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**SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE**

MMH, LLC, a Washington limited liability company,	No.
Plaintiff,	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, AND WRIT OF MANDAMUS.
and	
CITY OF FIFE, a Washington municipal corporation	
Defendant.	

I. INTRODUCTION

1. Plaintiff MMH, LLC brings this action to halt Defendant's prohibition of marijuana businesses in the City of Fife. Defendant has issued an ordinance stating that it will grant no licenses or permits to marijuana businesses seeking to locate within the city, that it will not accept any application for such licenses, and has imposed an indefinite prohibition on the production, processing, and retail sale of recreational marijuana in the city, despite the state-wide legalization of such activities by Washington State Initiative No. 502 ("I-502")

2. Plaintiff is a Washington State Limited Liability Company selected by the

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF, AND WRIT OF MANDAMUS.

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1 Washington State Liquor Control Board ("WSLCB") to receive licenses to operate as a
2 marijuana retailer pursuant I-502 and RCW 59.50 *et seq.* and intends open retail
3 establishments in the City of Fife.
4

5 3. Defendant's actions are in conflict with State law, are preempted by State law,
6 exceed regulatory authority granted to the City by I-502, and are unconstitutional.

7 4. Plaintiff seeks injunctive, declaratory, and mandamus relief, enjoining
8 Defendant's obstruction of Plaintiff's lawful marijuana business, and declaring
9 Defendant's refusal to grant permits and licenses for Plaintiff's lawful marijuana
10 business—on the basis that such permits and licenses are prohibited by a local
11 ordinance—preempted by state law.

12 II. PARTIES

13 5. Plaintiff MMH, LLC is Washington State limited liability company attempting to
14 do business in the City of Fife.

15 6. Defendant City of Fife is a municipal corporation validly formed and existing
16 under the Constitution of Washington State as a non charter code city pursuant to RCW
17 35A.13 located in Pierce County, Washington.

18 III. JURISDICTION AND VENUE

19 7. This court has subject matter jurisdiction under RCW 2.08.010, 7.24.010,
20 7.40.010, and 7.16.160.

21 8. Jurisdiction and venue are proper under RCW 4.12.025 which provides for
22 actions to be brought in the county where the defendant resides.
23

24 IV. FACTS

25 9. On November 6, 2012 the citizens of Washington State approved I-502. This

1 initiative has been codified in RCW 69.50 *et seq.* and WAC 314-15 *et seq.*

2
3 10. RCW 69.50 legalizes the use and possession of marijuana for
4 Washingtonian's over the age of 21.

5 11. RCW 69.50 and WAC 314-55 also legalize and regulate the production,
6 manufacture, and retail sales of marijuana by businesses duly licensed by the WSLCB.

7 12. The stated intent of I-502 to decriminalize the use and possession of
8 marijuana in order to, (1) allow law enforcement resources to be focused on violent and
9 property crimes; (2) generate new state and local tax revenue for education, health
10 care, research, and substance abuse prevention; and (3) take marijuana out of the
11 hands of illegal drug organizations and brings it under a tightly regulated, state-licensed
12 system similar to that for controlling hard alcohol.

13 13. RCW 69.50.345 requires WSLCB to establish and implement procedures
14 which provide for the licensing of marijuana producers, marijuana processors, and
15 marijuana retailers.

16
17 14. RCW 69.50.345 requires WSLCB to allocate the maximum number of retail
18 outlets that may be licensed in each county with regard to (a) population distribution;
19 (b) security and safety issues; and (c) the provision of adequate access to licensed
20 sources of useable marijuana and marijuana-infused products to discourage purchases
21 from the illegal market.

22 15. RCW 69.50.342 authorizes the WSLCB to adopt rules regarding the locations
23 of marijuana retail locations for the purpose of carrying into effect the provisions of I-502
24 according to their true intent or of supplying any deficiency therein.

25 16. RCW 69.50.354 authorizes WSLCB to license retail marijuana outlets in "no

1 greater number in each of the counties of the state than as the state liquor control board
2 shall deem advisable," and decriminalizes the sale of marijuana by licensed retailers.

3
4 17. Under RCW 69.50.360 the purchase, receipt, possession, delivery,
5 distribution, or sale to a person 21 years of age or older of properly packaged and
6 labeled marijuana from a validly licensed marijuana processor that does not exceed the
7 maximum amounts established by the WSLCB shall not constitute a criminal or civil
8 offense.

