No. 46723-2-II

Washington State Court of Appeals
Division II

MMH, LLC and GRAYBEARD HOLDINGS, LLC,

Appellants,

and

DOWNTOWN CANNABIS CO., LLC; MONKEY GRASS FARMS, LLC; AND JAR MGMT, LLC, d/b/a/ RANIER ON PINE,

Intervenor-Appellants,

v.

CITY OF FIFE,

Respondent,

and

ROBERT W. FERGUSON, Attorney General of the State of Washington,

Intervenor-Respondent.

RESPONDENT CITY OF FIFE'S SUPPLEMENTAL BRIEF

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I. INTRODUCTION

The purpose of this supplemental brief is to apprise the Court as to the impact on the above-captioned case from the May 2015 Washington Supreme Court ruling in *Cannabis Action Coalition v City of Kent*[1], as well as two recently passed statutes.[2] The impact is, in short, a strong affirmation of the City of Fife's position that there is neither field preemption nor conflict preemption between I-502 and a local jurisdiction's authority to implement zoning regulations, including a complete ban.

II. STATEMENT OF THE CASE

June 2012: The City of Kent passes a zoning ordinance prohibiting medical marijuana collective gardens within its city limits.

October 2012: The City of Kent is sued over its medical marijuana ban in *Cannabis Action*.

November 2012: Initiative 502 ("I-502") passes, creating a state licensing system for the production, processing, and retail sale of recreational marijuana. The Initiative contained no explicit statement of state field preemption.

November 2013: The Washington State Liquor Control Board (now Washington State Liquor and Cannabis Board, "WLCB") passed WAC 314-55-020(11) stating that "The [WLCB] issuance or approval of a [marijuana business] license shall not be construed as a license for, or an approval of, any

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[1] *Cannabis Action Coalition, et al v. City of Kent, et al*, 351 P.3d 151 (2015)
[2] 2SSB 5052, signed April 24, 2015 and 2E2SHB 2136, signed June 30, 2015

violations of local rules or ordinances, including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements."

January 16, 2014: The Washington State Attorney General, ("AG"), issues an Opinion (AGO 2014 No. 2), concluding that a local jurisdiction zoning ban is valid and there is neither field preemption nor conflict with I-502.

January 13, 2014 – March 13, 2014: Washington State Legislature, (the "Legislature"), passes two bills regarding marijuana,[3] neither bill rejects or corrects the AG's opinion regarding local jurisdictions having the ability to ban marijuana businesses via land use regulation.

March 2014: In *Cannabis Action*, the Court of Appeals, Division I, rules that the City of Kent's zoning ban on collective gardens is constitutional.

July 8, 2014: City of Fife, (the "City" or "Fife"), amends its zoning code to ban all marijuana businesses within the corporate boundaries of Fife.

July 15, 2014: MMH, LLC and Graybeard Holdings (collectively "MMH") files the above-captioned lawsuit, alleging the City is prohibited from banning marijuana businesses. MMH claims that I-502 both field preempts and conflict preempts municipal regulation of retail marijuana sales.

August 29, 2014: Superior court ruling entered against MMH in the above-captioned lawsuit, stating there is no field or conflict preemption and the City has the right to regulate marijuana businesses via zoning codes.[4]

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[3] SB 6505 & ESHB 2304

[4] Pierce County Superior Court, No. 14-2-10487-7, Order entered September 8, 2014, Clerk's Papers 1435-1452

October 2014: Superior court ruling entered in *SMP Retail, LLC v. City of Wenatchee* concluding there is no field or conflict preemption stemming from the City of Wenatchee's zoning ban of marijuana businesses.[5]

November 2014: Superior court ruling entered in *Americana Weed, LLC v. City of Kennewick* concluding there is no field or conflict preemption stemming from the City of Kennewick's zoning ban of marijuana businesses.[6]

December 2014: Superior court ruling entered in *Emerald Enterprises LLC & John M Larson v. Clark County* concluding there is no field or conflict preemption stemming from Clark County's zoning ban of marijuana businesses.[7]

December 2014: Superior court ruling entered in *Green Collar LLC v. Pierce County* concluding there is no field or conflict preemption stemming from Pierce County's zoning ban of marijuana businesses.[8]

April 2015: The Legislature declines to expressly preempt the field regarding local jurisdictions' regulatory zoning authority in 2SSB 5052, titled "Medical Marijuana – Regulation," which incorporates medical marijuana into the recreational marijuana regulatory scheme.

