



**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number: O-1

Date: March 28, 2007

Subject: Request that the City Council consider adopting an ordinance amending Tyler City Code Chapter 4 to clarify firearms and concealed handgun regulations, and directing City staff to develop and install appropriate signage.

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Item Reference: Federal Law Enforcement Officer Safety Act of 2004, U.S.C. Chapter 44, Title 18, Section 926; Texas Local Government Code Section 229.001; Texas Penal Code Sections 30.05, 30.06, 46.03, 46.035, and 46.15; Texas Government Code Chapter 411; Texas Local Government Code Chapter 9; Texas Local Government Code Sections 5.004, 51.001(1) and (2), and 51.072; Texas Constitution Article 1, Section 23; Texas Constitution Article 11, Section 5; Tyler City Charter Sections 1, 2 and 6; Tyler City Code Chapter 4

Tyler City Code Sections 4-93 through 4-95 currently contain firearms regulations. Most of the proposed amendments in the attached Ordinance draft are designed to comply with Federal or State law requirements and to clarify the exceptions thereto. The major changes are summarized as follows:

- 1) Keeps the current City Code prohibition of firearms on city premises, but removes the current blanket prohibition on lawfully licensed concealed handguns on City premises (as mandated by Texas Penal Code Sections 30.05(f) and 30.06(e)). Clarifies exceptions. Current firearms signage on City buildings will need to be changed to reflect the fact that lawfully licensed concealed handguns by license holders must be permitted on City premises in most instances. State law would still generally prohibit all firearms at the Municipal Court, secured areas of the Airport, and buildings used as a polling place, with some exceptions. Texas Penal Code Section 46.03.
- 2) Keeps and clarifies the current City Code prohibition of concealed handguns at a meeting of a governmental entity (City Council meetings and City Board/Commission meetings), as allowed by Texas Penal Code Section 46.035(c). Clarifies exceptions. Special notice/signage will be needed as required by Texas Penal Code Sections 46.035(i) and 30.06(c) for meetings of a governmental entity.

- 3) Keeps and clarifies the current City Code prohibition on firearms at political rallies, parades and official political meetings, as allowed by Texas Local Government Code Section 229.001(b)(6). Adds exception for lawfully licensed concealed handguns, per Texas Local Government Code Section 229.001(6). Clarifies other exceptions.

During the review and drafting of this ordinance amendment, City Staff received input from the Texas Municipal League, the Texas State Rifle Association, and citizens. The City also forwarded a copy for review to a local attorney knowledgeable about firearms regulations and familiar with firearms organizations.

A more detailed description of the changes is set forth below.

ORDINANCE AMENDMENTS

Current Section 4-93.

Currently prohibits all firearms at meetings of governmental bodies, and currently prohibits all firearms at political rallies, parades and meetings.

Proposed Changes to Section 4-93. **POLITICAL RALLIES/PARADES/OFFICIAL POLITICAL MEETINGS**

Moves the current prohibition against firearms at meetings of a governmental body to Section 4-95. Most firearms on city premises will be governed by City Code Section 4-94. Lawfully licensed concealed handguns will be prohibited in a meeting of a governmental entity in Section 4-95.

Keeps the current prohibition of firearms at a political rally/ parade/official political meeting in Section 4-93, as allowed by Texas Local Government Code Section 229.001(b)(6)(C).

Keeps the current exception for peace officers engaged in official duties, and clarifies that the exception applies to peace officers lawfully engaged in official duties. Changes reference from security guard to “commissioned security officer” lawfully engaged in official duties while in uniform and with the firearm in plain view (similar to Texas Penal Code Section 46.15(b)(5)).

Adds additional Exceptions for a political rally/ parade/official political meeting as follows:

- 1) a concealed handgun carried by a qualified law enforcement officer or a qualified retired law enforcement officer, as defined in Federal law, in compliance with Federal and State law (mandated by federal Law Enforcement Officer Safety Act of 2004);
- 2) a lawfully licensed concealed handgun (mandated by Texas Local Government Code Section 229.001(b)(6));

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- 3) a firearm in or carried to or from an area designated for lawful hunting, fishing or other sporting event and the firearm is of the type commonly used in the activity (mandated by Texas Local Government Code Section 229.001(c); and
- 4) armed forces engaged in official duties, similar to Texas Penal Code Sections 46.03(b) and 46.15(b)(1) and similar to other existing Tyler City Code Chapter 4 provisions.

