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8 BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

9 In the Matter of the Appeal of:

10 DOUG WAUN

11 Denial for a Marijuana Business License
12 issued by the Director, Regulatory Compliance
13 & Consumer Protection Division, Department
14 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

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

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

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

22 3. Washington OG had a series of problems with the building permits with the
23 City of Seattle, with its landlord, and subsequently with contractors that delayed its ability
24 to obtain a certificate of occupancy to conduct retail marijuana sales at 5300 17th Ave
25 NW.
26

DECLARATION OF RYAN ESPEGARD - 1 of 3
[4810-4883-0579 v.1]

LAW OFFICES
GORDON THOMAS HONEYWELL LLP
ONE UNION SQUARE
600 UNIVERSITY, SUITE 2100
SEATTLE, WASHINGTON 98101-4185
(206) 676-7500 - FACSIMILE (206) 676-7575

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

7
8 5. Washington OG was concerned about Marigold Products, Inc. dba Seattle
9 Cannabis Co.'s efforts to relocate into Ballard, which would have resulted in three stores
10 within 1,000 feet of Washington OG in violation of Seattle's dispersion ordinance.
11 Washington OG submitted two formal objections to the issuance of a marijuana business
12 license to Seattle Cannabis Company. Attached as Exhibit A is a true and correct copy of
13 the initial formal objection dated May 24, 2018. Attached as Exhibit B is a true and
14 correct copy of a supplemental objection submitted to the City of Seattle dated June 11,
15 2018.

16
17 6. Washington OG was not provided a copy of the Director's Order dated July
18 20, 2018 and was similarly not provided any notice of Seattle Cannabis Company's
19 appeal proceedings. Washington OG heard rumors that the City may change its mind with
20 respect to Seattle Cannabis Company late last week. I then discovered the existence of
21 the appeal after searching for the property address on the Seattle Hearing Examiner's
22 website yesterday, September 18, 2018. Notably, since Seattle Cannabis Company did
23 not appeal in its own name, and instead appealed under the name Doug Waun, we were
24 unable to successfully locate the appeal information through the case name function.
25
26

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

GORDON THOMAS HONEYWELL LLP

By: 

Ryan C. Espegard, WSBA No. 41805
Attorneys for Washington OG, LLC

EXHIBIT “A”

Ryan C. Espegard
Direct: (206) 676-7548
E-mail: respegard@gth-law.com

May 24, 2018

VIA EMAIL & U.S. MAIL

Fred Podesta, Director
Finance and Administrative Services
City of Seattle
700 5th Ave, Suite 5200
Seattle, WA 98104

RE: Objection to Issuance of Marijuana Business License – Seattle Cannabis Co.

Dear Mr. Podesta:

We represent Washington OG, LLC, which holds two state issued marijuana retail licenses in Seattle (#420382 and #420292). This letter is a formal objection to the issuance of a marijuana business license to Marigold Products, Inc. dba Seattle Cannabis Co. (former license #414780) at 1713 NW Market St. A license cannot be issued because it would violate Seattle Municipal Code ("SMC") 23.42.058(C)(5), which states in pertinent part: "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." A violation of SMC 23.42.058(C)(5) is a valid basis for denial pursuant to SMC 6.202.230(D), which states denial is appropriate when the applicant's activity fails to comply with any applicable provision of the Seattle Municipal Code.

Further, any potential change in the interpretation of SMC by the City that would allow Seattle Cannabis Co. to be granted a license over this objection, must be abandoned, as any change in interpretation would directly conflict with provisions of the SMC, undermine the

Reply to:

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Seattle, WA 98101
(206) 676-7500
(206) 676-7575 (fax)

Tacoma Office
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Tacoma, WA 98402
(253) 620-6500
(253) 620-6565 (fax)

Gordon Thomas Honeywell_{LLP}
May 25, 2018
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intent of the dispersion rule, and violate principles of statutory interpretation that preside over state and local law.

In the event the City plans to issue a marijuana business license to Seattle Cannabis Co. despite this objection, then we request a prompt written explanation of the reasons why the license would be issued over this objection as required by SMC 6.202.110, as well as details on any administrative remedies available to challenge the decision, so that my client can take all available measures in pursuing legal recourse.

