

# Certain Activities in the Vicinity of the Polling Place

Texas Secretary of State

October 10, 2023



# Use of Firearms by Law Enforcement

- Section 46.03(a) of the Texas Penal Code generally prohibits a person from bringing a firearm onto the premises of a polling place.
  - This prohibition does not apply to a peace officer, regardless of whether the police officer is on or off duty. For this and other potentially applicable exceptions, see Tex. Pen. Code § 46.15.
  - **The legislation allowing open carry of handguns does NOT change the law as it pertains to guns in the polling place; thus no one except licensed peace officers may carry handguns into the polling place.**



## Cont.

- Although there is no requirement that you place any sort of signage in the polling place in order to inform voters of the unchanged restrictions regarding handguns in the polling place, if you wish to provide a notice to that effect, you may post Form 7-40, [Notice of Prohibition of Handguns in the Polling Place \(PDF\)](#).



## Electioneering

- Each early voting and election day polling place must be organized with 100-foot distance markers posted at surrounding outside entrances to the building.
- The early voting clerk and the presiding judge of each polling place, as appropriate, have the authority of a district judge while serving in that capacity.
- Section 32.075(e) of the Election Code specifically states that a presiding judge may not enforce electioneering provisions outside of the 100-foot distance markers.
  - The same prohibition applies to an early voting clerk. (Sec. 81.002)



# Sound Amplification

- It is prohibited to use a sound amplification device to electioneer within 1,000 feet of the early voting or election day polling place. (Sec. 61.004)
  - A violation is a **Class C misdemeanor**.
- Because the focus of the election judge and early voting clerk will be on the polling area and surrounding 100-foot area, the judge may contact law enforcement to enforce the sound amplification device rule.



## Electioneering Provisions

- During the voting period, it is prohibited to electioneer for or against any candidate, measure, or political party inside the 100-foot area. (Secs. 61.003, 85.036)
- A person may not wear a badge, insignia, emblem, or other similar communicative device relating to a candidate, measure, or political party appearing on the ballot, or to the conduct of the election, within the 100-foot zone (except for certain specified individuals). (Sec. 61.010)



## Regulating Electioneering Outside 100-Foot Marker

- An entity that owns or controls a public building being used as a polling place may not prohibit electioneering outside of the 100-foot distance marker.
  - However, the entity may enact reasonable regulations in regards to the time, place, and manner of electioneering.
- Only a court of law can determine what is reasonable in terms of time, place, and manner.
  - An example of a reasonable regulation may include prohibiting electioneering on sidewalks or driveways to keep them clear for pedestrians and traffic.



# Curbside Voting and Electioneering

- When individuals vote curbside, their car becomes their voting station. Curbside voters must be afforded the opportunity to vote their ballot privately (in the same way as a voter in the voting booth) and thus are entitled to vote without the interference of campaigns or bystanders.
- The presiding judge has the authority to preserve order and prevent breaches of peace if there are individuals harassing voters while they vote curbside. (Sec. 32.075)
  - See Advisory No. 2023-14





## County Chairs in Polling Places

- The Election Code provides that a county chair may be in a polling place during the primary or primary runoff election. (Sec. 172.1113).
- The provision does not provide that a county chair may be in the polling place during other elections. However, a county chair may enter the polling place for other authorized reasons (e.g., as a voter, assistant, poll watcher).



# Cell Phones and Other Wireless Communication Devices

- Persons are not allowed to use wireless communications devices within 100 feet of the voting stations. Additionally, persons are not allowed to use mechanical or electronic devices to record sound or images within 100 feet of the voting stations. (Secs. 61.014, 81.002)
  - This can include:
    - Cell phones;
    - Cameras;
    - Tablet computers;
    - Laptop computers;
    - Sound recorders;
    - Smart watches capable of messaging or recording sound or images; and
    - Drones



- What about voters with disabilities?
  - An election judge or early voting clerk may use their authority to allow a voter to utilize these programs/applications at their discretion.



- Can poll watchers use these devices?
  - A poll watcher may not be accepted for service if the poll watcher has possession of a device capable of recording images or sound unless the poll watcher agrees to disable or deactivate the device.
  - The early voting clerk or presiding judge, as appropriate, may inquire whether a poll watcher has possession of any prohibited recording devices before accepting the poll watcher for service.
    - See Poll Watcher's Guide



- Can an election official use these devices?
  - Yes, if it is being used to conduct official duties.



- Should a police bodycam be turned off in a polling location?
  - We recommend turning off police bodycams within 100 feet of a voting station regardless of whether the officer is on or off duty, pursuant to Section 61.014 of the Election Code. Turning off these devices within the 100-foot zone helps to maintain voter privacy while voters are voting at the polling place and are standing in line to be accepted for voting.



- What if the polling location is also a business location, where a person may need to use a wireless communication device for employment-related matters?
  - This is permissible if the person is acting in the course of the person's employment.



