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3 **BEFORE THE OFFICE OF THE**  
4 **KING COUNTY HEARING EXAMINER**

5 In re the matter of the Appeal by Cougar Hills  
6 LLC, d/b/a Cougar Crest Estate Winery, and  
7 Stephen and Sheri Lee,

8 and

9 Cave B LLC, d/b/a Cave B Estate Winery, and  
10 Larry P. and Jane E Scrivanich,

11 Appellants,

12 vs.

13 King County,

14 Respondent.

BUSINESS LICENSE APPEAL

**NO. BUSL200009**

**CONSOLIDATED WITH**

**NO. BUSL200029**

APPELLANTS' REPLY IN MOTION  
FOR SUMMARY JUDGMENT

15 The bulk of the County's and Intervenors' Response Briefs focus on whether  
16 RCW 66.08.120 preempts the County's authority to impose *zoning and land use regulations* on  
17 wineries. However, Appellants are not challenging the County's authority to impose land use  
18 regulations (i.e. "police ordinances and regulations") on Appellants' properties under the King  
19 County Zoning Code, KCC 21A. As discussed in Appellants' Motion, RCW 66.08.120 expressly  
20 preempts the County's power to *license the sale of liquor*. The statute does not affect the County's  
21 separate land use authority. Appellants challenge the County's authority to impose *business*  
22 *licensing requirements* on Appellants under the Business Licensing Code, KCC 6, the denial of  
23 which license is the decision document in this appeal.  
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1 *the sale or distribution of liquor* while reserving local jurisdictions’ power to adopt regulations  
2 that do not conflict with that state law.” King County’s Response to Appellants Motion for  
3 Summary Judgment, pp. 6-7 (emphasis added). By requiring Appellants to apply for and obtain  
4 Adult Beverage Business Licenses for their winery businesses, the County exceeded its authority  
5 under the statute. It is the County’s attempt to require Adult Beverage Business Licenses for the  
6 sale of liquor that Appellants are challenging.

7 The County asserts that its Council believed “a *land use* license for an adult beverage  
8 businesses would aid in code enforcement.” *Id.* at page 2 (emphasis added). However, the  
9 Ordinance finding cited by the County for that statement does not refer to this as a “*land use*  
10 license.” Rather, it provides that the Ordinance “establishes a *business* license for the adult  
11 beverage industry. . .” Ord. §1, Finding W (emphasis added). The County then codified this  
12 “Adult Beverage License” as a business license under KCC 6, not as a land use license, permit  
13 or approval process under KCC 21A. The County has two separate regulatory structures  
14 governing remote tasting rooms: the land use provisions under KCC 21A and the business  
15 licensing provisions under KCC Ch. 6.74. If the County intended the Adult Beverage Business  
16 License to be a land use regulation, it would have included it within KCC 21, not the licensing  
17 regulations of KCC 6.

18 The County asserts it needs this “land use license” to “provide greater certainty about  
19 where adult beverage uses are located’ and ‘verify that they are in compliance with county land  
20 use, health and safety regulations.” County’s Response, p. 3. Yet, there is simply no reason to  
21 believe the County’s Title 23 KCC<sup>2</sup> code enforcement powers are lacking in the event of any  
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 <sup>2</sup> Governing land use code enforcement.

1 need when it comes to Appellants’ tasting rooms. There is no reason for the County to use a  
2 business license as an indirect code enforcement action.<sup>3</sup>

3 King County Code and the Ordinance both enforce the distinction between land use and  
4 business regulations as those pertain to Appellants’ tasting rooms. Even the purpose clauses in  
5 the land use provisions and the business licensing provisions reflect this distinction. The purpose  
6 of KCC Ch. 6.74 governing licensing of Adult Beverage Businesses is “to *establish business*  
7 *licensing standards* for adult beverage businesses located in unincorporated King County.”  
8 KCC 21A.55.010. KCC 6.01.010 defines “License” as “any license or renewal of license issued  
9 pursuant to any business license ordinance.” KCC 6.01.010.C. Similarly, “Licensee” means any  
10 person to whom a license or renewal of license has been issued pursuant to any business license  
11 ordinance.” KCC 6.01.010.D. Conversely, the purpose of KCC Ch. 21A.55 governing the remote  
12 tasting room demonstration project was to “provide for ‘demonstration projects’ as a mechanism  
13 to test and evaluate alternative *development standards and processes* before amending King  
14 County policies and regulations.” KCC 21A.55.010.

15 The Ordinance itself makes a distinction between its land use regulations and its licensing  
16 provisions. For example, Ordinance Section 29, codified at KCC 21A.55.110.D.1, provides, “An  
17 application for a remote tasting room under this section may be submitted *in conjunction with an*  
18 *application for an adult beverage business license or a building permit.*” If the land use permitting  
19 of Adult Beverage Businesses was synonymous with the business licensing regulations, this  
20 provision would make no sense. Under the rules of statutory construction, statutory provisions  
21 cannot be read in isolation. *Cannabis Action Coalition v. City of Kent*, 180 Wn. App. 455, 477,  
22 322 P.3d 1246 (2014), *affirmed*, 183 Wn.2d 219, 351 P.3d 151 (2015). “We construe an act as a  
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24 <sup>3</sup> Nor does the County need a separate regulatory scheme from the King County Health Department, which has  
25 ample public health and safety powers. The King County Health Department has routinely reviewed and approved  
the tasting rooms through its regulatory regime.

