

SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

BRETT BASS, an individual; CURTIS
MCCULLOUGH, an individual; and SWAN
SEABERG, an individual,

Plaintiffs,

v.

CITY OF EDMONDS, a municipality;
EDMONDS POLICE DEPARTMENT, a
department of the City of Edmonds,

Defendants.

No. 18-2-07049-31

**INDIVIDUAL PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

Washington law comprehensively and preemptively regulates all aspects of firearms and ammunition in the state. *See* RCW 9.41.010–9.41.810. Leaving no uncertainty whatsoever about its intentions, the Legislature declared—in a provision titled “State Preemption”—that it “fully occupies and preempts the entire field of firearms regulation within the boundaries of the state,” including the possession of firearms and ammunition. RCW 9.41.290. The preemption provision further warned that “[l]ocal laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law **shall not be enacted and are preempted and repealed.**” *Id.* (emphasis added). As the Washington State Supreme Court categorically stated: “RCW

1 9.41.290 forbids the local regulation of guns.” *Watson v. City of Seattle*, 189 Wn.2d 149, 155,
2 401 P.3d 1, 4 (2017).

3 Everyone, including the City of Edmonds and its attorneys, is aware of these restrictions
4 on municipal legislative power. Nevertheless, the City enacted Ordinance 4120 (“the
5 Ordinance”), titled “An Ordinance relating to the safe storage of and access to firearms,” and
6 invited this litigation. The City seemingly claims that the broad, sweeping language of RCW
7 9.41.290 does not regulate storage of firearms because the statute does not include the word
8 “storage.” The City has also quoted *Cherry v. Municipality of Metro. Seattle*, 116 Wn.2d 794,
9 801, 808 P.2d 746, 749 (1991), to argue that RCW 9.41.290 only applies to “criminal” firearms
10 regulation. Neither contention has any merit. *See* Defendants’ September 18, 2018 Motion to
11 Dismiss 4 & n.4.

12 Every tool of statutory interpretation points to the conclusion that the state of Washington
13 has preempted both criminal and civil local regulation of firearms storage. The plain text of RCW
14 9.41.290 “fully occupies and preempts the entire field of firearms regulation.” This unambiguous
15 language applies to both criminal and civil regulation. The canons of statutory interpretation
16 plainly demonstrate that regulation of “storage” is preempted just like regulation of possession,
17 acquisition, and transportation—to hold otherwise would yield absurd results. The legislative
18 history demonstrates that RCW 9.41.290 preempts both criminal and civil regulation, and it is
19 only RCW 9.41.300 that preserves the right for municipalities to, for example, enact zoning
20 regulations that affect firearms sales. And *Cherry* is inapplicable here: *Cherry* analyzed former
21 RCW 9.41.290—which was later amended along with RCW 9.41.300 to address civil firearms
22 regulation of zoning—and held that internal rules for public employee conduct were not “laws
23 and ordinances” subject to preemption. *Cherry*, 116 Wn.2d at 801.

1 Further, the recent adoption of Initiative No. 1639 (“I-1639”) by the state of Washington
2 provides an additional reason that the Ordinance is invalid: direct conflict with state law. RCW
3 9.41.290 provides that “[l]ocal laws and ordinances that are inconsistent with, more restrictive
4 than, or exceed the requirements of state law . . . are preempted” The City’s Ordinance
5 directly and irreconcilably conflicts with I-1639 by requiring different firearms storage that is
6 inconsistent with and more restrictive than state law, and imposing penalties that exceed the
7 requirements of state law.

8 Because only the state of Washington may regulate firearms, both civilly and criminally,
9 and the state of Washington will begin directly regulating the storage of firearms, the Ordinance
10 must be preempted. Accordingly, individual plaintiffs Brett Bass, Curtis McCullough, and Swan
11 Seaberg respectfully request that this Court grant the individual Plaintiffs’ motion for summary
12 judgment, and issue declaratory and injunctive relief barring the enforcement of the Ordinance.

