

**PUBLIC GUIDE**

**TO APPEALS AND HEARINGS**

**BEFORE THE HEARING EXAMINER**

March 2018

Dear Member of the Public:

As explained in the pages that follow, the Hearing Examiner's job is to review decisions made by various City agencies to ensure that they are consistent with the laws governing those decisions. Thus, Hearing Examiner decisions can have a substantial impact on applicants and others concerned about, or affected by City agency decisions and recommendations that are reviewed by the Hearing Examiner.

Because appeal hearings are legal proceedings, and parties are often represented by attorneys, the hearings may appear both formal and formidable to those without a legal background. Individual rights and property are at stake in appeal hearings. The structured format of the hearings acknowledges the seriousness of the matters appealed and ensures a fair opportunity for all affected parties to participate. However, the hearing process should not be mysterious.

This guide is intended as a handbook for members of the public who want to understand and participate in hearings before the Hearing Examiner. The format is question-answer, and the tone is conversational. The information presented here is intended primarily for those who will participate in an appeal or other hearing before the Hearing Examiner, but it may be helpful for anyone interested in understanding the hearing process and the work of the Hearing Examiner.

**NOTE:** Hearings and prehearing matters are governed by the *Hearing Examiner Rules of Practice and Procedure* and the *Hearing Examiner Rules for Discrimination Cases*. You will need to review these rules if you participate in an appeal. They are available from the Office of Hearing Examiner and on the Office's website at: <http://www.seattle.gov/examiner>.

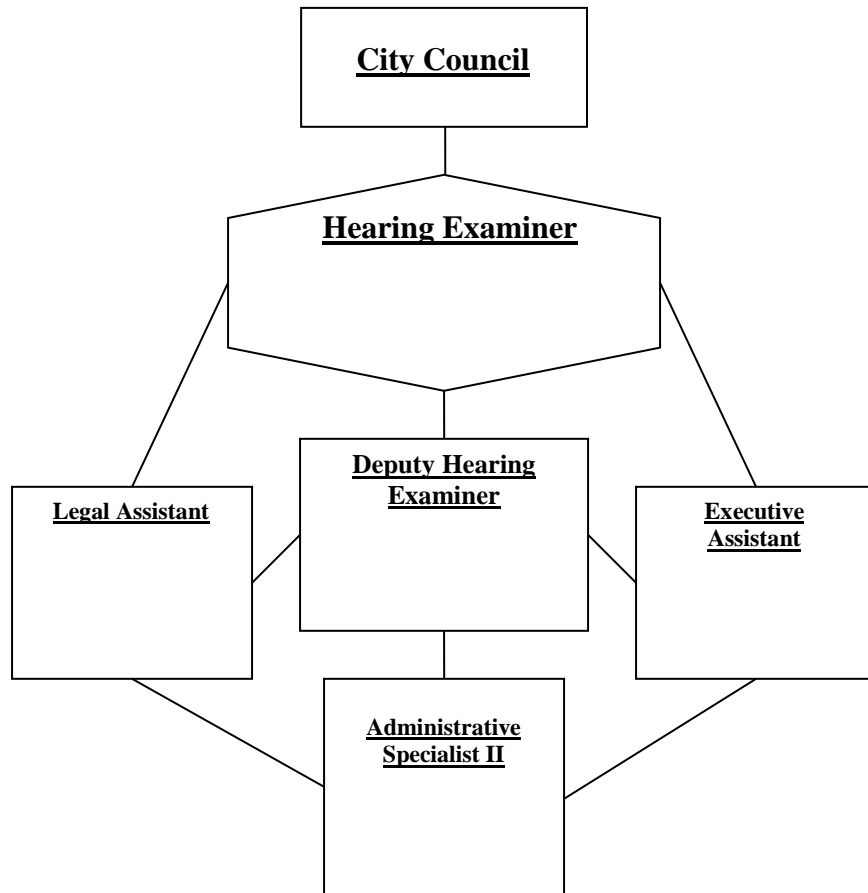
If you have comments or suggestions on the format or information presented in this guide, please let me know.

Ryan P. Vancil  
Hearing Examiner



# OFFICE OF HEARING EXAMINER

## Organization



## NON-DISCRIMINATION POLICY

It is the policy of the Hearing Examiner that the Office of Hearing Examiner be free from discrimination on the basis of race, color, sex, marital status, sexual orientation, political ideology, age, creed, religion, ancestry, national origin, or any sensory, mental, or physical disability. No person shall be excluded from lawful participation in the proceedings of this Office based upon any of those conditions.

The Office of Hearing Examiner provides barrier-free access and will provide communications and other access reasonably necessary to ensure participation by people with disabilities.

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# **PUBLIC GUIDE TO APPEALS AND HEARINGS BEFORE THE HEARING EXAMINER**

## **THE OFFICE OF HEARING EXAMINER**

### **What is the Office of Hearing Examiner?**

The Office of Hearing Examiner is the City department established to conduct hearings on recommendations made by City agencies and appeals of City agency decisions. Before the Office was created in 1973, some of these matters were heard by the City Council, while others went directly to court. The Office of Hearing Examiner is Seattle's forum for reviewing whether the law, including City code requirements, has been correctly applied in agency decisions. Not every decision of every department can be appealed to the Hearing Examiner. The Hearing Examiner can hear and decide appeals only where the City's code has given the Examiner authority (*i.e.*, "jurisdiction") to do so.

The Hearing Examiner is an independent official selected directly by the City Council through a procedure prescribed in Seattle's Municipal Code. The Hearing Examiner is authorized to appoint deputy examiners, temporary examiners, and other staff. All examiners must be licensed attorneys with experience in administrative hearings.

