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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 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 SUPPLEMENTAL BRIEF IN ACCORDANCE WITH MCR 7.312(E)

ORAL ARGUMENT REQUESTED

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STATEMENT OF APPELLATE JURISDICTION

On October 29, 2025, this Court entered an Order directing the Clerk to schedule oral argument on the Defendant-Appellant City of Royal Oak's Application for Leave to Appeal and directing the Parties to file Supplemental Briefs addressing a single issue: "whether the City of Royal Oak's city manager was a 'public body' as defined by MCL 15.262(a), subject to the Open Meetings Act, MCL 15.261 *et seq*." Quality Roots does not dispute that this Court has jurisdiction to hear this matter.

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STATEMENT OF QUESTIONS INVOLVED

I. WHETHER DEFENDANT-APPELLANT 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 adoption, 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. As a result of whatever deliberations took place in these clandestine meetings, the City awarded the marihuana-retail-establishment licenses 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*. 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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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 ("OMA"), 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. Quality Roots opposed the City's Application for Leave to Appeal, and on October 29, 2025, this Court entered an Order directing the Parties to "file supplemental briefs . . . , addressing whether the City of Royal Oak's city manager was a 'public body' as defined by MCL 15.262(a), subject to the Open Meetings Act . . . ."

The City contends that neither the City Manager nor his Review Committee were subject to the requirements of the OMA in this case, relying primarily upon three (unavailing) arguments: ***First***, the City asserts that individuals (like the City Manager), as opposed to collective entities comprised of multiple people, categorically cannot constitute "public bodies" as contemplated under the OMA, and so individuals simply cannot be subject to the requirements of the Act. But this Court—in authorities both recent and from decades long past—has already rejected this contention on multiple occasions. It is well established that where, as here, a public body delegates authority to another government entity (whether an individual or group), and that entity exercises that authority by making decisions pertaining to public policy that were, by law, the responsibility of the delegating public body, then the entity to which a delegation was made is ***also*** a public body. And that is precisely what occurred in this matter. Under the City Charter of the City of Royal

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Oak, the original authority to award the kind of licenses at issue was vested with the City's legislative body, the City Commission. By adopting the aforementioned Licensing Ordinance, the City Commission granted the City Manager the authority to implement and administer the City's licensing process, including the power to rank applicants in order of "which is best suited to operate in compliance with" MRTMA in the City. Although the City's Ordinances vested final licensing authority in the City Commission, in practice the City Manager and his Review Committee winnowed the applicant pool down to two "winners," and the Commission merely rubber-stamped those selections without any independent review. By doing so, the City Commission effectively delegated its licensing authority to the City Manager and his Review Committee, rendering them subject to the requirements of the OMA.

Second, the City asserts that the City Manager independently possessed licensing authority and was therefore exempt from the OMA—again, solely by virtue of his status as an individual. But as already stated, the City is incorrect. Under Michigan law and Royal Oak's own City Charter, the authority to issue licenses is vested with the City Commission. After the City Commission delegated this authority, the City Manager and Review Committee chose the winning applicants in closed-door sessions, cutting the public entirely out of the process.. Under these circumstances, controlling precedent from this Court required the City Manager and Review Committee to conduct their deliberations and decisions in full compliance with the OMA.

Third, the City argues that the Court of Appeals' Opinion in this matter must be reversed because, if left undisturbed, it will thrust administrative difficulties upon municipal governments all over the state of Michigan. However, difficulty in compliance with the law is no excuse for non-compliance. And regardless, the City presents no authority or evidence to support its assertion that the Court's ruling would impose new or oppressive obligations on municipalities attempting

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to comply with OMA. To the contrary, the Court of Appeals' OMA holding is firmly grounded in decades-old precedent from this Court, precedent that has long guided municipal governments without sowing disorder—and there is no reason to believe the Court of Appeals' decision in this case will do otherwise.

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 or, in the alternative, issue an Opinion affirming the Court of Appeals' Opinion with regard to the issue of the City's violation of the OMA.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

A. The Michigan Regulation and Taxation of Marihuana Act Authorized Municipal Licensure of Marihuana Establishments

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 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

[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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> compliance with [MRTMA] within the municipality." [MCL 333.27959(4) (MRTMA's "competitive-process requirement").]

