

# The State of Texas



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## **ELECTION ADVISORY** **NO. 2023-10**

**TO:** Election Officials

**FROM:** Christina Worrell Adkins, Director of Elections

*CWA*

**DATE:** August 14, 2023

**RE:** NEW LAW: Changes to Early Voting by Personal Appearance – House Bill 1217

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As you prepare for the November 2023 uniform election and elections in 2024, we wish to advise you of recent changes in state law relating to early voting by personal appearance. Specifically, this advisory addresses House Bill 1217 (88th Leg., R.S., effective September 1, 2023). 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 (87th Leg., R.S.), **beginning September 1, 2023, statutes that contain a population threshold apply to a political subdivision according to the 2020 federal census.** Thus, on September 1, 2023, the population figures from the **2010 federal census NO LONGER apply** with respect to a statute that applies to a political subdivision having a certain population according to the most recent federal census.

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

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.

The early voting hours discussed below are different than the mandatory office hours under Section 31.122 of the Code. The mandatory office hours require each county clerk/elections administrator, 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 beginning not later than the 50th day before the date of each general election and ending not earlier than the 40th day after election day. If the local political subdivision ordered a special election, the office hour requirement begins on the third day after the date that the special election is ordered. Section 31.096 of the Code 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. For independent school districts, a "regular business day" means a day on which the school district's main business office is regularly open for business. (Sec. 31.122(b)).

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/elections administrator 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.

In an election in which a person other than a county clerk/elections administrator or city secretary is the early voting clerk, the authority appointing the clerk shall designate the location of the main early voting polling place. The location must be in the territory covered by the election.

## **Counties**

Section 85.005(a) of the Code provides that for elections in which the county clerk/elections administrator is serving as the early voting clerk, early voting by personal appearance at the main early voting polling place 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 (9) hours. Voting may not be conducted earlier than 6:00 AM or later than 10:00 PM.

As a reminder, Section 85.005(d) of the Code allows 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.

## **Local Political Subdivisions (Not Counties)**

Section 85.005(b) of the Code provides 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 at the main early voting polling place must be conducted each weekday of the early voting period that is not a legal state holiday for a period of at least nine (9) 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 (4) hours each day. The authority ordering the election, or the county clerk/elections administrator if that person is the early voting clerk, shall determine which hours the voting is to be conducted.

As noted above, Section 85.005(d) of the Code allows 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.

## **Extended Weekday Early Voting Hours for Early Voting by Personal Appearance at the Main Early Voting Polling Place**

House Bill 1217 amended Section 85.005(c) of the Code to modify the required days and hours for early voting by personal appearance at the main early voting polling place. House Bill 1217 removed the population threshold that required only counties above a certain population to provide extended weekday early voting hours. House Bill 1217 also repealed the provision that required counties below a certain population threshold to provide extended weekday early voting if the early voting clerk received a written request submitted by at least 15 registered voters of the county. **As a result, the same extended early voting hours at the main early voting polling place now apply to ALL counties regardless of their population.**

### **Primary Election and General Election for State and County Officers**

In **ALL** counties (regardless of population), 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 consecutive hours on each weekday of the last week 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)).

### **Special Election Ordered by the Governor**

In **ALL** counties (regardless of population), voting in a special election ordered by the Governor shall be conducted at the main early voting polling place **for at least 12 consecutive 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)). This means that for the November 7, 2023 constitutional amendment election, all counties must provide at least 12 consecutive hours at the main early voting polling place on each of the last two days of the early voting period, Thursday, November 2, 2023 and Friday, November 3, 2023.

### **Local Political Subdivisions (Not Counties)**

Per Section 85.005(b) of the Code, early voting by personal appearance at the main early voting polling place shall be conducted for **at least nine (9) hours** each weekday of the early voting period that is not a legal state holiday. For territories with less than 1,000 registered voters, voting shall be conducted for at least **four (4) hours** each day. **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.** There is no requirement that a political subdivision conduct extended weekday early voting hours upon receipt of a written request signed by at least 15 registered voters of the political subdivision. (NOTE: This is different from the process for extended weekend early voting hours, as discussed below.) Moreover, Section 85.005 of the Code no longer requires cities to choose two weekdays for the main early voting polling place location to be open for at least 12 hours during the regular early voting period.

