99709-8

Washington Supreme Court

Docket No. 80961-0

King Cy. Sup. Ct. Cause No. 19-2-23673-6SEA

MELISSA C. WILLIAMS,

Plaintiff-Appellant,

-against-

CITY OF SEATTLE,

Defendant-Respondent.

PETITION FOR REVIEW BY WASHINGTON SUPREME COURT

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I. IDENTITY OF PETITIONER

MELISSA WILLIAMS, through Adam P. Karp, petitions for review under RAP 13.4(b)(3 and 4).

II. COURT OF APPEALS DECISION

Except for that part of the Court of Appeals decision regarding standing and justiciability, Williams seeks reversal of the attached Court of Appeals decision (**Exh. A**) and Order on Summary Judgment (**Exh. B).**

III. ISSUES PRESENTED FOR REVIEW

Did the Court of Appeals err in:

1. Refusing to declare Seattle's dangerous dog code unconstitutional as in irreconcilable conflict with the State dangerous dog code, RCW 16.08.070-.100, and to prevent its enforcement?

2. Engaging in a legal fiction of deeming the Seattle "dangerous" dog code a variant State "potentially dangerous" dog code?

IV. STATEMENT OF THE CASE

A. Comparing and Contrasting City and State Dangerous Dog Laws.

In 1987, after the City of Seattle enacted its vicious dog ordinance, the Legislature passed 1987 c 94 (ESSB 5301), codified at RCW 16.08.070 (§ 1), .080 (§ 2), .090 (§ 3), and .100 (§ 4). Read in its entirety, its purposes were clear:

(1) To create a nomenclature for two classes of bad dog ("potentially dangerous" and "dangerous");

(2) To impose default due process mechanisms for "dangerous"

dog designations; and

(3) To require Statewide registration of "dangerous" dogs with specific restraints on control, to mandate immediate confiscation and conditional euthanasia, and to impose criminal penalties upon those who fail to so register and control same.[1]

However, the State is not and never has been in the business of declaring dogs dangerous (for there exists no Washington State Dog Patrol or State Animal Control Authority); nor of maintaining a statewide registry, as it does with motor vehicles or in licensing professionals; nor of using the Attorney General to prosecute those who fail to register dangerous dogs. So, why go to the trouble of creating a statewide, comprehensive regulatory scheme for dangerous dogs that directs administration exclusively at the local level (including those without an animal control authority – see RCW 16.08.080(7)(a)(iii)), only to let those localities create their own contradictory scheme rife with dissimilar definitions? This *Petition for Review* urges the Washington Supreme Court to rectify the Court of Appeals's invitation to 281 incorporated municipalities and 39 counties to introduce a confusing, disuniform patchwork that only brings less predictability and more interjurisdictional conflict?

While amended by SSB 6635 (2002 c 244) to expressly permit

[1] RCW 16.08.070 explicitly applies the definitions of "dangerous dog" and "severe injury" throughout RCW 16.08.070-.100, "[u]nless the context clearly requires otherwise."

localities to enact more prohibitive restraints on statutorily defined "dangerous" dogs, including to even ban them entirely (i.e., RCW 16.08.080(6) and RCW 16.08.080(9)), it did not authorize them to subvert legislative intent by imposing their individual will on the rest of the State.

RCW 16.08.070(2) defines a "dangerous dog" as:

> any dog that (a) inflicts severe injury on a human being without provocation on public or private property, (b) kills a domestic animal without provocation while the dog is off the owner's property, or (c) has been previously found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans.

RCW 16.08.070(3) defines "severe injury" as "any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery." Ch. 16.08 RCW does not define "provocation."

In broad conflict with RCW 16.08.070(2), SMC 9.25.020(G) defines "dangerous animal" as:

> any animal: (1) That, when unprovoked, inflicts severe injury on or kills a human being or domestic animal on public or private property; (2) Whose owner has been previously found to have committed a civil violation of 9.25.084.G or has been convicted of a crime under 12A.06.060 of the Seattle Municipal Code and whose owner is found to have committed a violation of either 9.25.084.G or 12A.06.060 of the Seattle Municipal Code with respect to the behavior of that same animal; (3) That, under circumstances other than as described in subsection G(2) above, has been the subject of one or more findings that its owner has committed a civil violation of 9.25.084.G or has been convicted of a crime under 12A.06.060 of the Seattle Municipal Code, whether involving the same or a different owner, whose owner is found to have committed a violation of either 9.25.084.G or 12A.06.060 of the Seattle Municipal Code; or (4) Whose owner has received a written notification alleging

behavior that would be in violation of either 9.25.084.G or 12A.06.060 of the Seattle Municipal Code issued under the laws of any other city, county or state agency within or outside of the State of Washington, which animal again engages in behavior that is in violation of either 9.25.084.G or 12A.06.060 of the Seattle Municipal Code.

In conflict with RCW 16.08.070(3), SMC 9.25.023(E) defines "severe injury" as:

any physical injury that results in: (1) one or more broken bones; (2) one or more disfiguring lacerations, avulsions, cuts, or puncture wounds requiring medical attention, including but not limited to one or more sutures, steri strips, or staples; or (3) permanent nerve damage. It also means transmittal of an infectious or contagious disease by an animal.

In conflict with the unrestricted and open phrase "without provocation" as used in the State code, SMC 9.25.024(A) restrains the concept by defining "unprovoked" as:

an animal [who] is not "provoked." An animal is "provoked" if the animal was being tormented physically abused or hurt at the time of the incident. An animal also is "provoked" if a reasonable person would conclude that the animal was defending itself, its owner or an immediate family member of its owner, or another person within its immediate vicinity from an actual assault or was defending real property belonging to its owner or an immediate family member of its owner from a crime being committed on the owner's property at that time. An animal is not "provoked" if the victim is alleged to have provoked the animal and the victim is less than six (6) years old.

