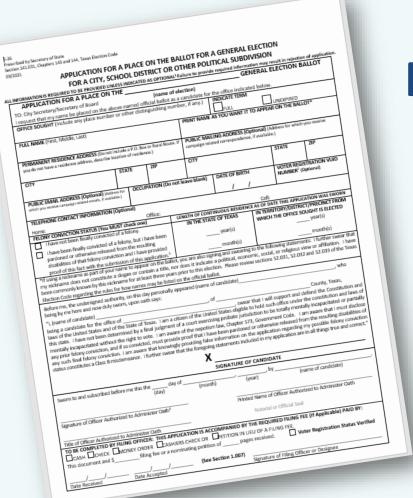# Reviewing Candidate Applications for Local Political Subdivisions

Topics Covered

- Notice Requirements

- Candidate Filing Deadlines

- Methods of Filing Candidate Applications

- Review of Candidate Applications

Resources

Local Election Official (Cities, Schools, and Other Political Subdivisions)
https://www.sos.state.tx.us/elections/laws/local-laws.shtml

Candidacy Corner

- Candidacy for Local Political Subdivisions

- Voter Registration for Candidates

- Terms, Qualifications, and Vacancies

Filing for Public Office - Posted Notice

- **General Elections**:
  - [Notice of Deadline to File Applications for Place on the Ballot](#)
  - Must be Posted 30 days before 1st day to file:
    - **Monday, December 19, 2022 for the May 6, 2023 election**

- **Special Elections:**
  - No posting requirement, but we recommend posting something that includes filing deadline dates/times once the special election has been ordered.

Web Notice - Requirements

- Political subdivisions with authority to impose a tax that at any time on or after January 1, 2019 maintained a publicly accessible Internet website must provide certain relevant information on their website.

- The requirements and deadline for filing for candidacy of each elected office of the political subdivision which shall be continuously posted on website for at least one year before the election day for the office.

  - If entity has taxing authority

  - This means you will need to know your requirements accurately, before the filing period

Filing Deadlines – General Elections

- **First Day to File**
  - General Elections (Uniform Election Date)
  - 30 days before filing deadline.
    - [Notice of Deadline to File Applications for Place on the Ballot](#)
      - Must be Posted 30 days before 1st day to file

- **Filing Deadline**
  - General Elections (Uniform Date)
    - Regular Candidates:
      - 5:00 pm, 78th day before election day.
    - Write-in Candidate Deadline
      - 5:00 pm, 74th day before election day.

Filing Deadlines – Special Elections

- **First Day to File**

  – Day special election is ordered.

- **Filing Deadline**

  – Windows are outlined by TEC Section 201.054.

Filing Deadlines – Write-in Candidates

- Must file a Declaration of **Write-in Candidacy**
  - Filing Deadlines
    - **General Election**: 5:00 pm on the 74th day before election day (withdrawal deadline – 5:00 pm on the 71st day before election day)
    - **Special Election to fill a Vacancy**: Same deadline as for regular candidates to file application for a place on the ballot (withdrawal deadline –5:00 pm on the 5th day after filing deadline)

Filing for Public Office - Filing Authority

Type of Entity	Filing Authority
City	City Secretary
School District	Secretary of School Board or designee
Water District	Secretary of Board or Presiding Officer or Agent, if permitted under Water Code
Hospital District	Secretary of the Board, or designee
Junior Colleges	Secretary of the Board
Library District	Secretary of the Board, or Presiding Officer
Emergency Services District	Multi-County District, County Clerk of each County.

- Employee Rule

- Delegation of Duty
  - Permitted <u>within</u> political subdivision
  - **NOT** permitted **between** political subdivisions.

Method of Filing

- Applications can be delivered in person, by mail, by fax, or by email.
  - **NEW LAW: HB 3107 (2021) Codified SOS interpretation about accepting applications via email**.
  - If by mail, must look at time of receipt, **<u>NOT</u>** postmark.
    - Receipt = actual possession of filing authority or agent, or time deposited in the authority's mail box.
  - Application cannot be submitted in parts. All parts must be submitted at the same time.
  - Section 1.007: Application can be received by any employee at the usual place of business.