A reference to the penalty clause in Tyler City Code Section 1-4 is also added.

Current Section 4-94.

Generally prohibits firearms on City of Tyler property, where signage is posted.

Currently contains an Exception for concealed handguns.

Proposed Changes to Section 4-94. KEEPS CURRENT PROHIBITION OF FIREARMS ON CITY PROPERTY, BUT CLARIFIES STATE-MANDATED EXCEPTION FOR LAWFULLY LICENSED CONCEALED HANDGUNS ON MUNICIPAL PROPERTY

Keeps the current general prohibition of firearms on City of Tyler property, where signage is posted, as allowed by the criminal trespass provisions in Texas Penal Code Section 30.05.

Revises the wording for the current exception for certified peace officers in order to be consistent with Texas Penal Code Section 30.05(g), and similar to the wording of Texas Penal Code Section 46.15. Per 30.05(g), the exception will apply to certified peace officers, including commissioned peace officers of a recognized state, or a special investigator, regardless of whether or not the officer or special investigator was engaged in the lawful discharge of an official duty while carrying the weapon.

Keeps the current exception for members of the armed forces engaged in official duties, similar to Texas Penal Code Sections 46.03(b) and 46.15(b)(1).

Clarifies the State-mandated Exception for lawfully licensed concealed handguns, as mandated by Texas Penal Code Sections 30.05(f) and 30.06(e).

Keeps current exception for commissioned security officers, but adds wording about being lawfully engaged in official duties while in uniform and with the firearm in plain view (similar to Texas Penal Code Section 46.15(b)(5)) and City Code Section 4-95.

Adds an exception for fire fighters or emergency medical personnel, if lawfully engaged in official duties under exigent circumstances, per Texas Penal Code Section 30.05(c).

Adds a provision stating that a violation of Section 4-94 is an act of criminal trespass, and shall subject the violator to removal. Keeps the current reference to State law penalties.

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Current Section 4-95.

Currently prohibits all concealed handguns on City property where signage is posted.

Proposed Changes to Tyler City Code Section 4-95. PROHIBITION OF LAWFULLY LICENSED HANDGUNS IN MEETING OF A GOVERNMENTAL ENTITY, AS ALLOWED BY STATE LAW

During the 2003 Session, the Texas Legislature adopted Senate Bill 501, which amended the trespass prohibitions in Texas Penal Code Sections 30.05 [Criminal Trespass] and 30.06 [Trespass by Holder of Concealed Handgun License]. The result was that political subdivisions such as the City of Tyler are prohibited from denying entry on their premises to holders of lawfully licensed concealed handguns, with exceptions for certain areas. Due to the current State law requirements, the attached Ordinance deletes the Tyler Code's current blanket prohibition against concealed handguns on City property, as mandated by Texas Penal Code Sections 30.05(f) and 30.06(e).

Moves the prohibition against carrying all firearms, including lawfully licensed handguns, at a meeting of a governmental body, from Section 4-93 to Section 4-95. This is per Texas Penal Code Sections 30.06(e) and 46.035(c).

Changes the term from governmental "body" to governmental "entity" per Texas Penal Code Section 46.035(c).

Keeps the current exceptions for certified peace officers and armed forces engaged in official duties. Clarifies that the exception applies to certified peace officers lawfully engaged in official duties. Keeps the current exception for commissioned security officers, but adds wording about being lawfully engaged in official duties while in uniform and with the firearm in plain view (similar to Texas Penal Code Section 46.15(b)(5) and City Code Section 4-94. Adds exception for fire fighters and emergency personnel lawfully discharging official duties in exigent circumstances, similar to Texas Penal Code Section 30.05(c).

RECOMMENDATION:

It is recommended that the City Council adopt the attached ordinance amending Tyler City Code Chapter 4 to clarify firearms and concealed handgun regulations and the exceptions thereto, and directing City staff to develop and install appropriate signage.

