

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

KARI NELSON, individually and
KIONO NELSON, as the Personal
Representative of the ESTATE OF
FREDDY, NELSON, JR,

Plaintiffs,

v.

TMT DEVELOPMENT CO., LLC, an
Oregon corporation; D. PARK
CORPORATION, and Oregon
corporation, dba HAYDEN MEADOWS;
MATTHEW CADY, dba
CORNERSTONE SECURITY GROUP;
JEFFREY JAMES, dba CORNERSTONE
SECURITY GROUP; TJ LATHROM, dba
CORNERSTONE SECURITY GROUP;
and LOGAN GIMBEL

Defendant.

No.: 21CV40742

DECLARATION OF CJ MARTIN IN
SUPPORT OF CORNERSTONE
DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION TO AMEND

I, CJ Martin state and declares as follows:

1. I am over 18 years only and competent to testify. I make this Declaration based on personal knowledge.
2. The factual statements set forth in Defendant Cornerstone's Response to Plaintiff's Motion to Amend the Complaint are true and correct to the best of my knowledge.

///

1 3. True and correct copies of the Exhibits cited in the response are attached
2 hereto:

3 Exhibit 1: TMT/Cornerstone Email Exchange, TMT 1001.

4 Exhibit 2: Cornerstone Offer Letter, TMT 1166-1170.

5 Exhibit 4: DPPST Training Manual Excerpts p. 11 (emphasis in
6 original).

7 4. Exhibit 3: Cornerstone Policy Notice, December 4, 2020, Def.
8 1337 is subject to a Protective Order and is confidential. Cornerstone
9 contemporaneously files a Motion to file Exhibit 3 under seal with the court.

10 I HEREBY DECLARE THAT THE ABOVE STATEMENTS ARE TRUE TO
11 THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I
12 UNDERSTAND THEY ARE MADE FOR USE AS EVIDENCE IN COURT
13 AND ARE SUBJECT TO PENALTY FOR PERJURY.

14 DATED: June 12, 2023

15 MALONEY LAUERSDORF REINER, PC

16
17 By /s/ CJ Martin
18 Candice J. Martin, OSB #106141
19 Email: cjm@mlrlegalteam.com

20 Of Attorneys for Defendants Matthew Cady,
21 Jeffrey James, TJ Lathrom, dba Cornerstone
22 Security Group

From: Marc Wilkins <[REDACTED]>
Sent time: 04/14/2021 05:54:13 PM
To: Rance <[REDACTED]>
Cc: Matthew Cady <[REDACTED]>
Subject: RE: Incident / Lowes
Attachments: Lowe's Property Boundary Map .pdf image001.jpg image002.jpg image003.jpg image004.jpg image005.png (Amended) Delta Park Center Scope of Work for Security Service.pdf

Hi Harris,

I will look into this with our Ground Lease tenant.

As a reminder, Lowe's is a Ground Lease and they are responsible for everything within the blue boundary line, see attached. This technically includes security. As we discussed during our recent call with myself and Brian, I am reviewing how to scale back the involvement Cornerstone has with our Ground Lease tenants but for now, nothing will change.

This all should have been made clear when you first started security activity at Delta Park Center, this is completely on us. Right now, it's going to be challenging to pull this back but I'm working on it and will update you accordingly.

Also, regarding managing the activity of our tenants vendors. I completely understand the reason why we need to be aware of who's behind the building but this might be another area we need to re-evaluate which I will review with the Landlord.

Moving forward, next time your officers encounter Mr. Nelson, can you please give him my number if he still does not feel he should be excluded.

Finally, is Cornerstone willing to share their "exclusion" list? I'm curious how you track this.

MARC WILKINS | Property Manager

760 SW 9th Avenue, Suite 2250, Portland, OR 97205

D: [REDACTED] | O: 503.241.1111



OREGON BUSINESS 100 BEST COMPANIES TO WORK FOR IN OREGON 2019
A PORTLAND BUSINESS JOURNAL'S MOST ADMIRE COMPANY 2019

From: Rance <[REDACTED]>
Sent: Wednesday, April 14, 2021 12:50 PM
To: Marc Wilkins <[REDACTED]>
Subject: Incident / Lowes

Marc,

Regarding this incident.

This has been a huge issue with us and Lowes.

I am sending this email to inform you.

Lowes has constantly and consistently undermined both CSG and TMT guidelines on trespass in the back of the building and letting people take their pallets.

Not only has this been an ongoing issue, Lowes has now decided to hire a company (Pacific Pallet) that is solely ran by a subject who has been excluded from DPC on numerous occasions and is living in his vehicle on Kirby road.

Subject Freddy Nelson has on many occasions harassed, threatened and undermined CSG security officers and operations at DPC for well over a year now.

Cornerstone WILL NOT un-exclude this subject or honor Lowes agreement to let this subject back on the property.

We ask once again for TMT to get a handle on the tenant and resolve this issue formally and finally.

Thank you.

Respectfully,

Harris J.R.
Director
Cornerstone Security Group

Office: (503) 490-6175
Direct: (541) 500-7432



Cornerstone Security Group was founded in 2017 on the principle of reinventing the security industry in the State of Oregon and abroad. Our founding principles are based on raising the security industry standard. We bring professionalism, honesty, integrity, loyalty, and combined 25 years experience to the table.



