

**City of Seattle**



**OFFICE OF HEARING EXAMINER**

**2014**

**ANNUAL REPORT**

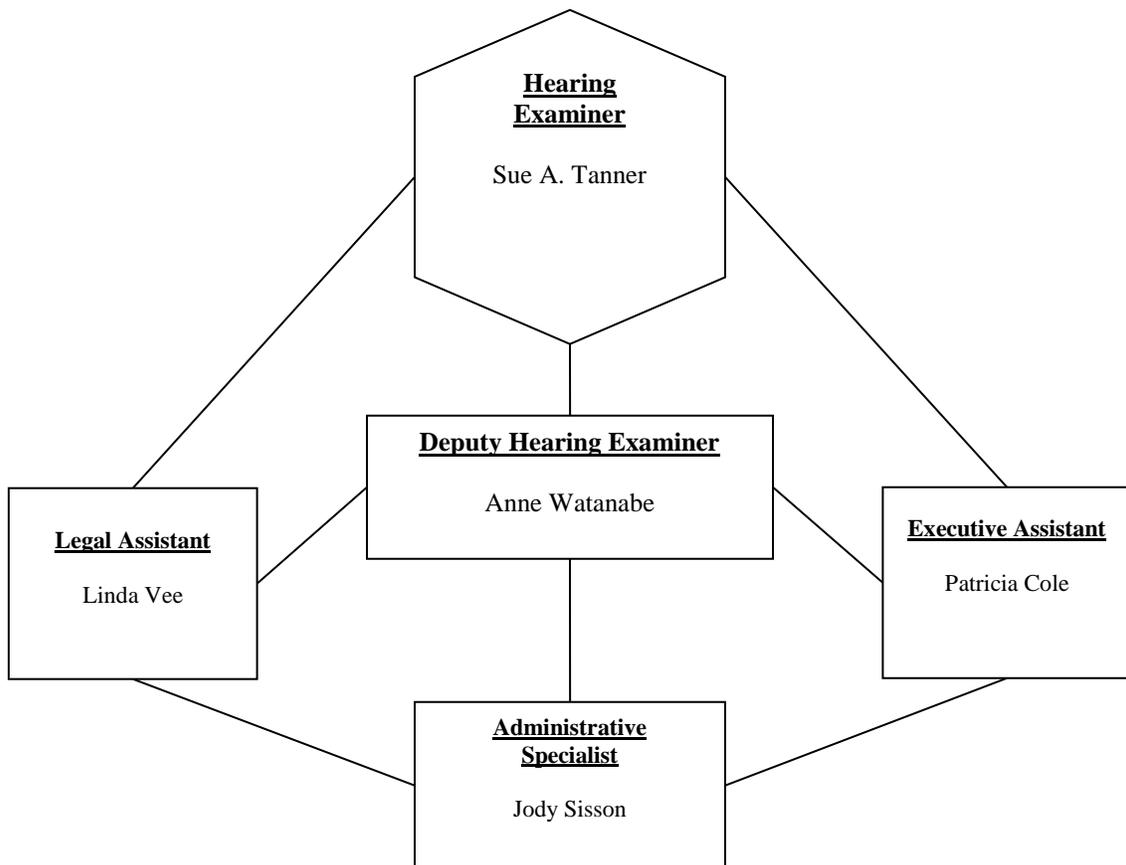
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**May 2015**

2014  
City of Seattle  
**CITY COUNCIL**

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**2014 Organizational Chart**



**CITY OF SEATTLE  
OFFICE OF HEARING EXAMINER**

**2014 ANNUAL REPORT**

**Mission and Authority**

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

The position of Hearing Examiner is established in the Seattle Municipal Code, and the Hearing Examiner is appointed by the City Council to serve an initial one-year term and subsequent four-year terms. The Hearing Examiner is responsible for all functions of the Office and is authorized to appoint Deputy Examiners and other staff. The inside front cover of this report shows the organization chart and Office staff for 2014.

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

**Jurisdiction**

Appeals. The Office of Hearing Examiner currently has jurisdiction over more than 75 different types of matters.<sup>1</sup> We track all cases that come into the Office as “Cases Filed”. The most numerous of these are appeals of decisions made by other City agencies, such as: 1) the Department of Planning and Development [master use permits, SEPA determinations, Land Use Code interpretations, land use and noise enforcement citations, and decisions on tenant relocation assistance]; 2) the Department of Finance and Administrative Services [tax assessments and licensing decisions]; 3) the Landmarks Preservation Board and Special Purpose District Commissions [certificates of approval for alterations]; and 4) 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 Planning and Development; 2) complaints filed by the Office for Civil Rights and the City Attorney’s Office for discrimination in employment, housing, public accommodation, or public contracts, or for violation of paid sick and safe time requirements, minimum wage requirements, or regulations governing the use of criminal history in employment decisions; 3) complaints for third party utility billing violations; 4) petitions for review of floating home moorage fee increases; and several others.

