



**City of New Fairview
City Council
Regular Meeting
999 Illinois Lane
Tuesday, September 6, 2022, at 7:00 pm**

REGULAR SESSION

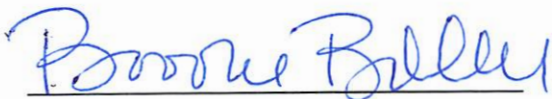
1. **Call to Order and Determination of Quorum**
2. **Pledge to the Flags.**
 - A. **United States of America**
 - B. **Texas Flag Honor the Texas Flag, I pledge allegiance to thee, Texas, one state under God, one and indivisible.**
3. **Public Comment:** The City Council invites persons with comments or observations related to city issues, projects, or policies to briefly address the City Council. Anyone wishing to speak should sign-in with the City Secretary before the beginning of the City Council Meeting. In order to expedite the flow of business and to provide all citizens the opportunity to speak, there is a three-minute limitation on any person addressing the City Council. State law prohibits the City Council from discussing or taking action on any item not listed on the posted agenda.
4. **Consent Agenda:** All matters as Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. An item can be removed from the consent agenda by the City Administrator, Mayor, or any member of the City Council and will be considered after approval of the consent agenda.
 - A. **Approve the City Council Meeting minutes for August 1, 15, and 29, 2022.**
 - B. **Approval of the August 2022 Financial Report**
5. **New Business:** All matters listed in New Business will be discussed and considered separately.
 - A. **Conduct a Public Hearing on the proposed Tax Rate for the 2022 Tax Year, FY 2022-2023.**
 - B. **Conduct a Public Hearing to consider the proposed budget for the fiscal year beginning on October 1, 2022 and ending on September 30, 2023.**
 - C. **Discuss, consider, and act on a Resolution approving a fire protection agreement with East Wise Fire Rescue.**

- D. Discuss, consider, and act on a Joint Ordinance and Boundary Agreement with the City of Fort Worth to adjust the Extraterritorial Jurisdiction between the Cities of New Fairview and Fort Worth in Denton County.
- E. Discuss, consider, and act on a Resolution of the City of New Fairview, Texas, awarding the Drainage Improvement project for Wilson Court and Creasser Lane to JR West Texas Construction for a total of \$426,991.50, and establish a not-to-exceed project contingency of \$50,000.
- F. Receive, consider, and act on a Resolution prohibiting the carrying of firearms within any meeting that is subject to the Open Meetings Act.

- 6. **Executive Session:** Recess to Executive Session to discuss matters relating to real property pursuant to §551.072, Texas Government Code; deliberation of economic development negotiations pursuant to §551.087, Texas Government Code; discuss personnel matters pursuant to §551.074, Texas Government Code; discuss IT network or critical infrastructure security pursuant to §551.089, Texas Government Code; and to consult with the City Attorney pursuant to §551.071, Texas Government Code. The Council may go into closed session for any matter on the agenda at any time, when permitted by Chapter 551, Texas Government Code or Chapter 418, Texas Tax Code. Before going into closed session, a quorum of the Council must be present, the meeting must be convened as an open meeting pursuant to proper notice, the presiding officer must announce that a closed session will be held and must identify the sections of Chapter 551 or 418, Texas Government Code authorizing the closed session.
- 7. **Return to Open Session:** Discuss and take appropriate action, if any, resulting from the discussions conducted in Executive Session.

8. Adjournment

I, the undersigned authority, do hereby certify the above notice of the meeting of the City Council of New Fairview, is a true and correct copy of the said notice that I posted on the official posting place at New Fairview City Hall, FM 407, New Fairview, Texas, a place of convenience and readily accessible to the general public at all times, and on its website, said notice being posted this 2nd day of September, 2022 at 5:00 PM at least 72 hours proceeding the meeting time.



Brooke Boller, City Secretary

SEAL:



This facility is wheelchair accessible; parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary at City Hall 817-638-5366 or fax 817-638-5369 or by email at citysecretary@newfairview.org for further information.



**City of New Fairview
City Council Minutes
Monday, August 1, 2022**

THE CITY COUNCIL CONVENED INTO A CITY COUNCIL MEETING THE SAME BEING OPEN TO THE PUBLIC, THE 1st DAY OF AUGUST IN THE NEW FAIRVIEW CITY HALL AND NOTICE OF SAID MEETING GIVING THE TIME PLACE AND SUBJECT THEREFORE HAVING BEEN POSTED AS PRESCRIBED BY ARTICLE 5 OF THE TEXAS GOVERNMENT CODE WITH THE FOLLOWING MEMBERS PRESENT:

CITY COUNCIL

Mayor John Taylor

Mayor Pro Tem Steven King

Place 1 Councilwoman Harvey Lynn Burger

Place 2 Councilman John Fissette

Place 3 Councilman Walter Clements

Place 5 Councilman Jimmy Royston

City Staff

John Cabrales Jr, City Administrator

Brooke Boller, City Secretary (Virtual)

Roberta (Robin) Cross, City Attorney

WORK SESSION

- 1. Call to Order and Determination of Quorum (Work Session called to order by Mayor John Taylor at 7:00 pm; Roll Call with the above-mentioned names.)**
- 2. Receive a report and hold a discussion on residential bulky item collection services. Council heard for City Administrator John Cabrales on the results from the survey city staff placed online. City Administrator recommended that this item be moved to an action item at a later date.**
- 3. Receive a report and hold a discussion regarding the FY 2021-22 and FY 2022-23 Annual Budget. Council received a presentation from City Administrator John Cabrales and Finance Director Michele Strickler.**
- 4. Adjournment
Meeting was adjourned at 7:37pm by Mayor John Taylor.**

REGULAR SESSION

1. **Call to Order and Determination of Quorum (Work Session called to order by Mayor John Taylor at 7:38 pm; Roll Call with the above-mentioned names.)**
2. **Pledge to the Flags.**
 - A. **United States of America**
 - B. **Texas Flag Honor the Texas Flag, I pledge allegiance to thee, Texas, one state under God, one and indivisible.**
3. **Public Comment:** The City Council invites persons with comments or observations related to city issues, projects, or policies to briefly address the City Council. Anyone wishing to speak should sign-in with the City Secretary before the beginning of the City Council Meeting. In order to expedite the flow of business and to provide all citizens the opportunity to speak, there is a three-minute limitation on any person addressing the City Council. State law prohibits the City Council from discussing or taking action on any item not listed on the posted agenda.
Nelson Craig: Spoke on the principals of governance, conduct of council members, residence representation.
Nema House: Spoke on concerns with Flacon Ridge
Robin Craig: Spoke on concerns with Falcon Ridge.
4. **Consent Agenda:** All matters as Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. An item can be removed from the consent agenda by the City Administrator, Mayor, or any member of the City Council and will be considered after approval of the consent agenda.
 - A. Approve the City Council Meeting minutes and Joint Meeting with Planning and Zoning for July 18, 2022.
Corrections needed to be made and brought back to Council for approval.
5. **New Business:** All matters listed in New Business will be discussed and considered separately.
 - A. Receive, consider, and act on an Ordinance approving the 2022 Annual Service Plan Update to the Service and Assessment Plan, including the Assessment Roll, for the Constellation Lake Public Improvement District in accordance with Chapter 372, Local Government Code, as amended.
Motion: Councilman John Fissette
Second: Councilman Jimmy Royston
Vote: All in Favor
Result: Motion Passed as written
 - B. Receive, consider, and act on a Resolution to enter into an Interlocal Cooperative Agreement with the Texas Department of Public Safety for participating in the Failure to Appear program.

Motion: Councilman John Fissette
Second: Councilman Walter Clements
Vote: All in Favor
Result: Motion passed as written

- C. Receive, consider, and act on a Resolution authorizing the City Administrator to enter into a contract for improvements to City Hall and the Multipurpose Building at the New Fairview municipal complex.

Motion: Councilman John Fissette
Second: Councilman Walter Clements
Vote: All in Favor
Result: Motion passed as written

- D. Receive, consider, and act on an Ordinance amending Chapter 8 “General Offenses and Additional Provisions,” of the New Fairview City Code, adding a new Article 8.06, establishing Child Safety Zones and distance restrictions for registered sex offenders.

Motion: Councilman Walter Clements
Second: Councilman Harvey Lynn Burger
Vote: All in Favor
Result: Motion passed as written

- E. Receive, consider, and act on a Resolution authorizing the City Administrator to work with the Falcon Ridge Developer to put the streets and drainage easement in a condition that is acceptable to the city and to move forward with an agreement to accept the streets, streetlights and drainage easements.

Motion: Councilman Walter Clements
Second:
Vote:
Result: Motion could not get a second so motion failed.

6. **Executive Session:** Recess to Executive Session to discuss matters relating to real property pursuant to §551.072, Texas Government Code; deliberation of economic development negotiations pursuant to §551.087, Texas Government Code; discuss personnel matters pursuant to §551.074, Texas Government Code; discuss IT network or critical infrastructure security pursuant to §551.089, Texas Government Code; and to consult with the City Attorney pursuant to §551.071, Texas Government Code. The Council may go into closed session for any matter on the agenda at any time, when permitted by Chapter 551, Texas Government Code or Chapter 418, Texas Tax Code. Before going into closed session, a quorum of the Council must be present, the meeting must be convened as an open meeting pursuant to proper notice, the presiding officer must announce that a closed session will be held and must identify the sections of Chapter 551 or 418, Texas Government Code authorizing the closed session.

Council broke for executive session at 8:45 pm

7. **Return to Open Session:** Discuss and take appropriate action, if any, resulting from the discussions conducted in Executive Session.

Council returned from executive session at 9:07 pm

8. Adjournment

Motion: Councilman Walter Clements

Second: Mayor Pro Tem Steven King

Vote: All in Favor

Result: Meeting adjourned at 9:08 pm

MINUTES APPROVED ON THIS, THE 6th DAY OF SEPTEMBER 2022:

John Taylor, Mayor

Brooke Boller, City Secretary

**City of New Fairview
City Council Minutes
Monday, August 15, 2022**

THE CITY COUNCIL CONVENED INTO A CITY COUNCIL MEETING THE SAME BEING OPEN TO THE PUBLIC, THE 15th DAY OF AUGUST IN THE NEW FAIRVIEW CITY HALL AND NOTICE OF SAID MEETING GIVING THE TIME PLACE AND SUBJECT THEREFORE HAVING BEEN POSTED AS PRESCRIBED BY ARTICLE 5 OF THE TEXAS GOVERNMENT CODE WITH THE FOLLOWING MEMBERS PRESENT:

CITY COUNCIL

Mayor John Taylor

Mayor Pro Tem Steven King

Place 1 Councilwoman Harvey Lynn Burger

Place 2 Councilman John Fissette

Place 3 Councilman Walter Clements

Place 5 Councilman Jimmy Royston

City Staff

John Cabrales Jr, City Administrator

Brooke Boller, City Secretary

Roberta (Robin) Cross, City Attorney (Virtual)

WORK SESSION

- 1. Call to Order and Determination of Quorum (Work Session called to order by Mayor John Taylor at 7:00 pm; Roll Call with the above-mentioned names.)**
- 2. Receive a report and hold a discussion regarding the FY 2021-22 and FY 2022-23 Annual Budget.
Council received a presentation from City Administrator John Cabrales & Contract Finance Director Michele Strickler.
Council Comments:
Mayor Pro Tem stated he would like to see an additional increase of 5% for Joshua Barnwell. Councilman John Fissette stated he would like to see money set aside for a farmers market in the budget as well as a blinking emergency lights for the EWFR & EMS when they are exiting onto FM 407 for a call.**
- 3. Receive a report and hold a discussion regarding amending Ordinance 2010-04-152 governing on-site sewage facilities.
Council heard a presentation given by City Administrator stating that the city follows the state regulation of ½ acre lots and some of council would like to see that changed to the County regulations of 1 acre lots per septic system.**

Council Comment:

Councilman John Fissette and Councilman Walter Clements requested that a professional in the filed with no ties to the City of New Fairview nor with Denton or Wise County come and give their opinion on the matter as a non-biased person.

4. **Adjournment**

Meeting was adjourned at 9:41 pm by Mayor John Taylor.

REGULAR SESSION

5. **Call to Order and Determination of Quorum (Work Session called to order by Mayor John Taylor at 9:41 pm; Roll Call with the above-mentioned names.)**

1. **Pledge to the Flags.**

A. United States of America

B. Texas Flag Honor the Texas Flag, I pledge allegiance to thee, Texas, one state under God, one and indivisible.

2. **Public Comment:** The City Council invites persons with comments or observations related to city issues, projects, or policies to briefly address the City Council. Anyone wishing to speak should sign-in with the City Secretary before the beginning of the City Council Meeting. In order to expedite the flow of business and to provide all citizens the opportunity to speak, there is a three-minute limitation on any person addressing the City Council. State law prohibits the City Council from discussing or taking action on any item not listed on the posted agenda.

3. **Consent Agenda:** All matters as Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. An item can be removed from the consent agenda by the City Administrator, Mayor, or any member of the City Council and will be considered after approval of the consent agenda.

A. Approve the City Council Meeting minutes for July 18, and Joint Meeting with Planning and Zoning for July 18.

B. Approval of the July 2022 Financial Reports.

Motion: Councilman Walter Clements

Second: Councilman John Fissette

Vote: All in Favor

Result: Minutes for July18, and Joint Meeting with Planning and Zoning for July 18 were approved. July 2022 Financial report was approved.

4. **New Business:** All matters listed in New Business will be discussed and considered separately.

- A. Receive, consider, and act on a Resolution calling Special Meetings on August 29, and September 12, and re-scheduling the September 5 Regular Meeting to September 6, 2022.
Motion: Councilman John Fissette
Second: Councilman Walter Clements
Vote: All in Favor
Result: Resolution calling Special Meetings on August 29, and September 12, and re-scheduling the September 5 Regular Meeting to September 6, 2022 was approved.

 - B. Hold a public hearing regarding an amendment to the City's TxCDBG Contract CDV21-0100.
Opened at 9:47 pm
Closed at 9:53 pm
Mayor John Taylor open the public hearing, then City administrator John Cabrales spoke on why the public hearing was being held. There was no public comments, the public meeting was closed.

 - C. Receive and consider the Section 3 requirements as required for the City's TxCDBG contract CDV21-0100.
City Administrator John Cabrales gave a presentation.

 - D. Receive, consider, and act to approve a Resolution regarding Civil Rights and related policies for the City's TxCDBG program.
Motion: Councilman Walter Clements
Second: Councilman John Fissette
Vote: All in Favor
Result: Resolution regarding Civil Rights and related policies for the City's TxCDBG program passed.

 - E. Receive, consider, and act to approve a Resolution approving an amendment to the City's TxCDBG Contract CDV21-0100.
Motion: Councilman John Fissette
Second: Councilman Walter Clements
Vote: All in Favor
Result: Resolution approving an amendment to the City's TxCDBG Contract CDV21-0100 passed.
5. **Executive Session:** Recess to Executive Session to discuss matters relating to real property pursuant to §551.072, Texas Government Code; deliberation of economic development negotiations pursuant to §551.087, Texas Government Code; discuss personnel matters pursuant to §551.074, Texas Government Code; discuss IT network or critical infrastructure security pursuant to §551.089, Texas Government Code; and to

consult with the City Attorney pursuant to §551.071, Texas Government Code. The Council may go into closed session for any matter on the agenda at any time, when permitted by Chapter 551, Texas Government Code or Chapter 418, Texas Tax Code. Before going into closed session, a quorum of the Council must be present, the meeting must be convened as an open meeting pursuant to proper notice, the presiding officer must announce that a closed session will be held and must identify the sections of Chapter 551 or 418, Texas Government Code authorizing the closed session.

6. **Return to Open Session:** Discuss and take appropriate action, if any, resulting from the discussions conducted in Executive Session.

7. Adjournment
Motion: Councilman Walter Clements
Second: Councilman John Fissette
Vote: All in Favor
Result: Meeting was adjourned at 10:04 pm.

MINUTES APPROVED ON THIS, THE 6th DAY OF SEPTEMBER 2022:

John Taylor, Mayor

Brooke Boller, City Secretary



**City of New Fairview
City Council Minutes
Monday, August 29, 2022**

THE CITY COUNCIL CONVENED INTO A CITY COUNCIL MEETING THE SAME BEING OPEN TO THE PUBLIC, THE 29th DAY OF AUGUST IN THE NEW FAIRVIEW CITY HALL AND NOTICE OF SAID MEETING GIVING THE TIME PLACE AND SUBJECT THEREFORE HAVING BEEN POSTED AS PRESCRIBED BY ARTICLE 5 OF THE TEXAS GOVERNMENT CODE WITH THE FOLLOWING MEMBERS PRESENT:

CITY COUNCIL

Mayor John Taylor

Mayor Pro Tem Steven King

Place 1 Councilwoman Harvey Lynn Burger

Place 2 Councilman John Fissette

Place 3 Councilman Walter Clements

Place 5 Councilman Jimmy Royston

City Staff

John Cabrales Jr, City Administrator

Brooke Boller, City Secretary (Virtual)

Patty Akers, City Attorney

WORK SESSION

- 1. Call to Order and Determination of Quorum (Work Session called to order by Mayor John Taylor at 8:56 pm; Roll Call with the above-mentioned names.)**
- 2. Receive a report and hold a discussion regarding the FY 2021-22 and FY 2022-23 Annual Budgets.
Council received a presentation from City Administrator John Cabrales Jr.
Council Comments:
Councilman John Fissette stated he would like to see a 10% increase across the board in Public Safety. Mayor Pro Tem Steven King asked if the additional increase of 5% for Joshua Barnwell had been made. City Administrator John Cabrales informed Councilman King that there was not a consensus for the increase.**

3. Adjournment
Motion: Councilman Walter Clements
Second: Councilman Jimmy Royston
Vote: All in Favor
Results: Meeting was adjourned at 10:17 pm.

REGULAR SESSION

1. **Call to Order and Determination of Quorum (Work Session called to order by Mayor John Taylor at 7:00 pm; Roll Call with the above-mentioned names.)**
2. **Pledge to the Flags.**
 - A. **United States of America**
 - B. **Texas Flag Honor the Texas Flag, I pledge allegiance to thee, Texas, one state under God, one and indivisible.**
3. **Public Comment:** The City Council invites persons with comments or observations related to city issues, projects, or policies to briefly address the City Council. Anyone wishing to speak should sign-in with the City Secretary before the beginning of the City Council Meeting. In order to expedite the flow of business and to provide all citizens the opportunity to speak, there is a three-minute limitation on any person addressing the City Council. State law prohibits the City Council from discussing or taking action on any item not listed on the posted agenda.
Iris Cook- Spoke on the concerns she has with Paloma Ranch and the problems she is already having with Ph 1 & 2 of Paloma. She spoke about her concern for traffic and requested that council consider placing a 4-way stop light at Dove Hollow Lane and S. County Line Rd. She also brought up the concern of the flood zone and requested that council consider 1-5 acre lots opposed to ½ acre lots.

Frank Beck- Also spoke on his concerns with Paloma Ranch. He is getting trash and debris in his yard when it rains. The contractors have not been managing the trenches so he has had to mow them down in order to see oncoming traffic. The construction workers have also been parking in the middle of the road on S. County Line Rd. Mr. Beck spoke on the concern he has with the water pressure and has requested that council hold the developer accountable for upgrading the water system as he has already lost water 5 times this year.
4. **Consent Agenda:** All matters as Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. An item can be removed from the consent agenda by the City Administrator, Mayor, or any member of the City Council and will be considered after approval of the consent agenda.
5. **New Business:** All matters listed in New Business will be discussed and considered separately.

- A. Discuss and consider a Resolution approving a Development Agreement with Dove Hollow Development LLC for Paloma Ranch Estates Phases 3 & 4 containing 179.779 acres in the James C. Jack Survey, Abstract No.679, Denton County, Texas generally located east of S. County Line Road and south of Dove Hollow Lane.

Motion: Mayor Pro Tem Steven King

Second: Councilman Walter Clements

Vote: FOR: Councilman John Fissette, Councilman Walter Clements, Mayor Pro Tem Steven King

AGAINST: Councilman Jimmy Royston, Councilman Harvey Lynn Burger

Results: Resolution approving a Development Agreement with Dove Hollow Development LLC for Paloma Ranch Estates Phases 3 & 4 containing 179.779 acres in the James C. Jack Survey, Abstract No.679, Denton County, Texas generally located east of S. County Line Road and south of Dove Hollow Lane was approved.

- B. Discuss and consider an amendment to the Development Agreement with Dove Hollow Development LLC Paloma Ranch Phases 1 and 2, dated May 28, 2020, as to 15.563 acres to authorize one-half acre lots.

Motion: Mayor Pro Tem Steven King

Second: Councilman John Fissette

Vote: FOR: Councilman John Fissette, Councilman Walter Clements, Mayor Pro Tem Steven King

AGAINST: Councilman Jimmy Royston, Councilman Harvey Lynn Burger

Results: An amendment to the Development Agreement with Dove Hollow Development LLC Paloma Ranch Phases 1 and 2, dated May 28, 2020, as to 15.563 acres to authorize one-half acre lots passed.

- C. Discuss and consider action approving an annexation services agreement between the City of New Fairview and Dove Hollow Development LLC for 179.779 acres in the James C. Jack Survey, Abstract No.679, Denton County, Texas generally located east of S. County Line Road and south of Dove Hollow Lane.

Motion: Councilman Walter Clements

Second: Councilman John Fissette

Vote: FOR: Councilman John Fissette, Councilman Walter Clements, Mayor Pro Tem Steven King

AGAINST: Councilman Jimmy Royston, Councilman Harvey Lynn Burger

Results: An annexation services agreement between the City of New Fairview and Dove Hollow Development LLC for 179.779 acres in the James C. Jack Survey, Abstract No.679, Denton County, Texas generally located east of S. County Line Road and south of Dove Hollow Lane passed.

- D. Hold a public hearing and consider an Ordinance for the Annexation of 179.779 acres in the James C. Jack Survey, Abstract No.679, Denton County, Texas generally located east of S. County Line Road and south of Dove Hollow Lane.