Cornerstone Security Group
sales@cornerstonesecurity.net
(503) 490-6175

Thank you for your interest! Listed below is a security services quote for Uniformed On-Site Security Officers at performance location by Cornerstone Security Group. A licensed/certified/insured security officer will provide access control, patrol the property, and respond to calls for service. The security officer(s) will conduct citizen contacts, mitigate criminal activity, effect arrests, report incidents, and enforce property rules/regulations in accordance with local, state, and federal law.

Performance Location: **DELTA PARK CENTER
1120 N HAYDEN MEADOWS DR.
PORTLAND, OR 97217**

Uniformed On-Site Security Officer

Duration: Short-term/Temporary
Billable Hours: 24 hrs
Beginning and Ending Time: 9/26/20 11:00am – 9/27/20 11:00am
Standing Officer Base Rate: \$ [REDACTED] per hour per officer
Work Order# N/A
Total Billable Hours: 24 hrs

One Officer: 24 hrs x \$ [REDACTED] Per Performance Period

(If payment is by Credit/Debit Card, a 4% processing fee will apply)

Above is the request quote for on-site security services. We can fully customize this service and are flexible to adjust our coverage to meet your needs. **Payment is required up front, prior to services being provided. Invoice terms are Net 0.** In the event that services are no longer required before the end of the job duration, payment will be refunded for remaining days.

Respectfully,

Matthew Cady
Owner/General Partner
Cornerstone Security Group
Sales@cornerstonesecurity.net
Direct: (541) 621-1512
Office: (503) 490-6175

The information herein is to be considered confidential and proprietary.

TMT 1166



Cornerstone Security Group met with TMT on July 7th, 2020 to discuss the current progress of the Delta Park Center and make adjustments as needed. One of the primary topics of discussion was TMT's Zero Tolerance Policy, which is a TMT policy used on all of their properties, and not exclusively for Delta Park Center. The meeting was represented by CSG Owner Matthew Cady and Director Rance Harris, and TMT Property Manager Henry Hornecker and Maintenance Manager Brian Hug.

The guidelines set forth by TMT for the Zero Tolerance Policy were as follows:

Any activity by a person, or persons, that is not a family friendly action is not tolerated and must be ended immediately or be trespassed/removed from the property.

Examples of Zero Tolerance Policy Violations put forth by TMT are: walking across the grass and landscaping, being behind buildings and unauthorized areas in which there is no business to conduct, cutting through the property by means of going through fencing/landscaping, littering such as throwing cigarette butts on the ground, loitering, illegal dumping, trash rummaging, urinating/defecating in public, use of controlled substances, public disruption, disorderly conduct, violence, illegal parking/camping, persons parking in other tenant parking spaces for the purpose of fraudulently returning bottles/cans from out of state (Washington).

TMT's stance for all above examples was for those persons to be immediately trespassed and removed from the Delta Park Center.

Cornerstone Security Group's stance was that, when applicable, a warning should be issued rather than immediate trespass so as to be in compliance with directives from the Oregon Department of Public Safety, Standards, and Training.

DPSST states that, when contacting a person, the officer needs to do the following: Make contact with the offending person(s), using clear and concise communication, offer a greeting, identify yourself, advise the reason/purpose for contact, educate on the correct course of action, and action needed, thank the person(s) for their level of cooperation, and end contact.

Enforcing TMT's Zero Tolerance Policy on its face doesn't allow Cornerstone Security Group the opportunity to comply with DPSST regulations and puts both Cornerstone Security Group and TMT in an awkward position that could result in liability due to strong push back from the general public. While taking a strong stance/heavy handed approach on the above listed activities works, it cannot be a linear approach without flexibility. Cornerstone Security Group's professional stance, is that the correct course of action needs to be educating the subject, and offering the subject the opportunity of corrective action. This should be conducted at the discretion of the contacting officer, and the situation at the time.



CORNERSTONE SECURITY GROUP OPERATIONAL PERSPECTIVE/CLIENT DISCUSSIONS

In speaking with TMT Representatives, we went over the basic security needs of the commercial center and what the organization was initially wanting. One of the things discussed was that they believed that the corporate office wanted everyone unarmed while on duty. We advised them that their current security provider was working armed at night. Cornerstone Security Group is a full service security provider dedicated to reinventing the security industry here in the State of Oregon and abroad with professionalism, honesty, integrity, and loyalty. Our loyalty is not extended to just our clients but to our officers, and their families. We do not provide unarmed security services and here is some information on why that is.

In the current climate of attacks on Law Enforcement/Security Officers, it is paramount to officer safety that they have access to every possible tool in order to defend themselves and others from harm. Here in the State of Oregon, there have been 11 On-Duty Unarmed Security Officer Homicides. To this day, there have been 0 On-Duty Armed Security Officer Homicides in the state of Oregon.

Over the course of my 16 year career as a Security Professional here in the State of Oregon, I have been shot at a staggering 5 times, one of which by a transient with a gas powered pellet gun nearly hitting me in my eye. The most recent of which was 1 year, 4 months ago on a routine patrol through one of our apartment complexes, where two males came to the fence separating our property and fired 4 shots at me from a handgun. Thankfully I was unharmed in all incidents.

There are countless studies by all the leading law enforcement agencies that strongly support having an armed, and trained professional on location to prevent attacks against persons. Because of this, we simply cannot provide security services in an unarmed capacity. Cornerstone Security Group is owned by three individuals that believe in the value of life and a value that is instilled in each of our well trained, passionate officers.

