

July 31 2014 2:41 PM

KEVIN STOCK
COUNTY CLERK
NO: 14-2-10487-7

1
2
3
4
5
6
7
8 **STATE OF WASHINGTON**
PIERCE COUNTY SUPERIOR COURT

9 MMH, LLC, a Washington Limited
Liability Company,

10 Plaintiff,

11 v.

12 CITY OF FIFE,

13 Defendant.
14

NO. 14-2-10487-7

ATTORNEY GENERAL'S MOTION
TO INTERVENE

15 The Attorney General of the State of Washington, by and through the undersigned
16 counsel, hereby moves to intervene in this action. This motion is based upon RCW 7.24.110
17 and CR 24(a).

18 **I. IDENTITY OF INTERVENOR**

19 The Attorney General is an officer of the executive branch of state government,
20 elected by the voters of Washington. The Washington Constitution provides that the Attorney
21 General is the legal advisor of state officers. Const. art. III, § 21.

22 **II. NATURE OF CASE**

23 Plaintiff commenced this action to challenge an ordinance of the City of Fife
24 prohibiting marijuana-related businesses within the city. In 2012, Washington voters enacted
25 an initiative measure to establish a licensing and regulatory system governing the distribution
26 and possession of marijuana for recreational purposes. Laws of 2013, ch. 3 (codified as part

1 of chapter 69.50 RCW). That measure, Initiative 502 (I-502), directs the Washington State
2 Liquor Control Board to establish a system for issuing licenses to producers, processors, and
3 retailers of marijuana. RCW 69.50.325 through .369. Certain otherwise applicable state law
4 criminal penalties do not apply to actions performed by licensees under I-502.
5 RCW 69.50.360.

6 Plaintiff seeks declaratory, injunctive, and other relief invalidating the City's
7 ordinance. Evaluating the claims will require the Court to interpret I-502 and determine
8 whether, under the initiative and the Washington Constitution, state law preempts local
9 authority to legislate on this subject. The Attorney General, and state officers and agencies
10 served by the Attorney General as their legal counsel, are assigned various responsibilities for
11 implementing I-502. The Attorney General therefore has an interest in this action.

12 **III. THE ATTORNEY GENERAL'S INTEREST IN INTERVENING**

13 The Attorney General moves to intervene to address the implementation of I-502. The
14 declaratory judgments act provides that the Attorney General is entitled to be heard in any
15 action in which a party contends that a state law or local ordinance is unconstitutional.
16 RCW 7.24.110. Plaintiff contends that the local ordinance at issue is unconstitutional as being
17 preempted by I-502. The Attorney General is therefore entitled to intervene in this case as a
18 matter of right. CR 24(a)(1) (providing that "anyone shall be permitted to intervene in an
19 action . . . when a statute confers an unconditional right to intervene"). In the alternative, the
20 Attorney General is permitted to intervene under Rule 24(b) because this Court's construction
21 of I-502 could affect the initiative's implementation by state officers and agencies.

22 No court has yet interpreted I-502 to determine whether it preempts city ordinances
23 like this one. The Attorney General has issued a formal opinion concluding that I-502 does
24 not preempt local ordinances such as the one the City enacted here. AGO 2014 No. 2. The
25 Attorney General's proposed Answer to the Amended Complaint, setting forth the defenses
26 for which intervention is sought, is attached as Exhibit A. CR 24(c) (requiring an applicant

1 for intervention to provide a pleading setting forth the claim or defense for which intervention
2 is sought).


3 **IV. CONCLUSION**

4 For these reasons, this Court should grant the Motion of the Attorney General of the
5 State of Washington to intervene in this matter. This Court should also accept for filing the
6 Attorney General's [Proposed] Answer to the Complaint, attached as Exhibit A hereto.

7 DATED this 31st day of July, 2014.

8
9 ROBERT W. FERGUSON
Attorney General

10 NOAH G. PURCELL, WSBA # 43492
Solicitor General

11
12 
13 JEFFREY T. EVEN, WSBA #20367
Deputy Solicitor General

14 PO Box 40100
15 Olympia, WA 98504-0100
16 360-753-6200

17
18 Counsel for Attorney General
19
20
21
22
23
24
25
26

EXHIBIT A

MMH, LLC, a Washington Limited
Liability Company,

ATTORNEY GENERAL'S ANSWER
TO COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND WRIT OF
MANDAMUS

V.

Defendant.

