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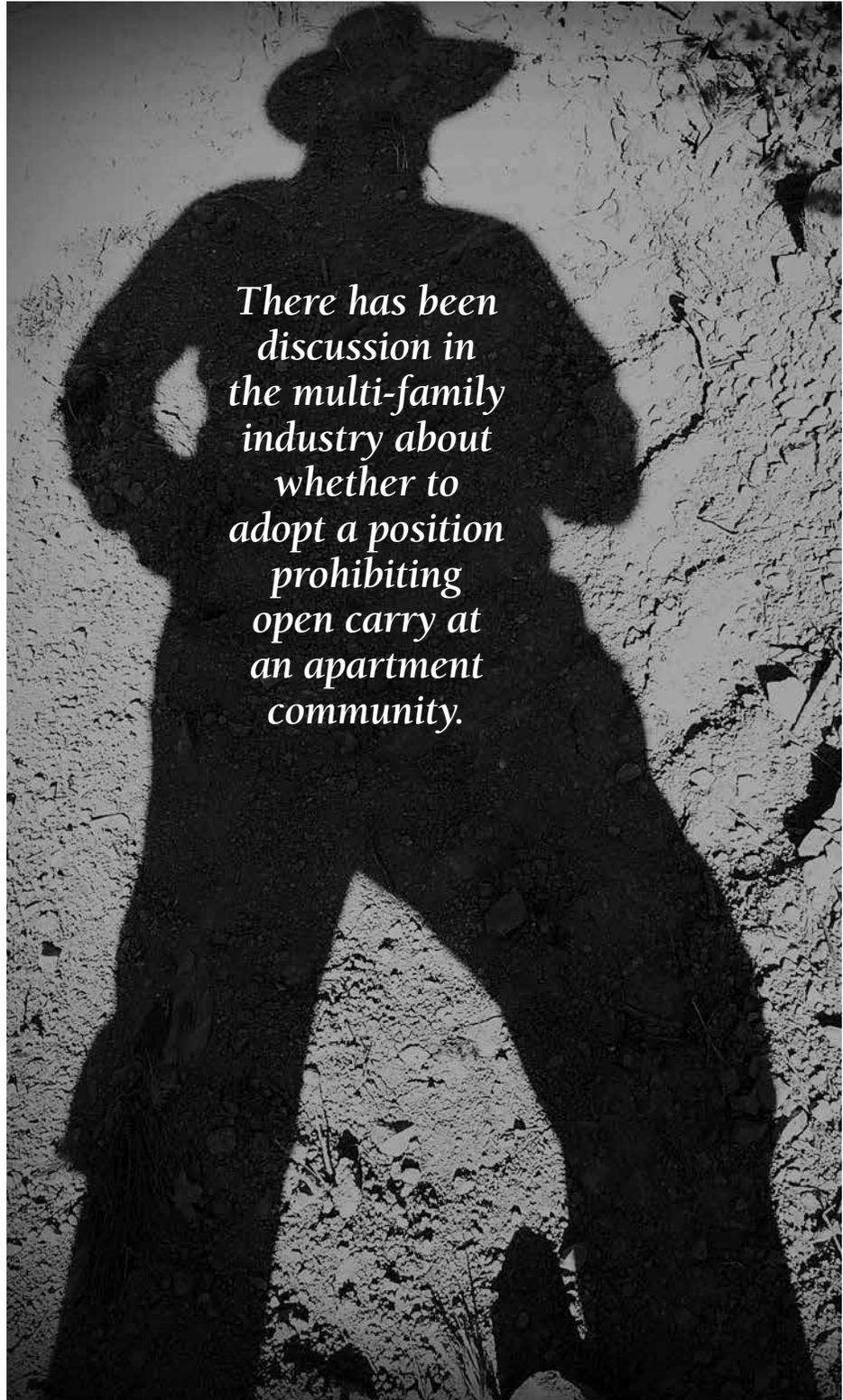
“Are you a real cowboy?” asks Sissy (Debra Winger) of Bud Davis (John Travolta) in the movie *Urban Cowboy*. Responds Bud, “Well that depends on what you think a real cowboy is.” Gilley’s Club in Pasadena, Texas, where those famous lines were spoken, has been levelled. But the urban cowboys who once frequented that historic venue have a new way to strut their western heritage, whether actual or perceived. New gun legislation was passed in Texas, and the open carry of handguns is now legal in the Lone Star State as of January 1, 2016. Have we awoken the Urban Cowboy? An online commenter, who goes by the screen name LTUME1978, seems to think the “privilege to play cowboy” has come with a higher than anticipated price. More from him later.

