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## Response to Mancill Letter

1 message

**Peter Watts** <peter@peterowattspc.com>

Wed, Oct 27, 2021 at 2:18 PM

To: Paulina Cockrum <mayorcockrum@cityofgearhart.com>, "councilorjesse@cityofgearhart.com" <councilorjesse@cityofgearhart.com>, Kerry Smith <councilposition1@cityofgearhart.com>, Reita Fackerell <councilorfackerell@cityofgearhart.com>, Brent Warren <councilorwarren@cityofgearhart.com>, Chad Sweet <chadsweet@cityofgearhart.com>, Justine Hill <jhill@cityofgearhart.com>, Krysti Ficker <krysti@cityofgearhart.com>

I have been getting questions about the Mancill Letter. I am not on social media, but I would ask that you share this far and wide. I think it is worth the read, but I am also the one who wrote it.

### The Mancill Letter and Allegations

I have received a letter, written by Deanna Mancill that alleges among other things:

1. That the City Council violated Article 1, Section 20 of the Oregon Constitution. In short, you didn't. I can explain in detail at the next Council meeting, but it's pretty archaic.
2. That the City Council violated Constitutional Home Rule. You didn't. It's actually Constitutional Home Rule that gives you the authority to regulate things on a time, place and manner basis.
3. That Ms. Mancill's allegations regarding Notice somehow invalidate the Code. No. Appropriate Notice was provided. Additionally City Staff and members of the Council affirmatively reached out to impacted parties to make sure they were aware of the issues. How meeting notice is provided is uniform under Oregon statutes, it is one of those "preemption" items.
4. That Sheila Nolan's Petition was illegal or improper. Not true. This wasn't a "capital P" Petition for the purposes of an initiative or referendum, that could have triggered a public vote if sufficient signatures were gathered. This was a "lower case p" petition to advise the Council of a concern.

There is no rule that Gearhart electors/voters are the only people who can petition the Council on an issue. Whether the issues are ham radio or pickleball, Council hears from non-electors on issues of community concern.

5. That Sheila Nolan's advocacy created a conflict of interest for Councilor Warren. No. Conflicts and potential conflicts as a general rule are created by actual or theoretical financial gain. Councilor Warren is free to participate in matters in front of the Council, even when his spouse/partner and/or family members have strongly held opinions.

Nobody made an on the record objection to Councilor Warren based on personal bias. And, the bar to prove bias is so high under Oregon law, that he likely needed to say something like "I sought appointment to this body to limit construction noise" in a public meeting, during the hearing, to trigger a legitimate bias claim. That did not happen.

6. That Councilors have violated the Code and if I don't fine them and prosecute them I should be prosecuted. No. This Code adoption/revision was exactly how representative government is supposed to work. Members of the "Gearhart community," some domiciled in Gearhart and some with residences in Gearhart raised an issue.

Council instructed City Staff to gather data, and develop recommendations to bring to a later meeting. That happened. A weekend/holiday prohibition was discussed. Feedback was heard from impacted parties. Council held a further hearing. Council approved a Sunday only prohibition on certain construction activities, with carve-outs for emergency events.

A Sunday prohibition is very common in Oregon. This Code represented a compromise, achieved after hearing extensive public testimony and considering a variety of views on the matter. This is literally exactly how code revisions should be adopted, and how representative government is supposed to work and it was done with complete transparency.

### Moving Forward

The various federal, state, and local interlocking laws are confusing. I can understand why someone looking at the Constitutional Privileges and Immunities Clause and statutory preemption, for the first time, would be confused. When people don't like an outcome they often look for technical violations. I did the same thing on a photo radar question.

However, people that should know better are using the Mancill letter for their own purposes. I'm being contacted by people who are angry and misinformed regarding both the process and what happened.

On a personal note, and this is not just Gearhart specific, it is incredibly frustrating to constantly be dealing with online misinformation or misinformation through omission of facts. The spread of inaccurate information wastes huge amounts of staff's time and mine.