# **Extended Weekend (Saturday and Sunday) Early Voting Hours for Early Voting by Personal Appearance at the Main Early Voting Polling Place**

House Bill 1217 amended Section 85.006(e) of the Code to modify the required weekend days and hours for early voting by personal appearance at the main early voting polling place for counties. House Bill 1217 removed the population threshold that required only counties above a certain population to provide extended weekend early voting hours for the primary election and the general election for state and county officers. House Bill 1217 also repealed the provision that required counties below a certain population threshold to provide extended weekend early voting in these elections if the early voting clerk received a written request submitted by at least 15 registered voters of the county. **As a result, the same extended weekend early voting hours now apply to ALL counties regardless of their population for the primary election and the general election for state and county officers.**

## **Primary Election and General Election for State and County Officers**

In a primary election or the general election for state and county officers, the early voting clerk in **ALL** counties (regardless of population) must order early voting by personal appearance at the main early voting polling place to be conducted on the **last Saturday** of the early voting period for **at least 12 consecutive hours**, except that voting may not be conducted earlier than 6:00 AM or later than 10:00 PM, and on the **last Sunday** of the early voting period for **at least six (6) consecutive hours**, except that voting may not be conducted earlier than 9:00 AM or later than 10:00 PM. (Sec. 85.006(e)).

## **Special Election Ordered by the Governor and All Other County-Ordered Elections**

The county election officer may order early voting on a **Saturday and/or Sunday**, and determine the hours for such Saturday or Sunday early voting, for a special election ordered by the Governor (such as the constitutional amendment election on November 7, 2023) and all other county-ordered elections. This must be done by written [order \(PDF\)](#). (Secs. 85.006(b), 85.006(c)). [Notice \(PDF\)](#) of Saturday or Sunday early voting must be posted for at least 72 hours immediately preceding the first hour that voting will be conducted. (Sec. 85.007(c)). The county election officer must have early voting on Saturday or Sunday (or both), *if a [written request \(PDF\)](#) is received from at least 15 registered voters of the county in time to comply with the posting requirement.* (Secs. 85.006(d), 85.007).

**Note:** The election notice must be subsequently amended to include voting later ordered for ANY Saturday or Sunday and must be posted on the political subdivision's website, if maintained. (Sec. 85.007).

## **Local Political Subdivisions (Not Counties)**

Voting on **ANY** Saturday or Sunday must be included in the order and notice of election. The order and notice must include the dates and hours of Saturday or Sunday voting. (Secs. 85.006, 85.007). 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 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).

If a local political subdivision is contracting for election services with a county or is holding a joint election with the county, the local political subdivision **must** amend their order and notice of election to include any weekend early voting that the county is conducting.

## **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 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) of the Code, 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**

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 of the Code, 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.

### **Note for Countywide Counties**

Section 85.062(f-1) of the Code provides 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.

### **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 site 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)).

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

House Bill 1217 amended Section 85.064, and repealed Section 85.065, of the Code so that the rules regarding the days and hours of early voting by personal appearance at temporary branch locations are the same for ALL counties regardless of their population.

As amended, Section 85.064 of the Code requires early voting by personal appearance at each temporary branch polling place to be conducted on the days that early voting is required to be conducted at the main early voting polling place under Section 85.005 and remain open for at least eight (8) hours each day; or for three (3) hours each day if the city or county clerk/elections administrator does not serve as the early voting clerk for the territory holding the election and the territory has fewer than 1,000 registered voters. (Sec. 85.064). For certain political subdivisions, this will require temporary branch locations to be open on every weekday of the early voting period, for at least eight hours on each of those days.

As a result of House Bill 1217 repealing Section 85.065 of the Code, counties with a population under 100,000 and political subdivisions located in such a county must apply the same early voting requirements listed in Section 85.064 and explained above.

