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Don't Want the State to Come Knocking? Review Firearms Signage Now to Avoid Civil Penalties

[Section 411.209](#) of the Texas Government Code is a new law that prohibits a city from displaying handgun signage in the wrong place. Specifically it prohibits a city:

from providing notice that a handgun license holder is prohibited from entering or remaining 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) or other place owned or leased by the city unless license holders are actually prohibited by state law from carrying a handgun on the premises or other place.

The new law authorizes the attorney general's office to investigate an alleged violation and seek civil penalties from a city that refuses to remove a sign that the attorney general deems improper.

As written, the bill applies only to a concealed handgun sign under Texas Penal Code Section 30.06. However, an [attorney general opinion](#) issued late last year seems to incorrectly expand the attorney general's authority under the law to include *any* sign, including signs pertaining to carry prohibitions that automatically apply (e.g., on the premises of courts or polling places). The opinion also erroneously expands the attorney general's authority to investigate *oral* notice that carry is prohibited.

The attorney general's office has issued [guidelines governing enforcement](#) of the new law, and will likely soon begin investigating the dozens of complaints it has already received. This makes it a good time for city officials to review their signage based on their interpretation of the law.

Keep in mind that, except for the rare city facility that derives 51 percent or more of its business from the on-premises sale of alcohol, the Texas licensed carry law *does not require any city to take any action or post any sign*.

Where a license holder can carry under the law becomes very complicated very quickly. The League has prepared a [detailed paper](#) on the issues, but – at the risk of oversimplifying – the following is a brief summary of the most common city-related places where the carrying of a handgun by a license holder can be or is prohibited.

1. **Room where body subject to Open Meetings Act is meeting:** This is an *optional prohibition* that requires signage or other written or oral notice to be effective. The only place that any city should display a Penal Code 30.06 and/or 30.07 sign is at the entrance to a room in which a meeting of a body that is subject to the Texas Open Meetings Act is taking place. That posting is optional, and should be based on a city [policy](#) prohibiting licensed carry into such a meeting.
2. **Secure area of a law enforcement facility:** This is an *optional prohibition* that requires signage to be effective. The handgun license law allows a peace officer to temporarily disarm a license holder when a license holder enters a nonpublic, secure portion of a law enforcement facility, if the law enforcement agency provides a gun locker where the peace officer can secure the license holder's handgun and displays certain signage in English and Spanish. This is a limited exception with many [detailed requirements](#).
3. **Activity sponsored by school or education institution:** A person commits a third degree felony if the person intentionally, knowingly, or recklessly possesses or goes with *any* firearm on any grounds or building on which an activity sponsored by a school or educational institution is being conducted, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution. An [attorney general opinion](#) 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.” It is very common for city facilities to host activities sponsored by a school or education institution. During that time, no person may come onto the “grounds” of the facility, and no signage is required.
4. **Polling place during voting:** A person commits a third degree felony if the person intentionally, knowingly, or recklessly possesses or goes with *any* firearm on the premises of a polling place on the day of an election or while early voting is in progress.
5. **Government court or offices utilized by the court:** A person commits a third degree felony if the person intentionally, knowingly, or recklessly possesses or goes with *any*

firearm on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court.

- 6. Secured area of an airport:** A person commits a third degree felony if the person intentionally, knowingly, or recklessly possesses or goes with *any* firearm 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).

Items 3-6 above are state law prohibitions, and none of them requires any signage. However, a recent [attorney general opinion](#) dealt with the “courts prohibition” in number five and 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 courts 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]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.” Pursuant to that advice, one possible option a city could use to address the confusion is to adopt a resolution making findings as to which of its room(s), portion(s) of building(s), or buildings are off-limits based on the [polling place](#) or [court](#) exception.

Again, *no signage is necessary for items 3-6*. However, some cities may deem it appropriate to post a sign of some type notifying the license holder that the area is considered off limits. What would the signs look like? Many would argue that a sign stating that the building, portion of a building, or room houses a prohibited area, such as a court or polling place, would be sufficient. Still others might say that the Penal Code section prohibiting carry into those places could be mentioned:

*Court/Court Office/Polling Place/School Sponsored Activity
All weapons are prohibited pursuant to Penal Code Section 46.03.
An offense under that section is a third degree felony.*

Again, city officials should understand that *they are not required to take any action with regard to licensed carry*. Moreover, the ultimate decision about whether to prosecute a license holder rests with the county or district attorney in most cases. Thus, displaying signage in courts and polling places to assist license holders may or may not affect the outcome of any particular prosecution or lack thereof.

U.S. Supreme Court Stays Clean Power Plant Rules

In response to a request by a coalition of 29 states and state agencies, including Texas, the U.S. Supreme Court has stayed the implementation of the new “Clean Power Plant” proposed rule pending the outcome of further legal challenges. As reported in previous editions of the *Legislative Update*, the U.S. Environmental Protection Agency (EPA) released the rule last year.

The proposal is designed to cut carbon pollution from existing power plants by making them more efficient and less polluting. It will be implemented through a state-federal partnership under which states develop a plan to use either current or new electricity production and pollution control policies to meet the goal of reducing carbon emissions.

Facilities Commission Establishes Center for Alternative Finance and Procurement

The Texas Facilities Commission (TFC) recently announced the establishment of the Center for Alternative Finance and Procurement to “assist governmental entities in the review of proposals, negotiation of interim and comprehensive agreements, and management of qualifying projects under Government Code Chapters 2267 and 2268.”

Passed in 2011, Chapters 2267 and 2268 of the Government Code were enacted by the Texas Legislature to encourage the use of public/private partnerships (P3s) by the state and its political subdivisions to develop “qualifying projects,” which include various infrastructure projects as defined by the law.

The P3 law was presumably passed by the Texas Legislature to serve as enabling legislation that grants additional entities the authority to use P3s. However, P3s are not new to cities. In fact, cities have used various legal authorities for many years to develop P3 projects, such as the Dallas Cowboys Stadium in Arlington.

To use the P3 law, the governing body of a political subdivision, including a city, must “opt-in” to elect to operate under its terms. Once a city has opted in, the law imposes detailed procedures for the procurement and implementation of a qualifying P3 project.

In 2015, the legislature amended the P3 law to provide, among other things, that the Texas Facilities Commission shall establish the “Center for Alternative Finance and Procurement” to: (1) consult with governmental entities regarding best practices for procurement and the financing of qualifying projects; and (2) assist governmental entities in the receipt of proposals, negotiation of interim and comprehensive agreements, and management of qualifying projects under the P3 law.

The bill also provides that any guidelines adopted by a governmental entity under Chapter 2267 must include the Center's role in the review, analysis, or evaluation of the qualifying project. According to a press release, the Center "will ensure value for taxpayer dollars by establishing best practices and providing assistance in all aspects of planning, procurement, financing, as well as negotiations of contracts and ultimately construction of the projects." Samuel Franco has been named the Director of the Center and will be responsible for consulting with stakeholders in both public and private sectors. Mr. Franco can be reached at Samuel.franco@tfc.state.tx.us.

While the P3 law is an option, cities are authorized by other law to develop P3s. Each city should consult with local legal counsel to determine which method best suits its needs.

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