

August 24, 2018

Note: The staff report provided to the Board of County Commissioners on August 23, 2018 has been revised as indicated below. The revised staff report was provided to the Board of County Commissioners on August 24, 2018. The draft ordinance provided to the Board of County Commissioners on August 23, 2018 was not revised. Philip C. Hunsucker, Jefferson County Chief Civil Deputy Prosecuting Attorney.



**STAFF REPORT ON THE DRAFT COMMERCIAL
SHOOTING FACILITY ORDINANCE PREPARED
WITH INPUT FROM THE COMMERCIAL
SHOOTING FACILITY REVIEW COMMITTEE**

August 23, 2018

**Mark McCauley, Director of Central Services
and Review Committee Chair**

**Michelle Farfan,
Associate Planner,
Department of Community Development**

**Philip C. Hunsucker,
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INTRODUCTION

This staff report presents the work of staff who worked with the Commercial Shooting Facility Ordinance Review Committee (Review Committee) to provide the Jefferson County Board of County Commissioners (BoCC) with a draft commercial shooting facility ordinance. To say the least, the Review Committee and staff were faced with a difficult task—balancing many factors required by Ordinance No. [05-1218-17](#), an Ordinance Establishing a Moratorium on Commercial Shooting Facilities in Unincorporated Areas of Jefferson County (Moratorium) and the limitations in the law on regulation of the shooting and noise related to shooting in the State of Washington, to develop a draft ordinance that satisfies the requirements in the Moratorium.

The draft ordinance is attached as [Appendix 1](#) and adheres to the BoCC’s findings in the Moratorium that:

- “[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.”
- “[C]ommercial shooting facilities benefit Jefferson County by providing its residents and law enforcement the opportunity to learn firearm safety, to practice shooting, and to participate in amateur recreational firearm sports in a safe, controlled setting.”
- “[U]niform requirements for the establishment and operation of all commercial shooting facilities in unincorporated Jefferson County would provide assurance of the safe conduct of recreational and educational shooting activities in Jefferson County.”

The draft ordinance has been informed by the experience and concerns of the Review Committee and their active participation for many weeks—all in a public forum, where each meeting was preserved on video that the public can readily review on Jefferson County’s (the County) [AVCapture All system](#). The draft ordinance probably will not please everyone. Some probably will say it goes too far and some probably will say it does not go far enough in the regulation of existing and new commercial shooting facilities. To be sure, the draft ordinance is not perfect—documents borne of balancing interests seldom achieve perfection. However, the draft ordinance being submitted with this staff report represents a well-crafted and balanced regulation of commercial shooting facilities.

The draft ordinance is designed to withstand a legal challenge for at least the following reasons:

- There was an inclusive and open process designed by the BoCC in the Moratorium;
- The draft ordinance is not directly regulating any particular facility, person or project, despite the claims of some and the hopes of others; and,
- Staff worked hard to rely on the BoCC’s substantial health and safety powers as the basis for the draft ordinance, as Kitsap County did in its successful defense of its own shooting range ordinance.

The draft ordinance relies on existing Jefferson County Code (JCC) in the areas of land use and nuisance, without repeating requirements in existing code or attempting to change it. However, this staff report also provides recommendations for possible changes to Chapter [8.70](#) JCC (Noise Control) or [Title 18](#) JCC (Unified Development Code).

THE MORATORIUM ORDINANCE

Draft Ordinance Requested

The Moratorium was established to allow for the development of:

[A]n ordinance for the permitting, development and operation of commercial shooting facilities that: (1) provides for and promotes safety by establishing a permitting procedure and rules for the siting, design and operation of commercial shooting range facilities that safeguards participants, spectators, neighboring properties and the public; (2) does not prohibit or expressly regulate the discharge of firearms; (3) involves measures designed to make the discharge of firearms safe; (4) protects the environment; (5) ensures compatibility with neighboring land use; and, (6) promotes the continued availability of shooting facilities for firearm education, practice in the safe use of firearms, and recreational firearm sports.

Moratorium, Section 1.

Establishment of the Review Committee

The Moratorium created a review committee to work with staff to develop a draft ordinance for commercial shooting facilities in unincorporated areas of Jefferson County. Section 6.5 of the Moratorium states:

The BoCC shall establish a Review Committee to advise the County as the County develops a draft ordinance. The Review Committee shall consist of: (a) the director of the department of community development or the director's designee (chair); (b) Jefferson County Sheriff or the Sheriff's designee; (c) Jefferson County Director of Environmental Health or the director's designee; (d) a representative of each current commercial shooting facility in unincorporated Jefferson County; (e) a resident or property owner from each of the three [districts](#)¹ of Jefferson County; (f) one representative of tribal interests, if interested; and (g) one at large Jefferson County resident or property owner appointed by the BoCC. The consultant hired pursuant to Section 6.3 and the Jefferson County Prosecuting Attorney (or designee) shall be ex officio members 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.

¹ The boundaries of the Jefferson County Districts can be viewed in the County's GIS Portal at: <https://jeffcowa.maps.arcgis.com/apps/MapSeries/index.html?appid=24535640c1ba4d33bdce3c1fac7a5df4>.

