



**Texas Association of School Boards**

Legal Services

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*Serving Texas Schools Since 1949*

## **Postponing the May 2, 2020 Election**

*Published online in [TASB School Law eSource](#)*

On March 31, 2020, Governor Abbott issued [Executive Order GA-14](#). Among other things, this order extends social distancing guidelines through April 30, 2020, defines essential services, and extends school closures across the state until May 4, 2020. On April 2, 2020, the Secretary of State Elections Division emailed election officials advising that entities that have not postponed their May 2, 2020 elections “**must take action to do so immediately!**” According to the Elections Division, failure to postpone an election may put the election at risk for an election contest. This April 2 guidance is attached.

A district may postpone its May 2 election pursuant to Governor Abbott’s [proclamation](#) authorizing political subdivisions to postpone those elections to the November 3, 2020 uniform election date. The Elections Division issued [Election Advisory 2020-12](#) to provide guidance (the guidance) to political subdivisions postponing their elections. On March 19 and again on March 24, the Elections Division emailed additional guidance; both emails are attached.

School districts should review all of the guidance and consider the following in postponing their elections:

- **Board action is required** to postpone the election. The guidance sets out what should be included in the order postponing the election. Consult your district’s attorney for assistance in drafting the order.
- If you are holding a bond election, **consult bond counsel** for assistance in drafting the postponement order for your bond election.
- Action to postpone should be taken as soon as possible. Work with your district’s attorney to ensure compliance with the Texas Open Meetings Act.
- After the board acts to postpone the election, **give notice** as follows:
  - **To Voters:** Post notice on the district website and alert any local media regarding the postponement.
  - **To County Election Officer:** Provide notice to the county election officer because the county is required to post the district’s notice of election on the county’s website.
  - **At Polling Places:** If possible and safe under local circumstances, post notice at the polling locations that would have been used for the election. The ability to do so may be limited by local orders. Do not put anyone at risk by posting a physical notice.

- **To the Elections Division:** Advise the Elections Division of the board's action to postpone at [elections@sos.texas.gov](mailto:elections@sos.texas.gov).
- The postponement will **not** affect a district's election schedule in future years.
- If a district cancelled all or part of its election, candidates declared elected may be sworn in after May 2, 2020. See the attached March 19 additional guidance for more information.
- The Governor's proclamation only authorizes postponement to November 3, 2020. According to the Elections Division, there are likely only two ways to postpone to a different date:
  - **Emergency Election under Texas Election Code section 41.0011(b):** A local political subdivision may request permission from the Governor to order a *special election* on a nonuniform election date. This does not apply to general elections.
  - **Court Order for Nonuniform Election Date:** A political subdivision that wants to hold its general election on a date other than November 3, 2020, might seek a court order for an alternative date.

Additional questions should be directed to the Elections Division or TASB Legal Services. If you email a question, include a current phone number at which you can be reached.

This document is continually updated, and references to online resources are hyperlinked, at [tasb.org/services/legal-services/tasb-school-law-esource/governance/documents/postponing-may-2-2020-election.pdf](https://tasb.org/services/legal-services/tasb-school-law-esource/governance/documents/postponing-may-2-2020-election.pdf) For more information on this and other school law topics, visit TASB School Law eSource at [schoolawesource.tasb.org](https://schoolawesource.tasb.org).

*This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.*

*Updated April 2020*

## April 2, 2020 Guidance

**From:** Elections Internet <Elections@sos.texas.gov>

**Sent:** Thursday, April 2, 2020 4:22 PM

**To:** Elections Internet <Elections@sos.texas.gov>

**Subject:** MASS EMAIL (CSO-3488) - April 1, 2020 Update to COVID-19 Election Procedures

**Sensitivity:** Personal

Dear Election Officials:

We have continued to receive questions regarding the recent proclamations by the Governor related to elections and COVID-19. We are providing some additional guidance below.

1. [Executive Order GA 14](#): Governor Abbott's March 31, 2020 executive order includes, but is not limited to, the following items. It (1) extends social distancing guidelines through April 30th, (2) defines essential services, and (3) extends school closures across the state through May 4, 2020. If you haven't already moved your May 2nd election, **you must take action to do so immediately!** This most recent 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.** For procedures related to postponing your election, see [Advisory 2020-12](#).
  - a. Please note, that while Elections Personnel have been included in the federal government's advisory on essential critical infrastructure workers, this does not include voters.
2. **Cities impacted by Article XI, Section 11, Texas Constitution:**
  - a. The Governor's executive order makes it clear that you must take action to move your election, even if your city is holding a special election to fill a vacancy due to the requirements prescribed in Article XI, Section 11 of the Texas Constitution. While the executive order does not suspend the Texas Constitution's requirements to hold your election within 120 days of the vacancy, you should consult with your city attorney about the proper way to handle a postponement of this type of election.
  - b. If you opt to move your election in response to this public health crisis, and to do so safely would result in the election occurring outside of the constitutionally prescribed 120 day period, please direct your attorney to review Attorney General Opinion No. [JC-0318](#), as you may be required to hold your election on the November 2020 uniform election date.
  - c. Runoff Elections being held for Article XI, Section 11, Texas Constitution City Elections

These situations can vary fact specific. We recommend you contact our office for specific guidance on your situation.