1 whole, giving effect to all the language used. Related statutory provisions are interpreted in  
2 relation to each other and all provisions harmonized.” *Id.*

3 This Examiner has also recognized the distinction between licensing and zoning laws in  
4 the *Four Horsemen Brewery* appeal. Therein, the Examiner found that even if the Washington  
5 State licensing board authorizes an activity, the “matter of state *licensing* law does not mean that  
6 the County allows (or has to allow) it as a matter of local *zoning* law.” *Four Horsemen Brewery*,  
7 Department of Permitting and Environmental Review File No. PREA170313, King County  
8 Hearing Examiner Report and Decision (Oct. 3, 2018), at 3.

9 B. Appellants are Not Challenging the Constitutionality of the Ordinance.

10 Intervenors assert that preemption is a constitutional claim which is outside of the  
11 Examiner’s jurisdiction. However, Appellants are not challenging the constitutionality of the  
12 Ordinance. Ordinances may be reviewed with regard to their constitutionality, compliance with  
13 rule-making procedures, or whether they exceed statutory authority. *Friends & Land Owners*  
14 *Opposing Dev. v. Washington State Dep’t of Ecology*, 38 Wn. App. 84, 87, 684 P.2d 765 (1984).  
15 Here, Appellants assert that the County has exceeded its authority by requiring Appellants to  
16 apply for and obtain Adult Beverage Business Licenses, not the constitutionality of the  
17 Ordinance.

18 The fact that the State preempted the licensing of liquor establishments but left the County  
19 the power to adopt police ordinances and regulations (such as land use regulations) allows the  
20 statute and Ordinance to be harmonized, negating any need for a constitutionality analysis:

21 A state statute may preempt a local ordinance in two ways: it will “preempt[ ] an  
22 ordinance on the same subject if the statute occupies the field, leaving no room for  
23 concurrent jurisdiction, or if a conflict exists such that the statute and the ordinance  
24 may not be harmonized.”

1 *Cannabis Action Coalition v. City of Kent*, 183 Wn.2d 219, 226, 351 P.3d 151 (2015), citing  
2 *Lawson v. City of Pasco*, 168 Wash.2d 675, 679, 230 P.3d 1038 (2010). In *Cannabis Action*  
3 *Coalition*, the Court upheld the City’s ability adopt zoning regulations for cannabis uses:  
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5 The remaining question is whether the Ordinance is otherwise consistent with state  
6 law. Because the legislature ensured that cities have the power to adopt “zoning  
7 requirements”—but did not grant carte blanche to opt out of all medical marijuana  
8 activity—a city's ordinance under RCW 69.51A.140(1) must concern a land use.  
9 Here, the Ordinance does concern a land use.

10 *Id.* 183 Wn.2d at 231. Like *Cannabis Action Coalition*, the land use aspects of the Ordinance are  
11 a proper exercise of authority under RCW 66.08.120, are consistent with state law, and are not  
12 preempted. They may be harmonized; no constitutional analysis is necessary.

13 Intervenors rely heavily on *Emerald Enterprises, LLC v. Clark County*, 2 Wn. App. 2d  
14 794, 413 P.3d 92 (2018) and AGO 2014 No.2, both of which support a municipality’s ability to  
15 ban marijuana businesses within their jurisdictions. What Intervenors fail to acknowledge is that  
16 *Emerald Enterprises* and the AGO support Appellants’ position: each conclude that  
17 municipalities may impose police regulations not in conflict with the state law in question.  
18 *Emerald Enterprises*, 2 Wn. App. 2d at 803; AGO 2014 No.2, p. 9. As noted in *Emerald*  
19 *Enterprises*, the question is “whether state law specifically removes authority that the County is  
20 presumed to possess.” *Id.*, 2 Wn. App. 2d at 812. The *Emerald Enterprises* Court did not find  
21 the ordinance unconstitutional. Rather it distinguished between the retail licensing aspects of the  
22 ordinance in *Emerald Enterprises* and the County’s zoning authority to the find that the statute  
23 “does not occupy the entire field of marijuana regulation in Washington. Because state law has  
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1 not explicitly or impliedly occupied the entire field, the County retains its zoning authority.”  
2 *Id.*, 2 Wn. App. 2d at 818. As such, the ordinance could be harmonized with state law. *Id.*, 2 Wn.  
3 App. 2d at 804.

4 Similarly, in the case at hand, the Ordinance and the statute can be harmonized. While  
5 RCW 66.08.120 preempts the licensing of liquor businesses, it explicitly gives the County its  
6 zoning authority. As such, no determination regarding the constitutionality is necessary.  
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## 8 II. CONCLUSION

9 Based on the foregoing, Appellants ask the Examiner to find that the Department does  
10 not have the authority to require, much less deny, Adult Beverage Business Licenses for  
11 Appellants’ wine tasting rooms, and enter summary judgment in favor of Appellants.

12 DATED this 9<sup>th</sup> day of September, 2022.

13 JOHNS MONROE MITSUNAGA  
14 KOLOUŠKOVÁ, PLLC

15 BY 

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18 Attorneys for Appellants

19 2022-09-09 Reply in Motion re Preemption 01-1971-1 and 01-324-1 F  
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DECLARATION OF SERVICE

I, Evanna L. Charlot, am a citizen of the United States, resident of the State of Washington, over the age 18 and hereby state that on this date, I caused to be served a true and correct copy of the foregoing Appellants' Reply in Motion for Summary Judgment upon all counsel and parties of record at the address and in the manner listed below.

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

Dated this 9<sup>th</sup> day of September, 2022, in Bellevue, Washington.

s/Evanna L. Charlot  
Evanna L. Charlot