

Vacancies and Vacancy-Filling Procedures

Elections Division – Texas Secretary of State
Election Law Seminar – December 2022



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 and Local Government Code**

<https://statutes.capitol.texas.gov/>

- **Terms, Qualifications, and Vacancies Outline**

<https://www.sos.texas.gov/elections/laws/terms.shtml>



Overview

- Resignation/Declination Process
- When the Vacancy Occurs
- Filling the Vacancy
 - Cities
 - Type A
 - Type B
 - Type C
 - Home Rule
 - Art. XI, Sec. 11
 - School Districts
 - Other Districts
- Filing Deadlines and Procedures



Resigning or Declining Office

To be effective, must be:

- In Writing
- Signed
- Delivered to the appropriate authority having power to act on the resignation (who appoints/orders the election?)
- If the authority is a body, can be accepted by presiding officer or clerk/secretary

CANNOT be refused!

[Secs. 201.001, 201.002, Texas Election Code]



When the Vacancy Occurs

- Death of Officer
 - Vacancy occurs on the date of death [Sec. 201.022]
- Resignation of Officer
 - Regardless of if the resignation is effective immediately OR at a later date, the vacancy (for the purpose of filling the vacancy) occurs on the date the resignation is accepted by the appropriate authority or on the eighth day after the resignation is received, whichever is earlier [Sec. 201.023]



When the Vacancy Occurs

- Removal
 - If officer is removed from office by a court, the vacancy occurs on date the judgment becomes final [Sec. 201.024]
- Acceptance of Other Office
 - If officer accepts another office that may not lawfully be held simultaneously with their original office, the vacancy occurs in original office the date the officer qualifies for the other office [Sec. 201.025]



When the Vacancy Occurs

- Declaration of Ineligibility
 - If officer is declared ineligible to hold office by court or administrative authority, the vacancy occurs on date that judgment becomes final or date that administrative declaration is made [Sec. 201.026]
- Creation of a New Office
 - If a new office is created, the vacancy occurs on the effective date of the law creating the office or on the date the order creating the new office is adopted [Sec. 201.027]



When the Vacancy Occurs

- Election of Deceased/Ineligible Candidate
 - If deceased/ineligible candidate is elected, the vacancy occurs on the date of the final canvass of the returns for that office [Sec. 201.028]
- Declination of Officer-Elect
 - If an officer-elect declines to qualify for the office before assuming the office, the vacancy occurs on the date the declination is delivered to the appropriate authority [Sec. 201.029]



When the Vacancy Occurs

- Recalled Officer
 - If an officer in a home-rule city has been recalled, pursuant to a charter-authorized election, the vacancy occurs on the date of the final canvass.
 - An officer that has been recalled may not continue to serve as a holdover under Article 16, Section 17 of the Texas Constitution [Attorney General Opinion No. GA-0175]



Election to Fill Vacancy in City Office

- Type A
- Type B
- Type C
- Home Rule



City Offices with Terms 3-4 Years

[Tex. Const. Art. XI, Sec. 11]

- Vacancies in cities with terms of office greater than 2 years, (e.g., 3 or 4 year terms) MUST be filled by a **majority vote** of qualified voters in a special election called for this purpose within 120 days after the vacancy occurs.
 - This type of special election does not have to be held on a uniform date. [Sec. 41.004(b)]
 - Terms longer than 2 years must be adopted by election.



Type A City

- Term of Office
 - 2 year terms [LGC Sec. 22.035]
 - Vacancy filling requirements vary depending upon number of vacancies [LGC Sec. 22.010]
 - 3 or 4 year terms, [LGC Sec. 22.035; Art. XI, Sec 11, Texas Constitution]
 - Cities with terms exceeding 2 years (e.g., 3 or 4 year terms) must be filled by special election within 120 days of the vacancy.



Type A City

- Cities with terms exceeding 2 years (e.g., 3 or 4 year terms) must be filled by special election within 120 days of the vacancy.
 - **Note:** Under Section 41.001 of the Election Code, generally entities are not supposed to hold an election within 30 days before or after the date of the general election for state and county officers, the general primary election, or runoff primary election.