Cornerstone Security Group's officers are all certified and trained through the Oregon Department of Public Safety, Standards, and Training (DPSST). Our officers have undergone several weeks of internal training in addition to what they have received by the Oregon DPSST. We also do weekly/bi-weekly training for our officers through multiple different avenues. As a company, we have had zero firearm related incidents related to neglect or improper use. Due to our very restrictive, careful hiring process, this is also extended to each officers' career as well.



OVERVIEW OF CURRENT VARIABLES CONCERNING THE DELTA PARK CENTER

According to the Oregon Crime Statistics, Portland, Oregon's North Precinct District in one-year spanning from Sept-19 through Sept-2020 bring up concerning results of the following:

Assault Offenses: 9,446

Homicide Offenses: 53

Arson: 489

The statistics for the year 2020 concluded with 890 shooting incidents which is a significant leap from the 393 in the year 2019. The Delta Park Center is located within the North East District of Portland which has been the highest risk district of Portland for many years.

It has been well observed during the last year an "unprecedented" number of Portland Police Officers have resigned mid-career, opting to forego service time toward retirement, take lower-paying jobs in smaller towns, citing poor working conditions in Oregon's largest city. Due to this current effect the PBB provides six Police Officers for the District DPC resides. Those six Officers are assigned two per vehicle.

Currently our Delta park Officer at night is alone and solely relies on a Patrol Back up supplied by CSG. This Patrol back up is a CSG Officer that CSG ultimately covers the expense for in order to keep Officer safety at a priority. The CSG assigned Officer for the DPC relies heavily on the extra manpower of the CSG Officers assigned to the OBRC for many back up and high risk contacts conducted throughout the day

Over the duration of the time Cornerstone Security Group has provided protective services for the TMT Delta Park Center our Security Officers have been involved in, and/or witness to, numerous violent and offensive acts. These acts include but are not limited to:

Multiple assaults on CSG Officers, threats from improvised weapons such as sticks, clubs, sharpened tools, blunt objects, machetes etc.

(CSG has confiscated many of these dangerous objects during contacts at DPC)

Some of these incidents include a stabbing incident in which a tenant's (Fisherman's Marine & Outdoor) LP Officer was stabbed and the subject attacked the CSG Officer shortly after. Use of infected needles during an attack. Assault on a CSG Officer using a motor vehicle which resulted in the Officer being out of work and in physical recovery for a duration of nearly 3 months. Multiple arson attempts. Politically motivated attacks and doxing from Antifa and other radical groups.

The information herein is to be considered confidential and proprietary.

TMT 1169



Cornerstone Security Group
operations@cornerstonesecurity.net
(503) 490-6175

CSG has provided a numerous and expansive amount of incident and arrest reports for such activities. To highlight the above mentioned accounts, crime statistics, current situation of DPC's location, the collective transient camps that overwhelmingly surround the area, and the rising rate in crime the Delta Park Center experiences, it is considered an extremely high risk area. We firmly believe that two officers are needed 24hrs a day.

As such, Cornerstone Security Group maintains the stance that we will not offer any unarmed services or reduce manpower. We will not remove any other effective means and/or tools for keeping both the general public, tenants of the Delta Park Center, and CSG Officers safe.

Crime Statistic Cited at <https://www.portlandoregon.gov/police/71978>

CONCLUSION

Because of our direct community focus method of providing security services, we have garnered praise from multiple walks of life ranging from several law enforcement agencies to persons we have taken enforcement action against while protecting properties and persons. We have incorporated the idea of community policing into our daily operations, which is an enforcement methodology invented by the Portland Police Bureau in the early 1980's. Through this style of enforcement, we have gained the respect of communities in which we work and it has been a big part of our success story. One of our aims is to improve the community and surrounding area of each location in which we provide our services.

We thank you for continuing to use us as your security services provider and we look forward to discussions in the future. We are happy to answer any questions you may have and desire to be a resource which you can call on to help with consulting matters in the future.

Respectfully,

Matthew Cady
Owner/General Partner
Cornerstone Security Group
Sales@cornerstonesecurity.net
Office: (503) 490-6175
Direct: (541) 621-1512

The information herein is to be considered confidential and proprietary.