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<sup>1</sup> See complete list at pp. 18-19.

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 hearing process 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; 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 DPD 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](http://www.seattle.gov/examiner). The website also includes the Hearing Examiner Rules, the “Public Guide,” appeal forms and fee and payment information, a schedule of upcoming hearings, information on making a public records request, 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. We currently provide contract examiner services to five cities: Kirkland, Mercer Island, Puyallup, Shoreline and Tukwila. In 2014, our contract city caseload remained approximately the same as the 2013 caseload. We conducted 40 hearings and issued 42 decisions in 2014, whereas in 2013, we held 44 hearings and issued 50 decisions for contract cities. The change reflects normal fluctuations in the types of cases assigned to us.

In the last five years, we have deposited \$89,700 in contracting revenue into the general fund. Since 2005, when we began with just one contract city, we have earned \$142,600 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 2014:

In *Daniel Duffus v. City of Seattle*, King Cy. Superior Ct.#13-2-24020-3SEA, a developer appealed a Hearing Examiner decision affirming an interpretation by the Director of DPD that a parcel of property did not qualify as a separate building site under applicable Code provisions. The Superior Court entered an order affirming the decision, which was later affirmed by the Court of Appeals.

Three decisions in land use citation cases were appealed to court and consolidated: *Johnson v. City of Seattle*, King Cy. Superior Ct.#10-2-44876-4SEA, #11-2-06591-0SEA; and 11-2-15560-9SEA. The court affirmed the Examiner's decisions in the cases, and the matter was appealed to the Court of Appeals. The appellate court reversed the decision. DPD had argued that before Mr. Johnson could prevail on his claim of a nonconforming right to store a large number of cars in his yard, he must complete a Code-mandated process for establishing the nonconforming use of the property. The Court of Appeals ruled that Mr. Johnson could not be cited for the vehicles in his yard because, as a matter of law, they constituted a legal nonconforming use of the property.

In *Strong v. City of Seattle*, Superior Ct.#13-2-40088-0SEA, neighbors appealed a Hearing Examiner decision affirming a DPD decision to grant a variance for construction of a single family residence on a lot comprised almost entirely of a steep slope environmentally critical area and its buffer. The court affirmed the Examiner's decision.

*Swift Printing and Digital Imaging, Inc. v. City of Seattle*, Superior Ct.#13-2-40017-1SEA involved a Hearing Examiner decision affirming DPD's approval of a proposal to construct a mixed use building that would include low income housing above commercial space on Third Avenue in Belltown. The appeal was dismissed by an order agreed to by both parties.

In *Corporation of the Catholic Archbishop of Seattle, et al. v. City of Seattle*, Superior Ct.#13-2-28550-9SEA (removed to U.S. Dist. Ct., USDC #13-cv-01589), Blanchet High School appealed a Hearing Examiner decision reversing a variance issued by DPD to the

school allowing installation of athletic field lights and a new broadcast system. The Examiner determined that the school could not meet one of the Code's variance criteria. The Code provided a special exception process, less rigorous than the variance process, for public schools to install light poles, but the process was not open to religious schools. The school appealed, arguing that the Code violated the a federal statute, the Religious Land Use and Institutionalized Persons Act, which requires that land use regulations be imposed on equal terms on both religious and nonreligious institutions. The court agreed and ruled in favor of the school.

*Wedbush Securities, Inc. v. City of Seattle*, Superior Ct.#13-2-22355-4SEA was an appeal of a Hearing Examiner decision affirming a tax assessment by the Director of Finance and Administrative Services against a registered securities broker/dealer. The court affirmed the decision, and the taxpayer appealed to the Court of Appeals.

Several appeals of Hearing Examiner decisions on challenges to the SEPA determinations issued for a project to construct the "missing link" of the Burke-Gilman Trail remain pending in Superior Court: *Salmon Bay Sand and Gravel, Inc., et al. v. City of Seattle, et al.*, King Cy. Superior Ct.# 09-2-26586-1SEA, 11-2-25099-7SEA, and 12-2-30454-8SEA.

### **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 2014. (The complete decision or recommendation can be found through the "Decisions" link at [www.seattle.gov/examiner](http://www.seattle.gov/examiner) using the Hearing Examiner case number included in parentheses after each case description below.)

