

My Name is

O. J. Mitchell

19330 NW Savie Is Rd

PORTLAND OR

I WISH TO TESTIFY ON

TOPIC #3

Sand Lake - Man made

Andrew Jordan -  
1600 S.W. Cedar Hills Blvd.  
97225

Josselman

O.J. Mitchell  
19330 N.W. Summit Island  
Rd.

At some point, you  
Need to read the  
title of the ordinances.

Date 12-19-89

NAME

Herb Brown

ADDRESS

1546 SE. 138 Ave.

Street

Portland

City

97233

Zip

I wish to speak on Agenda Item #

1-PUD

Subject

✓ FOR

AGAINST

Date 12-19-89

NAME

Frank Teahart

ADDRESS

2103 NE 24<sup>th</sup> Ct.

Street

Loesham

City

On

97030

Zip

I wish to speak on Agenda Item # 1

Subject

~~Bob~~ Rhoad PHD

X

FOR

AGAINST

NAME

Ruth Spetter

Date 12/20

ADDRESS

Street

City

Zip

I wish to speak on Agenda Item #

Subject

FOR

✓ AGAINST

✓

12/19/89

Carol Canning  
13838 NW. Revere Dr.  
Portland, Ore. 97231

Periodic Review

3

Date 12/19/89

NAME

M Jane Michaelson

ADDRESS

14200 NW Riverview Drive

Street

Portland  
City

OR

97231

Zip

I wish to speak on Agenda Item #

Subject

Periodic Review

\_\_\_\_ FOR

\_\_\_\_ AGAINST



Date \_\_\_\_\_

NAME

Anna Vasil

ADDRESS

14110 N.W. Riverview Dr.

Street

Port

Or

92231

City

Zip

I wish to speak on Agenda Item

# Paradise River

Subject

FOR

AGAINST

4

Date 12/19/89

NAME

George Souder

ADDRESS

16618 N.W. Skyline Blvd

Street

Portland OR

City

97231

Zip

I wish to speak on Agenda Item #

Subject

Periodic Review

\_\_\_\_ FOR

\_\_\_\_ AGAINST

Date

12/19/89

NAME

Jim Sjulín

ADDRESS

PORTLAND PARKS

1120 SW 5th #502

Street

PORTLAND, OR

97204

City

Zip

NO AGENDA AVAILABLE

I wish to speak on Agenda Item #

Subject WILDLIFE CORRIDOR

FOR

AGAINST

Date

12/19

NAME

JAMES D. THAYER

ADDRESS

2135 NW 107<sup>th</sup> PL.

Street

Portland

City

OR

Zip

I wish to speak on Agenda Item #

4

Subject

☒

FOR

☐

AGAINST

NAME

Heribernick  
Paul Heribernick

Date

ADDRESS

1200 Bank of California Tower

Street

PDX

City

97205

Zip

rep. Mr. Raymond Smith

I wish to speak on Agenda Item #

Subject

Mineral + Agave

FOR

AGAINST

227-5560

NAME

Molly O'Reilly

Date

ADDRESS

1414 NW 53RD DR

Street

Portland

City

97210

Zip

I wish to speak on Agenda Item #

4

Subject

☒

FOR

☐ AGAINST

NAME

Paul Ketchum

Date

12-19

ADDRESS

534 SW 3rd

Street

Portland OR

City

Zip

I wish to speak on Agenda Item #

Periodic Review

Subject

FOR

AGAINST

Semin Planner - 1000 Friends

Date 12/19/89

NAME

JIM WEIGAND

ADDRESS

2835 SE 49

Street

PORTLAND

City

Zip

I wish to speak on Agenda Item #

Periodic Review

Subject

✓ FOR

       AGAINST

Portland Audubon



Date 12-19

NAME

Lynn Keys

ADDRESS

37746 SE Rickert Road

Street

Corbett

OR

97019

City

Zip

I wish to speak on Agenda Item #

C1-88

Subject

Mining & Aggregate

FOR

X

AGAINST

Howard Canyon site

12.19.89  
Date \_\_\_\_\_

NAME DONNA MATRAZZO

ADDRESS 19300 NW Souvie Island Rd.

Street

PORTLAND

City

97231

Zip

I wish to speak on Agenda Item # \_\_\_\_\_

Subject \_\_\_\_\_

X FOR

AGAINST

ELIMINATING GOLF COURSES AS A CONDITIONAL  
USE IN BFU ZONES

NAME

ANDREW JORDAN

Date 12/19

ADDRESS

1600 SW Cedar Hills Blvd

Street  
Portland

City

97225

Zip

I wish to speak on Agenda Item #

Subject

Periodic Review

FOR

✓ AGAINST

Rep. Anzell Bros.

12-19-89

Date

NAME

Dave Runkel

ADDRESS

20801 NW Rieder Rd

Street

Portland,

OR

City

97231

Zip

I wish to speak on Agenda Item #

1

Subject Golf Courses on EFU

FOR

X

AGAINST

NAME

Barbara Walker

Date

12/19/88

ADDRESS

1906 SW Edgewood Rd  
Street  
Portland, OR 97201  
City Zip

I wish to speak on Agenda Item #

Subject

Wildlife  
Corridor

X FOR

\_\_\_\_ AGAINST

12-19-89  
Date \_\_\_\_\_

NAME

JACK SANDERS

ADDRESS

14986 NW Mill Road

Street

Portland

City

OR

97231

Zip

I wish to speak on Agenda Item # C-188

Subject Periodic Review

\_\_\_\_ FOR

X AGAINST

Bridgeview Moorage

12/19/89  
Date

NAME

Peter F Fry

ADDRESS

123 NE Littlepage

Street

Corbett OR 97019

City

Zip

I wish to speak on Agenda Item #

C1-88

Subject

Mining + Haggagale

FOR

X

AGAINST

Planning Commission, but speaking as individual

NAME

Michael BAMA

Date 12-9

ADDRESS

37737 SE Howard Cyn Rd

Street

City

Corbett, OR 97019

Zip

I wish to speak on Agenda Item #

Subject

FOR

☒ AGAINST



10A  
NAME

Lee Strickland

Date

12-19

ADDRESS

1331 SE Newland

Street

Trousdale

97060

City

Zip

I wish to speak on Agenda Item  
Subject

#

municipal extraction

FOR

☒ AGAINST

left

Date 12/19

NAME

Ross Senske

ADDRESS

37601 E Krietiem Rd

Street

Corbett

City

97019

Zip

I wish to speak on Agenda Item # \_\_\_\_\_

Subject \_\_\_\_\_

\_\_\_\_ FOR

~~X~~

AGAINST

Date 12/19

NAME

Michael R. Beyer

ADDRESS

37638 E. Knieken Rd

Corbett

Street

City

99209

Zip

I wish to speak on Agenda Item #

Subject

       FOR

X AGAINST



# MULTNOMAH COUNTY OREGON

BOARD OF COUNTY COMMISSIONERS  
ROOM 605, COUNTY COURTHOUSE  
1021 S.W. FOURTH AVENUE  
PORTLAND, OREGON 97204

GLADYS McCOY • CHAIR • 248-3308  
PAULINE ANDERSON • DISTRICT 1 • 248-5220  
GRETCHEN KAFOURY • DISTRICT 2 • 248-5219  
RICK BAUMAN • DISTRICT 3 • 248-5217  
SHARRON KELLEY • DISTRICT 4 • 248-5213  
JANE McGARVIN • Clerk • 248-3277

AGENDA OF  
MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS  
FOR THE WEEK OF  
December 18 - 22, 1989

Monday, December 18, 1989 - 7:00 PM - Gun Safety Ordinance  
David Douglas Performing Arts Center  
1400 SE 130th . . . . . Page 2

Tuesday, December 19, 1989 - 9:30 AM - Formal and  
Planning Items . . . Page 3

Tuesday, December 19, 1989 - 1:30 PM - Informal Meeting . . Page 4

Thursday, December 21, 1989 - 9:30 AM - Gun Safety Ordinance  
World Trade Center Auditorium  
121 SW Salmon  
Portland . . . . . Page 5

1:30 PM - Formal . . . . . Page 6

-2-

Monday, December 18, 1989 - 7:00 PM

David Douglas Performing Arts Center  
1400 SE 130th

Continued First Reading - An Ordinance to regulate the possession of firearms in public places, to establish a safety training course for firearms users and to impose fees

Tuesday, December 19, 1989 - 9:30 AM

Multnomah County Courthouse, Room 602

1. Continued Public Hearing on the boundaries of the proposed Rockwood Water Peoples Utility District

\* \* \* \* \*

C 1-88 PERIODIC REVIEW

2. Resolution In the Matter of Submitting to the State the County's Local Review Order under ORS 197.640 (C 1-88)
3. First Reading - An Ordinance amending Multnomah County Comprehensive Framework Plan to comply with the Periodic Review requirements of the Oregon Department of Land Conservation and Development
4. First Reading - An Ordinance amending Multnomah County Code Chapter 11.05 to comply with the Periodic Review requirements of the Oregon Department of Land Conservation and Development
5. First Reading - An Ordinance amending Multnomah County Code Chapter 11.15 and selected Sectional Zoning Maps to comply with the Periodic Review requirements of the Oregon Department of Land Conservation and Development
6. First Reading - An Ordinance amending Multnomah County Code Chapter 11.45 to comply with the Periodic Review requirements of the Oregon Department of Land Conservation and Development

-4-

Tuesday, December 19, 1989 - 1:30 PM

Multnomah County Courthouse, Room 602

INFORMAL

1. Informal Review of Formal Agenda of December 21
2. Briefing concerning the 1989 Legislative Report Summary -  
Fred Neal

PUBLIC TESTIMONY WILL NOT BE TAKEN AT INFORMAL MEETINGS .

