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

STATE OF OREGON,

 Petitioner,

 v.

YAMHILL COUNTY,

 Respondent.

Case No. _____

ORS 203.060 PETITION FOR JUDICIAL
REVIEW AND INVALIDATION OF
ORDINANCE

CLAIM NOT SUBJECT TO MANDATORY
ARBITRATION

ORS 20.140 - State fees deferred at filing

The State of Oregon brings this Petition for Judicial Review (“Petition”) pursuant to ORS 203.060 to seek judicial review and invalidation of a county ordinance on account of conflict with paramount state law. The State challenges Yamhill County Ordinance 913, entitled “In the Matter of Declaring a Second Amendment Sanctuary in Yamhill County,” enacted by the Yamhill County Board of Commissioners on April 1, 2021. In support of the Petition, the State alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1.

Petitioner State of Oregon brings this action as a sovereign state that holds police power within its jurisdiction. The State’s principal place of business is Marion County. The Attorney General has authority to bring suit on behalf of the State. *See* ORS 180.060.

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2.

Respondent Yamhill County is a political subdivision of the State of Oregon organized and existing under the laws of the State of Oregon. Yamhill County’s powers derive from, and are inferior to, those of the State.

3.

Yamhill County enacted Ordinance 913 on April 1, 2021 pursuant to the legislative authority granted under ORS 203.035, which provides that “the governing body ... of a county may by ordinance exercise authority within the county over matters of county concern, to the fullest extent allowed by Constitutions and laws of the United States and of this state, as fully as if each particular power comprised in that general authority were specifically listed in ORS 203.030 to 203.075.” *See* Ex. 1, Section 2.05 (stating that the ordinance is adopted pursuant to ORS 203.035). A correct copy of Ordinance 913 is attached as Exhibit 1 to this Petition.

4.

Ordinance 913 went into effect on June 30, 2021. It declares Yamhill County to be a “Second Amendment Sanctuary” and contains three categories of unlawful provisions that (1) purport to nullify, void, and render unenforceable new state laws relating to firearms; (2) prohibit county officials from enforcing new state firearm laws or utilizing county resources in connection with the enforcement or investigation of those laws, and (3) establish a private cause of action authorizing lawsuits against county officials for violations of the ordinance. These provisions, set forth in more detail below, are unlawful and invalid on their face, because they are preempted by or violate state law.

5.

This court has jurisdiction to review Ordinance 913 under ORS 203.060 and Article VII (Original), section 9, of the Oregon Constitution. This Court may grant declaratory and injunctive relief under ORS 203.060, which provides that county ordinances “shall be subject to

1 judicial review and invalidation on account of unreasonableness, procedural error in adoption, or
2 conflict with paramount state law or constitutional provision.”

3 6.

4 As set forth below, Ordinance 913 is in direct conflict with state law and exceeds the
5 authority of Yamhill County. As sovereign and consistent with its police power, the State has an
6 interest in the uniform application and enforcement of its laws across the state, including in
7 Yamhill County.

8 7.

9 Venue in Yamhill County is proper under ORS 14.080(1) because the cause of action
10 arose here and because it is the location of the respondent.

11 **BACKGROUND**

12 8.

13 Section 1 of Ordinance 913 prohibits Yamhill County agents, employees, and officials
14 acting in their official capacity from participating in the enforcement of what the ordinance calls
15 “Extraterritorial Acts.” It also prohibits utilizing “county assets, county funds, or funds allocated
16 by any entity to the county to ... engage in any activity that violates this ordinance by aiding in
17 the enforcement or investigation of Extraterritorial Acts relating to personal firearms, firearm
18 accessories, or ammunition.” Ex. 1, Section 1.01.

19 9.

20 Section 2 of Ordinance 913 defines the “Extraterritorial Acts” that fall within its
21 prohibitions. It provides that “[a]ll local, state and federal acts, laws, rules, or
22 regulations, originating from jurisdictions outside of Yamhill County, which restrict or
23 affect an individual person’s general right to keep and bear arms, including firearms,
24 firearm accessories or ammunition are, for all purposes under this ordinance defined as
25 Extraterritorial Acts. Such Extraterritorial Acts are specifically rejected by this county,

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1 and shall not be enforced by Yamhill County agents, employees, or officers and, shall be
2 treated as if they are null, void and of no effect in Yamhill County Oregon.” The
3 ordinance goes on to further state that “Extraterritorial Acts” include:

- 4 (a) Any tax, levy, fee, or stamp imposed on firearms, firearm
5 accessories, or ammunition not common to all other goods and services on
the purchase or ownership of those items by citizens; and
- 6 (b) Any registering or tracking of firearms, firearm accessories, or
7 ammunition; and
- 8 (c) Any registering or tracking of the owners of firearms, firearm
accessories, or ammunition; and
- 9 (d) Any registration and background check requirements on firearms,
10 firearm accessories, or ammunition for citizens; and
- 11 (e) Any Extraterritorial Act forbidding the possession, ownership, or
12 use or transfer of any type of firearm, firearm accessory, or ammunition by
citizens of the legal age of eighteen and over; and
- 13 (f) Any Extraterritorial Act ordering the confiscation of firearms,
14 firearm accessories, or ammunition from citizens; and
- 15 (g) Any prohibitions, regulations, and/or use restrictions related to
16 ownership of non-fully automatic firearms, including but not limited to
semi-automatic firearms; including semi-automatic firearms that have the
17 appearance or features similar to fully automatic firearms and/or military
“assault-style” firearms by citizens; and
- 18 (h) Any prohibition, regulations, and/or use restrictions limiting hand
19 grips, stocks, flash suppressors, bayonet mounts, magazine capacity, clip
capacity, internal capacity, or types of ammunition available for sale,
20 possession or use by citizens; and
- 21 (i) Any restrictions prohibiting the possession of open carry or
concealed carry, or the transport of lawfully acquired firearms or
ammunition by adult citizens or minors supervised by adults.

22 10.

23 Ordinance 913 renders any violation of the ordinance a Class A violation under ORS
24 203.065, with a maximum fine of \$2,000 for an individual, and \$4,000 for a corporation. It
25 creates a private cause of action providing that “[a]ny agent, employee or official of Yamhill

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Page 4 - ORS 203.060 PETITION FOR JUDICIAL REVIEW AND INVALIDATION OF
ORDINANCE
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1 County Oregon accused to be in violation of this ordinance may be made a defendant in a civil
2 proceeding pursuant to ORS 203.065.” It also provides that “any peace officer, as defined by
3 ORS 161.015, may enforce this ordinance....” Ex. 1, Sections 2.02-2.05.

4 11.

5 Ordinance 913 contains various exceptions, including that Section 1 of the ordinance
6 “does not prohibit Yamhill County, its employees, officials and agents from enforcing local,
7 federal or state firearms acts, laws, rules or regulations in effect as of February 2021.” It also
8 specifies that “[t]his ordinance does not apply to, nor prohibit, enforcement of firearms
9 regulations in effect as of February 2021 pursuant to the directives of, written administrative
10 decisions, or written policies of the County Sheriff or the District Attorney, and the Sheriff and
11 District Attorney retain all prosecutorial, enforcement, or administrative discretion and authority
12 that the Sheriff or District Attorney would otherwise have under federal, state, or local laws after
13 February 2021 so long as said discretion and authority is exercised consistent with the legislative
14 directives of this ordinance.” Ex. 1, Section 2.06.