13 **I. FACTUAL BACKGROUND**

14 On July 24, 2018, the Edmonds City Council enacted Ordinance 4120. Declaration of Eric
15 Lindberg (“Lindberg Decl.”), Ex. A. Before enacting the Ordinance, the Edmonds City Council
16 was aware that the preemption statute imposed limits on the type of firearms regulation available
17 to a municipality compared to the State. Lindberg Decl., Ex. B at 18–20 (July 17, 2018 meeting
18 minutes). On July 29, 2018, Mayor Earling approved and signed the Ordinance on July 25, 2018,
19 making the Ordinance effective and in force on August 23, 2018. Lindberg Decl., Ex. A at 8–9.
20 The Ordinance states that the substantive provisions will be imposed 180 days from enactment.
21 The City further amended the Ordinance, pushing back the enforcement date to March 21, 2019.
22 Lindberg Decl., Ex. C. The safe storage requirements are now in force in the City of Edmonds.

23 The Ordinance created Chapter 5.26 in the Edmonds City Code. The safe storage
24 regulations state, in pertinent part:
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1 **5.26.020 Safe storage of firearms**

2 It shall be a civil infraction for any person to store or keep any firearm in any
3 premises unless such weapon is secured by a locking device, properly engaged so
4 as to render such weapon inaccessible or unusable to any person other than the
5 owner or other lawfully authorized user.

6 Notwithstanding the foregoing, for purposes of this Section 5.26.020, such weapon
7 shall be deemed lawfully stored or lawfully kept if carried by or under the control
8 of the owner or other lawfully authorized user.

9 **5.26.030 Unauthorized access prevention**

10 It shall be a civil infraction if any person knows or reasonably should know that a
11 minor, an at risk person, or a prohibited person is likely to gain access to a firearm
12 belonging to or under the control of that person, and a minor, an at-risk person, or
13 a prohibited person obtains the firearm.

14 Lindberg Decl., Ex. A at 3–4. A violation of ECC 5.26.020 (“Section 20”) is a civil infraction,
15 subject to a fine not to exceed \$500. ECC 5.26.040(A). If anyone other than an authorized user
16 obtains a firearm in violation of Section 20 or ECC 5.26.030 (“Section 30), the penalty rises to
17 \$1,000, or up to \$10,000 if the firearm is used in a crime. ECC 5.26.040(B) & (C).

18 Plaintiffs bring this case because they possess firearms that they store in their homes in
19 the City for self-defense. Plaintiff Brett Bass is credentialed as a Chief Range Safety Officer.
20 Declaration of Brett Bass (“Bass Decl.”) ¶ 4. Mr. Bass stores his daily-use firearms unsecured in
21 his home, and ready for self-defense, even when the firearm is outside his possession and control.
22 Bass Decl. ¶¶ 5–6. Plaintiff Curtis McCullough has a concealed pistol license and stores firearms
23 in a concealed place in his home, unsecured and ready for self-defense, at all times—even when
24 not at home or in a different room in his home. Declaration of Curtis McCullough (“McCullough
25 Decl.”) ¶¶ 3, 5–7. Plaintiff Swan Seaberg is a United States Marine Corps and United State Coast
26 Guard veteran, and he stores firearms in a concealed place in his home, unsecured and ready for
27 self-defense, at all times—even when not at home or on a different floor in his home. Declaration

1 of Swan Seaberg (“Seaberg Decl.”) ¶¶ 2, 6–8. All three individual plaintiffs continue to store
2 firearms without a locking device and outside their possession and control, even though the
3 Ordinance is now in effect and they fear enforcement. Bass Decl. ¶¶ 7–8; McCullough Decl. ¶¶
4 8–9; Seaberg Decl. ¶¶ 9–10.

5 After filing this lawsuit, the voters approved I-1639, which includes a “secure storage”
6 provision. *See* Lindberg Decl., Ex. D, at 10–11. The initiative establishes standards related to the
7 use of secure gun storage, trigger locks, or similar devices designed to prevent unauthorized use
8 or discharge. The initiative does not require that a firearm be stored in a particular place or in a
9 particular way. *See id.*; RCW 9.41.360 (effective July 1, 2019). In contrast, the Ordinance
10 requires locking mechanisms. *Compare* Lindberg Decl., Ex. A at 3–4, *with* Ex. D at 10–11, 27.
11 Also, I-1639 imposes penalties if a firearm was not secured and it is used in a particular way by a
12 prohibited person—the Ordinance imposes infractions for failure to use locking devices, or if a
13 non-authorized user simply obtains a firearm. *Id.* The Ordinance went into effect on March 21,
14 2019, while the secure storage provisions went into effect on July 1, 2019. *Id.*

15 **II. STATEMENT OF ISSUES**

16 Whether the City of Edmond’s storage ordinance is preempted by RCW 9.41.290 because
17 it impermissibly regulates firearms.

