



Legislative UPDATE

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Open Carry and Contracts Disclosure Laws Effective January 1

Open Carry Update

Texas' much anticipated "open carry law" will become effective on January 1, 2016. The law modifies the current concealed handgun license law that has been in place since 1995. It eliminates the concealed/open carry distinction, and it creates a "license to carry a handgun."

Beginning on January 1, 2016, a person with a current concealed handgun license, or a person who obtains the new "license to carry a handgun," may carry a handgun in a concealed manner or openly in a belt or shoulder holster.

The rules related to where and when a license holder may openly carry are essentially identical to where and when a concealed handgun license holder has been able to carry for 20 years. Of course, the difference is that no one knows when a person is concealed carrying, but some are uncomfortable with the idea of a holstered handgun being displayed in public.

State law prohibits the carrying of firearms in certain places. For example, it is a crime to take a gun onto the premises of a polling place or a court. (With regard to courts, more information will be available in the form of attorney general opinions on the subject, which should be released soon.) The law also expressly prohibits a handgun license holder from carrying in a government meeting, if the governmental body gives notice that doing so is prohibited.

Beyond the three places listed above, a city council has essentially no authority to prohibit a license holder from carrying in areas that are otherwise open to the public. Any attempt to do so can lead to the attorney general bringing a civil action against the city for monetary penalties. (The attorney general, pursuant to legislation passed last session, has posted a [notice](#) on his website inviting individuals in your city to file a complaint if an "uncooperative government" posts signs prohibiting handgun license holders from carrying handguns where they are legally allowed to carry them.)

What's the bottom line for city officials and employees who see someone carrying a holstered handgun in public? Don't panic. If you see any person acting suspicious (armed or not), you should contact law enforcement. However, the mere fact that a person is carrying a holstered handgun is a sight Texans may have to get used to. In fact, most city attorneys will likely advise law enforcement officers to use discretion in making contact with such a person, considering the totality of the circumstances.

City employees should arguably follow the same restrictions. For example, if a person enters a city library or recreation facility with a holstered handgun, the employees may decide to do nothing, unless the person causes a disturbance. If that happens, summoning law enforcement is the best course of action.

The state legislature is the body that enacted the open carry law. You can find and contact your state representative and/or senator at www.capitol.state.tx.us.

Contracts Disclosure Legislation

Section 2252.908 is a new ethics law that was enacted by H.B. 1295 in 2015. It prohibits a city from entering into certain contracts with a business entity unless the business entity submits a form called a disclosure of "interested parties." Although the bill became effective on September 1, 2015, the reporting applies only to a contract entered into on or after January 1, 2016.

The Texas Ethics Commission is charged with adopting rules to implement the new statute, developing the disclosure of interested parties form, and posting the form on its website. The Commission adopted the "Certificate of Interested Parties" form ([Form 1295](#)) on October 5, 2015 and adopted [rules](#) on November 30, 2015.

By January 1, 2016, the Commission will make available on its website a new filing application (a software application) that must be used to file Form 1295. The process as implemented by the Commission is as follows:

1. A business entity must use the application to enter the required information on Form 1295 and print a copy of the form and a separate certification of filing that will contain a unique certification number.
2. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 and certification of filing must be filed with the city "at the time the business entity submits the signed contract" to the city.
3. The city must notify the Commission, using the Commission's filing application, of the receipt of the filed Form 1295 and certification of filing not later than the 30th day after the date the contract binds all parties to the contract.

In the coming weeks, the Commission will post a "How to Register and File a Report" video on its website under the "[Implementation of HB 1295](#)" heading. In the meantime, the League has prepared a Q&A covering what we know about the law so far.