## **Extended Weekend Early Voting at Temporary Branch Locations**

The early voting clerk is required to order early voting in accordance with Section 85.006(e) of the Code (extended weekend early voting) at each temporary branch location established under Section 85.062(d). Therefore, in a primary election, the general election for state and county officers, or a special election to fill a vacancy in the legislature or Congress, early voting must be conducted for at least 12 consecutive hours on the last Saturday and at least 6 consecutive 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, 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).

For elections other than a primary election, the general election for state and county officers, or a special election to fill a vacancy in the legislature or Congress, the early voting clerk for a county election may order early voting to be conducted on a Saturday or Sunday at any one or more of the temporary branch polling locations. This must be done by written [order \(PDF\)](#). (Secs. 85.006(b), 85.006(c)). [Notice \(PDF\)](#) of Saturday or Sunday early voting must be posted for at least 72 hours immediately preceding the first hour that voting will be conducted. (Sec. 85.007(c)).

House Bill 1217 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 any dates and the hours that voting on Saturday or Sunday will be conducted under Section 85.064(d). 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.

## **All Cities and Political Subdivisions, Except Counties, with More than 1,000 Registered Voters**

The authority ordering an election (i.e., the governing body) may order early voting by personal appearance to be conducted at any temporary branch polling place on the days that voting is required to be conducted at the main early voting polling place. Voting at each temporary branch polling place must be conducted for at least eight (8) hours each day. (Sec. 85.064).

Similarly, the same authority may order weekend early voting to be conducted on a Saturday or Sunday at any one or more of the temporary branch polling places and shall determine the hours during which voting is to be conducted. Voting on any Saturday or Sunday **must** be included in the order and notice of election. The order and notice must include the dates and hours of Saturday or Sunday voting. (Secs. 85.006, 85.007, 85.064). The election notice must be posted on the political subdivision's website, if the political subdivision maintains a website. (Sec. 85.007).

**NOTE:** There is no requirement that a city or other political subdivision provide extended weekend early voting at a temporary branch location if petitioned (as there is for the main early voting polling place). (Secs. 85.006, 85.064).

### **Political Subdivisions (Other than Cities or Counties) with Less than 1,000 Registered Voters**

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 authority ordering an election (i.e., the governing body) may order early voting to be conducted at any temporary branch polling place on the days that voting is required to be conducted at the main early voting polling place. Voting at each temporary branch polling place must be open for at least three (3) hours each day that voting is required to be conducted at the main early voting polling place under Section 85.005 of the Code. (Sec. 85.064).

Similarly, the same authority may order weekend early voting to be conducted on a Saturday or Sunday at any one or more of the temporary branch polling places and shall determine the hours during which voting is to be conducted. Voting on any Saturday or Sunday **must** be included in the order and notice of election. The order and notice must include the dates and hours of Saturday or Sunday voting. (Secs. 85.006, 85.007, 85.064). The election notice must be posted on the political subdivision's website, if the political subdivision maintains a website. (Sec. 85.007).

**NOTE:** There is no requirement that a political subdivision provide extended weekend early voting at a temporary branch location if petitioned (as there is for the main early voting polling place). (Secs. 85.006, 85.064).

### **Use of Chapter 19 Funds**

House Bill 1217 amended Section 19.004 of the Code to authorize the use of Chapter 19 funding in a county with a population of less than 55,000 to defray the cost to the county of keeping polling places in the county open during the early voting period as required under Sections 85.005(c) (extended weekday early voting), 85.006(e) (extended weekend early voting), and 85.064(d) (voting hours at temporary branch polling places).

Questions about Chapter 19 funding should be directed to our office's Election Funds Management team.