18 **III. EVIDENCE RELIED UPON**

19 In support of the Individual Plaintiffs’ Motion for Summary Judgment, Plaintiffs rely on
20 the Declarations of Eric Lindberg, Brett Bass, Sean Seaberg, Curtis McCullough, the exhibits
21 thereto, and the filings in this case.

22 **IV. AUTHORITY**

23 Local regulation of firearms or ammunition, including possession, is preempted in
24 Washington. RCW 9.41.290. “RCW 9.41.290 forbids the local regulation of guns.” *Watson*, 189
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1 Wn.2d at 155. The statute makes no distinction between civil and criminal regulation. In fact,
2 the preemption statute specifically addresses and allows certain specific civil regulations.
3 Moreover, as I-1639’s secure storage requirements have gone into effect, the Ordinance is now in
4 conflict with state law. Accordingly, the City’s Ordinance is preempted and void.

5
6 **A. State Law Preempts the Ordinance**

7 The Ordinance is a direct regulation of firearms in the City of Edmonds. This puts the
8 Ordinance squarely within the scope of preemption in RCW 9.41.290 and RCW 9.41.300. The
9 City’s only argument to the contrary is their claim that the statute is civil in nature. But the
10 Legislature and the courts have repeatedly and unmistakably affirmed that it occupies the entire
11 field, including laws that are primarily civil in nature.

12 **1. The plain text of RCW 9.41.290 unambiguously preempts the field for both
13 criminal and civil regulation of firearms.**

14 RCW 9.41.290 “fully occupies and preempts the entire field of firearms regulation within
15 the boundaries of the state, including the registration, licensing, possession, purchase, sale,
16 acquisition, transfer, discharge, and transportation of firearms, or any other element relating to
17 firearms or parts thereof” Accordingly, cities “may enact only those laws and ordinances
18 relating to firearms that are specifically authorized by state law, as in RCW 9.41.300” *Id.*

19 The Legislature’s sweeping occupation of the entire field of firearms regulation leaves no
20 room to build a wall between civil and criminal regulation. *See Chan v. City of Seattle*, 164 Wn.
21 App. 549, 562, 265 P.3d 169, 176 (2011) (finding preemption under the unambiguous plain
22 language of RCW 9.41.290 and RCW 9.41.300). The statute does not specify that only “criminal
23 firearms regulation” is preempted, or make any distinction between civil and criminal regulation.
24 Under the plain and unambiguous language, the statute preempts “the entire field of firearms
25 regulation”—criminal and civil. Given the broad language of RCW 9.41.290, “civil” regulation
cannot be allowed as an exception. Any such regulation would undoubtedly blur into regulation

1 over “registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and
2 transportation of firearms, or any other element relating to firearms” RCW 9.41.290; *see*
3 *City of Auburn v. U.S. Gov’t*, 154 F.3d 1025, 1031 (9th Cir. 1998) (finding preemption and
4 rejecting distinction between “environmental” and “economic” regulation due to broad language
5 in preemption clause).

6 Previously, courts have treated RCW 9.41.290 as ambiguous only with respect to whether
7 challenged government actions were “laws and ordinances,” and thus preempted. In *Cherry*, the
8 Washington State Supreme Court determined that the purpose of the statute was unclear, at least
9 with respect to the internal policies of municipal employers, and conducted an examination of
10 legislative intent. 116 Wn.2d at 800. But there is no such ambiguity here. The City has enacted
11 an ordinance, and the Ordinance regulates firearms.

12 Likewise, because RCW 9.41.290 has unambiguous preemptive effect over “the entire
13 field of firearms regulation,” there can be no argument that “storage” regulations are somehow
14 permissible. By using broad language, such as “entire field” and “any other element relating to
15 firearms,” the statute need not enumerate each and every type of regulation that is subject to
16 preemption. Also, the statute lists registration, licensing, purchase, sale, and acquisition of
17 firearms as included in the field of preempted regulations—such matters are generally civil
18 matters. The examples in the text of the statute, which are the best indication of the legislature’s
19 intent, cover both civil and criminal matters and do not support a distinction between the two
20 when it comes to preemption.

