City of Seattle



**OFFICE OF HEARING EXAMINER**

**2019**

**ANNUAL REPORT**

Office of Hearing Examiner
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**2020**City of Seattle

**CITY COUNCIL**

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**Office of Hearing Examiner Organizational Chart**

**Hearing Examiner**

Ryan P.Vancil

**Deputy Hearing Examiner**

**Administrative**

**Specialist**

Angela Oberhansly

**Executive Assistant**

Bonita Roznos

**Legal Assistant**

Galen Edlund-Cho

 **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 is 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]](#footnote-1)

**2019 Caseload**

Table I presents an overview of case activity for 2019.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|   | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | Previous 5-Yr Average |
| B & O Tax Appeals | 9 | 8 | 1 | 2 | 6 | 4 | 4.2 |
| Council Land Use Actions | 6 | 3 | 6 | 7 | 3 | 0 | 3.8 |
| Dangerous Animals | 1 | 0 | 1 | 3 | 0 | 2 | 1.2 |
| Discrimination | 2 | 4 | 10 | 20 | 7 | 1 | 8.4 |
| Energy Benchmarking Appeals | 0 | 0 | 3 | 0 | 0 | 16 | 3.8 |
| Floating Homes | 2 | 3 | 2 | 1 | 0 | 0 | 1.2 |
| Grading and Drainage | 0 | 0 | 0 | 0 | 0 | 1 | .02 |
| Health Codes | 2 | 9 | 2 | 0 | 1 | 0 | 2.4 |
| Housing and Building Unfit for Habitat | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Labor Standards | 4 | 1 | 0 | 0 | 0 | 0 | .02 |
| Land Use Code Interpretations | 2 | 11 | 3 | 7 | 4 | 3 | 5.6 |
| Landmarks - Special Review Districts | 0 | 2 | 2 | 3 | 7 | 1 | 3 |
| Licensing Appeals | 3 | 8 | 8 | 3 | 3 | 2 | 4.8 |
| Master Use Permits | 32 | 31 | 37 | 25 | 33 | 23 | 29.8 |
| Public Nuisance | 0 | 0 | 0 | 0 | 0 | 2 | .04 |
| Public Works Relocation  | 0 | 0 | 1 | 0 | 0 | 0 | .02 |
| School Development Departure | 0 | 1 | 0 | 0 | 0 | 0 | .02 |
| Sepa-Only Appeals (Non Mup) | 6 | 14 | 14 | 8 | 10 | 3 | 9.8 |
| Tenant Relocation Assistance Eligibility  | 13 | 10 | 10 | 17 | 13 | 6 | 11.2 |
| Utility Service Appeals-3rd Party Billing | 3 | 7 | 13 | 3 | 3 | 5 | 6.2 |
| Total Without Citations | 86 | 112 | 113 | 99 | 90 | 69 | 96.6 |
| Land Use Citation Enforcement Actions | 132 | 195 | 340 | 403 | 364 | 317 | 323.8 |
| SDOT Citation Enforcement Actions | 404 | 402 | 348 | 273 | 145 | 94 | 252.4 |
| Marijuana Citation Enforcement Actions | 2 | 11 | 29 | 32 | 16 | 0 | 17.6 |
| Total Citations | 538 | 608 | 717 | 708 | 525 | 411 | 593.8 |
| Grand Total | 624 | 720 | 830 | 807 | 615 | 480 | 690.4 |

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, 31 in 2018, and 32 were filed in 2019.

The Department of Construction and Inspections issued 812 MUPs in 2019. In most years, approximately 3% to 4% of MUPs are appealed to the Hearing Examiner. The appeal rate in 2019 was about 3.8%.

“**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 and 2018, we received 14 SEPA appeals, a significant increase over the previous 5-year average. In 2019 the number of appeals dropped by more than half as only six such 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.



The total number of **Land Use Code and Noise Code citations**, which are combined for tracking purposes, was 132 in 2019, which is a decrease from 195 in 2018. These numbers remain low compared to the number of citations in most recent years which averaged over 300.

M**arijuana citation** appeals were reduced to two filed in 2019 as marijuana businsses continued to come into compliance since the time of licensing for such businesses passed into legislation.

