

City of Seattle



OFFICE OF HEARING EXAMINER

2018

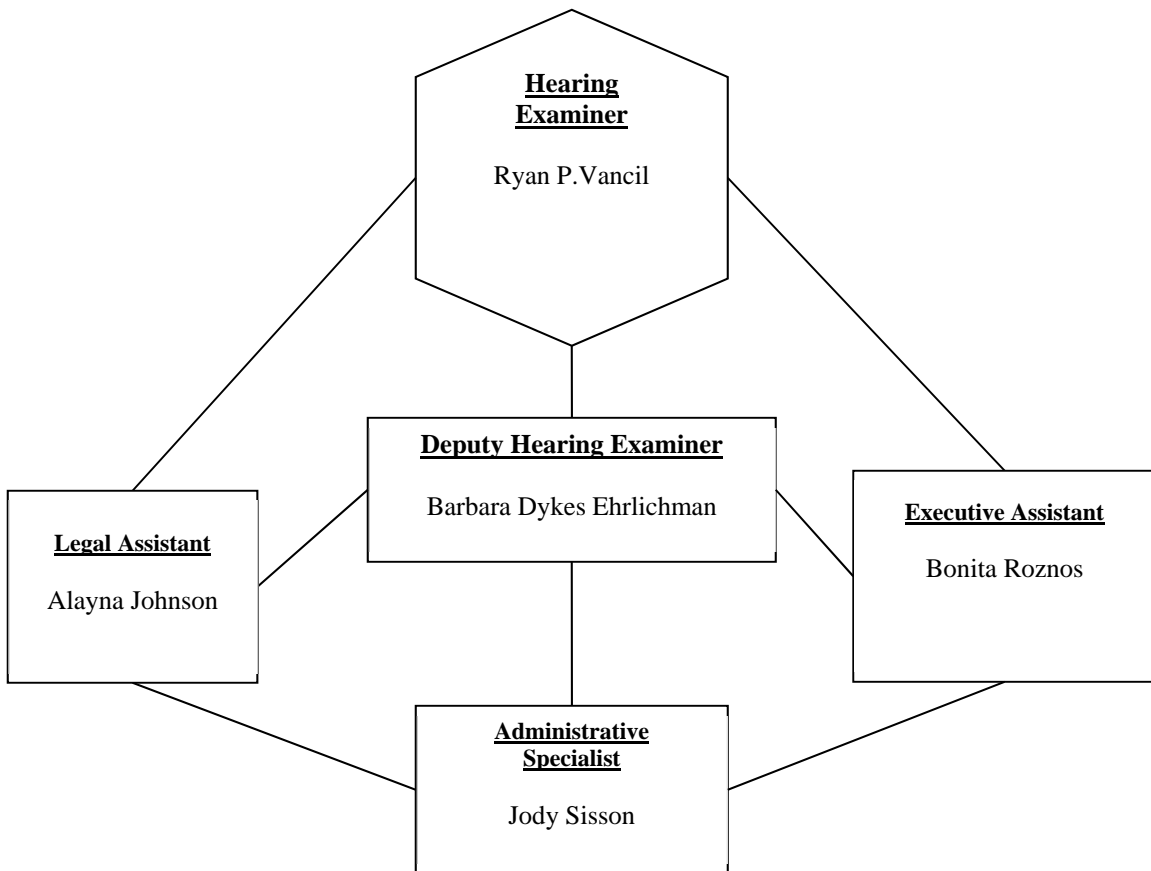
ANNUAL REPORT

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2018
City of Seattle
CITY COUNCIL

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Office of Hearing Examiner Organizational Chart



**CITY OF SEATTLE
OFFICE OF HEARING EXAMINER**

2018 ANNUAL REPORT

Mission and Authority

The mission of the Office of Hearing Examiner is to conduct impartial administrative hearings in matters where jurisdiction has been granted by the Seattle Municipal Code, and to issue clear and timely decisions and recommendations that are consistent with applicable law.

The position of Hearing Examiner is established in the Seattle Municipal Code. The City Council appoints the Hearing Examiner, who is responsible for all functions of the office and authorized to appoint Deputy Examiners and other staff.

The Office of Hearing Examiner was created in 1973 as a part of Municipal Court. In 1977, it became a separate and independent City office under Chapter 3.02 of the Seattle Municipal Code. Before the office was created, some appeals of administrative decisions were heard by the City Council; others went directly to court. Pursuant to authority conferred throughout the Code, the Office of Hearing Examiner now provides an independent hearing forum to review decisions made by numerous City agencies, make initial decisions on some matters, and provide the City Council with recommendations on some types of land use applications.¹

Jurisdiction

Appeals. The Office of Hearing Examiner tracks all cases that come into the office as “Cases Filed.” The most numerous of these are appeals of decisions made by other City agencies, such as: 1) the Department of Construction and Inspections (master use permits, SEPA determinations, Land Use Code interpretations, land use and noise enforcement citations, and decisions on tenant relocation assistance); 2) the Office of Planning and Community Development (SEPA determinations on programmatic initiatives, such as comprehensive plan amendments and area-wide rezones); 3) the Department of Finance and Administrative Services (tax assessments, licensing decisions, and marijuana citations); 4) the Office of Labor Standards (decisions on alleged violations of City ordinances on paid sick and safe leave, minimum wage, wage theft, and use of criminal history in hiring); and 5) the Department of Transportation (citations related to right-of-way use).

Original Jurisdiction. In cases where the Hearing Examiner has original jurisdiction, the Examiner makes the initial decision in a case rather than reviewing another department’s decision. Original jurisdiction cases include: 1) subdivision applications processed by the Department of Construction and Inspections; 2) complaints filed by the Office for Civil Rights and City Attorney’s Office for discrimination in employment, housing, public accommodation, or public contracts; 3) complaints for third party utility billing violations; 4) petitions for review of floating home moorage fee increases; and several others.