There are very real issues that are facing Gearhart, like the lack of workforce housing, and housing in general. In order to address those sorts of issues, we need accurate data, information, and projections.

The only way we can get to an outcome that represents the vision and values of Gearhart and is true to the intent of your Charter is by being both truthful and realistic about the reality on the ground and what tools there are to move forward. If we continue to have people actively spreading misinformation it will make it that much harder to "get it right" and the end losers will be anyone who cares about Gearhart as it is now, or as it could be in the future.

--  
Peter O. Watts  
Peter O. Watts P.C.  
(503) 657-0406 Ext 29  
1969 Willamette Falls Dr. Suite 260  
West Linn OR., 97068

October 17, 2021

Peter Watts, City of Gearhart attorney  
1980 Willamette Falls Drive, Suite 200  
West Linn, Oregon 97068

Re: City of Gearhart Code of Ordinances passed on 10/01/2008  
Statutory Authority: ORS 221.315 Enforcement of charter provisions and ordinances  
Gearhart General Provisions 30.31: requirement of prosecution by the city attorney and  
District Attorney

Dear Mr. Watts:

I am a resident and landowner in the City of Gearhart. The past few months I have been participating in the city council meetings regarding the repeal of a Noise Ordinance that is directed at general and landscape contractors. My son, Timothy Mancill, owns Mancill Yard and Lawn Maintenance, located in Seaside. Since 2006, I have worked with Tim on various jobs. I have a vested interest in the outcome of amending a city ordinance. The contractors affected all have Gearhart business licenses, but many do not live in Gearhart.

The current Gearhart City Council violated numerous sections of the Code of Ordinances passed on 10/01/2008 by the Gearhart City Council. This is the official Charter and governs the code of conduct for local officials. In addition, my constitutional rights have been violated. This letter outlines my concerns.

ASSIGNMENT OF ERROR No. 1: (Exhibit 1)

The attached Ordinance No. 930 only covers certain type of contractors, and mandates they cannot work on Sunday. However, the Gearhart Golf Course can still use power equipment on Sunday. This is a violation of Article 1, Section 20, Oregon Constitution: Equality of Privileges and immunities of citizens. No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.

(Exhibit 2)

Origins of Home Rule (Oregon Municipal Handbook) In 1906, Oregon citizens also gave voters the power to vote on local initiatives and referendums, reserving these powers to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality of district. But cities do not exercise home rule in a vacuum. First, cities are subject to provisions of the U.S. and Oregon Constitutions because cities are political subdivisions of the state. The state and federal government exercise their own lawmaking authority that is superior to local government. So, even when a city has authority to adopt a local law under its charter, and even where it is otherwise constitutional, that law might be invalid due to a contravening state or federal statute.

Unlike 48 other states, Oregon and California do not have Blue Laws on the books. It is not written in the Oregon Constitution. A Blue Law prohibits working on Sunday for religious beliefs or alcohol prohibition. In this particular situation, Gearhart petitioners just do not like the noise created by construction activities on the weekends and bank holidays.

(Exhibit A)

221.315 Enforcement of charter provisions and ordinances; disposition of fines. (1) Prosecution of violations of the charter or ordinances of a city in circuit or justice court shall be by the city attorney and in the name of the city.

(Exhibit B)

Gearhart General Provisions 30.31:

(A) (1) Prosecution of violations of the Charter or ordinances of a city in circuit or justice court shall be by the City Attorney and in the name of the city.

(2) An agreement may be made between the city, and on behalf of the state, the presiding judge for the judicial district in which all or part of the city is located, that the violations be prosecuted for the city in the circuit court by the district attorney in the name of the State of Oregon.

SECOND ASSIGNMENT OF ERROR:

30.30 Publication or Posting of amending ordinances. Public Hearing requirement, Ordinances must be posted or published in a newspaper.

In an August 8, 2021 letter to the City Council, I raised the issue about how Gearhart business owners were notified. I suggested that since the city collects a business license fee on the affected parties, mailing a notice would have been the proper way to conduct the public's business.

