Second Amendment Preservation Ordinance

_____ County, the State of Oregon

1 **Section 1.**

2 **THE PEOPLE OF _____ COUNTY FIND THAT:**

3 **Whereas** the Declaration of Independence states that people are "*endowed by their Creator with certain unalienable Rights, ...to secure these rights, Governments are instituted among Men… deriving their just powers from the consent of the governed*."

4 **Whereas** it is the natural tendency of civil government to expand beyond the limits of its rightful Constitutional charge and to usurp authority and power which has not been given to it through the delegated consent of the governed.

5 **Whereas** whenever the ends of government are perverted, public liberty is manifestly endangered or threatened and all other means of redress are ineffectual, the People may, and of right ought to, reestablish the original spirit of Constitutional Liberty.

6 **Whereas** non-resistance against arbitrary power and oppression is absurd, slavish and destructive to the good and happiness of mankind.

7 **Whereas** John Adams wrote in [1]A Dissertation on the Canon and Feudal Law (1765): "*I say RIGHTS, for such they (the people) have, undoubtedly, antecedent to all earthly government, — Rights, that cannot be repealed or restrained by human laws — Rights, derived from the great Legislator of the universe."*

8 **Whereas** the Supreme Court found in [2]Miranda v. Arizona – page 384 U.S. 491: "*Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them."*

9 **Whereas** Justice Thomas M. Cooley in [3]People v. Hurlbut 24 Mich. 44, page 108 (1871) surmises: "*The State may mould local institutions according to its views of policy or expediency; but local government is matter of absolute right; and the state cannot take it away."*

1. TeachingAmericanHistory.org – project of the Ashbrook Center, Ashland University, Ohio – parenthesis added

2. Justia.com – a leading online resource which publishes United States Supreme Court Decisions

3. Harvard Law Review, Vol. 14, No. 1, May 1900, p. 20, on jstor.org; an online resource founded by Princeton Univ. Pres. William G. Bowen to preserve scholarly & academic journals. Search also the *Cooley Doctrine* – Wikipedia

10 **Whereas** the Constitution of These United States is the Supreme Law of the Land.

11 **Whereas** the Second Amendment to the Constitution of the United States of America states: “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.”

12 **Whereas** the Supreme Court, in the [1]District of Columbia v. Heller (2008) decision, affirmed the right to keep and bear arms is unconnected to any service in a militia;

13 **Whereas** the Supreme Court, in [2]United States v. Miller (1939), opined that firearms that are part of ordinary military equipment, with use that could contribute to the common defense, are protected by the Second Amendment;

14 **Whereas** The Ninth Amendment to the Constitution of the United States of America states: “the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people,” - protects ancillary rights that are closely related to the right to keep and bear arms protected by the Second Amendment; including the right to manufacture, transfer, buy and sell firearms, firearm accessories and ammunition. Hereinafter these shall be referred to as “ancillary firearms rights”.

15 **Whereas** the Tenth Amendment to the Constitution of the United States of America states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

16 **Whereas** Article 1, section 27 of the Constitution of the State of Oregon states: “The people shall have the right to bear arms for the defence of themselves, and the State, but the Military shall be kept in strict subordination to the civil power.”

17 **Whereas** Article 1, section 33 of the Constitution of the State of Oregon states: “This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.” This section protects ancillary firearms rights that are closely related to the right to keep and bear arms protected by Article 1, section 27 of the Constitution of the State of Oregon.

18 **Whereas** the Fourteenth Amendment to the Constitution of the United States of America, Section 1 states: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

1 & 2. Justia.com

19 **Whereas** the Fourteenth Amendment to the Constitution of the United States of America further guarantees the fundamental freedoms relating to firearms, protected by the Second, Ninth and Tenth Amendments, against infringement by state and local governmental action.

20 **Whereas** it is apparent that many proposed federal mandates, such as the presidential executive orders introduced in 2013, and other acts, laws, orders, mandates, rules or regulations regarding the restriction or confiscation of firearms, firearm accessories or ammunition, violate the Second, Ninth and Tenth Amendments to the Constitution of the United States of America.

21 **Whereas** it is apparent that many state bills, such as the recently passed SB941 - that makes a crime of an activity that has been a daily practice in America for centuries - and other state acts, laws, orders, mandates, rules or regulations regarding the restriction or confiscation of firearms, firearm accessories or ammunition, violate the Fourteenth Amendment to the Constitution of the United States of America, and Article 1 sections 27 and 33 of the Constitution of the State of Oregon.

22 **Whereas** it is therefore the duty of the People of _____ County, through the agency of the lesser magistrates - local elected officials and sheriffs - to challenge the civil government when and where it exceeds or threatens to exceed its bounds.

23 **Section 2**

24 **THEREFORE, THE PEOPLE OF _____ COUNTY DO ORDAIN AS FOLLOWS:**

25 **A. This Second Amendment Preservation Ordinance**

26 **To preserve** the right of the People of, on and in _____ County to:

1. Keep and bear arms as originally understood; in self-defense and preservation, and in defense of one's community and country.

