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STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS
OAKLAND COUNTY CIRCUIT COURT JUDGE MARY ELLEN BRENNAN

EXCLUSIVE CAPITAL PARTNERS LLC,
a Michigan Limited Liability Company,

Plaintiff-Appellee,

v

CITY OF ROYAL OAK,
a Michigan Municipal Corporation,

Defendant-Appellant,

AND

QUALITY ROOTS, INC.,
a Michigan Corporation,

Plaintiff-Appellee,

v

CITY OF ROYAL OAK,
a Michigan Municipal Corporation,

Defendant-Appellant,

PGSH HOLDINGS, LLC,
a Michigan Limited Liability Company,

Intervening Defendant.

MSC No. 168243

COA No. 366247
(Consol. With Case No. 366257)

Circuit Court No. 2022-192383-CZ
HON. MARY ELLEN BRENNAN
Consolidated Trial Court Cases:
Case No. 2022-192288-CZ
Case No. 2022-192830-CZ
Case No. 2022-193015-CZ
Case No. 2022-294223-CZ
Case No. 2022-194753-CZ

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PLAINTIFF-APPELLEE QUALITY ROOTS, INC'S ANSWER TO DEFENDANT-APPELLANT CITY OF ROYAL OAK'S APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF APPELLATE JURISDICTION

On December 4, 2024, the Court of Appeals issued a published Opinion in *Exclusive Capital Partners, LLC v City of Royal Oak,* ___ Mich App ___; ___ NW2d ___ (2024) (Docket Nos. 366247 and 366257). Under MCR 7.303(B)(1), the Court may "review by appeal a case . . . after decision by the Court of Appeals." Thus, this Court has discretionary jurisdiction in this matter.

After the Court of Appeals has made a decision in a given Appeal, a party seeking leave to appeal the matter to this Court must file an Application for Leave to Appeal within 42 days after "the Court of Appeals order denying a timely filed motion for reconsideration . . . ." See MCR 7.305(C)(2)(a). "A motion for reconsideration may be filed within 21 days after the date of the order or the date stamped on an opinion." MCR 7.215(I)(1). As previously stated, the Court of Appeals issued its published Opinion on December 4, 2024. And on December 23, 2024 (within the applicable 21-day window), Defendant-Appellant City of Royal Oak (the "City") and Intervening Defendant PGSH Holdings, LLC ("Gatsby") filed a Joint Motion for Reconsideration in the Court of Appeals. The Court of Appeals entered an Order denying the City's and Gatsby's Joint Motion for Reconsideration on January 27, 2025. *Appellant's Appx, Ex. 27*. Thus, the City had until March 10, 2025 (42 days after January 27, 2025) to file the Application for Leave to Appeal currently under review. See *id*. The City did file its Application for Leave to Appeal on March 10, 2025, and so the Application is timely.

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STATEMENT OF QUESTIONS INVOLVED

I. WHETHER DEFENDANT-APPELLEE CITY OF ROYAL OAK VIOLATED THE OPEN MEETINGS ACT WHEN THE CITY MANAGER AND A DE FACTO REVIEW COMMITTEE OF HIS CREATION COMPRISED OF MULTIPLE CITY OFFICIALS, ACTING ON AUTHORITY DELEGATED BY THE CITY COMMISSION, DELIBERATED UPON AND DETERMINED WHICH APPLICANTS WOULD RECEIVE MARIHUANA RETAIL ESTABLISHMENT LICENSES AT SECRET CLOSED-DOOR MEETINGS FOR WHICH THE PUBLIC RECEIVED NO NOTICE OR OPPORTUNITY TO OBSERVE AND FOR WHICH NO NOTES OR MINUTES WERE TAKEN.

Defendant-Appellant says:	"No."
Plaintiff-Appellee says:	"Yes."
Intervening Defendant says:	[Has Not Stated Position]
Trial Court says:	"No."
Court of Appeals says:	"Yes."

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BRIEF IN SUPPORT

I. INTRODUCTION

In July 2020, acting under the authority granted to it by the Michigan Regulation and Taxation of Marihuana Act ("MRTMA"), MCL 333.27951 *et seq*., the Defendant-Appellant City of Royal Oak (the "City") adopted an Ordinance (the "Licensing Ordinance"), Royal Oak Ordinance No. 2020-06, which created a framework for issuance of no more than two municipal adult-use marihuana retail establishment licenses to select applicants. After, 31 applications for marihuana retail establishment licenses were submitted to the City. Among the applicants was Plaintiff-Appellee Quality Roots, Inc. ("Quality Roots"), which submitted two applications.

However, the City's selection process was unlawfully carried out in a series of secret, closed-door meetings held by an unsanctioned "Review Committee," which was made up of former City Manager Paul Brake and certain City officials that he selected. And as a result of whatever discussion and deliberations were conducted in these clandestine meetings, the lucrative marihuana retail establishment licenses were awarded to two entities: Intervening Defendant PGSH Holdings, LLC ("Gatsby"); and Royal Oak Treatment, LLC ("Royal Treatment").

Multiple unsuccessful applicants, including Quality Roots, sued the City in the Oakland County Circuit Court, raising a number of legal challenges in a series of consolidated lawsuits. Among those challenges were claims that the City's licensing procedures violated the Open Meetings Act ("OMA" or the "Act"), MCL 15.261 *et seq*. Even so, the trial court granted summary disposition in favor of the City; and two consolidated Appeals to the Court of Appeals followed (Quality Roots' Appeal, Docket No. 366257, was consolidated with the Appeal filed by another unsuccessful applicant, Plaintiff-Appellee Exclusive Capital Partners LLC, Docket No. 366247).

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Nevertheless, in a published Opinion, the Court of Appeals partially reversed the trial court's grant of summary disposition in favor of the City, holding that the City had violated the Open Meetings Act, MCL 15.261 *et seq*. *Exclusive Capital Partners, LLC v City of Royal Oak*, ___ Mich App ___, ___; ___ NW2d ___ (2024) (Docket Nos. 366247 and 366257); slip op at 21-24. *Appellant's Appx, Ex. 26*. On that basis, the Court of Appeals remanded this matter to the trial court so that it could address the appropriate remedy. *Id*. at ___; slip op at 25.

The City now requests leave to appeal in this Court, arguing that the Court of Appeals erred when it reversed the trial court's decision regarding Appellees' claims that the City's so-called competitive process violated the OMA. In particular, the City contends that, where the pertinent Licensing Ordinance required the City Manager to administer the process, the City could not have run afoul of the OMA because individuals (as opposed to municipal bodies comprised of multiple people) cannot constitute the kind of "public bodies" subject to the Act. The City further posits that the City Manager exercised independent authority (rather than authority delegated to him by the City Commission – a "public body" as contemplated under the OMA) in selecting the winning applicants, and was therefore immune to the requirements of the OMA. And finally, the City argues that its licensing determinations should not be subject to the provisions of the OMA because compliance, as mandated by the Court of Appeals, would thrust some unidentified administrative difficulties upon municipal governments.

