

**MEMORANDUM**

**TO: WHITTIER CITY COUNCIL AND CITY MANAGER**

**FROM: JASON BRANDEIS**

**RE: GOOD CANNABIS REQUEST FOR EXTENSION OF TIME TO MEET  
CONDITIONAL PROTEST CONDITIONS**

**CLIENT: CITY OF WHITTIER**

**FILE NO.: 507456.84**

**DATE: JANUARY 15, 2025**

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**INTRODUCTION**

This memorandum provides an overview of the City of Whittier’s current position and actions taken concerning the application submitted by GOOD LLC dba GOOD Cannabis (“GOOD”) to open a marijuana retail store in Whittier, potentially located at Area B, Lot 7 of the Harbor View Subdivision (the “Property”).

The City has consistently sought to ensure compliance with all applicable laws and regulations, including the Whittier Municipal Code and the Master Lease between the City and the Alaska Railroad Corporation (ARCC). As such, the City filed a protest of GOOD’s application with the State of Alaska Alcohol and Marijuana Control Office (AMCO) and the Alaska Marijuana Control Board (MCB) to address procedural deficiencies and legal issues with the proposed use of the Property.

This memorandum also outlines the history of the issue, the steps taken by the City to provide GOOD with opportunities to address these issues, including converting the protest into a conditional protest, and the current status of compliance with the conditions established by the conditional protest. The City Council is now presented with the question of whether to approve an extension for GOOD to meet these conditions or to allow the protest to stand, effectively terminating GOOD’s license application with AMCO.

**BACKGROUND**

In August 2022, the City denied Permit Application #2022-003 filed by COHO Contractors on behalf of Whittier Lodging, LLC (the current lessee of Property pursuant to an assigned lease with the City). The City explained that, among other things, the

current lease allows use of the Property to operate a marine charter, a lodging business, gift shop, and for storage/office space, which was inconsistent with the intended use of a restaurant. See Exhibit 1.

In response, Whittier Lodging sent the City a letter requesting to amend the current lease agreement to change the use of the Property to “restaurant and all Harbor Commercial Uses.” See Exhibit 2.

The City Manager followed up with a letter stating that the City would consider the request and enter into negotiations regarding amendments to the lease. The City Manager requested the following items: (1) a description of the proposed use; (2) an operating or business plan; and (3) financial history or information supporting the viability of the changed use. The letter explained that after the City received the requested information, the City would review it and propose an amended lease form for the lessees' consideration, and that the City Council would need to approve a resolution authorizing any amendments to the lease. See Exhibit 3.

Whittier Lodging did not respond to this request for information. Later in the fall of 2023, GOOD and Whittier Lodging contacted the City Manager regarding the possibility of GOOD subleasing the Property from Whittier Lodging for use as a marijuana retail store. During those communications, the City Manager and City Clerk explained that the terms of the current lease agreement and the Whittier Municipal Code still required Whittier Lodging to seek approval from the City Council to change the use of the Property and to approve a sublease from Whittier Lodging to GOOD.

GOOD also made presentations to the City Council regarding its plans to open a marijuana retail store in Whittier, but neither GOOD nor Whittier Lodging sought to formally change the permitted use of the Property or approval to sublease the Property from Whittier Lodging to GOOD.

## **THE CITY’S INITIAL PROTEST**

In April 2024, the City received notice from AMCO that GOOD had submitted a complete application for a marijuana retail store in Whittier, and that pursuant to 3 AAC 306.060, the City had the right to protest the application within 60 days. See Exhibit 4. The City then reviewed the application, which included a “Letter of Intent to Lease” the Property from Whittier Lodging to an entity affiliated with GOOD. See Exhibit 5.

After reviewing the application, relevant provisions of the Whittier Municipal Code, and the Master Lease between the City and Alaska Railroad Corporation (“ARRC”), legal counsel for the City advised that the application was deficient in several ways, including that GOOD did not have a valid lease agreement to occupy the Property, and would not unless the City Council approved a change of use and sublease from Whittier Lodging to GOOD. But it was also determined that the use of the Property as a marijuana retail store would violate provisions of both the Whittier Municipal Code and the Master Lease that require use of the Property to comply with all federal laws. And because marijuana remains a Schedule I controlled substance and is illegal for commercial sale under the

Controlled Substances Act, the City Council could not approve a change of use or sublease for a marijuana establishment without violating the Municipal Code or the Master Lease. Accordingly, the City filed a protest with AMCO. See Exhibit 6.