- Appellants challenged DPD's Determination of Nonsignificance ("DNS") for proposed "microhousing" legislation. The legislation was a response to recent microhousing projects, characterized by many small units housed in a structure, often without any off-street parking, in neighborhoods throughout the City. Microhousing was not specifically identified and regulated in the City's Codes, and the proposed legislation included new requirements, such as design review for certain-sized projects. The appellants argued that the legislation would cause increased development of microhousing, which in turn would have significant environmental impacts. But after comparing the proposed legislation to the existing regulation for such housing, the Examiner ruled that the new regulations for this new form of housing would not have significant environmental impacts. (W-13-008)
- Quite different concerns were raised in an appeal of a DNS for proposed legislation to amend certain standards in the Lowrise Multifamily Residential zones. The Lowrise Multifamily Code was amended in 2010, but DPD subsequently determined that new development was consuming development capacity at a higher rate than had been anticipated, such that build-out in the LR1 and LR3 zones would exceed capacity in those zones. DPD's research also indicated that other unintended consequences were occurring as a result of the 2010 legislation. Appellants claimed that the proposed changes would reduce the available housing so as to cause increased traffic congestion from commuters who worked in the City but lived elsewhere, that the

amendments would not address concerns about project design, and that the changes would reduce the amount of affordable housing. The Examiner affirmed the decision, concluding that the DNS was not in error, even if the recent legislative history itself showed that some of the outcomes of legislation can be difficult to predict. (W-14-001)

- Design review is an integral part of the City’s development review for certain types of projects. The discretion exercised by the Design Review Board was at issue in an appeal brought by neighbors of a new Wallingford project. The Appellants argued that the project’s design was jarring compared with existing development in Wallingford. They argued that the Board could have required features such as a larger courtyard, greater setbacks, additional landscaping, and other design changes to improve the project design. The Appellants included former design review board members who would have chosen to exercise their discretion differently, and the results would undoubtedly have been different. But the Examiner determined that the Board’s recommendations were consistent with the design guidelines and Code and upheld DPD’s design review approval. (MUP-13-023)
- Neighbors living in a strip of single-family-zoned properties that adjoin midrise-zoned property appealed DPD’s approval of a seven-story, 102-unit multifamily structure, with 59 parking spaces, to be constructed on the midrise-zoned property. The appeal challenged DPD’s design review decision and the SEPA DNS issued for the project, as well as a DPD interpretation concluding that the project met the Land Use Code’s floor area ratio (FAR) requirements. The Design Review Board had struggled with the issue of the project’s compatibility with the single-family neighborhood but had been instructed that it lacked authority to seek a reduction in structure height. The Hearing Examiner reversed DPD’s design review decision because this instruction was contrary to the express language of applicable design guidelines, and because the Board was not given an opportunity to revisit the scale of the proposal after DPD concluded the FAR calculations were incorrect and required a reduction in the project’s square footage. The decision was remanded to DPD to return to the Board. The Examiner also reversed and remanded DPD’s SEPA DNS because the neighbors were also able to demonstrate that DPD’s analysis of cumulative parking impacts did not consider the impacts of several nearby microhousing projects that were projected to raise on-street parking to between 104% and 120% of available capacity. Finally, the neighbors argued successfully that the Director’s Rule that addresses the parking reductions allowed when “frequent transit service” is available in an area conflicted with the Code’s express definition of frequent transit service. (MUP-13-011)

### **2014 Caseload**

Table 3, on page 15, presents a complete summary of case activity for 2014. “Cases Filed” and “Decisions Issued” are shown in tables found on pages 6 and 11, respectively and discussed in more detail below. The total number of cases filed, 481, was up slightly from the 446 filed in 2013. The number of SDOT citation enforcement cases filed, which declined by 56% between 2011 and 2013, increased by 47% in 2014 to 94, and was approximately equal to the previous five-year average of 95. Land Use Code citation enforcement actions also increased, but not as significantly, rising from 359 in 2013 to 412 in 2014.

