

The State of Texas



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ELECTION ADVISORY **NO. 2022-07**

TO: Election Officials

FROM: Keith Ingram, Director, Elections Division

DATE: January 21, 2022

RE: NEW LAW: Changes to Early Voting by Personal Appearance – House Bill 2025, House Bill 3107, and Senate Bill 1

As you prepare for elections in 2022, we wish to advise you of recent changes in state law relating to early voting by personal appearance. Specifically, this advisory addresses three bills passed by the Texas Legislature in its Regular Session and Second Called Session in 2021: [House Bill 2025](#) (R.S., effective June 15, 2021); [House Bill 3107](#) (R.S., effective September 1, 2021); and [Senate Bill 1](#) (2nd C.S., effective December 2, 2021). We also provide answers to certain frequently asked questions regarding these changes.

All statutory references in this advisory are to the Texas Election Code (“the Code”), unless otherwise indicated.

Certain Statutes and Governmental Actions that Relate to the Federal Census

Pursuant to House Bill 2025 (2021, R.S), the population figures from the 2010 federal census will continue to apply with respect to a statute that applies to a political subdivision having a certain population according to the most recent federal census until September 1, 2023. The bill specifies that a statute does not apply to a political subdivision to which the statute did not apply under the 2010 federal census, regardless of whether the political subdivision has the population prescribed by the statute according to the 2020 federal census.

Regular Days and Hours for Early Voting by Personal Appearance at the Main Early Voting Polling Place

Senate Bill 1 (2021, 2nd C.S.) modified the required days and hours for weekday early voting by personal appearance.

Pursuant to Section 85.002 of the Code, early voting by personal appearance for each election must be conducted at the main early voting polling place. The main early voting polling place, for elections in which a county clerk or city secretary is the early voting clerk, shall be located in any room selected by the early voting clerk in the building that houses the main business office of the county clerk/elections administrator or city secretary (as applicable), unless the commissioners court or city council determines the location is impracticable, in which case the

commissioners court or city governing body may designate a different location in the city in which the business office is located that is as near as practicable to the business office.

Depending on who the early voting clerk is, the main early voting polling place must be open on certain days and for certain hours pursuant to Section 85.005 of the Code, as amended by Senate Bill 1. **Please note that Senate Bill 1 applies to all elections ordered on or after December 2, 2021.**

As a reminder, the early voting hours discussed below are different than the mandatory office hours under Section 31.122 of the Election Code. The mandatory office hours require each county clerk, city secretary, or secretary of a governing body (or the person performing duties of a secretary) to keep the office open for election duties for at least 3 hours each day, during regular office hours, on regular business days. Section 31.096 specifically states that the mandatory office hours are a nontransferable function and therefore an election services contract may not change the political subdivision's requirement to maintain office hours.

Counties

Senate Bill 1 modified Section 85.005(a) of the Code to provide that for elections in which the county clerk/elections administrator is serving as the early voting clerk, early voting by personal appearance must be conducted each weekday of the early voting period that is not a legal state holiday and for a period of at least nine hours. Voting may not be conducted earlier than 6:00 AM or later than 10:00 PM.

Senate Bill 1 also amended Section 85.005(d) of the Code to allow a voter who has not voted before the scheduled time for closing a polling place during the early voting period to vote after that time if the voter is in line at the polling place by closing time. Previously, this procedure only applied to voting on election day.

Local Political Subdivisions (Not Counties)

Senate Bill 1 amended Section 85.005(b) of the Code to provide that for all other elections in which the county clerk/elections administrator is not the early voting clerk (i.e., cities, schools, other political subdivisions), early voting by personal appearance must be conducted each weekday of the early voting period that is not a legal state holiday for a period of at least nine hours, unless the territory has fewer than 1,000 registered voters. For those territories with fewer than 1,000 registered voters, voting shall be conducted at least four hours each day.

Senate Bill 1 removed the requirement that in an election ordered by a city, early voting by personal appearance must be conducted at the main early voting polling place for at least 12 hours on one weekday, if the early voting period consisted of less than six weekdays; or on two weekdays, if the early voting period consisted of six or more weekdays. While cities may still conduct early voting for 12 hours during the weekdays of early voting by personal appearance if they choose to do so, it is no longer required that cities conduct early voting at the main early voting polling place for at least 12 hours on one or two weekdays. **If a city, school, or other political subdivision chooses to conduct extended weekday early voting, the entity MUST include that information in the original order of election.**

As noted above, Senate Bill 1 also amended Section 85.005(d) to provide that a voter is entitled to vote after the scheduled time for closing a polling place during early voting if the voter is in line at the polling place by closing time.

Extended Weekday and Weekend Early Voting Hours for Early Voting by Personal Appearance at the Main Early Voting Polling Place

Senate Bill 1 amended Sections 85.005(c) and 85.006(e) of the Code to modify the required days and hours for early voting by personal appearance at the main early voting polling place for counties above and below certain populations and for certain elections. Senate Bill 1 lowered the population threshold—from counties with a population of 100,000 or more, to counties with a population of 55,000 or more—that requires the mandatory extended weekday and weekend early voting hours. For counties with a population under 55,000, the same extended early voting hours apply if the early voting clerk receives a written request submitted by at least 15 registered voters of the county.

