

City of Seattle



OFFICE OF HEARING EXAMINER
2008
ANNUAL REPORT

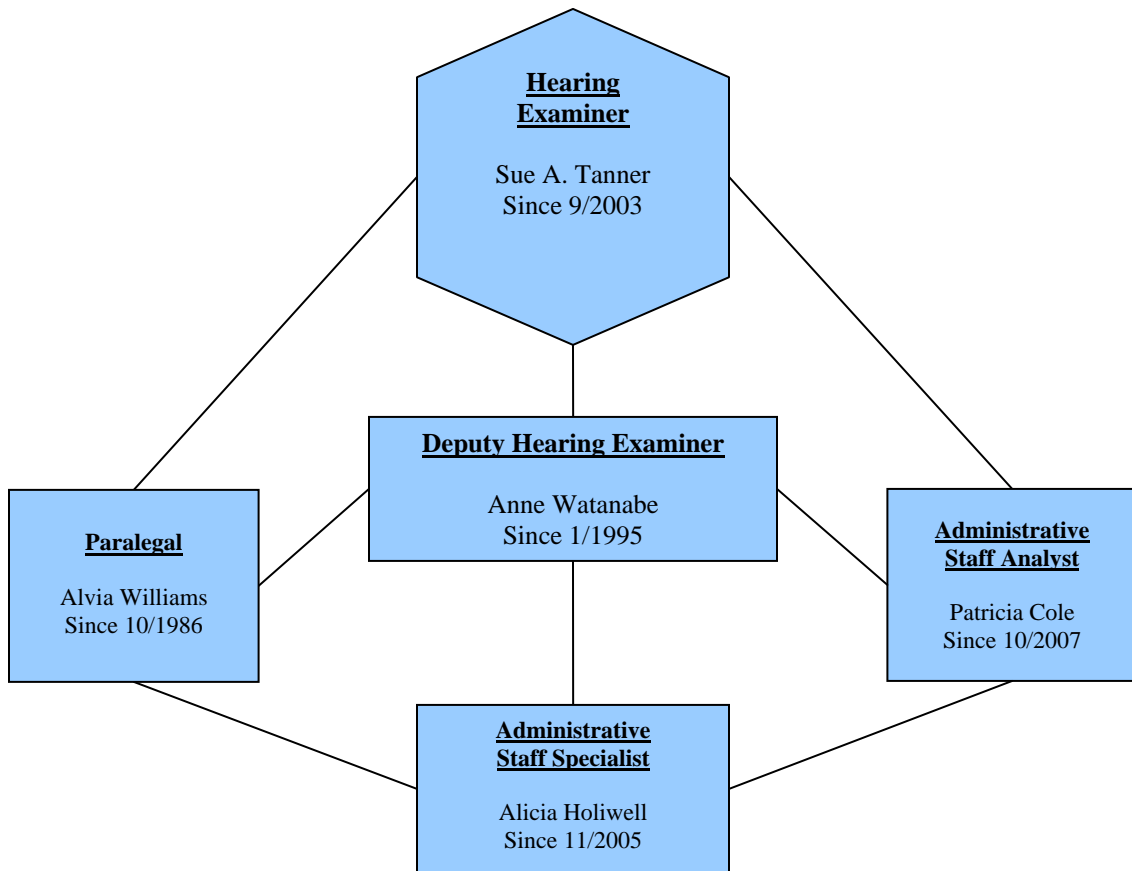
Office of Hearing Examiner
Seattle Municipal Tower, Suite 4000
700 5th Avenue
Seattle, Washington 98104
Phone: (206) 684-0521
Fax: (206) 684-0536

February 2009

2008
City of Seattle
CITY COUNCIL

TIM BURGESS
SALLY CLARK
RICHARD CONLIN, PRESIDENT
JAN DRAGO
JEAN GODDEN
BRUCE HARRELL
NICK LICATA
RICHARD MCIVER
TOM RASMUSSEN

2008 Organizational Chart



**CITY OF SEATTLE
OFFICE OF HEARING EXAMINER**

2008 ANNUAL REPORT

Mission and Authority

The mission of the Office of Hearing Examiner is to conduct fair and 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, and the Hearing Examiner is appointed by the City Council to serve an initial term of one year and subsequent terms of four years. The Hearing Examiner is responsible for all functions of the Office and is authorized to appoint Deputy Examiners and other staff. The inside front cover of this report shows the organization chart and Office staff for 2008.

The Office of Hearing Examiner is created as a separate and independent City office under Chapter 3.02 of the Seattle Municipal Code. Before the Office was created in 1973, 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 many City agencies and provide recommendations to the City Council on some land use applications.

Jurisdiction

The Office of Hearing Examiner currently has jurisdiction over more than 75 different types of matters.¹ We track 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 the Department of Planning and Development (Master Use Permits, SEPA determinations, Code Interpretations, Land Use Enforcement Citations and decisions on tenant relocation assistance); the Department of Finance (tax assessments); the Landmarks Preservation Board and Special Purpose District Commissions (decisions on certificates of approval for alterations); the Department of Executive Administration (licensing decisions); and the Department of Transportation (use of public property).

When 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 subdivision applications processed by the Department of Planning and Development; complaints of discrimination in employment, housing, public accommodation, or public contracts filed by the Office for Civil Rights and the City Attorney’s Office; complaints for third party utility billing violations; petitions for review of floating home moorage fee increases; and others.

¹ See complete list at pp. 17-18.

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

Accessibility

An administrative hearing before the Hearing Examiner is a quasi-judicial process, which 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 several tools to make the hearing process understandable and “user friendly,” while at the same time protecting the rights of parties and fulfilling legal requirements. Examples include: a “Citizen Guide” 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; 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 pamphlet on citation hearings is included with each citation issued. We also solicit feedback from those who participate in hearings. A “Customer Satisfaction Survey” is available in our Office and hearing rooms, as well as on-line.

