



Licensed Carry Update

Scott Houston
Deputy Executive Director/General Counsel
Texas Municipal League
Cell 512-791-4158
shouston@tml.org



What are you more afraid of?



453 in 2012



2 in 2012

Today's Objective...

...is that you should know where the holder of a license to carry a handgun can/can't carry a handgun in or around city facilities.

Objective:

Carry by License Holder

Prohibited by law:

1. Premises of a **Polling place** on the day of an election or while early voting is in progress
2. Premises of any government **court or offices utilized by the court**, unless pursuant to written regulations or written authorization of the court

Only if city provides notice :

3. in the room or **rooms where a meeting of a governmental entity** is held during the meeting only if the meeting is an open meeting subject to the Open Meetings Act.
4. into the **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 Licensed Carry Laws

- H.B. 910: Open Carry

[Gail Stanwyk](#): I really should change.

[Fletch](#): No! I think you should stay the same wonderful person you are today.

[Gail Stanwyk](#): I mean, put clothes on.

- S.B. 273: Prohibits posting 30.06 sign in wrong place

- Tex. Att’y Gen. Op. No. KP-0049 (2015) – wrong?

- Enforcement has begun!

- S.B. 11: Concealed campus carry

- Effective beginning August 1, 2016 and August 1, 2017

- Tex. Att’y Gen Op. No KP-0051 (2015)



Can't Carry ANY Firearm

TEX. PENAL CODE § 46.03

1. 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: A new defense to this offense was added by H.B. 554, and is effective now – 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)

[Fletch](#): Well, I'm not even sure that's a crime anymore. There've been a lot of changes in the law.

2. any **grounds or building** on which an **activity sponsored by a school** or educational institution is being conducted, unless pursuant to written regulations or written authorization of the institution (But see campus carry on Aug. 1 and Tex. Att'y Gen. Op. No. KP-0050, concluding that “grounds” don’t equal “premises.”)



Can't Carry ANY Firearm (Con't)

TEX. PENAL CODE § 46.03

3. Premises of a **polling place** on the day of an election or while early voting is in progress
4. On the “physical” premises of a school or education institution (until campus carry for universities), unless pursuant to written regulations or written authorization.

Note: “**Premises**” means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.



Can't Carry ANY Firearm (Con't)

TEX. PENAL CODE § 46.03

3. Premises of any government **court or offices utilized by the court**, unless pursuant to written regulations or written authorization of the court .
 - Previous interpretations, then governor's memo
 - Tex. Att'y Gen. Op. No. KP-0047 (2015) concludes that safest answer is that a person is prohibited from carrying a firearm only into the *room* that actually houses a court or court office.
 - “We routinely acknowledge that decisions such as this are for the governmental entity in the first instance, subject to the *applicable* review”
 - TAC and CUC county reaction
 - TML city suggestions
 - McLennan County enforcement letter



McLennan County Enforcement Letter

Although the county issued a joint order determining the entire courthouse and annex to be essential to the operations of the courts, a reviewing court would likely conclude the county abused its discretion by implementing a joint order that protects areas of the courthouse and annex that are clearly neither a government court nor offices essential to the operation of a court. *See Agan*, 940 S.W.2d at 80 (commissioners court abuses discretion by acting “illegally, unreasonably, or arbitrarily”). Consequently, the OAG has determined the signs located at the entrances of the courthouse and the annex are in violation of the Government Code and the Penal Code.



Hmmmm...



Hmmmm...



Hmmmm...



**THIS BUILDING HOUSES THE
MUNICIPAL COURT AND OFFICES
UTILIZED BY THE MUNICIPAL COURT
ALL WEAPONS ARE PROHIBITED
PURSUANT TO PENAL CODE
SECTION 46.03 (A) (3). AN OFFENSE UNDER
THAT SECTION IS A THIRD DEGREE FELONY.
PROHIBIDO LAS ARMAS DE FUEGO
CONFORME A LA SECCION 46.03. DEL
CODIGO PENAL, ARMAS DE FUEGO
CUCHILLOS ILEGALES, MACANA U OTRAS
ARMAS PROHIBIDAS NO SON
PERMITIDAS EN EL LOCAL DE LA CIUDAD DE
PANORAMA VILLAGE CORTE MUNICIPAL.**

Hmmmm...



