



NORTH CAROLINA STATE BOARD OF ELECTIONS

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Numbered Memo 2022-14

TO: County Boards of Elections
FROM: Karen Brinson Bell, Executive Director
RE: Public Viewing of Opening and Closing Procedures
DATE: October 18, 2022

This numbered memo concerns measures to allow secure public viewing of specific procedures at the opening of the polls and the closing of the polls. Individual members of the public must be allowed to view these procedures, and county boards must ensure that these procedures are performed securely and without interference by any member of the public.

Public Viewing of the Preparation of the Polls to Open

Members of the public, including party-appointed observers, are permitted to view certain procedures when the voting system is being prepared before the opening of the polls, both on the morning of the first day of one-stop early voting and on Election Day morning.

The Administrative Code states:

Prior to the opening of the polls, the precinct officials shall open the voting system and examine the ballot for accuracy and examine the counters or other method to determine there is a zero balance. Any persons interested in viewing this procedure may observe but shall not interfere or impede the process.¹

Accordingly, members of the public may enter the voting enclosure to view these procedures only: (1) opening the voting system, (2) examining the ballot for accuracy, and (3) examining the counter to determine there is a zero balance.²

¹ 08 NCAC 04 .0304(a).

² Because the Administrative Code identifies the procedures that are viewable by the public to include examining the ballot for accuracy and determining there is a zero balance, which are tasks that would only take place on the first day of one-stop voting, the Administrative Code does not entitle members of the public to enter the voting enclosure before voting starts on the remaining days of one-stop early voting.

Members of the public should await the direction of the chief judge at the precinct site or the one-stop site manager at the one-stop site before entering, and should follow directions to exit at the conclusion of these procedures. It is advisable for the chief judge or one-stop site manager to announce to the public in attendance the three procedures that will be taking place with the public present, and that the public must exit the voting enclosure after those procedures are complete.

No photography or video recording is permitted in the voting enclosure; members of the public may only “view[]” and “observe” these procedures.³ Anyone in the voting enclosure who is not a poll worker appointed by the county board must remain at a secure distance from poll books or check-in laptops,⁴ the ballots,⁵ or any component of the voting system—whether a tabulator or a ballot marking device.⁶ The one-stop site manager or chief judge, exercising their authority to maintain order,⁷ is in the best position to establish a secure distance with respect to the specific circumstances of their polling place. A secure distance, prior to the opening of the polls, is out of arms reach, at a minimum, and far enough to not interfere with the work of poll workers. The chief judge or the one-stop site manager has the authority to remove any person who is interfering with or impeding the opening procedures.⁸ Public viewing must not be permitted to delay the opening of the voting site for voters.

To permit members of the public to view the zero count, the chief judge or one-stop site manager may, after the zero tape has been printed, remove the zero tape and display it from a secure

³ 08 NCAC 04 .0304(a). View means “to look at attentively.” Merriam-Webster’s Dictionary, <https://www.merriam-webster.com/dictionary/view>. Observe means “to watch carefully[.]” Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/observe>. Neither of these words encompasses the recording of an event by mechanical means.

⁴ Poll workers must “ensure that registration records can only be accessed by precinct officials.” 08 NCAC 10B .0101(g)(12).

⁵ Poll workers must “certify the integrity of the vote and the security of the official ballots at the voting place.” 08 NCAC 10B .0101(g)(3).

⁶ No person other than election officials and their appointees, or voters inserting their ballots, may access a voting machine. 08 NCAC 04 .0306. Poll workers are required to “ensure that the voting system cannot be tampered with throughout the period voting is being conducted.” 08 NCAC 10B .0101(g)(5); *see* N.C.G.S. § 163-166.7(c)(1).

⁷ N.C.G.S. § 163-48: “The chief judge and judges of election shall enforce peace and good order in and about the place of registration and voting.”

⁸ N.C.G.S. § 163-48.

distance, or permit the public to view the zero count on the tabulator from a secure distance. The zero tape must remain in the custody of poll workers and secured throughout the voting process.⁹

To facilitate any members of the public wishing to view these procedures, poll workers should consider taping off an area where such viewing may take place. They should also consider providing seating, if there is adequate space and available chairs. Poll workers should abide by any space constraints in the voting enclosure; they may need to enforce a maximum number of public attendees to ensure personal safety and the security of the voting site.

After these three opening procedures are complete, the chief judge or one-stop site manager should announce the completion of these procedures, and members of the public must then exit the voting site.

Public Viewing of the Vote Count on Election Day

Members of the public, including party-appointed observers, are permitted to view the counting of ballots when the polls are closed on Election Day.

For **Election Day voting** at the precinct site, this means that after voting has ended and the polls have closed, members of the public may enter the voting enclosure to witness the counting of the ballots, upon the direction of the chief judge for the public to enter. Our statutes require that:

Any member of the public wishing to witness the vote count at any level shall be allowed to do so. No witness shall interfere with the orderly counting of the official ballots. Witnesses shall not participate in the official counting of official ballots.¹⁰

For **absentee voting (including one-stop)**, when the results are tallied on one-stop and absentee-by-mail tabulators and announced after the close of the polls on Election Day at the county board office, members of the public may witness those procedures.¹¹ The law states:

Any elector of the county shall be permitted to attend the [Election Day absentee] meeting and allowed to observe the counting process, so long as

⁹ 08 NCAC 04 .0304(a).