The Hearing Examiner’s website, at www.seattle.gov/examiner includes the Hearing Examiner Rules, the “Citizen Guide”, appeal forms, a schedule of upcoming hearings, the “Customer Satisfaction Survey,” and the most recent Annual Report. Decisions dating back through 1990 are also available in a searchable database through a link on the website.

Contracting

The Hearing Examiner is authorized by Seattle Municipal Code to provide hearing examiner services to other jurisdictions via contract. We provide contract examiner services to the Cities of Kirkland, Mercer Island, Shoreline and Tukwila. Our work for these contract cities was down slightly in 2008. We conducted 25 hearings and prepared 23 decisions for them, compared with 31 hearings conducted and 30 decisions prepared in 2007. Working with other cities continues to add variety to our case load and keeps us flexible.

Judicial Appeals of Hearing Examiner Decisions

At the request of the 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 2008:

Voran and Hettick v. City of Seattle, King Cy. Superior Ct. #05-2-18274-0SEA, involved a proposal for expansion of the Bertschi School. The Hearing Examiner remanded the case to DPD for preparation of an acoustical study, and later affirmed the Director's environmental determination and conditional use approval with an additional condition on noise. The superior court dismissed the neighbors' appeal, and the dismissal was upheld by the court of appeals. The appellants sought review in the Washington Supreme Court which was denied in 2008.

In *Glasser v. City of Seattle*, King Cy. Superior Ct. #05-27936-7SEA, the superior court affirmed the Hearing Examiner's decision upholding the Seattle Public Utilities' environmental determination for the Cedar River Hatchery. The court of appeals upheld the superior court's decision. The appellants sought review in the Washington Supreme Court which was denied in 2008.

In *Vonage v. City of Seattle*, King Cy. Superior Ct.#07-2-15735-6SEA, the superior court affirmed the Hearing Examiner's decision that a company providing digital voice communications through Voice Over Internet Protocol was in the "telephone business" as defined in the Code. The court reversed the Examiner's determination that under the Code, the taxpayer had the burden of proving the correct amount of the tax and thus, had to prove what percentage of the company's calls were intrastate and subject to the City's B&O tax. The court remanded the case to the Examiner for further proceedings on that issue. However, Vonage has appealed the superior court's decision to the Court of Appeals with a request for direct review by the Washington Supreme Court. The City has cross-appealed the burden of proof decision.

The appellants in *Cedar Park Hillside Association v. City of Seattle*, King Cy. Superior Ct.#07-2-38978-4SEA, appealed a Hearing Examiner decision upholding DPD's issuance of a Determination of Non-significance and administrative conditional use approval for a four-unit-lot short subdivision in an environmentally critical area. The appeal was later dismissed by the appellants.

In *Unite Here Local 8 v. City of Seattle*, King Cy. Superior Ct.#07-2-15733-6SEA, the Hearing Examiner had dismissed an appeal of a SEPA Determination of Non-significance issued for an application to change the use of an office and retail building (the Alaska Building) to a hotel and residential building and construct an addition. The superior court dismissed an appeal of the Examiner's decision, concluding that the appellants lacked standing under SEPA to bring the appeal.

In *Saxman v. City of Seattle*, King Cy. Superior Ct.#08-2-05294-0SEA, the Hearing Examiner had affirmed DPD's design review approval and SEPA Determination of Non-Significance for a proposal to combine three parcels and construct a six-story mixed-use structure and underground parking garage in the Pike-Pine neighborhood. The superior court dismissed an appeal of the Examiner's decision.

In *Conner v. City of Seattle*, King Cy. Superior Ct.#08-2-16690-5SEA, the superior court affirmed the Hearing Examiner, who upheld a decision by the Landmarks Preservation Board that denied a certificate of approval for construction of three houses on the grounds of Satterlee House, a designated landmark site in West Seattle. The case has been appealed to the Court of Appeals.

Naficy v. City of Seattle, King Cy. Superior Ct.#08-2-20527-4SEA, involved an appeal of the Hearing Examiner's decision affirming a Determination of Non-significance issued by DPD for an 11-story mixed-use development and parking garage in Pioneer Square. The superior court affirmed the Hearing Examiner's decision.

Hugh Sisley v. City of Seattle, King Cy. Superior Ct.##08-2-21379-0SEA, 08-2-17864-1SEA, 08-2-17865-0SEA, and 08-2-17866-8KNT, were appeals of four Hearing Examiner decisions that upheld citations and associated penalties issued to a landlord for Land Use Code violations on several rental properties in the Roosevelt neighborhood. The appellants dismissed the appeals as part of a settlement with the City.

The superior court had not entered orders by year's end in the following appeals of Hearing Examiner decisions issued in 2008: *Gratzer v. City of Seattle*, King Cy. Superior Ct.#08-2-09164-3SEA; *Friends of Cedar Park Neighborhood v. City of Seattle*, King Cy. Superior Ct.#08-2-29531-1SEA, *Maple Leaf Community Council v. City of Seattle*, King Cy. Superior Ct.#08-2-32517-2SEA, *Julian v. City of Seattle*, King Cy. Superior Ct.#08-2-27470-5SEA; *Fremont Neighborhood Council et al. v. City of Seattle*, King Cy. Superior Ct.#08-2-41324-1SEA, and *Acquavella v. City of Seattle*, King Cy. Superior Ct.#08-2-39188-4SEA. We will report on the outcome of these appeals in the next annual report.

Case Highlights

Every year includes cases that are noteworthy, either because of the controversy surrounding them or because they present important issues in the application of the Code. The brief case descriptions that follow highlight some of those cases that came before the Hearing Examiner in 2008. (The actual decisions can be found through a link at www.seattle.gov/examiner.)

