IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

BRETT BASS, an individual; SWAN SEABERG, an individual; THE SECOND AMENDMENT FOUNDATION, INC., a Washington non-profit corporation; and NATIONAL RIFLE ASSOCIATION OF AMERICA, INC.; a New York non-profit association;

Plaintiffs,

v.

CITY OF EDMONDS, a municipality; DAVE EARLING, Mayor of the City of Edmonds, in his official capacity; EDMONDS POLICE DEPARTMENT, a department of the City of Edmonds; and AL COMPAAN, Chief of Police, in his official capacity,

Defendants.

CASE NO. 18-2-07049-31

DEFENDANTS' SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT

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I. RELIEF REQUESTED

Plaintiffs' Verified Amended Complaint ("VAC") fails to allege facts necessary to show that Plaintiffs have standing to sue and that their claims are ripe for judicial resolution. While the VAC includes a new plaintiff and certain new allegations, it continues to omit essential allegations about how the plaintiffs currently store their firearms and what they intend to do once Edmonds Ordinance 4120 ("the Ordinance") goes into effect. Without these allegations, and absent any showing that waiting for enforcement would be a hardship, the VAC should be dismissed with prejudice.

II. STATEMENT OF GROUNDS

Plaintiffs initially filed this lawsuit in August 2018, seeking a declaratory judgment that the recently enacted Ordinance – requiring Edmonds residents to responsibly store firearms and prevent access by children, unauthorized persons, and people at risk of harming themselves or others – violated Washington law. This lawsuit followed closely on the heels of a nearly identical complaint challenging a very similar Seattle ordinance that also requires responsible storage and prohibits unauthorized access. The Seattle lawsuit was brought by the Second Amendment Foundation, Inc. ("SAF") and National Rifle Association of America, Inc. ("NRA") (together "Organizational Plaintiffs") – also Plaintiffs in the instant case – along with two individuals; all plaintiffs were represented by the same attorneys who represent Plaintiffs in this case. In Seattle, the Court granted Defendants' motion to dismiss for failure to allege standing and denied Plaintiffs' motion to reconsider that dismissal.[1]

[1] *See* Goldman Decl. Ex. A., Hearing Transcript at 28-29 (Oct. 19, 2018), Ex. B Motion for Reconsideration, Ex. C, Proposed Amended Complaint, Ex. D, Defendants' Opposition to Plaintiffs' Motion for Reconsideration, Ex. E Order Denying Motion for Reconsideration, all in *Alim, et al. v. City of Seattle*, Cause No. 18-2-18114-3 (SEA).

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Following oral argument on Defendants' motion to dismiss in the case at bar, this Court granted Plaintiffs leave to file sworn declarations or a verified complaint, informing them it would "not consider facts or make inferences from information, *supplied solely in briefing or oral argument*." (Nov. 8, 2018 Order) (emphasis added). Plaintiffs filed the VAC on December 6, 2018.

In their amended pleading, Plaintiffs have failed to adequately or clearly allege what by now they know they must: that they (and in the case of the Organizational Plaintiffs, their members) intend to violate the Ordinance and that this dispute is ripe for judicial resolution. Defendants accordingly renew their Motion to Dismiss.

The VAC's deficiencies can be broken into four categories:

- First, not a word in the VAC alleges that any Plaintiff believes their storage practices will make it likely that a minor, at-risk, or prohibited person will access their firearms. While it is perhaps unsurprising that no Plaintiff will declare under the penalty of perjury that they believe it is likely that a child or other person posing a clear danger can access their guns, the absence of any such allegation is fatal to their attempt to establish standing to challenge the section of the Ordinance that prohibits unauthorized access.
- Second, the individual Plaintiffs fail to adequately allege that, once the Ordinance goes into effect, they intend to store their guns in a manner prohibited by the first section of the Ordinance – the provision requiring responsible storage. Plaintiffs' allegations remain vague, at best, on key points concerning how their current conduct violates the Ordinance and whether they intend to violate the Ordinance in the future.
- Third, the Organizational Plaintiffs do not plead facts sufficient to establish that the Ordinance runs counter to their public positions *in favor* of responsible storage.

