

## Open Carry in Texas: Are You Prepared?

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### Texas Gun Laws: Prior to 2016

- **Taming the Wild West** – Texas Legislature first restricted carrying of pistols in public in 1871
- **Concealed Carry** – concealed handguns legal in Texas since 1995
- **Open Carry** – only long-barreled weapons, such as shotguns and rifles

### Texas Gun Laws: What's New in 2016?

- **House Bill 910 (Open Carry)** - As of 1/1/16, licensed Texans can openly carry holstered handguns in plain view in public places where concealed handguns are permitted; amended 12+ Texas Codes to remove “concealed” and leave only “handgun”; employers and private property owners can prohibit handguns if proper notice provided
- **Senate Bill 11 (Campus Carry)** – As of 8/1/16, concealed handguns allowed on public college campuses; bill does *not* allow open campus carry
- **Senate Bill 273** – As of 9/1/15, civil penalties for state agencies, cities and counties that wrongfully post signs prohibiting guns from government buildings that are not off-limits. Texans can formally challenge wrongful “no gun” policies of cities and counties

### What is Open Carry?

- Open carry refers to carrying a holstered handgun in plain view
- Handgun not required to be concealed under clothing or vest
- Openly carried handguns, loaded or unloaded, must be carried in shoulder or belt holster
- Openly carried (and concealed) handguns can be loaded

### Rights of Texas Citizens v. Rights of Texas Property Owners

- HB 910 gives Texas citizens right to openly carry handguns anywhere – even on private property -- *unless* expressly prohibited by law *or* property owner provides “effective notice” that guns not allowed
- Private property owners can prohibit handguns (open & concealed), but *only if* affirmative steps taken, *i.e.*, provide “effective notice”
- If do nothing, open and concealed carry allowed (with a few exceptions)
- Law is very specific as to “effective notice”

### Still a “Hot Potato” Issue

- Gun-rights advocates are boycotting retailers that prohibit firearms
- Gun-control advocates are boycotting retailers that allow firearms
- Ongoing push for expansion of law to “constitutional carry” to let Texans openly carry handguns without a license
- Law enforcement statewide creating policies on how to handle open carry issues

## Texans Seeking Licenses to Carry Handguns at Record Pace

- Between Dec. 2015 and Feb. 2016, the state received 136,000 license applications
- That's a 139% increase over the same time period the year before
- Statewide, there are 966,222 active licenses
- DPS has hired more staff and authorized overtime, creating multiple shifts, seven days a week to ensure compliance with statutory time frames for original and renewal applications

Source: *Fort Worth Star Telegram*, 3/30/16

## License to Carry Requirements

A person is eligible to carry a handgun if the person:

- Lived in Texas at least 6 months
- At least 21 years old
- Not been convicted of, or currently charged with, felony or Class A or B misdemeanor
- Lawfully able to purchase handgun under state and federal law
- Pass a background check for mental and criminal histories, is not chemically dependent, or delinquent on taxes or child support
- Take a class and pay a fee
- **(Gov't Code, §411.172)**

## After 1/1/16, Still Illegal to Carry *Any* Firearm in Certain Places

Even with a license, Texas law prohibits firearms on premises of:

- Schools
- Polling places on day of election or while voting taking place
- Courts and offices used by courts
- Racetracks
- Secured areas of airports
- Place of execution

## Handguns Also Prohibited in Other Places *if* Proper Notice Given

Even with a license, Texas law prohibits handguns in the following places:

- **Business that derives at least 51% of sales from alcohol** (if sign is posted as set out in Tex. Gov't Code §411.204)
- **High school, collegiate and professional sporting events** (effective 8/1/16, notice must be given under §30.06 of Penal Code for collegiate sporting events)
- **Correctional facilities**
- **State-licensed hospitals and nursing homes** (if signs are posted as described in Penal Code §§30.06/30.07 & Gov't Code §411.204)
- **Amusement parks** (if notice is given as described in Penal Code §§ 30.06/30.07)
- **Church, synagogue, or other established place of religious worship** (if notice is given as described in Penal Code §§ 30.06/30.07)
- **Room or rooms where government meeting is held that is subject to Open Meetings Act** (if notice is given as per Gov't Code Chapter 551 and as described in Penal Code §§30.06/30.07)

