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**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KITSAP COUNTY**

KITSAP COUNTY, a political subdivision
of the State of Washington,

Plaintiff,

No. 15-2-00626-8

v.

KITSAP RIFLE AND REVOLVER CLUB,
a not-for-profit corporation registered in the
State of Washington,

Defendant,

**MEMORANDUM OPINION AND
ORDER ON PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION**

and

IN THE MATTER OF THE
UNPERMITTED SHOOTING FACILITY
located at the 72-acre parcel at 4900
Seabeck Highway NW, Bremerton,
Washington, viz Kitsap County Tax Parcel
ID No. 362501-4-002-1006.

THIS MATTER comes before the Court upon Plaintiff Kitsap County's Motion for Preliminary Injunction ("Motion"), brought pursuant to RCW 7.40, CR 65, and KCC 10.25.090. This matter was heard on April 14, 2015 before the Honorable Jay B. Roof. In ruling on this motion, this Court has reviewed and considered the pleadings and filings in this matter, and oral argument of both parties.

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SUMMARY OF ISSUES AND CONCLUSIONS:

I. Whether the Plaintiff's Claim Is Barred By Res Judicata?

This Court holds as follows:

The Plaintiff's claim is not barred by res judicata because the cause of action and subject matter under which this case arose is factually and legally separate and distinct from the claims litigated and decided in the case cited by Defense.

II. Whether the Defendant Is "Grandfathered" In From Obtaining An Operational Permit Under KCC 10.25.090 Due To Its Status As A Nonconforming Use Under Title 17?

This Court holds as follows:

The Defendant is not "grandfathered" in from obtaining an operational permit under KCC 10.25.090 due to its nonconforming use status under Title 17 because the Plaintiff has the authority to require nonconforming uses to abide by reasonable police power regulations imposed for health and safety reasons.

III. Whether This Court Has The Authority To Grant Injunctive Relief Under KCC 10.25.090?

This Court holds as follows:

This Court does have the authority to grant injunctive relief under KCC 10.25.090 because the ordinance expressly allows for such remedial enforcement measures after the violating entity has failed to apply for the permit within 90 days, and the provisions under KCC 10.25.090 do not operate to alter the nonconforming use status under Title 17.

IV. Whether The Plaintiff Has Met Its Burden In Establishing The Requisite Elements For Injunctive Relief?

This Court holds as follows:

The Plaintiff has met its burden of establishing the requisite elements for preliminary injunctive relief because it has a well-grounded fear of an immediate invasion of its clear legal right which will result in actual and substantial injury to the Plaintiff.

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FACTUAL HISTORY

In 2011, the Kitsap County Board of County Commissioners initiated a process to evaluate whether stricter local regulations were warranted to respond to citizen complaints regarding the safety and compatibility issues of shooting ranges. A proposed ordinance was created, a review process undergone, and ultimately the final ordinance, Ordinance 515-2014 (KCC 10.25), was adopted on September 22, 2014 and became effective on December 22, 2014.

KCC 10.25 lays out procedures for both the development and operation of shooting ranges. The provisions that are pertinent to this lawsuit, KCC 10.25.090(1)-(2), provide as follows:

(1) Shooting facilities shall be authorized and operated in accordance with an operating permit issued by the department. The operating permit shall govern the facilities and scope of operations of each shooting facility, and shall be issued, denied or conditioned based upon the standards set forth in this article. No proposed or existing shooting facility may operate without an operating permit issued pursuant to this chapter, except as provided in subsection (2) of this section. This operating permit is not intended to alter the legal nonconforming use status and rights of existing ranges, which are governed by Title 17 and the common law, nor shall this operating permit authorize expansion of range uses which otherwise require approval pursuant to a conditional use permit or other land use permits per Title 17. Failure to obtain a range operational permit will result in closure of the range until such time a permit is obtained. Ranges that operate without a permit are subject to code compliance enforcement, including but not limited to injunctive relief.

(2) Each owner or operator of a shooting facility shall apply for and obtain an operating permit. The owner or operator of a proposed new shooting facility shall apply for the facility operating permit at the time of application for any necessary building or land use permits. The owner or operator of an established shooting facility in active use on the effective date of the ordinance codified in this article shall apply for the initial facility operating permit not later than ninety days after the effective date of the ordinance codified in this article. A shooting facility operating permit is valid for five years from the date of issuance or renewal. The owner or operator of each facility shall apply for a permit renewal at least thirty days prior to the date of current permit expiration.

