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HEARING EXAMINER

The Hearing Examiner
Hearing Date: Thursday, September 13, 2018 at 1:00 p.m.

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:

DOUG WAUN

Denial for a Marijuana Business License
issued by the Director, Regulatory
Compliance & Consumer Protection
Division, Department of Finance and
Administrative Services,

Civil Case No. L-18-007

APPELLANT'S RESPONSE TO MOTION
TO CONTINUE SEPTEMBER 13, 2018,
1:00 P.M. HEARING

I. INTRODUCTION AND RELIEF REQUESTED

This is an appeal of the Seattle Department of Finance and Administrative Services' ("FAS") July 20, 2018, decision denying issuance of a Marijuana Business License for Marigold Products Inc. d/b/a Seattle Cannabis Company ("Seattle Cannabis"). Seattle Cannabis filed its appeal on July 26, 2018, and was provided a hearing date of September 13, 2018. FAS now brings a last-minute motion to continue that hearing. Seattle Cannabis respectfully requests that the motion be denied and the September 13th hearing proceed as scheduled. FAS's motion is untimely, does not show good cause, and Seattle Cannabis has the right to have its appeal expeditiously adjudicated.

II. STATEMENT OF FACTS

Seattle Cannabis holds a Washington retail marijuana license, and operated a retail cannabis business in the SODO neighbor of Seattle from 2015 to 2018. In January 2018, Seattle

APPELLANT'S RESPONSE TO CONTINUE
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1 Cannabis endeavored to relocate its business to Ballard, and received approval to do so from the
2 Washington State Liquor and Cannabis Board ("LCB") and initially also from the City of Seattle
3 authority, FAS. However, after Seattle Cannabis had, in reliance upon FAS's initial approval,
4 closed its SODO store, terminated its SODO lease, entered into a lease for space in Ballard,
5 built-out the Ballard location for retail, transferred all of its product, and hired and trained new
6 employees, FAS withdrew its approval based upon a misinterpretation of the City of Seattle
7 Land Use Code. Because of this Seattle Cannabis has been unable to operate for several months
8 and has lost substantial revenue.

9 On July 26, 2018, Seattle Cannabis filed a timely appeal of FAS's denial, and on July 27,
10 2018, it was provided a hearing date of September 13, 2018. The parties prepared for the hearing
11 during August and into early September. Then, on September 5, 2018, FAS filed a motion for
12 summary judgment, arguing that there were no disputed issues of fact relating to Seattle
13 Cannabis's appeal and therefore the appeal should be ruled upon as a matter of law. On
14 September 6, 2018, FAS filed the current motion to continue the September 13, hearing, citing as
15 good cause the unavailability of SDCI employee Faith Lumsden as a witness, as well as the
16 pending motion for summary judgment.

17 III. ARGUMENT

18 Seattle Cannabis respectfully requests that FAS's motion to continue be denied because it
19 is untimely, does not show good cause, and Seattle Cannabis has the right to have its appeal
20 expeditiously adjudicated.

21 Hearing Examiner rule 2.16(b) provides parties 7 days in which to respond to motions.
22 Likewise, Hearing Examiner rule 2.16(e) states that dispositive motions "shall be filed at the
23 earliest possible time in the proceeding in order to allow time for the other party to respond...
24 and to ensure that the Examiner will consider the motion on the merits." But rather than file its
25 summary judgment motion at the earliest opportunity, FAS's motion was filed at the *latest*
26

1 possible time in the proceeding. FAS offers no explanation for why it waited until the last minute
2 to file its summary judgment motion; that alone is reason enough to deny both that motion and
3 this related motion to continue. At the very least, the summary judgment motion does not
4 constitute good cause for a continuance.

5 FAS also cites as good cause the unavailability of Faith Lumsden as a material witness.
6 This, however, is incompatible with their summary judgment assertion that there are no disputed
7 questions of material fact. If there are no material issues of fact, then Ms. Lumsden cannot be a
8 "necessary" witness from FAS's perspective. Furthermore, if Ms. Lumsden could provide
9 relevant hearing testimony, the same testimony could likely be provided by any other Seattle
10 Department of Construction and Inspections employee familiar with the case. Indeed, when
11 Seattle Cannabis initially indicated to FAS that it wanted Ms. Lumsden to testify at the hearing,
12 it also suggested multiple other possible SDCI witnesses, all of whom could substitute for her in
13 the event she is unavailable.

14 Finally, Hearing Examiner rule 2.06 states that "Hearings shall be conducted
15 expeditiously. At every stage in the proceedings, all parties shall make every effort to avoid
16 delay." Seattle Cannabis has a right to have its appeal swiftly adjudicated. Every day Seattle
17 Cannabis is prevented from opening its doors it is losing significant retail sales, as well as
18 incurring carrying costs associated with maintaining a dormant business. The loss incurred by
19 Seattle Cannabis as the result of FAS's improper denial is already substantial, and increases
20 every day the issuance of its license is delayed.

21 IV. CONCLUSION

22 For the reasons stated herein, Seattle Cannabis respectfully asks that the Hearing
23 Examiner deny FAS's motion to continue, and proceed with the September 13, 2018, hearing as
24 scheduled.
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1 DATED this 7th day of September, 2018.

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5 By: s/ Drew F. Duggan

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the date set forth below I served the foregoing APPELLANT'S
3 RESPONSE TO MOTION TO CONTINUE SEPTEMBER 13, 2018, 1:00 P.M. HEARING on:

4
5 Stephanie P. Dikeakos
6 Assistant City Attorney
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10 Email: Stephanie.Dikeakos@Seattle.gov

☐ via Hand Delivery
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☒ via E-mail
☐ via E-Service

11 Attorney for Respondent

12 Under the laws of the state of Washington, the undersigned hereby declares, under the
13 penalty of perjury, that the foregoing statements are true and correct to the best of my
14 knowledge.

15 Executed at Seattle, Washington, this 7th day of September, 2018.

16 s/ Gillian Fadaie
17 Gillian Fadaie, Legal Assistant

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APPELLANT'S RESPONSE TO CONTINUE
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RE: In the Matter of the Appeal of Doug Waun

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Message:

Attached is Appellant's Response to Respondent Department's Motion to Continue
September 13, 2018, 1:00 p.m. Hearing

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