### **What does the Hearing Examiner do?**

The basic functions of the Hearing Examiner are similar to those of a judge. ("Administrative law judge", and "administrative hearing officer" are other titles used for this kind of position.) In the course of an appeal, the examiner is authorized to regulate the conduct of the hearing, administer oaths, issue subpoenas, decide procedural questions, receive evidence, hold conferences and issue orders and decisions.

### **What decisions can be appealed to the Hearing Examiner?**

The Seattle Municipal Code authorizes the Hearing Examiner to hold hearings and decide appeals of more than 75 different types of City decisions. The following is a brief description of some of the types of decisions that can be appealed. A list of the Hearing Examiner's jurisdictions, with references to the appropriate Seattle Municipal Code sections, begins on page 15.

Many of the matters considered by the Hearing Examiner relate to land use decisions made by the Department of Planning and Development (DPD) and environmental decisions made by any City department. Land use **code interpretations, master use permit decisions and State Environmental Policy Act (SEPA) determinations may be appealed to the Hearing Examiner.** A master use permit is a permit issued to an applicant that includes all land use (not construction) decisions made by DPD on the application, such as decisions on short subdivisions, conditional use permits, variances, design review, and conditioning of development projects. SEPA determinations include determinations of non-significance

and decisions on the adequacy of environmental impact statements. The Hearing Examiner holds a hearing and makes a final decision on subdivision applications. If someone interested in or significantly affected by the subdivision seeks further consideration of the DPD recommendation on the subdivision, or files an appeal of DPD's environmental determination for the subdivision, the hearing on the request and/or appeal will be consolidated with the public hearing on the subdivision application. The Hearing Examiner holds public hearings on **rezones, council conditional uses, and major institution master plans**, and makes a recommendation to the City Council for a final decision. Other DPD decisions appealable to the Hearing Examiner include: **Tenant Relocation Assistance Program eligibility, critical areas exceptions, and Land Use Code and noise citations and stop work orders. Floating home moorage fee increases** may also be appealed to the Hearing Examiner, as may citations issued by the Seattle Department of Transportation.

Landmarks Preservation Board decisions on the issuance or denial of certificates of approval for changes in landmarks, and decisions on **certificates of approval** for changes to structures or uses in special districts (*e.g.*, **Pioneer Square** and **International District** Special Review Districts, **Pike Place Market** Historical District) are subject to appeal. The Landmarks Preservation Board's recommendations for **landmark controls are subject to "objection" by the landmark's owner. The proceedings for recommended controls are conducted as a "contested case," similar to an appeal, but the Hearing Examiner issues a recommendation to the City Council on the matter.**

The Hearing Examiner also hears and decides complaints brought by individuals and the Office for Civil Rights under the **City's Fair Employment, Unfair Public Accommodation Practices** and **Unfair Housing Practices** ordinances and the **Paid Safe Time and Sick Time** ordinance, appeals from **licensing** decisions and **Admissions and Business and Occupation Tax assessments** made by the Department of Finance, Revenue and Consumer Affairs Division, and appeals of enforcement of the City's **Nuisance Ordinance**.

### **Are there rules that govern appeals to the Hearing Examiner?**

The Hearing Examiner has adopted rules, the *Hearing Examiner Rules of Practice and Procedure* (HER), which govern proceedings before the Hearing Examiner. The Rules establish the procedural framework for handling appeals and conducting hearings. For a copy of the Rules, contact the Office of Hearing Examiner, (there is a small charge), or go to the Office of Hearing Examiner's website and download or print the Rules without charge: <http://www.seattle.gov/examiner>

## **APPEALING A DECISION**

### **How do I appeal a decision?**

Appeals must be submitted in writing and received by the Office of Hearing Examiner by 5 p.m. on the last day of the appeal period, accompanied by any required filing fee. **Note:** Delivery of appeals filed by any form of USPS mail service may be delayed by several days. Allow extra time if mailing an appeal.



**In Writing:** All appeals must be in writing. The Hearing Examiner has a form that may be used for an appeal of a DPD land use or environmental decision. (A copy of this form is included at the end of this booklet.) If you want to appeal a different type of decision, other forms are available on the Hearing Examiner's website, <http://www.seattle.gov/examiner/>, and from the Office of Hearing Examiner. If a form is not available, or you don't want to use a form, a letter of appeal is acceptable if it includes all the information required on the form. Correspondence to the Hearing Examiner is best addressed, "Dear Hearing Examiner".

**Identify who is appealing:** Include the name, address, phone and fax numbers, and email address of the person appealing (*i.e.*, the "appellant"). If one appeal is made jointly by several individuals, list the information for each person, and specify one person as the official contact person. If the appeal is made on behalf of an organization, identify the organization by name, and indicate the name, address, phone and fax numbers, and email address of the official contact person.

**Identify the decision being appealed:** Include the name of the department that made the decision being appealed; date of decision; decision number (if any has been provided); and address, if property is involved. If only part of the decision is being appealed, indicate which part(s).

**State your interest in the decision or how you are affected by it,** *i.e.*, how the decision affects your property, your eligibility, your neighborhood, etc.

**State your objections to the decision:** Explain or describe what you believe to be incorrect about the decision. What is wrong with it? Be as clear and concise as you can in stating any errors, omissions, etc. Note: Except in limited circumstances, your appeal will be limited to the issues raised in the appeal form or letter. *See* HER 3.05.

**State what you want the Hearing Examiner to do:** What relief do you seek? Examples: reverse the decision; modify conditions; require an EIS; etc.

