



ADMINISTRATIVE SERVICES COMMITTEE

Agenda

Wednesday, December 3, 2014
3:30 pm

Madison Avenue Meeting Room
500 SW Madison Avenue

- | | |
|------------------------------------|--|
| Discussion/ Possible Action | I. Comprehensive Annual Financial Report
(Attachment) |
| Discussion/ Possible Action | II. Open Carry of Loaded Firearms Alternatives
(Attachment) |
| Discussion/ Possible Action | III. Livability Code/Neighborhood Outreach Program
Review (administrative provisions)
(Attachment) |
| Information | IV. Other Business |

Next Scheduled Meeting

Wednesday, December 17, 2014 at 3:30 pm
Madison Avenue Meeting Room, 500 SW Madison Avenue

Agenda

Livability Code/Neighborhood Outreach Program Review

MEMORANDUM

DATE: 11/25/2014

TO: Administrative Services Committee

FROM: Janet Chenard, Interim Finance Director *JIC*

SUBJECT: Accept the June 30, 2014 Comprehensive Annual Financial Report

I. Issue

To review and accept the FY 13-14 Comprehensive Annual Financial Report (CAFR).

II. Background

Finance Department staff prepares the CAFR and has the responsibility to ensure that the CAFR presents fairly the financial position of the City as of June 30, 2014 in accordance with Generally Accepted Accounting Principles (GAAP). State law requires that the CAFR be filed with the Oregon Secretary of State Office by December 31. The auditors' responsibility is to express an opinion on the basic financial statements based on their audit. The audit is conducted in accordance with auditing standards generally accepted in the U.S. and standards applicable to financial audits contained in Governmental Auditing Standards issued by the Comptroller General. The CAFR, which ASC will receive in time to review for its December 3, 2014 meeting, provides financial information such as the Statement of Net Position, Balance Sheet, and Fund Financial Statements to the City Council, citizens, and financial markets.

III. Discussion

The auditors have issued an unmodified opinion for the June 30, 2014 CAFR. To receive an unmodified auditors' opinion, the financial statements must present fairly the financial position of the City. There were no material internal control weaknesses nor were there any material variances from generally accepted accounting principles. Normally, the CAFR and the related filings/paperwork would be finalized by this time to be included with the ASC agenda packet. This year, due to a compressed timeline for both City and audit staff, the CAFR is not yet available, but will be emailed to the Committee shortly before, or delivered at, the ASC meeting.

Attached hereto, please find the Auditors' communication letter to the governing body, commonly known as the SAS 114 letter, which is the auditor's required communication with those charged with Governance. The letter outlines the auditor's responsibilities of communication under generally accepted auditing standards, the planned scope and timing of the audit, independence, and the significant findings from the audit. The only item mentioned in this letter was a "non-significant" deficiency that they have highlighted each year of their audit:

- Fidelity insurance coverage – Auditors recommend City Council evaluate the fidelity insurance coverage to determine whether it is appropriate to carry sufficient coverage for the cash and investment balances.

Staff Response – For FY 13-14, as in prior years, the Fidelity Insurance coverage for the City Manager and Finance Director was \$500,000 each. Staff recognizes that there are times when the City's cash balance in the demand account is significantly higher than this amount, but the \$500,000 level is considered to be a standard best practice level and acquiring coverage equal to the highest bank balance amount would be cost prohibitive. Staff believes that the City has a robust set of internal controls in place that minimize the risk of loss through dual control mechanisms on the ability to issue checks or to transfer monies in and out of the City's bank account.

IV. Future GASB Statements

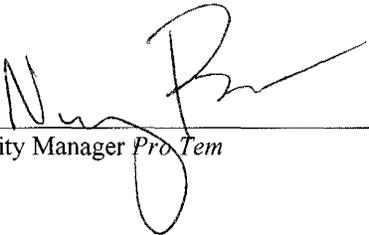
Following is a brief explanation of the most recent statements issued by GASB anticipated to have an impact on the City's financial reporting, which will go into effect in FY 14-15. The statements will have varying work load impacts for staff based on their application to the City of Corvallis:

- GASB Statements No. 68 (& 71, an Amendment thereto) - Accounting and Financial Reporting for Pension Plans – The simultaneous implementation date for these statements, as noted above, is fiscal year 2014-15. The objective of the original statement is to improve financial reporting by state and local governmental pension plans. Statement 68 establishes a definition of a pension plan that reflects the primary activities associated with the pension arrangement—determining pensions, accumulating and managing assets dedicated for pensions, and paying benefits to plan members as they come due. Statement 71 amends Statement 68 to address the pension transition for contributions made subsequent to the measurement date of the government's beginning net pension liability. Staff has not yet completed an analysis of the work effort required to implement this statement; a significant portion of the City's work will depend on the Oregon Public Employee Retirement System implementation. Corvallis City Manager Pro Tem Nancy Brewer is an active member of an employer group working with PERS on GASB 68 implementation issues.

V. Requested Action

Staff requests the Administrative Services Committee review the June 30, 2014 Comprehensive Annual Financial Report, and move to recommend that the City Council accept the June 30, 2014 Comprehensive Annual Financial Report at its December 15, 2014 meeting.

Review and Concur:



City Manager Pro Tem



PAULY, ROGERS AND Co., P.C.
12700 SW 72nd Ave. ♦ Tigard, OR 97223
(503) 620-2632 ♦ (503) 684-7523 FAX
www.paulyrogersandcocpas.com

November, 14, 2014

To the Honorable Mayor, Members of
City Council, and City Manager
The City of Corvallis, Oregon

We have audited the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Corvallis, Oregon for the year ended June 30, 2014. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards and *Government Auditing Standards* and OMB Circular A-133, as well as certain information related to the planned scope and timing of our audit. Professional standards also require that we communicate to you the following information related to our audit.

Purpose of the Audit

Our audit was conducted using sampling, inquiries and analytical work to opine on the fair presentation of the financial statements and compliance with:

- generally accepted accounting principles and auditing standards
- the Oregon Municipal Audit Law and the related administrative rules
- federal, state and other agency rules and regulations related to expenditures of financial awards

Our Responsibility under U.S. Generally Accepted Auditing Standards and OMB Circular A-133

As stated in our engagement letter, our responsibility, as described by professional standards, is to express opinions about whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit of the financial statements does not relieve you or management of your responsibilities.

In planning and performing our audit, we considered internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinions on the financial statements and not to provide assurance on the internal control over financial reporting. We also considered internal control over compliance with requirements that could have a direct and material effect on a major federal program in order to determine our auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with OMB Circular A-133.

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we performed tests of compliance with certain provisions of laws, regulations, contracts, and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions is not an objective of our audit. Also in accordance with OMB Circular A-133, we examined, on a test basis, evidence about compliance with the types of compliance requirements described in the U.S. Office of Management and Budget (OMB) Circular A-133 Compliance Supplement applicable to each of the major federal programs for the purpose of expressing an opinion on compliance with those requirements. While our audit provided a reasonable basis for our opinion, it did not provide a legal determination on compliance with those requirements.

Our responsibility for the supplementary information accompanying the financial statements, as described by professional standards, is to evaluate the presentation of the supplementary information in relation to the financial statements as a whole and to report on whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole.

Planned Scope and Timing of the Audit

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit involved judgment about the number of transactions examined and the areas to be tested.

Our audit included obtaining an understanding of the City's environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Material misstatements may result from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the City or to acts by management or employees acting on behalf of the City. We also communicated any internal control related matters that are required to be communicated under professional standards.

Results of Audit

1. Audit opinion letter - an unmodified opinion on the financial statements has been issued. This means we have given a "clean" opinion with no reservations.
2. State minimum standards – We found no exceptions or issues requiring comment, except as noted on page 139 of the report.
3. Federal Awards - We found no issues of non-compliance and no questioned costs. We have responsibility to review these programs and give our opinion on the schedule of expenditures of federal awards, and our testing of the internal control system, compliance with laws and regulations, and general and specific requirements mandated by the various awards.
4. No separate management letter was issued.

Significant Audit Findings

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during 2014, except for the implementation of GASB 65 – *Items Previously Reported as Assets and Liabilities*. We noted no transactions entered into during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements were Management's estimate of Receivables and Capital Asset Depreciation, which are based on estimated collectability of receivables and useful lives of assets. We evaluated the key factors and assumptions used to develop these estimates in determining that they are reasonable in relation to the financial statements taken as a whole.

Certain financial statement disclosures are particularly sensitive because of their significance to financial statement users. The disclosures in the financial statements are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit

We encountered no difficulties in performing and completing our audit.

Pauly, Rogers and Co., P.C.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. There were no adjustments required as a result of auditing procedures. There were immaterial uncorrected misstatements noted during the audit which were discussed with management.

Disagreements with Management

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditors' report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the financial statements or a determination of the type of auditors' opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards with management each year prior to our retention as the auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Supplementary Information

With respect to the supplementary information accompanying the financial statements, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

Other Information

With respect to the other information accompanying the financial statements, we read the information to identify if any material inconsistencies or misstatement of facts existed with the audited financial statements. Our results noted no material inconsistencies or misstatement of facts.

Other Matters – Future Accounting and Auditing Issues

In order to keep you aware of new auditing standards issued by the American Institute of Certified Public Accounts and accounting statements issued by the Governmental Accounting Standards Board (GASB), we have prepared the following summary of the more significant upcoming issues:

GASB 68

GASB Statement No. 68, *Accounting and Financial Reporting for Pensions—an Amendment of GASB Statement No. 27*, addresses accounting and financial reporting for pensions that are provided to the employees of state and local governmental employers through pension plans that are administered through trusts that have certain characteristics. This statement will impact the government-wide financial statements for most entities with net position being reduced by an actuarially determined amount. The implementation date for this statement is fiscal periods beginning after June 15, 2014.

GASB 69

GASB Statement No. 69, *Government Combinations and Disposals of Government Operations*, establishes accounting and financial reporting standards related to government combinations and disposals of government operations. As used in this Statement, the term government combinations includes a variety of transactions referred to as mergers, acquisitions, and transfers of operations. This Statement requires measurements of assets acquired and liabilities assumed generally to be based upon their acquisition values. This Statement also provides guidance for transfers of operations that do not constitute entire legally separate entities and in which no significant consideration is exchanged. The implementation date for this statement is fiscal periods beginning after December 15, 2013 and earlier implementation is encouraged.

GASB 71

GASB Statement No. 71, *Pension Transition for Contributions Made Subsequent to the Measurement Date – An Amendment of GASB Statement No. 68*, addresses the reporting requirements related to amounts associated with contributions made by a state or local government employer or nonemployer contributing entity to a defined benefit pension plan after the measurement date of the government's beginning net pension liability. The provisions of this Statement are required to be applied simultaneously with the provisions of Statement 68, which is required to be implemented in fiscal periods beginning after June 15, 2014.

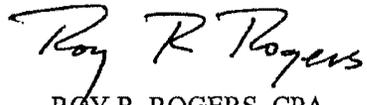
Best Practices – Not Significant Deficiencies

1. Fidelity Insurance Coverage

In reviewing fidelity insurance (employee honesty) coverage we noticed that the City carries cash and investment balances in excess of the insurance coverage amount. We recommend that the City Council examine this exposure risk and make a determination as to the amount of insurance coverage they feel is prudent in regard to their oversight.

Pauly, Rogers and Co., P.C.

This information is intended solely for the use of the City Council and management and is not intended to be and should not be used by anyone other than these specified parties.

A handwritten signature in black ink that reads "Roy R. Rogers". The signature is written in a cursive style with a large, stylized "R" at the beginning.

ROY R. ROGERS, CPA
PAULY, ROGERS AND CO., P.C.

MEMORANDUM

November 20, 2014

TO: Administrative Services Committee

FROM: Nancy Brewer, City Manager *Pro Tem*

Jon Sassaman, Police Chief

SUBJECT: **Open Carry of Loaded Firearms Alternatives**

I. Issue

To discuss the City Council's request for alternatives to an ordinance banning open carry of loaded firearms.

II. Background

In the summer several community members appeared at a City Council meeting and requested the City Council adopt an ordinance banning open carry of firearms. The Council referred the issue to the Human Services Committee. At meetings with HSC, the City Attorney and Police Chief presented information on the Federal and Oregon State Constitutional limits on local bans of open carry. Ultimately, HSC took up an ordinance that proposed certain limitations on open carry of loaded firearms. The ordinance was modeled closely following one adopted by the City of Portland which had portions appealed to the Oregon Supreme Court and upheld by that Court.

HSC's work culminated in a City Council meeting on November 3 where public testimony was taken about the Committee's discussions. The City Council referred the issue back to Committee (this time to ASC) to discuss potential alternatives to adoption of the ordinance as discussed at HSC.

III. Alternatives

Staff has identified several alternatives for the Committee's consideration:

Options:	Possible Advantages	Possible Disadvantages
Adopt a local ordinance prohibiting the open-carry of a loaded firearm in public	<p>Some community members will obey the new law, potentially resulting in fewer open-carry situations.</p> <p>Would satisfy some community members who desire an ordinance be adopted.</p> <p>Would be a clear statement from the City Council on its position on open carry of loaded firearms.</p>	<p>Some community members will not obey the law.</p> <p>People may purposefully come to Corvallis to open-carry to test the knowledge and practices of law enforcement. In doing so, other law enforcement agencies that operate in and around Corvallis may be affected.</p> <p>Does not provide public safety an enhancement in authority.</p> <p>Creates a false sense of enforcement capability within the community.</p> <p>Creates the potential for litigation based on circumstances.</p> <p>Would not satisfy some community members who desire no change from the current standards.</p>

Options:	Possible Advantages	Possible Disadvantages
Do nothing.	<p>Would likely not change the number of open-carry situations.</p> <p>Status – quo is maintained.</p> <p>Arguably would not result in new cases being litigated against the City.</p> <p>Does not create a false sense of enforcement capability.</p> <p>Maintains clear and legally consistent training and practices for law enforcement.</p> <p>Would be an agreeable position for those community members who desire no change from current standards.</p>	<p>Does not act upon concerns of some community members who desire to have no open carry.</p>
Council could develop an Advisory Question to be voted on by the registered voters in Corvallis.	<p>Acts upon the voiced concerns by some community members who desire action.</p> <p>Provides Council with perspective of those who elect to cast their ballot.</p> <p>All of the “possible advantages” relative to adopting an ordinance remain the same if, following a vote, Council elected to move forward with an ordinance.</p>	<p>Council remains in control of deciding what to do regardless of the vote outcome.</p> <p>All of the “possible disadvantages” relative to adopting an ordinance remain the same if, following a vote, Council elected to move forward with an ordinance.</p> <p>May not satisfy some community members who desire no change.</p> <p>May not satisfy some community members who desire an action.</p> <p>A campaign over an advisory vote may be difficult in the community, with some people coming to the community to open carry and challenge the issue during a campaign.</p> <p>Adds an expense to local government in council and staff time to develop the advisory question language and fund the election process .</p>
Council could adopt a resolution on the subject.	<p>Allows Council to make a public policy statement relative to “open-carry,” constitutional rights and community safety.</p> <p>Does not create any enforcement capability, thereby maintaining clear and legally consistent training and practices for law enforcement.</p>	<p>Must be carefully crafted to not create an ordinance via resolution.</p> <p>May be difficult to develop language in a Resolution that clearly articulates the Council’s position.</p> <p>May not satisfy some community members who desire an ordinance be adopted.</p> <p>May not satisfy some community members who desire no change.</p>

Options:	Possible Advantages	Possible Disadvantages
<p>Adopt a Council Policy relative to “Safety” and support for all Constitutional rights in Corvallis.</p>	<p>Allows Council to make and take a public policy position relative to safety, constitutional rights, anti-violence and balancing the rights of all community members.</p> <p>Allows for a broad and all encompassing policy position of safety in Corvallis for all community members.</p> <p>Encourages council to review and update the policy in future years.</p> <p>Does not create any sense of enforcement capability, thereby maintaining clear and legally consistent training and practices for law enforcement.</p>	<p>May not satisfy some community members who desire an ordinance be adopted.</p> <p>May not satisfy some community members who desire no change.</p>
<p>Encourage supporters to pursue the “open market” concept raised at the November 3 meeting</p>	<p>Allows the businesses in the community to identify themselves as supporting an open carry of loaded firearms ban.</p> <p>Does not require City Council or staff support.</p>	<p>Could result in more open challenges at businesses which display the sign indicating the business’ position.</p> <p>A business voluntarily displaying an anti-open carry sign may expect public safety support from someone who challenges the business’ position, but since there would be no local law there would be no public safety support.</p>

Staff needs direction from Council to pursue an option listed above or generate an option not yet considered for staff to pursue.

Review and concur:



Jim Brewer, City Attorney

Attachments:

1. Council Follow-up Memorandum: Open-Carry of firearms in public places.
2. July 8, 2014 HSC Staff Report and Meeting Minutes.
3. September 29, 2014 HSC Meeting Staff Report and Meeting Minutes.
4. November 3, 2014 City Council Meeting Minutes

To: Mayor and City Council
 From: Jon Sassaman, Police Chief
 Jim Brewer, Deputy City Attorney JB
 Date: May 28, 2014
 Subject: Council Follow-up/ "Open-carry" of firearms in public places

Issue:

At the May 19, City Council meeting, a group of citizens expressed concern about a person carrying a firearm openly in Cloverland Park, possibly within 1000 of a school, in possible violation of a federal statute. This group of citizens asked for the City to consider appropriate steps to prohibit "open carry" of firearms. This memorandum is intended to provide some information about "open carry" and the authority of the Corvallis Police Department to enforce federal law.

Background:

In Oregon, any City's ability to regulate firearms is greatly limited by a state law that preempts most regulations:

ORS 166.170 is the State Preemption law. It states:

- 1). Except as expressly authorized by state statute, the authority to regulate in any matter whatsoever the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition, is vested solely in the Legislative Assembly.
- 2). Except as expressly authorized by state statute, no county, city or other municipal corporation or district may enact civil or criminal ordinances, including but not limited to zoning ordinances, to regulate, restrict or prohibit the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and complements thereof, including ammunition. Ordinances that are contrary to this subsection are void.

There are also specific Oregon Revised Statutes where the Legislature grants narrow authority to local jurisdictions:

ORS 166.172 authorizes a City to regulate the discharge of firearms. As such, we have a local ordinance to this effect.

ORS 166.173 authorizes a City to regulate the possession of a loaded firearm in public places. A local municipality may regulate, restrict or prohibit the possession of a loaded firearm in public places, with some exceptions. Exceptions include public safety officials and those with concealed handgun licenses.

Under the state law, if someone has a concealed handgun license, they are free to carry a loaded firearm concealed or to "open-carry" it. There is no authority granted to local jurisdictions to prohibit open-carry for someone with a concealed handgun license. The laws grant limited authority to local jurisdictions who desire to regulate loaded firearms in public for people without a concealed handgun license or are

Council Follow-up
 "open-carry"

otherwise exempt (e.g. police officer). Even if additional laws are passed, I suspect legal challenges may result and any new law does not grant a greater degree of safety for our officers who are put in the position to engage these situations.