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2 As set forth above, the relevant provisions provide, among other things, that all new
3 and existing shooting ranges apply for an operating permit within 90 days of the
4 Ordinance's effective date. KCC 10.25.090(2).

5 On December 19, 2014, the Director of the County's Department of Community
6 Development, Larry Keeton, sent a letter to the Defendant Kitsap Rifle and Revolver Club
7 ("KRRC") notifying it of the new ordinance's requirement to submit an application within
8 90 days of December 22, 2014. The 90 day deadline was March 23, 2015. KRRC never
9 submitted an application. On March 26, 2015, Larry Keeton again sent a letter to KRRC
10 informing it of its noncompliance with the ordinance and requesting that an application be
11 sent by March 30, 2015 (effectively extending the deadline for KRRC). No application was
12 forthcoming.

13 On March 31, 2015, the day after the extended deadline, Kitsap County filed its
14 complaint against KRRC, asserting one count of violations of the Firearms Discharge
15 Ordinance under KCC 10.25, and requesting declaratory and injunctive relief. On April 2,
16 2015, the County filed this Motion for Preliminary Injunction. On April 10, 2015, KRRC
17 appeared and filed its Responsive Opposition to the Motion for Preliminary Injunction. On
18 April 13, 2015, Kitsap County filed its Reply in Support of its Motion, and this Court heard
19 oral argument by the parties on April 14, 2015.

20 ANALYSIS

21 The Plaintiff requests relief under RCW 7.40, CR 65, and Kitsap County Code
22 §10.25.090. Title 10 of the County Code is titled "Peace, Safety and Morals,;" Chapter 25
23 is titled "Firearms Discharge,;" and Section .090 is titled "Ranges – Operating Permit
24 Required."

25 KRRC opposes the motion, arguing that (1) the claims before this Court have
26 already been decided by the Court of Appeals in *Kitsap County v. Kitsap Rifle and*
27 *Revolver Club*, 184 Wn.App. 252, 263, 337 P.3d 328 (2014), and thus res judicata prohibits
28 the Plaintiff from re-litigating those same claims, (2) since KRRC has a legally valid
29 "nonconforming use" under Title 17, an operational permit is not required for KRRC under
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1 Title 10.25.090 since their rights are “grandfathered/vested” prior to the adoption of Title
2 10.25, (3) that injunctive relief is not available for permit violations of a nonconforming
3 use under Title 10,¹ and (4) the Plaintiff has not met its burden in establishing the elements
4 for injunctive relief. KRRC’s arguments collapse when held up against the facts of this case
5 and the law of Washington.

6
7 **I. Whether the Plaintiff’s Claim Is Barred By Res Judicata**

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9 KRRC’s argument that this lawsuit is barred by res judicata because the Court of
10 Appeals has already decided the issues demonstrates a lack of understanding of the factual
11 and legal grounds upon which that case was decided.

12 Res judicata, also known as claim preclusion, prohibits the re-litigation of claims
13 and issues that were litigated, or could have been litigated, in a prior action. *Loveridge v.*
14 *Fred Meyer, Inc.*, 125 Wn.2d 759, 763, 887 P.2d 898 (1995). In order to properly apply the
15 doctrine, there must be the same identity between a prior judgment and a subsequent action
16 as to (1) persons and parties, (2) cause of action, (3) subject matter, (4) the quality of
17 persons for or against whom the claim is made, and (5) a final judgment on the merits.
18 *Pederson v. Potter*, 103 Wn.App. 62, 67, 11 P.3d 833 (2000). When the parties are

