
- Outstanding principal (as of the date of the order)
- Outstanding interest (as of the date of the order)
- Debt service tax rate (as of the date of the order) per \$100 valuation of taxable property

Bond Measures Generally

- Consult the authorizing law
 - Bonds cannot finance everything
 - Generally, no statutorily required language
 - Usually formatted as a question
- One purpose = one measure = one proposition
 - The measure is the “contract with the voters”
 - Where to go if bond proceeds are left over

Bond Propositions Generally

- Ballots printed “for” or “against” (not yes/no)
- Starting with: “The issuance of bonds”
- Amount to be authorized
- “Plain language description” / “general description”
- Taxes sufficient to pay the principal and interest will be imposed.
- Don’t forget *Dacus v. Parker* (chief features of the measure).

Sources: GC §151.005, § 1251.052 (2 versions: SB 30 / HB 477).

Measures/Propositions For ISDs (Not Colleges)

- One measure/proposition for “general” school purposes:
 - School buildings
 - Land
 - Buses (including retrofitting school buses with safety equipment)
- Some purposes require separate measures/propositions:
 - Stadium with seating of 1000 or more
 - Natatorium
 - Recreational facility “other than a gym, playground, or play area” (that is, athletics)
 - Performing arts facility
 - Teacher housing
 - Technology other than “school security” or “integral to the construction” of a building
- Post 2019 second sentence:
 - THIS IS A PROPERTY TAX INCREASE.

Sample Measure & Proposition

Shall the City Council of the City of Luxury, Texas be authorized to issue and sell one or more series of general obligation bonds of the City in the aggregate principal amount of not more than \$10,000,000 for the purpose of designing, acquiring, constructing, renovating, improving, upgrading, updating, and equipping City street, curb, gutter, and sidewalk improvements, demolition, repair, and rebuilding of existing streets, completing necessary or incidental utility relocation and drainage in connection with the foregoing and the purchase of land, easements, rights-of-way, and other real property interests necessary therefor or incidental thereto, with priority given to ABC Street and Main Avenue, such bonds to mature serially or otherwise (not more than 40 years from their date) in accordance with law; and any issue or series of said bonds to bear interest at such rate or rates (fixed, floating, variable, or otherwise) as may be determined within the discretion of the City Council, provided that such rate of interest shall not exceed the maximum rate per annum authorized by law at the time of the issuance of any issue or series of said bonds; and shall the City Council of the City be authorized to levy and pledge, and cause to be assessed and collected, annual ad valorem taxes, within the limitations prescribed by law, on all taxable property in said City sufficient to pay the annual interest and to provide a sinking fund to pay the bonds at maturity and the cost of any credit agreements executed in connection with the bonds?

The issuance of bonds in the amount of \$10,000,000 for streets and the levying of taxes sufficient to pay the principal of and interest on the bonds.

ISDs: THIS IS A PROPERTY TAX INCREASE.



Contents Of Orders For Special Districts

Generally, the same as other entities.

But exceptions exist, such as:

- Summary of an engineering report (particularly for entities under the Water Code).
- Presiding judge for each polling place.
 - For example, Palo Duro Water District.
- Alternate judge for each polling place.
 - For example, South Randall County Hospital District.
- Presiding officers.
 - For example, Yoakum Hospital District.

Sources: WC § 49.106; SD § 8509.0304, § 1100.253, § 1117.253.

Additional Contents:

Why is bond counsel making this so long?

- Contracting methods, if any
- Ballot type (paper, electronic)
- Counting method (central count or not)
- Appointment of election officials (early voting ballot board, etc.)
- Boiler plate:
 - Texas law applies
 - Open meetings satisfied
 - Amending authority (important if county polling details change)
- “Voter Information Document”

Sources: 1 TAC § 53.41, § 53.61.

Voter Information Document

- For **each** proposition **if** there are 250+ registered voters in the CSO when the election is ordered (usually everyone but new districts governed by the Water Code).
- **Table** with:
 - Principal to be authorized
 - Estimated interest
 - Estimated combined principal and interest to pay in full
 - Principal of “all” outstanding debt obligations calculated on the date the election is called
 - Estimated interest on “all” outstanding debt obligations
 - Estimated combined principal and interest required to pay on time and in full all outstanding debt
 - Estimated tax impact on a homestead valued at \$100,000 with assumptions explained:
 - The amortization period
 - Changes in estimated future appraised values
 - Assumed interest rate on the proposed debt
 - Any other information the CSO considers relevant or necessary

Source: GC § 1251.052 (HB 477).

Notice For A Bond Election

Contents Of A Notice Of Bond Election

- A bond election notice may look almost exactly like the order/ordinance.
 - Bond counsel is juggling the EC, GC, TAC, etc.
 - It's simpler (and safer) to treat all forms of notice the same way.
- Contents:
 - Nature and date of the election
 - Proposition
 - Location of each election day and main early voting place
 - Hours these polls will be open
 - Contact information for the early voting clerk

Sources: EC § 4.004, § 83.010, § 85.004, § 85.007; GC § 1251.003; 1 TAC chapter 53,
SOS Forms 1-13 & 1016.