2. Freely manufacture, transfer, sell and buy firearms, firearm accessories and ammunition, which are designed primarily for the same purposes.

27 **B.** These rights are retained by the People and protected by the aforementioned Constitution of These United States, and the Constitution of the State of Oregon.

28 **C.** Any regulation of the right to keep and bear arms or ancillary firearms rights that violate the Second, Ninth, Tenth or Fourteenth Amendments to the Constitution of the United States of America, or Article 1, sections 27 and 33 of the Constitution of the State of Oregon, as articulated herein, shall be regarded by the People on and in _____ County as unconstitutional; a transgression of the Supreme Law of the Land and its spirit of Liberty, and therefore by necessity ***void ab initio.***

29 **D.** The People on and in _____ County do resolve by this instrument that:

1. The _____ County Government will not authorize or appropriate government funds, resources, employees, agencies, contractors, buildings, detention centers or offices for the purpose of enforcing any element of such acts, laws, orders, mandates, rules or regulations, that infringe on the right by the people to keep and bear arms, including, but not limited to the following:

30 **a)** Registration requirements for existing lawfully owned firearms;

31 **b)** Prohibitions, regulations, and/or use restrictions related to ownership of non-fully automatic firearms, including but not limited to semi-automatic firearms; including semi-automatic firearms that have appearance characteristics or features similar to fully automatic firearms and/or military "assault style" firearms;

32 **c)** Prohibitions, regulations, and/or use restrictions limiting hand grips, stock, flash suppressors, bayonet mounts, magazine capacity, clip capacity, internal capacity, or types of ammunition available for sale, possession or use;

33 **d)** Registration and background check requirements beyond those customarily required at time of purchase prior to December 2012;

34 **e)** Restrictions prohibiting the possession, carry or transport of lawfully acquired firearms or ammunition by law abiding adult citizens or minors supervised by adults.

35 **E.** This Ordinance acknowledges provisions of preexisting law that:

1. Prohibit the possession of firearms by certain felons per ORS 166.270;

2. Prohibit the purchasing or possession of firearms by individuals who have been adjudicated mentally ill and a danger to self and others per ORS 426.130.

3. Prohibit the possession of unlawful machine guns, short-barreled shot guns and silencers per ORS 166.272.

4. Prohibit the possession of unlawful concealed firearms, or possession by minors per ORS 166.250

5. Prohibit the possession of firearms in public buildings or court facilities per ORS 166.360-166.370.

6. Prohibit the possession of firearms to certain convicted domestic violence perpetrators under the Gun Control Act of 1968.

F. It shall be the duty of the sheriff of _____ County to determine as a matter of internal policy and county concern per ORS 203.035, whether any federal, state or local regulation affecting firearms, firearms accessories and ammunition, that is enforceable within his/her jurisdiction, violates the Second, Ninth, Tenth or Fourteenth Amendments to the Constitution of these United States, or Article 1, sections 27 and 33 of the Constitution of the State of Oregon, as articulated herein. The sheriff will use pro bono legal advice as available.

Section 3

PENALTIES

A. Anyone within the jurisdiction of _____ County, Oregon found in violation of this ordinance may be made a defendant in a civil proceeding by the county seeking redress of the violation, per ORS 203.065.

B. Fines recovered under ORS 203.030 – 203.075 shall be paid to the clerk of the court in which recovery is had. After first deducting court costs in the proceedings, the clerk shall pay the remainder to the treasurer of the county for the general fund of the county, per ORS 203.065.

C. A civil offense against this ordinance is a Class A violation, per ORS 203.065, with a maximum fine of $2000 for an individual, and $4000 for a corporation, per ORS 153.018

D. Any peace officer, as defined by ORS 161.015, may enforce this ordinance, adopted under ORS 203.035.

Offense described ORS 161.505

Authority of political subdivision to specify ordinance violation ORS 153.025

43 **E.** Under county authority per ORS 203.035, enforcement of this ordinance is in alliance with the oath to uphold and defend the Constitution of these United States under Article VI Clause 3 of the U.S. Constitution, and Article XV section 3 of the Constitution of the State of Oregon, which the elected officials and officers of _____ County are being held to by the people of this county. It is primary in their scope of duties, and may indemnify them against certain liability per ORS 30.285

44 **Section 4**

45 **A. Effective Date**

46 This ordinance takes effect within 30 days of being adopted by the _____ County Board of Commissioners, per ORS 198.570.

47 **BE IT NOW ORDAINED AND ADOPTED** this _____ day of August, 2015

The County Commissioners of _____ County, Oregon

Attest:

_____ (Seal)

Commissioner

_____

County Clerk

_____ (Seal)

Commissioner

_____

County Sheriff

_____ (Seal)

Commissioner Chair

48 **(END)**

Ordinance No._____