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**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF REDMOND**

In the matter of the Appeal of

**Andorra Ventures, LLC**

Of the April 10, 2020 approval of  
BLDG-2020-01804 which authorized tenant  
Improvements to an existing commercial  
Space addressed as  
7829 Leary Way, Suite 100, Redmond

NO. APL LAND - \_\_\_\_\_

MOTION TO DISMISS APPEAL

**I. RELIEF REQUESTED**

The City of Redmond hereby moves the Hearing Examiner for an order dismissing the appeal filed herein by Andorra Ventures, LLC (“Andorra”). The Hearing Examiner lacks jurisdiction over the issues raised by Andorra in this appeal and the appeal must be dismissed.

**II. STATEMENT OF FACTS**

On April 10, 2020, the City of Redmond issued a building permit for the Hashtag Cannabis project. A copy of the permit is attached to this Motion as Exhibit A. The permit authorizes the construction of a new demising wall in a building located at 7829 Leary Way in order to create a separate retail space. *Id.* The permit also authorizes the upgrade of a restroom for ADA compliance. *Id.* The total work area is 1,408 square feet. *Id.*

1 Andorra has appealed the permit, arguing that (1) the decision to issue the building permit  
2 violates RZC 21.20D.130.10-030(6) and RZC 21.40.030.E(6), which prohibit vehicles exiting  
3 parking lots from backing onto streets, (2) the building permit does not meet the criteria in RZC  
4 21.10.030.C(8) and RZC 20D.130.10-010(4) because of the volume of traffic generated and the  
5 parking needed for the new marijuana retail use, and (3) the new marijuana use violates the buffer  
6 requirements of RZC 21.41.040.C because of the proximity of the site to the Downtown Park.  
7 Prehearing Order herein dated May 22, 2020 at 1. None of these issues are within the subject  
8 matter jurisdiction of the Hearing Examiner in an appeal of a building permit and this appeal must  
9 therefore be dismissed.

### 10 **III. STATEMENT OF ISSUE**

11 Should Andorra’s appeal be dismissed by the Hearing Examiner for lack of subject matter  
12 jurisdiction under RMC 15.08.050(6)? [YES].

### 13 **IV. ARGUMENT**

14 Hearing examiners “are creatures of the legislative body that creates them, and their power  
15 is limited to that which the legislative body grants.” *Lejeune v. Clallam Cy.*, 64 Wn. App. 257,  
16 270, 823 P.2d 1144 (1992) (citations omitted). When the Redmond City Council adopted the  
17 2015 International Building Code (IBC), the Council deleted the appeals section provided in the  
18 IBC and adopted the following in its stead:

19 Appeals of orders, decisions or determinations made by the Building  
20 Official *related to the application or interpretation of this code* shall  
21 be made pursuant to the Redmond Zoning Code Section  
22 21.76.060(1), Appeals of Type I and II Permits, as said section  
23 currently exists or is hereafter amended, modified or recodified.

24 RMC 15.08.050(6) (emphasis added). *See, also*, RMC 15.06.040(1) (deleting Section 113 – Board  
25 of Appeals, from the Council’s adoption of the 2015 IBC). Under RZC 21.76.060(1), the Hearing  
26 Examiner is the review authority for Type I and II permit appeals. Thus, under the emphasized  
language in RMC 15.08.050(6), the Redmond Hearing Examiner’s subject matter jurisdiction in

1 building permit appeals is limited to reviewing decisions of the Building Official “related to the  
2 application or interpretation” of the 2015 IBC.

3 Andorra’s appeal should be dismissed because it lies outside of the Hearing Examiner’s  
4 subject matter jurisdiction. “Subject matter jurisdiction is ‘the authority of the court [or  
5 administrative tribunal] to hear and determine the class of actions to which the case belongs.’” *In*  
6 *the Matter of the Adoption of Buehl*, 87 Wn.2d 649, 655, 555 P.2d 1334 (1976); *Washington*  
7 *Optometric Ass’n v. Pierce Cty.*, 73 Wn.2d 445, 447 n. 1, 438 P.2d 861 (1968). “Without subject  
8 matter jurisdiction, a court or administrative tribunal may do nothing other than enter an order of  
9 dismissal.” *Inland Foundry Co. v. Spokane Cty. Air Pollution Control Authority*, 98 Wn. App.  
10 121, 123-24, 989 P.2d 102 (1999). In this appeal, Andorra’s issues have nothing to do with the  
11 Building Official’s “application or interpretation” of the 2015 IBC. Andorra alleges that the  
12 permitting decision violates certain provisions of the City’s zoning code, the RZC, not the City’s  
13 building code, the IBC. Andorra’s issues are therefore outside the limited subject matter  
14 jurisdiction over building permit appeals granted to the Hearing Examiner by RMC 15.08.050(6).  
15 The Hearing Examiner must dismiss Andorra’s appeal.

