



Texas Secretary of State
ELECTIONS DIVISION



Runoff Elections, Second Elections, and Recounts

36th Annual Election Law Seminar
for Cities, Schools, and Other Political Subdivisions



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Runoff Elections



When is there a runoff?

- A runoff election occurs when you have more than two candidates running and none of them gets a **majority of the vote**
 - Top two vote getters move on to the runoff
- Majority = 50% of the vote + 1 vote.
- Example:
 - Candidate A: 100 votes
 - Candidate B: 60 votes
 - Candidate C: 10 votes
- 170 total votes, but Candidate A has met the 50% +1 requirement and has won a majority.



When is the runoff?

- Section 2.025 of the Texas Election Code requires the Secretary of State to set the runoff date for all runoff elections resulting from an election held on a uniform election date.
- Runoff Date for the May 3, 2025 election is:

Saturday, June 7, 2025



Ordering and Providing Notice for your Runoff

- A runoff election cannot be ordered until the canvass of the original election is complete.
- Due to quick turnaround times, our office recommends canvassing as soon as possible to allow your entity time to order the runoff and post notice.
- Canvassing for the May 3rd election
 - First Day is May 6, 2025
 - Last Day is May 14, 2025
- Deadline to post notice is May 23, 2025 (2.026)



Other Factors to Consider

- Recounts cannot take place until after all ballots involved in the election have been counted or the relevant deadlines have passed.
- Logic and accuracy testing/programming.
- Early voting begins May 27, 2025.



Resources

- May 3, 2025 Election Law Calendar
 - <https://www.sos.state.tx.us/elections/laws/advisory2024-37-may-3-2025-election-law-calendar.shtml>
- June 7, 2025 Runoff Election Law Calendar
 - <https://www.sos.state.tx.us/elections/laws/advisory2024-38-june-7-2025-runoff-election-law-calendar.shtml>



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Second Elections



Are runoffs the same as a second election?



Not Quite

- A second election occurs if there is a tie. (2.002)
- What is the process for a second election?
- Need to canvass to have a second election



Resolving the Tie

- A tying candidate can withdraw.
- The withdrawing candidate needs to file a signed written statement.
- On receipt of this statement, the other candidate is the winner.



Resolving the Tie (cont.)

- The candidates can agree to “cast lots” to resolve the tie.
- Agreement must be filed with authority responsible for ordering the election.
- The authority or, if the authority is a body, the body's presiding officer shall supervise the casting of lots.



What Does it Mean to Cast Lots?

- Game of chance
- The candidates can decide how they would like to cast lots.



What if a candidate does not withdraw or they don't agree to cast lots?



Automatic Recount

- An automatic recount is initiated.
- Governed by Chapter 216 of the Election Code.
- The method of counting votes in an automatic recount is the same method of counting used in the election that resulted in the tie vote.
- The costs of an automatic recount shall be paid by each political subdivision or county executive committee.



Our political subdivision contracted with the county to conduct our election. Can the county canvass our results or order an automatic recount if there is a tie?

- Generally no. The Code provides that the governing body must canvass their results. The Code does not allow a transfer of canvass duties to a county.
- Section 271.011 of the Code authorizes a joint canvassing authority. If your joint election agreement designated a joint canvassing authority, Section 212.026(b) of the Code requires the recount petition to be filed with the presiding officer of your regular canvassing authority.
- Code states that an automatic recount can only be ordered by the governing body.



Resolving the Tie Summary

- Candidate can withdrawal
- Cast lots
- Automatic Recount
- Another opportunity to Withdrawal or Cast lots



What if the tie is still not resolved?



Second Election

- Must be held not earlier than the 20th day or later than the 45th day after the automatic recount or the final canvass following the automatic recount.
- Both names shall be printed on the ballot; there are no write-in votes permitted.
- The order of the names on the ballot must be the same as it was in the original election. (2.002)



Ordering and Notice

- Must be ordered not later than the 5th day after the date the automatic recount is completed or the final canvass following the automatic recount. (2.002)
- Notice must be posted not later than 15th day before election day. (2.002)



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Recounts



What a Recount is Not

- Not an election contest.
- Does not delay canvass.
- Does not authorize adjudication of ballots.



What is a Recount?

- Counting the ballots in a particular race or measure.
- If someone alleges that irregularities impacted the election, point them to Chapter 232 (Contest for Office) or Chapter 233 (Contest for Measure) of the Election Code.