15 **SENATE BILL 554**

16 12.

17 Senate Bill (SB) 554 (2021), also known as the Cindy Yuille and Steve Forsyth Act, was
18 duly enacted into law on June 1, 2021. SB 554 requires individuals to secure firearms with a
19 trigger or cable lock, in a locked container, or in a gun room. This requirement applies at all
20 times that the firearm is not carried by or under the control of the owner, possessor, or authorized
21 person, except in specified circumstances. SB 554 requires persons to transfer firearms with an
22 engaged trigger or cable lock or in a locked container. It requires a person to report the loss or
23 theft of a firearm to local law enforcement within 72 hours of the time the person knew or
24 reasonably should have known of the loss or theft and requires law enforcement agencies to
25 create a record of the theft in an electronic database. It requires a person who delivers or

26

1 otherwise transfers a firearm to a minor to directly supervise the minor's use of the firearm.
2 These requirements are subject to various exceptions and limitations. SB 554 is Exhibit 2 to this
3 Petition.

4 13.

5 SB 554 imposes various forms of criminal and civil liability for violations of its
6 provisions, including:

7 (a) A violation of SB 554's general gun storage requirements is a Class C violation, or a
8 Class A violation if a minor obtains an unsecured firearm as a result of the violation
9 under certain specified conditions.

10 (b) A violation of SB 554's gun storage requirements relating to the transfer of firearms is a
11 Class C violation.

12 (c) A violation of SB 554's loss or theft reporting requirements is a Class B violation.

13 (d) Various violations of SB 554's provisions constitute negligence per se under specified
14 conditions.

15 14.

16 SB 554 falls within Ordinance 913's definition of "Extraterritorial Acts" because its
17 provisions regulate and affect the responsibilities, rights, and liabilities of firearm owners.
18 Ordinance 913 applies to SB 554, enacted June 1, 2021 and effective September 25, 2021,
19 because by its terms it applies to so-called "Extraterritorial Acts" adopted after February 2021.

20 **GROUNDS FOR JUDICIAL REVIEW AND INVALIDATION**

21 **ORS 166.170**

22 15.

23 Ordinance 913 is expressly preempted in its entirety by ORS 166.170, which bars local
24 firearm ordinances and provides that a county lacks authority to regulate in the area of firearms
25 absent express authorization.

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16.

State law expressly preempts local civil law where the “text, context, and legislative history of the statute ‘unambiguously expresses an intention to preclude local governments from regulating’ in the same area as that governed by the statute.” *Rogue Valley Sewer Services v. City of Phoenix*, 357 Or 437, 450–51 (2015) (quoting *Gunderson, LLC v. City of Portland*, 352 Or 648, 663 (2012)) (emphasis omitted).

17.

ORS 166.170 expressly preempts counties from regulating in the field of firearms:

- (1) Except as expressly authorized by state statute, the authority to regulate in any matter whatsoever the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition, is vested solely in the Legislative Assembly.
- (2) Except as expressly authorized by state statute, no county...may enact civil or criminal ordinances, including but not limited to zoning ordinances, to regulate, restrict or prohibit the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition. Ordinances that are contrary to this subsection are void.

18.

Ordinance 913, in its entirety, fits squarely within the terms of, and is preempted by, ORS 166.170. For this reason, Ordinance 913 void and invalid on its face.

SENATE BILL 554

19.

Ordinance 913 is impliedly preempted by Senate Bill 554 (2021).

20.

State law impliedly preempts local civil law when the two are in conflict, meaning that compliance with both state and local law is “‘impossible.’” *Rogue Valley Sewer Services*, 357 Or at 455 (quoting *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or App 457, 474

1 (2010)). “An ordinance is said to ‘conflict’ with a state statute if the ordinance either prohibits
2 conduct that the statute permits, or permits conduct that the statute prohibits.” *State v. Krueger*,
3 208 Or App 166, 169 (2006). In the context of criminal law compatibility with local law, “[t]he
4 analysis of compatibility begins then with the assumption that state criminal law displaces
5 conflicting local ordinances” *City of Portland v. Dollarhide*, 300 Or 490, 501 (1986)
6 (emphasis omitted).

7 21.

8 Because Sections 1-2 of Ordinance 913 purport to reject, nullify, void, and render
9 ineffective and unenforceable SB 554, and because Ordinance 913 prohibits county employees
10 from enforcing or utilizing county resources in the enforcement of SB 554, SB 554 and
11 Ordinance 913 are in direct conflict. Ordinance 913 is therefore preempted by SB 554.

12 **SHERIFF’S STATE LAW DUTIES**

13 22.

14 Ordinance 913 is in conflict with, and impliedly preempted by, ORS 206.010 because the
15 ordinance directs the Yamhill County Sheriff and his deputies not to enforce state firearms laws
16 enacted after February 2021 and prohibits the utilization of county funds and resources in the
17 enforcement of state firearms laws enacted after February 2021. *See* Ex. 1, Section 2.06(h)
18 (directing the Sheriff to exercise his discretion and authority “consistent with the legislative
19 directives of this ordinance”).

20 23.

21 Under ORS 206.010, “it is the sheriff’s duty to [a]rrest and commit to prison all persons
22 who break the peace, or attempt to break it, and all persons guilty of public offenses.” A sheriff
23 may delegate these duties to deputies under ORS 204.635. “Public offenses” in this context
24 includes the criminal laws of the State of Oregon, including the violations set out in SB 554. *See*
25 *State v. Jacobs*, 55 Or App 406, 410–11 & n.1 (1981).

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24.

Thus, a sheriff and deputies have a statutory duty to enforce state criminal laws, including SB 554. The Ordinance’s contrary instruction that the Sheriff must turn a blind eye to violations of SB 554 is therefore preempted. For this reason, Ordinance 913 is invalid and void.

DISTRICT ATTORNEY’S STATE LAW DUTIES

25.

Ordinance 913 is in conflict with, and impliedly preempted by, Article VII (Original), section 17, of the Oregon Constitution because it directs the Yamhill County District Attorney and his deputy district attorneys not to enforce state firearms laws enacted after February 2021 and prohibits the utilization of county funds and resources in the enforcement of state firearms laws enacted after February 2021. See Ex. 1, Section 2.06(h) (directing the District Attorney to exercise his discretion and authority “consistent with the legislative directives of this ordinance”).

26.

When prosecuting violations of state law, district attorneys and their deputies are state officers and are duty bound to follow and enforce the laws of the state. The Oregon Constitution established the office of district attorney:

“There shall be elected by districts comprised of one, or more counties, a sufficient number of prosecuting Attorneys, who shall be the law officers *of the State*, and of the counties within their respective districts, and shall perform such duties pertaining to the administration of Law, and general police *as the Legislative Assembly may direct.*”

Art VII (Original), § 17 (emphasis added). The statute governing district attorney authority incorporates that constitutional provision. See ORS 8.630 (“District attorneys shall ... have the powers, perform the duties and be subject to the restrictions provided by the Constitution for prosecuting attorneys, and by the laws of this state.”).

