

# DeSoto Police Department Town Hall Meeting

December 12, 2015

DECEMBER 12, 2015

TOWN HALL MEETING



# Texas Open Carry Handgun Law

- PUBLIC INFORMATION AND UNDERSTANDING

# CURRENT LAW

- **Currently**, citizens can openly carry rifles and shotguns, but not handguns. A CHL is not needed to do this. However, it must be done in a manner not "calculated" to cause alarm; meaning carrying the rifle to purposely intimidate or scare people.
- The Motorist Protection Act does allow a concealed handgun to be kept in a motor vehicle without a CHL, but it does carry the provision that the handgun must not be in plain sight.

# NEW LAW BACKGROUND

**Starting January 1, 2016, citizens with a concealed carry license (CHL) will be permitted to now carry openly in TEXAS, per House Bill 910 of the 2015, 84th legislative session. Non-Texans from states whose permits are also recognized by Texas will be allowed to open carry under the new law January 1, 2016.**

*(Texas is the 45th state to become an open carry state.)*

# NEW LAW

(continued)

**Authorizes individuals to obtain a license to openly carry a handgun in the same places that allow the licensed carrying of a concealed handgun with some exceptions.**

*(See "Exceptions" below for more information.)*

**Requirements are the same as CHL- Applicants must be 21, pass a background check and receive classroom and shooting range instruction.**

**DPS will be updating website, forms and training materials to reference License to Carry (LTC) instead of Concealed Handgun License (CHL).**

# DEFINITION

**Open carry refers to the act of carrying a handgun (generally) that is in plain view in a holster. There is no concealment garment such as a t-shirt or vest that is covering the firearm. Unconcealed handguns, loaded or unloaded, must be carried in a shoulder or belt holster**

# PUBLIC BUILDINGS

- **\*\*\*Open carry is still prohibited in city and government buildings where a city meeting is taking place.\*\*\*\* (COURTS)**
- **New Law however, limits the scope of the governmental meeting prohibition by restricting it to the specific room or rooms in which the meeting is being held, and to public meetings for which notice is required under the Open Meetings Act.**
- **(Sign must be visible outside of specific rooms)**

# SCHOOL CAMPUSES

- Starting Aug. 1, 2016, institutions of higher education and private/independent schools have the ability to allow a concealed handgun on campus. (SB 11)
- Open carrying of handguns is still prohibited at these locations.
- Citizens will be able to carry a concealed handgun but not an open carry on college campuses. That still means no elementary schools, middle schools or high schools.

# SCHOOL CAMPUSES

(continued)

- Authorizes an institution of higher education or private or independent institution of higher education in this state to establish rules, regulation, 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. Post a sign under Penal Code Sect. 30.06 with respect to any portion of the premises on which license holders may not carry.

# BUSINESSES

- Business owners and employers will still have the authority to ban weapons on their property and work place using the proper legal signage.
- The state is very specific about how these signs are worded. (Signs must be block letters that are at least 1 inch in height, written in both English and Spanish, and must be visible and posted at each public entrance to be legally binding. BOTH 30.07 & 30.06 SIGNS MUST BE POSTED if you DO NOT want CONCEAL carry and OPEN carry on your premises)

# SIGNAGE

- Private businesses may post signs to indicate entry on the property with a handgun by a license holder is forbidden.
- Penal Code Section 30.06 provides the language to be included on signs to indicate license holders are forbidden to carry concealed.
- Penal Code Section 30.07 provides the language to be included on signs to indicate license holders are forbidden to open carry.
- Posting of both signs is an indication by the business that license holders are forbidden to carry concealed or openly.

# Signage

- **New 30.06 Sign Wording**
- “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

# Signage

- Sec. 30.07. TRESPASS BY LICENSE HOLDER WITH AN OPENLY CARRIED HANDGUN.
  - (A) a card or other document on which is written 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”; or
  - (B) a sign posted on the property that:
    - (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 at each entrance to the property

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

CONFORME A LA SECCIÓN 30.07  
DEL CÓDIGO PENAL (TRASPASAR  
DE PERSONA CON LICENCIA  
PORTAR PISTOLA ABIERTAMENTE),  
PERSONAS CON LICENCIA BAJO  
DEL SUB-CAPÍTULO H, CAPÍTULO  
411, CÓDIGO DE GOBIERNO (LEY  
DE PORTANDO PISTOLA  
ABIERTAMENTE), NO DEBEN  
ENTRAR A ESTA PROPIEDAD  
PORTANDO PISTOLA ABIERTAMENTE



# VIOLATIONS

- (a) A license holder commits an offense if the license holder:
  - (1) openly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, on property of another without effective consent; and
  - (2) received notice that:
    - (A) entry on the property by a license holder openly carrying a handgun was forbidden; or
    - (B) remaining on the property while openly carrying a handgun was forbidden and failed to depart.
- (b) For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.
- (c) In this section:
  - (1) “Entry” has the meaning assigned by Section 30.05(b).
  - (2) “License holder” has the meaning assigned by Section 46.035(f).
  - (3) “Written communication” described on previous slide.:

# Places of Worship

- In places of worship, pastors or the heads of churches have the authority to ban handguns or allow them on the premises.