The Review Committee included:

- J. Thomas (Tom) Richardson, representing [District #1](#).
- Janet Welch, representing [District #2](#).
- Riley Parker, representing [District #3](#) and Tarboo Ridge Coalition² member.
- Joe D'Amico, as land owner in Jefferson County, who also has experience with commercial shooting facilities representing Fort Discovery, Inc.³ and Security Services Northwest, Inc.,⁴ At Large Member.
- John Minor, representing the Jefferson County Sportsmen's Association⁵ Shooting Range, the existing commercial shooting facility.
- Tim Cullinan, Point No Point Treaty Council,⁶ Tribal Representative.
- Art Frank, Undersheriff, Sheriff's designee.
- Stuart Whitford, Environmental Health Director.
- Mark McCauley, Central Services Director, the Community Development Department's designee and chair.
- Philip Hunsucker, Chief Civil Deputy Prosecuting Attorney, Prosecuting Attorney's designee, ex-officio member.
- Clark Vargas, C. Vargas & Associates, LTD,⁷ Consultant, ex-officio member.
- Michelle Farfan, Department of Community Development, supported the work of the Committee as a Staff Resource.

The Review Committee included persons with diverse viewpoints about regulation of shooting ranges in the County. The Review Committee sometimes engaged in spirited discussions, but the discussions were always respectful of opposing viewpoints, even when there were areas of disagreement.

Every person listed above participated actively and provided invaluable input to the development of the draft ordinance.

The Review Committee has a [web page](#)⁸ where information on the Review Committee can be found, including agendas and documents considered by the Review Committee.

The Review Committee's work satisfied well the BoCC's finding in the Moratorium that "resident and property owner input and careful analysis of the uniform requirements for

² <https://tarbooridgecoalition.org/>.

³ <https://www.fortdiscoveryusa.com/>.

⁴ <https://www.ssnwhq.com/>.

⁵ <http://www.jeffersoncountysportsmen.org/>. ("The Jefferson County Sportsmen's Association (JCSA) operates a shooting range near the beautiful Victorian seaport town of Port Townsend, Washington. We're located on a 43-acre parcel at 112 Gun Club Road just south of the city and operate by special license with Jefferson County. The gun club has been providing safe shooting sport activities since 1962 in the same location including Trap Shooting, Pistol, Rifle and Archery.")

⁶ <https://www.pnptc.org/index.html>.

⁷ <http://www.cvaltd.com/>.

⁸ <https://www.co.jefferson.wa.us/1291/Commercial-Shooting-Facility-Review-Comm>.

commercial shooting facilities should be obtained before legislation imposing uniform requirements on commercial shooting facilities can be adopted by the BoCC.”

Deadline for Submission of Product to the BoCC

Section 6.6 of the Moratorium states: “The draft shooting facility ordinance for existing and new commercial shooting facilities within unincorporated Jefferson County shall be forwarded to the Planning Commission if within its jurisdiction, or to the Board of County Commissioners within 120 days of the Review Committee’s establishment.” The Review Committee was established on April 25, 2018, so the deadline for submission of the draft ordinance is August 23, 2018.

The draft ordinance does not include land use provisions, so the Planning Commission’s jurisdiction for the draft ordinance is not implicated. However, staff have made recommendations below for modifying [Title 18 JCC](#) (Uniform Development Code), which the BoCC may wish to transmit to the Planning Commission.

THE EXISTING REGULATORY FRAMEWORK

Regulation of Shooting in Washington

The [Washington Constitution](#), Article XI, Section 11, confers upon county legislative authorities the police power to adopt regulations necessary to protect the health, safety, and well-being of its residents.

RCW [9.41.290](#) provides that the State of Washington fully occupies and preempts the entire field of firearms regulations within its boundaries, and counties may only enact ordinances as expressly authorized by RCW [9.41.300](#). However, cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law, as in RCW [9.41.300](#), and are consistent with this chapter.

RCW [36.32.120\(7\)](#) provides that the county legislative authorities shall make and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law.

RCW [9.41.300\(2\)\(a\)](#) provides an exception to RCW [9.41.290](#) under which a county may, by ordinance, restrict the discharge of firearms in any portion of its jurisdiction where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized so long as such ordinance shall not abridge the right of the individual guaranteed by Article I, section 24 of the [Washington Constitution](#) to bear arms in defense of self or others.

The Kitsap County Example

In 2014, Kitsap County Passed Ordinance No. 515-2014 which added Article 2 to Chapter 10.25 of the Kitsap County Code (KCC).

The purpose of Article 2 was to: “provide for and promote the *safety* of the general public by establishing a permitting procedure and rules for the development and operation of shooting range facilities. The shooting range standards adopted herein are *intended to protect and safeguard*

participants, spectators, neighboring properties and the public, while promoting the continued availability of shooting ranges for firearm *education, practice in the safe use of firearms*, and recreational firearm sports.” KCC 10.25.060.

In 2017, the Court of Appeal upheld Article 2 of Chapter 10.25 KCC. *Kitsap Cty. v. Kitsap Rifle & Revolver Club*, [1 Wash.App.2d 930](#), 405 P.3d 1026 (Wash. Ct. App. 2017), *review denied*, 190 Wash. 2d 1015, 415 P.3d 1198 (2018). [Below are excerpts from the published opinion of the Court of Appeal:](#)

- “Several factors support the conclusion that RCW 9.41.290 does not preempt KCC 10.25. First, RCW 9.41.290 does not make any reference to the regulation of shooting facilities. In addition, nothing in chapter 9.41 RCW pertains to shooting facilities. The multiple provisions in that chapter 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.***” 1 Wash.App.2d at 406 (emphasis added).
- “Second, unlike Article 1 of KCC 10.25, Article 2 does not prohibit or expressly regulate the discharge of firearms. Instead, the ordinance regulates ‘shooting facilities.’ KCC 10.25.060 states that the purpose of KCC 10.25 is to ‘provide for and promote the safety of the general public by establishing a permitting procedure and rules for the development and operation of shooting range facilities.’” *Id.* at 406-07 (emphasis added).
- “Third, 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.’” *Id.* at 407 (emphasis added).
- “Fourth, although the Club claims that the scope of RCW 9.41.290 is broad, the Supreme Court cases addressing RCW 9.41.290 have limited the scope of preemption.” *Id.* at 407-08 (emphasis added).