21 Further, storage of firearms is simply non-possessory ownership, and is necessarily
22 included within “the entire field of firearms regulation” and “any other element relating to
23 firearms or parts thereof.” The Ordinance is inextricably tied to issues of possession, non-
24 possession, and ownership. *See* ECC 5.26.020 (regulating how a person “store[s] or keep[s]” any
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1 firearm, and deeming it lawful storage “if carried by or under the control of the owner” or
2 authorized users); ECC 5.26.030 (regulating access to firearms). There is no way to interpret the
3 Ordinance, as written and enacted, as outside the scope of RCW 9.41.290.

4 This case is also unlike *Watson v. City of Seattle*, where the Court upheld an ordinance
5 that imposed a “Firearms and Ammunition Tax” because the ordinance was a tax and not a
6 regulation. 189 Wn.2d at 155–56. The *Watson* Court recognized that firearms *regulations*, as
7 opposed to taxes, are facially preempted by state law. *Id.* at 165. Here, the Ordinance makes no
8 reference to taxes, and there is no evidence that the Ordinance is a tax masquerading as a civil
9 infraction. The language of the Ordinance and RCW 9.41.290 are clear, and the plain text of the
10 statute preempts the Ordinance.

11 **2. The legislative history of RCW 9.41.290 demonstrates the wide and exhaustive**
12 **preemption created by the Legislature.**

13 Even if the Court were to find the preemptive scope of the statute to be ambiguous, the
14 legislative history and statutory interpretation support an extremely broad preemptive scope. “A
15 review of the legislative history makes clear that RCW 9.41.290 is concerned with creating
16 statewide uniformity of firearms regulation of the general public.” *Cherry*, 116 Wn.2d at 801.

17 The history and structure of the statute demonstrates that all laws singling out firearms and
18 ammunition are preempted, whether they are criminal or civil. The preemption statutes have been
19 amended three times in response to judicial interpretations that limited the scope of firearm
20 preemption. In *Second Amendment Foundation v. City of Renton*, the trial court found that the
21 city could prohibit possession of firearms in bars because the original preemption statute only
22 repealed inconsistent legislation in effect in 1961 and had no prospective effect. 35 Wn. App.
23 583, 583 & 588, 668 P.2d 596 (1983). While *City of Renton* was pending before the Court of
24 Appeals, the Legislature amended RCW 9.41.290 to prospectively preclude local laws that were
25 more restrictive than or exceeded state laws. *Id.* at 588 n.3. But the Court of Appeals found that

1 the amendment made while the case was pending only preempted inconsistent local firearms laws
2 and did “not militate against the result reached here” because the state did not specifically regulate
3 possession. *Id.* In response, the Legislature *again* amended RCW 9.41.290 to state that
4 “Washington hereby fully occupies and preempts the entire field of firearms regulation” and also
5 added RCW 9.41.300 which prohibited possession of firearms in certain places but allowed
6 municipalities to enact certain possession laws “notwithstanding” RCW 9.41.290. *See* Laws of
7 1985, ch. 428 §§ 1–2.

8 Ten years later, in *City of Seattle v. Ballsmider*, the Court of Appeals found that this
9 “notwithstanding” language in RCW 9.41.300 was intended “to allow local governments
10 relatively unlimited authority in one specific area—*i.e.*, the discharge of firearms in areas where
11 people, domestic animals, or property would be endangered.” 71 Wn. App. 159, 162–63, 856
12 P.2d 1113 (1993). The next year, the Legislature *again* amended RCW 9.41.290 to abrogate
13 *Ballsmider*. The Legislature mandated that local laws and ordinances are only permitted as
14 specifically delineated in RCW 9.41.300 and removed the “notwithstanding” language from RCW
15 9.41.300. *See* Laws of 1994, 1st Sp. Sess., ch. 7, §§ 428–29.

16 The legislative history tells a story: every time a court has sought to restrict the preemptive
17 field of regulation, the Legislature has forcefully struck back and reaffirmed or expanded the all-
18 inclusive scope of RCW 9.41.290. *See Chan*, 164 Wn. App. at 551–53 (summarizing history).
19 Given this history, it is simply implausible that the Legislature intended a narrow “criminal only”
20 field of preemptive effect.

