

City of Seattle



OFFICE OF HEARING EXAMINER

2017

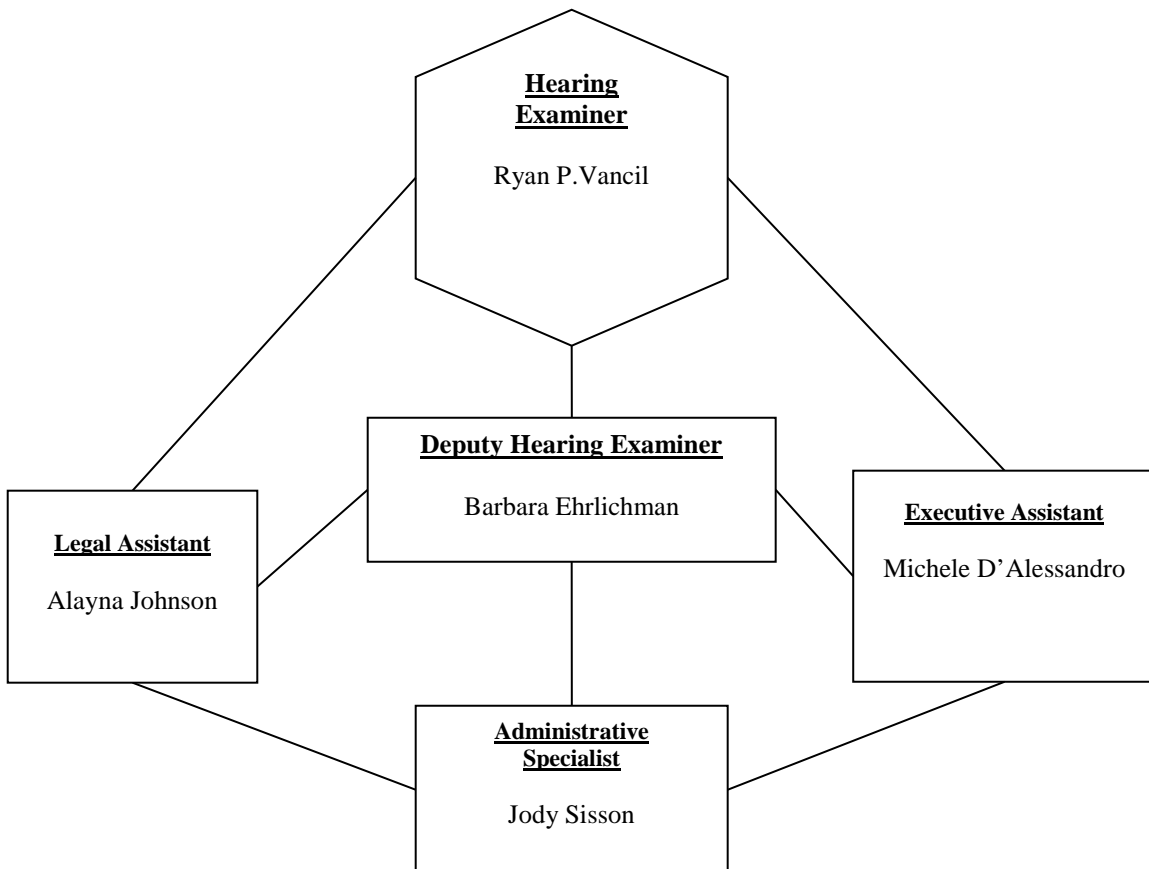
ANNUAL REPORT

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2017
City of Seattle
CITY COUNCIL

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Office of Hearing Examiner Organizational Chart



**CITY OF SEATTLE
OFFICE OF HEARING EXAMINER**

2017 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 Hearing Examiner holds a public hearing for the Council, gathers

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

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.

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 “user friendly,” 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 initiated 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 hearings 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. In 2017, we issued 43 decisions in contract city services provided to

four cities: Kirkland, Mercer Island, Shoreline and Tukwila.

The Office of Hearing Examiner is a General Fund department. Since 2005, when we began with just one contract city, we have deposited \$197,300 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.

