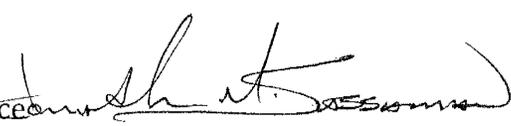


Memorandum  
Corvallis Police Department  
September 29, 2014

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. 2<sup>nd</sup> 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).

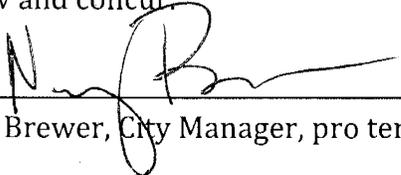
A new Corvallis ordinance mirroring the City of Portland does not grant police officers additional authority beyond that which exists today to investigate an "open carry" situation. Officers do not have the unilateral authority to stop, detain, question or search an individual because they have a firearm 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:

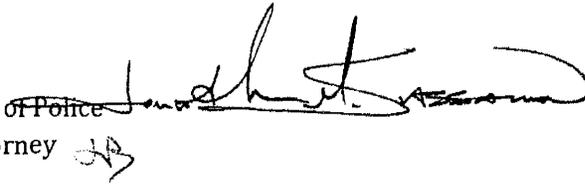
1. "Open Carry" of firearms in public staff report dated July 1, 2014
2. Minutes from July 8, 2014 HSC meeting.
3. Draft ordinance

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 2<sup>nd</sup> 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 2<sup>nd</sup> 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.

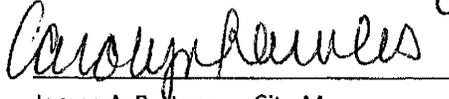
The 4<sup>th</sup> Amendment of the United States of America Constitution grants the right of the people to be secure from unreasonable searches and seizures. Police officers who respond to unknown situations with people who "open-carry" a firearm, do not have the unilateral authority to stop, detain 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

*AIC  
cm*

Review and concur:



Jim Brewer, City Attorney

1

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COUNCIL REQUESTS

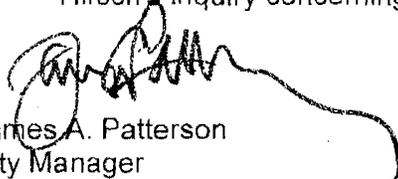
FOLLOW-UP REPORT

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.

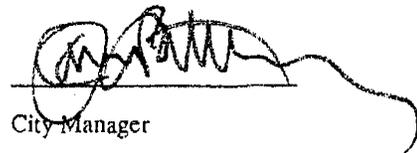
(Ord. 2010-21 § 2, 10/18/2010; Ord. 82-77 § 111.03, 1982) (Ord. 2002-19 § 3, 06/17/2002)

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

## 2<sup>nd</sup> 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."*



## 2<sup>nd</sup> Amendment of the Constitution of the United States

- Ratified in 1791. Until recently, it was undecided if the 2<sup>nd</sup> 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 2<sup>nd</sup> 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.

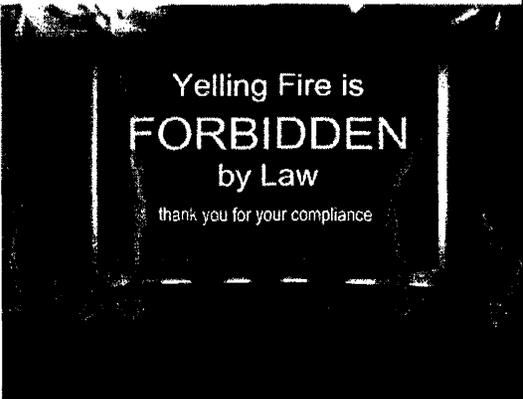
US Supreme Court 2010:  
McDonald v. Chicago

- 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 2<sup>nd</sup> 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.

