

**BEFORE THE LAND USE HEARING EXAMINER  
OF CITY OF WOODLAND, WASHINGTON**

Regarding an enforcement action by the	)	<b><u>FINAL ORDER</u></b>
City of Woodland relating to the sale of	)	
recreational marijuana at 1511 North Goerig	)	<b>Notice and Order Appeal</b>
Street in the City of Woodland, Washington	)	<b>APP-21-02 (Paradigm)</b>

**A. BACKGROUND INFORMATION**

1. This final order concerns an appeal of a Notice and Order filed by John Stoehr, the registered agent of Paradigm LLC, doing business as “20 After 4” (the “appellant”). The Notice and Order concerns property owned Daniel P. and Carole S. Heerman (the “property owners”) at 1511 North Goerig Street (Tax Parcel No. 50612) in the City of Woodland, Washington (the “site”).<sup>1</sup> The site is zoned C-2 (Highway Commercial).
2. The city issued the Notice and Order on October 25, 2021. It alleges that the appellant is using the site in violation of the Woodland Municipal Code (the “WMC”); specifically, by operating a retail marijuana outlet in violation of WMC 17.50.040.B and 17.36.040.D, and by operating a business without a city business license in violation of WMC 5.04.050.<sup>2</sup> The Notice and Order ordered that the appellant cease retail marijuana sales within ten days from the date of the Notice and Order, i.e., by November 4, 2021. The city sent the Notice and Order to the property owners and the appellant. (Exhibit 3).
3. The appellant appealed the Notice and Order on November 18, 2021. (Exhibits 4 and 5).
4. The appellant also submitted an application for a city business license on November 3, 2021. (Exhibit 9). The city denied that application by letter dated December 22, 2021. (Exhibit 12). On December 22, 2021, the appellant filed an appeal of the city’s decision denying the business license application. (Exhibit 13).
5. City of Woodland Hearing Examiner Joe Turner (the “examiner”) held a hearing regarding the appeal on January 4, 2022. The parties presented evidence supporting the Notice and Order as set out in the exhibit list attached at the end of this Final Order. City of Woodland Community Development Director Travis Goddard and city attorney Frank Randolph testified on behalf of the city. City residents Darlene Johnson, Will Finn,<sup>3</sup> and Suzanne Donaldson appeared and testified in support of the Notice and Order. John Stoehr, the appellant’s representative, was unable to attend the hearing, due to technical difficulties. Therefore, the examiner held the record open

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<sup>1</sup> As noted in the Staff Report, there are several businesses operating on the site, including Rooster Brew Espresso, Big Foot Bark and Rock, and 20 After 4. Only 20 After 4 is subject to the Notice and Order that is the subject of this appeal.

<sup>2</sup> The examiner refers to a “city business license” to distinguish the City of Woodland business license required by WMC 5.04 from the Washington State business in Exhibit 24.

<sup>3</sup> Mr. Finn is the mayor of Woodland. However, he testified on his own behalf, as a private citizen.

for four weeks, to allow all parties an opportunity to submit additional written testimony and evidence, subject to the following schedule:

- a. Until January 19, 2022, for anyone to submit new argument or evidence;
  - b. Until January 26, 2022, for anyone to respond to the new argument or evidence submitted by January 19, 2022; and
  - c. Until February 2, 2022, for the appellant to submit a final written argument, without any new evidence.
6. Exhibits 14 through 26, included in the Exhibit list at the end of this Final Order, were submitted at the hearing or during the open record period.

### **B. ISSUES**

1. Whether the appellant is operating a retail marijuana establishment on the site in violation of applicable zoning;
2. Whether the appellant is operating a business in the City of Woodland without a required city business license;
3. Whether the city properly denied the appellant's application for a city business license;
4. Whether the city has the authority to impose civil penalties on the property owners;
5. Whether the city may impose civil penalties for violations occurring prior to the effective date of the Notice and Order;
6. Whether the city may impose cumulative daily penalties after the effective date of the Notice and Order; and
7. Whether the examiner has the authority to impose additional penalties or other measures in this proceeding to force the appellant to remedy the violations.

### **C. FINDINGS OF FACT**

1. The appellant was operating a state licensed retail marijuana establishment at 302 Hazel Street, Kelso, Washington (the "Kelso property"). (Exhibit 5).
2. The City of Kelso and/or Cowlitz County purchased the Kelso property through eminent domain for construction of a new bridge and the appellant was forced to relocate its business. (Exhibit 5).
3. The Washington State Liquor and Cannabis Board (the "LCB") issued the appellant a license to operate a retail marijuana establishment on the site in the City of Woodland. (Exhibit 5).