- Appellants challenged a DPD decision approving a townhouse project in the Maple Leaf neighborhood on a site that included a former teaching hospital and a large stand of trees, the "Waldo Grove." The appellants cited numerous concerns, including the removal of half of the grove's trees, the possible release of toxic chemicals from building demolition, the height and bulk of the new buildings, and stormwater runoff. The appeal also contended that DPD wrongly focused its analysis on impacts to individual trees, not the grove, and lacked sufficient information, including a final plan for cleaning up any toxics at the site. The Examiner concluded that DPD had imposed adequate conditions to mitigate for the project's impacts, including impacts to the Waldo Grove, not merely the individual trees. The Examiner also concluded that the information relied upon by DPD, which included studies characterizing the site's potential contamination and a draft remediation plan, was sufficient to support the DNS. The decision is on appeal to superior court.

- Does the Code requirement that a short subdivision “serve the public use and interests” give DPD discretion to look beyond Land Use Code regulations in reviewing a short subdivision application? Those appealing the short subdivision of an oversized residential lot in the Cedar Park neighborhood said “yes”. They maintained that DPD should have considered the irregularly-shaped lots in the short subdivision and the appearance of a density that was greater than the zoned density, and should have determined that the “public use and interests” were not served. The Hearing Examiner disagreed, noting state case law that prohibits rejecting a proposal on the basis of lot shape without a local regulation on the issue, and prohibits use of a “public use and interest” criterion to exercise discretion beyond the express requirements of a platting regulation. The other issues on appeal were the adequacy of drainage, the size of the required access easement, and the number of lots that could be created, and the Examiner affirmed DPD’s decision on all of them. The decision is on appeal to superior court.
- Design review approval for a Capitol Hill townhouse project was challenged by neighbors, who opposed reduced setbacks and other departures granted for the project, and were concerned about impacts on a large mature London Plane street tree. The tree was not an “exceptional tree” under the City’s rules, but the Capitol Hill design review guidelines encouraged preservation of mature street trees and discouraged departures that would be detrimental to them. The Examiner agreed with the appellants that, given the likely close proximity of the tree’s roots to the construction areas, and the lack of information about the impacts on the tree, the decision should be remanded for further study before the design could be approved.
- Neighbors appealed the issuance of a DNS and administrative conditional use approval for additional cellular antennae on the rooftop of an apartment building located in a single family zone. The building’s height and orientation were attractive to the applicant telecommunications company, which wanted new antennae to serve ferry traffic in Puget Sound. The Code requires that such a facility be “the least intrusive facility in the least intrusive location consistent with effectively providing service”. DPD’s Director’s Rule established an order of preference for location, with single family residential zones being the least preferred location. But because antennae were already present at this location, DPD had not obtained any information about other potential locations for the new facility. Since the proposed location was not shown to be the “least intrusive” by any information in the record, the Hearing Examiner reversed the administrative conditional use decision but affirmed the SEPA decision.
- Neighbors also appealed Seattle Public Utilities’ SEPA Determination of Non-Significance (DNS) for a proposal to replace the existing Wallingford transfer and recycling station with new and expanded facilities at the same location. Although the area around the transfer station has retained its industrial zoning, the neighborhood has changed over the years, and the appellants expressed a strong desire for the station to be relocated. They alleged that the transfer station was near the end of its useful life, and that SPU was therefore required to evaluate the proposal’s impacts from the baseline of an empty lot rather than from existing site conditions. The Hearing Examiner found no basis in SEPA for the suggested evaluation method. The

Examiner also concluded that although the record showed existing adverse air and traffic impacts associated with the transfer station, the technical reports in the record demonstrated that the impacts *of the proposal* would not be adverse or significant under SEPA. The Examiner therefore affirmed the DNS. The decision has been appealed to court.

- A newsstand that has been located at the southeast corner of Third Avenue and Pike Street since 1919 was the subject of an appeal before the Hearing Examiner. The Code allows “attended” newsstands in existence since 1977 to remain in place as long as they remain “attended,” which requires the presence of an operator selling directly to customers for at least 90 minutes a day on weekdays, and provision for sales during general business hours when the operator is not present. The newsstand fell into disrepair in recent years and became a target for vandalism, arson and graffiti. The present operator was making an effort to restore the stand and attended it from time to time, but the record showed that it had been abandoned for a two-year period. Consequently, the Examiner determined that under the Code, the newsstand had lost its “attended” status, and the operator would have to obtain a permit for it under current Code standards.
- The Wallingford Community Council (WCC) challenged a DPD decision for a new building in Fremont. WCC argued that the decision failed to require adequate mitigation for the building’s impacts to public views of Lake Union and the downtown skyline. The project included a public rooftop viewing platform and views through or from within public areas of the building, but WCC argued that such view opportunities were inferior to those provided by building setbacks. Using the platform required the viewer to enter the building, rather than obtaining a street-level view while walking or driving. Because the project’s actual impact on protected views was minimal, the Hearing Examiner affirmed the Director’s decision, concluding that the mitigation, while limited, was adequate to address the project’s actual impacts on views.
- A coalition of neighborhood groups and one individual neighbor appealed design review approval and the adequacy of the environmental impact statement issued for a requested rezone of the Goodwill site near the “Little Saigon” shopping district and the Jackson Place residential neighborhood. The rezone included a proposed contract to construct 500+ residential units above a 700,000 square-foot retail space with underground parking, which would bring significant change to the area. The coalition settled with the developer, but the individual neighbor pursued his appeal, which was consolidated for hearing with the Hearing Examiner’s public hearing on the rezone request. The main issues on appeal were the design review process and transportation impacts. The Examiner found no clear error in DPD’s design review decision or its determination that the EIS was adequate and upheld both. The Examiner also recommended that Council approve the contract rezone.

2008 Caseload

Table 3, on page 14, presents a complete summary of case activity for 2008. “Cases Filed” and “Decisions Issued” are discussed in more detail below.

