

ORDINANCE NO 2019-15

AN ORDINANCE ESTABLISHING MARSHALL COUNTY, KENTUCKY AS A SECOND AMENDMENT SACTUARY COUNTY (SASO).

SECTION 1. TITLE

The title of this ordinance shall be known as the “Second Amendment Sanctuary Ordinance,” or “SASO.”

SECTION 2. FINDINGS

The people of Marshall County, Kentucky, find and declare:

- A. Acting through the Constitution of the United States, the people created government to be their agent in the exercise of a few defined powers, while reserving to the citizens the right to decide on matters which concern their lives, liberty, and property in the ordinary course of affairs;
- B. The Second Amendment to the Constitution of the United States, a provision of the Bill of Rights drafted and introduced into the first Congress after the ratification of the Constitution by James Madison, 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”;
- C. The right of the people to keep and bear arms is further protected from infringement by State and Local Governments under the Ninth and Tenth Amendments, and the “due process” and “privileges and immunities” clauses of the Fourteenth Amendment to the Constitution of the United States;
- D. Kentucky’s Bill of Rights, set forth as Section 1 of the Kentucky Constitution, protects the rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, peaceable assembly, redress of grievances, and bearing arms. Section 1 of the Kentucky Constitution reads in pertinent part: “All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned... (Seventh) The right to bear arms in defense of themselves

and of the State, subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons;”

- E. The Supreme Court of the United States in *District of Columbia v. Heller*, 554 U.S. 570 (2000), recognized the individual’s right to keep and bear arms, as protected by the Second Amendment of the Constitution of the United States. Justice Antonin Scalia’s prevailing opinion in that case stated that the Second Amendment protects an individual’s right to possess a firearm unconnected with service in a militia, and the right to use that firearm for traditionally lawful purposes, such as self-defense within the home;
- F. Section 1 of the Fourteenth Amendment to the Constitution of the United States reads, “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;”
- G. The Supreme Court of the United States recognized in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), that the Second Amendment to the Constitution was incorporated into the Fourteenth Amendment, and thereby made applicable to the States;
- H. Justice Thomas M. Cooley in the *People v. Hurlbut*, 24 Mich. 44 (1871), opined: “The State may mould local institutions according to its views of policy or expediency: but local government is a matter of absolute right; and the state cannot take it away,” and that legal rule has since been known as the “Cooley Doctrine;”
- I. The right of a State to be free from the commandeering hand of the Federal Government has been recognized by the Supreme Court of the United States in *Printz v. United States*, 521 U.S. 898 (1997). The Court held: “The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a Federal regulatory program.” The anti-commandeering principles recognized by the U.S. Supreme Court in *Printz v. United States*, *supra*, are predicated upon the advice of James Madison, who in Federalist Number 46 advised “a refusal to cooperate with officers of the Union” in response to either unconstitutional Federal measures or constitutional but unpopular Federal measures; and

J. The Supreme Court of the United States in *Miranda v. Arizona*, 384 U.S. 436 (1966), stated that “where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.”

THEREFORE, the right to keep and bear arms is a fundamental individual right that shall not be infringed; and all local, State, and Federal acts, laws, orders, rules or regulations regarding firearms, firearms accessories, and ammunition enacted or promulgated that violate that fundamental individual right are violative of the Second Amendment of the Constitution of the United States and/or Section 1(7) of the Kentucky Constitution.

Local governments have the legal authority to refuse to cooperate with State and Federal firearm laws that violate those rights, and to proclaim a Second Amendment and Section 1(7) Sanctuary for law-abiding citizens in their cities and counties;

THEREFORE, through the enactment of this document,
Marshall County, Kentucky is hereby a Second Amendment Sanctuary County.

SECTION 3. PROHIBITIONS

A. Notwithstanding any other law, regulation, rule, or order to the contrary, no agent, department, employee, or official of Marshall County, a political subdivision of the State of Kentucky, while acting in their official capacity, shall:

1. Knowingly and willingly, participate in any way in the enforcement of any Unlawful Act, as defined herein, regarding personal firearms, firearm accessories, or ammunition.
2. Utilize any assets, Marshall County funds, or funds allocated by any entity to Marshall County in whole or in part, to engage in any activity that aids in the enforcement or investigation relating to an Unlawful Act in connection with personal firearms, firearm accessories, or ammunition.