NOTE CHANGE OF LOCATION

9:30 AM

WORLD TRADE CENTER AUDITORIUM  
121 SW SALMON  
PORTLAND, OREGON

ORDINANCES - NONDEPARTMENTAL

- R-1 Continued First Reading - An Ordinance to regulate the possession of firearms in public places, to establish a safety training course for firearms users and to impose fees

\* \* \* \* \*

Thursday, December 21, 1989, 1:30 PM

Multnomah County Courthouse, Room 602

Formal Agenda

CONSENT CALENDAR

DEPARTMENT OF JUSTICE SERVICES

- C-2 Liquor License Renewal applications submitted by Sheriff's Office with recommendation that same be approved as follows:  
a) Package Store - Super Market Express, 16100 SE Stark; Portland City Florist and Catering, 13607 SE Powell  
b) Retail Malt Beverage - Velvet Keg, 12131 SE Holgate

REGULAR AGENDA

BOARD OF COUNTY COMMISSIONERS

- R-3 In the matter of the appointment of Luana Shipp and Laura Woodruff to the Community Health Council, term expiring June, 1992
- R-4 In the matter of the appointment of Thomas Mason and Marc Sussman to the Community Corrections Advisory Committee, terms expiring July, 1992



- R-5 In the matter of the appointment of Martha J. White to the Portland Multnomah Commission on Aging, term expiring June, 1990
- R-6 In the matter of the appointment and reappointments to the Integrated Pest Management Advisory Committee:  
Appointment: Bruce A. Nelson, term expiring July, 1992.  
Reappointments: Dr. David Dunnette, Marua Doherty, Albert J. Warren, Dr. David G. Adams, and David Reggiani, terms expiring July, 1992

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-7 Order in the Matter of Offering to Surrender Jurisdiction to the City of Portland all County Roads within the areas annexed to the City of Portland between January 1, 1989, and June 30, 1989
- R-8 Order in the matter of the Conveyance to the City of Portland Various One (1) Foot Strips (Street Plugs) and Road Fund Related Property adjacent to Former County Roads Previously Surrendered to the City of Portland Owned by the County, Item 88-164 (And Bargain and Sale Deed)
- R-9 Request approval of private sale of Tax Foreclosed property as provided by ORS 275.200 of LOMA ACRES, Exc S 62' & Exc N 70' of E 147' of Lot 7, located north of 747 SE 148th Ave.
- R-10 Notice of Intent to apply for a \$300,000 grant from the Oregon Department of Fish and Wildlife by the Parks Services Division, to be used for the construction of Chinook Landing Boating Facility on the Columbia River

DEPARTMENT OF GENERAL SERVICES

- R-11 Resolution in the matter of the approving of the issuance and negotiated sale of \$4,100,000 Series 1989B Taxable Certificates of Participation; approving and authorizing the Certificate Purchase Agreement, the Lease-Purchase and Escrow Agreement, and the Preliminary Official Statement and Official Statement; and designating an Authorized Officer
- R-12 Budget Modification DGS #8 making an appropriation transfer in the amount of \$19,643 from General Fund Contingency to Assessment & Taxation (Tax Collection/Information Section), establishing one position of Finance Specialist 1, with funding being offset by revenue the County will receive from HB 2338

- R-13 Budget Modification DGS #9 making an appropriation transfer in the amount of \$200,000 from Data Processing Fund Contingency to Information Services, Capital Equipment, for the purchase of an upgrade to the County's existing Central Processing Unit (CPU)

DEPARTMENT OF HUMAN SERVICES

- R-14 In the matter of ratification of an Intergovernmental Agreement with the 6255th United States Army Reserve Dental Service Detachment, whereby reserve personnel will provide dental service to County prisoners at Corrections Health Clinic
- R-15 In the matter of ratification of an Intergovernmental Agreement between Tri-Met and Developmental Disabilities Program Office, for transportation services for Multnomah County residents only, for period July 1, 1989 to June 30, 1990
- R-16 In the matter of ratification of an Intergovernmental Agreement with the Regional Research Institute at Portland State University for \$41,873 and Aging Services, for evaluation of two demonstration projects (The Oregon Partners in Energy Chronic Arrearages Project funded by the State Community Services, and the Homeless Family Self Sufficiency Project funded by the U.S. Department of Health and Human Services), for period July 1, 1989 to June 30, 1990
- R-17 In the matter of ratification of 3 Intergovernmental Agreements to the State Community Services Contract, adding a total of \$188,894 to the County's omnibus contract, for period October 31, 1989 to June 30, 1990
- R-18 In the matter of ratification of an Intergovernmental Agreements with a) Gresham Elementary School, and b) Barlow-Gresham Union High School, to reimburse the County for performing semi-annual inspections of food service operations until August 31, 1991
- R-19 In the matter of ratification of an Intergovernmental Agreement amendment between Alcohol Treatment and Training Center, OHSU, and Multnomah County Alcohol and Drug Program Office, to pay for interpreter for hearing impaired DUII clients, for period July 1, 1989 to June 30, 1990

- R-20 Budget Modification DHS #25 making an appropriation transfer in the amount of \$2,400 within Juvenile Justice from Materials & Services to Capital Outlay, for the purchase of a Wang Word Processing System upgrade
- R-21 Budget Modification DHS #26 making appropriation adjustments for net total of \$40,460 in the Social Services (Children's Clinical Services) budget, reflecting actual program operating costs, and making adjustments in Personnel, related Materials & Services, telephone and building management line items

DEPARTMENT OF JUSTICE SERVICES

- R-22 Budget Modification DJS #12 reflecting additional revenues in the amount of \$117,562 (ROCN Anti Drug Grant) and \$39,188 (Equitable Sharing) to the the District Attorney's Office, to apprehend and prosecute drug offenders

Thursday Meetings of the Multnomah County Board of Commissioners are recorded and can be seen at the following times:

Thursday, 10:00 PM, Channel 11 for East and West side subscribers

Friday, 6:00 PM, Channel 27 for Paragon Cable (Multnomah East) subscribers

Saturday 12:00 PM, Channel 21 for East Portland and East County subscribers

PUBLIC SPEAKERS/GUN SAFETY ORDINANCE HEARINGS

12/7/89 & 12/18/89

NICK ALBRECHT

DONALD G. ALLEN

STEVE BACH

ROGER D. BACON

HAROLD BANGS

DON BARTON

BOB BELL \*

MARCEL BENDSHADLER

SHERMAN BISHOP

JIM BLEAKLEY

DEWALD BOSWELL

JON SCOTT BRADFELD

PAUL D. CARRIER

DANA CARTER

CLIFFORD CHENEY \*

CHARLES F. CLARK

ROBERT COGGBURN

PATRICK CONLEY

JEFF CONNOR

ALLEN COOK

KATHRYN COOK

RICHARD A. COW<sup>8</sup>ER

RALPH DAWSON

DAVID DEMARKEY

BILL DICKSON  
STEPHEN DONNELL  
DARRELL DURFEY  
BOB ENRIGHT  
AUGIE ENRIQUEZ \*  
CHUCK FOLEY  
BRUCE FORBUSH  
CHRIS FURROW  
DENNIS GELFAND  
ROBERT A. GEORGE \*  
KEN GLASS \*  
ROBERT GRAHAM \*  
JIM GUTHRIE  
BILL HENDRIX  
ALFRED S. HERRING  
JERRY HOFFMAN  
JOHN A. HOSFORD  
CLARENCE KOENNECKE  
MARTIN KOCHAN  
ANNA KROUT  
STEVE LAVALLEY  
JOHN LEBRUN  
PAUL LISAC \*  
CLEE LLOYD  
CHARLES LOKEY  
L. H. LONDON  
ERNEST E. MCWHORTER

LARRY MCQUAIN  
PATRICK MARSON  
CLINT MARTINDALE  
WALTER J. MILFORD  
BILL MONTGOMERY \*  
TED MORFORD  
THOMAS MOSER \*  
DUKE NEWBY  
WILLIAM H. NEWHOUSE  
JOHN NICHOLS  
LEWIS NOREN  
CHARLES OAKES  
ROBERT ORTH  
GREGORY PEKRUL  
MOLLIE PETERS  
JON PETERSON  
LADDIE POLANEK  
DOUG RENFROW  
EARL RHEA  
RONALD L. RICHERT  
RUTH ROBINSON  
JOHN SAEMANN  
CRAIG SCHIMSCHOK  
WALLACE SCHMIDT  
JACK L. SMITH  
JULIE STERLING  
WARD C. STEVENS