9 18. Neither I-502, RCW 69.50, nor WAC 314-55 contain provisions authorizing
10 cities or counties to opt out of the production, processing, or retailing of marijuana.

11 19. In October 2013, WSLCB adopted WAC 314-55-081 setting forth the
12 application requirements for a marijuana retailer license and method by which retail
13 locations will distributed throughout the state,

14
15 The number of retail locations will be determined using a method that distributes the
16 number of locations proportionate to the most populous cities within each county.
17 Locations not assigned to a specific city will be at large. At large locations can be
18 used for unincorporated areas in the county or in cities within the county that have
19 no retail licenses designated. Once the number of locations per city and at large
20 have been identified, the eligible applicants will be selected by lottery in the event
21 the number of applications exceeds the allotted amount for the cities and county.

22 20. WSLCB determined that there would be seventeen (17) at large retail
23 licenses in Pierce County and zero (0) retail licenses assigned to the City of Fife.

24 21. Plaintiff timely submitted applications to WSLCB that were selected for Pierce
25 County at large licenses in the WSLCB lottery in April, 2014.

26 22. Plaintiff executed a lease at 4500 Pacific Highway E, Fife, WA for the purpose
of operating a retail marijuana outlet.

27 23. RCW 69.50.331(7)(b) provides the city a right to file WSLCB within twenty

1 days after the date of transmittal of a notice of application written objections against an
2 applicant.

3
4 24. Defendant did not file an objection to Plaintiff WSLCB retail marijuana
5 application.

6 25. On August 13, 2013 the City of Fife City Council passed Ordinance No. 1841
7 imposing a one year moratorium on the establishment, location, permitting, licensing of
8 marijuana production, processing and retailing. Ordinance No. 1841 provides that the
9 Fife Planning Commission is to make a recommendation to the City Council on
10 development regulations for marijuana related land uses.

11 26. On January 27, 2014 the City of Fife Planning Commission held a special
12 meeting expressly for the purpose of taking public comment on how the City might
13 proceed on developing amendments to address marijuana. Studies related to
14 secondary effects of marijuana land uses were compiled and presented to the Planning
15 Commission. Based on public comment and data received, the Planning Commission
16 directed the city attorney to draft Ordinance No. 1872 ("the ordinance").

17
18 27. On April 7, 2014, the City of Fife Planning Commission held a public meeting
19 as required by FMC 19.92.040(A) on the ordinance and accepted public comment.

20 28. On May 5, 2014, the City of Fife Planning Commission voted 5-1 to
21 recommend the ordinance (Attached as Exhibit 1) to the City Council allowing and
22 regulating marijuana related land uses in the City of Fife. The Planning Commission's
23 May 5, 2014 recommendation considered public comment, the WSLCB adopted Rules,
24 federal and state law, and secondary impacts as directed by Ordinance No. 1841. The
25 City of Fife Planning commission made findings of fact in support of their

1 recommendation. (Attached as Exhibit 2).

2
3 29. FMC 19.92.040 identifies the criteria that must be met for the Planning
4 Commission to recommend approval of a zoning code text amendment. The ordinance
5 met the FMC 19.92.040 criteria.

6 30. On March 27, 2014, the City of Fife State Environmental Policy Act (SEPA)
7 Responsible Official issued notices required under State Environmental Policy Act on
8 the proposed ordinance. In accordance with RCW 36.70A.106(3)(b), the City of Fife
9 transmitted the proposed development regulation amendment to the Washington State
10 Department of Commerce for the purpose of State agency review requesting 14-day
11 expedited review. Said expedited review having granted and no comments from State
12 agencies having been received. The City of Fife has fulfilled all procedural requirements
13 for the adoption of the proposed ordinance.

14 31. On June 10, 2014, the Fife City Council held a hearing on the ordinance as
15 recommended by the Planning Commission and accepted public testimony.

16 32. On June 24, 2014, the Fife City Council held a public hearing on the
17 ordinance (now designated Ordinance No. 1872). The ordinance was approved as
18 presented for first reading.

19 33. After short deliberation, Fife Councilmember Johnson moved to amend the
20 ordinance from its original purpose of regulating lawful marijuana uses in the city to an
21 outright ban of lawful production, processing, and retail sales of marijuana in the City of
22 Fife.
23

24 34. The council voted 5-2 to approve the ordinance as amended by
25 Councilmember Johnson.