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3. **Special Elections Regarding the Continuation of a Sales Tax:** If you have a special election scheduled for May 2, 2020 on the question of the continuation of a sales tax that cannot be rescheduled for November 3, 2020 because the tax will expire before then, please contact the Comptroller's office regarding the expiration of your sales tax. If you are unable to receive an extension from the Comptroller's office regarding your sales tax, please contact the SOS for additional assistance.
4. **Options Other Than November 3, 2020:** The Governor's proclamation allowing a postponement only authorized a move to November 3, 2020. There is no authority for a local political subdivision, on its own order, to move an election to any other date. If an entity would like to move to a date other than November 3, 2020, there are likely only two ways to do so:
  - a. **Emergency Election under Section 41.0011(b) of the Texas Election Code:** A local political subdivision can request permission from the Governor to allow the political subdivision to order a special election on a nonuniform election date. Please note that this only applies to special elections and not general elections.
  - b. **Court Order for Nonuniform Election Date:** As there are no other options outside of the Governor's authorization to postpone the election and the option under Section 41.0011 of the Texas Election Code, a political subdivision that wishes to hold its election on a date other than November 3, 2020 could try to seek court order for an alternative date.
5. **Notice Requirements:** Any entities that are exercising the authority to postpone their election date must provide the following notice:
  - a. **Notice to Voters:** The entity should post notice on the entity's website and alert any local media organizations regarding this change to their election date.
  - b. **Notice to County Election Officer:** 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.
  - c. **Posted Notice at Polling Locations:** If it's possible to post notice at the polling locations that would have been used for the elections, we would recommend doing so. However, your ability to do so may be limited due to the stay-at-home orders that are in place. Please do not put your workers at risk by posting a physical notice. The most important thing is to update local media and update your website.
  - d. **Notice to SOS:** When you take action to postpone your elections, please inform us of the action taken. You may do so at [elections@sos.texas.gov](mailto:elections@sos.texas.gov).

Please let us know if you have any questions or concerns.

Keith Ingram  
Director, Elections Division  
Office of the Secretary of State  
800-252-VOTE(8683)

[www.sos.state.tx.us/elections/index.shtml](http://www.sos.state.tx.us/elections/index.shtml)

**For Voter Related Information, please visit:**



*The information contained in this email is intended to provide advice and assistance in election matters per §31.004 of the Texas Election Code. It is not intended to serve as a legal opinion for any matter. Please review the law yourself, and consult with an attorney when your legal rights are involved.*

# March 24, 2020 Guidance

**From:** [Elections Internet](#)  
**To:** [Elections Internet](#)  
**Subject:** MASS EMAIL (CSO -3492 ) - March 24, 2020 Update to COVID-19 Election Procedures  
**Date:** Tuesday, March 24, 2020 1:58:14 PM  
**Attachments:** [image001.png](#)  
**Sensitivity:** Personal

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Dear Election Officials:

We've continued to receive questions regarding the recent proclamations issued by the Governor related to both the May 2, 2020 uniform election date and the postponement of the primary runoff election to July 14, 2020. Below are some issues we'd like to address:

1. **Authorized Postponement of May 2, 2020 Election:** On March 18, 2020, the Governor issued a [proclamation](#) that authorized local political subdivisions to postpone their elections scheduled on May 2, 2020 to November 3, 2020. There are a few key issues that we wanted to address:
  - a. **Make the decision as quickly as possible while complying with open meetings laws:** While the Governor's proclamation doesn't prescribe a deadline for a local entity to make a decision on postponement, we STRONGLY advise that the decision be made this week. Election equipment must be programmed and tested and mail ballots must be sent immediately if the election will be taking place May 2, 2020. Delaying the decision could subject your election to a contest if mail ballots are sent out significantly later than the law requires.
  - b. **Shelter-in-Place Orders:** As many local political subdivisions are enacting shelter-in-place orders, this has a significant impact on elections. If your entity or 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. Additionally, some political subdivisions have enacted fines for violating their local ordinances; if your order does so and there is no specific exemption for voting or conducting elections, you put your voters at risk of criminal penalty for leaving their homes to vote.
  - c. **Article XI, Section 11, Texas Constitution:** If your city is holding a special election to fill a vacancy due to the requirements prescribed in Article XI, Section 11 of the Texas Constitution, the Governor's proclamation does NOT apply to your election. 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. However, given that many political subdivisions are 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 in response to this public health crisis, and to do so safely would 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 on the November 2020 uniform election date.
  - d. **Certain Types of Special Elections:** We have heard from a number of entities that have special elections resulting from the expiration of a sales tax and that the