County With a Population of 55,000 or More:

- **Extended Weekday Early Voting** – Voting in a primary election or the general election for state and county officers shall be conducted at the main early voting polling place for at least 12 hours on each weekday of the last week of the early voting period, and voting in a special election ordered by the Governor shall be conducted at the main early voting polling place for at least 12 hours on each of the last two days of the early voting period. Voting may not be conducted earlier than 6:00 AM or later than 10:00 PM. (Sec. 85.005(c)).
- **Extended Weekend Early Voting** – Voting in a primary election or the general election for state and county officers shall be conducted at the main early voting polling place on the last Saturday of the early voting period for at least 12 hours and on the last Sunday of the early voting period for at least six hours. Voting may not be conducted earlier than 6:00 AM or later than 10:00 PM on the last Saturday of the early voting period. Voting may not be conducted earlier than 9:00 AM or later than 10:00 PM on the last Sunday of the early voting period. (Sec. 85.006(e)).

County with a Population Under 55,000:

- **Extended Weekday Early Voting** – In a primary election or the general election for state and county officers, voting shall be conducted at the main early voting polling place for at least 12 hours on each weekday of the last week of the early voting period, and voting in a special election ordered by the Governor shall be conducted at the main early voting polling place for at least 12 hours on each of the last two days of the early voting period if the early voting clerk receives a [written request \(PDF\)](#) submitted by at least 15 registered voters of the county requesting extended weekday hours. Voting may not be conducted earlier than 6:00 AM or later than 10:00 PM. The request must be submitted in time to enable compliance with Section 85.067 of the Code. (Sec. 85.005(c)). See [Notice of Extended Weekday Voting at Main Early Voting Location for County Elections \(PDF\)](#).
- **Extended Weekend Early Voting** – In a primary election or the general election for state and county officers, on receipt of a [written request \(PDF\)](#) submitted by at least 15 registered voters, voting shall be conducted at the main early voting polling place on the last Saturday of the early voting period for at least 12 hours and on the last Sunday of the early voting period for at least six hours. Voting may not be conducted earlier than 6:00 AM or later than 10:00 PM on the last Saturday of the early voting period. Voting may not be conducted earlier than 9:00 AM or later than 10:00 PM on the last Sunday of the early voting period. The request must be submitted in time to enable compliance with Section 85.007 of the Code. (Sec. 85.006(e)). See [Notice for Additional Early Voting on Saturday and/or Sunday \(PDF\)](#).

Local Political Subdivisions (Not Counties)

Senate Bill 1 amended Section 85.006 of the Code as it pertains to extended weekend early voting by personal appearance at the main early voting polling place for all local political subdivisions which are not counties. Pursuant to Section 85.006, voting on any Saturday or Sunday for an election of a local political subdivision must be included in the order and notice of election. The order and notice of election must include the dates and hours of Saturday or Sunday voting. (Secs. 85.006, 85.007). The political subdivision must order early voting on Saturday or Sunday, if a [written request](#) is received from at least 15 registered voters of the political subdivision prior to the election being ordered. (Sec. 85.006(d)). The election notice must be posted on the political subdivision's website, if the political subdivision maintains a website. (Sec. 85.007).

Previously, a city secretary could order weekend early voting hours by written order. Alternatively, a city could be petitioned for weekend early voting hours upon receipt of a request from at least 15 registered voters, as long as the written request was received in time to enable compliance with the notice requirement under Section 85.007 of the Code. As a result of Senate Bill 1, for elections ordered on or after December 2, 2021, city secretaries no longer have the authority to order early voting by personal appearance for a Saturday or Sunday 72 hours immediately preceding the first hour that voting will be conducted. Voting on **any** Saturday or Sunday must be included in the political subdivision's election order and notice of election. The order and notice of election must include the dates and hours of Saturday or Sunday voting. However, the political subdivision must have early voting on Saturday or Sunday, if a written request is received from at least 15 registered voters of the political subdivision in time to comply with the posting requirement. **The written request must be submitted in time to be included in the order and notice of election.**

Overview of Permanent Branch Locations

Branch offices that are regularly maintained for conducting general clerical functions of the county clerk/elections administrator are required to serve as permanent branch early voting locations per Section 85.061 of the Election Code. Permanent branch locations are used only in countywide elections in which the county clerk/elections administrator is the early voting clerk under Section 83.002 of the Code. Per Section 85.061(a), if a suitable room is unavailable inside the branch office, the polling place may be located in another room inside the same building as the branch office.

Pursuant to Section 85.061(b) of the Code, in an election in which a temporary branch polling place is established under Section 85.062(a)(1) or (d), the commissioners court may provide by resolution, order, or other official action that any one or more of the county clerk's/elections administrator's regularly maintained branch clerical offices are not to be branch early voting polling places in the election. If the commissioners court has not issued such a resolution, order, or other official action, then early voting by personal appearance at each permanent branch polling place must be conducted on the same days and during the same hours as voting is conducted at the main early voting polling place. (Sec. 85.063).

