STAY ON TARGET: CITIES AND FIREARMS

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In a nutshell, what does the "open carry" legislation authorize?

House Bill 910, which became effective on January 1, 2016, modified the prior law relating to concealed handgun licenses. The bill eliminated the concealed/open carry distinction, and it created a "license to carry a handgun." *See generally* TEX. GOV'T CODE Chapter 411, Subchapter H.

State law now allows a person with a current concealed handgun license, or a person who obtains the new "license to carry a handgun," to carry a handgun in a concealed manner or openly in a belt or shoulder holster. The rules related to where and when a license holder may openly carry are essentially identical to where and when a concealed handgun license holder could carry under prior law. Of course, those rules remain complicated.

Some distinctions between concealed and open carry exist, especially related to legal notices and college campuses. Those are explained below. In addition to the existing training criteria, the new license to carry a handgun class must include training on the use of restraint holsters and methods to ensure the secure carrying of openly carried handguns. *Id*. at § 411.188(b) & (g).

In what places is a person *prohibited* by state law from carrying a firearm?

State law prohibits the carrying of certain types of firearms in certain places. A "firearm" generally means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. TEX. PENAL CODE § 46.01(a)(3). A "handgun" is a subset of "firearm" and means any firearm that is designed, made, or adapted to be fired with one hand. *Id.* § 46.01(a)(5).

A person commits a third degree felony if the person intentionally, knowingly, or recklessly possesses or goes with *any* firearm:

1. on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution.

   Note: The attorney general has concluded that this provision "prohibits handguns from places on which a school-sponsored activity is occurring, which places can include grounds such as public or private driveways, streets, sidewalks or walkways, parking lots, parking garages, or other parking areas." Tex. Att'y Gen. Op. No. KP-0050. It is very common for city facilities to host activities sponsored by a school or education institution. During that time, no person may come onto the "grounds" of the facility, and no signage is required. (Some cities may decide to post signage to assist license holders

in determining where they may legally carry, but that practice has not been tested in court.)

Additional Note: A "campus concealed carry exception" applies to this provision and allows a license holder to carry a concealed handgun on the premises of an institution of higher education, including the premises of a junior college or private or independent institution of higher education, on any grounds or building on which an activity sponsored by the institution is being conducted, or in a passenger transportation vehicle of the institution, subject to rules of the institution. TEX. GOV'T CODE § 411.2031. (In July of 2016, three UT professors sued to enjoin the law. One year later, the court dismissed the case.)

2. on the premises of a polling place on the day of an election or while early voting is in progress (Note: The Texas attorney general has concluded, in Opinion No. KP-0212, that a presiding election judge who is licensed to carry a handgun may do so at most polling places during the voting period.);

3. on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court (Note: Attorney general opinions KP-0047 and KP-0049 offer nonsensical interpretations of this provision, and courts have disagreed with their conclusions – see next question for details.);

4. on the premises of a racetrack;

5. in or into a secured area of an airport (i.e., an area of an airport terminal building to which access is controlled by the inspection of persons and property under federal law)(Note: Penal Code Sections 46.03(e-1) and (e-2) provide a defense to this offense. The defense essentially says that a license holder who makes a mistake at security by forgetting that he possesses a handgun can leave upon notice.); or

6. within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that doing so is prohibited (unless the person is on a public road and going to or from his home or business).

Id. § 46.03 ("premises" generally means a building or a portion of a building, but not including any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area).

The exclusions above, with the exception of the "campus concealed carry exception" in (1), apply to the carrying of a firearm by any person, *regardless of whether the person holds a license to carry a handgun*. *Id*. § 46.03(f).

Handgun license holders are subject to a number of other restrictions relating to the concealed or open carrying of a handgun. For example, a license holder may not concealed or open carry a handgun:

1. if the license holder is given written notice by a "51 percent sign" as defined in Gov't Code Section 411.204(c), on the premises of a business that is licensed by the Texas Alcoholic Beverage Commission and that derives 51 percent or more of its business from the on-premises sale of alcohol. (Note: Some city facilities, such as convention centers, could conceivably meet this threshold.);
2. on the premises where a high school, collegiate, or professional sporting event is taking place, unless the handgun is used for the event (Note: Open carry is prohibited on collegiate premises, but Gov't Code Section 411.2031 authorizes concealed carry, subject to rules of the institution. Because of that, concealed carry on the premises of a collegiate sporting event generally appears to be allowed unless Section 30.06 notice is given that it is prohibited.);
3. on the premises of a correctional facility;
4. if the license holder is given written notice pursuant to Penal Code Section 30.06 and/or 30.07 that carrying is prohibited, on the premises of a state-licensed hospital or nursing home, unless the administration has granted written permission to the license holder;
5. if the license holder is given written notice pursuant to Penal Code Section 30.06 and/or 30.07 that carrying is prohibited, in certain amusement parks (Note: Section 46.035(f) very narrowly defines amusement park, and only a few "six flags"-type parks would meet the definition.);
6. if the license holder is given written notice pursuant to Penal Code Section 30.06 and/or 30.07 that carrying is prohibited, on the premises of a church, synagogue, or other established place of religious worship (Note: Attorney general opinion KP-0176 (2017) concluded that, unless a church provides effective oral or written notice prohibiting the carrying of handguns on its property, a license holder may carry a handgun on church property as the law otherwise allows.);
7. anytime the handgun is not in a belt or shoulder holster, or concealed;
8. if the license holder is intoxicated;
9. if the license holder is given written notice pursuant to Penal Code Section 30.06 and/or 30.07 that carrying is prohibited, into any meeting of a governmental entity that is subject to the Open Meetings Act, while the meeting is taking place; or
10. on the premises of employment if prohibited by the license holder's employer (including a city), but an employee may generally leave a handgun in a private, locked car in parking lot.
11. On the property of any of the 10 state hospitals listed Section 552.002 of the Health and Safety Code by providing specific written notice as stated in that section.

Id. § 46.035(a), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6); (c); (d); TEX. GOV'T CODE § 411.203; TEX. LABOR CODE § 52.061 et seq; TEX. HEALTH & SAFETY CODE § 552.002.

Note: The language in the required sign to provide notice that concealed carrying is not allowed *was changed in 2015*, which means any old "30.06" signs must be replaced, and a new provision relating to open carry notice has been added:

- Texas Penal Code § 30.06(c)(3)(A) requires that the sign prohibiting concealed carry contain language *identical to the following*: "Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun".

- Texas Penal Code § 30.07(c)(3)(A) requires that the sign prohibiting open carry contain language *identical to the following*: "Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly".

The signs must include the *exact* language above in *both English and Spanish*, be printed in contrasting colors with block letters *at least one inch in height*, and be displayed *in a conspicuous manner clearly visible to the public*. (Section 30.07 adds the words "at each entrance to the property," which adds some confusion to where that sign should be posted, especially in relation to the optional "meeting room prohibition" for cities – the current consensus appears to be that both signs should be posted at the entrance to the meeting room itself.)

