AGENDA
SNYDER CITY COUNCIL REGULAR MEETING
JANUARY 4, 2016
CITY COUNCIL CHAMBERS
1925 24th STREET
SNYDER, TEXAS
5:30 P.M.

If the Council should determine that a closed or executive meeting or session as authorized by the Open Meetings Act, Chapter 551, Govt. Code, Vernon's Texas Codes Annotated, should be held, the Council may convene into a closed or executive meeting or session concerning any and all subjects and for any and all purposes permitted by Section 551.071 through 551.088 including:

Section 551.071 consultation with attorney, 551.072 deliberation regarding real property, 551.073 deliberation regarding prospective gift, 551.074 personnel matters, 551.075 conference with employees, 551.076 deliberation regarding security devices, 551.084 exclusion of witness from hearing, 551.086 certain public power competitive matters, 551.087 economic development negotiations, and 551.088 certain licensing or certifications test items.

WELCOME VISITORS

All visitors are encouraged and welcome to speak at City Council Meetings during the visitors forum for up to five minutes. At all other times, visitors must be recognized by the chair to speak.

Thank you,

Mayor Tony Wofford

I. INVOCATION:

II. RECOGNIZE EMPLOYEE OF THE MONTH:

III. RECOGNIZE VISITORS:

IV. VISITORS/CITZENS FORUM:

V. MINUTES:

1. Consider And Act On Approval Of The Minutes Of The Regular Council Meeting, December 7, 2015. (Pages 1-4)

   Documents: MIN151214A.PDF

2. Consider And Act On Approval Of The Minutes Of The Special Council Meeting, December 14, 2015. (Pages 5-6)

   Documents: MIN 151214B.PDF

VI. BIDS:

1. Consider And Act On Awarding The Bid For A Construction Contract Contingent Upon Approval By The Texas Department Of Agriculture For A Performance Statement Modification On The City's Water Improvement Texas Capital Fund Grant No. 7214242 For Chemplex Water Line Project. (Pages 7-11)

   Documents: CHEMPLEX BID.PDF

2. Consider And Act On Approval Of The Purchase Of A Dump Truck For Dept. 25 & Dept. 75 From Austin Freightliner Through Buy Board For $194,376. (Page 12)

   Documents: DUMPTRUCK.PDF

3. Consider And Act On Approval Of The Purchase Of A Sanitation Truck For Dept. 30 From Austin Freightliner Through Buy Board For $186,676. (Page 13)

   Documents: SANITATION TRUCK.PDF

VII. OLD BUSINESS:

1. Consider And Act On Adoption On Second Reading Ordinance No. 2026 Amending Ordinance No. 178 Codified In Chapter 12, Section 12.02.002 Of The Snyder Code Of Ordinances Regarding Location Of Stop Intersections And Right-Of-Way Intersections As Captioned Below: (Pages 14-15)

   AN ORDINANCE AMENDING PART OF ORDINANCE NO. 178 CODIFIED IN CHAPTER 12, SECTION 12.02.002 OF THE SNYDER CODE OF ORDINANCES TO UPDATE THIS SECTION REGULATING THE DESIGNATION OF LOCATIONS OF STOP INTERSECTIONS AND YIELD RIGHT-OF-WAY INTERSECTIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

   Documents: ORDINANCE NO. 2026.PDF

VIII. NEW BUSINESS:

1. Presentation By Halff & Associates Regarding The Master Comprehensive Plan For The City

2. Discussion Regarding Residential Tax Abatement Program.

3. Consider And Act On Approval Of Resolution R160104A Regarding A Residential Tax Abatement Program As Captioned Below: (Pages 16-20)

   A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SNYDER, TEXAS, DECLARING THE CITY OF SNYDER'S ELIGIBILITY AND INTENTION TO PARTICIPATE IN A RESIDENTIAL TAX ABATEMENT PROGRAM TO PROMOTE DEVELOPMENT/ REDEVELOPMENT IN CERTAIN AREAS OF THE CITY; ESTABLISHING GUIDELINES AND CRITERIA; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

   Documents: R160104A.PDF

4. Consider And Act On Approval Of Resolution R160104B Regarding A Home Improvement Incentive Program As Captioned Below: (Pages 21-32)

   A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SNYDER, TEXAS APPROVING ADDITIONS TO THE CITY OF SNYDER'S CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM POLICIES AND PROCEDURES RELATIVE TO

AUTHORIZING AND IMPLEMENTING THE SNYDER HOME IMPROVEMENT INCENTIVE PROGRAM; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

Documents: R160104B.PDF

5. Discussion Regarding Firearms. (Pages 33-111)

   Documents: OPEN CARRY LAW DISCUSSION.PDF

IX. EXECUTIVE SESSION: Time_____

1. Council May Act In Open Session On The Following Item:

   Deliberation regarding real property. (Section 551.072 Texas Government Code.)

X. RECONVENE IN OPEN SESSION: Time_____

1. Consider And Act On Deliberation Regarding Real Property.

XI. EXECUTIVE SESSION: Time_____

1. Council May Act In Open Session On The Following Item:

   Personnel Matters. (Section 551.074 Texas Government Code.) Evaluation of City Manager.

XII. RECONVENE IN OPEN SESSION: Time_____

XIII. INFORMATION:

1. Election Day Is May 7, 2016

   Dia de Eleccion es el 7 de Mayo de 2016

2. Next Regular Council Meeting Is February 1, 5:30 P.m.; Building Standards Commission Meeting Is February 1, 4:30 P.m.

XIV. ADJOURNMENT:

1. Consider Motion To Adjourn.

MINUTES OF THE REGULAR COUNCIL MEETING

CITY OF SNYDER

DECEMBER 7, 2015

A Regular Meeting of the City Council of the City of Snyder, Texas was called to order at 5:30 p.m. by Mayor Tony Wofford with the following members present:

Councilmember Rodney Dupree
Councilmember Vernon Clay
Councilmember Steve Rich
Councilmember Tom Strayhorn
Attorney for the City, Bryan Guymon

And the following absent:

Councilmember Luann Burleson
Councilmember Steve Highfield

ITEM I. INVOCATION:

The invocation was given by Councilmember Tom Strayhorn.

ITEM II. RECOGNIZE EMPLOYEE OF THE MONTH:

Mayor Tony Wofford recognized Miguel Guerrero as the Employee of the Month.

ITEM III. RECOGNIZE VISITORS:

Mayor Tony Wofford recognized the following visitors:

Bill Crist, Snyder Daily News; Richard Reed, Southern Electric; Dennis Westmoreland, Snyder; Miguel Guerrero, Snyder; Kayla Kay, KSNY.

ITEM IV. VISITORS/CITIZENS FORUM:

No Discussion.

ITEM V. MINUTES:

1. Councilmember Steve Rich made the motion to approve the minutes of the Regular Council Meeting, November 2, 2015.

   The motion was seconded by Councilmember Rodney Dupree and passed with the following vote:

   Ayes: All members present voted yes.
   Noes: None.

2. Councilmember Steve Rich made the motion to approve the minutes of the Building Standards Commission Meeting, November 2, 2015.

   The motion was seconded by Councilmember Tom Strayhorn and passed with the following vote:

   Ayes: All members present voted yes.
   Noes:None.

3. Councilmember Steve Rich made the motion to approve the minutes of the Special Council Meeting, November 9, 2015.

   The motion was seconded by Councilmember Rodney Dupree and passed with the following vote:

   Ayes: All members present voted yes.
   Noes:None.

ITEM VI. BIDS:

1. Councilmember Steve Rich made the motion to award the bid for Water & Sewer Line Improvements, Phase II to Starks Construction for $1,000,205.

   The motion was seconded by Councilmember Tom Strayhorn and passed with the following vote:

   Ayes: All members present voted yes.
   Noes: None.

2. Councilmember Vernon Clay made the motion to award the bid for a Breathing Air Compressor for Dept. 18 to Ferrara for $34,123.

   The motion was seconded by Councilmember Rodney Dupree and passed with the following vote:

   Ayes: All members present voted yes.
   Noes: None.

3. Councilmember Steve Rich made the motion to allow City staff to accept sealed bids for a used Breathing Air Compressor the City of Snyder Fire Department currently owns.

   The motion was seconded by Councilmember Vernon Clay and passed with the following vote:

   Ayes: All members present voted yes.
   Noes: None.

ITEM VII. NEW BUSINESS:

1. Councilmember Rodney Dupree made the motion to approve Resolution R151207A allocating the City's 203.11 votes to elect David Beaver to the Scurry County Appraisal District.

   The motion was seconded by Councilmember Steve Rich and passed with the following vote:

   Ayes: All members present voted yes.
   Noes: None.

2. Councilmember Vernon Clay made the motion to allow City staff to proceed with the abandonment of 1800 block of 9th street.

   The motion was seconded by Councilmember Rodney Dupree and passed with the following vote:

   Ayes: All members present voted yes.
   Noes: None.

3. Councilmember Vernon Clay made the motion to approve on first reading Ordinance No. 2026 amending Ordinance No. 178 codified in Chapter 12, Section 12.02.002 of the Snyder Code of Ordinances regarding location of stop intersections and right-of-way intersections as captioned below:

AN ORDINANCE AMENDING PART OF ORDINANCE NO. 178 CODIFIED IN CHAPTER 12, SECTION 12.02.002 OF THE SNYDER CODE OF ORDINANCES TO UPDATE THIS SECTION REGULATING THE DESIGNATION OF LOCATIONS OF STOP INTERSECTIONS AND YIELD RIGHT-OF-WAY INTERSECTIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

The motion was seconded by Councilmember Tom Strayhorn and passed with the following vote:

Ayes: All members present voted yes.
Noes: None.

4. Discussion Regarding Residential Tax Abatement Program – City Attorney Bryon Guymon presented information to the Council regarding a residential tax abatement program. The residential tax abatement program would only apply to single-family homes and the homeowners would have to apply for the tax abatement within 10 days of filing a building permit. The buyer would receive five year abatement and the first year's City taxes would be fully abated, dropping 20 percent each year. The abatement would apply for any home on a permanent foundation, projects costing $50,000 or more, and would be transferrable 2 times including the buyer.

5. Discussion Regarding Home Improvement Incentive Program – City Attorney Bryan Guymon presented information to the Council regarding a home improvement incentive program. The home incentive program would offer homeowners who make at least $20,000 minimum improvements to their existing homes would receive a one-time payment from the City. The amount would be 10 times the amount that the improvements raised the appraised value of the home. This incentive would require applicants to enter into a 380 agreement with the City and all work must be documented by the applicant. Limitations discussed included the applicants would have 2 years to complete the project, $20,000 minimum improvements to the structure, and setting the maximum rebate at $3,000. Funds for the incentive payments would come from the City's Chapter 380 funds.

ADDENDUM ITEMS

6. Councilmember Tom Strayhorn made the motion to approve selling obsolete gear boxes with associated parts to the City of Uvalde for $1,000 per unit.

   The motion was seconded by Councilmember Steve Rich and passed with the following vote:

   Ayes: All members present voted yes.
   Noes: None.

7. Councilmember Steve Rich made the motion to table Resolution R151207B authorizing a line item transfer of $18,700 from Community Service Department 5 account 01-605-6701 to Downtown Revitalization account 01-605-513 to match funds for Downtown Beautification.

   The motion was seconded by Council member Rodney Dupree and passed with the following vote:

   Ayes: All members present voted yes.
   Noes: None.

ITEM VIII. INFORMATION:

1. Monthly Personnel Report.

2. Election Schedule. Horario De Eleccion.

3. Texas Capital Fund Downtown Revitalization Score Sheet

4. Special Council Meeting, December 14, 5:30 p.m. for workshop.

5. Next Regular Council Meeting is January 4, 5:30 p.m.; Building Standards Commission Meeting is January 4, 4:30 p.m.

6. The Annual Christmas Party and Awards Ceremony will be Thursday, December 17 at 6:30 p.m. at Martha Ann Woman's Club.

ITEM IX. ADJOURNMENT:

1. Councilmember Rodney Dupree made the motion to adjourn.

   The motion was seconded by Councilmember Tom Strayhorn and passed with the following vote:

   Ayes: All members present voted yes.
   Noes: None.

   The meeting was adjourned at 6:49 p.m.

_____
Mayor

ATTEST:

_____
City Secretary

Approved: January 4, 2016.

MINUTES OF THE SPECIAL COUNCIL MEETING

CITY OF SNYDER

DECEMBER 14, 2015

A Special Meeting of the City Council of the City of Snyder, Texas was called to order at 5:30 p.m. by Mayor Tony Wofford with the following members present:

Councilmember Rodney Dupree
Councilmember Vernon Clay
Councilmember Steve Rich
Councilmember Steve Highfield
Councilmember Luann Burleson

And the following absent:

Councilmember Tom Strayhorn
Attorney for the City Bryan Guymon

ITEM I. INVOCATION:

The invocation was given by Councilmember Steve Highfield.

ITEM II. RECOGNIZE VISITORS:

Mayor Tony Wofford recognized the following visitors:

Bill Crist, Snyder Daily News; Bill Lavers, Development Corporation of Snyder; Dennis Westmoreland, Snyder; Roy Wright, Jacob & Martin; Diane Terrell, Davis, Kinard & Co.; Vince Viaille, Specialized Public Finance; Paz Elizondo, Snyder.

ITEM III. STREET REHABILITATION WORKSHOP:

1. Possible methods of financing for future street rehabilitation projects. – Diane Terrell with Davis, Kinard & Co. explained as of September 30, 2014 the general fund had an unrestricted fund balance of approximately $7.6 million, which is equivalent to about 15 months of operating expenses. The council could use part of the unrestricted fund balance for street projects, but it was recommended the council maintain three to five months of expenses in reserve. Vince Vaiaille with Specialized Public Finance gave the council 3 scenarios for a 15 year loan by raising the taxes by 10 cents, 20 cents, and 30 cents. A ten cent increase would give the City $5,545,000 in funds for street projects. The council could also use certificates of obligation or general obligation bonds to fund future street projects. Vince Vaiaille explained the City could develop a Capital Improvement Program on a 5 year rolling basis allowing the City to plan and finance future projects by priority. The council was in consensus it would take an additional $600,000 from the unrestricted fund balance for fiscal year 2016-2017 to fund street rehabilitation projects including street maintenance and seal coating. The City currently has $300,000 budgeted for street maintenance and seal coating.

ITEM IV. ADJOURNMENT:

1. Councilmember Steve Rich made the motion to adjourn.

   The motion was seconded by Councilmember Steve Highfield and passed with the following vote:

   Ayes: All members present voted yes.
   Noes: None.

The meeting was adjourned at 7:47 p.m.

_____
Mayor

ATTEST:

_____
City Secretary

Approved: January 4, 2016

JACOB & MARTIN, LTD.
CONSULTING ENGINEERS
Firm No. 2448

3465 Curry Lane
Abilene, Texas 79606
325-695-1070
www.jacobmartin.com

1508 Santa Fe Drive
Suites 204-205
Weatherford, Texas 76086
817-594-9880

December 17, 2015

Mr. Merle Taylor
City of Snyder
P.O. Box 1341
Snyder, Texas 79550

Re: Chemplex Water Line TDA 7214242
Letter of Recommendation

Via Email

Dear Mr. Taylor:

As you know we opened bids today for the referenced project. Attached is a copy of the bid tabulation. We received a total of 6 bids with the high bid being $633,829.80 and the low bid being $400,282.00 as offered by Starks Construction of Abilene. Starks Construction is the contractor who will be installing Phase 2 of the city's water and sewer project. The construction budget for the Chemplex project is $610,000; therefore, we have more than enough money in the budget for the bid offered by Starks Construction.

We understand you have a council meeting scheduled for January 4, 2016 and that you will consider awarding this construction contract at that meeting. We recommend the city award the Chemplex water line project to the low bidder Starks Construction, Inc. for the low base bid amount of $400,282.00. After the city awards the construction contract, Jacob and Martin, LLC will prepare documents for execution by the Contractor and the City. Feel free to contact me if you have any questions.