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21 ¹ KRRC also makes a number of other allegations, including (1) due process, (2) constitutional takings, (3) ex
22 post facto, and (4) vested rights doctrine, among others (e.g., unconstitutional for overbreadth, Second
23 Amendment violations, estoppel, etc.). These arguments all fail. The due process argument has already been
24 held to be not ripe for review by the court when the defendant has not applied for the permit, because the
25 defendant has yet to receive a final decision regarding how the regulation at issue will be applied to the
26 particular land in question. *Rhod-A-Zalea*, 136 Wn.2d at 19. A similar standard applies for a takings claim.
27 *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 339 (1990). The ex post facto doctrine does not apply
28 to civil actions. *Kitsap Alliance of Property Owners v. Central Puget Sound Growth*, 160 Wn.App. 250, 262
29 (2011). Under the vested rights doctrine, developers who file a timely and complete building permit
30 application obtain a vested right to have their application processed according to the zoning and building
ordinances in effect at the time of the application. The doctrine only protects a permit applicant from
regulations enacted after a permit application has been completed and filed and only serves to fix rules that
will govern a particular land use permit application. *Rhod-A-Zalea*, 136 Wn.2d at 16. Such a situation did not
occur here, as the defendant never even applied for the permit, so this defense likewise lacks merit. The
remaining arguments are so unfounded and unsupported by the law that they do not warrant addressing here.
The defendant has failed to meet the high burden of, when challenging an ordinance’s constitutionality,
proving that KCC 10.25.090 is unconstitutional beyond a reasonable doubt. *Edmonds Shopping Center
Associates v. City of Edmonds*, 117 Wn.App. 344, 355 (2003).

1 identical, the quality of the persons is also identical. *See Rains v. State*, 100 Wn.2d 660,
2 664, 674 P.2d 165 (1983).

3 Here, the case that KRRC is claiming prohibits this Court from proceeding is *Kitsap*
4 *County v. Kitsap Rifle and Revolve Club*, 184 Wn.App. 252, 337 P.3d 328 (2024), which
5 was decided on October 28, 2014. Although in this lawsuit and in *Kitsap Rifle* the parties
6 are identical, the quality of persons are the same, and the *Kitsap Rifle* lawsuit ended with a
7 judgment on the merits, nevertheless the subject matter and cause of action giving rise to
8 the claims of these two lawsuits arise under very distinguishable sets of facts.

9 Specifically, the *Kitsap Rifle* case dealt with KRRC increasing its hours of
10 operation, increasing noise levels and noise range, and expanding/developing the range
11 without the requisite permits. The County had brought an action for declaratory, injunctive
12 and nuisance abatement relief for the public nuisance under Title 9 and 17, and permit
13 violations under Title 12, 17 and 19, completely different code provisions and pursuant to
14 distinguishable factual circumstances than those before this Court today.

15 In *Kitsap Rifle*, the issues on appeal dealt with whether or not KRRC's
16 unauthorized expansion and development work without the proper permitting terminated its
17 status as a "nonconforming use" under Title 17, which it had been designated as such by
18 the County in 1993 during the passage of Ordinance 50-B dealing with new rules regarding
19 the location of shooting ranges.² *Kitsap Rifle* also dealt with whether or not the County
20 Code allowed for injunctive relief as a remedy for those permit and nuisance violations.
21 The Court of Appeals held that injunctive relief was expressly allowed for abating public
22 nuisances, but not for the specific permit violations at issue before it. Thus, the *Kitsap Rifle*
23 case involved different sets of facts and county ordinances. Moreover, the ordinance at
24 issue before this Court, KCC 10.25, was not even an existing law at the time that *Kitsap*
25 *Rifle* was decided.³

26 Here, the facts giving rise to this lawsuit deal with the failure on the part of KRRC
27 to obtain an operating permit under KCC 10.25.090, which expressly allows for injunctive

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29 ² The location of KRRC did not conform to the ordinance's provisions, but was allowed to continue as a
30 nonconforming use.

³ *Kitsap Rifle* was decided October 28, 2014, and KCC 10.25 became effective December 22, 2014.

1 relief as a code enforcement remedy. Thus, both the factual and legal grounds under which
2 injunctive relief is being sought here are distinguishable from the *Kitsap Rifle* case.
3 Therefore, the Plaintiff is not barred by res judicata.

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5 **II. Whether The Defendant Is “Grandfathered” In From Obtaining An**
6 **Operational Permit Under KCC 10.25.090 Due To Its Status As A**
7 **Nonconforming Use Under Title 17**

8
9 KRRC argues that, because of its nonconforming use status under Title 17.460.020
10 granted to it in 1993 by the Kitsap County Board of Commissioners, it is somehow
11 grandfathered in and therefore exempt from the requirement to obtain an operating permit
12 under KCC 10.25. The fact that KRRC did not even apply for the permit, together with
13 counsel’s argument to this Court, suggests that KRRC believes it is exempt from any and
14 all restrictions, requirements and conditions whatsoever. That argument is absurd and
15 fanciful and the case of *Rhod-A-Zalea & 35th, Inc. v. Snohomish County*, 136 Wn.2d 1, 959
16 P.2d 1024 (1988) disposed of this argument to the contrary.

