

City of Seattle



OFFICE OF HEARING EXAMINER

2016

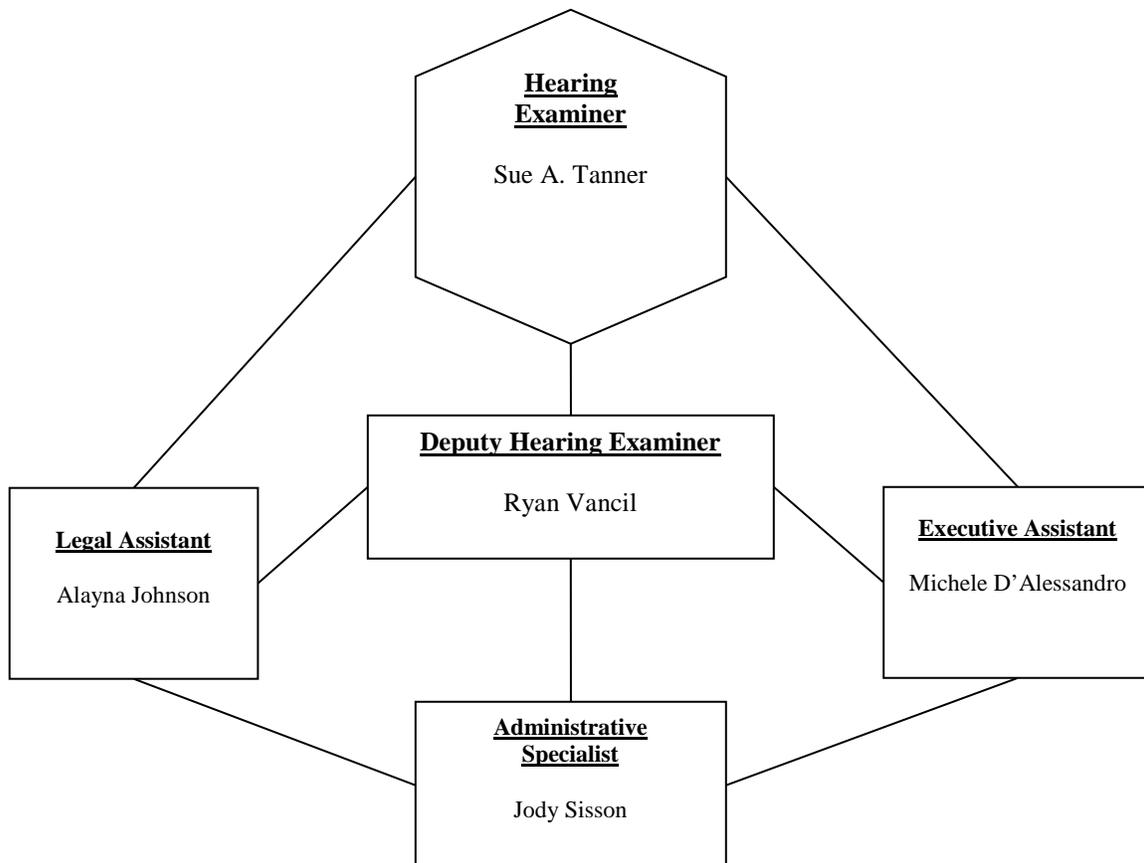
ANNUAL REPORT

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2016
City of Seattle
CITY COUNCIL

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Office of Hearing Examiner
Organizational Chart



**CITY OF SEATTLE
OFFICE OF HEARING EXAMINER**

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Mission and Authority

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

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

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

Jurisdiction

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

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

¹ A list of matters within the Hearing Examiner’s jurisdiction is found at pp. 20-22.

Recommendations. The City Council has retained jurisdiction over certain land use actions, including Council conditional uses, rezone proposals, major institution master plans, planned unit developments, and landmark controls and incentives. For these cases, the Hearing Examiner holds a public hearing for the Council, gathers information to establish the record, and forwards the record and detailed written findings, conclusions and a recommendation to the Council for its use in making the decision.

Accessibility

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

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

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

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

Contracting

Since 2004, the Hearing Examiner has been authorized by Seattle Municipal Code to provide hearing examiner services to other jurisdictions via contract. In 2016, we provided contract examiner services to five cities: Kirkland, Mercer Island, Puyallup, Shoreline and Tukwila.² We issued 52 decisions in contract city cases, which was a slight increase over the caseloads in 2015 and 2014.

The Office of Hearing Examiner is a General Fund department. In the last five years, we have deposited \$114,232 in contracting revenue into the General Fund. Since 2005, when we began with just one contract city, we have earned \$178,600 for the General Fund. In addition to bringing in a modest amount of revenue for the City, working with other cities compensates for fluctuations in our Seattle caseload, adds variety to our work, and keeps us flexible.