Recount Personnel

- **Recount Supervisor (213.001)**
 - The recount supervisor manages and supervises the recount in precincts within the jurisdiction of the local canvassing authority.
 - The recount supervisor is the presiding officer of the local canvassing authority or his/her designee.
 - Commissioners Court → County Judge
 - Primary Election → County Chair
 - City Election → Mayor
 - School/Water/Hospital/Other district → President of the board
- However, the presiding officer of a canvassing authority who is a candidate in the race to be recounted is ineligible to serve as recount supervisor.



Recount Personnel (cont.)

- **Recount Coordinator (211.002)**
 - The petition for a recount is filed with the recount coordinator. This is the presiding officer of the final canvassing authority. Usually, the final canvassing authority is the local canvassing authority as well.
 - Just as with the recount supervisor, a presiding officer of a final canvassing authority who is candidate in the race to be recounted is ineligible to serve as recount coordinator.



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Starting the Recount Process



Recount Petition

- Our office has a petition on our website that can be used. (Form 14-1)

14-1
Prescribed by Secretary of State
Section 212.001, Texas Election Code
9/2023

PETITION REQUESTING A RECOUNT

(The following petition may be used for requesting a recount as provided by Section 212.001 of the Texas Election Code.

To: _____ (name of presiding officer of canvassing authority)

For a Recount for Office:

I, _____, hereby request a recount for the _____ (date of election and name of political subdivision) election for the office of _____ (identify the office for which a recount is desired (e.g., County Commissioner, Precinct #1).

For a Recount on a Measure:

I, _____, hereby request a recount for the following measure _____. For a recount on a measure, state the side of the measure that the person requesting the recount represents ("For" or "Against") _____.

Check one or more of the applicable grounds:

- () Difference between number of votes received by petitioner and number of votes received by person who was elected or is entitled to a place on the runoff election ballot is less than 10% of the number of votes received by the person elected or entitled to a place on the runoff ballot; OR
- () Number of votes received by all candidates is less than 1000; OR
- () Electronic system used in election; OR
- () An election judge swears that he or she counted paper ballots incorrectly (must also be certified by the Secretary of State).

Identify each voter registration precinct for which a recount is being requested and identify the method of voting used in each precinct.

Voter registration precinct(s) and voting system used:

If an electronic system was used in the election, I request a manual (by-hand) count/electronic count (circle one).

Signature of Person(s) or agent of person(s) requesting recount

List Recount Requestor(s) name, mailing address, at least one phone number and email address, voter registration number (if authorization to obtain the recount is based on eligibility to vote in the election), and county of registration (if the election covers territory in more than one county):

| Name | Mailing Address | Phone Number | Voter Registration No./County |
|-------|-----------------|--------------|-------------------------------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

Provide the name and mailing address, email address, and at least one phone number for each opposing candidate (or agent):

| Name of Opposing Candidate or Agent | Email Address | Mailing Address | Phone Number |
|-------------------------------------|---------------|-----------------|--------------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |



Who may file a petition?

- **Election for an Office**
 - A candidate for nomination or election to an office only if the candidate is shown by the election return not to be nominated or elected.
- **Election for a Measure**
 - **The campaign treasurer of a specific-purpose political committee that was involved in the election**
 - **Any 25 or more persons, acting jointly, who were eligible to vote in the election may petition for a recount**
 - Need to provide on the petition (for each of the 25) the name, residence address, voter registration number (if authorization to obtain the recount is based on eligibility to vote in the election), and county of registration (if the election covers territory in more than one county).
 - This group needs the signature of one or more of the 25 requestors, or the agent. The agent must be a resident of this state.



Grounds for a Petition

- A petition must state a valid ground
- If the difference between the number of votes received by the petitioner and number of votes received by the person who was elected or is entitled to a place on the runoff election ballot is less than 10%
 - Jane Doe 2000
 - John Doe 1850
 - Difference of 150
 - Take 10% of the winner's votes ($2000 \times .10 = 200$)
 - Within the 10% threshold



Other Grounds

- All candidates combined received less than 1000 votes;
- A petition may be filed if an election judge swears that he or she counted paper ballots incorrectly;
 - This must be certified by the Secretary of State
- No ground for a petition is required for a recount of electronic system results.
(Tex. Elec. Code 212.0241)



What Must be Included in a Petition?

- A recount request **MUST** contain the following elements: (212.001)
 - The request must be in writing;
 - The request must identify the office or measure for which a recount is requested;
 - The request must state the grounds on which the recount is requested;
 - The request must identify the election precincts in which a recount is requested;
 - If it is a recount of an electronic voting system, the request must identify if a manual or electronic recount is requested;
 - The request must contain the name, address, and telephone number of the petitioner (or an agent);
 - The request must also contain the name, address, e-mail address (if any) and telephone number of an opposing candidate or campaign treasurer;
 - The request must be signed by the petitioner or his/her agent;
 - The request must also include the required deposit.