County Notice Is More Important Than Ever

- Deadline is no later than 60 days before election day.
- Sent by mail, fax, or email to:
 - County clerk and voter registrar of each county the CSO is in, or
 - The elections administrator.
- Dates, hours, and places of early voting (will this information be available?).
- County must post to its website at least 21 days before election day.
 - Who is saving the screen shot required by the Attorney General?

Sources: EC § 4.008, § 4.003(b).

Post At Least 3 Things In Areas The CSO Controls

Not later than 21 days before election day through the day *after* election day:

1. Notice of election in all required languages:
 - On the bulletin board used to post meeting notices of the governing body;
 - “Prominently” on the CSO’s website (who is saving a screen shot for the Attorney General?);
 - In three additional public places (do you have any?).
 2. Sample ballot in all required languages on the CSO’s website (who is saving a screen shot for the attorney general?).
 3. “Voter Information Document” if applicable and not included in the notice or order/ordinance:
 - In three public places;
 - “Easily accessible” on the CSO’s website: (who is saving a screen shot for the Attorney General?).
- Election order: belts and suspenders.
 - Any home-rule city charter requirements? Special districts?

Sources: EC § 4.003; GC § 1251.003, § 1251.052.

Posting At Polling Places During Voting Hours

1. Notice of election in all required languages.
 2. “Voter Information Document” if applicable and not included in the notice.
- Is the CSO running its own election?
If so, document compliance.
 - Is the CSO contracting with its county to run its election?
If so, offer to supply these items in the number and format the county prefers.
 - Special districts (especially water districts) contracting with a county:
Coordinate any voter requirements (such as affidavits for confirmation elections).

Sources: EC § 4.003; GC § 1251.003; WC § 49.1025..

Another Way To Look At Posting Notice Of Election

Location (deadline)	Election Code § 4.003(f) “debt obligation election order” see also § 85.007	Government Code § 1251.003 “substantial copy” of election order/ordinance
Website (at least 21 days before election day)	✓ “prominently” plus sample ballot & “notice of election”	†
3 public places (at least 21 days before election day)	✓	✓
Polling places (during voting hours)	✓	✓
Bulletin board where meetings are usually posted (at least 21 days before election day)		✓

† Government Code § 1251.052 requires the voter information document (VID), when applicable, to be posted in the same places as the “debt obligation election order” and to be “easily accessible” on the web. This chart presumes the VID is incorporated into the election order/ordinance and the notice of election.

Publish Notice Of Election In All Required Languages

- When?
 - Cities and Counties:
 - On the same day in two consecutive weeks.
 - First publication not more than 30 days or less than 14 days before the election.
 - Any home-rule charter requirements?
 - Schools and Water Districts:
 - Not more than 30 days or less than 10 days before the election.
 - Special Districts:
 - Might be more than once on a different timeline, so harmonize with the Election Code.
- Where?
 - In a newspaper of general circulation.



Sources: EC 4.003, GC § 1251.003.

An Electronic Paper Isn't Enough

- Objective criteria for a newspaper of general circulation:
 - Not less than 25% general interest items
 - Published at least once a week
 - Published regularly for at least 12 months (missed no more than twice)
 - Second-class postal matter = periodicals
- Subjective criteria:
 - More than a de minimis number of subscribers
 - Diverse subscribers
- Tip: In the election order, identify a hard copy newspaper and find that it satisfies the above criteria.



Sources: EC § 4.003(a)(1); GC § 2051.044, § 2051.049, 1251.003(d)(2); AG Op. JC-0223 (2000).


Canvassing Tips



- Proceed as you normally would.
- Water Districts:
 - Election results must be filed with the county clerk and TCEQ.
- Special Districts:
 - A supermajority (often 2/3) may be needed for passage of the bond measure.
 - For example, Liberty County Municipal Management District No. 1 (SD § 3795.201)
 - Election results may need to be filed with the county clerk.
 - For example, Wood County Central Hospital District (SD § 3795.201)

Sources: WC § 49.455, 49.102.

VATREs (formerly, a TRE)

A hand is shown from the right side of the frame, holding a white ballot paper and inserting it into a slot on top of a grey ballot box. The background is a blurred bokeh of colorful lights in shades of purple, blue, and yellow.

A kind of
referendum
to repeal an
adopted tax
rate.

Background

Senate Bill 2 (86th Leg. 2019) = Texas Property Tax Reform and Transparency Act

- Primarily amended Chapter 26 of the Tax Code and Chapter 49 of the Water Code
 - Changed the property tax appraisal process
 - Changed the CSO procedure for adopting a property tax rate
- Introduced new terminology
- Transformed elections (making non-ISD elections more like ISDs):
 - Mandatory elections replace petition-driven elections for non-ISDs, but
 - Petition elections survive in limited circumstances for non-ISDs.