Sincerely,

JACOB & MARTIN, LTD.

Ken Martin, P.E.

Xc: Grantworks

CITY OF SNYDER
CHEMPLEX WATER LINE

Engineer: Jacob & Martin, LLC

Abilene, Texas

Bid Date: December 17, 2015

Item	Description	Est Qty	Unit	Starks Construction Co. 7449 Lantana Abilene, Texas 79606		MH Civil Constructors, Inc. 4200 Ridgecrest Circle, Suite 1 Amarillo, Texas 79109		Whitewater Construction, Inc. 6640 Old Mexia Road Waco, Texas 76705		Darnell Construction 1602 E. 18th Street San Angelo, Texas 76902		Rick Garcia P.O. Box 671 Breckenridge, Texas 76424		Thunder Well Service, LLC P.O. Box 1432 Shallowater, Texas 79363	
				Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
1	Mobilization, Bonding, Insurance (Maximum 5%)	1	LS	$ 5,100.00	$ 5,100.00	$ 17,501.00	$ 17,501.00	$ 6,500.00	$ 6,500.00	$ 10,200.00	$ 10,200.00	$ 1,100.00	$ 1,100.00	$ 30,000.00	$ 30,000.00
2	8" DR25 C900 PVC Water Line	15,500	LF	$ 16.55	$ 256,525.00	$ 14.70	$ 227,850.00	$ 21.00	$ 325,500.00	$ 21.20	$ 328,600.00	$ 26.00	$ 403,000.00	$ 25.30	$ 392,150.00
3	8" DR25 Certi-lock PVC Water Line	600	LF	$ 23.75	$ 14,250.00	$ 32.50	$ 19,500.00	$ 29.00	$ 17,400.00	$ 85.00	$ 51,000.00	$ 24.00	$ 14,400.00	$ 40.10	$ 24,060.00
4	6" DR25 C900 PVC Water Line	100	LF	$ 26.50	$ 2,650.00	$ 31.90	$ 3,190.00	$ 16.00	$ 1,600.00	$ 18.00	$ 1,800.00	$ 23.00	$ 2,300.00	$ 35.44	$ 3,544.00
5	2" SDR 9 HDPE Water Line	240	LF	$ 24.00	$ 5,760.00	$ 17.10	$ 4,104.00	$ 19.00	$ 4,560.00	$ 8.50	$ 2,040.00	$ 14.00	$ 3,360.00	$ 6.65	$ 1,596.00
6	8" Gate Valve & Box	10	EA	$ 1,000.00	$ 10,000.00	$ 2,113.20	$ 21,132.00	$ 1,000.00	$ 10,000.00	$ 994.00	$ 9,940.00	$ 903.00	$ 9,030.00	$ 1,552.00	$ 15,520.00
7	6" Gate Valve & Box	10	EA	$ 615.00	$ 6,150.00	$ 1,695.70	$ 16,957.00	$ 800.00	$ 8,000.00	$ 695.00	$ 6,950.00	$ 540.00	$ 5,400.00	$ 1,153.60	$ *11,536.60
8	4" Gate Valve & Box	1	EA	$ 570.00	$ 570.00	$ 1,613.30	$ 1,613.30	$ 650.00	$ 650.00	$ 578.00	$ 578.00	$ 534.00	$ 534.00	$ 1,005.00	$ 1,005.00
9	2" Gate Valve & Box	3	EA	$ 525.00	$ 1,575.00	$ 1,097.60	$ 3,292.80	$ 450.00	$ 1,350.00	$ 348.00	$ 1,044.00	$ 446.00	$ 1,338.00	$ 915.00	$ 2,745.00
10	6" Fire Hydrant (not including 6" GV)	10	EA	$ 2,025.00	$ 20,250.00	$ 2,464.20	$ 24,642.00	$ 3,200.00	$ 32,000.00	$ 2,456.00	$ 24,560.00	$ 2,011.60	$ 20,116.00	$ 2,115.30	$ 21,153.00
11	Bore & 14" Encasement	340	LF	$ 112.00	$ 38,080.00	$ 160.00	$ 54,400.00	$ 147.00	$ 49,980.00	$ 138.00	$ 46,920.00	$ 97.50	$ 33,150.00	$ 145.57	$ 49,493.80
12	8" Slick Bore	215	LF	$ 41.00	$ 8,815.00	$ 94.80	$ 20,382.00	$ 110.00	$ 23,650.00	$ 70.00	$ 15,050.00	$ 30.00	$ 6,450.00	$ 129.00	$ 27,735.00
13	6" Slick Bore	40	LF	$ 41.00	$ 1,640.00	$ 86.90	$ 3,476.00	$ 95.00	$ 3,800.00	$ 55.00	$ 2,200.00	$ 30.00	$ 1,200.00	$ 30.00	$ 1,200.00
14	2" Slick Bore	180	LF	$ 21.00	$ 3,780.00	$ 46.40	$ 8,352.00	$ 31.00	$ 5,580.00	$ 38.00	$ 6,840.00	$ 20.00	$ 3,600.00	$ 14.00	$ 2,520.00
15	Pavement Repair	210	LF	$ 19.00	$ 3,990.00	$ 41.00	$ 8,610.00	$ 23.00	$ 4,830.00	$ 9.00	$ 1,890.00	$ 16.00	$ 3,360.00	$ 25.00	$ 5,250.00
16	4" AMR Compound Flow Meter, Vault, etc	1	EA	$ 6,700.00	$ 6,700.00	$ 9,056.90	$ 9,056.90	$ 7,500.00	$ 7,500.00	$ 7,747.00	$ 7,747.00	$ 6,867.00	$ 6,867.00	$ 7,275.00	$ 7,275.00
17	2" AMR Compound Flow Meter, Box, valves, etc	1	EA	$ 3,150.00	$ 3,150.00	$ 4,878.00	$ 4,878.00	$ 6,500.00	$ 6,500.00	$ 4,944.00	$ 4,944.00	$ 2,710.00	$ 2,710.00	$ 4,551.00	$ 4,551.00
18	8" Water Line Connection	2	EA	$ 1,400.00	$ 2,800.00	$ 2,417.40	$ 4,834.80	$ 1,200.00	$ 2,400.00	$ 614.00	$ 1,228.00	$ 900.00	$ 1,800.00	$ 850.00	$ 1,700.00
19	Trench Safety	670	LF	$ 0.10	$ 67.00	$ 2.80	$ 1,876.00	$ 0.20	$ 134.00	$ 0.12	$ 80.40	$ 10.00	$ 6,700.00	$ 30.00	$ 20,100.00
20	Water Line and Valve Markers	35	EA	$ 58.00	$ 2,030.00	$ 92.50	$ 3,237.50	$ 30.00	$ 1,050.00	$ 30.00	$ 1,050.00	$ 50.00	$ 1,750.00	$ 49.60	$ 1,736.00
21	Metal Detectable Tape	16,000	LF	$ 0.10	$ 1,600.00	$ 0.10	$ 1,600.00	$ 0.20	$ 3,200.00	$ 0.06	$ 960.00	$ 0.17	$ 2,720.00	$ 0.15	$ 2,400.00
22	Tracer Wire and Boxes, etc.	16,000	LF	$ 0.30	$ 4,800.00	$ 0.20	$ 3,200.00	$ 0.20	$ 3,200.00	$ 0.14	$ 2,240.00	$ 0.15	$ 2,400.00	$ 0.41	$ 6,560.00
	TOTAL BASE BID ITEM				$ 400,282.00		$ 463,685.30		$ 519,384.00		$ 527,861.40		$ 533,285.00		$ 633,829.80

Item	Deductible Alternate Bid Items #1	Est. Qty	Unit	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
DA-1	Delete Base Bid Item 22 Tracer Wire, etc.	(16,000)	LF	$ 0.30	$ (4,800.00)	$ 0.20	$ (3,200.00)	$ 0.20	$ (3,200.00)	$ 0.14	$ (2,240.00)	$ 0.15	$ (2,400.00)	$ 0.31	$ (4,960.00)
DA-2	Delete 6" Fire Hydrant	(4)	EA	$ 2,025.00	$ (8,100.00)	$ 2,464.20	$ (9,856.80)	$ 3,200.00	$ (12,800.00)	$ 2,456.00	$ (9,824.00)	$ 2,011.60	$ (8,046.40)	$ 1,400.00	$ (5,600.00)
DA-3	Delete 6" Gate Valve	(4)	EA	$ 615.00	$ (2,460.00)	$ 1,695.70	$ (6,782.80)	$ 800.00	$ (3,200.00)	$ 695.00	$ (2,780.00)	$ 540.00	$ (2,160.00)	$ 700.00	$ (2,800.00)
DA-4	Delete 8" Gate Valve	(1)	EA	$ 1,000.00	$ (1,000.00)	$ 2,113.20	$ (2,113.20)	$ 1,000.00	$ (1,000.00)	$ 994.00	$ (994.00)	$ 903.00	$ (903.00)	$ 1,140.00	$ (1,140.00)
DA-5	Delete Base Bid Item 20 Markers, etc	(35)	EA	$ 58.00	$ (2,030.00)	$ 92.50	$ (3,237.50)	$ 30.00	$ (1,050.00)	$ 30.00	$ (1,050.00)	$ 50.00	$ (1,750.00)	$ 35.00	$ (1,225.00)
	TOTAL DEDUCTIBLE ITEMS (1-5)				$ (18,390.00)		$ (25,190.30)		$ (21,250.00)		$ (16,888.00)		$ (15,259.40)		$ (15,725.00)

* Mathematical Error Corrected

EXHIBIT A PERFORMANCE

STATEMENT CITY OF

SNYDER

All activities funded with TxCDBG funds must meet one of the CDBG program's National Objectives: benefit low- and moderate-income persons, aid in the prevention or elimination of slums or blight, or meet community development needs having a particular urgency.

Contractor shall carry out the following activities in the target area identified in the Application. The Contractor shall ensure that the amount of funds expended for each activity described does not exceed the amount specified for such activity in the Budget.

PROJECT SUMMARY

This economic development project will provide water improvements for the City of Snyder in support of Solvay USA, Inc., (herein referred to as the "Company"). The ~~Company~~ Contractor shall make water improvements to the existing chemical manufacturing facility located on CR 137 between Huffman Avenue and FM 1673. The location of the building and land is defined as the Company's project site. The infrastructure improvements will enable the company to expand operations including a new warehouse, distribution, packing and manufacturing space in the City of Snyder's northeastern extraterritorial jurisdiction.

The Contractor certifies that the activity (ies) carried out under this contract will meet the National Objective of benefitting low- and moderate-income persons with at least 51% of the beneficiaries qualifying as low- to moderate-income.

ACTIVITIES

ED Financial Assistance to For-Profits Contractor shall provide water improvements to enable the Company to expand operations on CR 137 between Huffman Avenue and FM 1673.

Water Improvements Contractor shall install approximately sixteen thousand five hundred fifty linear feet (16,500 l.f.) of two-inch to eight-inch (2"-8") water line, ~~six~~ ten (~~6~~10) fire hydrants, ~~nine~~ twenty-four (~~9~~24) valves, one (1) commercial meter, and all associated appurtenances. Construction shall take place in the following locations:

STREET	FROM	TO	Length
Huffman Avenue	Hwy 208	CR 137	5,300 linear feet
CR 137	Huffman Avenue	FM 1673	5,300 linear feet
FM 1673	CR 137	US Hwy 84 Bypass frontage road	1,200 linear feet
US Hwy 84 Bypass frontage road	FM 1673	Second Street	4,700 linear feet

Engineering

Contractor shall ensure that the amount of Department funds expended for all eligible project-related engineering services, including preliminary and final design plans and specifications, all interim and final inspections, and all special services does not exceed the amount specified for engineering in the Budget.

General Administration

Contractor shall ensure that the amount of Department funds expended for all eligible project-related administration activities, including the required annual program compliance and fiscal audit does not exceed the amount specified for administration in the Budget.

PROJECT OBJECTIVES

Contractor certifies that the activities carried out under this contract will meet the National Objective of benefitting low- and moderate-income (LMI) persons through permanent job creation and/or retention with at least 51% of the beneficiaries qualifying as LMI.

As a result of this Project, Contractor shall ensure that the Company retains fifty-five (55) permanent new jobs at the Company project site described above. Of the fifty-five (55) total retained jobs, fifty-one percent (51%) or twenty-nine (29) jobs total shall be held by LMI persons prior to the contract termination date. In the event more than the obligated number of permanent jobs are created, the Contractor shall ensure that at least fifty-one percent (51%) of all permanent jobs created during the contract period are held by LMI persons.

In the Application, the Contractor provided census data or information to document that the persons employed by the Company may be presumed to be LMI persons since the Company is located within a census tract that meets the following criteria, and the jobs will be located within that census tract.

1. It is either part of a Federally-designated Empowerment Zone or Enterprise Community, or
2. It meets the following criteria:
   a. It has a poverty rate of at least 20 percent;
   b. It does not include any portion of a central business district; and
   c. It evidences pervasive poverty and general distress because either all block groups in the census tract have poverty rates of least 20 percent, or the specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent.

This information has been verified and shall require no further documentation during this contract's term. In the event more than fifty-five (55) permanent jobs are created or retained, all persons may also be presumed to be LMI person(s).

Merle Taylor

From: Cumbest, Joseph [joseph.cumbest@solvay.com]
Sent: Thursday, December 24, 2015 8:18 AM
To: Merle Taylor
Subject: Re: FW: Snyder Chemplex Water Line

Merle,

Chemplex concurs with JACOB & MARTIN, LTD recommendation to award the bid for the Chemplex Water Line TDA 7214242 project to Starks Construction for $400,282.00. Chemplex would like to participate in any Change Order approval process if this amount is exceeded.

Respectfully,

Joe Cumbest | Director of Manufacturing and Engineering
joseph.cumbest@solvay.com
Chemplex | SOLVAY - Novecare
1101 W. County Rd 150 | Midland, TX 79706
432.685.5039 (Office) | 432- 238-2678 (Cell)

NOTICE/CONFIDENTIAL: This is a private and confidential communication for the intended recipient only. If you are not the intended recipient or authorized to act on behalf of the intended recipient of this message, you may not disclose, forward, copy or use this message or its content or attachments. The unauthorized disclosure, dissemination, copying, or use of information contained herein may violate applicable law. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message, including all attachments, from your e-mail system and destroy all copies of this communication (including all attachments) and all extracted information. Chemplex's Terms and Conditions of Sale, available at http://www.chemplex.net/pages/sale-terms-conditions exclusively govern all sales made by Chemplex and supersede all prior agreements, understanding, negotiations and representations, whether oral or written. Thank you.

On Thu, Dec 17, 2015 at 4:42 PM, Merle Taylor <mtaylor@ci.snyder.tx.us> wrote:

Shai, please add this Seal Bid award to the Jan. 4th City Council Agenda. Thanks,

Merle Taylor

City of Snyder

City Manager

(325) 573-4957

mtaylor@ci.snyder.tx.us

ci.snyder.tx.us

From: Ken Martin [mailto:kbm@jacobmartin.com]
Sent: Thursday, December 17, 2015 3:56 PM
To: Merle Taylor; Elias Torres; Vick Chambers

December 16, 2015

Merle Taylor

DUMPTRUCK RECOMMENDATION

We recommend the purchase of two Freightliner M2106 trucks with the 10' OX Stampede with high lift gate and electric tarp, from Austin Freightliner (Buy Board Contract). Austin Freightliner meets all the specs.