TMT 1170

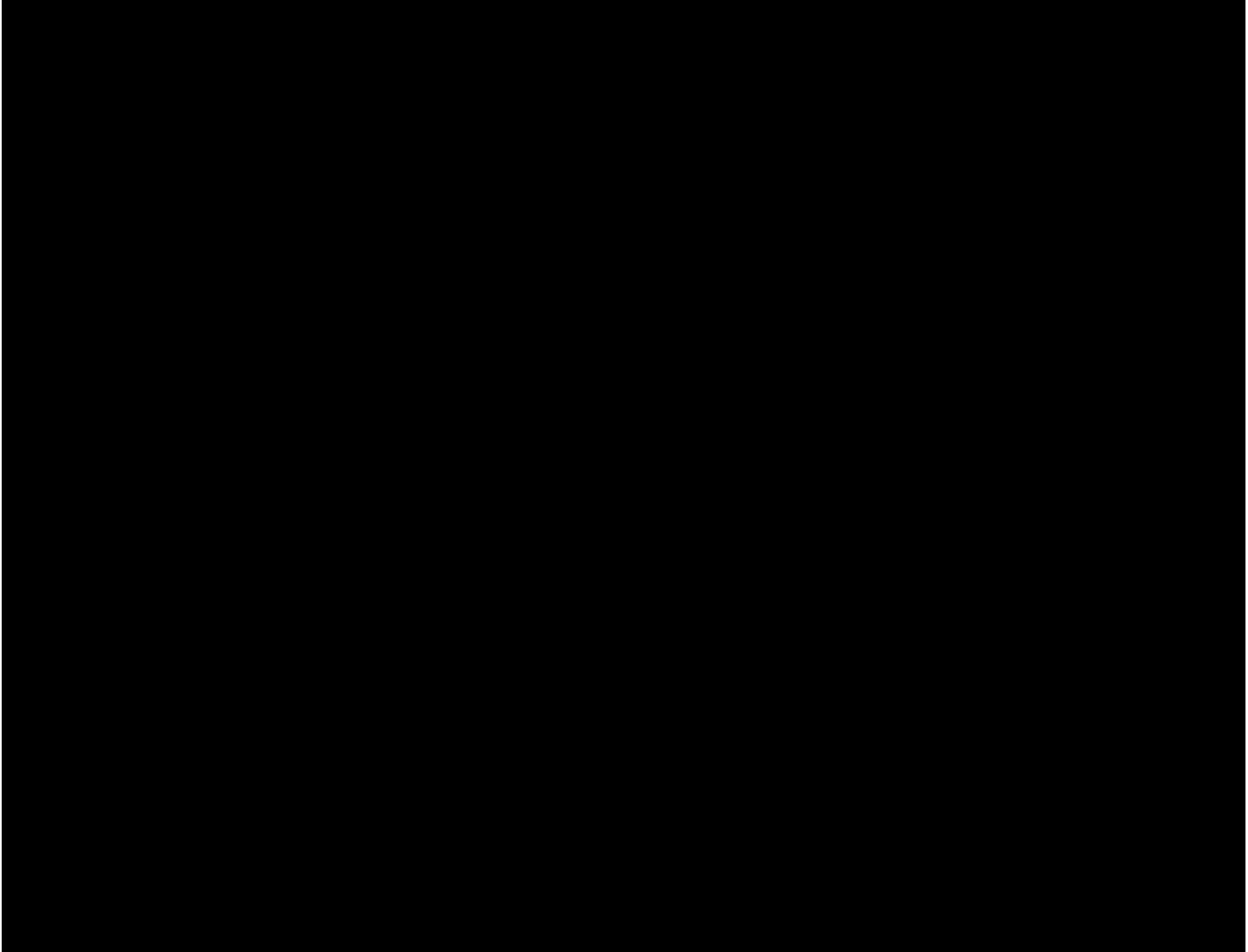


Cornerstone Security Group
operations@cornerstonesecurity.net
(503) 490-6175

Date: 04 DECEMBER 2020

Policy Memo: 20-0032

Written & Approved by: DIRECTORS [REDACTED]



The information herein is to be considered confidential and proprietary.



Cornerstone Security Group
operations@cornerstonesecurity.net
(503) 490-6175

PRINT: _____	SIGN: _____	DATE: _____
PRINT: _____	SIGN: _____	DATE: _____
PRINT: _____	SIGN: _____	DATE: _____
PRINT: _____	SIGN: _____	DATE: _____
PRINT: _____	SIGN: _____	DATE: _____
PRINT: _____	SIGN: _____	DATE: _____
PRINT: _____	SIGN: _____	DATE: _____
PRINT: _____	SIGN: _____	DATE: _____
PRINT: _____	SIGN: _____	DATE: _____
PRINT: _____	SIGN: _____	DATE: _____
PRINT: _____	SIGN: _____	DATE: _____
PRINT: _____	SIGN: _____	DATE: _____

The information herein is to be considered confidential and proprietary.

Armed Officer's Training Manual

Section 2: Responsibilities of the Armed Officer

Learning Goal: The student will understand his or her personal responsibilities and moral obligations in making deadly physical force decisions. The student will understand the importance of sound judgment in identifying and considering the use of non-deadly force options prior to using deadly force. The student will be able to identify the elements of proper preparation as an armed private security professional.

Your initial, and perhaps most important, responsibility as an armed private security professional is to thoroughly understand the serious nature of your potential use of deadly physical force. Being armed gives you the instantaneous ability to take a human life. This is a grave and profound responsibility that is entrusted to only a relative few members of society such as law enforcement officers. The firearm that you carry has only one purpose: to defend your life or the life of another from an immediate threat of death or serious physical injury. Once you have made the decision to fire and the bullet is on its way, you cannot call it back. The results of your judgment, good or bad, will be forever, and you will be held to account for your actions.

You Must Answer These Questions:

Before (not after) you accept the responsibility of carrying a gun as an armed private security officer, you must examine the following questions and decide if you are willing to shoot and, if necessary, kill if the situation demands it. If you have doubts or a sense of indecision, then you are not prepared to carry the gun in the performance of your job.

Are you willing to shoot and possibly kill someone who threatens your life or the life of another person?

This decision is critical to your ability to safely and effectively carry out your role as an armed officer. You must think about and resolve this question before accepting the responsibility of carrying a gun and potentially using it. You must be willing to shoot and, if necessary, kill if the situation demands it. When the deadly confrontation occurs, it will be too late to decide whether you can or cannot shoot. Failing to make this decision now will place you and the people you work with in danger. You must decide now. Your employer cannot do it for you. Neither can family, friends or advisors. This is your decision and yours alone.

Are You Capable of Making an ON-THE-SPOT Decision to Use Deadly Physical Force?

Generally life or death situations occur suddenly and do not give an officer much time to prepare or think out his or her response. You must be able to assess the situation, and make a sound, defensible decision based on the information you have at that time.

