



Urgent Updates

Has the Secretary of State's Elections Division issued additional guidance on elections?

Yes, in addition to previously reported information, the Elections Division issued the following guidance today.

Authorized Postponement of May 2, 2020 Election: On March 18, 2020, the Governor issued a [proclamation](#) that authorized local political subdivisions to postpone their elections scheduled on May 2, 2020 to November 3, 2020. There are a few key issues that we [the Elections Division] wanted to address:

- 1. Make the decision as quickly as possible** while complying with open meetings laws: While the Governor's proclamation doesn't prescribe a deadline for a local entity to make a decision on postponement, we **STRONGLY** advise that the decision be made this week. Election equipment must be programmed and tested and mail ballots must be sent immediately if the election will be taking place May 2, 2020. Delaying the decision could subject your election to a contest if mail ballots are sent out significantly later than the law requires.
- 2. Shelter-in-Place Orders:** As many local political subdivisions are enacting shelter-in-place orders, this has a significant impact on elections. If your entity or your county has issued such an order, you need to move your election; otherwise you are putting your election at risk of an election contest due to voters not being able to exercise their right to vote. Additionally, some political subdivisions have enacted fines for violating their local ordinances; if your order does so and there is no specific exemption for voting or conducting elections, you put your voters at risk of criminal penalty for leaving their homes to vote.
- 3. Article XI, Section 11, Texas Constitution:** If your city is holding a special election to fill a vacancy due to the requirements prescribed in Article XI, Section 11 of the Texas Constitution, the Governor's proclamation does NOT apply to your election. You must hold your election within 120 days of the vacancy occurring. The Governor's proclamation does not suspend this requirement in the Texas Constitution. However, given that many political subdivisions are enacting shelter-in-place orders, it is imperative that some action be taken to move your election dates. If you opt to move your election in response to this public health crisis, and to do so safely would result in ordering the election to occur outside of the constitutionally prescribed 120 day period, you should consult with your attorney regarding [Attorney General Opinion No. JC-0318](#), as you may be required to hold your election on the November 2020 uniform election date.
- 4. Certain Types of Special Elections:** We have heard from a number of entities that have special elections resulting from the expiration of a sales tax that the November 3, 2020, uniform election date occurs after their expiration date. For these elections, we recommend consulting with the Comptroller's office, as they may be able to provide certain assistance with expiring taxes. Additionally, if you need to have an election prior to November 3, 2020, you may have to seek permission from the Governor in accordance with Section 41.0011 of the Texas Election Code to hold your election on a non-uniform election date.

5. Options Other than November 3, 2020: The Governor’s proclamation only authorized a move to November 3, 2020. There is no authority for a local political subdivision, on its own order, to move an election to any other date. If an entity would like to move to a date other than November 3, 2020, there are likely only two ways to do so:

-Emergency Election under Section 41.0011(b) of the Texas Election Code: A local political subdivision can request permission from the Governor to allow the political subdivision to order a special election on a non-uniform election date. Please note that this only applies to special elections and not general elections

-Court Order for Non-Uniform Election Date: As there are no other options outside of the Governor’s authorization to postpone the election and the option under Section 41.0011 of the Texas Election Code, a political subdivision that wishes to hold its election on a date other than the November 3, 2020 could try to seek court order for an alternative date.

[Editor’s note: the success of either of these two options is very unlikely.]

Thank you all for your continued questions and all of your hard work. Please let us know if you have any additional questions or concerns.

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Must a city provide for in-person comment/testimony when holding a public hearing?

The term “public hearing” refers to a meeting at which a governmental entity is required to receive and record public comment/testimony on a matter. This requirement may arise under a state or federal statute or rule, a city charter, a city ordinance, a city contract, or some other source. See, e.g., Tex. Loc. Gov’t Code § 102.006(a) (“The governing body of a municipality shall hold a public hearing on the proposed budget. Any person may attend and may participate in the hearing.”).

Existing precedent makes clear the distinction between a public hearing and general public comment at a meeting. One court held that comments by the public at large need to be solicited and heard at a public hearing, and that “the term ‘public hearing’ contemplates the opening of the floor for public comment by anyone desiring to speak on the issue of concern.” *Eudaly v. City of Colleyville*, 642 S.W.2d 75, 77 (Tex. App.—Fort Worth 1982, writ ref’d n.r.e.).

This raises the question of whether the governor’s [guidance](#) about handling general public comment at a meeting during the COVID-19 disaster is equally applicable to a public hearing. In other words, is the receipt of public comment/testimony via telephone, videoconference, email, etc. sufficient for a public hearing?