Recommendations. The City Council has retained jurisdiction over certain land use actions, including Council conditional uses, rezone proposals, major institution master plans, planned unit developments, and landmark controls and incentives. For these cases, the Examiner holds a public hearing for the Council, gathers information

¹ A list of matters within the Hearing Examiner’s jurisdiction is found at pg. 16

to establish the record, and forwards the record and detailed written findings, conclusions and a recommendation to the Council for its use in making the decision.

Accessibility

An administrative hearing before the Hearing Examiner is a quasi-judicial process that involves the application of existing law and policy to the specific facts of a case. Constitutionally guaranteed due process requires procedural safeguards for those whose rights are affected by the outcome of the case. The hearing format resembles an informal court proceeding and is structured to provide a fair opportunity for each party to participate, while also reflecting the seriousness of the matters appealed for those involved.

The Office of Hearing Examiner uses various tools to make the appeal and hearing processes understandable and more accessible, while at the same time protecting the rights of parties and fulfilling legal requirements. Examples include: a “Public Guide,” which is a booklet that explains the hearing process in a question and answer format; “fill-in-the-blanks” appeal forms; an explanatory letter that is sent along with the notice of hearing in each case; sample forms for use in cases before the Examiner, and two pocket-sized pamphlets that include basic information about the hearing process and are available from the office, neighborhood centers, and most libraries. In addition, the Office’s pamphlet on code enforcement citation hearings is included with each citation issued by SDCI and SDOT. If appropriate, an information card in one of the City’s six core languages, or Russian, is also handed out with the citation. The card explains what basic hearing-related information is available from the Office of Hearing Examiner. We also provide language interpreters for appeal hearings when requested.

The office accepts credit and debit cards for payment of filing fees and citation penalties, and we are the only hearing examiner office in the state to offer the option of electronic filing of appeals and subsequent documents in our cases. This is provided through a portal on the Office of Hearing Examiner website. We also provide 24-hour public access to our case files, including recordings of hearings, through the website. A Listserv on the website allows people to receive updates on proposed rule changes and other matters. We also solicit feedback from everyone who participates in a hearing. Our “Customer Satisfaction Survey” is available on-line as well as in the office and hearing rooms; it is also administered quarterly via SurveyMonkey and may be submitted anonymously through these forums.

Hearing Examiner decisions dating back to 1990 are available in a searchable database through a link on the Hearing Examiner’s website at www.seattle.gov/examiner. Although not searchable, decisions prior to 1990 are available by year on the website, which also includes the Hearing Examiner Rules, the “Public Guide,” appeal forms and fee and payment information, information on mediation of cases, public records request information, links to the Seattle Municipal Code and other resources relevant to matters that come before the Hearing Examiner, and other information.

The office has also commenced a project to provide Skype access. Camera equipment and video conferencing protocols have been established. The first hearing to include witnesses by Skype was held February 20, 2018. As technology improves and the system becomes better established we hope to offer this as an opportunity to some parties to help improve accessibility.

In 2018 the office completed translation of the Land Use/SEPA Decision Appeal Form into Spanish, and posted this on the office website with public forms. In addition, the office allowed such appeals to be filed in Spanish with the expectation that the Office of Hearing Examiner will cover the cost to have the appeal translated to English for the record. The Office’s pamphlet on code enforcement citation hearings was also

translated into Spanish, and added to the office website for improved access.

Contracting

Since 2004, the Hearing Examiner has been authorized by Seattle Municipal Code to provide hearing examiner services to other jurisdictions via contract. In 2018, we issued 26 decisions in contract city services provided to four cities: Kirkland, Mercer Island, Shoreline, and Tukwila.

In November 2018, the office ended contract services to the City of Shoreline by mutual agreement.

The Office of Hearing Examiner is a General Fund department. Since 2005, when we began with just one contract city, we have deposited \$219,792 in contracting revenue into the General Fund. In addition to bringing in a modest amount of revenue for the City, working with other cities compensates for fluctuations in our Seattle caseload, informs examiners as to practices from a variety of jurisdictions, adds variety to our work, and keeps us flexible. However, given the historic high caseload that the office has been encountering for the past several years, and can anticipate for the foreseeable future, reconsidering the office's capacity to provide contract services to the remaining contract Cities is warranted.

Judicial Appeals of Hearing Examiner Decisions

At the request of the City Council, and with the assistance of the City Attorney's Office, the Office of Hearing Examiner tracks the results of judicial appeals of Hearing Examiner decisions. The following cases were appealed in 2018:

In *Ballard Coalition v. the City of Seattle*, Superior Court #18-2-04988-1SEA, appellants who opposed the Burke-Gilman Trail Missing Link Project appealed the Hearing Examiner's decision that had upheld the City's FEIS for that project. The Ballard Coalition's appeal was based on challenging the appearance of fairness of the Hearing Examiner, and the adequacy of the FEIS on the basis of traffic hazards, parking loss, and economic impacts. The Superior Court dismissed the appearance of fairness issue on summary judgement. In its final order for the matter the Court affirmed in part and reversed in part the Examiner's decision. The Court affirmed that the FEIS adequately disclosed impacts concerning traffic and parking. The Court found that the FEIS was not adequate concerning the analysis of economic impacts. The City has appealed that decision to the Court of Appeals, where the case remains at this time. (W-17-004)

City of Seattle v. American Healthcare Services, Inc. et. al., Superior Court #18-2-13484-6SEA, the Hearing Examiner addressed the consolidated cases of D-16-014 and D-17-006, which concerned appeals for unfair employment practices. The Examiner dismissed the matter on summary judgement. The Superior Court found that material issues of fact remained for the matter (without written or oral findings explaining why), and reversed the Examiner's decision, and remanded the matter for hearing. Respondents American Healthcare Services, Inc. appealed the Court's decision to the Court of Appeals, where the matter remains at this time.

