

SEGUIN POLICE DEPARTMENT OPEN CARRY INFORMATION

Beginning January 1, 2016, licensed firearm owners in the State of Texas are allowed to openly carry a firearm in most places. This law is known as "open carry." Existing Texas law requires licensed gun owners to conceal their handguns from plain view, such as under shirts, or in purses, just to name a few. The new law, House Bill 910 will allow current licensed "CHL" (Concealed Hand Gun License) to carry handguns openly, in belt or shoulder holsters. The Seguin Police Department is a proactive law enforcement agency that is prepared for this upcoming law change and the challenges it brings.



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DEFINITIONS

What does “open carry” mean?

The practice of openly (visibly) carrying a handgun in a shoulder or belt holster on one's person in public.

What are a “CHL” and an “LTC”?

“CHL” is the acronym for a “concealed handgun license.” “LTC” is the acronym for a “license to carry” a handgun.

What are the differences between a firearm, a handgun, and a long gun?

A “firearm” 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. A “handgun” means any firearm that is designed, made, or adapted to be fired with one hand, such as a revolver or pistol. A “long arm” means any firearm that is designed, made, or adapted to be fired with both hands, such as a rifle or shotgun.

What are “premises” for the purpose of Texas gun laws?

“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.

WHERE AND WHEN CAN I CARRY?

Can I lawfully open carry a handgun in Texas?

Yes, as of January 1, 2016, you can carry a handgun openly or concealed in many places as long as you possess a CHL issued by Texas or a similar license issued by a state with reciprocity. By law, the handgun must be carried in a “shoulder or belt holster.” You do not need a CHL to open carry a long arm.

Can I open carry on private property?

Yes, provided that the property does not display a sign described in Section 30.07 of the Texas Penal Code at each of its entrances. A business wanting to completely ban handguns must post both signs in English and in Spanish. However, if the owner or manager asks you to remove the weapon or leave the property, you must comply. Failure to leave the property when requested to do so could result in you being charged with criminal trespass.

Can I open carry in a vehicle?

Yes, as long as the handgun is in a shoulder or belt holster and you have a CHL. If you do not have a CHL, you still must keep your handgun concealed.

Where am I prohibited by state law from carrying a handgun?

Even if you have a CHL, Texas law prohibits you from intentionally, knowingly, or recklessly possessing or carrying any firearm: on the premises of a school or educational institution (hereafter “school”), any grounds or building on which an activity sponsored by a school is being conducted, or a passenger transportation vehicle of a school: except beginning on August 1, 2016, a CHL holder may carry a concealed handgun on the premises of an institution of higher education [other than a junior college]; except beginning on August 1, 2017, a CHL holder may carry a concealed handgun on the premises of a junior college; on the premises of a 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; 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, unless pursuant to written regulations or written authorization of the court; on the premises of a racetrack; in or into a secured area of an airport under federal law; within 1,000 feet of premises 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 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).

Can my openly carried firearm be loaded?

Yes. The law makes no distinction between a loaded and an unloaded firearm. For safety purposes, we recommend every firearm be treated as if it were loaded.

WHAT QUALIFICATIONS AND CONDITIONS EXIST FOR OPEN CARRY?

Can everyone open carry?

No, a person convicted of certain crimes cannot carry a firearm. Generally, if you can lawfully possess a firearm, you can open carry with a CHL. Must be 21 years old to obtain a CHL, unless you are in the military, a veteran, or honorably discharged, in which case you can get a CHL if you are at least 18. Federal laws must also be considered when discussing the legality of firearm ownership.

I live out of state. Can I open carry in Texas?

Yes. There are no residency restrictions to open carry as long as you possess a CHL or a handgun license from a reciprocating state.

I already have a CHL. Will I need to get another license for open carry?

No. Your CHL will qualify you to open carry a handgun. The CHL will become a LTC.

I heard there is additional training for open carry. Do I need to retake the class?

No, the new training will be added to the CHL classes required by law for those required to take the class. No additional training will be required for current CHL holders.

Do I give up my right to open carry if I obtain a concealed handgun permit?

No, the CHL serves as the license for the open carry and will later be changed to a License to Carry or LTC.