Table 1 – 2008 Cases Filed

	2008	2007	2006	2005	2004	2003	Previous 5-Yr. Average (03-07)
B&O TAX ASSESSMENTS	6	10	14	12	14	11	12
COUNCIL RECOMMENDATIONS	9	1	10	7	2	4	5
LAND USE CODE INTERPRETATIONS	8	6	0	2	2	4	3
LANDMARKS/SPECIAL REVIEW DISTRICT (Pioneer Sq., Pike Market, ID, etc.)	5	5	5	11	7	5	7
LICENSING (taxis, adult entertainment, etc.)	17	19	12	10	21	9	14
MASTER USE PERMITS (MUP)	39	39	44	39	29	49	40
OTHER JURISDICTIONS (Public Nuisance, Third Party Billing, etc.)	19	26	30	23	34	12	25
SEPA-only Appeals (non MUP)	7	2	3	10	5	12	6
TENANT RELOCATIONS	7	18	23	15	10	3	14
TOTAL WITHOUT CITATIONS	117	126	141	129	124	109	126
LAND USE CITATION ENFORCEMENT ACTIONS	361	316	214	209	170	237	235
SDOT CITATION ENFORCEMENT ACTIONS	161	65	125	47	98	35	74
GRAND TOTAL	639	507	480	385	392	381	435

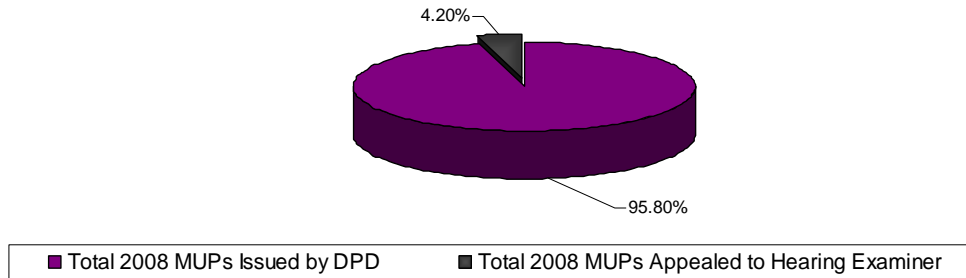
Non-Citation Cases Filed

There were 117 Non-Citation cases filed with the Office of Hearing Examiner in 2008, slightly fewer than the 126 filed in 2007, which is also the five-year average.

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 Planning and Development on the application. MUP appeals remain 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 review and decision-writing.

The number of MUP appeals (39) was exactly the same as the number filed in 2007 and just under the five-year average (40). Of the 890 MUPs issued by the Department of Planning and Development, just over 4% were appealed. This is slightly higher than the appeal rates during the last three years.

2008 Master Use 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 a Council land use decision; and 2) proposals that require a MUP or a Council land use decision, but a department other than DPD makes the environmental determination on the proposal. The number of SEPA-only appeals (9) was higher than in any of the last five years except 2005, when there were 10 appeals.

There was an unusually high number of **Land Use Code interpretation** appeals (8) filed in 2008. The previous five-year average is 3.

A year can make a significant difference, as it did in **recommendations to Council**. Nine cases requiring recommendations were filed in 2008, compared with just 1 in 2007, and 10 in 2006. The previous five-year average is 5.

There were 17 **appeals of license suspensions** in 2008, higher than the previous five-year average (14), and approximately equal to the 19 filed in 2007. All appeals were related to adult entertainment license suspensions.

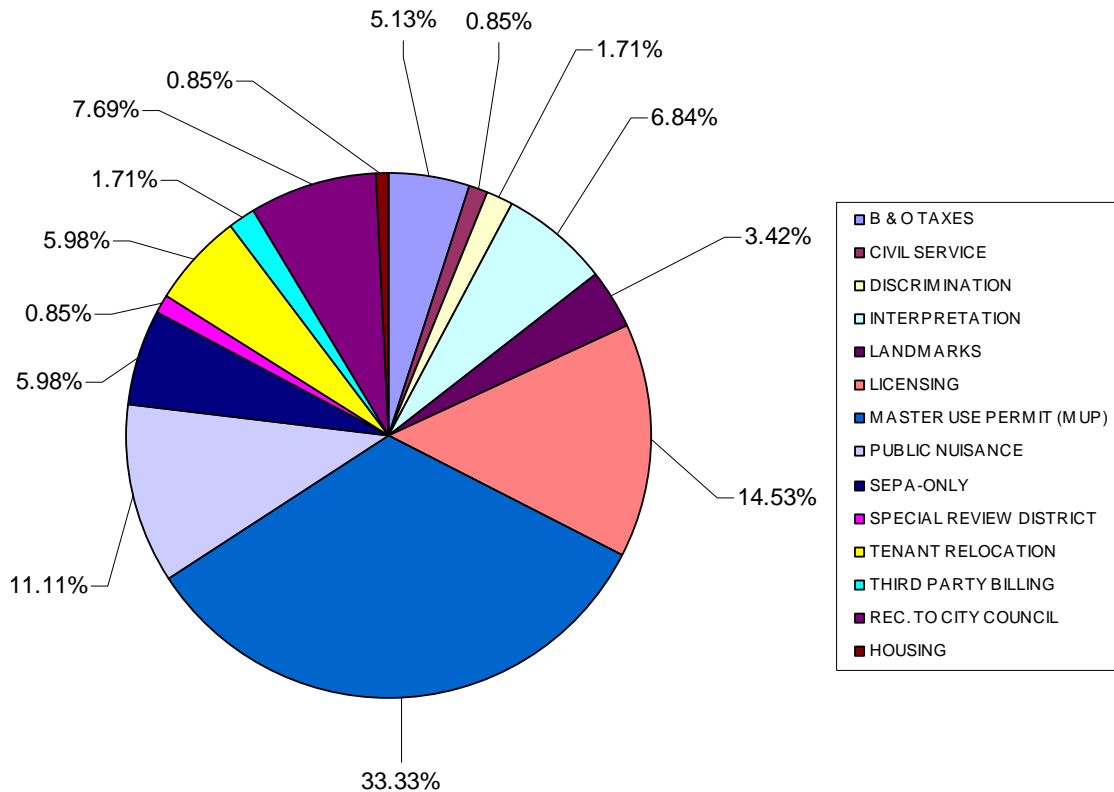
Appeals from **tax assessments** (6) were down again in 2008. Six appeals were filed, which is just half the previous five-year average.