Type A City

[LGC Sec. 22.010]

- One Vacancy - Terms of 1 or 2 years
 - City Council may fill by appointment
 - Appointment made by majority of members (excluding the mayor)
 - Appointee serves until next regular city election
 - Office then goes on the ballot for any unexpired portion of the term. This can be ordered as part of the city's general election or it may be ordered as a special election.
 - City Council may call a special election
 - Governed by Title 12 of the Election Code
 - Deadline to apply for a place on the ballot varies depending upon when election is ordered. [Sec. 201.054]



Type A City

[LGC Sec. 22.010]

- Two Vacancies - Terms of 1 or 2 years
 - City Council must order a special election to fill the vacancies for the remainder of the unexpired term.
 - A special election ordered to fill these vacancies (either one or two) is governed by Title 12 of the Election Code and must be held on a uniform election date.
 - Deadline to apply for a place on the ballot varies depending upon when election is ordered. [Sec. 201.054]



Type B City

[LGC Sec. 23.002]

- Term of Office
 - 1 or 2 year terms [LGC Sec. 23.026]
 - Vacancies are filled by appointment by remaining alderman for the entire unexpired term
 - No authority to order a special election to fill vacancies for 1 or 2 year terms
 - 3 or 4 year terms, [LGC Sec. 23.026, Art. XI, Sec 11, Texas Constitution]
 - Cities with terms exceeding 2 years (e.g., 3 or 4 year terms) must be filled by special election within 120 days of the vacancy.



Type C City

[LGC Sec. 24.026]

- Term of Office
 - 2 year terms [LGC Sec. 24.023]
 - Vacancy filling requirements vary depending upon the number of vacancies
 - 3 or 4 year terms, [LGC Sec. 24.023, Art. XI, Sec 11, Texas Constitution]
 - Cities with terms exceeding 2 years (e.g., 3 or 4 year terms) must be filled by special election within 120 days of the vacancy.



Type C City

[LGC Sec. 24.026]

- One Vacancy - 2 year terms
 - Remaining members of the Commission fill the vacancy for the remainder of the unexpired term [LGC Sec. 24.026(a)]



Type C City

[LGC Sec. 24.026]

- Two Vacancies – 2 year terms
 - County judge must order special election to fill vacancies [LGC Sec. 24.026(b)]
 - Conducted under LGC Chapter 8, Subchapter A
 - County judge shall order the election and appoint 2 election judges and 2 election clerks [LGC Secs. 8.003, 8.004]
 - Notice of an election must be published in a newspaper in the community before the 30th day before election, 3 public places in community for the 30 days before election day [LGC Sec. 8.005]
 - Held on next uniform election date



Home-Rule City

[LGC Ch. 26]

- Term of Office
 - 2 - 4 years [Tex. Const. Art. XI, Sec. 11]
 - Vacancies in two-year terms are filled in accordance with city charter, except:
 - If population is 1.5 million or more, and 270 days or more remain before next general election, governing body must order special election on next uniform election date [LGC Sec. 26.045]
 - Terms exceeding 2 years must be filled within 120 days of the vacancy
 - Charter can provide alternative procedure for filling vacancy if there are 12 months or less left in the term



School District Offices

[Educ. Code Sec. 11.060]

- Term of Office
 - 3 or 4 years [Educ. Code Sec. 11.059]
 - If vacancy occurs on Board in an ISD, remaining trustees may fill by appointment until the next regular trustee election.
 - Office then goes on the ballot for any unexpired portion of the term. This can be ordered as part of the school board's general election or it may be ordered as a special election.
 - If board is appointed by governing body of a municipality, trustee appointed by governing body to fill vacancy serves unexpired term.
- OR (see next slide)



School District Offices

[Educ. Code, Sec. 11.060]

- Board/Municipality may order special election
 - Special election is conducted in the same manner as general election, except as provided in Election Code
 - Must be held on next uniform election date
- If more than one year remains in term vacated, vacancy shall be filled not later than 180th day after date vacancy occurs
 - **Note:** Joint election mandate in Educ. Code Sec. 11.0581 applies to general elections for trustees, not special elections to fill vacancies



Other Political Subdivisions

- Water Districts
 - Generally, Chapter 49
 - Special Law
- Hospital Districts, Library Districts, etc.
 - Depends on your law
 - Call us for clarification



Resignation to Take Effect at a Future Date

- May a resignation of a public officer be set to take effect at a future date?
 - Yes. The date a resignation is effective is not necessarily the same as the date the vacancy is effective. A resignation letter may indicate the vacancy will occur at a future date. For purposes of filling the vacancy, the authority with whom the resignation was filed may appoint upon receipt and acceptance of the resignation (if applicable) and the newly appointed officer may take office on or after the designated resignation date.