17 In *Rhod-A-Zalea*, an owner of a peat mine, that had a valid nonconforming use for
18 peat mining, failed to obtain grading permits pursuant to a county building code for
19 excavation and fill activities. The county hearing examiner upheld the grading permit
20 violations. The owner appealed to Superior Court which reversed, and the Court of Appeals
21 affirmed. The Supreme Court, however, reversed the Court of Appeals and reinstated the
22 decision of the hearing examiner which had found permit violations. In so holding, the
23 Washington Supreme Court determined that the “vested rights doctrine”⁴ was inapplicable
24 to the facts at bar and that the owner was subject to grading permit requirements, as grading
25 requirements were a “reasonable police power regulation” of the nonconforming use and
26 there was no indication that complying with grading requirement would terminate the
27 owner’s existing nonconforming use. The *Rhod-A-Zalea* decision directly rejected KRRC’s

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29 ⁴ As stated earlier in footnote 1, *supra*, the “vested rights doctrine” likewise does not apply to the case before
30 us here. Instead, both here and in *Rhod-A-Zalea*, the issue has been “whether a nonconforming use is exempt
from later enacted police power regulations.” *Rhod-A-Zalea*, 136 Wn.2d at *16.

1 argument here that because KRRC is a legally valid nonconforming use under Title 17 that
2 it is “grandfathered” in from obtaining an operational permit under Title 10.25.090.

3 Specifically, the *Rhod-A-Zalea* Supreme Court first began by explaining that a
4 nonconforming use is a “use” which lawfully existed prior to the enactment of a zoning
5 ordinance, and which is maintained after the effective date of the ordinance, although it
6 does not comply with the zoning restrictions applicable to the district in which it is situated.
7 *Id.* at *6. The right to continue a nonconforming use despite a zoning ordinance which
8 prohibits such a use in the area is sometimes referred to as a “protected” or “vested” right.
9 *Id.* This right, however, “only refers to the right not to have the use *immediately terminated*
10 in the face of a zoning ordinance which prohibits the use.” *Id.* (citing 1 Robert M.
11 Anderson, *American Law of Zoning* §6.1; Richard L. Settle, *Washington Land Use and*
12 *Environmental Law and Practice* § 2.7(d) (1983)). Washington’s legislature has “deferred
13 to local governments to seek solutions to the nonconforming use problem according to
14 local circumstances.” *Id.* Thus, “local governments have the authority to preserve, regulate
15 and even, within constitutional limitations, terminate nonconforming uses.” *Id.* at *8.

16 In *Rhod-A-Zalea*, the defendant argued that nonconforming uses were not subject to
17 any “police power regulations” including health and safety regulations, enacted after the
18 existence of their nonconforming use’s creation. The Washington Supreme Court rejected
19 this argument, holding that the defendant’s nonconforming use status was subject to the
20 subsequently enacted reasonable police power regulations. The court quoted *The Law of*
21 *Zoning and Planning* §51A.02 in explaining its analysis:

22 “[a] lawful existing nonconforming use or structure may continue to be
23 operated by virtue of the protection afforded by statutory or ordinance
24 provisions or by constitutional vested rights doctrines. However, this
25 protection is limited. Nonconforming uses generally are held to be subject to
26 later **police power regulations imposed by statute or local ordinances**
regulating the manner or operation of use. These regulatory restrictions
often take the form of licensing or special permit requirements.”

27 *Id.* at *9 (quoting Arden H. Rathkopf, *The Law of Zoning and Planning* §51A.02)
28 (emphasis added).