When we receive a call for service about someone openly carrying a firearm, there is currently no specific law in Corvallis granting police officers the unilateral authority to stop, detain, question or search an individual merely because they have a firearm on their hip where people can see it. At this point, there's no reasonable suspicion that a crime or violation of law has occurred. There are many people who have a CHL and choose to open-carry. We do have local ordinances dealing with weapons:

Municipal Code: Section 5.03.120.020 Concealed weapons.

1) No person, other than, with regard to firearms, a person described by ORS 166.260 or licensed pursuant to ORS 166.291 through 166.293, shall carry concealed on or about the person, or carry concealed and readily accessible about the person within any vehicle, any firearm; any gun; any knife having a blade that projects or swings into position by force of a spring, commonly known as a switchblade; any dirk or dagger; any metal knuckles; any nunchaku sticks; any sling shot; or any similar instrument by the use of which injury could be inflicted upon the person or property of any other person.

2) A violation of this Section is a Class B Misdemeanor.

(Ord. 90-10 § 2, 1990; Ord. 82-77 § 111.02, 1982)

Municipal Code: Section 5.03.120.030 Discharge of weapons.

1) No person, other than a police officer or animal control officer, shall fire or discharge within the City any bow and arrow, firearm, or gun.

2) A violation of this Section is a Class A Misdemeanor.

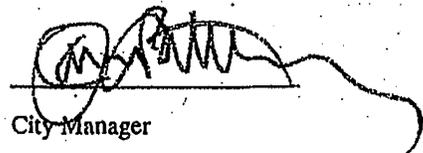
(Ord. 2010-21 § 2, 10/18/2010; Ord. 82-77 § 111.03, 1982) (Ord. 2002-19 § 3, 06/17/2002)

The City Attorney's Office has reviewed local ordinances in the jurisdictions listed in the citizens' letter (Astoria, Beaverton, Multnomah County, Newport, Oregon City, Portland, Salem, Tigard, and Bend). Each of them has carefully followed the state statutory scheme and only banned the open carrying of a loaded firearm, with the statutory exceptions including people with concealed carry permits (who may therefore carry a loaded weapon openly).

Police officers in Oregon do not have jurisdiction or authority to directly enforce federal law. Federal agencies (DEA, ATF, FBI, etc.) with law enforcement authority may do so. Under Oregon's statutory scheme, local governments may not independently create a regulation that echoes the 1000 foot rule. The state has not chosen to do so.

Both the Police Chief and City Attorney are available to answer any questions.

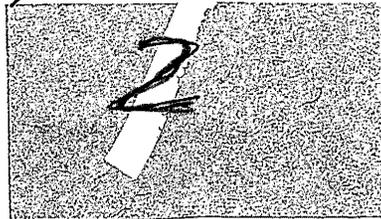
Review and Concur:



City Manager

Council Follow-up
"open-carry"

ATTACHMENT



Memorandum
Corvallis Police Department
July 1, 2014

To: Human Services Committee

From: Jonathan M. Sassaman, Chief of Police
Jim Brewer, Deputy City Attorney

Subject: "Open Carry" of firearms in public

Issue:

City Council, at the June 2, 2014 Council meeting referred to Human Services Committee the issue of "open carry" of firearms in the public. This staff report addresses legal issues and local authority relative to "open carry" of firearms. (Information for council)

Background:

At the May 19, 2014 City Council meeting, a group of citizens expressed concern about a person carrying a firearm openly in Cloverland Park, possibly within 1000 feet of a school, in possible violation of a federal statute. This group of citizens asked for the City to consider appropriate steps to prohibit "open carry" of firearms. City Council was provided an informational memorandum (attachment 1), containing information about "open carry" and the authority of the Corvallis Police Department to enforce federal law.

Discussion:

The 2nd Amendment of the United States of America Constitution grants the right to people to keep and bear arms which shall not be infringed upon. In 2010, the United States Supreme Court (McDonald v. Chicago) ruled a ban on ownership of handguns within a private home was unconstitutional, affirming the 2nd Amendment applies to States and therefore gun ownership is an individual right and it cannot be taken away by the individual States.

Article I, Section 27 of the State of Oregon Constitution echo's in part the 2nd Amendment and grants the people of Oregon the right to bear arms. The State of Oregon enacted ORS 166.170 which preempts local governments from regulating firearms or enacting civil or criminal ordinances relating to firearms. Any ordinances contrary to ORS 166.170 are void, however the Oregon Legislature did carve out for local governments the authority to enact very narrow laws governing the discharge of firearms and the possession of a loaded firearm in public places with exceptions for public safety officials, those with concealed handgun licenses, military members,

employees of the US Department of Agriculture and other lawful purposes in defense of person and property.

Corvallis Municipal Code 5.03.120.020 restricts the possession of concealed weapons and Corvallis Municipal Code 5.03.120.030 restricts the discharge of weapons within the City of Corvallis. The City does not have an ordinance restricting the possession of a loaded firearm in public.

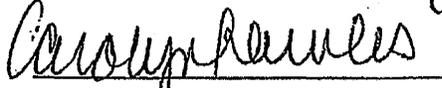
The 4th Amendment of the United States of America Constitution grants the right of the people to be secure from unreasonable searches and seizures. Police officers who respond to unknown situations with people who "open-carry" a firearm, do not have the unilateral authority to stop, detain and question or search any person because they have a firearm which the general public can observe. A Police officer must have "reasonable suspicion" that a crime or violation of law is about to occur, is occurring or just occurred in order to stop a person. A person who openly carries a firearm, in and of its self, is insufficient cause to stop a person.

Attached are excerpts from a training "power point" (Attachment 2) utilized by the Corvallis Police Department to train staff of laws related to "open-carry" which will be discussed during the meeting.

Attachments:

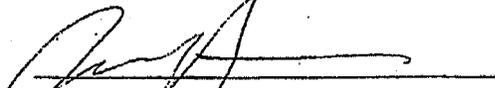
1. Council request follow-up, dated May 28, 2014
2. Training slides

Review and concur:



James A. Patterson, City Manager

Review and concur:



Jim Brewer, City Attorney

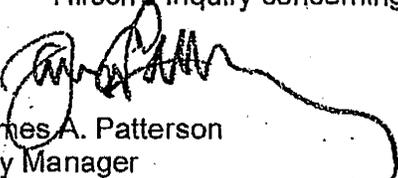
COUNCIL REQUESTS

FOLLOW-UP REPORT

MAY 29, 2014

1. Open Carry of Guns in Parks (Possible City-Wide Ban) (Hirsch)

The attached memorandum from Police Chief Sassaman addresses Councilor Hirsch's inquiry concerning open carry of firearms in City parks.


James A. Patterson
City Manager

To: Mayor and City Council
From: Jon Sassaman, Police Chief
Jim Brewer, Deputy City Attorney JB
Date: May 28, 2014
Subject: Council Follow-up/ "Open-carry" of firearms in public places

Issue:

At the May 19, City Council meeting, a group of citizens expressed concern about a person carrying a firearm openly in Cloverland Park, possibly within 1000 of a school, in possible violation of a federal statute. This group of citizens asked for the City to consider appropriate steps to prohibit "open carry" of firearms. This memorandum is intended to provide some information about "open carry" and the authority of the Corvallis Police Department to enforce federal law.

Background:

In Oregon, any City's ability to regulate firearms is greatly limited by a state law that preempts most regulations:

ORS 166.170 is the State Preemption law. It states:

- 1). Except as expressly authorized by state statute, the authority to regulate in any matter whatsoever the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition, is vested solely in the Legislative Assembly.
- 2). Except as expressly authorized by state statute, no county, city or other municipal corporation or district may enact civil or criminal ordinances, including but not limited to zoning ordinances, to regulate, restrict or prohibit the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and complements thereof, including ammunition. Ordinances that are contrary to this subsection are void.

There are also specific Oregon Revised Statutes where the Legislature grants narrow authority to local jurisdictions:

ORS 166.172 authorizes a City to regulate the discharge of firearms. As such, we have a local ordinance to this effect.

ORS 166.173 authorizes a City to regulate the possession of a loaded firearm in public places. A local municipality may regulate, restrict or prohibit the possession of a loaded firearm in public places, with some exceptions. Exceptions include public safety officials and those with concealed handgun licenses.

Under the state law, if someone has a concealed handgun license, they are free to carry a loaded firearm concealed or to "open-carry" it. There is no authority granted to local jurisdictions to prohibit open-carry for someone with a concealed handgun license. The laws grant limited authority to local jurisdictions who desire to regulate loaded firearms in public for people without a concealed handgun license or are

Council Follow-up
"open-carry"

otherwise exempt (e.g. police officer). Even if additional laws are passed, I suspect legal challenges may result and any new law does not grant a greater degree of safety for our officers who are put in the position to engage these situations.

When we receive a call for service about someone openly carrying a firearm, there is currently no specific law in Corvallis granting police officers the unilateral authority to stop, detain, question or search an individual merely because they have a firearm on their hip where people can see it. At this point, there's no reasonable suspicion that a crime or violation of law has occurred. There are many people who have a CHL and choose to open-carry. We do have local ordinances dealing with weapons:

Municipal Code: Section 5.03.120.020 Concealed weapons.

1) No person, other than, with regard to firearms, a person described by ORS 166.260 or licensed pursuant to ORS 166.291 through 166.293, shall carry concealed on or about the person, or carry concealed and readily accessible about the person within any vehicle, any firearm; any gun; any knife having a blade that projects or swings into position by force of a spring, commonly known as a switchblade; any dirk or dagger; any metal knuckles; any nunchaku sticks; any sling shot; or any similar instrument by the use of which injury could be inflicted upon the person or property of any other person.

2) A violation of this Section is a Class B Misdemeanor.

(Ord. 90-10 § 2, 1990; Ord. 82-77 § 111.02, 1982)

Municipal Code: Section 5.03.120.030 Discharge of weapons.

1) No person, other than a police officer or animal control officer, shall fire or discharge within the City any bow and arrow, firearm, or gun.

2) A violation of this Section is a Class A Misdemeanor.

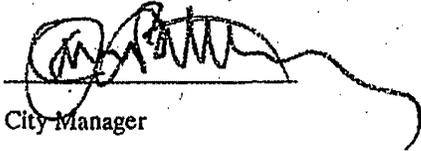
(Ord. 2010-21 § 2, 10/18/2010; Ord. 82-77 § 111.03, 1982) (Ord. 2002-19 § 3, 06/17/2002)

The City Attorney's Office has reviewed local ordinances in the jurisdictions listed in the citizens' letter (Astoria, Beaverton, Multnomah County, Newport, Oregon City, Portland, Salem, Tigard, and Bend). Each of them has carefully followed the state statutory scheme and only banned the open carrying of a loaded firearm, with the statutory exceptions including people with concealed carry permits (who may therefore carry a loaded weapon openly).

Police officers in Oregon do not have jurisdiction or authority to directly enforce federal law. Federal agencies (DEA, ATF, FBI, etc.) with law enforcement authority may do so. Under Oregon's statutory scheme, local governments may not independently create a regulation that echoes the 1000 foot rule. The state has not chosen to do so.

Both the Police Chief and City Attorney are available to answer any questions.

Review and Concur:



City Manager

Council Follow-up
"open-carry"

Carrying Firearms



Legal Issues

Developed By:

- ❖ The Corvallis Police Department
- ❖ The Benton County District Attorney, John Haroldson
- ❖ The Corvallis City Attorney, Jim Brewer

Sources

- Oregon Revised Statutes
- DA Haroldson and CA Brewer, CPD Capt. Hendrickson, Lt. Brewer and Sgt. Mann
- Annual legal update in-service training, DDA Amesbury
- Memorandum: Benton County Sheriff's Office "Notice to Concealed Handgun License Holders",
- Syllabus DISTRICT OF COLUMBIA ET AL. v. HELLER:
<http://www.supremecourt.gov/opinions/07pdf/07-290.pdf>
- Syllabus MCDONALD ET AL. v. CITY OF CHICAGO, ILLINOIS, ET AL:
<http://www.supremecourt.gov/opinions/09pdf/08-1521.pdf>
- Constitution of the United States of America:
<http://www.usconstitution.net/const.html#Am2>
- Oregon Court of Appeals Ruling: OREGON FIREARMS EDUCATIONAL FOUNDATION, v. BOARD OF HIGHER EDUCATION and OREGON UNIVERSITY SYSTEM
- H.R. 218 The Law Enforcement Officers Safety Act of 2004
- S.R. 1132 The Law Enforcement Officers Safety Improvements Act of 2010

Training Objectives

- Protection of the community.
- Ensure stops and arrests for firearms laws are based on sound legal guidance and principles.
- Increase officer safety through awareness and contact procedures.
- Protection of the rights of citizens to carry firearms legally.
- When the opportunity arises, education of citizens regarding carrying firearms.

Firearms are a Tool

- Everyday you work, you are around many other people who are armed.
- You also pass many citizens on the street who are legally armed:
 - Citizens with Concealed Handgun Licenses (CHL).
 - Some people carry firearms openly in public legally; this may cause some people alarm.
- It's the person and actions that can be dangerous; a firearm is a tool that can increase the person's capacity for violence, whether for crime or legal defense.

Issue

- Most citizens just want to exercise their rights peacefully and without calling attention to themselves.
- There is a movement of becoming more educated in firearms carry laws and exercising the ability to carry firearms.
- Some activists are trying to bring this cause to light by engaging in "open carry" of firearms.
- Locally and across the country, these individuals are encountering law enforcement to test our knowledge of the law.
- Being aware of the presence of a firearm is important - remain alert.

The Issues Are Complex



- **Possession of firearms is a legal and a political issue**

Areas Where Firearms are or may be Restricted

- Court Facilities
- Public Buildings
- The grounds adjacent to Public Buildings
- Federal Facilities, including the Post Office and some BLM land
- Tribal Land and Facilities
- Private property where posted

2nd Amendment of the Constitution of the United States

*"A well regulated Militia,
being necessary to the security of a free State,
the right of the people to keep and bear Arms,
shall not be infringed."*



2nd Amendment of the Constitution of the United States

- Ratified in 1791. Until recently, it was undecided if the 2nd Amendment meant that individuals (without militia membership) have a right to own firearms.
- The issue of individual ownership of firearms was not resolved until 2008 and 2010.
- There will likely still be challenges to any law that restricts possession of firearms and LE will likely be involved.
- Some people may push the issue to get into court.

US Supreme Court 2008: Washington DC v. Heller

- Washington DC had a complete ban on handgun ownership
- The US Supreme Court ruled in this case that the 2nd amendment is an individual right
- "The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home."
- This ruling only applied to the Federal Government; not to the States.

US Supreme Court 2010:
McDonald v. Chicago

- In June 2010, the U.S. Supreme Court ruled that a Chicago ban on ownership of handguns within a private home was unconstitutional.
- This ruling means the 2nd Amendment applies to the States (via the “Due Process Clause”); gun ownership is an individual right and it cannot be taken away by the individual States.

2nd Amendment of the Constitution of the
United States

- **HOWEVER....Just like freedom of speech, government has the ability to regulate “time, place and manner” issues**

Example: the freedom of speech does not allow a citizen to yell “FIRE!” in a crowded theater when there is not a fire.

Yelling Fire is
FORBIDDEN
by Law

thank you for your compliance

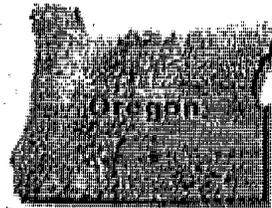
2nd Amendment of the Constitution of the United States

- **Final Assessment on 2nd Amendment: Gun ownership is a fundamental right, BUT some restrictions / limits can be placed on firearms by government.**



State of Oregon Constitution

- **Article I, Section 27. Right to bear arms; military subordinate to civil power.** The people shall have the right to bear arms for the defense of themselves, and the State, but the Military shall be kept in strict subordination to the civil power.



Oregon Statutes

- **166.170 State preemption (summarized). Except where specifically authorized by state statute, only the state legislature may regulate (in any manner) firearms, components and ammunition. (affirmed by Western Oregon University case of Sept, 2011).**
- **166.171-166.276 Allows for some very limited regulation of firearms by cities and counties**

Authority of City to regulate discharge of firearm (ORS 166.172)

- A City may adopt ordinances to regulate, restrict or prohibit the discharge of firearms within the city's boundaries.
 - CMO 5.03.120.030 Discharge of Weapons, regulates, restricts and prohibits the discharge of weapons within the City of Corvallis with exemptions for Police Officers and the Animal Control Officer. Violation of the CMO is a Class A Misdemeanor

Authority of City or County to regulate possession of
loaded firearms in public
(ORS 166.173)

- A city or county may adopt ordinances to regulate, restrict or prohibit the possession of loaded firearms in public places, as narrowly defined by state law.
 - The City of Corvallis does not have a law to this effect.

State v. Christian

- Portland ordinance (PCC 14A.60.010(A)):
- “It is unlawful for any person to knowingly possess or carry a firearm, in or upon a public place, including while in a vehicle in a public place, recklessly having failed to remove all the ammunition from the firearm.”
- 14 exceptions including concealed handgun license

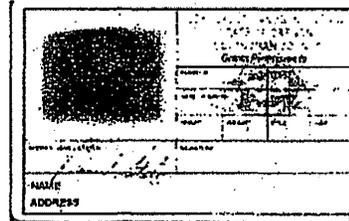
State v. Christian

354 OR 22, 307 P3d 429 (2013)

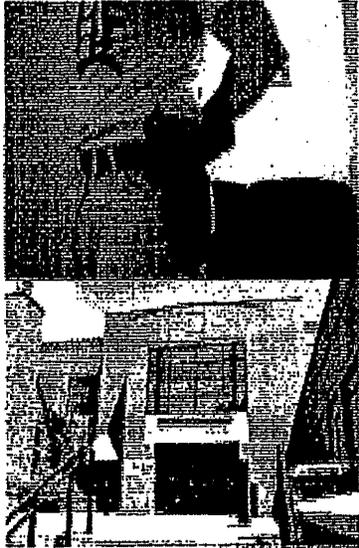
- Ordinance challenged as violating face of US 2nd Amendment and Oregon Article I, Section 27
- Oregon Supreme Court rules that Portland Ordinance does not violate US or Oregon Constitution.
- Different facts could lead to different result
- No appeal taken to US Supreme Court
- 2013 decision, follows Heller and McDonald

Concealed Handgun License

- If an applicant meets the legislated requirements and pays the required fees, ORS 166.291 requires a sheriff to issue a person a concealed handgun license.
- The applicant must be:
(summarized)
 - 21 years old
 - A resident of that county
 - Trained in firearms safety
 - Not mentally ill
 - Not a “criminal” (see ORS for specifics; many including the person is not free on any form of pretrial release)



Can a CHL Holder "Open Carry"?



Someone with a CHL CAN OPEN CARRY; there is no requirement a CHL holder carry concealed.