## **CONVERSION OF THE INITIAL PROTEST INTO A CONDITIONAL PROTEST**

At the next MCB meeting, the City explained that the protest was an administrative decision made necessary due to the deficiencies in the license application and the conflict between the proposed license and both the Whittier Municipal Code and the Master Lease. However, recognizing that the legal status of marijuana could change and that the Municipal Code could be amended, and to provide GOOD with an opportunity to attempt to pursue such changes, the MCB agreed to allow the City to convert the protest to a “conditional protest” which would allow the City to lift the protest if certain conditions were met—namely, if the legal requirements for operating a marijuana retail store in the City changed such that GOOD’s business would not violate the Municipal Code and Master Lease, and if GOOD and Whittier Lodging received the required City Council approvals to amend the lease and sublease.

The revised conditional protest was provided to GOOD on August 26, 2024, and officially accepted by the MCB on September 11, 2024. See Exhibit 7. The conditional protest allowed GOOD until January 31, 2025 to meet the required conditions; in which case the City could lift the protest.

## **CURRENT STATUS AND REQUEST FOR EXTENSION**

In November 2024, GOOD, via its attorney, contacted the City Manager and City Clerk to request an extension of time for GOOD to attempt to comply with the protest conditions. Because the protest conditions give the City Council the ability to modify the protest and the final authority to determine if all conditions have been met, the request has been forwarded to the City Council for its consideration. The protest conditions and a summary of the current status of each condition is provided below.

- 1. Determination by the City that the operation of the proposed GOOD Cannabis retail marijuana store does not conflict with the Master Lease. This condition may be satisfied by an amendment to the Master Lease specifically allowing for the operation of a retail marijuana store at the Property.**

Status: This condition has not been met. The previous protest letter (May 31, 2024) and the revised conditional protest letter (August 26, 2024) sent by the City Clerk on behalf of the City both explained that the proposed GOOD Cannabis retail marijuana store conflicted with the Master Lease. To date, there has been no amendment to the Master Lease that would allow this activity.

- 2. Determination by the City that the operation of the proposed GOOD Cannabis retail marijuana store does not conflict with any provision of the Whittier Municipal Code. This condition may be satisfied by amendment(s) to the Whittier Municipal Code to permit the operation of a retail marijuana store at the Property, or a change in federal law that would allow the operation of a retail marijuana store in the City of Whittier without violating any local, State, or federal laws.**

Status: This condition has not been met. The previous protest letter (May 31, 2024) and the revised conditional protest letter (August 26, 2024) sent by the City Clerk on behalf of the City both explained that the proposed GOOD Cannabis retail marijuana store conflicts with provisions in the Whittier Municipal Code. To date, there have not been any amendments to the Whittier Municipal Code to permit the operation of a retail marijuana store at the Property, nor any changes in federal law that would allow the operation of a retail marijuana store in the City of Whittier without violating any local, State, or federal laws.

- 3. Modification or amendment to the Lease, as required by the Whittier Municipal Code, to change the permitted use of the Property so as to allow the Property to be used as a retail marijuana store.**

Status: This condition has not been met. An application to amend the lease and change the permitted use of the Property to be used as a retail marijuana store has not been submitted. But such an application could not be approved prior to the required changes to the Municipal Code and Master Lease, so such an application would be premature at this point.

- 4. Approval of a sublease from Whittier Holdings to GOOD Cannabis as required by the Whittier Municipal Code.**

Status: This condition has not been met. An application to sublease the property has not been submitted. Again, such an application would likely be futile, unless the Master Lease and Code are amended first—unless GOOD wishes to sublease the property for other purposes that are permitted under current law.

- 5. Determination by the Whittier City Council that there are no other reasons or changed circumstances that would support maintaining the protest or amending or modifying these conditions.**

Status: This condition has not been met, but it does not require any action from GOOD. This condition gives the City Council the ability to consider current circumstances when making its final determination about the protest and license application.

**6. The affirmative vote of the Whittier City Council that the protest conditions stated herein have been met.**

Status: This condition has not been met. This condition provides that the City Council must determine that all protest conditions have been met in order to lift the protest.

**CONCLUSION AND NEXT STEPS**

The City has taken deliberate and measured steps to address the issues surrounding Whittier Lodging's lease and GOOD's proposed marijuana retail store application while seeking to ensure compliance with the Whittier Municipal Code and the Master Lease. By revising the initial protest into a conditional protest, the City provided GOOD with an opportunity to pursue the necessary changes for its business to operate in Whittier.

The City Council now has the discretion to grant the requested one-year extension or set a different timeline. Approving the extension would provide GOOD with more time to pursue the required legal and regulatory changes, maintaining the status quo and leaving the conditional protest in place. Alternatively, denying the extension would likely result in the termination of GOOD's license application under 3 AAC 306.060(a), as the conditions for compliance would remain unmet.