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BEFORE THE OFFICE OF THE
KING COUNTY HEARING EXAMINER

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

and

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

Appellants,

v.

KING COUNTY,

Respondents,

and

FRIENDS OF SAMMAMISH VALLEY, a Washington nonprofit corporation, MICHAEL TANKSLEY, individually, and HOLLYWOOD HILL ASSOCIATION (HHA), a Washington nonprofit corporation,

Intervenor.

NO. BUSL20-00009
BUSL20-00029

**KING COUNTY'S RESPONSE TO
APPELLANTS' MOTION FOR
SUMMARY JUDGMENT**

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I. INTRODUCTION

Appellants fail to meet their heavy burden to prove that King County's ("County") adult beverage business license system in the King County Code ("Code" or "KCC") is preempted by state law. Because the County's licensing provisions are within the County's

1 police powers and do not conflict with the plain language of RCW 66.08.120, Appellants’
2 motion for summary judgment must be denied.

3 II. RELEVANT FACTS

4 The relevant facts necessary to decide the issue of whether the County’s business
5 license system is preempted by state law are undisputed. Specifically, that the County adopted
6 an ordinance which created a new business license requirement for wineries, distilleries, and
7 breweries (“WBD”) in unincorporated King County.
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9 A. Adoption of Ordinance 19030

10 In response to King County’s rapid growth in population and wineries in and around
11 King County as well as changes in state licensing regulations, on December 4, 2019, the King
12 County Council (“Council”) adopted Ordinance 19030 (“19030”).¹ The ordinance enhanced
13 and modified development regulations for WBDs in unincorporated King County. Part of
14 those changes included adding a definition for remote tasting room² and a term-limited
15 demonstration project, Demonstration Project Overlay A, to study very small off-site remote
16 tasting rooms along State Route 202 between Woodinville and Redmond.³ 19030 also added a
17 business licensing system for adult beverage businesses, which includes “winery, brewery,
18 distillery or cidery, and remote tasting rooms for any of those businesses,” as well as legal
19 nonconforming WBD businesses.⁴ Applicants must pay an annual licensing application fee of
20 \$100.⁵ The Council found that a land use license for an adult beverage businesses would aid
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24 ¹ Ordinance 19030 available at
https://kingcounty.gov/~media/Council/documents/Issues/winery/Ordinance_19030.ashx?la=enOrdinance
25 [ance](#).

26 ² Id. § 13.

³ Id. § 1, Finding X and § 23.

⁴ Id. § 5, codified as KCC 6.74.020.

⁵ Id. § 8, codified as KCC 6.74.050.

1 in code enforcement, specifically “provide greater certainty about where adult beverage uses
2 are located” and “verify that they are in compliance with county land use, health and safety
3 regulations.”⁶ The business license provisions under Sections 4 through 11 of 19030⁷ were
4 codified as chapter 6.74 in the KCC.

5 **B. Order of Invalidity of Ordinance 19030**

6
7 In 2020, a group of Woodinville neighbors and two nonprofit organizations appealed
8 19030 before The Central Puget Sound Growth Management Hearings Board (“Board”),
9 alleging that 19030 violated the Growth Management Act (“GMA”).⁸ On January 3, 2022, the
10 Board issued its Final Decision and Order (“Order”) (and an amended Order to correct
11 scrivener’s errors on January 27, 2022).⁹ The Board invalidated Sections 12-29, and 31 of
12 19030, which are all of the development conditions for WBD uses, including remote tasting
13 rooms.¹⁰ Because the Board lacked jurisdiction over the Council’s findings, the licensing
14 provisions, appeals process, code enforcement, and civil penalties, Sections 1-11 and 30
15 remain in effect.¹¹ The County filed an appeal of the Board’s Order, which is currently
16 pending at the Court of Appeals (“COA”).¹² Oral argument is currently scheduled for
17 September 21, 2022.¹³
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21 ⁶ *Id.* §1, Finding W.

22 ⁷ *Id.* at 15-20.

23 ⁸ See Petition for Review for FOSV, et al. v. King County, CPSGMHB 20-3-0004c.