Public Meeting Opened at 8:16 pm

Iris Cook- Spoke on her concerns regarding Paloma Ranch

Frank Beck- Spoke on his concerns regarding Paloma Ranch

Public Meeting Closed at 8:21 pm

Motion: Mayor Pro Tem Steven King

Second: Councilman John Fissette

Vote: FOR: Councilman John Fissette, Councilman Walter Clements, Mayor Pro Tem Steven King

AGAINST: Councilman Jimmy Royston, Councilman Harvey Lynn Burger

Results: Ordinance for the Annexation of 179.779 acres in the James C. Jack Survey, Abstract No.679, Denton County, Texas generally located east of S. County Line Road and south of Dove Hollow Lane passed.

- E. Hold a public hearing and consider an Ordinance for the zoning of 179.779 acres in the James C. Jack Survey, Abstract No.679, Denton County, Texas and rezoning of 15.563 acres currently zoned (PD) Planned Development generally located east of S. County Line Road and south of Dove Hollow Lane to (PD) Planned Development for single family residential on one half (1/2) acre lots.

Public Meeting Opened at 8:16 pm

Public Meeting Closed at 8:21 pm

Motion: Councilman Walter Clements

Second: Mayor Pro Tem Steven King

Vote: FOR: Councilman John Fissette, Councilman Walter Clements, Mayor Pro Tem Steven King

AGAINST: Councilman Jimmy Royston, Councilman Harvey Lynn Burger

Results: Ordinance for the zoning of 179.779 acres in the James C. Jack Survey, Abstract No.679, Denton County, Texas and rezoning of 15.563 acres currently zoned (PD) Planned Development generally located east of S. County Line Road and south of Dove Hollow Lane to (PD) Planned Development for single family residential on one half (1/2) acre lots passed.

- F. Consider the approval of a preliminary plat of Paloma Ranch Estates Phases 3 & 4 containing 195.342 acres in the James C. Jack Survey, Abstract No.679, Denton County, Texas generally located east of S. County Line Road and south of Dove Hollow Lane

Motion: Councilman John Fissette

Second: Mayor Pro Tem Steven King

Vote: FOR: Councilman John Fissette, Councilman Walter Clements, Mayor Pro Tem Steven King

AGAINST: Councilman Jimmy Royston, Councilman Harvey Lynn Burger
Results: Preliminary plat of Paloma Ranch Estates Phases 3 & 4 containing 195.342 acres in the James C. Jack Survey, Abstract No.679, Denton County, Texas generally located east of S. County Line Road and south of Dove Hollow Lane was approved.

G. Discuss, consider, and act on a Resolution disapproving of the Denton Central Appraisal District 2023 Budget.

Motion: Councilman Walter Clements

Second: Councilman John Fissette

Vote: All in Favor

Results: Resolution disapproving of the Denton Central Appraisal District 2023 Budget passed.

6. **Executive Session:** Recess to Executive Session to discuss matters relating to real property pursuant to §551.072, Texas Government Code; deliberation of economic development negotiations pursuant to §551.087, Texas Government Code; discuss personnel matters pursuant to §551.074, Texas Government Code; discuss IT network or critical infrastructure security pursuant to §551.089, Texas Government Code; and to consult with the City Attorney pursuant to §551.071, Texas Government Code. The Council may go into closed session for any matter on the agenda at any time, when permitted by Chapter 551, Texas Government Code or Chapter 418, Texas Tax Code. Before going into closed session, a quorum of the Council must be present, the meeting must be convened as an open meeting pursuant to proper notice, the presiding officer must announce that a closed session will be held and must identify the sections of Chapter 551 or 418, Texas Government Code authorizing the closed session.

7. **Return to Open Session:** Discuss and take appropriate action, if any, resulting from the discussions conducted in Executive Session.

8. **Adjournment**

Motion: Councilman Walter Clements

Second: Councilman Jimmy Royston

Vote: All in Favor

Results: Meeting was adjourned at 8:50 pm.

MINUTES APPROVED ON THIS, THE 6th DAY OF SEPTEMBER 2022:

John Taylor, Mayor

Brooke Boller, City Secretary



AGENDA ITEM: 5A

**CITY COUNCIL
AGENDA MEMO**

Prepared By: John Cabrales Jr, City Administrator

September 6, 2022

Public Hearing on Proposed 2022 Tax Rate

DESCRIPTION:

Conduct a Public Hearing on the proposed Tax Rate for the 2022 Tax Year.

BACKGROUND INFORMATION:

Truth in Taxation requires one public hearing before implementing a tax rate if a rate is considered which will exceed the lower of the No New Revenue Rate or the Voter Approved Rate. The No New Revenue Rate is generally equal to the prior year's taxes divided by the current taxable value of properties that were also on the tax roll in the prior year.

The proposed tax rate of \$0.216384 per \$100 valuation for the 2022 Tax Year (Fiscal Year 2022-23), is the same as the Voter Approved Rate of \$0.216384 per \$100 valuation but exceeds the No New Revenue Rate of \$0.198932 per \$100 valuation, so the public hearing is required.

FINANCIAL CONSIDERATION:

FY 2022-2023 Proposed Budget will contain the projected revenues and expenses for the City.

RECOMMENDED MOTIONS:

None.

ATTACHMENT(S):

None.



**CITY COUNCIL
AGENDA MEMO**

Prepared By: John Cabrales Jr, City Administrator

September 6, 2022

Public Hearing on the FY 2022-2023 Proposed Budget

DESCRIPTION:

Conduct a Public Hearing to consider the proposed budget for the fiscal year beginning on October 1, 2022, and ending on September 30, 2023.

BACKGROUND INFORMATION:

The City is required by Section 102.006 of the Texas Local Government Code to hold a public hearing on the proposed budget. Notice for the public hearing was posted on the city website and in the *Wise County Messenger*. During the public hearing on the proposed budget, all interested persons shall be given the opportunity to be heard, either for or against, any item of the proposed budget.

The Fiscal Year 2022-2023 Proposed Budget was filed with the City Secretary and distributed to the City Council on August 15, 2022. The proposed budget has been on file for review at City Hall and on the City's internet website. The City Council has received presentations, held discussions, and had the opportunity to receive citizen comments on the following dates.

August 1	Budget Workshop (Regular Meeting)
August 15	Budget Workshop (Regular Meeting)
August 29	Budget Workshop (Special Meeting)
September 6	Public Hearing on Tax Rate (Regular Meeting)
September 6	Public Hearing on Budget (Regular Meeting Meeting)
September 12	Adoption of Tax Rate and Budget (Special Meeting)

FINANCIAL CONSIDERATION:

FY 2022-2023 Proposed Budget will contain the projected revenues and expenses for the City.

RECOMMENDED MOTIONS:

None.

ATTACHMENT(S):

None.



CITY COUNCIL AGENDA MEMO

Prepared By: John Cabrales Jr, City Administrator

September 6, 2022

East Wise Fire Rescue Fire Protection Agreement

DESCRIPTION:

Discuss, consider, and act on a Resolution approving a fire protection agreement with East Wise Fire Rescue.

BACKGROUND INFORMATION:

The Wise County portion of the City of New Fairview is located within the fire protection service area of the East Wise Fire Rescue (EWFR) Department. EWFR has been providing fire protection service for the residents of New Fairview for several years. However, the City and EWFR have never had a formal agreement to provide this service.

This agreement is made to formalize the longstanding relationship by and between the City of New Fairview and East Wise Fire Rescue (EWFR) for fire protection or prevention, rescue, and assist emergency medical services and/or hazardous material services. The term of this Agreement is from the Effective Date to and including September 30, 2023.

As part of this agreement, EWFR will maintain needed emergency response vehicles and equipment; make reasonable effort to maintain the lowest possible fire insurance classification and rate for property within the city; continue to maintain a Fire Chief; and participate in drills and training by all active fire fighters. EWFR will also enter into a written Mutual Aid Agreement with the Justin Volunteer Fire Department for fire protection, emergency medical, and related services, to all citizens of the CITY residing within the City limits of New Fairview within Denton County. The Mutual Aid Agreement must be finalized within six months of the effective date of this agreement.

The City shall provide and maintain a fire station facility and grounds for the benefit of EWFR, and its various activities. The City may, at its option and discretion, convey, lend, or provide equipment, materials or assistance to EWFR, as the City may deem appropriate. However, this shall be under such terms and conditions as the City may impose and shall not in any way alter

EWFR's obligations to provide full fire protection and emergency medical services. The City will pay for these services as listed below in the Financial Consideration Section.

Staff recommends approval of the Resolution.

FINANCIAL CONSIDERATION:

The CITY shall pay to EWFR fixed sum of twenty-six thousand and four hundred dollars (\$26,400.00) annually. This amount will be paid monthly at two-thousand and two hundred dollars (\$2,200.00) per month.

RECOMMENDED MOTIONS:

I move to **Approve/Deny** a Resolution approving a fire protection agreement with East Wise Fire Rescue.

ATTACHMENT(S):

1. East Wise Fire Rescue Agreement
2. Resolution 202209-01-308

FIRE PROTECTION AGREEMENT

This agreement is made to formalize the longstanding relationship by and between the City of New Fairview, Texas (“City”), a Type A general-law municipality of the State of Texas, and the EAST WISE FIRE RESCUE (“EWFR”), a Texas non-profit organization (collectively referred to as the “Parties”) that is operated by its members, exempt from state sales tax and franchise tax, and organized to provide an emergency response involving fire protection or prevention, rescue, emergency medical, or hazardous material response services.

For and in consideration of the mutual agreements, promises, and conditions set forth herein, the Parties hereby agree, and contract as follows:

This Agreement is to provide fire protection services within the corporate limits of the City. This Agreement is effective as of September 7, 2022 or the last date on which a party signs below, whichever occurs later (the “Effective Date”).

Article I. EWFR shall

- A. Use emergency response vehicles and equipment, to respond to emergency response requests within the corporate limits of the City of New Fairview, Texas at all times.
- B. Cooperate with City in every reasonable and available effort to maintain the lowest possible fire insurance classification and rate for property within the City.
- C. Continue to maintain a Fire Chief, who shall assume the customary responsibilities and duties placed upon such position as Chief:
 - 1) Appoint and maintain a member as EWFR’s qualified and certified training/certification officer, and safety officer(s) with proper and necessary training and qualifications.
 - 2) Cause to be prepared and submitted to City not less than ninety (90) days prior to expiration of the City’s fiscal year, a proposed budget for the upcoming fiscal year containing proposed expenditures, together with an itemization of equipment needed, and any requests deemed appropriate by EWFR.
 - 3) Attend meetings of the City Council as may be requested by the City.
 - 4) Execute on behalf of EWFR, such documents, applications, certifications, proclamations, recognitions, and awards as are necessary and proper to the cooperative efforts of City and EWFR.
 - 5) Promulgate and enforce standards of attendance and participation in EWFR drills and training by all active fire fighters.

Article II.
City shall

Provide and maintain a fire station facility and grounds for benefit of EWFR, and its various activities.

Article III.
EWFR shall

- A. Acquire and at all times maintain in force and effect such policies of general liability, automobile, worker's compensation, disability, property damage, including fire and extended coverage, insurance covering EWFR and its firefighters and EWFR-owned vehicles and equipment in such amounts as the City deems necessary and appropriate for each person and occurrence for bodily injury or death and for injury to or destruction of property or as required by law, as well as such other insurance coverage as the City deems necessary and advisable, and make proof of such coverage available to the City for examination, inquiry, and copying at all reasonable times.
- B. Provide to the EWFR fire fighters such worker's compensation and disability insurance coverages as are required by law or otherwise deemed proper by City. In each event, EWFR and its fire fighters shall be informed of such coverages, if any, and provided with a copy of the policy or plan document and given notice of any discontinuance.
- C. Provide to the EWFR firefighters such other benefits as it may deem proper and, in such instance, notify the EWFR and its firefighters of its inception, terms, and discontinuance.

Article IV.

In this agreement, emergency response shall mean fire protection or prevention, rescue, assist emergency medical services and/or hazardous material, whether referring to services or equipment.

Article V.

This agreement is performable in Wise County, Texas and shall be interpreted and executed in accordance with the laws of the State of Texas and the ordinances of the City of New Fairview, Texas.

Article VI.

The obligations of this agreement cannot be assumed or assigned and shall remain in force and effect until modified by mutual agreement. Should either party believe the other not in compliance with this agreement, written notice of the matter shall be given to the other who shall have ten (10) days to remedy or resolve the matter. If such resolution is not accomplished, the complaining party may declare this agreement terminated. Should either party desire to terminate this agreement for

any other reason, the party shall give the other reasonable notice, and not less than ninety (90) days' notice of such desire to terminate. Until the date of termination, each party shall continue full performance as set forth herein.

The parties agree to review the terms of this agreement every year to determine what, if any, changes should be made. For the orderly flow of information and notice between the parties, the City Administrator shall be the designated representative for City, and the Fire Chief for the EWFR.

Article VII.

This Agreement shall extend to and be binding upon the parties and their respective successors and assignees; provided, however, that the Agreement may not be assigned without the written consent of both parties.

Article VIII.

Venue and jurisdiction of any suit or right or cause of action arising under or in connection with this Agreement shall be exclusively in Wise County, Texas, and any court of competent jurisdiction shall interpret this Agreement in accordance with the laws of the State of Texas.

Article IX.

Nothing contained in the Agreement shall be deemed or construed by the parties hereto or any other third party to create the relationship of principal and agent, partnership, joint venture, or of any other association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any acts of the parties hereto shall be deemed to create any other relationship between the parties other than the relationship of the City and the EWFR as those terms are understood herein.

Article X.

EWFR AGREES TO SAVE, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, INCLUDING REASONABLE ATTORNEY'S FEES, FOR INJURY, SERIOUS BODILY INJURY TO OR DEATH TO ANY PERSON, OR FOR DAMAGES TO ANY REAL OR PRSONAL PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES PROVIDED UNDER THIS AGREEMENT FOR WHICH THERE IS NO INSURANCE COVERAGE AS REQUIRED BY SUBPARAGRAPH II (C) ABOVE.

Article XI.

Should any provision herein be invalid for any reason, same shall not affect the validity of the remaining provisions and the Agreement if same may be given effect without the invalid provision.

Article XII.

The City may, at its option and discretion, convey, lend, or provide equipment, materials or assistance to EWFR, as the City may deem appropriate. However, this shall be under such terms and conditions as the City may impose and shall not in any way alter EWFR's obligations to provide full fire protection and emergency medical services hereunder.

Article XIII. Consideration

During the term of this Agreement, EWFR shall provide the CITY with the services required by this Agreement. The CITY shall pay to EWFR fixed sum of twenty-six thousand and four hundred dollars (\$26,400.00) annually. This amount will be paid monthly at two-thousand and two hundred dollars (\$2,200.00) per month and shall be paid by on or before the fifteenth (15th) day of the month (Payment Date). The Parties understand and agree that the CITY's payment to EWFR shall be made in accordance with the CITY's normal and customary processes and business procedures and in conformance with applicable state law.

Payments made under this Agreement will be used by EWFR exclusively for fulfilling the requirements of this Agreement and providing and enhancing EWFR services under this Agreement and no other purposes. Any unauthorized use of payments shall constitute a Major Breach of this Agreement.

Article XIV. Term

The term of this Agreement is from the Effective Date to and including September 30, 2023.

Article XV. Performance of Service

EWFR shall devote sufficient time and attention to ensure the performance of all duties and obligations of the EWFR under this Agreement, including sufficient training, and shall provide immediate and direct supervision of the EWFR's employees, agents, contractors, sub-contractors and/or laborers engaged in the performance of this Agreement for the mutual benefit of EWFR and the CITY.

The EWFR will also enter into a written Mutual Aid Agreement with the Justin Volunteer Fire Department for fire protection, emergency medical, and related services, to all citizens of the CITY residing within the City limits of New Fairview within Denton County. The Mutual Aid Agreement must be finalized within six months of the effective date of this agreement.

**Article XVI.
Service Area**

Acceptance of this Agreement constitutes approval of the service area set out in Exhibit "A", a copy of which is attached and incorporated for all purposes.

**Article XVII.
Independent Contractor Status**

Nothing contained in this Agreement shall be deemed or construed by the parties hereto or any other third party to create the relationship of principal and agent, partnership, joint venture or any other association whatsoever between the parties. It is understood and agreed by the parties that EWFR is providing services to City as an independent contractor. EWFR is not and shall not be construed to be a division or agency of the CITY. The CITY does not and will not accept or assume any liability or obligation incurred by or on behalf of EWFR. At no time will any employee or representative of EWFR be considered an agent or employee of the CITY or represent himself or herself as such.

**Article XVIII.
Termination**

Either Party may terminate this Agreement without cause by providing the other Party a minimum of ninety (90) days' written notice.

**Article XIX.
Non-Harassment Policy**

In addition to the terms and conditions contained in this Agreement, EWFR agrees to abide by and comply with the City's Non-Harassment Policy. attached to this Agreement as Exhibit 'B' and incorporated herein for all purposes.

**Article XX.
Notices**

All notices required or contemplated by this Agreement (or otherwise given in connection with this Agreement) shall be in writing, shall be signed by or on behalf of the person or entity giving the notice, and shall be effective as follows: (a) on or after the third (3rd) business day after being deposited with the United States mail service, certified mail, return receipt requested; (b) on the day delivered by private courier, private delivery or private messenger service (including overnight mail services such as FedEx or UPS) as evidenced by a receipt signed by any person at the delivery address (whether or not such person is the person to whom the notice is addressed); or (c) otherwise on the day actually received by the person to whom the notice is addressed, including, but not limited to, delivery in person and delivery by regular mail. Notices given pursuant to this section shall be addressed as follows:

To the City: Attn: City Administrator
City of New Fairview
999 Illinois Ln.
New Fairview, Texas 76078-3940

To the EWFR: Fire Chief
East Wise County Rescue

**Article XXI.
Miscellaneous**

- A. By entering into this Agreement, City does not waive any immunity or defense that would otherwise be available to it against any claims, including those arising in the exercise of governmental powers and functions, all of which is expressly reserved.
- B. This Agreement shall extend to and be binding upon the parties and their respective successors and assigns; provided, however, that this Agreement may not be assigned without the express written consent of both parties.
- C. If any of the provisions of this Agreement are declared invalid for any reason, the same shall not affect the other provisions of this Agreement that can be given effect without the invalid provision. The provisions of this Agreement are severable.
- D. During the performance of this Agreement, EWFR agrees to comply with the provisions of the that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. EWFR shall also comply with the Age Discrimination in Employment Act (ADEA) in all volunteer and personal actions, to include, but not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- E. The titles and headings contained in this Agreement and the subject organization are used only to facilitate reference, and in no way define or limit the scope or intent of any of the provisions of this Agreement.
- F. Both parties have participated fully in the review and preparation of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.
- G. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter unless specifically described herein.

CITY OF NEW FAIRVIEW, TEXAS

By: _____

Print Name: _____

Title: _____

Date: _____

ATTEST:

Brooke Boller, City Secretary

[Signatures continue on page following]

EAST WISE FIRE AND RESCUE

By: _____

Print Name: _____

Title: Fire Chief

Date: _____

By: _____

Print Name: _____

Title: Assistant Fire Chief

Date: _____

By: _____

Print Name: _____

Title: Treasure

Date: _____

STATE OF TEXAS §

§

COUNTY OF WISE §

Before me, the undersigned authority in and for Wise County, Texas, on this day personally appeared _____, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the _____ of City of New Fairview, Texas, and that he is authorized by said legal entity to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

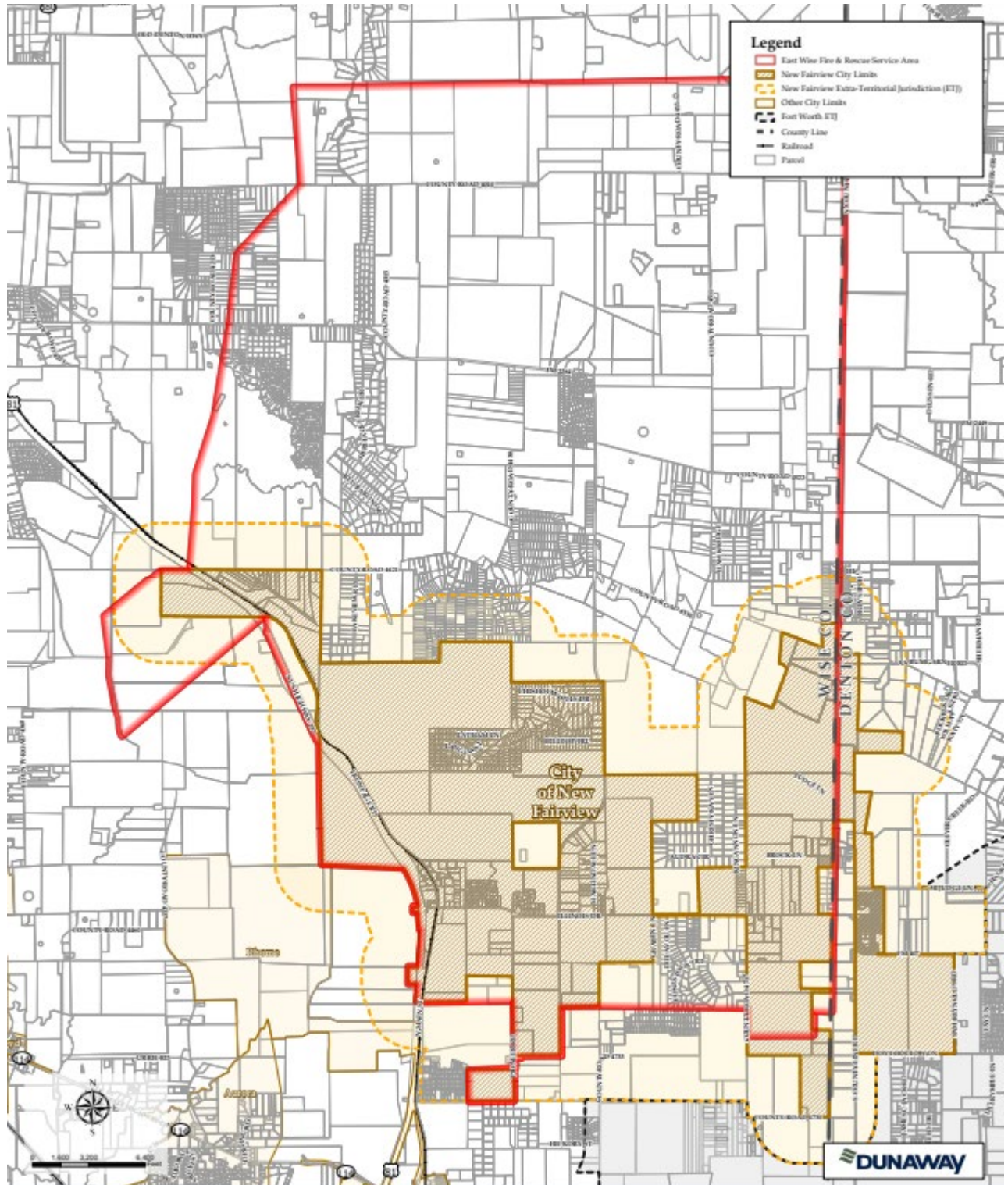
Given under my hand and seal of office, this the _____ day of _____, 2022.