Table 1 – 2014 Cases Filed/Delegated\*

	2014	2013	2012	2011	2010	2009	Previous 5-Yr. Average (09-13)
B&O TAX ASSESSMENTS	4	7	1	11	6	14	8
CIVIL SERVICE APPEALS	0	2	7	6	6	5	5
COUNCIL RECOMMENDATIONS	0	9	7	3	10	6	7
ENERGY BENCHMARKINGS	16	4	0	0	0	0	1
LAND USE CODE INTERPRETATIONS	3	5	2	1	4	15	5
LANDMARKS/SPECIAL REVIEW DISTRICT (Pioneer Sq., Pike Market, ID, etc.)	1	0	2	1	4	4	2
LICENSING (taxis, adult entertainment, etc.)	2	0	0	5	6	12	5
MASTER USE PERMITS (MUP)	23	23	28	17	25	22	23
OTHER JURISDICTIONS (Dangerous Animals, Public Nuisance, etc.)	6	5	4	4	6	27	9
SEPA-only Appeals (non MUP)	3	9	3	10	6	2	6
TENANT RELOCATIONS	6	16	8	8	2	7	8
THIRD PARTY UTILITY BILLING	5	7	3	2	7	7	5
<b>TOTAL WITHOUT CITATIONS</b>	<b>69</b>	<b>87</b>	<b>65</b>	<b>68</b>	<b>82</b>	<b>121</b>	<b>85</b>
LAND USE CITATION ENFORCEMENT ACTIONS	318	294	278	274	479	341	333
SDOT CITATION ENFORCEMENT ACTIONS	94	65	76	147	90	99	95
<b>TOTAL CITATIONS</b>	<b>412</b>	<b>359</b>	<b>354</b>	<b>421</b>	<b>569</b>	<b>440</b>	<b>429</b>
<b>GRAND TOTAL</b>	<b>481</b>	<b>446</b>	<b>419</b>	<b>489</b>	<b>651</b>	<b>561</b>	<b>513</b>

### Non-Citation Cases Filed

There were 69 Non-Citation cases filed with the Office of Hearing Examiner in 2014, down from the 87 filed in 2013 and approximately the same as the number filed in 2012 (65) and 2011 (68). As it does each year, the mix of cases changed somewhat.

Appeals from **tax assessments** went from 1 in 2012 up to 7 in 2013, and then back down to 4 in 2014.

The Civil Service Commission sometimes delegates **civil service appeals** to the Hearing Examiner for hearing and decision. In 2011, the Office of Hearing Examiner worked with the Commission and the Personnel Department to place the Pro Tem Hearing Examiner position on the same pay band as the Hearing Examiner and Deputy Hearing Examiner. As a result, the Commission has been able to attract contract pro tem examiners to handle most of the Commission’s cases. In keeping with our expectation that fewer cases would be delegated to the Hearing Examiner, we received just two in 2013 and none in 2014.

Cases involving **recommendations to the City Council** went from 9 in 2013 down to 0 in 2014.

**Energy benchmarking appeals** were added to our caseload in 2013, and 16 appeals were filed in 2014. These are appeals from administrative review 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.

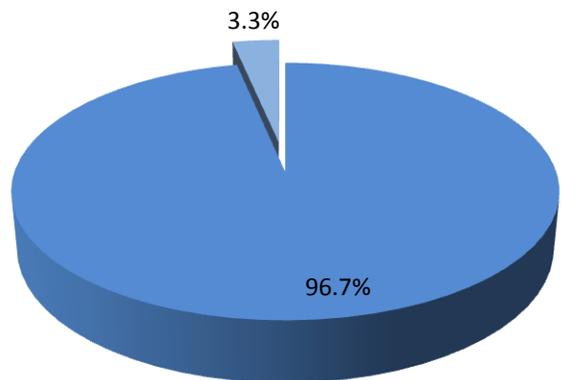
Five appeals from DPD **Land Use Code interpretations** were filed in 2013, but the number fell to 3 in 2014.

**Landmark and special district appeals** filed increased from 0 in 2013 to 1 in 2014. And **licensing decisions** increased from 0 in 2013 to 2 in 2014.

A **Master Use Permit, or MUP**, is a document issued to a permit applicant that includes all land use decisions made by the Department of Planning and Development on 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, but it fell to the low to mid 20s in 2009 and 2010 and to 17 in 2011. MUP appeals increased to 28 in 2012 and dropped slightly in 2013 and 2014 to 23.

The Department of Planning and Development issued 676 MUPs in 2014, a 14% increase from the 593 MUPs issued in 2013 which, in turn reflected a 21% increase over the 490 MUPs issued in 2012. In most years, approximately 5% of MUP decisions are appealed to the Hearing Examiner, but in 2013, only 3.7% were appealed and in 2014, that number dropped slightly to 3.3%.