There were 5 **landmark and special district appeals** in 2008 as there were for each of the two prior years. The previous five-year average (7) is slightly higher.

Appeals from denials of tenant relocation assistance (7) decreased significantly from prior years. There were 18 appeals in 2007, down from the high of 23 in 2006.

The number of **civil service appeals** assigned to the Hearing Examiner by the Civil Service Commission in 2008 (3) was lower than the 5 assigned in 2007.

2008 Non-Citation Cases Filed by Type



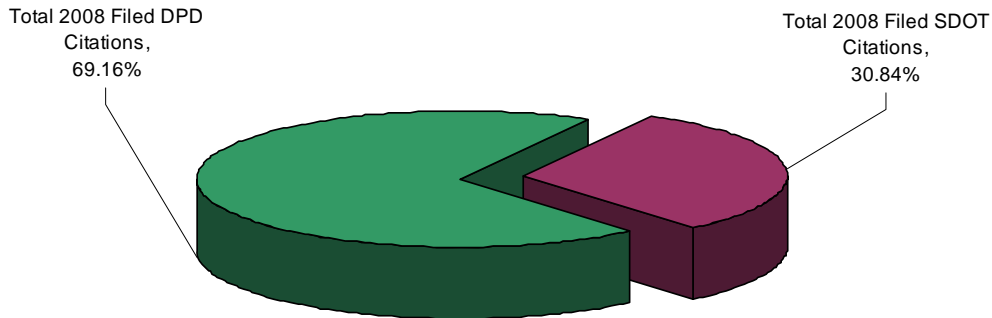
Citation Enforcement Cases Filed

Because citation enforcement cases follow a unique procedure, we track them separately from other categories of cases. When citations are issued, a copy is sent to the Office of Hearing Examiner. When someone files an appeal of a citation, the citation is removed from the others and set up for an appeal hearing and decision. For citations that are neither paid nor appealed, the Office of Hearing Examiner prepares and sends out orders of “default” which note the failure of the party to respond, find that the violation has been committed and impose the cited penalty, as required by the Code.

Land Use Code citation cases filed have averaged 235 for the previous five-year period. However, there were 316 filed in 2007, and 361 filed in 2008, the highest number ever filed in one year since the Hearing Examiner acquired jurisdiction over these cases in 1999.

SDOT citation cases (use of public property without a permit, vending in a no-vending area, etc.) are similar to Land Use Code citations, and they are reflected in the “Citation” category of cases in the tables. In 2003, the first full year of SDOT enforcement activity, 35 appeals were filed. That number rose to 125 by 2006, dropped to 65 in 2007, and then rose to 161 in 2008, again the highest number filed since the Hearing Examiner acquired jurisdiction over SDOT citations in 2002.

2008 Citations Filed by Type



Prehearing, Hearing and Decision Activity

Prehearing Conferences. The Office of Hearing Examiner held 33 prehearing conferences in cases scheduled for hearing in 2008. Under the Hearing Examiner Rules, prehearing conferences can be held at the request of either a party or the Hearing Examiner. The conferences are designed to organize and prepare a case for hearing, including clarifying the issues to be addressed, determining the parties' interest in mediation, facilitating disclosure of each party's intended witnesses and exhibits, and establishing a case schedule for prehearing motions and other matters. Following the conference, the Examiner normally issues a prehearing order memorializing any agreements reached or rulings made at the conference. Prehearing conferences are usually held in MUP, SEPA, civil service and tax appeals, and are scheduled in other types of cases as needed.

Prehearing Decisions. Prehearing motions are frequently filed in land use, landmark, SEPA, tax and civil service cases. Most are on substantive or procedural legal issues that the parties can address fully in written memoranda. While they often require legal research and writing, prehearing motions do not always require a separate hearing before the Examiner issues a written decision on them. These decisions 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 are appealable as part of an appeal of the final decision in a case. Because work on dispositive prehearing motions often involves considerable Examiner time, the Office of Hearing Examiner includes them 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 less than an hour to hear, while another case may require several hearings and/or several days for one hearing. 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.

Total decisions: In 2008, the Office of Hearing Examiner issued a total of 188 decisions in City of Seattle cases. That number is higher than the previous five-year average of 159 and higher than in any of the last five years. These include decisions issued after a full, evidentiary hearing, and those issued following submittal of legal memoranda and sometimes a hearing for oral argument on a party's motion for full or partial dismissal of a case. We also issued 23 decisions in other cities' cases.