In *255 South King St LP v. City of Seattle*, Superior Court # 18-2-14348-9 SEA, the Director of the Department of Neighborhoods denied a Certificate of Approval to Avalara and Embassy Suites ("Appellants") for wall signs at 255 S King Street. The Appellants exercised the right to appeal pursuant to Chapter 25.24 of the Seattle Municipal Code. The Hearing Examiner upheld the Department's denial of the Certificate of Approval. This matter is still in litigation at Superior Court. (R-17-002)

1921-27 Fifth Avenue Holdings et al. v. City of Seattle et al. & Escala Owners Association v. City of Seattle et al.,

Superior Court # 18-2-16223-8 SEA & 18-2-16318-8 SEA, originated in an appeal by Escala Owner's Association of the City's FEIS (and Addendum) and design review approval for construction of a forty eight-story building (see below for additional case details). The Applicant and Appellant both appealed the Examiner's split decision which had remanded in part and upheld in part the FEIS. The Court dismissed the appeal on September 14, 2018. (MUP-17-035)

Schmautz, Michael v. City of Seattle, Superior Court #18-2-22844-1 SEA, concerns an appeal of a denial of an application to verify a floating on-water residence. The City's Shoreline Master Program ("SMP") provides certain "grandfathered" rights for residential use to floating craft that meet specific requirements, including "floating on-water residences" ("FOWRs"). To qualify as a FOWR, the craft must obtain a verification from the City by meeting certain requirements. In this case, the specific requirement at issue was whether the craft meets the definition of "vessel," which would exclude it from qualification as a FOWR since a "vessel" is not a "structure" under the Code. The Examiner determined that the craft in this case did not qualify as a FOWR, and dismissed the appeal on summary judgment. The Court dismissed the appeal on March 8, 2019. (S-18-008)

City of Seattle v. Senior Housing Assistance Group, Mike Hirai, and the Seattle Hearing Examiner, Superior Court #18-2-28185-7 SEA, concerned a petition by the Office of Civil Right's concerning unfair housing practices. The Examiner dismissed the appeal on summary judgment. That decision was appealed to Superior Court, which dismissed it on January 11, 2019. (D-18-003)

Case Highlights

Each year includes cases that are noteworthy, either because of the controversy surrounding them or because they present important issues in the application of the Seattle Municipal Code or other regulations. The brief case descriptions that follow highlight some of these cases that came before the Hearing Examiner in 2018. (The complete decision or recommendation can be found through the "Decisions" link at www.seattle.gov/examiner using the Hearing Examiner case number included in parentheses after each case description below.)

- SDOT issued a State Environmental Policy Act ("SEPA") Final Environmental Impact Statement ("FEIS") for the Burke-Gilman Trail Missing Link Project ("Missing Link"). The FEIS was appealed by the Ballard Coalition. SEPA review for the Missing Link project passed through several iterations, including three Determinations of Non-significance ("DNS") that preceded the FEIS. Each of those DNS's was appealed, and the result was the Department's decision to prepare an EIS for the entire Missing Link project, and to include an evaluation of alternative routes. The Appellants challenged the FEIS by raising a variety of issues including but not limited to the inadequacy of: project level of design; alternatives analysis; and analysis of impacts related to traffic and safety, parking, economics, and the shoreline environment. The Hearing Examiner affirmed SDOT's determination that the FEIS was adequate. (W-17-004)
- The Escala Owner's Association appealed the City's FEIS (and Addendum) and design review approval for construction of a forty eight-story building. Appellant's notice of appeal raised a list of twenty-three issues including but not limited to concerns related to compliance with SEPA process, inadequate design review process, and the inadequacy of the SEPA analysis concerning impacts related to: transportation; land use; height, bulk, and scale; and natural light/solar access. The Appellants were residents in the Escala residential tower, which is located adjacent to the proposal. The Hearing Examiner held that the FEIS was adequate as to most of the petitioner's issues. However, the Hearing

Examiner remanded a portion of the FEIS for additional review for the purpose of evaluating the proposal's impacts as they relate to loss of light within the Escala residential units, and for incorporation of specific conditions into the proposal's dock management plan. Otherwise the FEIS was affirmed and the appeal of the Director's Decision approving design review was denied. (MUP 17-035)

- The Seattle Office of Planning and Community Development issued an FEIS for Mandatory Housing Affordability (“MHA”) legislation. The FEIS was appealed by a coalition of Seattle neighborhood groups (“Appellants”). The appeal hearing was held on June 25-29, July 23-27, August 20-24, 30 and 31, and September 4 and 7 2018, before the Hearing Examiner. The Appellants challenged the FEIS by raising issues concerning compliance with SEPA procedures, and the adequacy of most sections of the FEIS including: housing and economics, land use, aesthetics, historic resources, traffic, biological resources, open space and recreation resources, public services and utilities, and air quality. The Hearing Examiner affirmed the adequacy of all aspects of the FEIS with the exception of the historic resources analysis which was remanded to the Department for additional analysis. (W-17-006 - 014)
- City Council Resolution 31812 declares the Council's intent to order the construction of the Seattle Central Waterfront Improvement Program and to create a local improvement district (“LID”) to assess a part of the cost and expense of certain improvements against the properties specially benefited by the improvements. The Office of Hearing Examiner was designated by Resolution 31812 to conduct the formation hearing for the LID. The Hearing Examiner conducted the hearing over a series of four separate days and evenings, taking oral and written testimony. A total of 333 oral and written comments were submitted. The Hearing Examiner provided a report to the City Council on the comments received.

2018 Caseload

Table 3, on page 14, presents a complete summary of case activity for 2018. “Cases Filed” and “Decisions Issued” are shown in tables found on pages 8 and 12, respectively, and discussed in more detail below. The total number of cases filed, 720, is less than the total of cases filed in 2017 by 110 cases. This reduced number is due to a reduced number of Land Use Citation Enforcement Actions. The caseload for the office in other respects was otherwise similar to 2018.