As one would expect, judges, peace officers, prosecutors, certain security guards commissioned by the Texas Board of Private Investigators and Private Security Agencies, members of the armed forces, corrections officers, and officers of a court are exempt in certain circumstances. *Id.* § 46.03(b) & (h); § 46.15. Some of those exemptions are discussed in more detail below – see "Are certain people allowed to carry a handgun where others may not?" In addition, a person convicted of a felony or a family violence offense is prohibited from possessing a firearm, with some limited exceptions. *Id.* § 46.02.

It is illegal to possess, manufacture, transport, repair or sell a machine gun ("any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger") or short-barreled gun ("a rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches"), unless federally registered under the National Firearms Protection Act. *Id.* § 46.01(10).

How has the statutory prohibition against carrying a firearm onto the premises of a court or court office been interpreted?

Two attorney general opinions called into question Texas city attorneys' previous understanding of where firearms can be carried in and around city courts. Attorney general opinion requests RQ-0040-KP (July 24, 2015) and RQ-0051-KP (September 9, 2015) asked numerous questions about the statutory prohibition against carry a firearm onto the premises of any government court or office utilized by the provision. The opinions further confused the issues. A discussion of each subsequent opinion, along with an explanation of their practical effects, follows.

- Tex. Att'y Gen. Op. No. KP-0047 (2015) concluded that a person is prohibited from carrying a firearm only into the *room* that actually houses a court or court office. That opinion is contrary to what the League and most other attorneys had been advising for years under the concealed carry law.

  Most governmental entities took that position because of the confusing nature of the law. In other words, because it wasn't (and still isn't) exactly clear into what "portion" of a building a licensee can carry, the licensee could (and still perhaps can) inadvertently commit a third degree felony for going to the wrong portion of the building.

  The opinion states that "[w]hile we can't be sure what the outside limits of the prohibition are, it is clear that 'the legislature intended to prohibit concealed handguns from the rooms that house government courts and offices central to the business of the courts….in order to provide clarity, we construe subsection 46.03(a)(3) to encompass only government courtrooms and those offices essential to the operation of the government court."

  The opinion further states that "[w]e routinely acknowledge that decisions like this are for the governmental entity in the first instance, subject to judicial review. Accordingly, the responsible authority that would notify license holders of their inability to carry on the respective premises must make the determination of which government courtrooms and offices are essential to the operation of the government court." The prohibition does not require notice, but notice given by a "no firearms allowed" sign or one with a gun with a slash through it has been found by at least one district court to be acceptable for doing so (see below discussion).

  Prior to the two opinions above, it always seemed clear that a license holder couldn't go into the court building. That interpretation provided certainty. Contrary to the "would notify license holders" quote above, the court or court office prohibition *does not require signage*. Thus, the opinions nonsensically shift the risk of compliance onto the license holder to know where he or she can carry.

  In the wake of KP-0047, some local governments called foul. For example, TML, the Texas District and County Attorneys Association and the Texas Conference of Urban Counties both questioned the conclusions of the attorney general's office.

  Whether a city official agrees or disagrees with the conclusions in the opinions, it seems safe to say that many are having trouble deciding how to deal with them. The CUC's advice to its county members is that the opinions are:

  > not consistent with the plain language found in Texas statutes, nor the very clear evidence of legislative intent…[t]he question of whether "premises of a court" means only a courtroom should be a question of law to be decided by the trial judge in the first instance, subject to appeal. Interestingly, as of this writing, the judges of the Texas Supreme Court and the Texas Court of

> Criminal Appeals don't permit any weapons to be brought into the Supreme Court building.

TDCAA's advice is slightly more tempered, but comes to a similar conclusion. Again, regardless of one's opinion on where guns should be allowed, it's tough to properly interpret the courts prohibition. As mentioned above, the attorney general's opinions actually shift the risk of compliance onto the license holder to know where he or she can carry.

Recently, Waller County, located northwest of Houston, filed a lawsuit to find out the answer. On November 28, 2016, a district judge in Waller County issued an order in the case of *Waller County v. Terry Holcomb*. The order concluded that the *entire building that houses a court* is off-limits to anyone carrying a firearm, including the holder of a license to carry. The order also concludes that the attorney general has no authority to investigate the county's signs providing notice that no firearms are allowed.

Terry Holcomb is the leader of the group known as Open Carry Texas, and spends much of his time complaining about governmental entities posting licensed carry signage in what he alleges is the wrong place or with the wrong wording. He sent a written complaint to Waller County officials claiming that – based on the attorney general opinion mentioned above – they can't prohibit licensed carry in the entire courthouse building. He also claimed that the attorney general's office, under its investigatory authority over signage, can seek civil penalties against the county if it refuses to remove its signs. (The other attorney general opinion discussed above incorrectly asserts investigatory authority that is not authorized by law.)

The county filed a lawsuit against Mr. Holcomb seeking a declaratory judgment from a district court that: (1) the entire courthouse is off-limits to licensed carriers; and (2) the attorney general's office doesn't have as much enforcement authority as it claims. The court's order agreed fully with the county's position.

The order isn't precedential, and it was recently overturned by a Houston Court of Appeals (that opinion is precedential in the geographic area of the court, and persuasive in other parts of the state).

The court of appeals concluded that writing a letter to a political subdivision to complain about its allegedly unlawful conduct is not a wrong that gives a court jurisdiction. According to the court, "Holcomb had a statutory right to notify the County of his contention that its courthouse signage violates the Government Code and request that the County cure this violation." Even in the absence of a statute, the court of appeals held, he had a right under the Texas Constitution to "apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance."

The court of appeals ultimately concluded that only the attorney general can investigate an allegation that a sign isn't allowed. That means the lawsuit should be between the county and the attorney general. Because the attorney general wasn't named as the party, the order was thrown out. Moreover, the court actually sent the case back to the trial court for it to consider

awarding damages to Holcomb under a law called the Citizen's Participation Act. That Act is designed to protect a citizen who complains against government to claim unfair treatment.

In any case, the reversal doesn't mean that the court of appeals wouldn't agree with the trial court on the merits. It simply means that the correct parties weren't involved, which rendered the trial court without jurisdiction to hear that case. The case was appealed to the Texas Supreme Court, but the court denied the petition for review.

The attorney general, before the order and subsequent opinion in the case discussed above, filed a separate lawsuit against Waller County in Travis County District Court on the exact same issues. In Ken Paxton v. Waller County et al., the attorney general is asking a Travis County district court to: (1) force the county to remove signs prohibiting any firearms in the county courthouse (including by license to carry holders); and (2) impose civil penalties on the county.

Even *more* recently, the attorney general's office filed a lawsuit against the City of Austin to require licensed carry at city hall, even though a municipal court is conducted there. More specifically, the Austin city hall houses the city's "community court." According to its website, the court's purpose is "to collaboratively address the quality of life issues of all residents in the downtown Austin community through the swift, creative sentencing of public order offenders." The court "seeks to hold people responsible while also offering help to change behavior."