## If "Effective Notice" Given

- **Private Business Owners** - can lawfully prohibit both open and concealed carry
- **Local Governments** - can lawfully prohibit both open and concealed carry, but only in limited situations

## What is "Effective Notice"?

- HB 910 did not change rights of property owners to prohibit handguns/firearms on premises by any reasonable means, including verbally or in writing by card, posted signs, or other document (e.g., handbook policy for employees)



- So, notice can be by oral or written communication
- Oral notice to each new employee, customer, citizen, or visitor may be impractical but is still enforceable
- Can use one, all, or combo, but written notice recommended

### What is Effective Written Notice?

- Penal Code §§30.06/30.07 contains very specific requirements
- Uncertainty as to whether 3.06/3.07 language required for effective written notice or if only required to prosecute criminal trespass
- A simple sign that says “No Guns/Firearms Allowed on Premises” is not necessarily unlawful, but failure to have 3.06/3.07 compliant signs will make it hard to prosecute trespass claims
- Best Practice: post 3.06/3.07 compliant signs

### Sign Requirements Under Texas Penal Code

- Now 2 signs required: §30.06 concealed carry sign and §30.07 open carry sign; signs cannot be combined
- Both §§30.06 and 30.07 contain very specific language for warning license holders that entry with a weapon is prohibited; old §30.06 signs must be updated to comply
- Both businesses and governments should post both signs; appearance, wording, and text size must be exactly as set out in Texas Penal Code
- Signs must have contrasting colors, inch tall text, and specific wording in both English and Spanish
- Signs must be posted at each entrance, including little used service entries
- Signs required to successfully prosecute

### Sign Requirements to Prohibit Concealed Carry Handguns – “30.06 Signs”

Establishments that want to bar concealed carry weapons must post sign that meets the following requirements:

- Must be printed in contrasting colors with block letters at least one inch in height.
- Must be in both English and Spanish.
- Must be displayed in a “conspicuous manner clearly visible to the public.”
- Must have 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.”

### Sign Requirements to Prohibit Open Carry Handguns – “30.07 Signs”

Establishments that want to bar the open carrying of handguns must post sign that meets the following requirements:

- Must be printed in contrasting colors with block letters at least one inch in height.
- Must be in both English and Spanish.
- Must be displayed in a “conspicuous manner clearly visible to the public at each entrance to the property.”
- Must have 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.”

### Can Cities Prohibit Guns in City Building or Facility?

- Cities have very limited authority to prohibit license holders from carrying in city buildings/facilities to which general public has access
- Having license does not convey special right of access to city buildings/facilities not open to public
- City can make certain areas off-limits to all but city employees

### Limitations on Premises Owned/Leased by Governmental Entity

Can't lawfully prohibit either open or concealed carry in property owned/leased by governmental entity *except*:

- **Polling place** during early voting and on election day - 30.06/30.07 signs not required, but recommended



- **Government court or offices utilized by the court** - 30.06/30.07 signs not required, but recommended
- **Room or rooms where government meeting is held that is subject to Open Meetings Act** - if notice is given under Open Meetings Act [Chapter 551, Gov't Code] and as described in Penal Code §§30.06/30.07). City can:
  - Post 30.06/30.07 sign,
  - Include 30.06/30.07 language on agenda and/or cards provided to attendees, and/or
  - Give oral notice

### **Government Buildings That House Courts & Other Offices**

- **Att’y General Opinion KP-0049 (Dec. 21, 2015)** – it is only the courtrooms themselves, and those offices determined to be essential to their operations, from which concealed handguns may be prohibited without risk of incurring civil penalties under Gov’t Code §411.209
- **Att’y General Opinion KP-0047 (Dec. 21, 2015)** – the 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 court, in consultation with the court

### **Rights of Public & Private Employers to Ban Employees From Bringing Guns**

- Neither Gov’t Code §411.203 (Rights of Employers) nor Labor Code §52.061 prevent employers from prohibiting employees with handgun licenses from carrying handguns on “premises” of employers’ business. See, Texas Labor Code, §52.062(b).
- Here, “premises” is defined by §46.035(f)(3), Tex. Penal Code, and means a building or a portion of a building; it does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area, where employee with valid license is expressly permitted by statute to carry.

