



# Cities and Firearms

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*Author's Note: During the 2015 Legislative Session, the Texas Legislature passed House Bill 910 and Senate Bill 11. House Bill 910 allows a license holder to "open carry" a handgun in a holster beginning on January 1, 2016, and S.B. 11 allows a license holder to, with exceptions, carry a concealed handgun on a college campus beginning on August 1, 2016. That legislation, combined with more frequent rallies and gatherings dedicated to the open carry of rifles, has led to confusion about the law in Texas. This Q&A will address state law and municipal authority over the regulation of "firearms" (e.g., rifles, shotguns, and handguns) in Texas.*

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### **In a nutshell, what does the new “open carry” legislation authorize?**

House Bill 910, which will be effective on January 1, 2016, modifies the current law relating to concealed handgun licenses. The bill eliminates the concealed/open carry distinction, and it creates a “license to carry a handgun.” *See generally* TEX. GOV’T CODE Chapter 411, Subchapter H.

Beginning on January 1, 2016, H.B. 910 will allow 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 can carry under current law. Of course, those rules remain complicated.

Some distinctions between concealed and open carry exist, especially related to legal notices. 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).

Another new law, S.B. 11, allows “concealed campus carry” by a license holder beginning on August 1, 2016. That bill does *not* allow open campus carry. It is discussed in detail below.

### **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 a 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: Beginning August 1, 2016, a “campus concealed carry exception” will apply to this provision that will allow a license holder to carry a concealed handgun on the premises of an institution of higher education [other than the premises of a junior college, on which concealed carry will not go into effect until August 1, 2017] 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.);
2. on the premises (“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) 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, unless pursuant to written regulations or written authorization of the court (Note: Attorney general opinion requests RQ-0040-KP (July 24, 2015) and RQ-0051-KP (September 9, 2015) ask numerous questions about this provision, and opinions on those requests are expected in early 2016.);
  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: A new defense to this offense was added by H.B. 554, and will be effective on September 1, 2015. 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. 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 further 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 sale of alcohol;
2. if the license holder is given written notice pursuant to Penal Code Section 30.06 that concealed carrying is prohibited, 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 S.B. 11 (2015)(Penal Code Section 46.035(l)) authorizes such carry beginning August 1, 2016, and subject to rules of the institution. Thus, the notice requirement was added to this section.);
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 “six flags” type park 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;
7. anytime the handgun is not in a belt or shoulder holster, concealed, or if the license holder is intoxicated;
8. 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; or
9. 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.

*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.

Note: The language 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 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*.

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. 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).

### **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.) However, a license holder may not carry on the campus of a public junior college until August 1, 2017. TEX. GOV’T CODE § 411.2031(b); S.B. 11 (2015), Section 8(a) and (d). “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.

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)

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 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.

### ***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.)

### **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, S.B. 273 became effective on September 1, 2015, 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.

As written, the bill applies only to a concealed handgun sign under Texas Penal Code Section 30.06. This was simply an oversight. It will likely be amended in 2017 to apply to the new open carry sign under Section 30.07.

## **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);
  - c. political rally, parade, or official political meeting; or
  - d. nonfirearms-related school, college, or professional athletic event;

(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).)

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).

S.J.R. 22 will be put to the Texas voters on November 3, 2015. The bill proposes an amendment to the Texas Constitution (a new Section 34 to Article I) that will: (1) enshrine 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) provide 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 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 (S.B. 734) 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. (Note: Attorney general opinion requests RQ-0040-KP (July 24, 2015) and RQ-0051-KP (September 9, 2015) ask numerous questions about this provision, and opinions on those requests are expected in early 2016.)

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.)

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 council 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 post notice that license holders are prohibited from carrying their handguns in the meeting room, *any* license holder may do so (unless the 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 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 who is not a city employee from going into certain areas.

### ***Firearms in General***

Yes, so long as 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” should be sufficient.

The penalty under the criminal trespass statute 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).

**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.*

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 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.

**Can you show in chart form the basic rules for where a private individual can carry a firearm?**

Absolutely. This chart does not cover every situation, but rather provides a general overview as to where a private citizen may carry a firearm (i.e., it doesn't list exceptions for judges, prosecutors, peace officers, etc.). It is not meant as legal advice.