**SDOT** citations increased from 348 in 2017 to 402 in 2018, and 404 citation were received in 2019.

**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. 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 are asked if they have considered mediation or settlement, and may 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 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, and sometimes, 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 decisions 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 dates dedicated to a hearing 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 2019, the Office of Hearing Examiner issued 127 decisions. We also issued 16 decisions for contract cities.

**Table 2 – CASE ACTIVITY SUMMARY**

|  |  |  |
| --- | --- | --- |
|   | **2019 Cases Filed** | **2019 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 | 5 | 9 | 14 | 2 | 3 | 1 | 0 | 7 |
| Council Land Use Actions | 1 | 6 | 7 | 5 | 4 | 2 | 0 | 1 |
| Dangerous Animals Appeals | 0 | 1 | 1 | 0 | 1 | 1 | 0 | 0 |
| Discrimination | 1 | 2 | 3 | 2 | 2 | 2 | 0 | 0 |
| Floating Homes Petitions | 3 | 2 | 5 | 0 | 4 | 1 | 0 | 1 |
| Health Codes | 0 | 2 | 2 | 0 | 0 | 0 | 0 | 2 |
| Housing and Building Unfit for Habitat | 0 | 1 | 1 | 0 | 1 | 1 | 0 | 0 |
| Labor Standards | 0 | 4 | 4 | 2 | 3 | 1 | 1 | 1 |
| Land Use Code Interpretations | 1 | 2 | 3 | 1 | 2 | 1 | 0 | 1 |
| Landmarks | 1 | 0 | 1 | 0 | 1 | 1 | 0 | 0 |
| Licensing Appeals | 0 | 3 | 3 | 2 | 3 | 1 | 0 | 0 |
| Master Use Permits | 8 | 32 | 40 | 5 | 37 | 22 | 0 | 3 |
| Sepa-Only Appeals (Non Mup) | 6 | 6 | 12 | 8 | 9 | 5 | 0 | 3 |
| Tenant Relocation Assistance Eligibility Appeals | 2 | 13 | 15 | 9 | 9 | 3 | 0 | 3 |
| Utility Service | 0 | 3 | 3 | 1 | 3 | 2 | 0 | 0 |
| Total | 28 | 86 | 114 | 37 | 82 | 44 | 1 | 22 |
| Land Use Citation Enforcement Actions | 46 | 132 | 178 | 13 | 15 | 4 | 114 | 1 |
| SDOT Citation Enforcement Actions | 53 | 404 | 457 | 24 | 29 | 9 | 257 | 9 |
| Marijuana Citation Enforcement Actions | 1 | 2 | 3 | 1 | 1 | 0 | 1 | 0 |
| Total Citations | 100 | 538 | 638 | 38 | 45 | 13 | 373 | 10 |
| Total Including Citations | 128 | 624 | 752 | 75 | 127 | 57 | 373 | 32 |
| \*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, 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 3 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 3 - DISPOSITION OF APPEALS\***

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|   | **Affirmed** | **Affirmed as Modified** | **Affirmed, Penalty Mitigated** | **Denied** | **Dismissed** | **Rescinded** | **Reversed** | **Remanded** | **Sustained** | **Total** |
| B & O Tax Appeals | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 3 |
| Dangerous Animals Appeals | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| Discrimination | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 2 |
| Floating Homes Petitions | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 3 | 4 |
| Health Codes | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Housing and Building Unfit for Habitat | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| Labor Standards | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 1 | 0 | 3 |
| Land Use Code Interpretations | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 2 |
| Landmarks | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| Licensing Appeals | 1 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 3 |
| Master Use Permits | 14 | 0 | 0 | 0 | 22 | 0 |   | 1 | 0 | 37 |
| SEPA-Only Appeals (Non MUP)\* | 3 | 0 | 0 | 0 | 5 | 0 | 1 |   | 0 | 9 |
| Tenant Relocation Assistance Eligibility Appeals | 1 | 0 | 0 | 0 | 2 | 0 | 2 | 4 | 0 | 9 |
| Total Without Citations | 21 | 0 | 0 | 0 | 41 | 0 | 4 | 6 | 3 | 75 |
| Land Use Citation Enforcement Actions | 8 | 0 | 3 |   | 4 | 0 | 0 | 0 | 0 | 15 |
| SDOT Citation Enforcement Actions | 14 | 0 | 3 | 1 | 7 | 4 | 0 | 0 | 0 | 29 |
| Marijuana Citation Enforcement Actions | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Total Citations | 23 | 0 | 6 | 1 | 11 | 4 | 0 | 0 | 0 | 45 |
| Total Including Citations | 44 | 0 | 6 | 1 | 52 | 4 | 4 | 6 | 3 | 120 |