JOAN E. STOVALL \*

SHAWN SUTTON \*

WAYNE SWANSON

JOHN SWEENEY

MARLIN E. TERRY

BUDDY TILLMAN

JESS M. TOWNSEND

RICK TUNISON

SCOTT VALLANCE

MIKE VLISS

DAVID R. WAGONER

RALPH WATSON

RODGER WEHAGE

LOUISE WEIDLICH

BRIAN WHEELER

LEWIS WHITE

GREG WHITON \*

TYE WOOD

DEXTER ZINKE

0717C.1  
12/19/89

2  
NAME

DAN Koch

Date 12-21

ADDRESS

3065 NE 67th

Street

Port

City

97213

Zip

I wish to speak on Agenda Item #

Subject

Gun Control

FOR

☒ AGAINST



Support

Opposed

||||

||||

||||

||||

||||

||||

1

1

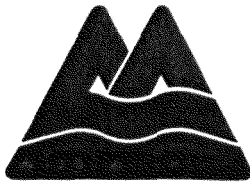
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16

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16

32 total



# MULTNOMAH COUNTY OREGON

FILE  
COPY

OFFICE OF COUNTY COUNSEL  
1120 S.W. FIFTH AVENUE, SUITE 1530  
P.O. BOX 849  
PORTLAND, OREGON 97207-0849  
(503) 248-3138

BOARD OF COUNTY COMMISSIONERS  
GLADYS McCOY, CHAIR  
PAULINE ANDERSON  
RICK BAUMAN  
GRETCHEN KAFOURY

## MEMORANDUM

TO: Gladys McCoy  
Multnomah County Chair

FROM: Larry Kressel  
County Counsel (106/1530)

DATE: December 6, 1989

RE: Proposed Gun Control Ordinance

COUNTY COUNSEL  
LAURENCE KRESSEL  
CHIEF ASSISTANT  
ARMINDA J. BROWN

ASSISTANTS  
JOHN L. DU BAY  
SANDRA N. DUFFY  
J. MICHAEL DOYLE  
H. H. LAZENBY, JR.  
PAUL G. MACKAY  
MARK B. WILLIAMS

MULTNOMAH COUNTY  
OREGON  
DEC 13 PM 2:46

The Board has scheduled a first reading of a gun control ordinance for December 7, 1989. You have asked me to review the legal issues.

### I. The Ordinance

The proposed ordinance has four key components: (1) restrictions on possession of assault weapons in public places (Section IV), (2) training in firearm safety (Section V), (3) fees for certain weapon permits and background checks (Section VI), and (4) general requirements for possession of firearms in public places (a broader category that includes "assault weapons") (Section VII).

The legal issues will be discussed below, after an overview of the principles that guide the discussion.

### II. Legal Principles

The County's power to enact ordinances is subject to constitutional and statutory limits. In the gun control area, the limitations are found in Article I, Section 27 of the state

Gladys McCoy  
December 6, 1989  
Page 2

constitution<sup>1/</sup> and 1989 Oregon Laws Chapter 839 (the so-called "Katz Bill").<sup>2/</sup> Conflicts between a proposed local enactment concerning weapons possession and these authorities would be resolved against the local measure. See e.g., State v. Kessler, 289 Or 359, 614 P2d 94 (1980) (statute on weapons possession in conflict with Article I, Section 27 and therefore invalid); City of La Grande v. PERB, 281 Or 137, 576 P2d 1204, 284 Or 173, 586 P2d 765 (1978) (generally, a conflict between a regulatory statute and a local ordinance is resolved in favor of statute). See also, State v. Dollarhide, 300 Or 490, 714 P2d 220 (1986) (court will assume Legislature meant to displace local ordinances on same subject as criminal statutes).

A. Article I Section 27

The Oregon Constitution protects individual rights to possess arms for self defense as well as defense of the state. The "arms" referred to in the state constitution are those hand carried weapons commonly used in colonial times (and their modern day equivalents) for self defense and defense of the state. Government cannot ban possession of such weapons, but can enact reasonable regulations over the manner of possessing them, the intent with which they are carried, the use to which they may be put and the status of a person (e.g., ex-convict) that results in forbidding his possession of a weapon.

Article I, Section 21 of the Oregon Constitution provides:

The people shall have the right to bear arms for the defence (sic) of themselves, and the State, but the military shall be in strict subordination to the civil power.

---

<sup>1/</sup> The Second Amendment to the U.S. Constitution also contains a provision on the "right to bear arms". However, the text of the provision is quite different from the Oregon Constitution, focusing on the right of states to maintain a "well regulated militia." The leading case reads the provision to restrict the power of the national government and to grant power to states to maintain state militias. Unlike the Oregon Constitution, the federal document does not protect individual right to bear arms in self defense. See Quilici v. Village of Morton Grove, 695 F 2d291, cert den 464 U.S. 863 (1982).

<sup>2/</sup> This memorandum does not consider federal statutory limits, as time did not permit research into that area.

Gladys McCoy  
December 6, 1989  
Page 3

In contrast to the parallel federal provision, Article I, Section 27 expressly authorizes the citizenry to bear arms for self defense as well as defense of the state. State v. Kessler, 289 Or 359, 614 P2d 94 (1980). In construing the state constitution, the Supreme Court has taken careful note of its historical roots in the constitutions of other states. In the Kessler case, the court pointed out that

It is generally recognized that \* \* \* the right to bear arms had its origin in the fear of the American colonists of a standing army and its use to oppress the people, and in their attachment to a militia composed of all able-bodied men. Probably the necessity of self protection in a frontier society also was a factor. 289 Or at 366.

The court added that

When the constitutional drafters referred to an individual's "right to bear arms", the arms used by the militia and for personal protection were basically the same weapons. Modern weapons used exclusively by the military are not 'arms' which are commonly possessed by individuals for defense, therefore, the term 'arms' in the constitution does not include such weapons. Id.

Kessler and the other cases summarized below apply the above-mentioned historical standard to various laws restricting weapons possession. The cases invalidate laws that prohibit mere possession of the types of weapons (and their modern day equivalents) covered by the state constitution. The cases also advise that state and local governments have some regulatory powers in this area. Specifically, government has the power to impose conditions on the manner of possession, the intent with which weapons are carried, the uses to which they may be put and the types of persons (e.g., convicted felons) who may be barred from possession.

State v. Kessler, *supra*, involved the constitutionality of ORS 166.510(1) (possession of a slugging weapon). The defendant was convicted for keeping two "billy clubs" in his apartment. The Supreme Court threw out the conviction under Article I, Section 27:

Gladys McCoy  
December 6, 1989  
Page 4

Our historical analysis of Article I Section 27 indicates that the drafters intended 'arms' to include the hand-carried weapons commonly used by individuals for personal defense. The club is an effective, hand carried weapon which cannot logically be excluded from this term. We hold that the defendant's possession of a billy club in his home is protected by Article I Section 27, of the Oregon Constitution. 289 Or at 372.

Kessler was followed by State v. Blocker, 291 Or 255, 630 P2d 824 (1981). Defendant kept a billy club on the floor of his car and was convicted of violating ORS 166.510(1) (possession of a billy club or blackjack). The Supreme Court again invalidated the conviction, dismissing the argument that the constitution protects only the right to keep self defense weapons at home, as opposed to public places. The court stated:

The text of the constitution is not so limited; the language is not qualified as to place except in the sense that it can have no effect beyond the geographical borders of this state. 291 Or at 259.

At the same time, the court added

What we said in Kessler, and iterate here, seems to raise concerns on the part of the state which we believe to be groundless. Our decision in neither case goes to the question of permissible legislative regulation of the manner of possession or regulation of the use of the billy. Id.

Blocker was followed by State v. Boyce, 61 Or App 662, 658 P2d 577 (1983) rev den 295 Or 122. Defendant was convicted of violating a Portland Ordinance making it unlawful for any person in a public place to carry a loaded firearm. He relied on Blocker to support a constitutional attack on the conviction. However, the Court of Appeals distinguished the case from Blocker as follows:

The most important distinction between Blocker and this case is that the statute in Blocker and Kessler and the ordinance here are fundamentally different. The

statute, ORS 166.510(1), proscribed the 'mere possession' of certain weapons, and that was the characteristic that made it unconstitutional. The Portland Ordinance, on the other hand, does not proscribe the mere possession of anything. Under it, an individual may possess both a firearm and ammunition. He may even possess a loaded firearm, so long as he is not in a public place. In a public place, he may possess both a firearm and ammunition, so long as the ammunition is not in the chamber, cylinder, clip or magazine.

\* \* \*

The ordinance does regulate the manner of possession, something that Kessler and Blocker both recognize as permissible when the regulation is reasonable. In fulfilling its obligation to protect the health, safety and welfare of its citizens, a government body must sometimes pass legislation that touches upon a right guaranteed by the state or federal constitution. Such an encroachment is permissible when the unrestricted exercise of the right poses a clear threat to the 'interests and welfare of the public in general (citation omitted) and the means chosen by the government body do not unreasonably interfere with the right.

\* \* \*Portland has identified a need to protect its citizens from the hazards that are created when people are permitted to roam free with loaded guns at their sides. The City's assessment was reasonable, and it chose a permissibly limited form of intrusion on the right. 61 Or App at 665-66.