The court is held in city hall. Because of that, the city took the position that the entire building is off-limits to license holders carrying handguns. A "no guns" sign (a handgun with a slash through it – see photo to the left) is posted on the window, and a guard posted at a metal detector provides verbal notice that licensed carry is not allowed.

The attorney general's lawsuit asked the court to order the city to remove its sign and authorize licensed carry in city hall. It also sought civil penalties from the city. In 2018, the district court judge in *Paxton v. City of Austin* disagreed, concluding that the attorney general has no jurisdiction under Government Code Section 411.209 to investigate, seek an inunction, or seek civil penalties for the display of any sign other than a 30.06 sign or verbal notice under that same section.

In a letter explaining her decision to deny the attorney general's motion for summary judgment, the judge eviscerated the attorney general's arguments based on the plain language of the law. Her conclusions can be summarized as follows:

1. Texas Government Code Section 411.209 provides that: "[A] political subdivision of the state may not provide notice by a communication described by Section 30.06, Penal Code, or by any sign expressly referring to that law or to a license to carry a handgun, that a license holder carrying a handgun…is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless license

holders are prohibited from carrying a handgun on the premises or other place by Section 46.03 or 46.035, Penal Code."

2. The section above refers only to Section 30.06 signs, which allow a city to prohibit licensed carry only in a meeting room while a meeting subject to the Open Meetings Act is taking place.
3. The plain language of the section above does not grant the attorney general any authority whatsoever to investigate or enforce against any other type of sign relating to firearms.
4. The section above does not prohibit a city from giving notice by a sign providing a gun with a slash through it (or presumably a "no firearms allowed" sign) that all firearms are prohibited under some other law. (Such as the prohibition against anyone carry any firearm – licensed or not – onto the premises of a building with a court or offices utilized by the court.)
5. The city's argument that the entire building that contains a court or offices utilized by the court is off limits to anyone – licensed or not – carrying a firearm is correct because "premises" is defined Penal Code Section 46.035(f)(3) law to mean "a building or portion of a building."
6. Number (5), above, is true because the prohibition against carry in a building or portion of a building is a criminal offense, and means that a person with a firearm can't go into any portion of the building housing a court or offices utilized by a court.
7. A building or portion of a building that houses a court or offices utilized is off limits to anyone – licensed or not – who is carry a firearm at all times (not just when court is in session).

The case is scheduled for a full bench trial in December 2018. An older appeals court opinion concluded that, in a criminal proceeding, the carrying of a pistol into a district court clerk's office was sufficient to uphold a conviction for a violation of Section 46.03. *Wooster v. State*, No. 08-05-00177-CR, 2007 WL 2385925 (Tex. App. Aug. 16, 2007).

What are the practical effects of the opinions and cases above? Based on the advice of a city's attorney, a city may wish to rely on the City of Austin's district court ruling, which is better-reasoned that the attorney general opinions. That reliance would be that a license holder may not carry a handgun into a building that houses a court or offices utilized by a court. No signage is necessary. However, some cities – like the City of Austin did – may deem it appropriate to post a sign of some type notifying the license holder that a room houses a court or court office.

What would the signs mentioned above look like? Some would argue that they should be the 30.06 and 30.07 "criminal trespass by license holder" signs mentioned in a previous question. But according to the Austin district court, that type of sign would mean that the attorney general has authority over them and can sue the city. Better might be a gun with a slash through it or a "no firearms allowed sign." Even better might be quoting the Penal Code section prohibiting carry into those places should be mentioned:

This building houses courts and court offices.
All weapons are prohibited pursuant to Penal Code Section 46.03(a)(3).
An offense under that section is a third degree felony.

The above analysis relates only to courts and court offices, but it might also be relevant to signage relating to the prohibition against carrying on the premises of a school sponsored activity or polling place during early voting or on Election Day.

Previous version of this paper advised that one possible option a city could use to address the confusion is to adopt a resolution making findings as to which of its room(s), portion(s) of building(s), or buildings are off-limits based on the court exception. An example is available at www.tml.org, under Legal Topics, Public Safety, but no city should do so without first consulting with local legal counsel. Considering the ruling in the Austin case, the advice to adopt that resolution may no longer make sense.

Is a person *allowed* by state law to carry a concealed handgun on college campuses?

Beginning on August 1, 2016, a license holder may carry a *concealed* handgun on the campus of an institution of higher education or private or independent institution of higher education in this state. ("Institution of higher education" means any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education. "Private or independent institution of higher education" includes only a private or independent college or university that is organized under the Texas Non-Profit Corporation Act, exempt from taxation under the Texas Constitution and as a 501(c)(3), and accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, the Liaison Committee on Medical Education, or the American Bar Association. TEX. EDUC. CODE § 61.003.) "Campus" means all land and buildings owned or leased by an institution of higher education or private or independent institution of higher education. *Id*. at § 411.2031(a)(1). This provision does *not* allow *open* campus carry.

(Note: Attorney general opinion KP-0167 (2017) concluded that a "license holder who carries a concealed handgun into an open meeting of a junior college district board of trustees in which no Penal Code section 30.06 trespass notice was posted would have a defense to the prosecution of Penal Code subsection 46.035(c). Though unnecessary within the context of Government Code subsection 411.2031 (d-1), a junior college district board of trustees could adopt a rule authorizing concealed handguns in its open meetings to affirm or publicize a license holder's right to carry the concealed handgun into the open meeting held on the institution's campus.")

An institution of higher education or private or independent institution of higher education may establish rules, regulations, or other provisions concerning the storage of handguns in dormitories or other residential facilities that are owned or leased and operated by the institution and located on the campus of the institution. *Id*. at § 411.2031(d). After following certain procedures, the president of an institution of higher education must adopt rules as necessary for campus safety, but those rules may not generally prohibit concealed carrying. *Id*. at § 411.2031(d-1)&(d-2)(The board of regents may, by a two-thirds vote, overrule the decisions of the president relating to the rules). If the rules prohibit carrying in any particular premises, the institution must give notice pursuant to Section 30.06, Penal Code. *Id*. It appears that the rulemaking authority is meant to allow an institution to prohibit carrying in sensitive areas, such as those related to secret research or similar endeavors. Any institution that adopts such rules

must annually submit them to the legislature explaining why it has done so. *Id*. at § 411.2031(d-4). The attorney general has concluded that an institution may not adopt rules that are so strict they, as a practical matter, prohibit concealed carry by a license holder. Tex. Att'y Gen Op. Nos. KP-0051 (2015) and KP-0120 (2016).

A private or independent institution of higher education may also establish rules prohibiting license holders from carrying handguns on the campus of the institution, any grounds or building on which an activity sponsored by the institution is being conducted, or a passenger transportation vehicle owned by the institution. *Id*. at § 411.2031(e). This provision was explained on the Senate floor as balancing Second Amendment rights with private property rights.