The answer to that question could depend on a variety of factors, including how the meeting is conducted and the source of the public hearing requirement. See *id.*, e.g., (focusing on the statutory requirement that “parties in interest and citizens shall have an opportunity to be heard”). That said, we find no general requirement that in-person comment/testimony must be allowed when conducting a public hearing.

It is important to note that, while the governor’s suspension allows a city to post notice of a meeting on its website in lieu of posting the meeting notice on a bulletin board, public hearings may require other forms of notice and procedures that have not been suspended. For instance, notice of a public hearing may need to be published in a newspaper. See, e.g., Tex. Loc. Gov’t Code §102.0065 (notice of budget hearing).

If a city decides to issue a shelter-in-place order, should certain businesses and activities be exempt from the order?

The [Dallas County order](#) or [City of Waco order](#) issued earlier could serve as a template for other local orders. It appears to follow what other states and localities have done with regard to exemptions. For example, certain “[critical infrastructure](#)” is typically exempted. That list from the U.S. Department of Homeland Security is fairly broad. In addition, several industry groups (some of which are already covered in the list) have reached out to the League asking that we share their information with city officials. Here is a list of those industries and requests:

- The **Texas Hotel & Lodging Association** has offered the lease of certain hotels if needed by a city to respond to the virus. The association also asked that any order contain a specific provision that will allow hotels to continue to operate as “essential critical infrastructure,” as they are [classified as such](#) by the U.S. Department of Homeland Security. More is available on the association’s [coronavirus web page](#).
- The Texas **construction industry**, including the Texas Association of Homebuilders and other associations, has issued an [open letter](#) to elected officials asking that their work be allowed to continue.
- Animal rights groups** have issued letters relating to [companion animals](#) and the **National Animal Care and Control Association** has issued guidance on [animal control functions](#).
- The U.S. Department of Homeland Security has issued a [letter for telecommunications providers](#) to show government that they are working on critical communications equipment.
- Dollar Tree** has [asked that](#) government classify them as critical infrastructure.
- Airlines** have asked cities to consider Federal Aviation administration guidance to airports related to attempted [airports](#) closures.
- The **Texas Association of Realtors** has asked that they be [exempted](#) from any shelter-in-place orders.
- The Texas **insurance industry** has referred cities back to the U.S. Department of Homeland Security’s [critical infrastructure list](#) and some sent a [letter](#) to the governor as well.
- The **Texas Automobile Dealers Association** has [asked](#) that motor vehicle dealers be classified as essential infrastructure.
- A group of **healthcare companies** has [asked](#) that drug research and similar activities be exempted from any shelter-in-place orders.
- The **Association of Electric Companies of Texas** has sent the governor a [letter](#) asking that electric companies be classified as essential infrastructure.
- The **railroad industry** has issued [guidance](#) on their status as critical infrastructure.
- The Texas **self-storage industry** has sent a [letter](#) to the governor asking to be classified as critical infrastructure.
- The **Texas Bankers Association** has [asked](#) that cities classify them as critical infrastructure.

Further Updates

What happens if a city official is unable to complete a state-mandated training by the deadline due to the coronavirus?

Social distancing requirements have led to the cancellation of many in-person training sessions across the state, many of which fulfill a state-mandated training requirement. Beyond that, many city officials are simply overwhelmed with performing essential functions in their communities to attend a training session at this time.

Two types of required training – training under the Public Funds Investment Act (PFIA) and the newly-imposed cybersecurity training – are available to be completed online using TML resources. In addition to in-person trainings, TML offers online PFIA training that can be taken anytime. More on PFIA training options through TML can be found [here](#). Mandatory cybersecurity training is being offered by the TML Intergovernmental Risk Pool, and can be taken through a free online video. More on this training option can be found [here](#).

The attorney general offers online [training videos](#) for city officials needing to complete training for the Open Meetings Act or Public Information Act.

Some city officials will understandably not have the time to complete even the online trainings in the coming weeks. Though the trainings mentioned above are mandatory, there are no specific penalty provisions for failing to take the training by the respective deadline. Still, city officials are encouraged to take any mandatory training as soon as possible under the circumstances.

What happens if our appraisal district is late submitting our certified appraisal rolls this year?

State law generally requires a chief appraiser to submit the certified appraisal rolls to cities by July 25th. Tex. Tax Code § 26.01(a). The certified roll is then used to calculate the city's no-new-revenue tax rate and voter-approval tax rates, among others.

Senate Bill 2 (2019) amends the Tax Code to provide that, if the appraisal review board has not approved the appraisal records by July 20th, the chief appraiser shall prepare and certify to the assessor for each taxing unit an estimate of the taxable value by not later than July 25th. Id. § 26.01(a-1). If a certified estimate is provided instead of a certified appraisal roll, the officer or employee designated by the city council shall calculate the no-new-revenue tax rate and voter-approval tax rate using the certified estimate of taxable value. Id. § 26.04(c-2).

