

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF DEER PARK, TEXAS, DESIGNATING THE DEER PARK COMMUNITY CENTER AS THE PHYSICAL PREMISES OF THE COMMUNITY PRE-SCHOOL FOR PURPOSES OF FIREARMS POSSESSION, INCLUDING BY A PERSON WHO HOLDS A LICENSE TO CARRY A HANDGUN.

WHEREAS, Texas Penal Code Section 46.03(a)(1) makes it an offense for a person to carry any firearm: (1) “on the physical premises of a school or educational institution...[; or (2) on]...any grounds or building on which an activity sponsored by a school or educational institution is being conducted...whether the school or educational institution is public or private;” and

WHEREAS, Penal Code Section 46.03(a)(1) does not ascribe a temporal component to the prohibition in (1), above; and

WHEREAS, the term “physical premises” is not defined in the Penal Code or elsewhere; and

WHEREAS, Penal Code Sections 46.03(c)(1) and 46.035(f)(3) provide that “‘premises’ means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area;” and

WHEREAS, without other guidance, the term “physical premises” should arguably be compared to “premises;” and

WHEREAS, Tex. Att’y Gen. Op. No. KP-0047 (2015) is merely and advisory opinion, but it calls into question the common interpretation of Penal Code Section 43.03(a)(3), which has been that a person is prohibited from carrying a firearm into the *entire building or portion of a building that houses a court or court office*; and

WHEREAS, KP-0047 concludes that “[t]he Legislature has not clearly demarcated, or established, a precise boundary in a building or portion of a building at which handguns are prohibited or permitted;” and

WHEREAS, KP-0047 further concludes that the office of the attorney general “routinely acknowledges that decisions such as [what constitutes the physical premises of a school or educational institution] are for the governmental entity in the first instance, subject to the applicable review;” and

WHEREAS, on November 28, 2016, the 506th District Court of Waller County, Texas, issued an order in *Waller County, Texas v. Terry Holcomb, Sr.*, that the premises of a courthouse constituted the *entire building* housing the court or offices utilized by the court;

WHEREAS, the analysis by the district court is equally applicable to the prohibition in (1), above, related to the prohibition against carrying a firearm on the physical premises of a school or educational institution; and

WHEREAS, the Deer Park Community Center houses the Community Center Pre-School, which is a state-licensed child care facility and thus a “school or education institution” as defined by Texas Penal Code Section 46(a)(1); and

WHEREAS, any question about the applicability of Penal Code Section 43.03(a)(1) puts handgun license holders at risk of inadvertently committing a third degree felony; and

WHEREAS, the legislature enacted Penal Code Section 43.03(a)(1) to protect the students and parents of schools and educational institutions; and

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

WHEREAS, the City Council of the City of Deer Park finds that the most appropriate way to assist license holders to avoid an offense under Section 46.03(a)(1) and to protect the students and parents of the Community Center Pre-School is by determining where carry is appropriate and providing notice by a sign.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DEER PARK, TEXAS, THE FOLLOWING:

1. Texas Penal Code Section 46.03(a)(3) as interpreted by Tex. Att’y Gen. Op. No. KP-0047 (2015) is merely advisory.
2. The 506th District Court of Waller County, Texas, issued an unambiguous order in *Waller County, Texas v. Terry Holcomb, Sr.*, that the premises of a courthouse constituted the entire building housing the court or offices utilized by the court
3. Texas Penal Code Section 46.03(a)(1) is analogous to Section 46.03(a)(3).
4. A handgun license holder may have difficulty determining what comprises the physical premises of the Community Center Pre-School.
5. The physical premises of the Community Center Pre-School constitutes the entire premises [as defined by Penal Code Sections 46.03(c)(1) and 46.035(f)(3)] of the Deer Park Community Center at all times.
6. City staff is hereby directed to post permanent signs at the entrances to the Deer Park Community Center identifying them as such.
7. The permanent signs posted under 6, above, should be conspicuously posted and contain the following language:

*This building houses The Community Center Pre-School, which conducts classes each weekday from 7:30 a.m. until 2:30 p.m. During school hours all weapons are prohibited pursuant to Penal Code Section 46.03(a)(1).
An offense under that section is a third degree felony.*

8. The possession of any firearm in the Deer Park Community Center can subject any person, including a person who holds a license to carry a handgun, to prosecution of a third degree felony pursuant to Penal Code Section 46.03(g).

PASSED AND APPROVED by the City of Deer Park, Texas on this _____ day of _____, 2017.

MAYOR, City of Deer Park, Texas

ATTEST:

City Secretary

APPROVED:

City Attorney