

<b>HIGHLAND CITY CITY COUNCIL MEETING FEBRUARY 5, 2013</b>			
<b>REQUEST:</b>	<b>RESOLUTION:</b> A resolution in support of protecting the fundamental right of the people to bear arms as secured under the second amendment of the United States Constitution, which shall not be infringed.		
<b>APPLICANT:</b>	Council Member Tom Butler		
<b>FISCAL IMPACT:</b>	N/A		
GENERAL PLAN DESIGNATION N/A	CURRENT ZONE N/A	ACREAGE N/A	LOCATION Citywide

**BACKGROUND:**

Council Member Tom Butler requested an ordinance protecting the fundamental right of the people to bear arms as secured under the second amendment of the United States Constitution, which shall not be infringed.

Because it contained elements that were not enforceable, Mayor Ritchie requested Kasey Wright, City Attorney review the ordinance, make recommendations and propose a resolution.

The attached proposed resolution was developed by the City Attorney Kasey Wright. It contains several recent court cases supporting the second amendment and language appropriate for a resolution.

**PROPOSED MOTION:**

**ATTACHMENTS:**

- Proposed Resolution

## RESOLUTION NO. 2013-\_\_\_\_\_

### **A RESOLUTION IN SUPPORT OF PROTECTING THE FUNDAMENTAL RIGHT OF THE PEOPLE TO BEAR ARMS AS SECURED UNDER THE SECOND AMENDMENT OF THE UNITED STATES CONSTITUTION, WHICH SHALL NOT BE INFRINGED.**

**WHEREAS**, the Second Amendment to the United States Constitution 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**, under the separation of powers doctrine, the judicial branch of government has the responsibility of interpreting the law (*Marbury v. Madison*, 5 U.S. 137 (1803)).

**WHEREAS**, in the case of *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court held that the Second Amendment of the United States Constitution protects an individual’s right to possess a firearm for traditionally lawful purposes.

**WHEREAS**, this right to bear arms applies to the individual states and may not be infringed upon by the same (*see McDonald v. Chicago*, 561 US 3025 (2010)).

**WHEREAS**, the Utah Constitution states, “The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the Legislature from defining the lawful use of arms” (*Utah Constitution*, Article 1, Section 6).

**WHEREAS**, the State of Utah has declared that the individual right to keep and bear arms is a constitutionally protected right (Utah Code §76-10-500).

**WHEREAS**, the Legislature has enacted legislation to ensure uniform laws throughout the State in regards to firearms, stating, “All authority to regulate firearms shall be reserved to the state except where the Legislature specifically delegates responsibility to local authorities or state entities. Unless specifically authorized by the Legislature by statute, a local authority or state entity may not enact or enforce any ordinance, regulation, or rule pertaining to firearms” (Utah Code §76-10-500).

**WHEREAS**, the Utah Supreme Court has determined that the sale, use and possession of firearms are proper subjects of regulation by the State (*see, e.g., Univ. of Utah v. Shurtleff*, 2006 UT 51, 144 P.3d 1109 (Utah 2006) and *State v. Beorchia*, 530 P.2d 813 (Utah 1974)).

**WHEREAS**, the only delegated authority given by the State to municipalities to exercise its legislative authority in regards to firearms is to “regulate and prevent the discharge of firearms” within the City (Utah Code §10-8-47).

**WHEREAS**, Highland City is a political subdivision of the State of Utah and derives its legislative authority from the State (Utah Code §10-1-201).

**NOW THEREFORE**, BE IT RESOLVED BY THE CITY COUNCIL OF HIGHLAND CITY, UTAH AS FOLLOWS:

**BE IT RESOLVED** that the City of Highland with the strongest of conviction reaffirms that the right to keep and bear arms is a fundamental right to a free society and thus must be vigorously protected by the State of Utah and its elected representatives. Highland City states that United States and Utah lawmakers, judges, and representatives have a duty to protect the peoples' right to keep and bear arms. Highland City further states that through lawful means it will hold lawmakers, judges, and representatives accountable for their actions in regards to the Second Amendment of the United States Constitution.

**BE IT FURTHER RESOLVED** that the City of Highland recognizes the right to keep and bear arms as a fundamental right of the citizens of Highland which is protected by the constitutions of the United States of America and of the State of Utah.

**BE IT FURTHER RESOLVED** that the City of Highland opposes restrictive firearms laws and regulations insofar as they infringe upon the Second Amendment of the United States Constitution and which limit the rights of law-abiding citizens to their fundamental right to keep and bear arms.

**BE IT FURTHER RESOLVED** that the City of Highland within its lawful powers will take any and all action necessary to protect and defend its citizens' Second Amendment right to keep and bear arms.

