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From Jefferson County Superior Court No. No. 18-2-01023-05

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

Fort Discovery Corp., a Washington corporation;
**Stephen Anderson; Steven Gilstrom; and Jay
Towne,**

Appellants,

v.

Jefferson County, a Washington municipality,
Respondent.

RESPONDENT'S BRIEF

JEFFERSON COUNTY
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I. INTRODUCTION AND SUMMARY OF ARGUMENT

The core right of self-defense in one's home guaranteed in Article I, Section 24 of the Washington Constitution and the Second Amendment of the United States Constitution does not preclude local government from exercising its police powers in regulating shooting ranges. These police powers include regulating shooting in low-light and night conditions.¹ This court already has held that an unrestricted training right does not exist, when it correctly upheld Kitsap County's shooting range ordinance in *Kitsap Cty. v. Kitsap Rifle & Revolver Club*.² *Kitsap Rifle* also correctly held that Kitsap County's shooting range ordinance was not preempted by RCW 9.41.290.

About a month after the decision in *Kitsap Rifle*, Jefferson County adopted a moratorium on new shooting ranges to develop its own shooting range ordinance. Jefferson County adopted its commercial shooting facility ordinance on December 17, 2018 (the ordinance), relying on *Kitsap Rifle* and with the assistance of a citizen review committee, written public comment, a public hearing and public deliberation. CP, 416, 429-30, 479-80, 533-34 and 686. The ordinance is codified in Article III of

¹ CP, 175, lines 19-20.

² 1 Wn.App.2d 393, 405 P.3d 1026 (2017), *review denied*, 190 Wn.2d 1015, 415 P.3d 1198 (2018) (*Kitsap Rifle*).

Chapter 8.50 of the Jefferson County Code (JCC), part of Title 8 JCC, the Health and Safety Code, which is attached in the Appendix.

Appellants admit, “It is true that the Kitsap County Ordinance in *Kitsap Rifle* was similar to the Jefferson County ordinance in this case.” CP, 812. Like the Kitsap County ordinance upheld in *Kitsap Rifle*, the ordinance does not ban shooting or shooting ranges and only regulates commercial shooting range operations so they are safe and do not adversely impact the environment. There are some differences between the ordinance and the Kitsap County ordinance. For example, the Kitsap County ordinance applies to *all* shooting ranges; the ordinance applies only to *commercial* shooting facilities. Excluded from regulation in the ordinance is shooting on privately owned property, when not for compensation to the private property owner. JCC 8.50.220(15)(b). And, the ordinance requires that the safety plan contain a requirement that no shooting take place after dark, except for law enforcement officers or members of the armed forces. JCC 8.50.240(3)(n). Appellants prefer the term “evening shooting” to describe the period between *dark* and 10:00 p.m. Opening Brief, 10. “In the summer when the sun is out until 9:00 p.m. or later, that is most accurately described as the ‘evening’ because if the sun is out it is not ‘night.’” *Id.* In winter, however, it can get dark as early as 4:57 p.m. CP, 226. Even though it is dark, the Appellants insist

shooting after dark is “evening shooting.” The superior court understood the minimal burden the ordinance places on so-called “evening shooting:” “The evening shooting and I guess your argument also is how much of an impingement on that right is because under the ordinance, in the summer months they are going to be able to shoot until 9:30, 10:00, right?” RP, 29. The ordinance is a reasonable time, place and manner police power regulation that is constitutional under Article I, Section 24, and the Second Amendment.

Local governments have “considerable latitude in exercising police powers,” and a regulation is constitutionally reasonable if it satisfies the “judicial test of reasonableness,”³ namely if it is “reasonably necessary to protect public safety or welfare, and substantially related to legitimate ends sought.” *City of Seattle v. Montana*, 129 Wn.2d 583, 594, 919 P.2d 1218, 1224 (1996) (*Montana*); *State v. Jorgenson*, 179 Wn.2d 145, 156, 312 P.3d 960, 964 (2013) (*Jorgenson*). This test requires that courts balance the public benefit from the regulation against the degree to which it frustrates the purpose of the constitutional provision. *Id.* Contrary to Appellants’ claims, the judicial test of reasonableness is a form of intermediate scrutiny approved by Washington Supreme Court, by the Supreme Court, and by the 9th Circuit and other federal courts of appeals.

³ See *Second Amendment Found. v. City of Renton*, 35 Wn. App. 583, 586, 668 P.2d 596, 597 (1983) (*Second Amendment Found.*) for the moniker.

The ordinance satisfies the judicial test of reasonableness. Both the ordinance and the similar Kitsap County shooting range ordinance (CP, 812) result from a constitutionally valid exercise of the police power, which gives each county flexibility on how to regulate health safety within their own county. Differences in the two ordinances do not make the ordinance unconstitutional.

An additional reason the ordinance is constitutional under the Second Amendment, which was not presented in *Kitsap Rifle*, is that a historical analysis of regulations in effect before the Fourteenth Amendment was ratified in 1868 demonstrates time, place and manner police power regulation of shooting facilities was commonplace. CP, 21. This brief refers to the first part of the Second Amendment analysis as “the historical step.” Based on analysis under the historical step, the superior court determined that the ordinance does not burden conduct protected by the Second Amendment. *Id.*

In their appeal of the superior court’s order deciding cross-motions for summary judgment, Appellants challenge the ordinance, stating they seek to overturn *Kitsap Rifle* and the Washington Supreme Court’s decision in *Jorgenson*,⁴ which *Kitsap Rifle* followed. Opening Brief, 2, 4, 5, 37 and 38. The superior court correctly determined *Kitsap Rifle* was controlling

⁴ *Jorgenson*, 179 Wn.2d at 155, 312 P.3d at 964.

precedent. CP, 24. *Kitsap Rifle* is one case among a line of Washington appellate cases discussing the limits of preemption in RCW 9.41.290 and analyzing the scope of the Second Amendment and Washington Constitution Article I, Section 24. Under the doctrine of stare decisis, a court abandons a prior published decision only when there is a clear showing that the prior decision is both incorrect and harmful. The doctrine requires a clear showing that an established rule is incorrect and harmful before it is abandoned.⁵ *Kitsap Rifle* and *Jorgenson*⁶ were decided correctly and are not harmful, so this court should affirm.

II. COUNTERSTATEMENT OF THE ISSUES

The issues can be condensed to three issues, but one issue has two parts:

- A.** Does RCW 9.41.290 allow, and fail to preempt, Jefferson County's ordinance regulating shooting facilities?
- B.** Does the ordinance satisfy the requirements of Article I, Section 24, which allows the exercise of police powers that meet the long-standing constitutional standard for reasonableness?
- C.** Whether the ordinance violates the core right of self-defense in one's

⁵ *In re Stranger Creek & Tributaries in Stevens Cty.*, 77 Wn.2d 649, 653, 466 P.2d 508, 511 (1970).

⁶ Of course, this court cannot overrule *Jorgenson*—only the Washington Supreme Court could do that. *1000 Virginia Ltd. P'ship v. Vertecs Corp.*, 158 Wn.2d 566, 578, 146 P.3d 423, 430 (2006), *as corrected* (Nov. 15, 2006).

home contained in the Second Amendment requires a two-step analysis. If the regulated activity falls outside the scope of the pre-existing right as understood when the right was codified, then the analysis stops and the regulation does not violate the Second Amendment. The second step in the Second Amendment analysis determines whether the challenged regulation is substantially related to an important government purpose.

1. Does review stop at the first step because reasonable time, place, and manner regulation of shooting areas was not historically understood to be within the scope of the right codified in Second Amendment?
2. If not, does the ordinance satisfy the Second Amendment because it is substantially related to an important government purpose?

III. COUNTERSTATEMENT OF THE CASE

The Jefferson County Board of Commissioners (Commissioners) adopted the ordinance (CP, 606-46), to require an operating permit for commercial shooting facilities in unincorporated Jefferson County. JCC 8.50.230. The ordinance was patterned after the Kitsap ordinance (CP, 415-16), which this court upheld. *Kitsap Rifle*, 1 Wash.App.2d at 419, 405 P.3d at 1038.

A. The Ordinance Regulates Only Commercial Shooting Facilities, Not the Core Right of Law-abiding, Responsible Citizens to Use Arms in Defense of Hearth and Home.

At its “core,” the Supreme Court has explained, the Second Amendment protects the “right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *Heller v. United States*, 554 U.S. 570, 635, 128 S.Ct. 2783, 2821-22, 272 L.Ed.2d 637 (2008) (*Heller*). The Second Amendment codified a pre-existing “individual right to possess and carry weapons in case of confrontation.” *Id.* at 592. The ordinance does not regulate the core individual right to possess and carry weapons in case of confrontation; it regulates “commercial shooting facilities.” JCC 8.50.230(1). Excluded from the definition of “commercial shooting facility” is “[a]ny portion of a privately owned property used for lawful shooting practice solely by its owner or the owner’s guests without payment of any compensation to the owner of the privately owned property or to any other person.” JCC 8.50.220(15)(b).

B. The Commissioners Relied on their Police, Health, and Safety Powers in Enacting an Ordinance Tailored to the Local Concerns of Jefferson County.

In adopting the ordinance, the Commissioners expressly relied upon their substantial police, health and safety powers reflected in the Washington Constitution, Article XI, Section 11, and RCW 36.32.120(7) and RCW 9.41.300. CP, 606. The Commissioners found, among other

things: (1) “[I]t is in the public interest to protect and preserve the continued viability of commercial shooting facilities in Jefferson County in the face of increasing population pressure and density of conflicting land uses;” and, (2) “Jefferson County has rural areas where commercial shooting facilities may be appropriate, but where emergency services are scarce and adopting a commercial shooting ordinance would promote public safety and preserve precious emergency services.” CP, 606-07.

The ordinance has three minimum standards for public health and safety at commercial shooting facilities: (1) Deter unauthorized entry to any shooting range; (2) Keep all projectiles from leaving any shooting range or the commercial shooting facility; and, (3) Prevent adverse public health or environmental impacts to critical areas. JCC 8.50.250.

JCC 8.50.230 requires an operating permit. JCC 8.50.230(1). The operating permit is based on an application, which includes, among other requirements: (1) A Professional Evaluation; (2) A Facilities Design Plan; (3) A Safety Plan; and, (4) An Environmental Plan. JCC 8.50.340(1). “The Professional Evaluation shall be the responsibility of the county under the direction of the director [of the Department of Community Development] and shall be performed by a qualified shooting range evaluator.” JCC 8.50.240(7)(a). “‘Qualified Shooting Range Evaluator’ means a person who has been an NRA range technical team advisor or who is a

professional engineer with expertise in the design of shooting ranges.” JCC 8.50.220(52). The professional evaluation must discuss safety issues not addressed in the operating permit application, discuss any proposed uses that are inconsistent with the NRA Range Source Book and must certify that the application satisfies all the requirements of the ordinance. JCC 8.50.240(7)(c).

C. The NRA Range Source Book Says Shooting Ranges Require Protection for the Safety of Both those Utilizing a Shooting Range and the General Public.

The NRA publishes a manual called “The Range Source Book.” CP, 545-604. Under the ordinance, a Qualified Shooting Range Evaluator must discuss “any proposed uses that are inconsistent with the NRA Range Source Book for facility designs and institutional controls.” JCC 8.50.240(7)(c)(ii). The purpose of the NRA Range Source Book is to provide “guidance to assist in the planning, design, construction and maintenance of shooting range facilities. CP, 547. “A shooting range should satisfy a number of goals, including the following: . . . *reasonable accommodations for the safety of both those utilizing the range and the general public.*” *Id.* (emphasis added). “A safety plan links each aspect of the process - planning, design, construction and use - into an integrated program. This program is designed to reduce risks associated with the use

of firearms either on or off the range.” CP, 599. Further, the plan “protects the safety and health of those who live nearby.” *Id.*

D. Appellants’ Claims of Bias and Surprise Are Unsupported in the Record.

1. The Ordinance was Created by the Review Committee that Included Appellant Fort Discovery’s President, Mr. D’Amico.

The Commissioners relied upon the work of the Review Committee of citizens to prepare a draft ordinance that was presented to the Commissioners by County staff on August 23, 2018 in a staff report. CP, 409-515. The Review Committee had input into both the draft ordinance and the August 23, 2018 staff report. CP, 412. The Review Committee included persons with diverse viewpoints about regulation of shooting ranges in Jefferson County. CP, 414. The Review Committee included Joseph D’Amico, Appellant Fort Discovery Corp.’s President. *Id.* Mr. D’Amico gave a quote to the press approving the ordinance. *Id.* at 521.

3. Appellants Create the So-Called “Errant Bullet Pretext” by Defining Away a Key Portion of the Finding of Fact in the Moratorium.