As strange as it may seem, prior to passage of this Texas law, 44 other states already permitted the open carry of handguns. Currently only Florida, California, Illinois, New York and South Carolina prohibit the open carry of pistols. It is not permitted in the District of Columbia either.

Most of us have heard, or received some training relating to, the requirements for signage to permit the owner of an apartment community to ban both open carry and concealed carry of guns on all or part of its premises. Stated another way, forty-five states’ constitutions recognize and secure the right to keep and bear arms in some form, and none of those prohibit the open carrying of firearms.

Any private business in Texas, which would include an apartment community, which wishes to ban the concealed or open carry of handguns in some form or fashion, must display strictly regulated signs. The signs are provided for in the Texas Penal Code, in Sections 30.06 and 30.07. New slang

HAVE WE AWOKEN THE URBAN COWBOY?



There has been discussion in the multi-family industry about whether to adopt a position prohibiting open carry at an apartment community.

terminology has been coined to describe the signs and what they represent: “30.06” (for concealed handguns) and the “30.07” (for openly carried handguns).

The signs themselves are strictly regulated and must contain precise language, be of a precise size, and adhere to precise requirements for lettering size, font, and contrast with the background. Unless you want to prohibit both concealed carry and open carry, you need not have both the “30.06” and “30.07” signs. You can choose which sign, if either, states your position.

The signs are to be posted at all entrances to areas to be affected by the prohibition. The prohibition can be for the entire apartment property, or just parts of it, like the leasing office and swimming pool area. Again, you can prohibit open carry, concealed carry, or both.

A few definitions are helpful in understanding this gun legislation. The term “open carry” generally means the act of publicly carrying a firearm on one’s person *in plain sight*. The term “plain site” is broadly defined as, “not being hidden from common observation.” This definition varies from state to state, hinging upon whether the firearm is partially visible or fully visible.

In addition, the issue of what constitutes a “loaded weapon” is common among the 45 states which presently permit the open carry of firearms. Considerations include (1) whether a live round of ammunition is actually in the firing chamber of the weapon, (2) whether a magazine with ammunition is inserted into the firearm, regardless of whether or not a round is in the chamber, and (3) whether a person simply has both the firearm and its ammunition in possession, without regard to the earlier two considerations.

The open carry law which took effect in Texas on January 1, 2016 authorizes properly licensed individuals to openly carry a holstered handgun. A properly licensed individual may openly carry a handgun in the same places where a concealed handgun may be carried. There are a few exceptions to this, which are not necessary to explore at this time.

If the weapon is not going to be concealed, but rather carried openly, it must be carried in a shoulder holster or a

belt holster, whether loaded or unloaded. Persons who previously held, prior to January 1, 2016, a valid Concealed Handgun License (CHL) may now carry openly or in a concealed manner with that license. A new license will not be required for open carry, nor will any additional fee be required to be paid.

The Texas Department of Public Safety (DPS) encourages first-time applicants for a License to Carry (LTC) to submit an online application, to be supplemented



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by in-person fingerprinting. Applicants seeking the LTC must also complete four to six hours of classroom training, pass a written examination, and pass a proficiency demonstration pertaining to their ability to shoot. In Texas, all classroom and proficiency testing is to be conducted by an LTC instructor certified by the DPS.