May 2015: In *Cannabis Action,* the Washington Supreme Court upholds the Court of Appeals opinion that the City of Kent's ordinance is constitutional and is a valid exercise of Kent's zoning authority.

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[5] Chelan County Superior Court, No. 14-2-00555-0. Order entered 10/17/14. Appx. A
[6] Benton County Superior Court, No. 14-2-02226-1. Order entered 11/21/14. Appx. B
[7] Cowlitz County Superior Court, No. 14-2-00951-9. Order entered 12/17/14. Appx C
[8] Pierce County Superior Court, No. 14-2-11323-0. Order entered 12/22/2104. Appx D

June 2015: The Legislature declines to expressly preempt the field regarding a local jurisdiction's regulatory zoning authority in 2E2SHB 2136, titled "Concerning comprehensive marijuana market reforms to ensure a well-regulated and taxed marijuana market in Washington state" which, in part, overhauls the recreational marijuana excise tax and funding distribution systems.

III. ARGUMENT

When a state statute expressly provides for local jurisdiction over a subject, then state law cannot impliedly preempt the field.[9] In *Cannabis Action,* the Washington Supreme Court analyzed whether RCW 69.51A, referred to as "MUCA," expressly or implicitly preempted the field of regulation for medical marijuana and whether a local municipal zoning ban would be invalid under conflict preemption. *Cannabis Action Coalition v. City of Kent,* __ Wn.2d __, 351 P.3d 151, 154-57 (2015). The Washington Supreme Court answered "no" to each question.[10] The Court should do the same here because I-502, like MUCA, has no express preemption clause, the relevant WAC requires compliance with local ordinances, and the Legislature has acquiesced in the WLCB's requirement that local ordinances be followed.

There Can Be No Conflict or Preemption When *Cannabis Action* Found None for a Statute Worded in Nearly Identical Fashion to the

---

[9] *Lawson v. City of Pasco*, 168 Wn.2d 675, 230 P.3d 1038 (2010).
[10] *Id.* Relying, in part, on former RCW 69.51A.140(1). (Repeal effective as of July 24, 2015, Laws 2015, Ch. 70, Section 48.).

Applicable WAC – In April 2015, the Legislature integrated the recreational and medical marijuana regulatory systems by passing 2SSB 5052. (Laws of 2015, Ch. 70, Sec. 2). This resulted in the repeal, effective July 24, 2015, of RCW 69.51A.140(1)'s directives concerning interactions between medical marijuana businesses and local ordinances in favor of one scheme for all marijuana businesses. (Laws of 2015, Ch. 70, Secs. 2 and 48). After passage of 2SSB 5052, pre-existing WAC 314-55-020(11) became the only remaining legislative or agency rule concerning local ordinances and marijuana licensing statutes. Nevertheless, *Cannabis Action*'s analysis and holding are directly relevant to an examination of the issues on appeal here because WAC 314-55-020(11) is worded nearly identical to former RCW 69.51A.140(1), which was the statute at issue on a nearly identical set of facts in *Cannabis Action*.

Cannabis Action found that former RCW 69.51A.140(1) expressly contemplated local regulation of medical marijuana by providing that cities and towns could adopt and enforce "any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes."[11]

The Washington Supreme Court in *Cannabis Action* found an absence of conflict preemption between MUCA and the City of Kent's ban on collective gardens because the plain and ordinary meaning of RCW 69.51A.140(1) allowed for local jurisdictions to have zoning authority over medical marijuana

[11] Former RCW 69.51A.140(1)

businesses, i.e., an activity otherwise permitted, including the authority to ban collective gardens.[12] Similarly, the plain and ordinary meaning of WAC 314-55-020(11) explicitly requires all licensed marijuana businesses to comply with local rules or ordinances, including zoning ordinances. As such, a local ban, such as the City's, should be enforced under WAC 314-55-020(11), just as Kent's ban was enforced under former RCW 69.51A.140(1).

WAC 314-55-020(11) states:

> "The [WLCB] issuance or approval of a [marijuana business] license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances, including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements."[13]

Former RCW 69.51A.140(1) stated:

> "Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes."[14]

There is no difference between former RCW 69.51A.140(1)'s requirements and those of WAC 314-55-020(11). Therefore, there cannot be a different result for MMH in the above-captioned case than there was for the Cannabis Action Coalition in *Cannabis Action Coalition v. City of Kent.*

The Legislature Has Acquiesced in a Construction of the Statute Consistent with the City's - The WAC, just like the MUCA statute at issue in *Cannabis Action*, expressly provides for adherence with "local rules or

---

[12] *Cannabis Coalition* at 156.
[13] WAC 314-55-020(11)
[14] RCW 69.51A.140(1)

ordinances, including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements jurisdiction." As such, the field cannot be said to be preempted by the State because the Legislature has acquiesced to local bans by repeatedly declining to add preemption language to any of the statutes enacted or amended since the legislative enactment of I-502.