Finally, in State v. Delgado, 298 Or 395, 692 P2d 610 (1984), defendant was convicted under ORS 166.510 for having a switchblade knife in his back pocket. The court rejected the state's argument that defendant had no constitutional protection because a switchblade is an "offensive" rather than a "defensive" weapon. The court found historical roots for

Gladys McCoy  
December 6, 1989  
Page 6

modern switchblades in weapons used for personal defense during the revolutionary and post revolutionary era. However, the court took pains to state that its decision

\* \* \* does not mean individuals have an unfettered right to possess or use constitutionally protected arms in any way they please. The legislature may, if it chooses to do so, regulate possession and use. \* \* \* The problem here is that ORS 166.510(1) absolutely proscribes the mere possession or carrying of such arms. This the constitution does not permit." 298 Or at 404.

In Delgado, the Court illustrated the regulatory power of the state by noting that, for example, the state can criminalize possession of a concealable firearm by an ex-convict. See State v. Robinson, 217 Or 612, 619, 343 P2d 886(1959).

B. 1989 Oregon Laws Chapter 839 (effective January 1, 1990)

The constitutional limit on local regulatory power has been supplemented by state gun control legislation. A 1989 law (1989 Or Laws ch. 839) enacts various restrictions on the acquisition and possession of weapons. In ambiguous language, it also limits local regulatory power. Section 38 of the Act states

Except as otherwise provided by law, cities, counties and other political subdivisions of this state may regulate only the possession of firearms and ammunition in a public place, as defined in ORS 161.015.

It must be kept in mind that, in addition to the limitation on local regulations quoted above, other portions of Chapter 839 enact policies with which local measures cannot conflict. Thus, it is important to consider the 1989 statute in its entirety, not merely to focus on the limitation in section 38.

The 1989 statute is lengthy and complex. It has several key components.

1. Handgun Sales

Purchases of handguns from dealers<sup>3/</sup> are subjected to background checks by local and state authorities to determine if the purchaser is disqualified by law from ownership. The purchase cannot be completed if the purchaser is under 18, has a felony conviction or outstanding felony arrest warrants, is on pretrial release, has been found mentally incompetent, or has been convicted of a misdemeanor involving violence. The background check is not required if the purchaser has a concealed weapons license. (Section 3, below)

2. Firearm Sales

The 1989 law also makes it unlawful to sell "firearms"<sup>4/</sup> to persons who would be disqualified under the above criteria from purchasing a handgun. However, the law does not require background checks or delay acquisition of a firearm. The burden is on the dealer to ascertain whether the purchaser is qualified. A one year study is to be conducted by the state police to determine if rifles, shotguns or other long guns (all of which are "firearms") are being sold to disqualified persons.

3. Concealed Handgun License

Under the 1989 law, county sheriffs are required to issue concealed handgun licenses to persons who meet certain criteria. The criteria are stricter than those listed above for the sale of a handgun.

A concealed handgun license must be issued if the applicant is at least 21, resides in the county, has no outstanding warrants for arrest, is not on pretrial release,

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<sup>3/</sup> By referring to a federal law, the state statute covers persons who deal in firearms as a "regular course of trade or business" for profit; it does not cover occasional sales or hobby sales. See 18 USC § 921.

<sup>4/</sup> The state law broadly defines "firearm" as any weapon "designed to expel a projectile by the action of smokeless powder and which is readily capable of use as a weapon."



demonstrates competence with a handgun, has never been convicted of a felony, has not been convicted of any misdemeanor within the four years preceding the application, has not been committed to the Mental Health Division within four years prior to the effective date of the 1989 statute, has not been prohibited from possessing a firearm as a result of mental illness, and is not listed on the Health Division registry established by law.

In addition, a sheriff may deny a license to an applicant the sheriff has reasonable grounds to believe is reasonably likely to be dangerous to himself or others.

The 1989 statute exempts sheriffs from liability for lawful performance of licensing duties and provides for informal judicial review of refusals to grant licenses, license revocations, and dealers' refusals to sell firearms.

#### 4. Local Regulations

Under Chapter 839, localities "may regulate only the possession of firearms and ammunition in a public place, as defined in ORS 161.015." "Public place" is broadly defined:

'Public place' means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation.

### III. Analysis of Proposed Ordinance

As already stated, the proposed ordinance is multifaceted. The interplay between the proposal and the constitutional and statutory laws discussed above is complex. Too late, the following legal problems have been identified (others may surface during public hearings).

A. Restriction on Possession of Assault Weapons

1. The Permit Requirement

Neither the constitution nor the statute bar a local permit requirement per se. However, the principles already discussed do impose limits. One such limit is that a local measure may not conflict with a statute. Here, there appears to be a conflict.

Section IV of the ordinance establishes criteria for issuance of an assault weapons permit. The criteria resemble those in the state law concerning licensure for a concealed handgun (e.g., under 21, no outstanding arrests, not dangerous to self or others, competent to handle weapon). As already stated, those criteria are stricter than the statutory criteria for possession of a "firearm" a term that includes an assault weapon. Thus, the county ordinance may be viewed as disallowing (at least in a public place) what the state law would allow.

In response to such a criticism, we could rely on the language in section 38 contemplating local restrictions on possession. However, a court would be unlikely to interpret that provision to allow a direct conflict with another portion of the state law. City of Portland v. Dollarhide, 300 Or 490, 714 P2d 220 (1986).

The legal issue would not be eliminated by revising the permit criteria to directly square with the statutory criteria for possession of a firearm. It could be argued the legislature chose to require a background check only for handgun purchases; a local measure to screen for eligibility to possess a firearm (assault weapon), even if limited to "possession in public places" might not have been intended. The legislative history might answer this, but our research to date has not been fruitful on the issue.

Apart from the above problems, it is worth considering the liability issues that may be presented under the permit system of the ordinance. Unlike the state legislature, the county cannot exempt its officials from liability for wrongful performance of duty. Allowance of a permit to an ineligible applicant could result in county liability. Whether this risk is worth taking is a policy judgement for the County Commission.

2. Allowable Purposes for Possessing An Assault Weapon

The proposed ordinance limits the purposes for which one may possess an assault weapon in a public place. A permittee may possess such a weapon in a public place only while en route (1) to the permittee's residence, business or other property, or property of another with the owner's consent, (2) to a target range of a club or a gallery licensed for target practice, or (3) to an exhibition, display or education project about firearms, sponsored by an official agency fostering education about firearms. See Section IV D.

Apart from the obvious enforcement problems presented by this scheme, I perceive a possible constitutional objection. As noted, the constitution allows possession of arms for self defense. Although government may impose reasonable restrictions on the right (such as regulating whether a weapon is loaded or concealed), the restrictions in the ordinance may go too far. They seem not to coincide with the idea of possession of a weapon for self defense.

Finally, it should be noted that the ordinance also prohibits possession of an assault weapon in a public place for purposes of sale. Section IV E. Given the broad statutory definition of public place, the ordinance seems to ban commercial sales of all assault weapons (a business would seem to fall within the definition of "public place" in ORS 161.015(9)). If that is so, the ordinance might violate the state constitution and the 1989 state law. Revising it to ban the sale of assault weapons in publicly owned buildings would avoid the problem.

3. Regulations on Possessing Firearms

Section VII of the proposed ordinance regulates possession of all firearms (not just assault weapons) in public places, effective January 1, 1991. Firearms must be unloaded.<sup>5/</sup> The person in possession must carry a certificate of participation in the county's firearms safety training course. If the type of gun requires a permit (e.g., assault weapons permit), the permit must be carried.

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<sup>5/</sup> The authority of government to proscribe possession of loaded firearms in public places is clear; this should not be a significant legal problem if raised in a court challenge.

Gladys McCoy  
December 6, 1989  
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The ordinance adds that for firearms purchased after January 1, 1991, the possessor must have proof the firearm was purchased from a federally licensed dealer.

Several legal issues are presented by this portion of the ordinance.

First, it may be argued that the state constitution does not permit government to restrict the right to carry arms to only those who pass a safety course. However, the cases discussed above would seem to allow such a reasonable restriction. State law incorporates a restriction of this type, though it is more limited (competence in using a handgun is required for a concealed handgun license.)

At the same time, it should be recognized that no reported Oregon case addresses a gun safety requirement. The cases discussed previously sanction reasonable regulations over the manner of possession, the intent of the possessor, uses to which weapons may be put and the status of gun possessors.

Apart from the possible constitutional problem, there may be a claim that the 1989 statute does not allow this type of local restriction. The legislature chose to closely regulate handguns, requiring proof of competency for those seeking concealed handgun licenses. The argument would be that the county ordinance restricts possession where the state allows it (no competence must be demonstrated under state law for possession of a firearm).

Although the statutory question cannot be answered with certainty, I believe this portion of the ordinance would withstand review, unless legislative history clearly supported the challengers. The statute seems to leave room for this sort of local regulation over possession, as opposed to acquisition, of firearms. (The statute does state that the one year study of the sale of rifles and other long guns "shall in no way alter the manner in which rifles, shotguns and other long guns are sold." ) 1989 Laws Chap 839 sec. 29.

Challenges might also be raised to the requirement in Section VII that firearms purchased after January 1, 1991 cannot be possessed in public unless they were purchased from a federally licensed dealer. At this writing, I am uncertain of the prerequisites for such licensure (promulgated by a federal agency).

Gladys McCoy  
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Constitutional and statutory objections might be stated. The constitutional issue would turn on whether the right to bear arms is unreasonably infringed by a limitation on the source of firearms. The answer would be negative, so long as the limitation carries out a valid governmental objective and does not prevent reasonable access to constitutionally protected weapons.