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27.

Exercising this authority, “[d]istrict attorneys are state officers applying statewide, not local law.” *State v. Clark*, 291 Or 231, 245 (1981); *see also* ORS 8.660 (“The district attorney shall attend the terms of all courts having jurisdiction of public offenses within the district attorney’s county, and, except as otherwise provided in this section, conduct, *on behalf of the state*, all prosecutions for such offenses therein.” (emphasis added)). District attorneys may delegate that authority to deputy district attorneys. *See* ORS 8.780 (“A deputy district attorney ...[,] subject to the direction of the district attorney, has the same functions as the district attorney.”); *see also Foster v. Flaherty*, 621 F. App’x 463, 464–65 (9th Cir. 2015) (concluding that, under Oregon law, “DDAs are State, not County, employees”). Exercising these authorities, district attorneys and their deputies prosecute violations of the State’s criminal laws. *See* ORS 8.660(1).

28.

Thus, a district attorney and deputy district attorneys have a constitutional and statutory duty to enforce state criminal laws, including SB 554. The Ordinance’s contrary instruction that the district attorney must turn a blind eye to violations of SB 554 is therefore preempted. For this reason, Ordinance 913 is invalid and void.

OREGON TORT CLAIMS ACT

29.

The private cause of action created by Section 3 of Ordinance 913 is preempted by the Oregon Tort Claims Act (OTCA).

30.

The sole cause of action for a tort committed by officers, employees or agents of a public body acting within the scope of their employment or duties is the OTCA. ORS 30.265(2). “The remedy provided by [the OTCA] is exclusive of any other action against any such officer,

1 employee or agent of a public body whose act or omission within the scope of the officer's,
2 employee's or agent's employment or duties gives rise to the action. No other form of civil
3 action is permitted.” *Id.*

4 31.

5 The OTCA mandates that claims for torts committed by county officers, agents, or
6 employees be asserted against the county, and cannot be brought against individual officers,
7 employees, or agents. *See* ORS 30.265(1)–(2). For purposes of the OTCA, the term “tort”
8 means the breach of a legal duty that is imposed by law, other than a duty arising from contract
9 or quasi-contract, the breach of which results in injury to a specific person or persons for which
10 the law provides a civil right of action for damages or for a protective remedy. ORS 30.260(8).

11 32.

12 Ordinance 913 directly conflicts with the OTCA by creating a cause of action against
13 county employees for a breach of a legal duty imposed by the ordinance, providing that “[a]ny
14 official, agent, or employee of Yamhill County who knowingly violates this ordinance, shall be
15 liable to the injured party” Ex. 1, Section 3.01. Because Section 3 of the Ordinance assigns
16 liability to the individual, rather than the public body, it conflicts with state law and is
17 preempted.

18 **REQUESTED RELIEF**

19 33.

20 The State requests that the Court declare Ordinance 913 to be invalid and void because it
21 conflicts with paramount state law on each of the aforementioned grounds:

- 22 (a) Declare Ordinance 913 invalid and void in its entirety due to conflict with ORS 166.170;
23 (b) Declare Sections 1 and 2 of the ordinance invalid and void due to conflict with SB 554;

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1 (c) Declare Sections 1, 2, and 3 of the ordinance invalid and void insofar as they apply to the
2 Yamhill County Sheriff, his office, and his deputies and employees, due to conflict with
3 their state law duties (e.g., ORS 206.010);

4 (d) Declare Sections 1, 2, and 3, of the ordinance invalid and void insofar as they apply to the
5 Yamhill County District Attorney, his office, and his deputy district attorneys and
6 employees, due to conflict with their state law duties (e.g., Article VII, Section 17 of the
7 Oregon Constitution and ORS 8.630, ORS 8.660, and ORS 8.780);

8 (e) Declare Section 3 of Ordinance 913 invalid and void due to conflict with the OTCA.

9 34.

10 The State also requests an award of costs and disbursements under ORS 33.720(5) and
11 ORCP 68, and such other relief as the Court may determine is just and proper.

12
13
14 DATED October 1, 2021.

15 Respectfully submitted,

16 ELLEN F. ROSENBLUM
17 Attorney General

18 s/ Brian Simmonds Marshall

19 BRIAN SIMMONDS MARSHALL #196129

20 Senior Assistant Attorney General

21 SADIE FORZLEY #151025

22 Assistant Attorney General

23 Trial Attorneys

24 Tel (971) 673-1880

25 Fax (971) 673-5000

26 Brian.S.Marshall@doj.state.or.us

Sadie.Forzley@doj.state.or.us

Of Attorneys for State of Oregon

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Declaring a Second Amendment)
Sanctuary in Yamhill County) ORDINANCE 913

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (“the Board”) sat for the transaction of county business in combined informal/formal session on April 1, 2021, at 10 a.m. in a virtual meeting via Zoom. Commissioners, Mary Starrett, Lindsay Berschauer and Casey Kulla being present.

THE DULY-ELECTED BOARD OF COUNTY COMMISSIONERS OF YAMHILL COUNTY OREGON FIND AND DECLARE:

WHEREAS, Acting through the United States Constitution, the people created government to be their agent in the exercise of a few defined powers, while reserving the citizen’s right to decide on matters, which concern their lives, liberties, and properties in the ordinary course of affairs;

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”;

WHEREAS, The rights of the people to keep and bear arms are further protected from infringement by State and Local Governments under the Ninth and Tenth Amendments to the Constitution of the United States of America as well as Article 1 of the Constitution of the Great State of Oregon;

WHEREAS, Article 1, Section 27 of the Constitution of the Great State of Oregon states, “The people shall have the right to bear arms for the defense of themselves, and the State, but the Military shall be kept in strict subordination to the civil power”;

WHEREAS, Article 1, Section 33 of the Constitution of the Great State of Oregon states, “This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people”;

WHEREAS, The Supreme Court of the United States of America in *District of Columbia v. Heller* upheld the individual rights to bear arms as protected by the Second Amendment of the Constitution of the United States of America. Justice Scalia’s opinion stated that the Second Amendment protects an individual’s right to possess a firearm unconnected with service in a militia, and to use that firearm for traditionally lawful purposes, such as self-defense within the home;

ORDINANCE 913
(B.O. 21-115)

WHEREAS, Justice Thomas M. Cooley in the *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*”;

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*”;

WHEREAS, There is a right to be free from the commandeering hand of government that has been most notably recognized by the United States Supreme Court in *Printz v. United States*. 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.*”

WHEREAS, It should be self-evident from the compounding evidence that 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 are a violation of the Second Amendment;

WHEREAS, Yamhill County asserts its legal authority to refuse to cooperate with state and federal firearm laws that violate those rights and to proclaim a Second Amendment Sanctuary for law-abiding citizens in their cities and counties;

WHEREAS, Therefore, through the enactment of this ordinance Yamhill County Oregon is hereby a Second Amendment Sanctuary County; NOW, THEREFORE,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1 PROHIBITION

- 1.01 No agent, employee, or official of Yamhill County, a political subdivision of the State of Oregon, while acting in their official capacity, shall:
- (a) Knowingly and willingly, participate in any way in the enforcement of any Extraterritorial Act, as defined in Section 2; or
 - (b) Utilize any county assets, county funds, or funds allocated by any entity to the county, in whole or in part, to engage in any activity that violates this ordinance by aiding in the enforcement or investigation of Extraterritorial Acts relating to personal firearms, firearm accessories, or ammunition.

