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6 **SUPERIOR COURT OF WASHINGTON**
7 **COUNTY OF PIERCE**

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9 MMH, LLC, a Washington limited liability
10 company,

11 **Plaintiff,**

12 **and**

13 CITY OF FIFE, a Washington municipal
14 corporation

15 **Defendant.**

16 **Companion:**

17 GRAYBEARD, LLC, a Washington limited
18 liability company,

19 **Plaintiff,**

20 **and**

21 CITY OF FIFE, a Washington municipal
22 corporation

23 **Defendant.**

No. 14-2-10487-7

**DECLARATION OF MARK D.
NELSON IN RESPONSE TO CITY
OF FIFE'S MOTION FOR
SUMMARY JUDGMENT**

**Hearing Date: August 29, 2014
Time: 9:00 a.m.**

24 I, Mark D. Nelson, subject to penalty of perjury under the laws of the state of
25 Washington, declare as follows:

DECLARATION OF MARK D. NELSON IN
RESPONSE TO CITY OF FIFE'S MOTION
FOR SUMMARY JUDGMENT

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1 1. I am one of the attorneys for the Plaintiffs in the above-captioned matter. I
2 am over the age of eighteen and am competent to testify to the matters addressed
3 herein. I make this declaration from personal knowledge.

4 2. During the 2014 Washington State legislative regular session, the
5 following legislation relating to I-502, medical marijuana, and recreational marijuana
6 was reviewed by the Washington State Legislature:

7 HB 1597 – Making marijuana law technical corrections

8 HB 2144 – Concerning the establishment of a dedicated local jurisdiction
9 marijuana fund and the distribution of a specified percentage of marijuana
10 excise tax revenue to local jurisdictions

11 HB 2149 – Concerning medical marijuana

12 HB 2198 – Providing tax relief to qualifying patients for purchases of
13 marijuana for medical use

14 HB 2304 – Concerning marijuana processing and retail licenses

15 HB 2394 – Concerning state liquor control board enforcement officers

16 HB 2409 – Delaying the use of existing tax preferences by the marijuana
17 industry to ensure a regulated and safe transition to the controlled and
legal marijuana market in Washington

18 HB 2706 – Ensuring safe, responsible, and legal acquisition of marijuana
19 by adults

20 HB 2772 – Distributing marijuana tax revenues to local governments for
21 law enforcement and fire protection services and to the department of
transportation for the repair and maintenance of state ferries, roads, an
22 bridges

23 SB 5887 – Merging the medical marijuana system with the recreational
marijuana system

24 SB 5966 – Concerning the possession or use of alcohol, cannabis

25 DECLARATION OF MARK D. NELSON IN
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1 products, and controlled substances in sentencing provisions
2 SB 6158 – Encouraging safe and responsible sales of marijuana by
3 authorizing the use of minors in compliance checks and addressing
4 identification and manufacturing

5 SB 6160 – Concerning marijuana processing and retail licenses

6 SB 6178 – Aligning the medical marijuana system with the recreational
7 marijuana system

8 SB 6481 – Funding recovery programs for persons with mental illness and
9 chemical dependency disorders

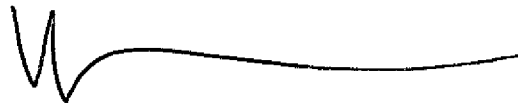
10 SB 6542 – Establishing the state cannabis industry coordinating
11 committee

12 SJM 8000 – Requesting that the DEA reclassify medical marijuana as a
13 Schedule II drug

14 3. Attached hereto as Exhibit 1 is a true and correct copy of House Bill 2322
15 which if enacted will prohibit local governments from taking actions preventing or
16 impeding the creation or operation of commercial marijuana businesses licensed by the
17 liquor control board.

18 Signed at Tacoma, Washington, this 18th day of August, 2014.

19 DAVIES PEARSON P.C.

20 

21 MARK D. NELSON, WSB# 37833
22 Attorneys for Plaintiffs

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24
25 DECLARATION OF MARK D. NELSON IN
RESPONSE TO CITY OF FIFE'S MOTION
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Exhibit 1

HOUSE BILL 2322

State of Washington

63rd Legislature

2014 Regular Session

By Representatives Sawyer, Condotta, Appleton, Kirby, Fey, Farrell, Fitzgibbon, Hunt, Reykdal, Springer, and Ryu

Read first time 01/15/14. Referred to Committee on Government Accountability & Oversight.

