

**HUMAN SERVICES COMMITTEE
MINUTES
October 7, 2014**

Present

Councilor Bruce Sorte, Chair
Councilor Mike Beilstein
Councilor Penny York

Staff

Nancy Brewer, City Manager *Pro Tem*
Karen Emery, Parks & Recreation Director
Steve DeGhetto, Parks & Recreation Assist. Dir.
Jon Sassaman, Police Chief
Jim Brewer, Deputy City Attorney
Carrie Mullens, City Manager's Office

Visitors

Robert Leff	Elizabeth Kohler
Charles Ippoliti	Jeanie Mason
Mike Wiener	Matthew MacClary
Loerna Simpson	Derek Barclay
Carolina Amadar	Carl Price
Anne White	Jeremy Anderson
Judy Gordon	Jeff Ford
Deborah Correa	David Erwin
Ron Highburger	Larene Long
Andrew Beck	John Carone

SUMMARY OF DISCUSSION

	Agenda Item	Info Only	Held for Further Review	Recommendations
I.	Majestic Theatre	Yes		Consider options one and two during the November 3 City Council meeting after receiving endowment fund information from staff.
II.	Open Carry of Firearms		Oct. 21	
III.	Other Business	Yes		

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

Councilor Sorte reported that written testimony was received from:

- Robert Leff related to the Majestic Theatre (Attachment 1).
- Frank DeMonte related to open carry (Attachment 2).
- Caroline Amador related to open carry (Attachment 3).

CONTENT OF DISCUSSION

I. Majestic Theatre

Ms. Emery introduced Majestic Theatre Management (MTM) Board members, including Chair Deborah Correa.

Ms. Correa said the MTM Board manages the Theatre for the City. MTM has had three executive directors in four years. Managing the Theatre with a voluntary board is not effective and the MTM Board believes it would be a greater benefit to turn the management over to the City. MTM has a small staff with limited resources. MTM has struggled with internal operations and providing a good infrastructure for staff, accounting, and other functions that larger organizations offer. She encouraged Council to consider what they want from a performing arts center.

Ms. Emery reported that since the staff report was drafted, she and Mr. DeGhetto have met with more than 20 people to explore options and gather opinions. Several more interviews are scheduled during the next two weeks. Two consistent messages were heard throughout the interviews:

- The Majestic Theatre is a precious gem, has great potential, and is an important asset to the community.
- The Parks and Recreation Department (Department) should manage the Theatre for a minimum of two years to discover its potential, assess the best management structure, and determine future direction.

Ms. Emery noted that the meeting materials included a written statement from the Arts and Culture Commission (ACC) who support bringing Theatre operations into the City. She added that two unsolicited proposals to contractually manage the Theatre were received by the Department.

The staff report includes four options for consideration:

1. Solicit requests for proposals (RFP) for contracting Theatre operations.
2. The Department operates the Theatre.
3. Mothball the Theatre.
4. Sell the Theatre.

Ms. Emery said staff recommends option two for a minimum of two years. During the two years, staff would implement cost recovery, including the development of alternative revenue through donations, sponsorships, and partnerships; implement elements of the five-year business plan created by MTM; develop a robust theatre-education program; revitalize community theatre; and maximize rental and room use.

In response to Councilor York's inquiry, Ms. Emery said two years is a realistic time frame to assess what can/cannot be accomplished, build trust in the community, and develop a donorship base that is required for the longevity of the Theatre. At the end of the two year time period, staff will be able to articulate next steps which could include requesting RFPs for Theatre management, continued operations by the Department for another two years to become cost effective, or other options.

Ms. Correa added that the Theatre has contracted renters and programming through July 2015. A plan for the following season needs to be developed soon.

Councilor Beilstein said he is concerned about the cost to the City if the Department takes over operations. He noted that the City is considering spending funds to internally operate the Theatre. The City could have invested those resources in MTM instead and the high turn-over of MTM executive directors might not have occurred. He is unsure whether the City operating the theatre is the best option and he requested additional information about the two offers. Councilor Beilstein opined that the Theatre does not have the ability to survive in this environment due to the small audience base. If the City wants to keep this amenity, it must be supported beyond providing building maintenance/upgrades and what can be generated by donors and ticket sales. The Theatre is a value to the citizens and the City should support the management function.

Chair Sorte said he is unaware of any entertainment venue operated by a city or county on a reliable, extended basis. Ms. Emery clarified that the Eugene Hult Center is a city operated facility.

