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Legal Opinion 2015-015

TO: Mike Brady; Scott Hoffman; Mike Colyer; Chris Odlin; Richard Stepper; Laurie Clark; Mayor John Engen; and Dale Bickell

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE: June 5, 2015

RE: United States Marines wearing/bearing/carrying fire arms in the Missoula City Council Chambers

FACTS:

United States Senator Jon Tester will be presenting a military medal at a ceremony in the city council chambers at which Marines will be present wearing/bearing/and or carrying firearms.

ISSUE:

Pursuant to Missoula Municipal Code is it acceptable for Marines to wear/bear/carry firearms in the Missoula city council chambers?

CONCLUSION:

Yes, pursuant to sections 8.58.010 and 8.58.020 of the Missoula Municipal Code it could be permissible for Marines to wear/bear and/or carry firearms at a medal ceremony held in the Missoula City Council Chambers.

LEGAL DISCUSSION:

Title 8, chapter 58 Missoula Municipal Code (MMC) is entitled “firearms in public buildings or meetings”. Sections 8. 58.010 and 8.58.020 MMC provide as follows:

8.58.010 Firearms prohibited in certain public build-ings--Exceptions.

A. No person shall wear, bear, or other-wise carry into the Missoula city hall or public school building within the city, excluding the University of Montana, any firearm,

whether concealed or unconcealed, or any explosive device as defined by Section 50-38-101, MCA.

B. This section shall not apply to:

1. Peace officers of the state or the United States government;
2. Persons participating or displaying guns and weapons at shows authorized by the city or school;
3. Persons participating in hunter or gun safety courses sanctioned by the Fish and Game Department and authorized by the city or school;
4. Persons specifically authorized by the city or school to carry firearms or demonstrate or use explosive devices on its premises.

8.58.020 Firearms prohibited in public meetings.

A. It is unlawful for any person, other than a peace officer of the state or the United States government, to attend a public meeting anywhere within the city wearing, bearing, or carrying a firearm or explosive device, unless specifically authorized by the agency conducting the public meeting.

B. For the purposes of this chapter a public meeting means the convening of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state for the purpose of hearing, discussing or acting upon a matter over which the agency has supervision, control, jurisdiction, or advisory power. Pursuant to these sections of Missoula Municipal Code it is possible for marines to wear/bear and/or carry firearms at a medal ceremony held in the city council chambers either as peace officers of the United States and/or pursuant to permission granted by the City of Missoula.

The Missoula Municipal Code does not define what constitutes peace officers of the United States. Since there is no ordinance definition identifying and/or limiting the definition of the term peace officers of the United States, it is reasonable for the city administration to consider peace officers of the United States to include Marines.

Subsections 8.58.010(B)(1) & (4) MMC provides that the prohibition of firearms in public buildings does not apply to peace officers of the United States and also empowers the city to authorize someone to carry firearms in a public building.

Subsection 8.58.020(A) MMC allows peace officers of the United States to attend public meetings anywhere within the city wearing or carrying a firearm.

CONCLUSION:

Yes, pursuant to sections 8.58.010 and 8.58.020 of the Missoula Municipal Code it could be permissible for Marines to wear/bear and/or carry firearms at a medal ceremony held in the Missoula City Council Chambers.

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/s/ _____
Jim Nugent, City Attorney

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