I. Existing City Interpretation of Dispersion Rule.

Seattle's dispersion requirements for marijuana retail are as follows:

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;

SMC 23.42.058(C)(5). This paragraph has consistently been interpreted by the City as strictly limiting the number of retail stores that may operate within 1,000 feet of each other to two.¹

Recognizing that the dispersion rule could set off a race amongst retail applicants for

¹ State licensed marijuana retail businesses are considered "major marijuana activity" pursuant to SMC 23.84A.025.

highly desirable neighborhoods, the City Council adopted a procedural provision to help determine which applicants can obtain the right to operate retail stores under the rule. SMC 23.42.058(C)(6) states:

Whether a major marijuana activity complies with the locational requirements prescribed by subsections 23.42.058.C.2, 23.42.058.C.3, 23.42.058.C.4, or 23.42.058.C.5 shall be based on facts that exist on the date the Washington State Liquor and Cannabis Board issues a "Notice of Marijuana Application" to The City of Seattle.

A Notice of Marijuana Application, aka Local Authority Notice ("LAN") is a requirement of the licensing process with the LCB and is issued by the agency pursuant to RCW 69.50.331(7) prior to issuance of a marijuana license in any location.

Seattle has consistently interpreted subpart (C)(6) as meaning that the first two businesses to have their LANs submitted to the City by the LCB are the only businesses that may obtain City of Seattle marijuana licenses and begin operating in a given area under the dispersion rule. In other words, after two LANs have been received by the City within 1,000 feet of one another, then the "facts that exist on the date" of a third LAN would be that two prior applicants are first in line to be licensed by the City in that area. This creates an equitable bright line rule that allows an applicant to establish the right to open a store under the dispersion rule during their application process. Without such a provision, disputes would naturally arise when multiple applicants lease space and buildout locations in the same area racing for a license.²

² See e.g., *City of Bellevue v. Greensun Group, LLC*, 194 Wn. App. 1029 (2016) (unpublished).

One example of this interpretation in action can be seen in Exhibit A., an email exchange between Washington OG's owner and Cherie MacLeod, the City of Seattle's Marijuana Program Coordinator. Mr. Douglas asked whether there is a point in time when an LAN that has been issued will no longer qualify as one of the two stores under the dispersion rule if the applicant does not appear to be moving forward with plans. Ms. Macleod confirmed that the City does not have a time limit on LANs and an LAN could continue to count as one of two stores for the dispersion rule until the application is withdrawn. Ms. Macleod also referenced a race between three applicants on Capitol Hill and noted that "The Bakeree," the third to apply in the area, "has to find another location unless either the Reef or Ian's application moves." None of the stores had opened by the time that email exchange occurred and the decision was based solely on the timing of LANs.

In addition to the Capitol Hill instance, the City applied this interpretation during our client's efforts to move a separate license into Belltown in May 2016. The City informed us that our client could not open in Belltown due to the City having already received a second LAN for Have a Heart at 115 Blanchard St., within 1,000 feet of another retailer (Herban Legends, at 55 Bell St. Have a Heart's applicant with the LCB was still pending, it was not open for business at the time, and it did not open until several months later.

Applying this consistent interpretation to Seattle Cannabis Co. requires the City to deny the applicant a marijuana business license on the basis that Lux Pot Shop (License #414532) had an LAN issued for 4912 17th Ave NW prior to its licensure in August 2015, and Washington OG had an LAN issued for 5300 17th Ave NW, Ste A on December 16,

2015, under tradename The Source. Both significantly predate Seattle Cannabis Co.'s LAN date of March 2, 2018, and both hold the right to operate as the only two retail stores within 1,000 feet of each other based on the City's prior interpretations of the dispersion rule.

This interpretation has already been confirmed by Seattle Department of Construction and Inspections ("SDCI") in this matter. Seattle Cannabis Co. submitted a permit application for retail space at 1713 NW Market St, but did not identify its intended use as marijuana retail. SDCI issued a corrections notice asking for clarification as to whether a marijuana use was intended and noted that the location violated the dispersion rule: "[T]his site does not meet the dispersion requirement, per 23.42.058.C.5, as it is located within 1000ft of two other marijuana retailers." See Exhibit B. SDCI then issued the permit without any clarification. Mr. Douglas followed up with SDCI to inquire and SDCI informed him that the sale of marijuana would not be allowed at the location due to the dispersion requirement of SMC 23.42.058(C)(5) despite the issuance of the building permit. See Exhibit C.