Chart: General Overview of Private Texas Citizen Firearm Carry Laws		
Activity/Location:	Allowed?	Legal Basis:
	<b>Any Firearm</b>	
Physical premises of a school or educational institution (But see licensed campus carry, under "Handgun Concealed Carry," below.)	No, unless pursuant to written regulations or written authorization of the institution	Penal Code 46.03(a)(1)
Grounds or building on which an activity sponsored by a school or educational institution is being conducted (But see licensed campus carry, under "Handgun Concealed Carry," below.)	No, unless pursuant to written regulations or written authorization of the institution	Penal Code 46.03(a)(1)
Passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private (But see licensed campus carry, under "Handgun Concealed Carry," below.)	No, unless pursuant to written regulations or written authorization of the institution	Penal Code 46.03(a)(1)
Premises of a polling place on the day of an election or while early voting is in progress (i.e., "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.)	No	Penal Code 46.03(a)(2)
Premises that house court or court offices	No, unless authorized by court rules	Penal Code 46.03(a)(3) (No sign required but some notice recommended to give license holder notice that court or court office is in building)
Premises of a racetrack	No	Penal Code 46.03(a)(4)
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)	No	Penal Code 46.03(a)(5)
Within 1,000 feet of a place of execution on a day that a sentence of death is set to be imposed on the designated premises	No, so long as the person received notice that doing so is prohibited (unless the person is on a public road and going to or from his or her home or business)	Penal Code 46.03(a)(6) & 46.03(i)
	<b>Handguns Open Carry (No License)</b>	
Person's own premises or premises under the person's control	Yes	Penal Code 46.02(a)
Generally anywhere else	No	Penal Code 46.02
	<b>Handgun Concealed Carry (No License)</b>	
In car or water craft	Yes, no license required	Penal 46.02(a)
Generally anywhere else - no license	No	Gov't Code ch. 411; Penal Code 46.02
	<b>Handgun Concealed Carry (With License)</b>	
In car or water craft	Yes	Penal Code 46.02(a)
Generally anywhere else with license	Yes, so long as concealed	Gov't Code ch. 411; Penal Code 46.035
On property of another if receives 30.06 notice that not allowed	No, so long as 30.06 sign is properly posted	Penal Code 30.06 (Note: It is an exception to the application of this authority to prohibit that the property on which the license holder carries a handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun by other, express provisions listed herein.)
Government meeting	Yes, unless 30.06 sign posted	Penal Code 30.06; 46.035(c)&(i)
Anytime the handgun is not concealed or the license holder is intoxicated	No	Penal Code 46.035(a)&(d)
Premises of a TABC-licensed business that derives 51 percent from the sale of alcohol	No, sign should be posted	Penal Code 46.035(b)(1); Gov't Code 411.204(a)
Premises of a high school, collegiate, or professional sporting event (unless sport shooting event)	No, until August 1, 2016. After that, yes, unless 30.06 sign is posted.	Penal Code 46.035(b)(2)&(l)
Premises of a correctional facility	No	Penal Code 46.035(b)(3)
Hospital or nursing home	No, unless written authorization from administrator to license holder	Penal Code 46.035(b)(4); Gov't Code 411.204(b)
Amusement park or premises of an established place of worship	Yes, unless 30.06 sign posted	Penal Code 46.035(b)(5)&(6) & (i); 30.06

Activity/Location:	Allowed?	Legal Basis:
Physical premises of a school or educational institution.	Generally no, unless pursuant to written regulations or written authorization of the institution (But see campus carry, below)	Penal Code 46.03(1)
Campus concealed carry: physical premises of an institution of higher education or private or independent institution of higher education	Yes, beginning August 1, 2016 (except for public junior colleges, which begins on August 1, 2017), but subject to the rules adopted by the institution and noticed by a 30.06 sign	Penal Code 46.03(a)(1)(B)
Grounds or building on which an activity sponsored by a school or educational institution is being conducted	Generally no, unless pursuant to written regulations or written authorization of the institution (But see campus carry, below)	Penal Code 46.03(1)
Campus concealed carry: grounds or building on which an activity sponsored by a school or educational institution is being conducted	Yes, beginning August 1, 2016 (except for public junior colleges, which begins on August 1, 2017), but subject to the rules adopted by the institution and noticed by a 30.06 sign	Penal Code 46.03(a)(1)(B)
A passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private	Generally no, unless pursuant to written regulations or written authorization of the institution (But see campus carry, below)	Penal Code 46.03(1)
Campus concealed carry: a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private	Yes, beginning August 1, 2016 (except for public junior colleges, which begins on August 1, 2017), but subject to the rules adopted by the institution and noticed by a 30.06 sign	Penal Code 46.03(a)(1)(B)
Premises of a polling place on the day of an election or while early voting is in progress (i.e., "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.)	No	Penal Code 46.03(2)
Premises that house court or court offices	No, unless authorized by court rules	Penal Code 46.03(a)(3)&(f). (No sign required but 30.06 sign recommended)
Premises of a racetrack	No	Penal Code 46.03(4)
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)	No	Penal Code 46.03(5)
Within 1,000 feet of a place of execution on a day that a sentence of death is set to be imposed on the designated premises	No, so long as 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)	Penal Code 46.03(6) & 46.03(i)
Premises of employment	Yes, unless the public or private employer prohibits as to employees only, but allowed in locked car in parking lot	Gov't Code 411.203; Labor Code 52.061 et seq.
<b>Handgun open carry in belt or shoulder holster (with license)</b>		
In car or water craft	Yes	46.02(a)
Generally anywhere else with license	Yes, so long holstered	Gov't Code ch. 411; Penal Code 46.035
On property of another if receives 30.07 notice that not allowed	No, so long as 30.07 sign is properly posted	Penal Code 30.07 (Note: It is an exception to the application of this authority to prohibit that the property on which the license holder carries a handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun by other, express provisions listed herein.)
Government meeting	Yes, unless 30.07 sign posted	Penal Code 30.07; 46.035(c)&(i)