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 appeals were decided in 2017:

In *Jessica Lucio and Greg Aden v. the City of Seattle*, Superior Court #16-2-04706-8SEA, appellants who opposed the demolition of the Terminal Garage Building in Pioneer Square appealed the Hearing Examiner's decision that had dismissed their appeal on two grounds: 1) lack of jurisdiction over the appellants' claim that the project should have gone through design review, because a Code section expressly exempts from design review new structures located in special review districts that are regulated by Chapter 22.66 SMC; and 2) lack of jurisdiction over the claim that the demolition was in error, because a Code section provides that there is no administrative appeal from the Director's demolition decision. The Superior Court affirmed the Examiner's decision, and the appellants appealed that decision to the state Supreme Court. The Supreme Court refused direct review and sent the case back down to the Court of Appeals, which has not yet issued a schedule for the appeal.

In *Seattle Housing Authority v. Seattle Office for Civil Rights on behalf of Ala Yudzenka*, Superior Court #15-2-21572-8SEA, the Hearing Examiner, sitting with two members of the Human Rights Commission as a hearing panel, determined that the Seattle Housing Authority ("SHA") had committed an unfair housing practice in failing to provide a one-bedroom apartment voucher, rather than a studio apartment voucher, as a reasonable accommodation for an applicant's medically verified disability. SHA appealed to superior court, which upheld the hearing panel's decision. SHA then appealed the Superior Court's decision to the Court of Appeals, which reversed, ruling that the Code's definition of "landlord" does not include SHA when it is administering the Federal Housing Voucher Program, as it was in this case.

In *Sani Maurou v. City of Seattle*, Superior Court #17-2-06022-4SEA, the Director of the Office of Labor Standards issued an order determining that the operator of a van shuttle business, who employed two drivers, had violated the City's Minimum Wage Ordinance and Wage Theft Ordinance. The Director's order included a requirement for payments to the two drivers for unpaid wages, unpaid minimum compensation, unpaid credit card tips, certain reimbursements, and accrued interest, as well as civil penalties for a first violation of the ordinances and for willful noncompliance with them. The shuttle operator appealed to the Hearing Examiner. Following an open record hearing, the Examiner affirmed the Director's order with the exception of the amount calculated as minimum compensation for one of the drivers. The shuttle operator appealed the Examiner's decision to Superior Court, which dismissed the appeal.

Parriott v. City of Seattle, Superior Court #17-2-03579-3SEA, involved an appeal of a Code interpretation, issued by the Director of the Department of Construction and Inspections, that a substandard lot in West Seattle qualified for a "historic lot" exception to the minimum required lot size. The Director's interpretation reviewed the property's conveyance history, the evolution of the City's regulatory scheme for property division and treatment of historic lots, and a Comprehensive Plan policy that encourages allowing exceptions to minimum lot size to recognize building sites created under previous regulations and provide housing opportunities through additional building

sites that are compatible with surrounding lots. The Examiner concluded that the interpretation was consistent with the Department's longstanding interpretation of the historic lot exception and that the appellants had not shown that it was clearly in error. The Examiner therefore affirmed the interpretation. The appellant appealed the Examiner's decision to Superior Court, which affirmed it. (MUP-16-019)

In *EPIC et al. v. City of Seattle*, Superior Court #17-2-09822-1SEA, a coalition of groups, individuals, and religious organizations opposed King County's plan to replace its existing juvenile justice center with a similar facility. The coalition appealed a decision by the Department of Construction and Inspections approving a master use permit for the project, including requested modifications to certain development standards and conditions imposed on the project pursuant to SEPA. The County, project applicant, and Department filed motions to dismiss the appeal on various grounds, including lack of Hearing Examiner jurisdiction over the issues raised. The Examiner analyzed the Land Use Code's decision framework and concluded that the Code did not allow either the Department's decision modifying some development standards for the proposal, or its decision imposing additional conditions on the project pursuant to SEPA, to be appealed to the Examiner. The Examiner therefore dismissed the appeal. EPIC appealed the decision to Superior Court, which dismissed it as untimely. EPIC then appealed to the Court of Appeals, which has not yet issued a decision on the appeal. (MUP-17-001)