II. Rumored New Interpretation of the Dispersion Rule.

We have heard unconfirmed reports that the City is prepared to change its interpretation of the dispersion rule for the benefit of Seattle Cannabis Co. The new rumored interpretation is that a marijuana retail business applicant will gain the right to open a retail store on the date their LAN is issued, unless there are two actively operating stores satisfying the definition of "major marijuana activity" on the LAN date. More specifically, the City is expected to argue that a licensee must conduct sales in order to be

considered a “major marijuana activity,” and unless there are two stores conducting sales within 1,000 feet of a new applicant when an LAN is received, the new applicant will be allowed to operate their store, despite it being the third (or more) store into that intended dispersion protected area.

If the City departs from its longstanding interpretation for this new interpretation, it will render the dispersion rule meaningless. The potential new interpretation would allow an unlimited number of stores the right to open within 1,000 feet of one another if their LANs are received prior to two stores opening for business and conducting sales. Due to the significant length of time involved in relocating a retail marijuana license, this will undoubtedly occur.

The time from when an LAN is submitted by the LCB to the City, to when an applicant completes the build out of their location, to when the LCB approves and issues the retail license, to the point that the applicant may finally apply for their City of Seattle marijuana business license, and open for business, creates a vast window of time during which any other retailer could simply complete the first step of submitting an LAN, to not be subject to the dispersion requirement. Given that the purpose of the dispersion rule is to ensure that there is “no concentration of permitted marijuana businesses,” it is plainly irresponsible of the City to allow this interpretation. *See* Ordinance 124969

As licensees learn of the City of Seattle's change in interpretation, it would result in numerous clusters throughout the City, not just in Ballard.³ For example, any time a licensee relocates or loses their location in a valuable area, a race will be set off among licensees to get LANs submitted for that neighborhood before a new store opens for business. Belltown provides a hypothetical example. Herban Legends and Have a Heart are currently located and operating in Belltown. Under the dispersion rule, no other stores may be located in Belltown. However, if one of the stores no longer operates in Belltown (due to relocation or loss of license), perhaps due to ongoing development activity in the neighborhood, then the dispersion rule would allow a new store to move into Belltown. Under the City's longstanding interpretation, the first business to have an LAN submitted to Seattle for the area could open—consistent with the intent of the SMC. Under the potential new interpretation, every licensee that could get an LAN issued prior to a second store opening for business would be able to open. Taking the timeline issues explained here into consideration, leads to the conclusion that the longstanding interpretation of the SMC is the only interpretation that can uphold the integrity of the dispersion rule and the intent of the legislation.

Additionally, the potential new interpretation would plainly violate principles of statutory interpretation. The rules of statutory interpretation apply equally to

³ Additionally, as licensees learn of the change in interpretation, the City should expect numerous lawsuits filed by licensees that have been denied chosen locations under the prior interpretation that would have qualified for licensure under the potential new interpretation. Numerous licensees have relied on the existing interpretation, potentially to their significant detriment if the interpretation now changes.

municipal ordinances and state statutes. *World Wide Video, Inc. v. Tukwila*, 117 Wn.2d 382, 391, 816 P.2d 18 (1991). The goal of statutory interpretation is to ascertain and carry out the legislature's intent. *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014); *see also Ellensburg Cement Prod., Inc. v. Kittitas Cty*, 179 Wn.2d 737, 743, 317 P.3d 1037 (2014). Here, the City Council's intent is readily apparent. The City Council determined that the dispersion requirement was necessary to ensure that there is "no concentration of permitted marijuana businesses" in the City. *See* Ordinance 124969. For confirmation of the City's intent at the time of the passage of this legislation, see Exhibit D, an email between Mr. Douglas and David Mendoza, the City of Seattle's Policy Advisor, from December 10th 2015, a few days before the language passed out of Committee. Mr. Mendoza explains: "if the Mayor's proposal is adopted by City Council, once the City receives [the] LAN the dispersion zone will be created around that store prohibiting other stores from moving within" the area prohibited by the dispersion rule. This shows the intent at the time of passage is consistent with the longstanding interpretation described herein.