B. The Process of Licensing Marihuana Retail Establishments Outlined Under 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 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).]

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The ten competitive criteria used in the City's "competitive process" are outlined under Licensing Ordinance, § 435-4(C)(4)(a) through (j). And while the criteria, themselves, are unimportant to the issues on Appeal, it should be noted that, with the exception of only one criterion (criterion (a)), they are all 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 for their review and approval. *Id*. at 435-4(D)(3). 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 issue a license to the applicant. *Id*. at § 435-4(D)(7).

C. The Process Actually Implemented By the City Violated the Open Meetings Act

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

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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," Licensing Ordinance, § 435-4(D)(2), this did not occur. Instead, the City Manager established a *de facto* marihuana application Review Committee (the "Review Committee") 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 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, then Assistant to the City Manager (now Deputy 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 Improperly 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 that 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. Litigation Ensued and the Trial Court Granted Summary Disposition in the City's Favor

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 eventually 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, itself, under MCR 2.116(I)(2)).

On December 14, 2022, the Court held a hearing on the parties' competing requests for summary disposition. Despite the law, analysis, and evidence presented (which overwhelmingly favored Quality Roots and the consolidated Plaintiffs), the Court granted summary disposition in

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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.

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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: Plaintiff-Appellee 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 most of the trial court's holdings; but it also reversed the trial court's decision on the alleged OMA violations, remanding that 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, but she retired days after she granted summary disposition in favor of the City. 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*.

I. This Court Requested that the Parties File Supplemental Briefs Addressing the Applicability of the Open Meetings Act to the City Manager in This Case

Quality Roots and the City each filed Applications for Leave to Appeal in this Court, challenging different aspects of the Court of Appeals' published Opinion. On October 29, 2025, this Court entered an Order denying Quality Roots' Application (Docket No. 168023) for failure to persuade the Court that the questions presented should be reviewed. **Exhibit G**. However, that same day, the Court entered an Order directing the Clerk to schedule oral argument on the City's Application and directing the Parties to file supplemental Briefs addressing a single issue: "whether the City of Royal Oak's city manager was a 'public body' as defined by MCL 15.262(a), subject to the Open Meetings Act, MCL 15.261 *et seq*." **Exhibit H**.

The instant Brief follows.

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*. This Court reviews "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

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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).

B. The Court 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"

In its Order directing oral argument on the City's Application for Leave to Appeal, this Court instructed the Parties to address one issue: "whether the City of Royal Oak's city manager was a 'public body' as defined by MCL 15.262(a), subject to the Open Meetings Act, MCL 15.261 *et seq*." The City argues that the City Manager, as an individual, categorically cannot be a "public body" as contemplated under the OMA. Thus, the City contends 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. The City also argues that, as a practical matter, the Court of Appeals' Opinion, if left undisturbed by this Court, will grind municipal operations to a halt as local governments struggle to comply with the OMA. However, for the reasons outlined below, the City is mistaken.

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1. The Court of Appeals' Analysis of Appellees' Claims of OMA Violations Was Supported by Analogous and Recent Caselaw from This Court in *Pinebrook Warren, LLC v City of Warren*

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).

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

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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).

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 (the Review Committee), 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

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which applicants would be best suited to operate therein, 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 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 Also in Keeping with Binding, Established Principles of Law, Which Preceded This Court's Ruling in *Pinebrook Warren, LLC v City of Warren*

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 over many, many years.

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).]

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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 *Davis*, 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 in this matter that the City Manager or the Review Committee 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 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 options available to the final decision-making body in any way. *Id*. Applying these rules, the Panel in *Davis* held that the financial review team at issue in that matter did not constitute a governing body because it did not exercise independent authority

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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 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

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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 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"

[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 32-33.