Jack Nikfard v. City of Seattle, Superior Court #17-2-18688-1SEA, concerned an appeal of the Department of Construction and Inspection's design review approval for a mixed use tower in downtown. The Applicant filed a motion to dismiss the appeal, arguing that the Hearing Examiner lacked jurisdiction to consider it. The Examiner agreed that the Land Use Code provides no authority for the Examiner to decide the appellant's design review procedural issues, and that the appellant's remaining issue was one which, under the Code, must first be raised with the Department Director as a request for a Code interpretation before it can be appealed to the Hearing Examiner. The Examiner therefore dismissed the appeal. That decision was appealed to Superior Court, which dismissed it as untimely.

Phinney Flats et al. v. City of Seattle et al, Superior Court #17-2-21302-1 SEA, involved an appeal by an applicant of a Hearing Examiner decision in the appeal of MUP-17-009 and S-17-002. The Hearing Examiner decision affirmed the Department's SEPA determination, and reversed the Director's Interpretation in part and remanded that part back to the Director for further review (for additional summary see MUP-17-009 and S-17-002 under Case Highlights below). The applicant appealed the reversal of the interpretation. That appeal was later voluntarily withdrawn by the applicant.

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 2017. (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.)

- The Seattle Asian Art Museum and Volunteer Park, where it is located, are both designated City landmarks and draw visitors from throughout the City and beyond. When the Museum proposed a nearly 14,000 square foot addition, a coalition of interested parties challenged the Department of Construction and Inspections' SEPA mitigated determination of non-significance ("MDNS") for the project. The MDNS concluded that the project would have potential significant adverse impacts to designated historic features, but that those would be addressed by the Landmarks Board in acting on

the Museum's then-pending application for a Certificate of Approval to alter the Museum. The Department, Museum, and Appellant each filed a motion for summary judgment, meaning that they all agreed that the appeal presented no issues of material fact and that each believed it was entitled to judgment as a matter of law. The Examiner noted that the City's SEPA Code provides that where regulations have been adopted to address an environmental impact, it is presumed that they are adequate to achieve sufficient mitigation. The Code also states that for designated historic structures or sites, compliance with the Landmarks Preservation Ordinance constitutes compliance with the City's SEPA policy on historic preservation. Therefore, the Examiner granted judgment in favor of the Department and Museum. (MUP-17-015)

- The Department of Construction and Inspections denied an application for a variance to reduce the required front yard of a triangle-shaped lot in a Single-family 7200 zone, and the property owners appealed. The lot, which was not created by the appellants, meets the lot size requirement. The front lot line is the long side of the equilateral triangle and abuts the public sidewalk along a noisy arterial. The lot coverage for the proposed residence would be below the 35 percent allowed by Code, and the height would be well below the allowed maximum. However, the required front yard setback would consume 41 percent of the site, compared to the 16.6 percent normally consumed by the front yard for a typical rectangular lot in the same neighborhood. The requirement would leave the appellants with a very small triangle for a rear yard, and a noise study showed that the front yard could not be used for any gatherings involving conversation. The appellants could have increased the rear yard area by building a home smaller than the proposed 2,241 square feet, but testimony from an architect showed that the market minimum standard for the area is 2,200 square feet, and that the average size of residences on the block is over 4,000 square feet. The Department determined that the variance would not be materially detrimental to the public welfare or injurious to property in the zone and vicinity, but concluded that it did not meet the other criteria for a variance. Under the Code, the Examiner reviews variance decisions without deference to the Department. The Examiner reversed the Department's decision, concluding that the front yard requirement would deprive the appellants of rights and privileges enjoyed by other properties in the same zone or vicinity because the lot's shape is an unusual condition within the neighborhood; the variance would not go beyond the minimum necessary to afford relief and would be consistent with the setback pattern in the neighborhood; denying the variance would preclude most outdoor use of the property and constitute an undue hardship; and the variance would be consistent with the spirit and purposes of the Code's regulations for the area. (MUP-17-016)
- The Department of Construction and Inspections issued a design review decision on January 23, 2017 to Jay Jannette for Johnson Carr, LLC. The Appellants, Liveable Phinney, appealed the Decision and associated SEPA determination, and in conjunction with that appeal sought and then appealed a Director's Interpretation concerning certain elements of the project. The appellants raised issues concerning a variety of topics including: compliance with the design guidelines; height, bulk, and scale impacts; inadequacy of shadow impacts analysis; parking impacts; soil contamination impacts; and whether the proposal was eligible for the frequent transit service exemption from parking code requirements. (MUP-17-009 and S-17-002). The Hearing Examiner affirmed the Director's SEPA and design review decisions. The Hearing Examiner reversed and remanded the Director's Interpretation on the basis that: setbacks from a residential zone had not been addressed; a portion of the project's rooftop proposal did not meet the definition of "clerestory" and either needed to be removed or redesigned; additional shadow impact analysis was needed; and that while the bus schedule showed the project could be supported by frequent transit service, actual data showed that bus service in the

