Hearing Date: 9/5/2019
Hearing Time: 9:30 AM

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' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

The state of Washington has expressly preempted the field of firearms regulation. There is no dispute that the Ordinance regulates the "storage" of firearms. Under the plain language of RCW 9.41.290, the City of Edmonds cannot regulate in this area and the Ordinance is subject to preemption. In the opposition and cross-motion, Defendants turn each tool of statutory interpretation on its head and argue that preemption is limited only to "exclusive" categories listed in RCW 9.41.290. But the list of categories is nonexclusive and illustrative, and regulation of firearms storage sits comfortably alongside other regulation of firearms preempted by the statute.

Because the Ordinance is entirely preempted, Defendants argue that Plaintiffs do not have

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standing to challenge Section 30. Defendants would have the Court leave Section 30 on the books in perpetuity, serving no purpose and avoiding an issue of major public importance. But Washington law permits courts to issue declaratory judgment in these circumstances. Plaintiffs have standing to challenge the Ordinance, and the dispute is ripe.

Plaintiffs respectfully request that the Court apply the plain, unambiguous language of RCW 9.41.290, grant Plaintiffs' motion for summary judgment in its entirety, and deny Defendants' cross-motion.

II. ARGUMENT

A. State Law Preempts the Ordinance Through Field Preemption

1. The plain language of RCW 9.41.290 expressly preempts firearms regulation

The plain statutory language expressly preempts the field of firearms regulation. "The purpose of statutory interpretation is to determine and give effect to the intent of the legislature." *Gray v. Suttell & Assocs.*, 181 Wn.2d 329, 339, 334 P.3d 14 (2014) (citation and internal quotation marks omitted). To interpret a statute, courts look first to the plain language. If the plain language has only one reasonable interpretation, the statute is unambiguous and courts apply the plain meaning. *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014).

While RCW 9.41.290 does not preempt everything and anything to do with firearms, the statute is crystal clear when it comes to field preemption over firearms regulation:

> The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law, as in RCW 9.41.300, and are consistent with this chapter. Such local ordinances shall have the same penalty as provided for by state law. Local 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, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

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RCW 9.41.290 is not ambiguous. *See Chan v. City of Seattle*, 164 Wn. App. 549, 562, 265 P.3d 169, 176 (2011) (emphasizing "fully occupies and preempts" when interpreting the statute). Once the legislature expressly states its intent to preempt the field of firearms regulation, "citi[es] may not enact any ordinances affecting" firearms regulation. *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 561, 29 P.3d 709, 712 (2001); *see also Lenci v. City of Seattle*, 63 Wn.2d 664, 670, 388 P.2d 926, 930 (1964) ("There is no room for doubt" regarding whether the city may regulate once the legislature affirmatively expresses its intent to occupy the field.). In addition to preempting "the entire field" of firearms regulation, the statute limits the powers of cities to enact only laws and ordinances relating to firearms regulation that are consistent with and specifically authorized by state law (including the exceptions in RCW 9.41.300). And any local laws that are inconsistent with state law are specifically preempted, regardless of the home rule powers delegated to the city. Taken together, the scope of preemption over firearms regulation is broad and encompassing—"the entire field."

In the face of this clear language, Defendants argue that civil regulation of firearms "requires a stronger showing" to apply field preemption (Op. Br. 22), and that the text of the statute limits the scope of field preemption only to the categories listed in the statute. Neither contention withstands scrutiny in light of the plain statutory text.

2. RCW 9.41.290 encompasses the field of both civil and criminal regulation

First, the scope of field preemption pertains to "the entire field of firearms regulation within the boundaries of the state." The plain language includes both civil and criminal regulation. There is nothing in the text of RCW 9.41.290 that distinguishes between civil and criminal regulation. This accords with the strong legislative policy behind uniform firearms regulation. "A review of the legislative history makes clear that RCW 9.41.290 is concerned with creating statewide uniformity of firearms regulation of the general public." *Cherry v. Municipality of*

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Metro. Seattle, 116 Wn.2d 794, 802, 808 P.2d 746, 749 (1991).

