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**FROM: Anthony Badovinac, Osceola Prosecutor**

**TO: All parties affected by "Open Carry" Laws**

As the chief law enforcement officer of Osceola County, it is part of my job to instruct and interpret the law as it currently stands. That being said; It has been brought to my attention that the Osceola County Parks Commission recently enacted a policy which provides as follows; the "open carry and use of firearms will not be allowed in Osceola County Parks."

While this is apparently a "policy" and not a law or a part of an ordinance; the enforcing of this "policy" could indeed subject the Commission/County to litigation for a violation of Federal law and state law and the concomitant right to bear arms. Therefore I would urge the Commission to revise, repeal or remove the policy as currently stated and to remove any signage indicating the ban. I do not make this recommendation lightly as this area of the law has been heavily litigated over the past few years and, as of this date, courts have been largely supportive of the Second Amendment right to bear arms, under circumstances such as these.

For the readers' information the law which supports the legal position cited by me is as follows:

We start with the second amendment:

The Second Amendment to the United States Constitution provides that **"[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."** "Keep arms" means to "have weapons." The natural meaning of "bear arms," as used in the Second Amendment, means wear, bear, or carry upon the person or in the clothing or in a pocket for the purpose of being armed and ready for offensive or defensive action in case of a conflict with another person. The Second Amendment conferred an individual right to keep and bear arms, without regard to militia service and, like the First and Fourth Amendments, codified a preexisting right.<sup>1</sup>

We then have to consider the applicable Michigan Law:

M.C.L.A. 123.1101  
123.1101. Definitions

Sec. 1. As used in this act:

(a) "Firearm" means any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive.

(b) "Local unit of government" means a city, village, township, or county.

(c) "Pistol" means that term as defined in section 222 of the Michigan penal code, 1931 PA 328, MCL 750.222.

(d) "Pneumatic gun" means any implement, designed as a gun, that will expel a BB or pellet by spring, gas, or air. Pneumatic gun includes a paintball gun that expels by pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact.

123.1102. Regulation of pistols, other firearms, or pneumatic guns by local government;  
prohibition

**Sec. 2. A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, other firearms, or pneumatic guns, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state.**

In short, the law does not allow a complete ban on the "Open Carry" of firearms by a local unit of government.

Certainly anyone who is concerned about the safety of people using the County Parks can understand the reasons behind the well-intentioned "policy" adopted by the Commission, however the law is well settled in this area and the procedure left to the Commission to insure the safety of Park patrons will rest with other unlawful activity prosecutions such as the 'Brandishing of Firearms', "Disorderly Person", "Disturbing The Peace", or "Nuisance" violations, for which there is a legal remedy supported by the current state of the law and which provides redress for wrongdoing.

Anyone with questions or concerns can reach me at the above-captioned address.

Sincerely,  
Anthony Badovinac  
c. Board of Commissioners, Sheriff, Tom Lambert