Between January 2014 and July 2015, the Legislature has had two regular legislative sessions and three special sessions, but it has refused to insert preemption language despite the fact that it has been aware of: (1) WAC 314-55-020(11) since its November 2013 issuance, (2) the AG's opinion since its January 2014 issuance, and (3) the decisions of five different Superior Courts, between August and December 2014, upholding local jurisdiction bans. Finally, the Legislature opted not to insert any preemption language in the marijuana statute known as 2E2SHB 2136, which was passed in the special session following the May 2015 *Cannabis Action* decision.

This is indicative of the Legislature's intent not to interfere with the application of local ordinances because "[t]he Legislature's failure to amend a statute interpreted by administrative regulation constitutes legislative acquiescence in the agency's interpretation of the statute [and] [t]his is especially true when the Legislature has amended the statute in other respects without repudiating the administrative construction." *Manor v. Nestle Food Company*, 131 Wn.2d 439, 932 P.2d 628, n.2 (1997).

Legislative Acquiescence Cannot Be Viewed as an Oversight -

Both of the 2015 statutes, 2E2SHB 2136 and 2SSB 5052, address a number of issues regarding recreational marijuana and medical marijuana in extensive and minute detail, but they explicitly decline to add language to preempt the field of marijuana regulation to the State. In the sixty-two pages of 2E2SHB 2136, the word "preempt" does not appear. In the seventy-three pages of 2SSB 5052, the word "preempt" does not appear. In fact, no marijuana licensing statutes have ever explicitly preempted the field to the State.

The refusal by the State to explicitly preempt the field in any of the post-I-502 legislation it passed in 2014 and 2015 can only be construed as intentional. In 2015, the Legislature reviewed and made decisions about one of the areas which MMH alleges shows conflict preemption, i.e., the total number of marijuana retail outlets necessary to effect the intent of I-502 and its companion statutes. In the resulting legislation, the Legislature again chose not to explicitly preempt the field. It also chose not to set a minimum number of retail outlets for cities or counties, allowing the possible number to be zero.[15]

When passed by the voters in 2012, I-502 set no minimum number of retail marijuana licenses that must be issued per jurisdiction. Instead, it referred only to maximum numbers of licenses and gave WLCB the discretion to set those numbers. When 2SSB 5052 was passed in 2015, the

[15] RCW 69.50.345, as amended, Laws of 2015, Ch. 70, Sec. 8(2)(d).

Legislature was contemplating what the "appropriate numbers" of licenses should be by expressly directing the WLCB to reassess the maximum number of retail outlet licenses for the purpose of accommodating new medical marijuana patients in the system.[16] The final version of 2SSB 5052 declined to set a minimum number of licenses.

As a result there is not now, and never has been, a legislative directive to set a minimum number of licenses for any jurisdiction, or a directive that the WLCB allocate "at least one" license per county. By only directing the WLCB to look at its maximum determination, and being expressly silent about a required minimum, the Legislature, by definition, makes "zero" a valid number of licenses. As such, a jurisdiction's ban on such businesses, which also results in zero licenses, cannot be in conflict with the state law.[17]

The Legislature Is Deemed to Agree with the AG's Opinion - As detailed above, the AG concluded in January 2014, that I-502 does not preempt local jurisdictions from banning recreational marijuana businesses and, while not constituting a statute, an AG formal opinion "constitutes notice to the Legislature of the Department's interpretation of the law." *City of Seattle v. State and Dep't of Labor and Industries*, 136 Wn.2d 693, 703 (1998). Therefore, when the Legislature does not act to overturn an AG's interpretation, the courts find that the Legislature has consented to the

[16] RCW 69.50.345, as amended, Laws of 2015, Ch. 70, Sec. 8(2)(d).
[17] I-502's other enabling statutes have no minimum number for retail outlets per municipality either.

interpretation.[18] The AG's opinion was issued in January 2014. The State Legislature, in the four marijuana related bills passed in 2014 and 2015, did not overturn or contradict the AG's opinion.[19] Therefore, the Legislature must be deemed to be in agreement with the AG's opinion.