I. INTRODUCTION

2. The Attorney General responds to the allegations of paragraph 2 of the Complaint by admitting that that Plaintiff has applied with the state Liquor Control Board for a license as a marijuana-related businesses, but denies that Plaintiff has any vested right to

1 receive such a license. The Attorney General lacks sufficient information or belief to admit or
2 deny the remaining allegations of paragraph 2, and on that basis denies those allegations.

3 3. Paragraph 3 of the Complaint consists entirely of allegations of law to which
4 no response by way of factual pleading is required. To the extent that response may be
5 required, the Attorney General denies the allegations of paragraph 3.

6 4. Paragraph 4 of the Complaint consists entirely of allegations of law to which
7 no response by way of factual pleading is required. To the extent that response may be
8 required, the Attorney General denies the allegations of paragraph 4.

9 II. PARTIES

10 5. The Attorney General admits the facts alleged in paragraph 5 of the Complaint.

11 6. The Attorney General admits the facts alleged in paragraph 6 of the Complaint.

12 III. JURISDICTION AND VENUE

13 7. The Attorney General admits that this Court has subject matter jurisdiction
14 over this action.

15 8. The Attorney General admits that jurisdiction and venue are proper in this
16 County.

17 IV. FACTS

18 9. The Attorney General admits the facts alleged in paragraph 9 of the Complaint,
19 except that the Attorney General denies that the administrative rules codified in chapter 31-55
20 WAC are part of Initiative 502. Rather, those provisions consist of administrative rules
21 adopted by the Liquor Control Board to implement Initiative 502.

22 10. Paragraph 10 of the Complaint consists entirely of allegations of law to which no
23 response by way of factual pleading is required. To the extent that response may be required,
24 the Attorney General denies the allegations of paragraph 10 as mischaracterizing and
25 overstating the provisions of Initiative 502.

1 11. Paragraph 11 of the Complaint consists entirely of allegations of law to which
2 no response by way of factual pleading is required. To the extent that response may be
3 required, the Attorney General admits that Initiative 502 established a regulatory and licensing
4 system for marijuana-related businesses.

5 12. Paragraph 12 of the Complaint describes section 1 of Initiative 502, which
6 speaks for itself and requires no response by way of factual pleading.

7 13. Paragraph 13 of the Complaint consists entirely of allegations of law to which no
8 response by way of factual pleading is required. To the extent that response is required, the
9 Attorney General denies that those allegations support the relief requested.

10 14. Paragraph 14 of the Complaint consists entirely of allegations of law to which no
11 response by way of factual pleading is required. To the extent that response is required, the
12 Attorney General denies that those allegations support the relief requested.

13 15. Paragraph 15 of the Complaint consists entirely of allegations of law to which no
14 response by way of factual pleading is required. To the extent that response is required, the
15 Attorney General denies that those allegations support the relief requested.

16 16. Paragraph 16 of the Complaint consists entirely of allegations of law to which no
17 response by way of factual pleading is required. To the extent that response is required, the
18 Attorney General denies that those allegations support the relief requested.

19 17. Paragraph 17 of the Complaint consists entirely of allegations of law to which no
20 response by way of factual pleading is required. To the extent that response is required, the
21 Attorney General denies that those allegations support the relief requested.

22 18. Paragraph 18 of the Complaint consists entirely of allegations of law to which no
23 response by way of factual pleading is required. To the extent that response is required, the
24 Attorney General denies that those allegations support the relief requested.

1 19. Paragraph 19 of the Complaint consists entirely of allegations of law to which no
2 response by way of factual pleading is required. To the extent that response is required, the
3 Attorney General denies that those allegations support the relief requested.

4 20. The Attorney General admits the facts alleged in paragraph 20 of the Complaint.

5 21. The Attorney General lacks sufficient information and belief to admit or deny the
6 allegations of paragraph 21 of the Complaint, and on that basis denies those allegations.

7 22. The Attorney General lacks sufficient information and belief to admit or deny the
8 allegations of paragraph 22 of the Complaint, and on that basis denies those allegations.

9 23. The Attorney General admits the facts alleged in paragraph 23 of the Complaint.

10 24. The Attorney General lacks sufficient information and belief to admit or deny the
11 allegations of paragraph 24 of the Complaint, and on that basis denies those allegations.

12 25. The Attorney General lacks sufficient information and belief to admit or deny the
13 allegations of paragraph 25 of the Complaint, and on that basis denies those allegations.

14 26. The Attorney General lacks sufficient information and belief to admit or deny the
15 allegations of paragraph 26 of the Complaint, and on that basis denies those allegations.