Appellants admit the 2017 moratorium is not at issue in this case. Opening Brief, 11. But they attempt to use a *portion* of a finding from the 2017 moratorium to suggest nefarious conduct by the Commissioners. Opening Brief, 20. The complete finding in the 2017 moratorium (CP,

240) from which the Appellants harvested the so-called “errant bullet pretext” said:

WHEREAS, bullets striking a residence on November 22, 2017 near the shooting range located at 112 Gun Club Rd., Port Townsend, WA 98368 on land owned by Jefferson County but operated by Jefferson County Sportsmen’s Association called to question the safety of commercial shooting facilities, *even though it was ultimately determined the damage was likely not caused by the shooting facility operated by Jefferson County Sportsmen’s Association*; and,

CP, 240 (emphasis added). The finding expresses concern about a report that bullets were leaving a property owned by the county and hitting a house, but relief in the *highlighted* portion that the cause for concern did not happen.

However, in harvesting of the portion of the finding to create their definition of “the Errant Bullet Pretext,” Appellants left out the *highlighted* portion of the finding that says damage was not caused by the Sportsmen’s Association. Opening Brief, 15. After defining away that part of the finding of fact in the moratorium, Appellants make the unremarkable claim Jefferson County knew the “Errant Bullet Pretext” never happened. *Id.* The investigation by Chief Criminal Deputy Sheriff Art Frank relied up by Appellants (*Id.*), agrees with the omitted *highlighted* portion of the finding: “The *dents* on the mobile home do not appear to be impacts caused by *direct fire* of bullets fired from the range.”

CP, 272 (emphasis added). But Chief Frank’s investigation did not determine there were no bullets leaving the Sportsmen’s Club facility on November 22, 2017 or that there was no damage to the house. *Id.*

4. The Ordinance did not need the Finding of Fact from the 2017 Moratorium, Given the Evidence in the Hearing Record for the Ordinance.

Before adoption of the ordinance on November 17, 2018, the Commissioners had received in written hearing comments both Chief Frank’s report and a November 29, 2017 memorandum from Captain Stamper. CP, 272-85. The commissioners did not need any “pretext” for concern because Captain Stamper documents 10 other reported incidents of gun fire coming from the shooting range between 2008 and 2017. CP, 651. And, by the time of the hearing, the Commissioners also received in the hearing comments, a copy of a formal complaint about the November 22, 2017 incident that had been filed with the Jefferson County Department of Community Development. CP, 272-85. That complaint states that at 176 & 178 Potlatch Rd., situated across Jacob Miller Road from the Sportsmen’s Association shooting facility, “maybe 10 shots of the hundred or so that we heard that hit the trees around us.” CP, 279. The complaint to Community Development contained photographs showing damage (CP, 280-82), including a photograph at CP, 282 of what could be bullet strikes. In short, repeating the 2017 moratorium finding was not

necessary, given the evidence in the record (CP, 272-280). The multiple reports of bullets leaving the Sportsmen's Association shooting facility by multiple people at different residences over a number of years that were included in the hearing record tend to prove there is a reasonable likelihood of that humans, domestic animals, or property will be jeopardized by bullets from commercial shooting facilities much better than the removed finding of fact from the moratorium does.

5. The Requirement of No Shooting After Dark and Other Changes to the Draft Ordinance Were Made as Part of the Normal Political Process.

The Commissioners received written public comment and held a hearing during which oral and written testimony was received. CP, 662. Based on written comments and oral testimony, the draft commercial shooting facility ordinance was modified before adoption. *Id.*

A change was made on the last day of deliberations to require that the safety plan contain a requirement that no shooting take place after dark at a commercial shooting facility, except for law enforcement officers or members of the armed forces in JCC 8.50.240(3)(n). RP 14. But a more austere limitation was discussed in the written hearing comments and during deliberations before that last day, namely a proposed requirement that no commercial shooting facility be allowed to stay open past 5:00

p.m. RP 15. Appellants provided the superior court the following explanation of how the no shooting after dark provision was added:

There was in our Clients' view a political compromise. Opponents to the gun range didn't want any shooting after 5:00 p.m., I believe that's true. And all of a sudden at the last minute, evening shooting restrictions appeared and Jefferson County, the Board of County Commissioners, is justifiably so a political body, an elected body. I think that's the best explanation.

RP 19. Instead of a requirement of no operations after 5:00 p.m., the ordinance requires that no shooting take place after dark. The adopted provision relates to safety concerns and is like regulations in which "colonial and early state governments routinely exercised their police powers to restrict the time, place, and manner in which Americans used their guns." Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & Hist. Rev. 139, 162 (2007).

Appellant Fort Discovery was following closely the development of the ordinance. Its Communications Director, Patrick Sullivan, attended the October 24, 2019 public hearing on the ordinance. CP, 267. Mr. Sullivan also attended all the BoCC deliberation sessions. RP 14. In Jefferson County's view, this "political compromise" was a foreseeable limitation that is a reasonable time, place and manner regulation based on safety

concerns, considering the debate had been over whether to require a more stringent provision requiring no operations after 5:00 p.m.

IV. STANDARD OF REVIEW

Courts review summary judgment decisions de novo. *Lakey v. Puget Sound Energy, Inc.*, 176 Wn.2d 909, 922, 296 P.3d 860, 867 (2013). As the superior court held, Appellants “having filed a cross-motion for summary judgment, no genuine issue of material fact exists.” CP, 19. *See also Tiger Oil Corp. v. Dep’t of Licensing, State of Wash.*, 88 Wn. App. 925, 930, 946 P.2d 1235, 1237 (1997).

V. ARGUMENT

A. RCW 9.41.290 Does Not Preempt the Ordinance.

Kitsap Rifle held RCW 9.41.290 does not preempt the ordinance. *Kitsap Rifle*, 1 Wn.App.2d at 406-408, 405 P.3d at 1032-34. There is no indication that the legislature intended to preempt local ordinances requiring shooting facilities to obtain operating permits. *Kitsap Rifle* was correct for the reasons discussed below.

1. State Law Preempts an Ordinance Only If the Ordinance Irreconcilably Conflicts with a Statute.

An ordinance is valid under Washington Constitution, Article XI, Section 11 (Police Power), unless: (1) the ordinance conflicts with some general law; (2) the ordinance is not a reasonable exercise of Jefferson

County's police power; or (3) the subject matter of the ordinance is not local. *Weden v. San Juan Cty*, 135 Wn.2d 678, 692–93, 958 P.2d 273, 280 (1998) (*Weden*). An ordinance will not be construed as taking away the power of a municipality to legislate unless this intent is clearly and expressly stated. *State ex rel. Schillberg v. Everett Dist. Justice Court*, 92 Wn.2d 106, 108, 594 P.2d 448, 450 (1979); *Second Amendment Found.*, 35 Wash.App. at 588, 668 P.2d at 598. Under conflict preemption precedents, a state law preempts a local ordinance when an ordinance permits what state law forbids or forbids what state law permits. *Watson v. City of Seattle*, 189 Wn.2d 149, 171, 401 P.3d 1, 12 (2017) (*Watson*). If the ordinance may be read in harmony, no conflict will be found. *Id.* The ordinance can be read in harmony with RCW 9.41.290, as discussed below.

2. RCW 9.41.290 Does Not Preempt Regulation of Shooting Facilities.

The statement of preemption in RCW 9.41.290 is:

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.

RCW 9.41.290 (emphasis added). The legislature did not define “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 Metro. Seattle*, 116 Wn.2d 794, 802, 808 P.2d 746, 749 (1991) (*Cherry*).

The language of the statute is important for what it says—but also for what it does not say. Nothing in RCW 9.41.290 prohibits the regulation of shooting facilities. In fact, nothing in the entire Chapter 9.41 RCW refers to shooting facilities. Instead, the multiple provisions in Chapter 9.41 RCW primarily focus on the possession, delivery, sale, and use of firearms. There is no indication that the legislature intended to preempt local ordinances requiring shooting facilities to obtain operating permits.

The Washington Supreme Court cases addressing RCW 9.41.290 have limited the scope of preemption. *Cherry*, 116 Wn.2d 794, P.2d 746 (1991); *Pac. Nw. Shooting Park Ass’n v. City of Sequim*, 158 Wn.2d 342, 144 P.3d 276 (2006); *Watson*, 189 Wn.2d 149, 401 P.3d 1 (2017). *Watson* suggests that RCW 9.41.290 is inapplicable here. If the taxation of firearms sales is not considered the regulation of firearms, then the licensing of shooting facilities also should not be viewed as a firearms regulation under RCW 9.41.290. *Watson* rejected the argument that the legislature has occupied

the entire field of gun-related laws and ordinances unless specifically authorized by state law. *Watson*, 189 Wn.2d at 172, 401 P.3d at 12.

Enforcement of the ordinance affects only indirectly the discharge of firearms in that an unlicensed shooting facility could not lawfully allow a person to discharge a firearm there after dark. But the ordinance imposes requirements only on owners and operators of commercial shooting facilities, not on the individuals who discharge firearms at those facilities. JCC 8.50.230(3) and (4). Nothing in the ordinance would affect a person's ability to discharge a firearm anywhere else in Jefferson County.

3. The Ordinance Is Not Preempted Because RCW 9.41.300(2)(a) Authorizes It.

Even if RCW 9.42.290 could apply, RCW 9.41.300(2)(a) authorizes the regulations in the ordinance. There are findings in the ordinance specifically relying on RCW 9.41.300(2)(a) and complaints about safety and land use at commercial shooting facilities. CP, 606. The legislative statements in enacting the ordinance and in the hearing record are sufficient to establish, as required under RCW 9.41.300(2)(a), that the ordinance was enacted to address the reasonable likelihood that the unregulated operation of shooting ranges would jeopardize humans and property.

This Court also previously construed RCW 9.41.300 in *City of Seattle v. Ballsmider*.⁷ This court concluded in *Ballsmider* “that the preemption statute and its restrictions, including its penalty restrictions, are to be disregarded and have absolutely no bearing on laws enacted pursuant to RCW 9.41.300(2)(a).” *Id. Ballsmider* says “it appears the Legislature’s purpose in creating RCW 9.41.300(2)(a) was to allow local governments relatively *unlimited authority* in one specific area—i.e., the discharge of firearms in areas where people, domestic animals, or property would be endangered.” *Id.*, 71 Wash.App. at 163, 856 P.2d at 1115 (emphasis added).

4. Common Sense: Guns Firing Bullets at an Unregulated Shooting Range Pose a Reasonable Likelihood of Jeopardy to Humans and Property.

Jefferson County’s motion for summary judgment showed YouTube video examples of why guns firing bullets on an unregulated shooting range pose a reasonable likelihood of jeopardy to humans and property. CP, 406 and 697-98. Appellants attempted to discount these videos: “This case is not about whether people do dumb things on YouTube; [Appellants] concede that they do. But that has nothing to do with this case.” CP, 322. Appellants are wrong. The “dumb things” in these videos were done *on shooting ranges*—including commercial shooting ranges.

⁷71 Wash.App. 159, 162-63, 856 P.2d 1113, 1115 (1993) (*Ballsmider*).

These videos show why regulation is necessary on shooting ranges to address the reasonable likelihood that the unregulated operation of shooting ranges would jeopardize humans and property.

5. The NRA Range Source Book Provides Evidence that a Reasonable Likelihood of Jeopardy to Humans and Property Exists at an Unregulated Shooting Facility.

The ordinance requires a professional evaluation that discusses “any proposed uses that are inconsistent with the NRA Range Source Book for facility designs and institutional controls.” JCC 8.50.240(7)(c)(ii). The NRA Range Source Book provides evidence that consistent with RCW 9.41.300(a)(2), there is a reasonable likelihood of jeopardy to humans and property at an unregulated commercial shooting facility. CP, 545-604. The NRA Range Source Book states: “*Firing range safety implies ... (3) strict regulations on use coupled with strict enforcement.*” CP, 548 (emphasis added). “A shooting range should satisfy a number of goals, including the following: ... *reasonable accommodations for the safety of both those utilizing the range and the general public.*” CP, 547 (emphasis added). “Remember that health and safety considerations are twofold: (1) ensuring the health and safety of participants, staff and spectators, and (2) ensuring the health and safety of surrounding inhabitants.” CP, 549. “A safety plan links each aspect of the process - planning, design, construction and use - into an integrated program. This program is designed to reduce risks

associated with the use of firearms either on or off the range.” CP, 599. Further, the safety plan “protects the safety and health of those who live nearby.” *Id.*

6. Appellants Rely on Two False Premises about *Past Safety at the Existing Shooting Range and the Closed Fort Discovery Gun Range.*

The first false premise is that the ordinance *only* applies to the existing the Sportsmen’s Association shooting facility and the proposed Fort Discovery shooting facility. Opening Brief, 3 and 8-9. However, JCC 8.50.210 states: “The purpose of this article is to provide *uniform requirements* for the establishment and operation of *all* commercial shooting facilities in unincorporated parts of the county.” (Emphasis added.) “*No proposed or established* commercial shooting facility may operate without an operating permit.” JCC 8.50.230(1) (emphasis added). New commercial shooting facilities in the ordinance are not limited to Fort Discovery’s proposed shooting facility. JCC 8.50.230(2). This first false premise is necessary for Appellants to inflate the importance of the second false premise.