- What if a person enters the 100-foot area while using a wireless communications device or appears to be recording sound/image?
  - The early voting clerk and the presiding judge have the authority to require persons to deactivate any such devices and further authority to require persons who do not comply to leave the early voting or election day polling place, as appropriate.
  - Questions or clarification should be directed to the early voting clerk or the presiding judge in your polling place, as appropriate.





## Notice to Voters

- A notice may be posted at the polling place by the early voting clerk or presiding judge. The notice should be posted where it can be read by persons waiting to vote. [Our office has prescribed the wording of such a posted notice \(Form 7-39\).](#)



## Security Cameras in Polling Places

- If a building is being used as a polling place and has security cameras installed, our advice is to have the cameras turned off during the hours that voting is being conducted if it is possible to do so.
- If it is not possible, then making sure the cameras do not cover or film the voting areas is essential.
  - Our office does not believe that turning the voting equipment away from the camera is sufficient. We believe that the camera should not view the voting equipment at all.



## Cont.

- Recording of sound is a separate but equally serious problem. If it is possible to turn off that feature during the hours of voting, that will be necessary. If not, then our advice is to find another polling location, if possible.



## Cont.

- The general custodian of election records in a county with a population over 100,000 is required to establish a video recording system that captures all areas containing voted ballots from the time that the ballots are delivered to the central counting station, early voting ballot board, or signature verification committee until the local canvass of election results. (Sec. 127.1232(b))
  - See Advisory No. 2022-10
- If the voted ballots will be located in a building that will also be used as a polling place, the cameras must be positioned in such a way that they do not capture any activity in the portion of that building that is used as a polling place.



## Exit Polling

- The policy of our office is to permit non-disruptive exit polling within the 100-foot boundaries surrounding each early voting and election day polling place.
- The early voting clerk or presiding judge at each polling place, as appropriate, must determine that such exit polling does not constitute either (1) “loitering” in violation of Section 61.003(a) or (2) a disruption of order or a contribution to a breach of the peace at the early voting or election day polling place in violation of Section 32.075(a) of the Code, as applicable to early voting under Section 81.002 of the Code.

(Secs. 61.003(a), 32.075, 81.002)



## Written Materials

- Voters are allowed to bring written materials into voting stations to assist them in casting their ballot.
  - It is important to remember that the prohibition on electioneering within 100-feet of the polling place does apply to written materials.
- Election judges and early voting clerks may use their discretion in determining if a voter is electioneering for or against any candidate, measure or political party through the use of written materials.



## Petition Signature Gathering

- Any persons who wish to gather petition signatures must do so beyond the 100-foot distance markers.
- Petition signatures for any type of election may not be collected inside the early voting or election day polling place or within the 100-foot distance marker.
- Petition gathering is considered electioneering for or against a measure, which is prohibited within the 100-foot distance marker.

(Secs. 61.003, 85.036)



## Restrooms in Polling Locations

- A polling location that is located in a public building and has restrooms open to the public, such as a courthouse, cannot restrict use of its restroom facilities in that building to voters only.
- If the building has restrooms open to the public, the public should be allowed to use them regardless of whether or not they intend to vote.
- However, the presiding judge, in their discretion, can have someone removed from the premises if it is determined that the individual is loitering.
- Polling locations that are public buildings but do not have a restroom open to the public, such as a school, may restrict access to the restrooms on the premises to the general public.





# Polling Location Check-Ins/Security Procedures

- Some polling locations, such as schools or courthouses, may have additional check-in and security procedures, including requiring individuals to check-in before they are allowed on the premises or having a person step through a metal detector.
- Polling locations cannot require voters to go through any additional security procedures that would interfere with or impede the voter's ability to vote.
- If a building has metal detectors installed, the authority is required to provide an entrance that would not require an individual to step through a metal detector or other screening device prior to voting.
- Additionally, a polling location that requires check-ins cannot enforce their check-in policy while voting is taking place on the premises.



# Individuals Permitted in a Polling Place

- Texas Election Code Section 61.001(a-1) provides a list of individuals who are permitted to be present in a polling place:
  - (1) an election judge or clerk;
  - (2) a watcher;
  - (3) the secretary of state;
  - (4) a staff member of the Elections Division of the Office of the Secretary of State performing an official duty in accordance with this code;
  - (5) an election official, a sheriff, or a staff member of an election official or sheriff delivering election supplies;
  - (6) a state inspector;
  - (7) a person admitted to vote;



## Cont.

- (8) a child under 18 years of age who is accompanying a parent who has been admitted to vote;
- (9) a person providing assistance to a voter under Section 61.032 or 64.032;
- (10) a person accompanying a voter who has a disability;
- (11) a special peace officer appointed by the presiding judge under Section 32.075;
- (12) the county chair of a political party conducting a primary election, as authorized by Section 172.1113;
- (13) a voting system technician, as authorized by Section 125.010;
- (14) the county election officer, as defined by Section 31.091, as necessary to perform tasks related to the administration of the election; or
- (15) a person whose presence has been authorized by the presiding judge in accordance with the Election Code.



## Questions?

[elections@sos.Texas.gov](mailto:elections@sos.Texas.gov)

1-800-252-VOTE (8683)