Do You Thoroughly Understand the Law on the Use of Deadly Physical Force?

The law allows the use of deadly force in legitimate self defense within very strict limitations. You must study and know the legal requirements for the justifiable use of deadly force. If you do not or cannot completely understand the law, then you are not prepared to carry a gun.

Can You Live With Your Decision After Injuring or Killing a Person?

Your decision to shoot may have been completely justified under the law, but long after others have forgotten the incident, you will have to live with that decision. Depending on your personal belief system you may wish to seek counseling and advice on the moral implications of using deadly force to protect innocent persons.

What Are Your Responsibilities as an Armed Officer?

Continue to Seek Out and Take Effective Training

Effective training will help you clearly understand the serious nature of the use of deadly physical force, and it will help you develop sound judgment in assessing non-deadly force options that must be considered before using deadly force.

Your training will give you an understanding of the criminal and civil penalties that you may face for misusing deadly force.

Proper training will provide you with the foundation for safe and competent gun handling and marksmanship.

You Must Accept Personal Responsibility for Your Decisions and Action

It is vital that you understand and accept personal responsibility for your use of force decisions. This responsibility demands that you thoroughly know and understand the legal limitations placed on your use of deadly force, and that you always consider what lesser alternatives or options are available before using deadly force. Law enforcement officers are frequently presented with situations

that could justify the use of deadly force, but most of the time they find other, non-deadly means. Just because you CAN shoot, does not mean that you SHOULD shoot. The community and the courts will hold you strictly accountable for your decision to shoot. You must be able to explain how and why your decision was necessary and proper.

You Must Understand that an Armed Private Security Officer Does Not Have a Duty to Act

The armed private security officer has a different and more limited role than the sworn law enforcement officer. The law enforcement officer is empowered by the state to investigate crimes, make probable cause arrests, and take action to protect life and property. The law enforcement officer has a sworn duty to act when confronted with unlawful behavior or resistance to a lawful command.

In contrast, the armed private security officer is considered a private citizen, and as such has no duty to act when confronted with unlawful behavior or resistance. The armed private security officer may decide to observe and report criminal behavior rather than attempt to arrest, detain or use force.

Unless there is an immediate and unavoidable deadly threat, the armed officer should consider alternative actions like retreating to a safer position and calling for police assistance. Remember, the law may allow the use of force or deadly force in certain situations, but it is never required.

Some armed private security officers hold law enforcement commissions as full-time or reserve law enforcement officers. This law enforcement authority may not be utilized while the officer is employed as a private security officer.

You Must Be Prepared

The mere act of carrying a gun does not mean that you are properly prepared to use deadly force. Being prepared means that you have gained the mental maturity to know that the gun is not there to enhance your authority or make up for your personal insecurities. You understand that the gun is a powerful tool that can be useful in protecting you and others in life and death situations. The gun does not make you a bigger or better person; it does require that you be a more responsible person.

1. Being prepared means that you have thought about your ability and willingness to use deadly force. It means that you have made the conscious decision that you will shoot, if necessary, to protect human life.

2. Being prepared means that you know how to make good decisions and that you will consider available alternative actions before using deadly force.

3. Being prepared means that you have invested the time and effort to gain and maintain proficiency with your handgun. There are no shortcuts to safe gun handling and accurate shooting. Carrying the gun without the ability to use it safely and effectively is irresponsible and foolhardy.

Section 2: Review

1. What critically important decision must every private security officer make before carrying a firearm on duty?

2. What questions must a private security officer answer before assuming the responsibilities that accompany carrying a gun on duty?

3. What are your responsibilities as an armed officer?

4. What is a "duty to act"? Explain how the duty to act of a sworn law enforcement officer differs compared to the actions taken by a private security officer.

Armed Officer's Training Manual

Section 3: USE OF FORCE

Learning Goal: The student will know the limitations placed on the use of physical force and deadly physical force by a private citizen or armed private security officer. The student will understand that an armed private security officer possesses no law enforcement powers, and is considered a private citizen with no duty to act when confronted by unlawful behavior. The student will understand how to avoid becoming the aggressor. The student will also understand the criminal and civil penalties associated with the misuse of deadly force.

OREGON LAW

Oregon law allows a private citizen to use force in self defense or the defense of another person. Oregon law considers the armed private security officer to be a private citizen, and therefore subject to the same limitations on the use of force, both physical and deadly. It is necessary for the armed private security professional to possess a fundamental knowledge of Oregon law concerning the use of force by private persons. ***Under Oregon law the armed private security officer is NEVER REQUIRED to use force.***

Definitions

Deadly Physical Force means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury. ORS 161.015(3)

Serious Physical Injury means physical injury which creates a substantial risk of death. ORS 161.015(8)

Reasonably believes... means that the person carrying out the force is acting on knowledge that he or she believes at that time to be true, and that an ordinary and reasonable person (i.e. a juror) would also believe to be true under the circumstances.

Statutes

An armed private security officer may be justified in using physical force during the confrontation or apprehension of a suspect, or in responding to an attack. Oregon law allows the use of necessary physical force in such circumstances, but

generally deadly physical force is not permitted except as a last resort and only to protect human life.

161.209 Use of physical force in defense of a person. Except as provided in ORS 161.215 and ORS 161.219, a person is justified in using physical force upon another person for self defense or to defend a third person from what the person reasonably believes to be the use or imminent use of unlawful physical force, and the person may use a degree of force which the person reasonably believes to be necessary for the purpose.

What does ORS 161.209 mean?