21 Equally important, the legislative history of RCW 9.41.300 itself supports a finding that
22 preemption applies to civil regulation of firearms. In 1994, the Legislature amended RCW
23 9.41.300 to specifically permit municipalities to use zoning laws to regulate where firearms could
24 be sold, but barred municipalities from otherwise burdening firearms businesses any more than
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1 other similarly zoned businesses. See RCW 9.41.300(3)(a) (“Cities, towns, and counties may
2 enact ordinances restricting the areas in their respective jurisdictions in which firearms may be
3 sold, but, . . . a business selling firearms may not be treated more restrictively than other businesses
4 located within the same zone.”). The Final Bill Report stated that this amendment was necessary
5 because “the state has preempted the area of firearms regulation” and “counties and cities are not
6 authorized to regulate, through zoning, where firearms may be sold.” See Lindberg Decl., Ex. E
7 at 4. If RCW 9.41.290 preempts civil zoning regulations (and it clearly does), there simply is no
8 room for an argument that RCW 9.41.290 is limited to the field of criminal regulation.

9 As the Legislature has stated time and time again, RCW 9.41.290 is intended to fully and
10 completely occupy the field of firearms regulation—and the preempted field includes regulatory
11 penalties for both civil and criminal infractions.

12 A distinction between civil and criminal regulation would lead to absurd and unworkable
13 results. The Ordinance purports to impose “civil infractions” for violations of Section 20 and
14 Section 30. ECC 5.26.040. But if the Court permits such a distinction, there are few limits to
15 what cities and counties could regulate as “civil” regulation. Seattle could ban all firearms in
16 parks using \$1,000 and \$10,000 “civil infractions,” and the City of Renton could do the same in
17 bars, contrary to established case law. See *Chan*, 164 Wn. App. at 551–53.¹ No textual support
18 or legislative history supports turning RCW 9.41.290 onto its head to permit firearms regulation.
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23 ¹ In fact, the Ordinance is similar to the categorically-impermissible criminal regulations in *Chan*, and the
24 Ordinance is closely related to criminal regulation of firearms. Although trespass liability is not imposed
25 under the Ordinance, the police enforce the Ordinance and the amount of the infraction depends upon and
relates to criminal conduct. ECC 5.26.040–050. For example, having a minor obtain a firearm, or having
a firearm used in connection with a crime, increases the amount of the maximum infraction to punitive
amounts like \$1,000 or \$10,000. ECC 5.26.040.

1 **3. The Ordinance impermissibly conflicts with Initiative No. 1639’s “safe storage”**
2 **requirements.**

3 In addition to field preemption, Washington law precludes a municipality from making
4 and enforcing any regulation that conflicts with state statutes. *Lawson v. City of Pasco*, 168 Wn.2d
5 675, 679, 230 P.3d 1038, 1040 (2010). Conflicts generally arise “when an ordinance permits what
6 state law forbids or forbids what state law permits” and thus “directly and irreconcilably conflicts
7 with the statute.” *Id.* at 682 (internal quotations omitted).

8 Specifically with respect to firearms regulation, however, RCW 9.41.290 explicitly states
9 that local laws that are “inconsistent with, more restrictive than, or exceed the requirements of
10 state law” are “preempted and repealed, regardless of the nature of the code, charter, or home rule
11 status of such city, town, county, or municipality.”

12 The Ordinance is inconsistent with, more restrictive than, and exceeds the requirements of
13 I-1639 and RCW 9.41.360 (effective July 1, 2019). *Compare* Lindberg Decl., Ex. A at 3–4, *with*
14 Lindberg Decl. Ex. D at 10–11 & RCW 9.41.360. Here are four examples:

15 **First**, “[n]othing in [RCW 9.41.360] mandates how or where a firearm must be stored.”
16 RCW 9.41.360(6). But the Ordinance requires the use of specific locking devices for firearms
17 that are not carried by or under the control of an authorized user. ECC 5.26.010(D). Under the
18 Ordinance, a person failing to use a locking device may violate ECC 5.26.020 and be subject to a
19 \$500 penalty. Failure to use a locking device, standing alone, does not violate state law.