4. The appellant began operating a retail marijuana establishment on the site at 1511 North Goerig Street (Tax Parcel No. 50612) on May 28, 2021. (Exhibits 2, 5, and 16). The appellant continues to operate a retail marijuana establishment on the site, open seven days a week. (Exhibits 2 and 16). Dan & Carole Heerman are the owners of the site. (Exhibits 3 and 7). The site is zoned C-2 (Highway Commercial). (Goddard testimony). There are several businesses operating on the site, including: Rooster Brew Espresso, Big Foot Bark and Rock, and 20 After 4. Only 20 After 4 is subject to the Notice and Order. (Staff Report and Goddard testimony).
5. On June 25, 2021, the city sent the appellant a letter noting that a City of Woodland business license is required prior to doing business in the city and that retail marijuana establishments are not allowed in any zoning district in the city. (Exhibit 1)
6. On October 25, 2021, the city issued a Notice and Order noting that the appellant is operating a retail marijuana outlet on the site in violation of WMC 17.50.040.B and 17.36.040.D, and that the appellant is operating a business without a required city business license. The Notice and Order directed the appellant to cease the retail sale of marijuana within ten days. The city sent the Notice and Order to the property owners and to Mr. Stoehr, the registered agent of Paradigm LLC, the owner of “20 After 4,” the retail marijuana business operating on the site. (Exhibit 3).
7. The appellant filed an appeal of the Notice and Order on November 18, 2021. (Exhibits 4 and 5). The property owners did not appeal the Notice and Order. (Randolph testimony).
8. The appellant submitted an application for a business license to the City of Woodland on November 3, 2021. (Exhibit 9). The city denied the business license application by letter dated December 22, 2021, noting that the Code prohibits recreational marijuana retail outlets in all zones in the City of Woodland. (Exhibit 12). By email dated December 22, 2021, the appellant appealed the decision denying the business license application. (Exhibit 13).
9. The appellant’s state business license for its former location in the City of Kelso expired in November 2020. (Exhibit 18). The appellant’s state business license for its current location in the City of Woodland remains in effect. (Exhibits 19, 20, 21, 22, and 24).
10. The city requested that the appellant and the property owners each pay daily fines of \$250.00 per day for violations of WMC 17.50.040(B) and 17.36.040(D) occurring during the 150-day period between May 28, 2021, the date the business opened, and October 25, 2021, the date the city issued the Notice and Order. This equates to \$37,500 in cumulative daily fines. ( $\$250/\text{day} \times 150 \text{ days} = \$37,500$ ). (Exhibit 16).
11. The city further requested that the appellant pay an additional daily fine of \$25.00 per day for violations of WMC 5.04.050 occurring during the 150-day period between May 28, 2021, and October 25, 2021. This equates to \$7,500 in cumulative daily fines. ( $\$25/\text{day} \times 150 \text{ days} = \$7,500$ ). (Exhibit 16).



12. On January 12, 2022, Mr. Stoehr paid the city \$82,500 in accumulated civil fines on behalf of the appellant and the property owners. (Exhibit 25).

#### **D. APPLICABLE LAW**

1. WMC 17.50 regulates recreational marijuana.

- a. WMC 17.50.020 provides the following relevant marijuana related definitions:

...

"Marijuana" means all parts of the plant cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this chapter, "cannabis" or "marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

"Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

"Marijuana, useable" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

...

"Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.

...

"Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

"Retailer, marijuana" means a person licensed by the State Liquor Control Board to sell useable marijuana and marijuana-infused products in a retail outlet.

...

"Useable cannabis or useable marijuana" means dried flowers of the cannabis plant. The term "useable cannabis or useable marijuana" does not include marijuana-infused products or cannabis products.

- b. WMC 17.50.040.B provides, “Recreational marijuana retail outlets and retail uses are prohibited in all zoning designations.”
- c. WMC 17.360.040 provides, in relevant part: “The following uses are specifically not permitted in the C-2 district:...D. Marijuana retailer...”
- d. WMC 17.50.090 provides:
  - A. Violation of this chapter including the sign code or zoning code shall result in a Class 1 civil infraction as defined by RCW 7.80.120, with each day of violation being a separate infraction. The city may enforce this section pursuant to Chapter 7.80 RCW. For violations of WAC 314-55-155 and 314-55-525, the city may report the violation to the State Liquor Control Board.
  - B. In addition to any other applicable remedy and/or penalty, any violation of this chapter is declared to be a public nuisance *per se*, and may be abated by the city under the applicable provisions of the Woodland Municipal Code or state law.
  - C. Nothing in this chapter shall be construed as a limitation on the city's authority to abate any violation which may exist from the cultivation of marijuana from any location.
- e. WMC 19.90 provides for enforcement if a violation of a land use ordinance is alleged. The hearings examiner is authorized to hear and decide appeals of enforcement orders pursuant to WMC 19.90.410.