RCW 16.08.080(5) directs that dogs meeting the definition of "dangerous" under RCW 16.08.070 must obtain a certificate of registration from the city or county in which they reside, and, failing in that endeavor, mandates both apprehension of the "dangerous dog" by the "animal control

authority"[2] and criminal prosecution of the owner (RCW 16.08.100(1)). It further specifies the application of operational definitions throughout.[3] Indeed, the City expressly adopts the dangerous dog restrictions set by Ch. 16.08 RCW even for dogs who would not, like Williams's dog Charlie, ever meet the definition of "dangerous" under RCW 16.08.070(2) and (3).[4]

B. A Labradoodle's Life at the Intersection of RCW and SMC.

Ms. Williams is a single mother and the owner-guardian of Charlie, an approximately 4-year-old, neutered male, miniature Labradoodle. Charlie serves as an assistance animal for Williams, and has been prescribed by Williams's licensed mental health counselor. The City cited Williams twice for incidents allegedly involving Charlie:

(1) For allegedly permitting Charlie to bite Kamiya Hayward causing less than severe injury (SMC 9.25.084(G)(1)), running at-large (SMC 9.25.084(A)), and not being rabies-vaccinated (SMC 9.25.049), arising from an incident dated March 28, 2018 ("Hayward matter"), which Williams timely contested and to which Seattle Municipal Court assigned case #203795400; and

(2) For allegedly permitting Charlie to bite a dog owned by Autumn Chandler (SMC 9.25.084(G)(1)), and running at-large (SMC 9.25.084(A)), arising from an incident dated May 3, 2018 ("Chandler matter"), which Williams timely contested and to which Seattle Municipal Court assigned

[2] Defined at RCW 16.08.070(5) as "an entity acting alone or in concert with other local governmental units for enforcement of the animal control laws of the city, county, and state and the shelter and welfare of animals."

[3] RCW 16.08.070 ("Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 16.08.070 through 16.08.100.")

[4] See SMC 9.25.035(A)(3) ("removed from the City and maintained at all times in compliance with RCW Chapter 16.08") and SMC 9.25.035(E)(1) ("proof that all conditions required by Chapter 16.08 RCW …. have been met")

case #203800137.

Williams defended against the Hayward matter on 8.14.18. The court found she committed the violations under SMC 9.25.084(G)(1) and SMC 9.25.084(A) but not SMC 9.25.049. On 9.10.18, Williams withdrew her request for a contested hearing on the Chandler matter, resulting in a committed finding. On 11.1.18, the City of Seattle issued Williams a *Notice of Preliminary Determination of Dangerous Animal Right to Meeting* letter asserting that Charlie was dangerous under SMC 9.25.020(G)(3) for having been twice the subject of two findings that Williams committed a violation of SMC 9.25.084(G). Neither the Hayward nor Chandler matters, nor each of them, however, would have qualified to deem Charlie "dangerous" or "potentially dangerous" under RCW 16.08.070. The City's preliminary determination of dangerous animal indicated that a final determination would be made within twenty days. It never did. As the Court of Appeals agreed with Williams that she had standing and her case was justiciable, facts pertaining to those issues are not included in this narrative.

In 2019, Williams sued the City seeking declaratory and injunctive relief to deem the Seattle dangerous dog code unconstitutional. On cross-motions for summary judgment, the trial court assumed, without deciding, that Williams had standing, but ruled against her on the merits. The Court

of Appeals affirmed on 3.29.21, holding the City's "dangerous" dog ordinance constitutional based on the view that it really was a "potentially dangerous dog" ordinance (as defined by State law).

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. RAP 13.4(b)(3) – Significant Constitutional Question

The Court of Appeals's reference to *Rabon v. City of Seattle ("Rabon II"),* 135 Wn.2d 278 (1998) as purportedly dispositive warrants discussion. Wilton Rabon's Lhasa Apsos, Word and Parsheba, were impounded after allegedly biting a woman in November 1991. After more complaints in February 1992 and June 1992, his dogs were seized and then released. In May 1993, these same dogs were unleashed and bit three women. Neither dog was administratively declared vicious. Instead, they were impounded and Rabon criminally charged with four counts of owning a vicious dog in violation of SMC 9.25.083,[5] for which he was convicted. SMC 9.25.024(A) defined "vicious animal" as one who might have satisfied the statutory definition of *dangerous.* In 2000, Seattle created the "potentially dangerous animal" designation (SMC 9.25.023(C)) and repealed the "vicious" label of SMC 9.25.024. In 2003, it repealed "potentially dangerous animal," leaving just "dangerous." To be clear:

[5] This provision strongly resembles the modern version of SMC 9.25.083, except that the word "vicious" is "dangerous."

though Word and Parsheba were never actually declared *dangerous*, their actions fell within the definition of *dangerous.*[6]

In adjudicating whether the City could impose greater restrictions on dogs satisfying the definition of dangerous, the court assumed that the vicious label affixed to Word and Parsheba met that the "dangerous" definition of RCW 16.08.070(2). Rabon reasoned that "vicious" equated with "dangerous" as applied to Word and Parsheba and that by falling within the definition of "dangerous" under State law, both dogs found refuge from the City's lethal injection. On the contrary, Williams contends that the City's definition of "dangerous" in no way resembles or mirrors "dangerous" under State law, on its face and certainly as applied to Charlie, and that because he falls outside the definition of "dangerous" under State law, the City has no right to subject Charlie to the State dangerous dog restrictions under RCW 16.08.080(6) and RCW 16.08.090(1), nor may the City invoke RCW 16.08.080(9) as an excuse to impose additional restrictions including banishment or death. The issue at bar could not be any more distinct.

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[6] Rabon argued that the City's definition of "vicious animal" necessarily included "dangerous" dogs. *Rabon v. City of Seattle,* 135 Wn.2d 278, 292 (1998). The Supreme Court did not reject this argument but concluded that even so, the City was not required to issue a dangerous dog license, though permitted under State law. If Word and Parsheba did repeatedly bite and endanger the safety of humans, they would meet the definition of dangerous under RCW 16.08.070(2)(c). Justice Sanders agreed. *Id.,* at 300 ("First, applying state law, the dogs would likely have been classified as 'dangerous,' not 'potentially dangerous.'")

The question before the Supreme Court was whether the City must allow registration of dogs who meet the definition of "dangerous" instead of banishing or killing them. While it is true that Williams is asking to compare the City against State definitions, *Rabon* did not examine or even contemplate whether the City could change the definition. Rather, it assumed equivalency as applied to Rabon, thereby permitting the City to impose more significant restrictions than otherwise permitted under State law for dogs meeting the definition of "dangerous."