Establishing Temporary Branch Locations and Required Use of Temporary Branch Locations

Counties

Temporary branch polling places established for the early voting period under Section 85.062 of the Code are different from permanent branch polling places under Section 85.061. Pursuant to

Section 85.062, one or more early voting polling places other than the main early voting polling place may be established by: (1) the commissioners court, for an election in which the county clerk/elections administrator is the early voting clerk; or (2) the governing body of the political subdivision served by the authority ordering the election, for an election in which a person other than the county clerk/elections administrator is the early voting clerk.

Pursuant to Section 85.062(d) of the Code, counties conducting a primary election, the general election for state and county officers, or a special election to fill a vacancy in the legislature or in Congress must establish temporary branch polling places as follows:

1. in a county with a population of 400,000 or more, the commissioners court must establish one or more temporary polling places, other than the main early voting polling place, in each state representative district containing territory covered by the election.
2. in a county with a population of 120,000 or more but less than 400,000, the commissioners court must establish one or more temporary polling places, other than the main early voting polling place, in each commissioners precinct containing territory covered by the election.
3. in a county with a population of 100,000 or more but less than 120,000, the early voting clerk must establish one or more early voting polling places in each commissioners precinct for which the early voting clerk receives a timely filed written request submitted by at least 15 registered voters of that precinct. The written request must be received in time to enable compliance with Section 85.067 of the Code.

House Bill 3107 (2021, R.S.) amended Section 85.062(d)(3) as it pertains to counties with a population of 100,000 or more but less than 120,000. This section previously required the commissioners court to establish one or more early voting polling places in each precinct for which the commissioners court received a written request signed by at least 15 registered voters of that precinct. As amended by House Bill 3107, Section 85.062(d)(3) makes the early voting clerk the authority responsible for establishing temporary branch polling places in each precinct for which the early voting clerk receives a written request signed by at least 15 registered voters of that precinct. In establishing one or more temporary branch polling places, the early voting clerk must comply with the notice requirements in Section 85.067 of the Code.

Senate Bill 1 amended Section 85.062(b) of the Code regarding the location of a temporary branch locations. Section 85.062(b) provides that a temporary branch polling place may be located, subject to Section 85.062(d), at any place in the territory served by the early voting clerk and may be located inside any building as directed by the authority establishing the branch office. Senate Bill 1 further provided that the temporary branch polling places for the general election for state and county officers or a primary or primary runoff election may not be located in a movable structure. Ropes or other suitable objects may be used at the polling place to ensure compliance with Section 62.004 of the Code.

Note for Countywide Counties

Senate Bill 1 also added Section 85.062(f-1) to the Code to provide that the location of temporary branch polling places, in an election in which countywide polling places are used, must be determined with the same methodology that is used for the location of countywide polling places. For additional information regarding the use of the countywide polling place program under Section 43.007 of the Code, please see [Election Advisory No. 2021-20](#).

Local Political Subdivisions Holding Elections on a Uniform Election Day

As a reminder, in an election held by a political subdivision, other than a county, on the November uniform election date in which the political subdivision is not holding a joint election with a county in accordance with Chapter 271 of the Code or has not executed a contract with a county elections officer under which the political subdivision and the county share early voting polling places for the election, the political subdivision must designate as an early voting sites one of the early voting sites established by the county that is located in the political subdivision. Per Section 85.010(b)(2) of the Code, the political subdivision may not designate as an early voting polling place a location other than an eligible county polling place unless each eligible county polling place located in the political subdivision is designated as an early voting place by the political subdivision. If such a shared polling place is designated as the main early voting polling place by the political subdivision, it must be open for voting for all political subdivisions the polling place serves for at least the days and hours required of a main early voting polling place under Section 85.002 of the Code for the political subdivision making the designation. (Secs. 85.010, 85.002, 85.062(e)).

For additional information regarding the impact of HB 3107 on an individual election, please see our election law calendar for that election.

Days and Hours of Early Voting by Personal Appearance at Temporary Branch Locations

As a result of House Bill 3107, the rules regarding the days and hours of early voting by personal appearance at temporary branch locations are different for counties with a population of 100,000 or more and political subdivisions situated in such a county. Specifically, HB 3107 amended Section 85.064 of the Code to provide that the section only applies to an election in which the territory served by the early voting clerk is situated in a county with a population of 100,000 or more. In an election in which the territory served by the early voting clerk is situated in more than one county, Section 85.064 applies if the sum of the populations of the counties is 100,000 or more. HB 3107 did not amend any Code provisions regarding permanent branch polling places.