**Mail the Appeal to:**

or

**Deliver the Appeal to:**

**Office of Hearing Examiner  
P.O. Box 94729  
Seattle, Washington 98124-4729**

**Office of Hearing Examiner  
Seattle Municipal Tower  
700 Fifth Avenue, Suite 4000  
Seattle, Washington**

You may also file the appeal electronically through a portal on the Hearing Examiner's website, at <http://www.seattle.gov/examiner/efile.htm>, or fax the appeal if the total number of pages does not exceed 15, If a document filed electronically exceeds 10 pages in length, a hard copy of the document must be delivered to the Hearing Examiner.

**Important Reminder:** In order for the Hearing Examiner to be able to consider an appeal, it **MUST BE RECEIVED** BY THE OFFICE OF HEARING EXAMINER **BY 5 PM** OF THE LAST DAY OF THE APPEAL PERIOD. A postmark on the last day is not sufficient. The length of an appeal period is established by the Code section that governs the decision being appealed. **The Hearing Examiner does not have the authority to change or extend an**

**appeal period. If the appeal is not filed in time, the Hearing Examiner must reject it.** It is best to submit your appeal well before the appeal deadline, especially if you are submitting it by mail. If you wait until the last minute, you could miss the deadline and lose the opportunity to appeal.

If you are not sure when an appeal period will end, contact the department that issued the decision you want to appeal. The notice of decision should list a contact person and telephone number. If the notice of decision does not have this information, call the Office of Hearing Examiner; we may be able to help.

**Required Fee:** A filing fee is required for most appeals. Exceptions to this general rule include tenant relocation assistance, landmarks controls and incentives, and citation appeals. If you are not sure of the amount of the fee or whether a fee is required, check with the Office of Hearing Examiner. The Hearing Examiner may waive a required filing fee if the person filing the appeal is able to demonstrate that the fee poses a financial hardship for him or her.

An appeal is not complete without the required fee. If you file in person, a check (made out to the City of Seattle) or cash is acceptable. If you file by mail, you may include a check or call the Office of Hearing Examiner and pay by credit card (VISA or MasterCard only), but please do not send cash through the mail. If you file electronically or by fax, you may pay by credit card over the phone. The filing fee is nonrefundable.

### **Do I have to have an attorney?**

Appeal hearings are legal proceedings, in that they are established by law and result in decisions that have legal force and effect. Some persons involved in appeal hearings have lawyers to represent them, but many citizens and City agencies represent themselves. It is not necessary to have an attorney, and you don't have to be an attorney to represent yourself or someone else in a proceeding before the Hearing Examiner. That said, representation by an attorney may be advisable for some complex appeals with difficult legal and factual issues.

To make the hearing process more accessible and "user friendly" for non-lawyers, the examiners explain various aspects of the hearing during their opening remarks and encourage procedural questions. They also encourage the use of everyday language in the hearings. In recognition of the importance of the issues to those involved, and the legal effect of the outcome, hearings do have a structured format. That structure, and the examiner's control of the proceedings, help to ensure that all participants have a fair opportunity to present their points of view.

### **What happens if more than one appeal is filed regarding the same decision?**

When this happens, and it often does with land use and environmental decisions, the Hearing Examiner will consolidate the appeals. This means that one hearing will be held and one decision issued, but each party who has appealed will have an opportunity to make a presentation and to question witnesses. Sometimes those who appeal separately will voluntarily join together to make a joint presentation at the hearing.

### **If I'm not sure about what to do, whom should I ask?**

You can always check with the Office of Hearing Examiner when you have questions. During a hearing, if you are unsure of the procedure or what you should be doing, you can ask the examiner to explain. Before and after the hearing, you may have to direct your questions to someone on staff other than the examiner who is hearing the appeal. This is necessary to avoid violating the prohibition on communicating with the examiner outside the actual hearing. (Such communications are referred to as *ex parte* contacts and are prohibited by law.)

The Office of Hearing Examiner can answer procedural questions, explain the process, and describe how hearings usually run and what to expect. We cannot assist with, or give advice on how to put together your presentation, what questions to ask which witness, whom to select as a witness, whether to get a lawyer to help, etc., as this could be interpreted as advocating for your position or giving you legal advice.

### **What if later I change my mind about appealing?**

If you change your mind and do not want to go through with an appeal, notify the Hearing Examiner in writing. You do not have to explain why you are withdrawing your appeal, but a withdrawal needs to be in writing and signed by the person who filed the appeal. (One person can withdraw an appeal made by several individuals, or by a group, only if that person has the permission of those he or she represents.) If there is not enough time to get the written withdrawal to the Office of Hearing Examiner before the scheduled hearing, you should telephone the Office and then immediately follow-up with your letter of withdrawal. (The filing fee is nonrefundable.)

### **Are there restrictions on talking to the examiner?**

By law, no one is to talk to the examiner about the merits of an appeal except during the hearing. Talking with the examiner outside of the hearing or prehearing conference is prohibited except for procedural matters. This is to prevent people from trying to influence the examiner or add information that is not presented at hearing where all parties can discuss and question it. If questions or problems arise outside of the hearing, you should ask to speak to someone in the Office of Hearing Examiner other than the examiner assigned to hear the appeal you are involved in.