1
2 35. On July 24, 2014, the Fife City Council approved Ordinance No. 1872 as
3 amended to incorporate an outright ban of lawful production, processing, and retail
4 sales of marijuana in the City of Fife.

5 36. Defendant will not issue a business license to Plaintiff to operate a marijuana
6 business in in the City of Fife.

7 37. Plaintiff's resort to any administrative remedies would be futile and vain.

8 38. Plaintiff has expended time and resources preparing to operate a lawful
9 business, including the payment of state licensing fees, engagement in the state
10 licensing process, and preparation of operating and business plans.

11 39. Plaintiff will lose significant revenue due to City's denial of business license.

12 40. Defendant's refusal to allow Plaintiff to operate as a business is an actual and
13 substantial injury to Plaintiff.

14 41. A controversy exists between Plaintiff and Defendant as to whether
15 Ordinance No. 1872 is constitutional or statutorily preempted.

16 42. A declaration that Defendant may not enforce the ordinance along with an
17 injunction against Defendant's obstruction of Plaintiff's applications for necessary
18 permits and licenses and/or a writ of mandamus compelling Defendant to issue
19 business licenses, would terminate Plaintiff's ongoing injury by allowing Plaintiff to
20 proceed with the steps necessary to become a fully licensed and operational retail
21 marijuana business.
22

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

24 43. Plaintiff re-alleges and incorporates by reference all allegations contained in
25 the preceding paragraphs.

1 44. The State of Washington fully occupies and preempts the entire field of
2 setting penalties for violations of the State's controlled substances act. RCW 69.50.608.

3
4 45. Cities, towns, and counties or other municipalities may enact only those laws
5 and ordinances relating to controlled substances that are consistent with RCW 69.50.

6 46. Local laws and ordinances that are inconsistent with the requirements of
7 State law shall not be enacted and are preempted and repealed, regardless of the
8 nature of the code, charter, or home rule status of the city, town, county, or municipality.
9 RCW 69.50.608.

10 47. Although Plaintiff's businesses are lawful under RCW 69.50 and WAC 314-
11 55, Defendant's enactment of the ordinance has prohibited its operation and impeded
12 its ability to become licensed under the laws of the State of Washington.

13 48. Defendant is statutorily preempted from enforcing the ordinance against
14 Plaintiff, as that application violates RCW 69.50.608.

15
16 **VI. SECOND CAUSE OF ACTION—CONSTITUTIONAL PREEMPTION**

17 49. Plaintiff re-alleges and incorporates by reference all allegations contained in
18 the preceding paragraphs.

19 50. Article XI, Section 11, of the Washington State Constitution, provides that
20 "[a]ny county, city, town, or township may make and enforce within its limits all such
21 local police, sanitary, and other regulations as are not in conflict with general laws."

22 51. An ordinance is in conflict with general laws if it prohibits that which a statute
23 permits and licenses.

24 52. Defendant's prohibition of marijuana businesses through application of its
25 Moratorium directly conflicts with state law providing for the licensed retail sale of

1 marijuana in designated localities by barring local access to legal, regulated marijuana.

2 53. Defendant is constitutionally preempted from enforcing Ordinance No. 1872
3 against Plaintiff, as that application conflicts with the general law.
4

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

6 54. Plaintiff re-alleges and incorporates by reference all allegations contained in
7 the preceding paragraphs.

8 55. Defendant's refusal to allow Plaintiff to operate as a business is an actual and
9 substantial injury to Plaintiff.

10 56. Plaintiff has no other complete, speedy, and adequate remedy at law by
11 which to prevent harm to itself.

12 57. Plaintiff is therefore entitled to an injunction preventing Defendant from
13 denying a right to operate in the City of Fife pursuant to RCW 69.50 and WAC 314-55.

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

15 58. Plaintiff re-alleges and incorporates by reference all allegations contained in
16 the preceding paragraphs.

17 59. Plaintiff has performed all acts necessary to entitle Plaintiff to issuance of City
18 of Fife Business License.
19

20 60. Defendant's enactment of Ordinance No. 1872 bars issuance of Fife Business
21 License.

22 61. There is not a plain, speedy and adequate remedy in the ordinary course of
23 law by which to compel issuance of license.

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

25 62. Plaintiff re-alleges and incorporates by reference all allegations contained in

1 the preceding paragraphs.