**BE IT FURTHER RESOLVED** that the City of Highland recognizes the United States Constitution as being a divinely inspired document conveying upon its citizens certain inalienable rights bestowed upon the people by divine providence.

PASSED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2013.

MAYOR OF HIGHLAND:

\_\_\_\_\_  
LYNN RITCHIE

ATTEST:

\_\_\_\_\_  
CITY RECORDER

HIGHLAND CITY CITY COUNCIL MEETING FEBRUARY 5, 2013			
<b>REQUEST:</b>	<b>ORDINANCE - An Ordinance to prevent federal or local infringement on the right to keep and bear firearms, firearms accessories or ammunition; nullifying all federal, local acts in violation of the 2nd Amendment to the Constitution of the United States along with Article I, Section 6, (Right to Bear Arms) of the Utah Constitution.</b>		
<b>APPLICANT:</b>	Council Member Tom Butler – Council Member Tim Irwin		
<b>FISCAL IMPACT:</b>	N/A		
<b>GENERAL PLAN DESIGNATION</b>	<b>CURRENT ZONE</b>	<b>ACREAGE</b>	<b>LOCATION</b>
N/A	N/A	N/A	Citywide

**BACKGROUND:**

Council member Tom Butler requested with the support of Council member Tim Irwin an ordinance in addition to a resolution protecting the fundamental right of the people to bear arms as secured under the second amendment of the United States Constitution, which shall not be infringed

**PROPOSED MOTION:**

**ATTACHMENTS:**

- Proposed Ordinance

# Highland City 2nd Amendment Preservation Ordinance

An Ordinance, which shall be known and may be cited as the “Highland City 2nd Amendment Preservation Ordinance.”

To prevent federal or local infringement on the right to keep and bear firearms, firearms accessories or ammunition; nullifying all federal, local acts in violation of the **2nd Amendment to the Constitution of the United States** along with **Article I, Section 6, [Right to Bear Arms] of the Utah Constitution.**

**THE CITY COUNCIL OF HIGHLAND CITY, UTAH DOES ENACT AS FOLLOWS:**

**SECTION 1.** THE GOVERNING BODY OF HIGHLAND CITY WITHIN THE STATE OF UTAH FINDS THAT:

WHEREAS, **The 2nd Amendment to the Constitution of the United States** reads as follows, “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.” Along with the **Utah Constitution Article I, Section 6. [Right to bear arms.]** “The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed.”

WHEREAS, All federal or local acts, laws, orders, rules or regulations regarding firearms, firearms accessories or ammunition are a violation of the 2nd Amendment of the U.S. Constitution along with section Article I, Section 6 of The Utah Constitution and are in violation of this ordinance.

**SECTION 2.** PROHIBITIONS ON FEDERAL, STATE OR LOCAL INFRINGEMENT OF THE RIGHT TO KEEP AND BEAR ARMS, FIREARMS ACCESSORIES OR AMMUNITION.

**NOW, THEREFORE, BE IT ORDAINED BY THE HIGHLAND CITY COUNCIL AS FOLLOWS:**

A. The Governing Body of Highland City, within the state of Utah declares that all federal or local acts, laws, orders, rules, regulations – past, present or future – which shall be in violation of the 2nd Amendment to the Constitution of the United States and the Constitution of Utah are not authorized by the Constitution of the United States and the Constitution of Utah and violate its true meaning and intent as given by the Founders and Ratifiers, and are hereby declared to be invalid within Highland City and all of its boundaries within the state of Utah, shall not be recognized by this city, are specifically rejected by this city, and shall be considered null and void and of no effect in this city and all of its boundaries.

These include but are not limited to, the enforcement of:

-Any federal laws banning any type of gun.

-Any federal law banning magazines of certain sizes or any other new gun regulations on any gun accessories etc.

-Any federal law requiring regulation of private sales of firearms.

-Any federal law requiring registration of firearms or related accessories or magazines.

-Any federal law prohibiting the ownership of or use of, any gun for self-defense.

-Any federal law requiring the transmission of any information regarding gun ownership obtained by a medical professional.

B. It shall be the duty of the governing body of Highland City within all of its boundaries within the State of Utah to adopt and enact any and all measures as may be necessary to prevent the enforcement of any federal or local acts, laws, orders, rules, or regulations in violation of the **2nd Amendment to the**

**Constitution of the United States and Article I, Section 6. of the Utah Constitution** or any violation of any portion of this ordinance.

SECTION 3. EFFECTIVE DATE

A. This act takes effect immediately upon approval by the Governing body of Highland City, Utah.