B. This ordinance does not regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition, or ammunition components. On the contrary, this ordinance prohibits the enforcement of Unlawful Acts or the use of assets, Marshall County funds, or funds allocated by any entity to the County, in whole or in part, to

engage in any activity that aids in the enforcement or investigation relating to an Unlawful Act.

C. An “Unlawful Act” shall consist of any Federal or State act, law, order, rule, or regulation, which restricts an individual’s constitutional right to keep and bear arms, including any Federal or State act, law, order, rule, or regulation that bans or effectively bans, registers or effectively registers, or limits the lawful use of firearms, firearm accessories, or ammunition (other than a fully automatic firearm which is made unlawful by Federal law). Any such “Unlawful Act” is invalid in Marshall County and shall not be recognized by Marshall County, is specifically rejected by the voters of Marshall County, and shall be considered null, void and of no effect in Marshall County, Kentucky and this includes, but shall not be limited to the following:

1. Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition not common to all other goods and services on the purchase or ownership of those items by citizens;
2. Any registration or tracking of firearms, firearm accessories, or ammunition;
3. Any registration or tracking of the owners of firearms, firearm accessories, or ammunition;
4. Any act forbidding the possession, ownership, or use or transfer of any type of firearm, firearm accessory, or ammunition by citizens of the legal age of eighteen and over, other than pursuant to Federal law background check requirements for transfers or purchases through FFL dealers;
5. Any act ordering the confiscation of firearms, firearm accessories, or ammunition from citizens;
6. Any prohibition, regulation, and/or use restriction related to ownership or the constitutionally guaranteed lawful use or carry of non-fully automatic firearms; and
7. Any prohibition, regulation, and/or use restriction limiting hand grips, stocks, flash suppressors, bayonet mounts, magazine capacity, clip capacity, internal capacity, bump stocks, suppressors, or types of ammunition available for sale, possession or use by citizens.

SECTION 4. PENALTIES

A. Anyone within the jurisdiction of Marshall County, Kentucky, accused to be in violation of this ordinance may be sued in the district court of the State of Kentucky for declaratory and injunctive relief, damages, and attorneys' fees pursuant to K.R.S. 83A.065. Neither sovereign nor official or qualified immunity shall be an affirmative defense in cases pursuant to this section.

B. Any peace officer may enforce this ordinance.

C. A civil offense against this ordinance is a Class A violation, per K.R.S. 83A.065, with a maximum fine of \$2,000 for an individual, and \$4,000 for a corporation, per K.R.S. 83A.065(4).

D. Exceptions:

1. The protections provided to citizens by this ordinance do not apply to persons who have been convicted of felony crimes or who are prohibited from possessing firearms under Federal law.
2. This ordinance is not intended to prohibit or affect in any way the prosecution of any crime for which the use or possession of a firearm is an aggregating factor or enhancement to an otherwise independent crime.
3. This ordinance does not permit or otherwise allow the possession of firearms in Federal buildings.
4. This ordinance does not prohibit individuals in Marshall County from voluntarily participating in assisting in permitting, licensing, registration, or other processing of applications for concealed carry permits, or other firearm, firearm accessory, or ammunition licensing or registration processes that may be required by law.
5. In accord with K.R.S. 65.870, this ordinance is not intended to, nor does it in any way, regulate the manufacture, sale, purchase, taxation, transfer, ownership, possession, carrying, storage, or transportation of firearms, ammunition, components of firearms, components of ammunition, firearms accessories, or a combination thereof. Rather, this ordinance enforces and protects, within

Marshall County, Kentucky, the existing Federal and State constitutional law regarding same.

SECTION 5. SEVERABILITY

- A. The provisions of this act are hereby declared to be severable, and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 6. EFFECTIVE DATE

- A. The effective date of this ordinance, The Second Amendment Sanctuary Ordinance, or SASO, shall be effective immediately upon approval by the Marshall County Fiscal Court.

FIRST READING:

SECOND READING:

PUBLICATION:

Passed this the ____ day of _____, 2019.

KEVIN NEAL, Judge-Executive
Marshall County Fiscal Court

ATTEST: _____
Marshall Fiscal Court Clerk