The campus carry law creates a criminal offense for a license holder who carries a partially or wholly visible handgun, regardless of whether the handgun is holstered, and intentionally or knowingly displays the handgun in plain view of another person: (1) on the premises of an institution of higher education or private or independent institution of higher education; or (2) on any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area of an institution of higher education or private or independent institution of higher education. TEX. PENAL CODE § 46.035(a-1). It also creates a criminal offense for a license holder who carries a concealed handgun on the campus of a private or independent institution of higher education that has prohibited carry by rule and given notice under Penal Code Section 30.06 that carrying is prohibited. *Id*. at § 46.035(a-2). Finally, it creates a criminal offense for a license holder who carries a concealed handgun in any area on the campus of an institution of higher education in which the institution has by rule prohibited such carry. *Id*. at § 46.035(a-3).

In what places is a person *allowed* by state law to *openly* carry a firearm?

Long Guns (e.g., Rifles and Shotguns)

The state has no licensing scheme for long guns. Because state law governs firearms, and because it does not prohibit the carrying of a rifle or shotgun in a public place, a person is generally allowed to carry those weapons in public in Texas.

Article I, Section 23, of the Texas Constitution, the "Right to Keep and Bear Arms" provision, provides that:

> Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

The above provision is the starting point for whether a person may possess or openly carry a firearm. It allows lawful carrying of firearms, but it also authorizes the state legislature to regulate to prevent crime. Contrary to the opinion of some, neither the Texas Constitutional provision above, nor the U.S. Constitutional provision, is absolute. U.S. Const., Amend. II ("A well regulated militia being necessary to the security of a free state, the right of the people to

keep and bear arms shall not be infringed."); *District of Columbia v. Heller*, 554 U.S. 570 (2008)("the Second Amendment right is not unlimited…[i]t is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."); *Reyes v. State*, 906 S.W.2d 256 (Tex. App. – Fort Worth, 1995), petition for discretionary review granted, reversed 938 S.W.2d 718, rehearing on petition for discretionary review denied (State constitutional right to bear arms does not prevent legislature from prohibiting possession of arms with intent to prevent crime.).

Handguns without a License

The open carry of handguns in public is prohibited in Texas, unless the person holds a license to carry a handgun (see next question). An unlicensed person may carry a handgun on private property or in a car or boat (technically, in a "watercraft"). A handgun in a car or boat must be concealed. Carrying a concealed handgun in a car or boat does not require a handgun license. More specifically, the Penal Code provides that a person commits a Class A misdemeanor if he or she intentionally, knowingly, or recklessly carries on or about his or her person a handgun if the person is not: (1) on the person's own premises or premises under the person's control; or (2) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control. TEX. PENAL CODE § 46.02(a).

In addition, a person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft that is owned by the person or under the person's control at any time in which: (1) the handgun is in plain view; or (2) the person is engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic or boating. *Id.* § 46.02(a-1). Also, a person may not carry a handgun if prohibited by law from doing so (e.g., if the person is on parole or probation or is a member of a criminal street gang).

Courts have concluded that states have a right to regulate the carrying of handguns, and that neither the Texas nor U.S. Constitutions limit that authority. (The constitutional right "to keep or bear arms in self-defense or in the defense of the state," is no defense to an indictment for carrying a pistol contrary to the statute. *Heller*, 554 U.S. 570; *Masters v. State*, 685 S.W.2d 654 (Tex. Crim. App. 1985), certiorari denied 106 S.Ct. 155, 474 U.S. 853, 88 L.Ed.2d 128 (Article 1, Section 23, of the Texas Constitution, providing that the legislature shall have power to regulate wearing of arms authorizes Penal Code limitations that define the crime of unlawfully carrying a weapon.).

Handguns with a License

A license holder may generally openly carry a handgun in a hip or shoulder holster beginning January 1, 2016. But see the previous questions ("In what places is a person *prohibited* by state law to carry a firearm?" and "Is a person *allowed* by state law to carry a concealed handgun on college campuses?") for numerous limitations on that authority.

In what places is a person *allowed* by state law to *concealed* carry a firearm?

Long Guns (e.g., Rifles and Shotguns)

The state has no licensing scheme for long guns. Because state law governs firearms, and because it does not prohibit the carrying of a rifle or shotgun in a public place, a person is generally allowed to carry those weapons in public in Texas.

Handguns without a License

An unlicensed person may carry a handgun on private property or in a car or boat (technically, in a "watercraft"). A handgun in a car or boat must be concealed. Carrying a concealed handgun in a car or boat does not require a handgun license. More specifically, the Penal Code provides that a person commits a Class A misdemeanor if he or she intentionally, knowingly, or recklessly carries on or about his or her person a handgun if the person is not: (1) on the person's own premises or premises under the person's control; or (2) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control. TEX. PENAL CODE § 46.02(a).

In addition, a person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft that is owned by the person or under the person's control at any time in which: (1) the handgun is in plain view; or (2) the person is engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic or boating. *Id.* § 46.02(a-1). Also, a person may not carry a handgun if prohibited by law from doing so (e.g., if the person is on parole or probation or is a member of a criminal street gang).

Handguns with a License

A license holder may generally concealed carry a handgun. *See generally* TEX. GOV'T CODE Chapter 411, Subchapter H. But see the previous questions ("In what places is a person *prohibited* by state law to carry a firearm?" and "Is a person *allowed* by state law to carry a concealed handgun on college campuses?") for numerous limitations on that authority.

Are certain people allowed to carry a handgun where others may not?

Yes. The legislature has seen fit to exempt certain people from many of the restrictions discussed above.

Judges/Presiding Election Judges and Prosecutors

For example, a defense to prosecution is available for an "active judicial officer" (i.e., a person serving as a judge or justice of the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court, a federal judge who is a resident of this state, or a

person appointed and serving as an associate judge under Chapter 201, Family Code. TEX. GOV'T CODE § 411.201).) who holds a license to carry a handgun when the officer is:

1. at a bar that is required to post the "51 percent" sign;
2. on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place;
3. on the premises of a correctional facility;
4. on the premises of a hospital or a nursing home;
5. in an amusement park;
6. on the premises of a church, synagogue, or other established place of religious worship; or
7. at any meeting of a governmental entity.

In addition, a defense to prosecution is available for judge or justice of a federal court, a district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney, who holds a license to carry a handgun to carry when the person is:

1. at a bar that is required to post the "51 percent" sign;
2. on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place;
3. on the premises of a hospital or a nursing home;
4. in an amusement park;
5. on the premises of a church, synagogue, or other established place of religious worship; or
6. at any meeting of a governmental entity.

TEX. PENAL CODE § 46.035(h-1)(Note that there are *two* (h-1) provisions, with slightly different defenses applied to different officers.)

