

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

7
8 MMH, LLC, a Washington limited liability
company,

9 **Plaintiff,**

10 **and**

11 CITY OF FIFE, a Washington municipal
corporation

12 **Defendant.**

13
14 **Companion:**

15 GRAYBEARD, LLC, a Washington limited
liability company,

16 **Plaintiff,**

17 **and**

18 CITY OF FIFE, a Washington municipal
corporation

19 **Defendant.**

No. 14-2-10487-7

**DECLARATION OF MARK D.
NELSON IN SUPPORT OF
PLAINTIFFS' MOTION FOR
CONTINUANCE OF CITY OF
FIFE'S MOTION FOR SUMMARY
JUDGMENT PURSUANT
TO CR 56(f)**

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

21
22 I, Mark D. Nelson, subject to penalty of perjury under the laws of the state of
23 Washington, declare as follows:

24 1. I am one of the attorneys for the Plaintiffs in the above-captioned matter. I
25

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

Page 1 of 3

mdn / s:\2xxxx\21xxx\215xx\21505\1\sj\declaration of mdn, in support of cr 56 f(8, 18, 14).doc

DAVIES PEARSON, P.C.
ATTORNEYS AT LAW
920 FAWCETT -- P.O. BOX 1657
TACOMA, WASHINGTON 98401
TELEPHONE (253) 620-1500
FAX (253) 572-3052

1 am over the age of eighteen and am competent to testify to the matters addressed
2 herein. I make this declaration from personal knowledge.

3 2. In October 2013, the Washington State Liquor Control Board ("WSLCB")
4 promulgated rules setting forth the application requirements for a marijuana retailer
5 license. Among those rules, WAC 314-55-020(11) states,

6
7 The issuance or approval of a license shall not be construed as a license for, or
8 an approval of, any violations of local rules or ordinances including, but not
9 limited to: Building and fire codes, zoning ordinances, and business licensing
10 requirements.

11 3. In July 2014 the City of Fife enacted Ordinance No 1872 banning all legal
12 marijuana uses in the city. Plaintiffs filed this action in July 2014 after being denied
13 business licenses from the City of Fife. The parties have filed cross motions for
14 summary judgment. The City's motion was filed on July 31, 2014 and prior to answering
15 the plaintiffs complaint.

16 4. In its motion for summary judgment, the City asserts that WAC 314-55-
17 020(11) authorizes local governments to ban I-502 businesses in their jurisdictions.

18 5. The City further asserts that WSLCB "acquiesced" to the City's legal
19 theory that WAC 314-55-020(11) authorizes local governments to ban I-502 businesses
20 in their jurisdictions.

21 6. In investigating this claim, I attempted to contact several different
22 individuals at WSLCB to determine if the city's claim were true. I attempted to make
23 contact with Alan Rathbun, (Director of Licensing and Regulation), Randy Simmons,
24 (Deputy Director), and Rick Garza, (Agency Director).

25 7. After leaving various messages, I was contacted by WSLCB Rules

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

Page 2 of 3

mdn / s:\2xxxx\21xxx\215xx\21505\1s\j\declaration of mdn, in support of cr 56 f(8.18.14).doc

DAVIES PEARSON, P.C.
ATTORNEYS AT LAW
920 FAWCETT -- P.O. BOX 1657
TACOMA, WASHINGTON 98401
TELEPHONE (253) 620-1500
FAX (253) 572-3052

1 Coordinator Karen McCall on August 12, 2014. I advised her of the reason for my call
2 and we discussed the WSLCB interpretation of WAC 314-55-020(11).

3 8. Ms. McCall advised that WSLCB did not view WAC 314-55-020(11) as
4 authorization for a ban. Instead, the rule was intended to acknowledge that WSLCB as
5 an agency does not have any specific authority over local governments and to provide
6 notice to applicants that they would need to comply with building and fire codes, zoning
7 ordinances, and business licensing requirements.

8 9. I requested a declaration from Ms. McCall. She declined believing that
9 such a statement would need to come from someone else at the agency. She indicated
10 that she would attempt to find someone who could sign a declaration. As of the filing of
11 this response no one from WSLCB as contacted me.

12 10. WSLCB's interpretation of WAC 314-55-020(11) is a material fact with
13 regard the City's claim of Legislative acquiescence and essential to the Plaintiffs'
14 opposition.

15 11. Given the nature of this litigation, that the Attorney General has
16 intervened, and that WSLCB is a state agency a subpoena may be necessary to compel
17 production of this declaration.
18
19

20 DAVIES PEARSON P.C.

21 

22 MARK D. NELSON, WSB# 37833
23 Attorneys for Plaintiffs
24
25