A stronger argument, though not a clearly correct one, would arise under the state statute. Section 38 of the statute seems to empower localities to regulate only the possession of firearms, not their acquisition. The section in question could be viewed as limiting acquisition (prohibiting possession unless weapon acquired from a certain source).

cc: Board of Commissioners  
Commissioner Pauline Anderson  
Commissioner Rick Bauman  
Commissioner Sharron Kelley  
Commissioner Gretchen Kafoury  
Sheriff Robert Skipper

Dec 21, 1989

Dear Commissioner Anderson:

I am a constituent. I am opposed to this safe streets ordinance, for these reasons.

Law abiding citizens must not be disarmed. This legislation will serve only to do just that, disarm law abiding citizens.

It will have no effect on crime or on criminals. Criminals will not sign-up to register firearms nor to get permits nor to comply in any way. Only law abiding resident citizens will do this.

I urge you, withdraw this unworthy proposed ordinance. You cannot afford to alienate the majority of us who stand ready to support and carry out any meaningful plan to reduce lawlessness and insure domestic tranquility.

Ernest A. Bearss  
1516 S.E. Glenwood St.  
Portland, 97202

Dec. 21, 1989

Gladys McCoy, Chairman  
Multnomah County Commission

Dear Commissioner:

I am concerned about your proposed Safe Streets Ordinance.

The proposed ordinance (first draft) contains several bookkeeping type errors which should be necessarily amended prior to passage. Because some of the errors should be obvious to any reader, I assume that you are holding many meetings and spending lots of time on a proposed ordinance which you have not even read. I suggest that you take out fifteen minutes and read it. It seems equally obvious that Laurence Kressel, County Counsel, who signed the draft, hasn't read it either. Please do not pass an ordinance which nobody has even read.

ERROR: (page 9)

Section VI, Subsection (B) MCC 5.10.425 says:

(A) Prior to January 1, 1990, the licensed dealer shall collect a \$40 fee.....

If this subsection (A) is to have any meaning, it must be amended prior to passage of the ordinance. If it is not amended, it will be past history by the time the ordinance goes into effect. If the intent of Subsection (A) is to collect fees during calendar year 1990, it should be amended to say so. As it is written in the 1st draft, Subsection (A) applies only to the few days left in calendar year 1989.

ANOTHER ERROR: (page 7)

SECTION IV, Subsection (C), (4), (b) says:

(b) After investigation, the Sheriff finds that the applicant does not pose a danger of harm self, others or to the community at large.

Before passing the ordinance, you should amend it so that it makes at least some kind of sense. One should not have to guess what it was supposed to have said.

ANOTHER ERROR: (page 4)

SECTION III, Subsection (B), (3) excludes from the definition of an "assault weapon" any handgun that is a revolver or conventional 18-shot semi-automatic pistol.

You've got to be kidding! There is no such thing as a conventional 18-shot semi-automatic pistol! Did you intend to call any semi-automatic pistol an "assault weapon" unless it held exactly 18 cartridges? Or was it intended to exclude the more common pistols which hold 6 or 7 or 8 or 9 cartridges. Whatever you intended it to say should be cleared up before you pass the ordinance.

ANOTHER ERROR: (page 6, last line on the page)

SECTION IV, Subsection (C), (3), (b) says;

(b) At the time application is made the Sheriff shall fingerprint and photograph the applicant and shall conduct an investigation necessary to corroborate that the applicant is qualified under subsection (E) of this section.

Subsection (E) says:

(E) Possession for the purpose of sale prohibited.

No person shall possess for purposes of sale an assault weapon in a public place.

What kind of qualification is this? Is he qualified if he possesses an assault weapon for sale? Is he qualified if he does not possess an assault weapon for sale? The poor sheriff is going to be very confused. Before passing the ordinance, it should be amended to say what the commission wants it to say, whatever that is. It does not do so now.



ANOTHER ERROR: (page 8)

SECTION V, Subsection (A) says:

(A) ....sheriff shall develop a firearms safety training course to be available to any person at no charge..

BUT--(page 3)

SECTION II, Subsection (L) says:

"....., it is in the best interest of the people of the county to impose and collect a fee from the persons directly served or affected by these laws."

The sheriff is going to be training a lot of persons "directly served by these laws" and according to (L) should impose and collect a fee. This fee according to (M) should reflect the actual cost of the training. How can he collect a fee from persons directly served by the training and at the same time provide the training at no cost? Obviously there is an internal conflict between the requirements made of the sheriff in the training SECTION V and the guidelines set forth in your findings SECTION II. This internal conflict in the ordinance should be clarified before the ordinance is passed.

RESPECTFULLY SUBMITTED,

*Charles R. Beiser*

Charles R. Beiser, Resident

DOUGLAS R. BERRY  
LEGAL ASSISTANT

BAUER, HERMANN, FOUNTAIN & RHOADES, P.C.

421 S.W. SIXTH AVE. • 1100 COMMONWEALTH BLDG. • PORTLAND, OR 97204

TELEPHONE (503) 223-6113

FAX (503) 274-7718

VOICE MAIL (503) 778-8093

THE FIRM EMPHASIZES GENERAL BUSINESS PRACTICE AND CIVIL TRIALS IN THE FOLLOWING AREAS: CORPORATE, BANKING AND FINANCE, REAL PROPERTY TRANSACTIONS AND FORECLOSURES, LAND USE, SECURITIES, BROKER-DEALER, INTELLECTUAL PROPERTY, COMPUTER LAW, MAJOR COLLECTIONS AND BANKRUPTCY, FRANCHISING, ESTATE PLANNING AND PROBATE, GOVERNMENT AND ADMINISTRATIVE LAW.

I AM INDEED GRATEFUL FOR THIS OPPORTUNITY TO SPEAK HERE TODAY. MY NAME IS DOUGLAS BERRY. I AM 29 YEARS OLD. I WORK AS A PARALEGAL IN A MID-SIZED LAW FIRM IN DOWNTOWN PORTLAND. I LIVE BY BROOKLYN PARK, JUST ACROSS THE ROSS ISLAND BRIDGE. I HAVE A SON THAT WILL TURN 6 ON JANUARY 2ND.

TODAY I WILL ATTEMPT TO PRESENT AN UNEMOTIONAL POINT OF VIEW ABOUT A VERY EMOTIONAL ISSUE. I WILL NOT SPEAK ABOUT THE CONSTITUTION. I WILL NOT ARGUE THE LEGITIMATE SPORTING AND RECREATIONAL USES OF FIREARMS. AND I WILL NOT CALL NAMES OR MAKE INFLAMMATORY ACCUSATIONS.

WHAT CONCERNS ME HERE TODAY IS THE SAFETY AND WELL-BEING OF MY FRIENDS AND MY FAMILY. DESPITE OUR DIFFERENCES, I THINK EVERYONE HERE IS SINCERELY CONCERNED ABOUT SAFEGUARDING THEIR LOVED ONES FROM THE AFFECTS OF CRIME. THE PROPOSED ORDINANCE WE ARE DISCUSSING HERE TODAY IS CALLED THE "SAFE STREETS ORDINANCE" I THINK THE WHOLE PURPOSE OF OUR EFFORTS IS TO REDUCE CRIME AND TO PROTECT THE PUBLIC FROM IT.

ALONG THESE LINES, I HAVE TWO POINTS TO MAKE. THE FIRST IS THAT LAWS AIMED AT REGULATING THE USE, TRANSFER AND POSSESSION OF FIREARMS, DO NOT REDUCE CRIME.

IN THE 1970'S, PRESIDENT JIMMY CARTER COMMISSIONED AN INDEPENDENT RESEARCH FIRM TO GIVE HIM THE DOCUMENTATION TO SUPPORT THE THEORY THAT GUN CONTROL LAWS DO, IN FACT, REDUCE CRIME. THOUSANDS OF TAX DOLLARS WERE SPENT TO AID PRESIDENT CARTER'S QUEST FOR FUEL TO AID HIM IN PASSING STRICT FIREARMS LEGISLATION.

THE PRESIDENT MUST HAVE BEEN A LITTLE DISAPPOINTED, EVEN SURPRISED BY THE FINDINGS. NOT ONLY DID THE COMMISSION FIND THAT GUN CONTROL LAWS DO NOT REDUCE CRIME, BUT JUST THE OPPOSITE. THIS RESPECTED FIRM FOUND THAT THE PASSAGE OF THESE GUN LAWS MAY EVEN CAUSE THE CRIME RATE TO INCREASE.

FOR A SIMPLE EXAMPLE, WASHINGTON HAS A 5 DAY WAITING PERIOD WHEN PURCHASING HANDGUNS, CALIFORNIA HAS A 15 DAY WAITING PERIOD AND OREGON'S WAITING PERIOD WILL JUMP FROM 5 TO 15 DAYS IN 2 WEEKS. SINCE THE INTRODUCTION OF THESE LAWS, HAS THE CRIME RATE SEEN A DECREASE? I THINK YOU'LL FIND THAT THE OPPOSITE IS TRUE.

THE CITIES IN AMERICA WITH THE HIGHEST RATES OF CRIME ALSO SEEM TO HAVE THE STRICTEST GUN CONTROL LAWS - WASHINGTON D.C., (WHERE THE POSSESSION OF HANDGUNS IS BANNED COMPLETELY); NEW YORK CITY (WHERE, AGAIN, POSSESSION OF HANDGUNS IS BANNED)... I DON'T BELIEVE THIS IS PURELY COINCIDENTAL.

