CITY OF WHITTIER

Gateway to Western Prince William Sound

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May 31, 2024

Marijuana Control Board
c/o Joan Wilson, Director
State of Alaska Alcohol & Marijuana Control Office
550 W 7th Ave., Suite 1600
Anchorage, AK 99501

RE: Protest By Local Government
GOOD LLC DBA GOOD Cannabis, Lic. #36998

Dear Director Wilson:

Pursuant to 3 AAC 306.060, on behalf of the City of Whittier (the "City"), the City Clerk hereby submits this protest of the application for State of Alaska Retail Marijuana Store License Number 36998 submitted by GOOD LLC doing business as GOOD Cannabis.

GOOD Cannabis proposes to operate a retail marijuana store within the City of Whittier, but GOOD Cannabis does not currently have the right to possession of the proposed licensed premises as required by 3 AAC 306.015(c). Additionally, as explained below, the proposed licensed premises is a City property, and use of City property as a retail marijuana store is not permitted by existing lease agreements or the Whitter Municipal Code. For these reasons, the City protests this application.

With its application, GOOD Cannabis provided a "Letter of Intent To Lease" ("LOI") the proposed licensed premises at "Area B, Lot 7 of Harbor View Subdivision, Whitter, Alaska 99693" (the "Property"). The LOI provides that the current occupant, Whittier Lodging, LLC ("Whittier Lodging"), would lease the Property to Ridgeline Property Management, LLC ("Ridgeline"), which would then sublease the Property to GOOD Cannabis for use as a retail marijuana store. However, as noted in the LOI, any lease between Whittier Lodging and Ridgeline, as well as a sublease from Ridgeline to GOOD Cannabis, is subordinate to Whittier Lodging's lease with the City, and the City's lease with the property owner, the Alaska Railroad Corporation ("ARRC").

ARRC is the owner of the Property, which it leases to the City pursuant to the terms of a Ground Lease and Management Agreement of November 13, 1998 (the "Master Lease"). The City then leases the Property to Whittier Lodging LLC, subject to the Whittier Municipal Code and the terms of the November 1, 2005 Lease Agreement for the Property, later assigned to Whittier Holdings in January 2020 (the "Lease"). The Lease details the allowable uses of the Property, and does not currently allow use as a retail marijuana store. The Lease states, in relevant part:

> **14. Use of Premises.** Lessee will be operating a marine charter, a lodging business and may also use the premises for storage/office space and a gift store. Lessee will be doing business under the name: Bread N Butter Charters and June's B & B Condo Suites. *Lessee covenants that the leased premises will be used only for the purposes directly related to the services or sales stated above and related activities thereto and no other use whatsoever shall be made of the leased premises.* [emphasis added]

The Lease also addresses the process for modifying or amending the Lease:

> **32. Integration and Modification Period.** […] This lease may not be modified or amended except by writing signed by both parties hereto, and any purposed [sic] amendment or modification is without effect until reduced to a writing signed by both parties hereto.

As of the date of this protest, the Lease has not been modified or amended to allow the Property to be used as a retail marijuana store, and the City has not approved a sublease from Whittier Holdings to GOOD Cannabis as required by WMC 3.38.500(A) ("City property may not be subleased unless expressly permitted in the lease agreement and approved in writing by council.") and the Lease:

> **27. Assignment or Subletting**. Lessee may not assign or sublet the leased premises, or any part thereof, without the prior written consent of Lessor to such subletting or assignment. Lessees request to assign or sublease must be in writing and must show the name and address of the proposed assignee or sublessee, as well, as the financial history and operating plan of said assignee or sublessee.

The Master Lease between ARRC and the City also contains restrictions on the use of the Property, and it prohibits the City from subleasing the Property for a use that does not comply with federal law:

> **7.6 Compliance with Laws.** The City shall use and occupy the Leased Premises during the Term of this Lease in compliance with all applicable laws, ordinances, regulations and requirements of all federal state and municipal governments having jurisdiction. Without limiting the foregoing, the City agrees to comply with all applicable planning and zoning ordinances required in connection with this Lease. In the even the use of occupancy of the Leased Premises by any sublessee shall constitute a violation of any such laws, ordinances, regulations or requirements, the City shall take all steps, promptly upon knowledge of such violation, reasonably necessary to remedy or prevent the same, as the case may be.

Use of the Property as a retail marijuana store does not comply with federal law because marijuana remains illegal under the Controlled Substances Act pursuant to 21 U.S.C. §801, *et seq*. Accordingly, use of the Property as a retail marijuana store is not permitted under the Master Lease.

Finally, the Whittier Municipal Code requires that all leases and subleases of City property "must comply with all applicable local, State, and federal laws." *See* WMC 3.38.500(C) and 3.38.440(A). Since the Property is leased to the City by ARRC, it is considered City property and a lease or sublease that allows use of the Property for a purpose that does not comply with federal law would conflict with the Whittier Municipal Code.

For the reasons stated above, the City of Whittier protests the retail marijuana store license application submitted by GOOD Cannabis.

Best regards,

Shelby Carlson

Shelby Carlson
City Clerk
City of Whittier