

# Recounts



# Recount Basics

- A recount may only be used to recount the votes in a particular race.
- A recount does **NOT** have the same scope as an election contest.
- The authority conducting an election cannot conduct a recount on its own motion.
- Entering a ballot box without receiving a request for a recount or outside of the provisions of the Election Code can lead to criminal prosecution.



# Recount Misconceptions

- A recount **DOES NOT** authorize a recount in other races
- A recount **DOES NOT** delay the duty of an authority to canvass the election
- A recount **DOES NOT** allow for the requalification of voters
- A recount **DOES NOT** authorize more than one recount for the race at issue.



# 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.
  - **Commissioner's 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 a candidate in the race to be recounted is ineligible to serve as recount coordinator.



# Recount Petitioner

- A candidate may petition for a recount if: (212.022)
  - The candidate is shown by the election return not to have been elected to the office.
  - A winning candidate may petition for a recount in certain circumstances affecting offices with a statewide canvass.
- In an election on a measure: (212.024)
  - The campaign treasurer of a specific purpose political committee involved in the election may petition for a recount.
  - 25 or more persons acting jointly who were eligible to vote in the election on the measure may also petition for a recount.



# Requirements of a Request

- 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**.



# Grounds for a Recount

- There is no required ground for recount of an election where electronic voting systems were used.
- In other elections, the difference in votes between the petitioning candidate and the candidate who was elected, nominated or entitled to a place on a runoff ballot must be less than 10% of the number of votes received by the candidate who was elected, nominated or entitled to a place on a runoff ballot.
- The number of votes received by all candidates is less than 1000.
- An election judge swears that he or she counted paper ballots incorrectly.
  - This must be certified by the Secretary of State's office





# Petition Recipients

- The petition for a recount must be submitted to the recount coordinator. (212.026)
  - This will be the presiding officer of the final canvassing authority unless that person is ineligible to serve as recount coordinator. Then, the petition would be submitted to the substitute coordinator.
- If the petition is submitted to the presiding officer of the final canvassing authority and that individual is not the recount coordinator, the presiding officer must deliver the petition to the recount coordinator.



# Scope of the Recount

- A recount will include all election precincts from which an office is elected except in the event of counting errors.
- All votes cast in those election precincts are subject to recounting.



# 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.



# Deadline for filing a Petition

- **Initial recount** (i.e. a recount in an office where election by plurality is required or an election where only two candidates are running), the deadline to file a petition for a recount must be submitted by 5:00 p.m. on the 2<sup>nd</sup> day after canvass. (212.028)
- **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. on the first day after the date of the canvass. (212.083)



# Review of 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 5:00pm on 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 of the Recount

- The recount supervisor must order the recount to be held **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 at Recount

- 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)
    - A watcher must, upon request, be permitted to photocopy a disputed ballot and may be charged a reasonable fee for such copy.
    - 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.
  - The **custodian of the voted ballots**; (213.001)
  - The recount supervisor; and
  - Any state inspectors.



# 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.

**However, keep in mind that the recount committee is not authorized to evaluate the method in which a voter was qualified for voting.**



# 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.



# Automatic Recounts (Ch. 216)

- The Election Code requires an automatic recount to be held if:
  - Two or more candidates tie for the number of votes required to be elected in an election by plurality.
    - The automatic recount must be held before a second election is called. However, the candidates can opt to resolve the tie by casting lots.
  - Two or more candidates tie for the highest number of votes or for the second highest number of votes (in the case of determining who will participate in a runoff) in an election by majority. The automatic recount must be held before the candidates opt to resolve the tie by casting lots or ordering a second election.
  - If there is a tie in a runoff election, an automatic recount is held. Following the automatic recount, the candidates cast lots to determine the winner. A third election is not held.



# Automatic Recounts (Ch. 216)

- In an automatic recount, the presiding officer of the canvassing authority “petitions for” the automatic recount in the same manner a petitioner would in an initial or expedited recount.
- All candidates in the race to be recounted are notified of the automatic recount.
- Votes are recounted in an automatic recount in the same manner that they were counted initially.
- The cost of an automatic recount is paid by the political subdivision served by the presiding officer of the canvassing authority.



# Resources

- Recount Outline -  
<https://www.sos.texas.gov/elections/laws/recounts.shtml>
- Recount Forms
  - [Petition Requesting a Recount 14-1](#)
  - [Appointment of Representative for a Recount 14-2](#)

