Filing Applications
Eligibility
Reviewing Applications - Form, Content, and Procedure
Accepting and Rejecting Applications
Withdrawal

CANDIDACY FEBRUARY 2021
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?
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 141.001 applies.
Web Notice - Requirements

• **NEW LAW**, HB 305 (2019), effective September 1, 2019.

• 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
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: NEW LAW HB 831 (2019) provides additional language to help define residency. However, 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 much such a determination.
Eligibility

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

• **Voter Registration**
  – Is the candidate a registered voter of the territory from which they are seeking office? (NOTE: This is not applicable to all offices. Water districts are a major exception.)
  – 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.

• **Status as Registered Voter**
  – 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

2/2/2021 Texas Secretary of State
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 – felony or misdemeanor Ed. 11.066
  – OAG Opinion – KP-0251 regarding Felony Convictions and Candidacy
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 conclusively establishes residency.
Administrative Declaration of Ineligibility

• Candidate **MAY** 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.
Rejection Notice

• Review promptly, within 5 days
• As soon as practicable if petition
• Written rejection
  – Email permissible if candidate gave email
Acceptance of Application

• Review promptly

• Provide written notice of acceptance
  – Not Required, but recommended
  – Email permissible if candidate provided email
  – Can be combined with Ballot Drawing Notice
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)
Ballot Drawing

• **Who conducts drawing?**
  – Authority in charge of preparing ballot.

• **When is ballot drawing?**
  – **No deadline.** SOS recommends date in calendar, usually after withdrawal deadline.

• **Notice for Ballot Drawing**
  – The authority conducting the drawing posts 72-hour notice in the authority's office a notice of the date, hour, and place of the drawing.
  – Candidates entitled to observe / send representative

• **EXCEPTION**
  – **NEW LAW, HB 88 (2019).** No second drawing needed for runoff ballot (unless home-rule charter or other outside law requires one).
COMMON SPECIFIC QUALIFICATIONS
Type A City (LGC 22.032)

- **Type A City (Local Gov't Code, Section 22.032)**
  - **Mayor**
    - Residence -- 1 year in state prior to the filing deadline; 1 year in city prior to election day
    - Age – 18
    - Must be a registered voter in territory elected from by the filing deadline*
  - **Alderman**
    - Residence -- 1 year in state prior to filing deadline; 6 months in the city (or ward) prior to filing deadline (Texas Elec. Code, Section 141.001(a); Brown v. Patterson, 609 SW 2nd 287)
    - Age – 18
    - Must be a registered voter in territory elected from by the filing deadline*
Type B City (LGC 23.024)

- **Residence:** 1 year in state prior to filing deadline; 6 months in city (or ward) prior to election day
- **Age:** 18 years old
- **Must be a registered voter in territory elected from by the filing deadline**
Type C City (TEC 141.001)

- **Residence**: 1 year in state and 6 months in city prior to filing deadline
- **Age**: 18 years old
- **Must be a registered voter in territory elected from by the filing deadline**
Home Rule City

• **Residence** -- use general rule if charter does not specify a requirement
  – A charter may require up to 12 months residence in a city.

• **Age** -- charter may require 21. (see Election Code, section 141.003)

• **Must be a registered voter in territory elected from by the filing deadline unless charter expressly conflicting**

• **Any requirement that a candidate must own property is unconstitutional.** Turner v. Fouche, 90 S. Ct. 532 (1970)
School Board Trustee (Ed.Code, Ch.11)

- **Residence** -- 1 year in state and 6 months in school district prior to filing deadline (Texas Elec. Code, Section 141.001(a); Brown v. Patterson, 609 SW 2nd 287)

  **Age** -- 18 years

- **Must be a registered voter in territory elected from by the filing deadline**

- **Must not have felony/misdemeanor Ed. Code 11.066**
Water Districts

- TEC 141.001
- Water Code General Law
- Special law if any
- Consult SOS as to which prevails
Questions?

elections@sos.texas.gov.