Ballots: Preparing, Proofing, and Ballot Corrections

February 2021

Agenda

• Ballot Preparation
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  – Ballot Drawing
• Ballot Proofing
• Ballot Corrections
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  – Correcting and Counting Mail Ballots
Ballot Preparation

Who Prepares the Ballot?

<table>
<thead>
<tr>
<th>Ordering Authority</th>
<th>Party Responsible for Preparing Ballot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governor</td>
<td>County Elections Officer</td>
</tr>
<tr>
<td>County</td>
<td>County Elections Officer</td>
</tr>
<tr>
<td>City</td>
<td>City Secretary</td>
</tr>
<tr>
<td>Political Subdivision</td>
<td>Secretary of the subdivision’s governing body. If no secretary, the presiding officer. (Frequently delegated to same employee accepting applications)</td>
</tr>
</tbody>
</table>
Ballot Preparation

- No specific statutory deadline.
- Ballots must be **prepared, finalized, and tested** in time for mail ballots to be mailed in compliance with Section 86.004 of the Texas Election Code, UOCAVA, MOVE.
- **45th day before May 1, 2021** =
  
  **Wednesday, March 17, 2021**

Ballot Format Requirements

- Printed on white or light-colored paper (not yellow) with black ink or some other color as approved by SOS.
- Numbered consecutively beginning with 1.
- Must be in uniform size and type.
- Ballots must be in English and Spanish.
Ballot Format Requirements

• **Nature of the election** and **date of the election** must be printed at the top of the ballot.

• “**OFFICIAL BALLOT**” must be printed in large letters on the ballot immediately below the designation and date of the election.

• “**unexpired term**” shall be printed on the ballot following the office title, if applicable.

• each proposition stating a measure shall appear on the ballot after the listing of offices= Section 52.072(c) & (d) of the Texas Election Code
  – Propositions must include the name of the entity in the title, must be designed by letter, not number

• “**voting squares**” and mandatory instructions = Sections 52.070, 52.071 & 124.063 of the Texas Election Code.

Ballot Format Requirements

• Election Day ballots must have the presiding judge's signature on the back of the ballot

• Early Voting ballots must have the early voting clerk's initials on the back of the ballot
  – Including ballots by mail

• These requirements apply to paper ballots and ballots marked by ballot marking devices
Center for Civic Design

- 10 key guidelines for designing usable ballots.
- These are recommendations but are not required under Texas law.

http://civicdesign.org/fieldguides/designing-usable-ballots/

1. Use lowercase letters.

Lowercase letters are more legible than ALL CAPITAL LETTERS because they make shapes that are easier to recognize.
2. Avoid centered type.

- Left aligned type is more legible than centered type, which forces the eyes to hunt for the start of the next line.

3. Use big enough type.

- Small print is hard to read for many voters.
- Use these minimum type sizes:
  - 12 point for print
  - 3.0 - 4.0mm for screen

Larger text may increase the number of pages but it is a worthwhile investment in election accuracy.
4. Pick one sans-serif font.

- Use sans-serif fonts with clean strokes.
- For dual language material, use bold text for the primary language, regular text for the secondary language.
- Using one font makes the ballot more unified. Different fonts make the voters stop reading and adjust.

5. Support process and navigation.

- Put instructions where they are needed. Use page (or screen) numbering to show progress.
6. Use clear, simple language.

- Make instructions and options as simple as possible.

- Note: most instruction language is prescribed by law and cannot be changed.

7. Use accurate instructional illustrations.

- Visual instructions help low-literacy and all voters.

- Illustrations must be accurate in their details, highlighting the most important instructions.

- Do not use photographs.
8. Use informational icons (only).

- Use icons that call attention to key information and support navigation with care.

9. Use contrast and color to support meaning.

- Use color and shading consistently:
- On paper ballots, to separate instructions from contests and contests from each other.
10. Show what’s most important.

- Use layout and text size to help voters know what to pay attention to.
  - Ballot title should be the most prominent.
  - Contest header should be more prominent than the candidates name.
  - A candidate's name should be bolder than his/her party affiliation.
  - Candidates' names and options should be presented with equal importance.

Minimum Number of Ballots

Formula for calculating number of ballots to be ordered:

\[ A \times B^* + C = D \]

Legend:
- \( A \) = percentage of voter turnout in a precinct
- \( B^* \) = current number of registered voters in precinct
- \( C \) = 25% of \( A \times B \)
- \( D \) = minimum number of ballots to be ordered

*REGISTERED VOTERS WHO APPEAR ON THE LIST WITH A "S" DESIGNATION DO NOT HAVE TO BE INCLUDED IN THE TOTAL NUMBER OF REGISTERED VOTERS IN THE PRECINCT.

Use figures from last like election (May 2020 uniform date or earlier, as applicable) to perform calculations.

