

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

DEPARTMENT'S REPLY TO
APPELLANT'S RESPONSE TO

DEPARTMENT'S MOTION FOR
SUMMARY JUDGMENT

I. SMC 23.42.058(C)(5) DESCRIBES PROPERTY "THAT INCLUDES THE RETAIL SALE OF MARIJUANA PRODUCTS" TO LIMIT DISPERSION TO MARIJUANA RETAIL, NOT TO REQUIRE PROOF OF ONGOING SALES.

Major marijuana activity is defined in the Seattle Land Use Code and means "any production, processing, or selling of marijuana, marijuana-infused products, usable marijuana, or marijuana concentrates." SMC 23.84A.025. Producing and processing marijuana is a very different business than retail sales of marijuana products. To limit dispersion to retail sales, SMC 23.42.058(C)(5)¹ uses the

¹ SMC 23.42.058(C)(5): No more than two properties with major marijuana activity that includes the retail sale of marijuana products are allowed within 1000 feet of each other; where any lot lines of two properties with existing major marijuana activity that includes the retail sale of marijuana products are located within 1000 feet of each other, any lot line of another property with a new major marijuana activity that includes the retail sale of marijuana products must be 1000 feet or more from the closest lot line of the property containing existing major marijuana activity that includes the retail sale of marijuana products;

1 phrase “major marijuana activity **that includes the retail sale of marijuana products**” in three
2 different places to distinguish a retail marijuana business from a producer/processor marijuana business.
3 This language in the code does not mean, as Appellant argues, the business must have proof of ongoing
4 sales, otherwise the code would contain language about being “open for business” or having “proof of
5 ongoing sales.” The purpose of the phrase “activity that includes retail sale of marijuana products” is to
6 limit the distance/dispersion requirement to marijuana retail as opposed to all of the activities included
7 in the definition of “major marijuana activity.”

8 **II. “MAJOR MARIJUANA ACTIVITY THAT INCLUDES THE RETAIL SALE OF**
9 **MARIJUANA” DOES NOT MEAN ONGOING RETAIL SALES OR ENGAGED IN**
10 **RETAIL MARIJUANA SALES**

11 Appellant adds words to the code that are not there. Nowhere in SMC 23.42.058(C)(5) does
12 the Land Use Code require proof of ongoing retail sales or proof that the business is engaged in retail
13 marijuana sales. (*Appellant’s Response*, pages 5-6.) The code describes the two (or more) businesses
14 already in the geographical area as “with existing major marijuana activity that includes the retail sale
15 of marijuana products.” The code describes the *new* business, or the third business, that wants to move
16 into the geographical area as “with a new major marijuana activity that includes the retail sale of
17 marijuana products.” The only difference is the word “existing” versus “a new.” So, if the remainder
18 of that phrase implies ongoing retail sales, that would have to mean that the *new* business that is
19 applying to go into that area would have to have ongoing sales and be engaged in business before they
20 are even approved to move in. Of course, this would be an impractical requirement and reading the
21 code in that way would produce an impossibility.

22 Assuming *arguendo* that “activity that includes the retail sale of marijuana” does mean ongoing
23 sales, how would this apply if the business were closed for a couple months or longer? If the business
became dormant, as Appellant argues, due to property damage or vacation would that mean that another

1 business could move into the neighborhood because they were not engaged in retail marijuana sales on a
2 particular day? This demonstrates the problems raised by adding words and requirements to the code
3 which are not there. For the intent of the code to be fulfilled, there must be some allowance for a business
4 that has invested in a location to complete any construction requirements and give them a chance to open
5 their doors to the public.

6 **III. CONCLUSION**

7 On March 2, 2018, the Washington State Liquor and Cannabis Board issued a Notice of the
8 Seattle Cannabis Co.'s application to the City. There were already at least two existing major
9 marijuana activities that includes the retail sale of marijuana products in that part of Ballard because
10 they had established roots before the dispersion code's effective date of January 12, 2016. Lux was
11 open for business, but the other two licenses owned by Washington OG were not open for business.
12 Despite being closed to customers, they still existed in their State-licensed location which were
13 within 1,000 feet of Seattle Cannabis's desired location. The Department respectfully requests that
14 the Hearing Examiner grant the motion for summary judgment and affirm the denial for non-
15 compliance with City Land Use Code.

16 DATED this 13th day of September, 2017.

17 PETER S. HOLMES
18 Seattle City Attorney

19 By:



20 Stephanie P. Dikeakos, WSBA #27463
21 Assistant City Attorney
22 *Attorneys for Department of Finance*
23 *and Administrative Services*

1 **CERTIFICATE OF SERVICE**

2 I certify under penalty of perjury under the laws of the State of Washington that, on this day,

3 I caused to be served true and correct copies of the following documents:

- 4 1. Department's Reply to Appellant's Response to Department's Motion for Summary
5 Judgment;

6 on the parties listed below and in the manner indicated:

7 Drew Duggan

8 Miller Nash|Graham Dunn

9 Pier 70

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Seattle, WA 98121

Attorney for Appellant

(x) via Legal Messenger

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10 the foregoing being the last known address of the above-named parties.

11 Dated this 14th day of September, 2018.

12 
13 _____
14 IANNE SANTOS