

A TML IRP “Local Officials: *Stronger, Together*” Podcast Cheat Sheet “Firearms and Local Governments: Avoiding a Jam”

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“Constitutional” or “Permitless” Carry

H.B. 1927 (2021) is the so-called “constitutional” or “permitless” carry bill, is known formally as the “Firearm Carry Act of 2021.” The bill authorizes most Texans over 21 years of age to carry a handgun in a concealed manner or openly in a holster, without the requirement to first obtain a handgun license.

It does so by modifying language in the Texas Penal Code to make it a crime to carry “on or about his or her person a handgun” only if he or she “is younger than 21 years of age” or “has been convicted of, in the five-year period preceding the date the instant offense was committed:” certain crimes as outlined in state and federal law. TEX. PENAL CODE § 46.02; 18 U.S.C. § 922(g).

Interestingly, H.B. 1927 does *not* repeal licensed carry. Why leave that bureaucracy in place? At least two reasons: (1) reciprocity – several other states still require a license to carry, and a Texans must have a Texas-issued license to carry to take advantage of that; and (2) ease of purchasing a firearm – license holders get to skip the subsequent background checks. The decision may also be beneficial to employers who want to allow employees to carry, but only if they’ve completed the requirements for a license.

Local Government Regulation of Licensed Carry

The state laws governing where an authorized person can carry a handgun become very complicated, very quickly. The TML Intergovernmental Risk Pool has prepared a detailed paper on the issues (available on www.tmlirp.org at the *Local Officials: Stronger, Together Podcast Series* button). The following is a summary of the most common local government facilities where the carrying of a handgun by a person authorized by law to do so can be – or is by law – prohibited. The paper describes several more.

1. **Room where body subject to Open Meetings Act is meeting:** For unlicensed carriers, this is an *outright ban*; for license holders only, this is an *optional prohibition*. An unlicensed carrier is prohibited from carrying a handgun into the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to the Open Meetings Act, and if the entity provided notice as required by the Open Meetings Act. To the contrary, a license holder isn’t prohibited from carrying into a meeting described above, *unless* the entity provides notice that doing so is prohibited using a Penal Code 30.06 and/or 30.07 sign. Id. § 46.03(a)(14); 46.15(b)(6); 30.06; & 30.07.

*Be aware that some argue that the legislation allows license holders to carry into a local government’s meeting *by right*. In other words, they argue that the local government no longer has the option to provide notice that doing so is prohibited using a Penal Code 30.06 (concealed carry) and/or 30.07 (open carry) sign. That interpretation has not yet been tested through the attorney

general's investigatory process, a formal attorney general opinion, or in court. A detailed discussion of the argument appears in the detailed paper mentioned above.

2. **Premises of employment, if prohibited by the person's employer (including a local government employer),** but an employee may generally leave a handgun in a private, locked car in parking lot. TEX. GOV'T CODE § 411.203; TEX. LABOR CODE § 52.061 et seq.; Tex. Att'y Gen. Op. No. GA-0972 (2012).
3. **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. *Id.* § 46.03(a)(3). Recent litigation hasn't really clarified whether an entire building that houses a court or court offices is off-limits or only the actual rooms that house them.
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. TEX. PENAL CODE § 46.03(a)(2).

Handgun Carry by Local Government Employees

Generally

A local government can, but is not required to, prohibit employee (and volunteer and contractor) carry. A local government can also adopt a written policy expressly allowing it, and a decent number have done so. (Special legislation applies to first responders pursuant to TEX. CIV. PRAC. & REM. CODE § 112.001 et seq.) Local officials who decide to allow carry may wish to consider requiring that an employee obtain a license to carry prior to doing so, but that's not required by law. Always consult with local legal counsel and law enforcement prior to acting on a matter of this importance.

Liability under Federal and State Law

The number one question related to employee carry is "will my local government be liable if an employee with a license is authorized to carry at work and shoots someone?" The answer is "we can't know for sure." Any local government considering whether to allow licensed employees to carry should consult with local legal counsel related to the potential for liability if an employee injures or kill someone with a firearm while on duty.

A person who is shot by a local government employee, or his family if the person dies, is likely to bring a lawsuit. Both federal and state laws could give rise to liability, but both also provide some protections.

In no case should a local government employer tell an employee that his or her job is to "police" their work area. In fact, it should be made clear that the exact opposite is true. Except in the rarest of circumstances when serious bodily injury or deadly force is imminent, the appropriate action is to retreat and summon law enforcement. A workplace violence policy and regular training should include actions employees should take in the event of an active shooter or similar event.