2<sup>nd</sup> 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**

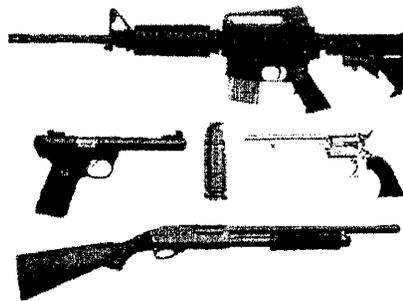
Example: the freedom of speech does not allow a citizen to yell “FIRE!” in a crowded theater when there is not a fire.



Yelling Fire is  
**FORBIDDEN**  
by Law  
thank you for your compliance

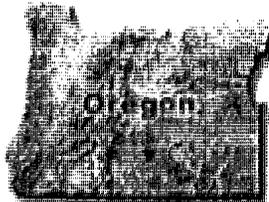
## 2<sup>nd</sup> Amendment of the Constitution of the United States

- **Final Assessment on 2<sup>nd</sup> 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

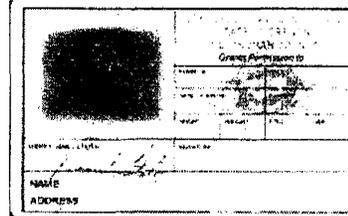
## State v. Christian

354 OR 22, 307 P3d 429 (2013)

- Ordinance challenged as violating face of US 2<sup>nd</sup> 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.

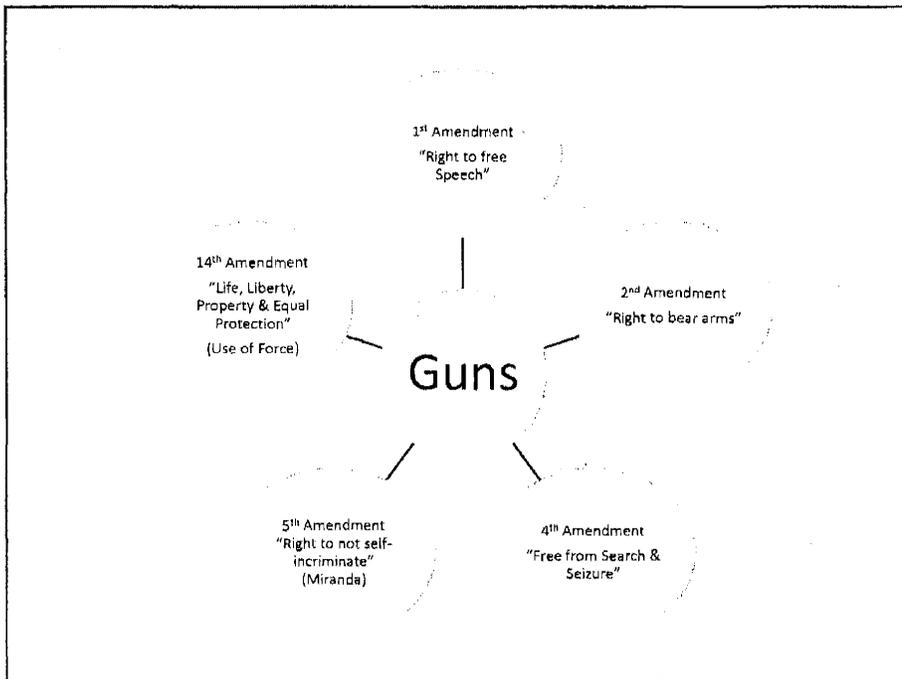
## CHL Holders

- 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 (cmts are not public bldgs)	No	No	No	Yes, unless judge says no	No
Public Buildings (specific list) <i>Officer may inspect firearm per 286.380</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 – <i>normally okay, but could be restricted, so check postings and with a ranger</i>	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
# of Firearm Arrest cases	15	11	6	6
# of Open-Carry calls for service	4	1	3	2
# of CHL's in Benton County	2,921			

**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

**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.