Moreover, an active judicial officer, district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney, or *municipal attorney* who holds a license to carry a handgun can lawfully carry:

1. on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private;
2. on the premises of a polling place on the day of an election or while early voting is in progress;
3. on the premises of any government court or offices utilized by the court;
4. on the premises of a racetrack;
5. in or into a secured area of an airport; or
6. within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution.

TEX. PENAL CODE § 46.15(a).

House Bill 435 passed during the Eighty-Fifth Legislative Session and is effective September 1, 2017. The bill provides that the attorney general or a United States attorney, assistant United States attorney, or assistant attorney general: (1) enjoys a defense to prosecution for carrying in most places otherwise off-limits to a license holder (e.g., bars, sporting events, hospitals that provide notice, open meetings if notice is provided, amusement parks, or places of worship); and (2) is permitted to carry into a school, institution of higher education, polling place, court or court offices, racetrack, secured area of an airport, or place of execution.

Finally, the Texas attorney general has concluded, in Opinion No. KP-0212, that a presiding election judge who is licensed to carry a handgun may do so at most polling places during the voting period.

Section 46.03 of the Penal Code provides that a "person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm…on the premises of a polling place on the day of an election or while early voting is in progress." However, the same section exempts "active judicial officers" from the prohibition. The judge of a district court is such an officer under state law. Interestingly, state law grants a presiding election judge "the *power of a district judge* to enforce order and preserve the peace."

All that is to say that a presiding election judge with a license to carry may do so "from the time the judge arrives at the polling place on election day until the judge leaves the polling place after the polls close." Regarding location, the presiding election judge's law enforcement authority exists "in the polling place and in the area within which electioneering and loitering are prohibited."

Other prohibitions could limit when a licensed presiding judge can carry. For example, a private business owner has the authority under other law to prohibit carry by the posting of so-called 30.06 and/or 30.07 signs. Thus, a grocery store owner still has the authority to prohibit a presiding judge from carrying on the premises if proper notice is given.

Peace Officers/Law Enforcement

Peace officers and special investigators as defined by the Code of Criminal Procedure can carry a weapon essentially anywhere, whether on or off duty.

Parole officers, community supervision and corrections department officers, and certain juvenile probation officers can carry essentially anywhere when in the discharge of their duties and in accordance with their agency's policy.

Honorably retired peace officers, qualified retired law enforcement officers, federal criminal investigators, or former reserve law enforcement officers who hold a certificate of proficiency and are carrying a photo identification that is issued by a federal, state, or local law enforcement agency meeting certain criteria, can carry essentially anywhere.

A bailiff designated by an active judicial officer who holds a handgun license and is engaged in escorting the judicial officer can carry essentially anywhere.

TEX. PENAL CODE § 46.15 (Note: This provision, titled "nonapplicability," allows certain other persons, such as members of the military and personal protection officers, to carry in expanded areas.)

Volunteer Emergency Services Personnel

Chapter 112 of the Civil Practices and Remedies Code provides certain liability protections to a governmental unit (including a city) that allows volunteer emergency services personnel with a license to carry a handgun while engaged in providing emergency services. Specifically, the bill provides that

1. "volunteer emergency services personnel" includes a volunteer firefighter, an emergency medical services volunteer, and any individual who, as a volunteer, provides services for the benefit of the general public during emergency situations;
2. a governmental unit is not liable in a civil action arising from the discharge of a handgun by an individual who is volunteer emergency services personnel and licensed to carry the handgun;
3. the discharge of a handgun by an individual who is volunteer emergency services personnel and licensed to carry the handgun is outside the course and scope of the individual's duties as volunteer emergency services personnel;
4. the bill may not be construed to waive the immunity from suit or liability of a governmental unit under the Texas Tort Claims Act or any other law; and
5. volunteer emergency services personnel who are engaged in providing emergency services: (a) enjoy a defense to prosecution for carrying into a place under which an owner has lawfully excluded licensed carry by providing notice under current law, bars, jails, sporting events, hospitals that provide notice, open meetings if notice is provided, amusement parks, or places of worship; and (2) are permitted to carry into a school, institution of higher education, polling place, court or court offices, racetrack, secured area of an airport, or place of execution.

City officials should note that the bill does not mandate that they allow volunteer emergency services personnel with a license to carry their handgun. It merely attempts to provide liability protections should that carry be allowed.

In what ways does state law expressly *preempt* a city from regulating firearms?

State law relating to firearms expressly preempts municipal authority over: (1) the transfer, private ownership, keeping, transportation, licensing, or registration of firearms, air guns, ammunition, or firearm or air gun supplies; or (2) the discharge of a firearm or air gun (e.g., a pellet, BB, or paintball gun) at a sport shooting range (defined as a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting). TEX. LOCAL GOV'T CODE §§ 229.001(a); 229.001(e)(1) & (e)(2).

In addition, Section 411.209, and provides that: (1) a state agency or a political subdivision of the state may not provide notice that a concealed handgun licensee is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless license holders are actually prohibited by state law from carrying a handgun on the premises; (2) a state agency or a political subdivision of the state that improperly posts notice is liable for a civil penalty of: (a) not less than $1,000 and not more than $1,500 for the first violation; and (b) not less than $10,000 and not more than $10,500 for the second or a subsequent violation; (3) a citizen of this state or a person licensed to carry a concealed handgun may file a complaint with the attorney general that a state agency or political subdivision has improperly posted notice; (4) before a suit may be brought against a state agency or a political subdivision of the state for improperly posting notice, the attorney general must investigate the complaint to determine whether legal action is warranted; (5) if legal action is warranted, the attorney general must give the chief administrative officer of the agency or political subdivision charged with the violation a written notice that gives the agency or political subdivision 15 days from receipt of the notice to remove the sign and cure the violation to avoid the penalty; and (6) if the attorney general determines that legal action is warranted and that the state agency or political subdivision has not cured the violation within the 15-day period, the attorney general or the appropriate county or district attorney may sue to collect the civil penalty, and the attorney general may also file a petition for a writ of mandamus or apply for other appropriate equitable relief. TEX. GOV'T CODE § 411.209 (This is the law that the attorney general uses to investigate and/or sue cities that allegedly have signs posted in unallowable places.)

As written, the bill applies only to a concealed handgun sign under Texas Penal Code Section 30.06. This appears to be an oversight, although it was not amended in 2017 to apply to the new open carry sign under Section 30.07. The attorney general has asserted that the bill grants his office authority over any sign and even over verbal trespass warnings. Tex. Att'y Gen. Op. No. KP-0049 (2015). But in a lawsuit involving the City of Austin, discussed above, a district court judge disagreed, stating that the plain language of the statute limits the attorney general's authority to a 30.06 sign or verbal notice under that section only.

In what ways does state law expressly *authorize* a city to regulate firearms?