Judicial Appeals of Hearing Examiner Decisions

At the request of the City Council, and with the assistance of the City Attorney's Office, the Office of Hearing Examiner tracks the results of judicial appeals of Hearing Examiner decisions. The following appeals were decided in 2016:

In *Alliance for a Livable Denny Triangle & Unite Here Local 8 v. City of Seattle*, Superior Ct. #15-2-18635-SEA, appellants who opposed the redevelopment of the former Greyhound Bus Terminal appealed the Hearing Examiner's decision affirming the DCI Director's decision approving it. The Superior Court entered an order affirming the Examiner's decision.

In *Jessica Lucio and Greg Aden v. the City of Seattle*, Superior Court #16-2-04706-8-SEA, appellants who opposed the demolition of the Terminal Garage Building in Pioneer Square appealed the Hearing Examiner's decision dismissing their appeal on two grounds: 1) lack of jurisdiction over the appellants' claim that the project should have gone through design review, because a Code section expressly exempts from design review new structures located in special review districts that are regulated by Chapter 22.66 SMC; and 2) lack of jurisdiction over the claim that the demolition was in error, because a Code section provides that there is no administrative appeal from the Director's demolition decision. The Superior Court entered a decision affirming the Examiner's decision, and the appellants have appealed that decision to the state Supreme Court.

In *UV 316 Alaskan Way, LLC, et al. v. City of Seattle*, Superior Court # 16-2-06040-SEA, a developer appealed a Hearing Examiner decision reversing the Department of Neighborhood's Certificate of Approval for a project that would replace the Terminal Garage Building in Pioneer Square with an 11-story residential development. The Superior Court remanded the matter to the Department of Neighborhood's Director to reconsider her decision in light of new evidence that was first presented at the appeal hearing before the Hearing Examiner. (Summarized in "Case Highlights" below)

Unite Here Local 8, et al. v. City of Seattle, Superior Court #16-2-14986-SEA, involved an appeal of the Hearing Examiner's decision finding that part of the EIS used for the University of Washington's redevelopment of the Rainier Square block was inadequate. The developer for the project, Wright Runstad, appealed the decision to superior court but later voluntarily dismissed the appeal. (Summarized in "Case Highlights" below)

² As of December of 2016, we no longer provide contract examiner services to the City of Puyallup. Instead, we have assumed additional work for the City of Mercer Island.

In *Seattle Housing Authority v. Seattle Office for Civil Rights on behalf of Ala Yudzenka*, Superior Court # 15-2-21572-8SEA, the Hearing Examiner, sitting as a hearing panel with two members of the Human Rights Commission, determined that the Seattle Housing Authority (“SHA”) had committed an unfair housing practice in failing to provide a one-bedroom apartment voucher, rather than a studio apartment voucher, as a reasonable accommodation for an applicant’s medically verified disability. SHA appealed to superior court, which upheld the hearing panel’s decision. SHA then appealed the superior court’s decision to the court of appeals.

The issue in *T-Mobile West Corp. v. City of Seattle*, Superior Court # 15-2-21111-1SEA, was whether the City had authority to levy a utility tax based on revenue received by T-Mobile West from Seattle customers who incur roaming charges when traveling outside the United States. The Examiner concluded that the charges were not authorized under the City Code. The Department appealed the decision to superior court, which affirmed the Examiner’s decision on other grounds, finding that state law did not authorize the City to tax revenue from roaming charges for calls that were interstate. The Department appealed the decision to the court of appeals, which affirmed the superior court’s decision.

The superior court had not entered orders by year’s end in appeals of two Hearing Examiner decisions: *Parriott v. City of Seattle*, Superior Court #17-2-03579-3SEA; and *Sani Maurou v. City of Seattle*, Superior Court #17-2-06022-4SEA. We will report on the outcome of these appeals in the next annual report.

Case Highlights

Each year includes cases that are noteworthy, either because of the controversy surrounding them or because they present important issues in the application of the Seattle Municipal Code or other regulations. The brief case descriptions that follow highlight some of these cases that came before the Hearing Examiner in 2016. (The complete decision or recommendation can be found through the “Decisions” link at www.seattle.gov/examiner using the Hearing Examiner case number included in parentheses after each case description below.)

- Cheasty Greenspace, a 28 plus-acre linear greenspace on the east side of Beacon Hill, includes steep slopes, wetlands and substantial wildlife habitat, and is described by the Parks Department as one of the few areas of undeveloped forest in an otherwise urban area. So when the Parks Department determined under SEPA that construction of a mountain bike and pedestrian trail system through the Greenspace would have no significant adverse environmental impacts, appeals followed. The appellants argued that the Department lacked sufficient information to evaluate the project’s geotechnical impacts and related drainage and erosion impacts, as well as impacts on wetlands, wildlife and wildlife habitat, and scenic and aesthetic values and available recreational facilities. After considering the impact information available to the Department, and evidence from scientific experts in numerous disciplines, the Hearing Examiner concluded that the wetland reconnaissance and analysis relied on by the Department suffered from several deficiencies, and that the Department lacked sufficient information to evaluate the proposal’s impacts on wetlands and wildlife habitat. The Examiner therefore reversed the Department’s SEPA Determination of Non-significance. (W-15-008 and W-15-009)

