

Precincts and Polling Places

May 7, 2022 Constitutional Amendment Election and
May 24, 2022 Primary Runoff Election



Elections Division – Legal Section

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Topics Covered

- May Constitutional Amendment vs May Primary Runoff
- Defining "Precincts"
- Rules for County Election Precincts
- Combination and Consolidation of Precincts
- Polling Places
- Notice Requirements



May Constitutional Amendment vs May Primary Runoff



May Constitutional Amendment vs May Primary Runoff

- Two statewide elections scheduled for May 2022
 - May 7, 2022 Constitutional Amendment Election
 - Counties are required to use county election precincts
 - Also includes local entities' elections
 - Local entities are not required to use county election precincts, but may do so for the convenience of their voters
 - May 24, 2022 Primary Runoff Election
 - Counties are required to use county election precincts
 - Note: Precinct chairs are on the primary runoff ballot in 2022



May Constitutional Amendment vs May Primary Runoff Combination and Consolidation

- **May 7, 2022 Constitutional Amendment Election**
 - Can combine or consolidate precincts
 - Combination (42.0051) - May combine two precincts if one precinct has less than 500 registered voters and the combined precinct would have less than 5000 registered voters
 - Consolidation (42.008) - Must have at least one consolidated precinct per commissioner precinct
- **May 24, 2022 Primary Runoff Election**
 - Can combine or consolidate precincts
 - Combination (42.0051) - May combine two precincts if one precinct has less than 500 registered voters and the combined precinct would have less than 5000 registered voters
 - Consolidation (42.009 and 42.005) - Each consolidated precinct may not have more than one ballot style for each type of office listed under 42.005
 - County commissioner, Justice of the Peace / Constable, US Representative, State Representative, State Senator, or State Board of Education
 - A consolidated precinct can have multiple ballot styles for offices not listed in 42.005 (e.g. precinct chairs)



Defining "Precincts"



Types of Precincts in Counties

- Commissioners Precincts
 - Territorial unit served by county commissioners.
- Justice Precincts
 - Territorial unit served by Justices of the Peace and Constables.
- County Election Precincts
 - Created by order of commissioners court and is the basic unit of voter registration.
- Election Day Precincts
 - The area served on election day by a single polling place. It could be a single county election precinct, combined county election precinct, or consolidated county election precinct (counties); or the precincts created by a local authority (May elections).



254 Counties, Many Variations

- The number of justice precincts, county election precincts and election day precincts will vary depending on the population of the county, district boundaries, and type of election.



Rules for County Election Precincts



Use of County Election Precincts

- County Election Precincts **MUST** be used for the following elections:
 1. General election for state and county officers;
 2. Special election ordered by the Governor;
 3. Primary election (including primary runoff);
 4. Countywide election ordered by county;
 5. Election held by political subdivision on uniform date in November

Sec. 42.002, Texas Election Code



Use of County Election Precincts

- Political subdivisions holding an election on the November uniform election date **must** use county election precincts and the county polling places on Election Day.
- This is the case even when the county has adopted the countywide polling place program. In that case, the entity **must** have a presence in every countywide location in the county, not just the locations physically within the territory of the political subdivision.

Secs. 42.002; 43.004; 43.007(e), TEC



Use of County Election Precincts

- Local political subdivisions holding an election on the **May** uniform election date **are not required to** use county election precincts and the county polling places on Election Day.
- This is the case even if the county is also holding an election on the May uniform election date.
- Local entities can use county election precincts and/or the county's polling places, but they are not required to do so in May.

Secs. 42.002; 42.061; 43.004; 43.007(e), TEC



Rules for County Election Precincts

- The Election Code outlines specific rules for how county election precincts lines must be redrawn.
- The redrawing of county election precinct lines occurs after each redistricting and then again every two years in March or April of odd-numbered years.