The Local Government Code expressly authorizes a city to regulate the following:

1. the discharge of firearms or air guns within the limits of the city, other than at a sport shooting range (a city can prohibit or regulate the discharge of a firearm or other weapons within the city's original city limits, but may not do so in annexed areas and the extraterritorial jurisdiction in certain circumstances—see next question). Tex. Atty. Gen. Op. No. GA-0862 (2011);

2. the use of property, the location of a business, or uses at a business under the city's fire code, zoning ordinance, or land-use regulations as long as the code, ordinance, or regulations are not used to circumvent the prohibition against regulating the transfer, private ownership, keeping, transportation, licensing, or registration of firearms, air guns,

ammunition, or firearm or air gun supplies, or the discharge of a firearm or air gun at a sport shooting range;

3. the use of firearms or air guns in the case of an insurrection, riot, or natural disaster if the city finds the regulations necessary to protect public health and safety (This exception does not authorize the seizure or confiscation of any firearm, air gun, or ammunition from an individual who is lawfully carrying or possessing the firearm, air gun, or ammunition);

4. the carrying of a firearm or air gun by a person *other than a person licensed to carry a handgun* at a:

    a. public park (For example, a city could prohibit anyone other than a handgun license holder from carrying a firearm in a city park. Tex. Atty. Gen. Op. No. DM-364 (1995));

    b. public meeting of a municipality, county, or other governmental body (A city may prohibit a license holder from attending a meeting with a handgun by posting notice under Penal Code Sections 30.06 and/or 30.07 that doing so is prohibited, but how to notice a non-license holder that carrying a long gun into a meeting is prohibited is the subject of debate – see "Can a city prohibit firearms in a city building or facility? Firearms in General, below.);

    (Note: Items 4a and 4b do not allow municipal regulation if the firearm or air gun is in or is carried to or from an area designated for use in a lawful hunting, fishing, or other sporting event and the firearm or air gun is of the type commonly used in the activity. TEX. LOCAL GOV'T CODE § 229.001(c).)

    c. political rally, parade, or official political meeting; or

    d. nonfirearms-related school, college, or professional athletic event.

5. the hours of operation of a sport shooting range, except that the hours of operation may not be more limited than the least limited hours of operation of any other business in the municipality other than a business permitted or licensed to sell or serve alcoholic beverages for on-premises consumption; or

6. the carrying of an air gun by a minor on: (a) public property; or (b) private property without consent of the property owner.

Id. § 229.001(b). The exceptions above are relatively narrow. For example, the Local Government Code preempts a city housing authority from regulating a tenant's otherwise lawful possession of firearms. Tex. Atty. Gen. Op. No. DM-71 (1991).

Moreover, if a city regulates in violation of state law, the attorney general may bring an action in the name of the state to obtain a temporary or permanent injunction against the violation. TEX. LOCAL GOV'T CODE § 229.001(f).

The Texas Constitution was amended in 2015 (by voter approval of a new Section 34 to Article I) that: (1) enshrines in that document that the people have the right to hunt, fish, and harvest wildlife, including by the use of traditional methods, subject to laws or regulations to conserve and manage wildlife and preserve the future of hunting and fishing; and (2) provides that: (a) hunting and fishing are preferred methods of managing and controlling wildlife; (b) the amendment does not affect any provision of law relating to trespass, property rights, or eminent domain; and (c) the amendment does not affect the power of the legislature to authorize a city to regulate the discharge of a weapon in a populated area in the interest of public safety. (The amendment actually clarifies existing law relating to city regulation of the discharge of firearms.)

In what additional ways does state law expressly *prohibit* city regulation of firearms?

In addition to the general state law preemption of municipal authority discussed in the question above, other laws have been enacted in recent sessions that expressly prohibit municipal regulation in certain circumstances.

At the request of various landowners and other groups, the legislature amended state law in 2005 to limit municipal authority over certain firearms discharges. According to the bill analysis for the legislation:

> In some parts of the state, large tracts of land that have traditionally been used for hunting leases have been annexed. Upon annexation, the municipality frequently informs the owners of these large tracts that they can no longer discharge firearms on the property, thereby ending their right to lease their property for hunting. Many owners of these large tracts depend on the revenue generated from their hunting leases.

Because of that analysis and the subsequent passage of legislation, a city may not apply a regulation relating to the discharge of firearms or other weapons in the extraterritorial jurisdiction of the city or in an area annexed by the municipality after September 1, 1981, if the firearm or other weapon is:

1. a shotgun, air rifle or pistol, BB gun, or bow and arrow discharged on a tract of land of 10 acres or more and more than 150 feet from a residence or occupied building located on another property in a manner not reasonably expected to cause a projectile to cross the boundary of the tract; or
2. a center fire or rim fire rifle or pistol of any caliber discharged on a tract of land of 50 acres or more and more than 300 feet from a residence or occupied building located on another property; and in a manner not reasonably expected to cause a projectile to cross the boundary of the tract.

TEX. LOCAL GOV'T CODE § 229.002. The 1981 date is relevant because that was the date of enactment of another law commonly known as the Agriculture Protection Act (APA) – Chapter 251 of the Agriculture Code. The APA generally prohibits a city from applying nuisance

regulations to an agricultural operation if doing so would negatively affect the operation. The Local Government Code provisions reference back to the APA, which makes the firearms limitations above retroactive to property annexed after 1981.

The law, in response to alleged shotgun pellets raining down on a school adjacent to a dove lease, was later amended to give cities in Collin and Tarrant Counties additional authority. *Id*. §§ 229.003 & 229.004.

Can a city prohibit firearms in a city building or facility?

Concealed or Open Handgun Carry by Handgun License Holder

A city has very limited authority to prohibit a license holder from carrying in city facilities to which the general public has access. As mentioned in the second question, above, state law prohibits a license holder from carrying a handgun on the premises: (1) of a polling place on the day of an election or while early voting is in progress; and (2) any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court. (See detailed discussion above regarding interpretations of the "courthouse exception.")

In addition, a city has the option of posting a specific notice to prohibit a license holder from carrying in the room or rooms where a meeting of a governmental entity is held and if the meeting is an open meeting subject to the Open Meetings Act. TEX. PENAL CODE § 46.035(c) & (i); § 30.06 & 30.07. (Texas Penal Code § 30.06(c)(3)(A) & 30.07(c)(3)(A) require that the sign giving the notice contain certain language that is printed in a certain size.); Op. Tex. Att'y Gen. No. KP-0098 (2016).

Attorney general opinion No. KP-0098 (2016) speaks to various issues related to the posting of notice. Sections 30.06 and 30.07 of the Penal Code provide the language to be used in a notice to prohibit entry with a concealed handgun and entry with a handgun that is carried openly. The request for the opinion was meant to clarify where the signs should be posted. That clarification was sought because Section 30.06 states that the concealed carry prohibition sign should be "displayed in a conspicuous manner clearly visible to the public." Section 30.07, for some inexplicable reason, has additional language stating that the open carry prohibition sign should be "displayed in a conspicuous manner clearly visible to the public *at each entrance to the property*."