Notary Public in and for the State of Texas

Print Name

My Commission Expires:

EXHIBIT "A" SERVICE AREA





City of New Fairview
The City With A View

**East Wise Fire & Rescue
Service Area**
Updated July 7, 2020

EXHIBIT "B"
RESPECTFUL WORK ENVIRONMENT

The City of New Fairview is committed to providing a work environment that is free of discrimination and unlawful harassment. Actions, words, jokes, or comments based on an individual's sex, race, ethnicity, age, religion or any other legally protected characteristic will not be tolerated. Sexual harassment (both overt and subtle) is a form of misconduct that is demeaning to another person, undermines the integrity of the employment relationship and is strictly prohibited.



nm

**CITY OF NEW FAIRVIEW, TEXAS
RESOLUTION NO. 202209-01-308**

A RESOLUTION OF THE CITY OF NEW FAIRVIEW, TEXAS, APPROVING AN AGREEMENT FOR FIRE PROTECTION, SUPPRESSION AND RESCUE SERVICES FOR THE CITY OF NEW FAIRVIEW AND THE EAST WISE COUNTY FIRE RESCUE

WHEREAS, the City of New Fairview, Texas (“City”) has received a request from the East Wise County Fire Rescue (“EWFR”) to enter into an agreement to provide, within their authorized geographical area, for fire protection, suppression and for rescue services for the City of New Fairview between them, in conjunction; and

WHEREAS, the City and EWFR seek to establish, clarify, and formalize the legal relationships between them as relating to provision of services in fire protection, suppression and other emergency rescue services; and

WHEREAS, the City and EWFR have collectively determined that the Agreement also addresses the City’s provided housing as partial consideration for EWFR services, serving to enhance response time and being appropriate for EWFR to better fulfill its purposes herein; and

WHEREAS, the City Council of New Fairview, Texas (“City Council”) has investigated and determined that entering into the Agreement with EWFR will help preserve and protect the public health and safety of the City’s residents and will further serve the general welfare and advance the good government of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF NEW FAIRVIEW, TEXAS THAT:

Section 1. Recitals Incorporated

The recitals set forth above are incorporated herein for all purposes as if set forth in full.

Section 2. Approval of the Agreement with EWFR.

The City Council hereby approves the terms of the Agreement for services with EWFR, attached hereto as Exhibit “A”, and authorizes, ratifies, and approves of the City Manager’s execution of same on behalf of the City, in final form as determined by the City Attorney.

PASSED AND APPROVED by the City Council of the City of New Fairview, Texas, on this the 6th day of September 2022.

ATTEST:

APPROVED:

Brooke Boller, City Secretary

John Taylor, Mayor



**City Council
AGENDA MEMO**

Prepared By: John Cabrales Jr, City Administrator

September 6, 2022

Approval of Joint Ordinance and Boundary Agreement

DESCRIPTION:

Discuss, consider, and act on a Joint Ordinance and Boundary Agreement (#202209-01-244) with the City of Fort Worth to adjust the Extraterritorial Jurisdiction between the Cities of New Fairview and Fort Worth in Denton County.

BACKGROUND INFORMATION:

The City of New Fairview has requested that the City of Fort Worth release extraterritorial jurisdiction (ETJ) to the City of New Fairview as depicted in Exhibit A. On November 5, 2019, the City Council accepted the release of 3,368 acres of Fort Worth ETJ to New Fairview. Additionally, on March 23, 2021 the City Council accepted the release of an additional 179 acres of ETJ to New Fairview. The release of ETJ in 2019 and 2021 to New Fairview involved residential developments that were primarily located within the ETJ of New Fairview. The current boundary adjustment will transfer approximately 1,179.907 acres of land from the ETJ of the City of Fort Worth to the ETJ of the City of New Fairview (see Exhibit A). The property is in the Aqua Texas, Inc. Certificate of Convenience and Necessity (CCN) Boundary. The City of Fort Worth and the City of New Fairview wish to make changes to the boundaries of each City which will promote orderly development, public safety, and effective delivery of municipal services.

The Texas Local Government Code Chapter 42, Sections 42.023 and 42.022 authorize adjacent municipalities to make mutually agreeable changes in their boundaries and release extraterritorial jurisdiction (ETJ) by Ordinance. Section 42.023 authorizes a municipality to reduce its ETJ by ordinance approved by its governing body. Section 42.022 authorizes a municipality to expand its ETJ beyond the distance limitations in Section 42.021 if the owners of the area of expansion request the expansion.

Staff recommends approval of the Ordinance.

FINANCIAL CONSIDERATION:

None

RECOMMENDED MOTIONS FOR CITY COUNCIL:

I move to **Approve/Deny** Ordinance and Boundary Agreement with the City of Fort Worth to adjust the extraterritorial jurisdiction between the Cities of New Fairview and Fort Worth.

ATTACHMENT(S):

1. Ordinance #202209-01-244
2. Boundary Agreement with Exhibit A

CITY OF FORT WORTH ORDINANCE NO. _____
CITY OF NEW FAIRVIEW ORDINANCE NO. 202209-01-244
JOINT ORDINANCE AND BOUNDARY AGREEMENT

WHEREAS, the City of New Fairview (hereinafter called “NEW FAIRVIEW”) is a Type A general law city located in Wise and Denton Counties; and

WHEREAS, the City of Fort Worth (hereinafter called “FORT WORTH”) is a home rule city located in Tarrant, Wise, Parker and Denton Counties; and

WHEREAS, NEW FAIRVIEW and FORT WORTH share an extraterritorial jurisdiction (“ETJ”) boundary; and

WHEREAS, NEW FAIRVIEW and FORT WORTH desire to adjust the boundary between the ETJ of the two cities to promote orderly development to ensure public safety and effective delivery of municipal services; and

WHEREAS, Section 42.023 of the Texas Local Government Code authorizes a municipality to reduce its ETJ by ordinance approved by its governing body; and

WHEREAS, Section 42.022 of the Texas Local Government Code authorizes a municipality to expand its ETJ beyond the distance limitations in Section 42.021 if the owners of the area of expansion request the expansion.

NOW, THEREFORE, BE IT ORDAINED AND MUTUALLY AGREED BY THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW AND THE CITY COUNCIL OF THE CITY OF FORT WORTH:

SECTION 1.

Pursuant to Section 42.023 of the Texas Local Government Code, FORT WORTH agrees to release and hereby releases the 1,179.907-acre tract located in FORT WORTH’s ETJ, as described and shown in Exhibit “A”, for the benefit of NEW FAIRVIEW.

SECTION 2.

Pursuant to Section 42.022 of the Texas Local Government Code, NEW FAIRVIEW has received a request, attached as Exhibit “B”, from the owners of the 1,179.907-acre tract described and shown in Exhibit “A” that NEW FAIRVIEW’s ETJ be expanded to include said tract. NEW FAIRVIEW approves the request and hereby accepts this tract into its ETJ and expands its ETJ to include the 1,179.907-acre tract described and shown in Exhibit “A.”

SECTION 3.

This ordinance shall be cumulative of all provisions of the ordinances of the City of New Fairview and the City of Fort Worth, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 4.

It is hereby declared to be the intention of the City Councils of New Fairview and Fort Worth that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, since the same would have been enacted without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5.

The City of New Fairview and the City of Fort Worth do hereby covenant and agree to protect, preserve and defend the herein described boundary adjustments.

SECTION 6.

The City of New Fairview and the City of Fort Worth agree and ordain that the adoption by both cities of this Joint Ordinance and Boundary Agreement, and the boundary change resulting from this Agreement do not mitigate, diminish or lessen in any way the rights that either party may have, at law or in equity, to challenge or contest any other annexations, attempted annexations or extraterritorial jurisdiction claims made by the other party.

SECTION 7.

This joint ordinance and boundary agreement shall become effective and shall become a binding agreement upon the City of New Fairview and the City of Fort Worth by the adoption of same in regular open city council meetings of the City of New Fairview and the City of Fort Worth.

SECTION 8.

The Mayor of each city shall execute this Joint Ordinance and Boundary Agreement, upon adoption by both cities, in duplicate originals.

PASSED AND APPROVED by the City Council of the City of Fort Worth on this
___ day of _____, 2022.

Mayor

APPROVED AS TO FORM AND LEGALITY:

Melinda Ramos
Deputy City Attorney

ATTEST:

Jannette S. Goodman, City Secretary

PASSED AND APPROVED by the City Council of the City of New Fairview on this
___ day of _____, 2022.

Mayor John Taylor

ATTEST:

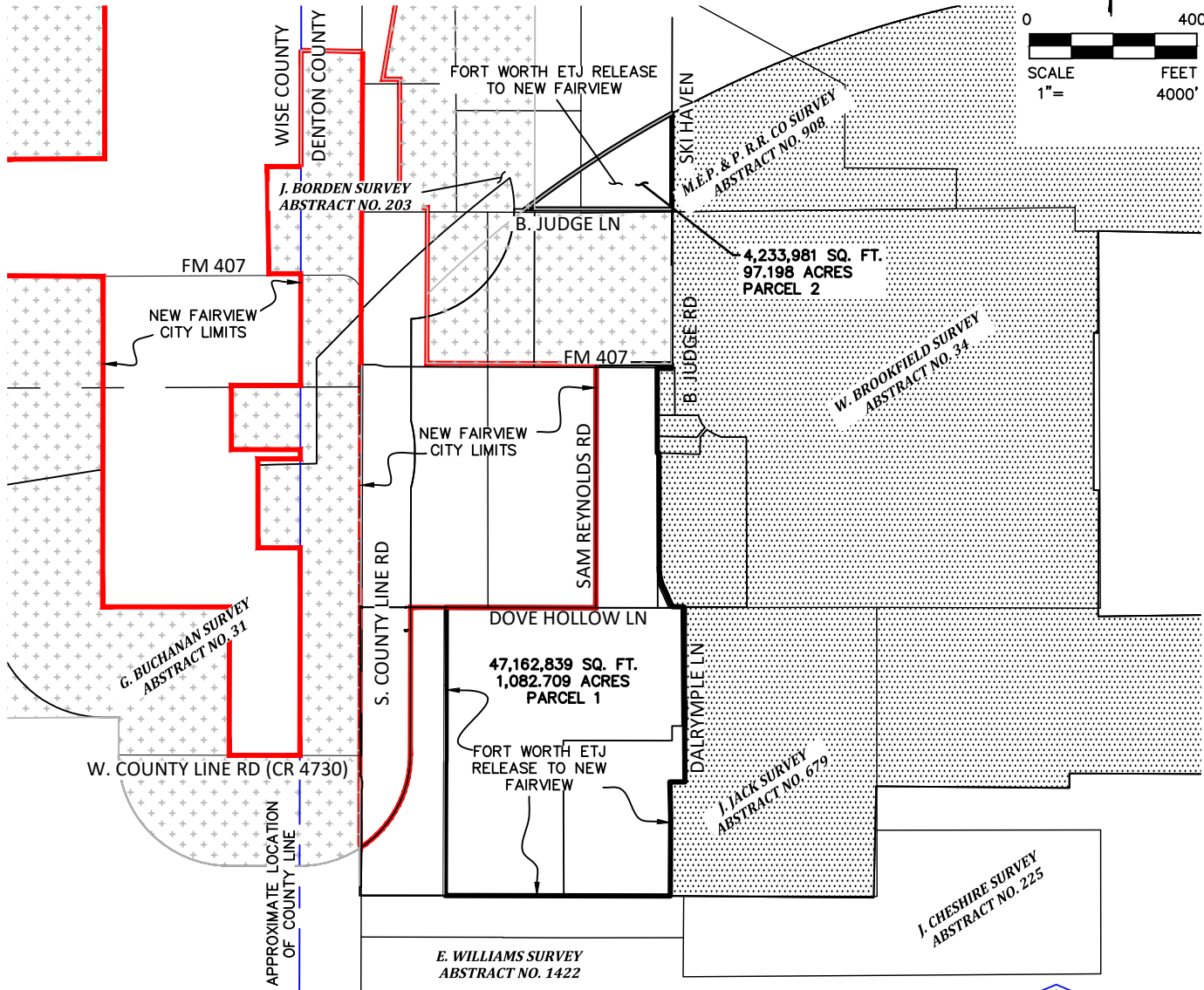
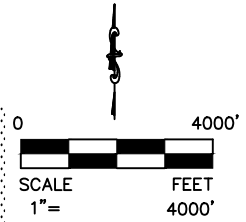
City Secretary, Brooke Boller

APPROVED AS TO FORM AND LEGALITY:

City Attorney, Roberta Cross

EXHIBIT "A"
CITY OF NEW FAIRVIEW
EXTRATERRITORIAL JURISDICTION

PARCELS 1 & 2



- = EXISTING NEW FAIRVIEW ETJ
- = EXISTING JUSTIN ETJ
- = NEW FAIRVIEW CITY LIMITS

P.R.D.C.T. = PLAT RECORDS, DENTON COUNTY, TEXAS
D.R.D.C.T. = DEED RECORDS, DENTON COUNTY, TEXAS

A metes and bounds description of even date accompanies this drawing.



550 Bailey Avenue • Suite 400 • Fort Worth, Texas 76107
Tel: 817-335.1121
TEXAS REGISTERED SURVEYING FIRM NO. 10098100

Stephen R. Glosup
06/22/2022

PLOTTED BY: Lee Flanegin ON: Wednesday, June 22, 2022 AT: 10:35 AM FILEPATH: G:\Productions\500\002200\2238\001\Survey\Drawings\B002238.001 New Fairview-Justin-Ft Worth ETJ 22-0510.dwg

EXHIBIT "A"
CITY OF NEW FAIRVIEW
EXTRATERRITORIAL JURISDICTION

PARCEL 1

BEING a tract of land situated in the J. Jack Survey, Abstract No. 679, and the W. Brookfield Survey, Abstract No. 34, Denton County, Texas, said tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a point in the south line of said J, Jack Survey, the southeast corner of that certain tract of land described by deed to Donald Dalrymple et al., recorded in Document Number 1994-73343, Deed Records, Denton County, Texas;

THENCE North 89°53'19" West, with the south line of said J, Jack Survey, a distance of 5,374.81 feet to a point for the southeast corner of that certain tract of land described by deed to Dove Hollow Development, LLC, recorded in Document Number 2020-19757, Deed Records, Denton County, Texas;

THENCE with the east line of said Dove Hollow Development, LLC tract, the following courses and distances:

North 00°09'45" East, departing the south line of said J, Jack Survey, with the east line of said Dove Hollow Development, LLC tract, a distance of 3201.26 feet to a point;

South 88°45'58" East, a distance of 6.71 feet to a point;

North 00°08'12" East, a distance of 3,680.31 feet to a point in the approximate centerline of Dove Hollow Lane, the south line of that certain tract of land described by deed to Royal Crest Properties, LP, recorded in Document Number 2017-121257, Deed Records, Denton County, Texas;

THENCE South 89°53'19" East, with the approximate centerline of said Dove Hollow Lane and with the south line of said Royal Crest Properties, LP tract, a distance of 3,569.37 feet to a point for the southeast corner of said Royal Crest Properties, LP tract, the approximate centerline of Dove Hollow Lane and north-south Sam Reynolds Road;

THENCE North 00°06'41" East, departing the south line of said Royal Crest Properties, LP tract, and the approximate centerline of said Dove Hollow Lane, with the east line of said Royal Crest Properties, LP tract and the approximate centerline of said north-south Sam Reynolds Road, a distance of 5,829.14 feet to a point in the south line of that certain tract of land described by deed to Rockin J Properties, LLC, recorded in Document Number 2012-146671, Deed Records, Denton County, Texas the north line of FM 407;

THENCE South 89°53'19" East, with the south line of said Rockin J Properties, LLC tract and the north line of FM 407, a distance of 1,798.32 feet to a point for the southeast corner of said Rockin J Properties, LLC tract;

THENCE South 00°06'41" West, departing the south line of said Rockin J Properties, LLC tract and the north line of FM 407, crossing said FM 407, a distance of 90.00 feet to a point in the south line of said FM 407;

THENCE North 89°53'19" West, with the south line of said FM 407, a distance of 342.94 feet to a point for the northeast corner of that certain tract of land described by deed to Rosemarie Green Peterson et al., recorded in Document Number 1998-82617, Deed Records, Denton County, Texas;

Continued.....



Stephen R. Glosup

05/10/2022



550 Bailey Avenue • Suite 400 • Fort Worth, Texas 76107
Tel: 817-335.1121

TEXAS REGISTERED SURVEYING FIRM NO. 10098100

EXHIBIT "A"
CITY OF NEW FAIRVIEW
EXTRATERRITORIAL JURISDICTION

PARCEL 1

Continued.....

THENCE South 00°07'42" East, departing the south line of said FM 407, with the east line of said Rosemarie Green Peterson tract, a distance of 2,039.99 feet to a point for the northwest corner of a 40' width right of way dedication for proposed lane, as shown on plat for Avery Ranch, an Addition to Denton County, recorded in Cabinet X, Page 428, Plat Records Denton County, Texas;

THENCE South 88°18'09" East, departing the east line of said Rosemarie Green Peterson tract, with the north end of said 40' width right of way line, a distance of 40.02 feet to a point in the east line of said 40' width right of way line of said proposed Lane and in the west line of Block 6 of said Avery Ranch;

THENCE South 00°07'42" East, with the east right-of-way line of said proposed Lane, the west line of said Block 6 and continuing with the west line of Block 1 of Avery Ranch, a distance of 2,736.30 feet to a point for the beginning of a non-tangent curve to the left, having a central angle of 23°59'29", a radius of 1,160.00 feet and a chord bearing and distance of South 12°07'28" East – 482.18 feet;

THENCE continuing with the east right-of-way line of said Lane, the west line of Block 1 of said Avery Ranch and with said non-tangent curve to the left in a southeasterly direction, an arc length of 485.72 feet to a point;

THENCE South 24°07'13" East, continuing with the east right-of-way line of said lane, a distance of 506.99 feet to a point in the south line of said Block 1, said Avery Ranch;

THENCE South 89°35'54" East, departing the east right-of-way line of said lane, with the south line of said Block 1, said Avery Ranch, a distance of 278.39 feet to a point;

THENCE South 00°21'56" East, departing the south line of said Block 1, said Avery Ranch, a passing distance of 30.00 feet the northeast corner of that certain tract of land described by deed to Donald Dalrymple et al., recorded in Document Number 1994-73343, Deed Records, Denton County, Texas, and continuing for a total distance of 4,185.20 feet to a point;

THENCE with the east line of said Donald Dalrymple the following courses and distances:

North 89°58'03" West, a distance of 360.27 feet to a point;

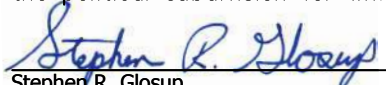
South 01°16'16" East, a distance of 862.98 feet to a point;

South 00°11'10" West, a distance of 498.50 feet to a point;

South 00°18'05" West, a distance of 1,361.50 feet to the POINT OF BEGINNING and containing a calculated area of 47,162,839 square feet or 1,082.709 acres of land.

NOTE: A drawing of even date accompanies this metes and bounds description.

The metes and bounds description contained herein was compiled from information contained in recorded documents and was prepared under 22 TAC 138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.