20 **Second**, under RCW 9.41.360, someone other than a lawfully authorized user obtaining
21 an unsecured firearm, standing alone, does not violate state law. Instead, a person violates the
22 statute if they store the firearm in a location where they should reasonably know that a prohibited
23 person may gain access, they did not use a trigger lock or secured storage, the prohibited person
24 obtains access, **and** the prohibited person takes some further act (e.g., use the firearm to commit
25 a crime, discharge the firearm, display the firearm as a threat to others). RCW 9.41.360(1). But

1 no subsequent act by a prohibited person is required to violate ECC 5.26.020 or 030. If someone
2 other than a lawfully authorized user obtains a firearm that did not have a locking device in
3 violation of ECC 5.26.020, the owner is subject to a penalty of up to \$1,000. Likewise, if a
4 prohibited person—anyone other than a lawfully authorized user (ECC 5.26.010(F))—obtains a
5 firearm and an owner should have known they were likely to gain access, the owner is also subject
6 to a penalty of up to \$1,000.

7 **Third**, state law defines a “prohibited person” as a person who is prohibited from
8 possessing a firearm under state or federal law, a much smaller class of individuals. RCW
9 9.41.360(5). But the Ordinance defines “prohibited person” with respect to access to firearms as
10 including “any person who is not a lawfully authorized user.” ECC 5.26.010(F). Thus, ECC
11 5.26.030 penalizes conduct that is not subject to penalty under state law.

12 **Fourth**, under state law, reporting within five days to local law enforcement that a firearm
13 was stolen as a result of an unlawful entry provides a complete defense to violation of RCW
14 9.41.360(1), even if the owner did not employ secure gun storage or a trigger lock. RCW
15 9.41.360(3)(d). The Ordinance contains no safe harbor for reporting theft of a firearm. Rather,
16 the City requires firearms owners to report stolen firearms within 24 hours in order to avoid civil
17 infraction and a fine of up to \$1,000. ECC 5.24.070.²

18 State law entitles firearms owners to store firearms in a manner that they see fit. RCW
19 9.41.360(6). State law also entitles firearms owners to avoid being penalized for subsequent acts
20 after their firearms were stolen by incentivizing them to promptly report stolen firearms to local
21 law enforcement. RCW 9.41.360(3)(d). By imposing infractions for any storage of firearms
22 without a locking device, and by providing no safe harbor from further liability for prompt
23 reporting of a stolen firearm, the Ordinance—including both ECC 5.26.020 & .030—
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25 ² In fact, there is a substantial question presented here as to whether ECC 5.24.070 may also be subject to
preemption because it is inconsistent with RCW 9.41.360(3)(d).

1 irreconcilably conflicts with state law. *See, e.g., Entertainment Industry Coalition v. Tacoma-*
2 *Pierce County Health Department*, 153 Wn.2d 657, 661–63, 105 P.3d 985 (2005) (striking down
3 local ordinance prohibiting smoking areas that were permitted under state law).

4 More to the point, the Ordinance unquestionably is “inconsistent with, more restrictive
5 than, [and] exceed[s] the requirements of” I-1639, codified at RCW 9.41.360. Section 20 requires
6 locking devices; the statute does not. Section 30 penalizes firearms owners if any unauthorized
7 user obtains the firearm; the statute prohibits a narrower class of individuals from obtaining
8 firearms and requires an additional act by the prohibited person in order to punish the owner. The
9 City of Edmonds requires owners to promptly report stolen firearms without providing a safe
10 harbor for violating ECC Chapter 5.26; the statute does not impose penalties on owners who
11 promptly report stolen firearms. Under the standard for conflict preemption of firearms regulation
12 in RCW 9.41.290, the Ordinance must be “preempted and repealed, regardless of the nature of the
13 code, charter, or home rule status of such city, town, county, or municipality.”

14 **B. Declaratory and Injunctive Relief Are Appropriate**

15 Plaintiffs have demonstrated that RCW 9.41.290 preempts the Ordinance because the state
16 occupies the entire field regarding firearms regulation. RCW 9.41.290; *Chan*, 164 Wn. App. at
17 562. Because the Ordinance is preempted and void, the Court should enter declaratory and
18 injunctive relief to bar its enforcement.