The second false premise is that *past* safety at Fort Discovery’s *closed* shooting range and the existing Sportsmen’s Association shooting facility are material. Opening Brief, 3 and 8-9. Even if no bullet had ever escaped either the closed Fort Discovery shooting facility or the existing

Sportsmen’s Association shooting facility that is not relevant. The Commissioners were not writing an ordinance just about Fort Discovery or the Sportsmen’s Association, they were writing an ordinance of general applicability. The ordinance provides uniform requirements for all commercial shooting facilities—current and future. And, the ordinance expresses local concerns about the future safety and viability of commercial shooting ranges in the face of the limited areas of private land where people can live and population growth in Jefferson County. CP, 606-07. The lack of past deaths or accidents does not ensure the same in the future, especially in the face of these local concerns.

7. RCW 36.32.120(7) Authorizes the Regulations in the Ordinance, So It Is Not Preempted by RCW 9.41.290.

RCW 9.41.290 expressly acknowledges that local governments may enact laws and ordinances relating to firearms as long as they are “authorized by state law ... and are consistent with this chapter.” As noted above, RCW 36.32.120(7) authorizes counties to “[m]ake and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law.” Therefore, the requirement in the ordinance that a shooting facility obtain an operating permit is an exercise of Jefferson County’s police power that is authorized under state law.

B. A Shooting Facility Ordinance with Reasonable Time, Place, and Manner Police Power Regulations Does Not Violate Article I, Section 24.

Consistent with this court’s holding in *Kitsap Rifle*, the ordinance is a reasonable regulation that does not violate Article I, Section 24. *Kitsap Rifle*, 1 Wn.App.2d at 418, 405 P.3d at 1038.

1. Why the *State Constitutional Analysis is Done First.*

Citing *Jorgenson*,⁸ Appellants admit, “Normally a court analyzes the state constitution right first and the federal one second.” Opening Brief, 27. That is because Washington Courts are responsible for interpreting the Washington constitution and must furnish a rational basis “for counsel to predict the future course of state decisional law.” *State v. Gunwall*, 106 Wn.2d 54, 60, 720 P.2d 808, 811-12 (1986) (*Gunwall*). This “also serves the important goal of preserving the power of the Washington courts as ultimate arbiters of the validity of state laws under the state constitution” because “a decision that a statute, regulation, or governmental action is invalid under the state constitution is not reviewable by the federal courts as long as the state ground is independent of any federal ground and is adequate to support the judgment.” Robert F. Utter, *Freedom and Diversity in a Federal System: Perspectives on State*

⁸ 179 Wn.2d at 152, 312 P.3d at 962.

Constitutions and the Washington Declaration of Rights, 7 Seattle U. L.Rev. 491, 505 (1984).

2. Under Washington Law, the Ordinance is Presumed Constitutional.

Enacted ordinances are presumed to be constitutional under Washington law. *Weden*, 135 Wn.2d at 690, 958 P.2d at 279. The challenging party has the burden of showing unconstitutionality. *Watson*, 189 Wn.2d at 158, 401 P.3d at 5. If possible, courts must construe an ordinance to render it constitutional. *City of Seattle v. Evans*, 184 Wn.2d 856, 861, 366 P.3d 906, 909 (2015).

3. Article I, Section 24 Does Not Confer a Range Training Right at a Gun Range *Without Restrictions*.

Appellants claim—without any supporting evidence and contrary to text of the Washington constitution—that: “The state Framers codified common law gun rights in the state constitution—and shooting at a gun range *without restrictions* was one of the rights codified.” Opening Brief, 45 (emphasis added). Appellants then speculate that: “The state Framers never explicitly added that the range training right cannot be infringed because, *presumably*, it was understood that the right to ‘bear’ arms included the right to shoot at a range.” *Id.* (emphasis added). Appellants are wrong for the reasons discussed below.

a. The Washington Supreme Court has Long Held that Firearms Rights Guaranteed by the Washington Constitution are Subject to the Judicial Test of Reasonableness.

The right to bear arms under Article I, Section 24 is subject to “reasonable regulation” by the State under its police power. *Jorgenson*, 179 Wn.2d at 155, 312 P.3d at 964. A reasonable regulation satisfies the judicial reasonableness test: A constitutionally reasonable regulation is “reasonably necessary to protect public safety or welfare, and substantially related to legitimate ends sought.” *Jorgenson*, 179 Wn.2d at 156, 312 P.3d at 964. This test requires balancing the public benefit from the regulation against the degree to which it frustrates the purpose of the constitutional provision—to ensure self-defense or defense of state. *Id.* The judicial test of reasonableness was used to evaluate claims of unconstitutionality under Article I, Section 24 many years before *Jorgenson* and *Kitsap Rifle* were decided. *Montana*, 129 Wn.2d at 594, 919 P.2d at 1224 (1996); *Morris v. Blaker*, 118 Wn.2d 133, 144, 821 P.2d 482, 488 (1992); *State v. Spiers*, 119 Wash.App. 85, 93, 79 P.3d 30, 34 (2003); *Second Amendment Found.*, 35 Wash.App. at 586, 668 P.2d at 597.⁹ The judicial test of reasonableness is a form of intermediate scrutiny approved by both the Washington

⁹ See also other cases holding Article I, Section 24 is subject to reasonable regulation, including: *State v. Spencer*, 75 Wash.App. 118, 122, 876 P.2d 939, 941 (1994) (*Spencer*); *State v. Rupe*, 101 Wn.2d 664, 707, n. 9, 683 P.2d 571, 596 (1984); *State v. Krantz*, 24 Wn.2d 350, 353, 164 P.2d 453, 454 (1945); *State v. Gohl*, 46 Wash. 408, 410, 90 P. 259, 260 (1907).

Supreme Court and the Supreme Court. *United States v. Virginia*, 518 U.S. 515, 533, 116 S.Ct. 2264, 2275, 135 L.Ed.2d 735 (1996);¹⁰ *State v. Coria*, 120 Wn.2d 156, 170, 839 P.2d 890, 898 (1992). The judicial test of reasonableness also has been applied by almost all the federal courts of appeals in the federal right to bear arms context. *United States v. Booker*, 644 F.3d 12, 25 (1st Cir. 2011); *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 96 (2d Cir. 2012); *Drake v. Filko*, 724 F.3d 426, 436 (3d Cir. 2013); *United States v. Masciandaro*, 638 F.3d 458, 471 (4th Cir. 2011); *Tyler v. Hillsdale Cty. Sheriff's Dep't*, 837 F.3d 678, 693-94 (6th Cir. 2016); *Ezell v. City of Chicago*, 651 F.3d 684, 708 (7th Cir. 2011) (*Ezell 2011*); *United States v. Chovan*, 735 F.3d 1127, 1139-41 (9th Cir. 2013) (*Chovan*); *Heller v. D.C.*, 670 F.3d 1244, 1258 (D.C. Cir. 2011). As *Ezell 2011* put it, intermediate scrutiny requires “a fit between the legislature’s ends and the means chosen to accomplish those ends, ... a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served.” *Ezell 2011*, 651 F.3d at 708. Appellants rhetorically ask: “If by

¹⁰ *United States v. Virginia* was cited by the Washington Supreme Court as setting forth a form of the test for intermediate scrutiny in both *Seiyes* and *Jorgenson*. *Jorgenson*, 179 Wn. 2d at 162, 312 P.3d. at 967; *State v. Seiyes*, 168 Wn. 2d 276, 295 n. 18, 225 P.3d 995, 1004 (2009). See also *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 572, 131 S. Ct. 2653, 2667-68, 180 L. Ed. 2d 544 (2011); *Turner Broad. Sys., Inc. v. F.C.C.*, 520 U.S. 180, 189, 117 S. Ct. 1174, 1186, 137 L. Ed. 2d 369 (1997); *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724, 102 S. Ct. 3331, 3336, 73 L. Ed. 2d 1090 (1982); *Craig v. Boren*, 429 U.S. 190, 197, 97 S. Ct. 451, 457, 50 L. Ed. 2d 397 (1976).

‘reasonable regulation’ *Jorgenson* and *Kitsap Rifle* meant rational basis review¹¹ for the range training right under Wash. Const. art. I, § 24, then that is improper.” Opening Brief, 37. However, both *Jorgenson* and *Kitsap Rifle* applied intermediate scrutiny and expressly followed the judicial test of reasonableness. *Jorgenson*, 179 Wn.2d at 156, 312 P.3d at 964 and *Kitsap Rifle*, 1 Wn.App.2d. at 418, 405 P.3d at 1038. The Supreme Court decisions in *Heller* and *McDonald* left this police power largely intact. *Jorgenson*, 179 Wn.2d at 156, 312 P.3d at 964.

b. A *Gunwall* Analysis¹² is not required.

No *Gunwall* analysis is required when established principles of state constitutional jurisprudence apply. “Once we agree that our prior cases direct the analysis to be employed in resolving the legal issue, a *Gunwall* analysis is no longer helpful or necessary.” *State v. White*, 135 Wn.2d 761, 769, 958 P.2d 982, 986 (1998), *as amended* (July 17, 1998). The analysis courts are directed to use in resolving whether a regulation is constitutional under Article I, Section 24 is the judicial test of reasonableness.

¹¹ Under the rational basis test, the law being challenged must rest upon a legitimate state objective, and the law *must not be wholly irrelevant to achieving that objective.*” *State v. Coria*, 120 Wn.2d 156, 169, 839 P.2d 890, 898 (1992) (emphasis added).

¹² *State v. Gunwall*, 106 Wn.2d at 60–62, 720 P.2d at 811-13.

c. *Gunwall* Analysis Undermines Appellants' Arguments.

Appellants start a *Gunwall* analysis to justify their claim that a corollary right to train is broader than any Second Amendment right and unconstitutional under Article I, Section 24. Opening Brief, 42-48. But Appellant's *Gunwall* analysis is incomplete and is contrary to long-standing Washington precedent, discussed below related to the third *Gunwall* factor.

First *Gunwall* Factor: Looking at the "textual language" of Article I, Section 24, the words "range training" cannot be found. The relevant textual language is: "The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired." Thus, the "textual language" *Gunwall* factor does not demonstrate there is a corollary range training right exists that is not subject to reasonable regulation.

Second *Gunwall* Factor: Appellants admit "the Second Amendment omitted this language about gun ranges." Opening Brief, 43. So, neither Article I, Section 24 nor the Second Amendment demonstrate there is a corollary range training right that is not subject to reasonable regulation.

Third *Gunwall* Factor: The third factor is "state constitutional and common law history." Appellants wrongly argue, "This factor definitely points to the range training enjoying more protection under the state constitution." Opening Brief, 44. *Jorgenson* states: "Our constitution is

patterned primarily on other state constitutions, which themselves draw from *prerevolutionary common law*.” *Jorgenson*, 179 Wn. 2d. at 153, 312 P.3d at 963 (emphasis added). “*English common law* formed the basis for American colonial legislation.” Michael A. Bellesiles, *Gun Laws in Early America: The Regulation of Firearms Ownership, 1607-1794*, 16 Law & Hist. Rev. 567, 573 (1998) (Bellesiles, emphasis added.) Blackstone’s Commentaries—influential to the development of American law—described a right of “having arms for their defence, suitable to their condition and degree, *and such as are allowed by law*.” William Blackstone, *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765-1769*. Chicago: University of Chicago Press, 1979 (emphasis added).¹³ “Every state had gun control legislation on its books at the time the Second Amendment was approved.” Bellesiles, 16 Law & Hist. Rev. at 587.

State legislatures needed no further argument than *public safety*, or in Constitutional terms, *the state’s police powers*, to justify gun regulation. *In this regard they adhered to the English common law heritage* and the practice of every European nation. As Edmund Burke held, the state’s primary justification is, after all, public safety, and therefore the legislature has a legitimate interest in passing acts to secure that end. And it is amazing how little debate these measures aroused—other than accusations that they were not stringent enough or rigorously enforced.

Bellesiles, 16 Law & Hist. Rev. at 586 (emphasis added).

¹³ <http://press-pubs.uchicago.edu/founders/documents/amendIIs4.html>, last accessed May 25, 2019.

Appellants claim range training is “directly linked” to the “individual right of self-defense” under Article I, Section 24. But Appellants cite no state cases for this proposition and rely only on two *federal* cases from the Seventh Circuit Court of Appeals—*Ezell 2011* and *Ezell 2017*. Opening Brief, 45-46. As discussed in the historical step of the Second Amendment analysis below, *Ezell 2011* provides evidence of a robust history of time, place, and manner police power regulation of shooting facilities before 1868, when the Fourteenth Amendment was adopted. *Ezell 2011*, 651 F.3d at 702-03. The regulations referenced in *Ezell 2011* also predated the 1899 Washington Constitution. *Id.*

Article I, Section 24 was derived from other states constitutions. *State v. Earl*, 116 Wn. 2d 364, 391, 805 P. 2d. 211, 225 (1991) (Utter, J., dissenting). Article I, Section 24 was derived from the Second Amendment and Article 1, Section 27 of the Oregon Constitution of 1857. Rosenow, *The Journal of the Washington State Constitution 1889* (1999), 521. The drafters of the 1857 Oregon Constitution, in turn, derived Article I, section 27, almost verbatim from Article I, sections 32 and 33, of the Indiana Constitution of 1851. *State v. Hirsch*, 338 Or. 622, 643, 114 P.3d 1104, 1116 (2005), *overruled by State v. Christian*, 354 Or. 22, 307 P.3d 429 (2013) (*Hirsch*). “Indiana patterned that provision on the Ohio Constitution of 1802 and the Kentucky Constitution of 1792. The Ohio

and Kentucky provisions, in turn, likely were patterned on the Pennsylvania Constitution of 1790. Pennsylvania, among other states, patterned its expression of the right to bear arms on the English Bill of Rights of 1689.” *Hirsch*, 338 Or. at 646–47, 114 P.3d at 1118 (citations omitted). Pre-colonial restrictions on gun use from Ohio and Pennsylvania are listed in the first-step historical analysis for the Second Amendment discussed below. Thus, the regulations referenced in *Ezell 2011* are evidence of common law history applicable to a *Gunwall* analysis. In contrast Appellants provide no evidence of historically unregulated right to range training. Instead of providing *evidence* there were no restrictions on shooting ranges in Washington before 1899, they merely argue it—twice. Opening Brief, 42 and 43.