- Citizens for Livability in Ballard (“CLB”) challenged the DCI Director’s determination of adequacy for the Final Environmental Impact Statement (“FEIS”) for proposed amendments to the Seattle Comprehensive Plan. The proposed amendments included recommendations from the Mayor and the Office of Planning and Community Development (“OPCD”). The FEIS identified five alternatives, each of which assumed the same level of growth within the City but distributed the growth differently. CLB challenged the FEIS arguing that it: 1) failed to provide adequate alternatives because it only examined the five policy proposals from the Mayor and OPCD; 2) did not address impacts of certain policy changes, such as upzoning, replacement of single-family homes with greater impact uses, and loss of parks and open space; and 3) inadequately analyzed the transportation and parking impacts of the proposals. The Hearing Examiner concluded that much of the appeal was based on concerns that the proposed policies of Seattle 2035 would lead to future Code or policy changes which, in turn, could have impacts that CLB argued should have been evaluated in the FEIS. The Examiner concluded that such impacts were speculative at the time of the FEIS and affirmed the Director’s SEPA determination. (W-16-003)
- Save Our Square and other appellants challenged a SEPA Determination of Non-significance issued by the Director of the Department of Construction and Inspections (“DCI”), and a Certificate of Approval granted by the Director of the Department of Neighborhoods (“DON”), that approved a project to demolish the Terminal Garage and replace it with an eleven-story residential structure. The Pioneer Square Terminal Garage, or “Old Seattle Parking Garage,” is located in the Pioneer Historic District and is listed on the National Register of Historic Places. The Pioneer Square Preservation Board had recommended denial of the project due to its large scale and incompatibility with surrounding buildings and with the District’s historic character. The Hearing Examiner upheld DCI’s environmental determination, but reversed DON’s Certificate of Approval because new evidence introduced at the hearing indicated that the building’s scale was incompatible with its surroundings and could not be approved as proposed under City Code. (MUP-15-019, R-15-005 & R-15-006)
- When the Seattle Children’s Home moved from Queen Anne Hill, a developer secured a master use permit to construct 15 residential structures with 57 units on the large site, while retaining and renovating the existing 1915 McGraw Cottage. Future Queen Anne appealed the DCI Director’s SEPA determination for the project, challenging the adequacy of the analysis of traffic impacts, impacts on the local elementary school due to overcrowding, and impacts caused by the proposal’s height, bulk, and scale. The Hearing Examiner concluded that: 1) the project traffic analysis and proposed mitigation were adequate; 2) while the City’s reliance on census data averages to determine elementary school population impacts might have seemed imprecise, no evidence of other reliable measures to determine student numbers was submitted; and 3) the analysis of height, bulk, and scale impacts was adequate, particularly in light of the Code’s presumption that a project approved pursuant to the City’s design review process complies with the City’s SEPA policy on height, bulk, and scale. The Hearing Examiner therefore affirmed the Director’s SEPA determination. (MUP-16-006 (W) and MUP-16-007)
- Not everyone in Seattle knows that the University of Washington (“UW”) owns approximately 11 acres of property in the heart of downtown Seattle, including some street sections. It is known as the “Metro Tract” and includes the half-block on the west side of Fourth Avenue between Union and Seneca Streets, and the entire one and one-half blocks bounded by Fourth Avenue, the east side of an alley to the east of Fifth Avenue, Union

Street and Seneca Street. The street sections are used as streets pursuant to an agreement with the City. The Metro Tract is zoned Downtown Office Core 1 (“DOC 1”) with a base floor area (“FAR”) of 6 and a maximum FAR of 20, which can be achieved through various incentives, including voluntary agreements to construct or contribute funds for low income housing and childcare.

A 2009 code interpretation from DCI concluded that the entire Metro Tract, including streets, could be included in determining permissible floor area for the Metro Tract, and that it could be considered as a single lot or as multiple development sites. Several years later, the UW proposed to redevelop most of the Rainier Square block within the Metro Tract with a mixed use building and hotel, and DCI confirmed that the UW could use some of the additional property within the Metro Tract to calculate FAR for the project. Thus, the FAR site was larger than just the Rainier Square block project site. This transfer of FAR to the Rainier Square block allowed the UW to achieve a larger base FAR for the project, enabling the project to achieve the desired floor area while reducing the amount of incentive payments that would otherwise be required for bonus FAR.

