

meta name="Description" content="The early voting period for the November 7, 2017 election will begin Monday, October 23. As you prepare for the election, we wish to advise you of state law on several early voting and election day polling place issues." />

## TEXAS SECRETARY OF STATE

### ROLANDO PABLOS

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## Election Advisory No. 2017-14

**To:** All Election Officials

**From:** Keith Ingram, Director of Elections



**Date:** October 6, 2017

**RE:** Certain Activities in Vicinity of Polling Places

The early voting period for the November 7, 2017 election will begin Monday, October 23. As you prepare for the election, we wish to advise you of state law on several early voting and election day polling place issues.

### Use of Firearms by Law Enforcement

Please note that Section 46.03(a) of the Texas Penal Code generally prohibits a person from bringing a firearm onto the premises of a polling place. However, 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.

**NOTE: The passage of House Bill 910, (84th Legislative Session, 2015), which became effective January 1, 2016, and allowed open carry of handguns, did NOT change the law as it pertain to guns in the polling place; thus no-one except licensed peace officers may carry handguns into the polling place.** 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 submit your proposed notice to our office for approval via [email](#). Note that any such notice must be in English and Spanish as well as any other languages required in your political subdivision.

## Electioneering

Each early voting and election day polling place must be organized with 100-foot distance markers posted at surrounding outside entries to the building. During the voting period and inside this protected area, it is prohibited to electioneer, including expressing preference for or against any candidate, measure, or political party. A violation of this provision in the Election Code is a Class C misdemeanor. Tex. Elec. Code §§ 61.003, 85.036.

Please note that 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. This authority enables the early voting clerk or the presiding judge, as appropriate, to use his or her discretion to ensure the safety and efficiency of the early voting and election day polling place and the surrounding 100-foot area. Tex. Elec. Code §§ 32.075(e), 81.002.

While an election judge or early voting clerk has the authority to ensure that electioneering is not occurring within the 100 foot marker, Section 32.075(e) of the 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, per Section 81.002 of the Code.

If you or your presiding judges have questions as to what constitutes electioneering, encourage them to contact either your office or our office directly with specific questions.

### 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. Tex. Elec. Code § 61.003(a-1).

Only a court of law can determine what is reasonable in terms of time, place and manner. However, an example of a reasonable regulation may include prohibiting electioneering on sidewalks or driveways to keep them clear for pedestrians and traffic. Finally, we recommend that all regulations be content neutral. If you have questions, we suggest that you contact your attorney.

## County Chairs in Polling Places

The Election Code provides that a county chair may be in a polling place during the *primary* election, but the provision does not provide that a county chair may be in the polling place during the November election. Of course a county chair may enter the polling place to vote. Tex. Elec. Code § 172.1113.

## 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. Tex. Elec. Code §§ 61.014(a), 81.002.

- **What devices should not be used in the polling place?**

- Cell phones
- Cameras

- Tablet computers
- Laptop computers
- Sound recorders
- Any other device that may communicate wirelessly, or be used to record sound or images.

- **Who does this prohibition apply to at the polling place?**

It applies to **all voters** within 100 feet of the voting stations.

- **What about voters with disabilities?**

In recent years, advances in technology have enabled cell phones, tablets and other wireless communications devices to assist voters with disabilities. As an example, a voter may use a program/application on a cell phone to translate verbal communication into sign language, allowing the voter to understand communication by an election official. While this situation is not expressly addressed in the Election Code, an election judge or early voting clerk may use their authority to allow a voter to utilize these programs/applications at their discretion. If you have any questions, please contact our office.

- **What about poll watchers, may they use these devices?**

No. 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. The poll watcher must sign an oath stating he or she does not have in his or her possession devices capable of recording images or sound, or that he or she will disable or deactivate the devices while serving as a watcher. Tex. Elec. Code §§ 33.006, et. seq.

- **What about election officials, may they use these devices?**

Yes, if they are using the device to conduct official duties.

- **What if the polling location is also a business location where a person may be employed and needing 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 appearing to record 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.

- **How should voters be notified of this law?**

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 of Certain Devices Within 100 Feet of Voting Station \(PDF\)](#).

If other wording is used, it will need to be approved by our office prior to use.

## **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. We note that 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) of the Code 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. Tex. Elec. Code §§ 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. However, 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.

## **Sound Amplification Devices**

It is also prohibited to use a sound amplification device to electioneer within 1,000 feet of the early voting or election day polling place; per Section 61.004 of the Code, a violation of this provision is a Class C misdemeanor.

## **Petition Signature Gathering**

Please be advised that 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. Tex. Elec. Code §§ 61.003, 85.036.

We hope you find this information helpful. Please contact us at 1-800-252-VOTE(8683) if you have any questions.

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