

BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeal of:

DOUG WAUN

Denial for a Marijuana Business License issued  
by the Director, Regulatory Compliance &  
Consumer Protection Division, Department of  
Finance and Administrative Services,

Civil Case No.: L-18-007

DEPARTMENT'S RESPONSE IN  
OPPOSITION TO WASHINGTON OG'S  
MOTION TO INTERVENE

**I. INTRODUCTION AND RELIEF REQUESTED**

Washington OG, LLC (WA OG) brings an untimely motion to intervene in this appeal pursuant to HER 3.09. The deadline for an intervention motion was September 17, 2018 and WA OG missed that deadline and filed their motion on September 20<sup>th</sup>. WA OG's interest is already covered by the Department's position that WA OG's two licenses were an existing major marijuana activity in Ballard and the Department denied a license to Seattle Cannabis Company accordingly. Allowing WA OG to intervene would unduly delay the hearing process and expand the issues beyond those stated in the appeal. The Department joins appellant, Doug Waun, and requests that WA OG's motion to intervene and submit evidence be denied.

1 **II. STATEMENT OF FACTS**

2 This is an appeal by Seattle Cannabis owner, Doug Waun, of the Department's marijuana  
3 license denial. A hearing is set for October 1, 2018. The Department has also filed a summary judgment  
4 motion and the parties to the appeal have exchanged briefing on that motion. WA OG filed a Motion to  
5 Intervene and Motion to Submit Evidence on Thursday, September 20, 2018. Before the Department  
6 decided to deny Seattle Cannabis their license, WA OG wrote to the Department and urged them to  
7 deny the Seattle Cannabis license based on the dispersion law [SMC 23.42.058(C)(5)]. (*Washington*  
8 *OG's Motion, pages 2-3*)

9 **III. ISSUE PRESENTED**

10 Should Washington OG, LLC be allowed to intervene in the October 1, 2018 hearing?

11 **IV. EVIDENCE RELIED UPON**

12 The City relies upon the pleadings on file with the Seattle Hearing Examiner.

13 **V. ARGUMENT AND AUTHORITIES**

14 **A. WASHINGTON OG'S MOTION TO INTERVENE IS UNTIMELY AND SHOULD BE DENIED.**

15 Hearing Examiner Rule 3.09 provides that, "a written request for intervention must be filed with  
16 the Hearing Examiner and served on all parties to the appeal no later than 10 business days prior to the  
17 scheduled hearing date."

18 The original hearing date in this case was September 13, 2018. Washington OG did not move to  
19 intervene before that hearing date. Even with a continued hearing date of October 1, 2018, Washington  
20 OG missed their deadline again – filing their motion on September 20<sup>th</sup> when it was due 10 business days  
21 before the hearing on September 17<sup>th</sup>. For this reason alone, their motion should be denied. Washington  
22 OG argues they were entitled to notice of the hearing because they objected to the Seattle Cannabis  
23 license. SMC 6.202.110 requires the Director Finance and Administrative Services to give notice within

1 10 days to someone who objected to the license renewal when the “license has been issued after  
2 consideration of the objection or protest. . . .” In this case, the City denied Seattle Cannabis their license  
3 which is exactly the outcome Washington OG wanted. They were not entitled to notice.

4 **B. ALLOWING WASHINGTON OG TO INTERVENE WOULD CAUSE UNDUE DELAY TO THE**  
5 **HEARING PROCESS.**

6 In deciding whether to grant intervention, “the Hearing Examiner shall consider whether  
7 intervention will unduly delay the hearing process, expand the issues beyond those stated in the appeal,  
8 or prejudice the rights of the parties.” HE Rule 3.09(c).

9 The hearing was already continued once and allowing Washington OG to intervene at this point  
10 would likely delay the hearing which is just three business days after oral argument on this motion.  
11 Including Washington OG would expand the issues as evidenced by WA OG’s motion. The issue of  
12 whether the Department properly denied a license to Seattle Cannabis would be expanded to include  
13 argument, testimony and exhibits about Washington OG’s experiences with dispersion in areas outside  
14 of Ballard and on prior dates which are irrelevant to the issues in this appeal. Intervention would also  
15 prejudice the two proper parties to this hearing who have already exchanged briefing on the Department’s  
16 summary judgment motion and exchanged witness and exhibit lists on September 24<sup>th</sup>. These are all  
17 factors the Hearing Examiner “shall consider” in determining the merits of the motion. HER 3.09(c). The  
18 Department requests WA OG’s intervention be denied for these reasons.

19 **C. THE DEPARTMENT IS ALREADY REPRESENTED AND ARGUING THAT THE DENIAL OF**  
20 **THE LICENSE SHOULD BE UPHELD. WASHINGTON OG’S INTERVENTION IS NOT**  
21 **NECESSARY.**

22 A request to intervene must contain a statement about how the person or entity is “affected by  
23 or interested in the matter appealed, and must demonstrate a substantial interest that is not otherwise  
adequately represented.” HER 3.09(b). Here, the Department’s position is consistent with Washington

1 OG's. The City denied the marijuana business license due to the proximity of Seattle Cannabis Co's  
2 proposed location to Washington OG's two licenses and Lux's license. There is no need for additional  
3 representation to make the same argument.

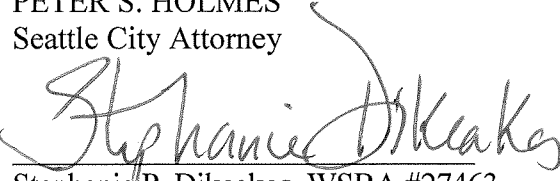
4 **VI. CONCLUSION**

5 For the reasons stated above, the Department requests that the Hearing Examiner deny  
6 Washington OG's motion to intervene. If the Hearing Examiner find Washington OG is a substantially  
7 interested organization then the rules do allow them to intervene for the sole purpose of preserving the  
8 right to appeal. HER 3.09(d).

9 DATED this 25<sup>th</sup> day of September, 2018.

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21 *Services, City of Seattle*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify under penalty of perjury under the laws of the State of Washington, that on  
3 this date, I caused to be served a true and correct copy of the foregoing document, Department's Witness  
4 and Exhibit List, on the parties listed below and in the manner indicated:

5 Drew Duggan  
6 Miller Nash Graham & Dunn (x) Email: Drew.Duggan@millernash.com  
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12 Seattle, WA 98101  
13 *Attorneys for Washington OG, LLC*

12 the foregoing being the last known address of the above-named party.

13 Dated this 25th day of September, 2018, at Seattle, Washington.

14   
15 \_\_\_\_\_  
16 LISA LEVIAS