Stephen R. Glosup
Registered Professional Land Surveyor
Texas Registration No. 5570
srg@dunaway.com
May 10, 2022

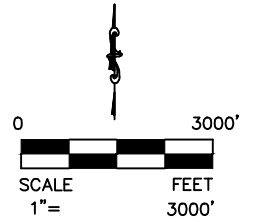


550 Bailey Avenue • Suite 400 • Fort Worth, Texas 76107
Tel: 817.335.1121
TEXAS REGISTERED SURVEYING FIRM NO. 10098100

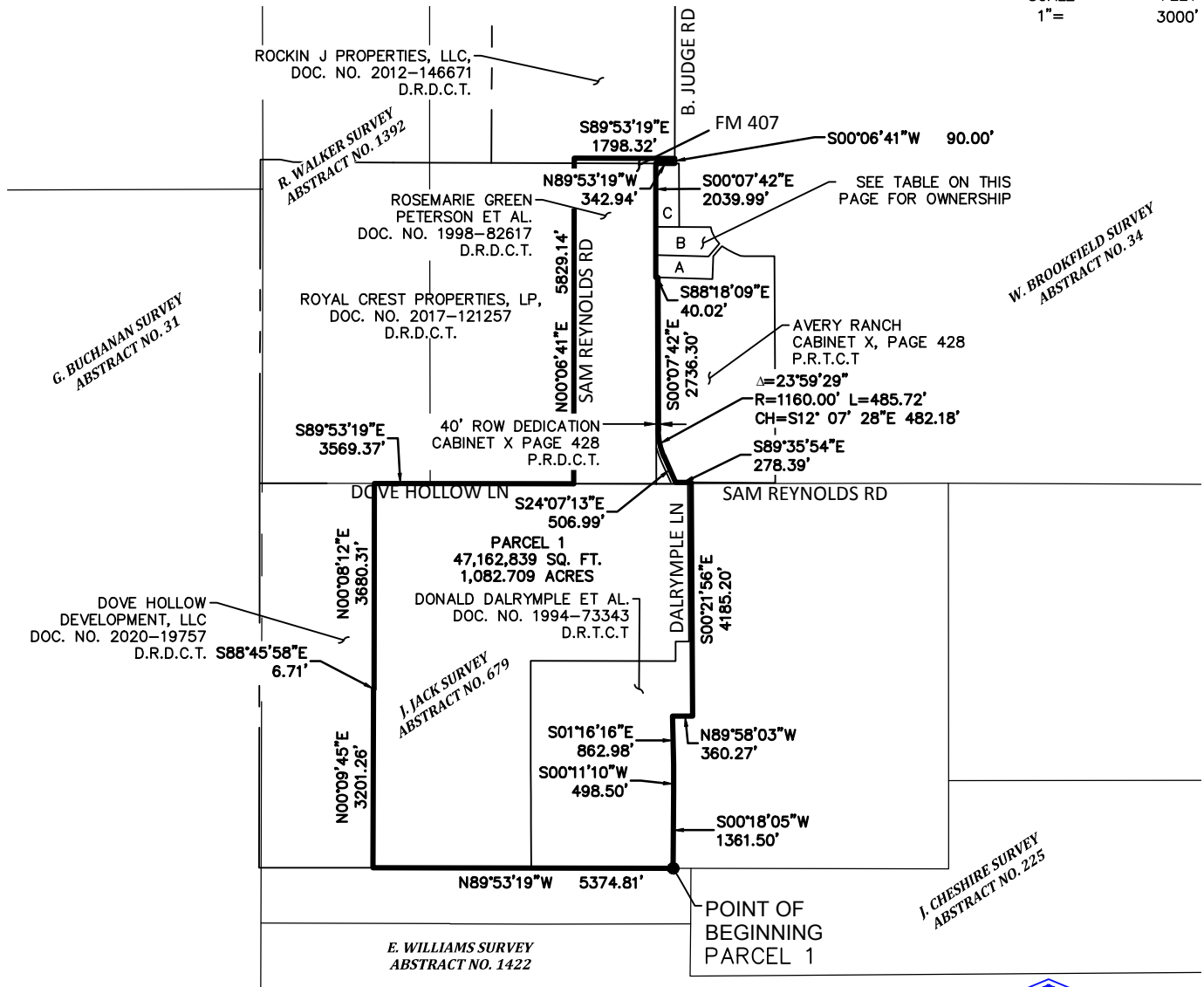
EXHIBIT "A"
CITY OF NEW FAIRVIEW
EXTRATERRITORIAL JURISDICTION

PARCEL 1

TRACT	GRANTEE	DOCUMENT NUMBER
A	Cheryl Edmondson	Vol. 1984, Pg. 30408
B	Bobbie J. Henry et al.	Vol. 1215, Pg. 962
C	Chris Johnston	Vol. 790, Pg. 396



PLOTTED BY: Steve Glosup ON: Tuesday, May 10, 2022 AT: 5:07 PM FILEPATH: G:\Production\500\002200\2238\001\Survey\Drawings\B002238.001 New Fairview-Justin-Ft Worth ETJ 22-0510.dwg



Stephen R. Glosup

05/10/2022

P.R.D.C.T. = PLAT RECORDS, DENTON COUNTY, TEXAS
D.R.D.C.T. = DEED RECORDS, DENTON COUNTY, TEXAS

A metes and bounds description of even date accompanies this drawing.



550 Bailey Avenue • Suite 400 • Fort Worth, Texas 76107
Tel: 817-335-1121
TEXAS REGISTERED SURVEYING FIRM NO. 10098100



DATE: MAY 10, 2022

PAGE 4 OF 6
DUNAWAY JOB NO. B002238.001

EXHIBIT "A"
CITY OF NEW FAIRVIEW
EXTRATERRITORIAL JURISDICTION

PARCEL 2

BEING a tract of land situated in the J. Borden Survey, Abstract No. 203, Denton County, Texas, said tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a point in the approximate centerline intersection of east-west B. Judge Lane, and Ski Haven, the southeast corner of that certain tract of land described by deed to Madelon Douglas Graham Trust, recorded in Document Number 2002-153885, Deed Records, Denton County, Texas;

THENCE North 89°53'19" West, with the south line of said Madelon Douglas Graham Trust tract and with the approximate centerline of east-west B. Judge Lane, a distance of 3,497.61 feet to a point for the beginning of a non-tangent curve to the right, having a central angle of 09°04'53", a radius of 26,400.00 feet and a chord bearing and distance of North 56°54'31" East - 4,180.04 feet;

THENCE departing the south line of said Madelon Douglas Graham Trust tract, crossing said Madelon Douglas Graham Trust tract, with said non-tangent curve to the right in a northeasterly direction, an arc length of 4,184.42 feet to a point in the east line of said Madelon Douglas Graham Trust tract, the approximate centerline of Ski Haven;

THENCE South 00°06'41" West, with the east line of said Madelon Douglas Graham Trust tract and with the approximate centerline of Ski Haven, a distance of 2,288.99 feet to the POINT OF BEGINNING and containing a calculated area of 4,233,981 square feet or 97.198 acres of land.

NOTE: A drawing of even date accompanies this metes and bounds description.

The metes and bounds description contained herein was compiled from information contained in recorded documents and was prepared under 22 TAC 138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.


Stephen R. Glosup

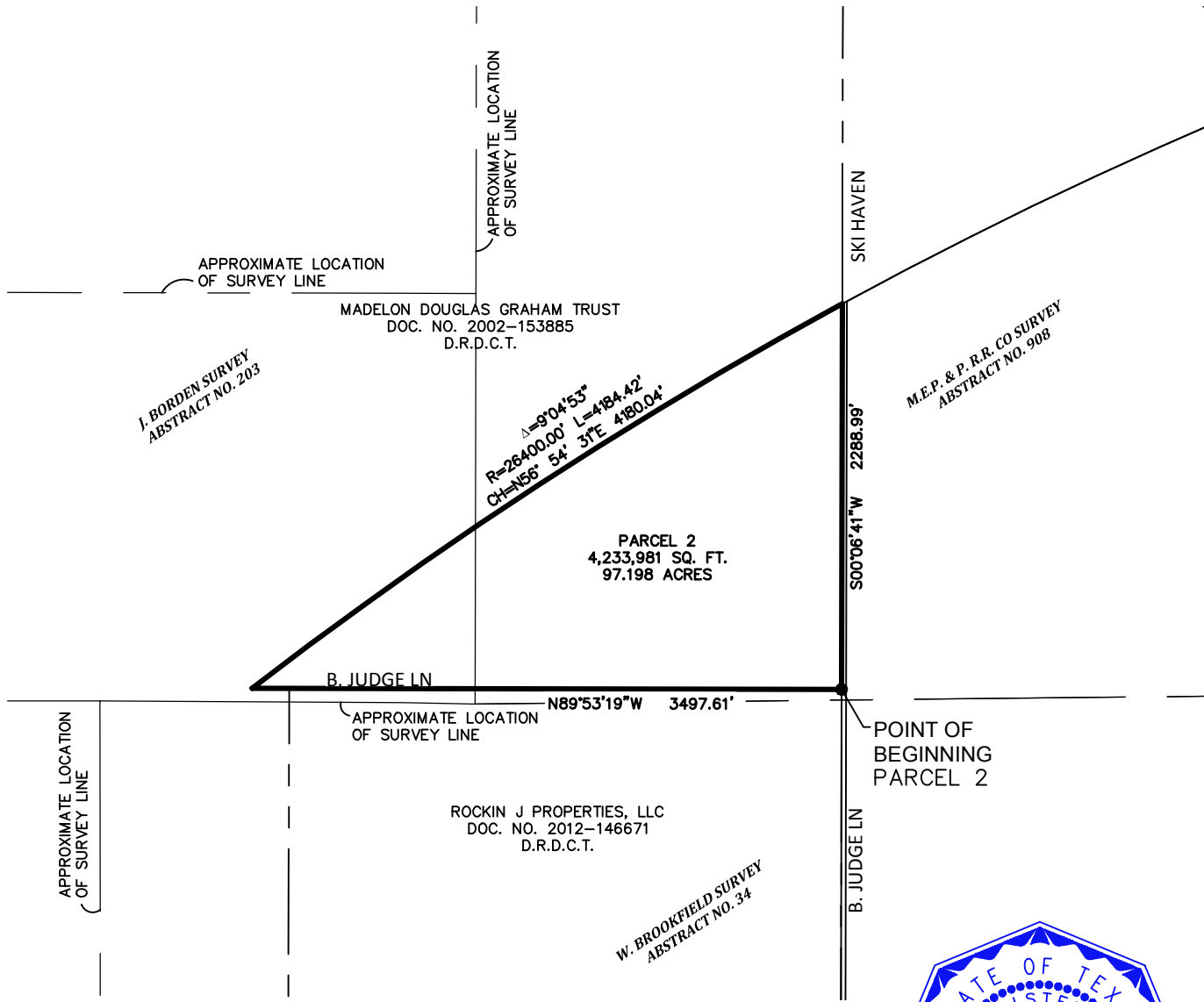
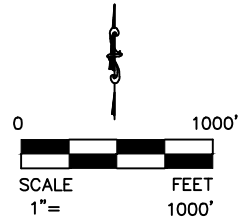
Registered Professional Land Surveyor
Texas Registration No. 5570
srg@dunaway.com
May 10, 2022



550 Bailey Avenue • Suite 400 • Fort Worth, Texas 76107
Tel: 817.335.1121
TEXAS REGISTERED SURVEYING FIRM NO. 10098100

EXHIBIT "A"
CITY OF NEW FAIRVIEW
EXTRATERRITORIAL JURISDICTION

PARCEL 2



Stephen R. Glosup
05/10/2022 PAGE 6 OF 6
DUNAWAY JOB NO. B002238.001

P.R.D.C.T. = PLAT RECORDS, DENTON COUNTY, TEXAS
D.R.D.C.T. = DEED RECORDS, DENTON COUNTY, TEXAS

A metes and bounds description of even date accompanies this drawing.



550 Bailey Avenue • Suite 400 • Fort Worth, Texas 76107
Tel: 817.335.1121
TEXAS REGISTERED SURVEYING FIRM NO. 10098100

DATE: MAY 10, 2022

PLOTTED BY: Steve Glosup ON: Tuesday, May 10, 2022 AT: 5:09 PM FILEPATH: G:\Production\500\002200\2238\001\Survey\Drawings\B002238.001 New Fairview-Justin-Ft Worth ETJ 22-0510.dwg



CITY COUNCIL AGENDA MEMO

Prepared By: Ryley Paroulek, PE, Westwood

September 6, 2022

Bid Award for Drainage Improvements

DESCRIPTION:

Discuss, consider, and act on a resolution of the City of New Fairview, Texas, awarding the Drainage Improvement project for Wilson Court and Creasser Lane to JR West Texas Construction for a total of \$426,991.50, and establish a not-to-exceed project contingency of \$50,000.

BACKGROUND INFORMATION:

The City received a Texas Department of Agriculture (TDA), Texas Community Development Block Grant (TxCDBG) in the amount of \$350,000, with a local match of \$83,784 for the reconstruction of Layfield Lane and Creasser Lane. However, Layfield Lane was included in the street reconstruction project awarded to Jagoe-Public, so it was replaced with Wilson Court.

Wise County Commissioner Biff Haynes has agreed to reconstruct Wilson Court and Creasser Lane for the City through an Interlocal Agreement (ILA). Staff met with Commissioner Hayes and County staff to explain the drainage work that was needed for the reconstruction project, and the County informed us that they will not do any of the drainage work, only the road work. The drainage work must be done and must be done first before the roads can be reconstructed. As a result, our contract engineer, Ryley Paroulek with Westwood, was asked to prepare bid documents for the drainage work for Wilson Court and Creasser Lane.

Although several contractors inquired about the project, only two submitted bids for this project, and the bids were opened on Friday, August 26th.

FINANCIAL CONSIDERATION:

The low bid was JR West Texas Construction for a total of \$426,991.50.

RECOMMENDED MOTIONS:

I move to **Approve/Deny** a resolution awarding the Drainage Improvement project for Wilson Court and Creasser Lane to JR West Texas Construction for a total of \$426,991.50, and establish a not-to-exceed project contingency of \$50,000.

ATTACHMENT(S):

1. Bids
2. Resolution 202209-03-210

Section 00 42 10

UNIT PRICE BID FORM

ITEM NO.	ESTIMATED QUANTITY	ITEM DESCRIPTION (SPECIFICATION NO.) PRICES TO BE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
STORM DRAIN IMPROVEMENTS				
1	1 LS	MOBILIZATION (Spec No. TxDOT 500) <u>Fourty Thousand</u> DOLLARS AND <u>No</u> CENTS PER LS	\$ <u>40,000.00</u>	\$ <u>40,000.00</u>
2	1 LS	EROSION CONTROL (SWPPP) (Spec No. TxDOT 506) <u>Eight Thousand</u> DOLLARS AND <u>No</u> CENTS PER LS	\$ <u>8,000.00</u>	\$ <u>8,000.00</u>
3	1 LS	TRAFFIC CONTROL (Spec No. TxDOT 502) <u>Six Thousand Five Hundred</u> DOLLARS AND <u>No</u> CENTS PER LS	\$ <u>6,500.00</u>	\$ <u>6,500.00</u>
4	266 LF	CMP (GAL STL 18 IN) (Spec No. TxDOT 460) <u>Two Hundred Fifteen</u> DOLLARS AND <u>No</u> CENTS PER LF	\$ <u>215.00</u>	\$ <u>57,190.00</u>
5	16 LF	CMP (GAL STL 24 IN) (Spec No. TxDOT 460) <u>Two Hundred Fifty</u> DOLLARS AND <u>No</u> CENTS PER LF	\$ <u>250.00</u>	\$ <u>4,000.00</u>
6	36 LF	RCP (18 IN) (CL III) (Spec No. TxDOT 464) <u>Two Hundred</u> DOLLARS AND <u>No</u> CENTS PER LF	\$ <u>200.00</u>	\$ <u>7,200.00</u>
7	29 LF	CONC BOX CULV (5 FT X 3 FT) (Spec No. TxDOT 462) <u>Eight Hundred Thirty</u> DOLLARS AND <u>No</u> CENTS PER LF	\$ <u>830.00</u>	\$ <u>24,070.00</u>
8	30 LF	CONC BOX CULV (6 FT X 4 FT) (Spec No. TxDOT 462) <u>One Thousand One Hundred</u> DOLLARS AND <u>No</u> CENTS PER LF	\$ <u>1,100.00</u>	\$ <u>33,000.00</u>
9	30 EA	SET (TY II) (18 in) (CMP) (4:1) (P) (Spec No. TxDOT 467) <u>One Thousand Four Hundred</u> DOLLARS AND <u>No</u> CENTS PER EA	\$ <u>1,400.00</u>	\$ <u>42,000.00</u>
10	2 EA	SET (TY II) (24 in) (CMP) (4:1) (P) (Spec No. TxDOT 467) <u>Two Thousand</u> DOLLARS AND <u>No</u> CENTS PER EA	\$ <u>2,000.00</u>	\$ <u>4,000.00</u>

ITEM NO.	ESTIMATED QUANTITY	ITEM DESCRIPTION (SPECIFICATION NO.) PRICES TO BE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
11	2 EA	SET (TY II) (18 in) (RCP) (4:1) (C) (Spec No. TxDOT 467) <u>Two Thousand Four Hundred</u> DOLLARS AND <u>No</u> CENTS PER EA	\$ <u>2,400.00</u>	\$ <u>4,800.00</u>
12	2 EA	SET (TY II) (S=5') (HW=3') (4:1) (P) (Spec No. TxDOT 467) <u>Nine Thousand Nine Hundred</u> DOLLARS AND <u>No</u> CENTS PER EA	\$ <u>9,900.00</u>	\$ <u>19,800.00</u>
13	226 CY	RIPRAP (STONE PROTECTION) (18 IN) (Spec No. TxDOT 432) <u>Three Hundred Twenty Five</u> DOLLARS AND <u>No</u>	\$ <u>325.00</u>	\$ <u>73,450.00</u>
14	280 CY	UNCLASSIFIED CHANNEL EXCAVATION (Spec No. TxDOT 110) <u>One Hundred Ninety Eight</u> DOLLARS AND <u>No</u>	\$ <u>198.00</u>	\$ <u>55,440.00</u>
15	470 SY	6" FLEXIBLE BASE DRIVEWAY APPROACH (Spec No. TxDOT 247) <u>Thirty</u> DOLLARS AND <u>No</u>	\$ <u>30.00</u>	\$ <u>14,100.00</u>
16	50 SY	6" CONCRETE DRIVEWAY APPROACH (Spec No. TxDOT 360) <u>One Hundred Fourty</u> DOLLARS AND <u>No</u>	\$ <u>140.00</u>	\$ <u>7,000.00</u>
17	50 SY	REMOVE CONCRETE DRIVEWAY (Spec No. TxDOT 104) <u>Sixty</u> DOLLARS AND <u>No</u> CENTS PER SY	\$ <u>60.00</u>	\$ <u>3,000.00</u>
18	515 SY	REMOVE FLEX BASE DRIVEWAY (Spec No. TxDOT 247) <u>Fifteen</u> DOLLARS AND <u>No</u> CENTS PER SY	\$ <u>15.00</u>	\$ <u>7,725.00</u>
19	411 LF	REMOVE CMP (12"-48") (Spec No. TxDOT 496) <u>Fifty Six</u> DOLLARS AND <u>No</u> CENTS PER LF	\$ <u>56.00</u>	\$ <u>23,016.00</u>
20	12 EA	REMOVE TREE (6"-24") (Spec No. TxDOT 752) <u>One Thousand</u> DOLLARS AND <u>No</u> CENTS PER EA	\$ <u>1,000.00</u>	\$ <u>12,000.00</u>

ITEM NO.	ESTIMATED QUANTITY	ITEM DESCRIPTION (SPECIFICATION NO.) PRICES TO BE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
21	2 EA	CONCRETE HEADWALL (CH-PW-0) (DIA=48") (Spec No. TxDOT 466) <u>Twenty Five Thousand</u> DOLLARS AND <u>No</u>	\$ <u>25,000.00</u>	\$ <u>50,000.00</u>
22	2 EA	CONCRETE HEADWALL (CH-PW-0) (DIA=54") (Spec No. TxDOT 466) <u>Twenty Five Thousand</u> DOLLARS AND <u>No</u>	\$ <u>25,000.00</u>	\$ <u>50,000.00</u>
23	1 EA	CONCRETE HEADWALL (PW-1) (HW=7") (Spec No. TxDOT 466) <u>Thirty Nine Thousand</u> DOLLARS AND <u>No</u>	\$ <u>39,000.00</u>	\$ <u>39,000.00</u>
24	1 EA	CONCRETE HEADWALL (PW-1) (HW=6.5") (Spec No. TxDOT 466) <u>Thirty Seven Thousand</u> DOLLARS AND <u>No</u>	\$ <u>37,000.00</u>	\$ <u>37,000.00</u>
25	59 LF	TRENCH SAFETY (Spec No. TxDOT 402) <u>Fourty</u> DOLLARS AND <u>No</u> CENTS PER LF	\$ <u>40.00</u>	\$ <u>2,360.00</u>
26	8,330 SY	4" TOPSOIL (Spec No. TxDOT 160) <u>Six</u> DOLLARS AND <u>Fifty</u> CENTS PER SY	\$ <u>6.50</u>	\$ <u>54,145.00</u>
27	8,330 SY	SEEDING HYDROMULCH (Spec No. TxDOT 164) <u>Two</u> DOLLARS AND <u>No</u> CENTS PER SY	\$ <u>2.00</u>	\$ <u>16,660.00</u>
28	100 LF	REMOVE AND REPLACE 4' WIRE FENCE (Spec No. TxDOT 552) <u>Twenty</u> DOLLARS AND <u>No</u>	\$ <u>20.00</u>	\$ <u>2,000.00</u>
29	16 EA	REMOVE AND REPLACE 4' MAILBOX (Spec No. TxDOT 560) <u>Four Hundred</u> DOLLARS AND <u>No</u> CENTS PER EA	\$ <u>400.00</u>	\$ <u>6,400.00</u>
TOTAL BID \$			703,856.00	

Section 00 42 10
UNIT PRICE BID FORM

ITEM NO.	ESTIMATED QUANTITY	ITEM DESCRIPTION (SPECIFICATION NO.) PRICES TO BE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
STORM DRAIN IMPROVEMENTS				
1	1 LS	MOBILIZATION (Spec No. TxDOT 500) <u>EIGHTEEN THOUSAND FOUR HUNDRED</u> DOLLARS AND <u>ZERO</u> CENTS PER LS	\$ <u>18,400.00</u>	\$ <u>18,400.00</u>
2	1 LS	EROSION CONTROL (SWPPP) (Spec No. TxDOT 506) <u>SIX THOUSAND THREE HUNDRED</u> DOLLARS AND <u>ZERO</u> CENTS PER LS	\$ <u>6,300.00</u>	\$ <u>6,300.00</u>
3	1 LS	TRAFFIC CONTROL (Spec No. TxDOT 502) <u>FIVE THOUSAND FIVE HUNDRED</u> DOLLARS AND <u>ZERO</u> CENTS PER LS	\$ <u>5,500.00</u>	\$ <u>5,500.00</u>
4	266 LF	CMP (GAL STL 18 IN) (Spec No. TxDOT 460) <u>SIXTY</u> DOLLARS AND <u>ZERO</u> CENTS PER LF	\$ <u>60.00</u>	\$ <u>15,960.00</u>
5	16 LF	CMP (GAL STL 24 IN) (Spec No. TxDOT 460) <u>SEVENTY FOUR</u> DOLLARS AND <u>ZERO</u> CENTS PER LF	\$ <u>74.00</u>	\$ <u>1,184.00</u>
6	36 LF	RCP (18 IN) (CL III) (Spec No. TxDOT 464) <u>SIXTY</u> DOLLARS AND <u>ZERO</u> CENTS PER LF	\$ <u>60.00</u>	\$ <u>2,160.00</u>
7	29 LF	CONC BOX CULV (5 FT X 3 FT) (Spec No. TxDOT 462) <u>THREE HUNDRED SEVENTY FIVE</u> DOLLARS AND <u>ZERO</u> CENTS PER LF	\$ <u>375.00</u>	\$ <u>10,875.00</u>
8	30 LF	CONC BOX CULV (6 FT X 4 FT) (Spec No. TxDOT 462) <u>FIVE HUNDRED FIFTY TWO</u> DOLLARS AND <u>ZERO</u> CENTS PER LF	\$ <u>552.00</u>	\$ <u>16,560.00</u>
9	30 EA	SET (TY II) (18 in) (CMP) (4:1) (P) (Spec No. TxDOT 467) <u>ONE THOUSAND ONE HUNDRED FIFTY</u> DOLLARS AND <u>ZERO</u> CENTS PER EA	\$ <u>1,150.00</u>	\$ <u>34,500.00</u>
10	2 EA	SET (TY II) (24 in) (CMP) (4:1) (P) (Spec No. TxDOT 467) <u>ONE THOUSAND FOUR HUNDRED FIFTY</u> DOLLARS AND <u>ZERO</u> CENTS PER EA	\$ <u>1,450.00</u>	\$ <u>2,900.00</u>