The Recount Deposit

- The amount of the deposit for a recount is based, in part, on the number of election day polling places OR precincts to be recounted, whichever results in a smaller amount.
 - Precincts = Election Day Precincts = Polling Places.
- \$60 for each precinct or polling place in which hand counted paper ballots were used
- \$100 for each precinct or polling place in which an electronic voting system was used.
- All of early voting is one precinct
- Deposit funds may be used to:
 - Compensate recount committee members;
 - Cover charges for use of automatic tabulating equipment;
 - Cover the service charge of \$15 for the recount supervisor and the \$50 service charge to the recount coordinator (in a statewide recount) to reimburse the fund used to cover office expenses such as telephone, postage, etc.



The Recount Deposit (cont.)

- The deposit must be paid by cash, cashier's check or money order made payable to the recount coordinator. **NO PERSONAL CHECKS!**
- A change in the outcome of the election entitles the petitioner to a refund of the entire deposit.
 - This means the winner of the election changes, **not just vote totals.**
- If more than one petition is submitted with different counting methods, a manual count shall be chosen over an electronic count. The petitioner selecting the "losing" method of recount is entitled to a refund of the deposit less any expenses incurred prior to the selection of the recount method.
- If a deposit is insufficient to cover the costs of the recount, the petitioner is responsible for covering any additional costs.



What if our County participates in Countywide?

- Deposit is based in part on the number of election day polling places used or voter registration precincts. Early voting ballots are considered to be one additional polling place or voter registration precinct.
- The petitioner should determine the total number of voter registration precincts that contained the race or measure that is the subject of the recount and compare that number to the total number of election day polling places used in the election, then include one additional polling place or voter registration precinct to that number (for early voting ballots) in order to determine the total deposit due.



Would a deposit or petition filed with the county be valid if the recount is for an election for an office or measure of a local political subdivision?

- No. In order for a deposit or petition to be valid, it must be filed with the correct authority. If the deposit or petition was filed with the county for an election for an office or measure of a local political subdivision, the deposit and petition are not valid. [Secs. 212.026, 212.028]



The 25 persons pooled several checks together to pay for the required deposit when the petition was filed. Is this permitted?

- As long as the deposit is in a form or forms authorized by the Election Code, and the total amount is correct, there can be more than one cashier's check or money order, or a combination of those and cash. Please note that courts tend to construe ambiguity in favor of petitioners and those requesting a recount.



Can a petitioner submit a smaller deposit if they would only like to count certain ballots?

- No, the petitioner would still have to submit the entire deposit. However, the petitioner can make a request to count certain ballots first such as ballots by mail. If they are satisfied with the count, they may end the recount early.



Deadline to File a Petition

- Initial recount: (i.e. a recount in an office where election by plurality is required or an election where only two candidates were in the race), the deadline to file a petition for a recount must be submitted by 5:00 p.m. of the 3rd business day after the date of the canvass. (212.028)
 - A majority vote means that the winning candidate must receive more than 50% of the total votes. A plurality vote means that the winning candidate must receive more votes than any other candidate for the office.
- Expedited recount: (i.e. a recount in an office where election by majority is required and more than two candidates are running), the deadline to file a petition for a recount is 2:00 p.m. of the 2nd day after the date of the canvass. (212.083)



Reviewing the Petition

- The recount coordinator must review a petition for a recount within 48 hours of its receipt and promptly notify the petitioner of any defect. (212.029)
- If there is a defect in the petition, the petitioner has until the deadline for filing a petition or 5:00 pm of the second day after notice of the defect is received to correct the defect, whichever is later. (212.030)
- If the defect is not corrected after notification, the recount coordinator must reject the amended petition and promptly notify the petitioner of the remaining defects. **A petition may not be amended more than once.**
- Correction of an improper deposit amount is considered an amendment to a recount petition.



Approval of Petition

- If the petition is approved, the recount coordinator must notify the recount supervisor (if different) and the recount supervisor must order the recount. (212.031)
- In addition, the recount coordinator is responsible for notifying the petitioner and each opposing candidate and, in an election on a measure, the petitioner and opposing campaign treasurer or a person eligible to vote in the election representing an opposing side of the petitioner if there is no political action committee. (212.032)



Time and Place for the Recount

- The recount supervisor must order the recount on the later of the 7th day after the approval of the recount petition or the day after all ballots have been delivered to the general custodian. This includes making arrangements for the recount including the time and place.
- The recount supervisor must give personal notice to the petitioner and all opposing parties at least 18 hours prior to the start of the recount. This notice must include the time, place, and number of counting teams involved in the recount.
- A phone call does suffice to give personal notice, but we recommend following up with something in writing. Written notice may be given with an email.
- The notice may be waived if all parties entitled to notice agree and the recount can begin earlier.