The legislature explicitly made "dangerous" applicable to RCW 16.08.070—.100, such RCW 16.08.080(9)'s allowance for cities to impose additional restrictions upon owners of "dangerous dogs" and not require a locality to allow a "dangerous dog" only applied where the subject dog actually met the State definition of "dangerous dog." The Supreme Court did not reason that because Word and Parsheba were not dangerous under State law, but instead *potentially dangerous*, the City could do anything it desired, including killing them. As to potentially dangerous dogs, the Supreme Court merely agreed with the Court of Appeals that there was no "implied intent to preempt." *Id.,* at 290. The dissent also observed that Ch. 16.08 RCW did not intend municipalities to impose greater restraints on "potentially dangerous" dogs than "dangerous" dogs since RCW 16.08.100 permitted euthanasia of a "dangerous" dog only under specific

circumstances. *Id.,* at 300.

Williams's urges, rather, that the City definition does not include "dangerous" dogs and, thus, it is not free to impose restrictions at or greater than govern "dangerous" dogs under State law. Yet, the City has expressly invoked the State's "dangerous" dog restrictions and mandated their application outside city limits as a condition of release (SMC 9.25.035(A)(3) and SMC 9.25.035(E)(1)), indicating an emphatic desire to expand the State definition to enshroud a substantially greater number of dogs with a statewide label never authorized by the State. Further, even if a citizen wished to remove a dog declared "dangerous" under City code from city limits, the City maintains its right to deny release and kill the dog, and, on appeal to the Seattle Hearing Examiner, the *dog owner* has the burden of proving that release outside City limits per SMC 9.25.035(A)(3) in lieu of death is "available" (i.e., meaning compliance with State dangerous dog restrictions), and the City need only prove that it was not arbitrary and capricious to order death over release to a secure animal shelter under SMC 9.25.035(A)(2). By bleeding State "dangerous" dog restrictions over the rest of the State (if not the entire country) on pains of death, the City has grossly exceeded its authority and exsanguinated constitutional rights by an insufficient standard of proof and improper burden of proof. *See Mansour v. King Cy.,* 131 Wash.App. 255 (2006).

Williams does not dispute that the City may do with dogs who meet the State definition of dangerous as it wishes (within reason, of course[7]), but, instead, challenges the City's attempt to upclassify and redefine what makes a dog dangerous at the outset and, in so doing, banish or criminalize his possession. She also challenges the Court of Appeals's rhetorical maneuver of downclassifying (and yet redefining) what makes a dog potentially dangerous to accomplish the same goal. The City ignores this rigid definitional structure, which applies statewide with nontrivial consequence per RCW 16.08.080(5).

Charlie was not declared or found to be *potentially dangerous*. Nor could he have been based on an alleged "less than severe bite" to a person (SMC 9.25.084(G)(1)) and a "bite" to an animal (also SMC 9.25.084(G)(1)). The City never cited Williams under SMC 9.25.084(G)(2) (which resembles RCW 16.08.070(1)(b)), and there is no evidence Charlie "inflict[ed] bite**s** on **a** human" in the Hayward matter, nor "inflict[ed] bite**s** on **a** … domestic animal" in the Chandler matter so as to qualify under RCW 16.08.070(1)(a). As noted, the animal control file admits that Charlie inflicted *no injury* and *did not break skin* on either Hayward of Chandler's

[7] For instance, ordering that the dog be given to a laboratory for experimentation or cruel mistreatment in violation of other state or federal laws, would not be permissible. Indeed, it is questionable whether a city could even order the dog killed since "additional restrictions upon owners of dangerous dogs" assumes that a living dog upon whom restrictions may be imposed. No restrictions are required for a deceased dog.

dog.[8] Nor was there any allegation of more than one bite to each so as to satisfy the plural form of RCW 16.08.070(1)(a); aggregating over incidents is not permitted given the singular "a." Aside from not being "potentially dangerous," with "the owner having received notice of such" (which also never occurred), Charlie never thereafter "aggressively bit[], attack[ed], or endanger[ed] the safety of humans," a predicate to deem him dangerous under RCW 16.08.070(2)(c). Hence, *Rabon* has no bearing on this case where the City has affixed only one label to bad dogs (i.e., "dangerous") and no longer declares dogs *potentially dangerous* or *vicious*.

Rabon I and *Rabon II* were decided years before the code was amended in 2002.[9] Those changes essentially codified *Rabon*. But a plain reading of the statute indicates that these modifications, and the caselaw they echo, speak only to dogs who actually meet the definition of "dangerous" under state law. If the dog does not, then statewide registration

[8] "Bite" is not defined by State law or City code, but conventionally means maceration, tearing, or cutting. See OxfordLanguages and Google defining the noun bite as "an act of biting something in order to eat it" or "a piece cut off by biting" and the verb bite as "use the teeth to cut into or through something." Google Dictionary (4.28.21).

[9] The amendments of relevance are found at subsection (2)(b) of RCW 16.08.070, making clear the legislative intent since 1987 that a dog cannot be declared dangerous for killing a domestic animal without provocation while the dog is on the owner's property; at subsection (6) of RCW 16.08.080, stating "unless a city or county has a more restrictive requirement," the city or county shall issue a dangerous dog certificate of registration if the owner can provide proof of a proper enclosure, warning signage, and $250,000 bond; at subsection (7)(b) of RCW 16.08.080, stating that the certificate of registration requirement "does not apply if a city or county does not allow dangerous dogs within its jurisdiction"; and at subsection (9) of RCW 16.08.080, stating that nothing limits a local authority from placing additional restrictions on dangerous dog or barring them entirely.

does not apply, either, and the City cannot make it so as a condition of release on threat of euthanasia. The dog is free to come and go without any restraint except by local regulation as a "potentially dangerous dog," but, again, only if the dog meets that definition under State law. RCW 16.08.090(2), while applying the definition given by RCW 16.08.070(1), makes the bad dog rubric pellucidly clear:

- Dogs who behave badly may be labeled "potentially dangerous" or "dangerous." No other designation applies anywhere in the State.

- State law defines what is a "potentially dangerous dog," but imposes no restrictions, leaving it completely up to the locality to codify notice and appeal procedures and impose registration and restraint conditions if desired (the city is not obligated to declare, register, or enforce potentially dangerous dogs at all). The locality may not change the definition of what makes a dog "potentially dangerous."

- State law defines what is a "dangerous dog," imposes minimum restraints, and mandates local registration, but while granting the limited power to the locality to refuse registration altogether (effectively banishing the dog) or to impose greater non-death restraints than set by State law. The locality may not change the definition of what makes a dog "dangerous."

- If a dog does not meet either definition of "potentially dangerous" or "dangerous," then it is not subject to regulation under State or local law.