However, in each of these regards, the City is mistaken. The City Manager was delegated authority to select winning applicants for marihuana retail establishment licensure by the City Commission, which conducted no independent review of any licensing applications and which gave no consideration to any applicants ***other than those selected to receive licenses by the City Manager and his Review Committee***. Instead, the City Manager and his Review Committee

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winnowed the pool of eligible applicants and ultimately selected the two that were chosen to receive licenses. Thus, in accordance with recent and (very) analogous caselaw issued by this Court, see *Pinebrook Warren, LLC v City of Warren*, ___ Mich ___ ; ___ NW3d ___ (2024) (Docket Nos. 164869 through 164877), ***the City Manager was a "public body" subject to the provisions of the Act*** (despite his status as an individual) because he was given authority to select which applicants would receive the coveted licenses by the City Commission—which is, itself, a "public body" as contemplated by the OMA. The City presents no support for its claim that the Court of Appeals' holding in this regard will thrust new or oppressive obligations upon municipalities seeking to comply with the requirements of the OMA; and even if the Court of Appeals' interpretation of the OMA would meaningfully impact municipal operations going forward, the City offers no justification for its audacious request to be exempted from the operation of state law simply because compliance is inconvenient.

For these reasons (as further developed below), Plaintiff-Appellee Quality Roots respectfully requests that this Court deny the City's Application for Leave to Appeal.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

A. The Michigan Regulation and Taxation of Marihuana Act

On December 6, 2018, MRTMA, MCL 333.27951 *et seq*., became effective, authorizing municipalities in this state to completely prohibit or limit the number of adult-use marihuana establishments within their boundaries. MCL 333.27956(1). MRTMA authorizes municipalities to adopt ordinances requiring a marihuana establishment with a physical location therein to obtain

[1] For ease of reference, excerpts from the following transcripts will be referred to as follows:
Deposition of Paul Brake, Volume I (June 8, 2022): *Brake Dep I* (**Exhibit A**)
Deposition of Todd Fenton, Volume I (June 10, 2022): *Fenton Dep I* (**Exhibit B**)

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municipal licenses prior to operation; although municipalities are not authorized to impose qualifications for licensure that conflict with MRTMA or the rules promulgated by the state. MCL 333.27956(3). Additionally, if a municipality

> limits the number of marihuana establishments that may be licensed in the municipality . . . and that limit prevents the [Cannabis Regulatory Agency] from issuing a state license to all applicants who [are otherwise qualified to receive a state license], the municipality ***shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with [MRTMA] within the municipality***." [MCL 333.27959(4) (MRTMA's "competitive-process requirement") (emphasis added).]

B. The City of Royal Oak's Recreational Marihuana Licensing Ordinance

On July 27, 2020, pursuant to its authority under MRTMA, Royal Oak adopted Ordinance No. 2020-06 (the "Licensing Ordinance") (Chapter 435). *Appellant's Appx, Ex. 1*. The Licensing Ordinance authorizes the City to issue up to two municipal licenses for marihuana retailers. Licensing Ordinance, § 435-2(B)(5).

Completed applications for marihuana retail establishment licensure are categorically accepted under the Licensing Ordinance, and such applications must be processed and considered "on a competitive basis . . . ." *Id*. at § 435-4(B)(2). The Licensing Ordinance authorizes the Royal Oak City Manager to "fully and effectively implement and administer the municipal license application process." *Id*. at § 435-2(E).

The Licensing Ordinance's "[c]ompetitive process" is outlined under § 435-4(C). For all marihuana establishment types for which the City limits the number of municipal licenses that may be issued, the City Manager is required to establish a window during which applications for licenses may be submitted. *Id*. at § 435-4(C)(1). At the end of each application window, if the number of applications for a particular type of municipal marihuana establishment license exceeds the number of available municipal licenses, the City "shall decide among applications by a competitive process intended to select the applicant(s) who are best suited to operate in compliance

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with the Act [MRTMA] within the City." *Id*. at § 435-4(C)(2). The Licensing Ordinance requires applicants and applications to be

> ***ranked in the order of which is best suited to operate in compliance with the Act [MRTMA] within the City*** as determined by the City Manager or his or her designee. This ranking will be used to fill available municipal license slots, starting with the best-suited applicant and application, until all available municipal license slots are filled. [*Id*. at § 435-4(C)(4) (emphasis added).]

The ten competitive criteria used in the City's "competitive process" include:

a. Review of the Applicant's completely submitted, detailed Application (including plans which address the provisions of this Section and related provisions, such as security, lighting, processing, handling of hazardous waste, site plans, record-keeping, disposal, water/utility, ventilation, odor, etc.), which illustrates the likely success of the proposed business, in harmony with surrounding properties at the proposed site;

b. Whether the Applicant is currently in default/arrears on any taxes or fees otherwise due to the City, has a history of noncompliance or violations with City ordinances or applicable laws, or has been served with any complaint or notice filed by or with any public body regarding the delinquency in the payment of any tax required under federal, state or local law;

c. Whether the Applicant is/was a business operating in the City of Royal Oak within the past two years;

d. Whether the Applicant has a history of criminal conviction/plea, other than as specified by the MRTMA, MCLA 333.27958.1(c), as may be amended;

e. Whether the Applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed, or has proceedings pending related to such;

f. Whether the Applicant filed, or had filed against it/him/her, a proceeding for bankruptcy or been involved in any formal process to adjust, defer, suspend or otherwise work out payment of a debt in the past seven years;

g. Whether there is planned future outreach on behalf of the proposed business and a written plan evidencing the outcome of such meetings, and whether the Applicant has made, or plans to make, significant physical improvements to the building housing the Marihuana Establishment;

h. Whether the Applicant has taken steps to encourage employee retention, attract highly capable workers, train employees, and any other employee-employer factors tending to show a successful workforce;

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i. Whether the applicant has taken steps to include equity, diversity, and inclusion in their operations that would tend to yield greater profitability, innovation, and more-effective teamwork; and

j. Whether the proposed plan incorporates sustainable infrastructure and energy efficient elements and fixtures. [*Id*. at § 435-4(C)(4)(a) through (j).]

With the exception of criterion (a), each of these criteria are binary, "check-the-box" factors, for which an applicant or application either does or does not satisfy the given consideration. Moreover, the City failed to promulgate any type of weight guidelines, scoring rubric, or point system for the "competitive" criteria—even internally (*Brake Dep I, 107*)—which has resulted in a completely opaque and subjective application evaluation process.

Following implementation of the ranking process as undertaken by the City Manager or his or her designee, an applicant that is awarded a municipal license slot is notified of their award and given five business days to pay a marihuana establishment application fee. *Id*. at § 435-4(D)(2). If an applicant does not pay the fee within the time allotted, the next highest ranked application is issued the municipal license slot. *Id*. If the fee is paid, the City Clerk refers a copy of the pertinent application to certain department heads or designated staff persons for their review and approval. If, after review of the application, there are no deficiencies—or if all deficiencies are corrected in a timely fashion—the City Planning Commission shall consider the applicant's special land use permit and site plan. *Id*. And if an applicant satisfies the remaining conditions outlined in the Licensing Ordinance, the City Clerk shall then issue a municipal license to the applicant. *Id*. at § 435-4(D)(7).