16 **V. CONCLUSION**

17 For the reasons stated above, this appeal raises issues outside the Hearing Examiner’s  
18 subject matter jurisdiction. The City respectfully requests that the Hearing Examiner dismiss this  
19 appeal.

20 DATED this 22<sup>nd</sup> day of June, 2020.

21 OGDEN MURPHY WALLACE, PLLC

22  
23  
24 By /s/ James E. Haney  
James E. Haney, WSBA #11058  
Attorney for City of Redmond  
25 [jhaney@omwlaw.com](mailto:jhaney@omwlaw.com)  
26

# **EXHIBIT A**



# Development Services Center Permit & Inspection Record

15670 NE 85th St, Redmond, WA 98052 • (425) 556-2473

**Permit Number: BLDG-2020-01804**

IVR Pin#: 179435

Inspection Request Web/Phone: [land.redmond.gov/\(425\) 556-2435](http://land.redmond.gov/(425)556-2435)

**Permit Type:** Commercial

**Issued:** Apr 10, 2020

**Work Class:** Tenant Improvement

**Expires\*:** Nov 9, 2020

**Project Name:** Hashtag Cannabis

**Valuation:** \$30,000.00

**Site Address:** 7829 LEARY WAY , 100

**Parcel Number:** 7198800035

**Desc of Work:** COMM TI - Hashtag Cannabis (Suite 100) - Construct new demising wall in building to create retail te space. Upgrade restroom for ADA compliance. Area of work 1,408 SF.

**Owner:** JS WESTERN PROPERTIES LLC

7829 LEARY WAY  
REDMOND, WA 98052

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**Lender:** Lender 555-555-1212

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**Contractor:** PACIFIC PARTNERS CONSULTING LLC

7214 104TH ST  
PUYALLUP, WA 98373

**Contractor License:** PACIFPC821LO **Expiration Date:** 6/20/2020

The following inspections may be required and have not yet been inspected. Inspection requests must be made by 11 pm to be scheduled for inspection on the next business day. To contact your inspector go to Today's Inspections at [land.redmond.gov](http://land.redmond.gov) after 7 am. For all other inspection questions please call 425-444-2425.

Number and Type	Code	Status	Id	Date	Comments
470 BLDG Pre-Construction					
430 BLDG Framing					
430 BLDG Framing					
427 BLDG Fire Safing					
435 BLDG Wall/Vault Insulation					
431 BLDG Glazing					
441 BLDG Sheetrock Nailing					
450 BLDG Ceiling Grid					
465 BLDG Other					
900 PLNG Approval					
790 FIRE Approval					
455 BLDG Final					

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3 **DECLARATION OF SERVICE**

4 I, Erin M. Kelly, an employee of Ogden Murphy Wallace, PLLC, certify that on the date  
5 below, I filed and served this Motion to Dismiss via email only to the parties listed below:

6 ***Hearing Examiner***

7 Hearing Examiner Sharon Rice  
8 c/o Kalli Biegel  
9 Deputy City Clerk  
10 City of Redmond  
11 15670 NE 85<sup>th</sup> Street  
12 P.O. Box 97010  
13 Mail Stop 3NFN  
14 Redmond, WA 98073-9710  
15 Via email to [kbiiegel@redmond.gov](mailto:kbiiegel@redmond.gov)

16 ***Appellant Attorney***

17 Vicki E. Orrico  
18 Johns Monroe Mitsunaga Koloušková, P.L.L.C.  
19 11201 SE 8<sup>th</sup> St., Suite 120  
20 Bellevue, WA 98104  
21 Via email to [orrico@jmmlaw.com](mailto:orrico@jmmlaw.com)

22 ***Applicant Attorney***

23 Duncan S. Manville  
24 Savitt Bruce & Wiley, LLP  
25 1425 Fourth Avenue, Suite 800  
26 Seattle, WA 98101-2272  
Via email to [dmanville@sbyllp.com](mailto:dmanville@sbyllp.com)

I declare under penalty of perjury under the laws of the State of Washington that the  
foregoing is true and correct.

EXECUTED at Seattle, Washington this 22<sup>nd</sup> day of June, 2020.

/s/ Erin Kelly  
Erin Kelly  
Legal Assistant  
ekelly@omwlaw.com