Can I prohibit persons from openly or concealed carrying in my business by displaying signs described in Sections 30.06 and 30.07 of the Texas Penal Code?

Yes.

If I am asked to leave a store for openly carrying a weapon, can I cover up the gun and go back in the store if I have a CHL?

Yes, unless the store owner or manager asked you not to return, in which case returning would constitute a criminal trespass.

Does a person have a right to view a CHL of another person?

A person can ask to view the CHL, but the holder of a CHL does not have to show a CHL to the person unless that person is a peace officer or magistrate.

What is a “belt holster” and what kind of holster would be a violation?

The law does not define a “belt holster”; the law just states you must carry your handgun in a “shoulder or belt holster.” A “drop down” holster attached to your belt is considered to be a belt holster.

HOW WILL SEGUIN POLICE OFFICERS RESPOND TO OPEN CARRY?

Do Seguin Police Officers know that open carry is legal as of January 1, 2016.

Yes, The Seguin Police Department (SPD) is training its officers in the new law and how to handle situations that will arise from implementing the law. SPD officers know that most residents are law abiding and are not open carrying to violate the law. SPD will have a measured response to instances of open carry that give residents a professional experience with each officer.

Should I call 911 each time I see someone carrying an open weapon?

Before calling, take time to observe what the person is doing. Ask yourself whether the person is doing anything that looks suspicious or is doing something “wrong.” Just because the person is openly carrying a handgun does not mean he has no right to do so. Just as importantly, if someone is openly carrying a weapon, they may also have a proper license. Based on the set of circumstances, a Seguin police officer may or may not request proof of a handgun license. Police officers must walk a “fine line” on what the new law allows them to do and balance that with an assurance that civil or Constitutional rights are now violated.

Can a police officer question or disarm me if I am openly carrying a holstered handgun in public?

Yes. State law gives a peace officer more authority to disarm a license holder who is carrying a handgun than it does for a non-licensed long gun carrier. 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 must display both the license holder’s driver’s license or identification certificate and the license holder’s handgun license. Moreover, a peace officer may disarm a license holder at any time the officer reasonably believes it is necessary for the protection of the license holder, officer, or another individual.

The peace officer shall return the handgun to the license holder before allowing the license holder to leave the scene if the officer determines that the license holder is not a threat to any person and if the license holder has not violated any other law that results in arrest.

What specific situations can a Seguin police officer demand the presentation of an individual’s 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 Seguin Police Department that officers may demand the presentation of an individual’s handgun license under 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; and,
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.



CAN I OPEN CARRY (OR CONCEALED) AT CITY COUNCIL MEETINGS?

Specifically, is it lawful to be armed in a City Council meeting?

The City of Seguin intends on posting proper and legal notice to prohibit weapons in the meeting room. In order to comply with Texas Law, this prohibition is only during the meeting if the meeting is an open meeting subject to the Open Meetings Act.



GENERAL OPEN CARRY QUESTIONS AND ANSWERS

If a person is open carrying a handgun, how does a police officer determine if he is carrying the handgun legally?

Answer: Constitutional carry did not pass in Texas, so a police officer does have the right to ask you to prove that you have a CHL (Concealed Handgun License). If you are asked by a police officer to prove that you are allowed to carry a handgun, you must produce identification. The State legislature did not give great direction in this area; however; in Seguin, our officers will look at the totality of the situation and based on their determination, may instruct someone open carrying a firearm to produce their license.

If I see a person open carrying a handgun, should I call the police?

Answer: You may call the police, but before you call, observe how the person is acting. If they are acting suspicious, or enter a building such as a school, then please give us a call. But, if they are simply at a gas station filling up their car, then they are probably a law abiding citizen who is legally open carrying. Unless they are doing something that a reasonable and prudent person considers to be "suspicious," as a law enforcement agency, we are unable to demand them to produce their license because they are simply open carrying a weapon in a holster.

If you are walking down a street, and an officer approaches you, is it a voluntary encounter, or at this point am I "detained"?

Answer: Technically, you are temporarily detained so that the officer can check your license and make sure that you are legally able to carry a handgun.

If I am open carrying a handgun, am I allowed to get out of my car, take the holster off my belt, and place it into the trunk of my car?

Answer: Yes you are able to do that.