C. The City Received Applications for Marihuana Retail Establishment Licensure and Disregarded the Requirements of MRTMA, the OMA, and Its Own Ordinances

The City's window for accepting applications for marihuana establishment licensure was open from December 7, 2020 until February 1, 2021. By the close of the application window, the City received 31 applications. Plaintiff-Appellee Quality Roots, Inc. ("Quality Roots") submitted

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two timely and complete applications for marihuana retail establishment licenses, which would be operated at 3115 West 13 Mile Road and 28300 Woodward Avenue.

Although the Licensing Ordinance expressly provides that the ranking of the applicants and their applications will be "determined by the City Manager or his or her designee," *id*. at § 435-4(D)(2), this did not occur. Instead, the City Manager established a *de facto* marihuana application Review Committee (the "Review Committee"), which was comprised of the City Manager, himself, and several other city officials/employees,[2] who regularly met in closed door sessions in the summer of 2021 (August 4, August 11, August 18, and August 25, 2021, from 2:00 p.m. to 4:00 p.m.) to review and evaluate the applicants/applications in plain violation of the directive imposed by Section 435-4(C)(4) of the Licensing Ordinance, as well as the Michigan Open Meetings Act ("OMA"), MCL 15.261 *et seq*. **Exhibit C**. These meetings were not open to the public nor was there any notice to the public regarding the existence of such meetings. Moreover, no official notes or minutes were kept for any of these August 2021 meetings. (*Fenton Dep I, 54-55; Brake Dep I, 87*). After each closed-door meeting, the Review Committee members recorded their comments for the various applicants into "Marihuana Application Review Notes," which were then compiled and organized into a private drive that only certain City officials and employees could access. (*Brake Dep I, 61-62*). Over the course of its review, the Review Committee—including members other than the City Manager—narrowed down and ***eliminated*** certain applicants from the pool of potential licensees. **Exhibit D**.

[2] The aforementioned Review Committee consisted of the following City officials: Paul Brake, then City Manager; Aaron Leal, then City Attorney; Todd Fenton, then Economic Development Manager and Deputy City Manager; Timothy Thwing, Director of Community Development; Joseph Murphy, Director of Planning; Holly Donoghue, City Engineer; Corrigan O'Donohue, Former Police Chief and Assistant City Manager; Michael Moore, Current Police Chief; Susan Barkman, Assistant to the City Manager; Jaynmarie Hubanks, Treasurer; and Melanie Halas, City Clerk.

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D. At the End of the Competitive Process Gatsby and Royal Treatment were Wrongfully Awarded License Slots on Grounds Unsupported by the Licensing Ordinance

The culmination of the Marihuana Application Review meetings was the separation of the Applicants/Applications into three tiers: (1) applicants that were approved to move forward with the process for the available License Slots (Gatsby and Royal Treatment); (2) applications that otherwise met all the "competitive" criteria, but were placed on standby in the event that Gatsby or Royal Treatment failed to obtain a license; and (3) denied Applications or Applicants.

On December 20, 2021, the City Manager notified Quality Roots by emailing a letter (dated December 15, 2021) that neither of its applications were selected "to move forward in the licensing process." *Appellant's Appx, Ex. 5*. The City placed Quality Roots in the second-tier (standby) group of applicants, clarifying that the letter was "not a denial of [Quality Roots'] application." *Appellant's Appx, Ex. 5*. The City Manager also sent letters to Gatsby and Royal Treatment on December 15, 2021, informing them that they were selected to move forward in the licensing process. And additional letters were sent to other applicants that same day, notifying them that their applications had been denied outright.

E. The Planning Commission Recommended Denial of Gatsby's Special Land Use Permit Request, but the City Commission Ignored the Recommendation Entirely

On February 8, 2022, the City Planning Commission conducted a public meeting at which it considered the site plans and special land use permit requests submitted by Gatsby and Royal Treatment. After public comment, the Planning Commission voted 3-2 to recommend that the City Commission ***deny*** special land use approval for Gatsby. *Appellant's Appx, Ex. 8, pp 3-4*. The Planning Commission also voted 4-1 to recommend approval of Royal Treatment's proposed special land use permit and voted unanimously to recommend approval of Royal Treatment's proposed site plan. *Appellant's Appx, Ex. 8, pp 4-5*.

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On April 25, 2022—despite the recommendation of the Planning Commission to deny Gatsby's proposed special land use permit, despite repeated written objections from Oakland Schools, Royal Oak Schools, and counsel articulating sound legal reasons why MRTMA and the City's own Ordinances precluded Gatsby's proposed marihuana retail site, and despite ongoing litigation on that very same subject—the City Commission voted to approve Gatsby's and Royal Treatment's proposed site plans and special land use permits. *Appellant's Appx, Ex. 13, pp 8-11*.

F. Quality Roots' and Other Applicants' Applications were Formally Denied, and Quality Roots was Wrongfully Denied the Right to Pursue an Administrative Appeal

On May 18, 2022, the City Manager notified Quality Roots that its applications for marihuana retail establishment licenses were officially denied because Gatsby and Royal Treatment had "obtained the necessary approvals and the city has issued retailer licenses to those two businesses." *Appellant's Appx, Ex. 15*. On June 8, 2022, Quality Roots timely requested an appeal of the denial of its applications pursuant to Licensing Ordinance, § 435-4(D)(10). **Exhibit E**. From there, the City Manager was required to set a date and time within 10 business days of Quality Roots' appeal letter scheduling a hearing at which Quality Roots could be heard. See *id*. Quality Roots did not receive a response from the City until July 21, 2022 (well after the 10-business-day deadline) when Mr. Brake sent a letter advising that:

> At this time, all available RME retailer licenses authorized by City of Royal Oak ordinance have been issued to the successful applicants. The ordinance does not authorize me to award additional licenses even upon a successful appeal, so a hearing on the appeal would be futile. Therefore, I will not be scheduling a hearing on the appeal." [**Exhibit F**.[3]]

[3] Multiple appeals in the Oakland County Circuit Court have arisen from the City's failure to adhere to its own Licensing Ordinance in this regard. The first appeal (Case No. 2022-195546-AA) resulted in an Opinion and Order requiring the City Manager to conduct the appeal hearing mandated under Licensing Ordinance, § 435-4(D)(10). After the hearing, the City reversed some of its purported reasons for denying Quality Roots' applications for marihuana retail establishment licensure; but it upheld others. Thus, Quality Roots was forced to initiate a second appeal in the

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G. Lawsuits were Filed, and the Trial Court Granted Summary Disposition in Favor of the City

Six of the unsuccessful applicants, including Quality Roots, filed lawsuits against the City, seeking to overturn the City's unlawful licensing determinations (over time, these lawsuits were consolidated). In March 2022—before any discovery had taken place—the City filed a Motion for Summary Disposition, seeking dismissal of Quality Roots' claims under MCR 2.116(C)(8) and (10). The City filed similar Motions against all Plaintiffs in these consolidated matters.