CHL holders are allowed to carry firearms in some places that non-holders are prohibited from carrying. *(Example: CHL holders can carry in most public buildings, but NOT in courts or federal buildings!)*

An Important Definition to Know

- 166.360 (4) "Public building" means a hospital, a capitol building, a public or private school, as defined in ORS..., a college or university, a city hall or the residence of any state official elected by the state at large, and the grounds adjacent to each such building. The term also includes that portion of any other building occupied by an agency of the state or a municipal corporation, as defined in ORS..., other than a court facility. (As an example, the Corvallis/Benton County Library is a "Public Building")

Officer May Examine Firearms in Public Buildings

- **166.380 Examination of firearm by peace officer; arrest for failure to allow examination. (1) A peace officer may examine a firearm possessed by anyone on the person while in or on a public building to determine whether the firearm is a loaded firearm.**
- **(2) Refusal by a person to allow the examination authorized by subsection (1) of this section constitutes reason to believe that the person has committed a crime and the peace officer may make an arrest pursuant to ORS 133.310.**

CHL Exemptions

- **166.262 Limitation on peace officer's authority to arrest for violating ORS 166.250 or 166.370. A peace officer may not arrest or charge a person for violating ORS 166.250 (1)(a) or (b) or 166.370 (1) if the person has in the person's immediate possession a valid license to carry a firearm as provided in ORS 166.291 and 166.292. [1999 c.1040 §5]**

Tactics when Dealing with Firearms General Guidelines

- Caution and reasonableness are key.
- Your reason for contact must be legally sound; anonymous reports will not/do not justify a stop.
- We don't want to conduct a high-risk custody on everyone who has a gun; the totality of the circumstances will determine the tactics.
- Consider the setting and try not to cause greater alarm than necessary.
- There is no perfect tactic for these situations; Tactics will be suggested, but ultimately the officer on the scene needs to decide the best course of action and be able to justify it.

Open Carry in General Public

- Open carry in a public place (but NOT IN A PUBLIC BUILDING, a COURT or a FEDERAL FACILITY) is generally LEGAL. – *Do not stop anyone just for carrying a firearm!*
- Totality of the circumstances MIGHT justify a stop if you have reasonable suspicion of a crime. You don't need "probable cause", just reasonable suspicion. Examples may include specific actions, such as the manner the person is carrying the gun, the person trying to evade being detected, threatening words – but this will be for you to justify and articulate!
- Generalities ("officer safety", "in an area where crime has occurred") will NOT suffice.

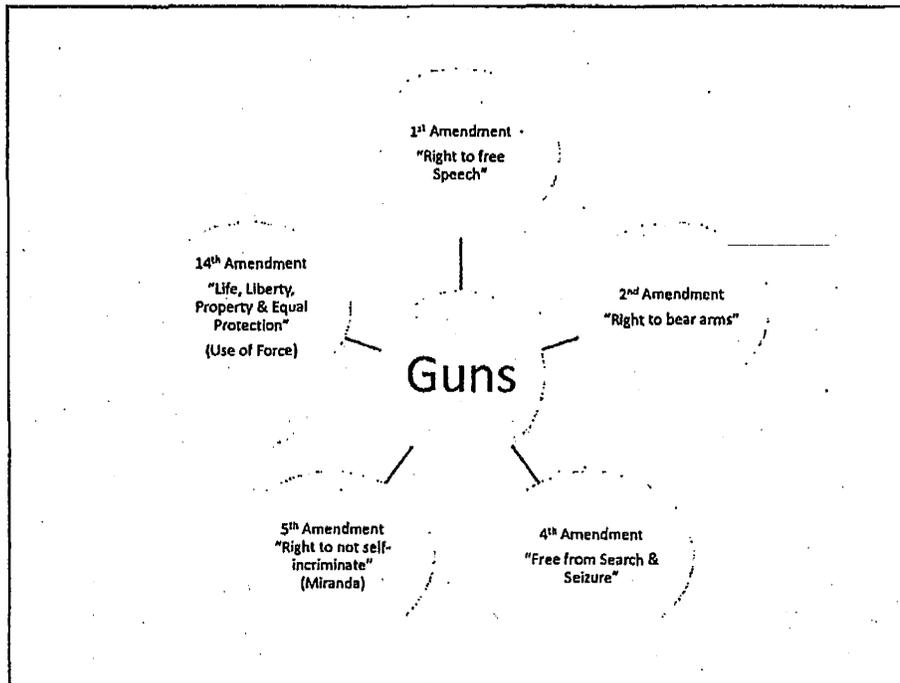
CHL Holders

- There is no law that overtly states that a CHL holder has to present it when carrying under that license. You cannot arrest someone for the crime of "Failure to Carry and Present" a CHL (the crime does not exist)
- However, the exemptions from arrest from the carrying crimes only apply if the CHL holder has the CHL in his possession
- Whether or not the person has a CHL is something you may investigate; if the person does not want to show you a CHL, you can only act on what you know
- It is lawful to stop a person if you have reasonable suspicion to believe he is (1) carrying concealed anywhere in public but you don't know he is a CHL holder or (2) carrying a firearm (open or concealed) in a public building and you don't know he is a CHL holder

	No CHL, open carry	Possess CHL, concealed carry	Possess CHL, open carry	On-duty Officer	Off-duty Officer
Public Property (sidewalks, streets, etc)	Yes	Yes	Yes	Yes	Yes
Court Facilities (crt: are not public bldgs)	No	No	No	Yes, unless judge says no	No
Public Buildings (specific list) <i>Officer may inspect firearm per 166.380</i>	No	Yes	Yes	Yes	Yes
Ground adjacent to public buildings	No	Yes	Yes	Yes	Yes
Federal Facilities (Post Office, Buildings)	No	No	No	Yes	No
Natl Forest Service/BLM Land - normally okay, but could be restricted, so check postings and with a ranger	Yes	Yes	Yes	Yes	Yes
Tribal Land and Facilities - Written permission to carry may be obtained from tribal judge	Not without written permission	Not without written permission	Not without written permission	Yes	Not without written permission
Private Property	Yes, unless otherwise posted	Yes, unless otherwise posted	Yes, unless otherwise posted	Yes	Yes, unless otherwise posted

Agency Comparisons

	2013 & 2014 YTD Charges	Procedural Changes based on Ordinance
Astoria Police Dept.	0	No Change
Beaverton Police Dept.	No response	No response
Bend Police Dept.	0	No Change
Multnomah County S.O.	0	No Change
Newport Police Dept.	0	No Change
Oregon City Police Dept.	0	No Change
Portland Police Bureau	153	No Change
Salem Police Dept.	1	No Change
Tigard Police Dept.	2	"Stop" people w/guns



	2011	2012	2013	2014 ytd
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# of Firearm Arrest cases	15	11	6	6
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# of Open-Carry calls for service	4	1	3	2
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# of CHL's in Benton County				2,921
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**HUMAN SERVICES COMMITTEE
MINUTES
July 8, 2014**

Present

Councilor Penny York, Chair
Councilor Mike Beilstein
Councilor Bruce Sorte

Staff

Jim Patterson, City Manager
Jim Brewer, Deputy City Attorney
Jon Sassaman, Police Chief
Carrie Mullens, City Manager's Office

Visitors

Jim Day, *Corvallis Gazette-Times*
Stewart Wershow
Carl Price
Christy Anderson Brekken
Rebecca Landis, Corvallis Farmers Market Director

SUMMARY OF DISCUSSION

	Agenda Item	Info Only	Held for Further Review	Recommendations
I.	Visitors' Propositions • Open Carry of Weapons (Price, Anderson Brekken)	Yes		
II.	Corvallis Farmers' Market Annual Report			Accept the 2013 Corvallis Farmers' Market annual report
III.	Open Carry of Weapons		Sept	
IV.	Other Business • Pending agenda items	Yes		

Chair York called the meeting to order at 2:00 pm.

CONTENT OF DISCUSSION

I. Visitors' Propositions

Carl Price testified in support of open carry as an inherent civil and constitutional right. He quoted from the Corvallis City Charter, "Corvallis is a community that honors diversity and diverse interests and aspires to be free of prejudice, bigotry and hate." He opined that recent information in local news media about banning open carry is similar to tactics used in an attempt to ban other civil rights, such as gay and interracial marriage. He said many of the arguments have been about the safety of children; however, Corvallis does not have a violence problem. During research, he could not locate any case in Corvallis that resulted in violence from an individual legally and openly carrying a weapon.

Mr. Price said banning open carry is against the City Charter and the oath Councilors took to uphold the Oregon and US Constitutions. In the *District of Columbia v. Heller* case, the US Supreme Court said the protective right to bear is

to open carry. Infringing on that right without pressing interest from the government is abridging an individual's civil rights by the government. The City should never attempt to infringe on any civil right.

Regarding safety, Mr. Price referred to Federal Bureau of Investigation (FBI) statistics that indicate violence in the US has decreased by more than 50% since 1993 as gun ownership has increased.

Mr. Price noted that citizens are suing cities who have banned open carry, and those cities are financially settling those lawsuits out-of-court. He inquired how Corvallis would pay for that type of settlement and encouraged Council to address the financial burden before any action is taken.

In response to Chair York's inquiry, Mr. Price said a number of states have prohibitions against open carry including California, New York, and the District of Columbia. Texas bans open carry of pistols but not rifles. Chicago's ban was recently challenged and failed.

Christy Anderson Brekken testified on behalf of the families who signed a letter submitted to Council requesting an open carry ban. She said there have been several open carry incidents in Corvallis that have alarmed families, especially when small children are nearby. In one specific issue, an off-duty Officer spoke casually with the individual who was openly carrying and that person left the area. This is an issue, even if it does not result in violence. Allowing open carry interferes with the feeling of safety in the community and the right to conduct business in a civil and dignified way without feeling there are people nearby who are either expecting violence or who may be inclined to violence. She noted that several cities in Oregon ban open carry in the same way that has been proposed. The Portland ban was challenged and found to be constitutional by the Oregon Supreme Court.

Regarding safety, Ms. Anderson Brekken said the presentation slides included in the meeting materials point out to officers that there is an increased risk of violence and bodily harm when firearms are present in public.

Ms. Anderson Brekken explained that if Corvallis adopts the proposed open carry ban, concealed handgun license (CHL) holders would still be allowed to open carry. That means when citizens see individuals openly carrying, they know those individuals have passed CHL requirements, including safety training and background check. She noted that concern has been mentioned about whether a ban will provide Officers with additional power to stop and talk to those people who openly carry. She referred to the presentation slide titled CHL Holders that states the Police Department's position that it is lawful to stop a person if an Officer has reasonable suspicion to believe a person is carrying a firearm (open or concealed) in a public building without knowing if the person is a CHL holder. She opined that

if an open carry ban is adopted in Corvallis, "public building" could be replaced with "public place."

Ms. Anderson Brekken added that Corvallis is a wonderful city to live in and raise children. Observing an increase of people openly carrying would disrupt that feeling. Citizens perceive that someone who is openly carrying is anticipating or considering violence. It is reasonable to maintain a civil, open, warm feeling of Corvallis where citizens feel safe to have children around without the children asking why someone else has a gun. The families of Corvallis strongly encourage Council to adopt an open carry ban.

Councilor Beilstein inquired whether Ms. Andersen Brekken believes the current protections are adequate when the Police Department has determined that it is lawful to stop someone who is openly carrying a firearm to inquire whether they have a CHL.

Ms. Anderson Brekken responded that the City settled a lawsuit related to an Officer approaching someone who was openly carrying a firearm. The person sued on the premise that the Officer did not have reasonable suspicion to stop and ask whether they had a CHL. Under current law, an Officer cannot ask whether the person has a CHL because open carry is not banned in Corvallis. If open carry was banned, an Officer would have the right to stop and ask a person who is openly carrying if they have a CHL.

II. Corvallis Farmers' Market Annual Report

In regards to the previous testimony, Ms. Landis said in 2008 the Market had an incident related to open carry. Several customers were very alarmed by the behavior and requested she do something as the Market Director.

Ms. Landis referred to the annual report and asked the Committee to recommend Council acceptance.

Ms. Landis reported that this year the Market was granted an extension to the permit to cross over the alley between 1st and 2nd Streets on Monroe Avenue. The Market was already able to occupy the area to the east of the alley and with the extension, the Market can block off space to the west. There is a pending parking elimination permit for reconstruction at the Julian Hotel. The Market is working with Public Works to keep at least a portion of this area that was previously granted to the Market so services promised to local farmers can be upheld. The space extension allows the Market to accept additional vendors and assist other organizations with publicity, such as providing space for a kinetic sculpture to promote the local kinetic event and offer space for a blood drive.

Ms. Landis said the Market continues to struggle with raising funds for the Supplemental Nutrition Assistance Program (SNAP) incentive. A monthly raffle is held at the Market and a summer picnic in Willamette Park will be held on August 3 to raise funds to supplement the Oregon Trail Card.

In response to Councilor Beilstein's inquiry related to the supplement to the SNAP program, Ms. Landis said fundraising amounts vary and are minimal. The most expeditious way for this program to work would be if an outside funder gave the Market a few thousand dollars. Additionally, the Market is not designed for, nor does it have the capacity for major fundraising. She noted that one of the local churches is holding a breakfast for members as a fundraising activity for the SNAP program and will raise a few hundred dollars. Benton County occasionally provides funds when they receive grants that match the purpose of the program.

Councilor Beilstein said he does not believe farmers' markets should be responsible for fundraising SNAP funds. He inquired about the utilization of the supplemental monies. Ms. Landis said the Corvallis Market could easily utilize \$15,000 to \$20,000 in supplemental funds.

Chair York thanked Ms. Landis for her stable leadership.

The Committee unanimously recommended Council accept the 2013 Corvallis Farmers' Market Annual Report.

III. Open Carry of Weapons

Chief Sassaman reported that several citizens expressed their concern to Council about an open carry incident that occurred in a park. Staff prepared a brief follow-up report and Council referred the issue to this Committee to begin discussions about open carry issues and concepts. The staff report highlights the 2nd Amendment of the US Constitution and Article 1, Section 27 of Oregon's Constitution related to the right to bear arms; Corvallis Municipal Code regarding concealed weapons and discharging weapons; the 4th Amendment of the US Constitution related to search and seizure; and a brief description of reasonable suspicion. Chief Sassaman reviewed portions of a PowerPoint presentation that the Department uses to train staff on laws related to open carry.

Chief Sassaman said primary Departmental training objectives focus on how to protect the community; legal boundaries Officers must work within to ensure stops, detentions, and arrests are founded on sound, legal guidance; safety of staff; protecting the rights of all citizens; and education of the public. An issue Officers must contend with is citizens openly carrying to create a police encounter to test Officer response and/or create a lawsuit. A few years ago, someone was walking downtown with an assault rifle while videotaping Department staff and uploading

the videos to the internet. Staff is well trained in how to respond to these types of encounters and they followed legal protocol without infringing on rights.

Chief Sassaman clarified that the 2008 *Heller* case was about the District of Columbia attempting to completely ban handguns. The US Supreme Court ruled the ban unconstitutional and that possessing a handgun was an individual right. Since the District of Columbia is not a state, the ruling does not necessarily apply to other states; however, it does provide guidance for other jurisdictions. The 2010 *McDonald v. Chicago* case was related to prohibiting handguns in private homes. The US Supreme Court ruled against Chicago and said gun ownership is an individual right that cannot be taken away by individual states. However, government has the right to regulate time, place, and manner. Although it is a fundamental right to possess a firearm and/or open carry, limits can be placed on those rights. The Oregon Constitution provides for ... "the right to bear arms for the defense of themselves...." Oregon Revised Statute 166.170 preempts local jurisdictions from creating laws that would further restrict weapon possession. There are areas where local jurisdictions can enact narrow laws, including the discharge of weapons and possessing loaded firearms in public places. Exemptions to the latter include Police Officers, military personnel, and CHL holders. Corvallis Municipal Code regulates the discharge of weapons, but not the possession of loaded firearms in public places.

Mr. Brewer noted that a law prohibiting the possession of a loaded firearm in a public place would not prohibit open carry of an unloaded firearm in a public place. The City cannot prohibit open carry of unloaded firearms.

Councilor Beilstein noted that adopting a law prohibiting open carry in public places would provide Officers with the legal authority to stop someone who is openly carrying to ask whether they hold a CHL.

Mr. Brewer explained that, for law enforcement purposes, a stop is a show and use of force. An Officer must have reasonable suspicion or probable cause based on an articulable subjective or objective fact to stop someone. An Officer can have encounters or conversations with people; however, many factors are considered when determining whether it is a "stop," such as where the Officer's car is parked, or any other show of force where a reasonable person would believe they were not free to leave.

Mr. Brewer said the issue is whether the City can, under the narrow authority to prohibit loaded weapons in public places, inquire whether someone openly carrying has their weapon loaded. Other jurisdictions with similar language do not inquire about this due to the reasonable suspicion law. Chief Sassaman added that without an inquiry, an Officer is not going to know who has a CHL permitting them to carry a loaded weapon versus someone without a CHL who can legally carry an unloaded weapon.

Mr. Brewer explained that Portland's ordinance prohibits knowingly carrying a recklessly loaded weapon. The Portland ordinance was upheld by the Oregon Supreme Court (*State v. Christian; 2013*). If Corvallis moves forward with an ordinance, the Portland ordinance would be used as a starting point.

Chief Sassaman added that Oregon is a "shall issue" State regarding CHL. The Sheriff's Department is required to issue any CHL applied for as long as the applicant meets all criteria. A CHL holder is allowed to open carry a loaded weapon; it does not need to be concealed. A CHL holder is also allowed to open carry a loaded weapon in public buildings and on public property. A CHL holder cannot open carry a loaded weapon in courts and federal buildings. The table following the CHL Holders slide is utilized by Department staff as a guide for CHL rules.

In response to Councilor Beilstein's inquiry related to Officers carrying a concealed weapon, Chief Sassaman said there are exemptions for off-duty law enforcement personnel. The standard officers must comply with at the State level requires additional certifications and annual testing.

Chair York referred to table following the CHL Holders slide and said it appears there is a very narrow section of the law where the City could potentially do something more than current law by addressing the first and fourth items (public property and ground adjacent to public buildings). Mr. Brewer agreed.

Chair York noted that these discussions do not include regulations related to CHL holders.

Chief Sassaman reviewed information received from other jurisdictions (Agency Comparisons slide) who were asked: 1) how many times has your department charged someone with violating their ordinance related to openly carrying a loaded firearm in a public place, and 2) what changes were made in the respective departments when their ordinance was enacted? Of the eight responses, five departments answered zero to question #1 and none of the eight departments made any changes in relation to question #2.

Chief Sassaman responded to several inquiries posed by Chair York:

- The important things to consider when someone begins to feel they are not free to leave during an Officer encounter are who approached first, where the Officer stands, where the Officer's vehicle is parked, who else is present, among others.
- The procedure in approaching anyone openly carrying a firearm remains the same.
- When discussing guns, the conversation must also consider:
 - 1st Amendment – Right to free speech

- 2nd Amendment – Right to bear arms
- 4th Amendment – Free from search and seizure
- 5th Amendment – Right to not self-incriminate (Miranda)
- 14th Amendment – Life, liberty, property and equal protection (use of force)

Chair York referred to the 14th Amendment and inquired about the right to liberty and a feeling of safety for a person who is not carrying a firearm and is walking through a park with their family. Chief Sassaman said everyone wants to feel safe. Levels of comfort vary depending on personal experiences and history. It is difficult to legislate how one feels about something. Laws are geared toward prohibiting something and whether there is a legal foundation to do so. There is no study that quantifies a degree of fear that led to any form of legislation.