IV. CONCLUSION

The Legislature has had two years and five sessions to declare that the State has preempted the field of marijuana zoning, but it has expressly declined to do so. The most recently enacted marijuana legislation, 2E2SHB 2136, could have made the AG's opinion moot, if that was the intent of the Legislature, but it did not. Finally, the Supreme Court in *Cannabis Action* relied on nearly identical statutory language to WAC 314-55-020(11) to find no express, implied, or conflict preemption between MUCA and Kent's ordinance banning collecting gardens. The City respectfully asks this Court reach the same conclusion regarding I-502 and Fife's ban.

DATED this 4th day of August, 2015.

VSI Law Group, PLLC

By: _____

Jennifer B Combs, WSBA No. 36264
Loren Combs, WSBA No. 7164
F. Hunter MacDonald, WSBA No. 22857
Gregory F. Amann, WSBA No. 24172
Attorneys for Appellant, City of Fife

[18] Id., *Five Corners Family Farmers*, 173 Wash.2d 296, 268 P.3d 892 at 308.
[19] SB 6505 & ESHB 2304 in 2014, 2SSB 5052 & 2E2SHB 2136 in 2015.

CERTIFICATE OF SERVICE

I certify that on the 4th day of August, 2015, I caused a true and correct copy of this *Respondent City of Fife's Supplemental Brief* and attachments to be served on the following in the manner indicated below:

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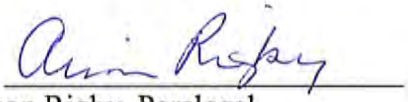
By: 
Alison Rigby, Paralegal

APPENDIX A

FILED
2014 OCT 17 P 4:14
KIM MORRISON
CHELAN COUNTY CLERK

82

CHELAN COUNTY SUPERIOR COURT
** PREPARED ** JUDICIAL CALENDAR 3
10-09-14109:02 FRIDAY, OCTOBER 17, 2014
JUDGE T W SMALL/SB

14-2-00555-0
SMP RETAIL, LLC BRICKEN, HILARY -P
VS
CITY OF WENATCHEE SMITH, STEVE DOUGLAS –P
EVEN, JEFFREY TODD -P

SUMMARY JUDGMENT 10:30 SMJHRG

Mr. Even spoke to Mr. Estes who advised he did not plan to appear. Court advised of documents It reviewed and noted page 3 of House Bill 2322 of the Amicas Brief was missing. Statements of counsel. Court recessed at 11:25 p.m. until 11:54 a.m.

Karen Komoto—court reporter present for decision

Court's Decision: Court thanked counsel for briefing and their professional conduct. Court found plaintiff had standing to bring this action, but noted It was limited to determining the validity of the ordinances at issue in this case. The Court would not rule further. Court found It must determine the constitutional validity of the ordinances according to the State Constitution, Article 11, Section 11. Court found the burden of proving unconstitutionality falls on plaintiff. The legal presumption was that all ordinances passed by cities are presumed to be constitutional. The plaintiff must prove beyond a reasonable doubt that the ordinance was unconstitutional. The Court found It must follow statutes that grants municipal powers are to be liberally construed in favor of the City. With those rules in mind, Court reviewed Initiative 502.

Court found counsel agreed there was no express preemption. Court found implied preemption was not argued. Court addressed direct conflict. In reviewing 502, Court found it did not confer to adults over 21 the unfettered right to sell marijuana or possess or, or process it, or to produce it. The initiative was conservative and strict, giving detailed provisions for regulations through the State Liquor Control Board. Court reviewed the Cole memo issued by the United States Attorney General's Office, noting that due to the strict conservative nature of the initiative the fact that the federal government was not enforcing their federal laws. Court found that in fact there was much a person must proceed through to get a State license first. The Court did not find a conflict if the City exercised its authority to pass ordinances to promote the health, welfare and safety of its residence. There was no evidence the City's intent was to thwart 502. If the City chose to not receive that revenue, it can choose to. The Court declined to make such policy. The Court upheld the constitutionality of both ordinances passed by the

City of Wenatchee and granted the city's motion and denied the plaintiff's motion. Order entered.

Court recessed at 12:07 p.m.