Two Types of Noise Regulations

There are two types of noise regulations:

1. Regulation of Noise Based on Maximum Noise Levels. Example: JCC [8.70.050\(1\)](#):

All of the following are defined as “public nuisance noises”:

1. Sound that originates from the property that exceeds the noise levels permitted by Chapter 173-60 WAC (Maximum Environmental Noise Levels), as that chapter now exists or as it may hereafter be amended.

WAC 173-60-040

Maximum permissible environmental noise levels.

(1) No person shall cause or permit noise to intrude into the property of another person which noise exceeds the maximum permissible noise levels set forth below in this section.

(2)(a) The noise limitations established are as set forth in the following table after any applicable adjustments provided for herein are applied.

EDNA OF NOISE SOURCE	EDNA OF RECEIVING PROPERTY		
	Class A	Class B	Class C
CLASS A	55 dBA	57 dBA	60 dBA
CLASS B	57	60	65
CLASS C	60	65	70

(b) Between the hours of 10:00 p.m. and 7:00 a.m. the noise limitations of the foregoing table shall be reduced by 10 dBA for receiving property within Class A EDNAs.

(c) At any hour of the day or night the applicable noise limitations in (a) and (b) above may be exceeded for any receiving property by no more than:

- (i) 5 dBA for a total of 15 minutes in any one-hour period; or
- (ii) 10 dBA for a total of 5 minutes in any one-hour period; or
- (iii) 15 dBA for a total of 1.5 minutes in any one-hour period.

[Order 74-32, § 173-60-040, filed 4/22/75, effective 9/1/75.]

2. Regulation of Noise Based on Nuisance. Example: JCC [8.70.050\(2\)-\(11\)](#):

All of the following are defined as “public nuisance noises”:

(4) Between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Thursday (example: 10:00 p.m. Sunday to 7:00 a.m. Monday) or between 11:00 p.m. and 7:00 a.m. on Friday or Saturday (example: 11:00 p.m. Friday to 7:00 a.m. Saturday), any sound made by persons or by use of a musical instrument, whistle, sound amplifier, portable audio equipment, or other device, electronic or not, capable of producing or reproducing sound, which sound emanates frequently, repetitively, or continuously from any social gathering, building, structure, or property, such as sound originating from a band session, tavern or bar operation, an indoor or outdoor social gathering, and where law enforcement determines the volume of such sound is such that it can be clearly heard by a person of normal hearing at a location which is (a) 150 feet or more from the source of the sound and (b) not located on the property containing the source of the sound;

(5) Sound from portable audio equipment, including that found in or as part of a motor vehicle audio system, while traveling or parked in public streets, or in park areas, residential and commercial zones, or any area where residences, schools, human service facilities, or commercial establishments are in obvious proximity to the source of the sound, and where the volume of such audio equipment is such that law enforcement determines it can be clearly heard by a person of normal hearing at a distance of 150 feet or more from the source of the sound; provided, however, that this section shall not apply to persons operating portable audio equipment within a public park pursuant to an event sanctioned by a responsible authority under valid permit or license;

(8) Sound from the discharge or use of any explosive device between the hours of 10:00 p.m. and 7:00 a.m.;

(11) Sound which law enforcement determines unreasonably disturbs or interferes with the peace, comfort, and repose of one or more reasonable persons of normal hearing, regardless of the distance between the source of the public nuisance noise and the person(s) being unreasonably disturbed or annoyed. Under this subsection, a sound meter reading is not necessary to establish that a public nuisance noise exists;

(12) Any other noise that is otherwise prohibited by state or federal law.

WAC 173-60-060—Nuisance Regulations Not Prohibited

Nuisance regulations not prohibited.

Nothing in this chapter or the exemptions provided herein, shall be construed as preventing local government from regulating noise from any source as a nuisance. Local resolutions, ordinances, rules or regulations regulating noise on such a basis shall not be deemed inconsistent with this chapter by the department.

“Exempt Noise” Related to Shooting

RCW [70.107.080](#) states:

Exemptions.

The [Department of Ecology] shall, in the exercise of rule-making power under this chapter, provide exemptions or specially limited regulations relating to recreational shooting and emergency or law enforcement equipment where appropriate in the interests of public safety.

The [Department of Ecology] in the development of rules under this chapter, shall consult and take into consideration the land use policies and programs of local government.

JCC [8.70.060](#) states:

Exempt noises.

Sounds originating from the sources listed here do not constitute a violation of this chapter, are not “public nuisance noises” and are defined as an “exempt noise” regardless of where or when they occur, unless otherwise noted.

(18) *The lawful discharge of firearms;*

(19) Sounds exempted under *Chapter 173-60 WAC*, as that chapter now exists or as it may hereafter be amended.

(Emphasis added.)

Kitsap County v. Kitsap Rifle and Revolver Club, 184 Wash. App. 252, 280 (2014) states:

Sounds created by firearm discharges on authorized shooting ranges are exempt from KCC 10.28.040 (maximum permissible environmental noise levels) and KCC 10.28.145 (public disturbance noises) between the hours of 7:00 AM and 10:00 PM. KCC 10.28.050. The Washington Department of Ecology also exempts sounds created by firearms discharged on authorized shooting ranges from its maximum noise level regulations. RCW [70.107.080](#); WAC [173-60-050\(1\)\(b\)](#). The Code broadly defines “firearm” as “any weapon or device by whatever name known which will or is designed to expel a projectile by the action of an explosion,” including rifles, pistols, shotguns, and machine guns. KCC 10.24.080(1). As a result, the noise from the weapons being fired at the Club’s range falls within the noise exemption provisions of KCC 10.28.050, and thus *is exempt from the maximum permissible environmental noise levels and public disturbance noise restrictions*.