The confusion came from the fact that a city can't generally prohibit open carry in city facilities, so it wouldn't make sense to post that sign "at each entrance to the property." Most attorneys had simply advised that a city wanting to prohibit carry in the meeting room do so by temporarily posting the signs at the entrance to the room when a meeting is taking place. The opinion essentially agreed, but it also included an analysis related to "closed meetings."

Legislation passed in 2015 prohibiting licensed carry "in the room or rooms where a meeting of a governmental entity is held and if the meeting is an *open meeting*" was added to clarify that only meetings of bodies governed by the Open Meetings Act are off limits, and only then if a city

posts signage. The phrase "open meeting" in that statute clearly means one that is subject to the Open Meetings Act. However, the attorney general office reads it literally to not include a "closed meeting (i.e., an executive session)." In other words, the opinion concludes that a city can't prohibit a person from licensed carrying into an executive session.

Of course, only members of the governing body have an absolute right to be in an executive session anyway. And a city can prohibit its employees from carrying at all while at work. But it's conceivable that the governing body could invite some other person to attend an executive session. If that's the case, the attorney general says the city can't prohibit that citizen from licensed carrying in that meeting. Whatever.

The law also allows a person to receive notice from the owner of the property (i.e., the city) or someone with apparent authority to act for the owner by oral or written communication. TEX. PENAL CODE § 30.06(b) & 30.07(b). In other words, a city employee could ask a license holder who is carrying to leave a meeting, even if the written notice is not posted, if the city has enacted a prohibition. Another method of providing notice could be a card with the statutory language to hand to attendees or the printing of the Penal Code 30.06 or 30.07 statements on the actual agenda. *Id*. at § 30.06(c)(3)(A) & 30.07(c)(3)(A).

The ignoring of notice by a license holder is a Class C misdemeanor, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the license holder was personally given the notice by oral communication and subsequently failed to depart. *Id*. at § 30.06(d) & 30.07(d).

City councilmembers or other city officials who hold a handgun license have no special right to carry a handgun into a meeting. However, if a city council does not prohibit license holders from carrying their handguns in the meeting room, *any* license holder may do so (unless the building or portion of a building where the meeting room is located also houses a polling place during an election or a city's municipal court and/or and office used by the court).

A "no firearms allowed" or similar sign has no effect on a license holder's ability to carry a handgun on property in which he is otherwise lawfully present. *Id.* § 30.05(f). But the fact that a person holds a license does not grant him any special right of access to city buildings and facilities that are not open to the general public. In 2018, an Austin district judge in *Paxton v. City of Austin* qualified that by concluding in an order and explanatory letter that a sign showing a gun with a line drawn through it is sufficient notice – even to a license holder – that firearms are prohibited by law. That case dealt with the prohibition against anyone carrying a handgun into a court or offices utilized by the court because the city hall housed a community court. But it would presumably apply also to other areas that anyone – license or not – is prohibited from carrying. In other words, a city can't deny a license holder from carrying where he is otherwise authorized to be, but a city can prohibit any person from going into certain areas.

One bit of special authority relates to the secure area of a law enforcement facility. The handgun license law allows:

> a peace officer who is acting in the lawful discharge of the officer's official duties to temporarily disarm a license holder when a license holder enters a nonpublic, secure

> portion of a law enforcement facility, if the law enforcement agency provides a gun locker where the peace officer can secure the license holder's handgun. The peace officer shall secure the handgun in the locker and shall return the handgun to the license holder immediately after the license holder leaves the nonpublic, secure portion of the law enforcement facility.

To avail itself of the authority above, a law enforcement facility shall prominently display at each entrance to a nonpublic, secure portion of the facility a sign that gives notice in both English and Spanish that, under this section, a peace officer may temporarily disarm a license holder when the license holder enters the nonpublic, secure portion of the facility. The sign must appear in contrasting colors with block letters at least one inch in height, and shall be displayed in a clearly visible and conspicuous manner.

The law defines a "law enforcement facility" as a building or a portion of a building used exclusively by a law enforcement agency that employs peace officers…and support personnel to conduct the official business of the agency." The term does not include any portion of a building not actively used exclusively to conduct the official business of the agency or any public or private driveway, street, sidewalk, walkway, parking lot, parking garage, or other parking area.

"Nonpublic, secure portion of a law enforcement facility" means that portion of a law enforcement facility to which the general public is denied access without express permission and to which access is granted solely to conduct the official business of the law enforcement agency. TEX. GOV'T CODE § 411.207(b)-(d).

In August 2016, the attorney general's office released Opinion No. KP-0108, its sixth opinion to that time related to licensed carry. It concludes that: (1) nothing prohibits a private entity that is leasing city property from posting notice that licensed carry is prohibited on the property; and (2) a licensed carrier who does so anyway would not commit the criminal offense of trespass by license holder under the Texas Penal Code.

The request for the opinion asked whether a non-profit entity that has offices on land owned by a city may restrict the carrying of concealed handguns on the property. The League has stated that the Penal Code provisions allowing a private entity to prohibit licensed carry on its property (Section 30.06 for concealed carry and Section 30.07 for open carry) can't be used to criminally enforce the trespass by license holder statute on city-owned property. That's because both sections provide that "it is an exception to the application of this section that the property on which the license holder openly carries the handgun is owned or leased by a governmental entity…"

The attorney general's office agreed with that position. However, the opinion also reviewed a new provision in the Government Code (Section 411.209) authorizing the attorney general to investigate and sue a state agency or a political subdivision that improperly posts a 30.06 notice. It concludes that the new section applies *only* to state agencies and political subdivisions. Thus, the attorney general's office has no authority to investigate a sign placed by the person or entity that is leasing the city property, so long as the city has no control over the placement. In other words, it appears to be a "don't ask, don't tell" opinion.

How can the person or entity that is leasing the city property and chooses to post signs then enforce the prohibition? The criminal trespass statute in the Penal Code (Section 30.05) can't be used to prohibit entry because it provides an affirmative defense if the basis for restricting access is that a person is carrying a handgun, so long as that person is licensed to do so. Because a license holder wouldn't necessarily commit a criminal offense by disregarding a sign in this case, the opinion mentions *civil* trespass, which presumably allows the person or entity to prohibit entry.

It's possible that the recourse of law enforcement responding to a call of an unwelcome licensed carrier at the leased property is thus limited to other criminal offenses.

Firearms in General

A non-license holder can't carry a handgun in public, and special rules discussed above apply to license holders. As such, this "firearms in general" answer really applies only to a non-license holder carrying a long gun onto city property.

This paper previously advised, and some still argue, that a city can prohibit the non-licensed carry of a long gun onto city property if the city provides notice that carrying firearms is prohibited in the building. Under Penal Code 30.05(a)(1) & (2), the state's criminal trespass statute, "[a] person commits an offense if the person enters or remains on or in property of another…without effective consent and the person: had notice that the entry was forbidden…or received notice to depart but failed to do so."