Buy Board Contract Number: 430-13

Austin Freightliner	**$ 194,376.00**
Department 25 (Streets)	**97,188.00**
Department 75 (Water Distribution)	**97,188.00**

Amount Budgeted - $ 200,000.00
Department 25 - $ 100,000.00
Department 75 - $ 100,000.00

Respectively,

Elias Torres

December 16, 2015

Merle Taylor

SANITATION TRUCK RECOMMENDATION

We recommend the purchase of the Freightliner 108SD truck with the Pakmor HLR33 body, from Austin Freightliner (Buy Board Contract). Austin Freightliner meets all the specs.

Buy Board Contract Number: 430-13

Austin Freightliner **$ 186,676.00**

Amount Budgeted - $ 185,000.00

Respectively,

Elias Torres

ORDINANCE NO. 2026

AN ORDINANCE AMENDING PART OF ORDINANCE NO. 178 CODIFIED IN CHAPTER 12, SECTION 12.02.002 OF THE SNYDER CODE OF ORDINANCES TO UPDATE THIS SECTION REGULATING THE DESIGNATION OF LOCATIONS OF STOP INTERSECTIONS AND YIELD RIGHT-OF-WAY INTERSECTIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Snyder, Texas has previously passed Ordinance 178, Article XI, Section I, previously designated in the 1996 Code, sec. 58-2, and currently codified in Chapter 12, Section 12.02.002, which provided that the city council shall designate the location of stop intersections and yield right-of-way intersections, and provide for the placement of said stop signs and yield signs within the city limits; and

WHEREAS, the City Council for the City of Snyder, Texas now wishes to amend such section; and

WHEREAS, the City Council of the City of Snyder finds that it is in the best interest of the health, safety and welfare of its citizens to provide that the Police Chief, Traffic Control Administrator, Public Works Director, or the City Manager shall have the authority to designate stop intersections and yield right-of-way intersections and to provide for the placement of said stop signs and yield signs; and

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Snyder, Texas that the Code of Ordinances is amended to read as follows:

SECTION I

The City of Snyder, Texas Code of Ordinances Section 12.02.002 shall be deleted and amended to read as follows:

The Police Chief, Traffic Control Administrator, Public Works Director, or the City Manager shall designate stop intersections and yield right-of-way intersections and signs shall be placed [at such intersections] and the Police Chief, Traffic Control Administrator, Public Works Director, or the City Manager shall designate the place where any sign, signal and marker [shall be placed] for such other zones for safety or otherwise as the Police Chief, Traffic Control Administrator, Public Works Director, or the City Manager may deem necessary for proper control and regulation of traffic within the city limits.

SECTION II

Repealer. All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated herein.

SECTION III

Severability. The provisions of this ordinance are declared to be severable. If any section, sentence, clause or phrase of the ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance, but they shall remain in full force and effect; it being the legislative intent that this ordinance shall remain in effect notwithstanding the validity of any part.

SECTION IV

Effective Date. This Ordinance shall take effect immediately upon its adoption by the City Council and publication as may be required by governing law.

SECTION V

Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the *Open Meetings Act, Chapter 551, Gov't. Code.*

PASSED AND APPROVED on first reading this 7th day of December, 2015.

_____
Mayor

ATTEST:

_____
City Secretary

PASSED AND ADOPTED on second reading this 4th day of January, 2016.

_____
Mayor

ATTEST:

_____
City Secretary

RESOLUTION R160104A

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SNYDER, TEXAS, DECLARING THE CITY OF SNYDER'S ELIGIBILITY AND INTENTION TO PARTICIPATE IN A RESIDENTIAL TAX ABATEMENT PROGRAM TO PROMOTE DEVELOPMENT/REDEVELOPMENT IN CERTAIN AREAS OF THE CITY; ESTABLISHING GUIDELINES AND CRITERIA; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Snyder, Texas, desires to promote the development/redevelopment of certain contiguous geographic areas within its jurisdiction; and

WHEREAS, the City of Snyder, Texas, is authorized to enter into Tax Abatement Agreements for commercial-industrial or residential purposes as authorized by Chapter 312 of the Texas Property Tax Code (Code); and

WHEREAS, Section 312.002 of the Code requires the City of Snyder, Texas, to establish guidelines and create criteria every two (2) years for the designation of reinvestment zones and the entering into Residential Tax Abatement Agreements; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SNYDER, TEXAS:

SECTION 1. That the City of Snyder, Texas, declares it is eligible for and intends to participate in a Residential Tax Abatement Program.

SECTION 2. That the City of Snyder, Texas, hereby adopts the following Guidelines and Criteria for Tax Abatement for use in its Residential Tax Abatement Program:

CITY OF SNYDER
RESIDENTIAL TAX ABATEMENT GUIDELINES AND CRITERIA

GENERAL PURPOSE AND OBJECTIVES

The City of Snyder is committed to an expansion of its tax base, an increase to its population, the promotion of development in all parts of the City, and to an ongoing improvement in the quality of life for its citizens. As these objectives are generally served by the enhancement and expansion of the local economy, the City of Snyder will offer residential tax abatement as a stimulus for economic development in Snyder. The policy of the City of Snyder is to make residential tax abatement available to new structures. Likewise, residential tax abatement is intended for residential structures built upon vacant lots within existing subdivisions as well as within new subdivisions of the City. It is the policy of the City of Snyder that such tax abatement will be provided in accordance with the procedures and criteria outlined in this document and as permitted by State statute. The guidelines and criteria herein adopted shall expire two (2) years from and after _____, 2016.

The provisions herein are severable, and if any provision or requirement of these guidelines or criteria is declared or found to be illegal or invalid, such illegality or invalidity shall not affect the remaining provisions, since the City Council would have adopted these guidelines and criteria without the incorporation of the portions found to be invalid.

DEFINITION OF TERMS

Act — means the Property Redevelopment and Tax Abatement Act, Texas Tax Code Ann. 312.001, et seq., as amended from time to time.

Agreement — means a contractual agreement between a property owner and the City of Snyder for the purposes of tax abatement.

Applicant — means an owner of real property who requests tax abatement in accordance with these guidelines.

Base Year Value — means the assessed value of eligible property on January 1 preceding the date of execution of the Agreement.

Economic Life — means the number of years a property improvement is expected to be in service.

New Structure — means residential improvements made to a property previously undeveloped which is placed into use by means other than or in conjunction with expansion.

Reinvestment Zone — means a contiguous geographic area in the jurisdiction of the municipality in which tax abatements may be granted to promote residential development or redevelopment if the governing body determines that residential development or redevelopment would not occur solely through private investment in the reasonably foreseeable future.

Residential Improvements — means the construction of residential building(s), and all the appurtenances thereto, single-family in purpose. This does not include duplexes or multi-family structures.

Total Facility — means all buildings and structures along with the appurtenances thereto.

ELIGIBILITY

All residentially zoned property is eligible for designation as a Reinvestment Zone. A new structure anywhere within the corporate limits of a value in excess of $50,000.00 may receive abatement. As provided in the Act, abatement may only be granted for the value of eligible property subsequent to and listed in an abatement agreement between the City of Snyder and the property owner. Abatement will be granted for residential improvements only.

Eligible Property — Abatement will be extended to the increased value of real estate, buildings, structures, and site improvements along with the appurtenances thereto for properties which are single-family in purpose. This does not include duplexes or multi-family structures.

Value and Term of Abatement — Upon determination that all requirements for tax abatement have been satisfied by the applicant, the value and terms of the abatement will be for a period of five (5) years in accordance with the following schedule for the abatement of taxes on the added value above the base year value. Abatement shall be granted effective with the January 1 valuation date immediately following the date of completion of the

improvements.

SCHEDULE OF TAXES ASSESSED

TAX YEAR	ABATEMENT
1	100%
2	80%
3	60%
4	40%
5	20%

CRITERIA

Any request for tax abatement shall be reviewed for completeness. The City staff shall determine whether the application satisfies the guidelines and criteria. Tax abatement shall be based upon an evaluation of the following criteria which each applicant will be requested to address in narrative format:

Fiscal Impact

Addition of real property improvements to the tax rolls.

No utility construction by the City would be required other than routine.

Community Impact

The project is compatible with the City's comprehensive plan.

No adverse environmental impact will be created by the project.

PROCEDURES

Any person, partnership, organization, corporation or other entity desiring that the City of Snyder consider providing tax abatement to encourage location of new residential construction within the City limits of Snyder shall be required to comply with the following procedural guidelines:

1. Preliminary Application Steps

   A. Applicant shall submit an "Application for Tax Abatement" contemporaneously with the application for a building permit, and shall pay a filing fee of $75.00 to cover publication, notice cost, review and processing. If the applicant for the building permit is not the owner of the real estate and does not make application for residential tax abatement on behalf of the owner, the City staff shall notify the owner by certified mail, return receipt requested, that residential tax abatement must be filed with the City within ten (10) business days of receipt of the notice.

   B. If the applicant does not wish to apply for residential tax abatement at the time that the building permit is issued, or if the owner fails to respond to the written notice of availability for residential tax abatement, the opportunity for residential tax abatement is waived. The staff shall prepare forms necessary to reflect the refusal of an applicant to participate and to document the lack of response by the owner to the written notice. The refusal or waiver to

participate in residential tax abatement by the owner or applicant shall be binding on subsequent owners of the real property.

C. The City may request applicant to provide substantiation of economic feasibility of the overall project to assist in determining the long-term benefit to the City.

D. A complete legal description shall be provided.

E. Applicant shall complete all forms and information detailed above and submit them to the City of Snyder.

2. All information in the application package detailed above will be reviewed for completeness and accuracy. Additional information may be requested as needed.

If necessary, applicant will meet with City staff to discuss details of the application and prepare for presentation of application to the City Council.

3. The application shall include the total capital investment for real property improvements and type of project.

LEGAL DOCUMENTATION PREPARATION

The City will be responsible for drafting the proposed agreement pursuant to the approved Tax Abatement, as well as all associated documentation.

The legal document is to include the following:

1. Estimated value of new construction to be abated.

2. Percent of value to be abated each year.

3. Commencement date and the termination date of abatement.

4. Proposed use of the facility, nature of construction, time schedule, map, property description and improvements list as provided in the application.

5. Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture and administration.

SECTION 3. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

PASSED AND APPROVED this 4th day of January, 2016.

_____
Mayor

ATTEST:

_____
City Secretary

RESOLUTION R160104B

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SNYDER, TEXAS APPROVING ADDITIONS TO THE CITY OF SNYDER'S CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM POLICIES AND PROCEDURES RELATIVE TO AUTHORIZING AND IMPLEMENTING THE SNYDER HOME IMPROVEMENT INCENTIVE PROGRAM; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the Chapter 380 Economic Development Program is intended to develop and expand the local economy by promoting and encouraging the development and redevelopment projects that enhance the City's economic base and that may also diversify and expand job opportunities; and

WHEREAS, the City of Snyder may, pursuant to Texas Local Government Code Chapter 380, provide incentives, including grants related to the increase in the taxable value of a residence (and the corresponding property taxes) following the construction of improvements to, or the remodeling of, a residence; and

WHEREAS, Texas Local Government Code Chapter 380 allows the City to provide incentives consisting of loans and grants of City funds, use of City personnel, facilities and services with or without charge, for the promotion of economic development; and

WHEREAS, neither the Texas Local Government Code, Chapter 380, nor the Texas Constitution, Article III, Section 52-a, specify the type, kind or extent of incentives that may be provided by a city for the promotion of economic development; and

WHEREAS, the promotion of the redevelopment of existing housing stock in the City promotes economic development within the City and is essential for the continued economic growth of the City; and

WHEREAS, it is well established that the availability of quality housing stock encourages the relocation of businesses and attracts new business enterprises, as well as the expansion of existing business enterprises within the City, which in turn stimulates growth, creates jobs and increases property and sales tax revenues; and

WHEREAS, the promotion of the housing stock is a major contributing factor to the growth of the City, which in turn stimulates trade and commerce and reduces unemployment; and

WHEREAS, the well-being and economic growth of the Snyder community benefits all its citizens; and

WHEREAS, residential development and redevelopment will attract and encourage business relocation and expansion since business will look to the available housing stock to meet the needs of management and the work force;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SNYDER, TEXAS:

SECTION 1.

That the City Council hereby approves additions to the City of Snyder Chapter 380 Economic Development Program Policies and Procedures relative to authorizing and implementing the Snyder Home Improvement Incentive Program which will provide up to a maximum $3,000 incentive to encourage residents to improve residential property values by making residential home improvements.

SECTION 2.

That the City Council hereby approves the Snyder Home Improvement Incentive Program Chapter 380 Economic Development Program Policies and Procedures as set forth as follows:

A. To be considered for a Snyder Home Improvement Incentive Program Chapter 380 Economic Development Program incentive under these Policies and Procedures, a project must at least meet the following minimum requirements:
    1. Must be a single family residential homeowner within the Snyder city limits, including owners of rental properties.
    2. Must agree to expend at least $20,000 in home improvements to the single family residential home that they own within the Snyder city limits that is the subject of the application.
    3. Must at the time of application be current on all state, federal, and local taxes related to the single family residential home that is the subject of the application.
    4. At the time of application the single family residential home must be occupied by homeowner(s) or renters.

B. The application process will include the following:
    1. Application for the incentive will be made at the same time as the request for a building permit on the subject property.
    2. The application for the incentive and the building permit will be determined at the same time.
    3. If the incentive application and building permit is approved the applicant will sign an incentive contract in substantially the same form as Exhibit "A", which is attached hereto and incorporated herein as if written word for word.
    4. After the construction and a final inspection is completed on the subject property, the applicant will provide proof of the new Scurry County Appraisal District (SCAD) value on the subject property.
    5. If applicant has met all conditions of the program, the City will calculate the incentive and pay the applicant in a single lump-sum payment on April 1 of the first full calendar year following Completion of Construction.

C. The incentive will be calculated as follows:
    1. The incentive will be in an amount equal to up to ten (10) times the amount of increase in property taxes for the Residence for the first tax year following the Completion of Construction as the result of the increase in the Taxable Value of the Residence under the Snyder Home Improvement Incentive Program as determined by the City of Snyder Director of Community Planning and Development for the Approved Project.
    2. The maximum incentive for any application will be $3,000.00.
    3. The applicant will have to refund any incentive paid if the applicant fails to meet the requirements of the policies and abide by the agreement signed by applicant.

D. Additional Provisions:
    1. City Council will authorize through the City Manager the implementation of the Snyder Home Improvement Incentive Program by Community Planning and Development.
    2. The number of active applications at any one time shall not exceed the amount of funds actually budgeted for the incentives divided by the maximum incentive available.

SECTION 3.

That the City Council hereby authorizes the City Manager or his designee to implement the Snyder Home Improvement Incentive Program agreements and to execute any and all documents necessary to the implementation which complies with this Resolution and the Chapter 380 Economic Development Program Policies and Procedures related to the Snyder Home Improvement Incentive Program.

SECTION 4.

That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

PASSED AND APPROVED this 4th day of January, 2016.

_____
Mayor

ATTEST:

_____
City Secretary

STATE OF TEXAS §
§ **SNYDER HOME IMPROVEMENT**
SCURRY COUNTY § **PROGRAM INCENTIVE AGREEMENT**

This Snyder Home Improvement Program Incentive Agreement ("Agreement") is made by and between the City of Snyder, Texas (the "City") and _____("Property Owner"), acting by and through their respective authorized officers and representatives.

W I T N E S S E T H:

WHEREAS, the Property Owner is the owner of a single-family residential structure located at _____, Snyder, Texas (the "Residence"); and

WHEREAS, Texas Local Government Code Chapter 380 allows the City to provide incentives for the promotion of economic development; and

WHEREAS, the promotion of the redevelopment of the existing residential housing stock in the City promotes economic development within the City and is essential for the continued economic growth and vitality of the City; and

WHEREAS, it is well established that the availability of quality housing stock encourages the relocation of businesses and attracts new business enterprises, and promotes the expansion of existing business enterprises within the City, which in turn stimulates growth, creates jobs and increases property and sales tax revenues; and

WHEREAS, the promotion of quality residential housing stock is a major contributing factor to the vitality of the City, which in turn stimulates trade and commerce and reduces unemployment; and

WHEREAS, residential development and redevelopment will attract and encourage business relocation and expansion as businesses will look to the availability of quality residential housing stock to meet the needs of its work force and management; and

WHEREAS, the City has determined that providing an economic development incentive in accordance with this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants, and will promote local economic development and stimulate business and commercial activity in the City; NOW THEREFORE,

In consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article I.
Term

The term of this Agreement shall begin on the Effective Date and continue until the Expiration Date, unless sooner terminated as provided herein.