The Recount Committee

- Composed of at least four members (including a chair) who are appointed by the recount supervisor. (213.002)
- If the recount coordinator is a different person than the recount supervisor, the recount coordinator may appoint one member of the committee.
- The members of the recount committee must meet the requirements of election day clerks except that if a person served as an early voting ballot board judge or election day judge, that person is ineligible to serve on the recount committee. (213.003)
- Committee members are entitled to an hourly rate of pay set by the recount supervisor. (213.004)
- In a recount that does not involve automatic tabulating equipment, the recount committee serves as one or more counting teams composed of three members each.



Who May Be Present?

- Only persons specifically permitted to be present by law may be present in the room where a recount is taking place or in any hallway within 30 feet of an entrance to such room. This includes: (213.002)
 - The recount chair and committee members;
 - The candidates/campaign treasurers and their watchers; (213.013)
 - Candidates/campaign treasurers may have 2 watchers or, if there is more than one counting team, watchers equal to the number of counting teams. (No specific eligibility requirements for watchers at recounts)
 - The custodian of the voted ballots; (213.001)
 - The recount supervisor; and
 - Any state inspectors.



Photocopying Ballots

- Candidates/campaign treasurers must, upon request, be permitted to photocopy a disputed ballot and may be charged a reasonable fee for such copy.
 - Our office recommends that a member of the recount committee photocopy the ballots if possible.
- If your entity does not provide a photocopier, than the campaign can bring equipment in.
- No one permitted to be present at a recount can possess a device capable of recording sound or images unless the person agrees to deactivate the device.



Other Procedural Issues

- Erroneously Placed Records:
 - If it is determined that election records were erroneously placed in a ballot box that is to be opened during a recount, it is the opinion of the Secretary of State Elections Division that such records may be retrieved during the recount.
 - Retrieval should be in the presence of the recount chair and the custodian of the records should make a note of the retrieval.
- All counting questions in a recount should be determined by the chair of the recount committee in accordance with the Texas Election Code.
- If there is a rejection of any ballot during a recount, the chair should make note of the reason for the rejection and place the rejected ballot in a separate container.
- **Keep in mind that the recount committee is not authorized to evaluate the method in which a voter was qualified for voting.**



Our political subdivision contracted with the county to conduct our election. May the county conduct the recount on behalf of the local political subdivision?

- No. A political subdivision may not transfer the duty of a recount to a county. The deposits and petition must be submitted to the presiding officer of the local canvassing authority and not the county. The presiding officer of each local canvassing authority having jurisdiction of election precincts included in recount must manage and supervise the recount for the precincts in that authority's jurisdiction. [Sec. 213.001]



After the Recount

- Following the recount, the recount committee chair shall:
 - Create a precinct by precinct report of the committee's count, and (213.012)
 - Deliver one copy to the recount supervisor and one copy to the custodian of election records. (213.054)
- Upon receiving the committee chair's report, the recount supervisor shall: (213.055)
 - Create and sign his/her own report using the chair's report and the original election returns for any precincts not covered in the recount. This will serve as the official statement of the vote count in the local canvassing authority's jurisdiction.
 - The recount supervisor shall deliver...
 - one copy of the report to the recount coordinator (if different), and
 - one copy to the custodian of election records.
- After receiving the recount supervisor's report, the recount coordinator will notify the petitioner and any opposing candidates/campaign treasurers or voters entitled to notice. (213.032)



After the Recount (cont.)

- If, as a result of the recount, the outcome of an election changes or the vote totals in an election change, the canvassing authority of the election must conduct a canvassing for that office or measure as soon as practicable after the recount. (213.033)
- The new canvass serves as the official canvass for purposes of that election.



Helpful Resources

- Recount Outline: <https://www.sos.state.tx.us/elections/laws/recounts.shtml>
- Petition for Recount: <https://www.sos.state.tx.us/elections/forms/pol-sub/14-1f.pdf>
- Appointment of Watcher for Recount:
<https://www.sos.state.tx.us/elections/forms/pol-sub/14-2f.pdf>



Available Support



WEBINARS



TRAINING



RESOURCES

elections@sos.texas.gov

800-252-VOTE • 512-463-5650

sos.texas.gov