**2014 Master User Permit Case Activity**



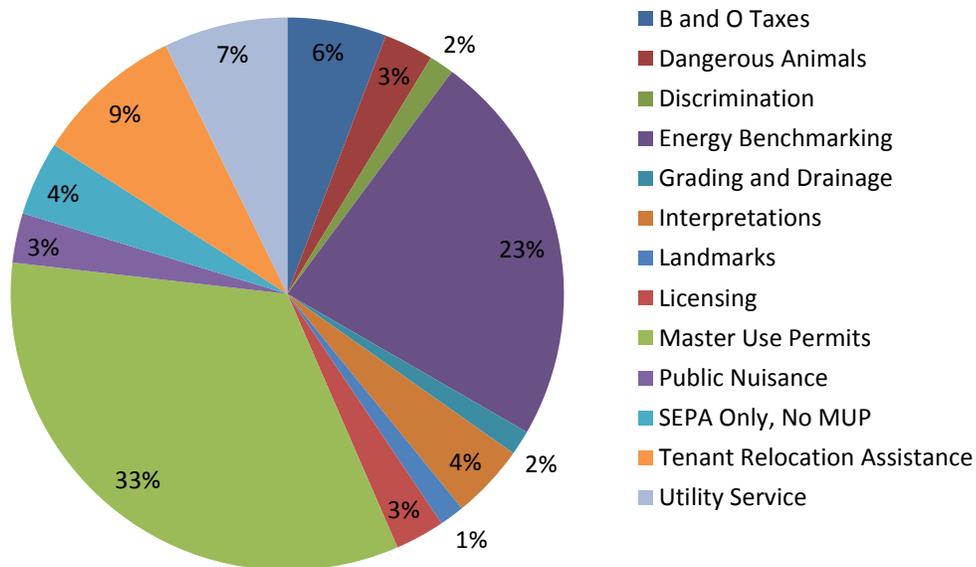
- Total 2014 MUPs Issued by DPD
- Total 2014 MUPs Appealed to Hearing Examiner

**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 DPD makes the environmental determination on the proposal. In 2012, just 3 SEPA-only appeals were filed, in 2013, the number increased to 9, and in 2014, it fell back to 3.

In 2013, there were 16 **appeals from denials of tenant relocation assistance**, but that was an anomaly. Just 6 appeals were filed in 2014, which is more in line with the number filed in 2009 through 2012.

**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. The number of third party utility billing cases filed has gradually increased as more tenants have become aware of the Code requirements. In some years, just 2 or 3 cases were filed, but we received 7 third party billing cases each year in 2009, 2010 and 2013, and 5 in 2014.

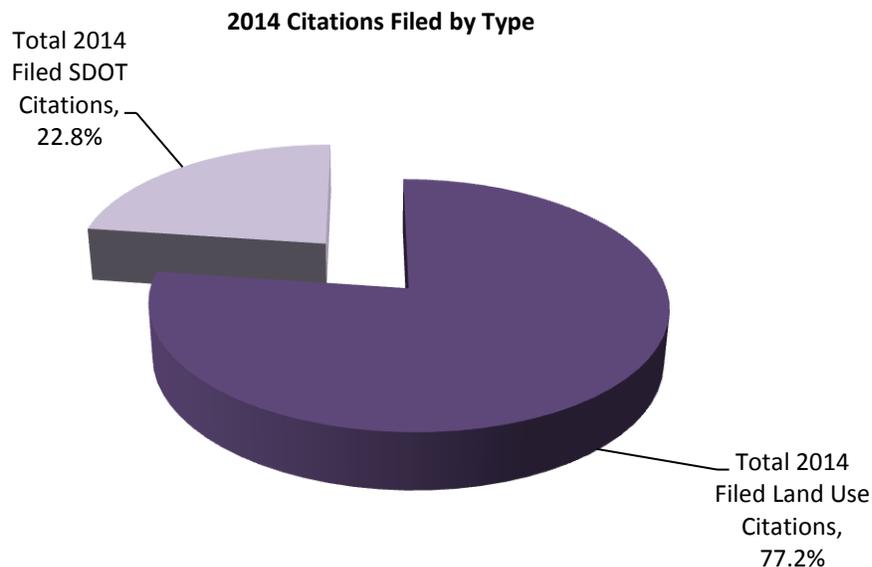
**2014 Non-Citation Cases Filed by Type**



## Citation Enforcement Cases Filed

Because citation enforcement cases follow a unique procedure, we track them separately from other categories of cases. When a citation is issued, a copy is sent to the Office of Hearing Examiner. In addition, all DPD citations are uploaded from DPD'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 Office of Hearing Examiner prepares and 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 DPD and SDOT citations filed in 2014 (412) was up by 53 over the number filed in 2013 and close to the five-year average of 429.

Both **Noise Code** and **Land Use Code citations** are issued by DPD, so they are combined for tracking purposes. The number filed in 2014 (318) was again higher than the number filed in 2013 (294) and 2012 (278) but still well below the number filed in 2010 (479), which now appears to have been an aberration. The number of **SDOT citations** (use of right-of-way without a permit, vending violations, etc.) filed in 2014 (94) was similar to the number filed in 2009 and 2010 and up by 29 over the number filed in 2013. That number may increase in 2015 in light of the increase in construction activity in the city.