Adoption of Local Noise Ordinances

- WAC [173-60-110\(2\)](#): “No ordinance or resolution of any local government which imposes noise control requirements differing from those adopted by the department shall be effective unless and until approved by the director [of the Department of Ecology].”
- RCW [70.107.060](#): “Noise limiting requirements of local government which differ from those adopted or controlled by the department shall be invalid unless first approved by the [Department of Ecology]. If the [Department of Ecology] fails to approve or disapprove standards submitted by local governmental jurisdictions within ninety days of submittal, such standards shall be deemed approved.”

JCC Exempts the Lawful Discharge of Firearms from its Noise Ordinance

In 2014, Jefferson County adopted Chapter [8.70](#) JCC (Noise Control), amidst significant public comment. The noise ordinance first proposed by staff was significantly revised after public comment and testimony was received.

Currently, JCC [8.70.060\(18\)](#) exempts from its regulation: “*The lawful discharge of firearms.*” (Emphasis added.)

Current Code on Shooting Ranges in Title 18 JCC (UDC)

JCC [18.20.350\(8\)](#) states:

Outdoor Shooting Ranges. Outdoor shooting ranges are subject to the following standards:

- (a) They shall be located, designed, constructed and operated to prevent the likelihood of discharge of ammunition beyond the boundaries of the parcel where they occur;
- (b) The National Rifle Association’s Range Manual shall be consulted and used in the development and operation of ranges; Articles 1, 2, and 3 of the safety recommendations for outdoor shooting ranges shall be used as minimum guidelines in the design and construction of shooting ranges;
- (c) Warning and trespass signs advising of the range operation shall be placed on the perimeter of the property at intervals no greater than 50 feet;
- (d) The shooting areas shall be surrounded by an eight-foot-high noise barrier in the form of an earth berm or wall, or be located in a minimal eight-foot deep depression;
- (e) The minimum lot size for an outdoor rifle, trap, skeet or pistol range used by an organization shall be 10 acres. For an outdoor archery range used by an organization, minimum lot size shall be five acres;
- (f) No structure or shooting areas associated with a shooting range shall be located closer than 100 feet to any lot line;
- (g) A minimum location of 500 feet is required from any occupied dwelling other than the dwelling of the owner;
- (h) All shooting areas must be completely fenced; and
- (i) In the consideration of an application for permit, the approval authority shall take into account both safety and noise factors and may prescribe additional conditions with respect thereto.

This code provision relates to “small-scale recreational and tourist uses,” discussed in JCC [18.20.350\(1\)](#):

Small-scale recreational and tourist uses rely on a rural location and setting and provide opportunities to diversify the economy of rural Jefferson County by utilizing the county’s abundant recreational opportunities and scenic and natural

amenities in an environmentally sensitive manner consistent with the rural character of the county. Upon approval pursuant to this code, these types of uses may be conducted in the land use districts specified in Table 3-1 in JCC [18.15.040](#) and as provided for in small-scale recreation and tourist (SRT) overlay districts under JCC [18.15.572](#).

Table 3-1 authorizes outdoor shooting ranges under a conditional use permit in Commercial Forrest (CF), Rural Forest (RF) and Inholding Forest (IF) zones only.

JCC [18.10.190 S](#) has the following definitions:

“Small-scale” means of a size or intensity which has minimal impacts on the surrounding area and which makes minimal demands on the existing infrastructure.

“Small-scale recreation or tourist uses” means those isolated uses which are leisure or recreational in nature; are reliant upon a rural setting or location; do not include any new residential development beyond that allowed in the underlying land use district; and otherwise meet the performance standards in JCC [18.20.350](#). See RCW [36.70A.070](#)(5)(d)(ii).

RCW [36.70A.070](#)(5)(d)(ii) refers to the Rural Element of the Comprehensive Plan and states:

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl.

There is no provision in Title 18 JCC for indoor shooting ranges.

THE WORK OF THE REVIEW COMMITTEE

The Work Was Informed by Section 6.6 of the Moratorium

Section 6.6 of the Moratorium guided the work of the Review Committee:

The Review Committee shall: (a) study the safety, environmental and land use impacts of commercial shooting facilities and reasonable measures to address those impacts, including among other measures whether there should be an amendment to the No Shooting Areas Ordinance, Chapter [8.50](#) JCC to allow indoor commercial shooting facilities in No Shooting Areas; and, (b) shall provide input to the County as the County generates and recommends a draft ordinance.

The Review Committee diligently followed this direction from the BoCC.

Meetings

The Review Committee met fifteen times, usually for 3 or more hours, in the BoCC's Chambers on May 9, 2018, May 16, 2018, May 23, 2018, June 6, 2018, June 13, 2018, June 20, 2018, June 28, 2018, July 11, 2018, July 19, 2018, July 25, 2018, August 1, 2018, August 8, 2018, August 15, 2018, August 17, 2018 and August 23, 2018. All the meetings of the Review Committee can be viewed on the County's [AVCapture All system](#).

Tour of the Sportsmen's Association Shooting Range

The Review Committee toured the JCSA commercial shooting facility on May 16, 2018.