In its SEPA review, DCI concluded that the project was within the range of actions and impacts evaluated in the 2005 EIS for the Downtown Height and Density Changes (“EIS”), which called for increased densities and heights in the DOC zone tied to development incentives. In addition to adopting the EIS, DCI prepared an Addendum with more project-specific information. DCI’s decision approving the project was appealed by Unite Here Local 8, which represents hotel and other service industry workers. The appeal challenged design review approval, the adequacy of the EIS, and a code interpretation that covered a wide range of topics, including the use of the FAR site to calculate FAR for the project. Each party filed motions that, if granted, would dispose of the case without a hearing. The Examiner granted the applicant’s and department’s motions in part, dismissing the appellant’s design review and code interpretation issues as a matter of law. The Examiner also determined that the EIS discussion of transportation and parking impacts and cumulative impacts was legally adequate, and upheld the Department’s determination that the project vested to housing policies in effect before the City’s adoption of a new SEPA housing policy that reiterates the need to address affordable housing impacts. However, the Examiner concluded that neither the 2005 EIS nor the Addendum addressed, or even acknowledged, the 24.5% increase in development capacity added to the DOC 1 zone through the UW’s ability to include streets and alleys in calculating allowable FAR for the Metro Tract. Nor did either document address the resulting impact on the number of affordable housing units that could be constructed downtown, which was a major focus of the downtown zoning changes analyzed in the EIS. The Examiner therefore concluded that the EIS failed to include a reasonably adequate discussion of the project’s probable adverse housing impacts and reversed the Department’s EIS adequacy decision on that ground. The project was remanded to the Department for additional SEPA analysis. (MUP15-032 and S-15-004)

- When is a floating object a “vessel” rather than a “float accessory to a floating home”? That was the questions in an appeal filed by a floating home owner who also operated a dinner barge that was used for dinner cruises on Lake Union for personal guests and charity cruises. A vessel is generally exempt from City shoreline regulations, whereas a float accessory to a floating home is prohibited by those regulations. The Shoreline Master Program defines

“vessel” as “ships, boats, barges, or any other floating craft, that are designed and used for navigation.” The DCI Director agreed that the dinner barge was *used* for navigation but determined that it was not *designed* for navigation, and so was a prohibited float accessory to the owner’s floating home. The Director’s conclusion relied on the Code’s standards for vessels that contain dwelling units. But the Examiner noted that that Code section applied only to vessels that included dwelling units and stated clearly that it was not be used to determine whether a craft meets the definition of vessel. Further, the evidence showed that, like other blunt-bowed boats, the barge was designed and constructed especially for its purpose, with a blunt bow for stability on the lake, an encapsulated Styrofoam float to support 5000 pounds of people and equipment, gunwales, attached running lights, cleats and moorage lines, an anchor, an outboard electric trolling motor, and Coast Guard-required safety equipment. The Examiner concluded that the dinner barge met the Code’s definition of vessel and reversed the Director’s decision. (S-16-004)

2016 Caseload

Table 3, on page 17, presents a complete summary of case activity for 2016. “Cases Filed” and “Decisions Issued” are shown in tables found on pages 9 and 14, respectively, and discussed in more detail below. The total number of cases filed, 827 exceeded the number filed in 2015 by 71%, with the biggest increases seen in discrimination complaints and code enforcement citations.

Table 1 – 2016 Cases Filed/Delegated

	2016	2015	2014	2013	2012	2011	Previous 5-Yr Average (11-15)
B & O TAX APPEALS	4	6	4	7	1	11	6
CIVIL SERVICE	-	-	-	2	7	6	3
COUNCIL RECOMMENDATIONS	9	3	0	9	7	3	4
DANGEROUS ANIMALS	3	-	2	3	1	2	2
DISCRIMINATION	22	7	1	-	-	1	2
ENERGY BENCHMARKING	-	-	16	4	-	-	3
LAND USE CODE INTERPRETATIONS	7	3	3	5	2	1	2
LANDMARKS/SPECIAL REVIEW DISTRICT	4	7	1	-	2	1	1
LICENSING APPEALS	3	3	2	-	-	5	2
MASTER USE PERMITS (MUP)	33	33	23	23	28	17	25
OTHER JURISDICTIONS FLOATING HOMES	1	1	3	2	3	1	2
SEPA-ONLY APPEALS (NON MUP)	7	10	3	9	3	10	7
TENANT RELOCATION	17	14	6	16	8	8	10
THIRD PARTY UTILITY BILLING	3	3	5	7	3	2	4
TOTAL WITHOUT CITATIONS	113	90	69	87	65	68	76
LAND USE CITATION ENFORCEMENT ACTIONS	403	324	318	294	278	274	298
SDOT CITATION ENFORCEMENT ACTIONS	277	145	94	65	76	147	105
MARIJUANA CITATION ENFORCEMENT ACTIONS	34	18	-	-	-	-	4
TOTAL CITATIONS	714	487	412	359	354	421	407
GRAND TOTAL	827	577	481	446	419	489	483

Non-Citation Cases Filed

There were 113 Non-Citation cases filed with the Office of Hearing Examiner in 2016, a slight increase from the number filed in 2015, and approximately 1½ times the five-year average of 76. As it does each year, the mix of cases changed somewhat.

Appeals from **tax assessments** remain quite low from year to year. There were 11 appeals in 2011, 4 in 2014, and just 4 in 2016.