Additionally, "[s]tatutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *G-P Gypsum Corp. v. State, Dep't of Revenue*, 169 Wn.2d 304, 309 (2010) (citation omitted). Here, if subsection C.6 is interpreted as allowing any applicant the right to operate a retail store as long as two other retailers have not yet begun sales, then it renders the portion of subsection C.5 stating "[n]o more than two properties with major marijuana activity that includes the retail sale of marijuana products are allowed within 1000 feet of each other"

meaningless because the new interpretation would plainly allow more than two to ultimately operate within 1000 feet of one another.

Further, if the City pursues this new interpretation it would be placing form over substance by giving greater weight to language of a procedural provision intended to implement the dispersion rule (subsection C.6) rather than to the dispersion rule itself (subsection C.5). "The paramount concern . . . is to ensure that the statute is interpreted consistently with the underlying policy" and the interpretation should not be one which "promotes form over substance." *Safeco Ins. Companies v. Meyering*, 102 Wn.2d 385, 392, 687 P.2d 195 (1984). The "fundamental guide to statutory construction is that the spirit or intention of the law prevails over the letter of the law." *State v. Evans Campaign Comm.*, 86 Wn.2d 503, 508, 546 P.2d 75 (1976). Thus, the procedural provision should be interpreted in a manner that truly upholds the intent of prohibiting more than two stores from operating within 1,000 feet of one another rather than interpreting the procedural provision in a manner that potentially allows clusters of stores to form in Seattle.

III. The Business License Should Be Denied Even Under the New Potential Interpretation.

If the City is determined to change its interpretation of the dispersion rule as noted above, then the City should still deny Seattle Cannabis Co.'s marijuana business license application because there were two existing retailers satisfying the definition of "major marijuana activity" within 1,000 feet of Seattle Cannabis Co. The following are additional "facts that exist on the date" Seattle Cannabis Co's LAN was issued:

- Not only had two LANs been issued, but both license applicants followed through with the state licensing and had received marijuana retail licenses from the LCB;
- Lux Pot Shop and Washington OG both applied for and received building permits from the City of Seattle related to their intended use of their buildings for marijuana retail prior to March 2, 2018, vesting their rights to marijuana retail sales in their locations pursuant to RCW 19.27.095(1);
- Lux Pot Shop and Washington OG both conducted retail marijuana sales from their locations prior to March 2, 2018 (this fact can be confirmed by contacting the LCB Tax and Fee Unit);⁴ and
- Washington OG held an active inventory of marijuana product at its state licensed location since December 2017.

These facts should be more than sufficient to conclude that Seattle Cannabis Co. cannot be issued a Seattle marijuana business license because both Lux Pot Shop and Washington OG satisfied the definition of "major marijuana activity" on the date of Seattle Cannabis Co.'s LAN. However, we have heard that City staff may argue in favor of Seattle Cannabis Co. that Washington OG does not satisfy the definition of "major marijuana activity" because its state licensed sales predating the new LAN only occurred for a limited time in February. If this rumor is true, then it would mean that in addition to changing its interpretation of SMC 23.42.058(C)(6), the City is also changing its definition of "major marijuana activity" and doing so without following any legislative process.

The definition of "marijuana activity, major" includes "any production, processing, or selling of marijuana." SMC 23.84A.025 (emphasis added). This definition is noticeably

⁴ Washington OG conducted sales under its state issued marijuana retail license in February 2018. It should be noted that Washington OG intended to commence full time operations and that the reasons for it pausing sales are beyond the scope of this letter.

relaxed from the prior requirement that sales must exceed 72 ounces of marijuana to meet the definition of major marijuana activity. *See* Ordinance 124326, §5, 2013. Neither the old or new definitions of major marijuana activity have ever included a time period element—such as conducting daily sales. A new interpretation of this definition to include a time period element would be improper rulemaking without legislation.