Candidate Applications

- [Application for Place on General Election Ballot](#) (2-26)

- [Application for Place on Special Election Ballot](#) (2-27)

- [Declaration of Write-in Candidacy](#) (2-28)

- Applications and more can be found at:

  https://www.sos.texas.gov/elections/forms/pol-sub/index.shtml
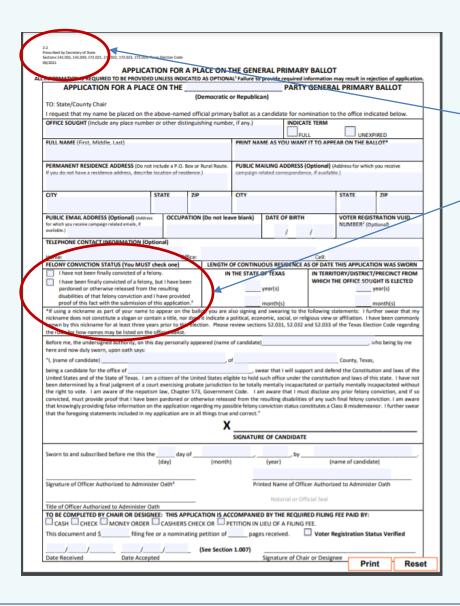
Using the Correct Application Forms

- All candidate forms have been updated to include recent legislative changes.

- Forms can be accessed on the following pages:
  - Forms Manual
  - May uniform election law calendar

- If you are having trouble accessing the new forms, clear your cache on your web browser.

- How to determine if it's the correct form…

- Things to Look for:
  - 9/2021 Revision Date
  - Box on Felony Conviction Status

- Other Changes
  - More boxes marked "optional"
  - More references to Texas Election Code provisions on nicknames
  - Revised Oath
  - More information for filing authority to fill out

Review of Application

- **Form, Content and Procedure**
  - Was the candidate application submitted timely?
  - Was it filled out properly?

- **Eligibility**
  - On the face of the application, does the candidate meet the eligibility requirements associated with that office?

Review of Candidate Application

- **Form, Content, and Procedure**
  - Review must be completed no later than 5th day after application is received (unless there is a petition).
  - Accepting application does not preclude a later determination that there is a deficiency in the application.
  - If rejecting, must do so **immediately** and deliver to candidate a **written notice of rejection**.
  - **Cannot challenge after the 50th before election day. [NEW LAW: HB 3107 (Sec. 141.034)]**

Review of Candidate Petition (if Applicable)

- **Review of Petition (141.032, TEC)**
  - Petition is part of application and review should be completed as soon as practicable.
  - Deficiency in petition cannot be cured with information provided in application.
  - **Unless the petition is challenged, the authority is only <u>required</u> to review the petition for facial compliance with the applicable requirements as to form, content, and procedure.**

Candidate Eligibility

- **Eligibility for Public Office (141.001, TEC)**
  - US Citizen
  - 18 years of age or older
  - No final judgment indicating:
    - Totally mentally incapacitated or
    - Partially mentally incapacitated without the right to vote
  - No final felony conviction
    - Unless pardoned or released from resulting disabilities
  - Resided continuously in the state for 12 months
  - Resided continuously in the territory for 6 months
  - Registered voter of the territory

  NOTE: Some offices have exclusive eligibility requirements, some laws are only partially conflicting, and for some offices all of Section 141.001 applies.

Administrative Declaration of Ineligibility

- **Eligibility**
  - MAY administratively declare candidate ineligible if:
    - Information on candidate application indicates ineligible for office, OR
    - Conclusive public record shows ineligible.

  NOTE: There is NO public record that **<u>conclusively</u>** establishes residency.

Administrative Declaration of Ineligibility

- Candidate **<u>MAY</u>** be declared ineligible:
  - By filing authority before early voting in person begins, OR
  - By presiding officer of final canvassing authority after polls close and before certificate of election is issued.

- Candidate must be given **written notice** of the declaration of ineligibility.

Administrative Declaration of Ineligibility

- Deadline for declaration **in time to remove from ballot** is different.

- Check the calendar for that election day.

2-26
Prescribed by Secretary of State
Section 141.031, Chapters 143 and 144, Texas Election Code
09/2021

APPLICATION FOR A PLACE ON THE BALLOT FOR A GENERAL ELECTION FOR A CITY, SCHOOL DISTRICT OR OTHER POLITICAL SUBDIVISION

ALL INFORMATION IS REQUIRED TO BE PROVIDED UNLESS INDICATED AS OPTIONAL[1] Failure to provide required information may result in rejection of application.

| APPLICATION FOR A PLACE ON THE _____ **Box 1** GENERAL ELECTION BALLOT |
| TO: City Secretary/Secretary of Board   (name of election) |
| I request that my name be placed on the above-named official ballot as a candidate for the office indicated below. |

| OFFICE SOUGHT (Include any place number or other distinguishing number, if any.) **Box 2** | INDICATE TERM ☐ FULL   ☐ UNEXPIRED **Box 3** |

Box 1: If left blank, not necessarily fatal.