## Prehearing, Hearing and Decision Activity

**Prehearing Conferences.** The Office of Hearing Examiner held 21 prehearing conferences in cases scheduled for hearing in 2014. 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, and 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, 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, landmark, SEPA, 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 dispositive prehearing orders involves considerable examiner time, the Office of Hearing Examiner includes them in the “decisions issued” category of annual statistics.

**Hearings.** The length of a hearing before the Hearing Examiner depends upon many variables, such as the type and complexity of a case, the number of witnesses, and the parties’ level of preparation and expertise in the subject area. Consequently, one case may take 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 a party’s dispositive prehearing motion. In 2014, the Office of Hearing Examiner issued 115 decisions in Seattle cases, down from the 126 issued in 2013, although higher than the 99 issued in 2012. We are still well below the 150 to 200 decisions issued each year between 2008 and 2011, but given the city’s development climate, that may change in 2015. As noted above, we also issued 42 decisions for contract cities.

Table 2 – 2014 Decisions Issued

	2014	2013	2012	2011	2010	2009	Previous 5-Yr Average (09-13)
<b>B&amp;O TAX ASSESSMENTS</b>	3	3	2	2	6	10	5
<b>CIVIL SERVICE APPEALS</b>	1	2	6	5	3	1	3
<b>COUNCIL RECOMMENDATIONS</b>	1	8	6	4	12	5	7
<b>ENERGY BENCHMARKING</b>	16	4	0	0	0	0	1
<b>LAND USE CODE INTERPRETATIONS</b>	1	2	1	1	1	6	2
<b>LANDMARKS/SPECIAL REVIEW DISTRICT (Pioneer Sq., Pike Mrkt, ID, etc.)</b>	1	0	1	0	3	1	1
<b>LICENSING (taxis, adult entertainment, etc.)</b>	1	0	0	2	7	17	5
<b>MASTER USE PERMITS (MUP)</b>	16	19	15	15	14	30	19
<b>OTHER JURISDICTIONS (Dangerous Animals, Public Nuisance, etc.)</b>	3	3	3	4	3	6	4
<b>SEPA-only Appeals (non MUP)</b>	3	5	1	8	6	3	5
<b>TENANT RELOCATIONS</b>	7	11	11	2	2	4	6
<b>THIRD PARTY UTILITY BILLINGS</b>	4	3	2	1	9	4	4
<b>TOTAL WITHOUT CITATIONS</b>	57	60	48	44	66	87	61
<b>LAND USE CITATION ENFORCEMENT ACTIONS</b>	35	50	38	67	73	77	61
<b>SDOT CITATION ENFORCEMENT ACTIONS</b>	23	16	13	37	30	38	27
<b>TOTAL CITATIONS</b>	58	66	51	104	103	115	88
<b>GRAND TOTAL</b>	115	126	99	148	169	202	149

**Non-Citation Decisions Issued**

The number of cases proceeding to decision was at a normal level during the first part of 2014 but dropped off precipitously in late summer and fall. Non-citation decisions issued in 2014 (57) decreased slightly from the number issued in 2013 (60) but was higher than the number issued in 2012 (48) and 2011 (44).

The number of **B&O Tax appeal decisions** issued in 2014 remained low (3), as it has been since 2011.

Just 1 decision was issued in **Civil-Service appeals** in 2014. As noted under “Non-Citation Cases Filed” above, the number of civil service appeals sent to the Office of Hearing Examiner is expected to remain low now that the Civil Service Commission is able to attract contract pro tem examiners to hear most appeals.

**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. There was just 1 recommendation to Council in 2014, down from 8 in 2013 and well below the previous five-year average of 7. The 2014 recommendation involved a request for a contract rezone for a mixed use structure.

There were 16 decisions issued in **energy benchmarking appeals**. Just 4 were issued in 2013, the first year these appeals were assigned to the Office of Hearing Examiner. As building owners become familiar with the energy benchmarking process and the computer program used for reporting, we expect to see fewer of these cases.

Over the last ten years, there have normally been between one and four decisions issued in appeals of **Land Use Code Interpretations**. That remained true in 2014 when we issued just one interpretation decision.

One decision was issued in a **landmarks/special districts** appeal in 2014. That may change in 2015, as these appeals sometimes mirror the increases in MUP appeals that come with increased development activity.

After two years of issuing no decisions in **licensing** appeals, we issued one decision in a taxicab appeal in 2014.