Because the coronavirus will undoubtedly impact the efficiency of appraisal districts to handle property tax protests statewide, many cities should expect to calculate rates based off of the certified estimate instead of the certified appraisal roll. Ideally, either the certified roll or the certified estimate of values is submitted by July 25th to ensure the city has adequate time to calculate rates and comply with the increased transparency requirements under S.B. 2.

Any delay in the submission of the certified roll or certified estimate of value would push back the amount of time the city has to adopt a tax rate that does not exceed the voter-approval tax rate until the 60th day after receipt of the document. Id. § 26.05(a). However, adopting a property tax rate exceeding the city's voter-approval tax rate could be rendered a legal impossibility if the city receives the certified appraisal roll or certified estimate of values late. That's because a city must adopt a rate exceeding the voter-approval rate by no later than the 71st day before the November uniform election date. In 2020, that deadline will be August 24th. Pursuant to his emergency powers, the governor may suspend a deadline imposed by state law related to budget or tax rate adoption. See Tex. Gov't Code § 418.016(e). At this point, the governor has not suspended any budget or tax deadlines.

As mentioned in a [previous TML Coronavirus Update](#), the statewide disaster declaration related to the coronavirus gives cities the option of calculating their voter-approval rates at 8 percent beyond a city's maintenance and operations rate instead of at 3.5 percent beyond the city's maintenance and operations rate. A city that receives its certified appraisal roll or certified estimate of values late might consider opting into the 8 percent voter-approval rate calculation, if for no other reason than to potentially buy enough time to legally comply with the notice and transparency requirements in the Tax Code.

Can a city postpone utility bill payments and waive disconnection of service for its municipally-owned utility (MOU) in response to COVID-19?

Yes. Cities have inherent authority to regulate their utility in "a manner that protects the interests of" the city. Tex. Loc. Gov't Code § 552.001(b). This inherent authority arguably includes postponing utility bill payments and waiving disconnection of service and related fees.

A city isn't required by law to disconnect customers. It can choose to do so after providing due process to its customers, including notice and opportunity for a hearing, before disconnecting utility service. A city can choose to waive, terminate, or modify that process.

How can a city postpone utility payments and refuse to disconnect service for its MOU?

A city has several options available. A city council can vote to modify existing policies and postpone payments and waive disconnection. If the council has delegated that authority to another individual, such as a mayor or city manager, that individual could postpone payments and waive disconnection. The city should check its local ordinances and policies to determine if and how authority has been delegated.

Alternatively, the city could provide for postponing payments and waiving disconnection in its emergency management plan. Each city is required to maintain its own emergency management agency or participate in a local interjurisdictional emergency management agency that has an emergency management plan. See Tex. Gov't Code § 418.106(a); 37 TAC § 7.1. The purpose of an emergency management plan is to provide for disaster mitigation, preparedness, response, and recovery. See Tex. Gov't Code § 418.106(a). Each emergency management plan must be signed by the mayor, and must include, at a minimum: (1) wage, price, and rent controls and other economic stabilization methods; (2) curfews and other movement restrictions; (3) limitations on utility use in areas affected by a disaster; and (4) rules governing entrance to and exit from the affected area, and other security measures. Id. § 418.106(b); 37 TAC § 7.12. Under Section 418.106(b)(1), the plan could postpone utility payments and waive disconnection until the disaster has ended, for example.

When the mayor declares a local disaster, it activates the appropriate provisions of the emergency management plan, including any provisions the city adopted suspending utility payments and disconnection for the duration of the disaster. Tex. Gov't Code § 418.108(c).

If a city does not have provisions for utility payment deferral and waiving disconnection in its emergency management plan, it may amend the emergency management plan to provide for it. See also next question.

Can a mayor postpone utility payments under a local disaster declaration?

Arguably. In a disaster, the mayor serves as the governor's designated agent in the administration and supervision of disaster management duties set out in state law and may exercise the same powers granted to the governor under the Texas Disaster Act (Chapter 418 of the Government Code) on an appropriate local level. Id. § 418.1015(b). The governor may use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster. Id. § 418.017.

A mayor can declare a local disaster under Government Code Section 418.108. Using his or her authority acting as the governor's designated agent and Section 418.017, a mayor probably could suspend utility payments and waive disconnections during a declared local disaster. See also Id. at § 418.1075.

Can a city or mayor waive payment of utility bills in response to COVID-19?

Probably not. Generally, the Texas Constitution prohibits a city from giving a gratuitous donation or gift. TEX. CONST. arts. III, § 52(a) (providing the legislature shall have no power to authorize any city "to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, . . ."); XI, § 3 (providing no city "shall hereafter become a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, or in anywise loan its credit. . .").

