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 Complaince & Consumer Protection Division, Department of Finance and Administrative Services,	Case No.: L-18-007 WASHINGTON OG, LLC'S MOTION TO INTERVENE AND MOTION TO SUBMIT EVIDENCE

I. INTRODUCTION

Washington OG, LLC, through its undersigned counsel, submits this motion to intervene as Washington OG, LLC is a necessary party to this appeal, but was not given adequate notice of these proceedings. Alternatively, Washington OG seeks to preserve its right to appeal the Hearing Examiner's decision and moves for the submission of written statement and documentary evidence to be included within the record to be considered by the Hearing Examiner and the record for any subsequent appeal. Submission of facts by Washington OG is necessary to rebut the misrepresentations about Washington OG made in the summary judgment briefing submitted in this case.

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II. STATEMENT OF FACTS

The facts asserted herein are supported by the accompanying Declaration of Ryan Espegard and attached exhibits.

Washington OG, LLC applied for and received two marijuana retail licenses from the Washington State Liquor & Cannabis Board ("LCB") in the Ballard neighborhood of Seattle in 2016. Lux Pot Shop ("Lux") obtained a license in the area shortly before Washington OG. After the passage of the City of Seattle's dispersion rule, which prohibited more than two stores from operating within any 1,000 foot radius, Washington OG intended to relocate one of its two licenses out of the neighborhood to comply with City requirements.

Over the next two years, Washington OG worked through obstacles with the City of Seattle, its landlord, and eventually contractors to build out space for the license in Ballard so that it could open for regular business. Washington OG also spent time working to relocate its second Ballard license to a location that would be compliant under the dispersion rules. Washington OG first conducted retail sales at its Ballard location in February 2018.

In April 2018, Washington OG learned that the City of Seattle was considering allowing Marigold Products, Inc. dba Seattle Cannabis Co. ("SCC") to relocate into Ballard despite the fact that it would result in three retail stores operating within 1,000 feet of one another in violation of the dispersion rule. Washington OG was stunned and actively opposed the issuance of a license to SCC. Not only would the addition of a third store in Ballard be directly detrimental to Washington OG's business, but it would also be unfair given that the City of Seattle had given Washington OG a very different interpretation of

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the dispersion rule and that Washington OG would have missed out on numerous viable locations if the City suddenly changed its interpretation.

Washington OG submitted a formal objection to the issuance of a business license to SCC pursuant to SMC 6.202.110 on May 24, 2018, and a supplemental objection letter on June 11, 2018. Per SMC 6.202.110, Washington OG is to be given notice if a license is to be issued over its objection so that Washington OG may appeal the decision. Here, Washington OG was never provided a copy of the July 20, 2018 Order of the Director and was similarly not given adequate notice of SCC's administrative appeal. Washington OG only learned of the actual appeal this week after hearing rumors from third-parties.[1]

Washington OG is baffled why it did not receive notice of this appeal, especially when Washington OG formally objected to the issuance of the business license and is the entity on which SCC seems to base its entire appeal.

III. ARGUMENT

A. Motion to Intervene

Washington OG is an interested party directly affected by the outcome of this hearing. A ruling in SCC's favor would put Washington OG in the unique position of being the only Seattle marijuana license operating within 1,000 feet of two other stores. All other Seattle marijuana businesses to date have benefited from the dispersion rule preventing third stores from opening in close proximity to one another. In other words, ruling in SCC's favor will have a very direct and significant negative effect on Washington OG's business. Separately, ruling in favor of license denial, will uphold the interpretation

[1] DECLARATION

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of the dispersion rule that Washington OG has had to follow in searching for a new location just as all other licensees have had to do. In other words, ruling in favor of license denial will confirm that Washington OG and other Seattle licensees have been treated fairly by the City in prior actions.

Washington OG should also be entitled to intervene after having submitted a formal objection to the issuance of a business license to SCC in May 2018. SMC 6.202.110 requires that notice of the issuance of a license over a formal objection be provided so that the objecting party has the opportunity to appeal the decision.[2] Here, where SCC is attempting to obtain a license over Washington OG's prior objection, Washington OG should have the right to participate in the appeal in the same manner that it could have appealed a license issuance to SCC.

Washington OG should also be entitled to intervene as a necessary party. It seems clear from SCC's opposition to the pending summary judgment motion that it intends to base its entire appeal on the factual history of Washington OG's license in Ballard. Washington OG should be allowed to present evidence on this history—especially in light of the numerous misrepresentations made by SCC in its summary judgment response brief discussed more fully below. To date, neither the City of Seattle nor SCC have approached Washington OG to address potential exhibits or witnesses. It is apparent that Washington OG may need to present this evidence itself.

Washington OG acknowledges that ordinarily a motion to intervene must be filed with the Hearing Examiner and served on all parties to the appeal no later than 10 business days prior to the scheduled hearing date pursuant to HER 3.09(b). However,

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[2] SMC 6.202.300 gives the Hearing Examiner authority to hear appeals of "decisions of the Director to issue" marijuana business licenses.

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HER 1.03(c) states: "When questions of practice or procedure arise that are not addressed by these Rules, the Hearing Examiner shall determine the practice or procedure most appropriate and consistent with providing fair treatment and due process." Washington OG asserts that HER 3.09(b) does not address the situation found here, where an interested party who submitted a formal objection, and who would otherwise be entitled to appeal, was given no notice of the appeal proceedings. Washington OG requests that the Hearing Examiner rely on HER 1.03(c) to find an exception to the 10-business day requirement so that Washington OG is treated fairly and given due process.

Finally, granting the motion to intervene will not place an undue burden on any party. While ideally Washington OG would prefer more time, Washington OG is prepared to adhere to the current schedule that includes witness and exhibit list disclosures on September 24, 2018 and with the hearing taking place on October 1, 2018.