Counties with a Population of 100,000 or More and Political Subdivisions Situated in Such a County:

- Section 85.064 of the Code was amended to provide that early voting by personal appearance at any temporary branch polling place must be conducted on the same days that voting is required to be conducted at the main early voting polling place under Section 85.005 and must remain open for at least eight hours each day. For certain political subdivisions, this will require your temporary branch locations to be open on every weekday of the early voting period, for at least eight hours on each of those days. **This only applies to an election in which the territory served by the early voting clerk is situated in a county with a population of 100,000 or more. In an election in which the territory served by the early voting clerk is situated in more than one county, this section applies if the sum of the populations of the counties is 100,000 or more.**
- Per Section 85.064(d) of the Code, the authority authorized under Section 85.006 to order early voting on a Saturday or Sunday may also order, in the manner prescribed by that section, early voting to be conducted on a Saturday or Sunday at any one or more of the temporary branch polling places for elections other than the primary election or the general election.
- In a primary election or the general election for state and county officers, early voting must be conducted for at least 12 hours on the last Saturday and at least 6 hours on the last Sunday of the early voting period at the mandatory temporary branch polling places established under Section 85.062(d) of the Code. (Secs. 85.006, 85.062, and 85.064).

Voting may not be conducted earlier than 6:00 AM or later than 10:00 PM on the last Saturday of the early voting period. Voting may not be conducted earlier than 9:00 AM or later than 10:00 PM on the last Sunday of the early voting period. (Sec. 85.006).

House Bill 3107 also amended Section 85.068 to provide that if the early voting clerk is a county election officer, the clerk must post [notice \(PDF\)](#) for each election stating any dates and the hours that voting on Saturday or Sunday will be conducted under Sections 85.064(d) or 85.065(b). For all other entities, any dates and hours that voting on Saturday or Sunday will be conducted MUST be included in the original order of election and notice of election.

Political Subdivisions Other than Cities or Counties:

- If the city or county election officer does not serve as the early voting clerk for the territory holding the election and the territory has fewer than 1,000 registered voters, the temporary branch polling place(s) must be open for at least three hours each day that voting is required to be conducted at the main early voting polling place under Section 85.005 of the Code. **This applies if the territory served by the early voting clerk is in a county with a population of 100,000 or more. In an election in which the territory served by the early voting clerk is situated in more than one county, this also applies if the sum of the populations of the counties is 100,000 or more.**
- Per Section 85.064 of the Code, the authority authorized under Section 85.006 to order early voting on a Saturday or Sunday may also order, in the manner prescribed by that section, early voting to be conducted on a Saturday or Sunday at any one or more of the temporary branch polling places.

As noted above, House Bill 3107 also amended Section 85.068 to provide that if the early voting clerk is a county election officer, the clerk must post [notice \(PDF\)](#) for each election stating the dates and hours of any voting that will be held on Saturday or Sunday under Sections 85.064(d) or 85.065(b). For all other entities, any dates and hours of voting on Saturday or Sunday must be included in the original order of election and notice of election.

Counties with a Population Under 100,000 and Political Subdivisions Situated in Such a County:

- Section 85.065 of the Code was added to provide the requirements regarding the days and hours for early voting by personal appearance at any temporary branch polling place if the territory served by the early voting clerk is situated in a county with a population under 100,000 or if the territory served by the early voting clerk is situated in more than one county and the sum of the populations of the counties is under 100,000. Early voting at any temporary branch polling place may be conducted on any days and during any hours of the period for early voting by personal appearance, as determined by the authority establishing the branch. However, voting at a temporary branch polling place must be conducted on **at least two consecutive business days** and for **at least eight consecutive hours** on each of those days. The schedules for conducting voting are not required to be uniform among the temporary branch polling places. This applies only to an election in which the territory served by the early voting clerk is situated in a county with a population under 100,000. In an election in which the territory served by the early voting clerk is situated in more than one county, this applies if the sum of the populations of the counties is under 100,000.
- The authority authorized under Section 85.006 of the Code to order early voting on a Saturday or Sunday may also order, in the manner prescribed by that section, early

voting to be conducted on a Saturday or Sunday at any one or more of the temporary branch polling places.

- There is no petition process to require weekend early voting at temporary branch locations in counties with a population under 100,000. However, the early voting clerk may voluntarily order weekend early voting at those temporary branch locations by written order if they choose to do so.

House Bill 3107 also amended Section 85.068 of the Code to provide that if the early voting clerk is a county election officer, the clerk must post [notice \(PDF\)](#) for each election stating the dates and hours of any voting on Saturday or Sunday under Sections 85.064(d) or 85.065(b). For all other entities, the dates and hours of any voting on Saturday or Sunday must be included in the original order of election and notice of election.

Reasonable Accommodation or Modification for Voters with Disabilities

Senate Bill 1 added Section 1.022 to the Code to provide that a provision of the Election Code may not be interpreted to prohibit or limit the right of a qualified individual with a disability from requesting a reasonable accommodation or modification to any election standard, practice, or procedure mandated by law or rule that the individual is entitled to request under federal or state law.

Curbside Voting

Pursuant to Section 64.009 of the Code, if a voter is physically unable to enter the polling place without personal assistance or likelihood of injuring the voter's health, on the voter's request, an election officer shall deliver a ballot to the voter at the polling place entrance or curb. This process is commonly referred to as "curbside voting."