After months of discovery, Quality Roots had garnered documentary evidence and testimony further substantiating its original claims and necessitating the inclusion of new claims as well. Thus, on August 17, 2022, the trial court granted Quality Roots' request for leave to amend its Complaint to incorporate new factual allegations and new assertions of legal violations. Initially, the City's counsel refused to withdraw its (then moot) initial dispositive Motion. Accordingly, notwithstanding the filing of Quality Roots' First Amended Complaint, Quality Roots submitted a Response to the City's Motion for Summary Disposition.

As expected, the City filed a new dispositive Motion, seeking dismissal of Quality Roots' First Amended Complaint. Quality Roots responded with another Response Brief (demonstrating not only that the City was not entitled to summary disposition, but also that Quality Roots was entitled to summary disposition under MCR 2.116(I)(2)).

A hearing on the competing requests for summary disposition was held on December 14, 2022. And, despite the law, analysis, and evidence presented (which overwhelmingly favored Quality Roots and the consolidated Plaintiffs), as well as the legally sufficient pleadings submitted

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Oakland County Circuit Court (Case No. 2023-202519-AA) to address the City's remaining reasons for denying Quality Roots' applications. This second appeal currently remains pending in the Court of Appeals.

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by the consolidated Plaintiffs, the Court granted summary disposition in favor of the City.[4] On December 21, 2022, the trial court entered an Order in the case number associated with Quality Roots' case (Case No. 2022-192383-CZ), which confirmed the grant of summary disposition in favor of the City "for the reasons stated by the Court on the record of December 14, 2022." *Appellant's Appx, Ex. 22*.

On January 11, 2023, Quality Roots timely filed a Motion for Reconsideration. Nevertheless, that Motion was denied by the trial court via an Opinion and Order, which was filed on May 4, 2023. *Appellant's Appx, Ex. 24*.

H. Quality Roots and Another Applicant Filed Consolidated Appeals, and the Court of Appeals Partially Reversed the Trial Court's Grant of Summary Disposition

On May 24, 2023, Quality Roots filed a Claim of Appeal as of right with the Court of Appeals (Docket No. 366257). On June 6, 2023, that Appeal was consolidated with the Appeal filed by another unsuccessful applicant for marihuana retail establishment licensure in the City: Exclusive Capital Partners, LLC (Docket No. 366247).

On December 4, 2024, the Court of Appeals issued a published Opinion resolving the Appeals, *Exclusive Capital Partners, LLC v City of Royal Oak*, ___ Mich App ___; ___ NW2d ___ (2024) (Docket Nos. 366247 and 366257). The Court of Appeals affirmed the majority of the trial court's holdings; but it also reversed the trial court's decision with regard to alleged violations of the OMA and remanded the matter to the trial court "to address whether invalidation of the license awards is appropriate under MCL 15.270(2) and to provide the public body with the opportunity to remedy to [sic] violation." *Id*. at ___; slip op at 25.

[4] The Honorable Rae Lee Chabot initially presided over the proceedings in the trial court. However, after the trial court granted summary disposition in favor of the City, Judge Chabot retired. Thereafter, the Honorable Mary Ellen Brennan presided over proceedings in the trial court.

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The City filed a Motion for Reconsideration in the Court of Appeals; but on January 27, 2025, the Court of Appeals entered an Order denying the City's request. *Appellant's Appx, Ex. 27*. The instant Application for Leave to Appeal follows the Court of Appeals' Order denying the City's request for reconsideration.

III. ANALYSIS

A. Standard of Review

The City initially sought summary disposition of Quality Roots' claim that the City violated the OMA under MCR 2.116(C)(8). *Appellant's Appx, Ex. 18, p 5*. The appellate Courts review "the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law. In making this determination, the Court reviews the entire record to determine whether defendant was entitled to summary disposition." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

A motion under MCR 2.116(C)(8) requests summary disposition where "[t]he opposing party has failed to state a claim on which relief can be granted." "A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden*, 461 Mich at 119. Such a motion is granted "where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id*. When deciding the motion, a court only considers the pleadings. *Id*.; MCR 2.116(G)(5).

Additionally, this Court reviews de novo questions of law and statutory interpretation. *Twp of Fraser v Haney*, 509 Mich 18, 23; 983 NW2d 309 (2022). This Court likewise reviews de novo matters involving the interpretation of municipal ordinances. *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003).

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B. The Cout of Appeals Did Not Err When It Held that the City Violated the Open Meetings Act in the Implementation of Its So-Called "Competitive Process"

The City argues that the Court of Appeals erred when it reversed the trial court's decision to grant summary disposition in favor of the City with respect to Appellees' claims that the City violated the OMA. See *Exclusive Capital Partners, LLC v City of Royal Oak*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket Nos. 366247 and 366257); slip op at 24-25. However, for the reasons outlined below, the City is mistaken.

1. The Court of Appeals' Analysis of Appellees' Claims of OMA Violations Was Supported by Analogous and Recent Caselaw from This Court

The Court of Appeals held that the City violated the OMA when the City Commission delegated authority to the City Manager to select winning applicants for marihuana retail establishment licensure because the City Manager did not comply with the Act.

The Panel noted that "[t]he Open Meetings Act generally requires decisions or deliberations of a public body to be open to the public . . . . Because the act applies only to a public body, the initial inquiry is whether the entity at issue constitutes a 'public body.' " *Id.* at ___; slip op at 21 (quotation marks and citations omitted). The OMA defines the term, "public body" to include " 'any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function . . . .' " *Id.*, quoting MCL 15.262(a). Thus, the Court of Appeals stated that, in general, there are two requirements that must be met in order for an entity to be a "public body": (1) the entity must be a "state or local legislative or governing body"; and (2) "the entity must be empowered . . . to exercise governmental or proprietary authority or perform a governmental or proprietary function, and that power must derive from state constitution, statute, charter, ordinance, resolution, or rule . . . ." *Id.* (quotation marks omitted).

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However, the Panel further noted that an entity may ***also*** qualify as a "public body" ***if another public body delegates authority to that entity***. *Id*. at ___; slip op at 21-22. Relying upon this Court's analysis in *Pinebrook Warren, LLC v City of Warren*, ___ Mich ___ ; ___ NW3d ___ (2024) (Docket Nos. 164869 through 164877), the Panel explained that, "[w]hen a court is assessing such a delegation it must look not only at the language of the ordinance or governing document; it must also consider how the public body and the entity to which it supposedly delegated authority actually operated." *Exclusive Capital Partners, LLC*, ___ Mich App at ___; slip op at 22, citing *Pinebrook Warren, LLC*, ___ Mich at ___; slip op at 8. That is:

> "in order to determine whether a public body has provided its authority to a different entity, thus subjecting that second entity to the OMA, we must examine both the language of the enabling action (in this case, an ordinance) and the actions actually taken by the new entity . . . . If the second entity makes public policy decisions that would otherwise have had to have been made by the original public body according to the law, then the second entity is also a public body covered by the OMA." [*Exclusive Capital Partners, LLC*, ___ Mich App at ___; slip op at 22, quoting *Pinebrook Warren, LLC*, ___ Mich at ___; slip op at 29.]