Article XI, § 11 of the Washington Constitution provides that:

[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

Unconstitutional conflict exists where an ordinance permits what state law forbids, or prohibits what state law permits. *Trimen Dev. Co. v. King*

County, 124 Wn.2d 261, 269 (1994). The City code conflicts with state law in three ways: (1) prohibiting what State law permits; (2) thwarting the legislative purpose of the statutory scheme, and (3) exercising power the scheme did not confer on local governments. *Department of Ecology v. Wahkiakum Cy.,* 184 Wash.App. 372, 378 (2014). The City's definition of "dangerous" simply cannot be harmonized with the State's "dangerous" or "potentially dangerous" definitions. It threatens criminal prosecution with a gross misdemeanor and mandatory euthanasia upon conviction of any person who owns, or possesses in defiance of municipal order to remove, a dangerous dog within the City. SMC 9.25.083. Further, any such dangerous dog must be killed or banished subject expressly to State dangerous dog restrictions and other extrajurisdictional restraints imposed by the City.

While RCW 16.08.080(9) gives the City the authority to banish such animals completely, it in no way allows the locality to change the definition of dangerous dog by expanding the class of behaviors and quantum/quality of injury beyond, nor by omitting defenses set forth by, State law. This subsection, rather, concerns sanctions that follow a dog once found "dangerous," not the procedures and definitions that *precede* such legal metamorphosis. SMC 9.25.020(G), SMC 9.25.023(E), and SMC 9.25.083(C), in attempting to invoke "additional restrictions" on dangerous dogs without providing the same defenses, unconstitutionally conflicts with

the general laws. Harmonization is simply not possible, especially where the City unabashedly seeks to impose State dangerous dog restrictions *outside city limits* where a dog meets the *City's* definition of dangerous (but not the *State*'s) and to kill or banish such dog when State law only applies to those dogs who meet the definition of "dangerous" (not "potentially dangerous").

To authorize the City's code would lead to absurd and strained consequences, which this court cannot endorse. *Kilian v. Atkinson,* 147 Wn.2d 16, 21 (2002). It would also improperly delegate to cities the power to govern citizens outside its boundaries in violation of Wash.Const. Art. 11, § 11 (permitting making and enforcing laws "***within its limits***"). This is why the State established an overarching scheme, prescribing the operative terms and consequences, as well as a default notification and appeal procedure for those localities who did not enact their own. The 2002 amendments did not authorize them to subvert legislative intent and impose their will on the rest of the State.

The Washington appellate courts have never answered the antecedent question of whether a municipality broadening the constituent terms that define a dog as "dangerous" creates an impermissible conflict. However, the Florida and Ohio Courts of Appeal have, ruling against the

municipalities, as this court should, too.[10] Dissenting Justice Sanders was right in *Rabon II* when holding that the earlier State dangerous dog law was "not a simple prohibitory enactment," but, rather, a "comprehensive scheme regulating the registration and execution of dangerous dogs," and concurring Judge Grosse properly held in *Rabon v. City of Seattle ("Rabon I"),* 84 Wash.App. 296, 308 (1996) that the 1985 version of the SMC clashed with the 1987 version of the RCW by eviscerating its dual definitions of dogs. By 2018, the operative RCW and SMC sections had significantly changed, warranting new analysis.

A structurally harmonious reading of RCW 16.08.070-.100 erects a three-story dog kennel. On the first floor are all dogs who do not meet either definition. The second floor houses those who meet the definition of "potentially dangerous," and the third floor is reserved for "dangerous." Only dogs rising above the "potentially dangerous" floor and below the "dangerous" ceiling can be regulated as "potentially dangerous." Those whose behavior rises above the "dangerous" floor can be regulated as "dangerous." What the City cannot do is drop the ceiling so that the third floor becomes the second, or the second the first, i.e., dogs whose

[10] Finding unconstitutional conflict, these courts nullified municipal dangerous dog codes that did as Seattle has. *Hoesch v. Broward Cy.,* 53 So.3d 1177 (Fla.App.2011); *Lima v. Stepleton,* 5 N.E.3d 721 (Ohio App.2013); *Mullins v. City of St. Marys,* 91 N.E.3d 786 (Ohio App.2017).

transgressions fall beneath the respective definitional thresholds, and certainly not order their banishment or death. Dogs who fail to even meet the standard of "potentially dangerous" cannot be restrained in any way as neither satisfies the two classes of bad dog set by State.[11]

Any other interpretation would render the State dangerous dog code illusory and allow cities to impose any restriction, including banishment and death, upon, for instance, a dog who:

- caused a single disfiguring puncture requiring a single office visit, whether or not sutures or surgical glue is applied[12];
- inflicted *de minimis* scratches on two people not requiring any medical attention whatsoever[13];
- menacingly approached two people on a sidewalk without making contact[14];
- inflicted *de minimis* bites on two domestic animals, whether or not veterinary treatment was sought or needed;[15] or
- kills a domestic animal on the owner's property;[16]

and to do so while removing from legal consideration "righteous" scenarios that would otherwise constitute instant or historical provocation, trespass, tortious behavior, or killing a domestic animal on the owner's

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[11] A dog who veritably presents a *bona fide* threat so as to legitimately warrant restraint will fit within either definition. If he does not, then no local regulation may occur. RCW 16.08.090(2)'s reference to "potentially dangerous dogs" being "regulated only by local, municipal, and county ordinances," constitutes a limited grant of authority that disallows regulation of non-potentially dangerous dogs, nor permits cities to change "dangerous" and "potentially dangerous" definitions

[12] SMC 9.25.020(G)(1) and SMC 9.25.023(E)(2).

[13] SMC 9.25.020(G)(3) and SMC 9.25.084(G)(1)(less than severe bite to person).

[14] SMC 9.25.020(G)(3) and SMC 9.25.084(G)(2).

[15] SMC 9.25.020(G)(3) and SMC 9.25.084(G)(1)(bite to animal).

[16] SMC 9.25.020(G)(1).

property.[17] The foregoing examples are but a few that the City code deems "dangerous" and warrants banishment or death.