Senate Bill 1 amended Section 43.031 of the Code to specify that no voter may cast a vote from inside a motor vehicle unless the voter meets the requirements for curbside voting under Section 64.009. Additionally, Senate Bill 1 amended Section 64.009 to authorize a poll watcher to observe any activity related to curbside voting, except a poll watcher may not observe a voter marking their ballot.

Senate Bill 1 also amended Section 64.009 to provide that a person who simultaneously assists seven or more voters that are curbside voting by providing transportation to the polling place, must complete and sign a form provided by the election officer that contains the person's name, address, and whether the person is providing assistance solely by providing transportation or by providing transportation and also serving as a voter's assistant under Subchapter B of Chapter 64. This provision only applies if the person assisting is related to each voter within the second degree by affinity (marriage) or the third degree by consanguinity (blood), as determined under Subchapter B, Chapter 573 of the Texas Government Code.

Frequently Asked Questions

Extended Early Voting Hours

Q: Can a county conduct extended early voting hours during an election other than a primary, the general election for state and county officers, or a special election ordered by the Governor?

A: Yes. A county may choose to conduct early voting at the main early voting polling place for more than the nine hours required each weekday under Section 85.005 of the Code, but such voting may not be conducted earlier than 6:00 AM or later than 10:00 PM.

Q: Can a city, school, or other political subdivision conduct extended weekday early voting hours?

A: Yes. While cities are no longer required to conduct early voting at the main early voting polling place for at least 12 hours on one or two weekdays, cities, schools, and other political subdivisions may choose to conduct early voting beyond the hours required each weekday under Section 85.005 of the Code. However, if a city, school, or other political subdivision chooses to conduct extended weekday early voting, the entity **MUST** include that information in the original order of election.

Q: Does early voting have to be conducted on days that are school, county, or town holidays?

A: Early voting must be conducted each weekday of the early voting period that is not a legal state holiday as defined by Section 1.006 of the Code. (Sec. 85.005).

Q: If a city, school, or other political subdivision which is not a county forgot to include weekend early voting hours in their initial order of election can they amend the order to include weekend early voting hours?

A: No. Voting on any Saturday or Sunday must be included in the political subdivision's original order and notice of election. While the order of election may be amended to correct minor errors or updates, no substantive changes may be made to an order of election. (Sec. 85.006).

NOTE – If the entity is contracting with the county or conducting a joint election with the county, and the county orders extended weekday or weekend early voting after the deadline to order an election, then the entity may amend the order and notice of election to reflect the county's voting hours.

Q: Can a county conduct weekend early voting for elections other than a primary election or the general election for state and county officers?

A: Yes. While weekend early voting is required for counties with a population of 55,000 or more for a primary election or the general election for state and county officers, all counties are permitted to order weekend early voting by written order for other elections.

Q: Does a county with a population under 55,000 have to conduct weekend early voting?

A: It depends. The county election officer may order early voting on a Saturday or Sunday, and determine the hours for such Saturday or Sunday early voting. This must be done by written order, and notice of Saturday or Sunday early voting must be posted for at least 72 hours immediately preceding the first hour that voting will be conducted. Alternatively, the county election officer must have early voting on Saturday or Sunday, if a written request is received from at least 15 registered voters of the county in time to comply with the posting requirement.

Temporary Branch Polling Places

Q: The county is conducting a primary election, the general election for state and county officers, or a special election to fill a vacancy in the legislature or in Congress. Must the county establish temporary branch polling places, and if so, for what dates and hours?

A: Pursuant to Section 85.062(d) of the Code, counties conducting a primary election, the general election for state and county officers, or a special election to fill a vacancy in the legislature or in Congress **must establish temporary branch polling places as follows:**

(1) the commissioners court of a county with a population of 400,000 or more shall establish one or more early voting polling places other than the main early voting polling place in each state representative district containing territory covered by the election, except that the polling place or places shall be established in the state senatorial or congressional district, as applicable, in a special election to fill a vacancy in the office of state senator or United States representative;

(2) the commissioners court of a county with a population of 120,000 or more but less than 400,000 shall establish one or more early voting polling places other than the main early voting polling place in each commissioners precinct containing territory covered by the election; and

(3) the **early voting clerk** of a county with a population of 100,000 or more but less than 120,000 shall establish one or more early voting polling places as described by Subdivision (2) in each precinct for which the **early voting clerk** receives in time to enable compliance with Section 85.067 a written request for that action submitted by at least 15 registered voters of that precinct.

Early voting by personal appearance at each temporary branch polling place must be conducted in accordance with Sections 85.064 and 85.065 of the Code, depending on the population of the county. **For counties with a population of 100,000 or more**, early voting by personal appearance at each temporary branch polling place must be conducted on the weekdays that voting is required to be conducted at the main early voting polling place under Section 85.005 of the Code and must remain open for at least eight hours each day. **For counties with a population under 100,000**, voting at a temporary branch polling place must be conducted on at least two consecutive business days and for at least eight consecutive hours on each of those days. As noted above, a county with a population of 100,000 or more but less than 120,000 must establish one or more early voting places if it receives a written request for that action submitted by at least 15 registered voters of the commissioners precinct. The written request must be received in time to enable the county's compliance with Section 85.067 of the Code.