vicinity did not meet the definition of frequent transit service almost 40% of the time, and the Department did not consider actual data. The applicant appealed the reversal of the interpretation, but later voluntarily withdrew its appeal.

2017 Caseload

Table 3, on page 14, presents a complete summary of case activity for 2017. “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, 892 exceeded the number filed in 2015 by 71%, with the biggest increases seen in discrimination complaints and code enforcement citations.

Table 1 – Cases Filed / Delegated

	2017	2016	2015	2014	2013	2012	Previous 5-Yr. Average
B & O Tax Appeals	1	4	6	4	7	1	4
Council Land Use Actions	7	9	3	0	9	7	6
Dangerous Animals	1	3	0	2	3	1	2
Discrimination	19	22	7	1	0	0	6
Energy Benchmarking Appeals	3	0	0	16	4	0	4
Floating Homes	3	1	0	0	0	0	0.2
Health Codes	2	0	1	0	0	2	0.6
Land Use Code Interpretations	5	7	3	3	5	2	4
Landmarks-Special Review Districts	2	4	7	1	0	2	3
Licensing Appeals	10	3	3	2	0	0	2
Master Use Permits	41	33	33	23	23	28	28
Public Works Relocation	1	0	0	0	0	1	0.2
Sepa-Only Appeals (No MUP)	17	7	10	3	9	3	6
Tenant Relocation Assistance Eligibility Appeals	11	17	14	6	16	8	12
Third Party Utility Billing	15	3	3	5	7	3	4
Total Without Citations	138	113	90	66	83	58	82
Land Use Citation Enforcement Actions	340	403	324	318	294	278	323
SDOT Citation Enforcement Actions	367	277	145	94	65	76	131
Marijuana Citation Enforcement Actions	47	34	18	0	0	0	10
Total Citations	754	714	487	412	359	354	465
Grand Total	892	827	577	478	442	412	547

Non-Citation Cases Filed

There were 138 Non-Citation cases filed with the Office of Hearing Examiner in 2017, a slight increase from the number filed in 2016, and approximately 61% higher than the previous five-year average of 85. As it does each year, the mix of cases changed somewhat.

Appeals from **tax assessments** have remained quite low for the last five years, and there was just 1 tax appeal filed in 2017.

Cases involving **recommendations to the City Council** decreased slightly, from 9 in 2016 to 7 in 2017.

Only a few **dangerous animal** appeals are filed each year; in 2016, we received 3, and in 2017 we received just 1.

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 2017. Historically, the number of discrimination cases filed has been low, but we received 7 in 2015, 22 in 2016, and 19 in 2017.

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. We received 16 energy benchmarking appeals in 2014, but the number has declined as building owners adjusted to the new regulations. We received no energy benchmarking appeals in 2015 or 2016, and just 3 in 2017.

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 and three in 2017.

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.

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 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 5 appeals from DCI **Land Use Code interpretations** in 2017, down slightly from the number filed in 2016.