Ms. Emery confirmed that two separate groups have volunteered to operate the Theatre. Proposals were not solicited by staff. If Council decides to pursue a contractual agreement for theatre management, an official RFP process will be conducted.

Robert Leff read from his written testimony in support of keeping the Theatre as a performing arts center in Corvallis (Attachment 1).

In response to Councilor Beilstein's inquiry, Mr. Leff said the City should review the proposals received and a meeting should be held to gather input from Council, Department staff, and citizens. Before the formation of MTM, the Theatre was under City management. He is unsure whether the Department is the best option. Managing a theatre is different than operating a park or swimming pool.

Charles Ippoliti, Corvallis Community Theatre (CCT) Board President, testified in support of options one and two, with the exception that a theatre manager be hired in option two instead of an executive director. He opined that it is unnecessary to spend large amounts of money to bring in talent from outside of Corvallis and to actively exclude local theatre groups. If Council decides to turn over operations to the Department, CCT recommends an advisory board with representatives from arts, business, and community relations to solicit donations and active participation. He acknowledged that CCT is one of the two organizations that submitted a proposal to the Department.

Mr. Ippoliti responded to several inquiries posed by Councilor Beilstein:

- MTM took on CCT's assets and financial obligations.
- Barry Kerr worked directly for MTM. When he left, MTM finances were stable.
- The ACC could be the advisory board; however, theatre and music people provide different aspects of performing arts.
- A theatre manager should operate the theatre and not look beyond the community for entertainment.
- If the City operates the Theatre, a manager should still be hired and could be paid less than an executive director.

Councilor York said, after talking with the arts community, she understands that a technical manager is needed more than an executive director. A technical manager understands a facility's assets and limitations which results in better solicitation of bookings that fit the facility.

Mr. Ippoliti responded that the advisory board could help the manager solicit volunteers, donations, and/or theatre companies for facility rental.

Mike Wiener announced that he was hired by Corey Pearlstein to rebrand the Theatre. Being paid through a contract, and not volunteering services, is what funded his small arts supply shop to grow as a downtown business and become a meeting place for artists, venue for community art events, and sponsor of public art (his business recently closed). Mr. Wiener said after the rebranding, younger people began attending shows

and patronizing downtown establishments before and after events. Music venues brought in a different audience and events appealed to a wider group of residents. The Theatre was busy and events were frequently scheduled, not just four times a year for local productions. The programming hired and promoted talent from outside of the Corvallis community. As a citizen, former downtown retail business owner, and local contractor providing services for other businesses, Mr. Wiener opined that more activity is better. The Department has a vast number of facilities and they do a good job managing those rentals; however, utilizing the Theatre strictly as a rental hall does not result in a performing arts center and downtown activity citizens desire. It is hard to survive in Corvallis as an arts venue due to the low ratio of arts program donors to the number of non-profit arts programs. He encouraged the City to contract the facility to a private organization that can bring talent from outside of the community and provide something fun to do in downtown Corvallis.

Councilor Beilstein said a private organization would need to rely on ticket sales to survive. He inquired whether it is possible to maintain a high level of activity and maintain a profit.

Mr. Wiener agreed that it is a risk to spend money to bring in talent. Rental space remains available if an outside organization is hired. The City needs to be clear about the expectations of using the facility for classes and other opportunities without excluding one type of an event for another.

Councilor York said the Theatre only seats 300 and does not have high-end technology. The potential to make a profit, even with a full house, is not great.

Mr. Wiener responded that there are groups who know how to market and promote a 300-seat venue to make a profit. It results in a business and not City-operated property.

Anne White, MTM Board Treasurer, supports option two. She said operating a theatre is different than operating a small community theatre non-profit organization. She explained that the model to operate the Theatre as a rental facility and event venue provides a place for the community to present performances. During the 1990s, the Theatre operated primarily as a rental and was almost self-sustaining. The risks were taken by the people who presented the performances. Over the last 10 to 15 years, the MTM Board and executive directors tried producing and brought in big-ticket venues. Residents are not used to paying high ticket prices for events held in Corvallis. This model is not working. Enthusiasm needs to be regenerated and the City needs to decide what they want for the Theatre. She supports creating an advisory board if the City operates the Theatre.

Councilor Beilstein said his preference is to have a high level of activity at the Theatre. In response to his inquiry, Ms. White said she supports the Department operating the Theatre for a couple of years with the assistance of an advisory board while discussions are held to decide the future of the Theatre.

Judy Gordon said with more time and research she can offer other options for the Theatre. She can acquire impact analysis studies that would include employment

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 Pediatricians 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 "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.