Article II.
Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Approved Project" shall mean a project for home improvements, modifications or remodeling of the Residence as approved by the City of Snyder's City Manager (or his designee) as being eligible for an incentive under the Snyder Home Improvement Incentive Program.

"City" shall mean the City of Snyder, Texas (Scurry County).

"Commencement of Construction" shall mean that

(i) the construction plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for the Approved Project; and

(ii) all necessary permits for the construction of the Approved Project have been issued by all applicable governmental authorities.

"Completion of Construction" shall mean the date of the City's final inspection of the subject Residence following the construction of the Approved Project.

"Effective Date" shall mean the last date of execution hereof.

"Event of Bankruptcy or Insolvency" shall mean insolvency, appointment of receiver for the Property Owner and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Property Owner and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Expiration Date" shall mean two (2) years from Completion of Construction.

"Home Improvement Program" shall mean the Snyder Home Improvement Incentive Program authorized by Resolution No. _____.

"Impositions" shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Property Owner or any property or any business owned by Property Owner within the City.

"Incentive" shall mean an economic development incentive in an amount equal to up to ten (10) times the amount of increase in property taxes for the Residence for the first tax year following the Completion of Construction as the result of the increase in the Taxable Value of the Residence under the Snyder Home Improvement Incentive Program as determined by the City of Snyder City Manager for the Approved Project.

"Residence" shall mean the single-family residential structure, excluding the land, located at _____, Snyder, Texas.

"Property Owner" shall mean the owner of the Residence.

"Taxable Value" shall mean the appraised value of the Residence as certified by the applicable appraisal district, or its successor entity, as of January 1 of a given year.

Article III.
Warranties

The Property Owner warrants that he/she has read the Snyder Home Improvement Incentive Program Chapter 380 Economic Development Program Policies and Procedures set forth in Resolution No. _____ and that compliance with those policies and procedures are mandatory for the receipt of any incentive.

Article IV.
Economic Development Incentive

4.1 **Payment.** Subject to the Property Owner's continued satisfaction of the terms and conditions of this Agreement and the obligation of the Property Owner to repay the Incentive pursuant to Section 6.2 hereof, the City agrees to provide the Incentive to the Property Owner to be paid in a single lump-sum payment on April 1 of the first full calendar year following Completion of Construction. Payments shall only be made to homeowners that have met all program eligibility requirements. Homeowners that owe taxes or fines or other monies to the City of Snyder are not eligible to receive payment. Payments shall be made to homeowner participants that have successfully complied with the program requirements, including expending at least $20,000 in home improvements to the subject dwelling in accordance with the program formula. Under no circumstances shall payment to any participating homeowner exceed $3,000. The

Scurry County Appraisal District determines the property tax amount for the City of Snyder, the Snyder Independent School District and Scurry County. For the purposes of this program the City of Snyder shall utilize that portion of the property tax determined by the Scurry County Appraisal District attributable to the City of Snyder. Payment shall be computed by calculating the difference between the pre home improvement property tax and the post home improvement property tax, multiplied by 10. Payments shall not exceed the total of $3,000 per dwelling unit.

For example:
A home improvement project approved in October 2016 is completed in December 2016. The City of Snyder property tax as defined by the Scurry County Appraisal District prior to the improvements (January 1, 2016) was $4,000. The City of Snyder property tax as defined by the Scurry County Appraisal District following the improvements (January 1, 2017) is $4,300. The difference between pre and post improvements is an increase of $300. Ten times the increase in taxable value improvements is ($300 x 10 = $3,000). In this example the total incentive is $3,000, which would be paid on April 1, 2018.

4.2 **Current Revenue.** The Incentive made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

Article V.
Incentive Conditions

The City's obligation to pay the Incentive shall be conditioned upon the Property Owner's continued compliance with and satisfaction of the terms and conditions of this Agreement and each of the conditions set forth in this Article.

5.1 **Inspections.** The Property Owner agrees to submit to periodic inspections of the Residence by the City during the period beginning with the date of Commencement of Construction and ending on the date of Completion of Construction.

5.2 **Construction Costs.** The construction costs incurred and paid by the Property Owner for the Approved Project shall be at least $20,000 (the "Certified Costs"). The Property Owner shall, as a condition precedent to the payment of the Incentive, provide copies of invoices, receipts and other documentation as may be reasonably requested by the City to verify the costs incurred and paid by the Property Owner for construction of the Approved Project.

5.3 **Completion of Construction.** The Property Owner shall cause Completion of Construction of the Approved Project to occur on or before twenty-four (24) calendar months after the City approval of the Property Owner's proposed project for an Incentive.

Article VI.
Termination

6.1 This Agreement shall terminate upon the occurrence of any one of the following:

(a) mutual agreement of the parties;

(b) the Expiration Date;

(c) at the City's option, if any Impositions owed to the City or the State of Texas by Property Owner shall become delinquent (provided, however Property Owner retains the right to timely and properly protest and contest any such Impositions);

(d) by the City, in the event Property Owner breaches any of the terms or conditions of this Agreement and such breach is not cured within sixty (60) days after written notice thereof;

(e) by the City, if the Property Owner suffers an Event of Bankruptcy or Insolvency;

(f) by the City, if any subsequent Federal or State legislation or any final, non-appealable decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable; or

(g) the sale or transfer of the Residence following one assignment of this Agreement as provided herein.

6.2 In the event of termination by the City pursuant to 6.1(c), (d), (e), (f) or (g) the Property Owner shall immediately repay to the City an amount equal to Incentive paid to Property Owner, if any, prior to termination of this Agreement.

Article VII.
Miscellaneous

7.1 **Assignment.** This Agreement may not be assigned without the prior written consent of the City, except that this Agreement may be assigned by the Property Owner one (1) time in connection with the sale or transfer of the ownership (including a life estate) of the Residence to a subsequent owner of the Residence upon thirty (30) days prior written notice to the City. This Agreement shall

automatically terminate upon any subsequent sale or transfer of the ownership of the Residence.

7.2 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and assigns of the parties hereto.

7.3 **Limitation on Liability.** It is understood and agreed between the parties that the Property Owner(s), in satisfying the conditions of this Agreement, have acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

7.4 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

7.5 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

7.6 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered.

If intended for Property Owner, to:

_____

_____

_____

Snyder, Texas _____

If intended for City, to:

City of Snyder
Attn: City Manager
P.O. Box 1341
Snyder, Texas 79550-1341

With a copy to:

City Attorney
P.O. Box 662
Pampa, Texas 79066-0662

7.7 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates

to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

7.8 **Governing Law.** The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Scurry County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

7.9 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

7.10 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

7.11 **Recitals.** The recitals to this Agreement are incorporated herein.

7.12 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

7.13 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the_____day of_____, 201__.

PROPERTY OWNER

BY_____
Signature

_____
Typed or Printed Name

_____
Typed or Printed Title

WITNESS:

_____

CITY OF SNYDER, TEXAS

BY_____
Name:_____
Title:_____

ATTEST:

_____
City Secretary

THE STATE OF TEXAS §
§
COUNTY OF SCURRY §

PROPERTY OWNER
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared_____, who is known to me or who was proved to me on the oath of _____(*name of person identifying the acknowledging person*) or who was proved to me through _____ (*description of identity card or other document issued by the federal or state government containing the picture and signature of the acknowledging person*) to be the person whose name is subscribed to the forgoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of_____, and as the_____thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the_____day of_____, 201__.

_____
Notary Public in and for
The State of Texas

_____ _____
My Commission Expires Notary's Printed Name

THE STATE OF TEXAS §
§
COUNTY OF SCURRY §

CITY OF SNYDER, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Merle Taylor, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of the **CITY OF SNYDER**, a municipal corporation of Scurry County, Texas, and as the City Manager thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the_____day of_____, 201__.

_____
Notary Public in and for
The State of Texas

_____ _____
My Commission Expires Notary's Printed Name

Shai Green

From: Merle Taylor
Sent: Wednesday, December 23, 2015 11:39 AM
To: Terry Luecke
Subject: Emailing: Licensed Carry and Courts Attorney General Opinions Confuse the Issues - Texas Municipal League

FYI Licensed Carry and Courts:

Attorney General Opinions Confuse the Issues

Two just-released attorney general opinions may call 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 attorney general released his opinion letters on Monday, and they appear to lead to further confusion on the issues. A discussion of each, along with an explanation of their practical effects, follows.

- Tex. Att'y Gen. Op. No. KP-0047 (2015) concludes 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 have been advising for years under the concealed carry law. The previous advice was that a person is prohibited from carrying a firearm into the *entire building* that houses a court or court office.

  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 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."

  In the past, it 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 actually shift the risk of compliance onto the license holder to know where he can carry.

- Tex. Att'y Gen. Op. No. KP-0049 (2015)interprets the provisions of S.B. 273, a bill that passed last session. The bill provides that – among other things – the attorney general can sue a state agency or a political subdivision that improperly posts a 30.06 notice.

  As written, the bill applies only to a concealed handgun sign under Texas Penal Code Section 30.06. However, the opinion seems to incorrectly expand the attorney general's authority under the bill to include any sign, including a signs pertaining to carry prohibitions that automatically apply (e.g., the court prohibition discussed above). The opinion also expands the attorney general's authority to investigate *oral* notice that carry is prohibited.

  If a city chooses to comply with the second opinion, and doing so may be wise given the possible fines under the new legislation, it should be noted that improper carrying near a court could still be a crime regardless of signage. The decision to prosecute that felony offense is made by county and district attorneys, not by city officials.

What are the practical effects of the opinions above? Some possible scenarios are these:

- **City (based on advice from city attorney) takes no action:** According to the opinions, a license holder can carry a handgun into any city facility, but may not carry into an actual room that houses a court or court office. No signage is necessary. However, some cities may deem it appropriate to post a sign of some type notifying the license holder that a room houses a court or court office.
- **City (based on advice from city attorney) takes position that a license holder may not enter a certain portion of the building that houses a court or court office:** No signage is necessary. However, some cities may deem it appropriate to post a sign of some type notifying the license holder that the portion of the building houses a court or court office. The attorney general's office claims that it has enforcement authority over the location of the city's signs and any verbal statements made by city employees to a license holder.
- **City (based on advice from city attorney) takes position that a license holder may not enter the building that houses a court or court office:** Again, no signage is necessary. However, some cities may deem it appropriate to post a sign of some type notifying the license holder that the building houses a court or court office. The attorney general claims that he has enforcement authority over the location of the city's signs and any verbal statements made by city employees to a license holder.

What would the signs mentioned in the bullet points above look like? Some would argue that they should be "criminal trespass by license holder" signs, which would be posted in accordance with the following:

- 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".

A 30.06 or 30.07 sign 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.*

Others would argue that a sign stating that the building, portion of a building, or room houses a court or court office is sufficient. Still others might say that 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. A city can always prohibit licensed carry in the room in which a city council meeting is being conducted by posting the 30.06 and 30.07 signs mentioned above, and may in rare cases have other authority related to firearms. A more detailed paper on the issue is available here.

These opinions did little more than further confuse an already complicated issue. Until this issue is decided by the courts, cities are advised to work closely with their local legal counsel before posting or removing any signs regarding courts and city buildings. We expect that a number of our member cities will have a different interpretation of the law than the attorney general. The League will work closely with Texas cities on possible legislative proposals to clarify the law to protect the safety of everyone who works in or visits city courts.

Please contact Scott Houston, TML general counsel, at shouston@tml.org or 512-231-7464, with questions.

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KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 21, 2015

The Honorable Allison Palmer
51st Judicial District Attorney
124 West Beauregard
San Angelo, Texas 76903-5850

Opinion No. KP-0047

Re: The extent to which firearms may be excluded from buildings that contain courts, offices utilized by the courts, and other county officials (RQ-0040-KP)

Dear Ms. Palmer:

You seek an opinion about whether provisions of the Penal Code prohibit the exclusion of firearms from certain county buildings.[1] You state that the Tom Green County Sheriff currently secures the district courthouse and the Tom Green County Justice Center and does not allow firearms inside the buildings even if the carrier has a concealed handgun license. *See* Request Letter at 1. You also tell us about the different offices that are located within other county buildings that house courts and ask whether firearms may be excluded from each of these buildings "even if the possessor of the firearm has a concealed handgun license." *Id.* at 2.

Chapter 411 of the Government Code was amended in 2015 with the enactment of Senate Bill 273. Act of May 23, 2015, 84th Leg., R.S., ch. 593, § 1, 2015 Tex. Gen. Laws 2000, 2000–2001 (codified at TEX. GOV'T CODE § 411.209). The primary change under Senate Bill 273 is the creation of enforcement measures available against the state or a political subdivision that seeks to wrongfully exclude a person from carrying a handgun where the person may lawfully do so. *See id.* Section 411.209 provides:

> A state agency or 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 concealed handgun license, that a license holder carrying a handgun under the authority of this subchapter is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless license holders are

[1] *See* Letter from Honorable Allison Palmer, 51st Judicial Dist. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 1–2 (July 14, 2015), https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs ("Request Letter").

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

TEX. GOV'T CODE § 411.209(a); *see also id.* §§ 411.171–.209 (subchapter H providing for the licensing of handguns).[2] Because section 411.209 references sections 46.03, 46.035, and 30.06 of the Penal Code, we briefly discuss each provision. *See id.* § 411.209(a).

Section 46.03 of the Penal Code prohibits a person, including a licensee, from carrying firearms and other prohibited weapons, including handguns, in certain locations identified in the section.[3] *See* TEX. PENAL CODE § 46.03(a), (f) ("Except as provided by Subsection (e-1), it is not a defense to prosecution under this section that the actor possessed a handgun and was licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code."). The enumerated locations include premises of schools and educational institutions, polling places during voting, and other specified locations. *See id.* § 46.03(a)(1)–(6). Relevant here, section 46.03 prohibits handguns from "the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court." *Id.* § 46.03(a)(3).

Penal Code section 46.035 lists the locations where a license holder may not carry a handgun. *See id.* § 46.035(b). The list of prohibited places in section 46.035 includes the premises of certain businesses involved in the sale of alcoholic beverages, the premises of a correctional facility, the premises of certain places of worship, and "in the room or rooms where a meeting of a governmental entity is held and if the meeting is an open meeting."[4] *Id.* § 46.035(b)(1)–(6), (c).

Section 30.06 of the Penal Code is a criminal trespass statute that essentially allows property owners to prohibit license holders from carrying concealed handguns onto their property by providing the prescribed notice. *See id.* § 30.06(a)–(b); *see also id.* § 30.06(c)(3) (providing exact language necessary to be included on any written communication intended to provide notice that entry with a handgun is prohibited). But it excepts that property which 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 under section 46.03 or 46.035." *Id.* § 30.06(a), (e). The exception in subsection 30.06(e) means that a governmental entity does not have general authority to prohibit concealed handguns from its public buildings other than a location listed in sections 46.03 and 46.035. *See id.* § 30.06(e); *see also* SENATE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. S.B. 273, 84th Leg., R.S. (2015) at 1 ("When uncooperative governments post signs to ban Texas citizens from carrying where it is legal, they are breaking the law and infringing on the

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[2]House Bill 910, also passed in 2015, amended subchapter H and mostly removed the requirement of concealment with respect to an individual's license to carry a handgun. *See* Act of May 29, 2015, 84th Leg., R.S., ch. 437, §§ 16–28, 2015 Tex. Gen. Laws 1706, 1710–1714 (codified at various provisions in TEX. GOV'T CODE ch. 411, subch. H).