# EXCEPTIONS

- Open carry is not permitted by a license holder regardless of whether the handgun is holstered:
  - 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
  - by an individual who is acting as a personal protection officer under Chapter 1702, Occupations Code and is not wearing a uniform

# LAW ENFORCEMENT CONTACT

- Open Carrier
- When stopped by law enforcement it is in the best interest of the person, who is carrying a handgun openly, to show both I.D. and license (CHL/LTC).
- Failure to identify and produce CHL/LTC could result in arrest. (UCW/ Disorderly Conduct)

# Law Enforcement Officers

- Inspection of Handgun License
- Texas Government Code Sec. 411.172 provides for the open carry of handguns by license holders except in specific places and under specific conditions. Sec. 411.205 provides for the inspection of handgun licenses by peace officers.
- It is the policy of the City of DeSoto Police Department that officers may demand the presentation of an individual's handgun license under any of the following circumstances:
  - 1. Individuals exhibiting open carry and demonstrating conduct which could cause a reasonable person to fear for their own safety or that of others;
  - 2. Individuals exhibiting open carry of a handgun and demonstrating conduct observed by an officer which leads the officer to believe the person is a danger to themselves or others; or,
  - 3. Individuals exhibiting open carry of a handgun brought to an officer's attention by the public due to conduct on their part which causes fear or concern on the part of the reporting person.

# Law Enforcement Officers

## Texas Criminal Law Section 42.01 Disorderly Conduct

- (a) A person commits an offense if he intentionally or knowingly: Displays a firearm or other deadly weapon in a public place in a manner calculated to alarm.
- Knowing the Texas Legislature's position on Officer safety, Texas Government Code 411.207 (lawful disarming of a CHL) and 392 U.S. at 23, 88 S.Ct. at 1881, 20 L. Ed. 2d at 907 (officer safety standards) will also apply to LE encounters with open carry enthusiasts.

# Law Enforcement Officers

- Investigative Stop and Detention – Open Carry
- Articulable questions to consider during contact.
- Is a police radio dispatch to a “man with a gun” sufficient to grant LE authority for temporary stops and investigative detention? (U.S. v Robinson)
- Is a 9-1-1 caller automatically a “credible witness?”
- How does dispatch determine veracity and reliability of a 9-1-1 caller’s information?
- Are you in a place you have a lawful right to be when initiating contact?
- What other circumstances exist? (Crime area/Time)

# QUESTIONS & ANSWERS: CONCEAL & OPEN CARRY

- **1. Is open carry permitted by a license holder?**
- Yes. Section 46.02 states that it is unlawful for a person to carry a handgun. Section 46.15(b)(6) creates the exception provided the person has a license to carry a handgun, and it is either concealed or in a \*shoulder or \*belt holster. (\*Effective Jan. 1, 2016).
- **Note:** The language in 46.15(b)(6) states the person “is carrying a license”.
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- **2. May an officer stop a person who is carrying a handgun in plain view in a shoulder or belt holster, and request that the person present his or her license (provided no other criminal violation has been observed)?**
- Yes. Constitutional carry did not pass in Texas. The statute language remains the same – the person carrying a handgun concealed or open carry is required to carry his or her license. It is the license holder’s responsibility to prove he or she is not in violation of 46.02 by presenting their license to a peace officer.
- **3. If a person refuses to display his or her license upon demand by a peace officer, can he or she be detained/arrested? Would this be a valid arrest?**
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- Yes. Once detained and it is determined the person is a license holder the Department policy will be to release the license holder, unless the action warrants an arrest (officer discretion). However, the Texas Government Code requires an officer to file an affidavit with DPS over the violation of the license holder for failure to display the license.
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# QUESTIONS & ANSWERS: CONCEAL & OPEN CARRY

- **4. May a license holder go on the premise of an institution of higher education (College) with a concealed handgun?**
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- Yes beginning August 1, 2016, but it must be concealed. Open Carry in shoulder or belt holster is not permitted. Premise includes the grounds and buildings of the college. Effective August 1, 2017 conceal carry will be permitted on the grounds and buildings of a junior college. (Institution of higher education may adopt rules regarding storage in dorms and other residential facilities. Generally, the rules may not prohibit conceal carry.)
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- Effective January 1, 2016 open or conceal carry will be permitted by a person, including a student, provided they are a license holder and the firearm or ammunition is being stored or transported in a privately owned or leased motor vehicle and they are on a street or driveway located on the campus of the institution; or in a parking lot, parking garage, or other parking area located on the campus.
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- \*The law for schools and other education institutions will remain the same:
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- *License holder is not permitted to carry on the physical premises of a school or educational institution, (other than an institution of higher education effective August 1, 2016) 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.*
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- “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