Table I – Cases Filed / Delegated

	2018	2017	2016	2015	2014	2013	Previous 5-Yr. Average
B & O Tax Appeals	8	1	2	6	4	7	7
Civil Service	0	0	0	0	0	2	5
Council Land Use Actions	3	6	7	3	0	9	7
Dangerous Animals	0	1	3	0	2	3	0.8
Discrimination	4	10	20	7	1	0	0.8
Energy Benchmarking Appeals	0	3	0	0	16	4	0
Float Homes	3	2	1	0	0	0	0.4
Grading and Drainage	0	0	0	0	1	0	0.0
Health Codes	9	2	0	1	0	0	0.6
Labor Standards	1	0	0	0	0	0	0
Land Use Code Interpretations	11	3	7	4	3	5	6
Landmarks-Special Review Districts	2	2	3	7	1	0	3
Licensing Appeals	8	8	3	3	2	0	8
Master Use Permits	31	37	25	33	23	23	26
Public Nuisance	0	0	0	0	2	1	8
Public Works Relocation	0	1	0	0	0	0	0
School Development Departure	1	0	0	0	0	0	0
Sepa-Only Appeals (Non Mup)	14	14	8	10	3	9	6
Tenant Relocation Assistance Eligibility Appeals	10	10	17	13	6	16	6
Third Party Utility Billing	7	13	3	3	5	7	4
Total Without Citations	112	113	99	90	69	86	89
Land Use Citation Enforcement Actions	195	340	403	364	317	293	287
SDOT Citation Enforcement Actions	402	348	273	145	94	65	102
Marijuana Citation Enforcement Actions	11	29	32	16	0	0	0
Total Citations	608	717	708	525	411	358	387
Grand Total	720	830	807	615	480	444	478

Non-Citation Cases Filed

There were 112 Non-Citation cases filed with the Office of Hearing Examiner in 2018, a decrease by one case from the number filed in 2017, and approximately 60% higher than the previous five-year average of 85. As it does each year, the mix of cases changed somewhat.

Appeals from **tax assessments** were quite low for the last five years, however there was an increase in such appeals with eight tax appeals filed in 2018.

Cases involving **recommendations to the City Council** decreased, from seven in 2017 to three in 2018.

Normally only a few **dangerous animal** appeals are filed each year; in 2018, none were filed.

Discrimination cases are filed by the City Attorney’s Office in matters referred to them by the Office for Civil Rights. The cases allege violations of Title 14 SMC, the City’s Human Rights Code, such as discrimination in housing, or discrimination in public accommodations. Appeals from the City’s enforcement of Labor Standards regulations are also included in the discrimination category for 2018. Historically, the number of discrimination cases filed has been low, and after higher numbers in 2016 and 2017, the number was reduced to four appeals filed in 2018.

Energy benchmarking appeals were added to our caseload in 2013. These are appeals from decisions by the Office of Sustainability and Environment on notices of violation issued for failure of a building owner to comply with the Code’s requirement for reporting the energy performance of multifamily and nonresidential buildings. After receiving 16 energy benchmarking appeals in 2014, the number has declined as building owners adjusted to the new regulations. We received no energy benchmarking appeals in 2015 or 2016, only three in 2017, and no such appeals in 2018.

Floating Homes Petitions are cyclical, in that they usually are filed only when rates for floating home moorages go up at the expiration of existing leases. After several years of receiving no floating homes petitions, we received one in 2016, two in 2017, and three in 2018.

Health Code appeals are usually noise-related, such as appeals from Noise Code variances issued for major public projects, and are intermittent. We received two Health Code appeals in 2017, and nine such appeals in 2018.

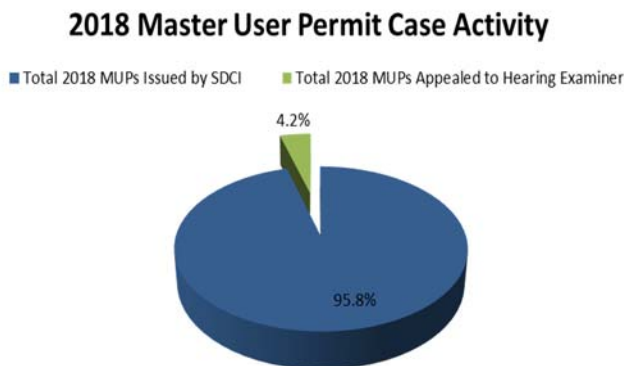
In any type of case, the Hearing Examiner must interpret applicable sections of the Code in reaching a decision or making a recommendation. However, the Land Use Code establishes a process whereby members of the public may request a formal written interpretation from the DCI Director concerning the meaning, application, or intent of any development regulation in the Land Use Code or Critical Areas Code. Those interpretations may be appealed to the Examiner. We received 7 appeals from DCI **Land Use Code interpretations** in 2016, three in 2017, and eleven in 2018 (nine of the eleven filed in 2018 were matters concerning floating on- water residence appeals).

Landmark and special district appeals filed decreased from seven in 2015 to three in 2016, two in 2017, and again two in 2018.

As noted in prior reports, **Licensing** appeals had remained low since the closure of *Rick's* adult entertainment club. However, in 2017, we received eight licensing appeals, and the same number were filed in 2018. Most involved taxi or for-hire licenses.

A **Master Use Permit, or "MUP"**, is a document issued to a permit applicant that includes all land use decisions made by the Department of Construction and Inspections on an application. MUP appeals, as well as SEPA appeals, are some of the most complex matters handled by the Hearing Examiner, as they often involve multiple parties, complicated facts, substantial controversy, several days for hearings and considerable time for research, review and decision-writing. For several years, the number of MUP appeals filed was between 39 and 44. It fell to 17 in 2011, rose to 33 in 2015, reduced slightly to 25 in 2016, rose to 37 in 2017, and 31 were filed in 2018.