It means that a private citizen can use reasonable physical force (less than deadly force) to defend him or herself from an attacker who is using physical force.

1. Physical force is force that is not likely to result in death or serious physical injury. Generally this would mean an attack with empty hands or no weapons involved.
2. The private citizen or armed private security officer could respond by using reasonable force such as defensive tactics controls, a chemical weapon like Cap-Stun™, an electronic weapon or stun gun, or a baton.
3. Physical force is also reasonable if it is the minimum degree of force necessary to cause the threat to stop the attack or be placed under physical control.

It is very important to understand that Oregon law places restrictions on the use of DEADLY PHYSICAL FORCE

ORS 161.219(3) states that a person is not justified in using deadly physical force upon another person unless the person reasonably believes that the other person is using or about to use deadly physical force against a person.

What does ORS 161.219(3) mean?

1. It means that you may use deadly force (i.e. a firearm) only if you reasonably believe that another person is using or about to use deadly force against you.
2. It means that you must base your belief on the knowledge you possess at the time of the attack, and that such knowledge would lead a reasonable person to the same conclusion.
3. It means that your use of deadly force is justified only as long as the attacker is using or about to use deadly force against you. Once the attacker stops using deadly force, you must stop using deadly force.

DPSST recommends that private security officers use deadly physical force only:

1. **In defense of the officer's own life** (to prevent someone from causing death or serious physical injury to the officer.)
2. **In the defense of another person's life** (to prevent someone from seriously injuring or killing another person in the officer's presence.)

It is very important to understand that deadly physical force (using a firearm or other deadly weapon) is NOT justified to stop a suspect who is running away from you, attempting to steal or destroy property, or disobeying an order.

Becoming the Aggressor

You become the aggressor when you use force that is not justified in the first place, or after there is no longer a need to use previously justifiable force. Oregon law provides no defense or justification for the use of force by the aggressor.

ORS 161.215 states that a person is not justified in using physical force in self defense if:

The person using the force provokes the use of unlawful physical force by another person with the intent to cause death or physical injury to that person; or

The person is the initial aggressor, (except that the use of physical force upon another person under such circumstances is justifiable if the initial aggressor withdraws from the encounter and effectively communicates to the other person the intent to do so, but the latter nevertheless continues or threatens to continue the use of unlawful physical force.)

This means that you are **NOT** justified in using physical force if you provoke a fight, or start a fight, or continue a fight when the circumstances do not justify the use of force.

For example, if a private security officer teases or taunts a trespasser into fighting, then the use of force by the officer is not justified.

In another example where a person attacks an officer, if that person stops using force, retreats or surrenders, but the officer continues to use force against that person, then the officer's use of force from that point forward is not justified. At that point the private security officer is using force unlawfully and has become the **AGGRESSOR**.

Being the AGGRESSOR means using EXCESSIVE or UNJUSTIFIED FORCE.

How Do You Avoid Using Excessive or Unjustified Force?

The armed private security officer can avoid becoming the aggressor in a use of force situation by:

1. **Knowing when it is lawful and proper to use force.**
2. **Considering and, if possible, using alternatives to the use of force.**
3. **Using only the degree of force necessary to stop the attack or control the threat.**
4. **Reducing the level of force if the threat stops using force, retreats or surrenders.**
5. **Understanding the *Determination of Force Matrix* and using it to help make sound, defensible use of force decisions.**

The Determination of Force Matrix

The ***Determination of Force Matrix*** is a conceptual model that helps private security officers understand what the proper level of force or alternate action should be in response to an attack or in trying to overcome resistance. It is also helpful in avoiding becoming the aggressor.

The ***Determination of Force Matrix*** is often expressed as a chart that shows the level of resistance by the threat, from low to high, and the corresponding level of appropriate force or action by the officer. At the lowest level of resistance the threat may refuse to comply or offer verbal resistance. The officer would reasonably respond by calmly talking to the threat, getting information, asking the threat to comply, providing choices, and calling for assistance.

Maybe the threat resists by punching, kicking or attempting to escape. The officer could reasonably defend him or herself by using non-lethal techniques: restraining techniques, pepper spray or impact weapons. If the threat's resistance is lethal (uses a firearm or other lethal weapon like a knife or club, uses a non-lethal weapon or any object in a lethal manner, or attempts to disarm the officer), then the officer could reasonably respond with deadly force.

The ***Matrix*** also allows downward movement. As the officer gains control and/or compliance and the threat reduces or stops using force, then the officer's level of force is reduced to a level appropriate to maintain control over the threat.

Always keep in mind that your primary goal in a violent or potentially violent situation is to defend yourself or other persons from the threat

