

City of Seattle



OFFICE OF HEARING EXAMINER

2015

ANNUAL REPORT

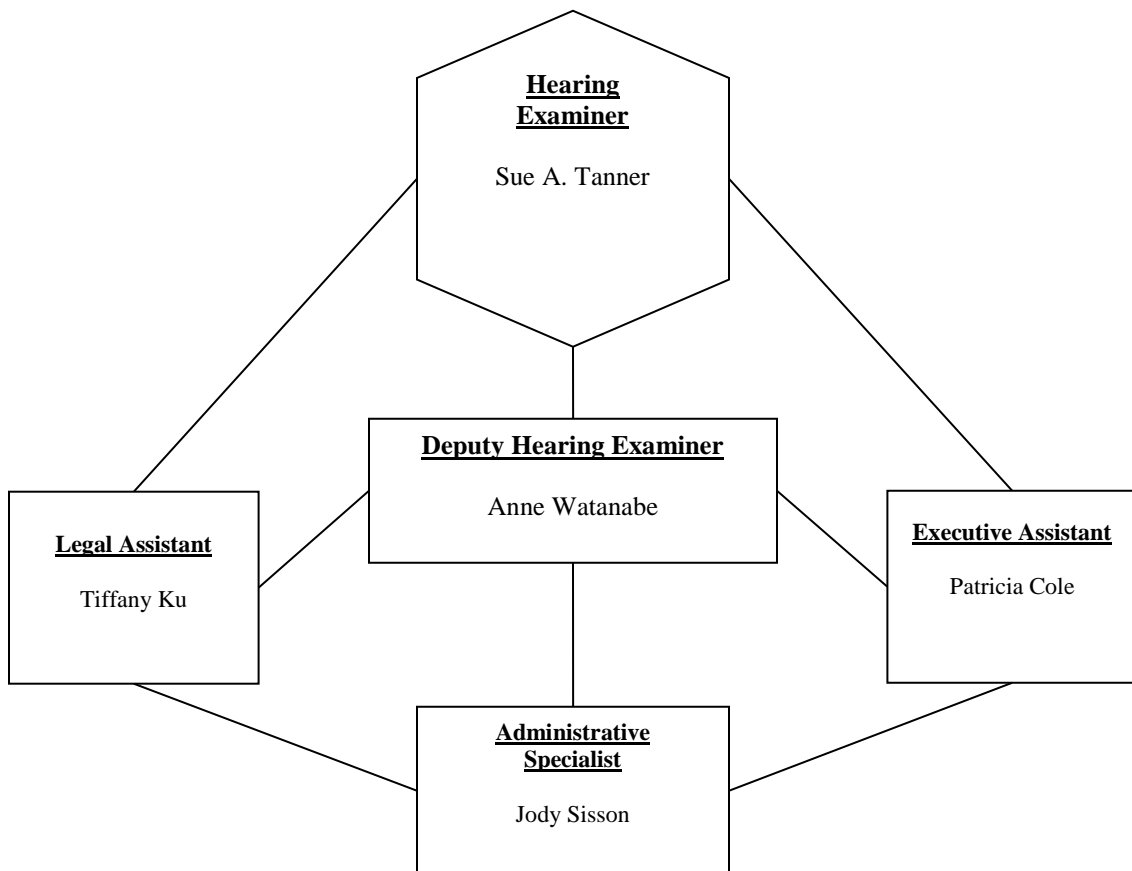
Office of Hearing Examiner
Seattle Municipal Tower, Suite 4000
700 5th Avenue
Seattle, Washington 98104
Phone: (206) 684-0521
Fax: (206) 684-0536

February 2016

2015
City of Seattle
CITY COUNCIL

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2015 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, 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 2015.

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 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 Planning and Development² [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, licensing decisions, and marijuana citations]; 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 City Attorney’s Office for discrimination in employment, housing, public accommodation, or public contracts; 3) complaints for third party utility billing violations; 4) petitions for review of floating home moorage fee increases; and several others.