Applying this same analysis to the facts and circumstances of this case, the Court of Appeals concluded "that the city manager and his designees acted as a public body subject to the OMA." *Exclusive Capital Partners, LLC*, ___ Mich App at ___; slip op at 23. The Panel reasoned that the City Commission is a public body, which imbued the City Manager with " 'the power to fully and effectively implement and administer the Municipal License Application process.' " *Id*., quoting Licensing Ordinance, § 435-2(E). Under the terms of the Licensing Ordinance, the City Manager could only "implement and administer" the application process and rank applicants using the City's competitive criteria, but the final decision as to which applicants would be awarded a license was technically reserved to the City Commission. *Exclusive Capital Partners, LLC*, ___ Mich App at ___; slip op at 23, citing Licensing Ordinance, §§ 435-2(E), 435-4(C)(4)(a)-(j), 435-4(D)(4) and (7).

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Nevertheless, the ***actual implementation*** of the Licensing Ordinance determined the outcome in this matter. *Exclusive Capital Partners, LLC*, ___ Mich App at ___; slip op at 23. The Panel noted that, in practice, the City Manager formed a workgroup composed of several city officers, which met in four closed-door sessions to assess applicants; and, as a result of those sessions, the City Manager recommended two applicants—Gatsby and Royal Treatment—for licensure. *Id*. While the Licensing Ordinance tasked the "City" with determining which applicants would be best suited to operate within the City, the City Commission merely adopted the City Manager's recommendation without any additional deliberation. *Id*. Indeed, the City Commission devoted no discussion to any applicants ***other than*** the two selected by the City Manager. *Id*.

> Consequently, the city manager effectively selected who would receive the two recreational marijuana licenses. ***Because the city manager made a de facto policy choice for the City Commission, the city manager met the definition of "governing body," and, thus, was subject to the OMA***. It follows that the meetings that the city manager had with his workgroup should have been noticed and made open to the public. [*Id*. (emphasis added).]

In effect, the City Commission, through the Licensing Ordinance, delegated its authority to select winning applicants to the City Manager, who did, in fact, exercise that authority in a manner that made him a "governing body"—and, therefore, a "public body"—as contemplated under the OMA. *Id*. at ___; slip op at 23-24.

For these reasons, the Court of Appeals properly reversed the trial court's decision with regard to Appellees' claims that the City violated the OMA. *Id*. at ___; slip op at 24.

2. The Court of Appeals' Analysis in This Case Was in Keeping with Binding, Established Principles of Law

The Court of Appeals' analysis on the OMA issue did not break new ground on the subject. Rather, it followed from sound interpretation of statutory authority and jurisprudence set forth by Michigan's appellate Courts.

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The OMA imposes several requirements on the meetings, decisions, and deliberations of ***public bodies*** in the state of Michigan, each designed to foster transparency in the actions and processes of such entities. See MCL 15.263. "Public bodies" are defined in part under the Act as

> any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function . . . . [MCL 15.262(a).]

From this, the Court of Appeals in *Davis v City of Detroit Fin Review Team* extrapolated two requirements that must generally be met in order for an entity to constitute a "public body" within the meaning of MCL 15.262(a): (1) the entity must be a "state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council"; and (2) the entity must be "empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or propriety authority or perform a governmental or proprietary function." *Davis v City of Detroit Fin Review Team*, 296 Mich App 568, 591; 821 NW2d 896 (2012). A legislative body, according to the *Davis* Panel, is an entity with "the power make or enact law, to bring something into or out of existence by making law, or to attempt to bring about or control by legislation. *Id*. at 593. It has never been argued that the City Manager or the Review Committee in this matter constituted "legislative bodies" as contemplated under the OMA.

It must therefore be determined whether the City Manager acted as a "governing body" as contemplated under MCL 15.262(a). The *Davis* Panel described a "governing body" as one that is "self-governing; independent; that is, a body that makes or administers public policy for a political unit or exercises independent authority." *Id*. at 597 (quotation marks and citation omitted). Concomitant with such independent authority is the power to make decisions. *Id*. Entities that exclusively make "recommendations," which have no impact on the final, authoritative decision of an actual decision-making entity, are not governing bodies, and are accordingly not public

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bodies as contemplated under the OMA. *Id*. at 601-609. That is, although an entity might make recommendations, this alone is not sufficient to render the entity a "public body" if it cannot act upon the recommendation or narrow the choices of any final decision-making body in any way. *Id*. Applying these rules, the Panel in *Davis* held that the financial review team at issue did not constitute a governing body because it did not exercise independent authority and merely provided recommendations to an ***actual*** governing body without making final decisions (i.e., the financial review team merely advised others how to effectuate or formulate public policy). *Id*. at 604, 608.

This Court echoed these rules in *Pinebrook Warren, LLC*, ___ Mich at ___; slip op at 22-23. However, the Court further noted that, even if an entity does not satisfy the above-referenced definition of "public body" in its own right, ***the entity may nevertheless constitute a public body if it is delegated authority from another public body***. *Id*. at ___; slip op at 22, citing *Booth Newspapers, Inc v University of Mich Bd of Regents*, 444 Mich 211, 225; 507 NW2d 422 (1993).

The *Booth Newspapers, Inc* case is instructive. In that case, the University of Michigan Board of Regents (a public body) was required to select a university president. *Id*. at 225. The Board of Regents delegated full authority to make a ***final selection*** of the university president to smaller subgroups within itself, with a single regent (Regent Brown) doing a great deal of the work winnowing the list of eligible candidates. *Id*. at 215-220, 225-226. In such circumstances, the Michigan Supreme Court held that any of these subgroups—even a "one-man committee, such as Regent Brown"—constituted "public bodies" as contemplated under the OMA, because they were exercising governmental authority in place of the Board of Regents. *Id*. at 226.

Similarly, in *Pinebrook Warren, LLC*, this Court considered whether a "Review Committee," which assisted in the review of applications for marihuana provisioning center licenses, was a public body subject to the OMA; and if so, whether the closed-door meetings held

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during the City of Warren, Michigan's licensing review process violated the OMA. *Pinebrook Warren, LLC*, ___ Mich at ___; slip op at 21. With regard to the second type of public bodies—those that are delegated sufficient authority by another public body—the Court drew from its previous analysis in *Booth Newspapers, Inc* and *Herald Co v Bay City*, 463 Mich 111; 614 NW2d 873 (2000) to distill the following rule:

> if a public body delegates its authority to any other entity regardless of its size, that entity (or person) is still effectively a public body, even though an individual person does not generally fit the statutory definition of a "public body." But where an individual executive is acting alone in their official work capacity pursuant to an independent grant of authority separate from the public body's authority, i.e., where their authority is not delegated by a public body to perform the functions of that same public body, an individual cannot be a "public body" under the OMA. [*Pinebrook Warren, LLC*, ___ Mich at ___; slip op at 26.]

The Court then noted that, in assessing whether a municipal body is a "public body" for purposes of the OMA, the reviewing Court should look not only to the text of the relevant enabling ordinances, but to the actions taken by the body at issue. *Id*. at ___; slip op at 27-29. Stated differently: if a public body delegates a task to another government entity (an individual or group), and that entity makes public policy decisions that, by law, were the responsibility of the delegating public body, then the entity to which a delegation was made is also a public body. *Id*.