A city can use public funds to make a donation under limited circumstances. The Texas Supreme Court has held that "[a] political subdivision's paying public money is not 'gratuitous' if the political subdivision receives return consideration." *Texas Mun. League Intergovernmental Risk Pool v. Tex. Worker's Comp. Comm'n*, 74 S.W.3d 377, 383 (Tex. 2002). Before making a gift or donation to a private entity, the city council should determine that: (1) the conveyance will serve a predominantly public purpose of the city; (2) the city will retain sufficient control to ensure the public purpose is carried out; and (3) the city will receive return benefit. Id.

Any city considering waiving utility bills instead of delaying or postponing them should consult with its city attorney prior to doing so.

Has the Texas Department of Licensing and Regulation waived continuing education deadlines for its licensees?

Yes. The Texas Department of Licensing and Regulation (TDLR) requested, and the Governor granted the agency, authority to suspend certain statewide regulatory requirements. Under that authority, TDLR is waiving continuing education requirements for all licenses expiring in March, April, and May 2020. TDLR regulates a multitude of occupational licensing programs, including code enforcement officers and sanitarians.

Licensees must still submit their renewal applications, pay the required fees, and have their criminal histories checked but they will not need to complete any required continuing education requirements this licensing cycle.

Has the Texas Department of Licensing and Regulation extended building inspection deadlines in the Elimination of Architectural Barriers Program?

Yes. The Texas Department of Licensing and Regulation (TDLR) requested, and the Governor granted the agency, authority to extend by 60 days all building inspection deadlines in the [Elimination of Architectural Barriers Program](#) for any inspections due in March, April, and May in case any of those buildings are needed to be used immediately as part of the COVID-19 response.

Has the Texas Department of Licensing and Regulation extended building inspection times for permitted boilers and elevators?

Yes. The Texas Department of Licensing and Regulation (TDLR) requested, and the Governor granted the agency, authority to extend inspection times for [boilers](#) and [elevators](#) with permits expiring in March, April, and May in order to allow any healthcare operations to continue.

What is a city required to do if the city elects to suspend the Public Information Act (PIA) because it has been impacted by COVID-19?

A [previous update](#) included detailed information relating to local suspension of certain PIA deadlines during an emergency. **PLEASE NOTE THAT the days that a city is closed, working with a skeleton crew, or working remotely do not count as business days for purposes of the PIA.** The attorney general's office has released a [clarification notice](#) concerning the PIA, calculating business days and COVID-19.

The attorney general's office has asked that the League help clarify some of the procedures involved with that process.

The city is required to:

1. submit a [catastrophe notice](#) to the attorney general's office. The notice has to be on the form created by the attorney general's office. The [form](#) (first page) requires the following information: (a) name of the governmental body; (b) identify and describe the catastrophe; (c) the dates for the beginning and end of the suspension period (only a seven calendar day period is allowed, with one extension); and (d) name, title, phone number, and signature of the governmental body's contact person; and
2. post notice of the PIA suspension in the same places the city would post notice of an open meeting.

Tex. Gov't Code §§ 552.233(c),(f),(j); see id. §§ 551.050, 551.056. Here is an example of a properly [filled out form](#).

How long can a city temporarily suspend the PIA?

The initial temporary suspension of the PIA is seven consecutive calendar days. Id. § 552.233(d). The city can extend the temporary suspension for another seven consecutive calendar days. Id. § 552.233(e). The city can only suspend the PIA for a total of up to 14 calendar days.

Is the attorney general's office required to post these catastrophe forms on its website?

Yes. The attorney general's office is required to post submitted catastrophe notice forms to its website. Id. § 552.233(i). These notices will be continuously posted until the first anniversary of the date the attorney general's office received the form. Submitted notice can be seen [here](#).

Is there a different notice form that the city has to fill out if the city decides to extend the temporary suspension of the PIA?

Yes. The attorney general's office has promulgated an [extension catastrophe notice form](#) (second page) for the extension of the temporary suspension of the PIA. The following information is required for the extension form: (a) name of the governmental body; (b) identify and describe the catastrophe; (c) the dates for the beginning and end of the original suspension period and the extension period (only a seven calendar day period is allowed, with one extension); and (d) name, title, phone number, and signature of the governmental body's contact person. Id. § 552.233(j). As with the initial catastrophe notice, the extension has to be submitted to the attorney general's office and posted where open meetings notice are required to be posted. Here is an example of a [filled out catastrophe extension notice form](#).

How does the city submit the catastrophe notice forms to the attorney general's office?

A city can submit its catastrophe notice form to the attorney general's office either [electronically](#) or via US mail to:

Attn: Public Information Act Catastrophe Notice
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548