Additionally, a decision that a marijuana retailer like Washington OG may conduct retail sales for a limited period without being considered a “major marijuana activity” would lead to absurd results since the dispersion rule only applies to major marijuana activity. For example, this interpretation would allow licensees to continually relocate to temporarily productive locations without regard to proximity of other stores as long as the sales were for a limited or intermittent period of time (ex: near Seattle Center for Bumbershoot, Belltown or Capitol Hill for Pride weekend, or near the U District for Husky football games), once again increasing the odds for clusters of stores to form in violation of the clear intent of the dispersion rule. The City should interpret “major marijuana activity” to include any sales regardless of quantity or period of time. The necessary conclusion would then be that both Lux (with ongoing sales) and Washington OG (with sales in February 2018) were both undoubtedly existing major marijuana activities within 1,000 feet of Seattle Cannabis Co. when the City received Seattle Cannabis Co.’s LAN on March 2, 2018.

We urge you to deny a Seattle marijuana business license to Seattle Cannabis Co. at 1713 NW Market St. because the business would then operate in violation of the dispersion rule. In the event the City plans to change its interpretation of the dispersion rule and issue

Gordon Thomas Honeywell_{LLP}
May 25, 2018
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a marijuana business license to Seattle Cannabis Co., then we demand a prompt written explanation of the reasons why the license would be issued over the objection as required by SMC 6.202.110. We would also request notification of any additional administrative remedies available to challenge the issuance of the business license before Washington OG would take action in King County Superior Court. Thank you for considering this objection.

Sincerely,

GORDON THOMAS HONEYWELL LLP

A handwritten signature in black ink, appearing to read 'Ryan C. Espegard', with a stylized, flowing script.

Ryan C. Espegard

Enclosures: Exhibit A (Emails with C. MacLeod); Exhibit B (March 28, 2018 Corrections Notice); Exhibit C (Emails with S. Putnam); Exhibit D (Emails with D. Mendoza).

From: MacLeod, Cherie <Cherie.MacLeod@seattle.gov>
Date: Mon, Feb 26, 2018 at 11:53 AM
Subject: RE: 760 Aloha St
To: Donnie Douglas <douglas.donnie@gmail.com>

Yes, I'll let you know.

Cherie

From: Donnie Douglas [<mailto:douglas.donnie@gmail.com>]
Sent: Monday, February 26, 2018 9:58 AM

To: MacLeod, Cherie <Cherie.MacLeod@seattle.gov>
Subject: Re: 760 Aloha St

Ok. I am going to try to check on whether or not the applications are withdrawn or moving forward.

If the city happens to have the info sooner, could you please keep me posted.

On Mon, Feb 26, 2018 at 9:26 AM, MacLeod, Cherie <Cherie.MacLeod@seattle.gov> wrote:

I think the Reef is still moving into the Olive way address as they contacted my office about licensing end of January.

The Bakeree has to find another location unless either the Reef or Ian's application moves.

Cherie

From: Donnie Douglas [mailto:douglas.donnie@gmail.com]
Sent: Monday, February 26, 2018 9:17 AM

To: MacLeod, Cherie <Cherie.MacLeod@seattle.gov>
Subject: Re: 760 Aloha St

Not all of the information reported is accurate in these links, but The Reef (District 420) application: <http://capitolhilltimes.com/Content/Business/Business/Article/Pot-potential-on-East-Olive-Way/108/468/5363>

The Bakeree does not have a lease for the building discussed in the article.

On Mon, Feb 26, 2018 at 8:58 AM, MacLeod, Cherie <Cherie.MacLeod@seattle.gov> wrote:

I have to request the information from LCB as well. Which one are you asking about?

From: Donnie Douglas [mailto:douglas.donnie@gmail.com]
Sent: Monday, February 26, 2018 8:57 AM

To: MacLeod, Cherie <Cherie.MacLeod@seattle.gov>
Subject: Re: 760 Aloha St

Can the city tell if the application has been withdrawn ?

I am not sure how I can do that, as the LCB usually does not release this kind of info over the phone.

On Mon, Feb 26, 2018 at 8:53 AM, MacLeod, Cherie <Cherie.MacLeod@seattle.gov> wrote:

We do not have any time limit rules on the LANs, however if the application has been withdrawn or otherwise no longer for that location (per LCB), it would no longer count as one of the 2 for the dispersion.