2. RAP 13.4(b)(4) – Substantial Public Importance

Issues of first impression that affect not only the parties at bar but potentially thousands of other daily interactions throughout this State, warrant review under RAP 13.4(b)(4). *State v. Watson,* 155 Wn.2d 574, 577 (2005). Seattle exemplifies a Statewide problem in an unabashedly cynophilic culture.[18] For more than twenty years, Karp estimates having negotiated and/or litigated over 1000 dangerous dog cases throughout the State among dozens of municipalities, including large numbers of Seattlites whose dogs were cited for violations of SMC 9.25.084(G)(1) or (2) and, thus, faced a potential designation of dangerous dog under its two-strike rule. It is virtually certain that Seattle code has and will continue to violate the rights of many, including those whose dogs are never administratively declared but, instead, are criminally charged, as in the case of Karp's former

[17] SMC 9.25.024(A). RCW 16.08.070(2)(b) provides that a dog is dangerous only if killing a domestic animal "while the dog is off the owner's property," amounting to an implied trespass justification.

[18] *See* Diana Wurn, *Seattle's Dog Obsession,* Seattle Magazine (October 2011) ("With more canines than children living within city limits, Seattle has officially gone to the dogs."); Gene Balk, *In Seattle, it's cats, dogs and kids – in that order,* The Seattle Times (February 1, 2013) ("Seattle has more dogs than children. We've practically become famous for it.") 2017-2018 U.S. Pet Ownership & Demographics Sourcebook (reporting 38.4% of all households own at least one dog.

client Janet Norman and her dog Duncan. *City of Seattle v. Norman,* 192 Wash.App. 1041 (2016).

The threat of criminal prosecution for owning an allegedly dangerous dog, along with a mandatory death sentence upon conviction, whether or not the dog is ever administratively declared dangerous, has had a significant effect on Seattleites over the years,[19] including forcing some to perseverate over whether to flee the jurisdiction with their dogs entirely, to voluntarily absent their dogs outside city limits, and even to consider euthanasia on their own terms rather than waiting for their dogs to be seized, confined, and killed among strangers. The constitutional issues raised by Williams affect several other municipalities. A decisive ruling by this court will not only affect the likely more than 150,000 dog-owning households in Seattle, but millions throughout the State.

VI. CONCLUSION

The Court of Appeals's proclamations are the best reason to accept review. At 11: "***RCW 16.08.070 does not prevent the City from determining that a 'potentially dangerous dog' under state law is a 'dangerous animal' under city ordinance***." But what if, as here, the dog

[19] The City has confirmed that between 2015 and 10.8.19, it issued 723 tickets under SMC 9.25.084(G)(1) [animals biting] and 122 tickets under SMC 9.25.084(G)(2) [animal at-large and menacing]**.** The City also confirmed that it prosecuted at least five individuals for owning a dangerous animal under SMC 9.25.083 since 2015.

does not meet the definition of "potentially dangerous dog" under state law? Is the City free to do as it pleases, using whatever label it desires? Such thwarts the mission of systematized dangerous dog regulation.

The court concludes on page 12: "***While a city obviously cannot modify state law, the legislature is free to allow a city to impose the same restrictions on owners of 'potentially dangerous dog' as the state imposes on owners of 'dangerous dogs.***'" The problem with this view is manifold:

1. It does not address whether a City can impose *any* restrictions on such dogs *outside* City limits, which the City invokes as a condition of release, even where the dog does not meet the State "dangerous" definition;

2. It does not address what result obtains when the dog does not meet the definition of "potentially dangerous" or "dangerous" under state law;

3. It does not address whether the City can relax the definitions of "potentially dangerous" and "dangerous" under State law to exercise unbridled authority as now endorsed by the Court of Appeals, where a dog would not otherwise satisfy either definition under state law;

4. It does not address whether a City can impose death of banishment for "potentially dangerous" dogs where State law allows citizens to keep dangerous dogs (i.e., alive);

5. It does not address whether, the defenses afforded by state law for "dangerous dogs" (i.e., RCW 16.08.070(2) and .090(3)) can be reduced or eliminated by the City.

The Court of Appeals had the ability to resolve these incongruities. Alas, it failed, only serving to invite improper, local, legislative repeals of State law and usher an era of incompatibility and uncertainty. Williams asks the Supreme Court to give each dog his day.

Dated this 4.28.21

ANIMAL LAW OFFICES

Adam P. Karp, WSB No. 28622
Attorney for Melissa Williams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 4.28.21, I caused a true and correct copy of the foregoing to be served upon the following person(s) in the following manner:

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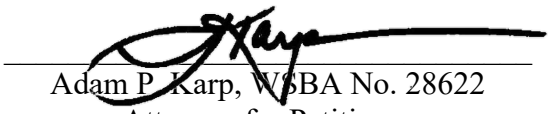

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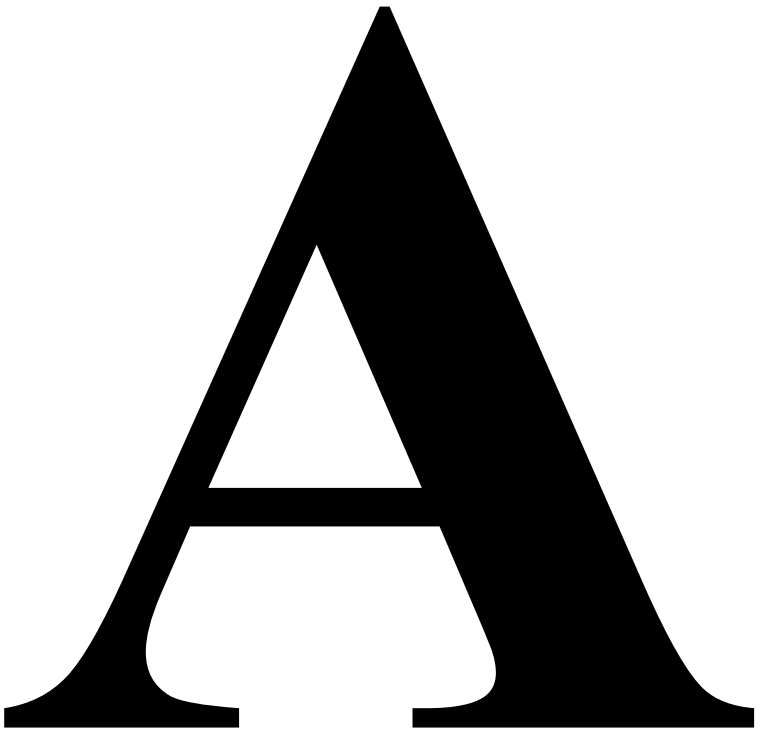

FILED
3/29/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

MELISSA C. WILLIAMS, individually and ex rel. the Taxpayers of the City of Seattle, Appellant, v. CITY OF SEATTLE, Respondent.	)	No. 80961-0-I DIVISION ONE UNPUBLISHED OPINION

ANDRUS, A.C.J. — Melissa Williams appeals the summary judgment dismissal of her challenge to the City of Seattle's (City) ordinance regulating dangerous animals. She contends the "dangerous animal" ordinance is unconstitutional because it conflicts with the state "dangerous dog" statute, chapter 16.08 RCW. We conclude that the laws do not unconstitutionally conflict and affirm.