2 63. Defendant's admissions, statements, and acts prior to June 24, 2014 are
3 inconsistent with Ordinance No. 1872 as amended.
4

5 64. Plaintiff reasonably relied on Defendant's admissions, statements, and acts.

6 65. Plaintiff will suffer significant injury if the court permits Defendant to contradict
7 or repudiate the admissions, statements, or acts.

8 66. Judgment is necessary to prevent a manifest injustice.

9 67. The exercise of city functions will not be impaired if Plaintiff is permitted to
10 operate lawful retail marijuana business in the city.

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

12 68. Plaintiff re-alleges and incorporates by reference all allegations contained in
13 the preceding paragraphs.

14 69. Article 1, Section 16 of the Washington Constitution states, "No private
15 property shall be taken or damaged for public or private use without just compensation
16 having been first made, or paid into court for the owner."
17

18 70. Ordinance No. 1872 destroys or derogates the ability to make economically
19 viable use of Plaintiff's property and property interests.

20 71. Ordinance No. 1872 impairs the public interest in health, safety, the
21 environment, or the fiscal integrity of an area by circumventing Washington State's
22 interest in (1) allowing law enforcement resources to be focused on violent and property
23 crimes; (2) generating new state and local tax revenue for education, health care,
24 research, and substance abuse prevention; and (3) taking marijuana out of the hands of
25 illegal drug organizations and brings it under a tightly regulated, state-licensed system

1 similar to that for controlling hard alcohol.

2 72. Ordinance No. 1872 does not advance a legitimate state interest.

3
4 73. Any interest advanced by Ordinance No. 1872 is outweighed by its adverse
5 economic impact to the Plaintiff, and the Citizens of Fife and Washington State.

6 **XII. REQUEST FOR RELIEF**

7 Plaintiff request that the court grant the following relief:

8 1. Declaratory judgment that Ordinance No. 1872 is preempted by state law,
9 and that Defendant's actions preventing Plaintiff from applying for and obtaining the
10 permits and licenses necessary to operate a lawful retail marijuana business in City of
11 Fife are unlawful violations of RCW 69.50.608 and Article XI, Section 11 of the
12 Washington State Constitution;

13 2. Injunctions, preliminary and permanent, enjoining Defendant from the acts set
14 forth above, including: Defendant's refusal to accept, process, and approve Plaintiff's
15 applications for required permits and licenses; Defendant's attempts to impede the state
16 licensing process by improperly objecting to Plaintiff's retail license; and any other
17 action against, or that harms the interests of, Plaintiff that would violate the general laws
18 of the State of Washington;

19 3. A writ of mandamus be issued out of this Court, directed to Defendant,
20 commanding Defendant to issue a city business license to Plaintiff;

21 4. Declaratory judgment that Defendants are estopped from enforcing
22 Ordinance No. 1872;

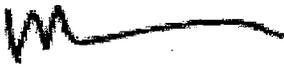
23 5. The purported taking by Defendant be declared void and of no effect as failing
24 to advance a legitimate state interest; and
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- 6. Enter judgment awarding Plaintiff's costs and disbursements in this action;
- 7. Any such additional relief as Court deems necessary.

DATED this 13 day of July, 2014

DAVIES PEARSON P.C.

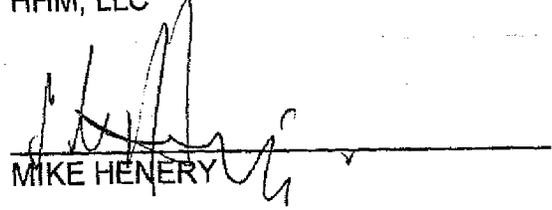


MARK D. NELSON WSB# 37833
ATTORNEYS FOR PLAINTIFF

Certification: I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct and there is not a plain, speedy and adequate remedy in the ordinary course of law.

Signed at OLYMPIA HARBOR, WA this 13th day of July, 2014

HHM, LLC


MIKE HENERY

FACSIMILE TRANSMISSION CERTIFICATION

I CERTIFY UNDER PENALTY OF WA. PERJURY LAWS I HAVE RECEIVED AND EXAMINED THE ATTACHED DOCUMENT, WHICH IS INCORPORATED HEREIN BY THIS REFERENCE THERETO, AND HAVE DETERMINED SAME TO BE COMPLETE AND LEGIBLE.

TOTAL PAGES: 12
DATE: 7/14/14
Kristen Allred
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