ITEM NO.	ESTIMATED QUANTITY	ITEM DESCRIPTION (SPECIFICATION NO.) PRICES TO BE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
11	2 EA	SET (TY II) (18 in) (RCP) (4:1) (C) (Spec No. TxDOT 467) ONE THOUSAND ONE HUNDRED FIFTY DOLLARS AND ZERO CENTS PER EA	\$ 1,150.00	\$ 2,300.00
12	2 EA	SET (TY II) (S=5') (HW=3') (4:1) (P) (Spec No. TxDOT 467) NINE THOUSAND SIX HUNDRED DOLLARS AND ZERO CENTS PER EA	\$ 9,600.00	\$ 19,200.00
13	226 CY	RIPRAP (STONE PROTECTION) (18 IN) (Spec No. TxDOT 432) TWO HUNDRED FIFTEEN DOLLARS AND ZERO	\$ 215.00	\$ 48,590.00
14	280 CY	UNCLASSIFIED CHANNEL EXCAVATION (Spec No. TxDOT 110) SEVENTY DOLLARS AND ZERO	\$ 70.00	\$ 19,600.00
15	470 SY	6" FLEXIBLE BASE DRIVEWAY APPROACH (Spec No. TxDOT 247) SIXTY DOLLARS AND ZERO	\$ 60.00	\$ 28,200.00
16	50 SY	6" CONCRETE DRIVEWAY APPROACH (Spec No. TxDOT 360) ONE HUNDRED FIFTEEN DOLLARS AND ZERO	\$ 115.00	\$ 5,750.00
17	50 SY	REMOVE CONCRETE DRIVEWAY (Spec No. TxDOT 104) FORTY FIVE DOLLARS AND ZERO CENTS PER SY	\$ 45.00	\$ 2,250.00
18	515 SY	REMOVE FLEX BASE DRIVEWAY (Spec No. TxDOT 247) TWENTY DOLLARS AND ZERO CENTS PER SY	\$ 20.00	\$ 10,300.00
19	411 LF	REMOVE CMP (12"-48") (Spec No. TxDOT 496) FIFTEEN DOLLARS AND ZERO CENTS PER LF	\$ 15.00	\$ 6,165.00
20	12 EA	REMOVE TREE (6"-24") (Spec No. TxDOT 752) EIGHT HUNDRED DOLLARS AND ZERO CENTS PER EA	\$ 800.00	\$ 9,600.00

ITEM NO.	ESTIMATED QUANTITY	ITEM DESCRIPTION (SPECIFICATION NO.) PRICES TO BE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
21	2 EA	CONCRETE HEADWALL (CH-PW-0) (DIA=48") (Spec No. TxDOT 466) TWENTY TWO THOUSAND DOLLARS AND ZERO	\$ 22,000.00	\$ 44,000.00
22	2 EA	CONCRETE HEADWALL (CH-PW-0) (DIA=54") (Spec No. TxDOT 466) EIGHTEEN THOUSAND DOLLARS AND ZERO	\$ 18,000.00	\$ 36,000.00
23	1 EA	CONCRETE HEADWALL (PW-1) (HW=7') (Spec No. TxDOT 466) TWENTY FIVE THOUSAND DOLLARS AND ZERO	\$ 25,000.00	\$ 25,000.00
24	1 EA	CONCRETE HEADWALL (PW-1) (HW=6.5') (Spec No. TxDOT 466) TWENTY THREE THOUSAND DOLLARS AND ZERO	\$ 23,000.00	\$ 23,000.00
25	59 LF	TRENCH SAFETY (Spec No. TxDOT 402) TEN DOLLARS AND ZERO CENTS PER LF	\$ 10.00	\$ 590.00
26	8,330 SY	4" TOPSOIL (Spec No. TxDOT 160) ONE DOLLARS AND FIFTY CENTS PER SY	\$ 1.50	\$ 12,495.00
27	8,330 SY	SEEDING HYDROMULCH (Spec No. TxDOT 164) ONE DOLLARS AND TWENTY FIVE CENTS PER SY	\$ 1.25	\$ 10,412.50
28	100 LF	REMOVE AND REPLACE 4' WIRE FENCE (Spec No. TxDOT 552) TWENTY DOLLARS AND ZERO	\$ 20.00	\$ 2,000.00
29	16 EA	REMOVE AND REPLACE 4' MAILBOX (Spec No. TxDOT 560) FOUR HUNDRED FIFTY DOLLARS AND ZERO CENTS PER EA	\$ 450.00	\$ 7,200.00
TOTAL BID \$			426,991.50	

RESOLUTION NO. 202209-03-210

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW ACCEPTING BID AND AWARDING CONTRACT TO JR WEST TEXAS CONSTRUCTION FOR DRAINAGE IMPROVEMENTS TO WILSON COURT AND CREASSER LANE

WHEREAS, the City Council of the City of New Fairview, Texas has advertised for bids for drainage improvements to Wilson Court and Creasser Lane; and

WHEREAS, sealed bids were received and opened by the City on August 26, 2022, at 2 p.m. for the drainage improvements to Wilson Court and Creasser Lane; and

WHEREAS, said bids have been tabulated and reviewed by the City, and filed with the City Clerk as shown on attached Bid Tabulation Sheet and made part of this resolution as follows:

Name of Bidder.	Bid Amount
JR West Texas Construction	\$426,991.50
Grod	\$703,856.00

WHEREAS, the bid submitted by JR West Texas Construction's in the amount of \$426,991.50 is the lowest, most responsive, responsible bid and best value received; and

WHEREAS, the Consumer Price Index showed an inflation index of up 8.5 percent over the 2022 year, and supply chain issues continue to plague the construction industries, Council has determined to include a capital contingency of \$50,000 for the improvements over the bid amount as a best practice in light of these factors, to avoid compounding delays by seeking additional approvals; and

WHEREAS, The Council authorizes budgeting of the \$50,000 capital contingency amount and authorizes the City Administrator to expend the same to ensure timely completion of the project, with any expenditures being updated to the Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, TEXAS, that the contract for the drainage improvements to Wilson Court and Creasser Lane, is hereby awarded to JR West Texas Construction in the amount of \$426,991.50; and

WHEREAS, THE PAYMENT, PERFORMANCE & MAINTENANCE BONDS OF SAID BIDDER are hereby set for \$426,991.50 (100 percent of the contract amount), and the City Secretary is further directed to return Bid Bond checks of the bidders, if any; and

BE IT FURTHER RESOLVED that the City Administrator is authorized to execute an agreement for the project upon final approval as to form by the City Attorney and thereafter, the City may allow the contractor to begin work on this project as soon thereafter as the contract, bonds, proofs of insurance have been filed satisfactorily filed with the City Secretary as well as compliance with Chapter 171, Texas Local Government. Code and Section 2252.908, Texas Government Code.

This resolution is adopted by the City of New Fairview on this 6th day of September 2022

John Taylor, Mayor

ATTEST:

Brooke Boller, City Secretary



CITY COUNCIL AGENDA MEMO

Prepared By: Susan Greenwood, Court Administrator/Assist City Secretary September 6, 2022

Providing Security Measures for Municipal Court and City Hall

DESCRIPTION:

Receive, consider, and act on a Resolution prohibiting the carrying of firearms within the City of New Fairview during any meeting that is subject to the Open Meetings Act.

BACKGROUND INFORMATION:

Staff was asked by the council to look into security measures for City Council meetings. This is a possible security measure if the council also prohibits firearms at meetings subject to the Open Meetings Act (i.e., City Council and Boards and Commission meetings). Courts, including Municipal Courts, have the authority to determine and issue written procedures for the conduct of their courtroom proceedings, which may include the prohibition of weapons.

A political subdivision has very limited authority to prohibit a license holder from carrying into facilities to which the public otherwise has access. Local governments have the option under state law to prohibit carrying into the room or rooms where a meeting of a governmental entity is held, if (1) the meeting is an open meeting subject to the Open Meetings Act, and (2) if the entity provided notice as required by the Open Meetings Act.

Texas Penal Code Section 46.035(c) makes it an offense for a handgun license holder to intentionally, knowingly, or recklessly carry a handgun under the authority of Subchapter H, Chapter 411, Government Code (Handgun Licensing Law), regardless of whether the handgun is concealed or carried in a shoulder or belt holster, in the room or rooms where a meeting of a governmental entity is held where the meeting is an open meeting subject to Chapter 551, Government Code (Open Meetings Act), and the governmental entity provides notice as required by that chapter.

The Texas Penal Code Section 46.035(i) provides that the prohibition in Section 46.035(c) does not apply unless the license holder is given effective notice under Penal Code Sections 30.06 and 30.07. Texas Penal Code Section 30.06 further requires that signage created in accordance with that section be “displayed in a conspicuous manner clearly visible to the public. “

Section 30.07 adds language that requires that signage be “displayed in a conspicuous manner clearly visible to the public at each entrance to the property.” The Texas Municipal League has recommended that the best interpretation of that conflicting language is to display the signage at the entrance to the meeting room itself, rather than at the entry to the building.

Sections 30.06 and 30.07 of the Texas Penal Code provide very specific language, color, sign and text size of the notice to prohibit entry with either a concealed handgun or a handgun that is carried openly. The text of the signs must be displayed at the entrance in a conspicuous manner clearly visible to the public, in English and Spanish, and in contrasting colors with block letters at least one inch in height.

The offense is generally a Class C misdemeanor, except whenever an individual was given notice to leave and failed to do so, the offense is punishable as a Class A misdemeanor. Texas Penal Code §§ 30.06(d), 30.07(d). Local elected officials have no special right to carry a handgun into a meeting. However, if a local government does not prohibit carrying in the meeting room, any person who is licensed to carry 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 court. (See discussion above).

As part of providing security measures for Municipal Court, staff will be printing the signs to give notice and looking into various metal detection devices that can be used at the entrance to the courtroom.

FINANCIAL CONSIDERATION:

The financial impact is the cost of the required posters and metal detection devices that will need to be purchased.

RECOMMENDED MOTIONS:

Move to **Approve/Deny** a Resolution prohibiting the carrying of firearms within the City Council meetings, Planning and Zoning Commission meetings, and any other meetings of City boards and commissions subject to Open Meetings Act, permitting personnel to deny entry to individuals who are carrying firearms to protect the public safety.

ATTACHMENT(S):

1. Resolution 202209-02-209



**CITY OF NEW FAIRVIEW, TEXAS
RESOLUTION 202209-02-209**

A RESOLUTION OF THE CITY OF NEW FAIRVIEW, TEXAS, PROHIBITING THE CARRYING OF A FIREARM INTO THE ROOM OR ROOMS IN WHICH ANY MEETING OF THE CITY COUNCIL OR ANY OTHER BOARD, COMMISSION, OR COMMITTEE THAT IS SUBJECT TO CHAPTER 551, TEXAS GOVERNMENT CODE (OPEN MEETINGS ACT) IS MEETING.

WHEREAS, Texas Penal Code Section 46.03(a) 14 makes it an offense for a person to intentionally, knowingly, or recklessly possess or go with a firearm in the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to Chapter 551, Government Code, and if the entity provided notice as required by the chapter; and

WHEREAS, a governmental entity may display signage in accordance with Texas Penal Code sections 30.06 and 30.07 prohibiting the carrying of a handgun in an open meeting; and

WHEREAS, Texas Penal Code Section 30.06 requires that signage created in accordance with that section be “displayed in a conspicuous manner clearly visible to the public”; and

WHEREAS, Section 30.07 adds language that requires that signage be “displayed in a conspicuous manner clearly visible to the public at each entrance to the property”; and

WHEREAS, the best interpretation of that conflicting language is to display signage at the entrance to the meeting room; and

WHEREAS, it may be difficult for a license holder, without notice provided by signage, to definitively know where he or she can lawfully carry a handgun; and

WHEREAS, the City Council of the City of New Fairview, Texas finds that the most appropriate way to protect the attendees of meetings of the City Council or any board, commission, or committee that is subject to Chapter 551, Texas Government Code (Open Meetings Act) is to prohibit the carrying of a handgun by license holder in those meetings.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, TEXAS, THAT:

SECTION 1. Pursuant to Section 46.03(a)(14), Texas Penal Code, a person is prohibited from entering with a firearm into the room or rooms in which any meeting of the City Council of the City of New Fairview or any other City of New Fairview board or commission that is subject to Chapter 551, Texas Government Code (Open Meetings Act) is being held.

SECTION 2. The City Secretary, or his/her designee, is directed to prepare signage in accordance with Texas Penal Code Sections 30.06 and 30.07.

SECTION 3. The City Secretary, or his/her designee, is directed to post such signage outside the door to the room or rooms in which any meeting of the City Council or any other board or commission that is subject to Chapter 551, Texas Government Code (Open Meetings Act) is taking place prior to the meeting, and to remove the signage upon the conclusion of the meeting.

SECTION 4. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this resolution of any such unconstitutional phrase clause sentence paragraph or section.

SECTION 5. The City Council hereby finds, determines and declares that the meeting, at which this resolution is passed, approved and adopted, was open to the public, and that the public notice of time, place and subject matter to be considered was posted as required by law.

SECTION 6: This resolution shall take effect immediately upon its passage, as provided by law.

PRESENTED AND PASSED on this 6th day of September 2022, at a regular meeting of the New Fairview City Council.

JOHN TAYLOR, Mayor

ATTEST:

BROOKE BOLLER, City Secretary

A “Local Officials: *Stronger, Together*” Podcast Publication



“Local Governments and Firearms: Avoiding a Jam”

(The materials herein become effective September 1, 2021.)

(Updated portions, including “permitless” or “constitutional” carry changes, are highlighted in gray.)

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(Version 2: Last Updated June 2021)



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What is the “Local Officials: *Stronger, Together*” Podcast Series and why should I be listening?

The “Local Officials: *Stronger, Together* Podcast (STP) Series” is designed to help local officials and their employees understand key legal concepts and the services the Pool provides. Each 15-minute episode will provide easy action items to help keep a local government’s citizens, employees, volunteers, and property safe, all while saving public dollars.

Visit www.tmlirp.org and click on the STP link for written materials with additional information on that episode’s topic and to sign up for email notification of new episodes.

The Pool provides financial strength and stability through a partnership with over 2,800 local governments, partners with over 96 percent of all local governments in Texas, provides workers’ compensation coverage to over 165,000 public servants, and protects more than \$25 billion in government property. The Pool’s success makes us *Stronger, Together* through our core values:

- Integrity:** Serving with honesty, integrity and professionalism.
- Public Service:** Serving the public good – for the benefit of local governments and their tax-paying citizens.
- Fiscal Responsibility:** Responsibly managing our members’ pooled funds for the protection of their financial stability.
- Operational Excellence:** Delivering excellent member service in all components of our risk financing and loss prevention services.

Scott Houston, the Pool’s Member Liaison, is host of the Podcast. After serving the Texas Municipal League for over 20 years, the last half as general counsel, Scott now serves as Intergovernmental Relations Manager for the Pool. He has served as an adjunct professor, been published in the Texas Tech Administrative Law Journal, and has received awards from the American Bar Association, Texas Bar, and International Municipal Lawyers Association. Scott graduated from Texas A&M University with a degree in political science and – after studying law in Austria and Argentina – received his law degree from St. Mary’s University School of Law.

Educating local officials has been Scott’s passion for two decades, and the STP Series is the culmination of those efforts. The Pool plans to eventually provide analysis and written materials on dozens and dozens of topics.

Questions or comments? Visit www.tmlirp.org, call 512-791-4158, or email scott.houston@tmlirp.org.

What's in this paper?

This paper is designed for local government officials. It isn't a completely comprehensive paper covering everything a person who wants to carry a gun should know. Instead, it covers the state laws that govern in which government buildings or on which government property a person can go with a pistol or long gun, whether licensed or not. And it covers the very limited authority of local officials to prohibit carry in certain circumstances. You can find the statutes on the [Texas Legislature Online website](#). A "cheat sheet" for local officials that summarizes the most important points is also available at www.tmlirp.org, at the *Local Officials: Stronger, Together Podcast Series* link.

What does the Texas "licensed carry" law authorize?

Texas Government Code Chapter 411, Subchapter H, allows a person who obtains a license to carry a handgun from the Texas Department of Public Safety to carry a handgun in a concealed manner or openly in a holster. Licensed concealed carry became effective in 1995, and licensed open carry became effective in 2015. This paper covers where a person in Texas can carry a firearm (licensed or not) under state law, and the very limited ways in which a local government can enact more stringent regulations. It doesn't cover the process to become licensed.

What does the so-called "constitutional" or "permitless" carry legislation authorize?

House Bill 1927 (2021), known as the "Firearm Carry Act of 2021," 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 by making 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:"

1. assault causing bodily injury, including to their spouse [TEX. PENAL CODE § 22.01(a)(1)];
2. deadly conduct, including discharging a firearm at persons, a habitation, a vehicle or a building [*Id.* § 22.05];
3. making a terroristic threat [*Id.* § 22.07]; or
4. disorderly conduct by: (a) discharging a firearm in a public place other than a public road or a sport shooting range; or (b) displaying a firearm or other deadly weapon in a public place in a manner calculated to alarm [*Id.* § 42.01(a)(7) or (8)].

Tex. Penal Code § 46.02. 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 & 46.04(a-1)(Sections 46.15(b); (j); & (l) sometimes allow some who would otherwise be prohibited from carrying to do so, such as at an emergency shelter discussed below.) Oddly, a quirk in the law means that a member of a criminal street gang is now authorized to unlicensed carry in public. *Id.* § 46.04(a-1).

What about someone convicted of more serious offenses, like murder? The federal Gun Control Act, codified at 18 U.S.C. § 922(g), makes it unlawful for certain categories of persons to ship, transport, receive, or possess firearms or ammunition. *See also Id.* § 46.02(a-1)(2)(B). Examples or those who are prohibited by the Gun Control Act from possessing a firearm include, among other things a person who is:

1. convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
2. who is a fugitive from justice;
3. who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, codified at 21 U.S.C. § 802);
4. who has been adjudicated as a mental defective or has been committed to any mental institution;
5. who is an illegal alien;
6. who has been discharged from the Armed Forces under dishonorable conditions;
7. who has renounced his or her United States citizenship;
8. who is subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner; or
9. who has been convicted of a misdemeanor crime of domestic violence.

Interestingly, H.B. 1927 (2021) 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 background check. 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. More on that appears later in this paper.

The bill also mandates that the Texas Department of Public Safety develop free-of-charge and post online a course on firearms safety and handling, and that DPS prepare an annual report to the legislature related to handgun carry. TEX. GOV’T CODE § 411.02096 & 411.02097.

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 “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, **whether or not they hold a license:**

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. *Id.* § 46.03(a)(1).

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 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. Other local governments frequently lend their 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. (A local government could perhaps decide to post signage to assist those carrying a firearm to know a school-sponsored activity is taking place, but the law doesn’t require it, or even expressly allow it.)

Additional Note: A “campus concealed carry exception” applies to this provision and allows a *license holder* to carry 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. *Id.* § 46.03(a)(1); TEX. GOV’T CODE § 411.2031. (In July 2016, three UT professors [sued to enjoin the law](#). One year later, the court dismissed the case.) The Penal Code also includes criminal offenses for improper campus carry. *Id.* § 46.02(a-2); (a-3); (a-4).

2. 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).

Note: The Texas attorney general has concluded, in [Opinion No. KP-0212](#), that a presiding election judge who is licensed to carry a handgun may do so at most polling places during the voting period, see discussion of special carry rules for certain positions, below. That probably means a judge who isn’t licensed, but who may otherwise carry a handgun under H.B. 1927, can do so as well.

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. *Id.* § 46.03(a)(3).

Note: Attorney general opinions KP-0047 and KP-0049 offer opinions about this provision with which few local government attorneys agree, and courts have disagreed with the conclusions in the opinions as well – see next question for details. [Opinion KP-0332 \(2020\)](#) confirms that a judge can issue written permission to individuals allowing them to carry in the court or court offices.)

4. on the premises of a racetrack. *Id.* § 46.03(a)(4).
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.” *Id.* § 46.03(e-1) & (e-2).

Note: Penal Code Sections 46.03(e-1) and (e-2) provide a defense to this offense. The defense essentially provides that a person who makes a mistake at security by forgetting that he possesses a handgun can leave upon notice. While H.B. 1927 (2021) adds open carry to the defense. But if someone can't remember that they are openly carrying a firearm, perhaps they shouldn't? Finally, H.B. 1920, also passed in 2021, provides – among other things - an affirmative defense to a person who has permission from the airport operator to carry in otherwise prohibited areas.

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(a)(4).
7. 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 on-premises sale of alcohol.* *Id.* § 46.03(a)(7).

Note: Some local government facilities, such as convention and expo centers, could conceivably meet this threshold.

*This prohibition applies to a *license holder* only if he or she is given written notice by a “51 percent sign” as defined in TEXAS GOV’T CODE Section 411.204(c). *Id.* § 46.15(p).