Under these rules, the *Pinebrook Warren, LLC* Court held that the Warren Review Committee was a governing body because it was empowered under the Warren Code of Ordinances[5] to exercise a governmental function by scoring applications, and because it effectively decided who would receive a marihuana provisioning center license instead of the city council, which conducted no independent review of the applications and merely rubber-stamped the work

[5] The *Pinebrook Warren, LLC* Court expressly stated that, because the Warren city council created and empowered the Review Committee by legislation (i.e., an ordinance), the Review Committee's function was not independent from the city council; rather, it was delegated ***by*** the city council. *Pinebrook Warren, LLC*, ___ Mich at ___; slip op at 32.

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of the Review Committee (despite the fact that Warren's Code of Ordinances required the city council to do the ranking). *Id*. at ___; slip op at 29-30. That is, by ordinance, the Warren city council delegated responsibilities to the Review Committee that were more than "purely advisory" functions; and the Review Committee's ***actual exercise*** of its delegated authority crossed over into decision-making. *Id*. at ___; slip op at 30.

The facts and circumstances of the instant case are directly analogous to those in *Booth Newspapers, Inc* and *Pinebrook Warren, LLC*. The Royal Oak City Charter, ch 3, § 1, vests the City Commission with "***full power and authority . . . to exercise all the powers conferred upon the City***" (emphasis added). Under the City Charter, the City Commission is "the legislative and governing body of" the City. *Id*. at ch 3, § 2. The City Charter also grants the City—and therefore the City Commission—the authority to issue licenses to businesses seeking to operate within the City. *Id*. at ch 2, § 1. Moreover, the authority to grant a license falls within a city's police power. *Kethman v Oceola Twp*, 88 Mich App 94, 104; 276 NW2d 529 (1979). Thus, the Royal Oak City Commission is undeniably a "public body"—a legislative and governing body empowered by charter to exercise governmental or proprietary authority or to perform governmental or proprietary functions, see MCL 15.262(a)—with power to issue licenses on behalf of the City.

Under the Licensing Ordinance, §§ 435-2(E) and 435-4(C)(4), and under the process as actually implemented in this case, ***the City Commission used its legislative power to delegate its authority to make licensing determinations to the City Manager***. The City Manager, in tandem with his Review Committee,[6] exercised the City Commission's authority in selecting which applicants would receive marihuana retail establishment licenses. The Review Committee

[6] Contrary to the City's assertions on Appeal, Mr. Brake testified that the final determination as to the winning applicants was a "consensus" reached by himself and the Review Committee, working in tandem to reach a "collective decision." (*Brake Dep I, 98, 100, 108, 183-184*).

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regularly met in closed door sessions in the summer of 2021 to review and evaluate the applicants/applications. **Ex. C**. After each closed-door meeting, the Review Committee members recorded their comments for the various applicants into "Marihuana Application Review Notes," which were then compiled and organized into a private drive that only certain City officials and employees could access. (*Brake Dep I, 61-62*). Over the course of its review, the Review Committee narrowed down and ***eliminated*** certain applicants from the pool of potential licensees. **Ex. D**. The culmination of the meetings was the separation of the Applicants/Applications into three tiers: (1) applicants that were approved to move forward with the process for the available License Slots (Gatsby and Royal Treatment); (2) applications that otherwise met all the "competitive" criteria, but were placed on standby in the event that Gatsby or Royal Treatment failed to obtain a license; and (3) denied Applications or Applicants.

The Licensing Ordinance technically reserves the final decision as to which applicants would be granted licenses to the City Commission, which determines which applicants receive site plan and special land use permit approval (both of which are necessary in order to obtain licensure). Licensing Ordinance, §§ 435-4(D)(4)(f) and 435-4(D)(5). However, the evidence of record contains no indication that the City Commission ever considered any applicants other than Gatsby or Royal Treatment for licensure.[7] *Appellant's Appx, Ex. 13, pp 8-11*. To the contrary, the City Commission conducted no independent review of any applications, instead opting to rubber stamp the licensing determinations (which were made behind closed doors) of the City Manager and the Review Committee. It was therefore the City Manager and Review Committee—not the City

[7] YouTube, *Royal Oak City Commission, meeting of 4/25/22* <https://www.youtube.com/watch?v=STtLGdaKKLM&list=PLgRTNn2T6G5TiAvaS5udcXyPxY_kw9XGY&index=17> (beginning at approximately 2:05:10) (accessed April 1, 2025).

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Commission—which made the policy determination as to which applicants for marihuana retail establishment licensure should prevail.

These are precisely the circumstances that this Court deemed in *Pinebrook Warren, LLC*, ___ Mich at ___; slip op at 29-30, to constitute an exercise of delegated decision-making authority sufficient to bring a governmental body within the ambit of the OMA. The only step of Royal Oak's licensing process that occurred in view of the public was the final step, where the City Commission selected the two winning applicants from a narrowed list of two candidates, as recommended by the City Manager and Review Committee. The City Manager's and Review Committee's actions thus constitute an exercise of the City Commission's licensing authority, and were therefore subject to the requirements of the OMA. See *id*. at ___; slip op at 25; *Booth Newspapers, Inc*, 444 Mich at 229.

3. This Court Has Already Determined that Individuals May Constitute Public Bodies as Contemplated Under the OMA

The City's principal argument on Appeal is that the City Manager cannot be a "public body" as contemplated by the OMA because individuals cannot constitute public bodies. Rather, according to the City, a public body must be a "collective entity." *Application for Leave to Appeal, p 9*. As already discussed, however, the City is mistaken.

In support of its position, the City primarily relies upon this Court's Opinion in *Herald Co v Bay City*. There, the Court stated that "an individual executive acting in his executive capacity is not a public body for the purposes of the OMA." *Herald Co*, 463 Mich at 131. But in *Herald*, the authority and responsibility of the city manager to recommend an individual to the position of fire chief came ***directly from the City Charter of Bay City***. *Id*. at 132. It ***did not*** come from a delegation of authority from the city commission. *Id*. This is a key distinction. The Court in *Herald Co* recognized that the city commission was, itself, a public body. *Id*. at 132-133. But where the

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city commission and the city manager were each performing an independent function on the basis of authority derived directly from the City Charter, the Court declined to hold that the city manager was acting as part of a greater public body. *Id*. Unlike the instant case, the city manager in *Herald Co* was ***not*** delegated authority to undertake the relevant acts by the city commission of Bay City.

Notably, this Court rejected the notion that an individual cannot fall within the ambit of the OMA in *Booth Newspapers, Inc*. There, the Court stated that

> [t]he Legislature did not grant any exception to specific types or forms of committees. Therefore, ***delegating*** the task of choosing a public university president to a one-man committee, such as Regent Brown, would warrant the finding that this one-man task force was in fact a public body. As the *Goode* Court observed, "we do not find the question of whether a multi-member panel or a single person presides to be dispositive. Such a distinction carries with it the potential for undermining the Open Meetings Act . . . ." [*Booth Newspapers, Inc*, 444 Mich at 226 (emphasis added).]