(Exhibit C)

The City of Gearhart has not properly notified the affected contractors, so they might be able to participate in the process. One week before the August 4, 2021 City Council meeting, Gearhart Police Chief Jeffrey Bowman posted on the city's blog website about the proposed ordinance change. Two weeks before the meeting he drove around Gearhart and told a few contractors in person about the upcoming meeting.

(Exhibit C 1)

There was no notice in the local newspaper, other media, neighborhood associations, or community organizations, per guidelines by the Oregon Attorney General. This is from the League of Oregon Cities publication. If cities are aware of persons who are or could reasonably be expected to be interested in a public meeting, cities should provide notice to those interested persons.

(Exhibit D)

The August 4 City Council meeting was a discussion about the proposed change. Contractors showed up enraged about the new ordinance. There were also letters entered into the record in opposition. The minutes from the August 4 council meeting showed contractors speaking orally and had written letters. It showed there was enough public interest to warrant letters to all the contractors working in Gearhart about a future public hearing. Keep in mind, these contractors do not live in Gearhart. They do not read the Gearhart Blog or go to the Gearhart Post Office. I get my mail by home delivery and had never even heard of the blog until now.

#### THIRD ASSIGNMENT OF ERROR:

The City Council first addressed a petition submitted by Chief Petitioner Sheila Nolan, who is married to Councilor Brent Warren, during their April 2021 City Council meeting. The city charter specifies that a citizen or legal voter of the City of Gearhart list their name, residence and street number on an initiative petition. Only registered voters are allowed to sign their names. The submitted names did not have signatures. They were simply typed on a letter, not even close to being legal. Because Sheila Nolan is married to a city councilor, the deficiencies were overlooked by city staff. The question wasn't asked to the City Attorney about the legality of the petition.

(Exhibit E, 30.45-30.49)

On October 5, 2021, I submitted a letter to the council (that was ignored) questioning the legality of the petition because there were people that do not live here, like Portland and West Linn. There were no mailing or street addresses listed. I have attached from the Gearhart General Provisions the proper form for initiatives and referendums. The Auditor of the city shall verify the number and genuineness of the signatures and voting qualifications of the persons signing in the County Clerk's office.

On October 5, Timothy Mancill, Mancill Lawn and Yard Maintenance, also wrote a letter objecting to the petition. He also found people from Seattle, Portland, and West Linn. His packet included Section 34, Referendum that states the initiative and referendum powers reserved to the people by the state constitution, are further reserved to the legal voters of the city. He also enclosed Sheila Nolan's petition, with the names circled of people that don't live in Gearhart.

I have attached Sheila Nolan's petition dated March 19, 2021 and it lacks the required format. On October 16, 2021 I went to the Clatsop County webmaps and looked up these individuals since Ms. Nolan did not provide the required information.

Sheila Nolan, 724 Creekside Ct. Gearhart, Oregon  
Jeanne and Wilson Mark, P.O. Box 2627, Gearhart, Oregon  
Penny and Rick Sabol, P.O. Box 2528, Gearhart, Oregon  
Lisa Cerveney and David Russell, 2473 Westmont Way W, Seattle, Washington, 98199-3729  
Chris Bell, P.O. Box 2833, Gearhart, Oregon  
Dianne Widdop, P.O. Box 2116, Gearhart, Oregon  
Maxine and Joel Johnson (CANNOT FIND THESE PEOPLE ANYWHERE IN GEARHART!)  
Betty and David Smith, P.O. Box 2312, Gearhart, Oregon  
Bebe Michel and Eric Halperin, P. O. Box 2864, Gearhart, Oregon  
Sarah and Rob Murphy, 22640 Ponderay Dr. West Linn, Oregon 97068  
Steve and Kelly Scott, 9235 NW Hopedale Ct. Portland, Oregon 97229-8417  
Bradley Wenger, P.O. Box 2034, Gearhart, Oregon

Two people, Maxine and Joel Johnson, cannot be found in public records in Clatsop County. Are the people with a mailing address of Portland, West Linn, and Seattle qualified to vote in Gearhart elections?