8. on the premises where a high school, collegiate*, or professional sporting event is taking place, unless the handgun is used for the event. *Id.* § 46.03(a)(8).

Note: Open carry is prohibited on collegiate premises, but Texas Gov’t Code Section 411.2031 authorizes *licensed* concealed carry, subject to rules of the institution. Because of that, licensed concealed carry on the premises of a collegiate sporting event generally appears to be allowed unless a Penal Code Section 30.06 notice is given that it is prohibited.

*This prohibition applies to a *license holder* only if he or she is given written notice by a 30.06 and/or 30.07 sign. *Id.* § 46.15(p).

9. on the premises of a correctional facility or a civil commitment facility. *Id.* § 46.03(9) & (10).
10. on the premises of a state-licensed hospital* or nursing home*, or a mental hospital, unless the administration has granted written permission to the license holder. *Id.* § 46.03(11) & (12).

*This prohibition applies to a *license holder* only if he or she is given written notice by a 30.06 and/or 30.07 sign. *Id.* § 46.15(p).

11. in certain amusement parks.* *Id.* § 46.03(13). (Note: Section 46.03(c)-(1) very narrowly defines amusement park, and only a few “six flags”-type parks would meet the definition.)

*This prohibition applies to a *license holder* only if he or she is given written notice by a 30.06 and/or 30.07 sign. *Id.* § 46.15(p).

12. any time the handgun is intentionally displayed in a public place, except if the handgun is partially or wholly visible and carried in a holster. *Id.* § 46.03(a-5).

13. if the person carrying is intoxicated, unless the person (get a load of these) is: (1) on the person’s own property or on private property with the consent of the owner; 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 or with the consent of the owner or operator of the vehicle or watercraft. (Presumably operating the car or boat under the influence remains a crime.) *Id.* § 46.03(a-6).

14. for an unlicensed carrier, 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. However, 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; and 30.07.

Note: Prior to the passage of H.B. 1927 (2021), a license holder could carry concealed or openly into an open meeting, *unless* a governmental body had prohibited carry by posting a 30.06 and/or 30.07 sign at the entrance to the meeting room while the meeting was taking place. Section 23 of the bill eliminated the notice requirement that used to be in Penal Code Section 46.035(c) by virtue of a cross-reference to 46.035(i), which stated that “Subsections... (c)... do not apply if the actor was not given effective notice under Section 30.06 or 30.07.” That means after H.B. 1927, 46.03(a)(14) – read alone – *would* mean that *no one* (licensed or not, with some exceptions for peace officers, etc.) could go into an open meeting with a handgun, period. But wait, there’s more!

Section 46.03(a)(14) is an absolute prohibition that *cannot* be “waived” by the governmental body or anyone else. But, importantly, a “non-applicability” list in 46.15(b)(6) also includes: “a person who holds a license to carry, and the handgun is concealed or in a holster.” *Id.* § 46.15(b)(6). That section takes the prohibition “full circle” to where it actually allows a license holder to carry into an open meeting, *unless* the governmental body has posted the usual Penal Code 30.06 and/or 30.07 signs, discussed in more detail below, prohibiting them from doing so.

Also, Section 46.15(b) statutorily exempts certain people from the prohibition, such as – among others – *a person who is traveling or en route between the premises and the person’s residence, motor vehicle, or watercraft.* A person who is lawfully carrying a handgun without a permit is barred from entering an open meeting, *unless* they fall into such an exception. Of course, the “travelling” or “*en route*” exceptions have been interpreted

narrowly. Typically, a stopover at a governing body's meeting between work and home, for example, makes the exception go poof. *See, e.g., Moosani v. State*, 866 S.W.2d 736, 738 (Tex. App. 1993), *aff'd*, 914 S.W.2d 569 (Tex. Crim. App. 1995).

15. on the 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 \(2012\)](#).
16. on the property of any of the 10 state hospitals listed Section 552.002 of the Health and Safety Code by providing specific written notice as stated in that section. TEX. HEALTH & SAFETY CODE § 552.002.
17. to a public place in plain view of another, unless in a holster. TEX. PENAL CODE § 46.02(a-5).

"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. *Id.* § 46.03(c)(4).

All of the prohibitions above are subject to a defense to prosecution if a person: (1) carries a handgun on a premises or other property into or on a prohibited place listed above; (2) personally received from the owner of the property, or from another person with apparent authority to act for the owner, notice that carrying a firearm or other weapon on the premises or other property was prohibited; and (3) *promptly departed from the premises or other property*. TEX. PENAL CODE § 46.03(m).

A note about religious institutions because it's not uncommon for government functions to take place there: Penal Code Section 43.035(b)(6), relating to carry on the premises of a church, synagogue, or other established place of religious worship, used to prohibit the carrying of firearms in a religious institution. However, it was repealed in 2019 by S.B. 535. That was done in the wake of attorney general opinion [KP-0176 \(2017\)](#). The repeal of the prohibition puts churches on par with other private businesses, i.e. a person can carry there, unless the church has provided proper notice that carrying is prohibited.

Finally, 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).

What type of signage is required to provide notice that handgun carry isn't allowed?

Handgun without a License

House Bill 1927 (2019) modifies some of the required signage to comport with *unlicensed* carry. Penal Code Section 46.15(o) allows a “person” or business to prohibit unlicensed carrying by the posting of a sign stating that “Pursuant to Section 46.03 Penal Code (places weapons prohibited), a person may not carry a firearm or other weapon on this property.” A political subdivision isn’t a “person” as defined in Penal Code Section 1.07(a)(38). Because of that, a political subdivision can’t post such a sign. (Penal Code Section 30.05(c) allows a “person” or business to prohibit unlicensed carrying anywhere on their property by the posting of a sign with similar language, but a political subdivision can’t use that one either.)

Handgun with a License

Besides the secure area of a law enforcement facility, discussed below, a political subdivision really has only one “optional” place it can choose to prohibit licensed carry, and that’s in a meeting subject to the Open Meetings Act. (Remember that unlicensed carry is prohibited there by law.) The language in the required sign to provide notice that licensed carry is not allowed in a meeting room is as follows:

- 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*.

Section 30.07 has the additional words “at each entrance to the property,” which adds some confusion to where that sign should be posted, especially in relation to the optional “meeting room prohibition” for local governments in (14) in the list of prohibited places, above – the current consensus appears to be that both signs should be posted at the entrance to the meeting room itself.

In 2019, legislation was passed that provides a defense to prosecution to the offenses of trespass by a license holder with a concealed or openly carried handgun (i.e., going where a “30.06” or “30.07” sign prohibits carry) if the license holder was personally given notice by oral communication and promptly departed from the property. *Id.* § 30.06(g) & 30.07(h).

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 – see “Are certain people allowed to carry a handgun where others may not?”

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

A 2015 attorney general opinion called into question local government attorneys’ previous understanding of where firearms can be carried in and around courts. Attorney general opinion request RQ-0040-KP (July 24, 2015) asked numerous questions about the statutory prohibition against carrying a firearm onto the premises of any government court or office utilized by the provision. A discussion of each subsequent opinion, along with an explanation of their practical effects, follows.

- [Tex. Att’y Gen. Op. No. KP-0047 \(2015\)](#) concluded that a person is prohibited from carrying a firearm *only into the room* that houses a court or court office. That opinion is contrary to what most attorneys had been advising for years under the concealed carry law.

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 perhaps can) inadvertently commit a third degree felony for going into 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.” That statement is a “gotcha.” Why? Because the court prohibition *does not require (or authorize) notice*.

Prior to the opinion above, 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 shift the risk of compliance onto the person carrying to know where he or she can carry.

In the wake of KP-0047, some local governments called foul. For example, TML, the Texas District and County Attorneys Association, and the Texas Conference of Urban Counties all questioned the attorney general’s conclusions.

Whether a local official agrees or disagrees with the conclusions in the opinion, it seems safe to say that many are having trouble deciding how to deal with them. CUC's advice to its county members was that the opinions are:

not consistent with the plain language found in Texas statutes, nor the very clear evidence of legislative intent...[t]he question of whether "premises of a court" means only a courtroom should be a question of law to be decided by the trial judge in the first instance, subject to appeal. Interestingly, as of this writing, the judges of the Texas Supreme Court and the Texas Court of Criminal Appeals don't permit any weapons to be brought into the Supreme Court building.

TDCAA's advice was similar. Again, regardless of one's opinion on where guns should be allowed, it's tough to properly interpret the courts prohibition.

In the wake of the opinion, Waller County, located northwest of Houston, filed a lawsuit to find the answer. On November 28, 2016, a district judge in Waller County issued an order in the case of *Waller County v. Terry Holcomb*. The order concluded that the *entire building that houses a court* is off-limits to anyone carrying a firearm, including the holder of a license to carry. The order also concluded that the attorney general had no authority to investigate the county's signs providing notice that no firearms are allowed.

Terry Holcomb is the leader of the group known as Open Carry Texas, and he spent some of his time complaining about governmental entities posting licensed carry signage in what he alleges is the wrong place or with the wrong wording. He sent a written complaint to Waller County officials claiming that – based on the attorney general opinion mentioned above – they can't prohibit licensed carry in the entire courthouse building. He also claimed that the attorney general's office, under its investigatory authority over signage, can seek civil penalties against the county if it refuses to remove its signs. He was wrong at the time, and so was the attorney general when he agreed in [Opinion No. KP-0049 \(2015\)](#). But both of their opinions "became correct" when legislation clarified the attorney general's investigatory authority in 2019. See TEX. GOV'T CODE § 411.209.

The county filed a lawsuit against Mr. Holcomb seeking a declaratory judgment from a district court that: (1) the entire courthouse is off-limits to licensed carriers; and (2) the attorney general's office doesn't have as much enforcement authority as it claims. The court's order agreed fully with the county's position. But the order isn't precedential, and it was later dismissed on procedural grounds.

The attorney general then filed a separate lawsuit against Waller County in Travis County District Court on the exact same issues. That case, [Ken Paxton v. Waller County et al.](#), was decided on purely procedural grounds on March 4, 2021, which provided no substantive guidance, and the case was remanded to the trial court.

The attorney general's office also filed a lawsuit against the City of Austin to require licensed carry at city hall, even though the city claimed a municipal court is housed there. The Austin city

hall houses the city’s “community court.” According to its website, the court’s purpose is “to collaboratively address the quality of life issues of all residents in the downtown Austin community through the swift, creative sentencing of public order offenders.” The court “seeks to hold people responsible while also offering help to change behavior.”

The court is in city hall. Because of that, the city took the position that the entire building is off-limits to license holders carrying handguns. A “no guns” sign (a handgun with a slash through it – see photo to the left) was posted on the window, and a guard posted at a metal detector provided verbal notice that licensed carry was not allowed.



The attorney general’s lawsuit asked the court to order the city to remove its sign and authorize licensed carry in city hall. It also sought civil penalties from the city. In 2018, the district court judge in *Paxton v. City of Austin* disagreed, concluding that the attorney general had no jurisdiction under Government Code Section 411.209 to investigate, seek an injunction, or seek civil penalties for the display of any sign other than a 30.06 sign or verbal notice under that same section. (Again, keep in mind that the legislature subsequently granted attorney general enforcement of any sign or communication through H.B. 1791 in 2019.)

In a letter explaining her decision to deny the attorney general’s motion for summary judgment, the judge eviscerated the attorney general’s arguments based on the plain language of the law. Her conclusions can be summarized as follows:

1. Texas Government Code Section 411.209 provides that: “[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 license to carry a handgun, that a license holder carrying a handgun...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.”*
2. The section above refers only to Section 30.06 signs, which allow a city to prohibit licensed carry only in a meeting room while a meeting subject to the Open Meetings Act is taking place.
3. The plain language of the section above does not grant the attorney general any authority whatsoever to investigate or enforce against any other type of sign relating to firearms.
4. The section above does not prohibit a city from giving notice by a sign providing a gun with a slash through it (or presumably a “no firearms allowed” sign) that all firearms are prohibited under some other law. (Such as the prohibition against anyone carry any firearm – licensed or not – onto the premises of a building with a court or offices utilized by the court.)
5. The city’s argument that the entire building that contains a court or offices utilized by the court is off limits to anyone – licensed or not – carrying a firearm is correct because “premises” is defined Penal Code Section 46.035(f)(3)* law to mean “a building or portion of a building.” (Note: An older appeals court opinion concluded that, in a criminal proceeding, the carrying of a pistol into a district court clerk’s office was sufficient to

uphold a conviction for a violation of Section 46.03. *Wooster v. State*, No. 08-05-00177-CR, 2007 WL 2385925 (Tex. App. Aug. 16, 2007).)

6. Number (5), above, is true because the prohibition against carry in a building or portion of a building is a criminal offense, and means that a person with a firearm can't go into any portion of the building housing a court or offices utilized by a court.
7. A building or portion of a building that houses a court or offices utilized is off limits to anyone – licensed or not – who is carry a firearm at all times (not just when court is in session).

*H.B. 1927 (2021) repealed Section 46.035.

The case was scheduled for a full bench trial in December 2018. After the bench trial, the judge did an “about face” and ordered the city to remove its signs and allow carry in city hall. The case is, as of June 2021, [on appeal to the Third Court of Appeals](#).

In a separate 2019 criminal case, the Waco Court of Appeals in *Thomas v. State* concluded that:

The common areas inside a building that are adjacent to courtrooms and offices used by the court are clearly part of the definition of “premises.” This is supported by the legislative history of § 46.03, which expanded the definition of the prohibited area from a “government court or offices utilized by the court” to the *premises* of any government court or offices utilized by the court, in conjunction with the definition of premises in § 46.035(f). See Act of May 16, 2003, 78th Leg., R.S., ch. 1178, § 3(a)(3), sec. 46.03(a)(3), 2003 Tex. Gen. Laws 1042, 1178.

No. 10-17-00138-CR, 2019 WL 4072073, at *4 (Tex. App. Aug. 28, 2019), *petition for discretionary review refused* (Mar. 25, 2020). However, *Thomas* is an unpublished opinion, which may limit its precedential value.

What are the practical effects of the attorney general opinions and court cases above? They mean we still don't have a concrete answer as to how firearm carry interacts with court buildings. One option might be to take no action at all. The prohibition against carrying in a court or court office is a state law and requires no signage or implementing action by a local government. If an employee or citizen sees a person carrying a firearm in a courtroom or a court office, law enforcement can be summoned. Another option could be a sign ensuring that citizens know they are entering a building that houses a court. While it hasn't been tested in court, a third option could be some variation of quoting new Penal Code Section 46.15(o)'s sign language – even though a political subdivision can't technically use the authority in that section because it isn't a “person” as defined in the Penal Code):

Pursuant to Section 46.03 Penal Code (places weapons prohibited),
a person may not carry a firearm or other weapon on this property.

(The above analysis relates to courts and court offices, but it might also be used for signage relating to the prohibition against carrying on the premises of a school sponsored activity or polling place during early voting or on Election Day.)

Previous version of this paper advised that one possible option a local government 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 court exception. Considering the ruling in the Austin and Waller cases, however, and the attorney general's renewed interest in signage, the advice to adopt such a resolution may no longer make sense. It may be better to simply wait for additional guidance from the courts.

Is a person *allowed* by state law to carry a concealed handgun on a college campus?

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 – *a person without a license may not carry any handgun onto a campus.* (“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.) “Campus” means all land and buildings owned or leased by an institution of higher education or private or independent institution of higher education. TEX. GOV'T CODE § 411.2031(a)(1). This provision *does not allow open campus carry*, and it *does not allow unlicensed carry on a college campus.*

Attorney general opinion [KP-0167 \(2017\)](#) concluded that a “license holder who carries a concealed handgun into an open meeting of a junior college district board of trustees in which no Penal Code section 30.06 trespass notice was posted would have a defense to the prosecution of Penal Code subsection 46.035(c). Though unnecessary within the context of Government Code subsection 411.2031(d-1), a junior college district board of trustees could adopt a rule authorizing concealed handguns in its open meetings to affirm or publicize a license holder's right to carry the concealed handgun into the open meeting held on the institution's campus.”

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. Nos. [KP-0051 \(2015\)](#) and [KP-0120 \(2016\)](#).

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.

House Bill 1927 (2021) repealed three additional criminal provisions that were in Penal Code Section 43.065’s list of license holder prohibitions, and inserted them into Section 43.06.

Those provisions provide 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 § 46.03(a-2).

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 § 46.03(a-3). 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 § 46.03(a-4).

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 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 Constitution’s provision above, nor the U.S. Constitution’s 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.”); *United States v. Anderson*, 559 F.3d 348, 352 (5th Cir. 2009)(Assertion that federal law prohibiting felon from possessing firearms was unconstitutional “was foreclosed in this circuit by *United States v. Darrington*, 351 F.3d 632, 633–34 (5th Cir.2003).); *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.).

Changes made by H.B. 1927 (2021) clarify that a “person” (which *does not* include a political subdivision) can prohibit a person from carrying a long gun onto their property by giving notice under the criminal trespass statute:

(c) A person may provide notice that firearms are prohibited on the property by posting a sign at each entrance to the property that:

- (1) includes language that is identical to or substantially similar to the following: “Pursuant to Section 30.05, Penal Code (criminal trespass), a person may not enter this property with a firearm”;
- (2) includes the language described by Subdivision (1) in both English and Spanish;
- (3) appears in contrasting colors with block letters at least one inch in height; and
- (4) is displayed in a conspicuous manner clearly visible to the public.

TEX. PENAL CODE § 30.05(c). The provision above doesn’t authorize a local government to do so.

Handguns without a License

Until the passage of H.B. 1927 (2021), the open carry of handguns in public was prohibited in Texas, unless the person held a license to carry a handgun or during certain disasters (see below and next question).

House Bill 1927 (2021) 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.”

1. assault causing bodily injury, including to their spouse [Penal Code § 22.01(a)(1)];
2. deadly conduct, including discharging a firearm at persons, a habitation, a vehicle or a building [*Id.* § 22.05];
3. making a terroristic threat [*Id.* § 22.07]; or

4. disorderly conduct by: (a) discharging a firearm in a public place other than a public road or a sport shooting range; or (b) displaying a firearm or other deadly weapon in a public place in a manner calculated to alarm [*Id.* § 42.01(a)(7) or (8)].

Tex. Penal Code § 46.02. 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. What about someone convicted of more serious offenses, like felony murder? The federal Gun Control Act, codified at 18 U.S.C. § 922(g), makes it unlawful for certain categories of persons to ship, transport, receive, or possess firearms or ammunition. *See also Id.* § 46.02(a-1)(2)(B). Examples or those who are prohibited by the Gun Control Act from possessing a firearm include, among other things a person who is:

1. convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
2. who is a fugitive from justice;
3. who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, codified at 21 U.S.C. § 802);
4. who has been adjudicated as a mental defective or has been committed to any mental institution;
5. who is an illegal alien;
6. who has been discharged from the Armed Forces under dishonorable conditions;
7. who has renounced his or her United States citizenship;
8. who is subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner; or
9. who has been convicted of a misdemeanor crime of domestic violence.

Interestingly, H.B. 1927 (2021) 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 background check. 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. More on that appears later in this paper.

The law also continues to expressly allow an unlicensed person who is over 21 or who holds a license to concealed or openly carry a handgun on private property or in a car or boat (technically, in a “watercraft”). For those younger than 21 years of age and who do not hold a license, a handgun in a car or boat must be concealed. For that narrow class of persons, 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)(3).

While H.B. 1927 (2021) makes several findings in its preamble, such as “the Second Amendment of the United States Constitution protects an individual right to keep and bear arms, and to possess a firearm unconnected with service in a militia, and to use that firearm for traditionally lawful

purposes, such as self-defense within the home,” 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 holster. *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 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

Until the passage of H.B. 1927 (2021), the open carry of handguns in public was prohibited in Texas, unless the person held a license to carry a handgun or during certain disasters (see below and next question).

House Bill 1927 (2021) authorizes most Texans over 21 years of age and who can otherwise lawfully possess a firearm to carry a handgun in a concealed manner or openly in a holster, without the requirement to first obtain a handgun license to carry.

The law also continues to expressly allow an unlicensed person who is over 21 or who hold a license to concealed or openly carry a handgun on private property or in a car or boat (technically, in a “watercraft”). For those younger than 21 years of age and who do not hold a license, a handgun in a car or boat must be concealed. For that narrow class of persons, 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)(3).

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.

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 there special rules related to the carry of handguns during a disaster?

The Penal Code provides that a person – licensed or not – may carry a handgun during a disaster in certain circumstances as follows:

1. a person, regardless of whether he or she holds a license, may carry a handgun if: (a) the person carries the handgun while evacuating from an area following the declaration of a state or local disaster with respect to that area or reentering that area following the person’s evacuation; (b) not more than 168 hours have elapsed since the state of disaster was declared, or more than 168 hours have elapsed since the time the declaration was made and the governor has extended the period during which a person may carry a handgun under the bill; and (c) the person is not prohibited by state or federal law from possessing a firearm;
2. a person may carry a handgun, regardless of whether the handgun is concealed or carried in a holster, on the premises of a location operating as an emergency shelter in a location listed in (3), below, during a declared local or state disaster if the owner, controller, or operator of the premises or a person acting with apparent authority authorizes the carrying of the handgun, the person carrying the handgun complies with any rules and regulations of the owner, controller, or operator of the premises, and the person is not prohibited by state or federal law from possessing a firearm; and
3. regardless of any state law prohibition, a person may carry, with the consent of the owner, et al., required by (2), above, on the 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, on the premises of a polling place on the day of an election or while early voting is in progress, on the premises of any government court or offices utilized by the court, on the premises of a racetrack, on the premises of an institution of higher education or private or independent institution of higher education, 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, on the premises of a business that has a permit or license issued by the Alcoholic Beverage Code, in an

amusement park, or on the premises of a church, synagogue, or other established place of religious worship.

TEX. PENAL CODE § 46.15(k) & (l).

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/Presiding Election Judges and Prosecutors

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 anywhere that would otherwise be prohibited by Section 46.03. TEX. PENAL CODE § 46.15(a).