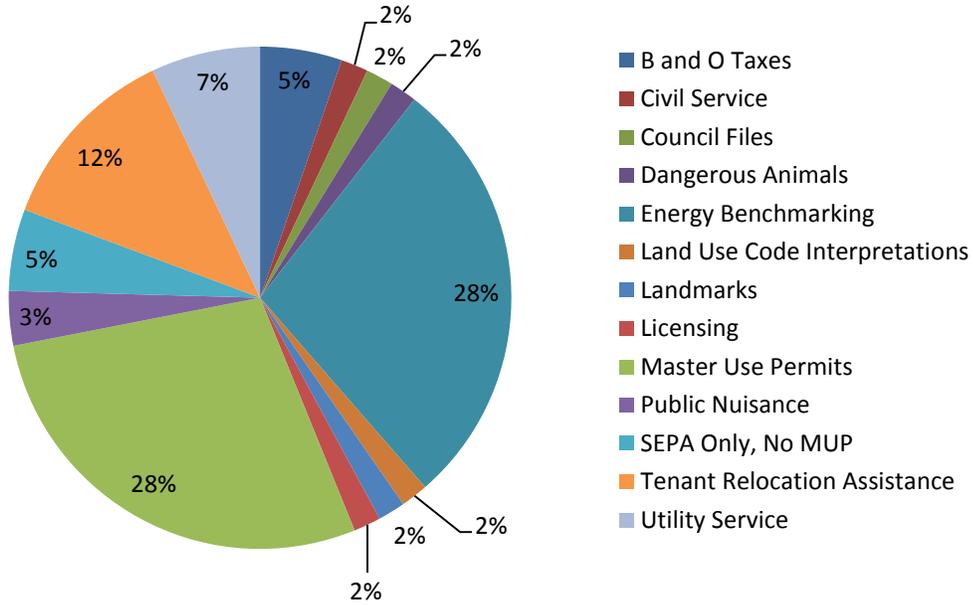
**MUP appeals** generated 16 decisions in 2014, which is approximately the same as the number issued each year since 2010, but approximately half the number issued in 2009 (30).

Decisions issued in **SEPA-only appeals** went from just 1 in 2012 to 5 in 2013, and down to 3 in 2014, which is below the previous five-year average.

We issued 7 decisions in **appeals of the denial of tenant relocation assistance**, down from the 11 issued in 2013 and 2012 but approximately the same as the previous five-year average of 6.

Four decisions were issued on **Third Party Billing Complaints**, which is consistent with the previous five-year average.

**2014 Non-Citation Decisions Issued by Type**

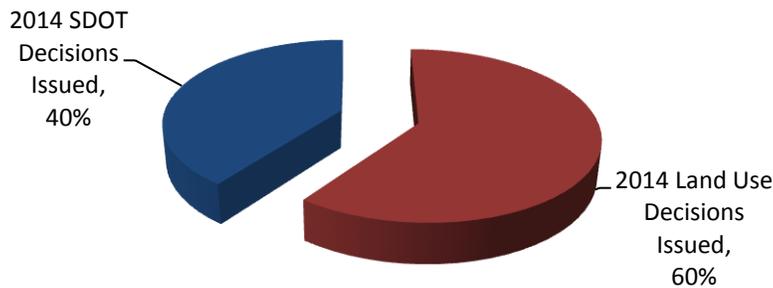


**Citation Decisions Issued**

During the last five years, both land use/noise and SDOT citation decisions have shown an overall decline. Although the number of both types of citations filed increased in 2014, citation decisions issued in 2014 continued the downward trend of the last several years. Just 58 citation decisions were issued in 2014, compared to 66 issued in 2013 and a previous five-year average of 88.

In **Land Use/Noise Code citation appeals**, 35 decisions were issued, down from the 50 decisions issued in 2013 and well below the previous five-year average of 61. In **SDOT citation appeals**, 23 decisions were issued, a slight increase from the 16 issued in 2013 and 13 issued in 2012.

**2014 Citation Decisions Issued by Type**



## **Disposition of Appeals to the Hearing Examiner**

At the request of the Council, the Office of Hearing Examiner includes in the Annual Report a breakdown of the 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 the Examiner must use for each type.

In appeals for which the Examiner issued a final order or decision, the Examiner affirmed the Department's decision 63 percent of the time, reversed, remanded or modified the Department's decision 30 percent of the time, and dismissed the appeal on procedural grounds 7 percent of the time.