Section 2

PENALTIES

2.01 All local, state and federal acts, laws, rules, or regulations, originating from jurisdictions outside of Yamhill County, which restrict or affect an individual person's general right to keep and bear arms, including firearms, firearm accessories or ammunition are, for all purposes under this ordinance defined as Extraterritorial Acts. Such Extraterritorial Acts are specifically rejected by this county, and shall not be enforced by Yamhill County agents, employees, or officers and, shall be treated as if they are null, void and of no effect in Yamhill County Oregon.

Extraterritorial Acts for which enforcement is prohibited by Section 1 include:

- (a) 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; and
- (b) Any registering or tracking of firearms, firearm accessories, or ammunition; and
- (c) Any registering or tracking of the owners of firearms, firearm accessories, or ammunition; and
- (d) Any registration and background check requirements on firearms, firearm accessories, or ammunition for citizens; and
- (e) Any Extraterritorial 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; and
- (f) Any Extraterritorial Act ordering the confiscation of firearms, firearm accessories, or ammunition from citizens; and
- (g) Any 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 the appearance or features similar to fully automatic firearms and/or military "assault-style" firearms by citizens; and
- (h) Any prohibition, regulations, and/or use restrictions limiting hand grips, stocks, flash suppressors, bayonet mounts, magazine capacity, clip capacity, internal capacity, or types of ammunition available for sale, possession or use by citizens; and
- (i) Any restrictions prohibiting the possession of open carry or concealed carry, or the transport of lawfully acquired firearms or ammunition by adult citizens or minors supervised by adults.

2.02 Any agent, employee or official of Yamhill County Oregon accused to be in violation of this ordinance may be made a defendant in a civil proceeding pursuant to ORS 203.065.

**ORDINANCE 913
(B.O. 21-115)**

Page 3

- 2.03 Fines recovered under ORS 203.030 to 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, pursuant to ORS 203.065.
- 2.04 A violation of this ordinance is a Class A violation, per ORS 203.065, with a maximum fine of \$2,000 for an individual, and \$4,000 for a corporation, per ORS 153.018.
- 2.05 Any peace officer, as defined by ORS 161.015, may enforce this ordinance, adopted under ORS 203.035.
- 2.06 Exceptions to Section 1:
- (a) The protections provided in Yamhill County by Section 1.01 of this ordinance do not apply to persons who have been convicted of felony crimes.
 - (b) This ordinance is not intended to prohibit or affect in any way the prosecution of any crime for which the use of, or possession of, a firearm is an aggravating factor or enhancement to an otherwise independent crime.
 - (c) This ordinance does not permit or otherwise allow the possession of firearms in State or Federal buildings or courthouses.
 - (d) This ordinance does not prohibit Yamhill County, its employees, officials and agents from enforcing local, federal or state firearms acts, laws, rules or regulations in effect as of February 2021.
 - (e) Actions in compliance with a court judgment or court order, based upon any Extraterritorial Act in effect as of February 2021, are exempt from this ordinance.
 - (f) This ordinance does not prohibit Yamhill County from enacting any other legislation to govern its own residents, and exclusively and only applies to county officials, employees and agents whose role and duties are primarily if not wholly a county concern.
 - (g) This ordinance does not apply to, nor prohibit, the enforcement of local firearms regulations which have been enacted by the voters of Yamhill County.
 - (h) This ordinance does not apply to, nor prohibit, enforcement of firearms regulations in effect as of February 2021 pursuant to the directives of, written administrative decisions, or written policies of the County Sheriff or the District Attorney, and the Sheriff and District Attorney retain all prosecutorial, enforcement, or administrative discretion and authority that the Sheriff or District Attorney would otherwise have under federal, state, or local laws after February 2021 so long as said discretion and authority is exercised consistent with the legislative directives of this ordinance.

Section 3 PRIVATE CAUSE OF ACTION

- 3.01 Any official, agent, or employee of Yamhill County who knowingly violates this ordinance, shall be liable to the injured party in an action at law, suit in equity, or other proper proceeding for redress.
- 3.02 In such actions, the court shall award the prevailing party, other than the government of Yamhill County Oregon or any political subdivision of the county, reasonable attorney fees and costs.
- 3.03 Neither sovereign nor governmental immunity shall be an affirmative defense of agent, employee or official of Yamhill County in cases pursuant to Section 2 or 3 of this ordinance.

Section 4 SEVERABILITY

- 4.01 The provisions of this ordinance are hereby declared to be severable, and if any provision of this ordinance 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 ordinance.

Section 5 EFFECTIVE DATE

- 5.01 The first reading of this Ordinance was made March 18, 2021. The second reading of this Ordinance was made April 1, 2021. This Ordinance is effective June 30, 2021.

AYES: Commissioners Starrett and Berschauer NAYS: Commissioner Kulla

DONE at McMinnville, Oregon on April 1, 2021.

ATTEST



YAMHILL COUNTY
BOARD OF COMMISSIONERS

BRIAN VAN BERGEN
County Clerk

Chair

Mary Starrett

MARY STARRETT

By: *Carolina Rook*
Deputy CAROLINA ROOK

Commissioner

Lindsay Berschauer

LINDSAY BERSCHAUER

FORM APPROVED BY:

Christian Boenisch
CHRISTIAN BOENISCH
Yamhill County Legal Counsel

Commissioner

Voted "No"

CASEY KULLA

ORDINANCE 913
(B.O. 21-115)

Enrolled Senate Bill 554

Sponsored by Senators BURDICK, MANNING JR, WAGNER, Representatives GRAYBER, PRUSAK, REYNOLDS, SOLLMAN; Senators DEMBROW, FREDERICK, GORSEK, LIEBER, PROZANSKI, RILEY, STEINER HAYWARD, TAYLOR, Representatives ALONSO LEON, CAMPOS, DEXTER, KROPF, NERON, NOSSE, PHAM, SALINAS, SCHOUTEN, SMITH WARNER, VALDERRAMA, WILDE (Pre-session filed.)

CHAPTER

AN ACT

Relating to firearms; creating new provisions; amending ORS 166.262, 166.291, 166.360 and 166.370; and prescribing an effective date.