24 ⁹ Board’s Order Nunc Pro Tunc Correcting Scrivener’s Errors in Final Decision and Order
25 FOSV et al v. King County, CPSGMHB 20-3-004c, attached as Exhibit A to Declaration of
26 Lena Madden in Support of King County’s Response to Appellants Motion for Summary
Judgment (Madden Dec.).

¹⁰ *Id.* at 46.

¹¹ *Id.* at 47.

¹² See King County’s Petition for Review, King County v. FOSV, et al, King County Superior Court
No. 22-2-01511-0, COA Case No. 839055-I.

¹³ COA August 11, 2022 letter setting oral argument attached as Exhibit B to Madden Dec.

1 **C. Business Licenses**

2 Pursuant to Ch. 6.74 of the KCC, Appellants Cougar Crest Estate Winery and Cave B,
3 LLC each applied for a King County business license as new remote tasting rooms and paid
4 the \$100 fee.¹⁴ On March 17, 2022, the County denied the business license application for
5 Cougar Crest Winery.¹⁵ On March 29, 2022, the County denied Cave B’s business license
6 application.¹⁶ Each business appealed the County’s decision to the Hearing Examiner
7 pursuant to Ch. 20.22 of the KCC, and the two appeals were consolidated. On July 21, 2022,
8 the Hearing Examiner granted Friends of Sammamish Valley and Michael Tanksley’s
9 (collectively Intervenors) petition to intervene.¹⁷

11 **III. ARGUMENT**

12 **A. Standard of Review – Summary Judgment**

13 “Summary judgment motions may be entertained when the moving party demonstrates
14 that: a. The relevant matters primarily involve legal interpretations based on facts that are
15 either uncontested or can be determined expeditiously.” Hearing Examiner Rule of Procedure
16 VII.B.3.a. Summary judgment is appropriate only when there is no genuine issue as to any
17 material fact and the moving party is entitled to a judgment as a matter of law. Keck v.
18 Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015) (citing Scrivener v. Clark Coll., 181
19 Wn.2d 439, 444, 334 P.3d 541 (2014)); CR 56(c). Reasonable inferences from the evidence
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24 ¹⁴ See application forms and materials for BUSL20-0009 and BUSL20-0029 attached to Appeal
Information Packets.

25 ¹⁵ See March 17, 2022 denial response letter attached to Cougar Crest’s Appeal Information Packet,
pp. 14-16.

26 ¹⁶ See March 29, 2022 denial response letter attached to Cave B Winery’s Appeal Information Packet,
pp. 13-15.

¹⁷ See Order On Intervention Petition for BUSL200009 and BUSL200029 Business License Appeal.

1 must be resolved against the moving party. Keck, 184 Wn.2d at 370 (citing Folsom v. Burger
2 King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998)).

3 **B. County’s adult beverage business license requirement is within the County’s police**
4 **powers and is not preempted by state law.**

5 Appellants fail to meet their high burden to prove that the County’s provision
6 requiring a business license for winery remote tasting rooms is preempted by state law. Local
7 governments exercise significant regulatory powers derived from Article XI, section 11 of the
8 Washington Constitution, which states that a county “may make and enforce within its limits
9 all such police, sanitary and other regulations as are not in conflict with general laws.” “The
10 scope of a county’s police power is broad, encompassing all those measures which bear a
11 reasonable and substantial relation to promotion of the general welfare of the people.”
12 Emerald Enterprises, LLC v. Clark County, 2 Wn. App.2d 794, 803, 413 P.3d 92 (2018)
13 (internal brackets omitted). “[S]tate law preempts an ordinance on the same subject if the
14 statute occupies the field, leaving no room for concurrent jurisdiction, or if a conflict exists
15 such that the statute and the ordinance may not be harmonized.” Lawson v. City of Pasco, 168
16 Wn.2d 675, 679, 230 P.3d 1038 (2010) (citing Brown v. City of Yakima, 116 Wn.2d 556,
17 559, 807 P.2d 353 (1991)).

