



# WORKSESSION MEMORANDUM

<b>DEPARTMENT</b> Police	<b>PRESENTED BY</b> Chief Russ Johnson	<b>DATE</b> December 4, 2023
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## ITEM

Regarding Second Amendment Demonstrations in City Limits

## BACKGROUND

Over the last few years, the Salida Police Department (SPD) has had various calls regarding people openly displaying firearms in our community. These calls have varied in type and have happened all over the City. SPD has been specifically dealing with an individual since early 2021. He and others have stood on the side of Hwy 50 and Hwy 291 most Sundays with an upside-down American Flag and a rifle. This location was utilized until late July of 2023. Towards the end on July, the location moved to 1st and F St., most Sundays from 2 PM - 4 PM with an upside-down American Flag and rifles. While they stand there, they get both positive and negative reactions from people passing by. Because of some of the reactions, they began recording while standing on the corner.

In September, several news articles were posted about one of the individuals downtown. Around that same time, SPD calls to the area began to increase. I put out a press release in early October, and since then, we have had two calls regarding the individuals being downtown.

This conduct, while potentially irritating and scary to some residents, is not criminal. The potential crime that continues to be referenced by the newspaper and residents is Disorderly Conduct pursuant to C.R.S. 18-9-106(1)(f). The crime of disorderly conduct as described in that subsection is, “[a] person commits disorderly conduct if he or she intentionally, knowingly, or recklessly: not being a peace officer, displays a real or simulated firearm, displays any article used or fashioned in a manner to cause a person to reasonably believe that the article is a firearm, or represents verbally or otherwise that he or she is armed with a firearm in a public place in a manner calculated to alarm and does alarm another person.”

As was noted in earlier email correspondence about this issue, the mere possession of a firearm in public is not sufficient for SPD to act. While not the main charge litigated in the case, the Colorado Supreme Court recently addressed this issue in 2017 in *People v. Naranjo*. In that case, the defendant was charged with menacing, a felony offense, and wished to have the jury consider his conduct to be disorderly conduct under the same subsection residents want our police to consider. In reviewing the conduct in that case, the court ruled that there must be some action done with the firearm such as pointing it, brandishing it, or making some kind of threat. Without that conduct, disorderly conduct would “criminalize essentially every instance in which an individual merely handles a gun publicly in another’s presence.” Such is the case with the individuals currently standing at 1<sup>st</sup> and F.

Council requested information from the City Attorney as to what their legal options are to address the current situation. According to the City Attorney’s Office, there are no immediate actions that can be taken without violating 1<sup>st</sup> and 2<sup>nd</sup> Amendment rights.

However, while Colorado is an open carry state, the legislature has also recognized that even though people do have the right to bear arms, there are times when regulation should be allowed. It also noted that officials of local governments are “uniquely equipped to make determinations as to regulations necessary in their local jurisdictions.” To



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that end, C.R.S. 29-11.7-103 allows local governments to enact ordinances or other laws governing or prohibiting the sale, purchase, transfer, or possession of a firearm within their limits so long as it does not conflict with state and federal law. There are several municipalities that have enacted ordinances that restrict the carrying, both open and concealed, of firearms within their boundaries. Denver, for example, has an ordinance that makes it unlawful for any person to conceal or openly wear, carry, or transport any weapon on or about their person or vehicle. There are exceptions to the ban that allow the ban to comply with state laws, however. Denver also has a specific ban on assault weapons in a separate ordinance. When Denver first passed these ordinances, they were sued, and the Colorado Supreme Court upheld the ban finding that the local interest in regulating firearms outweighed the state interest.

Other municipalities have also taken these steps to varying degrees. Glenwood Springs passed an ordinance that makes it unlawful for any person to possess a firearm in any public building or other public places where signs are posted prohibiting the open carrying of firearms. Similarly, Boulder has an ordinance that prohibits the possession of firearms in sensitive areas that applies to openly carried and concealed weapons. Silverthorne prohibits open carry of firearms, but places limitations on specific places in town where the ban applies. They also note in their ordinance that signs are to be posted notifying people of the prohibition. Silverthorne also allows the Chief of Police to grant permission for open carry in specific instances. Similarly, Crested Butte prohibits open carrying of firearms and lists within the ordinance the specific places to which the ordinance applies. Lafayette has a couple different prohibitions on carrying guns. There is one ordinance that prohibits open and concealed carrying of firearms on all city owned property, including outdoor areas, at all public parks and playgrounds, and on the outdoor premises of any city-owned/managed/operated rec center, community center, golf course, or aquatic center. They also created a general prohibition on the open carrying of firearms in public places.

The state statute gives the city a large amount of discretion to determine what is best for the residents and for the community as a whole. There is a wide range of restrictions that can be put in place.

Enforcement would be an issue. Per Salida Municipal Code only fines are allowed, and no imprisonment could be ordered. Currently, the Municipal judge is on the more lenient side so it would likely take many violations to have real penalty. Citizens and visitors must be on notice of the ban in order for it to be enforceable if the ordinance regulates specific places. SPD would have to determine how to prioritize enforcement of these ordinance, not an easy task given the variety of other calls they are responding to.