2. WMC 5.04 regulates city business licenses.

- a. WMC 5.040.040 requires a city business license to engage in business in the City of Woodland.
- b. WMC 5.04.090 provides:

A business license will not be issued for any activity that violates local and/or state and/or federal law, provided however, that this prohibition shall not apply to a business authorized under Washington law pursuant to Washington State Initiative 502, and further provided that the applicant holds a valid license issued by the Washington State Liquor Control Board pursuant to said Initiative. Issuance of a business license shall not relieve the applicant from the need to comply with all other applicable city ordinances.

- c. WMC 5.04.050.B provides that a decision to deny a city business license application may be appealed pursuant to WMC Chapter 17. WMC 17.81.020.F authorizes the examiner to hear such appeals.
3. WMC 19.90 sets out the city's enforcement provisions.
    - a. When the responsible official determines that a violation has occurred, WMC 19.90.120.A authorizes the responsible official to issue a Notice and Order "[t]o the person in possession of the property where the violation originates, or the person otherwise causing or responsible for the violation." WMC 19.90.120.A.1 through A.6 set out the required contents of a Notice and Order.
    - b. The city must post a copy of the Notice and Order on the site and serve a copy on "[a]ll persons identified in the notice...." Service may be provided by personal service or by certified mail. Certified mail service is effective on the date of mailing and failure to receive mailed notice does not affect the validity of the enforcement proceeding. WMC 19.90.130.
    - c. Any person aggrieved by a Notice and Order may file a written appeal of the Notice and Order. Appeals must be filed within ten working days of the date of service of the Notice and Order. WMC 19.90.400.
    - d. A Notice and Order shall become final unless an aggrieved person files a timely appeal. WMC 19.90.120.A.6.
    - e. WMC 19.90.120.A.5(1) provides that any unpaid civil penalties may become a lien against the property as well as a joint and separate personal obligation of any person in violation. WMC 19.90.120.A.5(2) authorizes the city to abate the violation and charge the costs of abatement as a lien against the property and as a joint and separate personal obligation of any person in violation.
  4. Fine amounts
    - a. WMC 17.50.090.A provides, "Violation of this chapter including the sign code or zoning code shall result in a Class 1 civil infraction as defined by RCW 7.80.120, with each day of violation being a separate infraction." RCW 7.80.120(1)(a) provides a maximum penalty of \$250 per violation.
    - b. WMC 5.04.220.E provides, "Any person as defined in this chapter and the officers, directors, managing agents or partners of any corporation, firm, partnership or other organization or business violating or failing to comply with any provisions of this chapter shall be subject to a Class 4 Civil Infraction pursuant to Chapter 1.12.020 WMC. Each day of violation shall constitute a separate offense." WMC 1.12.020.A.4 provides a maximum penalty of \$25 per violation for Class 4 civil infractions.
    - c. WMC 19.90.160.B provides:



Enforcement of any notice and order that the responsible official issued pursuant to this chapter shall be stayed during the pendency of any appeal under this chapter, except when the responsible official determines that the violation will cause immediate and irreparable harm and so states in the notice and order issued. Mitigation measures may be imposed by the responsible official during the pendency of an appeal in superior court to minimize the impact of the alleged violation. The accrual of penalties assessed in the notice and order are stayed and will not continue to aggregate during the appeal period.