16 27. The Attorney General lacks sufficient information and belief to admit or deny the
17 allegations of paragraph 27 of the Complaint, and on that basis denies those allegations.

18 28. The Attorney General lacks sufficient information and belief to admit or deny the
19 allegations of paragraph 28 of the Complaint, and on that basis denies those allegations.

20 29. The Attorney General lacks sufficient information and belief to admit or deny the
21 allegations of paragraph 29 of the Complaint, and on that basis denies those allegations.

22 30. The Attorney General lacks sufficient information and belief to admit or deny the
23 allegations of paragraph 30 of the Complaint, and on that basis denies those allegations.

24 31. The Attorney General lacks sufficient information and belief to admit or deny the
25 allegations of paragraph 31 of the Complaint, and on that basis denies those allegations.
26

1 32. The Attorney General lacks sufficient information and belief to admit or deny the
2 allegations of paragraph 32 of the Complaint, and on that basis denies those allegations.

3 33. The Attorney General lacks sufficient information and belief to admit or deny the
4 allegations of paragraph 33 of the Complaint, and on that basis denies those allegations.

5 34. The Attorney General lacks sufficient information and belief to admit or deny the
6 allegations of paragraph 34 of the Complaint, and on that basis denies those allegations.

7 35. The Attorney General lacks sufficient information and belief to admit or deny the
8 allegations of paragraph 35 of the Complaint, and on that basis denies those allegations.

9 36. The Attorney General lacks sufficient information and belief to admit or deny the
10 allegations of paragraph 36 of the Complaint, and on that basis denies those allegations.

11 37. The Attorney General lacks sufficient information and belief to admit or deny the
12 allegations of paragraph 37 of the Complaint, and on that basis denies those allegations.

13 38. The Attorney General lacks sufficient information and belief to admit or deny the
14 allegations of paragraph 38 of the Complaint, and on that basis denies those allegations,
15 except that the Attorney General admits that there are licensing fees associated with applying
16 for a license from the Liquor Control Board.

17 39. The Attorney General lacks sufficient information and belief to admit or deny the
18 allegations of paragraph 39 of the Complaint, and on that basis denies those allegations.

19 40. The Attorney General lacks sufficient information and belief to admit or deny the
20 allegations of paragraph 40 of the Complaint, and on that basis denies those allegations.

21 41. The Attorney General admits the allegations of paragraph 41 of the Complaint

22 42. The Attorney General denies that the law supports granting the relief requested
23 in paragraph 42 of the Complaint.

24 **V. FIRST CAUSE OF ACTION—STATUTORY PREEMPTION**

25 43. The Attorney General re-alleges and incorporates by reference all of the
26 allegations set forth in paragraphs 1-42 of this Answer.

1 44. Paragraph 44 of the Complaint consists entirely of allegations of law, to which
2 no response by way of factual pleading is required. To the extent response may be required,
3 the Attorney General denies the legal conclusions expressed in paragraph 44.

4 45. Paragraph 45 of the Complaint consists entirely of allegations of law, to which
5 no response by way of factual pleading is required. To the extent that response may be
6 required, the Attorney General admits that the Washington Constitution vests cities, towns,
7 and counties with broad local authority to legislate as to matters of local concern, so long as
8 such local legislation does not violate the Constitution or is preempted by state law.

9 46. Paragraph 46 of the Complaint consists entirely of allegations of law, to which
10 no response by way of factual pleading is required. To the extent that response may be
11 required, the Attorney General denies those allegations, and specifically denies that
12 RCW 69.50.608 preempts the local legislation at issue.

13 47. The Attorney General lacks sufficient information and belief to admit or deny the
14 allegations of paragraph 47 of the Complaint, and on that basis denies those allegations.

15 48. Paragraph 48 of the Complaint consists entirely of allegations of law, to which
16 no response by way of factual pleading is required. To the extent that response may be
17 required, the Attorney General denies that RCW 69.50.608 preempts the local legislation at
18 issue.

19 **VI. SECOND CAUSE OF ACTION—CONSTITUTIONAL PREEMPTION**

20 49. The Attorney General re-alleges and incorporates by reference all of the
21 allegations set forth in paragraphs 1-48 of this Answer.

22 50. The Attorney General admits that paragraph 50 of the Complaint quotes article
23 XI, section 11 of the Washington Constitution.