County Election Precincts

- **Territory Contained in a County Election Precinct**
 - Each county election precinct (including a consolidated precinct) may **NOT** contain territory from more than one of each of the following territorial units:
 - Commissioners precinct;
 - Justice precinct;
 - Congressional district;
 - State representative district;
 - State senatorial district; or
 - State Board of Education District.

Sec. 42.005, TEC



County Election Precincts

- **Population Requirements for County Election Precincts (42.006)**
 - A county election precinct must contain at least 100 but not more than 5,000 registered voters.
 - **EXCEPTIONS:**
 - County with population under 100,000: minimum number of voters contained in county election precinct is 50.
 - County with a population under 50,000: may contain fewer than 50 registered voters if the commissioners court received a written petition signed by at least 25 registered voters of the county requesting continuation of the precinct.
 - Voters on the “S” list are excluded in determining totals.
- **NOTE:** When in conflict, Section 42.005 (officer/territory lines) prevails over Section 42.006 (population requirements).



County Election Precincts

- **Combining incorporated and unincorporated territory (42.007)**
 - A county election precinct may not contain territory inside a city with a population of 10,000 or more and territory from outside that city.
 - **EXCEPTIONS:** If the commissioners court determines that either of the two areas:
 - cannot constitute a separate election precinct of suitable size that contains the permissible number of voters; or
 - cannot be combined with other territory on the same side of the city boundary to form a precinct of suitable size with the permissible number of registered voters without causing another precinct to fail to meet those requirements.



Reviewing County Election Precincts

When reviewing county election precincts remember that:

- Each county election precinct (including a consolidated precinct) may **NOT** contain territory from more than one territorial unit provided under **Section 42.005**
- A county election precinct must contain at least 100 but not more than 5,000 registered voters under **Section 42.006** (but exceptions apply)
- A county election precinct may not contain territory inside a city with a population of 10,000 or more and territory from outside that city under **Section 42.007** (but exceptions apply)



Combination and Consolidation of Precincts



Election Day Precincts

- County Election Precincts may be combined or consolidated for certain county held elections.
 - This creates “election day precincts” meaning these precincts only exist for the election.

NOTE: When the Election Code refers to “election precinct” it generally means the election day precinct, i.e. the precincts established for an election.



Combining Precincts (42.0051)

- When two or more county election precincts vote at the same polling place, but the precincts are reported separately and separate paperwork is kept for each precinct.
- Population Requirements for Combining Precincts
 - Commissioners court can combine two precincts if one of the precincts has fewer than 500 registered voters and the combined precinct does not exceed 5000 registered voters
 - Except: If county population is 250,000 or more, then may combine two precincts if one precinct has fewer than 750 registered voters and the combined precinct does not exceed 5000 registered voters
 - Note: In primary election, decision on combination is determined by county executive committee
- Restrictions
 - Voting Rights Act – cannot dilute voting strength or representation or discourage participation by a group covered by the Voting Rights Act



Consolidating Precincts

- Consolidation of precincts occurs when two or more county election precincts are consolidated into a single election precinct and reported as such.
- The polling place in a consolidated precinct must be located in a place that can adequately serve the voters of the precinct.
- **Consolidation can only occur in specific elections:**
 - **Special Elections (42.008):**
 - Consolidation can occur in a special election that requires the use of county election precincts.
 - Occurs on order of commissioners court and on recommendation of County Election Board.
 - **Primary Elections (42.009 and 172.126(b)):**
 - Consolidation can occur on order of the County Executive Committee of political party (separate primary) or county election officer (joint primary)



Consolidating Precincts in May Constitutional Amendment Election

- **Consolidation of Precincts in Special Election (sec. 42.008)**
 - Consolidation can occur in a special election that requires the use of county election precincts
 - Includes constitutional amendment elections
 - Occurs on recommendation of County Election Board
 - Note: Local entities holding elections in May are not required to use county election precincts, so they generally would not need to consolidate
 - However, those entities have broad authority to draw their own precinct lines in May, which can result in fewer polling places than would be used in a county election that uses the county election precincts.
 - Must have at least one consolidated precinct wholly contained within each commissioner precinct