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20 The interpretation of a statute is a question of law. Lawson v. City of Pasco, 168
21 Wn.2d 675, 678, 230 P.3d 1038 (2010). Ordinances are interpreted using the same rules as
22 state statutes. Kitsap County v. Mattress Outlet/Gould, 153 Wn.2d 506, 509, 104 P.3d 1280
23 (2005). While deference is not afforded to an agency’s power to determine the scope of its
24 own authority, the fundamental objective in construing a statute or ordinance is to ascertain
25 and carry out the legislature’s intent. Arborwood Idaho, LLC v. City of Kennewick, 151
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1 Wn.2d 359, 367, 89 P.3d 217 (2004); In re Elec. Lightwave, Inc., 123 Wn.2d 530, 540, 869
2 P.2d 1045 (1994). In order to give effect to the legislature’s intent, courts start with the
3 statute’s plain language. Jin Zhu v. North Central Educational Service District – ESD 171,
4 189 Wn.2d 607, 613-14, 404 P.3d 504 (2017). “If the statute’s meaning is plain on its face,
5 then the court must give effect to that plain meaning as an expression of legislative intent.”
6 Arborwood, 151 Wn.2d at 367 (citing Dep’t of Ecology v. Campbell & Gwinn, LLC, 146
7 Wn.2d 1, 9-10, 43 P.3d 4 (2002); State v. J.M., 144 Wn.2d 472, 480, 28 P.3d 720 (2001)). A
8 plain language analysis requires examination of the “statute itself as well as related statutes or
9 other provisions of the same act in which the provision is found.” Zhu, 189 Wn.2d at 616
10 (internal quotations omitted).
11

12 “A statute will not be construed as taking away the power of a municipality to legislate
13 unless this intent is clearly and expressly stated.” State ex rel. Schillberg v. Everett District
14 Justice Court, 92 Wn.2d 106, 108, 594 P.2d 448 (1979). Because there is a strong
15 presumption against finding that state law preempts a local ordinance, courts must make every
16 effort to reconcile state and local law if possible. HJS Dev., Inc. v. Pierce County ex rel.
17 Dep’t of Planning & Lands Servs., 148 Wn.2d 451, 477, 61 P.3d 1141 (2003). Here, the
18 Appellants do not meet their heavy burden to prove that Ch. 6.74 of the KCC is preempted by
19 state law; therefore, their motion for summary judgment must be denied.
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22 **1. King County’s Adult Beverage Business Licensing System is Not in Conflict**
23 **with RCW 66.08.120.**

24 Appellants assert that the County’s adult beverage business license requirement under
25 KCC 6.74.030 directly conflicts with RCW 66.08.120’s preemption language. App. Br. at 7.
26 However, the legislature provided no indication, either expressly or impliedly, that it intended

1 to preempt a local jurisdiction’s authority to regulate zoning for adult beverage businesses. To
2 the contrary, the plain language of RCW 66.08.120 explicitly preempts only the authority to
3 license *the sale or distribution* of liquor while reserving local jurisdictions’ power to adopt
4 regulations that do not conflict with state law:

5
6 **Preemption of field by state—Exception.**

7 No municipality or county shall have power *to license the sale of*, or impose
8 an excise tax upon, liquor as defined in this title, or *to license the sale or*
9 *distribution thereof* in any manner; and any power now conferred by law on
10 any municipality or county to license premises which may be licensed under
11 this section, or to impose an excise tax upon liquor, or to license the sale and
12 distribution thereof, as defined in this title, shall be suspended and shall be of
13 no further effect: ***PROVIDED, That municipalities and counties shall have***
14 ***power to adopt police ordinances and regulations not in conflict with this***
15 ***title or with the regulations made by the board.***

16 RCW 66.08.120 (emphasis added). KCC 6.74.030 requires a license *to operate or maintain* an
17 adult beverage business:

18 A person or entity shall not ***operate or maintain an adult beverage business*** in
19 unincorporated King County unless the business has obtained a business license
20 issued by the director as provided by this chapter.