Box 2: Should include distinguishing number, if applicable. Does not have to be stylized any certain way as long as you can determine which office the candidate is applying for.

Box 3: Must be completed if there is another office that has the same title but does not have place numbers. If it is blank, but you understand which office the application is for, you can accept.

| FULL NAME (First, Middle, Last)   Box 4 | PRINT NAME AS YOU WANT IT TO APPEAR ON THE BALLOT*   Box 5 |

- ## Box 4: **Full Name**
  - Legal name, but does not have to exactly match legal documents.
    - EX: John Michael Smith, John M. Smith, John Smith
- ## Box 5: **Name as you want it to appear on ballot**
  - Nickname rules apply.
  - Candidate may use any surname acquired by law or marriage.

PERMANENT RESIDENCE ADDRESS (Do not include a P.O. Box or Rural Route. If you do not have a residence address, describe location of residence.)			PUBLIC MAILING ADDRESS (Optional) (Address for which you receive campaign related correspondence, if available.)		
Box 6			**Box 7**		
CITY	STATE	ZIP	CITY	STATE	ZIP

- **Box 6: Permanent Residence Address**
  - MUST be completed by all candidates
  - Even candidates subject to confidentiality (judges and peace officers) must complete this box.

- **BOX 7: Public Mailing Address, if Available.**

Eligibility

- **Residency**

    – Is the candidate a resident of the territory they would be elected from? (If applicable)

    – Is the address on their application located within the territory?

    – Have they resided in the territory the proper amount of time? (If there is a durational residence requirement)

    NOTE: Eligibility verification by the filing authority does NOT include whether the candidates actually live at the address provided. This is left up to the courts.

    NOTE: Texas law does not allow a filing authority to make a conclusive determination about the location of a person's residence. Only a court of law may make such a determination.

PUBLIC EMAIL ADDRESS (Optional) (Address for which you receive campaign related emails, if available.)	OCCUPATION (Do not leave blank)	DATE OF BIRTH	VOTER REGISTRATION VUID NUMBER[2] (Optional)
Box 8	**Box 9**	**Box 10** / /	**Box 11**
TELEPHONE CONTACT INFORMATION (Optional) **Box 12**			
Home:	Office:		Cell:

- **Box 8: Public Email Address, if available**
  - This is what they should use to receive campaign email. Public address does NOT mean the candidate's county or government email address as a public official.
- **Box 9: Occupation**
  - Required per Section 141.031, Texas Election Code. However, please review In re Anthony, 642 S.W.3d 588 (Tex. 2022)
- **Box 10: Date of Birth**
  - Used to validate that the candidate meets minimum age requirements.
- **Box 11: VR Number (VUID)**
  - Not required, but very helpful as it can help you to validate their VR status, if applicable.
  - Also puts the candidate on notice that they need to think about their current VR status.
- **Box 12: Contact information**
  - Optional, but helpful to you if you need to contact a candidate.

Eligibility

- **Age**
  - Does the candidate meet the minimum age requirements required for that office?
  - NOTE: Sec. 141.001 rule is 18 years of age by election day. However, for offices requiring voter registration by filing deadline, candidate will need to be 18 years old earlier.

Eligibility

- **<u>Voter Registration</u>**
  - Is the candidate a registered voter of the territory from which they are seeking office? (NOTE: This is not applicable to all offices. <u>Water districts are a major exception</u>.)
  - Is the candidate's registration effective?
    - by the date of the filing deadline (for place on the ballot) OR
    - election day (for write-in)?
  - A candidate's registration must be **EFFECTIVE**. It is not enough to have submitted a registration application.

- **<u>Status as Registered Voter</u>**
  - As Candidate (141.001(6), TEC)
  - As Officeholder (601.009, Government Code)
    - "A person may not qualify for a public elective office unless the person is a registered voter."
  - Inconsistency in the Law

FELONY CONVICTION STATUS (You MUST check one)

☐ I have not been finally convicted of a felony. **Box 13**

☐ I have been finally convicted of a felony, but I have been pardoned or otherwise released from the resulting disabilities of that felony conviction and I have provided proof of this fact with the submission of this application.[3]

- **BOX 13: Felony Conviction Status**

  – Must be completed.

  – If they mark the second box, the candidate must provide documentation to provide proof that they have been pardoned or released from the resulting disabilities.