Recommendations. The City Council has retained jurisdiction over certain land use actions, including Council conditional uses, rezone proposals, major institution master plans, planned

¹ A complete list of matters within the Hearing Examiner’s jurisdiction is found at pp. 17-19.

² The Department of Planning and Development is now known as the Department of Construction and Inspections.

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 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. 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. We currently provide contract examiner services to five cities: Kirkland, Mercer Island, Puyallup, Shoreline and Tukwila.

In 2015, our contract city caseload remained approximately the same as the caseloads in 2013 and 2014. We conducted 38 hearings and issued 41 decisions.

The Office of Hearing Examiner is a General Fund department. In the last five years, we have deposited \$92,625 in contracting revenue into the General Fund. Since 2005, when we began with just one contract city, we have earned just over \$157,000 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 only appeal decided in 2015 was in the case of *Wedbush Securities, Inc. v. City of Seattle*, Superior Ct.#13-2-22355-4SEA, 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 Superior Court affirmed the decision, and the taxpayer appealed to the Court of Appeals, which also affirmed.

The superior court had not entered orders by year's end in appeals of three 2015 Hearing Examiner decisions: *T-Mobile West Corp. v. City of Seattle*, Superior Ct.#15-2-21111-1SEA; *Alliance for a Liveable Denny Triangle & UNITE HERE Local 8 v. City of Seattle*, Superior Ct.#15-2-18635-3SEA; and *Seattle Housing Authority v. Seattle Office for Civil Rights*, Superior Ct.#15-2-21572-8SEA. 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 2015. (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.)

- Ballard residents opposed DPD's decision granting conditional use approval of the Ballard "urban rest stop" ("BURS"), which would provide restrooms, showers and laundry facilities to the homeless. The appellants contended that homeless people already living in their vehicles in Ballard would drive to the BURS, affecting the supply of on-street parking and causing traffic congestion. Although a staff person would be on-site to monitor noise, the appeals raised concerns that the BURS patrons would loiter on the sidewalk and engage in disruptive behavior, including making noise, blocking the sidewalk, and smoking. The appellants also believed that crime would increase on account of the BURS. But the evidence showed that homeless "car campers" were unlikely to risk losing a valued parking spot in order to drive to the BURS, while other evidence showed that the BURS and its patrons would not cause impacts that were different from those common to urban activities and uses in the neighborhood. The Examiner denied the appeals. (MUP-14-020 and MUP-14-021)

- Two appeals challenged DPD’s determination of adequacy for the Final EIS for the proposed “U District Urban Design Alternatives.” The U District Urban Design plan identified potential changes to height and density limits in the “U District,” as potential changes to the incentive program for affordable housing and incentives for open space. The appellants argued that the EIS relied on insufficient information about the existing supply of affordable housing and failed to adequately analyze the proposal’s impacts on supply, particularly the displacement of lower income tenants. Open space advocates argued that the EIS failed to reflect specific open space features sought by the community, including a long-desired central open space in the U District. They also contended that the EIS failed to sufficiently acknowledge that the proposed upzones could make public acquisition of open space more expensive and more difficult. Both appeals took issue with the EIS’s growth assumptions, arguing that the EIS failed to address the growth that could result from the upzones. The Hearing Examiner ultimately decided that the EIS, including its growth assumptions, analysis of open space impacts, displacement risks, and impacts on housing affordability, met the test of adequacy under SEPA. (W-15-001 and W-15-004)
- Many consider the Seattle Art Museum Olympic Sculpture Park a city treasure. The Park and the adjacent low building to the north of it also preserve expansive waterfront views from some of the residential buildings on the east side of Western Avenue. So when a proposal to construct a 12-story multifamily residential structure on the property to the north received a SEPA Determination of Nonsignificance (“DNS”) and design review approval, there were appeals. The appellants alleged that the project conflicted with several design guidelines, most of which call for development of a structure that responds to geographic conditions and patterns of nearby urban form, considers the predominant attributes of the neighborhood, and provides transitions in bulk and scale. But the record showed that the Design Review Board, in an unusually high number of meetings, had given extensive and detailed consideration to the project’s compliance with each of the applicable guidelines, and had required numerous changes that would reduce the bulk and scale of the proposed building. The Hearing Examiner concluded that the Appellants had not shown clear error in the Director’s decision, which adopted the Board’s unanimous recommendation of design review approval. The appeals also challenged the DNS, alleging that the proposal would have significant adverse height, bulk and scale, shadow, environmentally critical area, transportation, aesthetic, land use and other impacts. However, the Examiner considered the project’s shadow study, geotechnical report, and traffic impact analysis, as well as applicable Code requirements, and concluded that the appellants had not shown clear error in the DNS either. The Examiner affirmed the Director’s DNS and design review decision. (MUP-15-001, MUP-15-002 and MUP-15-003)
- Seattleites, especially members of the Pike Place Market Historical Commission, are also very protective of the Pike Place Market. The Market’s Preservation and Development Authority is constructing a new mixed use building, “MarketFront,” and received a certificate of approval from the Commission to include mosaic tiles, hoof prints and hanging charms in the project to recognize those making financial contributions to it. A Commission member appealed the Commission’s decision, contending that it violated several of the Commission’s Guidelines for decisions. But the Examiner concluded that the evidence showed a thorough discussion of the proposal relative to the Guidelines, and a clear difference of opinion among