Again, the distinction between the holding in *Booth Newspapers, Inc* (where the Court held that an individual can be bound by the requirements of the OMA), and *Herald Co* (where the Court declined to hold that the city manager of Bay City was so bound because of his status as an individual) is that, in the former case, a public body ***delegated*** its authority to an individual. In contrast, the result in *Herald Co* was reached because the city manager was acting in his individual capacity under the relevant city charter; ***not*** under any authority delegated by the city commission of Bay City.

The Court has already addressed this distinction and reconciled the results reached in *Booth Newspapers, Inc* and *Herald Co* in the *Pinebrook Warren, LLC* Opinion:

> In *Herald*, 463 Mich 111, we further addressed the OMA as it applied to city staff. This Court concluded that the OMA was inapplicable where the Bay City Charter required that a new fire chief be appointed by the Bay City Commission on the recommendation of the city manager . . . . Specifically, we held that the OMA did not apply to the city manager because the Legislature did not include individuals in the definition of "public body" in the OMA . . . . While *Booth* held that the individual regent was subject to the OMA, *Herald* came to the opposite conclusion . . . . *Booth* involved a public body (the Board of Regents) evading its OMA

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> obligations by attempting to have an individual and subquorum committees composed of individual regents do the Board of Regents' job. *Herald*, in contrast, involved an individual executive who at all times had independent and individual authority under the city charter to recommend the fire chief candidate to the city commission. Unlike in *Booth*, the relevant public body in *Herald* (the city commission) did not delegate any authority to the city manager. Rather, the city manager's authority arose from the city charter . . . .
>
> More plainly put, if a public body delegates its authority to any other entity regardless of its size, that entity (or person) is still effectively a public body, even though an individual person does not generally fit the statutory definition of a "public body." But where an individual executive is acting alone in their official work capacity pursuant to an independent grant of authority separate from the public body's authority, i.e., where their authority is not delegated by a public body to perform the functions of that same public body, an individual cannot be a "public body" under the OMA. [*Pinebrook Warren, LLC*, ___ Mich at ___; slip op at 25-26.]

For the same reason, the City's citation to the Court of Appeals' Opinion in *Yellow Tail Ventures, Inc v City of Berkley*, 344 Mich App 689; 1 NW3d 860 (2022) does not compel reversal of the Court of Appeals' decision in this matter. In *Yellow Tail Ventures, Inc*, the Panel considered whether the city manager of Berkley was subject to the OMA when reviewing licensing applications before they were sent to the city commission for ultimate approval. *Id*. at 704. The Court noted that "[t]here was no impermissible delegation of authority to the City manager . . . [,]" and, for ***that reason***, the Court held that the City Manager, as an individual, was not subject to the provisions of the OMA. See *id*. at 704-705 (emphasis added). But this does not support the notion that an individual can never be subject to the OMA. It merely reaffirms that, unless there is a delegation of authority from a public body to that individual, the individual will generally not be considered a "public body" in his or her own right.

The Michigan appellate Courts have already rejected the City's argument in this regard, and the City has offered no reason why the issue should be revisited now.

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4. The City Manager Did Not Exercise Independent Authority to Determine Winning Applicants; Rather, The City Commission Vested Him with Such Authority Under the Licensing Ordinance

The City next argues that the City Commission did not delegate authority to make licensing determinations to the City Manager. In support, the City contends that there is no provision in the City Charter that conveys the powers of the City to the City Commission. In both regards, the City is incorrect.

As previously stated, the Royal Oak City Charter, ch 3, § 1, expressly vests the City Commission with "***full power and authority . . . to exercise all the powers conferred upon the City***" (emphasis added). The City Charter is clear that the City Commission is "the legislative and governing body of" the City. *Id*. at ch 3, § 2. And beyond that, the City Charter grants the City—and therefore the City Commission—the authority to issue licenses to businesses seeking to operate within the City. *Id*. at ch 2, § 1. Moreover, the authority to grant a license falls within a city's police power. *Kethman*, 88 Mich App at 104. There has never been a dispute among the Parties of this case that the Royal Oak City Commission is a "public body" with the power to issue licenses on behalf of the City.[8]

Thus, all that remains is to determine whether that power was delegated—in law or in practice—to the City Manager or the Review Committee. See *Pinebrook Warren, LLC*, ___ Mich at ___; slip op at 25-26. And as already discussed, the City Commission plainly delegated its licensing authority to the City Manager in these circumstances.

Under the Licensing Ordinance, §§ 435-2(E) and 435-4(C)(4), and under the process as actually implemented in this case, ***the City Commission used its legislative power to delegate its***

[8] In fact, in its Application for Leave to Appeal, the City ***concedes*** that the City Commission has authority to authorize its chosen delegate to "issue city marijuana establishment retailer licenses . . . ." *Application, p 16.*

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authority to make licensing determinations to the City Manager. The City Manager and the Review Committee exercised the City Commission's authority in selecting which applicants would receive marihuana retail establishment licenses. Over the course of its review, the Review Committee narrowed down and ***eliminated*** certain applicants from the pool of potential licensees. **Ex. D**. And it was the determination of the City Manager and the Review Committee—***not the City Commission***—that Gatsby and Royal Treatment would receive licenses. Although the Licensing Ordinance technically reserves the final decision as to which applicants would be granted licenses to the City Commission, see Licensing Ordinance, §§ 435-4(D)(4)(f) and 435-4(D)(5), ***the evidence of record contains no indication that the City Commission ever considered any applicants other than Gatsby or Royal Treatment for licensure***.[9] *Appellant's Appx, Ex. 13, pp 8-11*. The City offers no evidence that the City Commission conducted an independent review of ***any*** applications. And indeed, it cannot. The City Commission merely rubber stamped the licensing determinations of the City Manager and the Review Committee. It was therefore the City Manager and Review Committee—not the City Commission—which made the policy determination as to which applicants for marihuana retail establishment licensure should prevail.[10]

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[9] YouTube, *Royal Oak City Commission, meeting of 4/25/22* <https://www.youtube.com/watch?v=STtLGdaKKLM&list=PLgRTNn2T6G5TiAvaS5udcXyPxY_kw9XGY&index=17> (beginning at approximately 2:05:10) (accessed April 1, 2025).

[10] ***The City also acknowledges that the final decision as to which applicants were selected for licensure was left to the City Manager***. *Application, pp 17-18*. The only point of contention between the Parties appears to be whether that authority was delegated to the City Manager under the Licensing Ordinance or merely in practice. But in either circumstance, the City Manager acted under the authority delegated to him by the City Commission (whether by the City Commission's legislation or merely because of the authority he was allowed to wield in practice, regardless of the language of the Ordinance).

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For the same reasons articulated by this Court in *Pinebrook Warren, LLC*, ___ Mich at ___; slip op at 25-26, the City has failed to establish that reversal is necessary on the bases asserted in its Application for Leave to Appeal.