Consolidating Precincts in May Primary Runoff Election

- **Consolidation of Precincts in Primary Election (Sec. 42.009)**
 - Consolidation can also occur in a primary election
 - Separate primary: ordered by county executive committee
 - Joint primary: ordered by county election officer (Sec. 172.126(b))
 - Cannot have more than one ballot style per consolidated precinct for the offices listed in 42.005
 - 42.005 Offices: County Commissioner, Justice of the Peace / Constable, US Representative, State Representative, State Senator, or State Board of Education
 - Can have multiple ballot styles for offices that are NOT listed in 42.005 (e.g. precinct chair)



Consolidating Precincts in May Primary Runoff Election

- **Consolidation of Precincts in Primary Election (Sec. 42.009)**
 - In other words, if you do not have any of the offices listed in 42.005 on your primary runoff election ballot, then there would be no limit to your ability to consolidate as long as you can adequately serve all your voters.
 - If you do have offices listed under 42.005 on your primary runoff ballot, then you would need to make sure that none of your consolidated precincts contain more than one of each type of office
 - e.g. if you have two County Commissioner races on your runoff primary ballot, then you could not have a consolidated precinct that contains territory from both of those commissioner precincts
 - e.g. if you have multiple precinct chairs on your runoff primary election ballot, then you could have a consolidated precinct that includes ballot styles for multiple precinct chair races because precinct chair is not an office listed under 42.005



	Combine (42.0051)	Consolidate (42.008/42.009)
Description	A county election precinct with fewer than 500 voters may be combined with another county election precinct. *If county of 250,000 or more, may combine if fewer than 750 registered voters.	If it is a special election ordered by the governor or a primary election, a county election precinct may be consolidated with another county election precinct.
Purpose	Avoid additional expenditures in precinct with fewer voters.	Avoid additional expenditures in certain elections.
Limitation	May not combine in such a manner that violates Voting Rights Act.	May not consolidate if it does not provide polling places that adequately serve voters.
Duration	Single election. *In March/April of odd year, commissioners court should review boundary lines.	Single election.
Elections	General Election, Special Election, Primary Election	Special Election, Primary Election
Different Ballot Styles?	Yes.	In special election, must have at least one consolidated precinct wholly located in each commissioner precinct. In primary election, consolidated precinct may not include more than one of each type of office under 42.005.
Records	Records must be maintained and reported by county election precinct.	Records must be maintained and reported by consolidated precinct.

Polling Places



Polling Places

- **GENERAL RULE**

- Each election precinct established for an election shall be served by a single polling place located within the boundary of the precinct.

Sec. 43.001, TEC



Location of Polling Places

- General Election or Special Election using County Election Precincts
 - Regular County Election Precincts: County Clerk/EA recommends location of polling place; commissioner court shall adopt designation.
 - Consolidated Election Precincts: Commissioners court designates the location of the polling place.
 - County population of more than 175,000: the commissioners court may not designate a location as a polling place that would require a voter to travel more than 25 miles from the voter's residence to their precinct polling place.

Sec. 43.002, TEC



Countywide Polling Places

In selecting countywide polling places, a county must adopt a methodology for determining where each polling place will be located. **The total number of countywide polling places may not be less than:**

- (1) 50 percent of the number of precinct polling places that would otherwise be located in the county for that election; or
- (2) for an election held in the first year in which the county participates in the program, 65 percent of the number of precinct polling places that would otherwise be located in the county for that election

Sec. 43.007, TEC



How Do You Determine How Many Polling Places You Are Required to Have?

- **Look at several different factors:**
 - Total number of County Election Precincts: This is your starting place for all elections!!
 - How many precincts have less than 500 or 750 (whichever is applicable) registered voters? These precincts are eligible to be **COMBINED** with other precincts under 42.0051.
 - Can you **CONSOLIDATE** precincts for the election? Possibly but see 42.008 (special elections) and 42.009 (primary elections).
- This number will provide your minimum number of precinct polling places upon which you can begin your calculations.