FACTS

In March 2018, the Seattle Animal Shelter (SAS) received a complaint regarding Williams's dog, Charlie. Kamiya Hayward reported to SAS Officer Caryn Cantu that while walking her dog and attempting to enter her apartment complex,

Charlie ran across the street, off leash, and attempted to bite Hayward's dog. When Hayward picked up her dog to protect it, Charlie bit Hayward.

The City cited Williams for violations of SMC 9.25.084.G(1),[1] for allowing Charlie to bite Hayward, and SMC 9.25.084.A,[2] for permitting Charlie to be at large, unleashed.[3] Williams contested these citations but the municipal court found that she had committed the violations. Although Williams initially appealed the municipal court findings to King County Superior Court, No. 19-2-22518-1, she subsequently abandoned her appeal.

In May 2018, SAS received another complaint about Charlie. Autumn Chandler reported that on May 3, while walking her dog, Charlie ran across the street, barking, and "attacked" and bit her dog. The City again cited Williams for violations of SMC 9.25.084.G(1) for allowing Charlie to bite Chandler's dog and SMC 9.25.084.A for again allowing Charlie to be off leash. Williams did not contest these citations and opted to pay the fine. In the proceedings below, Williams admitted that as a result of these proceedings, Charlie meets the definition of "dangerous animal" under SMC 9.25.020.G.[4]

[1] SMC 9.25.084.G(1) makes it unlawful for an owner to permit any animal "when unprovoked on public or private property to: (1) Bite a human being causing less than severe injury as defined in 9.25.023E of the Seattle Municipal Code or bite a domestic animal; . . . " SMC 9.25.023(E) defines "severe injury" as any physical injury that results in broken bones, disfiguring lacerations, avulsions, cuts or puncture wounds requiring medical attention, or permanent nerve damage.
[2] SMC 9.25.084(A) makes it unlawful for an owner to permit any animal to be at large or to trespass on the property of another.
[3] Officer Cantu also issued a citation for violation of SMC 9.25.049 for Williams's failure to vaccinate Charlie against rabies, but the municipal court dismissed this citation.
[4] SMC 9.25.020.G defines "dangerous animal" as including one whose owner is found to have committed two or more violations of SMC 9.25.084.G.

Pursuant to SMC 9.25.035.A, the Division Director of SAS, Ann Graves,[5] began an investigation into whether she should declare Charlie to be dangerous under SMC 9.25.020.G. SMC 9.25.035.B provides that before the director may declare any animal to be dangerous, the director must notify the owner in writing of the reasons why the animal is believed to be dangerous, and provide the owner with the opportunity to meet the director to present information as to why the animal should not be declared dangerous. On November 1, 2018, Director Graves sent Williams a "Notice of Preliminary Determination of Dangerous Animal Right to Meeting" letter (NPDD), notifying her that the City had preliminarily determined that Charlie was a dangerous animal. Graves explained:

> I am investigating to determine whether your dog is a dangerous animal under Section SMC 9.25.020(G). SAS has received multiple complaints of Charlie permitted to run at large and attack other dogs. Based off the two separate incidents resulting in citations for Charlie biting a human being on one incident and a domestic animal on another incident, I have made a preliminary determination that your dog is a dangerous animal. I will make my final determination after the expiration of twenty (20) days following the services of this notice upon you. After that time, I will issue my final determination as to whether your dog, Charlie, is a dangerous animal or not.

Graves offered to meet with Williams to allow her to provide information as to why Charlie should not be declared dangerous.

On January 3, 2019, Williams and her attorney met with Graves, Don Baxter from SAS, and counsel from the Seattle City Attorney's Office. At this meeting, Williams "provided extensive information" for Graves to consider. Afterwards, SAS decided to offer Williams a settlement instead of proceeding directly to declaring

[5] Director Graves was acting as an authorized representative of the Director of the Department of Finance and Administrative Services.

Charlie to be dangerous. Negotiations lasted until June 2019, when Williams filed a CRLJ 60 motion in municipal court to vacate the findings on the underlying citations. The municipal court denied this motion.

In September 2019, Williams filed this lawsuit, seeking a declaration under the Uniform Declaratory Judgment Act (UDJA) that the City's "dangerous dog" ordinance was unconstitutional under article XI, section 11 of the Washington State Constitution because definitions within the ordinance conflict with RCW 16.08.070(2) and (3).

The City has taken no further action relating to Williams's dog while this litigation has been pending. The City has not issued a final declaration that Charlie is dangerous, nor has it ordered Charlie to be removed from the city or destroyed.

Both Williams and the City filed motions for summary judgment. The trial court granted the City's motion and dismissed Williams's complaint. The trial court concluded the Supreme Court's holding in Rabon v. City of Seattle, 135 Wn.2d 278, 957 P.2d 621 (1998), was dispositive, there is no evidence of a legislative intent to preempt the field of dangerous animal regulation, and there is no constitutional conflict between Seattle's "dangerous animal" ordinance and the state "dangerous dog" statute. Williams appeals.

ANALYSIS

A. Justiciability

The City argues the trial court appropriately dismissed Williams's lawsuit because she failed to establish the existence of a justiciable controversy. Specifically, the City contends Williams's claim is not ripe and she lacks standing

to raise her constitutional challenge because the City has not determined the dog is in fact dangerous or ordered Williams to remove the dog from the city limits or otherwise dispose of it. Because Williams admitted below that Charlie meets the ordinance's definition of "dangerous animal," which means the City could declare the dog dangerous at any time, and Williams challenges its authority to do so, we conclude Williams's claim is ripe and she has direct standing to bring this pre-enforcement challenge to the City ordinance, despite the lack of a final dangerousness declaration or removal order.

Williams seeks relief under the UDJA, which provides that a person "whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, municipal ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." RCW 7.24.020.