In response to Chair York's inquiry, Mr. Brewer confirmed that "life and liberty" has been legally interpreted to be the right to move about safely in public; however, it is mutual for all parties. He said the question is when does someone else's constitutional right end and the other person's right begin. Fear is subjective. For safety purposes, everyone should assume that every firearm is loaded.

Chair York said sometimes it is difficult to draw the line between the individual rights of different people. Mr. Brewer said the Police Department would rather have people who are afraid call them instead of being afraid and not making the call. Chief Sassaman agreed and added that Officers are well trained but cannot predict everything. The public needs to be comfortable contacting the Department and expressing their concern.

Chief Sassaman referred to the final slide that identified the number of:

- Firearm arrests cases in 2011, 2012, 2013, and 2014 year-to-date.
- Open carry calls for service in 2011, 2012, 2013, and 2014 year-to-date.
- CHL holders in Benton County.

Chief Sassaman referred to the last item in the CHL Holders slide and clarified that Oregon law specifically identifies "public buildings." The City would not be able to replace "buildings" with "property" as was suggested.

In response to Councilor Beilstein's inquiry about a legal decision involving one of the City's Police Officer's, Mr. Brewer said the person asked if they were free to go and the Officer said no. The person then asked if they were under arrest and the Officer asked the person to identify themselves. When the person refused to identify himself, the Officer arrested him. This incident rapidly progressed from an encounter to at least a stop and an arrest. The facts of the case and the things that brought the Officer to a point of arresting the individual were understandable. It is difficult to second guess an Officer's concern for his own safety.

Councilor Beilstein said, according to the judge, the behavior of the Officer was incorrect. He inquired whether staff agreed. Mr. Brewer said from a legal point of view, judges are correct because they are judges.

Chief Sassaman said the case resulted in many of the training slides included in the meeting materials. He added that Officers must make split-second decisions in difficult circumstances. These will always be second-guessed by a multitude of people on multiple layers who were not present during the incident. The Officer must also use their best judgment at the time. Chief Sassaman opined that this Officer used his best judgment at the time.

Councilor Beilstein inquired whether there was anything Council should consider to provide a clearer path for Officers. Mr. Brewer responded that Council does not have the ability to adopt a local ordinance that would give Officers the right to violate any constitutional standard.

Chief Sassaman said staff is not expecting a recommendation at this time. He anticipated additional discussions and/or direction from this Committee and the full Council for more information and/or the development of a draft ordinance. He cautioned that an adopted law does not necessarily provide additional rights for Officers.

Councilor Sorte said he prefers a "soft touch" approach. He contacted a rural community about how they approach open carry. Law enforcement personnel in rural counties have the luxury of knowing most of their citizens, but they also use a casual approach when inquiring about why someone is openly carrying. He opined that the general public and Parks staff may need some guidance in when and how to contact the Police Department.

Chief Sassaman said 9-1-1 dispatchers are well trained and know what questions to ask that can be translated to Officers in the field. Citizens should call 9-1-1, be observant (good witness), and not engage. Councilor Sorte agreed and added that the City has a responsibility to manage the interaction between the public and the Police Department.

Councilor Sorte said an ordinance banning open carry of a loaded firearm does not preclude anyone from carrying an unloaded firearm and keeping shells or handgun clips easily accessible in a pocket.

Councilor Sorte noted that the Citizens Advisory Commission on Transit recently reviewed a pamphlet for the new Night Owl bus (formally Beaver Bus). He referred the responsible staff members to Mr. Brewer and Chief Sassaman after reading a statement in the pamphlet about riders not being allowed to carry weapons.

Councilor Sorte said he agrees that the City would spend a great deal of money defending any ordinance banning open carry. Adopting this type of ordinance may encourage activists to engage with Officers as a means of protest. The no carry statement in the Night Owl brochure may also encourage people to test the law.

Chair York inquired about next steps. She said she has no interest in challenging constitutional or State law. She would prefer a clearer understanding of the narrow scope of what Council could do differently and what the potential consequences might be if action was taken. She has an interest in the feeling of safety by members of the community. She needs a clearer understanding of the rights of someone who is openly carrying and the rights of someone who may feel a sense of fear or potential loss of life or liberty due to someone else exercising their right to open carry.

Councilor Beislstein said adopting an ordinance similar to Portland would not achieve a greater quality of service already provided by the Police Department nor would it empower Officers to do anything different. He opined that it would be a waste of time for the City Attorney to draft an ordinance if adoption will not change Police procedures. However, if an ordinance made the community feel more safe and secure, he would support it. If Council considered an ordinance, he would prefer it be modeled after Portland.

Mr. Brewer confirmed for Councilor Sorte that the only legislation Council can amend is to ban open carry of a loaded firearm. Councilor Sorte said this information needs to be thoroughly articulated to the public along with the practicality of what is gained by adopting that type of legislation. If staff can present what the City currently has and what decision(s) Council can make, then the public can testify or lobby for their preference. He opined that Corvallis could set a good, thoughtful example or precedent for other jurisdictions. Providing education and direction to those people who fear open carry would be beneficial. He noted that the people who support open carry have a clearer view of their options than those who are concerned.

The Committee directed staff to return with potential legislation, clear information about what additional legislation would and would not allow, and options to inform the public about keeping safe.

Councilor Beilstein suggested that the Community Policing Forum might be a good venue for public education.

Chief Sassaman said staff will return with draft legislation that they believe will sustain a legal challenge and create an educational strategy and implementation plan. He anticipated returning with the information in September.

Chair York encouraged the public to provide suggestions and comments at future meetings.

IV. Other Business

Chair York reviewed the pending Committee agenda items (Attachment 1).

Councilor Beilstein announced that he will be absent for the July 22 and August 5 meetings. He requested that the Parks and Recreation presentation about relocating the Senior Center be postponed until August 19.

Chair York suggested that the Council Policy review regarding the City Hall Plaza and Kiosk be rescheduled to that date also.

Mr. Patterson agreed to move the July 22 pending agenda items and cancel the July 22 meeting.

In regards to the Senior Center relocation information, Councilor Sorte requested maps or other information about the location of current Senior Center users. He opined that the Senior Center is a social cushion in that neighborhood, and said if it is relocated, he would prefer the facility continue to provide some of the same attributes. He clarified that the information can be provided in the meeting materials or during the presentation.

The next Human Services Committee meeting is scheduled for 2:00 pm on Tuesday, August 5 in the Madison Avenue Meeting Room.

The meeting adjourned at 3:29 pm.

Respectfully submitted,

Penny York, Chair

Memorandum
Corvallis Police Department
September 29, 2014

To: Human Services Committee

From: Jonathan M. Sassaman, ~~Chief of Police~~ 
Jim Brewer, Deputy City Attorney

Subject: "Open Carry" of firearms in public

Issue:

This report contains potential legislation relative to "open carry" of a loaded firearm in public including what a new local law would and would not allow, and proposed educational information strategy for the public on the subject.

Background:

At the May 19, 2014 City Council Meeting, citizens asked the City to consider steps to prohibit the "open carry" of firearms. City Council was provided an informational memorandum which addressed "open carry" and the authority of the Corvallis Police Department to enforce federal law.

At the June 2, 2014 City Council meeting, Council referred to Human Services Committee (HSC) the issue of "open carry" of firearms in public. Staff reported to HSC on July 8, 2014 providing information on the U.S. Constitution, the State of Oregon Constitution and the Corvallis Municipal Code relative to "open carry" of loaded firearms (attachment 1). HSC directed staff to prepare potential Legislation, information about what additional legislation would and would not allow and options to inform the public. Minutes from the July 8, 2014 HSC meeting are included (attachment 2).

Discussion:

Staff previously examined "open carry" legislation from 9 other Oregon jurisdictions (Astoria, Beaverton, Bend, Multnomah County, Newport, Oregon City, Portland, Salem and Tigard). The City of Portland's "open carry" ordinance was challenged (State v. Christian, 354 OR 22, 307 P3d 429, 2013) as violating the U.S. 2nd Amendment and Oregon Article 1, Section 27. The Oregon Supreme Court ruled Portland's ordinance does not violate the U.S. or Oregon Constitution. It's important

to note in the Portland case, the Oregon Supreme Court ruling followed the 2013 U.S. Supreme Court's rulings (Washington D.C. v. Heller and Chicago v. McDonald), that different facts could lead to different results and there's been no appeal to the U.S. Supreme Court.

Portland's "open carry" ordinance is specific to ORS 166.173 where a City is authorized to regulate the possession of a loaded firearm in public places. Staff, following the City of Portland drafted a potential ordinance for Council review and consideration (attachment 3).

A new Corvallis ordinance mirroring the City of Portland does not grant police officers additional authority beyond that which exists today to investigate an "open carry" situation. Officers do not have the unilateral authority to stop, detain, question or search an individual because they have a firearm which can be observed by others in public. An officer must have reasonable suspicion (e.g. specific and objective articulable facts) that a crime is about to be committed, is being committed or was just committed, in order to exercise authority to intervene.

Upon final decisions by Council (enact an ordinance or not), staff will develop informational documents specific to "open carry" referencing:

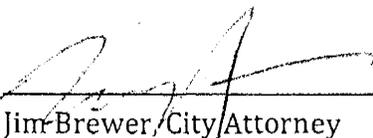
- A. The Oregon Revised Statutes.
- B. The Corvallis Municipal Code.
- C. In lay terms depict what is legal and what is not.
- D. When and how to call 911 and non-emergency lines.
- E. What a citizen can do to be and feel safe when "open carry" is occurring.
- F. Develop a Frequently Asked Questions data sheet.

Staff will utilize and post the information on the Police Departments Web Page, linking our social media to the web page (e.g. Facebook, twitter, Department MyPD App.), and provide the information to the local media.

Review and concur:



Nancy Brewer, City Manager, pro tem



Jim Brewer, City Attorney

Attachments:

1. "Open Carry" of firearms in public staff report dated July 1, 2014
2. Minutes from July 8, 2014 HSC meeting.
3. Draft ordinance

Draft Corvallis

5.03.120.070 Possession of a Loaded Firearm in a Public Place.

1) It is unlawful for any person to knowingly possess or carry a firearm, in or upon a public place, including while in a vehicle in a public place, recklessly having failed to remove all the ammunition from the firearm.

2) It is unlawful for any person to knowingly possess or carry a firearm and that firearm's clip or magazine, in or upon a public place, including while in a vehicle in a public place, recklessly having failed to remove all the ammunition from the clip or magazine.

3) The following are exceptions and constitute affirmative defenses to a violation of this Section:

a) A police officer or other duly appointed peace officers, whether active or honorably retired.

b) A member of the military in the performance of official duty.

c) A person licensed to carry a concealed handgun.

d) A person authorized to possess a loaded firearm while in or on a public building under ORS 166.370.

e) A government employee authorized or required by his or her employment or office to carry firearms.

f) A person summoned by a police officer to assist in making arrests or preserving the peace, while such person is actually engaged in assisting the officer.

g) A merchant who possesses or is engaged in lawfully transporting unloaded firearms as merchandise.

h) Organizations which are by law authorized to purchase or receive weapons from the United States or from this state.

i) Duly authorized military or civil organizations while parading, or their members when going to and from the places of meeting of their organization.

j) A corrections officer while transporting or accompanying an individual convicted of or arrested for an offense and confined in a place of incarceration or detention while outside the confines of the place of incarceration or detention.

k) Persons travelling to and from an established target range, whether public or private, for the purpose of practicing shooting targets at the target ranges.

l) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from a hunting or fishing expedition.

m) A person authorized by permit of the Chief of Police to possess a loaded firearm, clip, or magazine in a public place in the City of Corvallis.

n) A security guard employed at a financial institution insured by the Federal Deposit Insurance Corporation while the security guard is on duty.

4) It is unlawful for any person who possesses a firearm, clip or magazine in or upon a public place, or while in a vehicle in a public place, to refuse to permit a police officer to inspect that firearm after the police officer has identified him or herself as a police officer. This Section does not apply to

law enforcement officers or members of the military in the performance of official duties, nor persons licensed to carry a concealed handgun or persons authorized to possess a loaded firearm, clip or magazine while in or on a public building or court facility.

5) Penalty

a) In the absence of the aggravating factors listed in Subsection 5.03.120.070 5)b), the court may impose a sentence of up to 6 months imprisonment and a fine not to exceed \$500 for violation of this section.

b) When this offense is committed by carrying a loaded firearm containing ammunition that employs gunpowder as a propellant in a vehicle, including a transit vehicle, the court must impose a mandatory minimum sentence of 30 days for violation of this Section.

opportunities and monies brought into the community. She encouraged the Committee to delay any decision until a thorough comparison of the options can be completed.

Councilor Beilstein requested additional information about the proposals received. He is not opposed to having the Department operate the Theatre while other proposals are requested. He could also support direct management by the Department, hiring a manager, and creating an advisory board to re-establish the Theatre's purpose. If the Committee recommends a RFP process, it could preclude the Department from operating the Theatre. He said one option could be to compare proposals to direct management.

Councilor York said the Theatre does not offer great amenities. It offers a 300-seat theatre with a stage and auxiliary spaces. The current model may be unsustainable and the City needs to determine whether a sustainable model exists or if a subsidy will always be necessary. The Theatre needs to bring back patrons, donors, and volunteers. A technical theatre manager is needed regardless of who operates the Theatre. It is important to retain the Theatre as an asset while decisions are made about the future. The Department can provide stability during the decision making process. She prefers a one-year agreement with a six-month re-evaluation. She does not believe it is the time to invest in a new look or model. The City may decide to contract with a non-profit or other organization for large events and keep the rental side of the business under Department management.

Councilor York added that during the recent League of Oregon Cities conference, she spoke with the Oregon coordinator of Mainstreet USA and learned that the Mainstreet program is considering a project for historical theatres.

Chair Sorte stated support for option one. He said cities and counties have tried to do the right thing by taking these types of operations over and watched their money disappear along with other funds used to help support it. It is unclear what will happen with the demand for reliable entertainment in the future. The "boomers" continue to demand live entertainment with a focus on local productions. Proposals received through a RFP process can reveal a lot of information including shortcomings and strengths. If the City does not like the proposals, a request for new proposals with some City support can be requested. If that is not feasible, the City could consider a facility rental program only. A rental program could be sustainable, but programming is lost. The City needs to determine if operating the Theatre through a department is realistic.

Councilor Beilstein inquired whether the City could revert to operating the Theatre by the Department if none of the proposals were adequate.

Councilors York and Beilstein, respectively, moved and seconded that Council consider staff recommended options one and two; and for the October 20 City Council meeting, staff provide cost projections, financial analysis, and management and programming plans.

Councilor Beilstein expressed concern about the amount of work the Committee is asking the Department to prepare for the next City Council meeting.

Councilor York clarified that the intent of her motion is for the full Council to choose between the two options after reviewing the additional requested information.

Ms. Brewer noted that staff may not be able to gather the requested information prior to the deadline for submitting the next City Council packet materials. If the information is not available for the October 20 City Council meeting packet, she will ask the Committee to announce this agenda item as informational only and forward a recommendation for the November 3 City Council meeting.

Chair Sorte said he will not support the motion. RFPs will provide the information needed for the projections Councilor York requested. Public entities do a great job managing rentals; however, they typically do a poor job projecting private demand and programming. A private sector or non-profit organization should provide the other information Council needs to make a decision.

Councilor York amended the second portion of her motion and requested staff provide Council with financial information about the City's endowment, how the endowment can be utilized, and whether the City can use the endowment to manage the Theatre for one year versus allocating other funds.

Ms. Brewer explained that the Majestic Theatre endowment is a Council-designated fund and Council can decide its best use. Councilor York requested this information be included in follow-up materials.

Based on a vote of two to one, with Chair Sorte opposing, the Committee recommended Council consider options one and two, and staff provide endowment fund information for the next City Council meeting. Staff was not able to collect the needed information for the October 20 City Council meeting. The Committee report on this agenda item is "information only" and the recommendation will be considered by Council during the November 3 City Council meeting.

Councilor Beilstein added that Chair Sorte may be correct that the City needs to contract management of the Theatre, but he would prefer the full Council make that decision.

Chair Sorte recessed the meeting from 2:58 until 3:02 pm.

II. Open Carry of Firearms

Chief Sassaman said the staff report includes background information, previous correspondence including meeting minutes, and a draft ordinance. Staff will develop an education strategy based on Council's decision. The draft ordinance language was copied from the City of Portland. This is the only ordinance in the State that has survived some degree of challenge through the Oregon Supreme Court. He cautioned that a different set of circumstances argued through the Court may result in a different outcome.

Mr. Brewer referred to the highlighted portions of the ordinance and said those items may result in greater challenges. Staff is unsure what Subsection 3)m) means and the

City of Portland indicated they have never used this exception. Staff suggests removing 3)m).

Mr. Brewer expressed concern about Subsection 4) infringing on 4th and 5th Amendment rights. A person who openly carries a weapon in Oregon is not a person who is committing a crime. The ability for Officers to stop and/or arrest a person after a weapons inspection is problematic. This subsection mirrors language in State law regarding carrying inside public buildings; however, Mr. Brewer is not sure the State language would survive a 4th Amendment review. If an ordinance is adopted, Mr. Brewer and the District Attorney recommend no change in police response. The ordinance does not give law enforcement the authority to stop and question people who are not otherwise reasonably suspected of being involved in criminal activity.

Chief Sassaman added that Subsection 4) would be a significant issue for the Corvallis Police Department (CPD). Search and seizure statutes do not grant police officers the authority outlined in Subsection 4).

In response to Councilor Beilstein's inquiry related to "or honorably retired" in Subsection 3)a), Mr. Brewer said it may be difficult to identify an honorably retired officer, making it a problem for Officers to enforce.

Chief Sassaman confirmed for Councilor Beilstein that adopting an ordinance will not change how CPD responds to people who carry firearms.

Councilor Beilstein said adoption of the ordinance acknowledges the concern and is proactive in making people feel safe.

Chief Sassaman said the City cannot legislate a greater authority that does not currently exist. CPD abides by all statutes related to stop/frisk; search/seizure; 1st, 4th, 5th, and 14th Amendments; etc. Officers do not have the ability to stop someone openly carrying a firearm to see if the weapon is loaded.

In response to Councilor York's inquiry about the difference between "brandishing" and "open carry," Mr. Brewer said "brandishing" is not a term found in Oregon statutes. The term is often heard in court cases as a descriptive and the dictionary defines it as shaking or waving a weapon menacingly. Chief Sassaman added that "brandishing" is not included in the Oregon Criminal Code of Conduct. A gun is a tool or mechanism. The behavior of the individual possessing the weapon and what they do with it is what matters. Related offenses include pointing a firearm at another person, menacing, and others.

Chair Sorte said "open carry" has become the moniker for this issue, when it is only related to open carry of a loaded firearm. He said open carry would not preclude him from bringing an unloaded shotgun into a building with shells in his pocket unless it was a public building. He could also legally walk downtown with an unloaded shotgun and have shells in his pockets. The ordinance only identifies loaded firearms.