May 7, 2022 Constitutional Amendment and May 24, 2022 Primary Runoff

- What do we consider for these elections?
 - 42.002(a)(1): Requires the use of county election precincts
 - 42.0051: Allows you to combine certain precincts based on population of precincts.
 - 42.008 / 42.009: Allows you to consolidate precincts for these elections.
 - 43.001: Requires one polling place per election precinct.
- Most importantly: Will your polling places adequately serve the voters in your community?
- If you are using the countywide polling place program, remember that just because you can go down to 65% or 50% of what you would have otherwise had open does not always mean you should!



Buildings as Polling Places

- Requirements
 - Must be located inside a building.
 - Must be a public building, if practicable.
 - May not be located at the residence of a person who is a candidate for elective office or related to the candidate.
 - Must be accessible and meet ADA requirements
 - The entity that owns the public building may refuse use if more than one entity asks permission for the building and simultaneous use by several entities is impracticable.
 - Primary Election: if the parties share polling places, the polling place must be sufficient to accommodate both elections.

Sec. 43.031, TEC



Public Buildings as Polling Places

- If a public building is unavailable in a county election precinct, the county commissioners may purchase or construct a building in the precinct for that purpose. (Sec. 43.032, TEC)
- There is no charge (including a charge for personnel, utilities, or other expenses incurred before or after regular business hours) for the use of a public building if the building is **normally open for business** on the day on which the election is held. (Sec. 43.033, TEC)
- If the building is not normally open for business, a charge may be made only for reimbursement for the actual expenses resulting from the use of the building in the election.



Notice Requirements



Notice of Consolidated Precinct

- Not later than 21st day before election day: Must post notice of consolidation, which must include the location of each polling place on the county's website. (4.003(b), 172.1112)
- Not later than 10th day before election day: Must post notice at the polling place used in the preceding general election. Notice must have location of polling place for consolidated precinct and must be posted through election day. (4.003(b), 172.1112)



Notice of Change in Polling Place (Sec. 43.061)

- If you have to change a polling place in an election ordered by the county or the governor after your notice of election was published, then the county election officer must give notice not later than the earlier of;
 - 24 hours after location is changed; or
 - 72 hours before polls open on election day.
- Notice of the change must be given in one of two ways:
 - Post notice on the county's website in a listing used specifically to inform the public of polling place changes; or
 - County election officer must provide notice to all candidates
 - Single-County Offices: Notice given directly to candidate
 - Multi-County Offices: Notice given to County Chair
 - Independent Candidates: Notice given to County Judge



Notice at Previous Polling Place

- If the polling place that is used in an election is different from the location used in the preceding election ordered by the same authority, you must give notice of the change at the previous polling place.
- Notice Requirements
 - Notice must be posted at entrance to previous polling place
 - Notice must state the location of the new polling place

Sec. 43.062, TEC



Notice of Nearest Polling Places (Countywide Polling Place Program)

- Each countywide polling place must post a notice at that location of the four nearest countywide polling place locations by driving distance.

Sec. 43.007(o), TEC



Resources

- **May 7, 2022 Constitutional Amendment Election Law Calendar**
<https://www.sos.texas.gov/elections/laws/advisory2021-23.shtml>
- **March 1, 2022 Primary Election Law Calendar (includes May 24, 2022 Primary Runoff Election Law Calendar)**
<https://www.sos.texas.gov/elections/laws/advisory2021-18.shtml>
- **Elections Forms Index**
<https://www.sos.state.tx.us/elections/forms/pol-sub/index.shtml#photo-id>
- **Conducting Your Elections Page**
<https://www.sos.state.tx.us/elections/laws/county-voter-reg-laws.shtml>
- **Texas Election Code**
<https://statutes.capitol.texas.gov/>



Thank you!

elections@sos.texas.gov