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

**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 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.

**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 2019:

In *Courtney Cooper v. City of Seattle,* Superior Court #19-2-03246-4SEA, the Hearing Examiner determined that an increase in moorage fees for a floating home was unjustified under the code. The moorage owner appealed, and the Superior Court affirmed the Hearing Examiner’s decision. (F-18-002)

In *Save Madison Valley v. City of Seattle,* Superior Court #19-2-10001-0SEA, appellants who opposed a mixed-use project at 2925 E. Madison Street appealed the Hearing Examiner’s decision that affirmed the design review of the project, subject to conditions, and largely affirmed SEPA review, with two exceptions: shadow impact and drainage. The Superior Court remanded the decision to the City to complete the work on shadow impact and drainage. (MUP 18-020 (DR, W))



In *Grant Protection for Trees, et al., v. City of Seattle,* Superior Court #19-2-25300-2SEA, appellants who opposed a project for two rowhouse structures at 2813 and 2815 4th Avenue West appealed the Hearing Examiner’s decision affirming the Director’s SEPA determination and code interpretation. The matter was settled prior to decision by the Superior Court. (MUP-19-004 (W) through MUP-19-015 (W))

In *Neighbors to Mirra Home Development v. City of Seattle,* Superior Court #19-2-25119-2SEA, appellants who opposed four rowhouse projects in the East Magnolia neighborhood appealed the Hearing Examiner’s decision dismissing all four appeals on summary judgment. The Superior Court dismissed the appeal with prejudice. (MUP-19-019 (W), 19-020 (W), 19-021(W), & 19-024(W))

In *Paul Cesmat v. City of Seattle,* Superior Court #19-2-27373-9SEA, appellant who opposed a four-story mixed use project at 2715 California Ave SW appealed the Hearing Examiner’s dismissal of the matter on a dispositive motion. The Superior Court dismissed appellant’s case with prejudice upon a summary judgment motion brought by the City. (MUP-19-026 (DR, W) & S-19-001)

In *Hempfest Central v. City of Seattle,* Superior Court #19-2-15029-7SEA, the Hearing Examiner affirmed a marijuana citation issued by the Department of Finance and Administrative Services that cited Seattle Events, a nonprofit corporation dba Hempfest Central, for violation of SMC 6.500.030 (engaging in a marijuana business without a license). Hempfest Central appealed to Superior Court, arguing that the Code is overbroad, as any person or entity who allows consumption of marijuana on their premises is guilty of operating a marijuana business without a license. The matter is still in litigation in the Superor Court. (CIT-18-04-002)

**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 2019. (The complete decision or recommendation can be found through the “Decisions” link at [www.seattle.gov/examiner](http://www.seattle.gov/examiner) using the Hearing Examiner case number included in parentheses after each case description below.)

* On October 4, 2018, the Seattle City Council published a Final Environmental Impact Statement (“FEIS”) considering potential significant adverse environmental impacts of possible legislation regarding accessory dwelling units in single-family zones. The adequacy of the FEIS was appealed by the Queen Anne Community Council pursuant to the State Environmental Policy Act. Another citizen group, TreePAC, also intervened. The Deputy Hearing Examiner held a five-day hearing March 25-29, 2019, considering the Appellant’s issues with respect to socioeconomic, aesthetic, tree-canopy, and parking impacts. The Examiner issued a decision on May 13, 2019, determining that the FEIS presented a reasonably thorough, adequate, and realistic description of potential significant adverse environmental impacts for policy makers to consider as a part of the decision-making analysis. Because the FEIS was determined to be adequate, the appeal was dismissed. (W-18-009)