MY SECOND POINT IS THAT THE LAWFUL USE, AND SOMETIMES THE MERE PRESENCE OF FIREARMS DO REDUCE CRIME.

NOTED CRIMINOLOGIST GARY KLECK OF FLORIDA STATE UNIVERSITY'S SCHOOL OF CRIMINOLOGY HAS RECENTLY COMPLETED A STUDY ENTITLED "CRIME CONTROL THROUGH THE PRIVATE USE OF ARMED FORCE". PROFESSOR KLECK'S RESEARCH ADVANCES THE HYPOTHESIS THAT "WHEN CITIZENS OWN AND USE GUNS TO DEFEND THEMSELVES, THE AMOUNT OF VIOLENT CRIME IS REDUCED TO A DEGREE THAT COULD RIVAL THE EFFECT OF THE CRIMINAL JUSTICE SYSTEM".

COMMISSIONERS, IF YOU WOULD PLEASE PAY PARTICULAR ATTENTION TO MR. KLECK'S NEXT WORDS: "GUNS ARE POTENTIALLY LETHAL WEAPONS, WHETHER WIELDED BY CRIMINALS OR CRIME VICTIMS. THEY ARE FRIGHTENING AND INTIMIDATING TO THOSE THEY ARE POINTED AT, WHETHER THESE BE PREDATORS OR THE PREYED UPON. GUNS THEREBY EMPOWER THOSE WHO WOULD USE THEM TO VICTIMIZE AND THOSE WHO WOULD USE THEM TO PREVENT THEIR VICTIMIZATION; CONSEQUENTLY, THEY ARE A SOURCE OF BOTH SOCIAL ORDER AND DISORDER, DEPENDING ON WHO USES THEM, JUST AS IS TRUE OF FORCE IN GENERAL. THE FAILURE TO FULLY RECOGNIZE THIS CAN LEAD TO GRAVE ERRORS IN DEVISING PUBLIC POLICY TO MINIMIZE VIOLENCE THROUGH GUN CONTROL".

A FEW YEARS AGO THE ORLANDO, FLORIDA, POLICE DEPARTMENT, BEING PLAGUED WITH AN EPIDEMIC OF RAPES, SPONSORED A HIGHLY PUBLICIZED COURSE IN HANDGUN SELF-DEFENSE FOR WOMEN. IN THE 9 MONTHS FOLLOWING THE PROGRAM, THERE WERE JUST 3 RAPES - A 90 PERCENT REDUCTION! THE GENERAL CRIME RATE ALSO DECREASED.

IN HIGHLAND PARK, MICHIGAN, MERCHANTS DEMANDED ACTION FROM POLICE IN THE WAKE OF A SERIES OF ARMED ROBBERIES AND MURDERS; THE POLICE RAN A HIGH-PROFILE FIREARMS TRAINING COURSE FOR STOREOWNERS. DURING THE 4 MONTHS PRIOR TO THE COURSE, THERE WERE 190 HOLDUPS. IN THE FOUR MONTHS FOLLOWING THE TRAINING, THERE WERE NONE.

HONORABLE COUNTY COMMISSIONERS, IF YOU TRULY WANT TO MAKE THE STREETS OF MULTNOMAH COUNTY SAFE, DO NOT PASS THIS ORDINANCE IN WHOLE OR ANY PART THEREOF. THIS ORDINANCE WILL NOT REDUCE CRIME. NO GUN CONTROL LAW EVER HAS. WE, THE HONEST, LAWFUL CITIZENS OF THIS COUNTY, DESERVE TO KEEP OUR RIGHT TO PROTECT OURSELVES. NOT ONLY IN OUR HOMES, BUT ON OUR STREETS AND IN THE UNINCORPORATED AREAS OF THIS COUNTY AS WELL. OUR SAFETY IS MORE AT JEOPARDY OUTSIDE THE CONFINES OF OUR HOMES THAN ANYWHERE ELSE.

H.B. 3470, THAT PASSED AS 1989 OREGON LAWS, 839, IS A GOOD, RESPONSIBLE LAW. IT AFFORDS THE POLICE ADEQUATE TIME FOR BACKGROUND CHECKS WHILE ALLOWING GOOD, DECENT PEOPLE THE ABILITY TO PROTECT THEMSELVES FROM CRIMINAL AGGRESSION IF NECESSARY.

PLEASE HEAR OUR WORDS. THANK YOU.

## Stop the spread of death

# U.S. needs gun control

"Right on!" will be the response of the majority of *Statesman-Journal* readers to the forthright editorial Jan. 19, deploring the weakness of our gun control laws, the widespread proliferation of deadly weapons, and their ready availability to dangerous individuals.

All advanced countries on this planet except the United States have strong gun control laws. In 1985, for example, it was reported that handguns killed 46 people in Japan, eight in Great Britain, 31 in Switzerland, five in Canada, 18 in Israel, five in Australia and 8,092 in the United States.

The gun lobby's recent victory in Congress against the Sarah Brady amendment, which mandated a seven-day waiting period for handgun purchases, borders on a national disgrace. According to Common Cause, between 1983 and July 1988, the National Rifle Association contributed \$1,167,908 to the political campaigns of members of Congress who voted against the amendment.

This is a tragic example of what a well-financed lobby can do to block desperately needed handgun control legislation desired by the majority of U.S. citizens, including ex-President Reagan, as shown by national polls.

As you have pointed out, the



Guest opinion

**Robert Y.  
Thornton**

time is long overdue for stronger and more effective weapons regulation at the city, county, state and national levels. Our elected officials must stand up to the vocal minority and enact stronger laws and ordinances.

Most U.S. citizens would favor a law banning guns such as the AK-47. The murder weapon was reportedly purchased in Sandy, Ore. and used in the recent massacre of school children in Stockton, Calif., by a man with a lengthy criminal record.

As to other weapons, particularly handguns, I support a law not banning them, but rather requiring the registration and licensing of such weapons and providing for confiscation and appropriate punishment for unlawful possession. Not only would such a measure increase public safety, it would give police and prosecutors a new tool for moving against armed criminals such as the drug-dealing

youth gangs now operating in many U.S. cities, including Portland.

Speaking of those gangs, I was appalled to read that more than 450 people were killed in gang warfare in Los Angeles County alone in 1988. Worse, every third victim was an innocent bystander!

Finally, a word about constitutional issues. As Lewis Powell, a retired U.S. Supreme Court justice, has pointedly observed, the federal Constitution does not guarantee to every citizen the unrestricted right to possess a handgun for his own private use.

With reference to the Constitution of Oregon, true, the language of the Right-To-Bear-Arms provision (Art. I, sec. 27) is broader than that of the federal Constitution. Notwithstanding, the Oregon Supreme Court has ruled in several cases that this provision does not prohibit reasonable regulation of that right. See *State v. Robinson*, 217 Or 612 (1959). Review denied by the U.S. Supreme Court, 386 U.S. 937.

It is apparent that current measures to control guns in our country are seriously deficient. More must be done to reduce the alarming proliferation of these death-dealing weapons.

Robert Y. Thornton of Salem is a senior judge and a former state attorney general and state appeals court judge.

21 December 1989

Madam Chairman, Commission Members, Ladies and Gentlemen:

Following the Dec. 7, 1989 public hearing relating to the, so called, "Safe Streets Ordinance", The Oregonian Headline read: GUN PROPOSAL TRIGGERS ANGER. A more appropriate word could have been disappointment.

Public officials are elected to office to protect the rights of the people, not to devise ways to abolish these rights, as you seek to do, with this proposed ordinance. This is a great disappointment to most of the citizens who have taken the time to attend these hearings. I implore you, don't so cheaply, cast aside rights which have cost so much to preserve.

A lot of "media" mileage was given to some of the European Nations in their recent bid for freedom, while elected officials in these United States, were at work trying to remove our right to "keep and bear arms". In Romania, a country where it is a capital offense to have a firearm in one's possession, many of its citizens have paid with their life in their bid for freedom. Today, Americans are fighting in Panama where General Noriega reportedly, issued guns to the civilians, telling them to shoot the Americans. Meaning of course, citizens of the United States.

Approximately ninety five percent of those who have voiced an opinion on the proposed ordinance, are against it. You have denied having your minds made up on the matter. The result of your vote will determine wheather this is true.

Thank you.

Ralph W. Watson  
10060 S. E. 92nd Ave.  
Portland, Oregon 97266



SPEECH TWO

My name is Walter Milford. I reside in Southeast Portland. I will now finish my presentation which was previously interrupted by your UNCONSTITUTIONAL three minute timer.

Commissioner Bauman and Commissioner Anderson. You wrote this treacherous ordinance that gives the commission the powers of a police state. I ask you - DO YOU TRUST ME? You SHOULD trust me. ~~I have only YOUR BEST INTERESTS in mind. Even if you do not agree with what I say, you should TRUST ME.~~ I am here TO HELP YOU.

We were talking about TREASON, which is a heinous crime that in times of war is punishable by death. Treason is a worse crime than murder, because it can cause MASS MURDER of the citizens. WE DO NOT APPRECIATE TREASON.