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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 here 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), and so that power would fall, under the City Charter, ch 3, § 1, within the purview of the authority held by the City Commission. 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 process that was implemented in this case, ***the City Commission delegated its authority to make licensing determinations to the City Manager***.[6] The City

[6] As discussed below, if the City is correct that the Licensing Ordinance, §§ 435-2(E) and 435-4(C)(4), actually did make the City Manager the final decision-maker as to the selection of license recipients ***by law***, *Appellant's Brief, p 16*, then the Licensing Ordinance would also constitute a ***legislative*** delegation of authority to the City Manager, which would further subject the City Manager to the requirements of the OMA. See *Pinebrook Warren, LLC*, ___ Mich at ___; slip op at 32-33; *Exclusive Capital Partners, LLC*, ___ Mich App at ___; slip op at 22. See also, *supra*, note 5.

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Manager, in tandem with his Review Committee,[7] exercised the City Commission's authority in selecting which applicants would receive marihuana retail establishment licenses. (*Brake Dep I, 98, 100, 108, 183-184*). The Review Committee 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 ultimate byproduct of these meetings was the Review Committee's placement 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 to obtain licensure). Licensing Ordinance, §§ 435-4(D)(4)(f) and 435-4(D)(5), (7). However, the evidence of record contains no indication that the City Commission ever considered any applicants other than Gatsby

[7] 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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or Royal Treatment for licensure.[8] *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 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." *Appellant's Brief, p 14*. As already discussed, however, the City is mistaken.

[8] 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 December 30, 2025).

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In support of its position, the City primarily relies upon this Court's Opinion in *Herald Co v Bay City*. There, the City Charter of Bay City stated that a new fire chief must be appointed by the city commission of Bay City on the recommendation of the city manager. *Herald Co*, 463 Mich at 115. When the Bay City fire chief retired, the city manager formed a committee to assist him in making his recommendation, and the committee conducted meetings and screened applicants in private. *Id*. When the city commission adopted the recommendation of the city manager and his committee, a challenge was brought under the OMA. *Id*. at 115-116. 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 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*. And critically, the Court explained—in keeping with other authorities cited in this Brief—that an individual executive making a ***recommendation*** to a deciding body did not constitute a delegation of authority. See *id*. at 132. Unlike the instant case, the city manager in *Herald Co*: (1) was ***not*** delegated authority to undertake the relevant acts by the city commission of Bay City; and (2) was ***not*** the final decision-maker.[9]

[9] Interestingly, the City actually ***concedes, multiple times***, that the City Manager was the decision-maker-in-fact with regard to the winning applicants for marihuana-retail-establishment licensure. *Appellant's Brief, pp 16, 18-20, 26-27, 29*. While the City also incorrectly posits that the City Manager was the decision-maker under the Licensing Ordinance and that he acted alone when

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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

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selecting the winning applicants—former City Manager Paul Brake, himself, 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*); and email correspondence from Review-Committee member Todd Fenton demonstrates that members other than Paul Brake "disqualified applications . . . ," **Ex. D**—this necessarily distinguishes the facts of this case from those at issue in *Herald*.

Notably, the City ***incorrectly*** states that "Mr. Brake unequivocally testified that he and no one else ranked the applications . . . [,]" *Appellant's Brief, p 17*, citing to a March 7, 2022 Affidavit, which was signed by Paul Brake before he gave deposition testimony in this case. *Appellant's Appx., Ex. 2, p* 2. But as previously stated, Paul Brake's deposition testimony reflects that the decision as to the winning applicants was made, collectively, by him and his Review Committee. (*Brake Dep I, 98, 100, 108, 183-184*). As a preliminary matter, the City did not seek summary disposition of Quality Roots' claim that the City violated the OMA under MCR 2.116(C)(10) (no genuine issue of material fact). But even if it had, Michigan law is clear that "a witness is bound by his or her deposition testimony, and that testimony cannot be contradicted by affidavit . . . ." *Casey v Auto Owners Ins Co*, 273 Mich App 388, 396; 729 NW2d 277 (2006). And further still, even if Paul Brake's Affidavit could be used to contradict his deposition testimony, it would be improper for the trial court to make a pre-trial finding of fact that Paul Brake made the licensing determinations, alone, when contradictory evidence is found in his own deposition testimony. See *Bank of America, NA v Fidelity Nat'l Title Ins Co*, 316 Mich App 480, 512; 892 NW2d 467 (2016) ("A trial court may not weigh evidence when ruling on a summary disposition motion . . . or make credibility determinations.").