The Civil Service Commission formerly delegated some **civil service** appeals to the Hearing Examiner for hearing and decision. As a result of a change in the pay band for Pro Tem Hearing Examiners, the Commission has been able to attract contract pro tem examiners to handle most of the Commission's cases. We received no Civil Service cases for hearing in 2014, 2015, or 2016.

Cases involving **recommendations to the City Council** went from 9 in 2013 down to 0 in 2014, and back up to 9 in 2016.

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

Discrimination cases are filed by the City Attorney's Office in matters referred to them by the Office for Civil Rights. The cases allege violations of Title 14 SMC, the City's Human Rights Code, such as discrimination in housing, or discrimination in public accommodations. Appeals from the City's enforcement of Labor Standards regulations are also included in the discrimination category for 2016. Historically, the number of discrimination cases filed has been low, but we received 7 in 2015, and 22 in 2016.

Energy benchmarking appeals were added to our caseload in 2013, and 16 appeals were filed in 2014. These are appeals from decisions by the Office of Sustainability and Environment on notices of violation issued for failure of a building owner to comply with the Code's requirement for reporting the energy performance of multifamily and nonresidential buildings. We received no energy benchmarking appeals in 2015 or 2016.

The Hearing Examiner must interpret applicable sections of the Code in reaching a decision or making a recommendation on any type of case. However, the Land Use Code establishes a process whereby members of the public may request a formal written interpretation from the DCI Director concerning the the meaning, application, or intent of any development regulation in the Land Use Code or Critical Areas Code. Those interpretations may be appealed to the Examiner. We received 7 appeals from DCI **Land Use Code interpretations** in 2016, up from 3 filed in 2015.

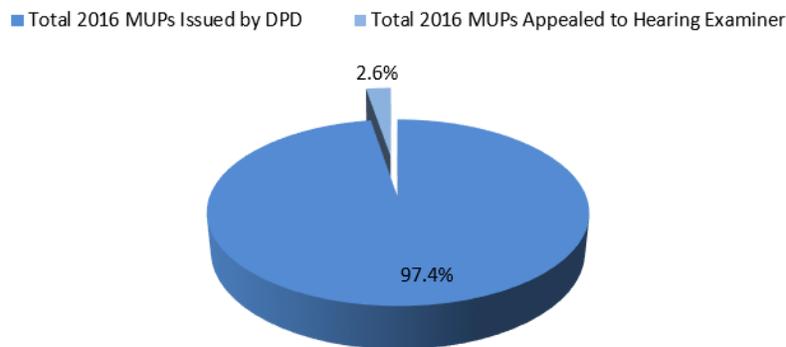
Landmark and special district appeals filed increased from 1 in 2014 to 7 in 2015 and decreased to 4 in 2016.

Licensing appeals have remained low since the closure of *Rick's* adult entertainment club. Most appeals now involve taxi or for-hire licenses rather than adult entertainer licenses. Just 3 licensing appeals were filed in 2016.

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

The Department of Construction and Inspections issued 894 MUPs in 2016. In most years, approximately 3% to 4% of MUPs are appealed to the Hearing Examiner, and that appeal rate held true in 2016.

2016 Master User Permit Case Activity

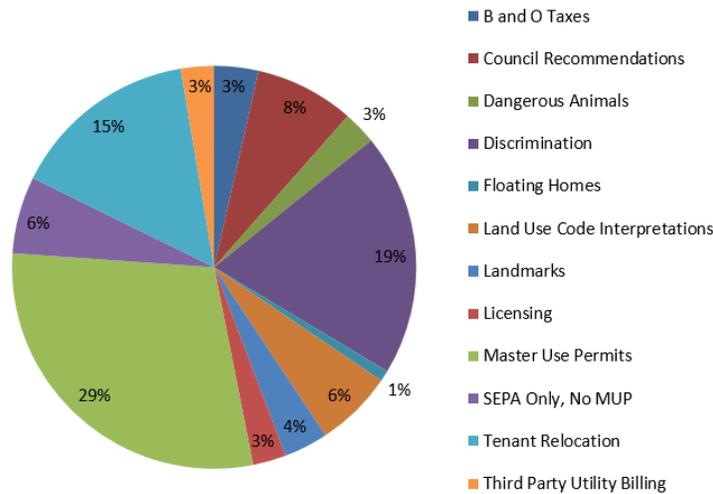


“**SEPA-only**” appeals are appeals of environmental determinations made for two types of proposals: 1) proposals, such as legislation, that do not require a MUP or Council land use decision; and 2) proposals that require a MUP or a Council land use decision, but a department other than DCI makes the environmental determination on the proposal. SEPA-only appeals have gone up one year and down the next for the last six years. In 2016, 7 were filed.

