

**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 articulable subjective and objective facts 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" could be interpreted to include 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

**HUMAN SERVICES COMMITTEE
SCHEDULED ITEMS**

Attachment 1

July 3, 2014

MEETING DATE	AGENDA ITEM
July 8	<ul style="list-style-type: none"> • Corvallis Farmers' Market Annual Report • Open Carry of Weapons
July 22	<ul style="list-style-type: none"> • Parks and Recreation Draft Master Plan Recommendation to Relocate Senior Center • Council Policy Review and Recommendation: <ul style="list-style-type: none"> • 99-4.14, "Use of City Hall Plaza and Kiosk"
August 5	
August 19	
September 2	<ul style="list-style-type: none"> • Social Services Semi-Annual Report
September 16	<ul style="list-style-type: none"> • Council Policy Review and Recommendation: <ul style="list-style-type: none"> • 93-4.11, "Public Library Policy for Selecting and Discarding Materials" • Rental Housing Program Annual Report
October 7	
October 21	
November 4	<ul style="list-style-type: none"> • Council Policy Review and Recommendation: <ul style="list-style-type: none"> • 95-4.08, "Code of Conduct on Library Premises"
November 18	
December 2	<ul style="list-style-type: none"> • 2015-2016 Social Services Priorities and Calendar • Council Policy Reviews and Recommendations: <ul style="list-style-type: none"> • 91-1.03, "Naming of Public Facilities and Lands" • 91-4.01, "Guidelines for Selling in Parks"
December 16	

HSC PENDING ITEMS

- | | |
|---|-----------------------|
| <ul style="list-style-type: none"> • Municipal Code Review: Chapter 5.01, "City Park Regulations" (Alcoholic Beverages in Parks) | Parks & Recreation |
| <ul style="list-style-type: none"> • Municipal Code Review: Chapter 9.02, "Rental Housing Code" | Community Development |
| <ul style="list-style-type: none"> • OSU/City Collaboration Project Recommendations (Action Items 4-1, 4-3, 4-4, 5-1) | Community Development |

Regular Meeting Date and Location:

Tuesday of Council week, 2:00 pm – Madison Avenue Meeting Room