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- Finally, none of Plaintiffs' new allegations alter the analysis that they will not suffer undue hardship in waiting for an enforcement action to be brought before challenging the Ordinance. Plaintiffs' claims are therefore not ripe for disposition.

For all of these reasons, as further explained below, Defendants urge this Court to dismiss these claims without leave to amend.

III. STATEMENT OF ISSUES

1. Do the individual Plaintiffs lack standing because they fail to adequately allege an intent to violate the challenged Ordinance?
2. Do the Organizational Plaintiffs lack standing where they fail to adequately allege that the organizations' interests are inconsistent with the challenged Ordinance?
3. Should the VAC be dismissed because Plaintiffs' pre-enforcement challenge to the Ordinance is not ripe and therefore not justiciable?

IV. LEGAL AUTHORITY

Defendants rely upon and reincorporate the arguments made in their fully briefed motion to dismiss, but submit this supplemental briefing to re-emphasize key points and address certain new aspects of Plaintiffs' VAC.

As the Court is aware, the Ordinance has two operative provisions. The first provision makes it a civil infraction to store firearms that are not "secured by a locking device, properly engaged so as to render such weapon inaccessible or unusable" to persons other than authorized users when an authorized user is not carrying the firearm and does not otherwise have it under his or her control. EDMONDS, WASH., MUN. CODE § 5.26.020. The second provision creates a civil infraction "if any person knows or reasonably should know that a minor, an at-risk person, or a

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prohibited person is likely to gain access to a firearm" belonging to that person "and a minor, an at-risk person, or a prohibited person obtains the firearm." EDMONDS, WASH., MUN. CODE § 5.26.030.

Plaintiffs seek a declaratory judgment that these two provisions "violate[] Washington statutory and constitutional law," (VAC ¶ 50), even though the Ordinance is not scheduled to take effect until March 21, 2019. As explained in our original motion to dismiss, Washington courts have long disfavored pre-enforcement challenges to statutes. *See, e.g.*, *Adams v. City of Walla Walla*, 196 Wash. 268, 82 P.2d 584 (1938); *Walker v. Munro*, 124 Wn.2d 402, 879 P.2d 920 (1994); *Forbes v. Pierce County*, 427 P.3d 675 (Wash. Ct. App. 2018). In a lawsuit brought under Washington's Uniform Declaratory Judgments Act, a court's jurisdiction may only be invoked for a controversy "(1) which is an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive." *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973). As Defendants have previously noted, this test incorporates standing and ripeness doctrines, as well as the federal case-or-controversy requirement. *To-Ro Trade Shows v. Collin*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001). Here, Plaintiffs have not pled facts sufficient to establish that they have standing or that this dispute is ripe.

A. The Individual Plaintiffs Do Not Have Standing.

As our motion to dismiss emphasized (Defs.' Mot. to Dismiss at 5-7; Defs.' Reply at 3-5), in a pre-enforcement challenge to a statute's validity, Washington courts require plaintiffs to allege that they intend to violate the ordinance. *Forbes*, 427 P.3d at 682-83 (citing federal case law and

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holding that a pre-enforcement challenge was "speculative" where there was no allegation of a "current threat to impose a criminal penalty" or any "inten[t] to engage in conduct prohibited" by a challenged statute); *Superior Asphalt & Concrete Co. Inc. v. Wash. Dep't of Labor & Indus.*, 121 Wash. App. 601, 606, 89 P.3d 316 (2004) (expressly rejecting the argument that being "required to abide by [a] . . . regulation . . . is enough to create standing" in a vagueness challenge to a safety regulation brought under Washington's Uniform Declaratory Judgment Act); *see also Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) ("A general intent to violate a statute at some unknown date in the future does not rise to the level of an articulated, concrete plan.").

1. No Plaintiff Has Pled an Intent to Violate § 5.26.030.

Not a word in the VAC alleges that any of the individual Plaintiffs intend to store their guns in a manner in which "a minor, an at-risk person, or a prohibited person is *likely* to gain access to a firearm." EDMONDS, WASH., MUN. CODE § 5.26.030 (emphasis added). If Plaintiffs believe that children or other persons posing a danger are likely to gain access to their firearms, they must say so in order to challenge this provision of the Ordinance prior to any enforcement.