Cherie

From: Donnie Douglas [<mailto:douglas.donnie@gmail.com>]
Sent: Monday, February 26, 2018 8:50 AM

To: MacLeod, Cherie <Cherie.MacLeod@seattle.gov>
Subject: Re: 760 Aloha St

Hi Cherie, yes, we have a situation that is dictated by the how the City treats the following scenario:

Someone starts a change of location application with the LCB, and they move forward to the point that the LCB issues a LAN. The LAN is within 1000 ft of another licensed retailer, and meets the definition of the city's two store dispersion within 1000 ft rule.

However, the application does not appear to be moving forward. SDCI shows no permit application or anything for the property that would indicate that they are moving forward with the necessary improvements at the property (a change of use is required, from the existing use to the marijuana retail use). Say it has been 5 months.

Is there a process, or point in time, at which that applicant's LAN no longer qualifies for consideration by the city for the store dispersion rule?

That is - if we have a compliant property that was within the hypothetical 1000 ft dispersion buffer, and one of the LAN's does not appear to be a "real" LAN, at what point does their LAN become inactive, and our compliant space no be affected by a dispersion buffer?

On Mon, Feb 26, 2018 at 8:22 AM, MacLeod, Cherie <Cherie.MacLeod@seattle.gov> wrote:

Good morning Donnie, I missed your call on Friday and your voicemail box is full. You have a question?

Cherie



City of Seattle
Department of Construction and Inspections
Land Use Review

JAMES D DESARNO
1626 Dexter Ave N
Seattle, WA 98109

Re: Project# 6632618

Correction Notice #1

Review Type	ZONING	Date	March 28, 2018
Project Address	1713 NW Market St	Contact Phone	(206) 660-0607
Contact Email	james@d3seattle.com	Contact Fax	
SDCI Reviewer	Travis Saunders	Address	Seattle Department of Construction and Inspections 700 5th Ave Suite 2000 PO Box 34019 Seattle, WA 98124-4019
Reviewer Phone	(206) 386-1357		
Reviewer Fax			
Reviewer Email	Travis.Saunders@Seattle.gov		
Owner	JAMES D DESARNO		

I have completed the initial round zoning review for the subject project, and have identified the following items to be resolved prior to approval. Additional notices may follow depending on response to this correction notice.

Applicant Instructions

Please see the attached flyer to learn "[How to Respond to a SDCI Correction Notice](#)".
If the 3-step process outlined in this document is not followed, it is likely that there will be a delay in permit issuance and there is a potential for penalty fees.

Codes Reviewed

This project has been reviewed for conformance with the applicable development standards of the Land Use Code.

Corrections

- 1 Use** - Please clarify the retail activity that will take place in each space. Please note: If any of the businesses are to conduct major marijuana activities (defined in 23.84A.025), this site does not meet the dispersion requirement, per 23.42.058.C.5, as it is located within 1000ft of two other marijuana retailers (WA OG LLC at 5300 17th Ave NW and Lux at 4912 17th Ave NW).

From: Putnam, Sue <Sue.Putnam@seattle.gov>
Date: Mon, Apr 30, 2018 at 11:13 AM
Subject: RE: Visit to SDCI & Permit 6632618
To: Donnie Douglas <douglas.donnie@gmail.com>

Hello Donnie.

Yes, these are the plans that were approved. I did ask some follow up questions of our senior review staff to be sure I provide you with the correct information.

The approved plans call out Retail as the use. The selling of marijuana is a retail use however, the site does not meet the develop requirement in title 23.42.058C5 requiring 1,000 foot separation between major marijuana activities. I believe that when I spoke with you earlier I stated that the sale of marijuana was not allowed based on the notations on their plans. It is not allowed because it cannot meet the development standards called out in the code section I cited.

If they should begin to sell marijuana, you would be able to file a complaint at
<http://www.seattle.gov/dpd/codesrules/makeacomplaint/default.htm>.

I hope this information is helpful.

