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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,

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.

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

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

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

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

16 III. ARGUMENT

17 A. Motion to Intervene

18 Washington OG is an interested party directly affected by the outcome of this
19 hearing. A ruling in SCC's favor would put Washington OG in the unique position of being
20 the only Seattle marijuana license operating within 1,000 feet of two other stores. All
21 other Seattle marijuana businesses to date have benefited from the dispersion rule
22 preventing third stores from opening in close proximity to one another. In other words,
23 ruling in SCC's favor will have a very direct and significant negative effect on Washington
24 OG's business. Separately, ruling in favor of license denial, will uphold the interpretation
25
26

¹ DECLARATION

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

5 Washington OG should also be entitled to intervene after having submitted a
6 formal objection to the issuance of a business license to SCC in May 2018. SMC
7 6.202.110 requires that notice of the issuance of a license over a formal objection be
8 provided so that the objecting party has the opportunity to appeal the decision.² Here,
9 where SCC is attempting to obtain a license over Washington OG's prior objection,
10 Washington OG should have the right to participate in the appeal in the same manner
11 that it could have appealed a license issuance to SCC.
12

13 Washington OG should also be entitled to intervene as a necessary party. It
14 seems clear from SCC's opposition to the pending summary judgment motion that it
15 intends to base its entire appeal on the factual history of Washington OG's license in
16 Ballard. Washington OG should be allowed to present evidence on this history—especially
17 in light of the numerous misrepresentations made by SCC in its summary judgment
18 response brief discussed more fully below. To date, neither the City of Seattle nor SCC
19 have approached Washington OG to address potential exhibits or witnesses. It is
20 apparent that Washington OG may need to present this evidence itself.
21

22 Washington OG acknowledges that ordinarily a motion to intervene must be filed
23 with the Hearing Examiner and served on all parties to the appeal no later than 10
24 business days prior to the scheduled hearing date pursuant to HER 3.09(b). However,
25
26

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

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

11 Finally, granting the motion to intervene will not place an undue burden on any
12 party. While ideally Washington OG would prefer more time, Washington OG is prepared
13 to adhere to the current schedule that includes witness and exhibit list disclosures on
14 September 24, 2018 and with the hearing taking place on October 1, 2018.
15

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

17 Washington OG should be given full intervenor rights to present evidence, cross-
18 examine witnesses, and make argument at the October 1, 2018 hearing. However,
19 should the Hearing Examiner deny Washington OG its full intervenor rights despite its
20 prior formal objections and having not received any timely notice of this appeal, then
21 Washington OG should at a minimum be granted intervenor status to preserve appeal
22 rights without question under HER 3.09(d).
23

24 **C. Alternative Motion to Submit Written Statement and Evidence**

25 If Washington OG is not given full intervenor rights, it should at least be given the
26 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

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

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

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

26 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

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

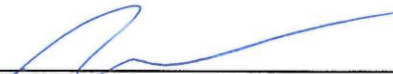
4 Washington OG should be allowed to present some evidence at the hearing to
5 establish facts concerning the timeline of Washington OG's business and marijuana
6 license in Ballard.
7

8 IV. CONCLUSION

9 Washington OG respectfully requests that the Hearing Examiner approve its
10 request to intervene and allow Washington OG to present evidence and argument at the
11 hearing currently scheduled for October 1, 2018.
12

13 Dated this 19th day of September, 2018.

14 GORDON THOMAS HONEYWELL LLP

15
16 By: 
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18 Attorneys for Washington OG, LLC
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