(Exhibit F)

The City Council refused to address the concerns of Timothy Mancill and me at the October 12 Special meeting. Rather, there is an e-mail from Sheila Nolan stating these people are property owners and taxpayers within Gearhart. But are they legal voters that can influence the actions of our local government?

On September 15, 2021 I responded to a letter from Gearhart Councilor Brent Warren. I had previously raised the issue about a conflict of interest and bias because his wife, Sheila was the chief petitioner. I expected due process and a fair hearing before the council. Without council approval, he sent me a personal letter which was self-serving and unprofessional. He cites the city attorney's opinion about a conflict of interest and voting recusal on this issue. Apparently, Councilor Warren used this as a green light to vote on the matter October 12 Special Council meeting. From day one, the deck was stacked against contractors and their due process rights of a fair and impartial hearing.

THE FOURTH ASSIGNMENT OF ERROR: (Exhibit G)

Previously I had raised concerns about the proper notification of the affected parties. The October 12, 2021 City of Gearhart Public Hearing notice was posted on the city website, city blog, and post office. Only Tim Mancill and me saw the notice. No other contractors were notified and totally left out of the process.

A copy of the Contractor Ordinance #930 is at the beginning of the packet. Not surprising with no opposition and lots of proponents, including Rob Murphy from West Linn, using the Zoom on-line format, a capability that I do not have (no cell phone, camera, and microphone) I could not respond if I wanted to. Other contractors also don't have the technology for these so-called public hearings.

(Exhibit H)

A Gearhart General Provisions 10.99 General Penalty (A) states: Any person violating any provision of this code for which no other specific penalty is provided shall, upon conviction, be punished by a fine not to exceed \$500, subject to division (B) of this section. (B) Any person violating any provision of this code which is identical to a state statute containing a penalty shall, be punished by the penalty prescribed by state statute.

There are consequences for the actions of public officials. I have laid out my concerns for your review. I do expect this violation of the Code of Ordinances be prosecuted by you and the Clatsop County District Attorney. In the thirty years of being involved in local issues in Seaside, Gearhart, and Clatsop County, I have never seen such a blatant attempt to manipulate the public process and ignore established code of conduct by public officials.

Thank you for your assistance in this matter.

Sincerely,



Deanna Mancill  
2945 Hwy 101 North  
Gearhart, Oregon 97138

Telephone: (503)738-3021

cc: Clatsop County District Attorney Ron Brown



698 PACIFIC WAY • P. O. Box 2510 • GEARHART, OREGON 97138 • (503) 738-5501  
October 26, 2021

**TO: HONORABLE MAYOR PAULINA COCKRUM & COUNCIL MEMBERS**

**FROM: CHIEF OF POLICE**

**SUBJECT: STARTING PAY FOR NEW OFFICER**

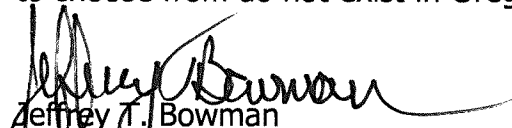
In the last round of looking for a new officer, we had 4 persons turn in applications for this position. Of the 4, one person did not take the test exam with NTN, one person did not show up for the ORPAT testing, one person got called up for one year active-duty service with the National Guard and the other person did not proceed past the Oral Interview.

We had a starting base pay of \$45,000.00 per year listed on our profile page with NTN. I would like the city council to authorize a base starting pay of \$50,000.00 per year.

The City of Cannon Beach starting base pay is \$50,726.87 (approx.)

The City of Warrenton starting base pay is \$52,342.08 (approx.)

Warrenton PD had 10 applicants apply and Astoria PD had 14 applicants apply in their last hiring process recently. I believe the County Sheriffs Dept. is also looking for qualified applicants. It currently is hard times for police/sheriff departments looking for qualified applicants in this cultural today. The days of having a huge pool of applicants to choose from do not exist in Oregon.