Drafted/Recommended By: *Gary C. Landers*
Department Leader **Gary C. Landers**

Edited/Submitted By:
City Manager



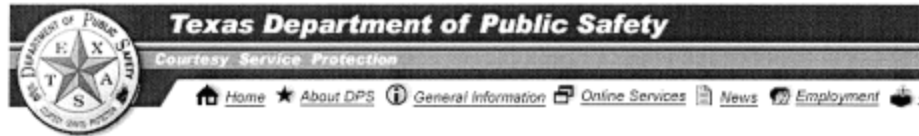
EXCEPT
CONCEALED HANDGUNS
BY LICENSE HOLDERS

TYLER CITY
CODE SEC. 4-94

TYLER CITY
CODE SEC. 4-94
(SPANISH)

EXCEPT CONCEALED HANDGUNS
BY LICENSE HOLDERS
(SPANISH)

1/25/05



PROHIBITING HANDGUNS IN A BUSINESS OR OTHER ENTITY

In order to provide notice that entry on property by a license holder with a concealed handgun is forbidden, Penal Code Section 30.06(c)(3)(A) requires that a written communication contain the following language:

"PURSUANT TO SECTION 30.06, PENAL CODE (TRESPASS BY HOLDER OF A LICENSE TO CARRY A CONCEALED HANDGUN) A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (CONCEALED HANDGUN LAW), MAY NOT ENTER THIS PROPERTY WITH A CONCEALED HANDGUN."

"CONFORME A LA SECCIÓN 30.06 DEL CÓDIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO H, CAPITULO 411, CODIGO DE GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO."

Download language

Penal Code Section 30.06(c)(3)(B) further states that a sign must meet the following requirements:

- i. includes the language described by Paragraph (A) in both English and Spanish;
- ii. appears in contrasting colors with block letters at least one inch in height; and
- iii. is displayed in a conspicuous manner clearly visible to the public.

Please note that while the language provided above may be downloaded for convenience, it does not meet the requirements of Section 30.06(c)(3)(B) and may not be used as a sign.

You can contact the Concealed Handgun Licensing Section at :

**Concealed Handgun Licensing Section
Texas Department of Public Safety
P O Box 4143
Austin, Texas 78765-4143
Phone: (512) 424-7293 or (512) 424-7294
Helpline: (800) 224-5744**

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5/11/2004

ORDINANCE NO. O-2007-32

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, CHAPTER 4, "OFFENSES AND MISCELLANEOUS PROVISIONS", ARTICLE VI., "MISCELLANEOUS PROVISIONS", TO CLARIFY FIREARMS REGULATIONS AND THE EXCEPTIONS THERETO; AND PROVIDING FOR APPROPRIATE SIGNAGE OR NOTICE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, it is the intent of the City Council to comply with all applicable Federal and State laws regulating firearms; and

WHEREAS, in order to conform to Federal and State law, it is necessary to amend certain firearms regulations in the Tyler City Code to provide certain exceptions for concealed handguns, including those carried by law enforcement officers; and

WHEREAS, it is necessary to clarify current firearms regulations and the exceptions thereto in the Tyler City Code; and

WHEREAS, municipalities may, under their police powers, enact reasonable regulations not in conflict with Federal or State law to promote the health, safety and welfare of citizens; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of local self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to local self-government; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City of Tyler may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City, and all nuisances and causes thereof; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether expressed or implied, shall be exercised and enforced, in the manner prescribed by the Charter, or when not prescribed in the Charter, in such manner as shall be provided by ordinances or resolutions of the City Council; and

WHEREAS, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

WHEREAS, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by the State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, Texas Constitution Article 1, Section 23, 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; and

WHEREAS, Texas Local Government Code Section 229.001(a) provides the general rule that a municipality may not adopt regulations relating to the transfer, private ownership, keeping, transportation, licensing or registration of firearms, ammunition, or firearm supplies; and