Section 85.067 requires the county election official to post a schedule, including the location of each permanent and temporary branch polling place at which voting will be conducted, and the election precincts served by each branch polling place. The schedule must include the dates and hours that voting will be conducted at each temporary branch. The schedule is not required to include the dates and hours that voting will be conducted on a Saturday or Sunday at the temporary branch locations (if applicable). Per Section 85.067, the schedule must be posted continuously for a period beginning not later than the fifth day before the first day of the period for early voting by personal appearance and ending on the last day of that period. The schedule may be amended after the beginning of early voting by personal appearance to include notice of additional temporary branch polling place locations, dates, and hours, but any amendment must be made not later than the fifth day before the date the voting is scheduled to begin at the additional temporary branch location. The schedule must be posted on the bulletin board used for posting notice of meetings or the county's website (if the county maintains a website).

Q: The county is conducting a primary election or the general election for state and county officers. Must the county provide weekend early voting hours at the temporary branch polling places?

A: It depends on the county's population. Section 85.006(e) of the Code provides that in a primary election or the general election for state and county officers in a county with a population of 100,000 or more, the early voting clerk shall order personal appearance voting at the main early voting polling place to be conducted for at least 12 hours on the last Saturday and for at least six hours on the last Sunday of the early voting period. Section 85.064(d) notes that the early voting clerk of a county covered by Section 85.006(e) must order such voting (in accordance with the subsection) at each temporary branch polling place established under Section 85.062(d) (please refer to the question above for an explanation of Section 85.062(d)).

This means that if a county with a population of 100,000 or more is conducting a primary election or the general election for state and county officers, it must conduct early voting by personal appearance for at least 12 hours on the last Saturday and for at least six hours on the last Sunday of the early voting period at the main early voting polling place and at each of the established temporary branch polling places. Voting may not be conducted earlier than 6:00 AM or later than 10:00 PM on the last Saturday of the early voting period. Voting may not be conducted earlier than 9:00 AM or later than 10:00 PM on the last Sunday of the early voting period. (Sec. 85.006(e)).

In a county with a population under 100,000, the early voting clerk may order early voting on a Saturday or Sunday, as provided under Section 85.006 of the Code, at any one or more of the temporary branch polling places. Note that there is no petition process to require weekend early voting at temporary branch locations in counties with a population of under 100,000. However, the early voting clerk may voluntarily order weekend early voting at those temporary branch locations by written order if they choose to do so.

Q: The county is conducting the constitutional amendment election and has established temporary branch polling places. Must the county provide weekend early voting hours at the temporary branch polling places?

A: No, the county is not required to provide weekend early voting hours at the temporary branch polling places. Early voting by personal appearance at each temporary branch polling place must be conducted in accordance with Sections 85.064 and 85.065 of the Code, depending on the population of the county. **For counties with a population of 100,000 or more**, early voting by personal appearance at each temporary branch polling place must be conducted on the weekdays that voting is required to be conducted at the main early voting polling place under Section 85.005 and must remain open for at least eight hours each day. **For counties with a population under 100,000**, voting at a temporary branch polling place must be conducted on at least two consecutive business days and for at least eight consecutive hours on each of those days. The schedules for conducting voting are not required to be uniform among the temporary branch polling places.

Pursuant to Sections 85.064(d) and 85.065(b) of the Code, the county clerk/elections administrator may [order \(PDF\)](#) early voting on a Saturday and/or Sunday in the manner prescribed by Section 85.006 at any one or more of the temporary branch polling places. However, the county clerk/elections administrator must provide [notice \(PDF\)](#) in compliance with Section 85.007 of the Code.

Q: Our political subdivision is not a county. Can our entity conduct early voting on a Saturday and/or Sunday at the established temporary branch polling places?

A: Yes. Pursuant to Sections 85.064(d) and 85.065(b) of the Code, the authority authorized to order early voting on a Saturday or Sunday at the main early voting polling place may also order, in the manner prescribed by Section 85.006, early voting to be conducted on a Saturday or Sunday at any one or more of the temporary branch polling places. Voting on any Saturday or Sunday must be included in the political subdivision's original order.

Q: Can a political subdivision establish a temporary branch polling place to be open only during a weekend?

A: No. For counties with a population of 100,000 or more, and political subdivisions located in such a county, once a temporary branch polling place is established, it must be open during the same weekdays as the main early voting location. (Sec. 85.064). For counties with a population under 100,000, and political subdivisions located in such a county, voting at a temporary branch polling place must be conducted on at least two consecutive business days and for at least eight consecutive hours on each of those days. (Sec. 85.065).

Q: Can a political subdivision establish a temporary branch polling place after the early voting period has started?

A: Yes. If, during the early voting period, your political subdivision needs to establish a temporary branch polling place(s), you may do so as long as the subdivision complies with Section 85.067 of the Code.