More specifically, Plaintiff Bass does not plead any facts about whether children or other at risk or prohibited persons live in or even visit his home. He thus has no standing to challenge § 5.26.030.

Plaintiff McCullough alleges that he keeps unlocked firearms in his home with two young children but falls short of alleging that his children – both under the age of three – are *likely* to access those weapons. (VAC ¶¶ 2, 25.) Nor does Plaintiff McCullough plead any facts that might give rise to such an inference – it is unclear where, within his house, he keeps weapons, and

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whether his children are likely to access those weapons. In the absence of any allegations supporting such an inference, he, too, lacks standing to bring a pre-enforcement challenge to § 5.26.030.

Like Plaintiff Bass, Plaintiff Seaberg does not plead any facts about whether children or other at risk or prohibited persons live in or visit his home. In opposition to Defendants' original motion to dismiss, Seaberg submitted a declaration stating that his grandchildren and great-grandchildren visit his home, and his counsel argued that this sufficiently stated a violation of § 5.26.030. (Seaberg Decl. ¶ 8; Plts.' Opp. at 13). Defendants noted in reply that these threadbare assertions of children visiting did not show that they were *likely* to access weapons. (Defs.' Reply at 7.) The VAC not only fails to plead any additional facts tending to show that Seaberg's minor family members are likely to access his gun, but it appears to retreat from the declaration he submitted – it omits any reference to his grandchildren or great-grandchildren. Thus, Plaintiff Seaberg's new verified allegations do not establish facts sufficient to show that he stores his guns in a manner in which they are "likely" to be accessed by children. He, too, lacks standing to challenge § 5.26.030.

It may not be surprising that no Plaintiff, in a verified statement, is willing to admit to irresponsibly storing guns in a manner that would allow children or other persons posing a danger to access their weapons. But the legally dispositive point is that the absence of such allegations means no individual Plaintiff has standing to challenge § 5.26.030.

2. No Individual Plaintiff Has Pled Intent to Violate § 5.26.020.

Although the VAC provides some information about the individual Plaintiffs' *current* gun storage, it conspicuously lacks sufficient allegations that any Plaintiff *intends* to store weapons in a

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manner that violates the Ordinance after it goes into effect. This is essential to any pre-enforcement challenge to a statute. The continuing absence of an adequate allegation of intent to violate stands out here, where the Plaintiffs are on full notice as to what deficiencies their complaint suffered from – both because of briefing and argument here focused on this core deficiency, and following briefing on Plaintiffs' unsuccessful motion for reconsideration in Seattle that focused on this same issue. In other words, Plaintiffs have now had multiple bites at the apple before this Court, and yet their allegations remain deficient and inadequate on the same core prerequisites that have been missing all along.

Paragraph 23 of the VAC contains the relevant allegations regarding Plaintiff Bass's intentions once the Ordinance is in effect:

> Mr. Bass intends on keeping his firearm in an unlocked and usable state when he is home after the effective date of the Ordinance. Mr. Bass fears enforcement of the Ordinance after it goes into effect. Mr. Bass fears that the Ordinance will chill the valid exercise of self-defense rights by citizens of the City.

(VAC ¶ 23.) What is notably missing is any allegation that he intends to violate the Ordinance – *i.e.*, that he intends to store his firearm in an unlocked state even when he is not carrying it and it is not otherwise under his control. The allegations, while artfully drafted, are insufficient to give rise to an inference that Plaintiff Bass intends to violate the law.

Plaintiff Seaberg also does not adequately plead that he intends to violate the law. The closest he comes to such an allegation is in paragraph 43 of the VAC:

> Mr. Seaberg fears enforcement of the Ordinance *were he to* continue storing his long guns in an unlocked and usable state in his home.

(VAC ¶ 43 (emphasis added).) This is at best a truism – if he were to violate the law, he might face enforcement – but it is not a basis for standing to challenge a law prior to enforcement. *See Nichols v. Brown*, 859 F. Supp. 2d 1118, 1128 (C.D. Cal. 2012) ("The Complaint merely alleges that

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Plaintiff 'would openly carry a loaded and functional handgun in public for the purpose of self-defense" but for his fear of arrest and prosecution. The mere assertion of a desire to engage in a prohibited activity, . . . is too indefinite to constitute a 'concrete plan.'") (citation omitted).