Table 2 – 2008 Decisions Issued

	2008	2007	2006	2005	2004	2003	Previous 5-Yr Average (03-07)
B&O TAX ASSESSMENTS	3	8	10	6	6	4	7
COUNCIL RECOMMENDATIONS	7	2	10	7	2	6	5
LAND USE CODE INTERPRETATIONS	4	2	0	2	2	3	2
LANDMARKS/SPECIAL REVIEW DISTRICT (Pioneer Sq., Pike Mrkt, ID, etc.)	6	2	4	7	7	2	4
LICENSING (taxis, adult entertainment, etc.)	2	23	0	12	18	2	11
MASTER USE PERMITS (MUP)	37	27	32	36	25	30	30
OTHER JURISDICTIONS (Public Nuisance, Third Party Billing, etc.)	2	7	7	11	5	3	7
SEPA-only Appeals (non MUP)	5	1	5	5	1	13	5
TENANT RELOCATIONS	6	24	16	12	9	2	13
TOTAL WITHOUT CITATIONS	72	96	84	98	75	65	84
LAND USE CITATION ENFORCEMENT ACTIONS	94	66	34	43	60	83	57
SDOT CITATION ENFORCEMENT ACTIONS	22	18	19	16	36	4	19
GRAND TOTAL	188	180	137	157	171	152	159

Non-Citation Decisions Issued

The greatest number of decisions issued in a non-citation jurisdiction was 37 for **MUP appeals**. This number was higher than the number of MUP decisions issued in any of the previous five years. As in 2007, just 69% of all MUP appeals filed went to hearing in 2008, whereas in 2005, 92% of MUP appeals filed went to hearing.

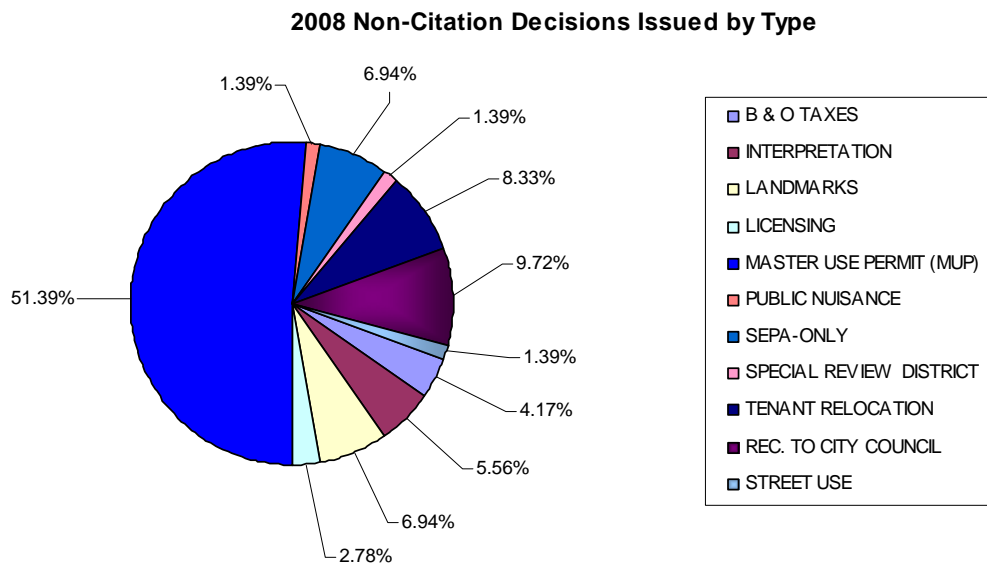
Five decisions were issued in **SEPA-only appeals** in 2008, up from the one decision issued in 2007 and equal to the previous five-year average for these appeals. Six decisions were issued in **landmarks and special districts** appeals, up from the two decisions issued in 2007, and higher than the previous five-year average of 4. And four **Land Use Code Interpretation** decisions were issued in 2008, twice the number issued in 2007 and twice the five-year average.

Because **recommendations to Council** on land use actions involve the same hearing, research, record review and writing time required for MUP decisions, they are included in the total decision figures in Tables 2 and 3. There were 7 recommendations to Council in 2008, an increase from the 2 issued in 2007 and from the previous five-year average of 5. All recommendations involved rezone applications.

The number of **B&O Tax appeals** decided in 2008 (3) was down from the 8 decided in 2007 and from the five-year average of 7.

There were just 2 **licensing appeal decisions** issued in 2008, down significantly from the 23 issued in 2007 and from the previous five-year average of 11.

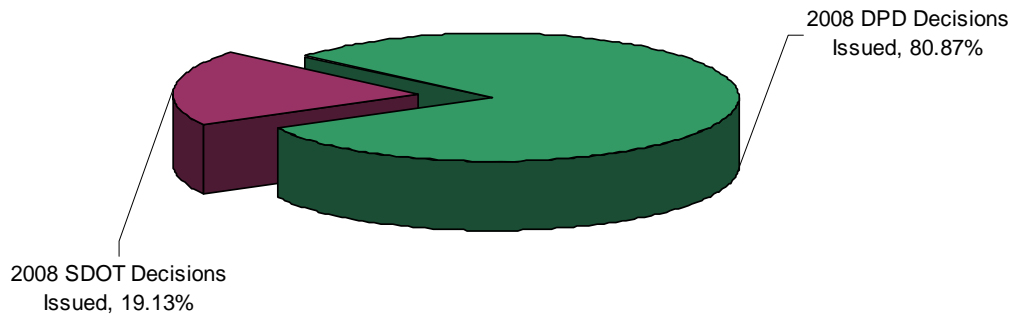
The number of decisions issued on **appeals of denials of tenant relocation assistance** (6) was just one-quarter of the number issued in 2007 (24) and well below the numbers issued in 2006 (16) and 2005 (12).



Citation Decisions Issued

In **Land Use Code citation appeals**, 94 decisions were issued, which is 28 more decisions than were issued in 2007 and 60 more than were issued in 2006. In **SDOT citation appeals**, 22 decisions were issued, higher than the number issued in any of the last four years except 2004, when 36 decisions were issued.

2008 Citation Decisions Issued by Type



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 outcomes 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 the Examiner must use for each type.

In 17% of the appeals for which the Examiner issued a final order or decision, the appeal was dismissed, usually at the request of the appellant. In slightly over 36% of the appeals, the Examiner affirmed the City decision being appealed. The Examiner modified and affirmed the decision being appealed in 4% of the appeals. In 37% of the appeals, the Examiner affirmed the decision being appealed but reduced the penalty imposed. And in just under 5% of the appeals, the Examiner remanded the decision to the department for additional work, reversed the decision, or reversed and remanded the decision.