<b>Activity/Location:</b>	<b>Allowed?</b>	<b>Legal Basis:</b>
Anytime the handgun is not holstered or the license holder is intoxicated	No	Penal Code 46.035(a)&(d)
Premises of a TABC-licensed business that derives 51 percent from the sale of alcohol	No, sign should be posted	Penal Code 46.035(b)(1); Gov't Code 411.204(a)
Premises of a high school, collegiate, or professional sporting event (unless sport shooting event)	No	Penal Code 46.035(b)(2)
Premises of a correctional facility	No	Penal Code 46.035(b)(3)
Hospital or nursing home	No, unless written authorization from administrator to license holder; sign should be posted	Penal Code 46.035(b)(3); Gov't Code 411.204(b)
Amusement park or premises of an established place of worship	Yes, unless 30.07 sign posted	Penal Code 46.035(b)(5)&(6) & (i); 30.07
Physical premises of a school or educational institution.	No, unless pursuant to written regulations or written authorization of the institution	Penal Code 46.03(a)(1)
Grounds or building on which an activity sponsored by a school or educational institution is being conducted	No, unless pursuant to written regulations or written authorization of the institution	Penal Code 46.03(a)(1)
A passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private	No, unless pursuant to written regulations or written authorization of the institution	Penal Code 46.03(a)(1)
Premises of a polling place on the day of an election or while early voting is in progress (i.e., "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.)	No	Penal Code 46.03(2)
Premises that house court or court offices	No, unless authorized by court rules	Penal Code 46.03(a)(3)&(f). (No sign required but 30.07 sign recommended)
Premises of a racetrack	No	Penal Code 46.03(4)
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)	No	Penal Code 46.03(5)
Within 1,000 feet of a place of execution on a day that a sentence of death is set to be imposed on the designated premises	No, so long as 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)	Penal Code 46.03(6) & 46.03(i)
Premises of employment	Yes, unless the public or private employer prohibits as to employees only, but allowed in locked car in parking lot	Gov't Code 411.203; Labor Code 52.061 et seq.
	<b>Rifle/shotgun carry</b>	
Generally in public place (e.g., sidewalks, public square, etc.)	Yes, subject to disorderly conduct	Tex Const Art. I, Sec. 8; Penal Code 42.01
Any place a 30.05 "No firearms" allowed posted by owner, including city-owned facility	No (Note: a "no firearms" sign would have no effect as to a <i>handgun</i> carried openly or concealed by a license holder. Only a 30.06 and/or 30.07 sign is effective as to that.)	Penal Code 30.05
Public or private facility where "No Firearms" or similar notice given	No	Penal Code 30.05
Physical premises of a school or educational institution	No, unless pursuant to written regulations or written authorization of the institution	Penal Code 46.03(1)
Grounds or building on which an activity sponsored by a school or educational institution is being conducted	No, unless pursuant to written regulations or written authorization of the institution	Penal Code 46.03(1)
Passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private	No, unless pursuant to written regulations or written authorization of the institution	Penal Code 46.03(1)
Premises of a polling place on the day of an election or while early voting is in progress (i.e., "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.)	No	Penal Code 46.03(2)
Premises that house court or court offices	No, unless authorized by court rules	Penal Code 46.03(a)(3)&(f) (No sign required but some notice recommended to give license holder notice that court or court office is in building)

Activity/Location:	Allowed?	Legal Basis:
Premises of a racetrack	No	Penal Code 46.03(4)
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)	No	Penal Code 46.03(5)
Within 1,000 feet of a place of execution on a day that a sentence of death is set to be imposed on the designated premises	No, so long as the person received notice that doing so is prohibited (unless the person is on a public road and going to or from his or her home or business.)	Penal Code 46.03(6) & 46.03(i)