The UDJA requires a justiciable controversy, meaning (1) one presenting an actual, present, and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) involving interests that are direct and substantial, rather than potential, theoretical, abstract, or academic, and (4) of which a judicial determination will be final and conclusive. Diversified Indust. Dev. Corp. v. Ripley, 82 Wn.2d 811, 815, 514 P.2d 137 (1973). All four justiciability factors must be present "to ensure that the court will be rendering a final judgment on an actual dispute between opposing parties

with a genuine stake in the resolution." To-Ro Trade Shows v. Collins, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001). The doctrines of ripeness and standing are encompassed in the first and third prongs, respectively. Alim v. City of Seattle, 14 Wn. App. 2d 838, 847, 474 P.3d 589 (2020). Ripeness and standing are questions of law we review de novo. Wash. State Commc'n Access Project v. Regal Cinemas, Inc., 173 Wn. App. 174, 209, 293 P.3d 413 (2013); In re Estate of Becker, 177 Wn.2d 242, 246, 298 P.3d 720 (2013).

In determining whether a claim is ripe for review, this court considers if the issues raised are primarily legal and do not require further factual development, and if the challenged municipal action is final. Jafar v. Webb, 177 Wn.2d 520, 525, 303 P.3d 1042 (2013). We also consider the hardship to the parties of withholding court consideration. Id. Here, the parties have an actual, present, and existing dispute—whether the City can declare Charlie to be a dangerous animal. The issue before the court—whether certain provisions of the City's Animal Control Code unconstitutionally conflict with state law—is entirely a legal question that requires no further factual development of the record.

The City argues Williams's claim is not ripe because it has not made a final decision to declare the dog dangerous and whether it will do so in the future is purely hypothetical. But the City has already preliminarily determined that the dog is dangerous based on the two undisputed violations of SMC 9.25.084.G(1). Williams conceded below her dog fits the definition of "dangerous animal" under the city code. And the Director has conducted the mandatory pre-declaration meeting with Williams as required by SMC 9.25.035.B. Thus, while the Director

may have the discretion to withhold a final decision indefinitely, there is no legal impediment to the City declaring the dog dangerous at any time. These are, at a minimum, the "mature seeds" of an actual dispute between the parties.

Moreover, Williams contends the City lacks any authority under article XI, section 11 of the Washington State Constitution to promulgate an ordinance that deems a dog "dangerous" in the absence of severe injury as is required under RCW 16.08.070(2). If her contention were correct, even the issuance of the NPDD under SMC 9.25.035.B would be unlawful. The "final" act is not the City's decision to declare Williams's dog dangerous but the enactment of an ordinance that appears broader in scope than state statute. The claim before us is ripe.

The City next argues Williams does not have direct standing because she has not suffered any actual or imminent injury from the ordinance provisions she challenges. In a pre-enforcement challenge to a municipal ordinance, a party must demonstrate that (1) the interest they seek to protect is within the zone of interests regulated by the ordinance; and (2) they have suffered or will suffer an injury in fact. Alim, 14 Wn. App. 2d at 852.

Williams's interest in keeping her dog despite his behavior is clearly within the zone of interests regulated by the ordinance. The City does not contest this. And Williams will suffer an injury in fact if the City decides to declare her dog dangerous, which it could do at any point. If the City takes this step, Williams will be obligated by law to comply with an order to remove the dog from the City or face the destruction of her pet. This outcome presents a sufficient risk of injury to

confer direct standing.[6] We therefore turn to the merits of her challenge to the constitutionality of the City's dangerous animal ordinance.

B. Constitutionality

Williams argues that portions of the City's dangerous animal ordinance are unconstitutional because they directly and irreconcilably conflict with state statute. We reject this argument because the legislature has granted exclusive jurisdiction to local governments to regulate "potentially dangerous dogs" and the City's ordinance is consistent with the exercise of that authority.

The Washington constitution grants every local government the power to "make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." WASH. CONST. art. XI, § 11. An ordinance is valid "unless: (1) the Ordinance conflicts with some general law; (2) the Ordinance is not a reasonable exercise of the [local government's] police power; or (3) the subject matter of the Ordinance is not local." Cannabis Action Coal. v. City of Kent, 183 Wn.2d 219, 225-26, 351 P.3d 151 (2015) (quoting Weden v. San Juan County, 135 Wn.2d 678, 692-93, 958 P.2d 273 (1998)). A heavy burden rests upon the party challenging the ordinance's constitutionality and there is a strong presumption in favor of constitutionality. Cannabis Action Coal., 183 Wn.2d at 226. The validity of an ordinance under article XI, section 11 is a question of law subject to de novo review. Id.

Williams contends SMC 9.25.020.G, the definition of "dangerous animal;" SMC 9.25.023.E, the definition of "severe injury;" and SMC 9.25.024.A, the

[6] Because we conclude Williams has direct standing to bring this UDJA challenge, we need not reach her argument that she also has taxpayer standing.

definition of "unprovoked" conflict with state law because they sweep more animals into their purview than permitted under state law. Williams asks this court to conclude that state statutory definitions of "dangerous dogs" preempt any conflicting local ordinances.

Conflict preemption occurs when an ordinance permits what the state laws forbid or forbids what the state laws permit. Lawson v. City of Pasco, 168 Wn.2d 675, 682, 230 P.3d 1038 (2010). But where the statute and ordinance may be read in harmony, this court will not find conflict. Id. In this case, the City's dangerous animal ordinance does not conflict with state law because RCW 16.08.090(2) grants exclusive jurisdiction to local governments to regulate dogs such as Charlie.

State statute identifies two categories of dogs—"potentially dangerous dogs" subject to exclusive local regulation, and "dangerous dogs" subject to concurrent state and local regulation. A "potentially dangerous dog" is defined as:

> any dog that when unprovoked: (a) Inflicts bites on a human or a domestic animal either on public or private property, or (b) chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to cause injury or otherwise to threaten the safety of humans or domestic animals.

RCW 16.08.070(1). Under RCW 16.08.090(2), "[p]otentially dangerous dogs shall be regulated only by local, municipal, and county ordinances. Nothing in this section limits restrictions local jurisdictions may place on owners of potentially dangerous dogs."

A "dangerous dog" under RCW 16.08.070(2) is:

> any dog that (a) inflicts severe injury on a human being without provocation on public or private property, (b) kills a domestic animal without provocation while the dog is off the owner's property, or (c) has been previously found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans.

It is unlawful for an owner to have a dangerous dog in the state without a certificate of registration, RCW 16.08.080(5), or to permit the dog to be outside the proper enclosure unless the dog is muzzled and under physical restraint of a responsible person. RCW 16.08.090(1).