FILED
2014 OCT 17 P 12:28
KIM MORRISON
CHELAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CHELAN

SMP RETAIL, LLC, Plaintiff, vs. CITY OF WENATCHEE, a Washington municipal corporation, Defendant, and ROBERT W. FERGUSON, Attorney General of the State of Washington, Intervenor.	NO. 14-2-00555-0 ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER came on for hearing in open Court on October 17, 2014. Appearances for parties and Amici were as follows:

1. Hilary V. Bricken and Charles P. Moure for Plaintiff, SMP Retail, LLC;

2. Steve D. Smith (argued) and Danielle R. Marchant for Defendant, City of Wenatchee;

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3. Robert W. Ferguson, Attorney General, Noah G. Purcell, Solicitor General, and Jeffrey T. Even, Deputy Solicitor General, for Intervenor Robert W. Ferguson, Attorney General of the State of Washington; and

4. Stewart A. Estes for Amici Curie Pierce County, Lewis County, City of Yakima, City of Fife, and Town of Wilbur.

The purpose of the hearing was to consider the Defendant City of Wenatchee's Motion for Summary Judgment and the Plaintiff SMP Retail, LLC's Motion for Summary Judgment.

The Court considered the Motions for Summary Judgment identified above, the arguments of counsel, and the following records:

1. Plaintiff's First Amended Complaint for Declaratory and Injunctive Relief;

2. Defendant City of Wenatchee's Answer and Affirmative Defenses to First Amended Complaint for Declaratory and Injunctive Relief;

3. Defendant's Motion for Summary Judgment;

4. Defendant's Memorandum in Support of its Motion for Summary Judgment;

5. Declaration of Deanne McDaniel;

6. Declaration of Frank Kuntz;

7. Declaration of Danielle R. Marchant;

8. Amicus Curie Brief of Pierce County, Lewis County, City of Yakima, City of Fife, Town of Wilbur;

9. Attorney General's Answer to First Amended Complaint for Declaratory and Injunctive Relief;

10. Attorney General's Memorandum in Support of Summary Judgment;

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11. Plaintiff's Motion for Summary Judgment;

12. Plaintiff's Motion for Summary Judgment and Response in Opposition to Defendant's Motion for Summary Judgment and Attorney General's Motion in Support Thereof; and

13. Attorney General's Reply Memorandum in Support of Summary Judgment, and

14. I-502.

NOW, THEREFORE, having considered the Motions, the arguments of counsel, and the papers, records and files in this matter, and the Court deeming itself fully advised in the premises, the Court orders as follows:

A. The Court finds that there is no issue of material fact;

B. That the Defendant City of Wenatchee's Motion for Summary Judgment is granted as a matter of law;

C. That the Plaintiff SMP Retail, LLC's Motion for Summary Judgment is denied as a matter of law; and

D. This case shall be and hereby is dismissed with prejudice and without an award of attorney's fees or costs.

DONE IN OPEN COURT this 17th day of October, 2014.

HONORABLE T.W. "[redacted]" SMALL
Superior Court Judge

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Presented by:

JOHNSON, GAUKROGER, SMITH
& MARCHANT, P.S.
Attorneys for Defendant City of Wenatchee

By_____
STEVE D. SMITH
WSBA #16613

Approved as to form; notice of presentment waived:
HARRIS MOURE
Attorneys for Plaintiff

By_____
HILARY V. BRICKEN
WSBA #43000

Approved as to form; notice of presentment waived:
ATTORNEY GENERAL OF WASHINGTON

By_____
ROBERT W. FERGUSON, WSBA #
NOAH G. PURCELL, WSBA #43492
JEFFREY T. EVEN, WSBA #20367

Approved as to form; notice of presentment waived:
KEATING, BUCKLIN & McCORMACK, INC., P.S.
Attorneys for Amici

By_____
STEWART A. ESTES
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APPENDIX B

Hearing Date: 11/21/2014
Hearing Time: 1:30 PM
The Honorable Vic L. Vander Schoor

JOSIE DELVIN
BENTON COUNTY CLERK
NOV 21 2014
FILED

STATE OF WASHINGTON
BENTON COUNTY SUPERIOR COURT

AMERICANNA WEED, LLC, a Washington Limited Liability Company,, Plaintiff, v. CITY OF KENNEWICK, Defendant, and ROBERT W. FERGUSON, Attorney General of the State of Washington, Intervenor.	NO. 14-2-02226-1 ~~[PROPOSED]~~ ORDER GRANTING SUMMARY JUDGMENT

THIS MATTER came on for hearing in open Court on November 21, 2014. Elizabeth Hallock appeared on behalf of Plaintiff Americanna Weed, LLC. Lisa Beaton, City Attorney, appeared on behalf of the Defendant City of Kennewick. Jeffrey T. Even, Deputy Solicitor General, appeared on behalf of Intervenor Robert W. Ferguson.