Whereas on December 11, 2012, 54-year-old Cindy Ann Yuille and 45-year-old Steven Forsyth were shot and killed in the Clackamas Town Center with a stolen AR-15 style assault weapon; and

Whereas the assault rifle used to kill Cindy Ann Yuille and Steven Forsyth had been stolen after being left unsecured with a fully loaded 30 round ammunition magazine by its lawful owner; and

Whereas the lawful owner of the assault rifle failed to report the weapon stolen to any law enforcement agency upon discovering the theft of the weapon; and

Whereas the lawful owner of the weapon used in the Clackamas Town Center shooting had no legal obligation under Oregon law to safely secure the firearm or to report the theft of the weapon; and

Whereas on average 10 children under the age of 18 commit suicide in Oregon each year with firearms that were not safely stored and secured to prevent child access; and

Whereas Oregon has a per capita suicide rate above the national average; and

Whereas the percentage of suicides that are firearm suicides in Oregon is also above the national average; and

Whereas a proven barrier to the impulse to commit suicide is securing firearms with a lock or storing firearms in locked containers; and

Whereas there are a number of children who are injured in Oregon each year with firearms that were not safely stored and secured to prevent child access; and

Whereas the lack of a safe storage law in Oregon contributed to more than 22,000 firearms being lost or stolen in Oregon over the past 10 years; and

Whereas two-thirds of all school shootings in the United States from 1974 through 2000 involved weapons taken by the attackers from their home or from the home of a relative, and many of these shootings would have been prevented if the firearms used had been secured and safely stored; and

Whereas simple common-sense actions including safely storing and transferring firearms, promptly reporting to law enforcement officials the loss or theft of firearms and supervising children when they use firearms would prevent many deaths and injuries in Oregon; and

Whereas the Cindy Yuille and Steve Forsyth Act can be effective in significantly reducing gun violence and suicide in Oregon without imposing criminal penalties; and

Whereas everyone has the right to be free from gun violence; now, therefore,

Be It Enacted by the People of the State of Oregon:

FIREARM STORAGE AND TRANSFER
(Definitions)

SECTION 1. Sections 2 to 6 of this 2021 Act shall be known and may be cited as the Cindy Yuille and Steve Forsyth Act.

SECTION 2. As used in sections 2 to 6 of this 2021 Act:

(1) "Authorized person" means a person authorized by the owner or possessor of a firearm to temporarily carry or control the firearm while in the presence of the owner or possessor.

(2) "Container" means a box, case, chest, locker, safe or other similar receptacle, including, within a vehicle, a glove compartment, enclosed trunk or center console, equipped with a tamper-resistant lock.

(3) "Control" means, in relation to a firearm:

(a) That the owner or possessor of the firearm is close enough to the firearm to prevent another person who is not an authorized person from obtaining the firearm; or

(b) That the owner or possessor of the firearm is in the person's own residence, either alone or with only authorized persons who also live in the residence and who are not minors, and the residence is secure.

(4) "Firearm" has the meaning given that term in ORS 166.210, except that it does not include a firearm that has been rendered permanently inoperable.

(5) "Gun room" means an area within a building enclosed by walls, a floor and a ceiling, including a closet, that has all entrances secured by a tamper-resistant lock, that is kept locked at all times when unoccupied and that is used for:

(a) The storage of firearms, ammunition, components of firearms or ammunition, or equipment for firearm-related activities including but not limited to reloading ammunition, gunsmithing and firearm cleaning and maintenance; or

(b) Conducting firearm-related activities, including but not limited to reloading ammunition, gunsmithing and firearm cleaning and maintenance.

(6) "Handgun" has the meaning given that term in ORS 166.210.

(7) "Law enforcement agency" has the meaning given that term in ORS 166.525.

(8) "Minor" means a person under 18 years of age.

(9) "Possessor" means a person who possesses a firearm with permission from the owner of the firearm for a period of time when the owner is not present.

(10) "Trigger or cable lock" means:

(a) A device that, when installed in a firearm, is designed to prevent the firearm from being operated without first deactivating the device; or

(b) A device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by any person not having access to the device.

(Storage)

SECTION 3. (1)(a) An owner or possessor of a firearm shall, at all times that the firearm is not carried by or under the control of the owner, possessor or authorized person, secure the firearm:

(A) With an engaged trigger or cable lock;

(B) In a locked container; or

(C) In a gun room.

(b) For purposes of paragraph (a) of this subsection, a firearm is not secured if:

(A) A key or combination to the trigger or cable lock or the container is readily available to a person the owner or possessor has not authorized to carry or control the firearm.

(B) The firearm is a handgun, is left unattended in a vehicle and is within view of persons outside the vehicle.

(2)(a) A violation of subsection (1) of this section is a Class C violation.

(b) Notwithstanding paragraph (a) of this subsection, a violation of subsection (1) of this section is a Class A violation if a minor obtains an unsecured firearm as a result of the violation and the owner or possessor of the firearm knew or should have known that a minor could gain unauthorized access to the unsecured firearm.

(c) Each firearm owned or possessed in violation of subsection (1) of this section constitutes a separate violation.

(3) If a firearm obtained as a result of an owner or possessor of a firearm violating subsection (1) of this section is used to injure a person or property within two years of the violation, in an action against the owner or possessor to recover damages for the injury, the violation constitutes per se negligence, and the presumption of negligence may not be overcome by a showing that the owner or possessor acted reasonably.

(4) Subsection (3) of this section does not apply if:

(a) The injury results from a lawful act of self-defense or defense of another person; or

(b) The unsecured firearm was obtained by a person as a result of the person entering or remaining unlawfully in a dwelling, as those terms are defined in ORS 164.205.

(5) This section does not apply to a police officer as defined in ORS 181A.355, with respect to a particular firearm, if storage of the firearm is covered by a policy of the law enforcement agency employing the police officer and the firearm is stored in compliance with the policy.

(Transfers)

SECTION 4. (1) If a person transfers a firearm and a criminal background check under ORS 166.435 is required prior to the transfer, the person shall transfer the firearm:

(a) With an engaged trigger or cable lock; or

(b) In a locked container.

(2)(a) A violation of subsection (1) of this section is a Class C violation.

(b) Each firearm transferred in violation of subsection (1) of this section constitutes a separate violation.

(3) If a firearm transferred in a manner that violates subsection (1) of this section is used to injure a person or property within two years of the violation, in an action against the transferor to recover damages for the injury, the violation of subsection (1) of this section constitutes per se negligence, and the presumption of negligence may not be overcome by a showing that the transferor acted reasonably.

(4) Subsection (3) of this section does not apply if the injury results from a lawful act of self-defense or defense of another person.

(5) This section does not apply to:

(a) The transfer of a firearm made inoperable for the specific purpose of being used as a prop in the making of a motion picture or a television, digital or similar production.

(b) A transfer that occurs when a firearm is taken from the owner or possessor of the firearm by force.

(Loss or Theft Reporting)

SECTION 5. (1)(a) A person who owns, possesses or controls a firearm shall report the loss or theft of the firearm to a law enforcement agency in the jurisdiction in which the loss

or theft occurred as soon as practicable but not later than within 72 hours of the time the person knew or reasonably should have known of the loss or theft.

(b) If a means of reporting a loss or theft of a firearm within 72 hours is not reasonably available, the person who owned, possessed or controlled the firearm that was lost or stolen must report the loss or theft within 24 hours of the means of reporting becoming available.

(c) A person may include the serial number of the firearm in a report under this subsection.

(2)(a) A violation of subsection (1) of this section is a Class B violation.

(b) Each firearm for which a person does not make the report within the time required by subsection (1) of this section constitutes a separate violation.

(c) A person who knowingly provides false information in a report required by subsection (1) of this section commits the crime of initiating a false report under ORS 162.375.

(3) If a lost or stolen firearm is used to injure a person or property and the person who owned, possessed or controlled the firearm at the time of the loss or theft did not report the loss or theft as required by subsection (1) of this section, in an action against the person who owned, possessed or controlled the firearm at the time of the loss or theft to recover damages for the injury, the violation constitutes negligence per se for two years from the expiration of the time limit for reporting or until the loss or theft report is made, whichever occurs sooner. The presumption of negligence may not be overcome by a showing that the person acted reasonably.