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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 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 expressly noted that "[t]here was no impermissible delegation of authority to the City

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manager . . . [,]"[10] 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.

4. The City Manager Did Not Exercise Independent Authority to Determine the Winning Applicants; Rather, The City Commission Vested Him with Such Authority by Rubber-Stamping His and the Review Committee's Decision

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

[10] A portion of the *Yellow Tail Ventures, Inc* Opinion that the City quoted in its own Brief actually calls out this very distinction. *Appellant's Brief, p 16*, see also *Yellow Tail Ventures, Inc*, 344 Mich App at 704 ("the City's ordinance provided that the City manager would review the applications before sending them to the planning commission, which would then send them to the City council for ultimate approval. Even though the City manager was aided by other officials and staff, ***there was no delegation of decision-making duties to these persons***.") (emphasis added). The City has evidently chosen to simply ignore the critical factors distinguishing this case from its favored authorities.

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operate therein. *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.[11]

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 process as implemented in this case, ***the City Commission delegated its 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***.[12] *Appellant's Appx, Ex. 13,*

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

[12] 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 December 30, 2025).

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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.[13]

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 and in its Supplemental Brief.

5. Even Under the City's Presentation of the Local Legislative Framework at Issue, the City Manager (and the Review Committee) Are Subject to the OMA

The City contests the Court of Appeals' understanding that, under the Licensing Ordinance, the City Manager was not actually tasked ***by law*** with awarding the licenses at issue. In support, the City argues that the Court of Appeals did not appreciate that there were two processes at play under the City's Code of Ordinances: (1) the process of reviewing and approving applications for marihuana-retail-establishment licensure, which was overseen by the City Manager; and (2) the process for obtaining site-plan and special-land-use approvals, which was overseen by the City Commission. *Appellant's Brief, p 18*.

But, as previously alluded to, the Court of Appeals was correct in this regard. Under the City's Code of Ordinances, the City Manager ***does not*** award licenses. Rather, the City Manager

[13] ***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 that the City Manager was allowed to wield in practice, regardless of the language of the Ordinance).

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ranks the applicants; and then, if all legislatively imposed conditions are met—including the City Commission's approval of the applicants' site-plan and special-land-use applications—the City Clerk awards a license. Licensing Ordinance, §§ 435-4(C)(4), 435-4(D)(4)(f), 435-4(D)(5), and 435-4(D)(7). And regardless, it bears repeating that the text of a municipality's legislative framework does not dictate the results of a challenge under the OMA. In determining whether a group or individual constitutes 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 ***in practice***. *Pinebrook Warren, LLC,* ___ Mich at ___; slip op at 27-29. In this case, regardless of the text of the Licensing Ordinance or the City's Zoning Ordinance, the City Manager and his Review Committee chose the winning applicants, and the City Commission simply adopted those decisions without additional deliberation. *Exclusive Capital Partners, LLC,* ___ Mich App at ___; slip op at 23. The City Manager and the Review Committee were therefore both subject to the terms of the OMA for the reasons outlined above.

Interestingly, in the City's endeavor to prove that the Court of Appeals erred, the City insists that the City Manager, himself, is the final decision-maker both in practice ***and*** under the Licensing Ordinance. But this is a distinction without a difference. In either case, the City Manager was subject to the OMA. Either: (1) the Court of Appeals was right, and although local law tasked the City Commission with making the final decision as to the awarding of licenses, in practice, it delegated its final decision-making authority to issue licenses to the City Manager, who should therefore have been subject to the OMA; or (2) the City is right, and the City Manager was delegated decision-making authority under both the Licensing Ordinance ***and*** in practice, and so he should have been subject to the OMA.