## **THE PREHEARING CONFERENCE**

### **What is a Prehearing Conference?**

This is a meeting held prior to the hearing to help sort out, simplify, and clarify the issues and procedural aspects of the hearing. Typical topics for a pre-hearing conference would

include the issues on appeal, whether the subjects included in the appeal are within the Hearing Examiner's jurisdiction, whether there is a potential for mediating the dispute, who the witnesses will be, and how long the presentations are expected to take. Any party may request that a prehearing conference be scheduled, and the Hearing Examiner may schedule one without such a request. (See pages 8 – 9 for information on location and parking.)

### **What should I do to prepare for a Prehearing Conference?**

The following suggestions may help you prepare for the matters to be covered in the prehearing conference:

Carefully read the City decision you are appealing and any City code sections cited in it.

Ask the City decision-maker for any other code sections or Director's Rules that were considered in reaching the decision, and read those.

Consider the issues stated in your appeal in light of what you have read. Are there any that should be dismissed? Are the remaining issues clear? If not, consider how you can clarify them, since it is likely that you will be asked to do so at the prehearing conference. (Note: Although you may clarify an issue, you may not raise a new issue in doing so. Except in limited circumstances, you cannot raise a new appeal issue after the deadline for filing the appeal. *See* Hearing Examiner Rule 3.05.)

Consider whether you would be interested in mediating this dispute. Mediation is a voluntary process in which an impartial third party helps the parties to a dispute negotiate a solution that is acceptable to them. It is a voluntary process and cannot occur unless agreed to by all parties. In considering the possibility of mediation, one question to ask yourself is whether you, and everyone in any group you represent, are able in good faith to consider options other than the relief requested in your appeal statement?

Determine generally what evidence (witness testimony and exhibits) you will need to present in order to prove the claims in your appeal statement.

Contact your potential witnesses and discuss the general nature of their testimony with them.

You will usually not need a final list of witnesses and exhibits at the prehearing conference, but you should have a preliminary list.

Clarify your schedule for the time period from the prehearing conference through approximately one month after the hearing date, if one has been scheduled, and bring the schedule with you to the conference. It is best if you know your main witnesses' schedules for this time period as well, but this is not always possible. (If it is necessary to discuss continuing the hearing date, it is easiest to do so when the availability of all parties and main witnesses is known.)

Following the prehearing conference, the Hearing Examiner may issue a prehearing order that includes requirements and deadlines for such tasks as disclosure of witnesses and exhibits. Note that if witnesses and exhibits are not disclosed by the required deadlines, the Hearing Examiner may prohibit the undisclosed witnesses from testifying and the undisclosed exhibits from being used.

### **What is "discovery"?**

"Discovery" takes place prior to the hearing and is the process whereby a party seeks disclosure by the other party of documents and information that are relevant to the appeal, or that are likely to lead to documents and information that are relevant to the appeal. The process is normally conducted by the parties without intervention by the Hearing Examiner, and often involves an informal exchange of documents and information. Each party has the right to learn as much as it can about the other party's case, so disclosure of requested information and documents is required. If you fail to disclose information that should have been disclosed, the Hearing Examiner may prohibit you from using it in the hearing or impose other sanctions. However, if a party thinks that a request for discovery is harassing, unnecessary or unduly burdensome, the party may request by motion that the Hearing Examiner limit or prohibit that part of the discovery request.

### **What are "motions" and "orders"?**

A "motion" is a request, a way of asking the Hearing Examiner for something. You do not need to call your requests "motions". For example, if you were going to be out of town on the scheduled hearing date, you could write to the Hearing Examiner and state: "I will be out of town on the date scheduled for the hearing, so I request that you change the date to sometime after July 9th." A lawyer might submit a "Motion for Continuance" with the same information, which is just a different way of saying the same thing. Either approach is acceptable. A motion, or request, should tell the Hearing Examiner all the relevant facts, and include any argument that helps support your request.

If you are a party to an appeal, you might receive a copy of a motion that another party has submitted to the Hearing Examiner. (Any party who writes to the Hearing Examiner must send a copy of the correspondence to each of the other parties.) Do not be thrown by the legal format. Read through the motion to determine what the Hearing Examiner is being asked to do. If you disagree with the motion, or if you wish to support the motion, you should send a written response/comment to the Hearing Examiner within seven days. Unless a different time is specified in a particular case, parties who do not respond to a motion within seven days are presumed to agree with the motion. A response, or answer, to a motion should tell the Hearing Examiner whether you oppose or support the motion, and should include all the relevant facts and any argument that helps support your position.

An "order" is direction to the parties from the Hearing Examiner. Be sure to read all orders carefully. Call the Office of Hearing Examiner if you have questions.

**NOTE:** In addition to "appeal hearings," which are held for appeals of decisions made by City agencies, the Hearing Examiner holds "public hearings" prior to issuing a final decision on preliminary subdivision applications, or a recommendation to the City Council on rezone requests, master plans, and similar matters. In these "public hearings" the examiner's function is somewhat different than it is in appeal hearings. The following section describes the appeal hearing; public hearings are discussed on page 14.

### **When will the hearing be held? What notice is given?**

The minimum number of days that must be allowed between giving notice of a hearing and holding the hearing is established by the Code and varies with the type of appeal. (Many appeals require a 20-day notice prior to hearing, but there are also other lengths of time.) Hearings must be set far enough in advance to allow the required notice period. When an appeal is filed, the Hearing Examiner schedules a hearing on the first available date that is consistent with the minimum time required for notice. (When an "automatic" appeal is provided by law, the hearing date is included in the notice of violation.)

When there are many appeals to be heard, considerably more time than the minimum notice period elapses between the filing of an appeal and the date of the hearing. The time between filing and hearing is typically 4 to 8 weeks. Some types of appeals must be heard within a certain number of days and therefore must be scheduled in a specific time-frame. In extraordinary circumstances a matter may be heard out of turn.