		<b>Main Early Voting</b>	<b>Temporary Branch</b>	<b>Extended Weekday at the Main Early Voting Polling Place</b>	<b>Extended Weekend at the Main Early Voting Polling Place</b>	<b>Extended Weekend at Temporary Branches</b>
<b>November 2023 Uniform</b>	<b>County</b>	Each weekday that is not a holiday for at least nine (9) hours. <sup>a</sup>	Same days as the main for at least eight (8) hours each day.	At the main for at least 12 consecutive hours on the <b>last two days</b> of early voting. <sup>a</sup>	County election official may order or may be petitioned.	County election official may order at one or more branches.
	<b>City/School/Other (CSO)</b>	Each weekday that is not a holiday for at least nine (9) hours. If the territory has fewer than 1,000 registered voters, at least four (4) hours each day.	Same days as the main for at least eight (8) hours each day if the city secretary/county election officer is the early voting clerk. However, three (3) hours each day if the city secretary/county election officer is not the EV clerk and the territory has fewer than 1,000 registered voters.	Governing body of the CSO may order but <b>MUST</b> be included in the order of election.	Governing body of the CSO may order or may be petitioned but <b>MUST</b> be included in order of election.	Governing body of the CSO may order but <b>MUST</b> be included in order of election.
<b>Primary/Primary Runoff</b>	<b>County</b>	Each weekday that is not a holiday for at least nine (9) hours. <sup>a</sup>	Same days as the main for at least eight (8) hours each day.	At the main for at least 12 consecutive hours on each weekday of the <b>last week</b> of early voting. <sup>a</sup>	At the main for at least 12 consecutive hours on the last Saturday <sup>a</sup> and 6 consecutive hours on the last Sunday. <sup>b</sup>	Must order at mandatory temporary branches established under Section 85.062(d) of the Code.
						County election official may order at one or more branches.

<sup>a</sup> No voting earlier than 6:00 AM or later than 10:00 PM.

<sup>b</sup> No voting earlier than 9:00 AM or later than 10:00 PM (Sundays only).

<b>May Uniform</b>	<b>County</b>	Counties cannot hold an election in May of an even-numbered year.				
	<b>City/School/Other</b>	Each weekday that is not a holiday for at least nine (9) hours. If the territory has fewer than 1,000 registered voters, at least four (4) hours each day.	Same days as the main for at least eight (8) hours each day if the city secretary/county election officer is the early voting clerk. However, three (3) hours each day if the city secretary/county election officer is not the EV clerk and the territory has fewer than 1,000 registered voters.	Governing body of the CSO may order but <b>MUST</b> be included in the order of election.	Governing body of the CSO may order or may be petitioned but <b>MUST</b> be included in order of election.	Governing body of the CSO may order but <b>MUST</b> be included in order of election.
<b>November 2024 General Election for State and County Officers (GESCO)</b>	<b>County</b>	Each weekday that is not a holiday for at least nine (9) hours. <sup>a</sup>	Same days as the main for at least eight (8) hours each day.	At the main for at least 12 consecutive hours on each weekday of the <b>last week</b> of early voting. <sup>a</sup>	At the main for at least 12 consecutive hours on the last Saturday <sup>a</sup> and 6 consecutive hours on the last Sunday. <sup>b</sup>	Must order at mandatory temporary branches established under Section 85.062(d) of the Code.
	<b>City/School/Other (CSO)</b>	Each weekday that is not a holiday for at least nine (9) hours. If the territory has fewer than 1,000 registered voters, at least four (4) hours each day.	Same days as the main for at least eight (8) hours each day if the city secretary/county election officer is the early voting clerk. However, three (3) hours each day if the city secretary/county election officer is not the EV clerk and the territory has fewer than 1,000 registered voters.	Governing body of the CSO may order but <b>MUST</b> be included in the order of election.	Governing body of the CSO may order or may be petitioned but <b>MUST</b> be included in order of election.	County election official may order at one or more branches.