  
Jeffrey T. Bowman  
Chief of Police



## I would like to express my deep gratitude for the Volunteer Gearhart Fire Department.

On Oct. 8 2021, My wife and I experienced one of the most traumatic nights of our lives. After a relaxing evening with an early season fire in our fireplace and while lying in bed, we heard what we thought was the magnet on the dog door popping back and forth. I have tried to sleep though Maggie's antics before. She is a very mischievous terrier. After several minutes of negotiation with my wife, Lisa takes the high road and decides to stop Maggie from making noise with the dog door. However, when Lisa turns on the bedroom light, both our dogs are quietly sleeping on their beds. Well, there must be a racoon trying to get in the house so I jump out of bed, but really Maggie should be on this first. Just at this moment Lisa screams the house is on fire. At the time, I'm still not so sure she's right. That popping noise does sound like a large bonfire but, there is no indication of any smoke in the house. I run outside and see a small flame around the base of the chimney on the front of the house. After putting the dogs in my truck, I immediately get the garden house full blast at the flames. Lisa calls 911. It was 11:04pm. Only seconds after calling 911, flames jump 25 feet into the air from the very back of the house, just above our upstairs bedroom. Our Fire Chief, Josh Como, was on scene in only 8 minutes, and the engine was just behind. I know that the incredibly quick response time of our Gearhart VOLUNTEER Fire Department and the quick assistance of the other local VOLUNTEER fire departments not only saved most of our house but our neighbors house as well. The fire was very close to their cedar roof and embers were everywhere. This was an intense fire.

I never imagined that as I watched our house burning the volunteers inside were not only fighting the fire, they were also trying to save as many of our personal items as possible. Think about this. There is a VOLUNTEER firefighter in the house taking pictures off the wall as other battle the flames. At one point, a firefighter came over and asked if there was anything of particular sentimental value he could try and recover. My first thought was this guy looks a lot like our city manager. Lisa, obviously distraught, tells the firefighter that her late father's pictures are in the room below where the fire started. I am thinking those are gone with most of our other belongings. When I saw that firefighter come out of the house with Lisa's father's memorabilia, that was an impactful moment for me. That was the moment I knew things had turned in the positive direction. That firefighter is our city manager Chad Sweet.

As I reflect on this particular moment, I recognize that Chad and Josh's actions are qualities that represent the true kind of leadership we have in our city leaders. Not only can they manage a quickly developing crisis, but they also recognize the necessary moment to comfort those in need. We are truly lucky to live in a community with this kind of leadership.

To the men and women of our local VOLUNTEER Fire Departments. I am so impressed by you. YOU ARE AN INCREDIBLE ASSEST TO THIS COMMUNITY. We must ensure that the VOLUNTEER Gearhart Fire Department has the resources to continue to serve our community. I have watched the firehouse debate from the sideline in silent support for too long. A new fire station is overdue. Some things are just worth paying for. You may not know it until you are standing outside your home in the middle of the night holding a garden hose against an inferno and hoping anyone will come to help you as quickly as possible.

With so much Gratitude,

Dave and Lisa Koller

967 N Cottage

To Our Friends and Neighbors,

I believe our house fire started by pyrolysis. Our 1970's cottage has framing built right up against the chimney brick. Basically, over time, some of that wood became carbonized. Essentially it became charcoal. We had our chimney cleaned and inspected regularly, but this decomposition was occurring in an area that could not be inspected. I have no doubt there are many dozens of homes in our area with a similar issue.

In any case, this fire started in the attic, and the grew to massive intensity with NO smoke in the house. This is what really scares me. If we were in a deeper sleep, the first indication of the fire may have been the ceiling collapsing on us while we were sound asleep.

In hindsight, A hard wired smoke detector in the attic would have made us aware of the developing inferno above our heads. A metal insert in the chimney could have prevented the fire altogether. Please make these improvements to your older home. The costs are well worth avoiding this type of personal catastrophe. Like a new fire station in Gearhart, some things are just worth paying for.

Your Neighbors,

Dave and Lisa Koller

967 N Cottage