Topics Discussed

May 9, 2018

- Open Public Meeting Act and Public Records Act compliance
- Mission of the Review Committee
- Potential Impacts of Commercial Shooting Facilities

May 16, 2018

Potential Impacts of Commercial Shooting Facilities, Including:

- Indoor Shooting Facility Potential Impacts, including lead exposure
- Outdoor Shooting Facility Potential Impacts, including:
 - Tribal treaty rights
 - Ground water quality
 - Surface water quality

- Aquifer recharge areas
- Wetlands
- Critical areas
- Lead exposure

May 23, 2018

- Continued Discussion of Potential Impacts of Commercial Shooting Facilities:
 - Public Health/Safety.
 - Environmental.
 - Economic:
 - Property values
 - Jobs
 - Increased tax base:
 - Construction sales tax
 - Ongoing sales tax
 - New construction - property tax
 - Real Estate Excise Tax (REET)
 - Need for increased code enforcement
 - Quality of life
 - Tourism
- Methods for Identifying/Mitigating Impact of Commercial Shooting Facilities:
 - Public Health/Safety:
 - Stray bullets - outside the facility, neighbors. Mitigation: SEPA Checklist, License Agreement.
 - Patron safety. Mitigation: License Agreement
 - Lead exposure. Mitigation: SEPA Checklist, License Agreement.

- Long term noise exposure. Mitigation: SEPA Checklist, License Agreement.
- Licensed Range helps minimize random shooting in the County.
- Better trained shooters.
- Supervision. Mitigation: License Agreement.
- Emergency protocols. Mitigation: License Agreement.
- Light pollution. Mitigation: SEPA Checklist, License Agreement.
- Environmental:
 - Water quality. Mitigation; SEPA Checklist, License Agreement, state surface and ground water standards.
 - Soil contamination. Mitigation: SEPA Checklist, License Agreement, Model Toxics Control Act.
 - Air pollution - onsite and offsite. Mitigation: SEPA Checklist, License Agreement, ORCAA
 - Historic/cultural preservation. Mitigation: SEPA Checklist.
 - Light pollution. Mitigation: SEPA Checklist, License Agreement.
 - Noise. Mitigation: SEPA Checklist, License Agreement.
 - Traffic. Mitigation: SEPA Checklist, License Agreement, Public Works and or WSDOT.
 - Wildlife - endangered species. Mitigation: SEPA Checklist.
 - Adjacent uses - recreational facilities. Mitigation: SEPA Checklist.
- Economic
- Land use
- Operating Permits

June 6, 2018

- The key finding in the Moratorium “that uniform requirements for the establishment and operation of all commercial shooting facilities in unincorporated Jefferson County would provide assurance of the safe conduct of recreational and educational shooting activities in Jefferson County”

- Review and evaluation of the impact mitigation effectiveness of the Kitsap County Gun Range Ordinance, No. 515-2014.
- The Moratorium does *not* require that any proposed or adopted ordinance:
 - Require that only Jefferson County residents can use the facilities;
 - Prohibit tourists or other county residents from using the facilities;
 - Limit law enforcement use to only local County, City and Tribal officers;
 - Specifically exclude the “Military, Para-military, others;”
 - Require only amateur recreational firearm sports shooting;
 - Exclude “Professional Tactical Firearms” shooting; or,
 - Identify who the shooting facilities are for.

June 13, 2018

- Request for Progress Report to BoCC.
- Review draft commercial shooting facility ordinance prepared by county staff, based on the Kitsap County Gun Range Ordinance, No. 515-2014.
- Review draft partial commercial shooting facility ordinance prepared by Janet Welch, suggesting a more logical organization of the draft ordinance, than the other shooting range ordinances passed by other municipal entities.

June 20, 2018

- Review of proposed modified definitions in the current draft of the ordinance.
- Discussion of the 5-year renewal provision in the Kitsap County Gun Range Ordinance, No. 515-2014:
 - Is it fair?
 - Does it work for Jefferson County?
 - What is the alternative?
 - More regular inspections?
 - Regular monitoring including reporting of data by the CSF?
 - Other ideas?

June 28, 2018

Continued review of the draft ordinance, especially the operating permit requirement.

July 11, 2018

- Possible standards for the draft ordinance, including:
 1. The NRA Range Source Book published by the National Rifle Association ([2012](#) is the most recent version and the County has a hard copy);
 2. [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](#);
 3. [USEPA Region 2 in its 2005 publication entitled Best Management Practices for Outdoor Shooting Ranges](#);
 4. [WAC 296-62-075221](#) (limiting occupational exposures to lead);
 5. [Chapter 173-60 WAC](#) (maximum environmental noise levels) ; and,
 6. Chapter [8.70](#) JCC (Noise Control).
- Definitions or standards from the JCC, including:
 1. “Buffer zone” has the same meaning as in JCC [18.10.10 B](#), as it exists now or is hereafter amended, 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.
 2. “Critical areas” mean critical areas described in Chapter [18.22](#) JCC.
 3. “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](#).
 4. “Law enforcement officer” means “law enforcement” officer as defined in RCW [9.41.010\(12\)](#) and “qualified law enforcement officer” as defined in 18 U.S.C. [Section 928B\(c\)](#) as they now exist or are hereafter amended.
 5. “Person” means person as that term is defined in RCW [1.16.080](#) as it now exists or hereafter is amended.
 6. Legal nonconforming use status and rights of existing ranges: [Title 18](#) JCC.
 7. Expansion of shooting range uses which otherwise require approval pursuant to a conditional use permit or other land use permits: [Title 18](#) JCC.