After a hearing date has been scheduled, a notice of hearing is distributed. With some land use and environmental appeals, DPD is responsible for sending the notice. With other matters, the Office of Hearing Examiner will send a notice to the person(s) who appealed and others directly involved. The notices are sent by regular mail unless a party requests notice electronically or by facsimile. (All notices to City departments are sent electronically.)

### **Can the date established for a hearing be changed?**

After receiving the notice of hearing, if a participant or someone else important to the presentation is unable to attend on the date specified, the participant should write a letter to the Hearing Examiner, explain the conflict and request that a different hearing date be scheduled. (This is referred to as a "continuance".) The person making the request must also send a copy of it to the other participants, who may respond to the request. (These names and addresses can be obtained from the Office of Hearing Examiner or through viewing the appeal file online through the e-File portal on the Hearing Examiner's website.) The Hearing Examiner will determine whether a continuance is warranted. If the request is granted, the Hearing Examiner may respond by providing several possible dates and requiring the party who requested the change to contact the other participants to arrange a mutually satisfactory date.

### **How long will the hearing last?**

There is no set minimum or maximum time for hearings. They rarely take less than a few hours, and sometimes take more than a day. The length of the hearing is determined primarily by the complexity of the issues that need to be presented. One of the Hearing Examiner's responsibilities is to keep the proceedings moving and avoid undue delay by not allowing irrelevant or repetitive testimony.

### **Where will the hearing be held?**

Hearings are held in the Office of Hearing Examiner which is located on the 40th Floor of Seattle Municipal Tower, 700 5<sup>th</sup> Avenue, Suite 4000. There are two rooms used for hearings: the main hearing room (Room 4009) and the small hearing room (Suite 4000). To locate a hearing, come to the 40th floor and check the hearing schedule posted outside the main hearing room. You may also inquire at the Office of Hearing Examiner's reception desk.

### **How do I get there? Where can I park?**

The Office of Hearing Examiner is located in Seattle Municipal Tower, at 700 5<sup>th</sup> Avenue, Suite 4000, between Cherry and Columbia Streets in downtown Seattle, and is wheelchair accessible.

Metro bus lines run along Second, Third, Fourth and Fifth Avenues. If you need assistance with determining which bus routes to use, call Metro at 553-3000. Tell them you want to get to 5<sup>th</sup> Avenue between Cherry and Columbia, and they can tell you which bus to take. You can also use the Metro Trip Planner online at <http://tripplanner.kingcounty.gov>

Parking on the street in the vicinity is very limited and often has a limit of 2 hours. If you decide to drive, parking at one of the nearby private facilities is the best choice, despite the cost. Some lots have special "early bird" rates if you arrive by 9:30 a.m. Car-pooling and sharing the cost of parking can reduce the expense and eliminate a great deal of frustration and worry.

The Seattle Municipal Tower offers garage parking, and the entrance is at the rear of the building on 6<sup>th</sup> Avenue, between Columbia and Cherry. Several other private parking lots and garages are located within a few blocks. The cost for parking in these private facilities varies depending on the time you enter and how long you park:

- Bank of America 5<sup>th</sup> Avenue Building, enter on Columbia between Sixth and Fifth Avenues
- Columbia Tower, enter on Columbia between Fifth and Fourth Avenues
- Garage on Cherry Street between Second and Third Avenues
- Lot in 500 block of Second Avenue between James Street and Yesler
- Garage/lot at corner of Fourth Avenue and Cherry Street
- Garages at NW & SW corners of Fourth Avenue and Columbia Street

There are small loading zones on the north and south sides of Seattle Municipal Tower, (on Columbia Street and Cherry Street), and another one across the street, in front of the

Columbia Tower on 5<sup>th</sup> Avenue. If you need to drop off passengers or materials, these may be helpful, but note that cars in these areas cannot be left unattended.

### **Who will participate in the hearing?**

Unlike the familiar "public hearing", where anyone who has information or an opinion has an opportunity to share it with the decision-makers, testimony at an appeal hearing generally comes only from the participants and those called as witnesses. However, all appeal hearings are open to the public so that anyone interested in the proceedings may observe them.

The participants are referred to as "parties". The party who appeals is the "appellant". If more than one person appeals a decision, each appellant is considered a "party." However, a group that files one appeal is one party and must select one person to represent the group in the proceedings. In most appeals, the City agency responsible for the decision is a "respondent," i.e., the one who must respond to the issues raised in the appeal. If the appeal involves a permit or a license, and the applicant for that permit or license is not the appellant, the applicant is also a party who has a right to participate in the hearing as a respondent. Parties have certain rights in the hearing process, including the right to notice and participation (presenting evidence and questioning witnesses).

The large hearing room, where most hearings are held, has several large tables in the front. Although it is subject to change, the arrangement of parties is generally as follows. The examiner and an assistant sit at the front table, facing the audience. When called to testify, each witness sits at the table facing the examiner. Parties to the appeal (appellant and respondent) sit at the tables to the right and left of the examiner, facing one another. When there are three parties -- appellant, applicant, and City agency -- the City representative sits at the table facing the examiner, sharing that table with the witness.

### **What can I do if I have an interest in the outcome but am not already a party?**

The Hearing Examiner is required to make decisions on appeals based on the record made at hearing. The decision must be based on facts and the applicable law. The Hearing Examiner cannot uphold or overturn a City agency decision because of popular opinion or public comment. Therefore, although appeal hearings are open to the public, only the parties to the appeal, and persons called by the parties as witnesses, have the opportunity to testify.

