

## 11-18 - Openly Carried Handguns

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Los Angeles County Sheriff's Department

### NEWSLETTER

Field Operations Support Services, (323) 890-5411

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#### OPENLY CARRIED FIREARMS

The purpose of this newsletter is to assist law enforcement officers in determining whether or not a person is in violation of California's "Open Carry" laws of handguns and other firearms.

#### Definitions

**Incorporated City:** Generally, a city that has its own city council. The city of Carson is an example of an incorporated city.

**City and County:** As used below, it refers to an incorporated city and county, such as San Francisco. **It does not apply to Los Angeles County.**

**Prohibited area:** Any place where it is unlawful to discharge a weapon (17030 PC). The Los Angeles County Code (LACC) generally makes it unlawful to discharge a firearm in the direction of any place of human habitation or any public road, park, or premise, unless the place from which the firearm is discharged is at **least one-half mile away** from such place of human habitation, public road, park, or premise (LACC 13.66.040); across or along any public highway, road, street, or way (LACC 13.66.050); or in specified restricted districts, including the metropolitan area as defined in LACC 13.66.240.

#### What is considered a loaded weapon?

16840(b) PC: As used in Chapter 2 (commencing with Section 25100) of Division 4 of Title 4, in subparagraph (A) of paragraph (6) of subdivision (c) of Section 25400, and in Sections 25850 to 26055, inclusive,

1. **A firearm shall be deemed to be “loaded” when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm. [This will be the section most commonly applied.]**
  
1. Notwithstanding paragraph (1), a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

**Note:** The definition of “loaded” in 16840(a) PC: “As used in Section 25800, a firearm shall be deemed to be ‘loaded’ whenever both the firearm and the unexpended ammunition capable of being discharged from the firearm are in the immediate possession of the same person” – applies *only* to 25800 PC (“Every person who carries a loaded firearm **with the intent to commit a felony** is guilty of armed criminal action.”)

### **Open Carry of All Loaded Firearms**

25850(a) PC: A person is guilty of carrying a loaded firearm when the person carries a loaded firearm on the person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory.

**Note:** Other Penal Code sections may be more appropriate to charge the suspect if other factors come to light during the investigation, such as felon with a gun, illegal gun, etc.

### **Open Carry of an Unloaded Handgun**

26350(a)(1) PC: A person is guilty of openly carrying an unloaded handgun when that person carries upon his or her person an exposed and unloaded handgun outside a vehicle while in or on any of the following:

- (A) A public place or public street in an incorporated city or city and county.
- (B) A public street in a prohibited area of an unincorporated area of a county or city and county.
- (C) A public place in a prohibited area of a county or city and county.

26350(a)(2) PC: A person is guilty of openly carrying an unloaded handgun when that person carries an exposed and unloaded handgun inside or on a vehicle, whether or not on his or her person, while in or on any of the following:

- A. A public place or public street in an incorporated city or city and county.
- B. A public street in a prohibited area of an unincorporated area of a county or city and county.
- C. A public place in a prohibited area of a county or city and county.

**Note:** “It is a misdemeanor for a driver of any motor vehicle or the owner of any motor vehicle, whether or not the owner of the vehicle is occupying the vehicle, to knowingly permit any other person to carry into or bring into the vehicle a firearm in violation of Section 26350” (17512 PC). If the firearm is loaded, the driver or owner may be charged with 26100 PC.

There are numerous exceptions to 26350 PC, such as peace officers, retired peace officers, authorized military personnel, licensed firearms dealer, etc. The exceptions to openly carry an unloaded handgun are listed in 26361 PC through 26391 PC.

If an arrest is made for 26350 PC, 26400 PC, or similar firearm section, the firearm shall be taken into custody and booked into evidence pursuant to the Manual of Policy and Procedures sections 5-04/010.60, Packaging Evidence, and 5-09/180.00, Firearms Processing.

### **Open Carry of Unloaded Firearms Other Than Handguns (Rifles, Shotguns, Etc.)**

26400 (a) PC: A person is guilty of carrying an unloaded firearm that is not a handgun in an incorporated city or city and county when that person carries upon his or her person an unloaded firearm that is not a handgun outside a vehicle while **in the incorporated city** or city and county.

There are a number of exemptions. Refer to 26405 PC for further information.

### **Inspection of firearms by law enforcement**

25850(b) PC: In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on the person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. **Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section.**

### **Conclusion**

If you encounter someone open carrying in an;

**Incorporated City:** You have the authority to detain them to inspect their firearm(s) to determine if they are loaded. You may also enforce the open carry laws in these areas if the firearms are loaded or unloaded.

### **Unincorporated Area**

**Inside a Prohibited Area:** You have the authority to detain them to inspect their firearm(s) to determine if they are loaded. You may also enforce the open carry laws in these areas if the firearm is a loaded handgun or long gun, or an unloaded handgun.

## Unincorporated Area

**Outside A Prohibited Area:** You **MAY NOT** enforce the open carry laws related to firearms, as they do not apply in these areas.

Information regarding the content of this newsletter may be directed to Field Operations Support Services at (323) 890-5411.

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