Fourth *Gunwall* Factor: Appellants claim that *Jorgenson* “punted” on the fourth factor, pre-existing state law. Opening Brief, 46. To support this argument, Appellants quote a portion of the *Jorgenson* opinion as follows: “Second Amendment case law is currently evolving. It is uncertain how the federal right compares to our preexisting ‘reasonable regulation’ analysis.¹⁴ We move on to the fifth *Gunwall* factor.” Opening Brief, 47. But Appellants omit from their quote the three words that start the first sentence in the *Jorgenson* opinion, namely “As we explain below.”

¹⁴ “Reasonable regulation” is in quotes for a purpose—the court was referring to the judicial test of reasonableness.

Jorgenson, 179 Wn. 2d at 154, 312 P. 3d at 964. Before the quote, *Jorgenson* cites four cases of pre-existing state law supporting the regulation (including *Montana*) and concludes, “Preexisting state law does not demonstrate how the state right compares to its federal counterpart.” *Id.*, 179 Wn. 2d at 154, 312 P.3d at 963-4. That was no “punt.” And, before *Montana* was decided, courts in Washington upheld various restrictions and prohibitions on the possession and carrying of firearms and weapons. In *State v. Tully*, 198 Wn. 605, 89 P.2d 517 (1939), the court upheld the concealed weapons permit requirement and a prohibition preventing those convicted of a violent crime from possessing a pistol. In *State v. Walsh*, 123 Wn.2d 741, 750, 870 P.2d 974, 978 (1994), the court upheld a law-making possession of firearm and spotlight prima facie evidence of unlawfully hunting big game. In *State v. Barnes*, 42 Wash.App. 56, 57, 708 P.2d 414, 415 (1985), the court upheld a ban on possession of weapons in penal institutions. In *Second Amendment Found.*, 35 Wash.App. at 586-87, 668 P.2d at 597, the court upheld an ordinance banning firearms in certain places where alcohol is served. In *Spencer*, 75 Wash.App. at 124, 876 P.2d at 942, the court upheld the ancient proscription upon carrying a firearm under circumstances that warrant alarm for the safety of others. In both *Second Amendment Foundation* and *Spencer*, the court concluded the laws were reasonable

because they promoted substantial public interests in safety, and minimally affected the right to bear arms in that they did not proscribe all carrying of a weapon. *Second Amendment Found.*, 35 Wash.App. at 586-87, 668 P.2d at 597; *Spencer*, 75 Wash.App. at 124, 876 P.2d at 942. And, those are only the cases *discussed in Montana. Montana*, 129 Wn.2d at 594-95, 919 P.2d at 1224.

Fifth Gunwall Factor: Paradoxically, Appellants use *Ezell 2011*—a *federal* case which holds a corollary range training right to the individual right to self-defense of one’s home exists under the Second Amendment and prohibits legislation that *bars shooting ranges altogether*—to argue structural differences in the state and federal constitutions create a greater right in Washington’s Article I, Section 24. Opening Brief, 47. In both *Gunwall* and *Jorgenson*, the court noted that structurally the U.S. Constitution is a *grant* of enumerated powers, whereas the Washington Constitution is a *limitation* on the state’s power. *Jorgenson*, 179 Wn. 2d at 155, 312 P.3d at 964; *Gunwall*, 106 Wn. 2d at 66, 720 P.2d at 815. For this reason, the fifth factor probably will always favor a separate interpretation. But Appellants’ discussion about the fifth factor does not prove a corollary range training right that is not subject to any reasonable regulation.

Sixth *Gunwall* Factor: Like Appellants' discussion about the fifth factor, there is little meat in their discussion about the sixth factor, namely: "Is the subject matter local in character, or does there appear to be a need for national uniformity?" *Gunwall*, 106 Wn.2d at 62, 720 P.2d at 813. Appellants quote *Sieyes* ("[P]eople in the West had to use their weapons to defend themselves and were not interested in being disarmed."), then argue: "Pre-empting excessive regulation of the discharge of firearms such as restrictions on gun ranges is, indeed, a matter of *state concern*, which is *presumably* why most local regulation of firearms is pre-empted by RCW 9.41.290." Opening Brief, 48 (emphasis added). That is Appellant's entire analysis of the sixth factor. Appellants make no effort to discuss *local concerns*, like the local concerns listed in the findings of the ordinance. CP, 606-07 (quoted above). Unlike in *Sieyes*, there is nothing in the ordinance that could be used to disarm any citizens. Appellants' argument does not address the heart of the dispute, namely whether an ordinance with judicially reasonable time, place, and manner police power restrictions on the operation of a commercial shooting facility should be held unconstitutional under Article I, Section 24.

4. Any Differences in the Ordinance and the Kitsap County Ordinance, Including How Each Ordinance Addresses Shooting Facility Operations after Dark, Remain within the Scope of Jefferson County’s Constitutionally Exercised Police Power.

Appellants argue: “There were no restrictions on evening shooting in 1889 because, *until electric lighting was introduced in the 1890s, there was no night lighting for any gun range that might exist.* Therefore, people shot when and where they wanted to. Period. That might be in the evening; it might even be at *dark.*” Opening Brief, 43 (emphasis added). Appellants asked the superior court to prohibit all regulation of “evening shooting” at commercial shooting facilities so customers “practice low-light *and night shooting.*” CP, 175, lines 19-20 (emphasis added). Appellants admit that in the winter it will be dark as early as 4:57 p.m., but they insist on describing the hours from *dark* until 10:00 p.m. as the “evening.” Opening Brief, 10. Common experience tells us that doing things after dark is less safe than doing things in daylight.

Because both the similar Kitsap ordinance and the ordinance tend to promote public health and safety, the wisdom or necessity of both ordinances is a matter left exclusively to the legislative body. *Montana*, 129 Wn.2d at 592, 919 P.2d at 1223.

Appellants admit the two ordinances are similar. CP, 812. And, the only differences Appellants discuss is the regulation of commercial

shooting facilities after dark (CP, 812) and the fact that the ordinance is has more pages (CP, 812-13). Other than pointing out that the ordinance has more pages, Appellants do not provide a comparison that supports their argument that the Kitsap ordinance is less restrictive than the ordinance. That “would be a detailed and laborious task,” Appellants claimed in the superior court. CP, 812-13. As discussed above, once Jefferson County’s police power is invoked for purposes of protecting public health and safety, local governments have “considerable latitude in exercising police powers,” and a regulation is reasonable if it satisfies the judicial reasonableness test. *Montana*, 129 Wn.2d 583 at 592, 919 P.2d at 1222-23. *See also Jorgenson*, 179 Wn.2d at 156, 312 P.3d at 964.

C. A Shooting Facility Ordinance with Reasonable Time, Place and Manner Police Power Regulations Does Not Violate the Second Amendment.

Two years after the Supreme Court decided *Heller*, the Court described its decision as holding “that the Second Amendment protects the right to possess a handgun in the home for the purpose of self-defense.” *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 791, 130 S. Ct. 3020, 3050, 177 L.Ed.2d 894 (2010). “We therefore hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*.” *Id.* The Supreme Court has not held there is a corollary range training right under the Second Amendment

that is not subject to reasonable regulation. After *Heller*, federal appellate courts, including United States Court of Appeals for the 9th Circuit, have held that the Second Amendment protects corollary rights necessary to the realization of the core right to possess a firearm for self-defense, if those rights were outside the historical understanding of the scope of the Second Amendment right. *Jackson v. City and County of San Francisco*, 746 F.3d 953, 968 (9th Cir. 2014). However, incorporation of the Second Amendment into the Fourteenth Amendment “the right to keep and bear arms is not ‘a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose’ and ‘does not imperil every law regulating firearms.’” *McDonald*, 561 U.S. at 786, 130 S. Ct. at 3047.

Appellants admit that the two-step test applies that was used by this court in *Kitsap Rifle*,¹⁵ based on *Silvester v. Harris*, 843 F.3d 816, 820-21 (9th Cir. 2016) (*Silvester*). Opening Brief, 29. According to *Silvester*, “Under our case law, the court in the first step asks if the challenged law burdens conduct protected by the Second Amendment, based on a historical understanding of the scope of the right.” *Silvester*, 843 F.3d at 821. “Whether the challenged law falls outside the scope of the Second Amendment involves examining whether there is persuasive historical evidence showing that the regulation does not impinge on the Second

¹⁵ *Kitsap Rifle*, 1 Wn. App. at 414, 405 P.3d at 1036.

Amendment right as it was historically understood.” *Id.* “Laws restricting conduct that can be traced to the founding era and are historically understood to fall outside of the Second Amendment’s scope may be upheld without further analysis.” *Id.*

1. The Evidence Presented by Jefferson County Satisfies the Historical Step, so the Second Amendment Analysis Can Stop at that Step.

a. This Court Did Not Review the Historical Step in *Kitsap Rifle* because the Parties Did Not Present Evidence on that Step.

Kitsap Rifle started at the second step because the parties did not present evidence on the historical step. *Kitsap Rifle*, 1 Wash.App. 2d at 415, 405 P.3d at 1037. In contrast, in this case, the superior court held that the ordinances listed below meet the burden of proof for the historical step. CP, 20-21. According to *Ezell 2011*, “if the government can establish that a challenged firearms law regulates activity falling outside the scope of the Second Amendment right as it was understood at the relevant historical moment—1791 or **1868**—then ***the analysis can stop there***; the regulated activity is categorically unprotected, and the law is not subject to further Second Amendment review.” *Ezell 2011*, 651 F.3d. at 702-03 (emphasis added).

b. Persuasive Historical Evidence Reviewed by the Superior Court Shows that the Ordinance does not impinge on the Second Amendment Right as it was Historically Understood.

Regulations in effect before the Fourteenth Amendment was ratified demonstrate that police power regulation of shooting facilities was commonplace:

- 1721: Act of Aug. 26, 1721, § IV, in A Digest of the Acts of Assembly Relating to the City of Philadelphia, providing for “governor’s special license,” 183 (Duane ed. 1856). *Ezell 2011*, 651 F.3d at 706;
- 1746: 1746 statute limiting the discharge of firearms in Boston provided an exception for target practice: City residents could “fir[e] at a Mark or Target for the Exercise of their Skill and Judgment ... at the lower End of the Common” if they obtained permission from the “Field Officers of the Regiment in Boston”; they could also “fir[e] at a Mark from the Several Batteries in” Boston with permission from the “Captain General.” Act of May 28, 1746, Ch. X, in Acts and Laws of the Massachusetts Bay 208 (Kneeland ed. 1746) *Id.* at 705;
- 1750: Act of Feb. 9, 1750–51, ch. 388, in 1 Laws of the Commonwealth of Pennsylvania 312 (Carey ed. 1803) (providing

for “Governor’s special license”); Ordinance of June 7, 1813, § V, in Philadelphia Digest 188 (providing for permission from the board of commissioners) *Id.* at 706, fn. 13;

- 1790: 1790 Ohio statute that prohibited the discharge of a firearm before sunrise, after sunset, or within one-quarter of a mile from the nearest building. Act of Aug. 4, 1790, Ch. XIII, § 4, in 1 The Statutes of Ohio and of the Northwestern Territory 104 (Chase ed. 1833) *Id.* at 705;
- 1813: Ordinance of June 7, 1813, § V, in Philadelphia Digest 188 (providing for permission from the board of commissioners) *Id.* at 705 fn. 13;
- 1826: Ordinance of Mar. 9, 1826, § 6, in Baltimore Gazette and Daily Advertiser, Dec. 17, 1827 (“[I]f any person shall fire or discharge any Gun or Pistol or fire arms within the City, unless it be on some occasion of Military parade and then by order of some officer having the command, every such person, for every such offense, shall forfeit and pay a sum not exceeding five dollars.”). *Id.* at 706;
- 1831: Acts of Feb. 17, 1831, § 6, in 29 Acts of a General Nature of the State of Ohio 162 (Olmsted ed. 1831) (subjecting “any person or persons [who] shall shoot or fire a gun at a target within

the limits of any recorded town plat” to a fine “not exceeding five dollars, nor less than fifty cents”). *Id.*;

- 1851: Ordinance of Sept. 8, 1851, § IX, in Philadelphia Digest 419 (providing for permission from the president of the board of commissioners); Ordinance of 1854, ch. 5, § 20, in Revised Ordinances of the City of Manchester, N.H. 59 (Gage ed. 1859) (providing for “permission of the Mayor and Aldermen in writing”). *Id.* at 705 fn. 13;
- 1854: Ordinance of 1854, ch. 5, § 20, in Revised Ordinances of the City of Manchester, N.H. 59 (Gage ed. 1859) (providing for “permission of the Mayor and Aldermen in writing”) *Id.*;
- 1855: Act of Feb. 14, 1855, § 78, in Private Laws of the State of Illinois 144 (Bailhache ed. 1861) (providing for “permission from the mayor or common council”) *Id.*; and,
- 1865: Bylaw, Title XI, ch. IV, in Charter and By-Laws of the City of New Haven, Conn. 90 (Benham ed. 1865) (providing for “permission ... of the Mayor, or some one or more of the Aldermen”) *Id.* at 705 fn. 13.