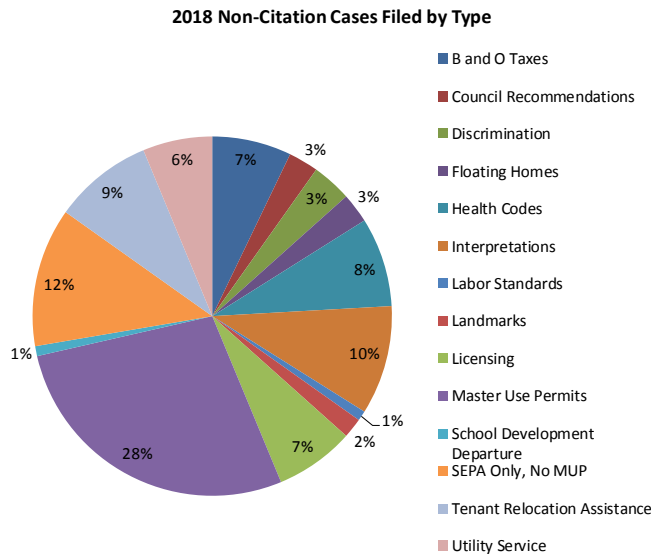
The Department of Construction and Inspections issued 700 MUPs in 2018, approximately the same number issued in 2016. In most years, approximately 3% to 4% of MUPs are appealed to the Hearing Examiner. The appeal rate in 2018 was about 4.2%.



“SEPA-only” appeals are appeals of environmental determinations made for two types of proposals: 1) proposals, such as legislation, that do not require a MUP or Council land use decision; and 2) proposals that require a MUP or a Council land use decision, but a department other than DCI makes the environmental determination on the proposal. SEPA-only appeals have fluctuated from year to year. In 2017, we received 14 SEPA appeals, a significant increase over the previous 5-year average, and again in 2018 14 such appeals were filed.

Appeals from denials of **tenant relocation assistance** remained low from 2010 through 2012, and were also low in 2014. However, 16 were filed in 2013, 13 were filed in 2015, 17 were filed in 2016, ten were filed in 2017, and ten were filed in 2018.

Third party utility billing cases are initiated by a complaint by a tenant of a building in which utility services for the building are master-metered and then billed to tenants in accordance with a formula developed to roughly determine usage on a per-unit basis. The utilities are normally billed through a third party billing agent, and the City’s third party billing regulations, Chapter 7.25 SMC, impose detailed requirements for the billing practices associated with master-metered utilities. Because the Code regulates billing practices, rather than the amount that can be billed for utilities, the number of third party utility billing cases filed is normally low. For example, in 2016, we received just three third party utility billing complaints. In 2017, we received a much higher amount at 13 complaints, and then in 2018 seven appeals were filed.



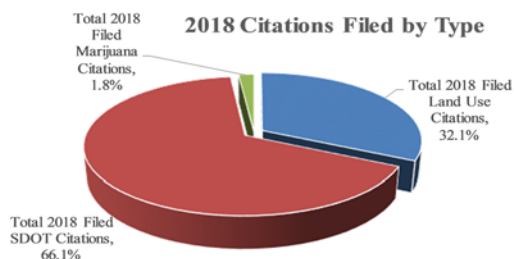
Citation Enforcement Cases Filed

Citation enforcement cases follow a unique procedure, and we track them separately from other categories of cases. When a citation is issued, a copy is sent to the Office of Hearing Examiner. In addition, all DCI citations are uploaded from DCI’s Accela tracking system into the Office of Hearing Examiner’s electronic case management system. If someone files an appeal of a citation, it is removed from the others and set up for an appeal hearing and decision. For citations that are neither paid nor appealed, the Hearing Examiner sends out Code-required orders of default, which note the failure of the party to respond, find that the violation has been committed, and impose the prescribed penalty.

In 2018 DCI completed a transition from Hansen to using Accela software as the basis for its citations processing and database. As a result of problems during this transition DCI’s capacity to issue citations, and to keep an accurate record of the number of citations issued, was compromised. This accounts for a substantial difference in the number of citations that are normally processed by the Office of Hearing Examiner. According to the Office of Hearing Examiner docket book, the total number of **Land Use Code and Noise Code citations**, which are combined for tracking purposes, was 195, which is a decrease by 145 from 2017.

Marijuana citation appeals were reduced to 11 filed in 2018 as more marijuana businesses came into compliance since the time of licensing for such businesses passed into legislation.

SDOT citations increased from 348 in 2017 to 402 in 2018.



Prehearing, Hearing, and Decision Activity

Prehearing Conferences. Under the Hearing Examiner Rules, prehearing conferences can be held at the request of a party to a case or the direction of the Hearing Examiner. The prehearing conference is used to organize and prepare a case for hearing, including clarifying the issues to be addressed, facilitating disclosure of each party’s intended witnesses and exhibits, establishing a case schedule for prehearing motions, and other matters. Following the conference, the Examiner normally prepares a prehearing order memorializing any agreements reached, rulings made at the conference, and dates set for the hearing schedule. Subsequent conferences may be scheduled, and often deal with discovery conflicts (whether information and documents sought by one party from another are relevant to the issues, privileged, etc.), scheduling, and other prehearing matters. Prehearing conferences are usually held in MUP, SEPA, tax, dangerous animal, discrimination, and third party billing cases, and are scheduled in other types of cases as needed. They occasionally provide the catalyst for eventual settlement of a case, as the parties work during the conference to clarify the issues underlying the appeal and often stay for additional private discussions after the Hearing Examiner leaves the room. Prehearing conferences in cases for our contract cities are less frequent and are usually held via telephone.

Prehearing Decisions. Prehearing motions are frequently filed in MUP, SEPA, landmark, interpretation, and tax cases, and on SEPA or design review issues in some Council recommendation cases. Most concern substantive or procedural legal issues that the parties address in written memoranda. They usually require legal research and a written decision by the Examiner, but do not always require a separate hearing. Decisions on prehearing motions affect whether, and how, a case proceeds to hearing by narrowing the issues or determining in advance whether certain testimony or evidence will be admissible at hearing. Consequently, most prehearing decisions can be appealed to court as part of an appeal of the final decision in a case. Because work on prehearing orders involves considerable examiner time, the Office of Hearing Examiner includes the orders in the “decisions issued” category of annual statistics.