An applicant for an LTC must be 21 years of age to apply for a Texas handgun

license in most situations. If a person is a member or veteran of the United States Armed Forces, however, which includes the Reserves or National Guard, they can apply at the age of 18. Those individuals, if not current Armed Forces members, have to have been discharged under honorable conditions. A dishonorable discharge will equate to a disqualification for the license.

Additional clarity will soon be coming to Texas gun legislation concerning the situations where persons with an LTC intentionally display the handgun *in plain view of another person in a public place*. Under the law to take effect August 1, 2016, it will be an exception to criminal liability if the handgun was partially or wholly visible, but was carried in a shoulder holster or a belt holster by the license holder. This will be the general rule, applicable generally to “a public place.”

The additional clarity will come through specifics about public places for which there are no exceptions to an intentional display of a handgun in plain view of another person (open carry). These include institutions of higher education, and streets, sidewalks, parking lots, driveways and parking areas of an institution of higher education.

In addition, even a CHL holder commits an offense if that person intentionally, knowingly, or recklessly carries a handgun, regardless of whether the handgun is concealed or carried in a shoulder holster or a belt holster, on or about their person, in specific locations. These include the premises of a business that has a permit or license to serve alcoholic beverages, where such business derives 51% or more of its income from the sale or service of alcoholic beverages for on-premises consumption. It also includes premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place. In general, the knowing or reckless carrying of a handgun on the premises of a correctional facility, the premises of a hospital or nursing facility, an amusement park, or the premises of a church,

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synagogue, or other established place of religious worship will also be expressly prohibited under the law which will take effect August 1, 2016.

What happens when a person with an LTC carries a *concealed* handgun, in violation of “30.06”, or *openly carries* a handgun, in violation of “30.07” where they should not? First, they must actually be carrying, in a concealed or open manner, without the effective consent of the property owner. Remember, in this scenario the “30.06” and “30.07” signs, in full compliance with law, have been properly posted. Having the sign(s) in place has the effect of providing notice that entry onto the property by an LTC holder with a concealed handgun, or an LTC holder openly carrying a handgun on the property, is forbidden.

It is possible, likewise, for written communication to be given by means of a card or other document, on which is written in the language contained in the pertinent section of the Texas Penal Code, stating that a person licensed in this state to carry a concealed handgun, or openly carry a handgun, may not enter this property with the concealed or openly carried handgun. Again, “30.06” pertains to concealed carry, while “30.07” pertains to open carry.

One who violates the prohibition commits a Class C Misdemeanor, punishable by a fine not to exceed \$200.00. If notice of the prohibition is verbally transmitted to the person with the weapon, the offense will rise to a Class A Misdemeanor.

There is an interesting twist concerning the signs. There is actually a third sign, commonly referred to as the “51% sign” which pertains to the prohibition against carrying a gun into the premises which have a permit or license to sell or serve alcoholic beverages for on-premises consumption.

There have been some questions posed to apartment owners and managers, at properties where concealed and open carry are prohibited, about the license holder’s ability to transport their gun from their vehicle to the apartment in which they reside. Even where concealed carry and open carry is prohibited by the property owner, a gun owner has a right in Texas to transport his gun to and from his residence and his vehicle. This exception is set forth

in Section 46.02 of the Texas Penal Code. That statutory provision provides that as long as the individual with the weapon is transporting it to or from his own premises, or premises under his control, and to or from a motor vehicle or watercraft that is owned by him or under his control, there will be no illegal activity involved. Stated another way, it is permissible for one to have her handgun in her apartment, in her motor vehicle or watercraft, or during the time she is traveling from one to the other. That is the case whether the “30.06” or the “30.07” sign is posted or not.

During such transport phase of the weapon, however, the handgun cannot be in plain view; and the person carrying the gun cannot be engaged in criminal activity, prohibited by law from possessing a firearm, or a member of a criminal street gang.

Even where concealed carry and open carry is prohibited by the property owner, a gun owner has a right in Texas to transport his gun to and from his residence and his vehicle.