Motions pending before the Court included Plaintiff's Motion for Partial Summary Judgment, ~~the City of Kennewick's Motion for Summary Judgment, and the Attorney~~

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General's ~~Motion for Partial Summary Judgment~~. The Court considered the motions, the arguments of counsel, and the following records:

1. Complaint for Declaratory and Injunctive Relief From Unconstitutional and Discriminatory Legal Marijuana Ban;
2. Petition for Writ of Prohibition and Writ of Mandamus;
3. Order for Writ of Prohibition and Mandamus;
4. City of Kennewick's Answer to Petition for Writ of Prohibition and Writ of Mandamus;
5. Attorney General's Motion to Intervene;
6. Attorney General's Answer to Complaint and Petition;
7. Order Granting Attorney General's Motion to Intervene;
8. Defendant City of Kennewick's Answer to Complaint for Declaratory and Injunctive Relief;
~~9. Attorney General's Motion for Partial Summary Judgment;~~
~~10. Motion for Summary Judgment Pursuant to CR 56;~~
~~11. City of Kennewick's Memorandum in Support of its Motion for Summary Judgment~~;
12. Declaration of Lisa Beaton;
13. Plaintiff's Motion for Partial Summary Judgment;
14. Declaration of Elizabeth Hallock, Attorney for Plaintiff, in Support of Plaintiff's Motion for Partial Summary Judgment;
15. Declaration of Cynthia Ventura in Support of Plaintiff's Motion for Partial Summary Judgment;
16. City of Kennewick's Memorandum in Response to Plaintiff's Motion for Partial Summary Judgment;
17. Attorney General's Response to Plaintiff's Motion for Summary Judgment;

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18. Plaintiff's Memorandum in Response to Defendant and Intervenor's Partial Motion for Summary Judgment: Ordinance Constitutionality; and

19. _____

_____

_____.

NOW, THEREFORE, having considered the Motions, the arguments of counsel, and the papers, records, and files in this matter, and the Court deeming itself fully advised in the premises, the Court orders as follows:

1. The Court finds that there is no issue of material fact;
2. As to the First and Second Causes of Action in Plaintiff's Complaint: as a matter of law Kennewick's Ordinances 5525, 5529, and 5566 and Kennewick Municipal Code sections 18.12.010B.1, 18.09.1605, and 18.12.165 are not preempted by state law, and summary judgment is therefore GRANTED in favor of the Defendant City of Kennewick and the Intervenor, Attorney General of the State of Washington;
3. The Motion for Partial Summary Judgment of Plaintiff Americanna Weed, LLC, is denied as a matter of law;
4. The Court does not reach what is denominated in Plaintiff's Complaint as the Fourth Cause of Action (there being no third cause of action), and this cause of action remains pending before this Court; and
5. This Order does not constitute a final order fully resolving this action.

DONE IN OPEN COURT this 21 day of Nov., 2014.

Judge of the Superior Court

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-6200

Presented by:

ROBERT W. FERGUSON
Attorney General

NOAH G. PURCELL, WSBA # 43492
Solicitor General

_____
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Counsel for the Attorney General

Receipt Acknowledged
Notice of Presentation Waived

_____
ELIZABETH HALLOCK, WSBA # 41825
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Camas, WA 98607
360-909-6327

Counsel for Plaintiff

_____
LISA M. BEATON, WSBA # 25305
Kennewick City Attorney
210 W. 6th Ave.
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509-585-4272

Counsel for the Defendant

APPENDIX C

RECEIVED
DEC 23 2014
ATTORNEY GENERALS OFFICE
LICENSING & ADMINISTRATIVE LAW DIVISI

FILED
SUPERIOR COURT
2014 DEC 17 PM 5 36
COWLITZ COUNTY
BEVERLY R LITTLE, CLERK
BY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF COWLITZ

EMERALD ENTERPRISES, LLC; JOHN M. LARSON, Plaintiffs, v. CLARK COUNTY, Defendant.	No. 14-2-00951-9 **ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

THIS MATTER came before the Court for a hearing on December 17, 2014, upon the Defendant's presentation of a summary judgment order. The parties previously appeared before the Court on December 3, 2014, for a hearing on cross-motions for summary judgment seeking the following relief:

Plaintiffs

1. An award of summary judgment, finding Defendant's ordinance CCC 40.260.115(B)(4), which prohibits the issuances of permits to recreational marijuana-related businesses until such time that marijuana is no longer listed as a federally controlled substance in accordance with 21 USC 812(c), is unconstitutional because it conflicts with state law;

2. An injunction, enjoining Defendant from enforcing CCC 40.260.115(B)(4) against Plaintiffs;

3. A writ of mandamus, directing Defendant to issue Plaintiffs any requisite local land use permit; and

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CIVIL DIVISION
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VANCOUVER, WASHINGTON 98666-5000
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Scanned