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* The City of Seattle Council Central Staff Division of the City Council issued a State Environmental Policy Act (“SEPA”) Determination of Non-Significance (“DNS”) for a proposed ordinance that would modify the Seattle Comprehensive Plan (“Ordinance”). The Seattle Mobility Coalition and Seattle for Growth appealed the adequacy of the DNS. Seattle for Growth’s appeal was dismissed prior to hearing. Following the hearing, the Hearing Examiner rejected arguments put forth by the Seattle Mobility Coalition arguing that the proposal would have significant impacts that were not adequately addressed by the DNS. However, the Examiner found that the record did not support a finding of *prima facie* compliance by the City with the fundamental requirement of SEPA, because the environmental checklist was incomplete, and the matter was remanded to the City to issue a new threshold determination. (W-18-012 and 013)
* The Director of the Department of Construction and Inspections (“SDCI”) issued a DNS and design review approval for construction of a 3-unit rowhouse structure and a 2-unit townhouse structure. A group of neighbors to the proposal appealed, primarily for the purpose of attempting to preserve an exceptional tree located in the middle of the property that was slated for removal in the proposed development. The Appellants raised issues including environmental impacts related to climate change, aesthetics, geotech and lack of compliance with SEPA and design review procedures. The Examiner found that the Appellants did not meet the burdent of proof to show that the DNS was clearly erroneous, and that SDCI had not committed error in approving the proposal. This case is representative of a type of appeal that the Office of Hearing Examiner processes several times a year wherein appellants are expressing through their appeal concern for the loss of trees and tree canopy in the City. (MUP-19-004 through 015)

**ADMINISTRATIVE SECTION**

**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 our website, and at the office. 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 seven core languages is also handed out with the citation. The card explains what basic hearing-related information is available from the Office of Hearing Examiner.

In 2019 the office continued to expand access to the office for individuals for whom English is not their first language. Language interpreters are provided for appeal hearings when requested. The form for filing Land Use and SEPA appeals has been translated into the City’s seven core languages, and appellants may file an appeal in the language of the form. Information pamphlets concerning Third Party Utility Billing appeals were also translated into the City’s seven core languages. As funding is made available, the office will continue to have materials translated until all primary office materials can be accessed in the City’s seven core languages. LanguageLine Solutions interpretation services are now provided to individuals utilizing the office.



Four assisted listening devices have been purchased, and are made available for use by participants or audience members during hearings proceedings.

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](http://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, other information, and links to the Seattle Municipal Code and other resources relevant to matters that come before the Hearing Examiner.

The office has continued to implement 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 seek to offer this as an opportunity to more parties to help improve accessibility.

**Contracting**

Since 2004, the Hearing Examiner has been authorized by Seattle Municipal Code to provide hearing examiner services to other jurisdictions via contract. Starting in 2018, and continuing into 2019, the office ended contract services to the Cities of Kirkland, Mercer Island, Shoreline, and Tukwila. This change in practice was precipitated by a caseload increase associated with the region’s development boom. Each of the contract cities has been experiencing an increase in caseload (e.g. in 2018, 26 hearing decisions were issued for four contract cities, and in 2019, 16 decisions were issued in the first six months for three contract cities). In order to focus office resources on the Seattle caseload, contract services were ended.

**Race and Social Justice Initiative**

All staff members in the Office, including the Examiner and Deputy Examiner, have participated in the People’s Institute Undoing Institutional Racism training. All staff members have also taken all available RSJI classes offered by the City. The Office of Civil Rights has generously supported the office in efforts to understand and train in the application of Racial Equity Toolkits. At the outset of 2019, OCR provided an all-day training in the use and application of the Racial Equity Toolkit process to the entire staff. The office Executive Assistant is currently training to be a Certified Race and Social Justice Trainer.



In 2019 the Office initiated a pro tem hearing examiner training program targeting legal practitioners who are People of Color. The OHE is committed to advancing diversity and inclusion within the Environmental and Land Use Law section of the Washington Bar Association. Based on the experience of the Hearing Examiner, and as reflected in data from the WSBA, there is a lack of diversity in the ranks of lawyers practicing in the area of land use law. The pro tem hearing examiner training program is an opportunity for experienced legal practitioners who are People of Color to become more experienced in land use and as a hearing officer. In addition to requiring review of some written materials, the centerpiece of the program includes mentoring the candidate through a series of nine or more citation hearings. The Office hopes to put up to two candidates a year through the program. The first candidate, Anthony Jones, a member of the Port Gamble S’klallam Tribe, completed the program in January 2020.