As a parent, I am concerned with my kids being around people open carrying a handgun. What do I tell my kids to do when they see someone with a pistol on their hip?

Answer: Again, it is situational. If your kids see someone in a grocery store shopping, they should not be alarmed if that person is carrying a handgun. But if they are at school, and they see a person (who is not a Police officer) carrying a gun, they should immediately tell someone and/or call 911.

In a government building such as a police station, can someone carry a handgun?

Answer: Yes you can, but only in the areas that are open to the public. So if that person has to go to a portion of the building where a normal citizen would not be allowed, they are not allowed to carry a handgun. If you are in this position where you are not sure if you can carry or not, it is recommended that you leave your handgun in your vehicle.

Will the presence of an open carried handgun during a verbal altercation between two people, elevate this altercation to an aggravated assault because a handgun has been “exhibited”?

Answer: No, it will not be considered aggravated assault as long as the person carrying the weapon was not threatening to use it.

Since an open carried weapon must either be carried in a shoulder holster or a belt holster, will there be a set standard that constitutes what is considered a shoulder or belt holster?

Answer: Currently there is no standard that constitutes what is a shoulder or belt holster.

If an officer sees me openly carrying a handgun in a shoulder or belt holster, is that officer legally able to ask me for proof that I have a CHL?

Answer: Unfortunately our State legislature failed to definitively address this. The short answer is “Yes,” since constitutional carry did not pass, the officer is within his or her right to ask you for your license. Also, when you get your CHL, you are instructed that if a police officer asks you for your CHL license, you must provide it. In Seguin, our officers are being instructed that requiring proof of a CHL should be based on the totality of circumstances.

If I am carrying a handgun, and I am approached by a police officer, what steps should I take to ensure that the police officer and myself both feel safe during this transaction?

Answer: Do as the officer asks. Tell the officer you are carrying a weapon and have a license to do so. Do not reach for the weapon, have the officer tell you what to do with the weapon.

If I want to prohibit both concealed carry and open carry in my private business what signs do I need to have displayed?

Answer: You must have the 30.06 (concealed carry) and the 30.07 (open carry) signs posted in the front windows of your business.

If I am a private business owner and I do not have the proper 30.06 and 30.07 signs posted and I ask someone to leave my store who is carrying a weapon, are they still legally required to leave even though I don't have the proper signs?

Answer: Yes. As a private business owner you can tell someone to leave if they are carrying a weapon whether you have or don't have the proper signs posted.

If I use a “drop leg” holster that holds my gun around the middle of my thigh, will I get arrested for having an improper holster?

Answer: No you will not be arrested for that type of holster. It is still mounted to your belt which is the requirement in the law.

If my private business has multiple entrances, can I post the 30.06 and 30.07 signs at the main entrance, or do I need to post them at every entrance?

Answer: You must have them posted at all entrances.

Does a citizen have the right to ask a CHL carrier for proof of licensing?

Answer: No. A citizen does not have the right to ask a CHL carrier for proof that he or she is legally carrying a weapon.

Since open carry is now legal, does that mean that I am no longer able to conceal my handgun?

Answer: The open carry law gives you the option to conceal your handgun or carry it out in the open.

What advice would you give to someone who is feeling anxious or intimidated in an open carry environment?

Answer: Open carry is going to be something that everyone will have to get used to. Initially it may be unsettling to see someone carrying a handgun in the grocery store, but it is important to know that the people who are open carrying a gun are law abiding citizens and are not there to intimidate or hurt you.

Since the public is not allowed to open carry a weapon, will you allow off duty police officers to be able to open carry their handgun?

Answer: No. Off duty police officers will still be required to conceal their handgun. However, if an officer wants to go and get their CHL, they will be allowed to carry a handgun out in the open as long as they are not carrying it under the authority or general orders of the Seguin Police Department.

Some organizations that are in opposition to open carry, have said that if they see someone openly carrying a handgun, they will call 911 and say that person is being aggressive and threatening people with the weapon. How will the police handle situations like this.

Answer: Seguin police officers will act with caution when approaching the person, they will collect the facts, and when it is found that this person was doing nothing wrong, the investigation will be turned towards the person who made the false 911 call.

For questions, please contact Deputy Chief B. Ure (830) 401-2367

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