Further, Robert H. Churchill’s essay, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & Hist. Rev. 139 (2007), conducted a

full survey of printed session laws pertaining to gun regulation in the thirteen colonies and Vermont between 1607 and 1815. *Id.* at 143. A detailed discussion of these pre-Fourteenth Amendment laws is at pages 161-65. The survey determined that “colonial and early state governments routinely exercised their police powers to restrict the time, place, and manner in which Americans used their guns.” *Id.* at 162. As to shooting after dark:

Colonial governments expressed particular concern over the firing of guns after dark, in part because the traditional method of raising the alarm of an attack after dark involved the firing of several guns in succession. Thus, an amendment to New Hampshire’s militia law prohibited the firing of guns after sunset during “time of war or watch.” Connecticut and Georgia enacted similar measures. North Carolina was more concerned with the dangers to lives and property stemming from the use of guns in night-time hunting, a practice that it banned.

*Id.*¹⁶

“American jurisdictions also regulated the places in which guns could and could not be used. By 1770, the shooting of guns was prohibited in the

¹⁶ “An Act in Addition to the Act for regulating the Militia,” 1718, New Hampshire Session Laws; *Acts and Laws of his Majesties Colony of Connecticut in New England* (1702), 5; “An Act for Regulating the Watch in the Town of Savannah,” 1759, Allen D. Candler, *The Colonial Records of the State of Georgia* (Atlanta: The Franklin Printing and Publ. Co., 1904-16), 18:295; “An Act to prevent the pernicious Practice of hunting with a Gun in the Night by Fire Light,” 1774, North Carolina Session Laws; “An Act to Prevent firing of guns and other firearms within this State, on certain days therein mentioned,” 1785, *Laws of the State of New York* (Albany: Weed, Parsons, and Co., 1886), 2:152; “An Act to suppress the disorderly practice of firing guns, etc.,” 1774, Mitchell, *Statutes at Large*, 8:410; “An Act for Preventing Mischief being done in the town of Newport, or in any other town in this Government,” 1731, Rhode Island Session Laws; 6 Commonwealth, c. 12 (Virginia, 1655-56), Hening, *Statutes at Large*, 1:401; and 18 Charles I, c. 35 (Virginia, 1642), *id.*, 1:261. *See id.* at 175, fn 55.

cities of Philadelphia, New York, and Boston. The colonies of Pennsylvania and New York extended this prohibition to all other towns and boroughs. Delaware also prohibited the firing of guns within built-up areas, but made an exception for ‘days of public rejoicing.’” *Id.* at 162–63 . “Colonial legislatures also tried to protect the highways from stray gunfire. Massachusetts banned the shooting of guns on Boston Neck. Rhode Island banned the placement of shooting ranges lying across a public highway. Pennsylvania banned gunfire ‘on or near any of the King’s highways.’” *Id.* at 163. “Colonial and state governments thus did not hesitate to regulate the use of guns in order to promote public safety and to protect private property.” *Id.* at 164.

Based on an analysis of the historical scope of the understanding of the Second Amendment right, the superior court correctly determined that the ordinance does not burden conduct protected by the Second Amendment. The Second Amendment analysis can stop at the historical step. CP, 20. Accordingly, this court should affirm the superior court.

c. Except in Appellants’ Attempt to Wrongly Limit the Historical Step Analysis to Shooting Ranges Located *in the State of Washington*, Appellants Do Not Address the Historical Step.

Appellants wrongly limit their efforts to shooting facilities located *in the State of Washington*. Opening Brief, 30-31. And, while Appellants

cite to the Clerks Papers to argue “there were no restrictions on shooting ranges *in Washington*,” their citations only are to argument in their superior court pleadings, not to evidence. Opening Brief, 30 (citing CP, 359, 831-832). Further, the argument in the superior court pleadings at CP, 831-832 does not address the historical step at all. The ordinances discussed above meet Jefferson County’s burden for the historical step of the Second Amendment analysis because whether the challenged firearms law regulates activity falling outside the scope of the Second Amendment right as it was understood at the relevant historical moment is not limited to history in the State of Washington. After all, the Second Amendment codified a *pre-existing* individual right. *Heller*, 554 U.S. at 592, 128 S.Ct. at 2797. The Supreme Court in *Heller* looked not to the State of Washington for the source of that individual right, but to pre-revolutionary American and English common law. *Heller*, 554 U.S. at 592-595, 128 S.Ct. at 2797-2800. Appellants’ attempt to limit the analysis to history in the State of Washington for the historical step analysis fails.

5. In *Kitsap Rifle*, this Court Correctly Applied Intermediate Scrutiny in the Second Step of the Second Amendment Analysis.

This court correctly applied intermediate scrutiny to uphold the Kitsap ordinance. *Kitsap Rifle*, 1 Wn.App.2d at 414, 405 P.3d at 1036. The United States Court of Appeals for the 9th Circuit described intermediate

certainty as requiring: (1) The government’s stated objective to be significant, substantial, or important; and, (2) A reasonable fit between the challenged regulation and the asserted objective. *Chovan*, 735 F.3d at 1139. This is the judicial test of reasonableness—the same standard used by the Washington Supreme Court in *Jorgenson*. As in *Kitsap Rifle*, the ordinance satisfies the judicial test of reasonableness.

a. First: Appellants Admit the Ordinance Addresses an Important Government Objective.

“Appellants agree that reasonably safe gun ranges are an important government purpose.” Opening Brief, 32.

b. Second: A Reasonable Fit Exists Between the Ordinance and the Safety Objective.

Among the stated purposes of the ordinance were to: (1) “Establish a permitting procedure and rules for the siting, design and operation of commercial shooting facilities that protect participants, spectators, neighboring properties and the public.” JCC 8.50.210(1); (2) “Include appropriate measures designed to make the discharge of firearms safe.” JCC 8.50.210(2); and, (3) “Protect the environment.” JCC 8.50.210(3). Except for their complaint about JCC 8.50.240(3)(n) (discussed in detail above), which requires that the safety plan contain a requirement limiting shooting after dark, Appellants voice no complaint about permitting procedure and rules in the ordinance for design and operation of

commercial shooting facilities that protect participants, spectators, neighboring properties and the public. Appellants voice no claim that the regulations in the ordinance are not designed to make the discharge of firearms safe or to protect the environment. That would be difficult, since Mr. D'Amico, Appellant Fort Discovery's President, was a member of the Review Committee that created the draft ordinance, and gave a quote to the press approving the ordinance. CP, 521. Mr. D'Amico's approval of the ordinance did not include JCC 8.50.240(3)(n). CP, 106 and 179.

The City of Chicago responded to *Ezell 2011* by replacing the ban on shooting ranges with regulations governing shooting ranges. *Ezell v. City of Chicago*, 846 F.3d 888, 890 (7th Cir. 2017) (*Ezell 2017*). The City was sued again in federal district court. The federal district court addressed these regulations and held, "The City's construction regulations are reasonable, drawn to directly advance its interest in protecting the safety of its citizens, and substantiated by evidence. Accordingly, they universally survive review." *Ezell v. City of Chicago*, 70 F. Supp. 3d 871, 888 (N.D. Ill. 2014), *aff'd in part, rev'd in part*, 846 F.3d 888 (7th Cir. 2017) (*Ezell 2014*). The federal district court also determined that the City of Chicago's ordinances "are aimed at locating firing ranges in suitable locations, ensuring proper construction, and guaranteeing safe operations; they do not preclude or even chill the Plaintiffs' desire or ability to

participate in firearms training,” and granted the City of Chicago’s motion for summary judgment. *Id.* at 892–93. The parties who filed the appeal in *Ezell 2017* did not appeal the safety regulations approved by the federal district court in *Ezell 2014*. *Ezell 2017*, 846 F.3d at 890.

An ordinance satisfies intermediate scrutiny if its “legislative conclusion was reasonable and supported by substantial evidence in the record.” *Ezell 2014*, 70 F. Supp. 3d at 885 (citing *Turner Broad. Sys. Inc. v. F.C.C.*, 520 U.S. 180, 195, 117 S. Ct. 1174 (1997)). Substantial evidence is found not only in the form of hard data—justification can be based on history, consensus, and simple common sense. *Id.*, 70 F. Supp. 3d at 886. Here, the Review Committee reached consensus on the safety provisions of the ordinance reflected in the County’s staff report. CP, 412. Jefferson County provided evidence of people getting hurt and killed on shooting ranges (CP, 697-98), reports of bullets leaving the Jefferson County Sportsmen’s Association shooting range (CP, 271-85 and 648-61), the NRA’s Source Book (CP, 545-604)—and simple common sense (CP, 156-57 and 697-98).

Under the Second Amendment, Jefferson County has room to regulate the construction and operation of firing ranges to address genuine risks to public health and safety. *Ezell 2017*, 846 F.3d at 898. That is what the ordinance does.

6. The Ordinance Does Not Unduly Frustrate the Right of Any Individual to Bear Arms in Self-Defense.

The ordinance does not unduly frustrate the right of any individual to bear arms in self-defense in defense of their home because the ordinance does not prohibit the discharge of firearms and only regulates the way commercial shooting facilities operate. The ordinance allows people to acquire and maintain proficiency with firearms at licensed commercial shooting facilities. And, excluded from regulation is “Any portion of a privately owned property used for lawful shooting practice solely by its owner or the owner’s guests without payment of any compensation to the owner of the privately owned property or to any other person.” JCC 8.50.220(15)(b).

Plaintiff’s only specific claim that the ordinance is unconstitutional is based on the inclusion of the requirement in JCC 8.50.240(3)(n) that the safety plan for the commercial shooting facility contain a requirement that no shooting take place after dark. Common sense is all that is needed to connect shooting after dark to a lack of safety.

As to the broader claims of unconstitutionality in the Amended Complaint, the 9th Circuit has held that vague allegations cannot possibly state a claim for relief under the Second Amendment. *Teixeira v. Cty. of Alameda*, 873 F.3d 670, 679 (9th Cir. 2017), *cert. denied sub nom.*

Teixeira v. Alameda Cty., Cal., 138 S. Ct. 1988, 201 L. Ed. 2d 249 (2018).

The ordinance is a reasonable regulation as measured by the judicial test of reasonableness, so it satisfies intermediate scrutiny and does not violate the Second Amendment. Accordingly, the ordinance is constitutional.

VI. CONCLUSION

The court should affirm the superior court's decision on the cross-motions for summary judgment and should award Jefferson County its costs on appeal.

RESPECTFULLY SUBMITTED this 5th day of June 2019.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 5th of June 2019, I caused to be served the above Respondent's Brief on Behalf of Respondent Jefferson County, Washington on the following party at the following address:

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APPENDIX – Article III of Chapter 8.50 JCC

Definition of Firearms

8.50.040 Firearms defined.

“Firearm” means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. The definition of “firearm” includes the terms “pistol,” “rifle,” “short-barreled rifle,” “shotgun,” “short-barreled shotgun,” “machine gun,” and “antique firearm” as those terms are defined in RCW [9.41.010](#). The term “firearm” shall not include: (1) devices, including but not limited to “nail guns,” which are used as tools in the construction or building industries and which would otherwise fall within this definition; or (2) a “destructive device” as defined in [18](#) U.S.C. Section [921](#)(a)(2). [Ord. 12-18 § 1 (App. A); Ord. 2-07 § 4]

Article III. Commercial Shooting Facilities

8.50.210 Purpose.

The purpose of this article is to provide uniform requirements for the establishment and operation of all commercial shooting facilities in unincorporated parts of the county. These requirements include provisions that:

- (1) Establish a permitting procedure and rules for the siting, design and operation of commercial shooting facilities that protect participants, spectators, neighboring properties and the public;
- (2) Include appropriate measures designed to make the discharge of firearms safe;
- (3) Protect the environment;
- (4) Ensure compatibility with neighboring land uses as regulated in JCC Title [18](#); and

(5) Promote the continued availability in the county of shooting facilities for firearm education, training, and practice in the safe use of firearms, and firearm sports, without prohibiting or expressly regulating the discharge of firearms. [Ord. 12-18 § 1 (App. B)]

8.50.220 Definitions.

The following definitions shall apply in the interpretation and enforcement of the ordinance codified in this article:

(1) “Aggrieved party” means a person or persons who can demonstrate that a decision by the director or a hearing examiner will prejudice them or their interests that are protected by federal or state law or JCC.