4. Any such additional relief that the Court deems just and equitable.

Defendant

1. An award of summary judgment, finding the Court did not have jurisdiction to hear the matter because Plaintiff failed to serve the Washington State Attorney General with a copy of the proceedings as required in RCW 7.24.110;

2. An award of summary judgment, finding the Court did not have jurisdiction to hear the matter because Plaintiff failed to establish a justiciable controversy;

3. An award of summary judgment, finding state law does not preempt, or otherwise conflict with, Defendant's authority to adopt and enforce CCC 40.260.115(B)(4);

4. An award of summary judgment, finding Defendant's ordinance serves a legitimate purpose;

5. An award of summary judgment, finding Plaintiff failed to establish a *prima facie* case for an injunction;

6. An award of summary judgment, finding federal law (*i.e.* 21 USC 801 *et seq.*) preempts state law (*i.e.* Laws of Washington 2013, chapter 3 §§ 1 - 41 and its corresponding statutory and administrative provisions); and

7. A dismissal of the underlying declaratory action.

The Court heard the oral argument of Mr. John M. Larson, appearing *pro se* for the Plaintiffs, counsel for the Defendant, Mr. Brian Wendt, and deputy solicitor general for the Washington State Attorney General's Office, Mr. Jeff Even. The Court reviewed and considered the pleadings filed in the action. The Court also reviewed and considered the documents that were attached to pleadings and those that were brought to the Court's attention at oral argument before the order on summary judgment was entered.

Specifically, the Court reviewed and considered the following documents:

Plaintiffs' Submittals

1. Complaint For Declaratory and Injunctive Relief.

   A. Exhibit – Email (dated 7/21/2014) from Ms. Kimberly Chabot, a Marijuana Licensing Specialist with the Washington State Liquor Control Board.

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B. Exhibit – Email correspondence (dated 7/21/2014, 7/26/2014, 7/29/2014) between Ms. Chabot and Plaintiff.

C. Exhibit – Email correspondence (dated 7/26/2014, 7/28/2014) between Plaintiff and Mr. Gordon Euler, Clark County Program Manager.

2. Plaintiff's Motion for Summary Judgment.

3. Plaintiff's Memorandum in Support of Motion for Summary Judgment.

4. Plaintiff's Response to Defendant's Cross Motion for Summary Judgment.

5. Plaintiff's Supplemental Memorandum in Support of Response to Defendant's Cross Motion for Summary Judgment.

Defendant's Submittals:

1. Defendant's Response to Plaintiff's Motion for Summary Judgment, and Defendant's Cross Motion for Summary Judgment.

A. Exhibit – Letter (dated 4/13/2011) from Governor Christine Gregoire to the Honorable Eric Holder, Attorney General of the United States.

B. Exhibit – Letter (dated 4/14/2011) from US Attorneys Michael Ormsby and Jenny Durkan to Governor Gregoire.

C. Exhibit – Governor Gregoire's veto message regarding ESSB 5073 (dated 4/29/2011).

D. Exhibit – Letter (dated 12/2/2011) from the Clark County Board of Commissioners to the Honorable Eric Holder, Attorney General of the United States.

E. Exhibit – Letter (dated 1/17/2012) from Joseph Rannazzisi, Deputy Assistant Administrator to the US Drug Enforcement Agency, to the Clark County Board of Commissioners.

F. Exhibit – Washington State and Clark County Voters' Pamphlet (2012).

G. Exhibit – US House of Representatives Bill 6606 (2d Sess., 112th Congress).

H. Exhibit – US House of Representatives Bill 964 (1st Sess, 113th Congress).

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I. Exhibit – Associated Press article, titled "Federal Agents Raid Marijuana Dispensaries in Washington" (dated 7/25/2013).

J. Exhibit – Legal Memorandum from James M. Cole, US Deputy Attorney General, "Guidance Regarding Marijuana Enforcement" (dated 8/29/2013).

K. Exhibit – Denver Post article, titled "Feds Raid Denver-Area Marijuana Dispensaries, Grow Operations, 2 Homes" (dated 11/21/2013).