The *Watson* case illustrates the scope of the field preemption over firearms regulation by RCW 9.41.290. In *Watson*, the Washington Supreme Court held that a civil "Firearms and Ammunition Tax" was not preempted by RCW 9.41.290. The Court held that there was no preemption over the tax because "RCW 9.41.290 preempts only municipal gun regulation, not taxation." *Watson v. City of Seattle*, 189 Wn.2d 149, 156, 401 P.3d 1, 4 (2017); *see also id.* at 155 ("RCW 9.41.290 forbids the local regulation of guns."); *id.* at 172 (RCW 9.41.290 expressly occupies the field of "firearms regulations"). Although the tax is entirely civil and not criminal, the Court makes clear that if the "Firearms and Ammunition Tax" was a regulation, "it is facially preempted by RCW 9.41.290 and our analysis ends." *Id.* at 159.

Defendants cite snippets from various cases and suggest that RCW 9.41.290 distinguishes between criminal and civil regulation. Op. Br. 22.[1] But there is no support in the holdings of those cases for applying different preemption principles to civil regulations. In *Cherry*, the Washington Supreme Court held that the Legislature enacted RCW 9.41.290 "to preempt municipal 'laws and ordinances' enacted on the subject of firearms regulation." *Cherry*, 116 Wn.2d at 798. And in *Chan*, the court pointed out the possibility of criminal penalties only in response to the City of Seattle's contention that that the ordinance was non-criminal in nature. *Chan*, 164 Wn. App. at 565–66; *see also Kitsap Cnty. v. Kitsap Rifle & Revolver Club*, 1 Wn App. 2d 393, 404, 405 P.3d 1026 (2017) ("RCW 9.41.290 expressly provides that state law preempts <u>all</u> local firearms regulations, including those involving the discharge of firearms." (emphasis

[1] Defendants do not claim that RCW 9.41.290 does not apply at all to any civil regulation. Nor can they, in light of the text of RCW 9.41.290 and RCW 9.41.300 (e.g., references to zoning, licensing, registration).

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added)).[2]

3. RCW 9.41.290 preemption is not limited to the listed categories

Second, preemption is not limited only to the categories listed in the statute. The plain text, grammar, and structure of RCW 9.41.290 compel the conclusion that field preemption is not limited to the listed categories, but rather applies to the entire field of firearms regulation. To recap, RCW 9.41.290 provides:

> The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law, as in RCW 9.41.300, and are consistent with this chapter. Such local ordinances shall have the same penalty as provided for by state law. Local 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, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

Defendants misapply the doctrine of Ejusdem Generis to argue that by including a list of specific categories, the legislature restricts field preemption to those categories alone. Op. Br. 15. Ejusdem generis does not mean that general terms suggest only items identical to the specific terms. Defendants misapply the canon when they argue that such a list of specific terms nullifies the Legislature's express statement of field preemption.

The "Presumption of Nonexclusive 'Include'" interpretive canon definitively settles the matter. ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 132 (2012) (discussing the "Presumption of Nonexclusive 'Include'"). RCW 9.41.290

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[2] Defendants cite *Estes v. Vashon Maury Island Fire Prot. Dist. No. 13*, 129 Wn. App. 1042, 2005 WL 2417641 (2005) (unpublished) several times in violation of GR 14.1(a). Op. Br. 21–22. Unpublished opinions of the Court of Appeals filed before March 1, 2013 may not be cited in any court, even if appropriately identified as having no precedential value. GR 14.1(a). Plaintiffs move to strike these citations. *Crosswhite v. Washington State Dep't of Soc. & Health Servs.*, 197 Wn. App. 539, 544, 389 P.3d 731, 733 (2017) (granting motion to strike after failure to comply with GR 14.1).

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uses the word "including" before the list of categories, which means that the list of categories are discrete parts of a larger group of unnamed categories. Washington courts interpret the word "includes" as a term of enlargement, not limitation. *See, e.g., Brown v. Scott Paper Worldwide Co.*, 143 Wn.2d 349, 359, 20 P.3d 921, 926 (2001) ("RCW 49.60.040(3) contains the word 'includes,' which is a term of enlargement."); *Douglass v. Shamrock Paving, Inc.*, 189 Wn.2d 733, 740, 406 P.3d 1155, 1159 (2017) ("The second clause begins with 'including,' which is generally construed as a term of enlargement, not limitation."); *Town of Ruston v. City of Tacoma*, 90 Wn. App. 75, 84, 951 P.2d 805, 810 (1998) ("Generally, the statutory use of 'including' does not exclude entities that are not specifically enumerated thereafter.").

