



CITY OF BEND

# **Local Firearm Regulations, Oregon's Red Flag Law, and Measure 114**

**City Attorney's Office**

September 21, 2022

# Firearm Rights and Interpretation of Those Rights

## Constitutional Firearm Rights:

- United States Constitution - Second Amendment
- Oregon State Constitution - Article 1, section 27

## Interpretation of Constitutional Rights:

- These rights are not absolute, unfettered rights and have been interpreted by:
  - (1) Supreme Court decisions;
  - (2) State regulations and state court decisions; and
  - (3) Local government regulations

# State Firearm Regulations

State limits on who may possess a firearm in Oregon:

- A person under 18 years of age who has been convicted in the last four years of certain crimes
- A person who has been convicted of a felony\*
- A person who was committed to the OHA pursuant to a court order
- A person who was found to have a mental illness pursuant to a court order
- A person who is presently subject to outpatient treatment pursuant to a court order
- A person who has been found guilty of a felony, except for insanity
- A person who is the subject to a court order that pertains to the crime of stalking\*

State limits on where a person may possess a firearm in Oregon:

- Possessing a concealed firearm in public without a Concealed Handgun License (CHL)
- Possessing a loaded firearm in certain *state* public buildings regardless of a CHL



# Local Government Firearm Regulations

## State Law Preemption:

- State law largely preempts local firearm regulations, including the sale, acquisition, transfer, ownership, possession, storage, transportation, and use of firearms

## When Local Governments Can Regulate:

- Only when Oregon's legislature has clearly and specifically authorized local governments to regulate

## Local Governments Can Adopt Ordinances to Regulate:

- Purchase of used firearms by pawn shops and secondhand stores
  - The City currently regulates the purchase of firearms by secondhand stores (BC 7.25)
- When, where, and how firearms may be discharged within city limits
  - The City currently prohibits the discharge of firearms within city limits (BC 5.40.040)
- Possession of loaded firearms in public places
  - The City currently prohibits possession of loaded firearms in parks (BC 5.55.005(11))



# Local Firearm Regulation Examples

Possession of loaded firearms in all public places:

- **Salem:** Unlawful for any person to possess a loaded firearm, whether the shell or cartridge is empty or live, while in a public place.
- **Beaverton:** No person shall carry a firearm upon the person unless all ammunition has been removed from the chamber and from the cylinder, clip or magazine.
- **Tigard:** Unlawful for any person to possess a firearm in a public place unless all ammunition has been removed from the chamber and from the cylinder, clip or magazine.
- **McMinnville:** The possession of loaded firearms in public places is prohibited.



# Oregon's Extreme Risk Protection Order (“Red Flag Law”)

What is Oregon's Red Flag Law?

- Allows a concerned individual to petition a court to remove a firearm from a person that is a risk to themselves or others

Why does Oregon have a Red Flag Law?

- Oregon's Red Flag Law codifies a legal process through which Oregonians can keep firearms out of the hands of at risk people
- Oregon's Red Flag Law is one of the few tools a family or household member may have to quickly remove a firearm from a person that is at risk



# Oregon's Red Flag Law: Process & Efficiency

How does Oregon's Red Flag Law work?

1. Concerned individual petitions a County Circuit Court
2. Circuit Court holds a hearing within 24 hours of receiving petition
3. If petition is contested, the at risk person is granted a hearing within 21 days
4. If a judge finds a factual basis, the judge will issue an order requiring the at risk person to surrender CHL and all firearms

How efficient is Oregon's Red Flag Law?

- If judge issues order, person must surrender CHL and all firearms within 24 hours
  - Between 2018 and early 2022, Oregon courts approved 80% of 521 petitions
- Order is generally effective for one (1) year
  - Order prohibits repossessing or purchasing new firearms



# Oregon's Measure 114

What is Measure 114?

- (1) Establishes a permit-to-purchase program
  - Permits issued by local law enforcement to purchase any firearm
  - Requires photo ID, fingerprints, training, background check, and fee to apply for a permit
- (2) Limits magazine size
  - Prohibits manufacturing, purchasing, selling, or possessing ammunition magazines that hold more than ten (10) rounds

How will Measure 114 affect the City of Bend?

- Local law enforcement officers would be charged with administering permit to purchase program
- Local law enforcement officers would be charged with enforcing the magazine capacity regulation





# Measure 114: Other Jurisdictions

Do other jurisdictions have permit-to-purchase programs?

- Fifteen (15) other jurisdictions have permit-to-purchase programs
- Examples: California, Illinois, Minnesota, Michigan, Maryland, Washington

Do other jurisdictions limit magazine capacity?

- Ten (10) other jurisdictions limit magazine capacity
- Examples: Colorado, California, Connecticut, Maryland, New Jersey, New York

# Council Discussion: How to Move Forward

## Council Position:

- Oregon's Red Flag Law
- Measure 114
  - Limit on staff support (ORS 260.432)

## Request for Feedback:

- Hold a work session to discuss the possibility and details of an ordinance that prohibits possession of loaded firearms in all public places?

**Questions?**

# Accommodation Information for People with Disabilities



To obtain this information in an alternate format such as Braille, large print, electronic formats, etc. please contact Shelly Smith at [shsmith@bendoregon.gov](mailto:shsmith@bendoregon.gov); Relay Users Dial 7-1-1.