In addition, the Texas attorney general has concluded, in [Opinion No. KP-0212](#), that a presiding election judge who is licensed to carry a handgun may do so at most polling places during the voting period. Section 46.03 of the Penal Code provides that a “person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm...on the premises of a polling place on the day of an election or while early voting is in progress.” However, the same section exempts “active judicial officers” from the prohibition. The judge of a district court is such an officer under state law. Interestingly, state law grants a presiding election judge “the *power of a district judge* to enforce order and preserve the peace.”

All that is to say that a presiding election judge with a license to carry may do so “from the time the judge arrives at the polling place on election day until the judge leaves the polling place after the polls close.” Regarding location, the presiding election judge’s law enforcement authority exists “in the polling place and in the area within which electioneering and loitering are prohibited.” That probably means a judge who isn’t licensed, but who may otherwise carry a handgun under H.B. 1927, can do so as well.

Other prohibitions could limit when a licensed presiding judge can carry. For example, a private business owner has the authority under other law to prohibit carry by the posting of a Penal Code 30.05(c) sign, 46.15(o) sign, or so-called 30.06 and/or 30.07 signs. Thus, for example, the owner of a grocery store being used as a polling place has the authority to prohibit a presiding judge from carrying on the premises if proper notice is given.

Peace Officers/Law Enforcement

Of course, law enforcement officers are authorized to carry essentially anywhere:

- 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. (H.B. 1522 in 2019 made various changes to the rules related to retired law enforcement officers.)
- 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 (This provision, titled “nonapplicability,” allows certain other persons, such as members of the military, personal protection officers, and others to carry in expanded areas.)

Volunteer Emergency Services Personnel

Chapter 112 of the Civil Practices and Remedies Code provides certain liability protections to a governmental unit that allows volunteer emergency services personnel *with a license to carry* a handgun while engaged in providing emergency services. A “governmental unit” means:

1. this state and all the several agencies of government that collectively constitute the government of this state, including other agencies bearing different designations, and all departments, bureaus, boards, commissions, offices, agencies, councils, and courts;
2. a political subdivision of this state, including any city, county, school district, junior college district, levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, public health district, and river authority;
3. an emergency service organization; and
4. any other institution, agency, or organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution.

The Code provides that:

1. “volunteer emergency services personnel” includes a volunteer firefighter, an emergency medical services volunteer, and any individual who, as a volunteer, provides services for the benefit of the general public during emergency situations;
2. a governmental unit is not liable in a civil action arising from the discharge of a handgun by an individual who is volunteer emergency services personnel and licensed to carry the handgun;

3. the discharge of a handgun by an individual who is volunteer emergency services personnel and licensed to carry the handgun is outside the course and scope of the individual's duties as volunteer emergency services personnel;
4. the bill may not be construed to waive the immunity from suit or liability of a governmental unit under the Texas Tort Claims Act or any other law; and
5. volunteer emergency services personnel who are engaged in providing emergency services:
 - (a) enjoy a defense to prosecution for carrying into a place under which an owner has lawfully excluded licensed carry by providing notice under current law, bars, jails, sporting events, hospitals that provide notice, open meetings if notice is provided, amusement parks, or places of worship; and
 - (2) are permitted to carry into a school, institution of higher education, polling place, court or court offices, racetrack, secured area of an airport, or place of execution.

Local officials should note that the bill does not mandate that they allow volunteer emergency services personnel who hold a license to carry their handgun. It merely attempts to provide liability protections should that carry be allowed. Moreover, while it appears to provide complete immunity under a state law claim, a state law can't provide immunity for a federal civil rights law. Instead, the law provides that a volunteer who discharges her handgun is "outside the course and scope of the individual's duties." That's an attempt to protect a local government from a civil rights lawsuit. (See more detailed questions about liability, below.)

Paid First Responders

H.B. 1069 (2021) becomes effective September 1, 2021, and authorizes certain first responders who hold a license to carry to do so while on duty in certain circumstances. Specifically, the bill:

1. Defines "first responder" to include a public safety employee whose duties include responding rapidly to an emergency, specifically including:
 - a. fire protection personnel, which means: (i) permanent, full-time law enforcement officers designated as fire and arson investigators by an appropriate local authority; (ii) aircraft rescue and fire protection personnel; or (iii) permanent, full-time fire department employees who are not secretaries, stenographers, clerks, budget analysts, or similar support staff persons or other administrative employees and who are assigned duties in one or more of the following categories: (A) fire suppression; (B) fire inspection; (C) fire and arson investigation; (D) marine fire fighting; (E) aircraft rescue and fire fighting; (F) fire training; (G) fire education; (H) fire administration; and (I) any other position necessarily or customarily related to fire prevention or suppression.
 - b. emergency medical services personnel, which means: (i) emergency care attendants; (2) emergency medical technicians; (3) advanced emergency medical technicians; (4) emergency medical technicians – paramedic; or (5) licensed paramedics.
2. Excludes from the bill: (a) volunteer emergency services personnel; (b) an emergency medical services volunteer, which means emergency medical services personnel who provide emergency prehospital care without remuneration, except reimbursement for

expenses; (b) a peace officer or reserve law enforcement officer who is performing law enforcement duties.

3. prohibits a city with a population of 30,000 or less that has not adopted collective bargaining from adopting or enforcing an ordinance, order, or other measure that generally prohibits a first responder who holds a license to carry a handgun, holds an unexpired certification of completion of a handgun training course for first responders, and has the required liability insurance from: (a) carrying a concealed or holstered handgun while on duty; or (b) storing a handgun on the premises of or in a vehicle owned or leased by the city if the handgun is secured with a device approved by the Texas Department of Public Safety (DPS);
4. provides that the prohibition in (1) does not prohibit a city from adopting an ordinance, order, or other measure that: (a) prohibits a first responder from carrying a handgun while on duty based on the conduct of the first responder; or (b) limits the carrying of a handgun only to the extent necessary to ensure that carrying the handgun doesn't interfere with the first responder's duties;
5. authorizes a city with a population of 30,000 or less that has not adopted collective bargaining to adopt a policy authorizing a first responder who holds a license to carry a handgun, holds an unexpired certification of completion of a handgun training course for first responders, and has the required liability insurance to: (a) carry a concealed or holstered handgun while on duty; or (b) store a handgun on the premises of or in a vehicle owned or leased by the city if the handgun is secured with a device approved by DPS;
6. provides that a first responder may not engage in the conduct described in (3)(a)-(b) unless the city has adopted a policy authorizing the conduct;
7. provides that a first responder may discharge a handgun while on duty only in self-defense;
8. provides that a city that employs or supervises a first responder is not liable in a civil action arising from the discharge of a handgun by a first responder who is licensed to carry a handgun;
9. provides that the discharge of a handgun by a first responder who is licensed to carry a handgun is outside the course and scope of the first responder's duties;
10. provides that one or more complaints received by a city with respect to a specific first responder constitutes grounds for prohibiting or limiting that first responder's carrying a handgun while on duty; and
11. requires the public safety director of DPS to establish a handgun training course for first responders.

School Marshals and "Guardian Plans"

State law provides several methods through which a school district can implement security measures.

A guardian plan (that term isn't in statute) allows a district to authorize certain employees with a license to carry on school premises. TEX. PENAL CODE § 46.03(a)(1). A district may go further and appoint school marshals who receive specialized training prior to serving. TEX. EDUC. CODE § 37.0811. The Texas Commission on Law Enforcement has a [web page](#) dedicated to the school marshal program.

Or a district may use a combination of guardian(s) and marshal(s). [Tex. Att’y Gen. Op. No. GA-1051 \(2014\)](#). *Id.* at § 37.0813. The Texas Association of School Boards has prepared an [excellent memo](#) with detailed information about school security planning and options.

Private schools may also appoint school marshals. *Id.* at § 37.0813. While state law may give the license holders above additional authority to carry on school premises, it doesn’t necessarily mean they can carry in other places that weapons are prohibited.

In what ways does state law expressly preempt a city from regulating firearms?

Most local governments don’t have the same ordinance-making authority as cities. Because of previously-broad city authority in the area of firearms regulation, the legislature has expressly preempted city authority over: (a) the transfer, possession, wearing, carrying, ownership, storage, transportation, licensing, or registration of firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories; (b) commerce in firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories; or (c) 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); [Tex. Att’y Gen. Op. No. KP-0252 \(2019\)](#). Local Government Code Section 236.002 includes similar limitations on counties.

In addition, Government Code Section 411.209, which is the statute that the attorney general uses to investigate and/or sue cities that allegedly have signs posted in unallowable places, provides that:

1. a state agency or a political subdivision of the state may not take any action, including an action consisting of the provision of notice by a communication described by Section 30.06 or 30.07, Penal Code, that states or implies that a license holder who is carrying a handgun 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, Penal Code, or other law;
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.

TEX. GOV'T CODE § 411.209.

As written, the law originally applied only to a concealed handgun sign under Texas Penal Code Section 30.06. The attorney general later asserted that the law grants his office authority over *any sign* and even over verbal trespass warnings. [Tex. Att'y Gen. Op. No. KP-0049 \(2015\)](#). That was an incorrect conclusion at the time, but H.B. 1791 (2019) ultimately clarified the attorney general's broad authority to investigate virtually any sign or communication. *Id.*

In what ways does state law expressly *authorize a city to regulate firearms*?

Most local governments – except for cities – have little if any authority to regulate firearms by ordinance. For a city, 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. using authority of other law: (a) adopt or enforce a generally applicable zoning ordinance, land use regulation, fire code, or business ordinance (but not if the ordinance or regulation is designed or enforced to effectively restrict or prohibit the manufacture, sale, purchase, transfer, or display of firearms, firearm accessories, or ammunition that is otherwise lawful in this state); (b) regulate the carrying of a firearm by a person licensed to carry a handgun in accordance with express state law authority; or (c) regulate or prohibit an employee's carrying or possession of a firearm, firearm accessory, or ammunition in the course of the employee's official duties;
3. the exception provided by Section (3)(c), above, does not authorize a city to regulate an employee's carrying or possession of a firearm in violation of Labor Code provisions relating to storing a handgun in a parking lot;
4. the carrying of a firearm or air gun or firearm *other than a handgun carried by a person not otherwise prohibited by law from doing so* at a:

a. public park (Prior to H.B. 1927 (2021), 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 \(1995\)](#). After the bill's passage, a city can't prohibit anyone who is lawfully carrying a firearm from bringing it into the park.);

b. public meeting of a city, county, or other governmental body (A city may prohibit license holders by posting a 30.06 and/or 30.07 sign, which appears to be at odds with this section, as does Penal Code Section 46.03(a)(14), which prohibits carry at a meeting by an unlicensed person. It seems everyone is in agreement that this section is superseded by those others either prohibiting unlicensed carry in a meeting or allowing a local government to prohibit licensed carry with proper signage.);

(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).)

c. political rally, parade, or official political meeting; or

d. nonfirearms-related school, college, or professional athletic event.

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) (Subsection (b-4), which allowed a city to regulate “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,” was repealed in 2021 by H.B. 1500.)

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 and costs for prosecuting the violation. *Id.* § 229.001(f).

The Texas Constitution, Article I, Section 34, was amended in 2015 (by voter approval) to: (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.)

Finally, H.B. 29 passed in 2021 and provides that: (1) allows a political subdivision to provide a person temporary secure weapon storage when entering a building or portion of a building used by the political subdivision that is generally open to the public and in which carrying a firearm, knife, club or other weapon is prohibited by state law or the political subdivision; (2) allows weapon storage to be provided via self-service weapon lockers or other temporary secure weapon storage operated at all times by a designated employee of the political subdivision; (3) allows a political subdivision to collect a fee of not more than \$5 for the use of a self-service weapon locker or other temporary secure weapon storage; and (4) addresses how a political subdivision must handle an unclaimed weapon. TEX. LOCAL GOV'T CODE § 365.001 et seq.

In what additional ways does state law expressly *prohibit* city regulation of firearms?

Most local governments – except for cities – have no authority to regulate firearms by ordinance. For a city, the legislature has preempted most inherent authority. 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 has limited municipal authority over certain firearm 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 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.

Id. § 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.

Also, the Texas Legislature was busy in the 2021 regular session passing further preemptive legislation – the following four bills passed:

- H.B. 957 relates to silencers and: (1) prohibits a city council or an officer, employee, or other body that is part of a city (including a police department) from: (a) adopting a rule, order, ordinance, or policy under which the city enforces, or by consistent action allows the enforcement of, a federal statute, order, rule, or regulation that purports to regulate a firearm suppressor if the statute, order, rule, or regulation imposes a prohibition, restriction, or other regulation that does not exist under Texas law; and (b) enforcing or attempting to enforce any federal statute, order, rule, or regulation described in (1)(a); (2) provides that a violation of the prohibition in (1) may be enforced by denying certain state grant funds to the city; (3) authorizes any citizen residing in the jurisdiction of a city to file a complaint with the attorney general if the citizen offers evidence to support an allegation that the city violated the prohibition in (1); (4) authorizes the attorney general, upon receipt of a valid citizen complaint, to file a writ of mandamus or seek other equitable relief to compel a city to comply with the requirements in the bill, and allows the attorney general to recover reasonable expenses in obtaining such relief; and (5) removes the prohibition in state law against possessing a firearm suppressor, and provides that any pending criminal action n for that offense is dismissed on the effective date of the bill. TEX. GOV'T CODE § 2.001 et seq.
- H.B. 1500 relates to disaster orders: (1) provides that the Texas Disaster Act of 1975 does not authorize any person to prohibit or restrict the business or operations of a firearms or ammunition manufacturer, distributor, wholesaler, supplier, or retailer or a sport shooting range, in connection with a disaster; (2) provides that the governor may not, during a state of disaster, suspend or limit the sale, dispensing, or transportation of explosives or combustibles that are components of firearm ammunition; (3) provides that a directive issued during a state of emergency may not prohibit or restrict the business or operations of a firearms or ammunition manufacturer, distributor, wholesaler, supplier, or retailer or a sport shooting range; and (4) removes certain express statutory authority of a city to regulate the use of firearms, air guns, or knives in the case of an insurrection, riot, or natural disaster. TEX. GOV'T CODE § 418.003 & 418.109.
- H.B. 2622 provides that: (1) notwithstanding any other law, an agency of this state, a political subdivision of this state, or a law enforcement officer or other person employed

by an agency of this state or a political subdivision of this state may not contract with or in any other manner provide assistance to a federal agency or official with respect to the enforcement of a federal statute, order, rule, or regulation that: (a) imposes a prohibition, restriction, or other regulation that does not exist under the laws of Texas; and (b) relates to: (i) a registry requirement for a firearm, a firearm accessory, or ammunition; (ii) a requirement that an owner of a firearm, a firearm accessory, or ammunition possess a license as a condition of owning, possessing, or carrying the firearm, firearm accessory, or ammunition; (iii) a requirement that a background check be conducted for the private sale or transfer of a firearm, a firearm accessory, or ammunition; (iv) a program for confiscating a firearm, a firearm accessory, or ammunition from a person who is not otherwise prohibited by the laws of Texas from possessing the firearm, firearm accessory, or ammunition; or (v) a program that requires an owner of a firearm, a firearm accessory, or ammunition to sell the firearm, firearm accessory, or ammunition; (2) the prohibition in (1) does not apply to a federal statute, order, rule or regulation in effect on January 19, 2021; and (3) a violation of the prohibition in (1) may be enforced: (a) by denying certain state grant funds to the political subdivision; and (b) through certain court action by the attorney general that is initiated by citizen complaint. TEX. PENAL CODE § 1.10.

- S.B. 19 relates to government contract provisions and - among other things, (1) prohibits a governmental entity from entering into a contract with a value of \$100,000 or more that is to be paid from public funds with a company with more than 10 full-time employees for the purchase of goods or services unless the contract contains a written verification from the company that it: (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of the contract against a firearm entity or firearm trade association; and (2) provides that the prohibition in (1) does not apply to a city that (a) contracts with a sole-source provider, or (b) the city does not receive any bids from a company that is able to provide the required verification required by (1) . TEX. GOV'T CODE § 2274.001 et seq.

Can a governmental entity prohibit handgun carry in its buildings or facilities?

Generally

A governmental entity has very limited authority to prohibit a license holder from carrying into facilities to which the public otherwise has access. As mentioned in the second question in this paper, state law prohibits any person 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. (See detailed discussion above regarding interpretations of the “courthouse exception.”) Local governments have the *option* to prohibit licensed carry under the following circumstances.

Meeting of Governmental Entity

An *unlicensed carrier* may never carry 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.

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; and 30.07.*

Here is more detail on the above statements. Prior to the passage of H.B. 1927 (2021), a license holder could carry concealed or openly into an open meeting, *unless* a governmental body had prohibited carry by posting a 30.06 and/or 30.07 sign at the entrance to the meeting room while the meeting was taking place. Section 23 of the bill eliminated the notice requirement that used to be in Penal Code Section 46.035(c) by virtue of a cross-reference to 46.035(i), which stated that “Subsections... (c)... do not apply if the actor was not given effective notice under Section 30.06 or 30.07.” That means after H.B. 1927, 46.03(a)(14) – read alone – *would* mean that *no one* (licensed or not, with some exceptions for peace officers, etc.) could go into an open meeting with a handgun, period. But wait, there's more!

Section 46.03(a)(14) is an absolute prohibition that *cannot* be “waived” by the governmental body or anyone else. But, importantly, a “non-applicability” list in 46.15(b)(6) also includes: “a person who holds a license to carry, and the handgun is concealed or in a holster.” *Id. § 46.15(b)(6)*. That section takes the prohibition “full circle” to where it actually allows a license holder to carry into an open meeting, *unless* the governmental body has posted the usual Penal Code 30.06 and/or 30.07 signs, discussed in more detail below, prohibiting them from doing so.

Also, Section 46.15(b) statutorily exempts certain people from the prohibition, such as – among others – *a person who is traveling or en route between the premises and the person's residence, motor vehicle, or watercraft*. A person who is lawfully carrying a handgun without a permit is barred from entering an open meeting, *unless* they fall into such an exception. Of course, the “travelling” or “*en route*” exceptions have been interpreted narrowly. Typically, a stopover at a governing body's meeting between work and home, for example, makes the exception go poof. *See, e.g., Moosani v. State*, 866 S.W.2d 736, 738 (Tex. App. 1993), *aff'd*, 914 S.W.2d 569 (Tex. Crim. App. 1995).

Because a 30.06 and/or 30.07 sign is still required after H.B. 1927 (2021) to prohibit licensed carry in a meeting, attorney general opinion [No. KP-0098 \(2016\)](#) speaks to various issues related to the posting of notice. Sections 30.06 and 30.07 of the Penal Code provide the language to be used in a notice to prohibit entry with a concealed handgun and entry with a handgun that is carried openly. The request for the opinion was meant to clarify where the signs should be posted. That clarification was sought because Section 30.06 states that the concealed carry prohibition sign should be “displayed in a conspicuous manner clearly visible to the public.” Section 30.07, for some inexplicable reason, has additional language stating that the open carry prohibition sign should be “displayed in a conspicuous manner clearly visible to the public *at each entrance to the property.*”

The confusion came from the fact that a governmental entity can't generally prohibit licensed open carry in its public facilities, so it wouldn't make sense to post that sign "at each entrance to the property." Most attorneys had simply advised that a governmental entity wanting to prohibit carry in the meeting room do so by temporarily posting the signs at the entrance to the room when a meeting is taking place. The opinion essentially agreed, but it also included an analysis related to "closed meetings."

Legislation passed in 2015 prohibits licensed carry "in the room or rooms where a meeting of a governmental entity is held and if the meeting is an *open meeting*." It was added to clarify that only meetings of bodies governed by the Open Meetings Act are off limits, and only then if a local government posts signage. The phrase "open meeting" in that statute clearly means one that is subject to the Open Meetings Act. However, the attorney general office reads it literally to not include a "closed meeting (i.e., an executive session)."

In other words, the opinion incorrectly concludes that a governmental entity can't prohibit a person from licensed carrying into an executive session. Of course, only members of the governing body have an absolute right to be in an executive session anyway. And a local government can prohibit its employees from carrying at all while at work. But it's conceivable that the governing body could invite some other person to attend an executive session. If that's the case, the attorney general says, again incorrectly, the governing body can't prohibit that citizen from licensed carrying in that meeting.

The law also allows a person to receive notice from the owner of the property (i.e., the governmental entity) or someone with apparent authority to act for the owner by oral or written communication. TEX. PENAL CODE § 30.06(b) & 30.07(b). For example, a governmental entity's employee could ask a license holder who is carrying to leave a meeting, even if the written notice is not posted, if the entity has adopted 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).

A license holder who ignores notice commits 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).

Local elected officials who hold a handgun license have no special right to carry a handgun into a meeting. However, if a local government does not prohibit carrying in the meeting room, *any* person who is licensed to carry 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 court and/or an office used by the court, see detailed discussion above). School districts are the exception because they have express authority to allow carry through written regulations. The Texas Association of School Boards has prepared an [excellent memo](#) with detailed information about school security planning and options.

Law Enforcement Facilities

One bit of special authority relates to the secure area of a law enforcement facility. The handgun license law allows:

a peace officer who is acting in the lawful discharge of the officer's official duties 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. The peace officer shall secure the handgun in the locker and shall return the handgun to the license holder immediately after the license holder leaves the nonpublic, secure portion of the law enforcement facility.

TEX. GOV'T CODE § 411.207(c). To avail itself of the authority above, a law enforcement facility shall prominently display at each entrance to a nonpublic, secure portion of the facility a sign that gives notice in both English and Spanish that, under this section, a peace officer may temporarily disarm a license holder when the license holder enters the nonpublic, secure portion of the facility. The sign must appear in contrasting colors with block letters at least one inch in height, and shall be displayed in a clearly visible and conspicuous manner. *Id.*

The law defines a “law enforcement facility” as a building or a portion of a building used exclusively by a law enforcement agency that employs peace officers...and support personnel to conduct the official business of the agency.” The term does not include any portion of a building not actively used exclusively to conduct the official business of the agency or any public or private driveway, street, sidewalk, walkway, parking lot, parking garage, or other parking area. *Id.* CODE § 411.207(d).