Table 3 – 2014 Case Activity Summary

	2014 Cases Filed				2014 Case Disposition			
	Pending Cases at Start of Year	Cases Filed	Total Caseload	Cases Heard **	Decisions Issued **	Cases Dismissed (No Hearing)	Defaults Issued (Untimely )	Pending Cases at End of Year
B & O TAX ASSESSMENTS	2	4	6	7	3	1	0	3
CIVIL SERVICE*	1	0	1	1	1	0	0	0
COUNCIL RECOMMENDATIONS	1	0	1	1	1	0	0	0
DANGEROUS ANIMALS	0	2	2	1	1	1	0	0
DISCRIMINATION	0	1	1	0	0	1	0	0
ENERGY BENCHMARKING	0	16	16	16	16	0	0	0
GRADING & DRAINAGE	0	1	1	0	0	0	0	1
INTERPRETATION*	1	3	4	0	1	1	0	2
LANDMARKS*	1	1	2	0	1	2	0	0
LICENSING	0	2	2	1	1	0	0	1
MASTER USE PERMIT (MUP)*	3	23	26	5	16	9	0	9
PUBLIC NUISANCE	0	2	2	2	2	0	0	0
SEPA-ONLY*	4	3	7	2	3	4	0	1
TENANT RELOCATION	3	6	9	5	7	1	0	1
THIRD PARTY BILLING*	0	5	5	3	4	1	0	1
<b>TOTAL</b>	16	69	85	44	57	21	0	19
<b>CITATION ENFORCEMENT</b>	<b>Pending Appeals at Start of Year</b>	<b>Cases Filed</b>	<b>Total Caseload</b>	<b>Cases Heard</b>	<b>Decisions Issued **</b>	<b>Cases Dismissed (No Hearing) ***</b>	<b>Defaults Issued</b>	<b>Pending Appeals at End of Year</b>
<b>DPD (Land Use &amp; Noise Code)</b>	24	318	342	40	35	50	205	47
<b>SDOT (Use of Public Property)</b>	13	94	107	21	23	9	61	16
<b>TOTAL CITATIONS</b>	37	412	449	61	58	59	266	63
<b>TOTAL INCLUDING CITATIONS</b>	53	481	534	105	115	80	266	82

\* 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 ASSESSMENTS	2						2
CIVIL SERVICE						1	1
DANGEROUS ANIMALS	1						1
ENERGY BENCHMARKING	15		1				16
INTERPRETATION	1						1
LICENSING	1						1
MASTER USE PERMIT	6	1					7
PUBLIC NUISANCE	2						2
SEPA-ONLY	2						2
TENANT RELOCATION	5	1			1		7
<b>Sub-Total</b>	<b>35</b>	<b>2</b>	<b>1</b>		<b>1</b>	<b>1</b>	<b>40</b>
DPD (Land Use Code)	10		20			5	35
SDOT (Use of Public Property)	14		4				18
<b>Sub-Total</b>	<b>24</b>		<b>24</b>			<b>5</b>	<b>53</b>
<b>Total</b>	<b>59</b>	<b>2</b>	<b>25</b>		<b>1</b>	<b>6</b>	<b>93</b>

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

**Standards of Review for Appeals by Case Type**

**Business and Occupation Tax Appeals**

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

**Civil Service Appeals**

The Department must show by a preponderance of the evidence that the Department's decision to terminate, demote or suspend an appellant was made with justifiable cause. In other appeals, the appellant bears the burden of proof. (CSC Rule 5.31)

**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)

**Energy Benchmarking Appeals**

"The certified statement or declaration authorized by RCW 9A.72.085 submitted by the Director shall be prima facie evidence that a violation occurred and that the person cited is responsible ... The person cited may rebut the 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 notice of violation is sustained at the hearing, the Hearing Examiner shall enter an order finding that the person cited committed the violation. If the violation remains uncorrected, the Hearing Examiner shall impose the applicable penalty." (SMC 22.920.170.E)

### **Land Use Code Interpretation 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)

### **Licensing Appeals (Taxicab)**

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)

### **Public Nuisance Appeals**

The Director has the burden "to prove by a preponderance of the evidence that the property contains graffiti, that the person issued the notice is a responsible party, that the required abatement is reasonable, and that the required abatement has not been completed prior to the date established in the notice". (SMC 10.07.050.B)

### **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)

### **Tenant Relocation Assistance Appeals**

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

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

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

## HEARING EXAMINER JURISDICTIONS

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

#### Appeals:

- 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 Petitions (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 COMPLAINTS** [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 Complaints (SMC 14.16.080)
- Use of Criminal History in Employment Decisions Complaints (SMC 14.17.060)
- Minimum Wage and Compensation Rates (SMC 14.19.060)

**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 Executive Admin., 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)
  - 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)

**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]