### **E. DISCUSSION**

1. The examiner finds that the appellant, a state licensed marijuana retailer, is operating a marijuana retail outlet on the site. This is a violation of WMC 17.50.040.B and WMC 17.360.040, as marijuana retail outlets and retail uses are prohibited in all zoning districts in the city, including the C-2 zone.
  - a. The fact that the LCB issued the appellant a license to operate a retail marijuana establishment on the site is not a defense and does not negate the violation. LCB's approval of a license does not authorize violations of local rules or ordinances, including zoning ordinances and business licensing requirements. WAC 314-55-020(16). "Zoning laws remain in full force regardless of whether a license is issued. The Board's decision to license a business in a zoning-restricted area may mean the license will have little utility." *Kittitas Cnty. v. Wash. State Liquor and Cannabis Bd. (In re Kittitas Cnty. for a Declaratory Order)*, 8 Wash.App.2d 585, 591, 438 P.3d 1199, 1202 (2019).
  - b. Therefore, Count 1 of the Notice and Order alleging "Operation of a retail marijuana outlet in violation of zoning" should be affirmed.
2. The examiner finds that the appellant is operating a business in the city without a required city business license. This is a violation of WMC 5.040.040. Therefore, Count 2 of the Notice and Order alleging "Operation of a business without first having obtained a business license" should be affirmed.
3. The examiner further finds that the city properly denied the applicant's city business license application pursuant to WMC 5.04.090 because the proposed business, operation of a recreational marijuana retail outlet, is an activity that violates local zoning laws.
  - a. Retail marijuana is "[a] business authorized under Washington law pursuant to Washington State Initiative 502..." and the applicant holds a valid license issued by the Washington State Liquor and Cannabis Board (formerly the "Washington State Liquor Control Board") to operate a retail marijuana establishment.
  - b. However, the proposed business is a violation of the city's zoning code. Recreational marijuana retail outlets and retail uses are prohibited in in the C-2 district where the site is located (WMC 17.360.040) and in all zoning designations

in the City of Woodland (WMC 17.50.040.B). Therefore, WMC 5.04.090 prohibits approval of the city business license application, because the applicant's business is an activity that violates local law; specifically, the city zoning regulations.

- c. Therefore, the city's decision to deny the appellant's city business license application should be affirmed and the appeal of the city's decision should be denied.
4. The examiner finds that the city has the authority to impose civil penalties on appellant for these violations. The appellant is responsible for the violations of WMC 17.50.040(B) and 17.36.040(D), as the appellant is operating a retail marijuana establishment on the site. The appellant is also responsible for the violation of WMC 5.04.050, as the appellant is operating a business without a required city business license.
5. The examiner further finds that the city has no authority to impose civil penalties on the property owners. WMC 19.90.120.A authorizes the city to issue a Notice and Order "[t]o the person in possession of the property where the violation originates, or the person otherwise causing or responsible for the violation."
  - a. There is no evidence that the property owners are "causing or responsible for" these violations, as there is no evidence that the property owners are involved in the ownership or operation of the retail marijuana establishment on the site.
  - b. In addition, there is no evidence that the property owners are "in possession" of the site; the property owners are leasing the property to the appellant. Therefore, the appellant, as lessee of a portion of the site, is in possession of the property where the violations are occurring.
  - c. The Code does not authorize the city to cite a property owner where the owner is not responsible for the violation and the owner is not in possession of the property.
  - d. The city does have the authority to impose a lien on the property for any unpaid fines and/or the costs of abatement of the violations. WMC 19.90.120.A.5.
6. In addition, the examiner finds that the civil penalties requested by the city in Exhibit 16 are inconsistent with the Code and the Notice and Order.
  - a. WMC 19.90.120 requires that the Notice and Order specify the amount of any civil penalty and the conditions on which such civil penalty will be assessed. In this case, the Notice and Order provides that cumulative daily civil penalties of \$275.00 per day will begin accruing "[b]eginning ten (10) working days from the date this Notice and Order is served, until the herein mentioned corrections have been made." Therefore, the city has no authority to seek civil penalties occurring prior to November 4, 2021, ten days from the date the city served the Notice and Order on October 25, 2021.