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

Third party utility billing cases are initiated by a complaint by a tenant of a building in which utility services for the building are master-metered and then billed to tenants in accordance with a formula developed to roughly determine usage on a per-unit basis. The utilities are normally billed through a third party billing agent, and the City’s third party billing regulations, Chapter 7.25 SMC, impose detailed requirements for the billing practices associated with master-metered utilities. Because the Code regulates billing practices, rather than the amount that can be billed for utilities, the number of third party utility billing cases filed is normally low. In 2016, we received just 3 third party utility billing complaints.

2016 Non-Citation Cases Filed by Type

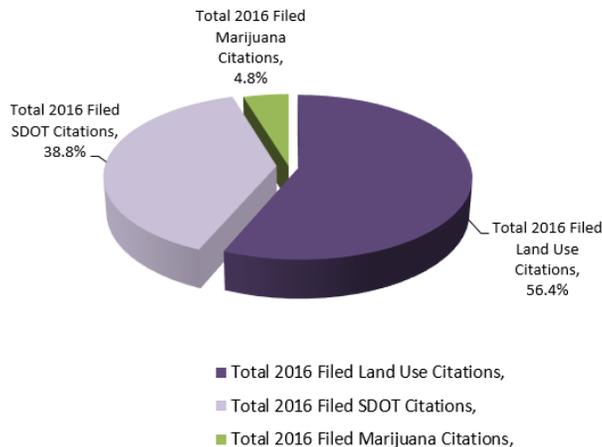


Citation Enforcement Cases Filed

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

The total number of citations filed in 2016 (714) was up by 227 over the number filed in 2015 and 57% higher than the five-year average of 407. **Marijuana citation** appeals nearly doubled, but most of the increase in citations is attributable to the **Land Use Code and Noise Code citations**, which are combined for tracking purposes. They were up 80% from the number issued in 2015. **SDOT citations** also saw a large increase, from 145 filed in 2015 to 277 filed in 2016.

2016 Citations Filed by Type



Prehearing, Hearing, and Decision Activity

Prehearing Conferences. The Office of Hearing Examiner held 41 prehearing conferences in cases scheduled for hearing in 2016. Under the Hearing Examiner Rules, prehearing conferences can be held at the request of either a party or the Hearing Examiner. Initial conferences are designed to assess the parties' interest in mediation. If a case will not be mediated, the prehearing conference is used to organize and prepare a case for hearing, including clarifying the issues to be addressed, facilitating disclosure of each party's intended witnesses and exhibits, establishing a case schedule for prehearing motions, and other matters. Following the conference, the Examiner normally prepares a prehearing order memorializing any agreements reached or rulings made at the conference. Subsequent conferences often deal with discovery conflicts (whether information and documents sought by one party from another are relevant to the issues, privileged, etc.), scheduling, and other prehearing matters. Prehearing conferences are usually held in MUP, SEPA, civil service, tax, dangerous animal, discrimination, and third party billing cases, and are scheduled in other types of cases as needed. They occasionally provide the catalyst for eventual settlement of a case, as the parties work during the conference to clarify the issues underlying the appeal and often stay for additional private discussions after the Hearing Examiner leaves the room. Prehearing conferences in cases for our contract cities are less frequent and are usually held via telephone.

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

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

Total decisions. As noted above, total decisions include decisions issued after a full evidentiary hearing, and those issued following submittal of legal memoranda and exhibits, and sometimes oral argument, on the party's prehearing motions. In 2016, the Office of Hearing Examiner issued 158 decisions in Seattle cases, up from the 115 issued in 2014 and 134 issued in 2015. Decisions in citation cases and non-citation cases were approximately equal in number. As stated above, we also issued 52 decisions for contract cities, approximately the same number that was issued in 2015.

Table 2 – Decisions Issued After Hearing

	2016	2015	2014	2013	2012	2011	PREVIOUS 5-YR AVERAGE (11-15)
B & O TAX APPEALS	1	3	3	3	2	2	3
COUNCIL RECOMMENDATIONS	7	1	1	8	6	4	4
DANGEROUS ANIMALS	1	0	1	2	1	2	1
DISCRIMINATION	8	3	3	3	3	4	3
LAND USE CODE INTERPRETATIONS	6	6	1	2	1	1	2
LANDMARKS/ SPECIAL REVIEW DISTRICT	2	6	1	0	1	0	2
LICENSING APPEALS	1	1	1	0	0	2	0.8
MASTER USE PERMITS	24	35	16	19	15	15	20
OTHER JURISDICTIONS	0	0	16	6	7	6	7
SEPA-ONLY APPEALS (NON MUP)	10	11	3	5	1	8	6
TENANT RELOCATION	15	11	7	11	11	2	8
THIRD PARTY UTILITY BILLINGS	0	3	4	3	2	1	3
TOTAL WITHOUT CITATIONS	75	80	56	60	49	45	58
LAND USE CITATION ENFORCEMENT ACTIONS	48	38	35	50	38	67	46
SDOT CITATION ENFORCEMENT ACTIONS	24	14	23	16	13	37	21
MARIJUANA CITATION ENFORCEMENT ACTIONS	11	2	0	0	0	0	0.4
TOTAL CITATIONS	83	54	58	66	51	104	67
GRAND TOTAL	158	134	114	126	100	149	125

Non-Citation Decisions Issued

We issued 75 non-citation decisions in 2016, maintaining the pace set in 2015. Three of the decisions were written by a pro tem hearing examiner.