# QUESTIONS & ANSWERS: CONCEAL & OPEN CARRY

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- **5. Can the operator of a motor vehicle carry a handgun in plain view in the motor vehicle?**
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- Yes, provided they are a license holder and the handgun is in a shoulder or belt holster. If the operator is not a license holder, the law remains the same and the handgun may not be carried in plain view (includes watercraft vehicle). (\*Reference Section 46.02(a-1) Penal Code).
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- **6. Is open carry allowed on public transportation? (Example: DART)**
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- Yes.
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- **7. Is open carry allowed in governmental buildings in areas to which the public has access? (Examples: City Hall while a person is paying their water bill; the lobby of the police department)**
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- Yes
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# QUESTIONS & ANSWERS: CONCEAL & OPEN CARRY

- **8. Is open or conceal carry permitted at a meeting of the governmental body?**
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  - Yes if no sign is posted. A license holder commits an offense if the license holder open carries or conceal carries a handgun, 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 and if the meeting is an open meeting subject to Chapter 551, Government Code, (A posted meeting and subject to the open meetings act) and the entity provided notice as required by that chapter.
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  - Meetings subject to the Open Meetings Act include City Council and all City Board and Commission Meetings.
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- **9. Is open or conceal carry allowed at the municipal court?**
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  - No – 30.06 and 30.07 signage is not required.
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- **10. May a private business owner prohibit conceal and/or open carry on the premise of their business? Does this include a liquor store?**
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  - Yes, through posting a sign pursuant to 30.06 and/ or 30.07. The sign must be displayed in a conspicuous manner clearly visible to the public at each entrance to the property. Sign requirements are specific. A private business owner may also provide notice on a card or other document that contains the same 30.06 and/or 30.07 language.

# QUESTIONS & ANSWERS: CONCEAL & OPEN CARRY

- 11. What are the sign and or written notice requirements?
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- To prohibit those licensed from conceal carry, the sign and written notice effective January 1, 2016, are as follows:
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- **PURSUANT TO SECTION 30.06 PENAL CODE (TRESPASS BY 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.**
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- **DE ACUERDO CON LA SECCIÓN 30.06 DEL CÓDIGO PENAL (DEL ALLANAMIENTO POR PORTADOR DE LICENCIA CON UN ARMA DE FUEGO OCULTA), UNA PERSONA CON LICENCIA BAJO EL SUBCAPÍTULO H, CAPÍTULO 411, CÓDIGO DE GOBIERNO (LEY DE ARMAS OCULTAS), NO PUEDE ENTRAR A ESTA PROPIEDAD CON UN ARMA OCULTA.**
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- To prohibit those licensed from open-carrying, the sign and written notice effective January 1, 2016 is as follows:
- **PURSUANT TO SECTION 30.07 PENAL CODE (TRESPASS BY 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**
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- **DE ACUERDO CON LA SECCIÓN 30.07 DEL CÓDIGO PENAL (DEL ALLANAMIENTO POR PORTADOR DE LICENCIA CON UN ARMA DE FUEGO OCULTA), UNA PERSONA CON LICENCIA BAJO EL SUBCAPÍTULO H, CAPÍTULO 411, CÓDIGO DE GOBIERNO (LEY DE ARMAS OCULTAS), NO PUEDE ENTRAR A ESTA PROPIEDAD CON UN ARMA DE FUEGO CLARAMENTE PORTADA.**
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# QUESTIONS & ANSWERS: CONCEAL & OPEN CARRY

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- **12. May a business owner provide notice verbally?**
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- Yes. Notice can also be provided verbally by a person with apparent authority to act on behalf of the business owner or notice can be provided by written communication through a document or card that contains the language above.
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- **13. May an employer restrict an employee that is licensed from carrying on the employer's premises?**
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- Yes. Section 411.203 of the Texas Government Code states that a private or public employer may prohibit a person who is licensed from carrying a concealed or open carry on the premises of the business. Section 46.035(f)(3) of the Texas Penal Code defines "Premises" as a building or 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.

# City Employees

- City of DeSoto civilian employees are PROHIBITED from carrying guns openly, or concealed while working.
- When interacting with an open carry citizen/customer during the course of city duties, do not get alarmed, be aware of the situation and deal with or serve that person as any other. (As long as the person is not causing alarm or suspicion.)

# REMINDER

- House Bill 910, passed in May, allows concealed handgun license holders to display their guns in a shoulder or belt holster. It takes effect Jan. 1, 2016.
- Open gun carriers: **COMPLY** with Law Enforcement. Provide ID and License.

QUESTIONS???

**COMMENTS**