WHEREAS, Texas Local Government Code Section 229.001(b)(6) states that Texas Local Government Code Section 229.001(a) does not affect the authority that a municipality has under another law to regulate the carrying of a firearm by a person, other than a person licensed to carry a concealed handgun under Texas Government Code Chapter 411, Subchapter H., at a public park; public meeting of a municipality, county, or other governmental body; a political rally, parade or official political meeting; or a nonfirearms-related school, college or professional athletic event; and

WHEREAS, per Texas Local Government Code Section 229.001(c), the authorization allowed by Texas Local Government Code Section 229.001(b)(6) does not apply if the firearm is in or carried to or from an area designated for use in a lawful hunting, fishing, or other sporting event and the firearm is of the type commonly used in the activity; and

WHEREAS, Texas Penal Code Section 30.05 [Criminal Trespass] provides the general rule that a person commits an offense if he enters/remains on the property or building of another without effective consent and the person either had notice that entry was forbidden, or received notice to depart but failed to do so; and

WHEREAS, Texas Penal Code Section 30.05(c) states that it is a defense to prosecution under Section 30.05 that the actor at the time of the offense was a fire fighter or emergency medical services personnel, acting in the lawful discharge of an official duty under exigent circumstances; and

WHEREAS, during the 2003 Legislative Session, the Texas Legislature adopted Senate Bill 501; and

WHEREAS, S.B. 501 amended the general prohibition in Texas Penal Code Section 30.05 [Criminal Trespass] to provide an exception for persons carrying a lawful concealed handgun license issued under Texas Government Code Chapter 411, and the basis of the prohibition is based upon entry with such concealed handgun; and

WHEREAS, Texas Penal Code Section 30.06 [Trespass by Holder of License to Carry Concealed Handgun] provides the general rule that a license holder carrying a concealed handgun commits an offense if, without effective consent, the license holder received notice that entry by a license holder with a concealed handgun was forbidden, or the license holder remained on the property and failed to depart; and

WHEREAS, S.B. 501 also amended the general prohibition in Texas Penal Code Section 30.06 [Trespass by Holder of License to Carry Concealed Handgun] to provide an exception for property owned or leased by a governmental entity, and the property is not the type on which concealed handguns are prohibited under Texas Penal Code Sections 46.03 or 46.035; and

WHEREAS, Texas Penal Code Section 46.035(c) provides that a license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Texas Local Government Code Chapter 411, Subchapter H., regardless of whether the handgun is concealed, at any meeting of a governmental entity; and

WHEREAS, under Texas Penal Code Section 46.035(i), the prohibition against licensed handguns at any meeting of a governmental entity under Texas Penal Code Section 46.035(c) applies only if the actor is given effective notice pursuant to Texas Penal Code Section 30.06; and

WHEREAS, Texas Penal Code Sections 46.03(a) and (f) generally prohibit firearms, including lawfully licensed handguns, at polling places during voting, court buildings, and airport secured areas; and

WHEREAS, the federal Law Enforcement Officer Safety Act of 2004, U.S.C. Chapter 44, Title 18, Section 926, was signed into law and became effective July 22, 2004; and

WHEREAS, the federal Law Enforcement Officer Safety Act of 2004 authorizes qualified law enforcement officers and qualified retired law enforcement officers to carry concealed handguns, regardless of most State or local laws prohibiting the carrying of concealed firearms; and

WHEREAS, the federal law Enforcement Officer Safety Act of 2004 does not supersede or limit the laws of any State that prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER:

PART 1: That Tyler City Code Chapter 4, “Offenses and Miscellaneous Provisions”, Article VI., “Miscellaneous Provisions”, is hereby amended by amending Sections 4-93, 4-94 and 4-95 to read as follows:

Sec. 4-93. Political events; firearms prohibited; exceptions.

a. It is unlawful to carry a firearm within the City limits at a political rally, parade, or official political meeting.

b. Subsection a. shall not apply to the carrying of a concealed handgun lawfully licensed under State law and in compliance with State law.

c. Subsection a. shall not apply to the carrying of a concealed handgun by a qualified law enforcement officer or a qualified retired law enforcement officer, as defined in Federal law, in compliance with Federal and State law.