Commission members, but did not demonstrate that that the Commission’s ultimate decision violated the cited Guidelines. The Examiner affirmed the decision. (R-15-001)

- When the “Polar Pioneer,” a large oil drilling vessel operated by Shell Oil Company, arrived at the Port of Seattle’s Terminal 5 en route to the Arctic seas, it was greeted by protests, controversy, and the City’s code enforcement officers. Shell, with the support of its contractor, Foss Maritime, had planned to moor the rig and other support vessels at Terminal 5 pursuant to a lease agreement between the Port of Seattle and Foss Maritime. But DPD issued an interpretation concluding that the Shell fleet’s moorage at Terminal 5 could not legally occur unless a new shoreline permit was issued. Foss and the Port appealed, arguing that the interpretation was not supported by the facts, the City’s Shoreline Code, the City’s longstanding practices, or accepted principles of statutory interpretation. The meaning of the Code’s definition of “cargo terminal” was vigorously debated, as were subject matters ranging from fishing nets to comma placement. In the end, the Hearing Examiner agreed with the Port and Foss, concluding that the proposed activities were cargo terminal uses and reversing the interpretation. But by that time, Shell had discontinued its Arctic oil exploration, and the Polar Pioneer did not return to Terminal 5. (S-15-001 and S-15-002)
- Swedish Medical Center Cherry Hill applied for approval of a new Major Institution Master Plan (“MIMP”), and several parties appealed the Director’s determination that the Final Environmental Impact Statement (“FEIS”) issued for the MIMP was adequate. The Hearing Examiner held a consolidated hearing on the Master Plan and the FEIS appeals. Rather than expanding the Major Institution Overlay boundaries, the MIMP increased heights on some parts of the campus, increased density, and significantly increased lot coverage. The SEPA appellants argued that the FEIS was required to analyze an option of siting some of the MIMP development at alternative locations. The Examiner disagreed, concluding that under SEPA, the FEIS was required to evaluate only reasonable alternatives for achieving the MIMP’s objectives. In this case, the objectives were to further the medical center’s status as a specialized facility for neurology, neurosurgery and heart and vascular medicine, and the evidence showed that this required an extensive network of on-site support services. The appellants also challenged the FEIS’s analysis of the MIMP’s relationship to adopted plans and policies, and its height, bulk and scale, view and sunlight, transportation, noise, drainage, and other impacts. However, the Hearing Examiner determined that in all these areas, the FEIS met or exceeded the legal standard of presenting a reasonably thorough discussion of significant impacts and potential measures to mitigate them. The Examiner affirmed the Director’s decision that the FEIS was adequate. The Examiner also concluded that with recommended conditions, the MIMP would meet all Code requirements and therefore recommended that the Council approve it. (CF 311936, MUP-15-010 through MUP-15-015)