1 Indeed, *Rhod-A-Zalea* made sure to note that only where complying with the
2 regulation would *immediately terminate* the nonconforming use have courts found the
3 regulation to be invalid as applied to the nonconforming use. *Id.* at *10 (“These rulings are
4 consistent with the principle that a nonconforming use has a ‘vested’ or ‘protected’ right to
5 continue without being subject to immediate termination.”). The Washington Supreme
6 Court in *Rhod-A-Zalea* cited to the United States Supreme Court decision of *Goldblatt v.*
7 *Town of Hempstead*, 369 U.S. 590, 82 S.Ct. 987 (1962) as authority for the proposition that
8 local governments have the authority to regulate the operations of a valid nonconforming
9 use. The *Rhod-A-Zalea* Court emphasized that the distinguishing factor between improper
10 and proper regulation is whether the local ordinance effectively terminates the
11 nonconforming use *immediately* or whether the local ordinance does not require the
12 immediate cessation of the use and is for safety and health purposes. *Id.* at *12 (citing
13 *Zoning Comm’n of Town of Groton v. Tarasevich*, 165 Conn. 86, 328 A.2d 682
14 (1973)(nonconforming use required to obtain a license); *City of Rutland v. Keiffer*, 124 Vt.
15 357, 205 A.2d 400 (1964)(nonconforming use subject to licensing requirements); *Lyman G.*
16 *Realty Corp. v. Gillroy*, 5 A.D.2d 520, 172 N.Y.S.2d 907 (1958)(nonconforming use
17 subject to ordinance requiring a permit for roof design)).

18 The *Rhod-A-Zalea* Court also held that an ordinance or other local regulation can
19 require a permit for operating something that is “intrinsic” to the nonconforming use:

20 “[J]ust because *Rhod-A-Zalea* was not required to obtain a general
21 conditional use permit (because it is a valid nonconforming use) does not
22 mean that it is exempt from all other specific permitting requirements, even
23 if they regulate some of the same operations.”⁵

24
25 ⁵ A similar analogy may be drawn to KRRC’s previous argument in *Kitsap Rifle*, which Division Two
26 rejected, regarding its claimed inability to have its noise levels constitute a nuisance due to its noise
27 exemption: “The Club argues that noise from the shooting range cannot constitute a nuisance as a matter of
28 law because noise regulations exempt shooting ranges. [...] But once again, the Club cites no authority for the
29 proposition that an exemption from noise ordinances affects the determination of whether noise constitutes a
30 nuisance. Because a nuisance can be found even if there is no violation of noise ordinances, the exemption
from such ordinances is immaterial.” *Kitsap Rifle*, 184 Wn.App. at 280. This analogy applies here, in that
because a KCC 10.25.090 operating permit violation can be found even if there is no violation of the zoning
laws under Title 17 for which it has an “exemption” through its nonconforming use status, the nonconforming
use status from Title 17 is immaterial to an operating permit violation under Title 10.

1 *Id.* at 17.

2 In sum, the Washington Supreme Court put to rest any question as to whether a
3 nonconforming use is exempt from later enacted police power regulations through local
4 ordinances.

5 Here, KRRC was established as a nonconforming use, along with three other
6 shooting ranges located in Kitsap County, in response to an Ordinance passed in 1993
7 which limited the location of shooting range areas (Ordinance 50-B-1993, i.e. KCC
8 10.24).⁶ Although the County grandfathered in KRRC for the “location” regulations in
9 1993, the County still has the authority to require nonconforming uses to follow reasonable
10 police power regulations imposed for health and safety reasons, like operating permits here.
11 *Rhod-A-Zalea*, 136 Wn.2d at 16-17. Therefore, KRRC is not “grandfathered” into the
12 operational permit requirement under KCC 10.25.090 due to its status as a nonconforming
13 use under Title 17.

14 **III. Whether This Court Has The Authority to Grant Injunctive Relief Under**
15 **KCC 10.25.090**

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17 KRRC argues that injunctive relief is not available for violations of a
18 nonconforming use under Title 10. Division Two in *Kitsap Rifle* already decided when
19 injunctive relief will be an available remedy for permit violations of a nonconforming use,
20 and decided such issue not in favor of KRRC’s present argument.

21 In *Kitsap Rifle*, the County had brought an action against the gun club for an
22 injunction, declaratory judgment, and nuisance abatement, alleging that the club
23 impermissibly expanded nonconforming use of property as a shooting range and violated
24 permit and nuisance ordinances. KRRC argued that the unpermitted development activities
25 could not cause its nonconforming use status to be terminated with an injunction. The trial
26 court concluded, in pertinent part, that (1) the shooting range was no longer a legal
27 nonconforming use because it failed to obtain the proper permits for the development work,
28

29 ⁶ See *Kitsap Rifle*, 184 Wn.App. at 262-263 (discussing the historical creation of KRRC’s “nonconforming
30 use” status).