8. Approval criteria for conditional use permits: [JCC 18.40.530](#).
- Limitations addressing the lack of intended impact on other provisions of law listed in the then current draft ordinance, including that the ordinance shall not be construed as:
 1. 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 Chapter [8.50](#) JCC (No Shooting Areas). Shooting ranges in such areas are expressly prohibited.
 2. Permitting the discharge of firearms, the ownership or possession of which is otherwise prohibited by law.
 3. Permitting the use or possession of a firearm by an individual who is otherwise prohibited by law from owning or possessing that firearm.
 4. Allowing or authorizing the discharge of firearms otherwise prohibited by state or federal law.
 5. Allowing the discharge of tracer or incendiary ammunition at any commercial shooting facility.
 6. Allowing or authorizing the discharge of a destructive device as that term is defined in 25 U.S.C. [Section 5845\(f\)](#) as it now exists or hereafter may be amended or any explosive as that term is defined in RCW [70.74.010\(5\)](#) as it now exists or hereafter may be amended.
 7. 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\(3\)](#).
 8. 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](#), as they now exists or hereafter may be amended, unless specifically authorized under RCW [9.41.190\(3\)](#).
 9. Permitting commercial shooting facility to maintain or create a public nuisance as defined in Chapter [7.48](#) RCW, JCC [5.10.050](#), JCC [8.20.140](#), JCC [8.30.020](#), JCC [8.55.070](#), Chapter [8.70](#) JCC, JCC [15.05.100](#), or [Title 18](#) JCC, as they now exist or hereafter may be amended.

10. 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.

11. Limiting a court of competent jurisdiction from ruling that a commercial shooting facility has been found to create a public nuisance, requiring additional noise, environmental or safety controls as a condition of continuing an operation of a commercial shooting facility.

Importantly, many of the items in this list are likely to be of concern to persons interested in this draft ordinance are covered elsewhere in the JCC or are the province of regulation by other federal or state agencies.

- Possible Structure and Contents of the Operating Permit Application.

July 19, 2018

- Further discussion of standards and limitations.
- Continue review, discussion and revision of the draft commercial shooting facility ordinance.

July 25, 2018

Review, discussion, and revision of next draft ordinance (version 6).

August 1, 2018

Review, discussion, and revision of next draft ordinance (version 7).

August 8, 2018

- Review, discussion, and revision of next draft ordinance (version 9).
- Discussion of the statutes and ordinances on shooting and noise. A copy of the PowerPoint presentation used for discussion is at [Appendix 2](#).

August 15, 2018

Review, discussion, and revision of next draft ordinance (version 11).

August 17, 2018

Review, discussion, and revision of next draft ordinance (version 13).

Materials Reviewed by the Review Committee

The materials reviewed by the Review Committee included:

- The Moratorium
- Cowlitz County Shooting Ordinance
- Gig Harbor Shooting Ordinance
- Kitsap County Shooting Ordinance
- JCC Code Sections Dealing with Shooting Ranges
- JCC Land Use Table
- Jefferson County Zoning Map
- Jefferson County No Shooting Area Map
- Jefferson County SCSA License and Operating Agreement
- List of Government SCSA Users
- Aerial Photo - SCSA
- Chapter [8.50](#) JCC (No Shooting Areas)
- Chapter [8.70](#) JCC (Noise Control)
- Laidlaw et al. - Lead exposure at firing ranges - a review
- SEPA Checklist in WAC [197-11-960](#)
- The NRA Range Source Book published by the National Rifle Association (2012 is the most recent version and the County has a hard copy)
- 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
- USEPA Region 2 in its 2005 publication entitled Best Management Practices for Outdoor Shooting Ranges
- WAC [296-62-075221](#) (limiting occupational exposures to lead)
- Chapter [173-60](#) WAC (maximum environmental noise levels)

THE DRAFT ORDINANCE

Bases for the Ordinance

Kitsap County adopted a shooting range ordinance, Article 2, [Chapter 10.25](#) Kitsap County Code that recently was upheld at the court of appeal in *Kitsap Cty. v. Kitsap Rifle & Revolver Club*, 1 Wash.App.2d 393, 405 P.3d 1026 (Wash. Ct. App. 2017), *review denied*, 190 Wash. 2d 1015, 415 P.3d 1198 (2018). The Kitsap County Ordinance is attached as [Appendix 3](#).

According to the Kitsap County Ordinance [itself](#):

The purpose of this article is to provide for and promote the *safety* of the general public by establishing a permitting procedure and rules for the development and operation of shooting range facilities. The shooting range standards adopted herein are intended to *protect and safeguard* participants, spectators, neighboring properties and the public, while promoting the continued availability of shooting ranges for firearm education, practice in the safe use of firearms, and recreational firearm sports.

See Kitsap County Code Section [10.25.060](#) (emphasis added).

In developing its shooting range ordinance, Kitsap County avoided land use issues and focused on health and safety issues, because the state legislature has given counties broad authority to adopt regulations that promote health and safety. Generally, reasonable health and safety regulations have passed muster in the state and federal courts. Land use, on the other hand, is connected to property rights which have a higher level of protection under state and federal law.

Kitsap County’s choice proved wise because its shooting range ordinance was upheld on the basis of Kitsap County’s strong interest in public health and safety. KCC 10.25.070(21) defines “shooting facility” as a site having one or more shooting ranges, and KCC 10.25.070(22) defines “shooting range” as a place designated for the safe “discharge of firearms.” “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, KCC 10.25’s requirement that a shooting facility obtain an operating permit is an exercise of the County’s police power that is authorized under state law. *Kitsap Cty. v. Kitsap Rifle & Revolver Club*, 1 Wash.App.2d at 407. “And the required standards for shooting facilities primarily involve measures *designed to make the discharge of firearms safe*. KCC 10.25.090(4).” *Id.* (emphasis added.)