From: Donnie Douglas <douglas.donnie@gmail.com>
Sent: Thursday, April 26, 2018 12:39 PM
To: Putnam, Sue <Sue.Putnam@seattle.gov>
Subject: Visit to SDCI & Permit 6632618

Hi Sue,

I visited SDCI this past Monday and you were able to help me regarding the above project number.

I was hoping to ask a follow up question about what we discussed, and have have attached the plans we reviewed.

Is it correct that these were the plans that were submitted as the response to the correction cycle #1 and that the approval was based off of ?

You noted that there was no mention of marijuana anywhere on here, and so therefore marijuana was not an approved use?

Thank you.

--

DONNIE DOUGLAS

(303) 829 5712

douglas.donnie@gmail.com



Donnie Douglas <douglas.donnie@gmail.com>

Pioneer Square language**Donnie Douglas** <douglas.donnie@gmail.com>

Thu, Dec 10, 2015 at 11:03 AM

To: "Mendoza, David" <David.Mendoza@seattle.gov>

Cc: "MacLeod, Cherie" <Cherie.MacLeod@seattle.gov>, "Espegard, Ryan" <respegard@gth-law.com>

Could you give me their contact info?

Has the ordinance language changed from this draft ? :

<http://murray.seattle.gov/wp-content/uploads/2015/10/DPD-Marijuana-Amendments-ORD.pdf>

In that draft is my current store considered a major marijuana activity, and would I be considered my own 500 ft buffer ?

[Quoted text hidden]

Mendoza, David <David.Mendoza@seattle.gov>

Thu, Dec 10, 2015 at 11:10 AM

To: Donnie Douglas <douglas.donnie@gmail.com>

Cc: "MacLeod, Cherie" <Cherie.MacLeod@seattle.gov>, "Espegard, Ryan" <respegard@gth-law.com>

CM Licata is introducing an amendment that would lower the buffer to 250 feet and yes, every LCB licensee would be considered major marijuana activity after the ordinance is passed. Those without a license would not be able to continue operating after July 1, 2016.

From: Donnie Douglas [mailto:douglas.donnie@gmail.com]**Sent:** Thursday, December 10, 2015 11:04 AM**To:** Mendoza, David <David.Mendoza@seattle.gov>**Cc:** MacLeod, Cherie <Cherie.MacLeod@seattle.gov>; Espegard, Ryan <respegard@gth-law.com>**Subject:** Re: Pioneer Square language

[Quoted text hidden]

To: "Mendoza, David" <David.Mendoza@seattle.gov>

Thu, Dec 10, 2015 at 11:15 AM

Cc: "MacLeod, Cherie" <Cherie.MacLeod@seattle.gov>, "Espegard, Ryan" <respegard@gth-law.com>

David thanks, just wanted to clarify - would my medical marijuana store in PS be considered for dispersion to any new applicant?

[Quoted text hidden]

Mendoza, David <David.Mendoza@seattle.gov>

Thu, Dec 10, 2015 at 11:50 AM

To: Donnie Douglas <douglas.donnie@gmail.com>

Cc: "MacLeod, Cherie" <Cherie.MacLeod@seattle.gov>, "Espegard, Ryan" <respegard@gth-law.com>

My understanding is that even if the buffer is reduced to 250; your store is still too close to Occidental Park to obtain a license from the LCB. However, dispersion analysis by DPD is triggered upon receipt of the Local Authority Notice from the LCB. If the Mayor's proposal is adopted by City Council, once the City receives LAN the dispersion zone will be created around that store prohibiting other stores from moving within 500 feet of that store. If new store completes their licensing process before a currently operating medical marijuana store, dispersion won't affect that MMJ location as they will be grandfathered since they were in operation before the ordinance went into effect.

From: Donnie Douglas [mailto:douglas.donnie@gmail.com]**Sent:** Thursday, December 10, 2015 11:15 AM

[Quoted text hidden]

[Quoted text hidden]

Exhibit "D" Page 1 of 1

EXHIBIT “B”



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June 11, 2018

VIA EMAIL & U.S. MAIL

Fred Podesta, Director
Finance and Administrative Services
City of Seattle
700 5th Ave, Suite 5200
Seattle, WA 98104

RE: Supplemental Objection to Issuance of Marijuana Business License

Dear Mr. Podesta:

As you know, we represent Washington OG, LLC, and we have previously submitted a formal objection to the issuance of a marijuana retail business license to the issuance of a marijuana business license to Marigold Products, Inc. dba Seattle Cannabis Co. (former license #414780) at 1713 NW Market St, dated May 25, 2018. This letter serves as a supplemental objection that should be considered along with the first prior to making any licensing decisions. If the license is issued over our objection, we request a written explanation for your reasoning as required by SMC 6.202.110.