Table 3 – 2008 Case Activity Summary

	2008 Cases Filed				2008 Case Disposition			
	Pending Cases at Start of Year	Cases Filed	Total Caseload	Cases Heard *	Decisions Issued *	Cases Dismissed (No Hearing)	Defaults Issued (Untimely)	Pending Cases at End of Year
B & O TAXES	4	6	10	3	3	2	0	5
CIVIL SERVICE	2	1	3	0	0	3	0	0
COUNCIL RECOMMENDATIONS	0	9	9	8	7	1	0	1
DISCRIMINATION	1	2	3	0	0	1	0	2
HOUSING	1	1	2	0	0	1	0	1
INTERPRETATION	1	8	9	4	4	4	0	1
LANDMARKS***	3	4	7	2	5	5	0	0
LICENSING	0	17	17	2	2	2	0	13
MASTER USE PERMIT (MUP) ***	4	39	43	27	37	6	0	10
PUBLIC NUISANCE	2	13	15	1	1	14	0	0
SEPA-ONLY ***	1	7	8	3	5	4	0	1
SPECIAL REVIEW DISTRICT	0	1	1	1	1	0	0	0
STREET USE	1	0	1	1	1	0	0	0
TENANT RELOCATION	0	7	7	6	6	0	1	0
THIRD PARTY BILLING	1	2	3	0	0	2	0	1
TOTAL	21	117	138	58	72	45	1	35
CITATION ENFORCEMENT	Pending Appeals at Start of Year	Cases Filed	Total Caseload	Cases Heard	Decisions Issued *	Cases Dismissed (No Hearing) **	Defaults Issued	Pending Appeals at End of Year
DPD (Land Use Code)	49	361	410	95	94	48	250	18
SDOT (Use of Public Property)	12	161	173	25	22	69	78	4
TOTAL CITATIONS	61	522	583	120	116	117	328	22
TOTAL INCLUDING CITATIONS	82	639	721	178	188	162	329	57

* indicates some cases in category are pending from prior years or will carry-over into subsequent years

** indicates rescinded citations, posthumous dismissals, or fines paid prior to default

*** indicates some cases in category may have multiple hearings or decisions

Table 4 - Disposition of Appeals*

	Affirmed	Affirmed, as Modified	Affirmed, Penalty Mitigated	Reversed	Remanded	Reversed and Remanded	Dismissed	Total
B & O TAXES	3						2	5
INTERPRETATION	1					2	4	7
LANDMARKS PRESERVATION	1						5	6
LICENSING		1		1			2	4
MASTER USE PERMIT	19	5			1	1	6	33
PUBLIC NUISANCE							1	1
SEPA-ONLY	3				1		3	7
SPECIAL REVIEW DISTRICT		1						1
STREET USE		1						1
TENANT RELOCATION	6							6
Sub-Total	33	8	0	2	2	3	23	71
Citation Enforcement								
DPD (Land Use Code)	30		61	1			2	94
SDOT (Use of Public Property)	5		8	1			8	22
Sub-Total	35	0	69	2	0	0	10	116
Grand Total	68	8	69	4	2	3	33	187

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

Standards of Review for Appeals by Case Type

Business and Occupation Tax Appeals

The Director’s assessment or refund denial “shall be regarded as prima facie correct, and the person shall have the burden to prove that the tax assessed or paid by him is incorrect”. (SMC 5.5.55.140)

Land Use Code Interpretation Appeals

The Director’s interpretation “shall be given substantial weight, and the burden of establishing the contrary shall be upon the appellant.” (SMC 23.88.020)

Landmark Preservation Appeals (certificates of approval)

No Code provision on burden of proof, so the default is to Hearing Examiner Rule 3.17: “The department must make a prima facie showing that its decision or action complies with the law authorizing the decision or action.” The appellant must then show by a preponderance of the evidence that the department’s decision or action does not comply with the applicable law.

Licensing Appeals (Adult Entertainment)

No Code provision on burden of proof, so the default is to Hearing Examiner Rule 3.17: "The department must make a prima facie showing that its decision or action complies with the law authorizing the decision or action." The appellant must then show by a preponderance of the evidence that the department's decision or action does not comply with the applicable law.

Master Use Permit Appeals (most land use permits and most SEPA appeals)

The appeal "shall clearly identify each component of a ... permit being appealed" and state "specific objections to the Director's decision and the relief sought". The Director's decision "shall be given substantial weight, except for determinations on variances, conditional uses, and special exceptions, which shall be given no deference." (SMC 23.76.022)

SEPA Only Appeals (no MUP)

"The determination appealed from shall be accorded substantial weight and the burden of establishing the contrary shall be upon the appealing party."

Special Review District Appeals (Pike Place Market, Pioneer Square, etc.)

Varies by district: "Hearing Examiner may reverse or modify the action of the Commission only if the Hearing Examiner finds that the action of the Commission violates the terms of the Code or rules, regulations or guidelines adopted" pursuant to it (Pike Place Market, SMC 25.24.080); "The decision appealed may be reversed or modified only if the Hearing Examiner finds that the Department of Neighborhoods Director's decision was arbitrary and capricious." (Pioneer Square, SMC 23.66.030)

Street Use Appeals

No Code provision on burden of proof, so the default is to Hearing Examiner Rule 3.17: "The department must make a prima facie showing that its decision or action complies with the law authorizing the decision or action." The appellant must then show by a preponderance of the evidence that the department's decision or action does not comply with the applicable law.

Tenant Relocation Assistance Appeals

No Code provision on burden of proof. Defaults to Hearing Examiner Rule 3.17: "The department must make a prima facie showing that its decision or action complies with the law authorizing the decision or action." The appellant must then show by a preponderance of the evidence that the department's decision or action does not comply with the applicable law.