(4) Subsection (3) of this section does not apply if the injury results from a lawful act of self-defense or defense of another person.

(5)(a) Within 24 hours of receiving a report under subsection (1) of this section, a law enforcement agency shall create a record concerning the lost or stolen firearm in the Law Enforcement Data System or another electronic database as determined by the Department of State Police.

(b) A law enforcement agency is exempt from the obligation described in paragraph (a) of this subsection if the agency is unable to create a record concerning the lost or stolen firearm in the electronic database due to insufficient information.

(c) The department may adopt rules to carry out the provisions of this subsection.

(Supervision of Minor)

SECTION 6. (1) Except as provided in subsections (3) and (4) of this section, a person who delivers or otherwise transfers a firearm to a minor shall directly supervise the minor's use of the firearm.

(2)(a) If a person delivers or otherwise transfers a firearm to a minor and fails to directly supervise the minor's use of the firearm as required by subsection (1) of this section, in an action against the person to recover damages for injury to a person or property caused by the minor's use of the firearm, the failure to supervise constitutes negligence per se, and the presumption of negligence may not be overcome by a showing that the person acted reasonably.

(b) Paragraph (a) of this subsection does not apply if the injury results from a lawful act of self-defense or defense of another person.

(3) A person who delivers or otherwise transfers a firearm to a minor may delegate to another person, with the consent of the other person and the minor's parent or guardian, the duty to supervise the minor's use of the firearm. If the duty to supervise is delegated under this subsection, subsection (2) of this section applies to the person assuming the duty to supervise.

(4)(a) This section does not apply, with respect to a particular firearm other than a handgun, if:

(A) The firearm is transferred to a minor in accordance with ORS 166.470, and, as a result of the transfer, the minor is the owner of the firearm; or

(B) The firearm is temporarily transferred to a minor by the minor's parent or guardian or by another person with the consent of the minor's parent or guardian, for the purpose of hunting in accordance with ORS 497.360, hunting of a predatory animal as defined in ORS 610.002 or target shooting at a shooting range, shooting gallery or other area designed for the purpose of target shooting.

(b) The exception described in paragraph (a)(B) of this subsection applies only during the time in which the minor is engaged in activities related to hunting or target shooting.

(Gun Dealer Notice)

SECTION 7. A gun dealer shall post in a prominent location in the gun dealer's place of business a notice, in block letters not less than one inch in height, that states, "The purchaser of a firearm has an obligation to store firearms in a safe manner and to prevent unsupervised access to a firearm by a minor. If a minor or unauthorized person obtains access to a firearm and the owner failed to store the firearm in a safe manner, the owner may be in violation of the law."

REGULATION OF FIREARMS IN PUBLIC BUILDINGS

SECTION 8. (1) The governing board of a public university listed in ORS 352.002, the Oregon Health and Science University Board of Directors, the governing board of a community college or a district school board as defined in ORS 332.002 may adopt a policy providing that the affirmative defense described in ORS 166.370 (3)(g), concerning persons licensed to carry a concealed handgun under ORS 166.291 and 166.292, does not apply to the possession of firearms on the grounds of the schools controlled by the board.

(2) A board that adopts a policy under this section shall:

(a) Post a clearly visible sign, at all normal points of entry to the school grounds subject to the policy described in subsection (1) of this section, indicating that the affirmative defense described in ORS 166.370 (3)(g) does not apply.

(b) Post a notice on the board's website identifying all school grounds subject to the policy described in subsection (1) of this section.

SECTION 9. ORS 166.360 is amended to read:

166.360. As used in ORS 166.360 to 166.380, unless the context requires otherwise:

(1) "Capitol building" means the Capitol, the State Office Building, the State Library Building, the Labor and Industries Building, the State Transportation Building, the Agriculture Building or the Public Service Building and includes any new buildings which may be constructed on the same grounds as an addition to the group of buildings listed in this subsection.

(2) "Court facility" means a courthouse or that portion of any other building occupied by a circuit court, the Court of Appeals, the Supreme Court or the Oregon Tax Court or occupied by personnel related to the operations of those courts, or in which activities related to the operations of those courts take place.

(3) "Judge" means a judge of a circuit court, the Court of Appeals, the Supreme Court, the Oregon Tax Court, a municipal court, a probate court or a juvenile court or a justice of the peace.

(4) "Judicial district" means a circuit court district established under ORS 3.012 or a justice of the peace district established under ORS 51.020.

(5) "Juvenile court" has the meaning given that term in ORS 419A.004.

(6) "Loaded firearm" means:

(a) A breech-loading firearm in which there is an unexpended cartridge or shell in or attached to the firearm including but not limited to, in a chamber, magazine or clip which is attached to the firearm.

(b) A muzzle-loading firearm which is capped or primed and has a powder charge and ball, shot or projectile in the barrel or cylinder.

(7) "Local court facility" means the portion of a building in which a justice court, a municipal court, a probate court or a juvenile court conducts business, during the hours in which the court operates.

(8) "Probate court" has the meaning given that term in ORS 111.005.

(9) "Public building" means:

(a) A hospital, a capitol building, a public or private school, as defined in ORS 339.315, a college or university, a city hall or the residence of any state official elected by the state at large, and the grounds adjacent to each such building. The term also includes that portion of any other building occupied by an agency of the state or [a *municipal corporation, as defined*] **by a city, a county, a district as defined in ORS 198.010 or any other entity that falls within the definition of "municipal corporation" in ORS 297.405, other than a court facility[.]; or**

(b) The passenger terminal of a commercial service airport with over one million passenger boardings per year.

(10) "Weapon" means:

(a) A firearm;

(b) Any dirk, dagger, ice pick, slingshot, metal knuckles or any similar instrument or a knife, other than an ordinary pocketknife with a blade less than four inches in length, the use of which could inflict injury upon a person or property;

(c) Mace, tear gas, pepper mace or any similar deleterious agent as defined in ORS 163.211;

(d) An electrical stun gun or any similar instrument;

(e) A tear gas weapon as defined in ORS 163.211;

(f) A club, bat, baton, billy club, bludgeon, knobkerrie, nunchaku, nightstick, truncheon or any similar instrument, the use of which could inflict injury upon a person or property; or

(g) A dangerous or deadly weapon as those terms are defined in ORS 161.015.

SECTION 10. ORS 166.370 is amended to read:

166.370. (1)(a) Any person who intentionally possesses a loaded or unloaded firearm or any other instrument used as a dangerous weapon, while in or on a public building, shall upon conviction be guilty of a Class C felony.

(b) Notwithstanding paragraph (a) of this subsection, in a prosecution under this section for the possession of a firearm within the Capitol, within the passenger terminal of a commercial service airport with over one million passenger boardings per year or on school grounds subject to a policy described in section 8 of this 2021 Act, if the person proves by a preponderance of the evidence that, at the time of the possession, the person was licensed under ORS 166.291 and 166.292 to carry a concealed handgun, upon conviction the person is guilty of a Class A misdemeanor.