Anyone who can legally possess a firearm can carry it in a vehicle in Texas. If the possessor of that firearm *does not have a handgun license* which Texas issues, or a permit or license from another state or territory which Texas honors, the firearm must be concealed and cannot be on the person of the owner of the gun. It can be in the glove box, the interior console, or otherwise hidden from view. But it cannot be on the gun owner’s person. On the other hand, if you *have a handgun license* that is valid in Texas, you can openly carry your handgun in a vehicle, although it must be carried either in a shoulder holster or belt holster.

Despite the apparent “victory” for gun advocates when Texas adopted its open carry law, all has not been a bed of roses for them. There is an interesting organization, known as The Trace, which is “an independent, nonprofit news organization dedicated to expanding coverage of guns in the United States.” This author stumbled upon this website

while researching this article, and found an article by Jennifer Mascia, dated January 11, 2016. In her article, Ms. Mascia examined online posts on a popular online message board, and found that some “Lone Star State open carriers worry that the push to expand their rights may have done more harm than good.”

To begin with, she noted that when “30.07” passed, the signs previously utilized to prohibit concealed carry under “30.06” became obsolete. What was happening, it appeared, was that businesses which wanted to prohibit open carry, but did not care about concealed carry, were getting both the “30.07” (open carry) and the “30.06” (concealed carry) signs at the same time, from the same source. Stated another way, businesses which previously felt no need to prohibit concealed carry on their premises decided to prohibit both concealed carry and open carry when a “30.07” (open carry) sign became necessary.

Ms. Mascia quoted a person in her article who posted a comment, with the screen name “Distinguished Rick” (DR) who stated it was “just as easy to have both the 30.06 and 30.07 signs made at the same time.” According to Distinguished Rick, “we have lost more than we gained.” DR noted that “I had my CHL 20 years this year and I hardly ran into any legal signs back then. This has woken up the anti-crowd in a big way. So now the genie is out of the bottle and I don’t see a way to put it back.”

Ms. Macias quoted a couple of online commentators in her article. One, whose screen name was “android”, had this to say: “We were free to carry concealed at far more places before than now. You have the exact same ability to be safe carrying concealed as openly. Except that now you can’t do either in many places. So you’re not safer at all. Open carry is not a right. It’s a dress code and comfort issue. You were already freely bearing arms before 1 Jan. You’ve given up safety for comfort, and lost and freedom [sic] for all of us.”

Probably the most candid and opinionated online comment quoted by Ms. Macias in her article came from a poster known by the screen name LTUME1978, who opined: “I hope the right to walk around looking like Wyatt Earp is worth it to the open carry folks because a lot of us are loosing [sic] our right to concealed carry and it may cost some of us our lives for your privilege to play cowboy.”

In conclusion, open carry in Texas seems here to stay. Only five states out of 50 currently do not make it legal to openly carry handguns. As Distinguished Rick noted, “now the genie is out of the bottle and I don’t see a way to put it back.”

Genies, as we know, typically grant wishes. Let us wish, then, for a clear majority of Texas citizens to understand the strong opinions of gun advocates and gun opponents, be tolerant of both, and make it a common goal to not allow anger, ignorance, mental impairment or worse to enable a crime or create a needless victim.

BILL WARREN is an Austin lawyer, and a Member of the Austin Apartment Association, whose practice areas include landlord-tenant, housing discrimination defense, collections, litigation in all courts, employment, consumer protection, lease and contract drafting and negotiations, and wills. He is Board Certified in Civil Trial Law by the Texas Board of Legal Specialization, and is a Fellow of the College of the State Bar of Texas. Mr. Warren is legal counsel to the Austin Apartment Association and a founding member of the Legal Counsel Advisory Council of the Texas Apartment Association. He regularly, and on a statewide basis, represents property owners and managers, vendors and others who regularly serve the real estate and multi-housing industry. Bill is a frequent author and lecturer, and has published more than 100 articles on multi-housing industry and fair housing issues. He can be reached at Warren Law Firm, 1011 Westlake Drive, Austin, Texas 78746, (512)347-8777, or through his website at www.WLFtexas.com.



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