A person who who has not appealed but demonstrates a substantial interest, not otherwise represented by the parties, may request by motion to become an "intervenor" in an appeal. An intervenor becomes a participant in the hearing and, like the original parties, has a right to appeal the Hearing Examiner's decision. The Hearing Examiner may grant intervenor status if participation by the intervenor will not add issues to the appeal or unduly complicate or lengthen the appeal process. Requests for intervention are not always granted and must be made well before the hearing date so the parties have a fair opportunity to respond to the request. (See HER 3.09 for more information on intervention.)



## **What conduct is expected at hearings?**

Everyone who participates in a hearing is expected to be punctual, courteous, and prepared. When addressing the examiner, it is equally acceptable to use that person's name or title (*e.g.*, "Ms. Smith" or "Ms. Hearing Examiner"). Other parties are addressed by their last names or by party status (*e.g.*, "Mr. Smith" or "the Appellant"). Witnesses are also addressed by their last names, *e.g.*, "Mr. Smith," or "Ms. Jones". The hearings are recorded, and a clear record requires that only one person speak at a time. No smoking, food, beverage (except water) or cell phone use is allowed in the hearing rooms.

## **Is there an established agenda or order to the hearing?**

Generally the order of an appeal hearing is:

1. Hearing Examiner's opening remarks
2. Opening statement by each party (optional - briefly indicate what will be presented)
3. Appellant's presentation of evidence (witness testimony, exhibits)
4. City agency's presentation of evidence (witness testimony, exhibits)
5. Applicant's presentation of evidence (if applicant is not appellant)(witness testimony, exhibits)
6. Rebuttal by each party
7. Closing arguments by each party (summarizing how the evidence presented supports the party's position)

## **What should I do to prepare for the hearing?**

All parties to an appeal (appellant, applicant, City agency representative) try to show the examiner that the facts and the law support their view. To do this, the parties should prepare by finding out about both. There is no set formula for what to do in preparation for a hearing. The effort necessary usually depends on the number and nature of the issues on appeal. Preparing may simply involve figuring out what you want to say in your own testimony, or it may be more complicated, requiring that a number of lay witnesses and experts be organized and coordinated so that each covers a different part of the presentation.

Basic suggestions for what to do to prepare for hearing include:

Review the decision that is being appealed. Get a copy of the decision from the City agency that issued it. (If you have difficulty getting a copy of the decision, call the Hearing Examiner's Office; we may be able to help.) The decision is central to the appeal; examine it to find the area(s) which you believe are incorrect. If there is a file kept by the City agency regarding the decision, reviewing it is also helpful.

Review the parts of the Seattle Municipal Code that control the decision being appealed. The Code is available in a searchable format online at <http://clerk.ci.seattle.wa.us/~public/code1.htm> and through a link on the

Office of Hearing Examiner's website. In addition, most branches of the City library system have a copy of the Code. (Call your local branch first to be sure it's there.) See pages 15 through 16 of this Guide for a listing of many of the applicable code sections.

Find people who are knowledgeable about the situation that is the subject of the decision being appealed. For example, if there are environmental issues on appeal, you could talk with others who live nearby to learn more about the existing conditions in the area. If there are technical issues, you may want to seek expert advice.

Review the information in this section about participating in the hearing. Decide what evidence you want to present about the issues on appeal, who you want to have testify, and whether or not you will need to have subpoenas issued to assure your desired witnesses attend the hearing (see below).

Know what your witnesses are going to say. It is a good idea to get together before the hearing and discuss the testimony of the witnesses in some detail, and even practice. This allows you to coordinate the presentation and to anticipate questions that will be asked of each witness.

Request subpoenas. Some of the witnesses you would like to have testify may agree to do so only under subpoena. A subpoena is a type of order issued by the Hearing Examiner that requires a person to appear and testify on a specified matter at a specified time. For example, if an appellant wishes to call an employee of an opposing party, such as a permit applicant, as a witness, it would be necessary to request a subpoena for the employee to be sure that he or she attends the hearing. Other witnesses may need a subpoena in order to take time off from their jobs to testify at the hearing. You must request a subpoena from the Hearing Examiner and serve it on the witness at least seven business days before the hearing. The *Hearing Examiner Rules of Practice and Procedure* cover the requirements for obtaining subpoenas. Note that some witnesses (usually experts) may agree to testify on your behalf only if you reimburse them for their time and/or travel expenses.

### **Who speaks at the hearing?**

As mentioned above, unlike a "public hearing" where anyone who wishes to speak has that opportunity, only a limited number of persons have a right to speak at an appeal hearing. The participants, or "parties", and those persons called by the parties as witnesses, have the opportunity to speak during the hearing. A representative of each party sits at the table, coordinates the party's presentation, introduces and asks questions of the party's witnesses, taking care to avoid repetitive testimony, asks questions of the other parties' witnesses at the appropriate time, and talks with the examiner about procedural concerns if any arise during the hearing. If you are representing yourself in the appeal, you are the party representative. When it's your turn to present evidence, you can give testimony yourself, as well as asking others to appear as witnesses.

Often in master use permit appeals of environmental decisions, different witnesses testify about different subjects. For example, witnesses for the neighborhood appellant group might be: a neighbor who gives information about traffic conditions in the neighborhood

and the results of a parking study that the neighbors had prepared; a neighbor who describes the neighborhood and presents photographs; and a neighbor with a degree in geology, who testifies about problems of slope stability. The party representative would call each witness and get the testimony started by indicating the topic (*e.g.*, "Mr. Smith will talk about the parking study conducted by the neighbors...").