For example, when the description of the city limits of Tacoma begins with the word "including" and then lists some, but not all, of the sections contained within the city limits, the court of appeals held that the absence of a specific reference to the tidelands section did not indicate an intent to exclude. *Town of Ruston*, 90 Wn. App. at 84. Likewise, the definition of portable sign under KCC 17.110.620 "includes" a raincoat mounted with an advertising message—even though the ordinance only listed "A-frame, pole attachment, banners and reader board signs"—because the raincoats served the same function and "the list of portable signs in the code is expressly nonexclusive." *Kitsap Cnty. v. Mattress Outlet/Gould*, 153 Wn.2d 506, 509, 511, 104 P.3d 1280, 1283 (2005). Here, because the Legislature modified express field preemption of firearms regulation with a list "including" specific examples, the Legislatures intent to enlarge the field beyond the list is clear.

Defendants point to criminal cases to argue that specific lists are meant to limit the scope of a statute to other items like the specific ones listed. But Defendants' own cases concede the point: even in narrow criminal statutes subject to the rule of lenity, such lists are <u>not exhaustive</u> and allow for un-enumerated examples that are within the scope of the statutory language. *E.g.*,

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State v. Larson, 184 Wn.2d 843, 853, 365 P.3d 740, 744 (2015) (holding that 'wire cutters' were outside of statutory scope but explicitly "preserving the illustrative and nonexclusive nature of the examples").

Defendants point to *Kitsap Rifle* to argue "that the statute's list of enumerated topics sets the outer bounds of the preempted field." Op. Br. 18. But the court in *Kitsap Rifle* did not hold that the enumerated list was exhaustive or that it set a limit. Instead, the court held that the ordinance requiring shooting facility permits was outside the scope of RCW 9.41.290 because the ordinance regulated "shooting facilities," not did not directly regulate "firearms." *Kitsap Rifle*, 1 Wn. App. 2d at 403, 406-07.

Next, Defendants argue that reading the statute to "fully occup[y] and preempt[] the entire field of firearms regulations" would render the list of categories superfluous. Not so. The list of categories is illustrative. *See, e.g., Douglass*, 189 Wn.2d at 740 (including is a term of enlargement); *Larson*, 184 Wn.2d at 853 ("[P]reserving the illustrative and nonexclusive nature of the examples" after the word "including."). Again, Defendants get it upside-down: interpreting the list as restricted or exhaustive would render superfluous the portion of RCW 9.41.290 that specifies that the State "fully occupies and preempts the entire field" of firearms regulation. Restricting the statute to the list would also read the word "including" out of the statute and ignore the nonexclusive statutory text.

Defendants also complain that if the Legislature wanted to preempt regulation of firearms storage, it could have specified "storage" among the enumerated list. But this is a red herring—because the statute preempts the entire field of firearms regulation, the regulation of firearms storage is already included within the scope of the statute. Purported, speculative legislative silence is never sufficient to overcome plain meaning.

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4. <u>"Safe firearms storage" is regulation of firearms</u>

The City's "regulation of firearms storage" (Op. Br. 13) is prohibited firearms regulation in the preempted field. Defendants do not argue that the "safe storage" Ordinance is not regulation of firearms, they merely argue that it is not on the enumerated list. Op. Br. 13–14. Nor can there be any dispute that the Ordinance is a "law or ordinance" of general application. *See* Op. Br. 4–5; *see also Chan*, 164 Wn. App. at 565 & n.13 (discussing wide impact of the City of Seattle's "Firearms Rule"). Not only is regulation of firearms storage within the preempted field of firearms regulation, it is consistent with the categories of regulation listed in the statute. Storage of firearms is similar to categories such as possession, transfer, and transportation.