I. Washington OG plans to open for regular business by June 13, 2018.

First, thank you for promptly issuing Washington OG its marijuana business license in response to its second application filed last week. The City issued the license earlier today and Washington OG intends to open for regular business by Wednesday, June 13, 2018. This means both Lux Pot Shop and Washington OG will be conducting regular sales prior to Seattle

Reply to:
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Seattle, WA 98101 (206) 676-7575 (fax)

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Cannabis Company. This is in addition to the fact that both licensees obtained their state marijuana licenses prior to the issuance of the new Local Authority Notice on March 2, 2018.

II. Fear of license/property squatting does not provide policy justification for issuing a license to Seattle Cannabis Company.

The City should not change its interpretation of the dispersion rule to allow Seattle Cannabis Company to open due to the length of time Washington OG remained unopen. Such a change would appear to be unnecessary because the policy of preventing license or property squatting was already addressed by the Washington State Legislature during the 2017 legislative session. Section 1 of Senate Bill 5131 required the LCB to adopt rules requiring the forfeiture of retail marijuana licenses that remain unopen for a period of nine months. The bill was passed on May 16, 2017 and became effective on July 23, 2017. See RCW 69.50.325(3)(c). The LCB issued a CR-101 to initiate the rulemaking process on July 19, 2017. The LCB then issued a CR-102 with actual proposed rules on February 7, 2018. These steps all occurred before the issuance of Seattle Cannabis Company's Local Authority Notice on March 2, 2018. Final rules were adopted on May 30, 2018 and will be effective on June 30, 2018. See WAC 314-55-055.

Given that licensees that remain unopen in Seattle will be required to forfeit their licenses shortly, pursuant to RCW 69.50.325(3)(c) and WAC 314-55-055, there is no reasonable basis for the City to change its interpretation of the dispersion rule to implement a policy discouraging license/property squatting. A policy implemented by the City on this issue is simply unnecessary given the state license forfeiture requirements. The City should

instead maintain its prior interpretation and push the LCB to enforce the forfeiture rules when needed.

III. Seattle Cannabis Company did not disclose its intended use on building permit applications and accepted the risk that it would not be issued a marijuana business license when it pursued relocation.

It has come to our attention that Seattle Cannabis Company applied for a construction permit to change the use of its proposed location without disclosing the intended use of the property to the City. At no point in any of the application materials or written communications with the City did the applicant disclose marijuana retail as the intended use. Presumably this significant omission was made because the applicant understood that a building permit for marijuana retail could not be granted based on the dispersion rule that would prohibit the use. However, an application to change the use to retail while masking the actual intended use, would allow Seattle Cannabis Company to obtain a Certificate of Occupancy for the property putting it one step closer to securing the necessary business license.

Seattle Cannabis Company moved forward with the relocation to Ballard fully aware of the then current dispersion rule interpretation. It appears that Seattle Cannabis Company was hoping that Washington OG's license would be forfeited under the new rules and that Seattle Cannabis Company could become next in line in Ballard after the issuance of its Local Authority Notice on March 2, 2018. In other words, Seattle Cannabis Company accepted the risk that it would not be granted a marijuana business license when relocation efforts began. The City should not feel an obligation to issue a business license under these circumstances, despite any communications the City may have had with the applicant after March 2, 2018.

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Instead, the City should maintain the prior interpretation that all parties assumed applied when the new Local Authority Notice was issued on March 2, 2018. Seattle Cannabis Company should be denied a business license in Ballard. Thank you for considering these additional comments.

Sincerely,

GORDON THOMAS HONEYWELL LLP

A handwritten signature in black ink, appearing to read 'Ryan C. Espegard', with a stylized, sweeping flourish at the end.

Ryan C. Espegard