

Suspension of Certain Requirements Under Texas Election Code

03.27.20

On March 18, 2020, Governor Abbott's office temporarily suspended a limited number of provisions of the Texas Election Code and Texas Water Code regarding general or special elections that have been ordered for May 2, 2020 in response to the Coronavirus (COVID-19) disaster.¹ This action will allow governmental bodies to postpone their May 2, 2020 election to the November 3, 2020 uniform election date. On March 20, 2020, Governor Abbott's office issued a proclamation that temporarily suspended a limited number of provisions of the Texas Election Code to the extent necessary to postpone the runoff primary election date until Tuesday, July 14, 2020.²

Does Executive Order GA-14 mandate that May elections be postponed?

Yes, the March 31, 2020 executive order will prevent you from securing polling places, recruiting election workers, and allowing voters a safe way to exercise their right to vote. If you don't move your May 2nd election, you are subjecting voters to health risks and potential criminal violations. Failure to postpone your election will put your election at severe risk for an election contest.³

Does the governing body of the political subdivision need to approve an order to postpone the May election?

Yes, the political subdivisions holding the elections must **order** the postponement of their election to the November 3, 2020 uniform election date. The Elections Division of the Office of the Texas Secretary of State has stated that there is no deadline for the order of postponement, but the Office of the Texas Secretary of State STRONGLY advises that a decision should be made by March 27, 2020.

How does a shelter-in-place order effect postponement of elections?

The Elections Division of the Office of the Texas Secretary of State has advised that if your county has issued such an order, you need to move your election; otherwise you are putting your election at risk of an election contest due to voters not being able to exercise their right to vote.

What should the postponement order contain?

The order for this official action should contain the following items:

1. A reference to the proclamation that authorizes the entity to postpone their election date, and the fact that the political subdivision is exercising this authority.
2. Confirmation that the candidate filings for the election will remain valid for the election held on November date and that the filing period will not be re-opened for the November election date.
3. Confirmation that all applications for ballot by mail ("ABBM") for voters that are voting by mail due to being over the age of 65 or due to disability will still be valid for the postponed election, and that ABBMs based on expected absence from the county would not be valid for the postponed election.
4. The major relevant dates for the November election, including the voter registration deadline (October 5, 2020), the deadline to submit an ABBM (October 23, 2020), and the dates for early voting (October 19, 2020 – October 30, 2020).

Are there any additional requirements or revisions to the Order of Election?

Yes, the entity will need to meet by August 17, 2020 to make any necessary revisions to the entity's original order of election. Those revisions may include:

1. The change of the date of the election;
2. Any change in location of the main early voting location;
3. Any changes to early voting dates and hours, including weekend early voting;
4. Any changes to identity of the early voting clerk and their contact information; or
5. Any changes to branch early voting locations.

If you are holding a bond election, you may need to make additional revisions to your order of election for that bond election. Please contact your bond counsel for additional guidance.

Are there notification requirements for websites for postponement of an election?

Yes, any entities that are exercising authority to postpone their election date **must post notice on the entity's website and should alert any local media organizations regarding this change to their election date**. The entity must also provide **notice to their county election officer** regarding this change, as the county is required to post the entity's notice of election on the county's website **no later than the 60th day before the date of the election under Election Code 4.008**. If that election date will be changing due to the entity's decision to postpone the election then the entity must provide a revised notice to the county for posting on the county's website.

What are the effects of postponement of election on Candidate Filings?

The political subdivision is preserving all candidate filings and ballot order actions that have already been taken. The postponement does not have the effect of reopening candidate filings.

- **Deadlines related to Candidate Filings, Declarations of Ineligibility, Withdrawals or Death:** The deadlines that apply to the November 3, 2020 election would apply to all candidates who are currently on the ballot for the May 2, 2020 election.

How does the new Primary Runoff Election date of July 14, 2020 effect filing deadlines for candidates?

- **Independent Candidate Filings:** The filing deadline for independent candidates is tied to the primary runoff date per Section 142.006 of the Texas Election Code. The new filing deadline is now August 13, 2020.
- **Write-In Candidates:** This filing period has not changed. The filing period for write-in candidates is from July 18, 2020 to August 17, 2020.
- **New County and Precinct Chairs Taking Office:** The first day of the term for new party chairs is now August 3, 2020.

Does the Governor's proclamation apply to a political subdivision holding a special election to fill a vacancy due to the requirements prescribed in Article XI, Section 11 of the Texas Constitution?

No, you must hold your election within 120 days of the vacancy occurring. The Governor's proclamation does not suspend this requirement in the Texas Constitution. With political subdivisions enacting shelter-in-place orders, it is imperative that some action be taken to move your election dates. If you opt to move your election date and to do so would safely result in ordering the election to occur outside of the constitutionally prescribed 120 day period, you should consult with your attorney regarding Attorney General Opinion No. JC-0318, as you may be required to hold your election date on the November 2020 uniform election date.

Who should we contact if we need help with questions about the Governor's suspensions on certain election laws?

State agencies and local governmental bodies may contact the Elections Division of the Secretary of State with questions about the suspension order by telephone at 1-800-252-2216. Any further updates by the Elections Division can be found at www.sos.texas.gov.

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¹ <https://www.sos.state.tx.us/elections/forms/adv-12-may-2-2020-uniform-election-date.pdf>

² https://gov.texas.gov/uploads/files/press/PROCLAMATION_COVID-19_May_26_Primary_Runoff_Election_03-20-

2020.pdf

³ https://gov.texas.gov/uploads/files/press/EO-GA-14_Statewide_Essential_Service_and_Activity_COVID-19_IMAGE_03-31-2020.pdf