(2)(a) Except as otherwise provided in paragraph (b) of this subsection, a person who intentionally possesses:

(A) A firearm in a court facility is guilty, upon conviction, of a Class C felony. A person who intentionally possesses a firearm in a court facility shall surrender the firearm to a law enforcement officer.

(B) A weapon, other than a firearm, in a court facility may be required to surrender the weapon to a law enforcement officer or to immediately remove it from the court facility. A person who fails to comply with this subparagraph is guilty, upon conviction, of a Class C felony.

(C) A firearm in a local court facility is guilty, upon conviction, of a Class C felony if, prior to the offense, the presiding judge of the local court facility entered an order prohibiting firearms in the area in which the court conducts business and during the hours in which the court operates.

(b) The presiding judge of a judicial district or a municipal court may enter an order permitting the possession of specified weapons in a court facility.

(c) Within a shared court facility, the presiding judge of a municipal court or justice of the peace district may not enter an order concerning the possession of weapons in the court facility that is in conflict with an order entered by the presiding judge of the circuit court.

(3) Subsection (1)(a) of this section does not apply to:

(a) A police officer or reserve officer, as those terms are defined in ORS 181A.355.

(b) A parole and probation officer, as defined in ORS 181A.355, while the parole and probation officer is acting within the scope of employment.

(c) A federal officer, as defined in ORS 133.005, or a certified reserve officer or corrections officer, as those terms are defined in ORS 181A.355, while the federal officer, certified reserve officer or corrections officer is acting within the scope of employment.

(d) A person summoned by an officer described in paragraph (a), (b) or (c) of this subsection to assist in making an arrest or preserving the peace, while the summoned person is engaged in assisting the officer.

(e) An honorably retired law enforcement officer.

(f) An active or reserve member of the military forces of this state or the United States, when engaged in the performance of duty.

(g) A person who is licensed under ORS 166.291 and 166.292 to carry a concealed handgun, **except as provided in subsection (1)(b) of this section.**

(h) A person who is authorized by the officer or agency that controls the public building to possess a firearm or dangerous weapon in that public building.

(i) An employee of the United States Department of Agriculture, acting within the scope of employment, who possesses a firearm in the course of the lawful taking of wildlife.

(j) Possession of a firearm on school property if the firearm:

(A) Is possessed by a person who is not otherwise prohibited from possessing the firearm; and

(B) Is unloaded and locked in a motor vehicle.

(k) A person who possesses a firearm in the passenger terminal of a commercial service airport, if the firearm is unloaded and in a locked hard-sided container for the purposes of transporting the firearm as checked baggage in accordance with federal law.

(4)(a) **Except as provided in subsection (1)(b) of this section,** the exceptions listed in subsection (3)(d) to [(j)] (k) of this section constitute affirmative defenses to a charge of violating subsection (1)(a) of this section.

(b) A person may not use the affirmative defense described in subsection (3)(e) of this section if the person has been convicted of an offense that would make the person ineligible to obtain a concealed handgun license under ORS 166.291 and 166.292.

(5)(a) Any person who knowingly, or with reckless disregard for the safety of another, discharges or attempts to discharge a firearm at a place that the person knows is a school shall upon conviction be guilty of a Class C felony.

(b) Paragraph (a) of this subsection does not apply to the discharge of a firearm:

(A) As part of a program approved by a school in the school by an individual who is participating in the program;

(B) By a law enforcement officer acting in the officer's official capacity; or

(C) By an employee of the United States Department of Agriculture, acting within the scope of employment, in the course of the lawful taking of wildlife.

(6) Any weapon carried in violation of this section is subject to the forfeiture provisions of ORS 166.279.

(7) Notwithstanding the fact that a person's conduct in a single criminal episode constitutes a violation of both subsections (1) and (5) of this section, the district attorney may charge the person with only one of the offenses.

(8) As used in this section, "dangerous weapon" means a dangerous weapon as that term is defined in ORS 161.015.

SECTION 11. ORS 166.262 is amended to read:

166.262. A peace officer may not arrest or charge a person for violating ORS 166.250 (1)(a) or (b) or 166.370 (1)(a) if the person has in the person's immediate possession:

(1) A valid license to carry a firearm as provided in ORS 166.291 and 166.292, **unless the person possesses a firearm within the Capitol, within the passenger terminal of a commercial service airport with over one million passenger boardings per year or on school grounds subject to a policy described in section 8 of this 2021 Act;**

(2) Proof that the person is a law enforcement officer; or

(3) Proof that the person is an honorably retired law enforcement officer, unless the person has been convicted of an offense that would make the person ineligible to obtain a concealed handgun license under ORS 166.291 and 166.292.

CONCEALED HANDGUN LICENSE FEES

SECTION 12. ORS 166.291 is amended to read:

166.291. (1) The sheriff of a county, upon a person's application for an Oregon concealed handgun license, upon receipt of the appropriate fees and after compliance with the procedures set out in this section, shall issue the person a concealed handgun license if the person:

(a)(A) Is a citizen of the United States; or

(B) Is a legal resident alien who can document continuous residency in the county for at least six months and has declared in writing to the United States Citizenship and Immigration Services the intent to acquire citizenship status and can present proof of the written declaration to the sheriff at the time of application for the license;

(b) Is at least 21 years of age;

(c) Is a resident of the county;

(d) Has no outstanding warrants for arrest;

(e) Is not free on any form of pretrial release;

(f) Demonstrates competence with a handgun by any one of the following:

(A) Completion of any hunter education or hunter safety course approved by the State Department of Fish and Wildlife or a similar agency of another state if handgun safety was a component of the course;

(B) Completion of any National Rifle Association firearms safety or training course if handgun safety was a component of the course;

(C) Completion of any firearms safety or training course or class available to the general public offered by law enforcement, community college, or private or public institution or organization or firearms training school utilizing instructors certified by the National Rifle Association or a law enforcement agency if handgun safety was a component of the course;

(D) Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, reserve law enforcement officers or any other law enforcement officers if handgun safety was a component of the course;

(E) Presents evidence of equivalent experience with a handgun through participation in organized shooting competition or military service;

(F) Is licensed or has been licensed to carry a firearm in this state, unless the license has been revoked; or

(G) Completion of any firearms training or safety course or class conducted by a firearms instructor certified by a law enforcement agency or the National Rifle Association if handgun safety was a component of the course;

(g) Has never been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony;

(h) Has not been convicted of a misdemeanor or found guilty, except for insanity under ORS 161.295, of a misdemeanor within the four years prior to the application, including a misdemeanor conviction for the possession of marijuana as described in paragraph (L) of this subsection;

(i) Has not been committed to the Oregon Health Authority under ORS 426.130;

(j) Has not been found to be a person with mental illness and is not subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;

(k) Has been discharged from the jurisdiction of the juvenile court for more than four years if, while a minor, the person was found to be within the jurisdiction of the juvenile court for having committed an act that, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470;

(L) Has not been convicted of an offense involving controlled substances or participated in a court-supervised drug diversion program, except this disability does not operate to exclude a person if:

(A) The person can demonstrate that the person has been convicted only once of a marijuana possession offense that constituted a misdemeanor or violation under the law of the jurisdiction of the offense, and has not completed a drug diversion program for a marijuana possession offense that constituted a misdemeanor or violation under the law of the jurisdiction of the offense; or

(B) The person can demonstrate that the person has only once completed a drug diversion program for a marijuana possession offense that constituted a misdemeanor or violation under the law of the jurisdiction of the offense, and has not been convicted of a marijuana possession offense that constituted a misdemeanor or violation under the law of the jurisdiction of the offense;

(m) Is not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866, 107.700 to 107.735 or 163.738;

(n) Has not received a dishonorable discharge from the Armed Forces of the United States;

(o) Is not required to register as a sex offender in any state; and

(p) Is not presently subject to an order under ORS 426.133 prohibiting the person from purchasing or possessing a firearm.