¹⁰ N.C.G.S. § 163-182.2(a)(3). The Administrative Code addresses precinct-level counting specifically in 08 NCAC 10B .0105(h): “The counting of the ballots shall be made in the presence of the precinct election officials and witnesses and observers who are present and desire to observe the count. Observers shall not interfere with the counting of the ballots.”

¹¹ N.C.G.S. § 163-234(6).

the elector does not in any manner interfere with the election officials in the discharge of their duties.¹²

Similar to the observation of the opening procedures, public observation of vote counting must also be conducted under strict measures to ensure the security of election materials and equipment.

Members of the public should await the direction of the chief judge at the precinct site or the county director (or their designee) at the board office, before entering. Anyone in the voting enclosure or county board office who is not a poll worker, county board member, or State or county board employee must remain at a secure distance from poll books or check-in laptops, the ballots, or any component of the voting system—whether a tabulator or a ballot marking device. A secure distance, during the vote count, is recommended to be at least 10 feet, and in all circumstances, far enough to not interfere with the work of the vote counters and to prohibit the viewing of any voted ballot. The county board or chief judge, exercising their authority to maintain order,¹³ are in the best position to establish a secure distance with respect to the specific circumstances of their location.

Because the accuracy of the vote count is at stake, county board officials and precinct officials must also instruct public observers to not interrupt officials or interfere with them in any other way during these critical tasks. No photography or video recording is permitted during the counting of votes. Members of the public may only “witness” or “observe” these procedures.¹⁴ The chief judge at the precinct site and the county board at its office have the authority to

¹² N.C.G.S. § 163-234(2). **Note** that even if a county board begins counting absentee ballots prior to the close of the polls, “[t]he board shall not announce the result of the count before 7:30 p.m.” N.C.G.S. § 163-234(2). This means that no results (or results tapes) may be revealed to any member of the public before the close of the polls.

¹³ N.C.G.S. §§ 163-34, 163-48.

¹⁴ N.C.G.S. §§ 163-182.2(a)(3), 163-234(2). Witness means “to have personal or direct cognizance of.” Merriam-Webster’s Dictionary, <https://www.merriam-webster.com/dictionary/witness>. Observe, again, means “to watch carefully[.]” Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/observe>. Neither of these words encompasses the recording of an event by mechanical means. And voted ballots may be displayed during the counting procedures which, under no circumstance, may be recorded by a member of the public. See N.C.G.S. §§ 163-165.1(e), 163-166.3(c).

maintain order and to remove any person who is interfering with or impeding the counting procedures.¹⁵

As with the opening procedures, precinct officials and county boards should consider taping off an area where such observation may take place, both at the voting site or the county board office. They should also consider providing seating, if there is adequate space and available chairs. They should also abide by any space constraints of the facility; they may need to enforce a maximum number of public attendees to ensure personal safety and the security of the facility and election materials.

Once the precinct results are announced or the county board adjourns its counting meeting, members of the public should exit the facility.

Tabulator Tapes as Public Records

Zero tapes and results tapes produced by tabulators are public records, except for the Election Qualification Code, as explained below. Such tapes are needed for the operation of the ongoing election and the certification of the election. Therefore, these tapes do not need to be immediately produced in physical form on Election Day.¹⁶

The one exception is for a physical copy of the results tapes, which we recommend to be posted at the precinct voting site upon the completion of the vote count on Election Day. It is a good practice to also post absentee tabulator results tapes for inspection at the county board office in a similar fashion. Any member of the public is permitted to photograph or video any posted results tapes—when the tapes are posted, the counting process is no longer ongoing. However, results tapes that are retained for official election records to be delivered to the county board (or backups of such official records) should be retained in the possession of election officials.

Aside from the publicly posted results tapes, if a county board receives a public records request for a zero tape or poll tape, it should produce a copy of such tape “as promptly as possible,”

¹⁵ N.C.G.S. §§ 163-34, 163-48.

¹⁶ See David M. Lawrence, *Public Records Law for North Carolina Local Governments*, at 39 (UNC School of Government, 2d ed. 2009) (“[C]ourts have upheld temporary denials of inspection when the records are actually being used by public officials; those officials do not have to interrupt their use of the records in order to permit inspection.”).

recognizing that it is likely not possible to produce such a copy immediately upon request, especially on Election Day.¹⁷

Some ES&S voting systems print an Election Qualification Code (EQC) on the machine configuration report, which prints prior to the zero tape. This code is a “security feature” of the county board’s voting system and therefore may not be disclosed under the Public Records Act until after an election has been finally certified.¹⁸ Before any configuration report tape containing an EQC can be produced to the public prior to an election being finally certified, the EQC must be redacted.

¹⁷ N.C.G.S. § 132-6(a). A county board may comply with any request for such records by posting a scanned copy on its website. *See* N.C.G.S. § 132-6(a1). Otherwise, however, if there is a request for in-person physical examination of such records and a scan is not uploaded to the web, the county board would need to permit such examination “at reasonable times and under reasonable supervision.” N.C.G.S. § 132-6(a). A reasonable time would be after the canvass—*i.e.*, once the physical results tapes are no longer needed for the purpose of election certification.

¹⁸ N.C.G.S. § 132-6.1(c).