“Nonpublic, secure portion of a law enforcement facility” means that portion of a law enforcement facility to which the general public is denied access without express permission and to which access is granted solely to conduct the official business of the law enforcement agency. *Id.*

In addition, H.B. 1927 (2021) provides similar authority over unlicensed carriers:

a peace officer who is acting in the lawful discharge of the officer's official duties to temporarily disarm a person when a person 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 person's handgun. The peace officer shall secure the handgun in the locker and shall return the handgun to the person immediately after the person leaves the nonpublic, secure portion of the law enforcement facility.

The section above is essentially the same as that for license holders, except it appears that no sign is required.

Government Property Leased to Private Person/Entity

In August 2016, the attorney general's office released [Opinion No. KP-0108](#), which concludes that: (1) nothing prohibits a private entity that is leasing government property from posting notice

that licensed carry is prohibited on the property; and (2) a licensed carrier who does so anyway would not commit the criminal offense of trespass by license holder under the Texas Penal Code.

The request for the opinion asked whether a non-profit entity with offices on land owned by a city may restrict the carrying of concealed handguns on the property. Many local government attorneys have opined that the Penal Code provisions allowing a private entity to prohibit licensed carry on its property (Section 30.06 for concealed carry and Section 30.07 for open carry) can't be used to criminally enforce the trespass by license holder statute on local government-owned property. That's because both sections provide that "it is an exception to the application of this section that the property on which the license holder openly carries the handgun is owned or leased by a governmental entity..."

The attorney general's office agreed with that position. However, the opinion also reviewed Section 411.209 the Government Code authorizing the attorney general to investigate and sue a state agency or a political subdivision that improperly posts a 30.06 notice. It concludes that the section applies *only* to state agencies and political subdivisions. Thus, the attorney general's office has no authority to investigate a sign placed by the person or entity that is leasing local government property, so long as the government has no control over the placement. In other words, it appears to be a "don't ask, don't tell" opinion.

How can the person or entity that is leasing the government property and chooses to post signs then enforce the prohibition? The criminal trespass statute in Penal Code Section 30.05(c) as added by H.B. 1927 (2021) allows the private leasee to also post notice that unlicensed carry is prohibited. Because an authorized carrier wouldn't necessarily commit a criminal offense by disregarding a sign in this case, the opinion mentions *civil* trespass, which presumably allows the person or entity to prohibit entry.

It's possible that the recourse of law enforcement responding to a call of an unwelcome licensed carrier at the leased property is thus limited to other criminal offenses.

Can a governmental entity prohibit the carry of long guns in its buildings or facilities?

A city can arguably prohibit the carry of a long gun onto city property if the city adopts a policy to that effect and 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. Generally, any 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 should be sufficient.

Also, as noted above and regarding cities specifically, state law expressly preempts most city regulation of firearms. Thus, the most conservative advice is that a city can't prohibit the carrying of a long gun by a person who can otherwise lawfully carry a handgun 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 (This is a weird one because a city may prohibit license holders carrying a handgun in a meeting by posting a 30.06 and/or 30.07 sign, and Penal Code Section 46.03(a)(14) prohibits carry of any firearm at a meeting by an unlicensed person.);
3. political rally, parade, or official political meeting; or
4. nonfirearms-related school, college, or professional athletic event.

TEX. LOCAL GOV'T CODE § 229.001.

Finally, 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(d) & (h). Certain public safety officers and employees of the owner are exempt from this provision. *Id.* § 30.05(e).

How can a local government regulate employee carry?

Generally

The handgun licensing law expressly allows a local government to prohibit employee carry while on the job:

RIGHTS OF EMPLOYERS. This subchapter does not prevent or otherwise limit the right of a public or private employer to prohibit persons who are licensed under this subchapter from carrying a handgun on the premises of the business. In this section, "premises" has the meaning assigned by Section 46.03, Penal Code.

TEX. GOV'T CODE § 411.203. The law generally allows an employee to leave an otherwise lawful handgun in a private, locked car in the parking lot. TEX. LABOR CODE § 52.061 et seq. That exception does not, however, "apply to...a vehicle owned or leased by a public or private employer and used by an employee in the course and scope of the employee's employment, unless the

employee is required to transport or store a firearm in the official discharge of the employee's duties.” *Id.* at § 52.062(a)(2)(A).

Moreover, the authority of an employee to leave a handgun locked in a car in the parking lot doesn't apply to a school district; an open-enrollment charter school, or a private school. *Id.* at § 52.062(a)(2)(B)-(C). The “parking lot” law “except in cases of gross negligence, [provides that] a public or private employer...is not liable in a civil action for personal injury, death, property damage, or any other damages resulting from or arising out of an occurrence involving a firearm or ammunition that the employer is required to allow” in the parking lot. *Id.* at § 52.063; 52.064 (an employee who shoots someone is not protected by this law, it protects only his employer).

In 2018, the attorney general received a request (RQ-0252-KP) as to whether a county can prohibit employees and elected officials from carrying in the county courthouse. Aside from the complex courthouse analysis described elsewhere in this paper, the provision above would clearly allow an entity to prohibit employees from carrying. The request was subsequently withdrawn, so we never got an opinion from the attorney general on that issue.

Allowing or Prohibiting Employee Carry While at Work

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.

Without hard data, it's unclear how many allow and how many prohibit (and how many have implicitly allowed it by doing nothing). Anecdotally, it's probably safe to say that most prohibit weapons of any type by a personnel or other policy. Please read this entire section, including the liability explanation, prior to acting on this issue. You should always consult with your local legal counsel and local law enforcement prior to acting on a matter of this importance. H.B. 1927 (2021) authorizes a broad class of persons to carry without a license. Each local government should decide whether allowing only licensed carry makes sense (the following policies deal only with that because the unlicensed carry isn't authorized until September 1, 2021, and we thus have no current examples), or whether to add unlicensed carry. When deciding, local officials should consider whether the minimal training to become licensed, and the licensing process (including a background check), make a difference.

This is an example of a simple personnel policy that *prohibits weapons at the workplace*:

Possession of Weapons

The City prohibits all employees from possessing weapons while on duty or in the City's offices with the sole exception of law enforcement personnel who have been authorized to carry a weapon.

This is an example of a comprehensive personnel policy that *prohibits weapons and provides for reporting of any threat or act of violence at the workplace*:

Weapons Control and Violence Prevention Policy

The City strives to provide a safe and secure working environment for its employees. This policy is designed to help prevent incidents of violence from occurring in the workplace and to provide for the appropriate response when and if such incidents do occur.

Zero Tolerance. This policy prohibits harassment, intimidation, threats, and violent behavior by or towards anyone in the workplace, that is in any way job- or City-related, that is or might be carried out on City-property, or that is in any way connected to the employee's employment with the City, whether the conduct occurs on-duty or off-duty. The City has a zero tolerance policy for this type of misconduct.

Weapons Banned. Unless specifically authorized by the City Manager, no employee, other than a City licensed peace officer, shall carry or possess a firearm or other weapon on City property. Employees are also prohibited from carrying a weapon while on duty or at any time while engaging in City-related business. Prohibited weapons include firearms, long guns, clubs, explosive devices, knives with blades exceeding 5 ½ inches, switchblades, etc. Employees do not have an expectation of privacy and the City retains the right to search for firearms or other weapons on City property.

Employees licensed by State of Texas to carry a handgun, or who otherwise lawfully possess a firearm, may have a permitted weapon only on the City parking lot if it is locked in the employee's vehicle. Such employees must report to [insert name or title] their identity and license plate numbers of all vehicles that employee may park in City parking lots.

Mandatory Reporting. Each City employee must immediately notify his/her supervisor, Department Director, the Director of Human Resources and/or the Police Department of any act of violence or of any threat involving a City employee that the employee has witnessed, received, or has been told that another person has witnessed or received. Even without an actual threat, each City employee must also report any behavior that the employee regards as threatening or violent when that behavior is job-related or might be carried out on City property, a City-controlled site or City job site, or when that behavior is in any manner connected to City employment or activity. Each employee is responsible for making this report regardless of the relationship between the individual who initiated the threat or threatening behavior and the person or persons threatened or the target of the threatening behavior. A supervisor who is made aware of such a threat or other conduct must immediately notify his/her Department Director and the Director of Human Resources.

Protective Orders. Employees who apply for or obtain a protective or restraining order which lists City locations as being protected areas must immediately provide to the Director of Human Resources and the City's Police Department a copy of the petition and declarations used to seek the order, a copy of any temporary protective or restraining order which is granted, and a copy of any protective or restraining order which is made permanent. City employees must immediately advise their Department Director and the Director of Human Resources of any protective or restraining order issued against them.

Confidentiality. To the extent possible, while accomplishing the purposes of this policy, the City will respect the privacy of reporting employees and will treat information and reports confidentially. Such information will be released or distributed only to appropriate law enforcement personnel, City management, and others on a need-to-know basis and as may otherwise be required by law.

City Property. For purposes of this policy, City property includes but is not limited to owned or leased vehicles, buildings and facilities, entrances, exits, break areas, parking lots and surrounding areas, recreation centers, swimming pools, and parks.

Documentation. When appropriate, threats and incidents of violence will be documented. Documentation will be maintained by the Director of Human Resources and/or the Police Department.

Policy Violations. Violations of this policy may lead to disciplinary action, up to and including termination of employment. Policy violations may also result in arrest and prosecution

This is an example of a simple personnel policy that *allows concealed carry by a license holder*:

Handguns

Unless otherwise prohibited or posted (Municipal Court, Secured Areas of Mathis Field Terminal building and City Council Meetings), Texas Penal Code 30.06 and 30.07 permits employees licensed to carry a handgun under Texas law to carry a handgun into a City facility, in a City vehicle, or on the employee's person while on duty as a City employee. Under Texas Government Code §411.203, the City of San Angelo can prohibit the carrying of handguns by employees while on duty on City property and in City vehicles.

Pursuant to Texas Government Code §411.203, employees of the City of San Angelo are prohibited from the open carry of any handgun while on duty or in City vehicles. Concealed carry by employees who are handgun license holders will be permitted pursuant to this policy. In order to comply with this policy, employees who have their handgun license and wish to carry their concealed handgun to work must self-identify themselves in writing as handgun license holders to their immediate Supervisor and the Director of Human Resources. This information will be kept strictly confidential in the office of the Director of Human Resources.

This is an example of a comprehensive personnel policy that *allows concealed carry by a license holder*:

Possession of Firearms on District Property

Ensuring a safe work environment and the prevention of workplace violence is of paramount importance for Austin County Appraisal District (the "District"). Except as otherwise provided for by this Possession of Firearms on District Property ("Policy"), nothing in the District's Employment Manual shall be interpreted or applied to: (a) allow or permit the open carry of any weapon or firearm on District Property in the course of District business; (b) prohibit any District employee from carrying a concealed weapon in the course of employment if the employee holds a valid license to carry a concealed weapon ("CHL") issued by the State of Texas, or (c) prohibit the carrying of a concealed weapon in the course of employment by an employee who is a *bona fide* resident of another state, and who holds a CHL from the employee's state of residence, if the State of Texas has granted reciprocity to CHL licensees of the employee's state of residence.

Employees who hold a valid CHL license may carry a concealed weapon while operating a vehicle owned by the District.

Nothing in this Policy shall be interpreted or applied as waiving the right of the District to prohibit any individual employee from carrying a concealed weapon in the course of employment, whether permanently or temporarily, whether for cause or for any non-discriminatory reason.

No employee may carry a concealed weapon in the course of employment unless the employee has (1) notified the Chief Appraiser ("CA"), Director of Collections Administration ("DCA"), or Office Manager ("OM") in writing that the employee holds a CHL and intends to carry the weapon in the course of employment, using the District form approved for that purpose, and (2) provided a copy of the employee's CHL to be placed in the employee's personnel file. An employee whose CHL license is suspended, or who is otherwise prohibited by a court from carrying a weapon, shall immediately notify the CA, DCA, or OM of that fact, in writing.

The District strictly prohibits the OPEN carry of weapons on District property or during the course of District business.

A decision by an employee to carry a concealed weapon during the course of employment is solely a choice by the employee to exercise the employee's individual right to bear arms. Nothing in this policy shall be interpreted or applied as a directive or authorization to any employee to carry or use a weapon in the scope of the employee's employment or agency.

Nothing in this policy shall be interpreted or applied to allow an employee who holds a CHL to carry a concealed weapon in any building or area where doing so is posted as prohibited in accordance with the laws of the State of Texas, whether public or private, and whether owned by the District or any person. Nothing in the policy shall be interpreted to authorize any employee to carry a concealed weapon in any area prescribed by Texas Government Code, Chapter 411, Subchapter H. No employee shall carry a concealed weapon in the course of

employment in any private vehicle or on private property owned or leased by another person over the objections of the owner or leasee. No employee may openly carry any weapon in any District building.

It is the sole responsibility of the employee to maintain control of the employee's concealed weapon and ammunition (if any) at all times.

Except as provided below, an employee who chooses to carry a concealed weapon during the course of employment shall have the weapon concealed and on the employee's person, carried in a holster or other appropriate carrying device, at all times, unless lawfully using the weapon.

An employee who stores a concealed weapon in a vehicle owned by the District during the course of employment must store the weapon in a locked case and place the case out of plain view from the exterior of the vehicle.

An employee who stores a concealed weapon in a vehicle owned by the employee (or any, other private vehicle, with the consent of the owner), in a parking lot owned or controlled by the District during the course of employment must place the weapon out of plain view from the exterior of the vehicle.

Nothing in the District's Employment Manual shall be interpreted or applied to construe the mere carrying of a concealed weapon as a violent, threatening or intimidating act on the part of the employee. Nothing in this policy shall be construed to support or permit violent, threatening or intimidating behaviors related to the possession of a concealed weapon. Threatening and intimidating behaviors may include, but are not limited to, intentionally displaying a concealed weapon to any person, referring to the concealed weapon, or referring to a weapon not on the employee's person, with the intent to implicitly or explicitly threaten or intimidate another person.

Conduct in violation of this policy is punishable by discipline, up to and including discharge. Violation of this policy which also constitutes a criminal act may be referred to law enforcement. Nothing in this policy shall be construed as providing implicit or explicit authorization for the violation of any federal, state, or local statute, administrative code or local ordinance.

Here's another comprehensive policy that *allows concealed carry by a license holder*:

Gun Carry Restrictions

Except as provided by subsection (a) below, no employee, other than a licensed peace officer of the City, may carry or possess a firearm or other weapon on City premises, including, without limitation, buildings, entrances, exits, break areas, surrounding areas and parks. The City's policy prohibits employees, other than licensed peace officers, from carrying or using any weapons, concealed or otherwise, on City's premises. This ban includes keeping or transporting a weapon in any City-owned or leased vehicle. Employees are also prohibited from carrying a weapon while on duty or at any time while engaging in City-related business. Prohibited weapons include firearms, clubs, explosive devices, knives with blades exceeding 5½ inches, etc., as defined by Texas Penal Code Section 46.01.

- Pursuant and subject to Section 52 of the Texas Labor Code, an employee who holds a valid license to carry a handgun under Subchapter H, Chapter 411, of the Texas Government Code, or who lawfully carries a firearm in accordance to State and

Federal laws, may possess a firearm and ammunition, or store a firearm and ammunition, in a locked, privately-owned vehicle in a city parking lot, parking garage or other parking area provided by the City. Additionally, an employee who holds a valid handgun license under Subchapter H, Chapter 411, of the Texas Government Code may carry a handgun in a concealed manner on City property, unless otherwise prohibited by the Texas Penal Code. Open carry of a handgun by employees is strictly prohibited on City property.

- No existing City policy, practice or procedure will be interpreted to conflict with decisions designed to prevent a threat from being carried out, a violent act from occurring or a life-threatening situation from developing.
- Employees authorized to carry must notify their Director of their intent to carry. The Director will notify the Police Department.
- Employees licensed under Subchapter H, Chapter 411, Government Code (Handgun Licensing Law), may not enter on the premises of any government court or offices utilized by the court (such as the City Council Chambers, while court is in session), unless pursuant to written regulations or written authorization of the court. This includes the non-public, controlled access, secure portion of the Crowley Police Department.
- Any violation of this policy may lead to discipline up to and including termination.

It bears repeating that the examples above are *not samples* to be adopted as-is. No local government should adopt a policy without consulting with local legal counsel. Another recommendation might be to form a committee of elected and appointed officials and employees to discuss what's best for each local government.

Liability under Federal and State Law

The number one question related to employee carry is “will my local government be liable if an employee 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 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 complete liability discussion is beyond the scope of this paper, but 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. (As of June 2021, the only statute that attempts to expressly limit a local government’s liability is related to licensed carry by paid or volunteer first responders. TEX. CIV. PRAC. & REM. CODE Chapter 112. See discussion elsewhere in this paper.)

42 United States Code Section 1983 is the primary federal law that provides a remedy for the actions of a local government employee. It provides that:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at lawsuit in equity, or other proper proceeding for redress.”

To succeed using a Section 1983 claim, a plaintiff must prove his constitutional rights were violated, and the violation was caused by a person acting under color of law. *West v. Atkins*, 487 U.S. 424 (1988). Only intentional conduct is actionable under Section 1983. *Daniels v. Williams*, 474 U.S. 327 (1986).

If an employee shoots and injures or kills a person, whether justified or not, the person or his surviving family would likely bring Section 1983 claim based on a violation of that person’s constitutional Fourth Amendment right to be free from unreasonable force. In the law enforcement context, deadly force is justified only if an objectively reasonable police officer (and presumably an employee for licensed carry purposes) facing the same circumstances as the defendant would conclude that the suspect posed an imminent threat of death or serious bodily harm. *Tennessee v. Garner*, 471 U.S. 1 (1985).

An officer (and presumably a local government employee) may not use more force than is reasonably necessary to make an arrest (or stop deadly conduct), and the amount of force must be proportional to the threat posed by the subject. *Graham v. Connor*, 490 U.S. 386 (1989). The reasonableness of the force depends on the totality of the facts and circumstances known to the officer (or employee) at the time the force is applied. *Fundamentals of Section 1983 Litigation: Common Claims, Defenses and Immunities*, Michael D. Bersani and Michael W. Condon, Hervas, Condon & Bersani (2016).

According to *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978), a local government can be sued under Section 1983 only when its own policies, customs, or practices cause the constitutional deprivation. This means a local government employer that adopts a policy allowing carry by its employees, or even one that has no written policy - but knowingly allows employees to carry through a “don’t ask, don’t tell” rule – could be liable for the actions of the employee.

Of course, a local government could argue that the employee’s duties did not include using a firearm, and thus an employee wasn’t acting in the “course and scope of employment” when the shots rang out. No Texas case has considered whether liability attaches to a “rank-and-file” employee (or her employing local government) who, if legally allowed to carry and authorized to do so at work, shoots someone. A court would likely apply the legal precedent relating to unreasonable force claims against law enforcement officers.

A state law claim would typically be brought pursuant to the Texas Tort Claims Act (Act). In Texas, sovereign or governmental immunity deprives a trial court of jurisdiction for lawsuits

against the state or certain governmental units, unless the state consents to suit. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004).

The Act is a state law providing a limited waiver of that immunity, which can allow a plaintiff to sue most local governments in certain, well-defined circumstances (and with caps on monetary awards). TEX. CIV. PRAC. & REM. CODE §§ 101.001-101.109. Under the Act, injuries arising out the use of tangible personal property, such as a handgun, can be actionable. *Miranda*, 133 S.W.3d at 225; see TEX. CIV. PRAC. & REM. CODE § 101.021-.022.

“A governmental unit in the state is liable for personal injury caused by a condition or use of tangible personal or real property [such as a firearm] if the governmental unit would, were it a private person, be liable to the claimant according to Texas law.” *Id.* at § 101.021(2).

If an employee, while on duty, shoots a citizen, will the employee or local government employer be liable under the Act? It depends. If the employee shoots and kills the citizen, and the citizen’s family sues the local government, that local governmental entity retains immunity if the complained-of act was intentional instead of negligent. *Id.* § 101.057; *City of Watauga v. Gordon*, 434 S.W.3d 586 (Tex. 2014).

An employee sued individually may file a motion to be dismissed when damages are sought against them. They merely need to show they are sued for acts performed within the course and scope of their employment. They may do so regardless of whether the governmental entity will ultimately be immune based on its defense of sovereign or governmental immunity. TEX. CIV. PRAC. & REM. CODE § 101.106; *Franka v. Velasquez*, 332 S.W.3d 367 (Tex. 2011); *Conditions and Uses of Property Under the Texas Tort Claims Act*, Heather Scott and Ysmael Fonseca, Guerra and Sabo, P.L.L.C. (2016). Again, a local government could argue the intentional act of shooting someone was outside the employee’s course and scope of employment.

In no case should a local government employer tell an employee their job is to “police” their work area. In fact, it should be made clear the exact opposite is true - except in the rarest of circumstances when there is an imminent threat of serious bodily injury or death – 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. (TML IRP provides online training for employees.)

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 carry are complex. Some take the position that openly carrying a handgun is suspicious enough to justify detention.

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 Cir. 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.* However, those states – unlike Texas – do not appear to have express statutory authority to disarm someone who is carrying in public.

Most attorneys will likely advise law enforcement to use discretion in making contact, considering the totality of the circumstances. 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, state law provides express authority relating to authorized carriers (see next question).

Local government 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 is otherwise acting suspiciously or 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 express authority to disarm a license holder who is carrying a handgun. 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, and in relation to permitless carry, a peace officer who is acting in the lawful discharge of the officer’s official duties may disarm any person at any time the officer reasonably believes it is necessary for the protection of the person, officer, or another individual. The peace officer shall return the handgun to the person before discharging the person from the scene if the officer determines that the person is not a threat to the officer, person, or another individual and if the person has not violated any law that results in arrest. TEX. CODE CRIM. PROC. Art. 14.03(h)(1).

Can a police officer arrest or disarm a person who is legally carrying a long gun (e.g., a rifle or shotgun) in public?

This one is tricky as well. Probably 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 – may have limited authority to disarm the person. Those decisions should be based on an officer’s training as applied to all the facts in each instance.