Hearings. The length of a hearing before the Hearing Examiner depends upon many variables, such as the type and complexity of a case, the number of witnesses, and the parties’ level of preparation and expertise in the subject area. Consequently, one case may take an hour to hear, while another may require several hours, or several days. Because of the great variety in the types of cases that come before the Office of Hearing Examiner, we do not track the number of hearing hours or hearing days per case. All hearings held on each case are counted together as one hearing regardless of the time involved.

Total decisions. As noted above, total decisions include decisions issued after a full evidentiary hearing, and those issued following submittal of legal memoranda and exhibits, and sometimes oral argument, on the party’s prehearing motions. In 2018, the Office of Hearing Examiner issued 149 decisions. We also issued 26 decisions for contract cities.

Table 2 – Decisions Issued After Hearing

	2018	2017	2016	2015	2014	2013	Previous 5-Yr Average
B & O Tax Appeals	4	0	4	6	3	5	4
Civil Service	0	0	0	0	0	3	3
Council Land Use Actions	3	6	7	1	0	9	5
Dangerous Animals	0	1	3	0	1	2	0.6
Discrimination	9	13	13	5	0	0	0.2
Energy Benchmarking Appeals	0	3	0	0	16	4	5
Floating Homes	1	1	0	0	0	0	0.2
Grading and Drainage	0	0	0	0	1	0	0
Health Codes	5	0	0	1	0	0	0
Housing and Building Unfit for Habitat	0	0	0	0	0	1	0.2
Labor Standards	1	0	0	0	0	0	0
Land Use Code Interpretations	7	5	6	4	2	4	4
Landmarks	1	0	5	5	2	0	0.4
Licensing Appeals	6	9	1	4	1	0	3
Master Use Permits	28	41	27	34	14	20	27
Public Nuisance Violations	0	0	0	0	2	1	0.6
Public Works	0	1	0	0	0	0	0
School Development Departure	1	0	0	0	0	0	0.2
Sepa-Only Appeals (Non Mup)	14	7	7	8	3	4	6
Special Review Districts	3	0	3	4	0	0	1
Tenant Relocation Assistance Eligibility	8	11	16	14	7	11	12
Utility Services	9	14	1	4	3	6	3
Total Without Citations	100	112	93	90	55	70	83
Land Use Citation Enforcement Actions	19	42	48	55	46	63	50
SDOT Citation Enforcement Actions	26	46	24	18	18	17	25
Marijuana Citation Enforcement Actions	4	20	11	2	0	0	7
Total Citations	49	108	83	75	64	80	82
Grand Total	149	220	176	165	119	150	165

Non-Citation Decisions Issued

The number of **tax assessment** appeals has continued to remain low as in past years. We issued four decisions in tax appeals in 2018. Other categories with few decisions issued last year were **dangerous animals** (zero), **landmarks/special review districts** (four), and **energy benchmarking** (zero).

Recommendations to Council on land use actions involve the same hearing, research, record review and writing time required for MUP decisions and are included in the total decision figures in Tables 2 and 3. The number of recommendations issued in 2018 (three) was three less than the number issued in 2017 (six). Two were recommendations on rezone applications, and one addressed the University of Washington Major Institution Master Plan.

There were nine decisions issued in **discrimination cases** in 2018, compared to 13 in 2016.

Land Use Code interpretations increased to 11 in 2018, doubling the amount of such appeals filed in 2016.

The number of **licensing** decisions was six. Most addressed taxi and for-hire license appeals.

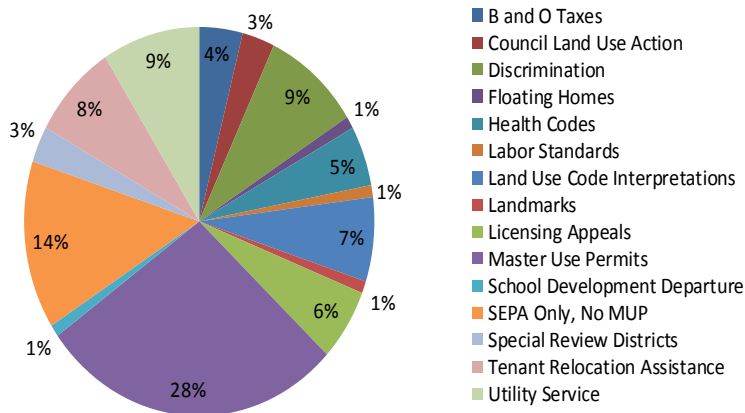
MUP appeals generated 28 decisions in 2018, compared to 41 issued in 2016.

Decisions issued in **SEPA-only** appeals (14) doubled the number issued in 2016 and 2015.

We issued eight decisions in appeals of the denial of **tenant relocation assistance**.

Nine decisions for **third party utility billing** complaints were issued in 2018, down from a high number of 14 in 2017.