Mr. Brewer agreed that Chair Sorte's examples have nothing to do with this draft ordinance. The City's limit in regulating firearms is whether they can be displayed loaded or unloaded.

Chair Sorte clarified that currently he could openly carry a loaded firearm. The ordinance only identifies loaded firearms and if adopted would define whether he could walk downtown with a loaded or unloaded firearm. Mr. Brewer agreed.

Chair Sorte reported that he previously asked Ms. Brewer to consider if there were means, other than adoption of an ordinance, to express the values of the community that they do not want to see guns in Corvallis. Ms. Brewer said information statements could be included in *the City* newsletter recognizing the desire for a safe community, and that openly carrying a weapon may make people nervous. She does not believe there is any alternative way to address the issue. Adopting a resolution instead of an ordinance would not make any difference. A resolution is not codified in the Municipal Code and it will not have any significant difference in how CPD operates procedurally. A resolution can be used to express values of the Council and/or community.

Mr. Brewer said if a resolution appears to be an ordinance and enforceable it will be viewed as an ordinance by the courts.

Councilor York said she is interested in hearing from the audience. She prefers a full Council discussion without recommendation from the Committee.

Councilor Beilstein stated a preference to recommend adoption of the draft ordinance with amendments.

Ron Highburger expressed displeasure with a picture of a Cuban flag displayed on a Councilor's laptop and the City not displaying the US flag in the meeting room. He said carrying an unloaded weapon does not provide protection and removing his ability to carry a loaded weapon is an infringement on his right. The issue should not even be voted on by Council. The City is trying to infringe on his 2nd Amendment rights.

Larene Long is a resident of Lebanon who visits Corvallis frequently. She is a victim of violence and understands that an unloaded firearm will not save anyone. Being afraid of seeing guns on the street is usually a sign of ignorance or lack of knowledge. Education is what supports people not being fearful of seeing guns on the street. In the 1950s, children as young as nine years old were taught firearm safety and handling. This is no longer acceptable. Firearms are not the problem; intent by a person is the issue. Enacting any law that infringes on the rights of law abiding citizens is an unlawful act. Protecting the rights of the people is a responsibility of all representatives at all levels of government. This is ensured through the oath of office. Council needs to remember their obligation to the people to uphold and defend our rights.

Carolina Amador read her written testimony in support of an open carry ban (Attachment 3).

In response to Councilor Beilstein's inquiries, Dr. Amador said guns are the single device most responsible for causing accidental child fatalities; not the number one cause, the single device most responsible. After further inquiries, she agreed that automobiles are responsible for more accidental child fatalities than guns.

David Erwin said he has a high regard for the Police Department who has done amazing things with Corvallis' more challenging residents. He began participating in shooting sports 50 years ago. He noted that automobile accidents cause more fatalities in children than guns. The Police Department stated they would not change their operations in any way if the ordinance was adopted. In addition to the ordinance being an infringement on rights, discussing it is a waste of Council's time. He recommended the ordinance not be adopted.

Jeff Ford expressed concern that Council is considering an open carry ban. Councilors were sworn to support and defend the Constitution. That oath is a trust; a contract to we, the people. By violating the oath, Councilors break that trust under penalty of perjury. The 2nd Amendment states that the right of the people to keep and bear arms shall not be infringed. In addition to violating the 2nd Amendment and oath, adopting this ordinance directs law enforcement to violate the 4th Amendment with illegal search and seizure. It is not right to intimidate law abiding citizens who are lawfully exercising their basic natural right to defend themselves. Additionally, Councilors were elected to serve the people; we do not serve you.

Jeremy Anderson testified against defining the safe carry of a loaded weapon as reckless. Without extra permitting, the safe carry of a firearm would be regarded as reckless and punishable. A citizen who has done nothing but honorably serve their country and community and safely carry a firearm could be punished and denied a concealed handgun license forever because they did not have extra permitting. The draft ordinance does not address the sensitivity some people have to observing firearms in public since it allows people to carry a firearm. He encouraged Council to not adopt the ordinance.

Carl Price distributed handouts (Attachment 4) and quoted from several sections of the materials. He said the draft ordinance is based on hate and intolerance. The City should encourage and celebrate all civil rights of all citizens. This must include all of the enumerated rights and rights held by people not enumerated. Citizens have the right to self defend and to feel safe when they are threatened. A permit infringes on the rights on any person who is not an Oregon citizen. The draft ordinance bans the carrying of firearms by non-residents. Adopting the ordinance goes against federal court rulings.

Mr. Price responded to questions posed by the Committee:

Councilor Beilstein: Do you believe the ordinance will be challenged if adopted?

Yes, and it will be expensive. There have been challenges in other states.

Councilor York: Related to state preemption, only the legislative assembly can regulate storage (magazines/clips)? The only difference between Sections 1 and 2 of the draft ordinance is the inclusion of magazines/clips.

Section 2 of the draft ordinance violates the state preemption clause. A clip is a piece of metal designed to store ammunition and nothing else. A magazine is a

piece of plastic or metal designed to store ammunition for use in feeding a weapon. A magazine's primary purpose is storage. This is one of the many flaws in the draft ordinance and Portland's ordinance. The statement overreaches state law.

Chair Sorte: The ordinance does not prevent carrying a gun. The ordinance prevents carrying a loaded gun.

Correct. The ordinance removes from the people an operable handgun for the purposes of self-defense which is allowed by federal law. A law that only allows for an unloaded weapon will cause the City to have constitutional challenges. The draft ordinance could have severe consequences to the finances of the City. An adopted ordinance that means nothing, steps over the line into intolerance and lack of diversity.

Elizabeth Kohler opposes forwarding the ordinance to Council. She did not grow up with guns, but has learned to appreciate them for hunting and target practicing. She does not carry a gun, but believes citizens should continue to have the right to carry. It is a personal value and constitutional right. There are many diverse values in the community. She encouraged the Committee to not pre-determine their opinions and consider everyone's testimony. She is educating her two daughters about safe and responsible use of firearms. If the ordinance is passed, she inquired whether the City would post signs at all entrances to Corvallis so people do not inadvertently break the law when they visit.

Jeanie Mason testified about her handouts that included a picture of the 2nd Amendment, tools that can be used for good or evil, a paper representing a restraining order, pictures of items proudly displayed by military families, and an article from the *Corvallis Gazette-Times* (Attachment 5). She opposes the draft ordinance.

Matthew MacClary said some people feel unsafe when they see a gun and other people carry a gun to reduce their fear. The City must make a decision between these two groups of people. There are legal ramifications if the City supports the first group and it puts Officers in a tough position. He noted that he is not afraid when he sees someone carrying a gun and he believes shooting sports are safe. He confirmed for Councilor Beilstein that he does not support the ordinance.

Loerna Simpson read her written testimony in support of banning open carry (Attachment 6).

Derek Barclay said he does not understand why the City needs this ordinance since it is extremely rare to see anyone in Corvallis open carrying. When it does happen, he does not feel threatened nor is he aware that people around him feel threatened. The original incident provoking this issue was a local pediatrician observing a person open carrying a firearm in a park. He quoted from The American Academy of Pediatrics Web site and opined they are essentially against the 2nd Amendment: "The absence of guns from children's homes and communities is the most reliable and effective measure to prevent firearms-related injuries in children and adolescents." He said Dr. Amadar spoke about the problems with children and adolescents with firearms, and their injuries. Nothing about open carry will impact that statistic. Someone carrying a firearm in downtown

Corvallis will not change a child finding a gun in a bedside stand. The draft ordinance represents chipping away at 2nd Amendment rights. He added that a few people are trying to influence the City to do something that does not need to be done. Statistics show that law enforcement in Corvallis was contacted a minimal number of times about open carry incidents.

Chair Sorte announced that additional testimony will be heard by this Committee on October 21. The Committee will then deliberate and make a recommendation for full Council consideration on November 3. Councilor Beilstein announced that he will be absent for the October 21 Human Services Committee meeting. He will be present for the November 3 City Council meeting.

III. Other Business

The next Human Services Committee meeting is scheduled for 2:00 pm on Tuesday, October 21 in the Madison Avenue Meeting Room.

The meeting adjourned at 3:59 pm.

Respectfully submitted,

Bruce Sorte, Chair

A Historical Perspective of The Majestic Theatre
Submitted October 7, 2014

My name is Robert Leff. As a long time support of the Majestic Theatre and someone who worked on the Bond Issue Elections, I want to provide a historical perspective of the Majestic Theatre.

On November 1, 1985, the city purchased the theatre in order to establish a community facility for the performing arts, meetings and speakers. In May 1986, a bond issue to provide funding for the first phase of improvements was defeated. Those of us who worked on the campaign redoubled our efforts in support of a new bond issue that appeared on the November 1986 ballot.

A support wrote an essay titled, A MATTER OF OPINION which, I recalled ran in the Gazette-Times before the election. The writer gave these reasons for supporting the project.

- * The Majestic Theatre will provide a home for local performing arts groups.
- * The Majestic Theatre will not continue to be a vacant building and will attract people and contribute to a more attractive and viable Downtown.
- * The Majestic Theatre project will be of quality and reflect the values of the community.
- * The Majestic will contribute to the quality of life in Corvallis.
- * The Majestic is not for a few but will be open to all.

Our hard work paid off and the bond issue was approved.

Now, almost 30 years later, the Majestic Theatre is faced with problems. I believe with hard work they can be solved.

I am not advocating a return to 1986. Times have changed. I am advocating reviewing what worked in the past and building on the long history of the theatre taking into account today's economic climate. A simple manta should be, the Majestic Theatre, with realistic budgets, must live within its means. It should continue as a community facility for the performing arts, meetings, speakers and provide education in the performing arts for children and adults.

Mullens, Carrie

From: Holzworth, Carla
Sent: Tuesday, October 07, 2014 10:24 AM
To: Mullens, Carrie
Cc: Brewer, Nancy; Sassaman, Jon
Subject: FW: Testimony for Open Carry proposal, Human Services Committee Meeting

Please make copies for today's HSC meeting. Thx.

From: jumpstart@[REDACTED] [mailto:jumpstart@[REDACTED]]
Sent: Tuesday, October 07, 2014 10:01 AM
To: Holzworth, Carla
Subject: Testimony for Open Carry proposal, Human Services Committee Meeting

Ms. Holzworth,

I hope that I have the correct email for the city's recorder and that this is the correct place to submit this. Please add this testimony to the record for Tues, Oct 7th 2014 Human Services Committee meeting:

I have been following the Open Carry proposal and wanted to express my serious misgivings with this.

Our own city attorney and our chief of police find issues with this proposal. It is, in a practical sense, unenforceable since it will absolutely lead to lawsuits, as it should, since it seeks to suppress specific civil rights that are as precious as any other right. It can easily be challenged on the 2nd, 4th and 14th amendments. Recent federal, state and local legal challenges across the country have shown even liberal courts to come down on the side of those civil rights.

I would hate to be the Corvallis police office that will be put in the unenviable position of violating an individual's constitutional rights without violating an individual's constitutional rights. Knowing that if they do not walk the razor's edge, they could easily land the city or themselves in a costly lawsuit.

Perhaps I am simply unaware. Unaware of the grave and immediate Corvallis public safety crisis that warrants these enormous legal and financial risks to the city and the increased burden to our police department that this proposal will surely bring. Perhaps I am unaware of the size of the city's treasury and copious free time of the city attorney. However I am aware that certain individuals may have personal feelings and issues with various civil rights that they consider this to be a crisis.

People are entitled to their feelings but not suppression of any civil rights. Personal feelings are hardly a crisis that involves the City of Corvallis. There will always be people who think various enumerated rights do not stand above their own personal feelings and beliefs. We see this every day in our world. People whose list of acceptable civil rights varies from the actual ones that we all have and have been upheld in countless courts. They would seek to suppress what they deem inappropriate because it offends or frightens them.

Many people care about all of our civil rights, not just the ones that agree with them personally.

Please consider this sincere testimony.

Sincerely,

Frank DeMonte



Corvallis Oregon 97330

ATTACHMENT 3

Carolina Amador, MD, MPH

In May, I spoke at the City Council meeting after a person arrived at Cloverland Park playground openly carrying a gun while I was there playing with my children. Subsequently, I learned that the City of Corvallis has no restriction on open carry of guns.

I am here in support of an open carry ban. However, 'ban' is actually a misnomer. It's a restriction, an absolutely minimal requirement to openly carry a weapon after an individual has followed basic protocol.

Getting a permit is simple.

1. U.S. citizen or legal alien for 6 months
2. Age 21 or older
3. Not a convicted felon
4. Not convicted or found guilty of a misdemeanor
5. No outstanding warrants
6. Demonstrates competence with a handgun.

There isn't good research that tells us if these types of restrictions are effective in reducing gun violence or accidental gun injuries. When there is lack of data, we as leaders and professionals then need to use judgment and rationale to determine what's best for the public. Given that guns are the single device most responsible for causing accidental child fatalities, shouldn't we err on the side of safety rather than unrestricted access?

The goal of gun regulation is not to stop people from exercising their rights but it is the goal to protect the public. This is common sense gun legislation. Requiring a permit does not interfere with responsible gun ownership. In fact, actually promotes it.

I feel sure that you, as representatives of the City of Corvallis must frequently ask yourselves what the people of Corvallis would want and what type of city we want to live in. An open carry restriction is consistent with the values we support in our city. These values include safety and high quality livability.

If anyone argues against this type of restriction, I challenge them to answer the following questions:

****Why shouldn't we require a person carrying a gun to be 21 years old?**

****Why shouldn't we require that the person not be a felon or have a warrant for their arrest?**

****Why shouldn't we require that they demonstrate competence with a gun?**

Ultimately, it would be nice if individuals could exercise their rights while having no negative impact on others. But, individuals don't live in a vacuum, they live in communities. We live in a community that represents many great qualities. Please envision how this restriction is congruent with those values.

A new Corvallis ordinance mirroring the City of Portland does not grant police officers additional authority beyond that which exists today to investigate an "open carry" situation. Officers do not have the unilateral authority to stop, detain, question or search an individual because they have a firearm which can be observed by others in public. An officer must have reasonable suspicion (e.g. specific and objective articulable facts) that a crime is about to be committed, is being committed or was just committed, in order to exercise authority to intervene.

Nancy Brewer and Jim Brewer
Memorandum
Corvallis Police Department
September 29, 2014

The 4th Amendment of the United States of America Constitution grants the right of the people to be secure from unreasonable searches and seizures. Police officers who respond to unknown situations with people who "OpenMcarry" a firearm, do not have the unilateral authority to stop, detain and question or search any person because they have a firearm which the general public can observe. A Police officer must have "reasonable suspicion" that a crime or violation of law is about to occur, is occurring or just occurred in order to stop a person. A person who openly carries a firearm, in and of its self, is insufficient cause to stop a person.

James Patterson and Jim Brewer
Memorandum
Corvallis Police Department
July 1, 2014

The very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is really worth insisting upon. A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all.

US Supreme Court
Heller, 554 U.S. pg 62 and 63

The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes

US Supreme Court
Heller, 554 U.S. pg 1

Meaning of the Operative Clause. Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it "shall not be infringed." As we said in *United States v. Cruikshank*, 92 U. S. 542, 553 (1876), "[t]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second amendment declares that it shall not be infringed"

US Supreme Court
Heller, 554 U.S. pg 19

But the enshrinement of constitutional rights necessarily takes certain policy choices off the table.

US Supreme Court
Heller, 554 U.S. pg 64

Carl Price
10/7/14

Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation, where well-trained police forces provide personal security, and where gun violence is a serious problem. That is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct.

US Supreme Court
Heller, 554 U.S. pg 64

As the Court noted in Heller, "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad." Heller, 554 U.S. at 634-35

Palmer v DC
pg 10

As the court noted in Peruta, "[t]he Second Amendment secures the right not only to 'keep' arms but also to 'bear' them[.]" Peruta, 742 F.3d at 1151; and, as the Supreme Court explained in Heller, "[a]t the time of the founding, as now, to 'bear' meant to 'carry[.]'" Heller, 554 U.S. at 584. "Yet, not 'carry' in the ordinary sense of 'convey[ing] or transport[ing]' an object, as one might carry groceries to the check-out counter or garments to the laundromat, but 'carry for a particular purpose confrontation.'" Peruta, 742 F.3d at 1151-52 (quoting [Heller, 554 U.S. at 584]). According to the Heller majority, the "natural meaning of 'bear arms'" was the one that Justice Ginsburg provided in her dissent in *Muscarello v. United States*, 524 U.S. 125 (1998), that is "'wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.'" Heller, 554 U.S. at 584 (quoting *Muscarello*, 524 U.S. at 143, 118 S. Ct. 1911) (Ginsburg, J., dissenting) (quoting *Black's Law Dictionary* 214 (6th ed. 1998)).

Palmer v DC
pg 11-12

Finally, "both Heller and McDonald identif[ied] the 'core component' of the right as self-defense, which necessarily' take[s] place wherever [a] person happens to be, 'whether in a back alley or on the back deck.'" Peruta, 742 F.3d at 1153 (citing Moore, 702 F.3d at 937 ("To confine the right to be armed to the home is to divorce the Second Amendment from the right of self-defense described in Heller and McDonald."))

Palmer v DC
pg 12-13

Furthermore, as the court in Peruta correctly pointed out, "with Heller on the books, the Second Amendment's original meaning is now settled in at least two relevant respects." Peruta, 742 F.3d at 1155. "First, Heller clarifies that the keeping and bearing of arms is, and has always been, an individual right. *Id.* (citing [Heller], 554 U.S. at 616, 128 S. Ct. 2783). "Second, the right is, and has always been, oriented to the end of self-defense." *Id.* (citation omitted). After an exhaustive summary of the text and history of the Second Amendment, the Ninth Circuit in Peruta concluded that "the carrying of an operable handgun outside the home for the lawful purpose of self-defense, though subject to traditional restrictions, constitutes 'bear[ing] Arms' within the meaning of the Second Amendment." Peruta, 742 F.3d at 1166.

Palmer v DC
pg 14

Furthermore, this injunction prohibits the District from completely banning the carrying of handguns in public for self-defense by otherwise qualified non-residents based solely on the fact that they are not residents of the District.

Palmer v DC
pg 16-17

Section 4. Responsibility to All People. The City shall exercise its power to ensure the equal protection, treatment, and representation of all persons without discrimination including, but not limited to, age, citizenship status, color, familial status, gender identity or expression, marital status, mental disability, national origin, physical disability, race, religion, religious observance, sex, sexual orientation, and source or level of income. Corvallis is a community that honors diversity and diverse interests, and aspires to be free of prejudice, bigotry, and hate.

Corvallis City Charter

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

US Bill of Rights
Second Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

US Bill of Rights
Fourth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fourteenth Amendment
Section 1

Section 9. Unreasonable searches or seizures. No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.—

Oregon State Constitution
Article 1 -- Bill of Rights

Section 27. Right to bear arms; military subordinate to civil power. The people shall have the right to bear arms for the defence [sic] of themselves, and the State, but the Military shall be kept in strict subordination to the civil power[.]