*or any future commission,*

This proposed ordinance gives the commission <sup>total</sup> police state power over our right to keep and bear arms in the following ways:

You may add ANY WEAPON to your list, at any time, thereby seriously restricting its use.

You may prohibit our ability to bear arms anywhere you choose, including out of the county. You may stop other citizens from carrying their arms through the county, thereby forcing everyone with a firearm to bypass Multnomah County.

You will disable the purpose of the concealed weapons permit by forcing all permit holders to carry their weapons unloaded. An unloaded gun is of no use to anyone.

You may prohibit any citizen from their constitutional right to keep and bear any arms by several other methods, including by excessive taxation, by failure to issue a training certificate, by forcing the closure of many gun stores, by making criminals of citizens for violation of your unlawful ordinance, and by other methods which we are sure you will discover at a later date. All these methods are familiar to us, so your double talk does not fool us.

The right to keep and bear arms is the final defense of our nation, and has kept many potential aggressors away from our shores for decades. Countries such as Switzerland and Israel understand the concept of an armed citizenry and require their citizens to be armed with military weapons at all times. Their crime rate is much lower than ours, partly because everyone is armed, therefore they think of the consequences before committing a crime, and partly because their societies treat criminals with punishment rather than with reward.

No country with an adequately armed citizenry has ever fallen to communist domination. We intend that we also never fall to communism or any potential aggressor. As long as we are armed with modern military style weapons, including semi-automatics, with no registration and no onerous controls, we will always be able to fight a successful guerrilla war against an attacker, even if our military is completely defeated.

Public officials seldom, if ever, have knowledge of the many methods of disabling a modern army through infiltration and deception. Those officials MUST LISTEN to their active duty and

former military and intelligence officers, and must never make decisions such as your ordnance based on personal opinion. The disarming of the final lines of defense of a nation, namely the private citizens, is a TREASONOUS OFFENSE, punishable by death in times of war. History has shown that the people take a very dim view toward expressions of innocence by the public officials who disarmed them. Although the citizens may be disarmed, history has shown that almost everyone owns an unregistered rope.

Should you wish an example of what can happen to a country when the citizens are disarmed, I will be happy to tell you. Any information that I am at liberty to divulge is now at your disposal so that you may make an informed decision on this matter. As I said before, you should TRUST me, for I AM HERE TO HELP YOU.

As I said on Monday night, I served more than 11 years with military intelligence and with the Central Intelligence Agency. I have considerable training and experience in these matters.

## IRAN

For many years the country of Iran was ruled by Shah Mohammed Reza Pahlavi. The Shah was a monarch, and a dictator. He did many good things and many bad things for his country. Iran was very rich from oil wealth, and very powerful in the Middle East. The Shah was a dictator, and he was our dictator. He was greatly respected and greatly feared by his people.

The Shah, like all dictators, did not trust his people. He therefore imposed GUN CONTROL. He did not wish to appear ungenerous, so he allowed the great masses of people to possess and carry their own firearms. However, he allowed them to have only single-shot black powder muzzle loaders, for he also feared the people. The people were able, through great stalking ability, to shoot an occasional mountain sheep or goat<sup>To help feed</sup> ~~for~~ their families, but were unable to protect their domestic animals from the packs of wolves which preyed on the villages during the winter. The people stood by helplessly as wolves entered their mud huts and carried off their goats and other animals.

The wealthy class of Iranians, and military officers, were allowed to have centerfire arms: One rifle, not to include any of military caliber; one shotgun; one handgun, not including the military .45 automatic; and one rim-fire .22 rifle. They were only able to possess a very small quantity of ammunition for each weapon, for the Shah did not want to give anyone the ability to overthrow him. Ammunition was rigorously controlled and very hard to acquire, sometimes taking more than one year to obtain.

During the latter part of the 1970's the political situation in Iran worsened and Iran was ripe for a coup. The Shah, although imperfect, had helped his country in many ways and had lent stability to his nation in a region known for instability. By his distrust of his people, however, he set the stage for his overthrow by the Ayatollah Khomeini, and the Dark Ages of Iran then began. Many Iranians did not want such a vicious, fundamentalist dictatorship as their master, but were powerless to stop the Ayatollah, since the Shah had meticulously disarmed them. We all know the result: Anti-American hatred; our embassy personnel held hostage for 444 days; a bloody and senseless war with Iraq; and more than ten years later, a whole race of people who are held hostage by their own despicable government. That is the very possible result obtained when the people are disarmed by their government. WE WILL NOT ALLOW THAT TO HAPPEN HERE.

## Constitutional Review

You seem very certain that this ordinance is "constitutional". This is most likely because some courts have taken a very liberal and anti-Bill of Rights interpretation to different questions. I contend that all court opinions regarding constitutionality are just that, OPINIONS. Opinions can be changed at any time. The Constitution cannot be changed without a vote of all the people. Our courts have taken to making the law, rather than interpreting the law. You would be wise to keep in mind that We The People are always the final court.

## Safety Training

Training in gun safety is very important, but should not be left solely to any government. The NRA does an excellent job teaching gun safety. I recommend that gun safety should be started in the schools, preferably with NRA or other sportsmans organizations doing the instructing. This would save a lot of tax dollars. Children should be taught that guns are a potentially dangerous tool, as are chainsaws, lawnmowers, kitchen knives and many other common items found in the household. Younger children should be taught to leave guns, and other dangerous tools, strictly alone. Older children could be taught safe gun handling, if the children wish to learn. Adults should also be taught gun safety and should be given refresher courses at intervals. This should NOT, however, be dictated or provided by the government.

1494 NW 15th  
Gresham, OR 97030  
(503) 665-7902

December 21, 1989

HAND DELIVERED

Multnomah County Board  
of Commissioners  
Multnomah County Courthouse  
1021 SW Fourth Ave.  
Portland, OR 97204

Re: Opposition to Proposed Firearms Ordinance

Dear Commissioners:

I am writing in opposition to the proposed Multnomah County firearms ordinance presently before you. I ask that you vote against this misdirected, ineffective and oppressive measure.

Although the measure has been touted as a reasonable extension of 1989 Oregon Laws Chapter 839 recently passed by the Oregon Legislature, anyone remotely familiar with that law knows that such statement is not true. The proponents of this measure cannot in good faith argue that this law is remotely related to the purpose of the recently-passed state statute. Instead, it is a blatant and oppressive attack on the rights of law-abiding citizens of this state guaranteed by the state constitution and exceeds the authority allowed the county under the state statute.

While Commissioner McCoy stated at the last public meeting on this proposed measure that the Commission thought it may have a little problem with the state constitution, anyone wishing to research the issue would be constrained to conclude that the impediment is substantial. The Bill of Rights of the Oregon State Constitution provides at Article 1, Section 27 that:

"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."

This is an individual right granted to each citizen of Oregon. It is the right to both keep and bear arms. It is also clear that, at the time of the adoption of the federal constitution and at the time of the adoption of the Oregon

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constitution, the right to keep and bear arms included the right to keep and bear the arms of modern warfare. While the Oregon Supreme Court has not directly addressed Article 1, Section 27 in relation to bearing of military-style weapons, the analysis consistently applied by that court in construing the state constitution would extend constitutional protection to the bearing of such arms, absent clear evidence that the constitutional framers intended otherwise. I submit that there is no such evidence. In fact, the constitution provides that "the military shall be kept in strict subordination to the civil power." This of course is a hollow statement unless civilians have the ability to ensure its continuing application.

The proposed ordinance flies in the face of not only Article 1, Section 27 of the Oregon constitution, but also Article XI, Section 2. Under the recent case of City of Portland v. Lodi, 308 Or 468 (1989), the provisions in the proposed ordinance regarding registration, sales and unreasonable restrictions on the right to possess and bear firearms clearly are unconstitutional. Further, the keeping of records with respect to lawful purchases of firearms was made a crime under Section 3(c) of Chapter 839.

At the last meeting, one man mentioned that the state can require registration and training for a drivers license, so why not apply the same principle to firearms. There is, of course, a clear distinction. Obtaining a state license to drive a car is a privilege that may be granted or withheld by the state. The right of the citizens of Oregon to keep and bear arms for the defense of themselves and the state is a constitutionally-guaranteed right of each citizen that may not be infringed by the county or any other state governmental body.

It was stated at the last public meeting that this so-called "safe streets" ordinance is aimed at possession and use of firearms by drug gangs and other criminal elements and other unlawful uses of firearms. It is also ostensibly aimed at reducing the number of avoidable, firearm-related accidents. In truth, the ordinance is unlikely to effect either.

The primary effect of this ordinance, if passed, would be to make criminals out of thousands of otherwise law-abiding citizens who are safe and responsible gun owners. This would affect not only residents of the unincorporated areas of the county, but anyone passing through those areas for any



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purpose while carrying any firearm. This ordinance is not merely aimed at so-called "assault weapons," it is a restrictive and coercive ordinance aimed at all firearms.

If the council is truly concerned about preventing avoidable firearms accidents, there are already excellent firearms safety and education training programs available that would not involve the expenditure of county monies or the imposition of any new tax on the citizens of Oregon. Millions of hunters, shooters and peace officers have learned safe and responsible firearms handling through NRA-sponsored training and education programs over the last century. If you want to get the job done right, ask the experts, not those who merely wish to infringe on basic constitutional rights of Oregon citizens and impose unreasonable restrictions on responsible firearms possession and use. Take advantage of existing programs. Make appropriate county land available for organized and casual target shooting and firearms training.