In an analogous case, a soil processing company challenged the Department of Ecology's ("DOE") authority to impose fines for filling wetlands based on its contention that RCW 90.48.020 "does not expressly include wetlands in its definition of 'waters of the state.'" *Pac. Topsoils, Inc. v. Washington State Dep't of Ecology*, 157 Wn. App. 629, 640, 238 P.3d 1201, 1207 (2010). "In defining 'waters of the state,' RCW 90.48.020 provides that the phrase 'shall be construed to include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.'" *Id.* at 642. The DOE argued that wetlands were included as "other surface waters." The court applied the canon of nonexclusive "include" and held that the plain language of the statute included wetlands, even though un-enumerated in RCW 90.48.020. *Id.* at 644 ("The legislature indicated the broad scope of this intent by its choice of the enlarging term 'include' which modifies the phrase 'all other surface waters' in its definition of 'waters of the state.'").

Defendants claim that the Court may not add "storage" to the list in the statute, and that "[l]egislative silence is a poor foundation on which to build a case for express field preemption." Op. Br. 14 (quoting *Watson*, 189 Wn.2d at 172). Defendants misconstrue the statute and quote *Watson* wildly out of context. In *Watson*, the Court pointed out that the statue included

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"regulation" but was silent as to "taxation." Here, the Ordinance concerns firearms regulation and the clear intent of the Legislature is to preempt "the entire field." Plaintiffs do not ask the Court to insert additional words into the statute—express preemption and enlarging terms are already present.

5. Storage is inextricably linked to possession and other enumerated categories

Additionally and alternatively, the Ordinance also directly regulates firearms possession. Defendants ask this Court to take an exceedingly narrow view of RCW 9.41.290's enumerated categories, and disregard all other forms of firearm regulation. But even if that is the case, the Ordinance is still preempted as regulation of firearms possession.

As Black's Law Dictionary explains, the "act or state of possession" is when one "can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons." This includes "actual possession"—when a person has "direct physical control over a thing"—and "constructive possession"—when a person lacking "actual possession" still has the power "to exercise dominion or control over a thing." BLACK'S LAW DICTIONARY, "POSSESSION" (5th Ed.); *see also State v. Carter*, 138 Wn. App. 350, 358, 157 P.3d 420, 423–24 (2007) ("Possession may be actual or constructive; constructive possession means the person has dominion or control over [the firearm] or over the premises where the firearm [is] found." (citations and internal quotation marks omitted)).

Under the broad scope of RCW 9.41.290, it would be illogical to limit regulation of firearms possession to "actual possession." Instead, possession should be read broadly to encompass both actual and constructive possession, i.e., how a firearm is stored when not in the actual, direct possession or control of an individual. Regulation of possession inevitably extends to regulation of storage during constructive possession. *See City of Auburn v. U.S. Gov't*, 154 F.3d 1025, 1031 (9th Cir. 1998), as amended (Oct. 20, 1998)) (rejecting distinction between

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"environmental" and "economic" regulation on the basis that "if local authorities have the ability to impose 'environmental' permitting regulations on the railroad, such power will in fact amount to 'economic regulation' if the carrier is prevented from constructing, acquiring, operating, abandoning, or discontinuing a line."). Even the Ordinance defines storage in direct relation to possession and control. Op. Br. 18 (deeming storage lawful if the firearm is carried by or under the control of the owner, i.e. possession).

6. The legislative history of RCW 9.41.290 supports preemption

Last, even if the Court find the language in the statute ambiguous, the legislative history supports finding preemption of firearms storage. The Legislature has made a series of enactments over the years that "highlight the regulatory focus of chapter 9.41 RCW." *Watson*, 189 Wn.2d at 173. "A review of the legislative history makes clear that RCW 9.41.290 is concerned with creating statewide uniformity of firearms regulation of the general public." *Cherry*, 116 Wn.2d at 802.