[3]As you ask about only section 411.209 of the Government Code, we limit this opinion to a consideration of only the prohibition of handguns.

[4]You do not ask us to address the scope of subsection 46.035(c). *See* Request Letter at 1–2.

second amendment rights of Texas citizens. S.B. 273 provides an enforcement mechanism . . . to stop these illegal postings.").

Taken together, these three provisions authorize a political subdivision to prohibit handguns from only the locations identified in Penal Code sections 46.03 and 46.035. Your questions do not implicate any limitation or expansion of the kinds of locations from which a governmental entity may prohibit handguns. Rather, you ask only about the scope of the location identified in subsection 46.03(a)(3) concerning the "premises of any government court or offices utilized by a court." Request Letter at 1; TEX. PENAL CODE § 46.03(a)(3). Your questions implicate many fact sensitive issues that cannot be resolved in an attorney general opinion. However, we will provide the legal guidance that we can.

When construing statutes, courts seek to ascertain and give effect to the Legislature's intent. *See Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009). "The plain meaning of the text is the best expression of [that] intent[.]" *Molinet v. Kimbrell*, 356 S.W.3d 407, 411 (Tex. 2011). "If a statute . . . assigns a particular meaning to a term, [courts] are bound by the statutory usage." *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011). "Undefined terms . . . are typically given their ordinary meaning[.]" *Id.*

To determine the scope of the prohibition in subsection 46.03(a)(3), we need to construe the phrase "premises of any government court or offices utilized by the court," which requires an examination of the term "premises." TEX. PENAL CODE § 46.03(a)(3). Subsection 46.035(f) defines the term "premises" for purposes of section 46.03. *Id.* § 46.035(f)(3); *see also id.* § 46.03(c)(1) (defining "premises" by reference to section 46.035). "'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." *Id.* § 46.035(f)(3) (emphasis added). "[T]he word 'or' is a disjunctive conjunction that indicates a choice between two alternatives generally corresponding to 'either' or 'either this or that.'" *Gunn v. Phillips*, 410 S.W.2d 202, 206 (Tex. Civ. App.—Houston 1966, writ ref'd n.r.e.). The common meaning of "building" is "a structure with a roof and walls, such as a house, school, store, or factory." NEW OXFORD AMERICAN DICTIONARY 228 (3d ed. 2010); *see also* TEX. PENAL CODE § 30.01(2) (defining "building" as "any enclosed structure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use"). Section 46.03 neither provides nor directs us to a definition of "government court," but article V, section 1 of the Texas Constitution vests judicial power in listed courts and "such other courts as may be provided by law."[5] TEX. CONST. art. V, § 1. It is likely that a court would determine that a "government court" under section 46.03 is any of the judicial bodies created by either the Texas Constitution or by the Legislature. We also consider the meaning of "offices utilized by the court." TEX. PENAL CODE § 46.03(a)(3). Section 46.03 does not define the term "office," but a Texas court of appeals has defined "office"

[5]The Legislature has provided for the courts in chapters 22 through 30 of the Government Code, which contain provisions for each of the different types of courts, and all of which have judicial authority to determine rights as between persons or property. *See* TEX. GOV'T CODE §§ 22.001–.302 (appellate courts), 24.001–.954 (district courts), 25.0001–.2702 (statutory county courts), 26.001–.353 (constitutional county courts), 27.001–.061 (justice courts), 29.001–.105 (municipal courts), 30.00001–.01904 (municipal courts of record). Created by the Texas Constitution or by the Legislature, these bodies are courts established by the government.

as a "place where a particular kind of business . . . is transacted." *Anderson v. State*, 17 Tex. Ct. App. 305, 310 (1884). The common meaning of "utilize" is to "make practical and effective use of." NEW OXFORD AMERICAN DICTIONARY 1909 (3d ed. 2010).

Thus, the phrase "premises of any government court" generally means either (1) a structure utilized by a court created by the Texas Constitution or the Legislature, or (2) a portion of such a structure. And the premises of an office utilized by the court generally means a building or portion of a building that is a place where the business of a government court is transacted.

But such alternatives still do not provide any clarity with respect to where section 46.03 prohibits handguns. If the Legislature intended for the entire structure with a government court in it to be a location from which firearms are excluded, it could have redefined "premises" to mean only a building. *See Kappus v. Kappus*, 284 S.W.3d 831, 835 (Tex. 2009) (recognizing that the Legislature chooses "its words carefully and intentionally"). It did not. To so construe subsection 46.03(a)(3) would essentially render the language "portion of a building" meaningless—a construction that, like the courts, we try to avoid. *See Hanson v. Jordan*, 198 S.W.2d 262, 263 (Tex. 1946) (stating that courts "should avoid a construction which renders any provision meaningless"). By including the "portion of a building" language, the Legislature evidenced an intent to have the prohibition in subsection 46.03(a)(3) equally apply to an area that is less than the entire structure. Thus, the disjunctive "or" in the phrase may not provide a discretionary choice between two alternatives as much as recognition that flexibility is necessary to accommodate the different kinds of spaces courts utilize in various types of buildings.

Further, when considering the statute as a whole, under subsection 46.03(a)(3) a court may issue written regulations or provide authorization concerning the allowance of firearms on its premises. *See* TEX. PENAL CODE § 46.03(a)(3) (establishing an offense for carrying a prohibited weapon "on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or authorization of the court"). A court's authority with regard to such regulations or authorization would not include areas of the building that are beyond the operations of the court. This is some indication that the Legislature intended the prohibition in subsection 46.03(a)(3) to have a limited reach.

Yet, in the greater context of section 411.209's penalty against a governmental entity improperly excluding handguns, the Legislature also amended subsection 46.035(c), Penal Code, to prohibit handguns from the "*room or rooms* where a meeting of a governmental entity is held." TEX. PENAL CODE § 46.035(c) (emphasis added). By this amendment, the Legislature indicated that it knows how to limit the handgun prohibition to a specific room in which an activity is conducted. The Legislature chose to use the term "government court," instead of government courtroom. *Id.* § 46.03(a)(3). So, though the Legislature may have intended subsection 46.03(a)(3) to have a limited reach, it did not expressly limit section 46.03(a)(3) to only the room that houses the government court.

The Legislature has not clearly demarcated, or established, a precise boundary in a building or portion of a building at which handguns are prohibited or permitted. Yet, it has established an enforcement scheme that can be properly effectuated only where such a boundary is determined and definitive. Similarly, the Legislature has not provided the Attorney General's Office with

specific authority to make rules governing this enforcement scheme. While the outside limits of subsection 46.03(a)(3) may be unclear, at the very least it can be said that the Legislature intended to prohibit concealed handguns from the rooms that house government courts and offices central to the business of the courts.[6] Accordingly, in the absence of clarity from the Legislature and in order to provide concrete advice to governmental entities seeking to secure their courts without penalty, we construe subsection 46.03(a)(3) to encompass only government courtrooms and those offices essential to the operation of the government court. Section 46.03(a)(3) recognizes the power of government courts to override the ban on concealed handguns in that a court may issue "written regulations or written authorization" allowing the carrying of concealed handguns in their spaces. Likewise, we routinely acknowledge that decisions such as this are for the governmental entity in the first instance, subject to the applicable review. *See, e.g.*, Tex. Att'y Gen. Op. KP-0007 (2015) at 2 (concluding that the determination of whether the expenditure of public funds is for a public purpose is for the governmental body 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. And it is that authority that could face the statutory civil penalty. TEX. GOV'T CODE § 411.209(a) (prohibiting "[a] state agency or a political subdivision of the state" from providing improper notice). If this authority is not the government court itself, the responsible authority would presumably consult with the government court to determine what government courtrooms and offices are essential to its operation.

[6]Toward that end, these parameters from the Legislature will presumably prevent a governmental body from using pretext to attempt to exclude the licensed carrying of handguns where the law allows it.

SUMMARY

For purposes of section 411.209 of the Government Code, the phrase "premises of any government court" used in Penal Code subsection 46.03(a)(3) generally means either (1) a structure utilized by a court created by the Texas Constitution or the Legislature, or (2) a portion of such a structure. The premises of a "government court or office utilized by the court" means a government courtroom or those offices essential to the operation of the government court. 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, in consultation with the government court.

Very truly yours,

Ken Paxton

KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

BRANTLEY STARR
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

CHARLOTTE M. HARPER
Assistant Attorney General, Opinion Committee

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 21, 2015

The Honorable Wesley H. Mau
Hays County Criminal District Attorney
712 South Stagecoach, Suite 2057
San Marcos, Texas 78666

Opinion No. KP-0049

Re: Questions regarding a notice prohibiting entry with a handgun onto certain premises under section 30.06 of the Penal Code and section 411.209 of the Government Code (RQ-0051-KP)

Dear Mr. Mau:

You present several questions about what constitutes a violation of section 411.209 of the Government Code as implicated by Penal Code section 30.06, which provides for a notice to prohibit entry with a handgun onto certain premises.[1] In connection with your request, you tell us that the Hays County Government Center ("Center") is "a large, three-story structure housing a variety of government offices." Request Letter at 1. You indicate that many of the offices in the Center are inhabited by courts or offices utilized by the courts but that several offices in the Center "*do not* serve the courts." *Id.* at 2. And you inform us that Hays County has historically prohibited weapons from being carried within the entire building. *Id.* You tell us that several signs are posted in the parking lot and at the entrance to the Center indicating that it is a "Weapons Free Zone." *Id.* Further, you tell us that "a metal-detector-equipped security checkpoint" is located a short distance inside the entrance to the Center. *Id.* You also indicate that "there are no '30.06 signs' posted, and the existing signage does not reference 'a law or a concealed handgun license.'" *Id.* at 2–3. Finally, you state that the sheriff's deputies provide notice to licensees upon passing through the security station "that they may not proceed into the building with a firearm" due to subsection 30.06(a)(2)(B) of the Penal Code. *Id.* at 3.

With this context, you specifically ask:

> (1) Does a sign that says, "Weapons Free Zone," but which does not include the language of [subsection] 30.06(c)(3)(A), violate the restrictions imposed on the government by [section] 411.209,

[1]*See* Letter from Honorable Wesley H. Mau, Hays Cnty. Crim. Dist. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 1, 3 (Sept. 9, 2015), https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs ("Request Letter").

> generally (*i.e.*, whether or not the Hays County Government Center constitutes court premises)?
>
> (2) Does oral notice by a security deputy to a license holder that he may not enter a building housing court[s] and offices used by the courts, but which building also houses offices not directly used by the courts, such as the Hays County Government Center, violate the restrictions imposed on the government by [section] 411.209?
>
> (3) Is a license holder who wishes to enter the Government Center in violation of Texas Penal Code [section] 30.06, if the license holder is told by security personnel that possessing a firearm in the building is prohibited and the license holder refuses to relinquish any carried firearms and also refuses to exit the building?

Request Letter at 3. Relevant to your questions, subsection 411.209(a) provides that

> [a] state agency or a political subdivision of the state[2] 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 concealed handgun license, that a license holder carrying a handgun under the authority of this subchapter 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.

TEX. GOV'T CODE § 411.209(a) (footnote added). As an initial matter, attorney general opinion KP-0047 recognized that the relationship between sections 30.06, 46.03, and 46.035 authorizes a governmental entity of the state to prohibit handguns from only those locations identified by sections 46.03 and 46.035. *See* Tex. Att'y Gen. Op. No. KP-0047 (2015) at 3. Opinion KP-0047 also concluded that although the full scope of subsection 46.03(a)(3) is unclear, it is at least clear that the Legislature intended to prohibit concealed handguns from government courtrooms and the offices essential to the operation of the courts. *See id.* at 4–5. Thus, it is only the courtrooms, and those offices determined to be essential to their operations, from which Hays County may prohibit concealed handguns without risk of incurring the civil penalty in section 411.209 of the Government Code.

However, your first two questions also implicate the question whether certain notices "violate the restrictions imposed on the government by [section] 411.209." Request Letter at 3. Subsection 411.209(a) does not create an offense and penalty regarding the manner of the notice;

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[2]Hereinafter collectively referred to as "governmental entity."

instead, it creates an offense and penalty for a governmental entity that seeks to prohibit a licensee from carrying a handgun onto premises where handguns are lawfully permitted. *See* TEX. GOV'T CODE § 411.209(a). Thus, these questions present the issue of whether a written notice that does not conform to the language required of a "written communication" in subsection 30.06(c)(3)(A), or an oral notice, function as notice to a licensee that handguns are prohibited such that if posted in an area where handguns are permitted would serve as grounds to support a complaint against the governmental entity. In other words, we must determine whether subsection 411.209(a) is implicated by an oral notice or a written notice that does not conform to the language provided in section 30.06.

In our consideration of section 411.209, we are mindful that the primary canon of statutory construction is to determine the intent of the Legislature. *City of Lorena v. BMTP Holdings, L.P.*, 409 S.W.3d 634, 641 (Tex. 2013). Like the courts, we seek that intent first and foremost from the text. *See id.* Courts only "resort to rules of construction or extrinsic aids" when a statute's words are ambiguous. *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009); *see also* TEX. GOV'T CODE § 311.023(3), (5) (allowing for the consideration of legislative history or the "consequences of a particular construction" to aid in statutory construction).

The language of subsection 411.209(a) broadly refers to a notice that is "a communication described by Section 30.06, Penal Code" or "any sign expressly referring to that law or to a concealed handgun license." TEX. GOV'T CODE § 411.209(a). Section 30.06 describes notice given orally or by "written communication." *See* TEX. PENAL CODE § 30.06(b), (c)(3)(A)–(B) (specifying language for a "written communication"). Yet, other subsections of 411.209, which govern the attorney general's enforcement of section 411.209, refer to only a sign. *See* TEX. GOV'T CODE § 411.209(d) (requiring citizen complaint to describe the "specific location *of the sign* found to be in violation") (emphasis added), (f)(1) (requiring the office of the attorney general to give a governmental entity notice that "describes the violation and specific location *of the sign*") (emphasis added), (f)(3) (authorizing the office of the attorney general to give the governmental entity fifteen days "to remove *the sign* and cure the violation") (emphasis added). This limited language about a sign differs from the initial and broad description of a "communication described by section 30.06." *Id.* § 411.209(a). Again, the Legislature has not acted with great clarity in this matter and enacted section 411.209 with internal ambiguities regarding the nature of the notice, the giving or posting of which by a governmental entity may subject the governmental entity to a penalty. Thus, we consider relevant legislative history. *See id.* § 311.023(3) (allowing for the consideration of legislative history to aid in statutory construction).

The bill analysis for Senate Bill 273, enacting section 411.209, states that "[w]hen uncooperative governments post signs to ban Texas citizens from carrying where it is legal, they are breaking the law and infringing on the second amendment rights of Texas citizens. S.B. 273 provides an enforcement mechanism . . . to stop these illegal postings." SENATE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. S.B. 273, 84th Leg., R.S. (2015) at 1. A similar motivation was behind the Legislature's 2003 addition of subsection 30.06(e) of the Penal Code, which operates to preclude a governmental entity from prohibiting the carrying of handguns from premises other than those listed in sections 46.03 and 46.035. *See* TEX. PENAL CODE § 30.06(e). The bill analysis for the enactment of subsection 30.06(e) acknowledged that some governmental entities have misinterpreted the law to "allow[] them to ban weapons in any location other than the specific

places listed in the statute." House Research Org, Bill Analysis, Tex. S.B. 501, 78th Leg., R.S., (2003) at 3–4. These statements are evidence that the Legislature intended to prevent governmental entities from trying to prohibit a licensee from carrying a handgun in locations other than ones identified in sections 46.03 or 46.035. These statements also indicate the Legislature intended to create an enforcement mechanism for subsection 30.06(e) to give teeth to the restriction against governmental entities improperly seeking to exclude licensees from carrying handguns into lawful areas. Subsection 411.209(a) can reasonably be construed to be this enforcement mechanism intended to induce governmental entities to comply with the law.

