



# STAY ON TARGET: CITIES AND FIREARMS

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# Today's Objective...

...is that you should know where a person can and can't carry a gun in relation to city facilities in Texas...

# Today's Objective...

- Non-licensee can't carry a handgun in public.
- Licensee can't carry a handgun into the following city facilities:
  1. Polling places.
  2. Courts.
  3. Meeting room with notice.
  4. Secure area of police department.
- Long guns? Will mention.

# Where Can a Texan Carry?

- Carrying **WITHOUT** License
  - **Handgun Open carry: prohibited.** TEX. PENAL CODE § 46.02(a-1).
  - **Handgun concealed carry: prohibited, unless** on private property or in a car or boat (technically, in a “watercraft”). TEX. PENAL CODE § 46.02(a).
  - **Long guns:** state law does not prohibit the carrying of a rifle or shotgun in a public place, so a person is **generally allowed to carry** those weapons in public in Texas. Article I, Section 23, of the Texas Constitution.

# Where Can a Texan Carry?

- Carrying Handgun WITH License
  - **Open Carry:** A **license holder** may generally openly carry a handgun in a **hip or shoulder holster** (But see numerous limitations in law)
  - **Concealed Carry:** A **license holder** may generally **concealed carry** a handgun (But see numerous limitations law)
  - TEX. GOV'T CODE Chapter 411, Subchapter H.

# No Civilian Can 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 defense to this crime essentially says that a license holder who makes a mistake at security by forgetting that he possesses a handgun can leave upon notice)
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 (see Tex. Att’y Gen. Op. No. KP-0050, concluding that “grounds” don’t equal “premises.”)



Hmmmm...



# No Civilian Can Carry ANY Firearm (Con't)

## TEX. PENAL CODE § 46.03

4. On the “physical” premises of a **school or education institution**, unless pursuant to written regulations or written authorization.
4. Premises of a **polling place** on the day of an election or while early voting is in progress (but see KP-0212 (2018) re election judges – what if city employees).

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.





# Hmmmm...



# No Civilian Can 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.
  - WRONG: 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. (Hearing video.)
  - McLennan County lawsuit.
  - Austin lawsuit - Gov’t Code 411.209.
  - Third degree felony.

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.



Hmmmm...





# 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).



# License Holder Can't Carry

## Penal Code § 46.035 - Class A Misdemeanor

1. Anytime the handgun is not in a **belt or shoulder holster or concealed**.
2. If the license holder is **intoxicated**.
3. **ONLY** if the license holder is given **notice** pursuant to Penal Code Section 30.06 and/or 30.07 that carrying is prohibited into any **meeting room during a meeting** of a governmental entity that is subject to the Open Meetings Act (Class C misdemeanor? Class A misdemeanor?).

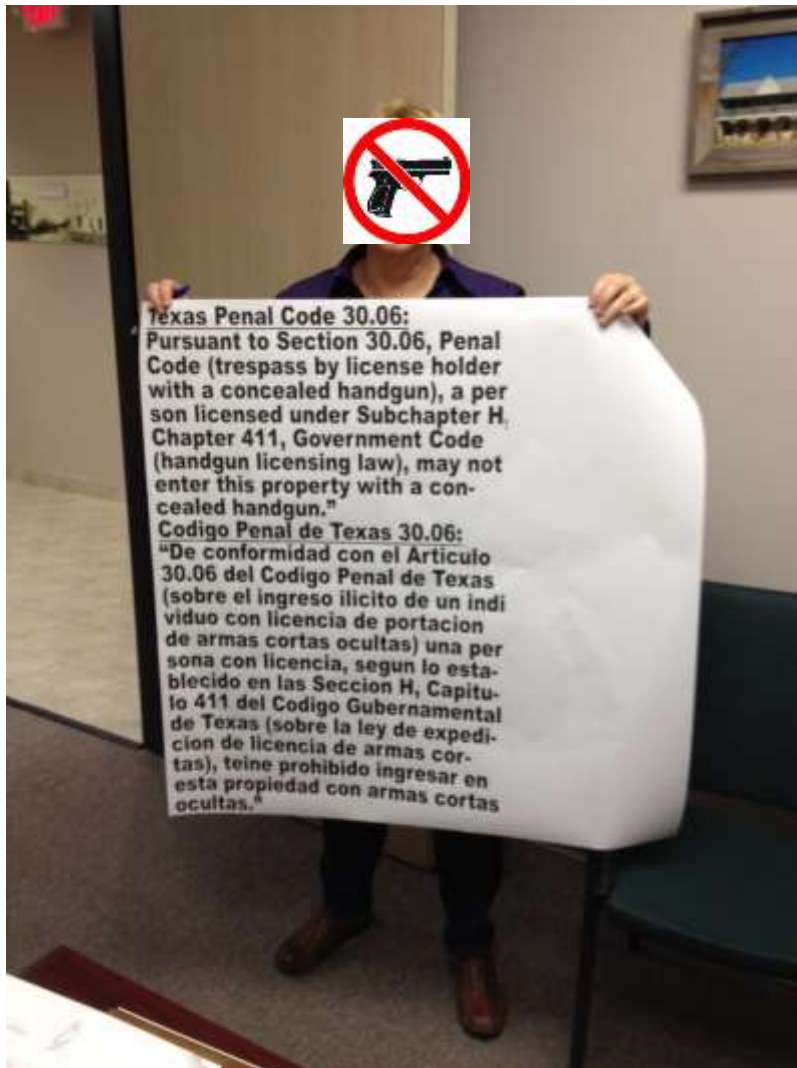


# Trespass by License Holder Signage

- 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 – KP-0098 (2016).



# Meeting Room Signage





# 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 in Jeopardy format...

**I'LL TAKE CLUSTER  FOR  
\$200, ALEX**

And the answer is...

...Where can a person carry a gun  
in relation to city facilities in Texas?



# 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).
- Convention center or similar facility owned by city and leased to private entity (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...



# Long Guns in City Facilities

## Preemption

- Remember the absolute prohibition against carrying and firearm onto the premises of any government **court or offices utilized by the court** (unless pursuant to written regulations) or **polling place**.
- But for other city facilities...

# Long Guns in City Facilities

## Preemption

- The Local Government Code **expressly preempts** a city from regulating “the transfer, private ownership, keeping, transportation, licensing, or registration of firearms, air guns, ammunition, or firearm or air gun supplies.” TEX. LOCAL GOV’T CODE § 229.001(a).
- 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).





# Long Guns in City Facilities

## Preemption - Surely This Can't be Right?

- TEX. LOCAL GOV'T CODE § 229.001(b) **expressly authorizes** a city to regulate the **carrying of a firearm by a person *other than a person licensed to carry a handgun*** at 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))
  - 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)



# Long Guns in City Facilities

- 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. TEX. PENAL CODE § 30.05(f); Tex. Att’y Gen. LO-95-058 (1995).
- 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.”
- Thus, for carrying of any firearm other than a handgun by a license holder, a city policy and written or oral notice could be enough to prohibit (TEX. PENAL CODE § 30.05(b)(A) & (C)) **UNLESS you believe that TEX. LOCAL GOV’T CODE § 229.001 preempts.**



# QUESTIONS?!

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