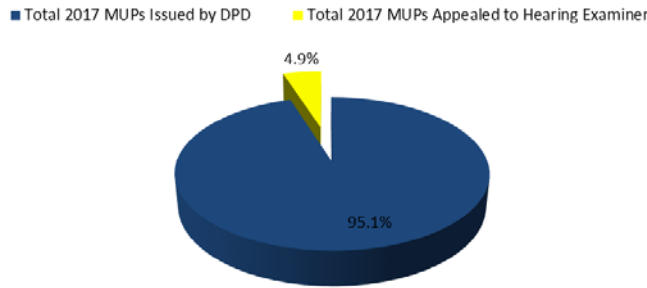
Landmark and special district appeals filed decreased from 7 in 2015, to 4 in 2016, to just 2 in 2017.

As noted in prior reports, **Licensing** appeals have remained low since the closure of *Rick’s* adult entertainment club. However, in 2017, we received 10 licensing appeals. All 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 and remained at 33 in 2016. In 2017, the number filed was back up to 41.

The Department of Construction and Inspections issued 797 MUPs in 2017, approximately 100 fewer than the number issued in 2016. In most years, approximately 3% to 4% of MUPs are appealed to the Hearing Examiner, but the appeal rate in 2017 was about 5%.

2017 Master User Permit Case Activity

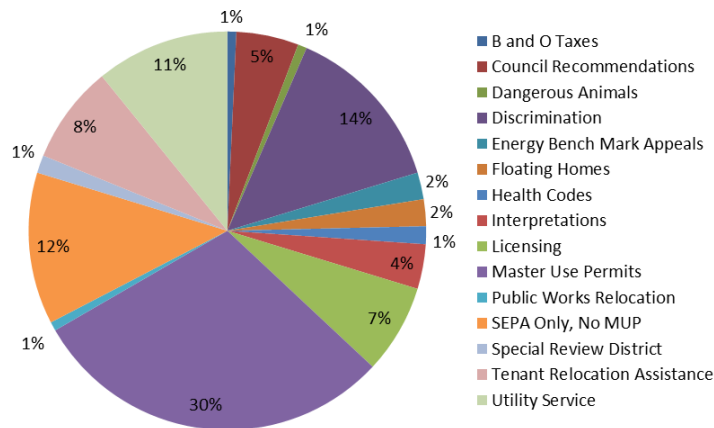


“SEPA-only” appeals are appeals of environmental determinations made for two types of proposals: 1) proposals, such as legislation, that do not require a MUP or Council land use decision; and 2) proposals that require a MUP or a Council land use decision, but a department other than DCI makes the environmental determination on the proposal. SEPA-only appeals have fluctuated from year to year. In 2017, we received 17 SEPA appeals, nearly three times the previous 5-year average.

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, 14 were filed in 2015, 17 were filed in 2016, and 11 were filed in 2017.

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 3 third party utility billing complaints. However, in 2017, we received 15 complaints, nearly four times the previous 5-year average.

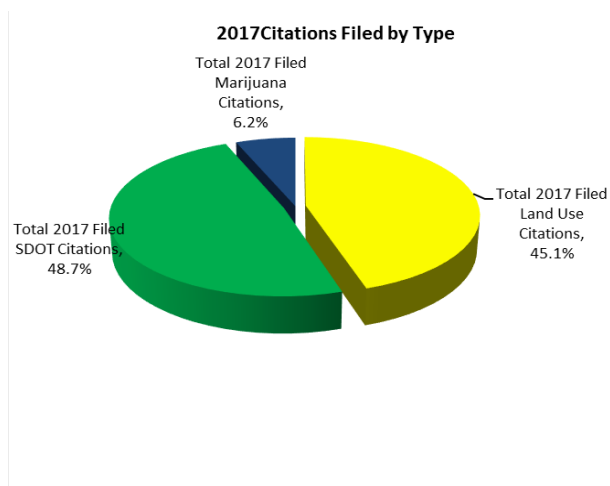
2017 Non-Citation Cases Filed by Type



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 Hansen 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 citations filed in 2017 (754) was up by just 40 over the number filed in 2016 but remained 62% higher than the five-year average of 465. **Marijuana citation** appeals increased some, but most of the increase is attributable to the **SDOT** citations, which went from 277 citations filed in 2016 to 367 filed in 2017. Between 2015 and 2017, the number of SDOT citations filed increased by nearly 60%. **Land Use Code and Noise Code citations**, which are combined for tracking purposes decreased slightly in 2017.