Defendants argue that the legislative history does not support robust preemptive scope over the field of firearms regulation because "courts have repeatedly upheld local regulations *related to firearms* against preemption challenges." Op. Br. 21 (emphasis added). But each case cited did not relate to *firearms regulation*. *See Watson*, 189 Wn.2d at 156 (taxation, not regulation), *Pac. Nw. Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 357, 144 P.3d 276, 283 (2006) (convention center permitting, not regulation), *Kitsap Rifle*, 1 Wn. App. 2d at 406 (regulation of shooting facilities, not firearms). Instead, the Washington Legislature has, time and time again, stated that RCW 9.41.290 is intended to fully and completely occupy the entire field of firearms regulation. *See, e.g., Chan*, 164 Wn. App. at 551–53 (summarizing legislative history of the statute, including removal of 'Notwithstanding RCW 9.41.290' from former RCW 9.41.290 "to make clear its intent to fully occupy and preempt municipalities from regulating firearm

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1 possession.").

2 **B. State Law Preempts the Ordinance Through Conflict Preemption**

3 In addition to field preemption, the Ordinance is invalid because it conflicts with state law.

4 Specifically, RCW 9.41.290 provides:

5

6 The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale,
7 acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and
8 counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law, as in RCW 9.41.300, and are consistent with this chapter.
9 Such local ordinances shall have the same penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law
10 shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

11

12 RCW 9.41.290. Former 9.41.290, enacted in 1983 "to prevent municipalities from adopting inconsistent laws and ordinances regulating firearms," contains similar prohibitions on cities
13 enacting laws inconsistent with state law and expressly preempting local laws "that are
14 inconsistent with, more restrictive than, or exceed the requirements of state law." *Chan*, 164 Wn.
15 App. at 552 (quoting Laws of 1983, ch. 232, § 12). The specific conflict preemption language in
16 the statute has been in place for more than 30 years in order to ensure statewide uniformity
17 regarding firearms regulation.

18 Defendants argue that the general test for conflict preemption applies here,
19 notwithstanding the specific statutory text at issue. Op. Br. 24. Defendants rely upon *Watson*,
20 where the Washington Supreme Court construed an argument as related to conflict preemption
21 and rejected it with reference to the general test. But *Watson* primarily addressed the question of
22 whether the tax at issue was a tax or a de facto regulation. *Watson*, 189 Wn.2d at 156. The
23 question of conflict preemption came up in the context of whether or not the "Firearms and
24 Ammunition Tax" was "specifically authorized" or not, and not whether the tax was more

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restrictive or exceeded the requirements of (non-existent) state regulation. *Id.* at 175. *Watson* does not support Defendants' novel theory that the conflict preemption test defined in RCW 9.41.290 does not apply. Instead, where uniformity concerns are at issue, stricter conflict preemption tests apply. *See City of Seattle v. Williams*, 128 Wn.2d 341, 349, 908 P.2d 359, 363 (1995) (preempting local ordinance in order to avoid creating "a crazy quilt" of DUI regulations based on the "uniformity" requirement of RCW 46.08.020 and RCW 46.08.030); *Cherry*, 116 Wn.2d at 802 ("RCW 9.41.290 is concerned with creating statewide uniformity of firearms regulation of the general public.").

The Ordinance is unquestionably "inconsistent with, more restrictive than, or exceed[s] the requirements of state law." RCW 9.41.290. The Ordinance and RCW 9.41.360 are inconsistent regarding the penalties imposed and an additional element required for liability under state law that is absent in the Ordinance. The Ordinance is more restrictive than state law by requiring the use of locking devices and providing no safe harbor for reporting a stolen firearm. And the Ordinance exceeds the requirements of state law by defining "prohibited" person as any non-authorized user, even if that person is allowed to possess or own a firearm. *See* Plaintiffs' Motion for Summary Judgment 11–12.

C. Ruling That Section 30 Is Preempted Would Not Be an Advisory Opinion

In light of the above, and faced with preemption of the entire Ordinance, Defendants argue that Plaintiffs have no standing to challenge Section 30. Defendants' version of the standing test for Section 30 is so narrow and unrealistic that it is unlikely that any individual could satisfy it, which would leave the Ordinance as a dead letter but nominally enforceable.