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In the Court of Appeals' version of events, the Licensing Ordinance reserved the final decision on licensure to the City Commission; but in practice, the City Manager and his Committee actually exercised decision-making authority. In the City's version, the City Manager had final decision-making authority under the Licensing Ordinance, itself, and he exercised that authority in practice. But the City of Royal Oak did not simply burst into existence with a full framework of ordinances providing for the licensure of marihuana establishments. Licensing authority—a police power—was first vested (under the City Charter) in the City's legislative body, the City Commission, which then delegated that authority to the City Manager. Royal Oak City Charter, ch 2, § 1; *id.* at ch 3, §§ 1 through 2; see also *Kethman*, 88 Mich App at 104.[14]

Accepting either version of events, the City Commission—in law, in practice, or both—delegated its licensing authority to the City Manager, who, in practice, made the final licensing decision and should have been subject to the OMA. The City outright acknowledges that "[n]either the planning commission nor the city commission received or discussed the applications of *any* applicants for marijuana establishment licenses under the RME, including Gatsby and Royal Treatment . . . ." *Appellant's Brief, p 20.* And in this regard, whether it means to or not, the City concedes that the City Manager (and his Review Committee) should have conducted his review of licensing applications in full view of the public and in compliance with the OMA.

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[14] The City appears to agree with Quality Roots' assessment regarding the City Commission's authority under the City Charter to some extent. At the very least, the City agrees that the City Commission has the powers of the City. *Appellant's Brief, p 23*. And while the City might not acknowledge it, one of those powers is the power to issue municipal licenses. The City states that the City Manager was given authority to license under the Licensing Ordinance. ***But that would be a delegation of licensing authority by the City Commission to the City Manager***. See *Pinebrook Warren, LLC*, ___ Mich at ___; slip op at 32-33. Indeed, the City acknowledges that the power to choose who has authority to license is vested in the ***City Commission***. *Appellant's Brief, p 25*. So even if the City is right and the City Manager had authority under the Licensing Ordinance to select the winning applicant, that means that the City Manager was ***delegated*** that authority when the City Commission adopted the Licensing Ordinance.

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6. Difficulty of Compliance Is No Defense, and the City's Doomsday Predictions Are Unfounded

a. Administrative Inconvenience Is No Basis to Evade the OMA, and Inventing New Exemptions Would Undermine the Act

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 *Appellant's Brief*, the City states:

> If the Court of Appeals decision stands and its logic is applied beyond the context of MRTMA, 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 thus reflects a fundamental and dangerous lack of understanding of both the way cities function and the additional, overwhelming burdens that the 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. It is not a stretch to foresee that municipal administrative employees would constantly be in doubt whether they have to call a public meeting just to carry out their day-to-day responsibilities.
>
> Ultimately, this decision could detrimentally affect efficiency and add to the already high cost of administering local government. Municipal budgets do not presently account for the costs that this type of compliance would impose. Then the taxpayers will wonder why if cities seek to raise taxes and fees or other forms of revenue to cover the additional administrative expenses caused by instituting processes that the judiciary—not the legislature—has imposed on them. [*Appellant's Brief, pp 33-34.*]

Putting aside the City's failure to explain exactly ***how*** the Court of Appeals' decision would breed chaos in municipal operations, the City's audacity in making this argument is striking.

First, the City cites no authority in support of the notion that it can 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 binds everyone, and Michigan courts have firmly resisted

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efforts to excuse noncompliance based on convenience 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 position 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 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-

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> 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.

b. The City Has Failed to Show that the Court of Appeals' Opinion Will Disturb Municipal Operations

Further, nothing about the Court of Appeals' Opinion in this case will, as the City suggests, grind municipal operations “to a virtual halt.” *Appellant's Brief, p 32*. 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 ***2024*** holding in *Pinebrook Warren, LLC* and its ***1993*** Opinion in *Booth Newspapers, Inc*, both of 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. And, despite the time that has passed since this Court issued its Opinions in *Booth Newspapers, Inc* and *Pinebrook Warren,*

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LLC, the year is now 2025, and the municipal governments of this state have not devolved into anarchy.

Putting that aside, however, the City's position in this regard is based not in law, but in a misunderstanding of the practical implications of the Court of Appeals' holding in this case. The City states that, under the Court of Appeals' holding, any individual city official performing any municipal duties in accordance with local ordinances will constitute a "public body" such that the requirements of the OMA will come into play. *Appellants' Brief, p 30*. The City characterizes this as a "hornet's nest not only for Royal Oak, but for municipal governments statewide." *Appellant's Brief p 30*. It apparently fears that all day-to-day operations of municipal government performed under local ordinance will be subject to the OMA.