2018 Non-Citation Decisions Issued by Type



Citation Decisions Issued

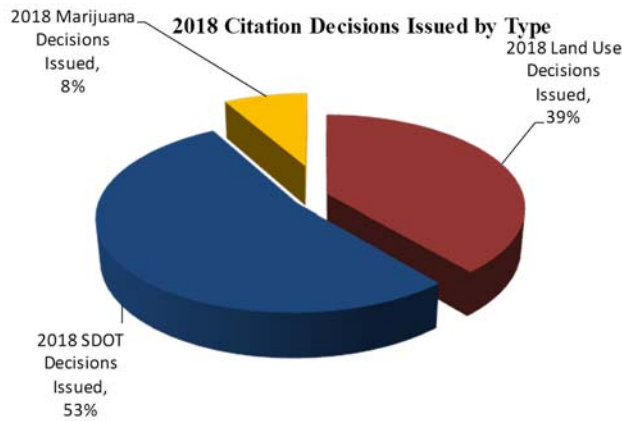


Table 3 - CASE ACTIVITY SUMMARY

	2018 Cases Filed				2018 Case Disposition			
	Pending Appeals at Start of Year	Cases Filed	Total Caseload	Cases Heard**	Decisions Issued**	Cases Dismissed (No Hearing)***	Defaults Issued (Untimely)	Pending Appeals at End of Year
B & O Tax Appeals	1	8	9	3	4	1	0	5
Council Land Use Actions	1	3	4	3	3	0	0	1
Discrimination	5	4	9	3	9	5	0	1
Floating Homes Petitions	2	3	5	2	1	1	0	3
Health Codes	2	9	11	3	5	1	0	0
Labor Standards	0	1	1	0	1	0	0	0
Land Use Code Interpretations	0	11	11	4	7	3	0	1
Landmarks	0	2	2	1	1	0	0	1
Licensing Appeals	1	8	9	7	6	2	0	0
Master Use Permits*	2	31	33	14	28	11	0	8
School Development Departure	0	1	1	1	1	0	0	0
Sepa-Only Appeals (No Mup)*	10	14	24	2	14	6	0	6
Special Review Districts*	2	0	2	1	3	1	0	0
Tenant Relocation Assistance	0	10	10	7	8	1	0	2
Utility Service Appeals*	1	7	8	4	9	4	0	0
Total	27	112	139	55	100	36	0	28
Land Use Citation Enforcement Actions	22	195	217	19	19	8	104	46
SDOT Citation Enforcement Actions	23	402	425	28	26	1	189	53
Marijuana Citation Enforcement Actions	2	11	13	3	4	1	7	1
Total Citations	47	608	655	50	49	10	300	100
Total Including Citations	74	720	794	105	149	56	300	128

* indicates some cases in category may have multiple hearings or decisions / ** indicates some cases in category were pending from prior years or will carry-over into subsequent years / *** indicates rescinded citations, posthumous dismissals, or fines paid prior to default

Disposition of Appeals to the Hearing Examiner

At the request of the Council, the Office of Hearing Examiner includes in the Annual Report a breakdown of the outcome of cases appealed to the Hearing Examiner. Table 4 shows the disposition of appeals by type of case, and is followed by an explanation of the standard of review required in each type.

In appeals for which the Examiner issued a final order or decision, the Examiner affirmed the Department's decision without change approximately 41% of the time, remanded or modified the Department's decision approximately 15% of the time, reversed the department's decision approximately 1% of the time, and dismissed the appeal on procedural grounds approximately 41% of the time.

Table 4 - DISPOSITION OF APPEALS*

	Affirmed	Affirmed, as Modified	Affirmed, Penalty Mitigated	Denied	Dismissed	Reversed	Remanded	Sustained	Total
B and O Tax	1				3				4
Discrimination	1				8				9
Floating Homes	1				1				2
Health Codes	2				2				4
LUC Interpretations	1				4		3		8
Labor Standards	1								1
Landmarks	1								1
Licensing	3				3	1			7
Master Use Permit	7	3			14		1		25
School Development	1								1
SEPA only, No MUP	3				6		1		10
Special Review District	1				1				2
Tenant Relocation	3				5				8
Total Without Citations	26	3			47	1	5		82
Land Use Citation Enforcement Actions	8		9		8				25
Marijuana Citation Enforcement Actions	2				3				5
SDOT Citation Enforcement Actions	16		8		3				27
Total Citations	26	0	17		14	0	0		57
Total	52	3	17		61	1	5		139

*Includes only final decisions on appeals. Does not include subdivision applications, third party billing complaints or recommendations to the City Council.

HEARING EXAMINER JURISDICTIONS

LAND USE & ENVIRONMENTAL [Administered by Department of Construction and Inspections]

Appeals:

- Commuter Trip Reduction (SMC 25.02.080)[Admin. by SDOT]
- Downtown Housing Maintenance (SMC 22.220.140)
- Denial or Revocation of Rental Housing Registration (SMC 22.214.045)
- Environmental Determinations (SMC 25.05.680)[Admin. by any City dept. as lead agency]
 - Determinations of Non-Significance(DNS)/ No EIS required (SMC 25.05.340)
 - Determinations of EIS Adequacy (SMC 25.05, Subchp. IV)
 - SEPA Conditions (SMC 25.05.660)
- Environmentally Critical Areas
 - Conditional Use (SMC 25.09.260)
 - Reasonable Use Exception (SMC 25.09.300)
 - Variance (SMC 25.09.160, 25.09.180, 25.09.280)
- Habitable Building Standards Variances (SMC 22.206.217)
- Housing & Building Maintenance Code Violations (SMC 22.208.050)
- Land Use Code Citations (SMC 23.91.006)
- Land Use Code Interpretations (SMC 23.88.020)
- Master Use Permit [Type II] decisions (SMC 23.76.06, SMC 23.76.022):
 - Administrative Conditional Uses
 - Consistency with Planned Action Ordinance and EIS
 - Design Review
 - Downtown Planned Community Developments
 - Establishing Light Rail Transit Facilities
 - Establishing Monorail Transit Facilities
 - Major Phased Developments
 - Short Subdivisions
 - Special Exceptions
 - Temporary Uses
 - Variances
- Noise Code Variances (SMC 25.08.610, SMC 25.08.655)
- Noise Code Citations (SMC 25.08.910)
- Pioneer Square Minimum Maintenance Violations (SMC 25.28.300)
- Relocation Assistance: (City action causes displacement) (SMC 20.84.225, SMC 20.84.640)
- Stop Work Orders (SMC 23.76.034)
- Stormwater, Grading & Drainage exceptions (SMC 22.800.040)
- Tenant Relocation Assistance Eligibility Determinations (SMC 22.210.150)
- Weed and Vegetation Citations (SMC 10.52.032) [Admin. by DPD]