In Rabon, an owner whose dogs had been ordered destroyed challenged Seattle's "vicious dog" ordinance,[7] arguing it irreconcilably conflicted with state statute and was unconstitutional under article XI, section 11. Id. He argued the state statute permitted the registration of dangerous dogs, whereas the City required vicious dogs to be destroyed. Id. at 284. He also argued that the City's ordinance treated all dog bites alike regardless of their severity, whereas under state law, only dogs whose bites caused "severe injury" could be declared "dangerous." Id. at 293.

The Supreme Court rejected both arguments. It held that under RCW 16.08.090(2), local governments have sole jurisdiction over "potentially dangerous dogs" and local and state governments have concurrent jurisdiction over "dangerous dogs." Id. at 290-291. As for the claimed conflicts between the two regulatory schemes, the Supreme Court held that the City could constitutionally

[7] Under former SMC 9.25.083 (1985), "vicious animal" was defined to include any animal "which bites, claws, or otherwise harms a human being or another animal, or which demonstrates menacing behavior toward human beings or domestic animals, but does not include an animal that bites, attacks, or menaces a person or another animal that has tormented or hurt it."

impose greater restrictions than state law because both were prohibitory in nature. Id. at 293. And while a local ordinance could not permit what state law explicitly prohibited, nothing prevented the City from "provid[ing] further protection from dangerous or vicious animals." Id. The definitional differences between state statute and city code did not render the ordinance invalid under article XI, section 11 because the ordinance did not permit an owner to keep a "dangerous" dog without complying with state law. Id.

Rabon governs here. The City's "dangerous animal" ordinance does not permit what state law forbids and does not prohibit what state law permits. Under SMC 9.25.083.A, it is "unlawful to own a dangerous animal . . . with knowledge that the animal is dangerous, or with reckless disregard of the fact that the animal is dangerous." The City includes in its definition of a "dangerous animal," any dog whose owner has committed two or more violations of SMC 9.25.084.G. SMC 9.25.020.G(2). SMC 9.25.084.G(1) makes it unlawful for a dog owner to permit their animal to bite a human or a domestic animal. If an owner permits a dog to bite a human or domestic animal, the City may order the dog removed from the city limits or order the dog destroyed.

These restrictions are not inconsistent with state law. State law does not permit owners to let their dogs bite humans or domestic animals. Indeed, a dog that bites a human or another dog meets the state definition of a "potentially dangerous dog," the area left exclusively to local regulation. RCW 16.08.070 does not prevent the City from determining that a "potentially dangerous dog" under state law is a "dangerous animal" under city ordinance. As Rabon recognized,

both the state statute and the ordinance are prohibitive in nature and the local ordinance can be more restrictive and provide more protection than state law.

Williams contends Rabon is distinguishable because that case addressed the City's ability to regulate dogs that fall within the state law's definition of "dangerous." According to Williams, "[t]he City is obviously free to impose more prohibitive restrictions on dogs statutorily defined as dangerous" but the City may not "expand the definitions" created by state law, thus altering who falls within the regulatory ambit. But this argument ignores the fact that the legislature explicitly authorized local jurisdictions to regulate "potentially dangerous dogs" in any manner they deemed appropriate. While a city obviously cannot modify state law, the legislature is free to allow a city to impose the same restrictions on owners of "potentially dangerous dogs" as the state imposes on owners of "dangerous dogs."

We conclude the state "dangerous dog" law and the City's "dangerous animal" ordinance do not conflict and the former does not preempt the latter.

We affirm.

Andrus, A.C.J.

WE CONCUR:

B

The Honorable Brian McDonald
Hearing Date: Friday, January 3, 2020 at 11:00 a.m.
With oral argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

MELISSA C. WILLIAMS, individually and ex. rel. the Taxpayers of the City of Seattle; Plaintiff, vs. CITY OF SEATTLE, Defendant.	Case No.: 19-2-23673-6 SEA ORDER GRANTING CITY'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF MELISSA WILLIAMS' MOTION FOR SUMMARY JUDGMENT **[CLERK'S ACTION REQUIRED]**

THIS MATTER, having come on regularly before the Court upon Defendant City of Seattle's Motion for Summary Judgment and Plaintiff Melissa Williams' Motion for Summary Judgment, and the Court having heard argument of counsel and having considered the pleadings, records, exhibits, and files in this case, including the following:

1. City of Seattle's Motion for Summary Judgment Dismissal;
2. Declaration of Ann Graves and attached exhibits;
3. Declaration of Lorna Staten Sylvester and attached exhibit;
4. Plaintiff's Opposition to Defendant's Motion for Summary Judgment;

ORIGINAL

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5. Declaration of Adam P. Karp dated December 2, 2019
6. City of Seattle's Reply to Plaintiff's Response in Opposition to City's Motion for Summary Judgment;
7. Second Declaration of Lorna Staten Sylvester and exhibits;
8. Plaintiff's Motion for Summary Judgment;
9. Declaration of Adam P. Karp in Support of Summary Judgment;
10. Declaration of Melissa Williams in Support of Summary Judgment;
11. Revised Declaration of Adam P. Karp in Support of Summary Judgment;
12. Revised Declaration of Melissa Williams in Support of Summary Judgment;
13. Defendant City of Seattle's Response to Plaintiff's Motion for Summary Judgment and Defendant City of Seattle's Motion to Strike;
14. Declaration of Lorna Staten Sylvester in Support of City's Response to Plaintiff's Motion for Summary Judgment;
15. Declaration of Ann Graves in Support of the City's Response to Plaintiff's Motion for Summary Judgment;
16. Plaintiff's Response to City's Motion to Strike;
17. Reply on Plaintiff's Motion for Summary Judgment.

NOW THEREFORE, IT IS HEREBY ORDERED that the City's Motion for Summary Judgment is GRANTED and all claims against the City are DISMISSED with prejudice.

IT ALSO IS HEREBY ORDERED that the Plaintiff's Motion for Summary Judgment is DENIED.

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For the reasons set forth on the record, the Court holds, as a matter of law, that Plaintiff's constitutional challenges to the relevant Seattle Municipal Codes are without merit. See Rabon v. City of Seattle, 135 Wn.2d 278 (1998),

In light of the controlling caselaw on the constitutional issues raised, the Court declines to decide the issue of standing.

DATED this 3rd day of January, 2020.

JUDGE BRIAN MCDONALD

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