2015 Caseload

Table 3, on page 14, presents a complete summary of case activity for 2015. “Cases Filed” and “Decisions Issued” are shown in tables found on pages 6 and 10, respectively, and discussed in more detail below. The total number of cases filed, 577, exceeded the number filed in 2014 by 20%. The number of SDOT citation enforcement cases filed in 2015 (145) was back up to the level seen in 2011. The number of Land

Use Code citation enforcement actions filed was approximately equal to the number filed in 2014. Marijuana enforcement began at the end of 2015, and a total of 18 cases were filed.

Table 1 – 2015 Cases Filed/Delegated

| | 2015 | 2014 | 2013 | 2012 | 2011 | 2010 | Previous 5-Yr. Average (10-14) |
|---|------|------|------|------|------|------|--------------------------------|
| B&O TAX ASSESSMENTS | 6 | 4 | 7 | 1 | 11 | 6 | 6 |
| CIVIL SERVICE APPEALS | 0 | 0 | 2 | 7 | 6 | 6 | 4 |
| COUNCIL RECOMMENDATIONS | 3 | 0 | 9 | 7 | 3 | 10 | 6 |
| DISCRIMINATION | 7 | 1 | 0 | 0 | 1 | 0 | 0 |
| ENERGY BENCHMARKINGS | 0 | 16 | 4 | - | - | - | 4 |
| LAND USE CODE INTERPRETATIONS | 3 | 3 | 5 | 2 | 1 | 4 | 3 |
| LANDMARKS/SPECIAL REVIEW DISTRICT (Pioneer Sq., Pike Market, ID, etc.) | 7 | 1 | 0 | 2 | 1 | 4 | 2 |
| LICENSING (taxis, adult entertainment, etc.) | 3 | 2 | 0 | 0 | 5 | 6 | 3 |
| MASTER USE PERMITS (MUP) | 33 | 23 | 23 | 28 | 17 | 25 | 23 |
| OTHER JURISDICTIONS (Health Codes, Public Nuisance, etc.) | 1 | 5 | 5 | 4 | 3 | 6 | 5 |
| SEPA-only Appeals (non MUP) | 10 | 3 | 9 | 3 | 10 | 6 | 6 |
| TENANT RELOCATIONS | 14 | 6 | 16 | 8 | 8 | 2 | 8 |
| THIRD PARTY UTILITY BILLING | 3 | 5 | 7 | 3 | 2 | 7 | 5 |
| TOTAL WITHOUT CITATIONS | 90 | 69 | 87 | 65 | 68 | 82 | 74 |
| LAND USE CITATION ENFORCEMENT ACTIONS | 324 | 318 | 294 | 278 | 274 | 479 | 329 |
| MARIJUANA CITATION ENFORCEMENT ACTIONS | 18 | - | - | - | - | - | N/A |
| SDOT CITATION ENFORCEMENT ACTIONS | 145 | 94 | 65 | 76 | 147 | 90 | 94 |
| TOTAL CITATIONS | 487 | 412 | 359 | 354 | 421 | 569 | 423 |
| GRAND TOTAL | 577 | 481 | 446 | 419 | 489 | 651 | 497 |

Non-Citation Cases Filed

There were 90 Non-Citation cases filed with the Office of Hearing Examiner in 2015, up from the 69 filed in 2014 and well above the five-year average of 74. As it does each year, the mix of cases changed somewhat.

Appeals from **tax assessments** remain quite low from year to year. There were 7 appeals in 2013, just 4 in 2014, and 6 in 2015.

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 or 2015.

Cases involving **recommendations to the City Council** went from 9 in 2013 down to 0 in 2014, and up to 3 in 2015.