Oregon State Constitution
Article 1 -- Bill of Rights

166.170¹

State preemption

(1) Except as expressly authorized by state statute, the authority to regulate in any matter whatsoever the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition, is vested solely in the Legislative Assembly.

(2) Except as expressly authorized by state statute, no county, city or other municipal corporation or district may enact civil or criminal ordinances, including but not limited to zoning ordinances, to regulate, restrict or prohibit the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition. Ordinances that are contrary to this subsection are void. [1995 s.s. c.1 §1]

166.173¹

Authority of city or county to regulate possession of loaded firearms in public places

(1) A city or county may adopt ordinances to regulate, restrict or prohibit the possession of loaded firearms in public places as defined in ORS 161.015 (General definitions).

(2) Ordinances adopted under subsection (1) of this section do not apply to or affect:

(a) A law enforcement officer in the performance of official duty.

(b) A member of the military in the performance of official duty.

(c) A person licensed to carry a concealed handgun.

(d) A person authorized to possess a loaded firearm while in or on a public building or court facility under ORS 166.370 (Possession of firearm or dangerous weapon in public building or court facility).

(e) An employee of the United States Department of Agriculture, acting within the scope of employment, who possesses a loaded firearm in the course of the lawful taking of wildlife. [1995 s.s. c.1 §4; 1999 c.782 §8; 2009 c.556 §3]

Next discussion will turn to the proposed ordinance, as I have stated, and shown in the above quotes, this ordinance violates an individual's civil rights, and if any form of it is passed by the council, it will expose the city to lawsuits and expenses that are not needed.

I also want to address fatal flaws in the proposed ordinance, even if you ignore all federal and constitutional law and rulings, and only look at ORS 166.

First, as you can see in the ORS 166.170, the city may only pass an ordinance dealing with loaded firearms in public.

Section 2 of the proposed ordinance deals with the storage and transportation of ammunition, which is vested solely in the Legislature per ORS 166.170. This is on its face a violation of state statute.

Section 3 states that the exceptions may be used as an "affirmative defense to a violation". ORS 166.173 that the any local ordinance enacted under ORS 166.173 "do not apply to or effect" certain individuals (see the text of the law above). This is very different from an affirmative defense, and is again a fatal flaw in the proposed ordinance.

Section 4 purports to remove 4th Amendment protections from open carriers. The law in this area has been established for over 45 years. Terry v Ohio clearly set out instances that police may stop and seize or search a person. An individual that is lawfully conducting their life just for the convenience of the police. I will include one more quote below that explains Terry better.

"to be lawful, a Terry stop 'must be supported at least by a reasonable and articulable suspicion that the person seized is engaged in criminal activity'. Reid v Georgia, 448 U.S. 438, 440 (1980) The level of suspicion must be a 'particularized and objective basis for suspecting the particular person stopped of criminal activity' United States v Griffin, 549 F.3d 148, 152 (4th Cir 2009) As such, 'the officer must be able to point to specific and articulable facts which, taken together with the ration inferences from those facts, reasonably warrant the intrusion' Terry, 392 U.S. At 21

I hope the Councilors can see not only does this proposed ordinance violate the 2nd Amendment, it also violates the 4th Amendment, and is fatally flawed from an Oregon State perspective.

Corvallis is sitting at a tipping point. We as a city have prided ourselves on being a diverse and tolerant community. Today, you have before you an ordinance that will violate individual's civil rights. Today, you have an ordinance not of diversity and tolerance, but of hate and intolerance. I urge you to not take this city down a path of hate, fear, and intolerance.

Thank you for your time and attention to this issue.

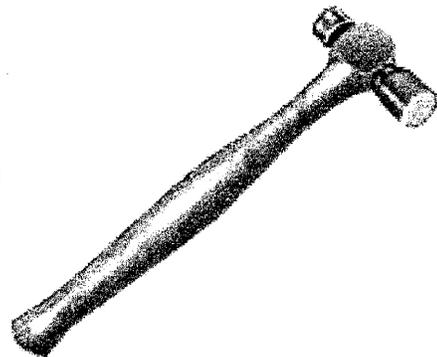
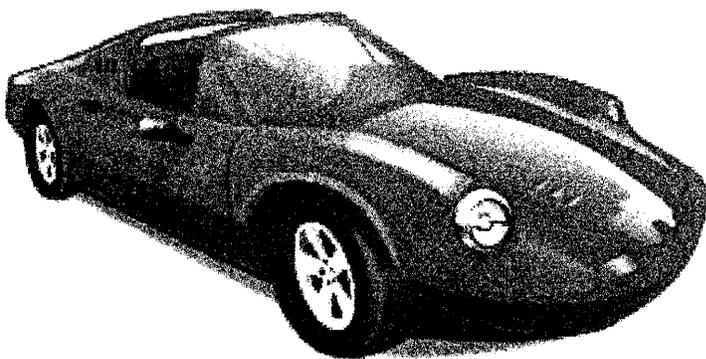
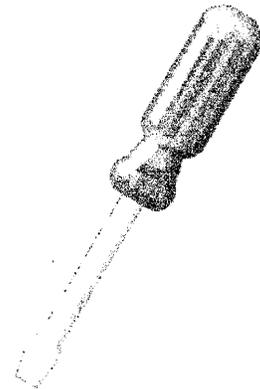
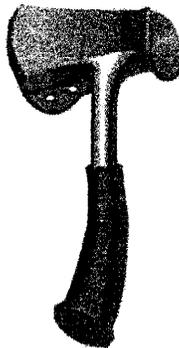
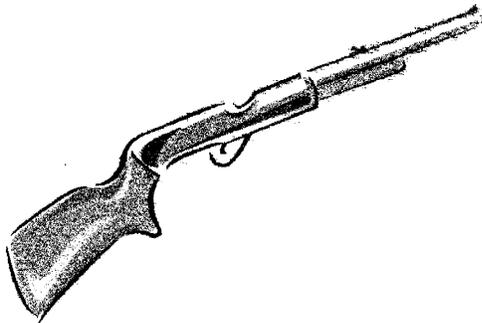
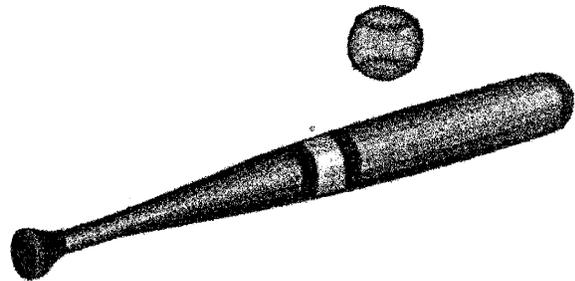
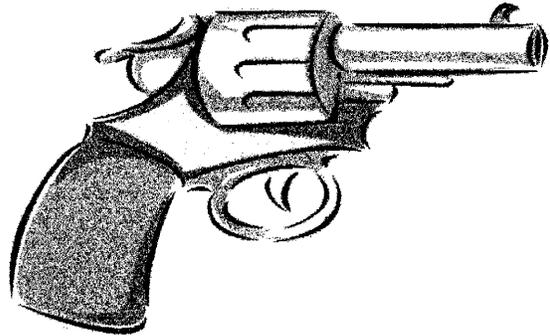
The Constitution of the United States



The 2nd Amendment

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

TOOLS



For Good or Evil

Restraining Order

*This piece of paper will not defend you from
acts. knives, guns, hammers, vehicles, hatchets, etc.*

Items seen in Cowallis
Proudly displayed by
military families.



TARGETS FOR ISIS



Oregon man gets 30 years in Christmas bomb plot



OCTOBER 01, 2014 2:51 PM • BY NIGEL DUARA

PORTLAND, Ore. (AP) — A young Somali American was sentenced Wednesday to 30 years in prison for plotting to detonate a bomb in Portland's downtown square while 10,000 revelers gathered to watch the mayor light a towering Christmas tree.

Prosecutors had sought a 40-year term for Mohamed Mohamud, 23, in the 2010 plot that actually was an FBI sting. But U.S. District Court Judge Garr King said Mohamud's youth and remorse for his actions helped lower his

sentence.

King said he believes the actions of undercover FBI agents edged into "imperfect entrapment," the idea that though they didn't fully entrap Mohamud in a legal sense, their actions nonetheless encouraged him to commit wrongdoing.

"This is a sad case," King said.

Mohamud was arrested Nov. 26, 2010, after pressing a keypad button on a cellphone that he believed would trigger a massive truck bomb and kill people gathered for the annual holiday event. But the bomb was a fake provided by FBI agents posing as al-Qaida recruiters.

The undercover agents made friends with Mohamud after learning he had written for an online jihadi magazine and exchanged emails with accused terrorists.

King disagreed with defense attorneys who made a last-gasp effort to portray Mohamud's actions as those of a confused teenager who just had his braces removed when first contacted by an FBI agent posing as a member of a terrorist cell.

Mohamud chose the location and timing of the bomb, King said, and when offered the choice to commit peaceful acts of resistance, he instead told the undercover agents he wanted to "become operational."

Mohamud's defense team had sought a term of no more than 10 years, and said he will appeal the sentence.

The former Oregon State University and his parents spoke before he was sentenced.

"The things I said and did were terrible," Mohamud said. "The hardest thing is to go over the (undercover agents') tapes, to see myself, to hear what I was saying."

His mother, Mariam Barre, begged the judge for leniency.

"Give him another chance," she said through tears on the witness stand.

His father, Osman Barre, said he has watched his waifish teenage son become an adult in prison and mature in the process. But King said Mohamud's youth aside, the sentence had to both punish him for his actions and serve as a warning for anyone planning similar acts.

FBI director James Comey said Wednesday that King's remarks about "imperfect entrapment" will have no effect on the agency's sting operations.

Comey was in Portland as part of a national tour of field offices — the U.S. Attorney's Office for Oregon says his presence on the day of Mohamud's sentencing was a coincidence.

Osman Barre was the first person to alert the FBI of his son's early leanings toward violent jihad, something he later said he regretted. The alert led the FBI to launch its sting operation.

Comey said Wednesday that parents in a similar situation ultimately have no other recourse, and he's unsure whether Mohamud's case would discourage them from coming forward.

"I just don't know what the alternative is," Comey said.

Jurors rejected Mohamud's entrapment defense at his January 2013 trial. The sentencing was pushed back a year after the government disclosed that warrantless overseas wiretaps helped make its case. The defense unsuccessfully sought a new trial.

Associated Press writer Steven Dubois contributed to this report.

Reach Duara at <https://www.twitter.com/nigelduara>

FAQ Prohibiting Open Carrying of Firearms in Corvallis

What's the problem with open carrying firearms?

- While members of the open carry movement argue that they are just "exercising their rights," the open carrying of firearms intimidates the public, wastes law enforcement resources, and creates opportunities for injury and death due to the accidental or intentional use of firearms.
- Open carrying poses particular challenges for law enforcement officers who must respond to 911 calls from concerned citizens about people carrying guns in public.

Won't we be safer with everyone carrying guns?

- No. Claims that open carrying is needed for self-defense are belied by the available research. Even when a gun is used in self-defense, which is rare, research shows that it is no more likely to reduce a person's chance of being injured during a crime than various other forms of protective action. [David Hemenway, *Private Guns, Public Health* 78 (2004)]
- Instead of improving safety, open carrying needlessly increases the likelihood that everyday interpersonal conflicts will turn into deadly shootouts.
- In addition, in states that allow open carrying without a permit, law enforcement officers may be prohibited from demanding identification when stopping an individual who is openly carrying a firearm. Without identification, those officers are unable to confirm whether the individual is eligible to possess a firearm under federal or state law. **This has already happened in Corvallis in 2013 when Corvallis police arrested Kevin Hall resulting in a \$5,000 fine against the City.**

Does the City of Corvallis have the authority to ban open carrying?

- Yes. ORS 166.173 authorizes a City to regulate the possession of a loaded firearm in public places.
- A local municipality may regulate, restrict or prohibit the possession of a loaded firearm in public places, with some exceptions.
- Exceptions include public safety officials and those with concealed handgun licenses.

What about people who have Oregon concealed handgun licenses?

- There is no authority granted to local jurisdictions to prohibit open carrying for someone with a concealed handgun license.
- The laws grant limited authority to local jurisdictions who desire to regulate loaded firearms in public for people without a concealed handgun license or are open-carry" otherwise exempt (e.g. police officer).

Do other Oregon cities prohibit open carrying?

- Yes. Portland, Beaverton, Tigard, Salem and Oregon City have prohibitions.

Is the prohibition constitutional?

- Yes. In 2013, the Oregon Supreme ruled in *State v. Christian* that the prohibition does not violate Oregon state law or the Second Amendment.

Loerna Simpson
10/7/14

November 3, 2014 City Council meeting minutes relative to open carry.
Open Carry of Loaded Weapons

Nun Yah said the response to the person who openly carried a firearm in Cloverland Park last April was extreme and opined that fears were allowed to take over. She suggested the City's efforts should be toward putting criminals behind bars and helping the mentally ill get medication and other assistance they need.

Sally Telford from the Linn-Benton Chapter of Oath Keepers expressed concern that Councilors were violating their oaths of office. She offered copies of the United States Constitution for anyone who was interested and she asked Councilors to keep the oath they took when they were sworn into office.

Chin Le spoke from a prepared statement concerning open carry of loaded firearms (Attachment J).

Nathan Slocombe said there had not been any demonstrable problems related to open carry, the ordinance was an extremist approach, and he did not support its adoption.

David Calhoun referenced a lawsuit regarding open carry that cost the City \$5,000. He said of roughly 30,000 citizen calls to the police, only 39 were related to weapons of any type. He believed the proposed ordinance was a solution in search of a problem.

Jeanie Mason reminded Councilors they took an oath to uphold the Constitution. She read passages from the Second Amendment and said the proposed ordinance violated the Constitution. Derek Barclay cited statements Councilor York made at a Human Services Committee (HSC) meeting related to her negative personal experiences with guns. He cited several serial killers and noted a gun-related death outside of the Portland, Oregon City Hall, which was a gun-free zone.

Leah Bolger disagreed with earlier statements that the proposed ordinance was a solution in search of a problem. She said people's feelings of fear and the intimidation of others was a problem. She believed people did not have the right to keep and bear arms anywhere they wished. She suggested if the City did not pass the proposed ordinance, citizens could encourage local businesses to become gun-free zones, and indicate such through signs or stickers on their doors.

Bob Watson cited passages from the City Charter that refer to Corvallis' aspirations to be free of prejudice, bigotry and hate. He said some people choose to openly carry firearms and others are deeply offended at the sight of it. He believed fear and ignorance were the breeding grounds for bigotry, prejudice, and hate. Mr. Watson noted the penalty for violating the proposed ordinance was six months in jail and he asked the Council if they would put someone in jail for exercising a civil right.

Janet Rasmussen supported the proposed ordinance and cited other cities that passed similar ordinances. She did not believe open carry of loaded weapons had been a large problem; however having a law on the books would give the City something to call upon if needed. She did not support taking guns away from anyone.

John Gilman said he was generally not in favor of openly carrying loaded weapons; however, he supported civil liberties. He urged the Council not to pass the proposed ordinance, opined a lawsuit would be filed if it was passed, and believed the City should spend its money on more

important City programs. He added that he believed the size of the MT was appropriate for Corvallis and supported Councilor Beilstein's earlier comment that a consultant was not needed to study police and fire staffing needs.

Jeremy Sevens believed the issue related to harassment, not gun control. He believed openly carrying a firearm increased the capacity for violence.

Peter Stoel said the presence of people openly carrying firearms created a less-civil and less-welcoming atmosphere in Corvallis and he supported banning open carry of loaded weapons.

Vincent Roberto cited Councilor York's comments at an HSC meeting where she shared her experiences of personal loss. He said a vote on the ordinance should be based on sound legal reasoning, not feelings. He cited an email from Councilor Hirsch regarding an exchange about gun rights and expressed extreme displeasure with Councilor Beilstein's display of a Cuban flag on a City laptop at an official City meeting.

Benjamin Barnett believed a license should be required for open carry of loaded firearms. He supported the right to openly carry a firearm, but said that right comes with responsibilities, including being properly trained in firearms use. He favored preserving freedom and taking sensible measures to support safety.

Paul Cauthorn expressed frustration with Councilor Hirsch, whom he believed was ignoring the comments of those who took the time to speak before the Council. He suggested Councilors should have a code of conduct for meetings and cited language from the email exchange between Councilor Hirsch and a citizen regarding the Second Amendment.

Thad Kohler opposed the proposed ordinance. He owns a gun, which is sometimes in his vehicle when he is en route to hunting. When he is in an area without cellular phone service, he wanted to openly carry his firearm. He did not support having a hodge-podge of ordinances across the state and viewed the proposed ordinance as a violation of the Second Amendment.

Karen Josephson supported the proposed ordinance and did not believe it restricted Second Amendment rights. She said Corvallis was a very friendly city and she worried civility would be lost over time. She appreciated the idea that with freedom comes responsibility, she believed openly carrying firearms was intimidating to others, and she asked what kind of city Corvallis wanted to be.

Carolina Amador spoke from a prepared statement in support of the proposed ordinance (Attachment K).

Jeff Hess said he was a decorated war veteran and was experienced with firearms. He lived in Australia where guns were well regulated, and he said as a result, the country was much safer. He believed fear was an issue on both sides.

Mark McCulloch said he was trying to understand the objective of the proposed ordinance and how it would benefit the community. He believed the proposed ordinance was more about providing comfort than addressing an actual risk. He was concerned there would be an unintended consequence of drawing "open carry" people to Corvallis.

Richard Phelps said it would not be acceptable for the City to take away a citizen's right to carry a firearm; however, if the proposed ordinance banned open carry of loaded weapons, he was not as concerned. He had lived in Corvallis for 62 years and had never seen anyone openly carrying a

firearm. He opined that people were scared for no reason, and believed people who open carry do not need to do so.

David Erwin said like Councilor York, he also had personal experiences related to loss of life involving a firearm; however, the proposed ordinance would do nothing to change those tragedies. He did not support passage of the proposed ordinance.

Janet Wolf-Eshe opposed openly carrying guns. She lived in cities of varying sizes and in rural areas, and she never felt it was necessary to own a firearm.

Jordan Jones, a pistol and firearms instructor, urged Councilors to vote against the proposed ordinance. He said obtaining a concealed handgun license (CHL) costs money and takes time, and if people needed to protect themselves outside the home they should not have to wait until they complete a course. He also did not believe a hodge-podge of regulations around the state was helpful. Mr. Jones said the proposed ordinance was not worth the financial and legal risk the City would incur if it passed.

Jeff Ford from Northern Oregon Oath Keepers read from the Second Amendment and said support of the ordinance was a violation of Councilors' oaths of office.

Carl Price said the proposed ordinance would infringe on civil rights and cited cases where he believed the Ninth Circuit Court of Appeals and Oregon Supreme Court overstepped their bounds.

Brett Johnson, an emergency room physician, supported licensing and background check for open carry of loaded firearms in Corvallis and he believed the proposed ordinance was a reasonable approach.

Tom McKirgan of Southern Oregon Oath Keepers and a retired police officer said the Constitution does not give people the right to feel good and the City does not need more laws. He said the Constitution is clear and Oath Keepers would not respect the ordinance if it was passed.