(2) “Annual inspection” means the annual inspection required by JCC [8.50.230\(5\)\(c\)](#).

(3) “Applicant” means a person applying for an operating permit.

(4) “Armed forces” means the armed forces of the United States or of the National Guard or organized reserves.

(5) “Backstop” means a barrier that stops or redirects bullets fired on a shooting range, usually directly behind the target line.

(6) “Baffles” means barriers constructed to contain bullets or to reduce, redirect or suppress sound waves.

(7) “Ballistic trauma” means wounds to humans or domestic animals or property damage from the discharge of firearms.

(8) “Berm” means an embankment used for restricting bullets to a given area, as a protective or dividing wall between shooting areas, or for noise abatement.

(9) “BMP” means best management practice or practices.

(10) "Bullet" means a single projectile fired from a firearm.

(11) "Buffer zone" has the same meaning as in JCC [18.10.020](#) and includes but is not limited to buffer zones required by Chapter [18.22](#) JCC (the critical areas ordinance) or Chapter [18.25](#) JCC (the shoreline master program ordinance), federal or state law.

(12) "Cartridge" means a self-contained unitized round of ammunition that is made up of a case, a primer, powder, and a bullet. The case usually is made of brass but may be steel, metal alloy or plastic.

(13) "CFR" means the Code of Federal Regulations, as it now exists or is later amended.

(14) "Cold range" means a shooting range open to the public on which all firearms are to be unloaded at all times, unless instructed otherwise by a range master or a range officer.

(15) "Commercial shooting facility" means an indoor facility or outdoor facility designed and specifically designated for safe shooting practice with firearms, whether open to the public, open only to private membership, open to organizational training for law enforcement officers or organizational training for members of the armed forces, or any combination of the above that for the use of the commercial shooting facility requires a contract, charges a fee or other compensation, or requires membership. There may be one or more shooting ranges located at a commercial shooting facility. The term "commercial shooting facility" does not include:

(a) Shooting facilities that are both owned and operated by any instrumentality of the United States, the state of Washington, or any political subdivision of the state of Washington;

(b) Any portion of a privately owned property used for lawful shooting practice solely by its owner or the owner's guests without payment of any

compensation to the owner of the privately owned property or to any other person. For the avoidance of doubt, where privately owned property is used primarily for lawful shooting practice for guests of the owner, and where the other uses of the property either facilitate shooting practice or are incidental, intermittent or occasional, it is presumed that the privately owned property used for lawful shooting practices is a commercial shooting facility.

(16) "Cowboy action shooting" means a type of match using one or a combination of firearms in "Old West themed" courses of fire for time and accuracy.

(17) "Critical areas" means critical areas as defined in Chapter [18.22](#) JCC.

(18) "Department" means the county department of community development.

(19) "Director" means the director of the county department of community development.

(20) "Environmental plan" means a plan for mitigating the environmental impacts of commercial shooting facilities as required by JCC [8.50.240](#)(5).

(21) "Expansion" means any proposed change that increases the existing activities and uses permitted for a commercial shooting facility, including expansions of a commercial shooting facility lawfully operating as of the effective date of the ordinance codified in this article. Examples of expansions include but are not limited to additional firing positions, lengthened periods of operations, increases in permitted firearm caliber or range, or increased size of shot fall or direct fire zones.

Modifications made solely through routine maintenance of a commercial shooting facility, such as the installation of sewer, water or other utilities, pavement of a parking lot, the installation of safety baffles, construction of side or backstop berms, or the construction or remodeling of a clubhouse, shall not be considered an expansion.

(22) "Exploding target" means a target that explodes when hit by a projectile.

(23) "Explode" means burst or shatter violently and noisily from rapid combustion, decomposition, excessive internal pressure, or other process, typically scattering fragments widely.

(24) "Facility design plan" means the written procedures or policies of a commercial shooting facility that specifically define the facility design requirements for the commercial shooting facility as required by JCC [8.50.240\(2\)](#).

(25) "False report" means a report of violation that results in the dispatch of the department, the sheriff or emergency services for a violation of this article when, in fact, there was no violation of this article and no reasonable belief there was a violation of this article.

(26) "Firearm" has the same meaning as in JCC [8.50.040](#).

(27) "Firing line" means a line parallel to the targets from which firearms are discharged.

(28) "Firing point" means a location from which one individual fires at an associated target located downrange.

(29) "Five-stand shooting" means a shotgun shooting sport where there are five stations or stands on the firing line and multiple strategically placed target throwers that throw targets in front of the firing line.

(30) "Hazardous substance" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC [173-303-090](#) or [173-303-100](#).

(31) "Hazardous waste" means those solid wastes designated by [40](#) CFR Part [261](#) and regulated as hazardous and/or mixed waste by the United States EPA.

(32) "Hot range" means a shooting range on which all firearms are allowed to be loaded at all times.

(33) "Impact area" means the area in a backstop or bullet trap directly behind the target where bullets are expected to impact or the area downrange where bullets will impact if not captured by a backstop or bullet trap.

(34) "Indoor facility" means a commercial shooting facility within a fully enclosed structure.

(35) "JCC" means the Jefferson County Code, as it now exists or is later amended.

(36) "Law enforcement officer" means "federal peace officer" as defined in RCW [10.93.020](#)(6), "general authority Washington peace officer" as defined in RCW [10.93.020](#)(3), "law enforcement officer" as defined in RCW [9.41.010](#)(13), "peace officer" as defined in RCW [43.101.010](#)(11), "limited authority Washington peace officer" as defined in RCW [10.93.020](#)(4), "qualified law enforcement officer" as defined in [18](#) U.S.C. Section [928B](#)(c) and "specially commissioned Washington peace officer" as defined in RCW [10.93.020](#)(5). For the avoidance of doubt, "law enforcement officer" includes federal, tribal, state, and local members of law enforcement organizations certified by their jurisdiction to enforce the laws of that jurisdiction.

(37) "Life safety incident" means an incident that causes ballistic trauma to humans, domestic animals, or property.

(38) "Member of the armed forces" means a member of the armed forces, when on duty.

(39) “NRA Range Source Book” means the most current version of the NRA Range Source Book published by the National Rifle Association.

(40) “Operations plan” means the written procedures or policies of a commercial shooting facility that specifically define the operations requirements for the commercial shooting facility as required by JCC [8.50.240](#)(4).

(41) “Operator” means the person operating the commercial shooting facility.

(42) “Operating permit” means the operating permit required by this article.

(43) “Or” means both “or” and “and/or.”

(44) “Other reports of violations” means reports of violations that are not life safety incidents or threats to humans, domestic animals or property.

(45) “Outdoor facility” means a commercial shooting facility that is not an indoor facility.

(46) “Owner” means the holder of title to the real property on which a commercial shooting facility is located.

(47) “Person” means “person” as that term is defined in RCW [1.16.080](#).

(48) “Physical containment” means the use of physical barriers that are sufficient to contain the projectile from the highest power firearm used on a shooting range when the shooting range is used in accordance with its operating permit. Physical containment may include, but is not limited to, baffles, sidewalls, backstops and berms of adequate design, quantity, and location to ensure that projectiles cannot escape the commercial shooting facility.

(49) “Practical shooting” means a sport that challenges an individual’s ability to shoot rapidly and accurately with a firearm. To do this, shooters take on obstacle-laden

shooting courses called stages, some requiring many shots to complete, and others just a few. While scoring systems vary between practical shooting organizations, each measures the speed with which the stage is completed, with penalties for inaccurate shooting.

(50) "Projectile" means an object fired from a firearm.

(51) "Provisional operating permit" means a provisional operating permit issued pursuant to JCC [8.50.230\(4\)](#) (c).

(52) "Qualified shooting range evaluator" means a person who has been an NRA range technical team advisor or who is a professional engineer with expertise in the design of shooting ranges.

(53) "Range master" or "range officer" means a person or persons trained and appointed by the operators of a commercial shooting facility to oversee the safe discharge of firearms in accordance with the requirements of this article and any additional safety specifications that may be adopted by the operators of the commercial shooting facility. At a minimum, a range master or a range officer shall complete the necessary training and obtain certification to be a range master or range officer from the National Rifle Association, the NROI National Range Officer Institute, the IDPA International Defensive Pistol Association, the SASS Single Action Shooters Society, the CMP Civilian Marksmans Program, the Washington State Criminal Justice Commission, an armed forces or, as determined by the director, other training equivalent to the National Rifle Association training for certification as a range master or range officer.

(54) "RCW" means the Revised Code of Washington, as it now exists or is later amended.

(55) "Report of violation" means a report of a violation of this article received by the department or the sheriff.

(56) "Routine maintenance" means repair of structures or property maintenance for which permits are not required or repair of berms.

(57) "Rules and regulations" means requirements used in the operation of a commercial shooting facility.

(58) "Safety fan" means all areas in or outside a shooting range where projectiles may impact or ricochet when firearms are operated in accordance with rules and regulations (as defined above). The safety fan extends to the maximum range of the most powerful cartridge and firearm used on the shooting range unless adequate physical containment is provided. When physical containment is adequate, the safety fan is limited to the area within the containment.

(59) "Safety plan" means the written procedures or policies of a commercial shooting facility that specifically define the safety requirements for the commercial shooting facility as required by JCC [8.50.240\(3\)](#).

(60) "Sheriff" means the elected sheriff of Jefferson County or designee.

(61) "Shooting range" consists of a firing line or firing points, and an impact area. A commercial shooting facility may include multiple shooting ranges.

(62) "Skeet shooting" means a shotgun shooting sport where the shooter is on the firing line and shoots at targets launched from two skeet houses in somewhat sideways paths that intersect in front of the shooter.

(63) "Sporting clays" means a form of clay pigeon shooting that consists of multiple shooting stations laid out over natural terrain such that target presentations simulate the unpredictability of live quarry shooting.

(64) "Target" means a mark to shoot at.

(65) "Target line" means the line where targets are placed.

(66) "Threatened harm" mean a reasonable likelihood that humans, domestic animals, or property has been or will be jeopardized by the operations of the commercial shooting facility.

(67) "Tracer or incendiary ammunition" means any ammunition causing or designed to cause fires and includes a projectile or shell that traces its own course in the air with a trail of smoke, chemical incandescence, or fire to facilitate adjustment of the aim of a firearm.

(68) "Trap shooting" means a shotgun shooting sport where a shooter on the firing line shoots at targets launched from a single launching point and generally away from the shooter.

(69) "U.S.C." means the United States Code, as it now exists or is later amended.

(70) "WAC" means the Washington Administrative Code, as it now exists or is later amended. [Ord. 12-18 § 1 (App. B)]

8.50.230 Operating permit required.

(1) Commercial shooting facilities shall be authorized and operated in accordance with an operating permit issued by the department. No proposed or established commercial shooting facility may operate without an operating permit. Failure to obtain an operating permit shall result in closure of the commercial shooting facility until such time a permit is obtained. Commercial shooting facilities that operate without an operating permit are subject to enforcement, including but not limited to injunctive relief. The operating permit shall govern the scope of operations of each commercial shooting facility, and shall be issued, denied, or conditioned based upon the standards set forth in this article.

(2) The operating permit is not intended to alter the legal nonconforming use status and rights of established commercial shooting facilities, which are governed by JCC Title [18](#) and the common law, nor shall the operating permit authorize expansion of

commercial shooting facility uses that otherwise require approval pursuant to a conditional use permit or other land use permits per JCC Title [18](#).

(3) New Commercial Shooting Facilities. The owner or operator of a proposed new commercial shooting facility shall apply for an operating permit at the time of the conditional use permit application. A hearing examiner considering a conditional use permit application pursuant to JCC Title [18](#) shall review the operating permit application as part of the review of the conditional use permit application.

(4) Established Commercial Shooting Facilities.

(a) The owner or operator of an established commercial shooting facility in active use on the effective date of the ordinance codified in this article shall apply for an operating permit not later than 180 days after the effective date of the ordinance codified in this article or within such other period as established by the director in consultation with the applicant.

(b) Subject to subsection (4)(c) of this section, an established commercial shooting facility must obtain an operating permit within one year of the application required by subsection (4)(a) of this section.

(c) If the professional evaluation (JCC [8.50.240\(7\)](#)) does not demonstrate full compliance with this article, then a provisional operating permit may be issued by the director, provided:

(i) Life Safety Deficiencies. All life safety deficiencies identified in the professional evaluation must be corrected prior to issuance of the provisional operating permit.

(ii) Critical Area Deficiencies. Any proposed operation that likely threatens to cause a detrimental impact to a critical area must be

addressed to remove that threat prior to issuance of the provisional operating permit.

(iii) Other Deficiencies.

(A) In consultation with the owner or operator, the qualified shooting range evaluator who performed the professional evaluation and the director will establish a timeline for remedying all the other deficiencies noted in the professional evaluation that are not life safety deficiencies or critical area deficiencies.