November 3, 2020 uniform election date occurs after their expiration date. For these elections, we recommend consulting with the Comptroller's office, as they may be able to provide certain assistance with expiring taxes. Additionally, if you need to have an election prior to November 3, 2020, you may have to seek permission from the Governor in accordance with Section 41.0011 of the Texas Election Code to hold your election on a nonuniform election date.

- e. **Options Other Than November 3, 2020:** The Governor's proclamation only authorized a move to November 3, 2020. There is no authority for a local political subdivision, on its own order, to move an election to any other date. If an entity would like to move to a date other than November 3, 2020, there are likely only two ways to do so:
  - i. **Emergency Election under Section 41.0011(b) of the Texas Election Code:** A local political subdivision can request permission from the Governor to allow the political subdivision to order a special election on a nonuniform election date. Please note that this only applies to special elections and not general elections
  - ii. **Court Order for Nonuniform Election Date:** As there are no other options outside of the Governor's authorization to postpone the election and the option under Section 41.0011 of the Texas Election Code, a political subdivision that wishes to hold its election on a date other than the November 3, 2020 could try to seek court order for an alternative date.

Thank you all for your continued questions and all of your hard work. Please let us know if you have any additional questions or concerns.

**Christina Worrell Adkins**

Legal Director – Elections Division

Office of the Texas Secretary of State

1019 Brazos Street | Rudder Building, 2nd Floor | Austin, Texas 78701

1.800.252.VOTE (8683)

[elections@sos.texas.gov](mailto:elections@sos.texas.gov) | [www.sos.texas.gov](http://www.sos.texas.gov)

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## March 19, 2020 Guidance

**From:** Elections Internet <Elections@sos.texas.gov>

**Sent:** Thursday, March 19, 2020 4:13 PM

**To:** Elections Internet <Elections@sos.texas.gov>

**Subject:** MASS EMAIL ADVISORY - (CC/EA/VR -700) - Questions regarding Advisory 2020-12- Actions for May 2, 2020 Uniform Election (COVID-19)

**Sensitivity:** Personal

Dear Election Officials:

We've received a number of questions related to the Governor's proclamation and Advisory 2020-12 (see email below). We appreciate the questions and would like to provide a few clarifications.

1. **This is NOT a permanent move.** The Governor's proclamation has the effect of postponing an election, but it is not a permanent move. The result is that your current office holders will be holdovers until the next election occurs. Your newly elected office holders in November will have a shorter term. Their next election will return back to the May date.
2. **Elections that have been properly cancelled:** If your entity cancelled their May 2, 2020 election, your new officers will still be able to take office after the May 2, 2020 election date. If you cancelled part of your election, you will still let the candidates that were declared elected be sworn in and the remainder of your election will occur in November if you choose to postpone your May election. For those officers that took the oath of office after the May 2, 2020 date, you would not have to place their names in the "unopposed candidates declared elected" box on your ballot in November as these candidates will have already taken office.
3. **Multi-County Territories:** If your entity is in more than one county, you will be required to use each county's polling places for the November 2020 election. You will also be required to share at least one early voting location in accordance with Section 85.010 of the Texas Election Code.
4. **Countywide Polling Places (Vote Centers):** If your county utilizes countywide polling places for November 2020, then you will be required to use all polling locations within each county that contains territory for your entity.
5. **Contracting Issues:** If a contract hasn't been executed between the county elections officer and the local political subdivision, the county does NOT have an obligation to contract in May 2020. If a contract has been executed, then both parties would need to consult with their attorney regarding options for modifying the terms of the contract. Additionally, when you contract with your county in November, this allows you to use a joint ballot, shared election workers, and shared voting system equipment. Political subdivisions will most likely not be required to obtain their own separate voting system equipment or e-pollbooks.



Thank you all for the very thoughtful questions. We appreciate your patience in allowing us time to work through some of your questions. Please let us know if there's anything else you need from us.

Thank you,

**Christina Worrell Adkins**

Legal Director – Elections Division

Office of the Texas Secretary of State

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