



CITY OF PLEASANT HILL POLICE DEPARTMENT



MEMORANDUM

Date: April 15, 2010

To: Department Personnel

From: Lt. Enea

Subject: Open Carry Information

Lexipol Client Advisory Alert

Unloaded Open Carry (UOC) Movement: Relevant Laws

- Inspection of a firearm: PC 12031(e) provides that peace officers are authorized to examine any firearm carried by anyone on his or her 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.
- Determining if a firearm is loaded: PC 12031(g) defines loaded as "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 ..." People v Scott (1996) 45 Cal.App.4th 1147 says a weapon is "loaded" when a shell or cartridge is in such a position so that the weapon may be fired (a weapon is not "loaded" even though shells or cartridges are in close proximity to the firearm).
- Refusal of firearm inspection: "Refusal to allow a peace officer to inspect a weapon pursuant to this section constitutes probable cause for arrest for violation of this section" (PC 12031(e)).
- Identification: Existing law does not require an UOC individual to produce identification. A refusal to identify oneself, coupled with other circumstances giving rise to reasonable suspicion, can justify further detention (People v. Lopez, 119 Cal. App. 4th 132 (2004)).
- Serial Number: While inspecting the firearm to determine if it is loaded, and only if the serial number is observed in plain view the serial number may be inspected, PC 537e (a) makes it unlawful to buy, sell, possess, etc. any personal property with an altered, defaced removed, etc. serial number. PC 12090 proscribes tampering and renders illegal possession of a firearm with altered, covered or obliterated serial numbers.
- Restrictions: Drug addicts (PC 12021(a)(1)); Felony convictions (PC 12021(a) (2)); Minors (12101(a) (1)); Possession within 1,000 feet of a public/private school (knowledge required) (PC § 626.9); and Unlawful in public buildings, open public meetings or state offices (PC § 171b and c).

OFFICER SAFETY AND TACTICS

Open Carry of Weapons

SCENARIO : While patrolling in the northern part of the city, you and your partner, Officer Dustin Schenkly, are dispatched to investigate a report of a man with a gun at Munson Park, located eight blocks to the west. Arriving at the park, you observe a man astride a Harley-Davidson motorcycle. Clearly displayed on his right hip is a holstered, semi-automatic pistol. Using appropriate officer safety tactics, you safely disarm the man. He identifies himself as Ralph Burns. You check the pistol and find it to be unloaded with a visible serial number.

ISSUE: SHOULD YOU ARREST MR. BURNS FOR OPENLY CARRYING AN UNLOADED FIREARM?

RULE : California Penal Code § 12025(f):

"...unloaded firearms carried openly in belt holsters are not concealed within the meaning of § 12025."

ANALYSIS : In attempts to stave off perceived threats to their rights under the Second Amendment of the U.S. Constitution, some gun-rights advocates use novel approaches to exercise their rights. Recently, in the state of California, some citizens have openly carried their firearms to publicly affirm their perceived right to bare a firearm.

Mr. Burns may be carrying his firearm for the aforementioned reason and, by the letter of the law, Mr. Burns has done nothing illegal. However, you and Officer Schenkly correctly identified and handled the potential threat as your training dictated. You had no way of knowing Mr. Burns' intent upon your initial encounter with him and, in the interest of officer safety you addressed the threat.

After determining his firearm to be unloaded, it would be prudent to release Mr. Burns and return his pistol. Before leaving the scene, you should advise Mr. Burns of the nature of the initial complaint and explain the officer-safety aspects of your response. You may also advise Mr. Burns that he can expect a similar response in any future situations since law enforcement personnel have no way of knowing if a handgun is loaded until it is inspected.

CONCLUSION : You should not arrest Mr. Burns.

Furthermore, under California Penal Code § 12031, "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 his/her 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."

QUESTION:

Generally, it is legal to openly carry a handgun if it not concealed, loaded or the person is not otherwise prohibited from carrying a firearm.

True

False

Correct Answer: True