  – See back of form for list of acceptable documents. Call SOS with questions!
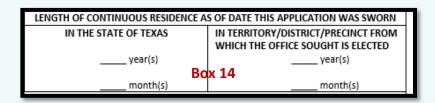
Eligibility

- **Felony Conviction**
  - Does the voter have a final felony conviction? If so, have they been pardoned or otherwise released from the resulting disabilities? (NOTE: Not all offices prohibit felony convictions.)
  - **School District eligibility – Section 11.066, Education Code**
  - OAG Opinion – KP-0251 – Felony Convictions and Candidacy

Eligibility / New Form

- **Felony Conviction**
- **On the form updated in 2021**, a candidate must provide an indication on their candidate application that the candidate has either not been finally convicted of a felony or if so convicted has been pardoned or otherwise released from the resulting disabilities.

- A person who has been convicted of a felony **shall include** in the application proof that the person has been pardoned or otherwise released from the resulting disabilities. The application form warns candidates to submit this information.

- Application form warns candidates that knowingly providing false information on their application related to their final felony conviction status is Class B misdemeanor.

- **Do not distribute old form!**
- [Sections 141.031, 141.039, TEC]

LENGTH OF CONTINUOUS RESIDENCE AS OF DATE THIS APPLICATION WAS SWORN	
IN THE STATE OF TEXAS	IN TERRITORY/DISTRICT/PRECINCT FROM WHICH THE OFFICE SOUGHT IS ELECTED
_____ year(s)	_____ year(s)
_____ month(s)	_____ month(s)

Box 14

- **BOX 14: Length of Continuous Residence**
  - Must be completed
  - Must indicate how long they have lived in the territory for which they are seeking office.
  - Check Qualifications for Public Office chart if you have questions on requirements.

Eligibility

- **Length of Continuous Residence**
  - Has the candidate been a resident of the territory elected from for the required period of time?
    - **Type A general-law city** requires a candidate for mayor to reside in the city for at least 12 months preceding election day and requires a candidate for alderman to reside in the territory the office is elected from for six months immediately preceding the filing deadline.
    - **Type B general-law city** requires a candidate for mayor or alderman to reside in the city for at least 6 months preceding election day.
    - Other political subdivisions should check laws or rules regarding residency for their entity.

As the filing authority, can I determine a candidate's residence?

No. An individual's residency is where an individual intends to return. In reviewing residency questions, the courts have consistently ruled that residency is a combination of intention and fact, and that the voter's intention must be reviewed to make a final determination of residence. McBeth v. Streib, 96 S.W.2d 992 (Tex. Civ. App.--San Antonio 1936, no writ).   For example, the El Paso Court of Appeals held that "the voter's intention was material to a proper determination of the voter's residence requirement." Simmons v. Jones, 838 S.W.2d 298, 301 (Tex. App.--El Paso 1992, no writ).

Coupled with the voter's intention must be a physical connection to the place in which he or she is claiming residence. Commercial Standard Ins. Co. v. Nunn, 464 S.W.2d 415 (Tex. Civ. App.--Texarkana 1971, writ dism'd).

In the absence of judicial review, a person must generally be presumed to have the requisite intent.

Further, the Texas Supreme Court has not indicated a single or a combination of public records that conclusively establish residency.

Residence Determinations – Continued

If the candidate describes a residence address on the face of the application within the district and the state for the requisite amount of time, the filing authority must accept that statement.

Under Section 145.003(f) of the Texas Election Code, an administrative declaration of ineligibility may be made only if the application or a conclusive public record establishes the candidate's ineligibility.

Again, neither the courts nor the Texas Legislature have established a public document that conclusively establishes residency.

What if an elected person seems to have moved from their elected territory?

In terms of the elections process, when a candidate files an application for a place on the ballot, he or she presents a sworn description on the face of the application as to the location of the person's residence, and the length of time at that location. The authority with whom the application is filed relies on this sworn description when reviewing the application for purposes of certifying the name to the ballot. In order to challenge this residence description, an opposing candidate would likewise need to challenge the application in court.

Continued

An officer is presumed to be a resident of the required territory he or she was elected to serve. To challenge this would require a judicial proceeding: specifically, a quo warranto hearing brought by the county or district attorney. <u>Whitmarsh v. Buckley</u>, 324 S.W.2d 298 (Tex. Civ. App., Houston, 1959, no writ hist.).

The Secretary of State's office is not a fact-finding tribunal (i.e., a court).