1 AN ACT Relating to prohibiting local governments from taking
2 actions preventing or impeding the creation or operation of commercial
3 marijuana businesses licensed by the liquor control board; amending RCW
4 66.08.170, 82.08.170, and 66.08.050; adding a new section to chapter
5 69.50 RCW; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 69.50 RCW
8 to read as follows:

9 (1) Cities, counties, and towns must cooperate with the liquor
10 control board with respect to the establishment within their
11 jurisdictional boundaries of businesses involved in the production,
12 processing, or sale of recreational marijuana where such businesses are
13 licensed under RCW 69.50.325. Subject to the regulatory requirements
14 of this chapter, licensed marijuana businesses attempting to locate
15 within the jurisdictional boundaries of a municipality must be treated
16 the same as other businesses within that jurisdiction with respect to
17 ordinances or regulations that include, but are not limited to, those
18 pertaining to local business licensing, zoning, and land use.

1 (2) Cities, counties, and towns are prohibited from enacting any
2 ordinance or other regulation pertaining to business licensing, zoning,
3 or land use that has the effect of preventing or impeding the
4 establishment of a recreational marijuana business licensed under RCW
5 69.50.325. In the event the liquor control board determines that a
6 municipality has engaged in regulatory practices that impede the
7 establishment of such businesses in violation of this section, the
8 liquor control board may:

9 (a) Penalize the offending municipality by making it ineligible to
10 receive any funds from the liquor revolving fund established in RCW
11 66.08.170 and the liquor excise tax fund established under RCW
12 82.08.170. Upon the determination that a municipality is ineligible to
13 receive moneys from such funds under this section, the liquor control
14 board may direct the state treasurer to withhold the revenues to which
15 a county, city, or town would otherwise be entitled from the liquor
16 revolving fund and the liquor excise tax fund. In the event the liquor
17 control board later determines that the offending municipality has
18 become compliant with the requirements of this section, it shall direct
19 the state treasurer to resume distributing revenues from these funds to
20 the municipality; and

21 (b) Bring legal action in superior court against the offending
22 municipality for injunctive relief for violations of this section. The
23 municipality shall pay all court costs and other litigation-related
24 expenses for legal actions brought under this section.

25 **Sec. 2.** RCW 66.08.170 and 2011 1st sp.s. c 50 s 959 are each
26 amended to read as follows:

27 (1) There shall be a fund, known as the "liquor revolving fund",
28 which shall consist of all license fees, permit fees, penalties,
29 forfeitures, and all other moneys, income, or revenue received by the
30 board. The state treasurer shall be custodian of the fund. All moneys
31 received by the board or any employee thereof, except for change funds
32 and an amount of petty cash as fixed by the board within the authority
33 of law shall be deposited each day in a depository approved by the
34 state treasurer and transferred to the state treasurer to be credited
35 to the liquor revolving fund. During the 2009-2011 fiscal biennium,
36 the legislature may transfer funds from the liquor revolving (~~account~~
37 ~~fund~~) fund to the state general fund and may direct an additional

1 amount of liquor profits to be distributed to local governments.
2 Neither the transfer of funds nor the additional distribution of liquor
3 profits to local governments during the 2009-2011 fiscal biennium may
4 reduce the excess fund distributions that otherwise would occur under
5 RCW 66.08.190. During the 2011-2013 fiscal biennium, the state
6 treasurer shall transfer from the liquor revolving fund to the state
7 general fund forty-two million five hundred thousand dollars for fiscal
8 year 2012 and forty-two million five hundred thousand dollars for
9 fiscal year 2013. The transfer during the 2011-2013 fiscal biennium
10 may not reduce the excess fund distributions that otherwise would occur
11 under RCW 66.08.190. Sales to licensees are exempt from any liquor
12 price increases that may result from the transfer of funds from the
13 liquor revolving fund to the state general fund during the 2011-2013
14 fiscal biennium. Disbursements from the revolving fund shall be on
15 authorization of the board or a duly authorized representative thereof.
16 In order to maintain an effective expenditure and revenue control the
17 liquor revolving fund shall be subject in all respects to chapter 43.88
18 RCW but no appropriation shall be required to permit expenditures and
19 payment of obligations from such fund.