24 51. Paragraph 51 of the Complaint consists entirely of allegations of law, to which
25 no response by way of factual pleading is required. The extent that response may be required,
26

1 the Attorney General denies that Paragraph 51 sets forth a full or complete statement of the
2 law of preemption under the Washington Constitution as it applies to this case.

3 52. Paragraph 52 of the Complaint consists entirely of allegations of law, to which
4 no response by way of factual pleading is required. The extent that response may be required,
5 the Attorney General denies that Paragraph 52 sets forth a full or complete statement of the
6 law of preemption under the Washington Constitution as it applies to this case. The Attorney
7 General alleges that Initiative 502 does not preempt the local legislation challenged in this
8 action.

9 53. Paragraph 53 of the Complaint consists entirely of allegations of law, to which
10 no response by way of factual pleading is required. The extent that response may be required,
11 the Attorney General denies that Paragraph 53 sets forth a full or complete statement of the
12 law of preemption under the Washington Constitution as it applies to this case. The Attorney
13 General alleges that Initiative 502 does not preempt the local legislation challenged in this
14 action.

15 **VII. THIRD CAUSE OF ACTION—INJUNCTIVE RELIEF**

16 54. The Attorney General re-alleges and incorporates by reference all of the
17 allegations set forth in paragraphs 1-53 of this Answer.

18 55. The Attorney General lacks sufficient information and belief to admit or deny the
19 allegations of paragraph 55 of the Complaint, and on that basis denies those allegations.

20 56. Paragraph 56 of the Complaint consists entirely of allegations of law, to which
21 no response by way of factual pleading is required. The extent that response may be required,
22 the Attorney General denies those allegations.

23 57. Paragraph 57 of the Complaint consists entirely of allegations of law, to which
24 no response by way of factual pleading is required. The extent that response may be required,
25 the Attorney General denies those allegations.

1 **VIII. FOURTH CAUSE OF ACTION—MANDAMUS RELIEF**

2 58. The Attorney General re-alleges and incorporates by reference all of the
3 allegations set forth in paragraphs 1-57 of this Answer.

4 59. The Attorney General lacks sufficient information and belief to admit or deny the
5 allegations of paragraph 59 of the Complaint, and on that basis denies those allegations.

6 60. Paragraph 60 of the Complaint consists entirely of allegations of law, to which
7 no response by way of factual pleading is required. The extent that response may be required,
8 the Attorney General denies those allegations.

9 61. Paragraph 61 of the Complaint consists entirely of allegations of law, to which
10 no response by way of factual pleading is required. The extent that response may be required,
11 the Attorney General denies those allegations.

12 **IX. FIFTH CAUSE OF ACTION—EQUITABLE ESTOPPEL**

13 62. The Attorney General re-alleges and incorporates by reference all of the
14 allegations set forth in paragraphs 1-61 of this Answer.

15 63. Plaintiff's Fifth Cause of Action sets forth allegations that are applicable only to
16 the Defendant City of Fife. The Attorney General accordingly takes no position regarding
17 Plaintiff's Fifth Cause of Action (Paragraphs 62-67 of the Complaint).

18 **X. SIXTH CAUSE OF ACTION—INVERSE CONDEMNATION**

19 64. The Attorney General re-alleges and incorporates by reference all of the
20 allegations set forth in paragraphs 1-63 of this Answer.

21 65. Plaintiff's Sixth Cause of Action sets forth allegations that are applicable only to
22 the Defendant City of Fife. The Attorney General accordingly takes no position regarding
23 Plaintiff's Sixth Cause of Action (Paragraphs 68-73 of the Complaint).

24 **XI. AFFIRMATIVE DEFENSES**

25 By way of further answer and affirmative defense, the Attorney General alleges:
26

1. Plaintiff's Complaint fails to set forth any cause of action upon which relief can be granted.

XII. REQUEST FOR RELIEF


Having fully answered the Complaint for Declaratory and Injunctive Relief, the Attorney General requests as follows:

1. That Plaintiff's requested relief be DENIED and Plaintiff take nothing by way of this action;
 2. That the Complaint be dismissed with prejudice;
 3. That the Attorney General be awarded its costs and allowable attorney fees;
- and
4. That the Court award such other and further relief as may be just and equitable.

DATED this 31st day of July, 2014.

ROBERT W. FERGUSON
Attorney General

NOAH G. PURCELL, WSBA # 43492
Solicitor General


JEFFREY T. EVEN, WSBA #20367
Deputy Solicitor General

PO Box 40100
Olympia, WA 98504-0100
360-753-6200

Counsel for Attorney General