The county should encourage and promote to the citizens of the county and state to enroll in firearms safety classes that are already offered. Likewise, with respect to the law's affect on the use of firearms by the organized gangs and other criminal element, it is well-documented that its effect will be negligible to the vanishing point. Experience has shown that you cannot control behavior of criminals by passing laws of this nature. They don't care about your laws. It cannot be seriously argued that organized criminal elements that are able to smuggle hundreds of thousands of tons of illegal drugs into this country will be affected by laws of this type. They need only to hide whatever weapons they wish under the bundles of cocaine that they smuggle into the country. As I mentioned, the law would merely make a whole new class of criminals out of hundreds, if not thousands, of otherwise law-abiding citizens.

Instead of trying to pass an unreasonable, ineffective, unconstitutional and coercive law such as that proposed by Councilpersons Bauman and Anderson, Council should seek to implement reasonable measures that would effectively support safety programs and realistically are aimed at reducing criminal the use of firearms. Council should not seek to impose unreasonable burdens on law-abiding citizens of this state as would be the case if the ordinance were passed.

No one supports gun safety more than the people who have been testifying at the meetings in opposition to this

measure. The county should actively support and promote citizens of the county to take one of the many firearms safety and education courses already offered. The county can institute a public information campaign that truly aims at educating the public on the safe and responsible ownership and use of firearms. Allow such classes to be given in the public schools to help educate youth on safe and responsible firearms handling.

You also asked what type of reasonable regulations could be supported by the citizens. Although I do not represent myself as speaking for any other person, I believe that an ordinance that limited the carrying of operable firearms in county parks, county office buildings, county schools or other government buildings without a permit from the county, subject to the right to do so under a state or federal permit, would be palatable to the majority of such persons. Trying to impose a coercive and unreasonable restraint on possession of weapons on any highways, streets or areas accessible to the public in the county is patently unreasonable, unworkable, unconstitutional and a waste of enforcement time and taxpayer money.

You should also pursue enhancing penalties of firearms-related crimes. Enforce the laws that are already on the books. Seek swift and sure justice for criminal perpetrators, not a revolving-door system that allows them back on the streets within hours of their arrest or days or months of their conviction for serious crimes. You know the answers.

Recent polls show that a majority of the citizens of the metropolitan area oppose the proposed ordinance. The ordinance lacks support from the Sheriff's office or any other law enforcement agency. It is founded on misleading information and the personal agenda of Mr. Bauman. Americans have a tradition of individualism and the supporting of individual rights in the face of oppressive and tyrannical government and the predations of criminal elements. The proposed ordinance would make a mockery of the right of free citizens to arm and defend themselves and their country. It is a right which, when challenged, the early Americans refused to yield and which in large measure allowed this nation to be borne. The Revolutionary War was not won with a newspaper. One need not look for examples of what happens when citizens are denied such rights. One need only look to the occurrences in Romania and China. Once the right to bear arms is diminished, what right is next to go?

Everyone supports reducing preventable accidents and getting tough on criminals, especially violent criminals. However, I am troubled much more by a person such as Commissioner Bauman, in a position of authority, attempting to erode the individual liberties of Oregon citizens than I am by the fact that the Bloods or the Crips may have or use firearms illegally. In my view, Commissioner Bauman and other elected officials of his ilk are the greater threat. This is in part because misguided programs such as that being proposed is directing crucial funds and services from the effective prevention, and swift and speedy apprehension, conviction and punishment of real crimes and criminals. They do so at the expense of law-abiding citizens who are treated very badly under the ordinance only made more vulnerable to the predations of the very persons on whom the commissioners should focus their attention.

Commissioner Bauman is clearly antagonistic to any private ownership of firearms by the citizens of Oregon. This is plain from his comments and attitude at the various meetings and his sponsorship of the ordinance. I do not believe that he is so interested in promoting firearms safety and responsible use as he is in disarming the citizens or at least perverting the right to keep and bear arms into an overly restrictive administrative red-tape nightmare.

The right to keep and bear arms for the defense of ones self is an inalienable right that is immutably bound into the fabric of American freedom. Americans have always had the ability and many time the occasion to fight for their freedom. I am reminded of Esek Hopkins, the first Commander in Chief of the Continental Navy during the American Revolution. The British government had sought to impose severe oppressive taxes and laws on its American colonies, including an attempt to disarm the Americans. As a warning to the British that Americans were willing to stand up and fight for their rights, Commander Hopkins prepared a special flag emblazoned with the native American rattlesnake for his command ship. That flag delivered a simple and eloquent message to the oppressors, equally applicable today. That message was "Don't Tread On Me."

Don't tread the rights of Oregon citizens underfoot. Vote no on the proposed ordinance. Instead, encourage firearms safety classes through public information campaigns aimed at promoting education and the safe and responsible handling of

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firearms. Make county land available for organized and causal target shooting and firearms training. Attack crime by promoting effective enforcement of the multitude of laws already on the books. Enhance penalties for crimes in which firearms are used. Make the punishment fit the crime. Consider restricting the carrying of operable weapons in county parks, county office buildings, county school buildings and other public building (by operable, I mean having a shell or cartridge in the magazine or chamber or having a loaded magazine for the weapon readily accessible on the person). Do not attempt to extend the reach of this law to all public places such as streets, highways and county land that is not a county park. The people will not tolerate it.

Please vote no on the proposed ordinance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Eugene A. Frassetto", with a stylized flourish at the end.

Eugene A. Frassetto

EAF:v-m

TESTIMONY BEFORE THE  
MULTNOMAH COUNTY BOARD OF COUNTY COMMISSIONERS  
IN SUPPORT OF THE PROPOSED GUN SAFETY ORDINANCE

December 21, 1989

Elliot Weiner, Ph.D.

Madame Chair, members of the Commission.

I am Dr. Elliot Weiner, a clinical psychologist here in Portland and Executive Director of the Oregon Psychological Association. I am here today to speak in support of the proposed gun safety ordinance now being considered by the Multnomah County Board of Commissioners.

I speak in support of the proposal with all due respect for those who disagree, who fear that it is just a first step toward restricting our personal freedom. Maybe it is. But if it is, it is a small but a necessary and overdue one.

I wish to speak today to two specific points: First, about the atmosphere in which we live, and, second, concerning the need for a major message that says violence through guns is not accepted.

We live in a society where violence is more accepted than it has ever been before as a means of solving disputes. Psychological research clearly tells us that children become immune to violence by watching countless acts of it on TV each day. Guns become playthings. It is all too easy to pick up the newspaper and read about another accidental shooting because kids were just playing with guns. Another sad story involving kids and guns stares at us from the Oregonian this morning. It follows another playing with guns killing one just a week ago. Perhaps if those parents had been through the proposed safety training course the young innocent victims of those killings would be alive today to play with less lethal toys.

Other news stories and columns should give us a clue about where our lives are headed unless the message about guns changes. Yesterday's Phil Stanford column talks gleefully about a man who drove recklessly finally being stopped and beaten up by someone in another car. We've all been there. We've all been so angry at someone who's cut us off that we wished we could ram them or punch them or maybe even shoot out their tires. I was just a few cars behind the shooting on the Sunset highway last year, where somebody shot at a car as he pulled off the highway. It's pretty basic. In psychological jargon we call it the "Frustration-Aggression Model." Simply it says that when faced with frustration, it's normal for people to respond aggressively. In fact, it's normal for any animal to respond aggressively. That's what guns, assault rifles and an open message that guns are an acceptable way to respond when frustrated do. They reduce us to responding like animals who are

trapped -- or who worry that we may be trapped. Just like in the Old West, when frustrated we can shoot our way out of trouble. Only with assault rifles we can kill too many and too easily. An angry man can walk into a schoolyard and spray gunfire. The disgruntled television fan can kill easily. The angry political loner can kill. The frustrated student can kill women who are the symbol of his frustrations. It's all too easy and all too accepted.

Do we not want these regulations because they really restrict our freedom or because they restrict our fantasies of what we would like to do.

Just last month, I was driving on the Sunset Highway. I signaled and pulled into the left hand lane. A van came speeding up behind me and passed me by using those few feet between my car and the center concrete divider. We had maybe six inches between our cars and we were traveling 55 miles an hour. At least I was. His van was estimated at over 90 as he continued weaving in and out of traffic. What was a bit more worrisome was the fact that I got an anonymous call a couple of weeks later asking me if I remembered the incident and telling me that I had better watch myself or I could get hurt someday.

Our new state laws, in their wisdom, have made it legal for driver to carry guns in their cars or vans. No more signaling with a lewd gesture to show your anger and frustration. Now you'll be able to wave a pistol at the guy who's cut you off. All we need now are the horses and it will be just like those thrilling days of yesteryear.

The message we give to ourselves, to each other, to our children has to change. It can no longer be one of individual restrictions being the first step in the trip to hell. It has to be a message of caution and caring and protection.

Where guns are concerned, the proposed regulations are not the first step on the road to hell. They are a very small step on that long trip to sanity. I urge you to take that step and to pass these regulations. Thank you for the opportunity to speak with you today.

Elliot Weiner, Ph.D.  
Clinical Psychologist