But this is simply not the case. The Court of Appeals' holding in this case is limited to the facts and circumstances applicable to this particular licensing determination. The OMA only applies to "public bodies," which, under MCL 15.262(a), can only be a "legislative or governing body . . . ." 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. *Davis*, 296 Mich App at 593. A "governing body," on the other hand, is 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). Such "governing bodies" must exercise decision-making authority on matters of public policy. *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 bodies as contemplated under the OMA. *Id*. at 601-609.

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It is untenable to suggest that every municipal employee involved in routine operations functions as a "legislative body" crafting local law or as a "governing body" making final decisions on public policy. For the most part, municipal employees will be engaged in ministerial tasks for which they hold no discretion – performing the work necessary to keep a given municipality functioning so that certain individuals involved in the legislative or decision-making processes (i.e., the public bodies) can do the work that ***does*** require compliance with the OMA.

Moreover, the OMA, itself, limits the application of its requirements to "decisions" made at "meetings" of those limited public bodies. See, e.g., MCL 15.262(a), (b), and (d); MCL 15.263; MCL 15.264; MCL 15.265; MCL 15.269. A "meeting," as that term is defined under the OMA, is a "convening of a public body at which a quorum is present ***for the purpose of deliberating toward or rendering a decision on a public policy*** . . . ." MCL 15.262(b) (emphasis added). And a "decision," under the OMA, is "a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and ***by which a public body effectuates or formulates public policy***." MCL 15.262(d) (emphasis added). The ultimate decision regarding a grant of a municipal license is an instance of a municipal body "effectuating public policy . . . ." *Pinebrook Warren, LLC v City of Warren*, 343 Mich App 127, 149; 996 NW2d 754 (2022), rev'd in part on other grounds by ___ Mich ___, ___; slip op at 13, 35. But not all municipal operations will "effectuate[] or formulate[] public policy[,]" see MCL 15.262(d), such that the requirements of the OMA are triggered.

The City cries outrage as if the Court of Appeals' decision would require every municipal action to occur in public meetings with prior notice to the local citizenry. This belief is misguided. The Court of Appeals' Opinion in this matter does not thrust the onus of OMA-compliance on any

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municipal bodies or endeavors that were not ***already*** subject to the OMA. It merely clarifies that, in the circumstances at issue in this case, where the City Manager and his Review Committee made the final determination as to a matter effectuating the public policy of Royal Oak (i.e., the licensure of marihuana retail establishments) in secret, closed-door meetings for which the public had no notice or opportunity to observe the deliberative and decision-making process, the OMA was violated. *Exclusive Capital Partners, LLC* ___ Mich App at ___; slip op at 21-24.[15]

The City complains that, under the Court of Appeals' Opinion, the City Manager will need to conduct public meetings whenever there is a staff meeting. *Appellant's Brief, pp 30-31*. If the staff meeting is held for the purpose of allowing City officials to make the final determination as to the formulation or effectuation of public policy, then the City is correct. The requirements of the OMA would apply. But if the City is ***not*** attempting to circumvent the OMA by conducting deliberations and determinations as to the public policy of the municipality behind closed doors, the OMA would not apply.

The same applies to the City's inquiry regarding whether the OMA applies when the City Manager is seeking legal advice from the City Attorney. If the City Attorney's "legal advice" is actually a guise for the City Attorney to improperly make final decisions as to matters of public policy, perhaps the OMA does apply. But if the City Attorney is merely providing legal advice (i.e., a ***recommendation***) to the ultimate decision-maker, then perhaps the requirements of the

[15] Perhaps if the City Manager had made the final licensing decisions, himself, pursuant to licensing authority independently conferred upon him by the Royal Oak City Charter, as was the case in *Herald Co*, 463 Mich at 132, there would be no OMA violation. Perhaps if the City Manager and Review Committee merely made a recommendation to the ultimate decision-maker, the City Commission, which then conducted an independent review of the application materials and made its own well-informed licensing determination, there would be no OMA violation. Perhaps if the determination at issue were not a matter of effectuating or formulating the public policy of Royal Oak, there would be no OMA violation. But here, ***under the facts unique to this case***, there was a violation. The City's cries of chaos are unfounded.