Witnesses are required to take an oath or affirmation to tell the truth. All witnesses may be questioned by the other parties; this is called "cross-examination."

### **Should I bring photographs, drawings, models, written materials?**

Such materials are not required, but they are frequently offered by parties because they can illustrate or make a point, or add clarity and understanding. Such items are called "exhibits". Each exhibit is given a number so that everyone will know which item is being discussed.

**NOTE:** Because you will be submitting your exhibits to the Hearing Examiner, it is important that you bring copies of the exhibits for yourself AND for the other parties. Generally this means that you need to have the original exhibit and at least three copies. It is not necessary to bring copies of large exhibits that are difficult to copy, but you should arrange with the other parties for them to review such exhibits before the date of the hearing.

During the course of your presentation, when you use the exhibits, it is helpful to refer to them by the numbers given to them by the examiner, ("Here is a photograph of the garage, it is marked as Exhibit #4"). If you want an item to be included in the record, you should offer it as an exhibit, and the examiner will decide if it is admissible. (See the next question regarding objections.) The other parties can ask questions about an exhibit, (*e.g.*, "When was the photograph taken?" "What is the scale of this drawing?"), and about the reliability of its source, (*e.g.*, "Where did you get the height information you used to draw my house?").

If there is no appeal of the Hearing Examiner's decision, exhibits can be released to the party who submitted them 60 days after the end of the appeal period specified in the decision. Unclaimed exhibits that are too large to be stored with the file will be discarded. If you want particular exhibits returned, you need to make written arrangements to pick them up from the Office of Hearing Examiner. If there is an appeal of the Hearing Examiner's decision, all exhibits are sent to the court, along with a copy of the Hearing Examiner's file.

### **What happens if someone objects to some testimony or an exhibit?**

The rules regarding what evidence can be used in administrative hearings are not as strict as those used in court. Basically, anything that is relevant, comes from a reliable source, and has value in proving something at issue in the appeal can be used. If a party believes some testimony or an exhibit is not admissible, that party may object to it coming into the record to be considered by the examiner. Also, when someone wants to have an exhibit

put into the record, the examiner will ask if anyone objects. When there is an objection, the examiner may ask the parties to comment, then will decide (or "rule") on the objection.

For example, during an appeal of a variance decision for a deck in a required yard, if someone wanted to present evidence about the occupation of the applicant, there might be an objection that such information is not relevant. The examiner would "sustain" the objection if he/she agreed that the information was not relevant. If the examiner disagreed, the objection would be "overruled," and the information would become part of the record. If an objection is made, and you are not sure what it means, ask the examiner to explain.

### **What should I do if I have questions about what is happening, or I don't know what I'm supposed to do during the hearing?**

As mentioned above, if you have questions or are unsure of what to do, you should ask the examiner. The examiner is not allowed to help present anyone's case, but will explain or clarify what is going on.

## **THE HEARING EXAMINER'S DECISION**

### **What does the Hearing Examiner consider when making the decision?**

In reaching a decision on an appeal, the examiner considers the evidence presented at the hearing in light of what the law requires. (The examiner will also inspect the property in environmental, land use, and certain other types of appeals.) The Hearing Examiner does not have authority to change or create law, and it is not unusual for a decision to differ from that which an examiner might personally prefer.

### **What is in a decision?**

A caption, showing the name of the appellant, the nature of the appeal, and other identifying information is at the top of the first page. The body of the decision follows, beginning with an "Introduction" presenting basic background and procedural information. The other sections are "Findings of Fact," which set forth the individual pieces of evidence that the examiner has found relevant and credible, "Conclusions" that are drawn from the findings and determine the outcome of the appeal, and the decision. The decision is followed by a postscript that explains how the decision can be appealed.

### **When is the decision issued?**

Some decisions have deadlines imposed by the Seattle Municipal Code. The examiner will usually cover this in opening remarks at the hearing. The record may be left open for a site visit or for information to be filed after the hearing. You may ask to be notified by telephone or email as soon as a decision is issued.

### **Who gets the decision?**

A copy of the decision is sent to each party representative, and to others who specifically ask to receive it.

**If I am not satisfied with the decision, how do I appeal?**

The postscript at the end of the decision indicates what opportunity there is for further review. Most decisions must be appealed directly to superior court.

## **OTHER KINDS OF HEARINGS**

### **What other kinds of hearings does the Hearing Examiner conduct?**

In addition to appeal hearings previously described, the Hearing Examiner also holds public hearings regarding the following:

- Preliminary subdivisions;
- Council conditional use and other Council land use actions;
- Rezone proposals;
- Major institution master plans; and
- Planned unit developments.

### **How are these hearings different from appeal hearings?**

The Hearing Examiner holds a public hearing on these matters in order to gather information that will inform the Hearing Examiner's final decision on a preliminary subdivision application, and the Examiner's recommendation to the Council on the other types of land use actions listed above. On all but preliminary subdivision applications, the hearing also forms part of the record that will be sent to the City Council for final decision.

Generally, anyone who wishes to be heard will have an opportunity to speak, but it may be necessary to limit the amount of time available to each speaker. Written comments are acceptable, and in the case of a Hearing Examiner's recommendation, the comments become part of the record sent on to the City Council. The Hearing Examiner tries to arrange the order of presentation in these hearings so that members of the public may speak before lengthy presentations by the City agency and the applicant.