(2) A person who has been granted relief under ORS 166.273, 166.274 or 166.293 or 18 U.S.C. 925(c) or has had the person's record expunged under the laws of this state or equivalent laws of other jurisdictions is not subject to the disabilities in subsection (1)(g) to (L) of this section.

(3) Before the sheriff may issue a license:

(a) The application must state the applicant's legal name, current address and telephone number, date and place of birth, hair and eye color and height and weight. The application must also list the applicant's residence address or addresses for the previous three years. The application must contain a statement by the applicant that the applicant meets the requirements of subsection (1) of this section. The application may include the Social Security number of the applicant if the applicant voluntarily provides this number. The application must be signed by the applicant.

(b) The applicant must submit to fingerprinting and photographing by the sheriff. The sheriff shall fingerprint and photograph the applicant and shall conduct any investigation necessary to corroborate the requirements listed under subsection (1) of this section. If a nationwide criminal records check is necessary, the sheriff shall request the Department of State Police to conduct the check, including fingerprint identification, through the Federal Bureau of Investigation. The Federal Bureau of Investigation shall return the fingerprint cards used to conduct the criminal records check and may not keep any record of the fingerprints. The Department of State Police shall report the results of the fingerprint-based criminal records check to the sheriff. The Department of State Police shall also furnish the sheriff with any information about the applicant that the Department of State Police may have in its possession including, but not limited to, manual or computerized criminal offender information.

(4) Application forms for concealed handgun licenses shall be supplied by the sheriff upon request. The forms shall be uniform throughout this state in substantially the following form:

APPLICATION FOR LICENSE TO CARRY
CONCEALED HANDGUN

Date_____

I hereby declare as follows:

I am a citizen of the United States or a legal resident alien who can document continuous residency in the county for at least six months and have declared in writing to the United States Citizenship and Immigration Services my intention to become a citizen and can present proof of the written declaration to the sheriff at the time of this application. I am at least 21 years of age. I have been discharged from the jurisdiction of the juvenile court for more than four years if, while a minor, I was found to be within the jurisdiction of the juvenile court for having committed an act that, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470. I have never been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony in the State of Oregon or elsewhere. I have not, within the last four years, been convicted of a misdemeanor or found guilty, except for insanity under ORS 161.295, of a misdemeanor. Except as provided in ORS 166.291 (1)(L), I have not been convicted of an offense involving controlled substances or completed a court-supervised drug diversion program. There are no outstanding warrants for my arrest and I am not free on any form of pretrial release. I have not been committed to the Oregon Health Authority under ORS 426.130, nor have I been found to be a person with mental illness and presently subject to an order prohibiting me from purchasing or possessing a firearm because of mental illness. I am not under a court order to participate in assisted outpatient treatment that includes an order prohibiting me from purchasing or possessing a firearm. If any of the previous conditions do apply to me, I have been granted relief or wish to petition for relief from the disability under ORS 166.273, 166.274 or 166.293 or 18 U.S.C. 925(c) or have had the records expunged. I am not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866, 107.700 to 107.735 or 163.738. I have never received a dishonorable discharge from the Armed Forces of the United States. I am not required to register as a sex offender in any state. I understand I will be fingerprinted and photographed.

Legal name _____

Age _____ Date of birth _____

Place of birth _____

Social Security number _____

(Disclosure of your Social Security account number is voluntary. Solicitation of the number is authorized under ORS 166.291. It will be used only as a means of identification.)

Proof of identification (Two pieces of current identification are required, one of which must bear a photograph of the applicant. The type of identification and the number on the identification are to be filled in by the sheriff.):

1. _____

2. _____

Height _____ Weight _____

Hair color _____ Eye color _____

Current address _____

(List residence addresses for the past three years on the back.)

City _____ County _____ Zip _____

Phone _____

I have read the entire text of this application, and the statements therein are correct and true. (Making false statements on this application is a misdemeanor.)

(Signature of Applicant)

Character references.

Name:	Address
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Name:	Address
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Approved _____ Disapproved _____ by _____

Competence with handgun demonstrated by _____ (to be filled in by sheriff)

Date _____ Fee Paid _____

License No. _____

(5)(a) Fees for concealed handgun licenses are:

(A) \$15 to the Department of State Police for conducting the fingerprint check of the applicant.

(B) [~~\$50~~] **\$100** to the sheriff for the **initial** issuance [*or renewal*] of a concealed handgun license.

(C) \$75 to the sheriff for the renewal of a concealed handgun license.

[(C)] **(D)** \$15 to the sheriff for the duplication of a license because of loss or change of address.

(b) The sheriff may enter into an agreement with the Department of Transportation to produce the concealed handgun license.

(6) No civil or criminal liability shall attach to the sheriff or any authorized representative engaged in the receipt and review of, or an investigation connected with, any application for, or in the issuance, denial or revocation of, any license under ORS 166.291 to 166.295 as a result of the lawful performance of duties under those sections.

(7) Immediately upon acceptance of an application for a concealed handgun license, the sheriff shall enter the applicant's name into the Law Enforcement Data System indicating that the person is an applicant for a concealed handgun license or is a license holder.

(8) The county sheriff may waive the residency requirement in subsection (1)(c) of this section for a resident of a contiguous state who has a compelling business interest or other legitimate demonstrated need.

(9) For purposes of subsection (1)(c) of this section, a person is a resident of a county if the person:

(a) Has a current Oregon driver license issued to the person showing a residence address in the county;

(b) Is registered to vote in the county and has a voter notification card issued to the person under ORS 247.181 showing a residence address in the county;

(c) Has documentation showing that the person currently leases or owns real property in the county; or

(d) Has documentation showing that the person filed an Oregon tax return for the most recent tax year showing a residence address in the county.

(10) As used in this section, "drug diversion program" means a program in which a defendant charged with a marijuana possession offense completes a program under court supervision and in which the marijuana possession offense is dismissed upon successful completion of the diversion program.

SECTION 13. The amendments to ORS 166.291 by section 12 of this 2021 Act apply to applications for new concealed handgun licenses and requests for license renewal submitted on or after the effective date of this 2021 Act.

CAPTIONS

SECTION 14. The unit captions used in this 2021 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2021 Act.

EFFECTIVE DATE

SECTION 15. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by Senate March 25, 2021

Received by Governor:

Repassed by Senate May 5, 2021

.....M.,....., 2021

Approved:

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2021

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Peter Courtney, President of Senate

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Kate Brown, Governor

Passed by House April 29, 2021

Filed in Office of Secretary of State:

.....M.,....., 2021

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Tina Kotek, Speaker of House

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Shemia Fagan, Secretary of State