The VAC instead appears to premise Seaberg's standing on the fact that he "would be required to purchase a new safe, locking mechanism, or other equipment in order to comply with the Ordinance."[2] (VAC ¶ 44.) The test for standing in a pre-enforcement challenge is whether you intend to engage in conduct that is proscribed by the law in question, not whether, if you follow that law, it will require some modest expenditure of funds. *See Colo. Outfitters Ass'n v. Hickenlooper*, 823 F.3d 537, 548 (10th Cir. 2016) ("[The] burden is the result of the organization's *compliance* with [the statute]. And the plaintiffs can't satisfy the credible-threat-of-prosecution test by relying on evidence of their compliance with the challenged statute.") (emphasis in original).

What is more, the cost of purchasing a locking mechanism is minimal and not directly mandated by the Ordinance. Locking mechanisms can cost as little as $3-$5 and are given away through some community programs.[3] An insubstantial financial interest does not confer standing. *See Lewis Cty. v. State*, 178 Wash. App. 431, 438-39, 315 P.3d 550 (2013) (stating that a future potential cost of approximately $17,000 per year for a county was insufficiently "substantial" to confer standing); *Fed. Way Sch. Dist. No. 210 v. State*, 167 Wn.2d 514, 529, 219 P.3d 941 (2009) (holding that certain individual plaintiffs did not have standing under the Uniform Declaratory

[2] Defendants briefed this issue at page 6 of their Reply Brief to the Original Motion to Dismiss.

[3] As an article published on Plaintiff NRA's website explains, trigger locks are given away for free through many community programs. *See* Goldman Decl. Ex. F, Gil Horman, 6 Ways To Safely Store Your Firearms, NRA Family, (April 14, 2016), https://www.nrafamily.org/articles/2016/4/14/6-ways-to-safely-store-your-firearms (last visited Jan. 7, 2019); *see also* Goldman Decl. Ex. G, Vanessa Misciagna, *Everett police handing out free gun locks to cut down on stolen firearms*, King 5 News, June 14, 2018, *available at* https://www.king5.com/article/news/local/everett-police-handing-out-free-gun-locks-to-cut-down-on-stolen-firearms/281-564560270 (last visited Jan. 7, 2019).

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Judgments Act where they did not show actual, present harm directly attributable to the challenged funding allocation system).

Finally, although Plaintiff McCullough's allegations may appear more fully formed than the other Plaintiffs' (he alleges some details about his *current* storage practices, which include storing firearms unsecured when he and his wife are out of the house and in rooms in the house where neither of them is present), he does not plead facts sufficient to establish that he has pre-enforcement standing to sue. With respect to McCullough's intent once the Ordinance goes into effect, the VAC merely states:

> Mr. McCullough intends on keeping his firearms in an unlocked and usable state in his home, even when not in his possession, after the effective date of the Ordinance. Mr. McCullough fears enforcement of the Ordinance after it goes into effect.

(VAC ¶ 33.)

What is absent here is an allegation that he intends to keep his firearms in "an unlocked and usable state" when they are not only "not in his possession" but also outside his "control." The Ordinance is only violated if both conditions are met. Alleging that one intends to store a firearm unsecured when it is not in one's "possession" – without also alleging that the firearm would be outside one's "control" – is inadequate to plead an intent to violate the Ordinance and therefore inadequate to show standing for a pre-enforcement challenge. McCullough falls short for this reason.

This is not mere oversight or sloppy pleading. Defendants have repeatedly made this very point in prior briefing. (Defs.' Mot. to Dismiss at 6; Defs.' Reply at 5.) That Plaintiffs are aware of the distinction between possession and control is evident from McCullough's other allegations: two paragraphs above the complaint twice uses the phrase "control or possession," (VAC ¶ 31), and in paragraph 30 McCullough states that his daily-carry firearm is "often in his possession" (*i.e.*, he

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carries it). (VAC ¶ 30.) Plaintiffs, moreover, were put on notice by this Court that they needed to plead facts, but still only muster legal conclusory language that does not rise to the level of an adequate and clear allegation of intent to violate the Ordinance. *See Thomas*, 220 F.3d at 1139 ("A general intent to violate a statute at some unknown date in the future does not rise to the level of an articulated, concrete plan."); *see also Walker*, 124 Wn.2d at 413-14 ("The course of future events is, at this time, purely speculative and subject to a challenge when a specific dispute arises in regards to particular bill.").