Following the hearing, for all but preliminary subdivision applications, the examiner prepares findings, conclusions and a recommendation that is sent to the City Council along with all the exhibits and other materials in the hearing record. The City Council will often use these as the basis for its decision. For preliminary subdivisions, the Hearing Examiner issues a final decision. The Hearing Examiner's recommendation, or final decision on a preliminary subdivision application, will be sent to the applicant, the department and those who request a copy of the decision.

## 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
- Rezone Applications (SMC 23.34)

### **SCHOOL REUSE & DEPARTURES** [Administered by Department of Neighborhoods]

- School Development Standard Departures (SMC 23.79.012) within MUP decision
- School Reuse/SUAC (SMC 23.78.014) within MUP decision

**CIVIL RIGHTS** [Administered by the Office for Civil Rights]

- Employment Discrimination Complaints (SMC 14.04.170)
- Fair Housing/Business Practice Complaints (SMC 14.08.170)
- Public Accommodations Complaints (SMC 14.06.110)
- Fair Contracting Practices (SMC 14.10.120)
- Paid Sick/Safe Leave Appeals (SMC 14.16.085)
- Fair Chance Employment Appeals (SMC 14.17.065)
- Minimum Wage Appeals (SMC 14.19.085)
- Wage Theft Appeals (SMC 14.20.065)

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

- Certificates of Approval for Designated Landmarks (SMC 25.12.740)
- Landmark Controls & Incentives (SMC 25.12.530) [Recommendations to City Council]
- Landmarks Code Interpretations (SMC 25.12.845)
- Special Review Districts' Certificate of Approval and Code Interpretations
  - Ballard Avenue Landmark District (SMC 25.16.110 & SMC 25.16.115)
  - Columbia City Landmark District (SMC 25.20.110 & SMC 25.20.115)
  - Fort Lawton Landmark District (SMC 25.21.130 & 25.21.135)
  - Harvard Belmont Landmark District (SMC 25.22.130 & SMC 25.22.135)
  - International District (SMC 23.66.030)
  - Pike Place Market Historical District (SMC 25.24.080 & SMC 25.24.085)
  - Pioneer Square Historical District (SMC 23.66.030)

**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 21I43I090) [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.

**LAND USE/SEPA DECISION APPEAL FORM**

*It is not required that this form be used to file an appeal. However, whether you use the form or not, please make sure that your appeal includes all the information/responses requested in this form. An appeal, along with any required filing fee, must be received by the Office of Hearing Examiner, not later than 5:00 p.m. on the last day of the appeal period or it cannot be considered.*

**APPELLANT INFORMATION (Person or group making appeal)**

**1. Appellant:**

If several individuals are appealing together, list the additional names and addresses on a separate sheet and identify a representative in #2 below. If an organization is appealing, indicate group's name and mailing address here and identify a representative in #2 below.

Name \_\_\_\_\_  
Address \_\_\_\_\_

Phone: Work: \_\_\_\_\_ Home: \_\_\_\_\_

Fax: \_\_\_\_\_ Email Address: \_\_\_\_\_

*In what format do you wish to receive documents from the Office of Hearing Examiner?*

**Check One:** \_\_\_\_\_ *U.S. Mail*      \_\_\_\_\_ *Fax*      \_\_\_\_\_ *Email Attachment*

**2. Authorized Representative:**

Name of representative if different from the appellant indicated above. Groups and organizations must designate one person as their representative/contact person.

Name \_\_\_\_\_  
Address \_\_\_\_\_

Phone: Work: \_\_\_\_\_ Home: \_\_\_\_\_

Fax: \_\_\_\_\_ Email Address: \_\_\_\_\_

*In what format do you wish to receive documents from the Office of Hearing Examiner?*

**Check One:** \_\_\_\_\_ *U.S. Mail*      \_\_\_\_\_ *Fax*      \_\_\_\_\_ *Email Attachment*

**DECISION BEING APPEALED**

1. **Decision appealed** (Indicate MUP #, Interpretation #, etc.): \_\_\_\_\_
2. **Property address** of decision being appealed: \_\_\_\_\_
3. **Elements of decision being appealed.** Check one or more as appropriate:
 

_____ Adequacy of conditions _____ Design Review and Departure _____ Conditional Use _____ EIS not required _____ Major Institution Master Plan _____ Other (specify: _____)	_____ Variance _____ Adequacy of EIS _____ Interpretation ( <b>See SMC 23.88.020</b> ) _____ Short Plat _____ Rezone
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## APPEAL INFORMATION

Answer each question as completely and specifically as you can. Attach separate sheets if needed and refer to questions by number.

1. What is your interest in this decision? (State how you are affected by it)

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2. What are your objections to the decision? (List and describe what you believe to be the errors, omissions, or other problems with this decision.)

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3. What relief do you want? (Specify what you want the Examiner to do: reverse the decision, modify conditions, etc.)

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Signature \_\_\_\_\_

Date \_\_\_\_\_

### Mail or deliver appeal and appeal fee to:

<b>MAILING ADDRESS:</b>	CITY OF SEATTLE Office of Hearing Examiner P.O. Box 94729 Seattle, WA 98124-4729	<b>PHYSICAL ADDRESS:</b>	SEATTLE MUNICIPAL TOWER 700 5 <sup>th</sup> Avenue, Suite 4000 40 <sup>th</sup> Floor Seattle, WA 98104
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### NOTE:

- 1. Appeal fees may also be paid by credit or debit card over the phone (Visa or MasterCard only).*
- 2. Delivery of appeals filed by any form of USPS mail service may be delayed by several days. Allow extra time if mailing an appeal.*

Phone: (206) 684-0521

Fax: (206) 684-0536

[www.seattle.gov/examiner](http://www.seattle.gov/examiner)