The number of **tax assessment** decisions issued in 2016 remained low (1), as it has since 2011. There were no **civil service** or **energy benchmarking** decisions issued by the office last year, and those case categories have been transferred to the “Other Jurisdictions” category on Table 2 above.

Recommendations to Council on land use actions involve the same hearing, research, record review and writing time required for MUP decisions and are included in the total decision figures in Tables 2 and 3. The number of recommendations issued (7) increased in 2016 for the first time since 2013. Six of the recommendations issued were for rezone applications, and one concerned King County’s application for a new wet weather treatment station in Georgetown.

We issued just one decision in a **dangerous animal** appeal in 2016, which is consistent with the previous 5-year average.

There were eight decisions issued in **discrimination cases** in 2016, a notable increase from the 3 and 4 per year issued during the last five years.

As in 2015, we issued 6 decisions on appeals of **Land Use Code interpretations** in 2016, an increase over the 5-year average of 2.

Landmarks/special districts appeals have been low in recent years. They increased to 6 in 2015 but were back down to 2 in 2016. Both concerned proposals within special districts (Pike Place Market and Pioneer Square) rather than landmarks.

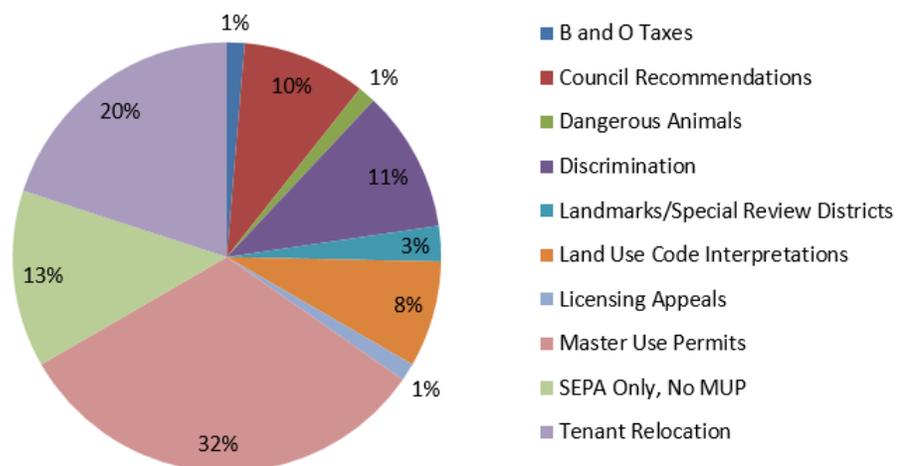
As in 2014 and 2015, we issued just one decision in a **licensing** appeal in 2016. The case involved a decision by FAS not to renew a marijuana business license.

MUP appeals generated 24 decisions in 2016, down from the 35 issued in 2015, but higher than the number issued in any other year since 2009. Decisions issued in **SEPA-only** appeals (10) were also high, and well above the previous 5-year average.

We issued 15 decisions in appeals of the denial of **tenant relocation assistance**, higher than the number issued in any year since 2007.

Third party utility billing complaints have remained consistently low over the last five years, and in 2016, we issued no decisions in that case category. These cases often involve misunderstandings on the part of both landlords and tenants about the requirements of the Third Party Utility Billing Code, and the cases frequently settle soon after the conclusion of the prehearing conference.

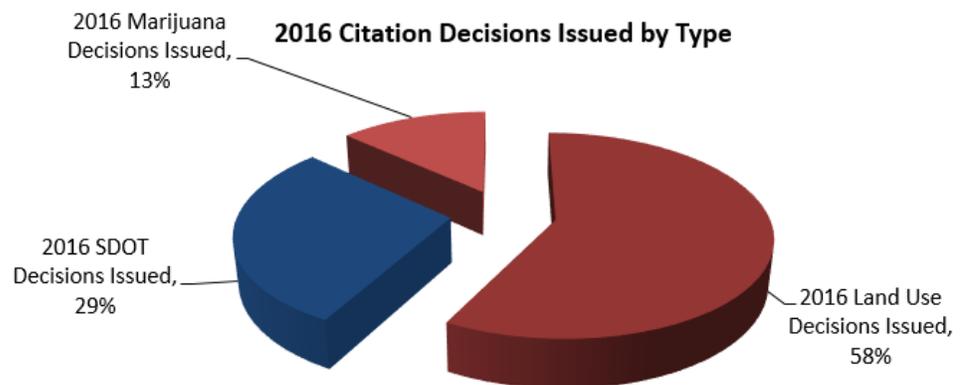
2016 Non-Citation Decisions Issued by Type



Citation Decisions Issued

After several years of trending down or staying flat, total citation decisions issued increased by 65%, to 83 decisions in 2016. The increase was consistent throughout all citation types: land use/noise, SDOT, and marijuana.