The Office completed a high-level Racial Equity Analysis for a long-term community outreach program that is in its nacent stage of planning. The purpose of the community outreach program is to connect with and inform communities of color in the City. When initiated it is expected that the program will likely include elements such as open houses, engagement with community representatives, and explanatory presentations regarding land use appeal processes.

As discussed above under “Accessibility,” the office has continued efforts to expand access to Office materials and procedures for those for whom English is not their primary language.

**Seattle Fire Department Citations**

In fall 2019 the Council passed legislation allowing the Seattle Fire Department (“SFD”) to issue citations concerning Fire Code violations including frequent false alarms, failure to maintain fire alarms and sprinklers, and failure to maintain exits free from obstructions. That same legislation allows for appeals of citations to the Office of Hearing Examiner, and for the Office to provide administrative support to SFD by processing payments and citation database management. In establishing this new citation process, the Office provided input on proposed citation forms, coordination on database development, and training to SFD inspectors on the appeal hearing process. In early 2020 the office started receiving its first SFD citations.



**SEPA Appeal Process**

The City of Seattle City Council passed Ordinance 125964 in October 2019.  Ordinance 125964 concerned (among other items) identifying specific deadlines for the Hearing Examiner to conclude the SEPA appeals.  In addition, the Ordinance provides:

Section 14. The Hearing Examiner is requested to include in its 2020 Annual Report a section identifying any opportunities to shorten, streamline or otherwise improve Hearing Examiner processes. The report should identify changes to processes or procedures, new code provisions or amendments to existing code sections, or any resources that could support the Examiner’s work and improve equity in the process and outcomes for participants. The report should identify changes to the Hearing Examiner’s rules that have already been made, or that are in the process of being made at the time of the report. In developing these recommendations, the Hearing Examiner shall convene a stakeholder committee consisting of members with experience going through the hearing process, expertise in environmental justice, and a representative of the City Council.

**Stakeholder Committee**

The stakeholder committee called for in Ordinance 125964 has been formed, and will convene in the Spring of 2020.

**Opportunities to Shorten, Streamline or Otherwise Improve Hearing Examiner Processes**

1. Rules of Practice and Procedure. The primary means of improving Hearing Examiner processes will likely be through finding efficiencies in re-drafting the Hearing Examiner Rules of Practice and Procedure (“Rules”). These Rules supplement Seattle Municipal Code and ordinances, and other applicable law, for matters within the jurisdiction of the Hearing Examiner. In fall 2019 the Office initiated an in-house review and complete re-write of the current Rules. In spring 2020 this draft will proceed through a public review and comment process before a final draft is adopted. Several proposed rule changes may be adopted that would result in more efficient hearing processes, including but not limited to:
2. Limiting/controlling motion practice – Currently many SEPA appeals are initiated by one party or more of filing pre-hearing motions. While these are often ostensibly filed to achieve judicial efficiency by deciding matters without a hearing, the current practice instead often results in almost doubling the time needed for some hearings. A pre-hearing motion commonly adds an additional 5-6 weeks to the hearing schedule. This results in setting the hearing date out further than necessary, and in many cases the time required of the Examiner to decide on a motion and issue an order results in twice the amount of time needed for a matter that simply goes to hearing. By limiting motion practice these inefficiencies in hearing schedules may be reduced.
3. Identifying a more streamlined process for discovery – Hearings schedules are often extended in order to accommodate parties’ requests for discovery (e.g. depositions, requests for documents etc.). Limiting discovery to matters only where it is strongly warranted, and trying to identify efficiencies in document production should improve hearing schedules. This item may require additional coordination with the City Attorney’s office and/or departments responsible for document production.
4. Limiting motions for reconsideration – The current form of the rules allows parties to file motions of reconsideration for hearing examiner decisions. The current rule form allows this for all decisions, including decisions on pre-hearing motions that do not result in a final decision of a case, but may only address certain portions. This process is frequently misused by parties to simply re-assert the same arguments that have already been determined by the Examiner. The draft rules will limit such motions to final decisions of the Examiner, and clarify under what conditions they can be filed. This will result in freeing up time for the Examiner to address other matters instead of writing decisions on matters that have already been decided.
5. Mediation – Mediation allows parties to resovle cases without need of a hearing, thus freeing up the hearing examiner’s case schedule for other matters. The draft rules will include rules for mediation, and will be accompanied by a robust mediation program to be developed by the Office.
6. Portable Hearing Recording System. The Council approved funds for the 2020 budget to provide the Office with a portable hearing recording system, that will allow hearings to be conducted in rooms and locations outside the large hearing room currently used for most hearings. This portable system is planned for implementation in March 2020. Previously, the current large hearing room was the only option for hearings, and as a result, when a large hearing was calendared no other large hearing could be scheduled. Now, with the portable hearing recording system, the hearing examiner, and the deputy hearing examiner or a pro tem examiner can hold large hearings simultaneously.
7. Focus Seattle Hearing Examiner on Seattle cases. Since 2004, the Office has provided hearing examiner services to other jurisdictions via contract. As noted above, by summer 2019, the Office ended contract services with all remaining contract cities. This change in practice was implemented to allow the resources of the Office to be wholly dedicated to the City of Seattle caseload.