1 and (2) the club's activities constituted nuisance per se. The trial court entered a permanent
2 injunction for both violations.

3 On appeal in *Kitsap Rifle*, KRRC did not argue that it was not subject to the
4 permitting requirements (like the way that it is here through its "grandfathering" argument),
5 and Division Two noted it was likely because it is well settled Washington law that
6 "nonconforming uses are subject to subsequently enacted reasonable police power
7 regulations unless the regulation would immediately terminate the nonconforming use."
8 *Kitsap Rifle*, 184 Wn.App. at 275 (citing *Rhod-A-Zalea*, 136 Wn.2d at 9). Rather, KRRC
9 argued that the trial court erred in selecting its remedy for the permit violations by
10 concluding that unpermitted development activities terminated KRRC's legal
11 nonconforming use of the property as a shooting range. As a result, KRRC argued that the
12 trial court was wrong in issuing an injunction shutting down the shooting range until
13 KRRC obtained a conditional use permit. The Court of Appeals Division Two agreed, and
14 held that the termination of KRRC's nonconforming use was not an appropriate remedy for
15 its permit violations. Instead, Division Two held that the proper remedy should have been
16 for the trial court to specifically address the violations while allowing the nonconforming
17 use status to continue.

18 Division Two found that the ordinance KCC 17.460.020 did not allow termination
19 of KRRC's operation as a shooting range because (1) KRRC's unlawful permitting
20 violations did not make the otherwise lawful shooting range unlawful, which is the
21 prerequisite for a nonconforming use to discontinue under KCC 17.460.020; (2) Title 17
22 did not provide for termination of an existing nonconforming use based on a code violation
23 and did not mention permanent injunctions as an express remedial option;⁷ and (3) having a
24 permitting violation terminate a nonconforming use status would eviscerate the very
25 protection provided by a legal nonconforming use, which is to allow them to continue.

26
27 ⁷ Instead, *Kitsap Rifle* held that other code provisions provided remedies for the specific permitting violations
28 at issue in that case: KCC 12.32 (Title 12 - Storm Water Drainage; Chapter 32 - Enforcement; Section .010 -
29 Violations of this Title 12; Section .040 - Stop Work Orders [for violations of Title 12]; Section .050 -
30 Cumulative Civil Penalty [for violations of Title 12]); KCC 19.100.165 (Title 19 - Critical Areas Ordinance;
Chapter 100 - Introduction and Approval Procedure; Section .165 - Enforcement [of Title 19]). See *Id.* at
301. These provisions would not be applicable in the case at bar, however, because those remedies are for
violations under Title 12 and Title 19, and here the violations occurred under Title 10.

1 Thus, the Court of Appeals vacated the injunction because it was based on an incorrect
2 conclusion that the nonconforming use was terminated. The injunction for the public
3 nuisance, however, was kept in place because “the trial court had [express] legal authority
4 to enter an injunction designed to abate a public nuisance under [...] KCC 17.530.030
5 [regarding enforcement of nuisance violations].”⁸ *Id.* at 302.

6 Here, the facts and law are very distinguishable from what Pierce County heard
7 before it and what Division Two already decided regarding imposing injunctive relief for
8 nonconforming uses that violate County Code provisions.

9 First, KRRC is arguing that it is not subject to the permitting requirements because
10 it is “grandfathered in,” which is exactly what it did not argue in the *Kitsap Rifle* matter
11 (there, KRRC was merely arguing that its permitting violations could not terminate its
12 nonconforming use status). KRRC’s argument that it is not subject to KCC 10.25 operating
13 permit requirement has already been rebuffed by *Rhod-A-Zalea*, wherein the Supreme
14 Court held that nonconforming uses are still subject to subsequently enacted reasonable
15 police power regulations so long as the subsequent laws do not immediately terminate the
16 nonconforming use.