21 KCC 6.74.030 (emphasis added). Furthermore, KCC 6.74.010 provides that the “purpose” of
22 the County’s licensing system is not to regulate sale or distributions of liquor but “to promote
23 and protect the health, safety and general welfare of unincorporated King County Residents.”
24 KCC 6.74.010. Because KCC 6.74.030 can be harmonized with state law, the County’s
25 licensing requirements do not conflict with RCW 66.08.120.

26 Appellants also assert that the County conceded in a May 11, 2022 Staff Report that
RCW 66.08.120 preempts the County’s authority to require an adult beverage business
license. This is incorrect. The preemption discussion in the report related to limitations *on*

1 *production and on-site tasting and sales*, not the County’s authority to require a business
2 license as part of its regulatory powers. The report states:

3 **Council Considerations.** The Council may want to consider the following as
4 the Committee and full Council deliberate on the proposed changes.

5 Liquor license conflict preemption. In addition to the County's requirements
6 under the Growth Management Act and constitutional considerations, state law
7 specifically prohibits regulations that conflict with the Washington State Liquor
and Cannabis Board's licensing requirements.

8 The conflict preemption restriction comes from state law (in particular, after the
9 "PROVIDED," the restriction on regulations that conflict with the RCW or
WAC)

10

11 *When considering the limitations on production and on-site tasting and*
12 *sales*, the Council should keep this statute in mind. In particular, *the state*
13 *liquor licenses for WBDs have allowances for the business to sell products*
14 *from other WBDs, and to sell food and nonalcoholic beverages...*¹⁸

15 Because the County’s adult beverage business license requirement does not conflict
16 with Title 66, RCW, or with regulations adopted by the Washington State Liquor Cannabis
17 Board, and because it does not license the sale or distribution of liquor, but rather creates a
18 tracking system to ensure compliance with land use and health and safety regulations, KCC
6.74.030 is not preempted by state law.

19 **2. The Business License Fee is a Regulatory Fee, Not a Tax.**

20 Appellants assert that the County’s authority to impose an annual \$100 business
21 application processing fee for the adult beverage business license is preempted by RCW
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¹⁸ Link to May 11, 2022 Staff Report to Proposed Ordinances 2022-0147
<https://mkcclegisearch.kingcounty.gov/View.ashx?M=F&ID=10875930&GUID=AE3DE011-4605-4714-BDB6-3161FA527D5A> (highlights removed).

1 66.08.120 as an excise tax on liquor. However, the application fee is a valid regulatory fee
2 within the County’s broad police powers, therefore, it is not preempted by RCW 66.08.120.

3 In determining whether a charge imposed by a governmental entity is a tax or a
4 regulatory fee, the Washington Supreme Court set out a three-prong test: “(1) whether the
5 primary purpose is to raise revenue or to regulate; (2) whether the money collected is spent on
6 non-regulatory purposes; and (3) whether there is a direct relationship between the fee charged
7 and the service received by those who pay the fee or between the fee charged and the burden
8 produced by the fee payer.” Thurston County Rental Owners Ass’n v. Thurston County, 85
9 Wn. App. 171, 178, 931 P.2d 208 (1997) (citing Covell v. City of Seattle, 127 Wn.2d 874, 879,
10 905 P.2d 324 (1995)) (internal quotations omitted). In their brief, Appellants provide no
11 analysis of the three-prong test, and all three factors support the conclusion that the fee is
12 regulatory rather than an excise tax.
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15 KCC 6.74.050 provides:

16 **License or renewal fee.** An applicant for an adult beverage business license or
17 renewal under this chapter shall pay an application fee at the time of
18 application submittal. The nonrefundable application fee for an adult beverage
19 business license or renewal is one hundred dollars. (Ord. 19030 § 8, 2019).