Preliminarily, Judge Farris rejected Defendants' argument that Plaintiffs could not seek relief concerning Section 30 by denying Defendants' motion to dismiss. Judge Farris carefully considered the two rounds of briefing and decided that even though Plaintiffs did not have

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independent standing to challenge Section 30, Plaintiffs did not have to dismiss its claim that the entire Ordinance is preempted.

> CONCLUDES the Plaintiffs all do not have standing to challenge Edmonds City Code 5.26.030. However, as Plaintiffs have standing to raise preemption to at least one portion of the ordinance and such challenge is ripe, it is further,
>
> ORDERED that defendants' Motion to Dismiss is denied.

Order Denying Defs.' Mot. to Dismiss 2 (Mar. 19, 2019). The facts and legal arguments here are essentially the same. As before, the preemption challenge to the Ordinance is ripe and the issue is one of major public importance. *See Lewis Cnty. v. State*, 178 Wn. App. 431, 439–40, 315 P.3d 550, 555 (2013) ("If the four justiciability elements are not met, a court may still enter declaratory judgment if the issue is one of major public importance."). Moreover, the challenge to Section 30 of the Ordinance involves issues that are "primarily legal, and do not require further factual development, and [] the challenged action [will be] final." *Id.* (citation omitted).

Defendants concede the Plaintiffs have standing to challenge Section 20. But Defendants argue (Op. Br. 10) that a putative challenger to Section 30 must intend to give a prohibited person access to a firearm in order to have pre-enforcement standing! It is hard to imagine a potential plaintiff under Defendants' standard.

Plaintiffs' standing to challenge Section 30 is not merely speculative and hypothetical. Although no Plaintiff believes that others will gain access to their firearms, the possibility is not far-fetched. Plaintiff McCullough has two small children at home, and although he takes steps to prevent firearms access by his children, he could plausibly be subject to Section 30 if the children gained access to a firearm. Declaration of Eric Lindberg ("Lindberg Decl.") ¶ 2, Ex. F. Plaintiff Seaberg expressed concern of burglaries during his deposition. Lindberg Decl. ¶ 3, Ex. G. Section

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1 30 of the Ordinance applies if any non-authorized user obtains the firearm. Plaintiffs and the
2 public have an interest in obtaining a ruling on the entire Ordinance, including Section 30, before
3 suffering the hardship of enforcement or before being compelled to purchase equipment (such as
4 a gun safe) in order to comply with the Ordinance.

5 Washington courts have applied the major public importance exception in several cases.
6 *See Ames v. Pierce Cnty.*, 194 Wn. App. 93, 117, 374 P.3d 228, 240 (2016) (listing examples).
7 Moreover, "[w]here a controversy is of serious public importance the requirements for standing
8 are applied more liberally." *City of Seattle v. State*, 103 Wn.2d 663, 668, 694 P.2d 641, 645
9 (1985). Plaintiffs have standing to challenge Section 20 and this lawsuit is ripe, primarily legal,
10 fully briefed, and would lead to finality. Plaintiffs respectfully request that the Court recognize
11 Plaintiffs' concrete harms and the ripeness of the dispute, and rule on Plaintiffs' summary
12 judgment motion regarding Section 30.

13 ## VI. CONCLUSION

14 For the foregoing reasons, and for the reasons set forth in Plaintiffs' Motion for Summary
15 Judgment, Plaintiffs respectfully request that the Court grant summary judgment and rule that the
16 Ordinance is preempted. Plaintiffs request that the Court declare the Ordinance preempted and
17 issue a permanent injunction.

18 DATED: August 19, 2019.

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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 August 19, 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
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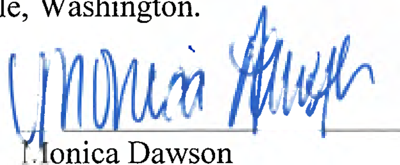
Jeffrey T. Even, WSBA No. 20367 Deputy Solicitor General 1125 Washington Street SE PO Box 40100 Olympia, WA 98504-0100 Phone: (360) 586-0728 jeff.even@atg.wa.gov	☐ Via ECF ☐ Via U.S. Mail ☐ Via Messenger Delivery ☐ Via Overnight Courier ☒ Via electronic mail

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

DATED: August 19, 2019, at Seattle, Washington.



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