(See Election Code 51.005)
Ballot Drawing

• **Who conducts drawing?**
  – Authority responsible for preparing the ballot.

• **Who is entitled to be present?**
  – Each candidate who is affected by the drawing may be present or have a representative present.

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Ballot Drawing

• **Notice Requirements for Candidates**
  – City Elections or elections held at county expense:
    • On receipt of a candidate’s written request accompanied by a stamped, self-addressed envelope, authority is required to mail notice to candidate
  – All other political subdivisions,
    • Required to mail written notice of the date, hours and place of the drawing to each candidate at the address on application no later than the **fourth day** before the date of the drawing
Ballot Drawing

- Notice requirements:
  - Date, Hour, and place of drawing.
  - Notice must be posted for at least 72 hours preceding the drawing.
  - Notice must be posted in the office of the authority conducting the drawing.
  - Sample Notice: AW3-2.

Ballot Drawing

- The drawing can be conducted virtually through a video conferencing method
- However, if a candidate or their representative wishes to attend the drawing in person, they may do so
Ballot Proofing

• This is one of the most important parts of the ballot preparation process
  – Errors become more costly and present a greater risk of legal challenge if they are caught later in the election process rather than earlier
  – Proper proofing can identify errors early in the process before the ballots are seen by voters and before your entity has to expend resources to correct them
• Remember to proof your paper ballots and the ballot programming on your electronic voting system equipment
• Even if you are contracting with the county, be sure to take part in the proofing process for your election!
Ballot Proofing

- Proofing should occur at several stages:
  - When you first put together your list of candidates or measures after the ballot drawing
  - Before you submit your list to your ballot printer
  - After your ballot proofs are created by the printer
  - After you receive your official ballots
  - After your ballots are programmed into your electronic system
  - Before ballots are mailed out

Finalizing Your Ballot

- Best Practices
  - Have multiple people in your office look at ballot.
  - Provide a copy of ballot to candidates for review.
  - **Verify the following:**
    - Spelling of Candidate Names.
    - Positions on the Ballot.
    - Order of Names on the Ballot.
    - Accuracy of Translations.
    - Accuracy of Instructions.
Ballot Correction

When and How to Correct a Ballot

When

• A ballot correction is necessary if the error on the ballot has the potential to affect the choice of the voter in a given election.
  – Example: when a candidate or a race has been left off of the ballot
  – Example: when a candidate who was required to be removed from the ballot remained on the ballot
  – Example: when an incorrect ballot instruction tells voters they can vote for more or fewer candidates than they should be able to vote for
  – Many circumstances are fact-specific.
    • Please contact our office regarding whether your specific situation requires a ballot correction.
When and How to Correct a Ballot

How:

• Paper: §52.006 specifically authorizes several different methods of correction for errors on pre-printed paper ballots:
  – Preparing new ballots
  – Marking through or obscuring the incorrect information
  – Affixing correction stickers to the ballot
    • Sticker must be printed in the same type style and on the same color paper as the ballot
• New paper ballots may also require you to reprogram and retest your voting system equipment.
• Ballot Marking Device or DRE: Correct the programming or database and create new ballots

Notify SOS

• Once it is determined that a ballot correction is necessary, you MUST provide written notice to the Secretary of State’s Office within 24 hours. [§52.0061]
  – Form: Notice of Ballot Correction
    • This notice may be sent via email
Notify Vendors

• If a vendor is used to print ballots, you will also need to reach out to your vendor to have them prepare the corrected ballots. [§ 52.0062]
• The vendor will also need to provide the Secretary of State’s Office with written notice within 48 hours of receiving a request to prepare new ballots.
  — Form: Notice of Ballot Reprint Order
    • The vendor may provide this notice via email
• Only applies to vendors who print ballots for a primary or for the November general election for state and county officers in even-numbered years
  — Does not apply to CSO elections

Destruction of Incorrect Ballots

• Once you have received your corrected ballots, you must destroy the incorrect ballots. [§52.0064]
• NOTICE: Before destroying the incorrect ballots, you must post notice of the time and place where the ballots will be destroyed for 72 hours before the destruction of ballot will occur.
  — Form: Notice of Destruction of Ballots
• The process must be conducted in the presence of the:
  — Sheriff (in a primary election or governor ordered election), or
  — Authority ordering the election (for all other elections)
• You must keep a record of the incorrect ballots that are destroyed.
  — Form: Record of Ballot Destruction
Providing Corrected Ballots to Mail Voters

• A corrected ballots must be sent to any ballot by mail voter who received an incorrect ballot. [§86.009]
  – You must keep a list of the voters who have been sent a corrected ballot
  – Form: List of Voters Mailed a Corrected Ballot
  – Reminder, the names of voters who voted by mail is not available for public inspection until after the corrected ballot is returned. [§87.121]

• When sending a voter the balloting materials for a corrected ballot, the early voting clerk must include a written notice explaining the reason for providing the corrected ballot.
  – Form: Notice of Correction to Ballot by Mail
  – You must make a notation on the carrier envelope indicating that the ballot is a corrected ballot.
  – You must also make a notation on the voter’s Application for Ballot by Mail that the voter was sent a corrected ballot.