Mandatory Eminent Domain Reporting

[Senate Bill 1812](#), passed during the 2015 legislative session, requires cities to fill out a web-based form with the comptroller relating to each city's statutory eminent domain authority. The form is due by **February 1, 2016**, and the failure to fill out the form could result in a \$1,000 penalty against the city. The electronic reporting form is available at:

<http://comptroller.texas.gov/webfile/eminant-domain/>

Most of the required information is self-explanatory, but League staff has inserted some commentary below that may be of assistance. The reporting consists of providing the following information:

- 1. The entity's full legal name.**
- 2. The entity's address and public contact information.**
- 3. The name and contact information of the appropriate officer, or other person representing the entity.**
- 4. The type of entity.**

Obviously, "city" is the type of entity. However, the form also allows an economic development corporation (EDC) to file, and it lists Local government Code Section 505.105 as that entity's authority. (While most attorneys would agree that an EDC uses the city's eminent domain authority on its behalf, it may nonetheless make sense to report for the EDC.)

Cities with other city-created entities should review the eminent domain authority of those entities to determine whether additional forms should be sent to the comptroller on their behalf. Some statutory provisions are very specific (e.g., authority of cities that have created municipal parking authorities or defense base management authorities, or even a city with a charter-created board of a municipally owned electric utility system that has certain financial obligations).

- 5. The legal provision(s) granting the entity's eminent domain authority.**

This section of the form is titled "Eminent Domain Provisions: Codes." It asks "under what code(s) of the law has eminent domain authority been granted to this entity?"

The user selects the appropriate code (e.g., Local Government Code, etc.) and then selects the specific provisions (e.g., 251.001, etc.). Several provisions under each code can be selected by holding down the "control" key while clicking. The process is repeated for each additional code.

Each city should submit its own form after reviewing each of the provisions in these spreadsheets to determine whether they apply to that particular city. The following spreadsheets are available:

- [General law cities – basic provisions](#): Most general law cities will be fine submitting only the provisions listed in this spreadsheet.
- [Home rule cities – basic provisions](#): Most home rule cities will be fine submitting only the provisions listed in this spreadsheet.
- [Comprehensive list of all statutory provisions](#) granting eminent domain authority to cities.

6. The focus or scope of the eminent domain authority granted to the entity.

This section of the forms asks “what types of projects and/or purposes does this entity have eminent domain authority.”

For most cities, it makes sense to choose every project/purpose listed, except for “other.” (Only those cities with a specific project type that is authorized by law but not listed should choose “other” and enter a description.)

7. The earliest date the entity had authority to exercise the power of eminent domain.

For a city, enter the incorporation month and year in this section.

8. The entity’s taxpayer identification number, if any.

9. Whether the entity exercised its eminent domain authority in the preceding calendar year by filing a condemnation petition under Section 21.012, Property Code.

10. The entity’s Internet website address or, if the entity does not operate an Internet website, contact information to enable the public to obtain information from the entity.

It may be appropriate to seek the assistance of local legal counsel to advise on the reporting. Please contact Scott Houston, TML’s general counsel, with questions at shouston@tml.org or 512-231-7400.

Get Involved: TML Legislative Policy Committees

Your involvement in the development of the Texas Municipal League’s 2017-2018 Legislative Program is critical to the League’s success. The program is the “roadmap” by which League staff lobbies the Texas Legislature. The process starts in earnest next spring, and TML President C.J. Wax, Mayor of the City of Rockport, is seeking volunteers to provide input. No particular

expertise is need. Volunteers need only have a willingness to learn and the ability to come to Austin for two full days in 2016.

Next year's topic-specific committees will be:

- **May 6:** Annexation and Regulation of Development.
- **May 27:** Revenue and Finance.
- **June 3:** Utilities and Transportation.

Service consists of appointment by the TML President to one of the above committees. Those committees will each meet once on the date indicated in Austin. All three will then combine to form the General Government Committee, which will meet on **August 19** in Austin. The General Government Committee will finish any topic-specific work and consider additional items.

The League's complete legislative policy development process is described [here](#). If you have questions or would like to volunteer for service on a legislative committee, please email JJ Rocha, TML Policy Analyst, at jj@tml.org. The deadline to apply is **December 23, 2015**. Please include your full contact information and your preferred topic-specific committee. Due to space limitations and other considerations, not all those who apply will be appointed to a committee, but will be considered for future volunteer opportunities.

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