Prehearing, Hearing, and Decision Activity

Prehearing Conferences. The Office of Hearing Examiner held 51 prehearing conferences in cases scheduled for hearing in 2017. 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 2017, the Office of Hearing Examiner issued 224 decisions in Seattle cases, 66 more than the number issued in 2016 and nearly double the number issued in 2014. Decisions in non-citation cases were up from the 75 decisions issued in 2016, to 128 in 2017, an increase of 70%. Total citation decisions increased by just 13, but decisions in marijuana citation cases increased from 11 in 2016 to 34 in 2017. We also issued 43 decisions for contract cities.

Table 2 - Decisions Issued After Hearing

	2017	2016	2015	2014	2013	2012	Previous 5-Yr Average
B & O Tax Appeals	0	1	3	3	3	2	2
Council Land Use Actions	6	7	1	0	8	6	4
Dangerous Animals	1	1	0	1	2	1	1
Discrimination	14	8	3	3	3	3	4
Energy Benchmarking Appeals	3	0	0	16	4	0	4
Floating Homes	1	0	0	0	0	0	0
Health Codes	2	0	0	0	0	0	0
Land Use Code Interpretations	6	6	6	1	2	1	5
Landmarks-Special Review Districts	1	2	6	1	0	1	2
Licensing Appeals	9	1	1	1	0	0	0.6
Master Use Permits	50	24	35	16	19	15	21
Public Works	1	0	0	0	0	1	0.2
Sepa-Only Appeals (Non Mup)	9	10	11	3	5	1	6
Tenant Relocation Assistance Eligibility Appeals	11	15	11	7	11	11	11
Third Party Utility Billings	14	0	3	4	3	2	2
Total Without Citations	128	75	80	56	60	49	64
Land Use Citation Enforcement Actions	42	48	38	35	50	38	42
SDOT Citation Enforcement Actions	34	24	14	23	16	13	18
Marijuana Citation Enforcement Actions	20	11	2	0	0	0	3
Total Citations	96	83	54	58	66	51	62
Grand Total	224	158	134	114	126	100	126

Non-Citation Decisions Issued

The number of **tax assessment** decisions issued has remained low for several years, and we issued no decisions in tax appeals in 2017. Other categories with few decisions issued last year were **dangerous animals** (1), **landmarks/special review districts** (1), and **energy benchmarking** (3).

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 2017 (6) was approximately the same as the number issued in 2016 (7). All were recommendations on rezone applications.

There were 14 decisions issued in **discrimination cases** in 2017, continuing the increase that began in 2016.

As in 2015 and 2016, we issued 6 decisions on appeals of **Land Use Code interpretations** in 2017.

The number of **licensing** decisions increased notably for the first time in four years, with 9 decisions being issued. Two were decisions in marijuana license appeals, and the rest addressed taxi and for-hire license appeals.

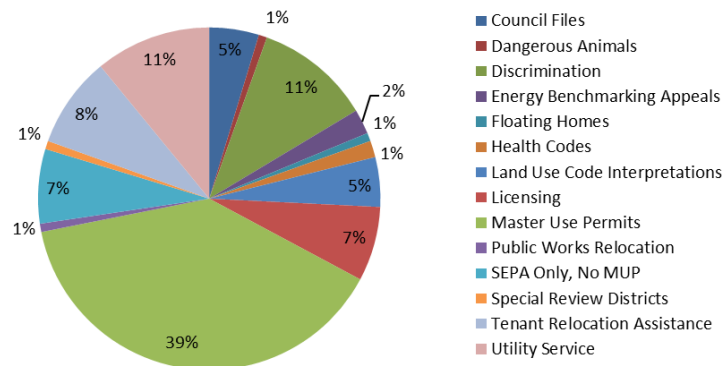
MUP appeals generated 50 decisions in 2017, nearly twice the number issued in 2016, and higher than the number issued in any year since the office began preparing annual reports in 1993. The next highest number of MUP decisions issued was 40 in 1999.