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OMA do not apply. Indeed, the OMA specifically states that a public body may hold a closed session (one not held in the public eye) in certain circumstances involving municipal attorneys, including sessions held for the purpose of consulting on "trial or settlement strategy in connection with specific pending litigation . . . ." See MCL 15.268(1)(e).

The City further argues that "[i]t would be quite a task for the seven-member city commission (six commissioners plus the mayor) to review in a public meeting the hundreds of pages of each of the 31 RME applications . . . ." *Appellant's Brief, p 26*. But that is precisely what the OMA was created to address. When municipal officials formulate or effectuate public policy, ***someone***—the actual decision-makers (whether in law or in practice)—must comply with the OMA. The City cannot be permitted to circumvent the OMA by delegating decision-making authority to an individual or by characterizing the winnowing of applicants by the Review Committee as insignificant "advising" to the City Manager. The alternative is that the OMA will be rendered a nullity when all municipal bodies simply delegate important matters of governmental function and decision-making to single individuals by ordinance. See *Booth Newspapers, Inc*, 444 Mich at 226. And although the City Manager and his Review Committee did review applications for marihuana-establishment licensure—putting aside that the Review Committee was made up of eleven members,[16] undermining the City's implication that a seven-member body simply could not be bothered to review application materials—it did not do so in view of the public. This cannot stand.

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 stems from

[16] See, *supra*, note 2.

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the Court of Appeals' Opinion, the City has failed to explain why such difficulty should result 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.

c. Public Bodies' Deliberations and Decisions Are Not Exempt from OMA Compliance Simply Because They Involve FOIA-Protected Documents

Without meaningful analysis, the City lastly argues that, because "information obtained from an applicant related to licensure under [MRTMA] is exempt from disclosure under the freedom of information act . . . ," see MCL 333.27959(7), local-government officials cannot be compelled to hold public meetings concerning the issuance of municipal licenses. *Appellant's Brief, pp 26-27*. But the City's logic is, once again, unavailing.

When a governmental body holds a public meeting under the OMA, but is faced on the record with the discussion of material that is exempt from disclosure under the Freedom of Information Act ("FOIA"), MCL 15.231 *et seq*., the body must nevertheless, at the very least, "state on the record those documents it deems exempt under the FOIA together with the associated FOIA exemption justifying the document's nondisclosure, describe those documents unless description would defeat the purpose of the nondisclosure, and complete this process on the record in open session" before moving to conduct further discussion in a closed meeting, out of public view. *Herald Co v Tax Tribunal*, 258 Mich App 78, 86; 669 NW2d 862 (2003), overruled in part on other grounds by *Speicher v Columbia Twp Bd of Trustees*, 497 Mich 125, 144; 860 NW2d 51 (2014). Moreover, nothing in the law prevents a municipal body from discussing—without disclosing confidential materials or the particulars of a particular applicant's business and operational plans—the reasons why an applicant is "best suited to operate in compliance with [MRTMA] within the municipality[,]" which is, ultimately, the guiding factor in determining which applicants should receive marihuana-establishment licensure. See MCL 333.27959(4);

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Licensing Ordinance, § 435-4(C)(4). This is particularly true in this case, where ***all*** of the factors relevant to making the final licensing determination under the Licensing Ordinance, § 435-4(C)(4)(a) through (j), can be openly discussed either by reference to publicly available sources or without reference to any documents collected during the City's application process, see Licensing Ordinance, § 435-4(A), which would be exempt from disclosure under FOIA.

If the City had merely discussed their purported reasons for selecting Gatsby and Royal Treatment as the applicants best suited to operate in compliance with MRTMA within the City in a lawfully noticed meeting made available to the public, this entire case (as well as all related lawsuits and appeals) might have been avoided.

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 (or, in the alternative, issue an Opinion affirming the determination of the Court of Appeals as applied to Quality Roots' challenge under the OMA).

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Respectfully submitted,

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

Dated: December 31, 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 13,574 words.

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

PROOF OF SERVICE

I hereby certify that on December 31, 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: December 31, 2025