

Council Study Session

April 5, 2021

Agenda Item	Update on Ordinance 3176	
From	Tighe O'Meara	Police Chief
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Item Type	Requested by Council <input checked="" type="checkbox"/> Update <input type="checkbox"/> Request for Direction <input type="checkbox"/> Presentation <input type="checkbox"/>	

SUMMARY

Ashland Municipal Code (AMC) 10.58.020, Failure to Provide Name and Date of Birth to a Peace Officer, was enacted in August of 2019. AMC 10.58.020 was automatically repealed on August 16, 2020 when Council did not re-authorize it. Staff is returning with an update on this now-repealed ordinance.

POLICIES, PLANS & GOALS SUPPORTED

N/A

BACKGROUND AND ADDITIONAL INFORMATION

In 2017, the Oregon Supreme Court issued a ruling called the “McNally Decision”. This ruling stated that people could not be arrested for the crime of Interfering with a Peace Officer (IPO), ORS 162.247, if their behavior is passive. Previous to the McNally Decision, police officers in the State had the ability arrest someone for IPO if the person was found to have violated a law and the person refused to provide a name so that a citation could be issued. In the six years leading up to the McNally Decision, Ashland Police Department (APD) officers had used this authority only six times.

After the McNally Decision, APD officers were encountering increased communication within the community about the new decision from the Oregon Supreme Court and how it could be used to prevent having a citation issued when someone is found in violation of the law. In order to provide APD officers with the same tool they had before the McNally Decision, staff brought Ordinance No. 3176 to Council, which was enacted and codified as AMC 10.58.020.

The ordinance did not give APD the authority to stop anyone without cause. It stated that a person is required to provide name and date of birth to an APD officer only after (a) the person had been stopped under applicable state law; and (b) probable cause had been established to issue a citation; and (c) the officer had decided to issue a citation and needed a name to put on the citation.

An officer’s authority to stop a person for violating the law has always been in place under ORS 153.039, which states that an officer can stop someone for a violation and detain that person long enough to conduct an investigation and issue a citation. Article XIV Section 2 of the Ashland City Charter mandates that APD officers will investigate all violations of the AMC and that appropriate complaints are to be filed with the City Judge. Ordinance No. 3176 gave APD officer the ability to make sure that mandate could be fulfilled after the McNally ruling was issued. Council built in a repeal clause that automatically repealed the ordinance after one year unless it was re-authorized. During the deliberations surrounding this ordinance there was concern that it would be used to target various groups within the community. In the one year that the ordinance was in place, it was not used at all by APD officers. The purpose of the ordinance was not to arrest anyone. The purpose was to allow officers to issue citations when appropriate.

It is impossible to know whether the ordinance served its purpose. While the ordinance was in place violators may have provided their information knowing that there was a more significant law being broken if they failed to do so. That it was not used does, however, suggest its existence did not prejudice members of any particular societal subgroup. It was recognized from the start that the law would be used infrequently, given the six instances in six years that APD arrested people for the same behavior pre-McNally.

APD has not encountered a situation since the ordinance's repeal in which officers have been unable to fulfill their mandate to issue citation when appropriate. Also, given the complexities of the last several months, this should not be seen as an indicator that this tool need not be in the enforcement toolbox for interactions with uncooperative violators of non-criminal City ordinances.

In the absence of the Oregon Legislature offering a solution to this situation, staff still views this ordinance as a valuable tool that allows APD officers to fulfill their mandate under the City Charter. Staff is not asking that this ordinance be re-authorized at this time. However, staff will bring this ordinance back to Council if its absence starts again to become an obstacle to officers fulfilling their mandate.

FISCAL IMPACTS

None

DISCUSSION QUESTIONS

None

SUGGESTED NEXT STEPS

None

REFERENCES & ATTACHMENTS

None