License Holder Can't Carry

Penal Code § 46.035 - Class A Misdemeanor

1. On the premises where a high school, collegiate, or **professional sporting event** or interscholastic event is taking place (unless the license holder is a participant in the event and a handgun is used in the event)
2. Anytime the handgun is not in a **belt or shoulder holster or concealed**
3. If the license holder is **intoxicated**
4. **ONLY** if the license holder is given **notice** pursuant to Penal Code Section 30.06 and/or 30.07 that carrying is prohibited:
 - a. into any **meeting room during a meeting** of a governmental entity that is subject to the Open Meetings Act
 - b. Class C misdemeanor? Class A misdemeanor?

Trespass by License Holder Signage

- The language required in the required sign to provide notice that concealed carrying is not allowed *has been changed*, which means any **old “30.06” signs must be replaced**, and a **new 30.07 provision** relating to open carry notice has been added.
- The signs must include the *exact* language on the next slide 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*.
- 30.07: *at each entrance to the property!*
- 30.06 and 30.06 signs only where expressly authorized – RQ-0087-KP (City of Alice)

License Holder Can't Carry

Gov't Code § 411.207

5. Only if license holder given proper notice in English and Spanish, into the 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.

ATTENTION

Pursuant to Section 411.207 (c),

Penal Code (*Authority of Peace Officer to Disarm*),
a person licensed under

Subchapter H, Chapter 411

Government Code (*handgun licensing law*), may be temporarily disarmed by a peace officer when the license holder enters the nonpublic, secure area of this facility.

ATENCIÓN

En Conforme con la Sección 411.207 (c),

del Código Penal
(*Autoridad de un oficial de la ley para desarmar*),
una persona con licencia bajo

el Subcapítulo H, Capítulo 411

Código Gobierno (*Ley de licencia de arma de fuego*),
puede ser desarmado temporalmente por un oficial
de la ley cuando el titular de la licencia entra una área
segura de este instalación.



Hmmmm...



Right of City as Employer

- TEX. GOV'T CODE § 411.203; TEX. LABOR CODE § 52.061 et seq.
 - City can **prohibit its employees** from carry on the premises of employment and city vehicles
 - an employee may generally leave a handgun in a private, locked car in parking lot
 - Liability of city
 - State law (Tort Claims Act) – generally no immunity waiver for intentional tort by an employee
 - Federal law (§ 1983) – “Official policy” that deprives a person of Constitutional rights
 - Coverage: “Course and scope”

Today's Objective...

...is that you should know where the holder of a license to carry a handgun can/can't carry a handgun in or around city facilities.

Objective:

Concealed or Open Carry by License Holder

Prohibited by law (no notice required, but may be prudent depending on circumstances):

1. Premises of a **Polling place** on the day of an election or while early voting is in progress
2. Premises of any government **court or offices utilized by the court**, unless pursuant to written regulations or written authorization of the court (Tex. Att'y Gen. Op. No. KP-0047 (2015))

Penalty: Third degree felony

Only if city has policy and provides notice in accordance with 30.06 and/or 30.07 posted at the door to the meeting room – technically, oral or written communication:

3. in the room or **rooms where a meeting of a governmental entity** is held during the meeting only if the meeting is an open meeting subject to the Open Meetings Act. TEX. PENAL CODE § 46.035(c) & (i).
4. **Only if license holder given proper notice in English and Spanish**, into the 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.

Penalty: Class A misdemeanor, but for meeting room prohibition can be class C unless fails to depart.



Guns in City Facilities

Examples of Places a License Holder CAN Carry

- Ambulance (hospital may prohibit)
- Police station (except secure area under TEX. GOV'T CODE § 411.207)
- Concert venue owned by city and leased to private entity – some disagree (see RQ-0097-KP Erath County Attorney)
- Library during city-hosted toddler reading hour (unless sponsored by a school or education institution)
- Recreation center during city or private league play
- And on and on...

QUESTIONS?!

- Texas Municipal League

www.tml.org

- Me

shouston@tml.org