As Plaintiffs have now had multiple opportunities to plead a justiciable case, these deficiencies cannot be deemed an accident and Plaintiffs should not be afforded the benefit of the doubt. The claims should be dismissed, without leave to refile.

B. The Organizational Plaintiffs Do Not Have Standing.

As an initial matter, the Organizational Plaintiffs did not comply with the Court's order requiring a *verified* complaint or sworn declarations for any new facts they wished to introduce. No one from either organization verified the Amended Complaint and allegations in paragraphs 46 and 47 are pled "[u]pon information and belief." (VAC ¶¶ 46-47.)

As explained in our original motion to dismiss, an organization may have standing to sue on its own behalf (direct organizational standing) if it can show that it falls within the zone of interests of the challenged law and it has suffered an injury-in-fact, or it may have standing to sue on behalf of its members (representative standing). *Am. Legion Post #149 v. State Dep't of Health*, 164 Wn.2d 570, 593-95, 192 P.3d 306 (2008). The Organizational Plaintiffs seem to have dropped any pretense that they have direct standing. Nowhere in the Amended Complaint is there an allegation

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that the Organizational Plaintiffs have suffered an injury-in-fact; without that, they cannot assert standing on their own behalf.

An organization "has [representational] standing to bring suit on behalf of its members when, (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Am. Legion Post #149*, 164 Wn.2d at 595 (citation omitted). Even taking the unverified allegations as true, the Organizational Plaintiffs cannot meet the first or second prongs of this test.

With respect to the first prong, the Organizational Plaintiffs still do not plead facts to show that any of their members have standing to sue. To the extent that they argue that the individual Plaintiffs who are members of the Organizational Plaintiffs are sufficient to confer standing, the individual Plaintiffs lack standing to sue in their own right, for the reasons described in Section IV(A), *supra*. The VAC contains no allegations that they have other members who reside in Edmonds and actually intend to violate the ordinance. (*See* VAC ¶¶ 46-47.)

As was true of the original complaint, the allegations in the VAC also undermine any claim that this lawsuit is germane to either organization's purpose. SAF alleges that its purpose is "focus[ed] on the constitutional right to own and possess firearms," (VAC ¶ 4), and NRA alleges that its purpose is the "protection of the right of citizens to have firearms for lawful defense, hunting, and sporting use, and to promote public safety." (VAC ¶ 5.) Neither SAF nor NRA can meet the germaneness requirement, because: (1) this is not a constitutional challenge (the focus of

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SAF); and (2) the ordinance is congruent with the organizations' public statements and guidance to their members about safe storage practices.[4]

Indeed, the Organizational Plaintiffs state in conclusory fashion that the "methods proscribed by the Ordinance does [sic] not comport with the best practices for safe storage outlined and recommended by the NRA and SAF." (VAC ¶ 45.) This allegation undercuts any argument that this lawsuit is germane to the Organizational Plaintiffs' interests, because it makes plain that the proscribed practices – *i.e.*, those which are prohibited – are not recommended by the Organizational Plaintiffs as best practices.[5] In other words, this allegation does no more than confirm that irresponsible storage methods prohibited by the Ordinance are not considered best practices by the NRA or the SAF; those organizations have not alleged "genuine and opposing interests" to the City of Edmonds. *Diversified Indus.*, 82 Wn.2d at 815.

C. None of the Claims are Ripe.

This case also is not ripe and should be dismissed for the reasons explained in Defendants' original briefs. (Defs.' Mot. To Dismiss at 9-11; Defs.' Reply at 9-10). Ripeness turns on (1) "the