Drafting Principles

These are the main drafting principles followed in preparing the draft ordinance:

1. The ordinance should provide one standard for all commercial shooting facilities—existing and new. Reasons:
 - a. The Moratorium requires one standard. *See* Sections 1 and 7 (through the last “Whereas clause”).
 - b. Not doing so may result in a claim that an arbitrary and unfair competitive advantage is given to existing or new commercial shooting facilities.
2. The ordinance should require an operating permit issued pursuant to an application that is reviewed and certified by a professional shooting range designer. Reason: The County does not possess sufficient expertise in the siting and operation of commercial shooting ranges, as evidenced by its selection of a professional to assist the Review Committee. Notably, this was an approach used by Kitsap County in its shooting range ordinance.
3. The ordinance should adopt generally accepted BMPs for lead at commercial shooting ranges. Reason: The Moratorium requires environmental protection.
4. The ordinance should not regulate where other federal, state or local agencies already are responsible for that regulation. Reason: The County lacks the expertise and resources to enforce another agency’s regulation.
5. The ordinance should not repeat language already covered in other portions of the JCC. Reason: There is a great potential for inconsistency in repeating language from other

portions of the JCC, which would create the potential for application and enforcement difficulties.

6. There should be a hearing examiner review/appeal process. Reasons:
 - a. Takes politics out of decisions on the operating permit.
 - b. Reduces litigation risks.
7. The ordinance should not regulate land use. Reasons:
 - a. Consistent with Drafting Principle 1, there is a potential to create regulatory inconsistency.
 - b. Land use regulation in the JCC and the State Environmental Policy Act (SEPA) require significant protections related to siting a commercial shooting facility. In particular, the SEPA checklist mandated by state law and the JCC requires mitigation of noise for siting any facility. A copy of the SEPA checklist is attached as Appendix 4.
 - c. There is an unnecessary risk of increasing the time and cost of implementing the ordinance. The County’s power in creating health and safety regulations is significant and unhampered by the potential application of the vested rights doctrine in land use. While the applicability of this doctrine has been severely limited in recent years by Washington courts,⁹ it remains a source of potential liability, particularly with respect to attorney’s fees exposure.

Limitations of the Draft Ordinance

The draft ordinance does not delve into land use in Title 18 JCC or seek to revise the noise standards in Chapter 8.70 JCC (Noise Control).

Staff believes the current conditional use permit process in Title 18 JCC, along with the SEPA process is the best way to deal with facility siting issues. In particular, SEPA will require mitigation of noise before any new commercial shooting facility can be built. Further, the approval criteria for all conditional uses contained in Title 18 JCC require, among other things, that: “The conditional use will not introduce noise, smoke, dust, fumes, vibrations, odors, or other conditions or which unreasonably impact existing uses in the vicinity of the subject parcel.” JCC 18.40.530(d). “‘Vicinity’ means, in rural and resource lands, the area generally within one-mile of the exterior boundary of a given parcel.” JCC 18.10.220 V. The draft ordinance also would adopt a one-mile requirement. See proposed JCC 8.50.240(1)(h) and JCC 8.50.270(3) in the draft ordinance.

⁹ See, for example, *Snohomish Cty. v. Pollution Control Hearings Bd.*, 187 Wash. 2d 346, 363-4 (2016), as amended (May 2, 2017), reconsideration denied (May 10, 2017), *Erikson & Assoc., Inc. v. McLerran*, 123 Wash.2d 864, 868 (1994), *Abbey Rd. Grp., LLC v. City of Bonney Lake*, 167 Wash. 2d 242, 251 (2009), *Town of Woodway v. Snohomish Cty.*, 180 Wash. 2d 165, 173 (2014), *Potala Vill. Kirkland, LLC v. City of Kirkland*, 183 Wash. App. 191, 203-4, 210 (2014) review denied, 182 Wash.2d 1004 (2015).

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STAFF RECOMMENDATIONS

Staff makes the following recommendations:

1. Set a hearing date and receive public comment on the attached draft ordinance.
2. Revise [Title 18](#) JCC to make it consistent with the draft ordinance;
3. Revise current Chapter [8.50](#) JCC (No Shooting Areas) to allow for indoor commercial shooting facilities in no shooting areas.
4. Consider directing staff to submit a draft ordinance, suggesting proposed revisions to [Title 18](#) JCC to the Planning Commission for its consideration to:
 - a. Approve the use of indoor commercial shooting facilities in any zone that complies with the new commercial shooting facility ordinance. A definition of indoor commercial shooting facility that incorporates the definition in the new commercial shooting facility ordinance should be added to [Title 18](#).
 - b. Modify Table 3-1 in [Title 18](#) to be consistent with the new commercial shooting facility ordinance. For example, “outdoor shooting ranges” used in Table 3-1 should be modified to be consistent with the new commercial shooting facility ordinance, while preserving their limitations for uses in effect before adoption of the new commercial shooting facility ordinance.
 - c. Modify JCC [18.20.350\(8\)](#) for small-scale recreation and tourist uses and other provisions of [Title 18](#) JCC to be consistent with the new commercial shooting facility ordinance, while preserving their limitations for uses in effect before adoption of the new commercial shooting facility ordinance. For example, in addition to JCC [18.20.350\(8\)](#), the term “outdoor shooting ranges” is used in Table 3-1 to identify the zones where such facilities are permitted.
 - d. Add definitions to [Title 18](#) JCC needed for consistency with the new commercial shooting facility ordinance. For example, a definition of commercial shooting facility that incorporates the definition in the new commercial shooting facility ordinance should be added to [Title 18](#).
 - e. Modify current definitions in [Title 18](#) JCC needed for consistency with the new commercial shooting facility ordinance. For example, the definitions of “outdoor shooting range” and “shooting range” in [Title 18](#) should be modified to be consistent with the new commercial shooting facility ordinance.
5. Consider directing staff to submit a draft ordinance with proposed revisions to Chapter [8.70](#) JCC (Noise Control) that harmonize Chapter [8.70](#) JCC with the new commercial shooting facility ordinance and to reduce the burden on the Sheriff’s office for false reports, as is also addressed in the draft ordinance. For example, a new exemption should be added to JCC [8.70.060](#) for commercial shooting facilities that are in compliance with their operating permit or provisional operating permit issued pursuant to the new commercial shooting facility