Land use decisions on Type III applications

- Subdivisions (SMC 23.76.024 and SMC 23.22.052)

Recommendations to City Council on Type IV applications (SMC 23.76.036, SMC 23.76.052):

- Council Conditional Uses
- Major Amendment to Property Use and Development Agreement (SMC 23.76.058)
- Major Institution Master Plans (SMC 23.69.030)
 - Public Facilities (SMC 23.69.032)
- Rezone Applications (SMC 23.34)

SCHOOL REUSE & DEPARTURES [Administered by Department of Neighborhoods]
School Development Standard Departures (SMC 23.79.012) within MUP decision
School Reuse/SUAC (SMC 23.78.014) within MUP decision

CIVIL RIGHTS [Administered by the Office for Civil Rights]
Employment Discrimination Complaints (SMC 14.04.170)
Fair Housing/Business Practice Complaints (SMC 14.08.170)
Public Accommodations Complaints (SMC 14.06.110)
Fair Contracting Practices (SMC 14.10.120)
Paid Sick/Safe Leave Appeals (SMC 14.16.085)
Fair Chance Employment Appeals (SMC 14.17.065)
Minimum Wage Appeals (SMC 14.19.085) Wage Theft Appeals SMC
14.20.065)

LANDMARKS AND SPECIAL DISTRICTS [Administered by the Dept. of Neighborhoods]
Certificates of Approval for Designated Landmarks (SMC 25.12.740)
Landmark Controls & Incentives (SMC 25.12.530) [Recommendations to City Council]
Landmarks Code Interpretations (SMC 25.12.845)
Special Review Districts' Certificate of Approval and Code Interpretations
Ballard Avenue Landmark District (SMC 25.16.110 & SMC 25.16.115)
Columbia City Landmark District (SMC 25.20.110 & SMC 25.20.115)
Fort Lawton Landmark District (SMC 25.21.130 & 25.21.135)
Harvard Belmont Landmark District (SMC 25.22.130 & SMC 25.22.135)
International District (SMC 23.66.030)
Pike Place Market Historical District (SMC 25.24.080 & SMC 25.24.085)
Pioneer Square Historical District (SMC 23.66.030)
Sand Point Naval Air Station Landmark District (SMC 25.30.110)

HEALTH AND PUBLIC SAFETY CODE VIOLATIONS

Graffiti Nuisance Violations (SMC 10.07.050) [Administered by Seattle Public Utilities]
Health Code Permit Actions (SMC 10.01.220) [Admin. by Seattle-King County Public Health]
Infectious Waste Management Ordinance Violations (SMC 211431090) [Admin. by
Seattle-King County Public Health]
Public Nuisance Abatements (SMC 10.09.100) [Administered by Seattle Police Department]
Radiofrequency Radiation Ordinance Violations (SMC 25.10.540) [Admin. by Seattle-King County Public
Health]

CITY TAXES AND LICENSES [Admin. by Financial and Admin. Serv., Revenue & Consumer Affairs]:

Admission Tax Exemptions (SMC 5.40.028, SMC 5.40.085)
All Ages Dance and Venues (SMC 6.295.180)
Bond Claims (SMC 6.202.290)
Business and Occupation and other Tax Assessments (SMC 5.55.140)
Horse Drawn Carriage Licenses (SMC 6.315.430)
Income Tax on High-Income Residents (SMC 6.65.170)
License Denials, Suspensions & revocations (SMC 5.55.230, SMC 6.02.080, SMC 6.02.285, SMC 6.214.320,
SMC 6.02.290, SMC 6.202.240, SMC 6.202.270, Chap. 6.500 SMC)
Animal Control:
Animal License Denials (SMC 9.25.120)
Determinations of Viciousness/Order of Humane Disposal (SMC 9.25.036)
Adult Entertainment (SMC 6.270)

For-Hire Vehicles & Drivers (SMC 6.310.635)
Gas Piping (SMC 6.430.210)
Panorama and Peepshows (SMC 6.42.080)
Refrigeration Systems (SMC 6.410.210)
Steam Engineers and Boiler Fireman (SMC 6.420.210)
Unit Pricing (SMC 7.12.090)
Marijuana Business License Citations (SMC 6.500.170)

CABLE COMMUNICATIONS – [Administered by the Office of Cable Communications]

Franchise Termination (SMC 21.60.170)
Rates and Charges Increases (SMC 21.60.310)
Extension of Time for Providing Service (SMC 21.60.380)

MISCELLANEOUS JURISDICTIONS

Civil Service Appeals (SMC 4.04.250) [Delegation from Civil Service Commission]
Commuter Benefit (SMC 14.30.150)
Energy Benchmarking Appeals (SMC 22.920.155) [Admin. by Office of Sustainability and Environment]
Ethics Code Violations (SMC 3.70.100) [Delegation from Ethics & Elections Commission]
Improvement District Assessment Appeals as provided by Ordinance
LID Assessment Rolls (SMC 20.04.090) [Admin. by SDOT]
Rental Agreement (7.24.130) [admin. By DCI]
Restricted Parking Zone Appeal (SMC 11.16.317) [Admin. by SDOT]
Review of Floating Home Moorage Fees (SMC 7.20.080, SMC 7.20.090, SMC 7.20.110)
Property Tax Exemption Elimination (SMC 5.72.110, SMC 5.73.100) [Admin. by Office of Housing]
SDOT Citation Appeals (SMC 15.91.006) [Admin. by SDOT]
Street Use Appeals (SMC 15.90) [Admin. by SDOT]
Third Party Utility Billing Complaints (SMC 7.25.050)
Whistleblower Retaliation Complaints (SMC 4.20.865) [Filed by the Ethics and Elections Commission]

Please note that the list is provided only for the public's convenience and may not reflect recent ordinances adopted by the City Council. The Seattle Municipal Code and those ordinances are the ultimate authorities on the extent of the Examiner's jurisdiction.