To effectuate the Legislature's intent to prevent governmental entities from seeking to wrongly exclude handguns from where they are lawful, a court would likely construe section 411.209 to be implicated by any type of notice that seeks to improperly prohibit handguns. Thus, any oral notice given by a governmental entity regarding the prohibition of handguns, if given where handguns are lawful, can serve as an improper exclusion in violation in section 411.209. And the sign about which you inquire that does not use the statutory language but states that the Center is a "Weapons Free Zone," if placed in an area where handguns are allowed, would similarly invoke the enforcement mechanism of section 411.209.

This conclusion is bolstered by the fact that to conclude otherwise would thwart the intent of the Legislature. *See* TEX. GOV'T CODE § 311.023(5) (authorizing in statutory construction the consideration of the "consequences of a particular construction"). If section 411.209 were construed such that a violation for the exclusion of handguns occurred only if the improperly placed notice was a written communication conforming to section 30.06, a governmental entity could avoid penalty by either providing oral notice or providing a nonconforming written notice. That is contrary to the Legislature's intent to stop governmental entities from infringing on Texas citizens' rights to carry handguns wherever the law allows.

Your third question involves a license holder who, upon receiving proper notice, refuses to relinquish any concealed handguns or who refuses to exit the building. *See* Request Letter at 3. The plain language of section 30.06 provides that a license holder commits an offense if the license holder carries a concealed handgun on the property of another without consent and received notice that entry on the property with a concealed handgun was forbidden. *See* TEX. PENAL CODE § 30.06(a). By the terms of the statute, a license holder carrying a concealed handgun who fails, after notice, to exit premises from which sections 46.03 or 46.035 prohibit concealed handguns commits an offense generally punishable as a Class A misdemeanor. *Id.* § 30.06(d). Conversely, a licensee who refuses to relinquish any concealed handgun or refuses to exit the building after being given notice by a governmental entity does not commit an offense if the building is not one from which sections 46.03 and 46.035 prohibit concealed handguns. *See id.* § 30.06(e).

SUMMARY

Pursuant to Opinion KP-0047, it is only the courtrooms, and those offices determined to be essential to their operations, from which Hays County may prohibit concealed handguns without risk of incurring a civil penalty under section 411.209 of the Government Code.

A court would likely conclude that section 411.209 of the Government Code can be implicated by a governmental entity that seeks to improperly prohibit handguns from a place where handguns may be lawfully carried through oral notice or by a written notice that does not conform to section 30.06 of the Penal Code.

By the terms of section 30.06 of the Penal Code, a license holder carrying a concealed handgun who refuses, after notice by the governmental entity, to exit premises from which Penal Code sections 46.03 or 46.035 prohibit handguns commits an offense punishable as a misdemeanor. Conversely, a licensee who refuses to relinquish any concealed handgun or refuses to exit the building after being given notice by a governmental entity does not commit an offense if the building is not one from which sections 46.03 and 46.035 prohibit concealed handguns.

Very truly yours,

Ken Paxton

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December 21, 2015

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Chair, Committee on Criminal Justice
Texas State Senate
Post Office Box 12068
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Opinion No. KP-0050

Re: Application of Penal Code sections 30.07 and 46.03, relating to the open carry of handguns, to school districts (RQ-0054-KP)

Dear Senator Whitmire:

You ask two questions relating to the open-carry handgun provisions of Penal Code sections 30.07 and 46.03.[1] Specifically, you ask whether "the trespass provision of the new 'Open Carry' law under section 30.07 of the Texas Penal Code . . . appl[ies] to school district property, including parking lots, driveways, sidewalks and walkways[.]" Request Letter at 1. You also ask whether Penal Code subsection "46.03(a)(1) prohibit[s] the carrying of firearms on the grounds of a school district where educational activity is being conducted to include parking lots, driveways, sidewalks or walkways of the school property[.]" *Id.* at 2. Because of the relationship between the two provisions about which you ask, we address your questions together.

Section 30.07 of the Penal Code creates the offense of trespass by a license holder with an openly carried handgun. *See* TEX. PENAL CODE § 30.07(a). A person licensed to carry a handgun under chapter 411 of the Government Code commits an offense if the person enters onto property with an openly carried handgun after receiving notice that entry was forbidden. *Id.* § 30.07(a)(1)–(2). Section 30.07 contains an exception providing that it does not apply to openly carrying a handgun on property that 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 under Section 46.03 or 46.035." *Id.* § 30.07(e). Penal Code section 46.03 identifies places where weapons, including handguns, are prohibited. *See id.* § 46.03(a) (prohibiting "a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a)"). Among the places identified as ones from which weapons are prohibited is "the physical premises of a school or . . . *any grounds or building on*

[1]*See* Letter from Honorable John Whitmire, Chair, Senate Criminal Justice Comm., to Honorable Ken Paxton, Tex. Att'y Gen. at 1–2 (Sept. 22, 2015), https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs ("Request Letter").

which an activity sponsored by a school . . . is being conducted, . . . whether the school or educational institution is public or private." *Id.* § 46.03(a)(1) (emphasis added).[2]

You state that there is concern that the term "premises" in subsection 30.07(e) may "have the same restrictive definition" as in Penal Code section 46.035. Request Letter at 2. Subsection 46.035(f)(3) defines "premises" to mean a "building or a portion of a building" and expressly excludes "any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area." TEX. PENAL CODE § 46.035(f)(3); *see also* Tex. Att'y Gen. Op. No. DM-363 (1995) at 4 (recognizing in this context that "premises" excludes specified grounds around the building). Under subsection 46.035(f)(3), the physical premises of a school encompass only the school buildings and not the surrounding grounds. Nonetheless, subsection 30.07(e) refers to "premises or other place" which means that it includes places other than school buildings if other law so provides. TEX. PENAL CODE § 30.07(e). And Penal Code subsection 46.03(a)(1) is other law providing that weapons are prohibited from "any grounds or building on which an activity sponsored by a school . . . is being conducted." *Id.* § 46.03(a)(1); *see also Zanchi v. Lane*, 408 S.W.3d 373, 376 (Tex. 2013) (stating that a "statute's plain language" is the best indicator of legislative intent). To the extent "any grounds" under subsection 46.03(a)(1) may include a public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area, such places are ones from which weapons are prohibited by law when an activity sponsored by a school is being conducted. TEX. PENAL CODE § 46.03(a)(1). Conversely, section 46.03 does not prohibit weapons on such places when a school-sponsored activity is not being conducted.

The question whether, and where on school grounds, a school-sponsored activity is occurring involves the resolution of fact questions that are beyond the purview of an attorney general opinion. Tex. Att'y Gen. Op. No. GA-0827 (2010) at 2 ("This office does not determine questions of fact in an attorney general opinion . . . ."). For instance, if a high school utilizes a school parking lot for a band rehearsal, that parking lot would likely fall within the scope of subsection 46.03(a)(1), prohibiting weapons during the time of the rehearsal. Yet, the other parking areas at the school where school activities are not occurring would not fall within subsection 46.03(a)(1) and would not be places where weapons are prohibited. *See* Tex. Att'y Gen. Op. No. DM-363 (1995) at 4 (recognizing that a concern before the Legislature in excluding parking lots and other similar areas from "premises" was to make it not a crime for a person with a concealed handgun to drive into the driveway of a place where handguns were prohibited).

In sum, Penal Code subsection 46.03(a)(1) prohibits weapons, including handguns, from places on which a school-sponsored activity is being conducted, which places can include grounds otherwise excluded from the definition of "premises" such as public or private driveways, streets, sidewalks or walkways, parking lots, parking garages, or other parking areas.[3]

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[2]Subsection 46.03(a)(1)(B) excepts from this prohibition the open carrying of handguns "on the premises of an institution of higher education or private or independent institution of higher education." TEX. PENAL CODE § 46.03(a)(1)(B). As you ask about "property or grounds of K-12 school districts," we do not address any issues related to the open carry of handguns on college campus grounds. *See* Request Letter at 1.

[3]It bears noting that this opinion deals only with the specific statutory provisions on carrying handguns. There is also a broader statutory provision prohibiting the carrying of a handgun, illegal knife, or club in certain circumstances. TEX. PENAL CODE § 46.02(a). This prohibition does not apply to a person licensed to carry a handgun. *See* Act of May 29, 2015, 84th Leg., R.S., ch. 437, § 49(b)(6), 2015 Tex. Gen. Laws 1706, 1722 (to be codified at TEX. PENAL CODE § 46.15(b)).

SUMMARY

Subsection 46.03(a)(1) of the Penal Code prohibits handguns from places on which a school-sponsored activity is occurring, which places can include grounds otherwise excluded from the definition of "premises" such as public or private driveways, streets, sidewalks or walkways, parking lots, parking garages, or other parking areas.

Very truly yours,

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December 21, 2015

The Honorable Brian Birdwell
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Texas State Senate
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Opinion No. KP-0051

Re: Authority of an institution of higher education to establish certain rules regarding the carrying of handguns on campus (RQ-0076-KP)

Dear Senator Birdwell:

You ask six questions related to the authority of a public institution of higher education to establish certain rules regarding the carrying of handguns on campus.[1] Your questions arise from the Eighty-fourth Legislature's passage of Senate Bill 11, commonly referred to as the "campus carry" law, which will take effect August 1, 2016. Request Letter at 1.[2] S.B. 11 generally authorizes individuals licensed to carry concealed handguns to "carry a concealed handgun on or about the license holder's person while the license holder is on the campus of an institution of higher education." 2015 Tex. Gen. Laws at 1723 (to be codified at TEX. GOV'T CODE § 411.2031(b)). In addition, it authorizes the president or other chief executive officer of an institution of higher education to "establish reasonable rules, regulations, or other provisions regarding the carrying of concealed handguns by license holders" on campus. *Id.* (to be codified at TEX. GOV'T CODE § 411.2031(d-1)). S.B. 11 also provides that "the president or officer may not establish provisions that generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution." *Id.*

Your first question asks whether an institution of higher education will violate the provisions of S.B. 11 if it "designates a meaningful number of classrooms as areas in which the possession of concealed handguns by Licensees is not allowed." Request Letter at 4. S.B. 11 does not expressly address the extent to which the carrying of concealed handguns can be regulated specifically within classrooms. The carrying of concealed handguns in certain types of classrooms may pose heightened safety concerns such that the regulation of concealed handguns is authorized under S.B. 11. As an example, some institutions of higher education have grade school classrooms

[1] *See* Letter from Honorable Brian Birdwell, Chair, Senate Comm. on Nominations, to Honorable Ken Paxton, Tex. Att'y Gen. at (Nov. 18, 2015), https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs ("Request Letter"). You note that the "authority granted to public Colleges and private colleges are different," and you limit your request to "deal solely with public Colleges." *Id.* at 1.

[2] *See* Act of May 31, 2015, 84th Leg., R.S., ch. 438, § 1, 2015 Tex. Gen. Laws 1723 (hereafter "S.B. 11").

on their campuses. Given that the Legislature has made it a criminal offense to carry a firearm on the physical premises of such a school, rules regulating the carrying of concealed handguns in such grade school classrooms would be consistent with the Legislature's intent. *See* TEX. PENAL CODE § 46.03(a)(1). That said, attending or teaching class is the primary reason most individuals are on campus. If an institution prohibited the carrying of concealed handguns in a substantial number of classrooms, a court would likely conclude that the effect would be to "generally prohibit" license holders from carrying concealed handguns on campus, contrary to the Legislature's express requirements.[3]

Also related to regulation of handguns in the classrooms, your second question asks whether an institution of higher education will violate the provisions of S.B. 11 if it "allows individual professors to designate their classrooms as areas in which the possession of the concealed handguns by Licensees is not allowed." Request Letter at 4. While the Legislature has required that faculty be consulted prior to establishing the rules, S.B. 11 places the authority to make rules regarding the carrying of concealed handguns on campus with the "president or other chief executive officer." 2015 Tex. Gen. Laws at 1723 (to be codified at TEX. GOV'T CODE § 411.2031(d-1)). No provisions within S.B. 11 authorize a president or chief executive officer to delegate this authority to individual professors, and reading S.B. 11 as a whole suggests that the Legislature did not intend to allow such piecemeal regulation of handguns on campus. *See TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011) (explaining that courts construe statutes as a whole rather than in isolation). Institutions of higher education are required to "widely distribute the rules . . . to the institution's students, staff, and faculty, including by prominently publishing the provisions on the institution's Internet website." 2015 Tex. Gen. Laws at 1723–74 (to be codified at TEX. GOV'T CODE § 411.2031(d-3)). Requiring that the rules be distributed to faculty suggests that the Legislature did not intend for the faculty members themselves to establish those rules. And, as a practical matter, if each faculty member could establish individualized rules, adequately publishing such rules and providing the notice required by S.B. 11 would be unmanageable.[4] Thus, a court would likely conclude that S.B. 11 does not authorize a president or chief executive officer of an institution of higher education to delegate to

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[3]*See* Univ. of Tex. at Austin, Campus Carry Policy Working Group Final Report, at 6, Dec. 2015, *available at* http://campuscarry.utexas.edu/CCWorkingGroup-FinalReport.pdf ("The primary on-campus activity for most of our more than 50,000 students is going to class. Excluding handguns from classrooms would have the effect of generally prohibiting license holders from carrying their handguns and so would violate S.B. 11.").

[4]S.B. 11 requires institutions of higher education to "give effective notice under Section 30.06, Penal Code, with respect to any portion of a premises on which license holders may not carry." 2015 Tex. Gen. Laws at 1723 (to be codified at TEX. GOV'T CODE § 411.2031(d-1)). Penal Code section 46.035(a-3) also provides that notwithstanding subsection (a) or section 46.03(a), "a license holder commits an offense if the license holder intentionally carries a handgun" in a location on campus where the institution has by rule prohibited the carrying of concealed weapons, "provided the institution gives effective notice under Section 30.06." 2015 Tex. Gen. Laws at 1726; *see* TEX. PENAL CODE § 30.06(b) (providing that notice under section 30.06 may be "oral or written communication"), (c)(3)(B)(iii) (providing that a sign displayed on the property constitutes notice if it "is displayed in a conspicuous manner clearly visible to the public").

individual professors the decision as to whether possession of a concealed handgun is allowed in the individual professor's classroom.

Your third question asks whether an institution of higher education would violate S.B. 11 if it prohibited or effectively prohibited the possession of handguns in "dormitories and/or other college-owned or leased residential housing." Request Letter at 5. S.B. 11 expressly prohibits an institution of higher education from adopting any rule, regulation, or other provision prohibiting license holders from carrying handguns on campus, except in limited circumstances. 2015 Tex. Gen. Laws at 1723 (to be codified at TEX. GOV'T CODE § 411.2031(c)). One of those exceptions is found in subsection (d), which provides that "[a]n institution of higher education . . . may establish rules, regulations, or other provisions concerning the storage of handguns in dormitories or other residential facilities . . . located on the campus of the institution." 2015 Tex. Gen. Laws at 1723 (to be codified at TEX. GOV'T CODE § 411.2031(d)). This provision allows an institution to establish reasonable requirements related to the location and manner in which handguns are stored within its residential facilities on campus. What is reasonable in any given circumstance will involve questions of fact.[5] If an institution placed a prohibition on handguns in the institution's residential facilities, however, it would effectively prohibit license holders in those facilities from carrying concealed handguns on campus, in violation of S.B. 11.[6] This is because "rules, regulations, or other provisions concerning the *storage of handguns in dormitories*" presupposes their presence in dormitories. 2015 Tex. Gen. Laws at 1723 (to be codified at TEX. GOV'T CODE § 411.2031(d)) (emphasis added); *see* BLACK'S LAW DICTIONARY (10th ed. 2014) (defining "storage" to mean "[t]he act of putting something away for future use; esp., the keeping or placing of articles in a place of safekeeping, such as a warehouse or depository").