19 In particular, a person may ask a court to determine the validity of an ordinance, and obtain
20 a declaration of rights under that ordinance, if that person’s “rights, status or other legal relations
21 are affected by” that rule. RCW 7.24.020. Such declaratory relief is “peculiarly well suited to
22 the judicial determination of controversies concerning constitutional rights and, as in this case,
23 the constitutionality of legislative action or inaction.” *Seattle Sch. Dist. v. State*, 90 Wn.2d 476,
24 490, 585 P.2d 71 (1978). A party may show the need for a declaratory judgment where a
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1 justiciable controversy is established through: (1) an actual, present, and existing dispute, as
2 opposed to a dispute that is possible, hypothetical, moot, or speculative; (2) between parties that
3 have genuine and opposing interests; (3) which involves direct and substantial interests as opposed
4 to potential, theoretical, or abstract interests; and (4) a judicial determination of which will
5 conclusively terminate the controversy. *See To-Ro Trade Shows v. Grant Collins*, 144 Wn.2d
6 403, 411, 27 P.3d 1149 (2001); RCW 7.24.060. Similarly, a party may obtain injunctive relief by
7 showing: (1) a clear legal or equitable right; (2) a well-grounded fear of immediate invasion of
8 that right; and (3) that the acts complained of either result in or will result in actual and substantial
9 injury. *Chan*, 164 Wn. App. at 567.

10 Where a law is preempted, injunctive relief is appropriate. *See, e.g., Gen. Tel. Co. of the*
11 *N.W., Inc. v. City of Richmond*, 105 Wn.2d 579, 587, 716 P.2d 879 (1986) (affirming trial court's
12 decision to grant declaratory relief where a city ordinance requiring telephone franchisees to move
13 underground lines at its own expense was declared null and void because a state regulation
14 required the expense to be paid for by the party requesting the move); *State v. City of Seattle*, 94
15 Wn.2d 162, 166–67, 615 P.2d 461 (1980) (granting declaratory and injunctive relief where a
16 Seattle ordinance regarding historic landmarks was declared unconstitutional because it conflicted
17 with a state statute expressly permitting the University of Washington to alter and demolish certain
18 University-owned property).

19 *Chan* is an obvious and instructive example. In that case, the trial court granted a summary
20 judgment motion that plaintiffs brought shortly after filing their lawsuit. 164 Wn. App. at 558.
21 Finding that the City of Seattle's attempt to regulate firearms by banning them from city parks
22 was preempted by state law and therefore void, the court ordered immediate declaratory and
23 injunctive relief that prevented the City from enforcing the preempted regulations. *Id.* The court
24 of appeals affirmed the declaratory judgment and injunction. *Id.* at 567.
25

1 The Individual Plaintiffs in this case are entitled to the same relief afforded the plaintiffs
2 in *Chan*. Like the parks ban, this Ordinance is preempted by state law, and is thus “null and void.”
3 *Id.* at 558. As to the Individual Plaintiffs, at the very least, there is no dispute that they maintain
4 unlocked firearms in their home for self-defense that are, at times, outside of their possession or
5 control. Bass Decl. ¶¶ 5–8; McCullough Decl. ¶¶ 5–9; Seaberg Decl. ¶¶ 6–10. Because the
6 Ordinance is enforceable right now, the individual plaintiffs are potentially subject to immediate
7 fines, or would be forced to purchase locking devices or alter their storage practices. As Judge
8 Farris ruled in response to Defendants’ earlier motion to dismiss in this case, “Plaintiffs all have
9 standing to challenge [ECC] 5.26.020 and the Plaintiffs’ claim that the ordinance is preempted by
10 state statute is ripe for determination.” March 19, 2019 Order Denying Defendants’ Motion to
11 Dismiss.³ The only thing that has changed since that ruling is that the Ordinance is now
12 enforceable, and the Individual Plaintiffs may now be subject to enforcement as a result.

13 Regarding injunctive relief, Plaintiffs meet the standard. Plaintiffs have (1) a clear legal
14 or equitable right to an injunction because Plaintiffs prevail on the merits of the preemption issue.
15 *Tyler Pipe Indus., Inc. v. State, Dep’t of Revenue*, 96 Wn.2d 785, 793, 638 P.2d 1213, 1217 (1982)
16 (analyzing the likelihood of a party prevailing on the merits to determine clear legal right).
17 Plaintiffs have also established (2) a “well-grounded fear of immediate invasion.” Because the
18 Ordinance is enforceable right now, the Individual Plaintiffs have a well-grounded fear that they
19 will be subject to enforcement and fines.