[4] As noted in Defendants' opening brief, according to NRA's website, "NRA's longstanding rule of gun storage is to store your guns so that they are inaccessible to any unauthorized users, especially your children and the children that visit your home." Goldman Decl. Ex. H, https://eddieeagle.nra.org/faqs/ (FAQ: "What are gun owner's responsibilities?") (last visited Dec. 26, 2018). Similarly, SAF leads the Safer Homes Coalition, a network of firearms retailers, Second Amendment rights groups, health care providers, and suicide prevention experts who work to prevent suicides. Goldman Decl. Ex. I, http://depts.washington.edu/saferwa/about-us/our-team/ (last visited Dec. 26, 2018). The Coalition directs people to "[l]ock up all firearms" and describes a Safer Home as one that "secures all firearms in locked storage" and where "[a]uthorized access to these potentially lethal items is restricted to only the owner or user and perhaps one additional adult." Goldman Decl. Ex. I, Safer Homes Coalition, "What is a Safer Home?", available at http://depts.washington.edu/saferwa/what-is-a-safer-home/ (last visited Dec. 26, 2018).

[5] Though Plaintiffs may seek to argue that this is a mere typo, the Court should not credit this argument. Plaintiffs included the same sentence in their proposed amended complaint filed in the Seattle litigation. (Goldman Decl. Ex. C, Proposed Amended Complaint, in *Alim, et al. v. City of Seattle*, Cause No. 18-2-18114-3 (SEA) ¶ 23.) Defendants noted, in their opposition to Plaintiffs' motion for reconsideration in that case, that that sentence, as written, indicated that the Organizational Plaintiffs supported the Ordinance's requirements. (*See* Goldman Decl. Ex. D, Defs.' Opp'n to Pls.' Mot.for Reconsideration at 10 ("Given that the Organizational Plaintiffs agree that responsible storage is important and that the practices prohibited by the Ordinance are not best practices, this allegation does not state a basis for organizational standing.")).

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fitness of the issues for judicial decision," *i.e.*, whether the issues raised are primarily legal, do not require further factual development, and the challenged action is final; and (2) "the hardship to the parties of withholding court consideration." *First Covenant Church of Seattle, Wash. v. City of Seattle*, 114 Wn.2d 392, 399-400, 787 P.2d 1352 (1990).

First, Plaintiffs' claims continue to be unfit for judicial determination. As explained above, none of the individual Plaintiffs have adequately alleged that they intend to violate the Ordinance after it goes into effect. Without enforcement history and because of Plaintiffs' vague allegations, it is difficult to tell whether they are in jeopardy. *See Walker*, 124 Wn.2d at 413-14 (declining to hear challenge to ballot initiative where it was unclear whether the initiative had any "present harmful effects"). Some Plaintiffs may well elect to comply with the Ordinance by maintaining control of their weapons, even when they are not in their possession – which is lawful under the Ordinance. Determining whether the Ordinance is violated is a fact specific inquiry requiring case-by-case assessments. *See, e.g., Com. v. Patterson*, 946 N.E.2d 130, 134 (Mass. App. Ct. 2011) ("Of course, the determination whether a particular firearm is under an individual's control will depend on the facts and circumstances of any given case."). To proceed at this juncture would require the Court to engage in precisely the sort of "potential, theoretical, abstract, or academic" inquiries that lead "into the prohibited area of advisory opinions." *Diversified Indus.*, 82 Wn.2d at 815.

Plaintiffs, moreover, cannot show that they will suffer meaningful hardship by waiting to see if the Ordinance is enforced against them. For a simple infraction they can be fined *at most* $500 or community service. EDMONDS, WASH., MUN. CODE § 5.26.040. While larger fines are possible if a firearm is improperly accessed, the statute expressly provides a mechanism to challenge a citation before the fine must be paid. *See* EDMONDS, WASH., MUN. CODE §§ 5.26.040, 5.26.070. The mere possibility of an unknown fine, for an unknown violation, at an unknown time in the future is not

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hardship. And neither is the possibility that a Plaintiff may voluntarily assume minimal costs to comply with the Ordinance. *Walker*, 124 Wn.2d at 412 (dismissing a pre-enforcement action where there was "no immediate harm" for certain plaintiffs and no showing of how the plaintiffs were "currently affected or denied some benefit by" the yet-to-be enforced statute); *see also* Defs.' Mot. to Dismiss at 11 (citing additional cases).

V. CONCLUSION

Because Plaintiffs' Verified Amended Complaint does not plead a justiciable case, it should be dismissed with prejudice.

DATED this 9th day of January, 2019.

Respectfully submitted,

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