

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

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## Local Government Regulation of Licensed Carry

The state laws governing where a handgun license holder can carry become very complicated, very quickly. The TML Intergovernmental Risk Pool has prepared a detailed paper on the issues (available on [www.tmlirp.org](http://www.tmlirp.org) at the *Local Officials: Stronger, Together Podcast Series* link). The following is a summary of the most common local government facilities where the carrying of a handgun by a license holder can be – or is by law – 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 local government 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 it should be based on a local policy prohibiting licensed carry into such a meeting. TEX. PENAL CODE § 46.035(c)&(i).
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. TEX. GOV’T CODE § 411.207.
3. **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.** *Id.* § 46.03(a)(1). A person commits a third degree felony if the person intentionally, knowingly, or recklessly possesses or goes with *any* firearm in these areas without authorization. A “campus concealed carry exception” applies to this provision and allows a license holder to carry only a *concealed* handgun on the premises of an institution of higher education, including the premises of a junior college 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, subject to rules of the institution adopted only as authorized by state law. TEX. PENAL CODE § 46.03(a)(1); TEX. GOV’T CODE § 411.2031.

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).
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. *Id.* § 46.03(a)(3). Pending litigation may eventually confirm whether an entire building that houses a court or court offices is off-limits or only the actual rooms that house those.
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). *Id.* § 46.03(a)(5).

## **Licensed Carry by Local Government Employees**

### ***Generally***

A local government can, but is not required to, prohibit licensed 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. You should always consult with your local legal counsel 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.