20 (2) Transfers of funds to local governments from the liquor
21 revolving fund are subject to the provisions of section 1 of this act.
22 Local governments are ineligible to receive such funding if the liquor
23 control board determines that the local government is noncompliant with
24 the requirements of section 1 of this act.

25 **Sec. 3.** RCW 82.08.170 and 2012 2nd sp.s. c 5 s 4 are each amended
26 to read as follows:

27 (1) Except as provided in subsection (4) of this section, during
28 the months of January, April, July, and October of each year, the state
29 treasurer must make the transfers required under subsections (2) and
30 (3) of this section from the liquor excise tax fund and then the
31 apportionment and distribution of all remaining moneys in the liquor
32 excise tax fund to the counties, cities, and towns in the following
33 proportions: (a) Twenty percent of the moneys in the liquor excise tax
34 fund must be divided among and distributed to the counties of the state
35 in accordance with the provisions of RCW 66.08.200; and (b) eighty
36 percent of the moneys in the liquor excise tax fund must be divided

1 among and distributed to the cities and towns of the state in
2 accordance with the provisions of RCW 66.08.210.

3 (2) Each fiscal quarter and prior to making the twenty percent
4 distribution to counties under subsection (1)(a) of this section, the
5 treasurer shall transfer to the liquor revolving fund created in RCW
6 66.08.170 sufficient moneys to fund the allotments from any legislative
7 appropriations for county research and services as provided under
8 chapter 43.110 RCW.

9 (3) During the months of January, April, July, and October of each
10 year, the state treasurer must transfer two million five hundred
11 thousand dollars from the liquor excise tax fund to the state general
12 fund.

13 (4) During calendar year 2012, the October distribution under
14 subsection (1) of this section and the July and October transfers under
15 subsections (2) and (3) of this section must not be made. During
16 calendar year 2013, the January, April, and July distributions under
17 subsection (1) of this section and transfers under subsections (2) and
18 (3) of this section must not be made.

19 (5) All transfers of funds to local governments from the liquor
20 excise tax fund are subject to the provisions of section 1 of this act.
21 Local governments are ineligible to receive such funding if the liquor
22 control board determines that the local government is noncompliant with
23 the requirements of section 1 of this act.

24 **Sec. 4.** RCW 66.08.050 and 2012 c 2 s 107 are each amended to read
25 as follows:

26 The board, subject to the provisions of this title and the rules,
27 must:

28 (1) Determine the nature, form and capacity of all packages to be
29 used for containing liquor kept for sale under this title;

30 (2) Execute or cause to be executed, all contracts, papers, and
31 documents in the name of the board, under such regulations as the board
32 may fix;

33 (3) Pay all customs, duties, excises, charges and obligations
34 whatsoever relating to the business of the board;

35 (4) Require bonds from all employees in the discretion of the
36 board, and to determine the amount of fidelity bond of each such
37 employee;

1 (5) Perform services for the state lottery commission to such
2 extent, and for such compensation, as may be mutually agreed upon
3 between the board and the commission;

4 (6) Accept and deposit into the general fund-local account and
5 disburse, subject to appropriation, federal grants or other funds or
6 donations from any source for the purpose of improving public awareness
7 of the health risks associated with alcohol consumption by youth and
8 the abuse of alcohol by adults in Washington state. The board's
9 alcohol awareness program must cooperate with federal and state
10 agencies, interested organizations, and individuals to effect an active
11 public beverage alcohol awareness program;

12 (7) Perform all other matters and things, whether similar to the
13 foregoing or not, to carry out the provisions of this title and chapter
14 69.50 RCW regarding the production, processing, and sale of
15 recreational marijuana, and has full power to do each and every act
16 necessary to the conduct of its regulatory functions, including all
17 supplies procurement, preparation and approval of forms, and every
18 other undertaking necessary to perform its regulatory functions
19 whatsoever, subject only to audit by the state auditor. However, the
20 board has no authority to regulate the content of spoken language on
21 licensed premises where wine and other liquors are served and where
22 there is not a clear and present danger of disorderly conduct being
23 provoked by such language or to restrict advertising of lawful prices.

24 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 immediately.

--- END ---