In **Land Use/Noise Code citation** appeals, 48 decisions were issued, approximately equal to the previous five-year average of 46. In **SDOT citation** appeals, 24 decisions were issued, more than the number issued in any year since 2011. **Marijuana citations** were in their first full year in 2016, and 11 decisions were issued in appeals of those citations.



Disposition of Appeals to the Hearing Examiner

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

In appeals for which the Examiner issued a final order or decision, the Examiner affirmed the Department's decision without change 38% of the time, remanded or modified the Department's decision 22% of the time, reversed the department's decision 9% of the time, and dismissed the appeal on procedural grounds 31% of the time.

Table 3 – 2016 Case Activity Summary

	2016 Cases Filed				2016 Case Disposition			
	Pending Appeals at Start of Year	Cases Filed	Total Caseload	Cases Heard**	Decisions Issued**	Cases Dismissed (No Hearing)	Defaults Issued (Untimely)	Pending Appeals at End of Year
B & O Tax Appeals	2	2	4	1	1	3	0	0
Council Recommendations	2	7	9	7	7	1	0	1
Dangerous Animals	0	3	3	1	1	2	0	0
Discrimination	2	20	22	8	8	5	0	9
Floating Homes Petitions	0	1	1	0	0	0	0	1
Land Use Code Interpretations*	1	6	7	3	6	1	0	2
Landmarks/Special Review District*	1	3	4	2	2	2	0	0
Licensing Appeals	0	3	3	1	1	0	0	2
Master Use Permits*	8	25	33	16	24	16	0	6
Seпа-Only Appeals (non MUP)*	1	6	7	3	10	3	0	1
Tenant Relocation	0	17	17	15	15	1	0	1
Third Party Billing	0	3	3	0	0	1	0	2
Total	17	96	113	57	75	35	0	25
Land Use Citation Enforcement	25	378	403	40	48	78	196	41
SDOT Citation Enforcement	13	264	277	16	24	87	129	17
Marijuana Citation Enforcement Actions	2	32	34	11	11	1	4	18
Total Citations	40	674	714	67	83	166	329	76
Total Including Citations	57	770	827	124	158	201	329	101

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

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

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

Table 4 – Disposition of Appeals*

	Affirmed	Affirmed as Modified	Affirmed, Penalty Mitigated	Reversed	Remanded	Dismissed	Total
B & O Tax	1	-	-	-	-	3	4
Dangerous Animals	1	-	-	-	-	2	3
Land Use Code Interpretations	1	-	-	2		3	6
Landmarks/Special Review District	1	-	-	2	-	2	5
Licensing Appeals	1	-	-	-	-	-	1
Master Use Permit	17	-	-	-	-	7	24
Tenant Relocation	5	-	-	7	1	3	16
SEPA-Only	1	-	-	3	-	3	7
Total Without Citations	28	-	-	14	1	23	66
Land Use Citation Enforcement	12	2	19	-	-	15	48
Marijuana Citation Enforcement	7	-	4	-	-	-	11
SDOT Citation Enforcement	9	-	7	-	-	8	24
Total Citations	28	2	30	-	-	23	83
Total	56	2	30	14	1	46	149

*Includes only final decisions on appeals. Does not include decisions on 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)

Dangerous Animal Appeals

The Director has "the burden of proving by a preponderance of the evidence that the Director's decision [declaring an animal dangerous or ordering humane disposal of animal] was correct." In the case of an order requiring humane disposal of a dangerous animal, the Director has "the burden of proving that the Director's decision not to allow the animal be sent to a secure animal shelter was not arbitrary and capricious." (SMC 9.25.036.C)

Interpretation Appeals

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

Licensing 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.

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." (SMC 25.05.680)

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

Varies by district. For example: Pike Place Market, SMC 25.24.080 - "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; Pioneer Square, SMC 23.66.030 - "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."

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, SDOT/Use of right-of-way, FAS/Marijuana Businesses)

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/SDOT/FAS] 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 and impose the applicable penalty. (SMC 23.91.012, SMC 15.91.012, SMC 6.500.170)

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 211431090) [Admin. by Seattle-King County Public Health]
Public Nuisance Abatements (SMC 10.09.100) [Administered by Seattle Police Department]
Radiofrequency Radiation Ordinance Violations (SMC 25.10.540) [Admin. by Seattle-King County Public Health]

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

Admission Tax Exemptions (SMC 5.40.028, SMC 5.40.085)
All Ages Dance and Venues (SMC 6.295.180)
Bond Claims (SMC 6.202.290)
Business and Occupation and other Tax Assessments (SMC 5.55.140)
Horse Drawn Carriage Licenses (SMC 6.315.430)
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.