### **Rights of Public & Private Employers to Ban Employees From Bringing Guns**

- HB 910 – Makes clear that the law “does not prevent or otherwise limit the right of a public or private employer to prohibit persons who are licensed . . . from carrying a handgun on the premises of the business”
- Public and private employers can still prohibit their employees from bringing handguns onto premises; “premises” does not include parking lots or parking garages
- Public and private employers cannot prohibit licensed employees from transporting or storing firearm or ammunition in locked, privately owned vehicle in parking lot, garage, or other parking area provided by employer to employees. (Tex. Labor Code §52.061)

### **State & Local Governments: Unequal Rights of Citizens v. Rights of Employees?**

- **Employees** – state and local governments can prohibit their employees from bringing both open and concealed firearms onto premises
- **Citizens** – state and local governments can only ban concealed guns for citizens in buildings already included on list of approved “gun-free” zones, including courthouses, polling places, hospitals, schools, airports, and buildings where public meetings, such as council meetings, take place.

### **Employer Notice to Employees**

- Texas employers who prohibit anyone – customers, citizens, contractors, vendors, and other vendors -- from carrying concealed or open carry and who post the statutorily required notices need not give additional notice to their employees.
- But still a good idea to have a detailed policy setting out:
  - Reasons for employee safety requirements
  - What to do if employee observes coworker violating policy
  - Exceptions to policy, e.g., licensed peace officers, private vehicles, etc.
- Policy strongly recommended for public and private employers that have different rules for employees and others, e.g., citizens and customers
- Signs not required if only banning employees
- Written notification must be given to employees if every employee not given verbal notice; 30.06/30.07 language that must be included in written policy, procedure, or published notice



## **Employee Vehicles: Public & Private Employees Can Still Store/Transport Firearms (Tex. Labor Code, §52.061)**

Public or private employer may not prohibit employee who:

- Holds license to carry handgun under Subchapter H, Chapter 411, Gov't Code
- Who otherwise lawfully possesses firearm (or ammunition) from transporting or storing a firearm or ammunition the employee is authorized by law to possess in locked, privately owned vehicle in a parking lot, garage, or other parking area employer provides for employees
- Employees not authorized to possess firearm (or ammunition) on any property where prohibited by state or federal law

## **Employee Vehicles: Public & Private Employees Can Still Store/Transport Firearms & Ammunition**

- New law does not alter existing right of employees to transport/store firearms or ammunition in locked, privately owned vehicles in parking lots, garages, or other parking area proved by employer.
- New law removed word “concealed” from §52.061 of Texas Labor Code, so it now applies to both concealed and open carry. Does this mean employees can transport/store firearms and ammo in plain site?
- Right does *not* extend to (Tex. Labor Code, §52.062(a)):
  - Vehicle on any property where prohibited by state or federal law,
  - Vehicle owned/leased by public or private employer used by employee in course and scope of employment, unless employee required to transport or store firearm in official discharge of duties.
  - Employees of school districts, charter schools, private schools; certain leased properties used for drilling/mining of oil, gas or minerals; and property of chemical manufacturers and oil and gas refiners.

## **How Does Your Employee Handbook Treat Handguns & Other Weapons?**

- Are employees prohibited from bringing weapons to work?
- How is “weapons” and/or “guns” defined?
- Policies may use term “firearms” which includes handguns, rifles, and shotguns
- Does policy prohibit only *concealed* carry?
- Does policy say exceptions will be granted as required by law, e.g., licensed employees can have handguns in private vehicle?
- Exception for peace officers employed by city?
- Other exceptions?
- What about employees who come into city hall to pay water bill while off-duty?