[Sec. 201.023]



Filing Deadlines/Procedures

[Sec. 201.054]

- When the vacancy occurs will determine when (and often how) the vacancy is filled
- Some vacancies *may* be filled by election
 - But also may not
- If you are a city with terms greater than 2 years, you *rarely* appoint
- The election will be on a uniform date
 - Unless you are a city with terms of greater than 2 years



Filing Deadlines/Procedures

[Sec. 201.054]

- Deadline for filing application for place on ballot in a special election
 - 2 possible deadlines to order a special election to be held on a uniform day that's not November of an even numbered year:
 - If election day is on or after the 70th day after the date the election is ordered: 5 p.m. of 62nd day before election day
 - If election day is on or after the 46th day and before the 70th day the election is ordered: 5 p.m. of the 40th day before election day



Filing Deadlines/Procedures

If Election Day is...
(May 6, 2023)

Election ordered
on or before 70th
day before
election day
(February 25,
2023)



5pm of 62nd day
before election
day (or next
business day -
March 6, 2023)

Then filing deadline
is...

Election ordered
on or before 46th
day but after 70th
day before election
day (February 26,
2023 to March 21,
2023)



5pm of 40th day
before election day
(March 27, 2023)



Filing Deadlines/Procedures

[Sec. 201.051]

- November of even numbered years:
 - Must be ordered by the 78th day before election day
 - Filing deadline is 6:00 p.m. on the 75th day before election day [Sec. 201.054]
 - Deadline to submit Declaration of Write-in Candidacy for a special election to fill a vacancy is the same as the regular filing deadline for an application for a place on the ballot.



ISSUES TO CONSIDER	GENERAL ELECTION	SPECIAL ELECTION
<p>Ordering the Election</p>	<p>Must be ordered no later than 78th day before election day [Sec. 3.005]</p>	<p>Two possible deadlines to order a special election to be held on a uniform date that's <u>not</u> November of an even numbered year. However, if election is held on uniform date in November of an even numbered year, election <u>must be</u> ordered no later than 78th day before election day [Secs. 201.051, 201.054]</p>
<p>Candidate Filing Period</p>	<p>Candidate filing deadline is the 78th day before election day [Secs. 143.007, 144.005]</p> <p>Filing deadline for write-in candidates is the 74th day before election day [Secs. 144.006, 146.054]</p>	<p>Two possible deadlines to file candidate applications depending on when the special election is ordered. The same filing deadline applies to write-in candidates[Sec. 201.054]</p> <p>If election is held on uniform date in November of an even number year, the filing deadline is 6:00 pm of the 75th day before election day [Sec. 201.054]</p>
<p>Cancellation of Election*</p> <p>*A general election is considered a separate election from a special election, even if the elections are held on the same day</p> <p>See our outline here regarding cancellation of elections: https://www.sos.state.tx.us/elections/laws/cancellation.shtml</p>	<p>If a single member district position is unopposed, the entity may cancel the election within that single-member district only if there are no opposed at-large races within that election.</p> <p>The entity may cancel the election if it has the same number of positions and candidates in an at-large election [Sec. 2.051]</p>	<p>The entity may cancel the special election for any candidate that is unopposed. [Sec. 2.051]</p>



Notifying the County

- Must notify the county you are planning an election by 60th day before election day
 - This is the last day to deliver notice to county election officer and county voter registrar of each county the political subdivision is partially/wholly situated.
 - This is for general information—if you’re planning on using equipment or discussing a contract or agreement, should be **much sooner.**

[Sec. 4.008]



Questions?

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