17 Second, here we are not dealing with terminating the status of a nonconforming use,
18 so *Kitsap Rifle’s* application of Title 17 does not apply. Whereas in *Kitsap Rifle*, where the
19 injunction was imposed due to the trial court finding the nonconforming use was no longer
20 lawful due to permit violations and thus the nonconforming use could no longer continue,
21 here KCC 10.25 expressly provides that:

22 “This operating permit is not intended to alter the legal nonconforming
23 use status and rights of existing ranges, which are governed by Title 17
24 and the common law....”

25 KCC 10.25.090(1) (emphasis added). Thus, a permitting violation under KCC 10.25.090
26 and injunction that comes thereafter is not intended to be interpreted as “terminating” the
27 “nonconforming use status” under Title 17.

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29 _____
30 ⁸ This provision regarding enforcement of remedying public nuisances expressly allowed for injunctions.

1 Third, *Rhod-A-Zalea* allows for reasonable police power regulation through KCC
2 10.25, and it provides for a 90 day window of time prior to when enforcement will occur.
3 Title 10 is titled “Peace, Safety and Morals,” which clearly implies that the rules and
4 regulations promulgated under it are pursuant to the local authorities’ reasonable police
5 powers. KCC 10.25.090(2) states in relevant part:

6 “The owner or operator of an established shooting facility in active use on
7 the effective date of the ordinance codified in this article shall apply for the
8 initial facility operating permit **not later than ninety days** after the
9 effective date of the ordinance codified in this article.”

10 KCC 10.25.090(2) (emphasis added). Thus, the ordinance, enacted for safety purposes,
11 provides a buffer period of 90 days’ time for a shooting range to apply for an operating
12 permit before the defendant will be subject to code enforcement. This is a reasonable
13 exercise of police power regulation.⁹

14 Fourth, the ordinance expressly provides for injunctive relief as a remedial method
15 of code enforcement:

16 “Failure to obtain a range operational permit will result in closure of the
17 range until such time as a permit is obtained. Ranges that operate without a
18 permit are subject to **code compliance enforcement, including but not**
19 **limited to injunctive relief.**”

20 KCC 10.25.090(1) (emphasis added). This is directly opposite from Title 17 that *Kitsap*
21 *Rifle* interpreted, which had only allowed for “civil penalties.” Rather, KCC 10.25.090 is
22 similar to the injunction upheld by the *Kitsap Rifle* court for the public nuisance, because
23 KCC 17.530.030 expressly provided for a mandatory injunction for nuisances.

24 This Court has the authority under KCC 10.25.090 to grant injunctive relief for
25 operating permit violations. Therefore, this Court may proceed with deciding the merits of
26 this Motion.

27
28
29 ⁹ This also means that, assuming *arguendo* that the ordinance were interpreted as terminating the status of the
30 nonconforming use, despite the express legislative intent not to, it does not operate as an “immediate
termination,” under *Rhod-A-Zalea* due to the 90 day period, thus making it still legally sound.

1
2 **IV. Whether the Plaintiff Has Met Its Burden In Establishing the Requisite**
3 **Elements for Injunctive Relief**

4
5 Any decision granting an injunction and the grounds upon which it is made will be
6 reviewed for an abuse of discretion. *Nw. Props. Brokers Network, Inc. v. Early Dawn*
7 *Estates Homeowner's Ass'n*, 173 Wash.App. 778, 789, 295 P.3d 314 (2013).¹⁰ A party
8 seeking preliminary injunctive relief must establish (1) a clear legal or equitable right, (2) a
9 well-grounded fear of immediate invasion of that right, and (3) that the acts complained of
10 either have or will result in actual and substantial injury. *San Juan County v. No New Gas*
11 *Tax*, 160 Wn.2d 141, 157 P.3d 831 (2007).

12 A party can establish the first element, a clear legal or equitable right, by showing
13 that it is likely to prevail on the merits. *Id.* at 154. Generally, in order to establish the third
14 element it is not enough to show the violation of a statute. *King County ex rel. Sowers v.*
15 *Chisman*, 33 Wn.App. 809, 818, 658 P.2d 1256 (1983). If an ordinance specifically
16 provides for injunctive relief against violators, however, Washington holds that this
17 indicates a decision by the legislative body that the regulated behavior warrants enjoining
18 and thus the violation itself is an injury to the community, satisfying the third element. *Id.*
19 at 819. It is not the court's role to interfere with such legislative decision. *Id.*