5. Difficulty in Compliance with the Law Is Not an Excuse to Evade Compliance

The City's final argument is that, if the Court of Appeals' decision on the OMA issue is left undisturbed, it will create difficulty in compliance for municipal governments. In the final pages of its Application, the City states:

> If this decision stands, requiring compliance with OMA will add new layers and processes that will paralyze municipal governments and give new meaning to bureaucratic red tape. The decision thereby reflects a lack of understanding of both the way cities function daily and the additional, overwhelming burdens that this decision will foist on them.
>
> From a practical perspective, compliance with this ruling will result in longer times for city governments to accomplish simple administrative functions, delayed services, interruption of administrative officials' other functions, greater responsibilities on administrative staff, some of which might require the hiring of additional staff or a choice between hiring more staff and reducing municipal services, and undoubtedly numerous other consequences not listed here. Ultimately, this decision will detrimentally affect efficiency and add to the already high cost of administering local government. Then the taxpayers will wonder why cities seek to raise taxes and fees to cover the additional administrative expenses caused by instituting processes that the judiciary—not the legislature—has imposed on them. Not to mention, this sweeping interpretation of the OMA will no doubt subject municipal governments to a slew of lawsuits with the OMA, spending precious resources on legal fees and costs rather than on serving the public. [*Application, pp 22-23*.]

Putting aside that the City neglects to adequately explain ***how*** the Court of Appeals' decision would cause so much chaos in municipal operations, the City's temerity in raising this argument is astounding.

The City cites no authority in support of the notion that it may avoid compliance with the laws enacted by the legislature of this state simply because compliance is difficult or inconvenient. Nor can it. The rule of law governs us all; and the Michigan Courts have declined many invitations

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to carve out exceptions requested on the basis of inconvenience or personal convictions. See, e.g., *In re Caldwell*, 228 Mich App 116, 120-121; 576 NW2d 724 (1998) (declining to create an exception to the operation of MCL 710.51(6), which allows stepparents to adopt the child of a noncustodial parent who has failed or neglected to support or contact said child, even for parents who have been unable to support or contact their children due to incarceration); *In re Pavlos-Hackney*, 343 Mich App 642, 648-649; 997 NW2d 511 (2022) (holding that a person who is subjected to a facially unlawful order from a Court must still comply with the order until relieved of that obligation via subsequent order from an appellate Court); *Spohn v Van Dyke Pub Sch*, 296 Mich App 470, 488; 822 NW2d 239 (2012) ("[I]f [courts] were to equate lack of legal training regarding a statutory duty to disclose or absence of affirmative efforts to conceal the claim with excusable mistake or inadvertence, it would undermine the familiar maxim that, even for pro se litigants, ignorance of the law is no excuse.") (quotation marks omitted). The City has provided no reason for this Court to create an exception to municipal obligations under the OMA for mere inconvenience.

Moreover, the City's request in this regard flies directly in the face of the purpose behind the OMA. The OMA was drafted in response to a 1968 statute, which ineffectively imposed open-meetings requirements on certain public bodies without an enforcement mechanism to deter noncompliance. *Booth Newspapers, Inc*, 444 Mich at 221. As stated by this Court in *Booth Newspapers, Inc*:

> In the instant case, the OMA's legislative purposes were to remedy the ineffectiveness of the 1968 statute and to promote a new era in governmental accountability. Legislators hailed the act as "a major step forward in opening the political process to public scrutiny . . . ." During this period, lawmakers perceived openness in, government as a means of promoting responsible decision making. Moreover, it also provided a way to educate the general public about policy decisions and issues. It fostered belief in the efficacy of the system. Legal commentators noted that "open government is believed to serve as both a light and

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> disinfectant in exposing potential abuse and misuse of power. The deliberation of public policy in the public forum is an important check and balance on self-government . . . .” The prodisclosure nature of the OMA prompted one of its sponsors to describe the law, prior to enactment, as “***a strong bill now which provides very limited closed meetings***” and “***very tight, limited exceptions . . . .***” ***To further the OMA’s legislative purposes, the Court of Appeals has historically interpreted the statute broadly, while strictly construing its exemptions and imposing on public bodies the burden of proving that an exemption exists***. [*Id*. at 222-223 (citations omitted) (emphasis added).]

The City’s purported concerns regarding the difficulty in compliance with the OMA demonstrate a fundamental misunderstanding of its purpose and mechanics. As the emphasized text in the above-referenced quote illustrates, the OMA was drafted ***with the intent that it be strictly construed with limited exceptions***. It has historically been interpreted broadly, placing the burden of proving that an exception exists in any particular circumstance upon the public body seeking the exception. And to be plain, the City has utterly failed to establish that any exception exists in this case.

Further, nothing about the Court of Appeals’ Opinion in this case will, as the City suggests, grind municipal operations to a halt. The Court of Appeals’ holding does not impose new duties or fabricate new requirements that municipalities must meet in order to comply with the OMA. It merely follows this Court’s holding in *Pinebrook Warren, LLC*, which clarified that, when a public body delegates policy-setting, decision-making authority (in this case, licensing authority) to a municipal entity (even an individual), the delegate entity is subject to the requirements of the OMA. In no way does the Panel’s decision expand upon the requirements of the OMA or break new ground in how municipal governments must conduct operations.

The OMA was created to ensure that government decision-making occurs in view of the public. The City has not articulated any reason why the Court of Appeals’ Opinion in this case makes that any more difficult. And even if some difficulty in municipal compliance would stem from the Court of Appeals’ Opinion, the City has failed to explain why such difficulty should result

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in a new, judicially created exception to the requirements of the statute. Municipal governments cannot be allowed to defy the will of the legislature as a matter of mere convenience.

IV. CONCLUSION

For the reasons outlined above, in contravention of MCR 7.305(B), the Defendant-Appellant City of Royal Oak's Application for Leave to Appeal fails to demonstrate that: (1) the issues raised involve a "substantial question about the validity of a legislative act"; (2) the issues raised have "significant public interest" and concern the state or one of its agencies or subdivisions; (3) the issues raised involve legal principles "of major significance to the state's jurisprudence"; (4) the Court of Appeals' decision "is clearly erroneous and will cause material injustice"; or (5) the Court of Appeals' decision "conflicts with a Supreme Court decision or another decision of the Court of Appeals . . . ." See MCR 7.305(B)(1) through (3), (5).

Accordingly, Plaintiff-Appellee Quality Roots, Inc. respectfully requests that this Court deny the City's Application for Leave to Appeal.

Respectfully submitted,

WILLIAMS, WILLIAMS, RATTNER, & PLUNKETT, P.C.

Dated: April 7, 2025

By: ***/s/ William C. DiSessa***

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The word-processing system used to prepare this Brief has indicated that the portions that were drafted in compliance with MCR 7.212(C)(6) through (8) contain a total of 9,945 words.

/s/ *William C. DiSessa*
William C. DiSessa

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PROOF OF SERVICE

I hereby certify that on April 7, 2025, I caused the appended document, the related Appendix, and this Proof of Service to be filed with the Clerk of the Michigan Supreme Court using the Court's e-file system, which will automatically send notification of such filing to all attorneys of record.

/s/ *William C. DiSessa*
William C. DiSessa

Dated: April 7, 2025