"Notice" means oral or written communication by the owner or someone with apparent authority to act for the owner. A sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden while carrying a firearm should be sufficient. TEX. PENAL CODE § 30.05(b)(A) & (C). In other words, a sign stating "No Firearms Allowed" could be sufficient.

However, as noted above, state law expressly preempts most city regulation of firearms. Thus, the most conservative advice is that a city can prohibit the carrying of a long gun by a non-license holder only at a:

1. public park (See Tex. Atty. Gen. Op. No. DM-364 (1995));
2. public meeting of a municipality, county, or other governmental body (A city may prohibit a license holder from attending a meeting with a handgun by posting notice under Penal Code Sections 30.06 and/or 30.07 that doing so is prohibited.);
3. political rally, parade, or official political meeting; or
4. nonfirearms-related school, college, or professional athletic event.

How to notice a non-license holder that carrying a long gun into one of the places above is prohibited is the subject of debate. A "No Firearms Allowed" sign could work, but some license holders may complain that such a posting is vague as to them.

Assuming criminal trespass is the appropriate offense, the penalty would generally be a Class B misdemeanor. However, it is a Class A misdemeanor if a person carries a deadly weapon during the commission of the offense or is on a "Critical infrastructure facility." A critical infrastructure facility means, among other places, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders:

1. an electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility;
2. a water intake structure, water treatment facility, wastewater treatment plant, or pump station; or
3. a natural gas transmission compressor station.

Id. § 30.05. Certain public safety officers and employees of the owner are exempt from this provision. *Id.* § 30.05(e).

Employees who hold a License to Carry

The handgun licensing law expressly allows a city to prohibit employee carry while on the job:

> RIGHTS OF EMPLOYERS. This subchapter does not prevent or otherwise limit the right of a public or private employer to prohibit persons who are licensed under this subchapter from carrying a handgun on the premises of the business. In this section, "premises" has the meaning assigned by Section 46.035(f)(3), Penal Code.

TEX. GOV'T CODE § 411.203. The law generally allows an employee to leave an otherwise lawful handgun in a private, locked car in the parking lot. TEX. LABOR CODE § 52.061 et seq. That exception does not, however, "apply to…a vehicle owned or leased by a public or private employer and used by an employee in the course and scope of the employee's employment, unless the employee is required to transport or store a firearm in the official discharge of the employee's duties. Id. at § 52.062(a)(2)(A).

In 2018, the attorney general received a request (RQ-0252-KP) as to whether a county can prohibit employees and elected officials from carrying in the county courthouse. Aside from the complex courthouse analysis described elsewhere in this paper, the provision above would clearly allow an entity to prohibit employees from carrying. Elected officials? Remains to be seen.

A city is not required to prohibit employee carry. In fact, a handful of cities have expressly allowed it. Any city that is considering such a policy should consult closely with local legal counsel and its liability carrier related to the potential for liability should an employee injure or kill someone with a firearm while on duty.

What federal law governs a police officer's authority to question a person who is legally carrying a firearm?

The Fourth Amendment of the U.S. Constitution. That amendment protects "[t]he right of the people to be secure in their persons…against unreasonable searches and seizures." U.S. CONST., Amend. IV. "The Fourth Amendment does not proscribe all contact between the police and citizens, but is designed 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.'" *I.N.S. v. Delgado*, 466 U.S. 210, 215 (1984) (quoting *United States v. Martinez–Fuerte*, 428 U.S. 543, 554 (1976)).

Although brief encounters between police and citizens require no objective justification, it is clearly established that an investigatory detention of a citizen by an officer must be supported by reasonable articulable suspicion that the individual is engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1 (1968); *United States v. Weaver*, 282 F.3d 302, 309 (4th Cir. 1968).

In Texas, the interplay between the Fourth Amendment and the statutory provisions relating to licensed carry are complex. Some take the position that openly carrying a handgun is suspicious enough to justify detention because doing so without a license is still a crime.

Other circuits have concluded that "where a state permits individuals to openly carry firearms, the exercise of this right, without more, cannot justify an investigatory detention." *U.S. v. Black*, 707 F.3d 531 (4th Circ. 2013). At least one federal appeals court has stated that "permitting such a justification would eviscerate Fourth Amendment protections for lawfully armed individuals in those states." *Id*. However, those states – unlike Texas – do not appear to have express statutory authority to disarm a license holder.

Most attorneys will likely advise law enforcement to use discretion in making contact, considering the totality of the circumstances. Unless and until Texas courts provide further guidance, each law enforcement officer should follow the advice of his or her local legal counsel, as well as any local policy directives. In any case, it is clear that state law provides express authority relating to license holders (see next question).

City employees should arguably follow the same restrictions. For example, if a person enters a city library or recreation facility with a holstered handgun, the employees should do nothing unless the person is otherwise acting suspiciously or causes a disturbance. If that happens, summoning law enforcement is the best course of action. In every case, each law enforcement agency should consult with legal counsel to understand its authority to investigate a person who is openly carrying in Texas.

Are there specific rules relating to whether a police officer can question or disarm a person who is openly carrying a holstered handgun in public?

Yes. State law gives a peace officer more authority to disarm a license holder who is carrying a handgun than it does for a non-licensed long gun carrier. See TEX. GOV'T CODE § 411.207. If a license holder is carrying a handgun on or about the license holder's person when a peace officer

demands that the license holder display identification, the license holder shall display both the license holder's driver's license or identification certificate and the license holder's handgun license. *Id*. at § 411.205.

Moreover, a peace officer who is acting in the lawful discharge of the officer's official duties may disarm a license holder at any time the officer reasonably believes it is necessary for the protection of the license holder, officer, or another individual. The peace officer shall return the handgun to the license holder before discharging the license holder from the scene if the officer determines that the license holder is not a threat to the officer, license holder, or another individual and if the license holder has not violated any law that results in arrest. *Id*. at § 411.207(a).

Can a police officer arrest or disarm a person who is legally carrying a long gun (e.g., a rifle or shotgun) in public?

Not without a reasonable suspicion of other illegal conduct. Because the Texas Constitution allows it, and because the legislature has not prohibited it, carry of a long gun is legal.

Of course, state law does provide restrictions to ensure public safety. Penal Code Section 42.01 governs disorderly conduct. It provides that a person commits a Class B misdemeanor offense if he or she intentionally or knowingly "displays a firearm or other deadly weapon in a public place in a manner calculated to alarm." TEX. PENAL CODE § 42.01(8); *see also* TEX. LOCAL GOV'T CODE § 229.001(7)(d).

If a peace officer encounters a person with a long gun, it is within his or her authority to inquire about the weapon. However, if the person is not holding the weapon at ready, pointing the weapon, brandishing it in a threatening manner, or otherwise using it in a manner calculated to cause alarm, the officer—without more—has limited authority to disarm the person. Those decisions should be based on an officer's training as applied to all of the facts in each instance.