20 Plaintiffs have also established that enforcement of the Ordinance (3) will result in actual
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22 ³ Plaintiffs are also entitled to declaratory relief regarding Section 30 of the Ordinance. Because Section
23 30 imposes penalties if “any person who is not a lawfully authorized user”, ECC 5.26.010(F)—and is not
24 limited to children or people who are “prohibited from possessing a firearm under state or federal law,
25 RCW 9.41.360(5)” —that section may apply to the facts asserted by the Individual Plaintiffs. Additionally,
the Court may grant declaratory relief regarding Section 30 because the entire Ordinance is being
challenged on grounds of preemption. *See* March 19, 2019 Order Denying Defendants’ Motion to Dismiss
at 2.

1 and substantial injury. Plaintiffs have concealed weapons licenses. Bass Decl. ¶ 3; McCullough
2 Decl. ¶ 3; Seaberg Decl. ¶ 4. The unlawful Ordinance attempts to compel the Individual Plaintiffs
3 to alter their firearms storage practices, even though state law does not mandate how or where a
4 firearm must be stored. Through the Ordinance, the City threatens to enforce compliance with
5 the preempted regulation with fines of \$500, even if no other person obtains the firearms. Just as
6 the plaintiffs in *Chan* had a right infringed by a preempted ordinance, Plaintiffs here have a right
7 to keep firearms in their home for self-defense, and the Ordinance impermissibly regulates and
8 interferes with this right, justifying injunctive relief. *Chan*, 164 Wn. App. at 568.

9 Injunctive relief is appropriate and necessary here, where Plaintiffs are entitled to a
10 declaratory judgment on the merits that the Ordinance is preempted. The City has no valid interest
11 in unlawful regulation, and any putative public interests the Defendants may cite to are not
12 relevant. *Id.* at 567–68. If anything, the public has a significant and decisive interest in preventing
13 enforcement of unlawful, preempted regulations.

14 Accordingly, the Individual Plaintiffs’ challenge to the Ordinance presents an actual,
15 present, and existing dispute between the parties that involves the Plaintiffs’ clear right to be free
16 from regulation and enforcement imposed by the Ordinance, as well as Plaintiffs’ well-grounded
17 fear of substantial injury. This Court can, and should, conclusively terminate the controversy
18 created by the City’s unlawful local interference with the regulation of firearms by declaring that
19 the Ordinance is preempted and void, and enjoining the City from enforcing the Ordinance.

20 VI. CONCLUSION

21 For all the foregoing reasons, Plaintiffs respectfully request that the Court grant summary
22 judgment on behalf of the Plaintiffs and issue declaratory judgment and permanent injunctive
23 relief as requested in the Complaint.
24
25

1 DATED: July 3, 2019.

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3 CORR CRONIN LLP

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5 Steven W. Fogg, WSBA No. 23528
6 Eric A. Lindberg, WSBA No. 43596
7 1001 Fourth Avenue, Suite 3900
8 Seattle, Washington 98154
9 (206) 625-8600 (Phone)
10 sfogg@corrchronin.com
11 elindberg@corrchronin.com
12 *Attorneys for Plaintiffs*

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CERTIFICATE OF SERVICE

The undersigned certifies as follows:

1. I am employed at Corr Cronin LLP, attorneys for Plaintiffs herein.

2. On July 3, 2019, I caused a true and correct copy of the foregoing document to be served on the following parties in the manner indicated below:

Attorneys for Defendants:

Edmonds City Attorney
c/o Jeffrey Taraday, WSBA No. 28182
Lighthouse Law Group PLLC
600 Stewart St, Ste 400
Seattle, WA 98101-1217
(206) 273-7440 Phone
jeff@lighthouselawgroup.com

- Via ECF
- Via U.S. Mail
- Via Messenger Delivery
- Via Overnight Courier
- Via electronic mail

Notice Only To:

Jeffrey T. Even, WSBA No. 20367
Deputy Solicitor General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
Phone: (360) 586-0728
jeff.even@atg.wa.gov

- Via ECF
- Via U.S. Mail
- Via Messenger Delivery
- Via Overnight Courier
- Via electronic mail

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED: July 3, 2019, at Seattle, Washington.



Monica Dawson