(B) If the director concludes that agreement on the timeline for correction of the other deficiencies cannot be reached, the director shall provide written notice of agreement to attend mediation to the applicant to be concluded within 60 days, along with a proposed timeline for correction of the other deficiencies.

(C) If the applicant does not agree to mediation within seven days after the director sends written notice, the timeline for correction of the other deficiencies proposed by the director pursuant to subsection (4)(c)(iii)(B) of this section shall be established.

(D) The applicant may appeal the establishment of the timeline for correction of the other deficiencies established pursuant to subsection (4)(c)(iii)(C) of this section to the hearing examiner pursuant to JCC [8.50.260](#).

(E) The provisional operating permit shall be issued only on the condition of acceptance by the applicant of the timeline established for correction of the other deficiencies.

(F) Failure to adhere to the timeline for correction of the other deficiencies may result in a notice of correction served by the department on the owner or operator of the commercial shooting facility.

(G) Following a notice of correction, the director and the owner or operator of the commercial shooting facility may meet to develop a compliance plan. The compliance plan shall establish a reasonable and specific time frame for compliance with the timeline for correction of the other deficiencies. The voluntary correction process is optional as deemed by the director. If the director believes that the requirements of a voluntary correction plan are not being met, the director shall revoke the provisional operating permit.

(H) Failure to adhere to the timeline for correction of the other deficiencies 30 days after issuance of the notice of correction or after failure to adhere to a compliance plan shall constitute sufficient grounds for the director to terminate immediately the provisional operating permit.

(I) Termination of a provisional operating permit by the director may be appealed pursuant to JCC [8.50.260](#).

(J) When all other deficiencies have been corrected, the director shall issue an operating permit.

(5) Inspections and Annual Report Required.

(a) Preoperation Inspection. Prior to issuing any operating permit or provisional operating permit, the department shall inspect the commercial shooting facility to determine that the commercial shooting facility complies with any applicable

conditional use provisions required by JCC Title [18](#) and all the requirements in the approved operating permit application.

(b) Annual Report. The holder of the operating permit shall submit a report to the department on an annual basis in a form required by the department. The annual report is due each year on the last day of the same month the operating permit was issued. The annual report shall include:

(i) A written statement by the owner of the commercial shooting facility declaring that the commercial shooting facility is compliant with the initial operating permit approval;

(ii) A statement of any changes to the plans required by JCC [8.50.240](#)(1)(a) through (e), as submitted in the application; and

(iii) A current statement of general liability insurance and any monitoring data required by an operating permit or any applicable conditional use permit issued pursuant to JCC Title [18](#).

(c) Annual Inspection. After issuance of an operating permit, commercial shooting facilities shall be subject to an annual inspection by the department following submission of the annual report required by this section. The department shall develop a checklist for an annual inspection. The checklist for the annual inspection shall be provided to the operator at the time the operating permit is issued and shall be effective during the term of the operating permit.

(d) Noncompliance Inspection. A noncompliance inspection shall be triggered upon receipt by the director of any of the following claims:

(i) A claim of noncompliance with the operating permit; or

(ii) A claim that there exists either a life safety incident or threatened harm.

For noncompliance inspections:

(i) The department shall have the authority to establish procedures for noncompliance inspections;

(ii) The department shall contact the commercial shooting facility within one business day after receipt by the department of a claim pursuant to subsection (5)(d) of this section and shall give the commercial shooting facility a written notice of the claim; and

(iii) The owner or operator shall make the commercial shooting facility available for inspection not later than two business days after receiving a request for an inspection from the department.

(e) Following an annual inspection or a noncompliance inspection:

(i) The department shall inform the owner or operator in writing of any deficiencies or corrective actions to be taken, which may include any of the actions authorized by subsection (5)(f) of this section;

(ii) The owner or operator shall take corrective action within a reasonable time, as determined by the department in consultation with the operator; and

(iii) The owner or operator shall allow the department to conduct follow-up inspections to verify that corrective action has been taken.

(f) Life Safety Incident. If the director determines there was a life safety incident:

(i) The director may suspend or modify the operating permit, close the commercial shooting facility or a shooting range, or modify shooting range operations;

(ii) The director shall provide the owner or operator a written notice that shall set forth each claimed life safety incident with a specific reference to applicable violation of this article or operating permit and the corrective measures to be taken;

(iii) The owner or operator shall respond in writing to the written notice provided by the director and shall take any necessary corrective measures within a reasonable time, as determined by the department in consultation with the operator;

(iv) The owner or operator shall allow the department to conduct follow-up inspections to verify that corrective action has been taken;

(v) The department shall verify that corrective action has been taken; and

(vi) Until the corrective measures are completed and verified, the director's determination in subsection (5)(f)(i) of this section shall remain in effect.

(g) Effect of a Suspension of an Operating Permit. An operating permit that has been suspended requires the commercial shooting facility to cease any firing activities until the permit has been reinstated by the director.

(6) In addition to the operating permit required by this article, land use permit applications may be required. Land use permit applications for a commercial shooting facility shall be governed by JCC Title [18](#). [Ord. 12-18 § 1 (App. B)]

8.50.240 Application for a commercial shooting facility operating permit.

(1) Required Components. The application for a commercial shooting facility operating permit shall contain the following components with the information required in the subsections that follow:

- (a) Facility design plan;
- (b) Safety plan;
- (c) Operations plan;
- (d) Environmental plan;
- (e) Noise abatement plan;
- (f) Professional evaluation;
- (g) Certification; and
- (h) A list of all property owners prepared by a title company within the distance of the safety fan, but no less than one mile.

(2) Facility Design Plan.

- (a) The facility design plan for all indoor and outdoor commercial shooting facilities shall contain the following elements:
 - (i) Locations and dimensions of all walkways;
 - (ii) Locations of all hazardous material storage and use, per a hazardous substance or hazardous waste management plan, if needed; and
 - (iii) The component parts for each shooting range.

- (b) The facility design plan for all outdoor commercial shooting facilities:
- (i) Locations and dimensions of firing lines or firing points, target lines and impact areas including all related buildings;
 - (ii) Locations, dimensions and slope of all backstops and side berms, whether natural feature or manmade, and the volume, source, and type of all materials of which they are comprised;
 - (iii) Locations and specifications of all baffles and containment structures;
 - (iv) Location of all security measures specified in JCC [8.50.250\(1\)](#);
 - (v) The safety fan for each shooting range proposed;
 - (vi) Approximate location of buildings on adjoining property;
 - (vii) Approximate location of any stream, river, lake, or other body of water within 500 yards of the commercial shooting facility;
 - (viii) Dimensional drawings of physical layout for each of the items listed in this subsection, drawn at an engineering scale appropriate for the drawings;
 - (ix) Horizontal drawings of the baffles and containment structures, and a description of the materials to be used for them;
 - (x) For rifle and pistol shooting ranges:
 - (A) Longitudinal cross-sections, with elevations, of that portion of each shooting range from 10 feet behind each firing line to 10 feet beyond the downrange terminus of each direct fire zone, 10 feet beyond the back toe of each backstop if manmade, or if natural, 20 feet beyond the front edge of the backstop, as applicable; and

(B) Latitudinal cross-sections, from 10 feet outside all side berms or the edge of each safety fan, of typical areas between each firing line and backstop or downrange terminus of the direct fire zone;

(xi) For five-stand shooting, skeet shooting, sport clay shooting and trap shooting ranges, the location and dimension of the shot fall zones and component parts; and

(xii) Elevations of all shooting ranges showing target area, backstops and berms.

(3) Safety Plan. The safety plan shall contain at least the following elements:

(a) Sign-in procedures, rules and regulations, and protocols for the use of shooting ranges;

(b) An emergency plan, to include provision for immediate notification to 911 of any life safety incident and on the next business day to the department;

(c) Methods for documenting the accidental or unintended release of a bullet anywhere at or from the commercial shooting facility, which documentation shall be transmitted to the department within seven days of the release;

(d) Provisions for the safe loading and unloading of firearms;

(e) A requirement that range masters and range officers shall complete the necessary training and obtain certification to be a range master or range officer;

(f) A requirement that at least one range master or range officer be present when shooting is occurring whenever the commercial shooting facility is open to the public;

(g) A requirement that when the commercial shooting facility is closed to the public, a commercial shooting facility member who has passed the minimum training requirements of the range shall be present;

(h) Provision for specific safety requirements for all cowboy action shooting, practical shooting, and similar sports shooting matches at any shooting range;

(i) Rules and regulations for changing the use of shooting ranges from cold ranges to hot ranges or vice versa;

(j) A means for participants and spectators to readily contact emergency services such as fire or emergency medical services;

(k) Provision for emergency services access by vehicle or air transport;

(l) A requirement prohibiting the use of alcohol, cannabis or other drugs at the commercial shooting facility when it is open to the public or shooting is occurring;

(m) A requirement that drones may not be flown by anyone on the commercial shooting facility when open to the public or while shooting is being conducted;
and

(n) A requirement that no shooting take place after dark, except for law enforcement officers or members of the armed forces provided such shooting after dark for law enforcement officers or members of the armed forces does not occur after 10:00 p.m., shooting does not exceed four hours, and the maximum days shooting after dark is allowed does not exceed one day per week.

(4) Operations Plan. The operations plan shall contain at least the following elements:

(a) The days of the week and the hours of operations;

(b) Whether the commercial shooting facility will be open to the public, open only to private membership, open to organizational training for law enforcement officers, open to organizational training for members of the armed forces, or any combination of these;

(c) A description of any activities that would not be overseen by the owner or operator and how the owner or operator will obtain compliance with the operating permit for these activities;

(d) The types and largest caliber of firearms and ammunition to be allowed on each shooting range;

(e) Type of shooting proposed on each shooting range;

(f) Whether exploding targets are to be used. If so, a plan for mitigation of noise impacts on neighbors;

(g) A requirement that the owner or operator maintain comprehensive general liability insurance coverage, with a minimum coverage amount of \$1,000,000 for each occurrence and combined single limit and \$2,000,000 in the aggregate during operation of the commercial shooting facility;

(h) A requirement that certificates of insurance for all policies that provide insurance coverage for the commercial shooting facility be provided to the department evidencing continuous insurance coverage required by the operations plan within 15 days of approval of the operations permit that include:

(i) The limits of coverage;

(ii) The names and addresses of all certificate holders; and

(iii) A statement that the insurance policy shall not be canceled or allowed to expire except on 30 days' prior written notice to the department;

(i) A requirement that the department be notified of any change in the insurance required by the operations plan.

(5) Environmental Plan. Each commercial shooting facility operator shall develop and submit an environmental plan with the following minimum requirements:

(a) BMPs for the collection and disposal of bullets, cartridges, and shotgun wadding.

(b) At indoor facilities, BMPs for lead as recommended by the National Institute for Occupational Safety and Health (NIOSH) in its 2009 publication entitled NIOSH Alert – Preventing Exposures to Lead and Noise at Indoor Firing Ranges, as it exists now or later is amended.

(c) At outdoor facilities, BMPs for lead as recommended by USEPA Region 2 in its 2005 publication entitled Best Management Practices for Outdoor Shooting Ranges, as it exists now or later is amended.

(d) If, other than lead, any hazardous substance or hazardous waste will be stored at the commercial shooting facility, the environmental plan shall also include:

(i) A plan for compliance with requirements under existing law for the handling and closure of facilities for storage or use of the hazardous substance or hazardous waste; and

(ii) A plan for financial assurance consistent with existing law for addressing any remediation of hazardous substances or hazardous waste.

(e) For the avoidance of doubt, this article neither seeks to set nor does set any substantive environmental standards, including but not limited to standards for any hazardous substance or hazardous waste, including but not limited to lead.

(6) Noise Abatement Plan. Each commercial shooting facility operator shall develop and submit a noise abatement plan. The minimum requirements for a noise abatement plan are:

- (a) Identify potential noise issues and potential solutions to those issues;
- (b) Describe sound abatement methodologies and technologies proposed for the facility;
- (c) Provide a description of how the noise abatement program will be integrated into yearly planning; and
- (d) Contain BMPs to minimize noise nuisance consistent with the NRA Source Book and Chapter [8.70](#) JCC (Noise Control).

(7) Professional Evaluation.

- (a) The professional evaluation shall be the responsibility of the county under the direction of the director and shall be performed by a qualified shooting range evaluator.
- (b) If requested, the applicant shall allow for an inspection of the site of the new or established commercial shooting facility by the qualified shooting range evaluator.
- (c) The professional evaluation shall contain an evaluation of the operating permit application that shall be performed by a qualified shooting range evaluator (as defined above) that meets the following minimum requirements:

- (i) The evaluation shall discuss any safety issues not addressed by the operating permit application;
- (ii) The evaluation shall discuss any proposed uses that are inconsistent with the NRA Range Source Book for facility designs and institutional controls;
- (iii) The evaluation shall include the commercial shooting facility's uses and institutional controls described in the application for an operating permit;
- (iv) The evaluation shall be in written form and signed by the qualified shooting range evaluator;
- (v) For new commercial shooting facilities, the evaluation shall certify that the operating permit application satisfies all the requirements of this article;
- (vi) For established commercial shooting facilities, the evaluation shall classify the ways in which the facility is currently noncompliant with this article according to the following priorities:
 - (A) Life safety issues or critical area deficiencies that must be remedied prior to issuance of an operating permit;
 - (B) Facility design components that do not meet the safety objectives of this article; and
 - (C) Facility design components that do not mitigate detrimental effects of the facility on critical areas.