Terminology

Old

- Effective tax rate
- Effective maintenance and operations tax rate
- Rollback tax rate

New

- No-new-revenue tax rate
- No-new-revenue maintenance and operations tax rate
- Voter-approval tax rate

Basic Idea

- If a governing body adopts a tax rate that exceeds the voter-approval tax rate (VATR), it triggers an election for the uniform date in NOVEMBER.
- See the Comptroller forms for required truth in taxation notices.
- See the Comptroller forms for calculating the VATR.
 - Different growth rates apply to different entities.
 - Different components of the calculation apply to different entities.

Communicate & Plan For Any Post-Election Actions

- It's a good idea to keep the tax assessor-collector informed.
 - That office may hold tax bills to save costs.
 - Election results may require refunds if bills have gone out.
- If the measure fails, then the tax rate is limited to the voter-approval tax rate.
 - Automatic “fall back” for non-ISDs.
 - ISDs will need to pass a new tax rate.
 - Unlike the canvass (quorum of 2), you'll need a regular quorum.
 - No need to republish truth in taxation notices.

Sources: Tax § 26.07 (non-ISD elections), § 26.08 (ISD elections).

Ordering A VATRE

When To Order The VATRE

- After adopting a tax rate that exceeds the voter-approval tax rate.
- Order an election no later than 78 days before uniform November election date.
 - Include a measure.
 - Include statutory ballot language (see next slide).
 - Don't forget the election date.
 - Beware of the differences between May and November elections if the CSO general election falls in May.

Sources: EC § 3.005, § 3.006, § 83.010, § 85.004, § 85.007, § 26.07 (allows a rate to be adopted 71 days before the November election but treat this reference as a typo), § 26.08.

Contents Of A VATRE Order/Ordinance

- Date of the election
- Measure and proposition
- “Any other” required elements:
 - Early voting clerk’s contact information
 - Location of the main early voting place
 - Dates and hours of early voting

Sources: EC § 3.006, § 83.010, § 85.004, § 85.007.

Statutory Ballot Language

Entities other than schools / Comptroller Form 50-861 (TC § 26.07(c)):

Approving the ad valorem tax rate of \$___ per \$100 valuation in (name of taxing unit) for the current year, a rate that is \$___ higher per \$100 valuation than the voter-approval tax rate of (name of taxing unit) for the purpose of (description of purpose of increase). Last year, the ad valorem tax rate in (name of taxing unit) was \$___ per \$100 valuation.

School districts / Comptroller Form 50-863 (TC § 26.08(c)):

Ratifying the ad valorem tax rate of ___ (insert adopted tax rate) in (name of school district) for the current year, a rate that will result in an increase of _____ (insert percentage ***increase*** in maintenance and operations tax revenue under the adopted tax rate as compared to maintenance and operations tax revenue in the preceding tax year) percent in maintenance and operations tax revenue for the district for the current year as compared to the preceding year, which is an additional \$___ (insert dollar amount of increase in maintenance and operations tax revenue under the adopted tax rate as compared to maintenance and operations tax revenue in the preceding tax year).

Automatic Elections Preferred Over Petition-Driven Elections

Petitions are not generally valid.

- They do not apply to:
 - Special taxing units
 - School districts
 - Cities with a population of 30,000 or more
- When the de minimis tax rate is less than the voter-approval tax rate

Sources: TC § 26.075, 26.012(19) (defining special taxing units).

Petition Election Process

- Citizens circulate a petition:
 - Stating an intent to require an election reducing the adopted tax rate
 - Signed by at least 3% of registered voters from the most recent list of registered voters
 - Due no later than 90 days after the tax rate is adopted
- Governing body determines validity of the petition within 20 days of its submission
- If valid, the governing body orders a November election with the following proposition:
Reducing the tax rate in (name of taxing unit) for the current year from (insert tax rate adopted for current year) to (insert voter-approval tax rate)
- Notice of election and canvass like a regular election

Sources: TC § 26.075, Comptroller Forms 50-862 & 50-866.

Notice For A VATRE

Contents Of A VATRE Notice

- Nature and date of the election
- Proposition
- Location of each election day and main early voting place
- Hours these polls will be open
- Contact information for the early voting clerk

Sources: EC § 4.004, § 83.010, § 85.004, § 85.007; GC § 1251.003; 1 TAC chapter 53, SOS Forms 1-13 & 1016.

The Process Of VATRE Notice Is Less Onerous Than A Bond Election

- Provide the CSO's county/counties with notice no later than 60 days before election day
- Post:
 - On the CSO's website at least 72 hours before early voting begins
 - On the CSO's bulletin board may be discretionary but post there anyway
- Cities and counties publish at least once not earlier than the 30th day or later than the 10th day before election day
 - Other entities can use mailers or precinct notices

Sources: EC § 4.008, § 4.003, § 85.007.

Resources

All entities should consult the Comptroller's website:

- Tax rate calculation worksheets
- Notices related to tax rates
- Ballots and petitions

School districts:

- TASB (resources are now behind a pay wall)
- TASBO
 - Free online toolkit
 - Members receive calculation assistance

Cities:

- TML has free online resources.

Any Questions?
Thank you!