20 Based on the plain language of KCC 6.74.050, the first factor is clearly met. The
21 provision contains no language that the \$100 fee is for revenue purposes. Rather, the primary
22 purpose is to cover the cost of processing applications in regulating WBD business uses
23 within unincorporated King County.¹⁹ Moreover, the two cases cited by Appellants – Century
24 Brewing Co. v. City of Seattle, 177 Wash. 579, 32 P.2d 1009 (1934) and Attorney General

25 ¹⁹ See State v. Grays Harbor County, 98 Wn.2d 606, 607-10, 656 P.2d 1084, 1085-86 (1983) (state
26 required to pay local fees for its share of the cost of filing and processing document); Irvin Water Dist.
No. 6 v. Jackson Partnership, 109 Wn. App. 113, 34 P.3d 840 (2001) (holding connection fee charged
to developers for multi-unit buildings by a water district to regulate distribution of water was a
“regulatory fee” rather than a “tax”)

1 Opinion 53-55 No. 2 – are inapplicable here because the fees at issue in those cases were for
2 the purpose of raising revenue, which the license fee here does not.

3 In Century Brewing, the Court found the ordinance at issue imposed an excise tax not
4 because of the annual license fee it imposed, but instead because of revenue-generating “so-
5 called additional fees.” Id. at 588. The ordinance provided that:

6
7 [A]ll distributors of alcoholic beverages doing business in the city of Seattle
8 shall obtain a license therefor, ***the fee for which shall be \$500 per annum, and***
9 ***in addition*** thereto, certain fees measured by the amount of alcoholic
10 ***beverages sold or distributed*** by the license, as follows: ***Two dollars per***
barrel having a content of from fifteen and one-half gallons to thirty-one
gallons, and similar fees for other sized barrels and for bottles, according to
content...

11 Id. at 584 (emphasis added). The issue before the Court was “whether the city’s right to
12 impose a tax of \$2 per barrel, as provided in the ordinance, has been superseded by the
13 Washington State Liquor Control Act.” Id. at 587. In concluding that the ordinance imposed
14 an excise tax, the Court found that “the so-called additional fees” were not for the purpose of
15 paying the costs of regulation but for the production of revenue, under the excise of the power
16 to tax. Id. at 588. Similarly, AGO 53-55, No. 2 involved a business tax, which the Attorney
17 General opined was “a revenue measure enacted pursuant to the taxing power” and therefore
18 was “not an exercise of the police power.”

19
20 Unlike the ordinance in Century Brewing as well as the facts in AGO 53-55, No. 2,
21 KCC 6.74.050 does not impose any “additional” fees nor does it include a “revenue measure.”
22 Therefore, Century Brewing and AGO 53-55 are distinguishable. RCW 66.08.120 does not
23 preempt the business license requirement.

24
25 As to the second factor, Appellants, who have the burden of proof, provide neither
26 evidence nor argument that the fees are spent on nonregulatory purposes. Thus, this factor

1 weighs in favor of a regulatory fee. Finally, as to the third factor, the fee is imposed only on
2 those applying for adult beverage business licenses from the County, thus there is a direct
3 relationship between the fee charged and the service provided - processing applications to
4 regulate WBD business uses within unincorporated King County.

5
6 In sum, Appellants do not rebut the strong presumption against finding the fee to be an
7 excise tax. Because the three-factor test supports the conclusion that the licensing fee is a
8 valid regulatory fee that does not conflict with RCW 66.08.120, the Appellants' motion for
9 summary judgment must be dismissed.

10 IV. CONCLUSION

11 Appellants' motion for summary judgment should be denied. They fail to meet their
12 high burden to prove that state law preempts the County's authority to require a regulatory
13 business license for WBD businesses. The business license provision does not conflict with
14 the plain language of RCW 66.08.120 and therefore is not preempted.
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18 Dated this 22nd day of August, 2022.

19 DANIEL T. SATTERBERG
20 King County Prosecuting Attorney

21 s/ Lena Madden
22 Lena Madden, WSBA No. 41246
23 Attorney for King County
24
25
26

1 **CERTIFICATE OF FILING AND SERVICE**

2
3 I hereby certify that on August 22, 2022, I electronically filed the foregoing
4 document with the Office of the King County Hearing Examiner by email to
5 hearingexaminer@kingcounty.gov and sent copies of the same via email to the following:
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13
14 I declare under the penalty of perjury under the laws of the State of Washington that
15 the foregoing is true and correct.
16

17 DATED this 22nd day of August, 2022.

18 s/ Monica Erickson
19 Monica Erickson, Paralegal
20 King County Prosecuting Attorney's Office
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24
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