For counties with a population of 100,000 or more, and political subdivisions located in such a county, early voting by personal appearance at each temporary branch polling place must be conducted on the weekdays that voting is required to be conducted at the main early voting polling place under Section 85.005 of the Code and must remain open for at least eight hours each day. However, once the temporary branch polling place is established, it must be open for the remainder of the early voting period during the same weekdays as the main early voting location. Further, the temporary branch polling place must remain open for the hours dictated under Section 85.064 of the Code.

For counties with a population under 100,000, and political subdivisions located in such a county, voting at a temporary branch polling place must be conducted on at least two consecutive business days and for at least eight consecutive hours on each of those days.

Q: Do the temporary branch polling places need to conduct early voting during the same hours as the main early voting location?

A: Not necessarily. Early voting by personal appearance at each temporary branch polling place must be conducted in accordance with Sections 85.064 and 85.065 of the Code, depending on the population of the county. For counties with a population of 100,000 or more, and political subdivisions located in such a county, early voting by personal appearance at each temporary branch polling place must be conducted on the weekdays that voting is required to be conducted at the main early voting polling place under Section 85.005 of the Code and must remain open for at least eight hours each day. For counties with a population under 100,000, and political subdivisions located in such a county, voting at a temporary branch polling place must be conducted on at least two consecutive business days and for at least eight consecutive hours on each of those days.

Q: If the political subdivision has fewer than 1,000 registered voters, what hours must early voting be conducted?

A: A political subdivision other than a county that has fewer than 1,000 registered voters must conduct early voting at the main early voting polling place each weekday that is not a legal state holiday for at least four (4) hours each day. (Sec. 85.005).

Each temporary branch polling place must be conducted in accordance with Sections 85.064 and 85.065 of the Code, depending on the population of the county.

If a political subdivision other than a county or city has fewer than 1,000 registered voters, is located in a county with a population of 100,000 or more, and will be acting as their own early voting clerk for their election, the temporary branch polling places must be open for at least three hours each weekday that voting is required to be conducted at the main early voting polling place.

If the political subdivision conducting the election has fewer than 1,000 registered voters, is located in a county with a population less than 100,000, and is acting as their own early voting clerk, early voting at the temporary branch polling places must be conducted on at least two consecutive business days and for at least eight consecutive hours on each of those days.

Q: If the political subdivision is contracting with the county for election services and/or is holding the election jointly with the county or the city, what hours must the temporary branch polling place(s) be open?

A: If the contract/joint election agreement provides that the county clerk/elections administrator or city clerk will act as the early voting clerk for the political subdivision, voting at the temporary branch locations must be conducted in accordance with Sections 85.064 and 85.065 of the Code, depending on the population of the county. This is regardless of whether the territory holding the election has fewer than 1,000 registered voters.

Q: If the political subdivision is located in more than one county, what hours must the temporary branch polling place(s) be open?

A: It depends on the sum of the populations of the counties. For political subdivisions situated in counties that when added together the sum of the populations is 100,000 or more, early voting by personal appearance at each temporary branch polling place must be conducted on the weekdays that voting is required to be conducted at the main early voting polling place under Section 85.005 of the Code and must remain open for at least eight hours each day. For political subdivisions situated in counties that when added together the sum of the populations is less than 100,000, voting at a temporary branch polling place must be conducted on at least two consecutive business days and for at least eight consecutive hours on each of those days. For entities with fewer than 1,000 registered voters, please see the answer above.

Curbside Voting

Q: Who may use curbside voting?

A: Under Section 64.009 of the Election Code, a voter who is “physically unable to enter the polling place without personal assistance or likelihood of injuring the voter’s health” may vote at the polling place entrance or curb.

Q: Must all early voting and election day polling places provide curbside voting?

A: Yes. All polling locations must provide curbside voting during early voting and on election day.

Q: May a poll watcher observe curbside voting activities?

A: Yes. Poll watchers may be present for curbside voting. However, poll watchers may not observe a voter marking their ballot, except when election officers are providing assistance to the voter pursuant to Section 64.031 of the Code. (Secs. 33.057, 64.009(e)).

Q: If a person assists by providing transportation to seven family members simultaneously, does the person need to sign the form provided by the election officer under Section 64.009 of the Code?

A: It depends. The form is not required if the person assisting is related to each voter within the second degree by affinity (marriage) or the third degree by consanguinity (blood).

Location of a Polling Place

Q: Can a tent, or a structure other than a building, be used as a polling place?

A: No. A polling place must be located inside a building. A polling place may not be located in a tent, movable structure, or any place other than inside of a building. (Secs. 43.031 and 85.062).

Q: If a political subdivision (other than a county) is conducting their own early voting for an election held on the November uniform election date, does the entity's main early voting polling place have to be in a location established by the county?

A: No, the political subdivision may designate their own main early voting location. However, pursuant to Section 85.010 of the Code, the entity must designate an eligible county polling place located in the political subdivision as an early voting polling place for the election.

Q: What if the county has not established any early voting polling places within the political subdivision's territory for an election held on the November uniform election date?