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.

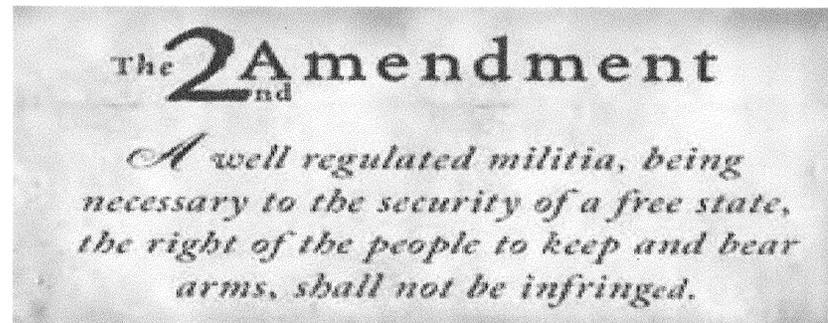
"to be lawful, a Terry stop 'must be supported at least by a reasonable and articulable suspicion that the person seized is engaged in criminal activity'. Reid v Georgia, 448 U.S. 438, 440 (1980) The level of suspicion must be a 'particularized and objective basis for suspecting the particular person 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.

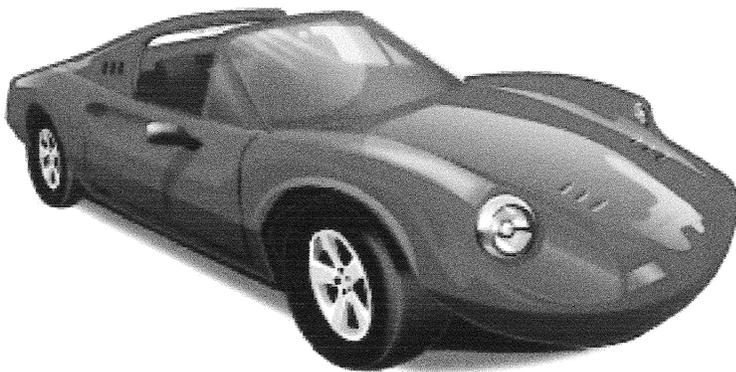
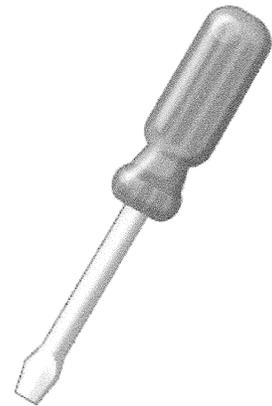
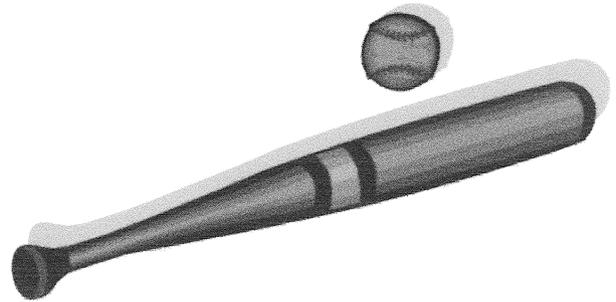
Corvallis is sitting at a tipping point. We as a city have prided ourselves on being a diverse and tolerant community. Today, you have before you an ordinance that will violate individual's civil rights. Today, you have an ordinance not of diversity and tolerance, but of hate and intolerance. I urge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



TOOLS



For Good or Evil

Restraining Order

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

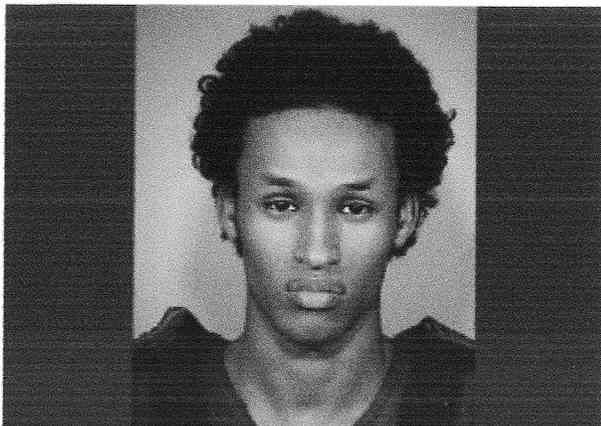
Items seen in Cornwallis
Proudly displayed by
military families.



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 person 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