ordinance. If revisions are adopted to Chapter [8.70](#) JCC, the revisions must be submitted to the Washington Department of Ecology for approval. However, a the categorical exemption under for noise ordinances is limited by WAC [197-11-800\(21\)](#), which states: “The adoption by counties/cities of resolutions, ordinances, rules or regulations concerned with the control of noise which do not differ from regulations adopted by the department of ecology under chapter [70.107](#) RCW. *When a county/city proposes a noise resolution, ordinance, rule or regulation, a portion of which differs from the applicable state regulations, SEPA compliance may be limited to those items which differ from state regulations.*” (Emphasis added.) Categorical exemptions exempt proposed actions from the SEPA threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC [197-11-305](#).

6. Consider, but do not adopt, a provision modified from Kitsap County’s KCC [10.25.020](#), which states:

“The discharge of firearms is prohibited within five hundred yards of any shoreline in the unincorporated areas of Kitsap County.” and “The discharge of firearms in the unincorporated areas of Kitsap County is further prohibited in the following instances: (2)(e) further states “Within five hundred yards of the following lakes located, in whole or part, in unincorporated areas of Kitsap County: Long Lake, Kitsap Lake, Wildcat Lake, Panther Lake, Mission Lake, Tiger Lake, William Symington Lake, Tahuya Lake, Island Lake, Horseshoe Lake, Carney Lake, Wye Lake, Buck Lake, Fairview Lake and Bear Lake.”

Notably, KCC [10.25.020](#) is in Article 1 (No Shooting Areas) of Chapter [10.25](#) KCC

- a. Before the dissemination of a draft of this staff report, the Tarboo Ridge Coalition (through Riley Parker) proposed a provision modeled on KCC [10.25.020](#). When it was pointed out in a draft of this staff report that a proposal like KCC [10.25.020](#) would be beyond the scope of the work of the Review Committee because it would not be limited to commercial shooting facilities, on August 23, 2018, the Tarboo Ridge Coalition, changes its proposal to request that the BoCC add to Title III of Chapter [8.50](#) JCC (Commercial Shooting Facilities) a prohibition on “the discharge of firearms *at a commercial shooting facility* within five hundred yards of any shoreline, in the unincorporated areas of Jefferson County and specifically Public Lakes: Anderson Lake, Gibbs Lake, Horseshoe Lake, Leland Lake, Ludlow Lake, Sandy Shore Lake, Silent Lake, Tarboo Lake, Teal Lake and Yahoo Lake.” (Emphasis added.)
- b. While the revised proposal is no longer outside the scope of work of the Review Committee, staff believes such a provision would be:
 - i. Unnecessary for safety purposes, as the draft ordinance would not allow shooting ranges to point toward a shoreline;
 - ii. Difficult to explain as reasonable because it would allow tribal hunters exercising their treaty rights and non-tribal hunters hunt waterfowl to shoot in those same areas without the protections afforded by the new ordinance; and,

- iii. Likely to result in a costly legal challenge to the ordinance that, even if not successful, which would delay implementation of the new ordinance. If successful, a legal challenge potentially could subject the County to liability under Chapter [64.40 RCW](#) or 42 U.S.C. [Section 1983](#), including reasonable attorney's fees and costs.

SEPA COMPLIANCE FOR THE NEW ORDINANCE

WAC [197-11-800\(13\)\(c\)](#) categorically exempts¹⁰ business and other regulatory licenses including: “All licenses required under electrical, fire, plumbing, heating, mechanical, and *safety codes and regulations*, but not including building permits.” (Emphasis added.) The draft ordinance probably qualifies as a safety code or regulation.

WAC [197-11-800\(19\)](#) categorically exempts: “The proposal, amendment or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program shall be exempt if they are:

(a) Relating solely to governmental procedures, and containing *no substantive standards* respecting use or modification of the environment.

(b) Text amendments resulting in *no substantive changes* respecting use or modification of the environment.”

(Emphasis added.) The requirements in the draft ordinance for an environmental plan require the development of best management practices (BMPs) for compliance with existing law with respect to the environment:

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:

¹⁰ Again, categorical exemptions exempt proposed actions from the SEPA threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC [197-11-305](#).

- 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. (Emphasis added.) Thus, the requirement of an environmental plan in the draft ordinance does not set substantive environmental standards.

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

Based on these exemptions, the draft ordinance likely is categorically exempt from a SEPA threshold determination or any environmental documentation.

CONCLUSION

The Review Committed and staff worked diligently to provide the draft ordinance to the BoCC on time. If there are questions, they should be directed to Mark McCauley and Philip Hunsucker.