Citation Appeals (DPD/Land Use Code and SDOT/Use of Public Property)

The certified citation "shall be prima facie evidence that a violation occurred and that the person cited is responsible. The certified [citation] of the inspector ... and any other evidence accompanying the report shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 9A.72.085 shall also be admissible without further evidentiary foundation. The person cited may rebut the [DPD/Department of Transportation] evidence and establish that the cited violation(s) did not occur or that the person contesting the citation is not responsible for the violation. If the citation is sustained at the hearing, the Hearing Examiner shall enter an order finding that the person cited committed the violation. If the violation remains uncorrected, the Hearing Examiner shall impose the applicable penalty." (SMC 32.91.012 & SMC 15.91.012)

HEARING EXAMINER JURISDICTIONS

LAND USE & ENVIRONMENTAL [Administered by Department of Planning and Development]]

Appeals:

- Downtown Housing Maintenance appeals (SMC 22.220.140)
- 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 in MUP decisions (SMC 25.05.660)
- Fire & Safety Standards Citations (SMC 22.207.006)
- Land Use Code Citations (SMC 23.91.006)
- Land Use Code Interpretations (SMC 23.88.020)
- Master Use Permit [Type II] land use decisions (SMC 23.76.022):
 - Administrative Conditional Uses
 - Consistency with Planned Action Ordinance
 - Design Review
 - Establishing Light Rail Transit Facilities
 - Establishing Monorail Transit Facilities
 - Major Phased Developments
 - Short Subdivisions
 - Special Exceptions
 - Temporary Uses
 - Variances
- Building Unfit for Habitation (SMC 22.208.050)
- Environmentally Critical Areas Reasonable Use Exceptions (SMC 25.09.300)
- Housing & Building Maintenance Code violations (SMC 22.208.050)
- Pioneer Square Minimum Maintenance violations (SMC 25.28.300)
- Relocation Assistance: (City action causes displacement) (SMC 20.84.160)
- Stop Work Orders (SMC 23.76.034)
- Stormwater, Grading & Drainage exceptions/enforcement (SMC 22.808.040)
- Tenant Relocation Assistance Eligibility Determinations (SMC 22.210.150)

Original Jurisdiction [Type III] land use decisions (DPD rec., Hearing Examiner decision)

- Subdivisions (SMC 23.76.024 and SMC 23.22.052)

Recommendations to Council on Type IV land use decisions (SMC 23.76.036):

- Council Conditional Uses
- Downtown Planned Community Developments
- Major Institution Master Plans
- Public Facilities Master Plans
- Rezone Petitions

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 COMPLAINTS [Administered by the Office of 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)

CONTRACTUAL RELATIONS [Administered by the Executive Administration]

- Boost Program Sanctions (SMC 20.49.100)
- WMBE Sanctions (SMC 20.46A.190)

PUBLIC NUISANCE

- Graffiti Nuisance Violations (SMC 10.07.050) [Administered by Seattle Public Utilities]
- Public Nuisance Abatements (SMC 10.09.100) [Administered by Seattle Police Department]

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
 - Pioneer Square Historical District (SMC 23.66.030)
 - International District (SMC 23.66.030)
 - Pike Place Market Historical District (SMC 25.24.080 & SMC 25.24.085)
 - Harvard Belmont Landmark District (SMC 25.22.130 & SMC 25.22.135)
 - Ballard Avenue Landmark District (SMC 25.16.110 & SMC 25.16.115)
 - Columbia City Landmark District (SMC 25.20.110 & SMC 25.20.115)

HEALTH CODE VIOLATIONS [Administered by Seattle-King County Public Health]

- Health Code Permit actions (SMC 10.01.220)
- Noise Ordinance variance appeals (SMC 25.08.770) [Administered by DPD]
- Radiofrequency Radiation Ordinance violations (SMC 25.10.540)

CITY TAXES AND LICENSES [Admin. by Executive Admin., Revenue & Consumer Affairs]:

- Admission Tax Exemptions (SMC 5.40.085)
- All Ages Dance and Venues (SMC 6.295.180)
- Bond Claims (SMC 6.202.290)
- Business and Occupation Tax assessments (SMC 5.55.140)
- Horse Drawn Carriage Licenses (SMC 6.315.430)
- License denials, suspensions & revocations (SMC 6.02.080, 6.02.290 and 6.202.270)
 - Adult Entertainment (SMC 6.270)
 - For-Hire Vehicles & Drivers (SMC 6.310.635)
 - Pawnshops (SMC 6.288)
 - Panorama and Peepshows (SMC 6.42.080)
 - Unit Pricing (SMC 7.12.090)
- Animal Control:
 - Animal License Denials (SMC 9.25.120)
 - Determinations of Viciousness/Order of Humane Disposal (SMC 9.25.036)

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

- Franchise Termination (SMC 21.60.180)
- Rates and Charges Increases (SMC 21.60.310)

MISCELLANEOUS JURISDICTIONS

- Civil Service Appeals (SMC 4.04.250) [Delegation from Civil Service Commission]
- 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) [Administered by Dept. of Transportation]
- Petitions for Review of Floating Home Moorage Fee Increase (SMC 7.20.080)
- Property Tax Exemption Elimination (SMC 5.72.110) [Administered by Office of Housing]
- Side Sewer Contractor Registration Appeal (SMC 21.16.065) [Admin. by SPU]
- SDOT Citation Appeals (SMC 15.91.006) [Admin. by Dept. of Transport.]
- Street Use Appeals (SMC 15.90) [Admin. by Dept. of Transport.]
- Tax Refund Anticipation Loan Complaints (SMC 7.26.070)
- Third Party Utility Billing Complaints (SMC 7.25.050)