Counting Corrected Mail Ballots

• Only one of the two ballots (incorrect vs corrected) will be counted.

• A voter may still cancel their ABBM, and vote in person, up until the time the voted ballot is received by the early voting clerk. [§84.032]

• Which ballot is counted depends on which ballot is returned, when it is returned, and whether the voter is a domestic voter using an ABBM, an overseas voter using an ABBM or FPCA, or a military voter using an FPCA
  – Each situation has different return deadlines for ballot by mail, which also apply in the corrected ballot context
Counting Corrected Mail Ballots
Domestic Voters Using an ABBM

• These timelines apply when the voter is voting by mail domestically using an ABBM
• Which ballot is counted depends on which ballot is returned, and when:
   – If the “incorrect” ballot is the only one that arrives by 7 PM on Election Day, then the “incorrect” ballot will be counted.
   – If the “incorrect” and the corrected ballot both arrive by 7 PM on Election Day, then only the corrected ballot will be counted.
   – If the corrected ballot is the only one to arrive by 7 PM on Election Day, then that ballot is counted.

Counting Corrected Mail Ballots
Overseas Voters Using an ABBM or FPCA

• These timelines apply when the voter is voting by mail as an overseas voter using an ABBM or an FPCA
• Which ballot is counted depends on which ballot is returned, and when:
   – If the “incorrect” ballot is the only one that arrives by the 5th day after Election Day, then the “incorrect” ballot will be counted.
   – If the “incorrect” and the corrected ballot both arrive by the 5th day after Election Day, then only the corrected ballot will be counted.
   – If the corrected ballot is the only one to arrive by the 5th day after Election Day, then that ballot is counted.

NOTE: If the 5th day after election day falls on a Saturday, Sunday, or federal or state holiday subject to Election Code 1.006, then those deadlines move forward to the next business day.
Counting Corrected Mail Ballots
Military Voters Using an FPCA

- These timelines apply when the voter is voting by mail as a military voter using an FPCA rather than an ABBM
- Which ballot is counted depends on which ballot is returned, and when:
  - If the “incorrect” ballot is the only one that arrives by the 6th day after Election Day, then the “incorrect” ballot will be counted.
  - If the “incorrect” and the corrected ballot both arrive by the 6th day after Election Day, then only the corrected ballot will be counted.
  - If the corrected ballot is the only one to arrive by the 6th day after Election Day, then that ballot is counted.

NOTE: If the 6th day after election day falls on a Saturday, Sunday, or federal or state holiday subject to Election Code 1.006, then those deadlines move forward to the next business day.

Specific Guidelines on Counting Mail Ballots

1. If a voter submits an uncorrected ballot by mail and does not return a corrected ballot (or vote a corrected ballot by personal appearance), the previously submitted uncorrected ballot will be counted.

2. If a voter returns a corrected ballot by mail, the corrected ballot will be counted.

3. If the voter submits a Request to Cancel Application for a Ballot by Mail before a voted ballot is received by the early voting clerk, the request should be marked as cancelled and the voter will be eligible to vote a regular ballot in person. Because the request was cancelled, any voted ballots by mail that arrives after the request was cancelled should NOT be sent to the Early Voting Ballot Board.
Specific Guidelines on Counting Mail Ballots

4. If a voter surrenders a corrected or uncorrected ballot at the polling place, he or she will vote a regular ballot.

5. If the voter does not have a ballot to surrender at the polling place, has not cancelled his or her Application for a Ballot by Mail in writing, and does not have a Notice of Improper Delivery, the voter may appear in person at the polling place and vote provisionally. Which ballot is counted depends on which ballot is reviewed by the Early Voting Ballot Board first. The provisional vote will be counted unless an uncorrected ballot or corrected ballot was already delivered to the Early Voting Ballot Board. This is why it is important to hold the uncorrected ballots until 7 p.m. on Election Day, or until you receive the corrected ballot by mail, whichever comes first.

– NOTE: If a corrected or uncorrected ballot by mail is reviewed first and properly rejected (e.g., for lack of signature), that concludes the process for the voter. The voter’s provisional ballot would not be accepted in this circumstance.

Advisories and Resources

• May 1, 2021 Election Law Calendar

• Advisory 2020-23: Ballot Corrections

• Advisory 2020-03: Emergency Ballot Procedures
Thanks for your attention!

Questions?

Contact: elections@sos.texas.gov