20 Here, Kitsap County has a likelihood of prevailing on the merits. KCC 10.25.090
21 requires that all new and existing shooting facilities obtain an operating permit. KCC
22 10.25.090(2) requires that this permit application be submitted within 90 days of the
23 effective date of the ordinance, which was on December 22, 2014. This 90 day window
24 came to a close on March 23, 2015 without KRRC applying. Additionally, KCC
25 10.25.090(1) expressly allows for the County to enforce the code by specifically seeking

26
27 ¹⁰Although whether the termination of a property's nonconforming use is an appropriate remedy for unlawful
28 uses of that property is a question of law, which is reviewed de novo (*See King County, DDES*, 177 Wash.2d
29 at 643, 305 P.3d 240), as KCC 10.25.090(1) clearly states, the failure to obtain an operating permit does not
30 affect the status of a nonconforming use. Therefore, the injunctive relief provided for under KCC
10.25.090(1) for failure to obtain an operating permit is not a "termination" of the nonconforming use status,
and thus granting injunctive relief will be reviewed for abuse of discretion.

1 injunctive relief in the event that shooting ranges continue to operate without a permit after
2 the 90 day reprieve period. Thus, Kitsap County has a high likelihood of achieving the
3 relief it is requesting because KRRC is in violation of the operating permit requirements.
4 Kitsap County's legal right is clear.

5 Second, Kitsap County does have a well-grounded fear of immediate invasion of
6 this right that it was given under KCC 10.25.090(1), because there is sufficient evidence
7 that KRRC has refused to obtain an operating permit and will continue to do so, despite
8 notice and requests to do otherwise.

9 Third, KRRC's failure to obtain an operating permit will result in actual and
10 substantial injury to the County because KCC 10.25.090(1) specifically provides for
11 injunctive relief against violators. Such an express remedial provision was held in *Chisman*
12 to be indicative that the legislative body found that an operating permit violation, in and of
13 itself, satisfies the third element for preliminary injunctive relief.

14 **ORDER**

15 The Plaintiff has met its burden of establishing that a preliminary injunction is
16 appropriate here.

17 It is hereby

18 **ORDERED** that the Plaintiff's Motion for Preliminary Injunction is **GRANTED**,
19 and that the Plaintiff shall draft proposed Findings of Fact, Conclusions of Law and Order
20 to be presented to this Court on its Departmental Calendar on April 24, 2015 at 1:30 p.m.
21 This scheduled hearing is for entry of the above referenced documents only and not for
22 further argument or presentations.

23
24 Dated: This 17th day of April, 2015.

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29 JUDGE ROOF
30

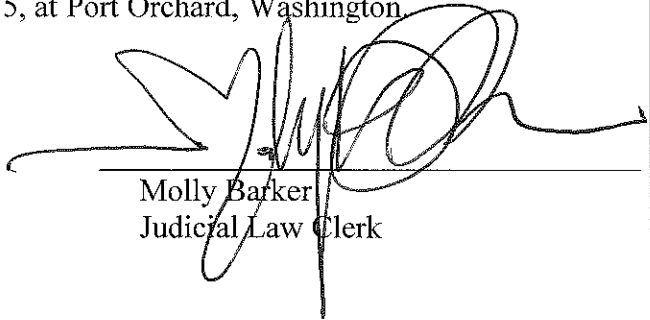
CERTIFICATE OF SERVICE

I, Molly Barker, certify under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above entitled action, and competent to be a witness herein.

Today, I caused a copy of the foregoing document to be served in the manner noted on the following:

Christine Palmer Kitsap County Prosecutors Office MS 35A 614 Division St Port Orchard, WA 98366-4614	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Via U.S. Mail Via Fax: Via Hand Delivery Via Interdepartmental Mail
Laura Zippel Kitsap County Prosecutor's Office MS 35A 614 Division St Port Orchard, WA 98366-4614	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Via U.S. Mail Via Fax: Via Hand Delivery Via Interdepartmental Mail
Bruce Danielson Danielson Law Office PS 1001 4th Ave Ste 3200 Seattle, WA 98154-1003	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Via U.S. Mail Via Fax: Via Hand Delivery Via Interdepartmental Mail

DATED this 7 day of April 2015, at Port Orchard, Washington


Molly Barker
Judicial Law Clerk