**HEARING EXAMINER JURISDICTIONS**

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

Appeals:

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]

Environmentally Critical Areas

Conditional Use (SMC 25.09.260)

Reasonable Use Exception (SMC 25.09.300)

Variance (SMC 25.09.160.C, 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, 23.91.010, 23.91.012)

Land Use Code Interpretations (SMC 23.88.020)

Land Use Regulations (SMC 23.47A.004)

Adult Cabarets (SMC 23.49.030)

Land Use Regulations – Industrial (SMC23.50.012)

Land use Regulations – Affordable Housing Impact Mitigation Program for Commercial Development – (SMC 23.58B.030)

Land Use Regulations – Mandatory Housing Afforability for Residential Development (SMC 23.58C.035)

Land Use Regulations – Seattle Shoreline Master Program Regulations (SMC 23.60A.064, 23.

A.202, 23.60A.203, 23.60A.204, 23.60A.214)

Land Use Regulations – Station Area Overlay District (SMC 23.61.016)

Land Use Regulations – Master Planned Communities (SMC 23.75.085, 23.75.120)

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 25.08.590, 25.08.610, SMC 25.08.655)

Noise Code Citations (SMC 25.08.900, 25.08.910, 25.08.920, 25.08.930, 25.08.940, 25.08.950)

Pioneer Square Minimum Maintenance Violations (SMC 25.28.280, 25.28.300, 25,28.310)

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 22.210.100, 22.210.110, 22.210.120, 22.210.150, 22.210.160)

Weed and Vegetation Citations (SMC 10.52.031, 10.52.032, 10.52.034, 10.52.035, 10.52.034, 10.52.036) [Admin. by DPD]

Land use decisions on Type III applications

Subdivisions (SMC 23.76.024 and SMC 23.22.054

Recommendations to City Council on Type IV applications (SMC 23.76.036, SMC 23.76.052, SMC 23.76.054):

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 14.04.150, 14.04.170, 14.04.180, 14.04.185)

Unfair Public Accommodations Practices (SMC 14.06.040, 14.06.110, 14.06.120, 14.06.130, 14.06.140)

All-Gender Single-Occupant Restrooms Requirements (SMC 14.07.040)

Fair Housing (SMC 14.08.170, 14.08.180, 14.08.200)

Use of Criminal Records in Housing (SMC 14.09.085, 14.09.090,

Fair Contracting Practices (SMC 14.10.120, 14.10.130, 14.10.140, 14.10.150)

Paid Sick/Safe Leave Appeals (SMC 14.16.050, 14.16.070, 14.16.085, 14.16.090, 14.16.100, 14.16.105)

Fair Chance Employment Appeals (SMC 14.17.045, 14.17.060, 14.17.065, 14.17.075, 14.17.080)

Minimum Wage Appeals (SMC 14.19.050, 14.19.070, 14.19.085, 14.19.090, 14.19.100, 14.19.105)

Wage Theft Appeals (SMC 14.20.030, 14.20.050, 14.20.065, 14.20.070, 14.20.080, 14.20.085) The Use of Conversion Therapy on Minors (SMC 14.21.050)