**Oregon Department of Public Safety Standards and Training
ARMED PRIVATE SECURITY PROFESSIONAL**

DETERMINATION OF FORCE MATRIX	
Resistance - What the Threat Does	Response - The Officer's Force Options (*Officer Has No Legal Duty to Take Action)
<p>Presence</p> <p>Resistive Presence Verbal Resistance Refusing to Comply</p>	<p>Presence</p> <p>Communicating Gathering Information Verbal Requests - Persuasion Giving Choices and/or Setting Limits Giving Directions Verbal Warnings (Or may retreat if safe and practical)</p>
<p>Resistance</p> <p>Static Resistance Refuses to Leave Balks/Dead Weight</p> <p>Active Resistance Struggles/Pulls away Attempts to Escape</p>	<p>Physical Control</p> <p>Defensive Tactics Restraining Techniques Pepper Spray</p> <p>(Or may retreat if safe and practical)</p>
<p>Non-Lethal Attack</p> <p>Ominous Resistance Physical Assault Punches, Kicks, Bites Throws Object Wrestles Bear Hugs, Holds Down</p>	<p>Serious Physical Control</p> <p>Defensive Tactics Restraining Techniques Punches, Kicks Focused Blows Pepper Spray Impact Weapons Electronic/Stun Weapons</p> <p>(Or may retreat if safe and practical)</p>
<p>Lethal Attack</p> <ul style="list-style-type: none"> - Attack with any object or weapon used in a lethal manner - Attack with unarmed force likely to cause death or serious physical injury - Attempt to Disarm Officer - Attack with a dangerous weapon, deadly weapon or firearm 	<p>Deadly Physical Force</p> <ul style="list-style-type: none"> - Force using any object or weapon used in a lethal manner - Unarmed force likely to cause death or serious physical injury - Firearms <p>(Or may retreat if safe and practical)</p>

04-2008

and/or control the situation. You, as a private security officer, will need to use enough force to stop or control the threat. You should not try to equally match your force to the threat's resistance. You should use just enough greater force than the threat, but not deadly force.

Example: You confront a recently fired employee in your client's place of business. You ask this person to leave, but he refuses. You call for police assistance, and you continue to talk and attempt to gain compliance. After you have talked to this person for several minutes, he finally complies and leaves the premises.

You have responded to this person's low level of resistance with a correspondingly low response on the **Matrix**: being present in uniform, asking for compliance, giving direction, and getting help on the way.

Example: Now let's take the same situation, but when you initially confront this person, he attacks you with punches and kicks. It is not possible to respond effectively with presence and verbal requests. You should immediately move to an appropriately higher level of force. You respond with force greater than his, but less than deadly force. Such force may include (but is not limited to) pepper spray, defensive tactics control techniques or impact weapons.

If he stops the attack and backs away, you would properly reduce your force to a level that allows you to maintain control or keep the threat away from you. For instance, if you opted to use pepper spray, you would stop spraying, but you would be ready to use it again if the threat resumed his attack.

Example: Let's look at this same situation again. In this case you confront the person, but before you can say anything, he draws a handgun from under his jacket and points it at you. It would be reasonable for you to believe that you are in immediate danger of death or serious physical injury. Your response is to move immediately to deadly force on the **Matrix**. You would not be required to attempt to stop his attack at a lower level on the **Matrix**.

Criminal Penalties for Unlawful Use of Force

It is a criminal act to use physical force or deadly physical force without justification. ***Even if you are justified in using deadly physical force to defend your life, you may be prosecuted (and/or held civilly liable) if you injure or kill innocent persons.*** The armed private security officer who uses deadly force, or threatens to use deadly force when it is not justified or, if justified, endangers or

harms innocent persons, may be prosecuted and convicted of the following crimes:

Menacing (ORS 163.190): A person commits the crime of menacing if by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury. Menacing is a Class A Misdemeanor punishable by up to one year incarceration.

For example, if an armed private security officer, who is not acting in justifiable self-defense, draws or points a firearm at another person and threatens to shoot or kill that person, the officer may be charged with the crime of menacing.

Recklessly Endangering (ORS 163.195): A person commits the crime of recklessly endangering another person if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person. Recklessly endangering another person is a Class A Misdemeanor punishable by up to one year incarceration.

An example of Recklessly Endangering is an armed private security officer firing at a threat (with or without justification) with an innocent person in the line of fire or in dangerously close proximity to the threat. The innocent person does not have to be killed or injured to complete the crime. If an innocent person is hit by the officer's gunfire, then the crime could elevate to criminal homicide or felony assault.

Pointing a firearm at another (ORS 166.190): Any person over the age of 12, who, with or without malice, purposely points or aims any loaded or empty pistol, gun, revolver, or other firearm at or toward another person within range of the firearm, except in self-defense, commits the crime of pointing a firearm at another. Pointing a firearm at another is an Unclassified Misdemeanor.

Assault in the First Degree (163.185): A person commits assault in the first degree if the person intentionally causes serious physical injury to another by means of a deadly or dangerous weapon. Assault in the first degree is a Class A felony punishable by twenty years in prison.

Criminal Homicide (ORS 163.005): A person commits criminal homicide if, without justification or excuse, the person intentionally, knowingly, recklessly or with criminal negligence causes the death of another human being.

Types of Criminal Homicide:

1. **MURDER (ORS 163.095):** Person acts **intentionally** (has a conscious objective). Murder is an unclassified felony punishable by life imprisonment.
2. **MANSLAUGHTER II (ORS 163.125):** Person acts **recklessly** (is aware of and consciously disregards a substantial and unjustifiable risk). Manslaughter II is a Class B felony punishable by up to 10 years imprisonment.
3. **CRIMINALLY NEGLIGENT HOMICIDE (ORS 163.145):** Person acts with **criminal negligence** (fails to be aware of a substantial and unjustifiable risk). Criminally Negligent Homicide is a Class C felony punishable by up to 5 years imprisonment.

Civil Penalties for Use of Deadly Physical Force

Even if you are justified in using physical force or deadly force to defend yourself or another person, you and your employer may be sued in civil court for damages by the person or family of the person you used force against.

The person suing (plaintiff) must establish by the preponderance of the evidence that he or she was harmed; that you were the cause of the harm, and that you acted recklessly and outside the law. Civil liability exists whether or not you were convicted of a crime.