Joe Schinkle said Corvallis was clean and safe; however, he opposed any new ordinance. He urged the Council to use common sense, noting passage of the proposed ordinance would only affect law-abiding citizens, as criminals do not obey laws.

David Terry said rights, not comfort, were important and someone carrying a firearm does not necessarily intend to do harm.

Bruce Cook said previous speakers had not mentioned the Oregon Constitution, noting it also provides protection of the right to bear arms in defense of oneself and the State. Citing Corvallis Municipal Code Sections 5.03.120.020 and 5.03.120.030, Mr. Cook said existing City laws related to firearms were in violation of State law and the City would be financially liable if it was sued. He stated that the City's law that expands the definition of concealed weapons to include "on or about the person" was preempted by Oregon Revised Statute 166.170 which specifies "on the person." He noted that 5.03.120.030 did not contain a provision for self defense, and the only right the City had was to regulate carrying of loaded weapons by those who do not possess a CHL. He also believed City laws relating to carrying firearms on City buses were in violation of State law.

Mark Bailets said history has shown those who willingly disarmed themselves and do not show an ability to defend themselves are perceived as weak and incapable. He said the National Rifle Association was formed to enable African Americans to defend themselves.

Mark Woodrow said he could not recall when the issue of openly carrying loaded firearms began to be a problem. He said Americans use loaded firearms to stop crimes and he said cities with strict gun laws have higher rates of gun violence.

Kevin Hall said he openly carries a loaded pistol and nobody had commented to him about it. He said he had patronized many establishments around town while carrying, including restaurants, the bowling alley, the Law Enforcement Center, and the Library. He said a small minority was trying to convince the Council to pass the proposed ordinance and he did not support it.

Brandon Rapolla, a Marine Corps veteran, said he understood having a fear of weapons, but those who are familiar with firearms act in a safe manner. He noted the Second Amendment is about people protecting themselves from a tyrannical government, as well as from criminals. He asked Councilors to remember their oath to the Constitution.

Kevin Starrett, Oregon Firearms Federation, said passing the proposed ordinance would not change anything. He believed the City was creating theatre without accomplishing something and it may encourage more open carrying.

Chris Brumbles, Columbia County coordinator for Oath Keepers, said the Country's founders said citizens' rights come from God and nature, and the Constitution is the law of the land. He reminded the Councilors of their oaths to the Constitution and he said if they voted for the proposed ordinance they would be committing perjury and treason.

Brian Wilson said the police carry guns to protect citizens and he carries a gun to protect himself. He took an oath when he went to Vietnam and he would never use his weapon to do anything but protect himself, his family, and fellow citizens. He believed the Police Chief's opinion regarding the proposed ordinance should matter.

Dave Kelsey said that crime exists and he had a right to defend himself with a firearm.

David Noble served in the military and was concerned about Councilors violating their oaths of office. He cited passages from the United States Constitution and the Oregon Constitution, and he did not believe the City had the authority to pass the proposed ordinance.

Fred Marsico said the Constitution grants people the right to tell the government what they can and cannot do. He said the City does not have the right to infringe on his rights.

Larene Long from Linn-Benton Oath Keepers said the proposed ordinance was unconstitutional, could not be enforced, and he asked Councilors to reject it.

Malachi Bunn said he carries a firearm; however, he had never felt the *need* to do so in Corvallis. He noted there was no way to tell by looking if a gun was loaded or whether someone possessed a CHL. He did not believe the proposed ordinance would help solve the problem and he believed it was just about getting rid of guns.

Chuck Willer, a Ward 5 resident, said he had spoken in other communities and appreciated that people in Corvallis listened respectfully. As a Corvallis voter, he wanted his City Councilor to

vote in a way that reflected the will of the people in his neighborhood, and he wanted the City to enact laws that reflected what the Corvallis community wanted.

Jeffrey Wright, a combat veteran, did not support the proposed ordinance, as he believed it showed disregard for the Second Amendment. He said the issue was not about anyone's feelings of comfort, or how they feel about guns.

Rhonda King was a victim of crime and said a weapon might have stopped that crime. She did not believe the Council had a right to tell someone they could not openly carry a firearm. She also said she was shocked that some Council members were looking at their computers and not making eye contact with people who were addressing them.

Kelly Smith said police officers arrived after crimes were committed and asked everyone to remember Brooke Wilberger.

Darrell Alderman was a victim of crime and cited several crime statistics. He said in 2012, the suicide rate in America was lower than in the United Kingdom, which has strict gun laws. He also said from 1995 to present, there was a 50 percent increase in all violent crime in Australia. He did not own a firearm until he became temporarily disabled and needed to be able to defend himself.

Mayor Manning recessed the meeting from 9:05 pm to 9:13 pm.

VIII. STANDING COMMITTEE REPORTS, ORDINANCES, RESOLUTIONS, AND MOTIONS – Continued

A. Human Services Committee (HSC) – October 21, 2014

1. Open Carry of Loaded Firearms

Councilor Sorte reported that Council forwarded the open carry of loaded firearms topic to HSC. The Committee held two meetings where they received public input and discussed the matter. At the second meeting, only two of the three Councilors were present. Due to a split vote, no recommendation was forwarded to the Council and the item was for information only. Councilor Sorte said the minutes outlined the reasons behind the two Councilors' differing votes.

Councilor Brown supported moving forward without taking action.

Councilor Beilstein favored passing the proposed ordinance, realizing it would not affect how police officers conduct business and it would not give them any additional powers. He said the ordinance from Multnomah County had not been found to be unconstitutional. He believed passage would be a symbolic act that was important to his constituents and would make a statement in support of a gun-free environment.

Councilor Hirsch said the City Council does not have the power to eliminate open carry. He supported whatever was allowed to give citizens comfort, and he agreed with Councilor Beilstein's comments.

Councilor Brauner said he weighed Constitutional rights, the need to feel safe in one's community, and the ability of the ordinance to be enforced. What the Corvallis community wants was important to him and he believed there were other alternatives to consider. He suggested referring a ballot advisory question to the voters as one way to ascertain what the community wants.

Councilor Traber said he was also open to considering an advisory question as a way of determining what the community values.

Councilor Hervey said he did not like to see people walking around with guns and he believed many of his constituents felt the same way. He appreciated that the City Council was limited in what it could do and believed it was worth considering other approaches, rather than adopting an ordinance that was symbolic and would not effect change. He believed a ballot advisory question was one way that Corvallis citizens could express their opinion on the matter.

Councilor Hirsch said he was not against guns, yet he understood people not feeling comfortable with open carry of weapons. He supported having Corvallis citizens vote on the matter; however, he was in favor of passing whatever legislation the Council could, symbolic or not.

Councilor York said it was reasonable to require a CHL to openly carry a loaded weapon; however, she was willing to listen to fellow Councilors' thoughts and consider options.

Councilor Hogg thanked everyone for speaking and listening to the points expressed on both sides. He said to his knowledge, there had never been an incident in a City park where there was an injury or a threat as a result of someone openly carrying a firearm. He saw the issue as symbolic and supported a wider vote of Corvallis citizens so they could voice what kind of community they wanted Corvallis to be.

Councilor Sorte said there was no way to enforce the ordinance because it was not possible to tell whether an openly carried firearm was loaded and he cited the potential financial liability for the City. He said part of his oath of office was a responsibility to represent his constituents and he supported getting a sense of what the community values. He said the most assured way of learning about those values was through a ballot advisory question because it works like an initiative. It would require around 2,500 valid signatures from Corvallis registered voters to place the matter on the ballot. He noted the advisory question would be to express a value; it would not have an enforceable outcome and would not affect anyone's right to openly carry a firearm. He said another option was to hold a Special Election where Councilors could decide to place the question on the ballot and ask citizens to weigh in on the matter. He said it could be timed to coincide with a regular election to reduce the expense to the City. Finally, the Council could consider a resolution; however, he did not favor that option because it would not provide a sense of what the community wanted and would not be enforceable. Councilor Sorte supported sending the matter to the Administrative Services Committee to consider.

Mayor Manning summarized by noting that Councilors expressed an interest in getting a sense of the larger community's perspective on the issue, which could

include placing an advisory question on the ballot and exploring other potential options in addition to the proposed ordinance. She assigned the matter to the Administrative Services Committee for further discussion.

MEMORANDUM

November 25, 2014

To: Administrative Services Committee
From: Ken Gibb, Community Development Director 
Re: Continued ASC Consideration of current livability code gaps and an expanded Livability Code Compliance and Neighborhood/Community Outreach Program

I. Issue

As requested at the end of the October 22, 2014 Administrative Services Committee meeting, staff are providing follow-up information regarding current community livability code gaps.

II. Background

At the conclusion of the October 22 ASC meeting the Committee determined that it would spend time at its November 5, November 19, and December 3 meetings discussing grouped elements of the livability code gaps that staff have presented in narrative and graphic form in prior meetings. The November 5 meeting covered the first grouped elements, interior condition gaps, and the November 19 meeting covered exterior condition gaps. The December 3 meeting will cover general gaps, including administrative provisions. The Committee's chosen approach is to hear explanations of the gaps from staff in a work session-type setting, and then to hear comments from people attending the meeting.

III. Discussion

The attached, modified excerpt from the "Current Corvallis Code Authority, Gaps and Potential Resolution" document presented to the Committee on October 22 includes a listing of general code gaps and potential resolutions. As requested, modifications have been made to clarify which property types would be included for coverage if code language to address the gaps is developed. As has been shared in past discussions, the approach to implementing additional code authority that was recommended by staff as a result of discussions with the Property Maintenance Code Advisory Group in 2013 was to apply new code standards to both the interiors and the exteriors of residential rental properties, but to apply new standards to only the exteriors of owner-occupied residences and non-residential properties. Staff will plan to supplement its discussion of the items in the attachment with a presentation of representative photographs.

IV. Requested Action

Because no decision is anticipated as an outcome of this meeting, staff request no specific action. However, ASC direction relative to information or materials that will be helpful for a concluding discussion on this topic, to be held on December 17 for the purpose of developing general recommendations for the next City Council's consideration, would be welcomed.

Review and Concur:


Nancy Brewer, City Manager Pro Tem

Attachment: Current Corvallis Code Authority, Gaps and Potential Resolution – General Conditions

Current Corvallis Code Authority, Gaps and Potential Resolution

Prepared for Administrative Services Committee Consideration on December 3, 2014

General Code Authority, Gaps and Potential Resolution

General administrative or condition standards, gaps and possible means of resolving those gaps include:

Fire Safety

Current: Provisions of state and local Fire Codes pertain primarily to triplex and larger residential structures; however, OFC Chapter 11 provides for the maintenance of ingress and egress paths of travel in all existing buildings. The Rental Housing Code (CMC 9.02.090) requires smoke detectors in all rental units, including one- and two-family structures.

Gap: There are no maintenance standards for door locks that are operable without keys or special knowledge from the egress side of a doorway, for maintenance of emergency escape openings, or for maintenance of fire-resistant surfaces and assemblies in one- and two-family structures.

Resolution: Adopt specific code language requiring clear, unobstructed paths of travel for the purpose of safe ingress/egress in all structure types; provision of door locks that are operable from the egress side without keys or special knowledge; maintenance of emergency escape openings and fire-resistant surfaces and assemblies in all structure types.

Occupancy Limits

Current: The Land Development Code stipulates by its definition of family that not more than five unrelated adults may occupy a dwelling unit. (LDC Chapter 1.6)

Gap: While the number of unrelated adults in a dwelling unit is limited, there are no standards that specify how much space each must have for sleeping, eating or living. In addition, the definition of “dwelling unit” varies between the Land Development Code and the Rental Housing Code.

Resolution: To implement more effective occupancy limits and address overcrowding and the neighborhood impacts that sometimes stem from that condition, adopt standards for minimum square footage allocation requirements to establish maximum occupancy of a dwelling unit in residential rental occupancy types. Examples of such standards can be found in both the International Building Code and the International Property Maintenance Code. Further, implementation of a single livability code and set of administrative provisions (detailed discussion to follow) would bring a consistent definition to the term “dwelling unit” as that term is applied for purposes of livability code compliance.

General Maintenance

Current: Building codes prescribe methods and materials for the construction and alteration of structures, and for establishing approved occupancy of a space, but do not require maintenance of structures following completion or alteration.

Gap: Because there are no code provisions for the maintenance of structures, the first opportunity the City has to address conditions of decay does not occur until a building or some element thereof must be deemed dangerous and unfit for occupancy.

Resolution: Develop and implement maintenance standards for all occupancy and structure types to prevent a structure’s decay to the point that it must be deemed dangerous. Potential areas of focus for such standards were included in the Exterior Conditions discussion package prepared for ASC’s November 19 meeting.

Administration

Current: Each of the three codes with livability compliance elements (Municipal Code, Land Development Code and Rental Housing Code) has its own administrative provisions (e.g., the means by which the code is implemented and efforts to gain compliance are carried out).

Gap: Inconsistencies exist among the three codes in regard to notices, compliance actions, penalties, appeals processes, and in the case of the Rental Housing Code, a requirement that a complainant contact the property owner/manager prior to filing a complaint with the City. Implementing three codes with separate sets of administrative provisions may result in a compliance process that is difficult for community members to understand, and that is relatively complex for City staff to administer.

Resolution: Integrating the City's livability code elements into a single code document, with one set of administrative provisions, would simplify compliance work for both staff and the community.

CAP USC Final Update

The Climate Action Plan Task Force wants to update you per the Scope of Work that we completed over the summer.

First of all, we want to thank you for your interest in this effort and the support and feedback you provided us in developing the Scope of Work that we used to guide our efforts.

We said that we would have a plan to the City Council by the end of the year, and I'm happy to report that we will!

As you recognized, our timeline was very "ambitious," but the fact that we are sitting here today to let you know that we'll have a draft ready for the next city council meeting is a testament to the importance of this issue to our community.

Since setting our scope of work with you, we have:

1. Completed a basic framework of a CAP with goals and actions for six key topic areas:
 - Buildings and Energy
 - Consumption and Solid Waste
 - Food and Agriculture
 - Health and Social Services
 - Land Use and Transportation
 - Urban Natural Resources
2. Recruited topic area experts and developed an advisory panel composed of people with expertise in the process of developing a climate action plan.
3. Begun outreach to the community through our website and by conducting two community meetings to provide information about the climate action plan and to receive public input. The public meetings – October 29 and November 12 at the library—were both well-attended, with about 50 people at each.
 - We took feedback from the meeting and revised the draft based on that input.
4. We also received feedback from our topic experts and incorporated it into the CAP accordingly.
5. We have sent updated sections of the draft to some members of our advisory panel already, and others will get the full draft when it is complete.
6. We will a draft at the City Council meeting on Dec. 15th, so look for it in your packets.

There are a few things that we will not have time to do before submitting the draft plan for the Dec. 15th meeting, but we will aim to complete them before taking the plan to the new Council in January. These include:

- Incorporating feedback from our Advisory panel, updating our website and seeking further public input.
- Additional research to clarify some of the relative costs and benefits of actions. We want to add a table containing all of the recommended actions, with at least a rough estimate of financial impacts and impact on greenhouse gas reductions.

- We are still working on setting reduction targets and measures. Establishing an emissions reduction target for a forecast year is an important milestone in the process of climate action planning.

We'll talk more about next steps when we present it to the full Council, but as we discussed, we hope that the Climate Action Plan that we present will serve as the foundation for a climate-related goal for the next City Council and for integration into updates of the 2020 Vision Statement, the Comprehensive Plan, and other city plans and policies.

Again, thank you for the interest and support you showed in this effort and we look forward to working with the new USC and the new council to implement this Climate Action Plan.

Climate Action Plan Task Force

Julie Arrington	Marys Peak Group—Sierra Club
Zach Baker	Member at Large
Dan Blaustein-Rejto	Member at Large
Glencora Borradaile	Member at Large
Claudia Keith	League of Women Voters
Linda Lovett	Corvallis Sustainability Coalition
Annette Mills	League of Women Voters
Kris Paul	350 Corvallis
Marge Stevens	First United Methodist Church Natural Step Ministry

Day, Emely

Subject: Testimony for Dec 3rd Administrative Services Committee on the Open Carry Ordinance City Council meeting.

-----Original Message-----

From: Frank

Sent: Wednesday, December 03, 2014 12:11 AM

To: Holzworth, Carla

Subject: Testimony for Dec 3rd Administrative Services Committee on the Open Carry Ordinance City Council meeting.

Please Ms. Holzworth, include the following text as testimony for the Dec 3rd Administrative Services Committee meeting, for the Open Carry Ordinance.

Thank You,
Frank DeMonte

Dear Councilors,

A city ordinance to band the 2nd Amendment civil right would be as wrong as any city ordinance to ban any other civil right.

I have twice before provided testimony at two public hearings against this proposed city ordinance. I wish to continue to register my opposition and reiterate that I think that this should and will be challenged. I believe that this will cost the city money.

I will not argue the merits of this or other any civil right, simply because they are all guaranteed, to everyone, regardless of color, sex or orientation. They are guaranteed regardless of whether you, I or someone else agrees with those rights. You cannot draw a box around Corvallis and edit which rights apply here. This will be met with legal challenges and with legal protests. The city will have to expend valuable resources in court trying to argue that it, in fact can edit the Bill of Rights within its borders.

Its enforcement is very problematic. It makes it highly probable that law enforcement could violate other rights and police officers will have to walk a razor's edge to not draw lawsuits.

You cannot do a head count on which civil rights are popular. This country has had many sad examples of entire communities and even states, editing civil rights to a local popular list of "good" and "bad" rights.

Popularity NEVER makes it legal or morally right to do so. I never thought Corvallis would become such a place that listened to such ideas from certain individuals.

And this is not about good intentions which must never be a consideration to be weighed. You cannot restrict civil rights on the basis of someone's belief in their own good intent, even if you agree with their intentions. You and they do not have that power. Local groups of people must never have the power to limit civil rights.

The people, who want the city to ascribe to their personal list of good and bad rights, should go through the legal process to amend the U.S.

Constitution to remove whatever Amendments they are having personal issues with. Only that would give them and the city the legal authority to do what they are asking you to do right now. Without that authority it is wrong to deny any civil right. It will and should be challenged.

Sincerely
Frank DeMonte
Ward 8

Corvallis OR

16 November 2014

From: Leah Bolger

To: Mayor Julie Manning and the Corvallis City Council, Councilors-Elect Barbara Bull and Bill Glassmire

Subject: Corvallis Open Carry Ordinance

Dear Mayor and Corvallis City Councilors,

I was in attendance at the 3 November City Council meeting and participated in the community discussion about the proposed ordinance regarding open-carry in Corvallis. I understand the conundrum you face. You want to be responsive to the concerns of the Corvallis public, yet you don't want to pass legislation that will not stand up to legal scrutiny, will almost certainly invite costly litigation, and may not be effective.

Though Corvallis may not be able to legally prohibit open-carry in the streets of its city, private businesses and organizations can, and some (like banks, hospitals, and churches) currently do. Federal buildings also prohibit weapons, and I believe that city and county officials have the prerogative to prohibit them from county and city buildings as well.