Your fourth question asks whether an institution of higher education would violate S.B. 11 if it temporarily prohibited the carrying of handguns by license holders on either "all or most of the campus" or, alternatively, "on certain portions of the campus." Request Letter at 5. The distribution and notice requirements discussed above suggest that the Legislature did not intend to allow frequent, temporary restrictions on the carrying of concealed handguns. S.B. 11 does, however, allow a president or officer to "amend the provisions as necessary for campus safety," and to consider "specific safety considerations, and the uniqueness of the campus environment." 2015 Tex. Gen. Laws at 1723 (to be codified at TEX. GOV'T CODE § 411.2031(d-1)). Pursuant to this language, a court could conclude that occasional, reasonable temporary restrictions that are prominently posted on the institution's website clearly notify license holders of the restrictions, and do not amount to a general prohibition on the carrying of concealed handguns on campus.

Your fifth question asks whether a concealed handgun licensee has "standing to bring an action" if the licensee reasonably believes that the institution "has exceeded its authority . . . , or that it has taken regulatory action without meeting the procedural requirements" under S.B. 11. Request Letter at 5. While sovereign immunity protects the state from lawsuits for money

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[5]*See* Campus Carry Policy Working Group Final Report, *supra* note 3, at 21 (establishing restrictions for gun safes used by license holders).

[6]*See id.* at 20–21 ("With three exceptions, the concealed carry of handguns should be prohibited in all on-campus residence halls.").

damages, "suits to require state officials to comply with statutory or constitutional provisions are not prohibited by sovereign immunity." *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). "Private parties may seek declaratory relief against state officials who allegedly act without legal or statutory authority." *Tex. Nat. Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002). Thus, an individual whose legal rights have been infringed due to a president or chief executive officer of an institution adopting regulations that exceed the authority granted in S.B. 11 would have standing to bring an *ultra vires* cause of action against the president or chief executive officer. *See Heinrich*, 284 S.W.3d at 372; *see also* TEX. CIV. PRAC. & REM. CODE § 37.004(b) (providing that an individual whose legal rights are affected by a statute "may have determined any question of construction" of that statute). The remedy for such action would be limited to injunctive relief. *See Heinrich*, 284 S.W.3d at 376 ("[A] claimant who successfully proves an *ultra vires* claim is entitled to prospective injunctive relief.").

Your final question asks whether the offense found in subsection 46.035(a-3) of the Penal Code would apply to a licensee carrying a concealed handgun if an institution of higher education has failed to comply with S.B. 11. Request Letter at 5. S.B. 11 amended section 46.035 of the Penal Code to add subsection (a-3), which will become effective August 1, 2016. 2015 Tex. Gen. Laws at 1726. At that time, subsection 46.035(a-3) will provide:

> Notwithstanding Subsection (a) or Section 46.03(a), a license holder commits an offense if the license holder intentionally carries a concealed handgun on a portion of a premises located on the campus of an institution of higher education in this state on which the carrying of a concealed handgun is prohibited by rules, regulations, or other provisions established under Section 411.2031(d-1), Government Code, provided the institution gives effective notice under Section 30.06 with respect to that portion.

Id. (to be codified at TEX. PENAL CODE § 46.035(a-3)). If a court concludes that the rules established by an institution of higher education with regard to where concealed handguns may be carried are not authorized by statute, "it would follow that any further enforcement of such provisions would be ultra vires." *Tex. Dep't of State Health Servs. v. Balquinta*, 429 S.W.3d 726, 751 (Tex. App.—Austin 2014, no pet.).[7]

[7]You do not ask whether institutions of higher education may establish policies regarding the manner in which license holders carry on campus, such as holster requirements or policies regarding the presence of a chambered round. *See* Campus Carry Policy Working Group Final Report, *supra* note 3 at 16 (preventing license holders from carrying a gun with a chambered round, requiring license holders to carry in a holster that completely covers the trigger and trigger guard area, and requiring sufficient tension on the handgun to retain it in the holster when subjected to unexpected jostling). Analyzing such restrictions would involve whether S.B. 11 delegated to public institutions of higher education the ability to restrict the manner in which license holders carry and whether state law restrictions on the manner of carrying preempts the field of such regulations. *See, e.g., S. Crushed Concrete, L.L.C. v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013) (recognizing that state law may preempt local ordinances).

SUMMARY

A court would likely conclude that a public institution of higher education exceeds the authority granted under Senate Bill 11 if it prohibits the carrying of concealed handguns in a substantial number of classrooms or delegates to individual professors the decision as to whether possession of a concealed handgun is allowed in the individual professor's classroom.

If a public institution of higher education placed a prohibition on handguns in the institution's campus residential facilities, it would effectively prohibit license holders in those facilities from carrying concealed handguns on campus, in violation of the express terms of Senate Bill 11.

A court could conclude that occasional, reasonable, temporary restrictions that are prominently posted on the institution's website clearly notify license holders and do not amount to a general prohibition on the carrying of concealed handguns on campus.

An individual whose legal rights have been infringed due to a president or chief executive officer of a public institution adopting regulations that exceed the authority granted in Senate Bill 11 would likely have standing to bring an *ultra vires* cause of action against the president or chief executive officer.

If a court concludes that the rules established by an institution of higher education with regard to where concealed handguns may be carried are not authorized by statute, it would follow that any further enforcement of such provisions would be *ultra vires*.

Very truly yours,

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(Updated December 22, 2015)

NOTE: Highlighted items have been updated from previous version.

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.)

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 otherwise excluded from the definition of 'premises' 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;

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 opinions KP-0047 and KP-0049 further confuse interpretations of this provisions – 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: 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. 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) authorizes concealed carry beginning August 1, 2016, subject to rules of the institution. Because of that, concealed carry on the premises of a collegiate sporting event generally appears to be allowed after that date 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;
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).

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

Two recent attorney general opinions may call 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 appear to simply further confuse the issues. A discussion of each, along with an explanation of their practical effects, follows.

- Tex. Att'y Gen. Op. No. KP-0047 (2015) concludes 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 have been advising for years under the concealed carry law. The previous advice was that a person is prohibited from carrying a firearm into the *entire building* that houses a court or court office.

  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 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."

In the past, it 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 actually shift the risk of compliance onto the license holder to know where he can carry.

- Tex. Att'y Gen. Op. No. KP-0049 (2015) interprets the provisions of S.B. 273, a bill that passed last session. The bill provides that – among other things – the attorney general can sue a state agency or a political subdivision that improperly posts a 30.06 notice.

  As written, the bill applies only to a concealed handgun sign under Texas Penal Code Section 30.06. However, the opinion seems to incorrectly expand the attorney general's authority under the bill to include any sign, including a signs pertaining to carry prohibitions that automatically apply (e.g., the court prohibition discussed above). The opinion also expands the attorney general's authority to investigate *oral* notice that carry is prohibited.

  If a city chooses to comply with the second opinion, and doing so may be wise given the possible fines under the new legislation, it should be noted that improper carrying near a court could still be a crime regardless of signage. The decision to prosecute that felony offense is made by county and district attorneys, not by city officials.

What are the practical effects of the opinions above? Some possible scenarios are these:

- **City (based on advice from city attorney) takes no action:** According to the opinions, a license holder can carry a handgun into any city facility, but may not carry into an actual room that houses a court or court office. No signage is necessary. However, some cities may deem it appropriate to post a sign of some type notifying the license holder that a room houses a court or court office.

- **City (based on advice from city attorney) takes position that a license holder may not enter a certain portion of the building that houses a court or court office:** No signage is necessary. However, some cities may deem it appropriate to post a sign of some type notifying the license holder that the portion of the building houses a court or court office. The attorney general's office claims that it has enforcement authority over the location of the city's signs and any verbal statements made by city employees to a license holder.

- **City (based on advice from city attorney) takes position that a license holder may not enter the building that houses a court or court office**: Again, no signage is necessary. However, some cities may deem it appropriate to post a sign of some type notifying the license holder that the building houses a court or court office. The attorney general claims that he has enforcement authority over the location of the city's signs and any verbal statements made by city employees to a license holder.

What would the signs mentioned in the bullet points above look like? Some would argue that they should be "criminal trespass by license holder" signs, which would be posted in accordance with the following:

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".

- A 30.06 or 30.07 sign 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*.

Others would argue that a sign stating that the building, portion of a building, or room houses a court or court office is sufficient. Still others might say that 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. A city can always prohibit licensed carry in the room in which a city council meeting is being conducted by posting the 30.06 and 30.07 signs mentioned above, and may in rare cases have other authority related to firearms. A more detailed paper on the issue is available here.

These opinions did little more than further confuse an already complicated issue. Until this issue is decided by the courts, cities are advised to work closely with their local legal counsel before posting or removing any signs regarding courts and city buildings. We expect that a number of our member cities will have a different interpretation of the law than the attorney general. The League will work closely with Texas cities on possible legislative proposals to clarify the law to protect the safety of everyone who works in or visits city courts.

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). 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. No KP-0051 (2015).

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.

TEX. PENAL CODE § 46.15(a).

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. 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). Whether that is true remains to be seen.

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.);
    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).

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 (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 opinions KP-0047 and KP-0049 further confuse interpretations of this provision – see "How has the statutory prohibition against carrying a firearm onto the premises of a court or court office been interpreted?, above, for details.)

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 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 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

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).

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.

Activity/Location:	Allowed?	Legal Basis:
	Any Firearm	
Physical premises of a school or educational insititution (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)
	Handguns Open Carry (No License)	
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
	Handgun Concealed Carry (No License)	
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
	Handgun Concealed Carry (With License)	
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, sign should be posted (note conflict between Penal and Gov't Codes)	Penal Code 46.035(b)(4)&(i); Gov't Code 411.204(b)

Activity/Location:	Allowed?	Legal Basis:
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
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.
	Handgun open carry in belt or shoulder holster (with license)	
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.)

Activity/Location:	Allowed?	Legal Basis:
Government meeting	Yes, unless 30.07 sign posted	Penal Code 30.07; 46.035(c)&(i)
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 (note conflict between Penal and Gov't Codes)	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 insititution.	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.
	Rifle/shotgun carry	
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 *handgun* 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)

Activity/Location:	Allowed?	Legal Basis:
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)
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)

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 21, 2015

The Honorable Allison Palmer
51st Judicial District Attorney
124 West Beauregard
San Angelo, Texas 76903-5850

Opinion No. KP-0047

Re: The extent to which firearms may be excluded from buildings that contain courts, offices utilized by the courts, and other county officials (RQ-0040-KP)

Dear Ms. Palmer:

You seek an opinion about whether provisions of the Penal Code prohibit the exclusion of firearms from certain county buildings.[1] You state that the Tom Green County Sheriff currently secures the district courthouse and the Tom Green County Justice Center and does not allow firearms inside the buildings even if the carrier has a concealed handgun license. *See* Request Letter at 1. You also tell us about the different offices that are located within other county buildings that house courts and ask whether firearms may be excluded from each of these buildings "even if the possessor of the firearm has a concealed handgun license." *Id.* at 2.

Chapter 411 of the Government Code was amended in 2015 with the enactment of Senate Bill 273. Act of May 23, 2015, 84th Leg., R.S., ch. 593, § 1, 2015 Tex. Gen. Laws 2000, 2000–2001 (codified at TEX. GOV'T CODE § 411.209). The primary change under Senate Bill 273 is the creation of enforcement measures available against the state or a political subdivision that seeks to wrongfully exclude a person from carrying a handgun where the person may lawfully do so. *See id.* Section 411.209 provides:

> A state agency or 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 concealed handgun license, that a license holder carrying a handgun under the authority of this subchapter is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless license holders are

[1] *See* Letter from Honorable Allison Palmer, 51st Judicial Dist. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 1–2 (July 14, 2015), https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs ("Request Letter").

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

TEX. GOV'T CODE § 411.209(a); *see also id.* §§ 411.171–.209 (subchapter H providing for the licensing of handguns).[2] Because section 411.209 references sections 46.03, 46.035, and 30.06 of the Penal Code, we briefly discuss each provision. *See id.* § 411.209(a).

Section 46.03 of the Penal Code prohibits a person, including a licensee, from carrying firearms and other prohibited weapons, including handguns, in certain locations identified in the section.[3] *See* TEX. PENAL CODE § 46.03(a), (f) ("Except as provided by Subsection (e-1), it is not a defense to prosecution under this section that the actor possessed a handgun and was licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code."). The enumerated locations include premises of schools and educational institutions, polling places during voting, and other specified locations. *See id.* § 46.03(a)(1)–(6). Relevant here, section 46.03 prohibits handguns from "the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court." *Id.* § 46.03(a)(3).

Penal Code section 46.035 lists the locations where a license holder may not carry a handgun. *See id.* § 46.035(b). The list of prohibited places in section 46.035 includes the premises of certain businesses involved in the sale of alcoholic beverages, the premises of a correctional facility, the premises of certain places of worship, and "in the room or rooms where a meeting of a governmental entity is held and if the meeting is an open meeting."[4] *Id.* § 46.035(b)(1)–(6), (c).

Section 30.06 of the Penal Code is a criminal trespass statute that essentially allows property owners to prohibit license holders from carrying concealed handguns onto their property by providing the prescribed notice. *See id.* § 30.06(a)–(b); *see also id.* § 30.06(c)(3) (providing exact language necessary to be included on any written communication intended to provide notice that entry with a handgun is prohibited). But it excepts that property which 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 under section 46.03 or 46.035." *Id.* § 30.06(a), (e). The exception in subsection 30.06(e) means that a governmental entity does not have general authority to prohibit concealed handguns from its public buildings other than a location listed in sections 46.03 and 46.035. *See id.* § 30.06(e); *see also* SENATE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. S.B. 273, 84th Leg., R.S. (2015) at 1 ("When uncooperative governments post signs to ban Texas citizens from carrying where it is legal, they are breaking the law and infringing on the

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[2]House Bill 910, also passed in 2015, amended subchapter H and mostly removed the requirement of concealment with respect to an individual's license to carry a handgun. *See* Act of May 29, 2015, 84th Leg., R.S., ch. 437, §§ 16–28, 2015 Tex. Gen. Laws 1706, 1710–1714 (codified at various provisions in TEX. GOV'T CODE ch. 411, subch. H).

[3]As you ask about only section 411.209 of the Government Code, we limit this opinion to a consideration of only the prohibition of handguns.

[4]You do not ask us to address the scope of subsection 46.035(c). *See* Request Letter at 1–2.

second amendment rights of Texas citizens. S.B. 273 provides an enforcement mechanism . . . to stop these illegal postings.").

Taken together, these three provisions authorize a political subdivision to prohibit handguns from only the locations identified in Penal Code sections 46.03 and 46.035. Your questions do not implicate any limitation or expansion of the kinds of locations from which a governmental entity may prohibit handguns. Rather, you ask only about the scope of the location identified in subsection 46.03(a)(3) concerning the "premises of any government court or offices utilized by a court." Request Letter at 1; TEX. PENAL CODE § 46.03(a)(3). Your questions implicate many fact sensitive issues that cannot be resolved in an attorney general opinion. However, we will provide the legal guidance that we can.