d. Subsection a. shall not apply to the carrying of a firearm by a certified peace officer lawfully engaged in the actual discharge of an official duty while carrying the weapon, by a commissioned security officer lawfully engaged in official duties while in uniform and with the firearm in plain view, or by a member of the U.S. or State armed forces engaged in official duties.

e. Subsection a. shall not apply if the firearm is in or is carried to or from an area designated for use in a lawful hunting, fishing, or sporting event and the firearm is of the type commonly used in the activity.

f. Violation of this section is unlawful and shall subject the violator to the penalties set forth in Section 1-4. (Ord. No. 0-98-52, 6/24/98) (Ord. No. 0-2007-32; 3/28/07)

Sec. 4-94. City premises; firearms prohibited; exceptions.

a. It is unlawful to carry any firearm, other than a concealed handgun lawfully licensed under State law and in compliance with State law, onto any City premises properly marked as provided in Subsection b. Such carrying of a firearm is hereby declared an act of criminal trespass and is prohibited, and any person so carrying a firearm is subject to immediate removal.

b. The City Manager or designee is hereby authorized and directed to place signs to be printed in both English and Spanish, on City premises to indicate that the carrying of a firearm, other than a concealed handgun lawfully licensed under State law, is prohibited.

c. This section shall not apply to the lawful carrying of a firearm by a certified peace officer, including a commissioned peace officer of a recognized state, or a special investigator under State law, regardless of whether the peace officer or special investigator was engaged in the actual discharge of an official duty while carrying the weapon. This section shall not apply to a commissioned security officer lawfully engaged in official duties while in uniform and with the firearm in plain view, or member of the U. S. or State armed forces, engaged in official duties. Also, this section shall not apply to a fire fighter, or emergency personnel as defined in State law, if acting in the lawful discharge of an official duty under exigent circumstances.

d. This section shall not apply to the carrying of a lawfully licensed handgun into a meeting of a governmental entity, which shall be governed by Section 4-95.

e. This section shall not apply to the carrying of a firearm into any City building being used as a polling place, on the premises of the Tyler Municipal Court or into any City building or offices being utilized by the Tyler Municipal Court, or into the secured areas of Tyler Pounds Regional Airport. The carrying of a firearm at such locations shall be governed by applicable State and Federal laws.

f. The carrying of any firearm prohibited by this section onto City premises is hereby declared to be an act of criminal trespass and is prohibited, and any person so carrying a prohibited firearm is subject to immediate removal and is subject to the penalties set forth in State law. (Ord. 0-98-27, 3/25/98) (Ord. No. 0-98-52, 6/24/98) (Ord. No. 0-2007-32; 3/28/07)

Sec. 4-95. Lawfully licensed handguns prohibited at meeting of governmental entity; notice; exceptions.

a. It is unlawful to carry a handgun lawfully licensed under State law, and whether concealed or not, at any meeting of the City Council, or at any meeting of a City board or commission, if proper notice has been provided as set forth in State law. When proper notice has been provided, such carrying of a handgun at any meeting of the City Council, or at any meeting of a City board or commission, is hereby declared to be an act of criminal trespass and is prohibited, and any person so carrying a handgun is subject to immediate removal and is subject to the penalties set forth in State law.

b. The City Manager or designee is hereby authorized and directed to place signs or other notice consistent with State law to indicate that the carrying of a lawfully licensed handgun, is prohibited in a meeting of the City Council or City board or commission.

c. Subsection a. shall not apply to the carrying of a handgun by a certified peace officer lawfully engaged in official duties, a commissioned security officer lawfully engaged in official duties while in uniform and with the firearm in plain view, a member of the U S. or State armed forces engaged in official duties, or a firefighter or emergency personnel as defined in State law if acting in the lawful discharge of an official duty under exigent circumstances. (Ord. No. 0-98-52, 6/24/98) (Ord. No. 0-2007-32; 3/28/07)

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be March 30, 2007.

PASSED AND APPROVED this 28th day of March, A. D., 2007.

JOSEPH O. SEEBER, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:

CASSANDRA BRAGER, CITY CLERK

APPROVED:

CITY ATTORNEY