L. Exhibit – 2014 Washington State Attorney General Opinion No. 2 (dated 1/16/2014).

M. Exhibit – Washington State House Bill 2322 (63rd Leg., 2014 Reg. Sess.).

N. Exhibit – Washington State Engrossed Substitute House Bill 2304 (63rd Leg., 2014 Reg. Sess.).

O. Exhibit – Clark County Ordinance 2014-05-07.

2. RCW 70.105.240

Attorney General's Submittals

1. Answer of Attorney General to Complaint for Declaratory and Injunctive Relief.

Based on the arguments and the evidence presented, the Court orders as follows:

1. Plaintiffs' motions for summary judgment and requests for relief are **denied.**

2. Defendant's motions for summary judgment is **denied in part** and **granted in part** as follows:

   a. Request for summary judgment, finding a lack of jurisdiction for failure to serve the Washington State Attorney General's Office is **denied.**

   b. Request for summary judgment, finding a lack of jurisdiction for failure to establish a justiciable controversy is **denied.**

   c. Request for summary judgment, finding state law does not preempt, or otherwise conflict with, CCC 40.260.115(B)(4) is **granted.**

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d. Request for summary judgment, finding that CCC 40.260.115(B)(4) serves a legitimate purpose is **granted.**

e. Request for summary judgment, finding that Plaintiffs failed to establish a *prima facie* case for injunctive relief is **granted.**

3. The Court does not reach the federal preemption question as the present matter can be resolved under the laws of the State of Washington.

4. The underlying matter is **dismissed with prejudice.**

Done in Open Court this 17 day of December 2014.

The Honorable Judge Michael Evans

Presented by

Brian Wendt, WSBA #40537
Deputy Prosecuting Attorney
Attorneys for Defendant

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APPENDIX D

14-2-11323-0 43844608 ORGSJ 12-23-14

The Honorable Ronald Culpepper
NOTED FOR HEARING: December 19, 2014, 9:00 AM

FILED
DEPARTMENT 17
IN OPEN COURT
DEC 22 2014
PIERCE COUNTY, Clerk
By DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

GREEN COLLAR, LLC, a Washington Limited Liability Company,

Plaintiff,

v.

PIERCE COUNTY,

Defendant.

No. 14-2-11323-0

~~[PROPOSED]~~ ORDER GRANTING DEFENDANT PIERCE COUNTY'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER having come on regularly before this Court on Defendant Pierce County's Motion for Summary Judgment, the Court having considered the records and files herein, including:

1. *Defendant Pierce County's Motion for Summary Judgment;*
2. *Declaration of Stewart Estes* with exhibits thereto;
3. *Declaration of Melanie Halsan* with exhibits thereto;
4. *Plaintiff's [Green Collar, LLC] Response to Defendant's Motion for Summary Judgment*;
5. *Declaration of Jay Berneburg*;
6. *Plaintiff-Intervenors' [Downtown Cannabis Company, LLC, Monkey Grass Farms, LLC and JAR MGMT, LLC] Memorandum in Opposition to Defendant's Motion for Summary Judgment;*

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FAX: (206) 223-9423

7. *Declaration of Mark Cooke in Support of Plaintiff-Intervenors' Memorandum In Opposition to Defendant's Motion for Summary Judgment;*

8. *Declaration of Kevin Haggerty in Support of Plaintiff-Intervenors' Memorandum in Opposition to Defendant's Motion for Summary Judgment;*

9. *Declaration of Katherine Beckett in Support of Plaintiff-Intervenors' Memorandum in Opposition to Defendant's Motion for Summary Judgment;*

10. *Declaration of Roger Roffman in Support of Plaintiff-Intervenors' Memorandum in Opposition to Defendant's Motion for Summary Judgment;*

11. *Attorney General's Memorandum Responding to Defendant's Motion for Summary Judgment;*

12. *Defendant's Reply to Plaintiff's Opposition to Summary Judgment*;

13. *Defendants Reply to Intervenors' Opposition on Summary Judgment*;

14. *Supplemental Declaration of Stewart A. Estes on Summary Judgment*; and

15. *Declaration of Hugh Taylor*;

IT IS HEREBY ORDERED THAT hereby Defendant Pierce County's Motion for Summary Judgment is **GRANTED,** and all claims against Defendant Pierce County are **DISMISSED** with prejudice as a matter of law.

DONE IN OPEN COURT this 22 day of Dec, 2014.

The Honorable Ronald Culpepper
Pierce County Superior Court Judge

FILED
DEPARTMENT 17
IN OPEN COURT
DEC 22 2014
Pierce County Clerk, Clerk
By

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Presented by:

KEATING, BUCKLIN & McCORMACK, INC., P.S.

By: /s/ Stewart A. Estes
Stewart A. Estes, WSBA #15535
Attorneys for Defendant

Jeff J. Eron
FOR ATTORNEY GENERAL

22165

for
Plaintiff-Intervenors

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