Your defense is usually based on facts surrounding your decision to use deadly force: the plaintiff's actions placed you in fear for your life or another's life; you acted within the law and in defense of yourself or another person.

Before you begin employment as an armed private security officer, you may wish to meet with your employer and discuss how you will be defended against lawsuits, who pays for your defense, and how judgments entered against you will be paid.

Section 3: Review

1. **A private security officer is, under Oregon law, never required to use force. Why?**
2. **Explain the difference between physical force and deadly physical force.**

3. Explain the difference between how a private citizen and a private security officer may use deadly force in self-defense.
4. ORS 161.219(3) allows a private citizen to use deadly physical force in self defense. How does this statute restrict the use of deadly force by private citizens?
5. May a private security officer ever use deadly physical force to stop a suspect who is running away, who is stealing or destroying property, or who is failing to obey an order? Why?
6. How can a private security officer become the aggressor when using force? How can the officer avoid becoming the aggressor?
7. If a private security officer must use deadly physical force (i.e. gun fire) to defend his or her life, what are the officer's responsibilities to nearby innocent persons?
8. Could an officer be prosecuted for injuring or killing an innocent person while shooting at a deadly threat?
9. Name three types of criminal homicide.

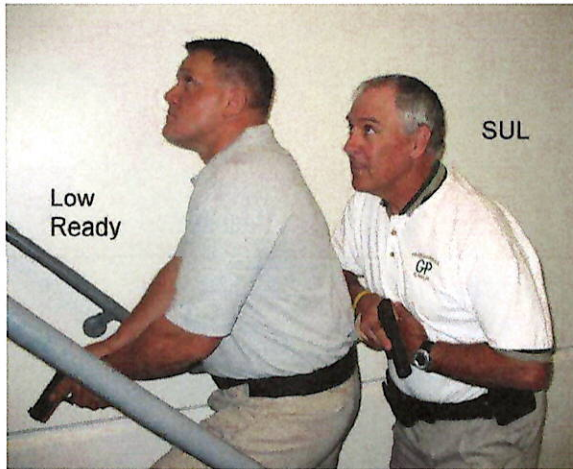


Fig. 7-18



Fig. 7-19

Warning Shots

Generally, warning shots are ineffective, potentially dangerous, and are not recommended. A warning shot is especially dangerous if fired into the air. Do you know for certain where it will fall? If you are in immediate danger of death or serious physical injury, time is precious and any shots you fire must be directed at stopping the threat. Warning shots do not usually stop an attacker intent on killing you, and firing a warning shot for anything less than a deadly attack may be unlawful (Recklessly Endangering). Because warning shots are not fired at a person or in a definitely safe direction, they are almost always in violation of the Four Cardinal Safety Rules, especially "Be Sure of Your Target, Back Stop and Beyond."

Shooting at Vehicles

Shooting at a vehicle is not usually effective in stopping the threat. There may be situations in which a moving vehicle is used as weapon against you. Usually the best tactic is to move quickly out of the vehicle's path and take cover behind a substantial barrier. It is difficult to stop a moving vehicle with any small arms fire, and even more so with a handgun. A moving vehicle will continue moving for considerable distances even with its engine and tires shot out. You may be justified in shooting the **driver** of a moving vehicle who is using it to assault you. Also, you may be justified in firing on someone who is firing at you from a moving vehicle. Remember that if you disable or kill the driver, the vehicle will likely continue moving, out of control and possibly causing the death or injury of others. Your decision to shoot must be based on your immediate need to defend yourself or another person, and this decision should be your best alternative available.

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2023, I served the foregoing
DECLARATION OF CJ MARTIN IN SUPPORT OF CORNERSTONE
DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO AMEND on the
following parties at the following addresses:

Thomas D'Amore
Ben Turner
D'Amore Law Group
4230 Galewood St Ste 200
Lake Oswego OR 97035
P: 503-222-6333
F: 503-224-1895
tom@damorelaw.com
ben@damorelaw.com
Of Attorneys for Plaintiff

Mr. Carey Caldwell
Hart Wagner LLP
1000 SW Broadway Ste 2000
Portland OR 97205
P: 503-222-4499
F: 503-222-2301
cpc@hartwagner.com
*Of Attorneys for Defendants TMT & D.
Park*

Andrew Burns
Shayna Rogers
Cosgrave Vergeer Kester LLP
900 SW 5th Ave Fl 24
Portland OR 97204
P: 503-323-9000
F: 503-323-9019
aburns@cosgravelaw.com
srogers@cosgravelaw.com
along@cosgravelaw.com

Kirsten L. Curtis
Thenell Law Group
12909 SW 68th Pkwy Ste 290
Portland OR 97223
P: 503-372-6450
F: 503-372-6496
kirsten@thenelllawgroup.com
Of Attorneys for Logan Gimbel

Steven Wraith
Lee Smart PS Inc
701 Pike St Ste 1800
Seattle WA 98101
P: 206-624-7990
F: 206-624-5944
sgw@leesmart.com
*Of Attorneys for Cornerstone
Defendants*

///
///
///
///

1 by emailing a true and correct copy thereof, certified by me as such, on said day.

2 MALONEY LAUERSDORF REINER PC

3
4 By /s/ CJ Martin
5 Candice J. Martin, OSB #106141
6 Email: cjm@mlrlegalteam.com

7 Of Attorneys for Defendants Matthew Cady,
8 Jeffrey James, TJ Lathrom, dba Cornerstone
9 Security Group
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26