 Secure Scheduling (SMC 14.22.065, 14.22.085, 14.22.100, 14.22.105, 14.22.115, 14.22.120)

 Domestic Workers (SMC 14.23.095, 14.23.095, 14.23.100, 14.23.105, 14.23.115, 14.23.120)

 Protecting Hotel Employees from Violent or Harassing Conduct (SMC 14.26.150, 14.26.170, 14.26.180, 14.26.210, 14.26.220)

 Protecting Hotel Employees from Injury (SMC 14.27.150, 14.27.170, 14.27.180, 14.27.190, 14.27.210, 14.27.220)

 Improving Access to Medical Care for Hotel Employees (SMC 14.28.150, 14.28.170, 14.28.180, 14.28.210, 14.28.220)

 Hotel Employees Job Retention (SMC 14.29.170, 14.29.180, 14.29.190, 14.29.210, 14.29.220)

**LANDMARKS AND SPECIAL DISTRICTS** [Administered by the Dept. of Neighborhoods]

Certificates of Approval for Designated Landmarks (SMC 25.12.740)

Factors to be considered by Board or Hearing Examiner (SMC 25.12.750)

Hearing Examiner procedure (SMC 25.12.760)

Landmark Controls & Incentives (SMC 25.12.530) [Recommendations to City Council]

Owner’s objections to Board’s recommendation (SMC 25.12.535)

Scheduling of hearing (SMC 25.12.540)

Hearing Examiner procedure (SMC 25.12.560)

Basis for Hearing Examiner’s recommendations. (SMC 25.12.570)

Hearing Examiner recommendations – Referral to Council (SMC 25.12.610)

Service of notices (SMC 25.12.840)

Landmarks Code Interpretations (SMC 25.12.845)

Conformance with general development (SMC 25.12.980)

Special Review Districts’ Certificate of Approval and Code Interpretations

 Certificate of Approval – Application, review and appeals (23.66.030

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 25.21.110, 25.21.130 & 25.21.135)

Harvard Belmont Landmark District (SMC 25.21.110, 25.22.130 & SMC 25.22.135)

International District (25.24.080 & 25.24.085)

Pike Place Market Historical District (SMC 25.24.080 & SMC 25.24.085)

Pioneer Square Historical District (SMC 25.28.280, 25.28.300, 25.28.310)

Sand Point Naval Air Station Landmark District (SMC 25.30.090, 25.30.110, 25.30.120)

**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 21l43l090) [Admin. by

Seattle-King County Public Health]

Public Nuisance Abatements (SMC 10.09.100) [Administered by Seattle Police Department]

Frozen Dairy Food Products (SMC 10.18.140) [Administered by Seattle-King County Public Health]

Noise Variance (SMC25.08.610)

Radiofrequency Radiation Ordinance Violations (SMC 25.10.540) [Admin. by Seattle-King County Public Health]

Corrosion Prevention (SMC21.08.350, 21.08.360) [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, 5.55.150, 5.55.230)

Income Tax on High-Income residents (SMC 5.65.160, 5.65.170, 5.65.230)

Multifamilty Housing Property Tax Exemption (SMC 5.72.110)

2004 Multifamilty Housing Property Tax Exemption Program (SMC 5.73.110)

Horse Drawn Carriage Licenses (SMC 6.315.430)

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, SMC 6.10.120, SMC 6.10.130, 6.208.020, 6.214.320, 6.295.160, 6.295.180)

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, 6.310.735)

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 6.500.147, 6.500.150, 6.500.170)

Short-Term Rentals 6.600.120)

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

Franchise Termination (SMC 21.60.120)

**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]

Compensation and Working Conditions Generally (SMC 4.20.225, 4.20.860, 4.20.870)

Documentation of Eligilibity for certain uses of Sick Leave and Funeral Leave (SMC 4.30.865)

Floating Home Moorages (SMC 7.20.080, 7.20.090, 7.20.100, 7.20.110)

Refund Anticipation Loan Regulation (SMC 7.26.070)

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.

1. A list of matters within the Hearing Examiner’s jurisdiction is found at pg. 17. [↑](#footnote-ref-1)