A: The political subdivision may establish their own early voting polling places. There is no requirement to use county early voting places which are outside of the territory of the political subdivision.

Q: Does this mean an entity must contract with the county for an election held on the November uniform date?

A: No, Section 85.010 of the Code does not require a political subdivision to contract with a county. However, if an entity has not executed a contract with a county under which the political subdivision and the county share early voting polling places for the election or the political subdivision is not holding a joint election with the county, then the political subdivision will still need to designate as an early voting polling place at least one of the eligible county polling places located in the political subdivision.

Q: Our political subdivision is conducting an election on the November uniform date. The entity is not holding an election jointly with the county and is not contracting with the county for election services. The entity presently has a main early voting location and has designated one of the county's polling places as an early voting polling place. Can the political subdivision establish additional early voting locations?

A: Yes, the entity may establish additional early voting locations. However, pursuant to Section 85.010(b)(2) of the Code, the entity may not designate as an early voting polling place a location other than an eligible county polling place unless each county polling place located in the political subdivision is designated as an early voting polling place by the political subdivision. This means that the entity must designate all of the county's eligible polling places to be used during early voting which are located in the political subdivision before the political subdivision may establish any additional early voting polling places of its own.

Q: May a political subdivision (who is running early voting on its own) designate one of the eligible county polling places as its main early voting polling place for an election held on the November uniform date?

A: Yes, the political subdivision may designate one of the eligible county polling places as its main early voting polling place.

Q: Our political subdivision is conducting an election on the November uniform election date. Our entity is located in two different counties, County A and County B. Must our political subdivision contract with these counties for election day services or hold the election jointly with the counties? If we contract or hold the election jointly with only County A, are we required to use the early voting locations in County B?

A: The political subdivision is not required to contract with either county or conduct the election jointly with either county. However, for school districts, please note that elections for school board trustees must be held as joint elections (election day polling places) under Section 11.0581 of the Texas Education Code.

Section 31.092 of the Election Code provides that a county election officer may contract with the governing body of a political subdivision situated wholly or partly in the county served by the officer to perform election services. This implies that a contract for election services could be made with County A and County B, since the political subdivision is partly contained in both counties. Further, Section 31.094 of the Code delineates services that may be performed under the contract, and provides that the county election officer may perform "any or all" of the duties and functions that the officer performs in connection with a countywide election ordered by the county authority. No limitation is placed on performing early voting duties by these sections of the Code.

Similarly, Section 271.006 of the Code allows for more than a single early voting clerk even within a single joint election agreement. Subsection (a) provides that the governing bodies of the political subdivisions participating in a joint election "shall appoint one of their early voting clerks as the early voting clerk for the joint early voting." Subsection (c) requires the "regular" early voting clerk to accept applications for a ballot by mail, and provides that the remaining procedures for voting by mail "shall be completed by the regular early voting clerk or by the early voting clerk for the joint early voting, at the discretion of the governing body of each political subdivision participating in the joint early voting."

Thus, in the scenario described by the question above, there could be two separate joint election agreements – one between County A and the political subdivision, and one between County B and the political subdivision – in which case an early voting clerk must be appointed for each joint agreement in which the entities have agreed to run early voting together. We do not read Sections 83.007 or 83.008 of the Code as providing that there may only be a single early voting clerk for an entity that has contracted or joined with multiple counties to run its early voting, but rather that each contract or each joint election agreement with the political subdivision may name an early voting clerk.

As such, the county election officer in County A could be designated as the early voting clerk in a contract or joint election agreement between County A and the political subdivision, and the county election officer in County B could be designated as the early voting clerk in a contract or joint election agreement between County B and the political subdivision, and both of these contracts or joint election agreements could be in force at the same time for the same election.

Conversely, the political subdivision could choose to contract with a single county to run its entire election, even in that portion of the political subdivision that is not in that county. For example, the political subdivision could contract or join with County A to run its entire election (assuming County A has enough voting system equipment to cover such an expanded territory.) In that case, a single early voting clerk must be appointed for the entire political subdivision.

If there are two contracts or two joint election agreements, and thus two early voting clerks, then a voter may only vote on the political subdivision's ballot in the county in which he/she is registered. Each county would maintain its own list of registered voters, sign-in sheets, ballots, and early voting rosters for its portion of the election. Alternatively, if there is a single early voting clerk (as in the scenario where County A is running the entire election for the political subdivision), then a voter could go to any early voting site run by County A, regardless of whether that site was physically located in County A or County B, and regardless of whether the voter was registered in County A or County B, as long as the individual was a registered voter of the political subdivision. Note that in this case, the early voting clerk will have to obtain a list of registered voters from the county that is not involved in conducting early voting for the political subdivision, so that the clerk has the entire list of registered voters in the political subdivision, from both County A and County B, per Section 18.001 of the Code.

Please note that if the political subdivision contracts or conducts the election jointly with only one county (with County A as an example), then the political subdivision will need to designate at least one early voting polling place established by the other county (County B) which is in the political subdivision.

If you have any questions regarding the issues addressed in this advisory, please contact Elections Division toll-free at 1-800-252-2216.

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