(d) The applicant shall reimburse the county for the actual costs incurred (including consultant work) of the evaluation. No operating permit shall be issued until reimbursement to the county is made.

(e) The applicant may challenge the evaluation by appealing the professional evaluation to the hearing examiner pursuant to JCC [8.50.260](#).

(8) Certification.

(a) Every application for an operating permit for a new commercial shooting facility shall be accompanied by a notarized certification by the operator that specifies the commercial shooting facility:

(i) Complies with this article;

(ii) Meets commonly accepted shooting facility safety and design practices; and

(iii) Shall be operated in a manner that protects the safety of all persons present at the commercial shooting facility and persons on neighboring properties.

(b) Every application for an operating permit for an established commercial shooting facility shall be accompanied by a notarized certification by the operator that specifies the following:

(i) The operator will abide by the improvement plan agreed upon as a condition of the issuance of the operating permit;

(ii) Areas of noncompliance at the commercial shooting facility will not increase over time;

(iii) That as much as possible the facility meets commonly accepted shooting facility safety and design practices; and

(iv) That the facility shall be operated in a manner that protects the safety of all persons present at the commercial shooting facility and persons on neighboring properties.

(9) Notice and Comment.

(a) The director shall issue a notice of application for all commercial shooting facilities.

(b) The notice of application shall include the following:

(i) The name and address of the applicant or the applicant's representative;

(ii) The date of application, the date of the notice of completion for the application, and the date of the notice of application;

(iii) The street address location of the project or, if unavailable, a description of the subject property reasonably sufficient to inform the public of its location, which may include a vicinity location (map), the location in reference to roadway intersections, or a written description (rural route box or subdivision lot and block alone are not sufficient);

(iv) The identification of state, federal or other permits required by other agencies with jurisdiction not included in the application, to the extent known by the county;

(v) The name and phone number of the person at the department evaluating the application;

- (vi) A statement of the limits of the public comment period, which shall be 30 calendar days following the date of the notice of application;
 - (vii) Statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights;
 - (viii) A statement of the preliminary determination, if one has been made at the time of the notice of application, of the proposed commercial shooting facility's consistency with this article;
 - (ix) The date, time and place of hearing, if applicable, and if scheduled prior to the date of the notice of application;
 - (x) A statement of when and where a copy of the application, all supporting documentation and evidence relied upon by the applicant, and applicable development regulations may be available for public inspection;
 - (xi) A statement that a copy of any staff report will be available for inspection at no cost to the public at least seven calendar days prior to any public hearing (if applicable); and
 - (xii) Any other information the administrator determines appropriate.
- (c) The director shall issue the notice within 14 calendar days of receipt of an application for a commercial shooting facility.
- (d) The notice of application shall be sent by mail to the applicant and to all property owners identified in subsection (1)(h) of this section.
- (e) The notice of application shall also be published in the official county newspaper at least once. Published notice shall include the proposed

commercial shooting facility's road or street address or location, type(s) of permit(s) all applied for concerning the commercial shooting facility, comment period dates, and location where the complete application and notice of application may be reviewed.

(f) The department shall be responsible for preparation of the list of all property owners identified in subsection (1)(h) of this section; provided, that the director retains the authority to require the applicant to supply and certify the list of all property owners identified in subsection (1)(h) of this section in circumstances where the information is not readily available to the county. The department shall obtain addresses for mailed notice from the county's geographic information system (GIS) or real property tax records. The director shall make a notation in the file affirming mailing of notice to all persons entitled to notice under this article.

(g) All public notices shall be deemed to have been provided or received on the date the notice is deposited in the mail or personally delivered, whichever occurs first.

(h) Failure to send notice by mail shall not invalidate such proceedings where the owner appears at the hearing or receives actual notice.

(i) As optional methods of providing public notice of any operating permits, the county may:

(i) Notify the public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(ii) Notify the news media;

(iii) Place notices in appropriate regional or neighborhood newspapers or trade journals;

- (iv) Place public notice in agency newsletters or send notice to agency mailing lists, either general lists or lists for specific proposals or subject areas;
 - (v) Mail to neighboring property owners; or
 - (vi) Place notices on the internet.
- (j) The county's failure to provide the optional notice as described above shall not be grounds for invalidation of any operating permit decision.
- (k) The comment period shall be 30 calendar days from the date of the published notice of application.
- (l) Comments may be mailed, personally delivered or sent by facsimile.
- (m) Comments shall be as specific as possible.
- (n) The director will receive public comments during regular business hours any time up to and during the open record hearing, if any, or if there is no predecision hearing, prior to the decision on the operating permit.
- (o) The county may not issue a decision or recommendation on the operating permit until the expiration of the public comment period on the notice of application.
- (p) The applicant shall reimburse the county for the actual costs incurred for providing notice. No operating permit shall be issued until reimbursement to the county is made. [Ord. 12-18 § 1 (App. B)]

8.50.250 Minimum standards.

(1) Required Security. Commercial shooting facilities shall provide security measures to deter unauthorized entry to any shooting range, such as barriers, berms, cameras, gates, fencing, on-site security personnel, physical limits, or signage.

(2) Containment. Commercial shooting facilities shall be designed and operated so that when firearms are operating in accordance with the rules and regulations (as defined above) all projectiles are kept from leaving any shooting range or the commercial shooting facility.

(3) Critical Areas. Commercial shooting facilities shall be designed and operated to prevent adverse public health or environmental impacts to critical areas. [Ord. 12-18 § 1 (App. B)]

8.50.260 Administrative remedy for decisions made by the director.

When a decision is made by the director pursuant to the provisions of this article, an applicant or any aggrieved party may appeal the decision to the hearing examiner pursuant to the procedures in JCC [18.05.080](#) and [18.05.085](#) by providing written notice of appeal to the director within 14 calendar days of the decision. The fee for such appeal shall be as set forth in the Jefferson County fee ordinance and must be paid by the appellant at the time of filing the notice of appeal. [Ord. 12-18 § 1 (App. B)]

8.50.270 Judicial appeals.

(1) Time to File Judicial Appeal. Within 21 calendar days of the date the decision or action becomes final, the applicant or any aggrieved party may appeal the final decision of the director or the hearing examiner to a court of competent jurisdiction in a manner consistent with state law.

(2) All appellants and aggrieved persons must timely exhaust all administrative remedies prior to filing a judicial appeal.

(3) Service of Appeal. Notice of appeal and any other pleadings required to be filed with the court shall be served by delivery to the county auditor (see RCW [4.28.080](#)), and all persons identified in JCC [8.50.240](#)(1)(h), within the applicable time period. This requirement is jurisdictional.

(4) Cost of Appeal. The person who filed the notice of appeal shall be responsible for the cost of transcribing and preparing all records ordered certified by a court or desired by the person who filed the notice of appeal. Prior to the preparation of any records, the person who filed the notice of appeal shall post with the county auditor an advance fee deposit in an amount specified by the county auditor. Any overage will be promptly returned. [Ord. 12-18 § 1 (App. B)]

8.50.280 Safe harbor for owners and operators.

Full compliance with an operating permit creates a rebuttable presumption that the commercial shooting facility is not being operated as a nuisance. For the avoidance of doubt, the burden of proving full compliance is on the owner or operator. [Ord. 12-18 § 1 (App. B)]

8.50.290 Reports of violations of this article.

(1) Creation of a Form. The director, in consultation with the sheriff, shall develop a form for receipt of reports of violations of this article.

(2) Provided to the Owner or Operator. All reports of violation shall be provided to the owner or operator of the commercial shooting facility as soon as possible, but no later than two business days from the receipt of the report of violation.

(3) Maintenance of Reports. The director shall maintain a copy of all reports of violation for at least two years following receipt of a report of violation.

(4) Discussion During Annual Inspection. During the annual inspection, all reports of violation shall be addressed by the department and the owner or operator of a commercial shooting facility.

(5) Response to Reports of Violation.

(a) Name of Informant. All reports of violation shall be encouraged to include the name of an informant with current contact information for use in the investigation.

(b) Expedited Response. The sheriff shall respond to reports of life safety incidents or threatened harm that violate this article as soon as practical, considering the nature of the report of violation and the other operational demands on the sheriff at the time the report of violation is received.

(c) Routine Response. Other reports of violation shall be evaluated by the department for investigation. In consultation with the sheriff, the department shall develop a procedure for addressing other reports of violation.

(d) Noise Only Response. When the report of violation is limited to a claim of noise nuisance, the report of violation shall be addressed by the sheriff under Chapter [8.70](#) JCC (Noise Control). [Ord. 12-18 § 1 (App. B)]

8.50.300 Review committee.

The county board of commissioners may require the director to establish a review committee to evaluate proposed revisions to this article. The review committee shall consist of: (1) the director of the department of community development or the director's designee (chair); (2) Jefferson County sheriff or the sheriff's designee; (3) Jefferson County director of environmental health or the director's designee; (4) a representative of each current commercial shooting facility in unincorporated Jefferson County; (5) a resident or property owner from each of the three districts of Jefferson County; (6) one representative of tribal interests, if interested; and (7) one

at-large Jefferson County resident or property owner appointed by the county board of commissioners. The Jefferson County prosecuting attorney (or designee) shall be an ex officio member of the review committee but shall not be required to attend every meeting of the review committee. All review committee meetings shall be subject to the requirements of the Open Public Meetings Act, Chapter [42.30](#) RCW. [Ord. 12-18 § 1 (App. B)]

8.50.310 Conflicts with JCC 18.20.350(8) and limitations on the applicability of this article.

- (1) If any provision of this article conflicts with JCC [18.20.350](#)(8), the provisions of this article shall prevail.

- (2) Nothing in this article shall be construed as:
 - (a) Authorizing an application or a permit for a commercial shooting facility to be located in whole or in part in an area designated as an area where the discharge of firearms is prohibited under this chapter. Shooting ranges in such areas are expressly prohibited.

 - (b) Permitting the discharge of firearms, the ownership or possession of which is otherwise prohibited by law.

 - (c) Permitting the use or possession of a firearm by an individual who is otherwise prohibited by law from owning or possessing that firearm.

 - (d) Allowing or authorizing the discharge of firearms otherwise prohibited by state or federal law.

 - (e) Allowing or authorizing the discharge of tracer or incendiary ammunition.

(f) Allowing or authorizing the discharge of a destructive device as that term is defined in [25 U.S.C. Section 5845](#)(f) or any explosive as that term is defined in RCW [70.74.010](#)(5).

(g) Allowing or authorizing the discharge of a machine gun as that term is defined in [26 U.S.C. Section 5845](#)(b) or RCW [9.41.010](#)(17), unless specifically authorized under RCW [9.41.190](#)(3).

(h) Allowing or authorizing the discharge of a short-barreled rifle or a short-barreled shotgun as those terms are defined in RCW [9.41.010](#), unless specifically authorized under RCW [9.41.190](#)(3).

(i) Permitting a commercial shooting facility to maintain or create a public nuisance as defined in Chapter [7.48](#) RCW, JCC [5.10.050](#), [8.20.140](#), [8.30.020](#), [8.55.070](#), Chapter [8.70](#) JCC, JCC [15.05.100](#), or JCC Title [18](#).

(j) Abridging or altering the rights of action by the state, by the county or by persons, which exist in equity, common law, or other statutes to abate pollution or to abate a nuisance.

(k) Limiting a court of competent jurisdiction from:

(i) Ruling that a commercial shooting facility is a public nuisance; or

(ii) Requiring additional noise, environmental or safety controls as a condition of continued operation of a commercial shooting facility.

(l) Nullifying or rendering void the terms of any existing or future injunctive order issued by a court of competent jurisdiction pertaining to operations or activities at a shooting range or commercial shooting facility. [Ord. 12-18 § 1 (App. B)]

8.50.320 Warning and disclaimer of liability.

The degree of protection required by this article for commercial shooting facilities is reasonable for regulatory purposes and is based on available information. This article does not imply that commercial shooting facilities will be free from risk of bodily injury or property damage, even if operated consistently with an operating permit. This article does not create liability on the part of the county or any officer or employee of the county for any bodily injury or property damage that results from reliance on this article, or any administrative decision made lawfully under this article, including but not limited to the decision to approve the application for an operating permit. By regulating commercial shooting facilities, the county is attempting to address obvious safety and environmental issues at commercial shooting facilities. Neither this article nor an operating permit issued pursuant to this article may be relied upon as a determination that operation of a commercial shooting facility consistent with an operating permit renders the commercial shooting facility free from the risk of bodily injury or property damage. [Ord. 12-18 § 1 (App. B)]

JEFFERSON COUNTY PROSECUTING ATTORNEY'S OFFICE

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