# Frequently Asked Questions

## Extended Early Voting Hours

**Q: Does a county with a population under 55,000 have to conduct extended weekday early voting hours at the main early voting polling place?**

**A:** Yes. However, the required hours will depend on the election.

- For a primary election or the general election for state and county officers, ALL counties (regardless of population) are required to conduct early voting by personal appearance at the main early voting polling place for **at least 12 consecutive hours on each weekday of the last week 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)).
- For a special election ordered by the Governor, such as the constitutional amendment election, and all other county-ordered elections, ALL counties (regardless of population) are required to conduct early voting by personal appearance at the main early voting polling place **for at least 12 consecutive 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)).

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

**A:** It depends on the election. ALL counties (regardless of population) are required to conduct weekend early voting at the main early voting polling place during a primary election or the general election for state and county officers. (Sec. 85.006). For these elections, the early voting

clerk in ALL counties (regardless of population) must order early voting by personal appearance at the main early voting polling place to be conducted on the **last Saturday** of the early voting period for **at least 12 consecutive hours**, except that voting may not be conducted earlier than 6:00 AM or later than 10:00 PM, and on the **last Sunday** of the early voting period for **at least six (6) consecutive hours**, except that voting may not be conducted earlier than 9:00 AM or later than 10:00 PM. (Sec. 85.006(e)).

**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 all counties are required to conduct weekend early voting during 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, such as the constitutional amendment election. (Sec. 85.006). Additionally, the county election officer will be required to order weekend early voting for a Saturday and/or Sunday on receipt of a [written request \(PDF\)](#) submitted by at least 15 registered voters of the territory covered by the election. The request must be submitted in time to enable compliance with Section 85.007 of the Code.

**Q: If a city, school, or other political subdivision that 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 must amend the order and notice of election to reflect the county's voting hours.

## **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 of the Code 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 Section 85.064 of the Code. 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. 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 of the Code 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 of the Code, 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 population of the county. Section 85.006(e) of the Code provides that in a primary election or the general election for state and county officers, the early voting clerk shall order personal appearance voting at the **main early voting polling place** to be conducted for at least 12 consecutive hours on the last Saturday and for at least six consecutive hours on the last Sunday of the early voting period. As for temporary branch polling places, Section 85.064(d) of the Code notes that the early voting clerk **must** order such voting in accordance with Section 85.006(e) 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) of the Code.

**Example #1:** 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 consecutive hours on the last Saturday and for at least six consecutive hours on the last Sunday of the early voting period at the main early voting polling place AND at

each of the temporary branch polling places established under Section 85.062(d) of the Code. 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)).

**Example #2:** If a county with a population under 100,000 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 consecutive hours on the last Saturday and for at least six consecutive hours on the last Sunday of the early voting period at the **main early voting polling place**. However, there is no requirement that the county order weekend early voting at any of the temporary branch polling places because counties under 100,000 are not covered by Section 85.062(d) of the Code. There is no petition process to require weekend early voting at temporary branch locations in counties with a population of under 100,000, but 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. However, early voting by personal appearance at each temporary branch polling place must be conducted in accordance with Section 85.064 of the Code. Therefore, 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.

Pursuant to Section 85.064(d) 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 Section 85.064(d) 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 of election.

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

**A:** No. For all counties and political subdivisions, 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).

**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.

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 if the city secretary or county clerk/elections administrator serves as the early voting clerk. If the city secretary or county clerk/elections administrator does not serve as the early voting clerk and the territory holding the election has fewer than 1,000 registered voters, then the temporary branch polling place(s) must remain open for at least three 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.

**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 Section 85.064 of the Code and 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 if the city secretary or county clerk/elections administrator serves as the early voting clerk. If the city secretary or county clerk/elections administrator does not serve as the early voting clerk and the territory holding the election has fewer than 1,000 registered voters, then the temporary branch polling place(s) must remain open for at least three hours each day.

**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 Section 85.064 of the Code. If a political subdivision, other than a county or city, has fewer than 1,000 registered voters 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. (Sec. 85.064).

**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, then voting at the temporary branch locations must be conducted in accordance with Section 85.064 of the Code and 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. This is regardless of whether the territory holding the election has fewer than 1,000 registered voters. (Sec. 85.064).

## **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, 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 the Elections Division toll-free at 1-800-252-2216.

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