B. Alternative Motion to Intervene for Purpose of Preserving Appeal Rights.

Washington OG should be given full intervenor rights to present evidence, cross-examine witnesses, and make argument at the October 1, 2018 hearing. However, should the Hearing Examiner deny Washington OG its full intervenor rights despite its prior formal objections and having not received any timely notice of this appeal, then Washington OG should at a minimum be granted intervenor status to preserve appeal rights without question under HER 3.09(d).

C. Alternative Motion to Submit Written Statement and Evidence

If Washington OG is not given full intervenor rights, it should at least be given the opportunity to submit some evidence for the record pursuant to her 3.16 to correct numerous misrepresentations about Washington OG made by SCC in its Response to

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Motion for Summary Judgment. Washington OG's appeal rights may be meaningless if it is required to appeal with a record that only contains misrepresentations and inaccurate details about Washington OG's history in Ballard.

For example, SCC claimed that Washington OG had not conducted any sales in Ballard prior to March 2, 2018. In reality, Washington OG purchased and stored marijuana inventory in its Ballard location since December 2017 and conducted limited retail sales and paid associated taxes in February 2018, both prior to SCC's LAN being submitted on March 2, 2018.

Additionally, SCC mischaracterizes Washington OG as a squatter and misrepresents that Washington OG was trying to move out of Ballard rather than develop its current location. As a reminder, Washington OG has two licenses held in separate suites in Ballard. The original plan was to have one operate as a recreational only store and the other a dedicated medical marijuana facility exclusively for medical patients—a style that no longer exists in Seattle after the passage of I-502. However, Washington OG was led to believe that only one of its two stores could operate in Ballard due to the dispersion rule and proximity to Lux. Therefore, Washington OG has been searching for other locations in Seattle for 1 of its 2 Ballard licenses. Washington OG has always intended to operate one of its licenses in Ballard. However, due to a series of delays with the City of Seattle, Washington OG's landlord, and then finally contractors, Washington OG was unable to open for regular business as soon as intended. The business has now been open regularly since June 2018 and plans a formal grand opening celebration in October as its renovations are fully completed.

Finally, SCC makes the assertion that there are no known hypotheticals where ruling in its favor could lead to problems for the City of Seattle or other marijuana

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licensees. Again, this is inaccurate. The City of Seattle is aware of numerous real examples as well as hypotheticals. Some of those examples were conveyed to the City in Washington OG's formal objection, which is Exhibit A to the Declaration of Ryan Espegard.

Washington OG should be allowed to present some evidence at the hearing to establish facts concerning the timeline of Washington OG's business and marijuana license in Ballard.

IV. CONCLUSION

Washington OG respectfully requests that the Hearing Examiner approve its request to intervene and allow Washington OG to present evidence and argument at the hearing currently scheduled for October 1, 2018.

Dated this 19th day of September, 2018.

GORDON THOMAS HONEYWELL LLP

By: _____
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In the Matter of the Appeal of: DOUG WAUN Denial for a Marijuana Business License issued by the Director, Regulatory Complaince & Consumer Protection Division, Department of Finance and Administrative Services,	Case No.: L-18-007 DECLARATION OF RYAN ESPEGARD IN SUPPORT OF WASHINGTON OG, LLC'S MOTION TO INTERVENE AND MOTION TO SUBMIT EVIDENCE

I, Ryan Espegard, declare under the penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge:

1. I am an attorney for Washington OG, LLC and make this declaration based on my personal knowledge.

2. At all times since obtaining its two licenses at 5300 17th Ave NW, suites A and B, Washington OG has intended to operate a marijuana retail store at its licensed location.

3. Washington OG had a series of problems with the building permits with the City of Seattle, with its landlord, and subsequently with contractors that delayed its ability to obtain a certificate of occupancy to conduct retail marijuana sales at 5300 17th Ave NW.

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4. Given pressure by the Washington State Liquor and Cannabis Board ("LCB") to begin retail operations, Washington OG began purchasing and storing marijuana inventory at 5300 17th Ave NW in December 2017 and began limited retail sales and associated tax payments in February 2018. Washington OG was finally able to obtain a temporary certificate of occupancy in May 2018 and began regular marijuana retail sales with City of Seattle approval in June 2018.

5. Washington OG was concerned about Marigold Products, Inc. dba Seattle Cannabis Co.'s efforts to relocate into Ballard, which would have resulted in three stores within 1,000 feet of Washington OG in violation of Seattle's dispersion ordinance. Washington OG submitted two formal objections to the issuance of a marijuana business license to Seattle Cannabis Company. Attached as **Exhibit A** is a true and correct copy of the initial formal objection dated May 24, 2018. Attached as **Exhibit B** is a true and correct copy of a supplemental objection submitted to the City of Seattle dated June 11, 2018.

6. Washington OG was not provided a copy of the Director's Order dated July 20, 2018 and was similarly not provided any notice of Seattle Cannabis Company's appeal proceedings. Washington OG heard rumors that the City may change its mind with respect to Seattle Cannabis Company late last week. I then discovered the existence of the appeal after searching for the property address on the Seattle Hearing Examiner's website yesterday, September 18, 2018. Notably, since Seattle Cannabis Company did not appeal in its own name, and instead appealed under the name Doug Waun, we were unable to successfully locate the appeal information through the case name function.

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SIGNED this 19th day of September, 2018, in Seattle, Washington.

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MESSAGE

Attached please find Washington OG, LLC's Motion to Intervene and Motion to Submit Evidence and Declaration of Ryan Espegard (Without Exhibits).

Hard copies will be hand delivered tomorrow, September 20, 2018.