Decisions issued in **SEPA-only** appeals (9) were approximately the same as the number issued in 2016 and 2015.

We issued 11 decisions in appeals of the denial of **tenant relocation assistance**, down slightly from the number issued in 2016 (15), but consistent with the number issued in four of the last five years.

Third party utility billing complaints have remained consistently low for five of the last six years, but in 2017, we issued 14 decisions in these cases in addition to having several others settle soon after the conclusion of the prehearing conference.

2017 Non-Citation Decisions Issued by Type



Citation Decisions Issued

After several years of trending down or staying flat, total citation decisions issued increased by 65%, to 83 decisions, in 2016, and again increased to 96 decisions in 2017. In 2017, the entire increase was attributable to decisions in **Marijuana citation** appeals. Both **Land Use/Noise Code citation** appeals and **SDOT citation** appeals were down slightly.

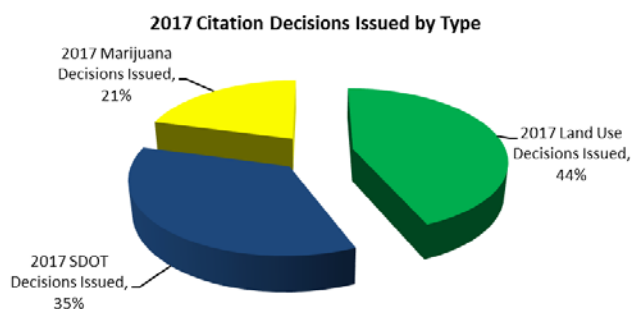


Table 3 - CASE ACTIVITY SUMMARY

	2017 Cases Filed				2017 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	0	1	1	0	0	0	0	1
Council Land Use Actions	1	6	7	6	6	0	0	1
Dangerous Animals	0	1	1	1	1	0	0	0
Discrimination	9	10	19	14	14	2	0	6
Energy Bench Marking	0	3	3	3	3	0	0	0
Floating Homes	1	2	3	2	1	0	0	2
Health Codes	0	2	2	1	2	0	0	0
Land Use Code	2	3	5	5	6	1	0	0
Licensing Appeals	2	8	10	8	9	1		1
Master Use Permits*	4	37	41	35	50	4	0	2
Public Works Relocation	0	1	1	1	1	0	0	0
Sepa-Only Appeals (No MUP)*	3	14	17	7	9	0	0	10
Special Review Districts*	0	2	2	1	1	0	0	1
Tenant Relocation	1	10	11	11	11	0	0	0
Utility Service Appeals*	2	13	15	7	14	7	0	1
Total Without Citations	25	113	138	102	128	15	0	25
Land Use Citation Enforcement Actions	43	297	340	32	42	56	220	22
SDOT Citation Enforcement Actions	17	350	367	37	34	133	179	21
Marijuana Citation Enforcement Actions	18	29	47	18	20	0	25	2
Total Citations	78	676	754	87	96	189	424	45
Total	103	789	892	189	224	205	397	70

* 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 38% of the time, remanded or modified the Department's decision 22% of the time, reversed the department's decision 9% of the time, and dismissed the appeal on procedural grounds 31% of the time.

Table 4 - DISPOSITION OF APPEALS

	Affirmed	Affirmed, as Modified	Affirmed, Penalty Mitigated	Denied	Dismissed	Reversed	Remanded	Sustained	Total
Dangerous Animals	1								1
Energy Benchmarking	3								3
Health Codes					2				2
LUC Interpretations	2				2		2		6
Licensing	5				4				9
Master Use Permit	6				27	1			34
Public Works	1								1
SEPA only, No MUP	0				7				7
Special Review District	0				1				1
Tenant Relocation	4				3	1	3		11
Total Without Citations	22				46	2	5		75
Land Use Citation Enforcement Actions	19		20		3				42
Marijuana Citation Enforcement Actions	14		4		2				20
SDOT Citation Enforcement Actions	14		17		3				34
Total Citations	47		41		8				96
Total	69		41		54	2	5		171

*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
Rezoning 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)

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 21.43.090) [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)
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]
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]
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.