What I propose is a "Guns Are Not Welcome Here" campaign. The campaign would ask business owners to place stickers at their entrances that say, "Guns are not welcome in this establishment."

If enough private businesses prohibited access to their establishments, then gun-carriers won't be able to do anything except walk up and down the street. If some businesses DO welcome guns, then people can make informed decisions about which ones they feel comfortable in, and want to patronize. I was shocked to hear one man testify that he had openly-carried his gun into LaSells, Sunnyside Up, the Darkside, the Co-op and other local businesses that I also patronize. I believe that most local businesses want to create a comfortable, friendly, welcoming atmosphere in Corvallis, and they want their customers and patrons to feel safe. I for one would certainly patronize and promote those businesses that refuse the presence of weapons, and would avoid those who don't, and I believe there are many others who feel the same way. Just as we promote shopping local, we can also promote shopping gun-free.

The next step in my proposal would be to call a meeting with representatives of the City Council, CIBA, the Chamber of Commerce, the Downtown Corvallis Association, the City Attorney, representatives of entities that already prohibit guns, and the police to discuss the proposal. Specifically my proposal includes:

- a. Asking local businesses to display a sticker in their windows saying "Guns are not welcome in this establishment" or similar language

- b. Providing legal information to business owners to assuage any concerns they may have about their legal right to restrict the presence of guns in their establishment
- c. Providing training to employees of these businesses about responding to customers who do not heed the stickers
- d. Making all city and county buildings weapons-free
- e. Seeking active support for businesses who participate in the campaign

I know that this issue has been referred back to committee within the City Council, and that they will be considering some other options such as a public referendum. I suggest that my proposal is something that can be undertaken separately or in addition to, any other action the committee may recommend.

Here are three articles about open-carry issues in other states that I found shortly after the City Council meeting that you may find interesting.

<http://www.addictinginfo.org/2014/11/08/father-open-carries-into-school-the-school-boards-reaction-was-perfect/>

<http://www.freep.com/story/news/local/michigan/2014/11/08/huron-valley-schools-open-carry/18713015/>

http://www.huffingtonpost.com/2014/11/14/right-to-carry-laws-crime_n_6160414.html

I would like to organize the meeting I proposed as soon as possible. Is there someone on the Council who wishes to work with me to coordinate this meeting?

Sincerely,
Leah Bolger

Corvallis, OR 97333
leahbolger@

In the discussions on the issue of Open Carry in Corvallis, we have heard a number of people reference Oregon State and the City of Portland vs Jonathan D Christian, and how it has established Oregon Supreme Court precedent for ORS 166.173. I encourage the councilors to read the decision in whole. The issue before the court was an appeal by a man that had been charged with carrying loaded, concealed weapons in public, and the only issue in front of the Court in this case was an overbreadth challenge to the Portland statute and the state concealed carry statutes. Not once was ORS 166.173 mentioned in the case, and the supreme court found that the State and City of Portland had a right to restrict concealed carry, and because they had that right, a overbreadth challenge of the statute was not warranted. This agrees with the US Supreme Court in *Heller* that concealed carry is not the meaning of "to bear" found in the 2nd ammendment.

However, both the US Supreme Court and district courts have said that there is an individual right to own and bear arms, and that to bear means to carry on ones body for the purpose of self-defense. This has the effect of preserving Open Carry as the protected right, and I feel that Jonathan Meltzer from The Yale Law Journal states it better than I can....

This Note argues that *Heller* and *McDonald* leave little doubt that courts should engage in a historical analysis when examining the right to carry. Such a historical examination—guided by the sources, methodology, and logic of *Heller*—yields two important conclusions: (1) the Second Amendment guarantees a right to carry outside the home, and (2) it guarantees only a right to carry openly. While much of the history examined by the Supreme Court gives little indication of early understandings of the right to carry, the one set of sources consulted by the Court that speaks unequivocally on the right to carry—antebellum state supreme court cases—suggests that only the open carry of weapons is protected.

The Yale Law Journal

Jonathan Meltzer

Yale Law School, J.D. 2013;

Law Clerk, J. Harvie Wilkinson III,

United States Court of Appeals for the Fourth Circuit.

The history relied upon by the Supreme Court, particularly in *Heller*, and the way the Court reads the historical sources, compel two important conclusions about the right to carry weapons. First, the logic, interpretive choices, and dicta of *Heller* suggest that the right to keep and bear arms must extend beyond the home. Second, the right to carry weapons that is guaranteed by the Second Amendment is the right to carry weapons *openly*. Much of the history of the right to carry is difficult to decipher. Only one set of sources consulted by the Supreme Court speaks comprehensively and unequivocally on this question: antebellum state supreme court decisions. They find almost uniformly, in upholding state concealed weapons bans, that the right to keep and bear arms protects the right to carry weapons openly—and only openly—in self-defense.

The Yale Law Journal

Jonathan Meltzer

Yale Law School, J.D. 2013;

Law Clerk, J. Harvie Wilkinson III,

United States Court of Appeals for the Fourth Circuit.

I would like to note, that per the Chief of Police and the City Attorney, the city of Corvallis, even if it desired to pass this legislation could not enforce it in any meaningful way, and the only impact that it would have for the city is a negative one, drawing the City of Corvallis into expensive lawsuits that it can not afford to become embroiled in. For those reasons I am asking the city to take no issue on this legislation based on hate and intolerance, and to instead send a message to the community that we as a city value diversity and the civil rights of all of our citizens.

A new Corvallis ordinance mirroring the City of Portland does not grant police officers additional authority beyond that which exists today to investigate an "open carry" situation. Officers do not have the unilateral authority to stop, detain, question or search an individual because they have a firearm which can be observed by others in public. An officer must have reasonable suspicion (e.g. specific and objective articulable facts) that a crime is about to be committed, is being committed or was just committed, in order to exercise authority to intervene.

Nancy Brewer and Jim Brewer
Memorandum
Corvallis Police Department
September 29, 2014

The 4th Amendment of the United States of America Constitution grants the right of the people to be secure from unreasonable searches and seizures. Police officers who respond to unknown situations with people who "open carry" a firearm, do not have the unilateral authority to stop, detain and question or search any person because they have a firearm which the general public can observe. A Police officer must have "reasonable suspicion" that a crime or violation of law is about to occur, is occurring or just occurred in order to stop a person. A person who openly carries a firearm, in and of itself, is insufficient cause to stop a person.

James Patterson and Jim Brewer
Memorandum
Corvallis Police Department
July 1, 2014

The very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is really worth insisting upon. A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all.

US Supreme Court
Heller, 554 U.S. pg 62 and 63

The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes

US Supreme Court
Heller, 554 U.S. pg 1

Meaning of the Operative Clause. Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it "shall not be infringed." As we said in *United States v. Cruikshank*, 92 U. S. 542, 553 (1876), "[t]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second amendment declares that it shall not be infringed"

US Supreme Court
Heller, 554 U.S. pg 19

But the enshrinement of constitutional rights necessarily takes certain policy choices off the table.

US Supreme Court
Heller, 554 U.S. pg 64

Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation, where well-trained police forces provide personal security, and where gun violence is a serious problem. That is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct.

US Supreme Court
Heller, 554 U.S. pg 64

As the Court noted in Heller, "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad." Heller, 554 U.S. at 634-35

Palmer v DC
pg 10

As the court noted in Peruta, "[t]he Second Amendment secures the right not only to 'keep' arms but also to 'bear' them[,]" Peruta, 742 F.3d at 1151; and, as the Supreme Court explained in Heller, "[a]t the time of the founding, as now, to 'bear' meant to 'carry[,]" Heller, 554 U.S. at 584. "Yet, not 'carry' in the ordinary sense of 'convey[ing] or transport[ing]' an object, as one might carry groceries to the check-out counter or garments to the laundromat, but 'carry for a particular purpose confrontation.'" Peruta, 742 F.3d at 1151-52 (quoting [Heller, 554 U.S. at 584]). According to the Heller majority, the "natural meaning of 'bear arms'" was the one that Justice Ginsburg provided in her dissent in *Muscarello v. United States*, 524 U.S. 125 (1998), that is "'wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.'" Heller, 554 U.S. at 584 (quoting *Muscarello*, 524 U.S. at 143, 118 S. Ct. 1911) (Ginsburg, J., dissenting) (quoting *Black's Law Dictionary* 214 (6th ed. 1998)).

Palmer v DC
pg 11-12

Finally, "both Heller and McDonald identif[ied] the 'core component' of the right as self-defense, which necessarily 'take[s] place wherever [a] person happens to be, whether in a back alley or on the back deck.'" Peruta, 742 F.3d at 1153 (citing Moore, 702 F.3d at 937 ("To confine the right to be armed to the home is to divorce the Second Amendment from the right of self-defense described in Heller and McDonald."))

Palmer v DC
pg 12-13

Furthermore, as the court in Peruta correctly pointed out, "with Heller on the books, the Second Amendment's original meaning is now settled in at least two relevant respects." Peruta, 742 F.3d at 1155. "First, Heller clarifies that the keeping and bearing of arms is, and has always been, an individual right. *Id.* (citing [Heller], 554 U.S. at 616, 128 S. Ct. 2783). "Second, the right is, and has always been, oriented to the end of self-defense." *Id.* (citation omitted). After an exhaustive summary of the text and history of the Second Amendment, the Ninth Circuit in Peruta concluded that "the carrying of an operable handgun outside the home for the lawful purpose of self-defense, though subject to traditional restrictions, constitutes 'bear[ing] Arms' within the meaning of the Second Amendment." Peruta, 742 F.3d at 1166.

Palmer v DC
pg 14

Furthermore, this injunction prohibits the District from completely banning the carrying of handguns in public for self-defense by otherwise qualified non-residents based solely on the fact that they are not residents of the District.

Palmer v DC
pg 16-17

Section 4. Responsibility to All People. The City shall exercise its power to ensure the equal protection, treatment, and representation of all persons without discrimination including, but not limited to, age, citizenship status, color, familial status, gender identity or expression, marital status, mental disability, national origin, physical disability, race, religion, religious observance, sex, sexual orientation, and source or level of income. Corvallis is a community that honors diversity and diverse interests, and aspires to be free of prejudice, bigotry, and hate.

Corvallis City Charter

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

US Bill of Rights
Second Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

US Bill of Rights
Fourth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fourteenth Amendment
Section 1

Section 9. Unreasonable searches or seizures. No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.—

Oregon State Constitution
Article 1 -- Bill of Rights

Section 27. Right to bear arms; military subordinate to civil power. The people shall have the right to bear arms for the defence [sic] of themselves, and the State, but the Military shall be kept in strict subordination to the civil power[.]

Oregon State Constitution
Article 1 -- Bill of Rights

166.170¹

State preemption

(1) Except as expressly authorized by state statute, the authority to regulate in any matter whatsoever the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition, is vested solely in the Legislative Assembly.

(2) Except as expressly authorized by state statute, no county, city or other municipal corporation or district may enact civil or criminal ordinances, including but not limited to zoning ordinances, to regulate, restrict or prohibit the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition. Ordinances that are contrary to this subsection are void. [1995 s.s. c.1 §1]

166.173¹

Authority of city or county to regulate possession of loaded firearms in public places

(1) A city or county may adopt ordinances to regulate, restrict or prohibit the possession of loaded firearms in public places as defined in ORS 161.015 (General definitions).

(2) Ordinances adopted under subsection (1) of this section do not apply to or affect:

(a) A law enforcement officer in the performance of official duty.

(b) A member of the military in the performance of official duty.

(c) A person licensed to carry a concealed handgun.

(d) A person authorized to possess a loaded firearm while in or on a public building or court facility under ORS 166.370 (Possession of firearm or dangerous weapon in public building or court facility).

(e) An employee of the United States Department of Agriculture, acting within the scope of employment, who possesses a loaded firearm in the course of the lawful taking of wildlife. [1995 s.s. c.1 §4; 1999 c.782 §8; 2009 c.556 §3]

Thank you,
Carl Price

City of Corvallis
 Administrative Services Committee

*Continued Discussion of Livability
 Code Provisions: Exterior Elements*

December 3, 2014

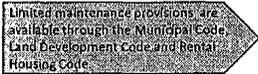
The Maintenance Gap



*New Construction/
Permitted Alterations*



Declaration of a Dangerous Building



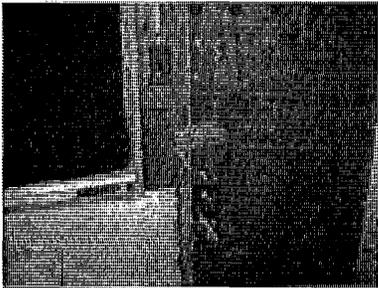
Fire Safety

Current: Provisions of state and local Fire Codes pertain primarily to triplex and larger residential structures; however, OFC Chapter 11 provides for the maintenance of ingress and egress paths of travel in all existing buildings. The Rental Housing Code requires smoke detectors in all rental units, including one- and two-family structures

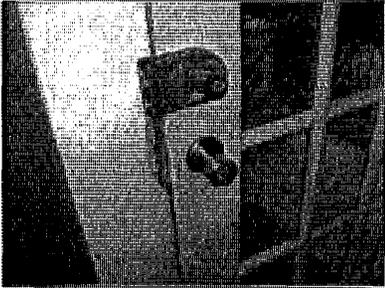
Gap: There are no maintenance standards for door locks that are operable without keys or special knowledge from the egress side of a doorway, for maintenance of emergency escape openings, or for maintenance of fire-resistant surfaces and assemblies in one- and two-family structures.

Resolution: Adopt specific code language requiring clear, unobstructed paths of travel for the purpose of safe ingress/egress in all structure types; provision of door locks that are operable from the egress side without keys or special knowledge; maintenance of emergency escape openings and fire-resistant surfaces and assemblies in all structure types.

General Code Gap Example: Fire Safety



General Code Gap Example: Fire Safety



General Code Gap Example: Fire Safety



**General Code Gap Example:
Fire Safety**



Occupancy Limits

Current: The Land Development Code stipulates by its definition of family that not more than five unrelated adults may occupy a dwelling unit.

Gap: While the number of unrelated adults in a dwelling unit is limited, there are no standards that specify how much space each must have for sleeping, eating or living. In addition, the definition of "dwelling unit" varies between the Land Development Code and the Rental Housing Code.

Resolution: To implement more effective occupancy limits and address overcrowding and the neighborhood impacts that may stem from that condition, adopt standards for minimum square footage allocation requirements to establish maximum occupancy of a dwelling unit in residential rental occupancy types. Examples of such standards can be found in both the International Building Code and the International Property Maintenance Code. Further, implementation of a single livability code and set of administrative provisions (detailed discussion to follow) would bring a consistent definition to the term "dwelling unit" as that term is applied for purposes of livability code compliance.

**Occupancy Limits
IPMC Standards Example for Rentals**

Example minimum space requirements for habitable areas include:

- Habitable rooms to be a minimum of 7 feet in any direction;
- Bedrooms to be a minimum of 70 square feet; additional space required if more than two occupants;
- Living rooms (excludes kitchens and bedrooms) to be a minimum of 120 square feet.

General Maintenance

Current: Building codes prescribe methods and materials for the construction and alteration of structures, and for establishing approved occupancy of a space, but do not require maintenance of structures following completion or alteration.

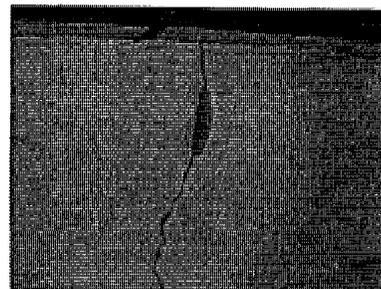
Gap: With no code provisions for the maintenance of structures, the first opportunity the City has to address conditions of decay does not occur until a building or some element thereof must be deemed dangerous and unfit for occupancy.

Resolution: Develop and implement maintenance standards for all occupancy and structure types to prevent a structure's decay to the point that it must be deemed dangerous. Potential areas of focus for such standards were included in the Exterior Conditions discussion package prepared for ASC's November 19 meeting.

**General Code Gap Example:
General Maintenance**



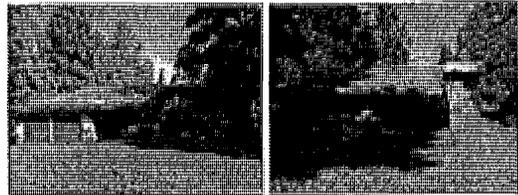
**General Code Gap Example:
General Maintenance**



**General Code Gap Example:
*General Maintenance***



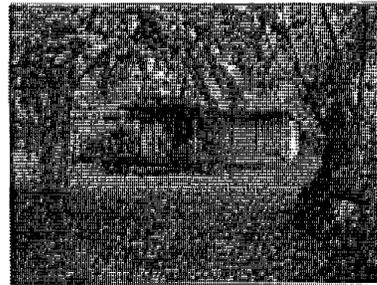
**General Code Gap Example:
*General Maintenance***



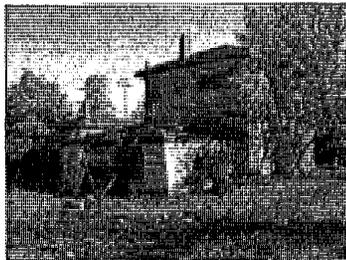
**General Code Gap Example:
*General Maintenance***



**General Code Gap Example:
*General Maintenance***



**General Code Gap Example:
*General Maintenance***



**General Code Gap Example:
*General Maintenance***



Administration

Current: Each of the three codes with livability compliance elements (Municipal Code, Land Development Code and Rental Housing Code) has its own administrative provisions (e.g., the means by which the code is implemented and efforts to gain compliance are carried out).

Gap: Inconsistencies exist among the three codes in regard to notices, compliance actions, penalties, appeals processes, and in the case of the Rental Housing Code, a requirement that a complainant contact the property owner/manager prior to filing a complaint with the City. Implementing three codes with separate sets of administrative provisions may result in a compliance process that is difficult for community members to understand, and that is relatively complex for City staff to administer.

Resolution: Integrating the City's livability code elements into a single code document, with one set of administrative provisions, would simplify compliance work for both staff and the community.

Administration *Areas for Potential Code Alignment*

Areas of inconsistency in administration between Municipal Code, Land Development Code and Rental Housing Code:

- Definitions
- Inspection and determination of violations
- Notices of violation
- Penalties for noncompliance
- Appeals

Administration

Contemplated Compliance Protocols

- Operate on a complaint vs. inspection basis; do not accept anonymous complaints but within legal limits, honor requests for confidentiality
- Residential rental units to be subject to interior and exterior standards; all other property types subject to exterior standards
- Suggest, but not require that tenants address issues directly with their landlord before filing a complaint
- Investigations limited to the scope of a complaint unless life/safety issues are identified during the investigation process
- Compliance achieved through a series of notices with response and action times based on the severity of the violation
- Progressive enforcement approach to be developed for application in cases of failure to achieve compliance
- All appeals to be heard by the City's Board of Appeals

City of Corvallis Administrative Services Committee

*Continued Discussion of Livability
Code Provisions: Exterior Elements*

December 3, 2014