When construing statutes, courts seek to ascertain and give effect to the Legislature's intent. *See Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009). "The plain meaning of the text is the best expression of [that] intent[.]" *Molinet v. Kimbrell*, 356 S.W.3d 407, 411 (Tex. 2011). "If a statute . . . assigns a particular meaning to a term, [courts] are bound by the statutory usage." *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011). "Undefined terms . . . are typically given their ordinary meaning[.]" *Id.*

To determine the scope of the prohibition in subsection 46.03(a)(3), we need to construe the phrase "premises of any government court or offices utilized by the court," which requires an examination of the term "premises." TEX. PENAL CODE § 46.03(a)(3). Subsection 46.035(f) defines the term "premises" for purposes of section 46.03. *Id.* § 46.035(f)(3); *see also id.* § 46.03(c)(1) (defining "premises" by reference to section 46.035). "'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." *Id.* § 46.035(f)(3) (emphasis added). "[T]he word 'or' is a disjunctive conjunction that indicates a choice between two alternatives generally corresponding to 'either' or 'either this or that.'" *Gunn v. Phillips*, 410 S.W.2d 202, 206 (Tex. Civ. App.—Houston 1966, writ ref'd n.r.e.). The common meaning of "building" is "a structure with a roof and walls, such as a house, school, store, or factory." NEW OXFORD AMERICAN DICTIONARY 228 (3d ed. 2010); *see also* TEX. PENAL CODE § 30.01(2) (defining "building" as "any enclosed structure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use"). Section 46.03 neither provides nor directs us to a definition of "government court," but article V, section 1 of the Texas Constitution vests judicial power in listed courts and "such other courts as may be provided by law."[5] TEX. CONST. art. V, § 1. It is likely that a court would determine that a "government court" under section 46.03 is any of the judicial bodies created by either the Texas Constitution or by the Legislature. We also consider the meaning of "offices utilized by the court." TEX. PENAL CODE § 46.03(a)(3). Section 46.03 does not define the term "office," but a Texas court of appeals has defined "office"

[5]The Legislature has provided for the courts in chapters 22 through 30 of the Government Code, which contain provisions for each of the different types of courts, and all of which have judicial authority to determine rights as between persons or property. *See* TEX. GOV'T CODE §§ 22.001–.302 (appellate courts), 24.001–.954 (district courts), 25.0001–.2702 (statutory county courts), 26.001–.353 (constitutional county courts), 27.001–.061 (justice courts), 29.001–.105 (municipal courts), 30.00001–.01904 (municipal courts of record). Created by the Texas Constitution or by the Legislature, these bodies are courts established by the government.

as a "place where a particular kind of business . . . is transacted." *Anderson v. State*, 17 Tex. Ct. App. 305, 310 (1884). The common meaning of "utilize" is to "make practical and effective use of." NEW OXFORD AMERICAN DICTIONARY 1909 (3d ed. 2010).

Thus, the phrase "premises of any government court" generally means either (1) a structure utilized by a court created by the Texas Constitution or the Legislature, or (2) a portion of such a structure. And the premises of an office utilized by the court generally means a building or portion of a building that is a place where the business of a government court is transacted.

But such alternatives still do not provide any clarity with respect to where section 46.03 prohibits handguns. If the Legislature intended for the entire structure with a government court in it to be a location from which firearms are excluded, it could have redefined "premises" to mean only a building. *See Kappus v. Kappus*, 284 S.W.3d 831, 835 (Tex. 2009) (recognizing that the Legislature chooses "its words carefully and intentionally"). It did not. To so construe subsection 46.03(a)(3) would essentially render the language "portion of a building" meaningless—a construction that, like the courts, we try to avoid. *See Hanson v. Jordan*, 198 S.W.2d 262, 263 (Tex. 1946) (stating that courts "should avoid a construction which renders any provision meaningless"). By including the "portion of a building" language, the Legislature evidenced an intent to have the prohibition in subsection 46.03(a)(3) equally apply to an area that is less than the entire structure. Thus, the disjunctive "or" in the phrase may not provide a discretionary choice between two alternatives as much as recognition that flexibility is necessary to accommodate the different kinds of spaces courts utilize in various types of buildings.

Further, when considering the statute as a whole, under subsection 46.03(a)(3) a court may issue written regulations or provide authorization concerning the allowance of firearms on its premises. *See* TEX. PENAL CODE § 46.03(a)(3) (establishing an offense for carrying a prohibited weapon "on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or authorization of the court"). A court's authority with regard to such regulations or authorization would not include areas of the building that are beyond the operations of the court. This is some indication that the Legislature intended the prohibition in subsection 46.03(a)(3) to have a limited reach.

Yet, in the greater context of section 411.209's penalty against a governmental entity improperly excluding handguns, the Legislature also amended subsection 46.035(c), Penal Code, to prohibit handguns from the "*room or rooms* where a meeting of a governmental entity is held." TEX. PENAL CODE § 46.035(c) (emphasis added). By this amendment, the Legislature indicated that it knows how to limit the handgun prohibition to a specific room in which an activity is conducted. The Legislature chose to use the term "government court," instead of government courtroom. *Id.* § 46.03(a)(3). So, though the Legislature may have intended subsection 46.03(a)(3) to have a limited reach, it did not expressly limit section 46.03(a)(3) to only the room that houses the government court.

The Legislature has not clearly demarcated, or established, a precise boundary in a building or portion of a building at which handguns are prohibited or permitted. Yet, it has established an enforcement scheme that can be properly effectuated only where such a boundary is determined and definitive. Similarly, the Legislature has not provided the Attorney General's Office with

specific authority to make rules governing this enforcement scheme. While the outside limits of subsection 46.03(a)(3) may be unclear, at the very least it can be said that the Legislature intended to prohibit concealed handguns from the rooms that house government courts and offices central to the business of the courts.[6] Accordingly, in the absence of clarity from the Legislature and in order to provide concrete advice to governmental entities seeking to secure their courts without penalty, we construe subsection 46.03(a)(3) to encompass only government courtrooms and those offices essential to the operation of the government court. Section 46.03(a)(3) recognizes the power of government courts to override the ban on concealed handguns in that a court may issue "written regulations or written authorization" allowing the carrying of concealed handguns in their spaces. Likewise, we routinely acknowledge that decisions such as this are for the governmental entity in the first instance, subject to the applicable review. *See, e.g.*, Tex. Att'y Gen. Op. KP-0007 (2015) at 2 (concluding that the determination of whether the expenditure of public funds is for a public purpose is for the governmental body 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. And it is that authority that could face the statutory civil penalty. TEX. GOV'T CODE § 411.209(a) (prohibiting "[a] state agency or a political subdivision of the state" from providing improper notice). If this authority is not the government court itself, the responsible authority would presumably consult with the government court to determine what government courtrooms and offices are essential to its operation.

[6]Toward that end, these parameters from the Legislature will presumably prevent a governmental body from using pretext to attempt to exclude the licensed carrying of handguns where the law allows it.

SUMMARY

For purposes of section 411.209 of the Government Code, the phrase "premises of any government court" used in Penal Code subsection 46.03(a)(3) generally means either (1) a structure utilized by a court created by the Texas Constitution or the Legislature, or (2) a portion of such a structure. The premises of a "government court or office utilized by the court" means a government courtroom or those offices essential to the operation of the government court. 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, in consultation with the government court.

Very truly yours,

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STAY ON TARGET: CITIES AND FIREARMS

WEBINAR • SEPTEMBER 10, 2015 • 10:30-11:30 A.M. CDT

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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 request RQ-0040-KP (July 24, 2015) asks numerous questions about this provision.);
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, 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 an amusement park;
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, 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 § 411.204; TEX. LABOR CODE § 52.061 et seq.

Note: 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 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, peace officers, 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. 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?

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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.

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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.

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 passed in 2015. The bill is 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. 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 request RQ-0040-KP (July 24, 2015) asks numerous questions about this provision.)

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 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).

And, "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.*

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.

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.

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 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 peace officers, etc.). It is not meant as legal advice.

Activity/Location:	Allowed?	Legal Basis:
	Any Firearm	
Physical premises of a school or educational insititution (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 30.06 and 30.07 signs 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)
	Handguns Open Carry (No License)	
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
	Handgun Concealed Carry (No License)	
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
	Handgun Concealed Carry (With License)	
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)

Activity/Location:	Allowed?	Legal Basis:
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
Physical premises of a school or educational insititution.	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 411.204; Labor Code 52.061 et seq.
	Handgun open carry in belt or shoulder holster (with license)	
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.)

Activity/Location:	Allowed?	Legal Basis:
Government meeting	Yes, unless 30.07 sign posted	Penal Code 30.07; 46.035(c)&(i)
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 insititution.	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(t)
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 411.204; Labor Code 52.061 et seq.
	Rifle/shotgun carry	
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 *handgun* 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 insititution	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)

Activity/Location:	Allowed?	Legal Basis:
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 and 30.07 sign recommended to give license holder notice that court or court office is in building)
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)

Texas Municipal League

Legislative UPDATE

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Licensed Carry and Courts: Attorney General Opinions Confuse the Issues

Two just-released attorney general opinions may call 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 attorney general released his opinion letters on Monday, and they appear to lead to further confusion on the issues. A discussion of each, along with an explanation of their practical effects, follows.

- Tex. Att'y Gen. Op. No. KP-0047 (2015) concludes 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 have been advising for years under the concealed carry law. The previous advice was that a person is prohibited from carrying a firearm into the *entire building* that houses a court or court office.

  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 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."

In the past, it 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 actually shift the risk of compliance onto the license holder to know where he can carry.

- Tex. Att'y Gen. Op. No. KP-0049 (2015) interprets the provisions of S.B. 273, a bill that passed last session. The bill provides that – among other things – the attorney general can sue a state agency or a political subdivision that improperly posts a 30.06 notice.

  As written, the bill applies only to a concealed handgun sign under Texas Penal Code Section 30.06. However, the opinion seems to incorrectly expand the attorney general's authority under the bill to include any sign, including a signs pertaining to carry prohibitions that automatically apply (e.g., the court prohibition discussed above). The opinion also expands the attorney general's authority to investigate *oral* notice that carry is prohibited.

  If a city chooses to comply with the second opinion, and doing so may be wise given the possible fines under the new legislation, it should be noted that improper carrying near a court could still be a crime regardless of signage. The decision to prosecute that felony offense is made by county and district attorneys, not by city officials.

What are the practical effects of the opinions above? Some possible scenarios are these:

- **City (based on advice from city attorney) takes no action:** According to the opinions, a license holder can carry a handgun into any city facility, but may not carry into an actual room that houses a court or court office. No signage is necessary. However, some cities may deem it appropriate to post a sign of some type notifying the license holder that a room houses a court or court office.

- **City (based on advice from city attorney) takes position that a license holder may not enter a certain portion of the building that houses a court or court office:** No signage is necessary. However, some cities may deem it appropriate to post a sign of some type notifying the license holder that the portion of the building houses a court or court office. The attorney general's office claims that it has enforcement authority over

the location of the city's signs and any verbal statements made by city employees to a license holder.

- **City (based on advice from city attorney) takes position that a license holder may not enter the building that houses a court or court office:** Again, no signage is necessary. However, some cities may deem it appropriate to post a sign of some type notifying the license holder that the building houses a court or court office. The attorney general claims that he has enforcement authority over the location of the city's signs and any verbal statements made by city employees to a license holder.

What would the signs mentioned in the bullet points above look like? Some would argue that they should be "criminal trespass by license holder" signs, which would be posted in accordance with the following:

- 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".

A 30.06 or 30.07 sign 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.*

Others would argue that a sign stating that the building, portion of a building, or room houses a court or court office is sufficient. Still others might say that 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. A city can always prohibit licensed carry in the room in which a city council meeting is being conducted by posting the 30.06 and 30.07 signs mentioned above, and may in rare cases have other authority related to firearms. A more detailed paper on the issue is available here.

These opinions did little more than further confuse an already complicated issue. Until this issue is decided by the courts, cities are advised to work closely with their local legal counsel before posting or removing any signs regarding courts and city buildings. We expect that a number of our member cities will have a different interpretation of the law than the attorney general. The

League will work closely with Texas cities on possible legislative proposals to clarify the law to protect the safety of everyone who works in or visits city courts.

Please contact Scott Houston, TML general counsel, at shouston@tml.org or 512-231-7464, with questions.

Mandatory Eminent Domain Reporting

Senate Bill 1812, passed during the 2015 legislative session, requires cities to fill out a web-based form with the comptroller relating to each city's statutory eminent domain authority. The form is due by **February 1, 2016**, and the failure to fill out the form could result in a $1,000 penalty against the city. The electronic reporting form is available at:

http://comptroller.texas.gov/webfile/eminent-domain/

Most of the required information is self-explanatory, but League staff has inserted some commentary below that may be of assistance. The reporting consists of providing the following information:

1. **The entity's full legal name.**

2. **The entity's address and public contact information.**

3. **The name and contact information of the appropriate officer, or other person representing the entity.**

4. **The type of entity.**

   Obviously, "city" is the type of entity. However, the form also allows an economic development corporation (EDC) to file, and it lists Local government Code Section 505.105 as that entity's authority. (While most attorneys would agree that an EDC uses the city's eminent domain authority on its behalf, it may nonetheless make sense to report for the EDC.)

   Cities with other city-created entities should review the eminent domain authority of those entities to determine whether additional forms should be sent to the comptroller on their behalf. Some statutory provisions are very specific (e.g., authority of cities that have created municipal parking authorities or defense base management authorities, or even a city with a charter-created board of a municipally owned electric utility system that has certain financial obligations).

5. **The legal provision(s) granting the entity's eminent domain authority.**

   This section of the form is titled "Eminent Domain Provisions: Codes." It asks "under what code(s) of the law has eminent domain authority been granted to this entity?"

The user selects the appropriate code (e.g., Local Government Code, etc.) and then selects the specific provisions (e.g., 251.001, etc.). Several provisions under each code can be selected by holding down the "control" key while clicking. The process is repeated for each additional code.

Each city should submit its own form after reviewing each of the provisions in these spreadsheets to determine whether they apply to that particular city. The following spreadsheets are available:

- General law cities – basic provisions: Most general law cities will be fine submitting only the provisions listed in this spreadsheet.
- Home rule cities – basic provisions: Most home rule cities will be fine submitting only the provisions listed in this spreadsheet.
- Comprehensive list of all statutory provisions granting eminent domain authority to cities.

6. **The focus or scope of the eminent domain authority granted to the entity.**

   This section of the forms asks "what types of projects and/or purposes does this entity have eminent domain authority."

   For most cities, it makes sense to choose every project/purpose listed, except for "other." (Only those cities with a specific project type that is authorized by law but not listed should choose "other" and enter a description.)

7. **The earliest date the entity had authority to exercise the power of eminent domain.**

   For a city, enter the incorporation month and year in this section.

8. **The entity's taxpayer identification number, if any.**

9. **Whether the entity exercised its eminent domain authority in the preceding calendar year by filing a condemnation petition under Section 21.012, Property Code.**

10. **The entity's Internet website address or, if the entity does not operate an Internet website, contact information to enable the public to obtain information from the entity.**

It may be appropriate to seek the assistance of local legal counsel to advise on the reporting. Please contact Scott Houston, TML's general counsel, with questions at shouston@tml.org or 512-231-7400.

Ethics Commission Releases Contracts Disclosure Tutorials

Section 2252.908 is a new ethics law that was enacted by H.B. 1295 in 2015. It prohibits a city from entering into certain contracts with a business entity unless the business entity submits a form called a disclosure of "interested parties," and the city confirms with the Texas Ethics Commission that it received the form. Although the bill became effective on September 1, 2015, the reporting applies only to a contract entered into on or after January 1, 2016.

Previous editions of the *Legislative Update* have reported in detail on the bill and its implementing rules, as well as linked to the League's Q&A on the new law. The Texas Ethics Commission prepared a web page with its Q&A and video tutorials of how the process is supposed to work. The Commission's online reporting page should go live on January 1, 2016.

Payday Lending Clearinghouse Updates

The League's "Payday Lending Clearinghouse" webpage, available at www.tml.org/payday-updates, includes information related to the regulation of payday and auto title lenders. It is updated from time-to-time to reflect recent developments. Interested city officials should note that ACE Cash Express has filed a petition for review with the Texas Supreme Court seeking to invalidate the City of Denton's ordinance. The petition and other information is available on the page.

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