Before me, the undersigned authority, on this day personally appeared (name of candidate)_____, who being by me here and now duly sworn, upon oath says:

"I, (name of candidate) _____, of _____ County, Texas, being a candidate for the office of _____, swear that I will support and defend the Constitution and laws of the United States and of the State of Texas. I am a citizen of the United States eligible to hold such office under the constitution and laws of this state. I have not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote. I am aware of the nepotism law, Chapter 573, Government Code. I am aware that I must disclose any prior felony conviction, and if so convicted, must provide proof that I have been pardoned or otherwise released from the resulting disabilities of any such final felony conviction. I am aware that knowingly providing false information on the application regarding my possible felony conviction status constitutes a Class B misdemeanor. I further swear that the foregoing statements included in my application are in all things true and correct."

Box 15   X _____
                        SIGNATURE OF CANDIDATE

Sworn to and subscribed before me this the _____ day of _____, _____, by _____.
                                                        (day)   (month)   (year)   (name of candidate)

_____   _____
Signature of Officer Authorized to Administer Oath[4]   Printed Name of Officer Authorized to Administer Oath

_____   Notarial or Official Seal
Title of Officer Authorized to Administer Oath

- **Box 15: Oath and Notary**
  - Must be completed and signed and sworn to by candidate.
  - If they leave blanks in statement of oath, it is not fatal if the application (Not Petition) contains the applicable information.
  - Oath must be administered by someone authorized to administer oaths under Chapter 602 – list on back of form.
  - Mistakes by the notary are not always fatal. Please call SOS for additional guidance if that happens.

Eligibility

- **Oath and Notary**

  - **Was the oath properly administered and notarized?**

    - The oath must be administered by a notary public or any other person authorized to administer an oath under Chapter 602 of the Texas Government Code.

    - For cities, the oath can be administered by the city secretary in a matter pertaining to the official business of the city. [Sec. 602.002]

TO BE COMPLETED BY FILING OFFICER: THIS APPLICATION IS ACCOMPANIED BY THE REQUIRED FILING FEE (If Applicable) PAID BY:
☐ CASH ☐ CHECK ☐ MONEY ORDER ☐ CASHIERS CHECK OR ☐ PETITION IN LIEU OF A FILING FEE.
This document and $_____ filing fee or a nominating petition of _____ pages received.   ☐ Voter Registration Status Verified

_____/_____/_____   _____/_____/_____   (See Section 1.007)   **Box 16**_____
Date Received   Date Accepted   Signature of Filing Officer or Designee

- **Box 16: Completed by Filing Authority or Employee who received application.**
  - Failure to complete this box is not fatal to an application!
  - Part of this box should be completed at the time the application has been received by the person who takes the application.
  - The remainder should be filled in after it has been reviewed and a disposition has been made on the application.
  - This contains information to help you know what actions have been taken and when on an application.
  - Section 1.007 provides that any employee at the usual place of business can receive the filing.

Withdrawal

- To be effective, withdrawal **MUST** be:
  - In writing, signed, and acknowledged (sworn to) by the candidate, AND
  - Timely filed with the filing authority.

- This has the effect of removing name from ballot. If withdrawal submitted too late, candidate's name remains on ballot and withdrawal has no effect.

Withdrawal

- **Filing Deadline**
  - Uniform Dates: 5 pm, 71st day before election day.
    - Regular candidates AND write-in candidates.
  - Runoff Elections: 5 pm, third day after canvass of main election
  - Other elections: 5 pm, fifth day after application deadline.

- **EXCEPTION**
  - Untimely withdrawal can still remove name from ballot if ballots have not been prepared at the time candidate files request. Sec. 145.098.

Public Information

- All candidate applications, including petitions, are public upon filing (Section 141.035).

- Confidentiality for voter registration purposes does not mean a candidate has confidentiality for candidacy purposes.

- Certain candidates can request confidentiality

  - Candidates entitled to confidentiality under Gov't Code 552.1175 must separately request confidentiality from the filing authority for information on a candidate application.

Public Information

- Any individual subject to Section 552.1175 is eligible for certain protections.

- HB 1082 extended certain confidentiality protections to elected public officers. (552.1175, Texas Government Code).

  - To receive confidentiality, qualified individual MUST:

    - (1) choose to restrict pubic access, AND

    - (2) notify the governmental body of their choice and provide evidence of individual's status.

  - If the individual has submitted this request to filing authority, you may redact information without seeking OAG ruling. You must provide certain information to requestor – form on OAG website that you can use. (**Form Letter 552.1175**)

  - If requestor wants that information, the requestor can seek a ruling from the OAG.

Questions?

elections@sos.texas.gov