7. The examiner finds that the city has the authority to impose ongoing daily civil penalties between November 4, 2021, and the date the city finds that the violations have ceased. *Post v. City of Tacoma*, 167 Wn.2d 300, 217 P.3d 1179 (2009), cited by Mr. Randolph, is inapplicable to this Notice and Order proceeding.
  - a. In *Post*, the City of Tacoma issued cumulative daily fines without providing an opportunity for appeal of the underlying violations on which the fines were based. In this case, the city is imposing cumulative daily fines through its Notice and Order process, which provided the appellant the opportunity to appeal the Notice and Order. The appellant filed a timely appeal and the examiner considered that appeal at a public hearing. In addition, the Court of Appeals affirmed cumulative daily penalties imposed pursuant to a Notice and Order in a later case, *Snohomish County v. Rugg*, 115 Wash.App. 218, 61 P.3d 1184 (2002).
  - b. Therefore, based on the terms of the Notice and Order, ongoing daily penalties of \$275 per day would begin to accrue on November 4, 2021, ten days from the service date of the Notice and Order, and continuing until the city finds that the appellant has remedied the violation(s). However, the appellant appealed the Notice and Order. Therefore, pursuant to WMC 19.90.160.B, enforcement of the Notice and Order, including the accumulation of daily penalties, is stayed during the appeal period. Daily penalties of \$275 per day will begin to accrue starting on February 9, 2022, unless the appellant appeals this Final Order to superior court.
8. The appellant paid the city \$82,500 towards the accumulated daily penalties, the fine amount calculated by the city in Exhibit 16. However, as discussed above, the city's penalty calculation was incorrect and no civil penalty is currently due. The examiner has no authority to order the city to this payment. However, it is likely in the city's best interest to refund this payment or work out an alternative arrangement with the appellant to apply some or all of the payment towards future daily fines.
9. The appellant may intend to pay the ongoing daily fines and continue to operate the retail marijuana establishment in violation of the code. The examiner has no authority prevent that by imposing additional fines or other penalties in this proceeding. However, the city has the ability to take additional enforcement actions to remedy the violations, including: issuance of a Stop Work Order pursuant to WMC 19.90.100.B, pursuing a civil infraction and imposing additional fines pursuant to WMC 19.90.200, seeking an abatement action pursuant to WMC 17.50.090.B and WMC 19.90.220, seeking an injunction pursuant to WMC 5.04.230.B, or seeking an injunction or other legal remedies that may be available.

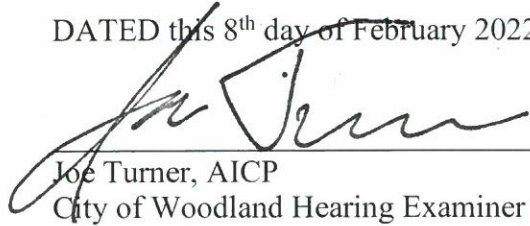
## **F. DECISION**

1. Based on the findings and conclusions contained herein, and incorporating the reports of public agencies and testimony received in this matter, the examiner hereby denies the appeal and affirms the Notice and Order against the appellant Paradigm LLC, and further;

2. Orders the appellant to immediately cease retail marijuana sales on the site.

3. In addition, if the appellant fails to immediately cease retail marijuana sales on the site and does not appeal this Final Order to superior court, then beginning on February 9, 2022, additional monetary penalties of two hundred seventy-five dollars (\$275) per day will begin to accrue for each day thereafter, until the city finds that the appellant has remedied the violation. The appellant is responsible for payment of such additional daily penalties.

DATED this 8<sup>th</sup> day of February 2022.



Joe Turner, AICP  
City of Woodland Hearing Examiner

**APPEAL:** This decision of the Hearing Examiner shall become final twenty days after the date the city mails the decision, unless within that time period an aggrieved person initiates review by writ of certiorari in Cowlitz County Superior Court. WMC 17.92.120.B

### Paradigm Exhibit List

Exhibit #	Date	Description
00	12/29/2021	City Staff Report
1	6/25/2021	Code Enforcement letter to 20 After 4
2	N.D.	City Enforcement Staff photos
3	10/25/2021	Notice and Order
4	11/18/2021	Appeal Submittal Forms
5	11/3/2021	Appeal Narrative
6	10/25/2021	Registered Mail Documentation
7	12/2/2021	Notice of Appeal
8	12/2/2021	Public Hearing Notice to the Reflector
9	11/3/2021	City Business License Application
10	N.D.	Petition in Support of 20 After 4
11	12/20/2021	City Council Meeting Agenda Summary Sheet
12	12/22/2021	City Business License Rejection Letter
13	12/22/2021	Appeal of City Business License Rejection
14	N.D.	<i>Emerald Enterprises, LLC. v. Clark County</i> , 2 Wash.App.2d 794, 413 P.3d 92 (2018)
15	12/30/2021	City Attorney Corrections to the Staff Report
16	1/6/2022	Randolph Email Comment re Fine Amount
17	1/11/2022	Randolph Email re additional evidence service on property owners
18	1/12/2022	Randolph Email re expired LLC
19	1/12/2022	Stoehr Email re expired LLC
20	1/12/2022	2 <sup>nd</sup> Stoehr Email re expired LLC
21	1/12/2022	3 <sup>rd</sup> Stoehr Email re expired LLC
22	1/12/2022	2 <sup>nd</sup> Randolph Email re expired LLC
23	1/12/2022	Stoehr email re 150 days of fines
24	1/12/2022	Copy of Paradigm LLC State Business License
25	1/12/2022	Randolph email re payment of fines
26	1/12/2022	Stoehr email re open record



