

Brian Posewitz  
Exhibit C



# HUMANE VOTERS | OREGON

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Oregon Fish and Wildlife Commission  
4034 Fairview Industrial Drive SE  
Salem, OR 97302

*Re: Proposed Rules on Urban Deer Population Control*

Dear Chair Finley and Members of the Commission:

Please consider the following comments by Humane Voters Oregon regarding proposed rules for urban deer population control. We understand this issue is on your agenda for the December 7, 2018, meeting.

By way of background, Humane Voters Oregon, previously known as Humane Oregon, was formed in 2014 to advocate for the humane treatment of animals in Oregon's political process and elections. We are a moderate yet progressive animal welfare organization, with many of Oregon's leading animal welfare advocates on our current board of directors. We are not affiliated with any other state or national organization.

We have reviewed the proposed new rules on urban deer population control, which were made available to us by email on October 18, 2018. We understand the rules were directed by Senate Bill 373 (2017). We support several aspects of the proposed rules. We also have suggestions for improving the rules.

## Supportive Comments

1. We support adoption of rules on this subject. There should be clear, consistent and publicly available standards for determining when deer in urban areas are killed on grounds they constitute a "public nuisance." Rules are preferable to managing the situation on a case-by-case basis, out of public view, without any sideboards to ensure consistency.

2. We support the proposed requirement that cities requesting kill permits first adopt and enforce an ordinance to limit activities that attract deer to urban areas. Cities should be required to try to solve urban deer problems by non-lethal means before resorting to lethal means.
3. We support the proposed requirement that cities requesting kill permits first pass a measure declaring the urban deer population to be a public nuisance. This would ensure that citizens receive notice and an opportunity to be heard on whether they consider the presence of deer in an urban area such a nuisance that it requires killing some of the deer.
4. We support the requirement for donating the meat to local food banks and charitable organizations. While we hope the need to kill urban deer can be minimized, it makes sense to use the remains to supplement charitable food programs.

#### **Suggestions for Improvement**

5. The definition of “public nuisance” is too broad and open-ended for this issue. Senate Bill 373 did not define “public nuisance,” and it did not require incorporating any particular definition of the term. The proposed rules would incorporate the definition in ORS 498.012(7)(c), which provides:

“Public nuisance” means loss of or harm inflicted on gardens, ornamental plants, ornamental trees, pets, vehicles, boats, structures or other personal property.

Under this definition, read literally, a city could declare that its urban deer constitute a “public nuisance,” and the Department could issue kill permits, if one deer eats pears from two trees. (The use of plurals implies that at least two trees must be involved). A kill permit also could be issued if one deer walks through two “gardens” or “ornamental plants.”

SB 373 does not appear intended to authorize killing deer in response to such minor annoyances. For example, the bill requires cities, before applying for a kill permit, to adopt and enforce ordinances prohibiting the placement of food, garbage, and any other attractants that may knowingly constitute a lure for deer. (SB 373, Section 1(5).) By requiring such non-lethal measures before kill permits can be issued, SB 373 suggests kill permits should be a last resort and not something that should be issued for anything that satisfies the vague description in ORS 498.012(7)(c).

Because the incorporated definition of “public nuisance” is so broad and imprecise, it also would lead to arbitrary and inconsistent determinations of how many deer need to be taken to prevent them from continuing to be a “public nuisance.” Thus, the rules would fail to satisfy the requirement in SB 373 that the rules include “[p]rovisions for ensuring that the number of deer taken under the pilot program do not exceed the number necessary to be taken to reduce the deer population to a level that no longer constitutes a public nuisance.” SB 373, Section 1(4)(d).

While the broad definition of “public nuisance” might be appropriate in a more general context (i.e., wildlife generally), there should be a clearer definition for an issue as controversial as urban deer populations. The Department’s written testimony on SB 373 acknowledged: “conflicts [related to urban deer populations] are associated with a spectrum of issues including: feeding of wildlife; differences of opinion and values regarding resident deer; and differences of opinion

regarding potential solutions to the issue.” (Testimony of Shannon Hurn, Deputy Director for Fish and Wildlife Programs, and Doug Cottam, Wildlife Division Administrator, to Senate Committee on Environment and Natural Resources, Feb. 13, 2017.)

Thus, we suggest the rules have a more narrowly tailored definition for when urban deer populations constitute a “public nuisance.” Department staff is probably better suited to refine the definition, but the definition should include, for example: (a) a minimum estimated deer population within an urban area (depending on the size of the urban area); and (b) a minimum number of documented public complaints in a given period (depending on the number of people in the urban area).

6. The rules should require a specific time period to pass between adoption of the required ordinance to restrict attractants and application for a kill permit. Under the proposed rules, a city would be required to adopt the ordinance to restrict attractants only sometime “[b]efore requesting a kill permit.” Thus, cities could apply for a kill permit one day after adopting the required ordinance, without giving the ordinance a chance to work.

7. The rules should require other specific non-lethal efforts to minimize loss and harm, such as education and/or requirements for fencing, before applying for a kill permit. SB 373 explicitly required only an ordinance to restrict attractants, but the bill also said the rules “need not be limited to” the requirements specified in the bill.

8. The Department should have included an animal welfare organization among the stakeholders consulted before drafting the rules. The introduction to the rules notes that no rules advisory committee was consulted in preparation of the proposed rules but that the Department “consulted with” the League of Oregon Cities and “communicated with” “Oregon food banks.” As an initial matter, this does not appear to satisfy the requirement in SB 373 that the Department “consult with . . . [t]he governing bodies of cities where high urban deer populations are a concern.” SB 373, Section 1(3)(a). In any event, we are disappointed that the Department apparently did not consult with any animal welfare organizations before drafting the proposed rules. Such consultation was not required by SB 373, but urban deer control raises obvious animal welfare concerns, as the Department’s written testimony on SB 373 acknowledged (see quoted testimony above). Those concerns should have been heard before the rules were drafted.

Thank you for considering our comments on this issue.

Sincerely,

***Rajesh Reddy***

Rajesh Reddy  
Board Member

***Brian Posewitz***

Brian Posewitz  
Board Member and Administrator