## **How Does Your Employee Handbook Treat Handguns & Other Weapons?**

- Some cities require that any exception, including handguns in employees vehicle, be approved by city manager
- In other words, City will grant exceptions to policy as required by law, but approval process means city has notice of who has firearm in their car

## **Employer Liability/Immunity**

- HB 910 does *not* grant employers civil immunity from an incident involving an employee and an openly carried handgun
- This is in contrast to concealed carry law, which expressly provides immunity to public and private employers (except in case of gross negligence) related to handgun and ammo employer is required to allow on property, *i.e.*, stored in employee’s vehicle on employer’s property
  - Presence of firearm/ammo does not constitute failure by employer to provide safe workplace
  - Employer does not have duty to patrol, inspect or secure, investigate, confirm or determine employee’s compliance with law



## Other Issues for Employers

- Employee safety and morale
- Workers' compensation claims
- OSHA's "General Duty" clause requiring employers to provide safe work environment
- Negligent hiring, training, supervision, retention, and training
- Reporting and enforcement of policy violations
- Others . . .

## Wrongful Exclusions of License Holder

### Complaints/Challenges to "No Guns" Policies of Governmental Entities

- SB 273 - passed in 2015 with little opposition; added §411.209 to Gov't Code; took effect 9/1/15.
- Concern that local governments and agencies posting signs prohibiting CHL holders from carrying, despite longstanding laws allowing them to do so
- Law difficult to enforce because no penalties for improperly posted signs
- Purpose to reinforce rights of license holders (under 2003 law) to carry on most property owned/leased by state or local governments
- New law puts teeth in 2003 law; anyone can file complaint with AG if government entity improperly posts signs where guns are allowed

## Wrongful Exclusions of License Holder

### Complaints/Challenges to "No Guns" Policies of Governmental Entities

- Many municipalities took down improper "no gun" signs
- As of March 2016, 50 complaints filed with AG alleging improper signs at zoos, city halls, county appraisal districts, tax offices, museums, and government complexes
- Complainant procedures in §411.209(d) of Gov't Code; must first send written complaint to entity; if no response after 3 days, can file complaint with Texas AG
- AG's office investigates complaint; directs violators to remove improper signs; if not removed within 15 days, AG can pursue legal action and fines
- 1<sup>st</sup> offenses – fine of up to \$1,500/day; 2<sup>nd</sup> offenses up to \$10,500/day

## Criminal Trespass: Bringing Gun on Premises if Proper Notice Given (Penal Code, §§30.06 and 30.07)

- A license holder commits offense if carries handgun on property of another without effective consent and received proper notice that handguns forbidden
- Class C misdemeanor, punishable with fine up to \$200; a gun-holder verbally told to leave, but doesn't, can be charged with Class A misdemeanor, fined up to \$4,000 and sentenced to year in county jail
- Exception to criminal trespass for government buildings - 30.06(e)/30.07(e) contain an exception for premises owned/leased by governmental entity

## Campus Carry

- SB 11 - Beginning 8/1/16, public universities cannot ban concealed carry, but are allowed to propose various "gun-free" zones on campus, e.g., dorms
- SB 11 – does not allow open campus carry; open carry still not permitted at either private or public colleges and universities
- Law permits private universities to opt out and public universities to set up gun-free zones
- Att'y General Opinion KP-0051 (Dec. 21, 2015) – Authority of an institution of higher education to establish certain rules regarding the carrying of handguns on campus
- Still no guns at elementary, middle, or high schools

## Q & A

- **Can Police Stop and Question Anyone Carrying a Weapon?**
- **What Can Police Ask/Not Ask When Questioning Someone?**
- **Is open carry allowed on public transportation, e.g., DART?**



- Is open carry allowed in governmental buildings in areas to which the public has access?  
(Examples: City Hall while a person is paying their water bill; the lobby of the police department)
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(Examples: City Hall while a person is paying their water bill; the lobby of the police department)
- Is open or conceal carry allowed at a municipal court?

**THIS IS NOT LEGAL ADVICE; PLEASE CONTACT YOUR LABOR  
AND EMPLOYMENT ATTORNEY REGARDING YOUR SITUATION**