Discrimination complaints are filed by the City Attorney’s Office in matters referred to them by the Office for Civil Rights alleging violations of Title 14 SMC, the City’s Human Rights Code, such as discrimination in housing, or discrimination in public accommodations. The number of discrimination complaints filed is usually very low, but we received 7 in 2015.

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.

We received 3 appeals from DPD **Land Use Code interpretations** in 2015, which is the same as the number filed in 2014.

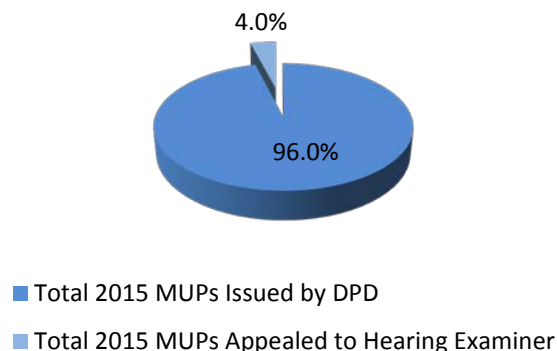
Landmark and special district appeals filed increased from 1 in 2014 to 7 in 2015.

Licensing appeals have remained low since the closure of *Rick’s* adult entertainment club. Just 3 appeals were filed in 2015, which is the same as the five-year average, and none involved adult entertainer licenses.

A **Master Use Permit, or “MUP”**, is a document issued to a permit applicant that includes all land use decisions made by the Department of 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 remained in the 20s from 2012 through 2014. In 2015, they increased to 33.

The Department of Planning and Development issued 797 MUPs in 2015, an 18% increase from the 676 issued in 2014. The number had increased 14% in 2014 and 21% in 2013. In most years, only a small percentage of MUPs are appealed, and 2015 was no exception, with just 4% of MUP decisions being appealed to the Hearing Examiner.

2015 Master User Permit Case Activity

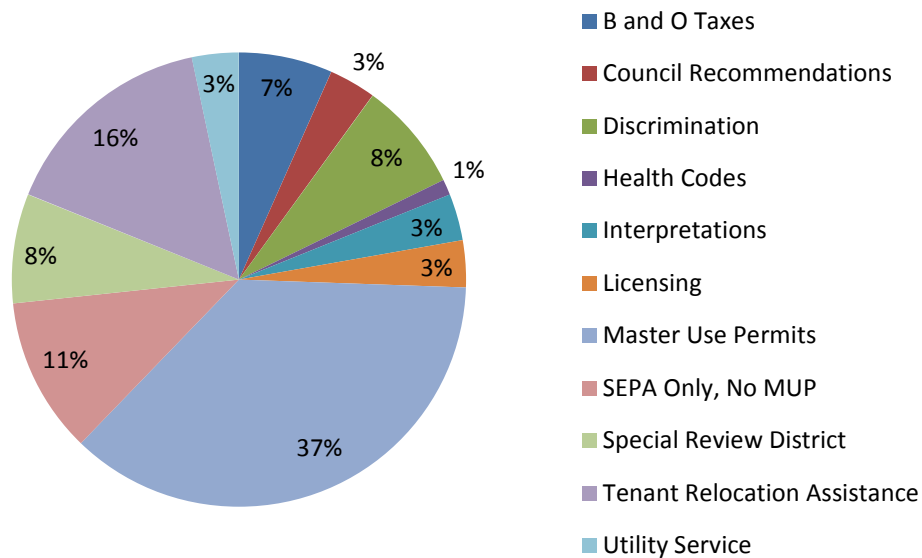


“SEPA-only” appeals are appeals of environmental determinations made for two types of proposals: 1) proposals, such as legislation, that do not require a MUP or Council land use decision; and 2) proposals that require a MUP or a Council land use decision, but a department other than DPD makes the environmental determination on the proposal. SEPA-only appeals have gone up one year and down the next for the last six years. In 2015, 10 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, and we received 14 in 2015.

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 2015, we received just 3 third party utility billing complaints.

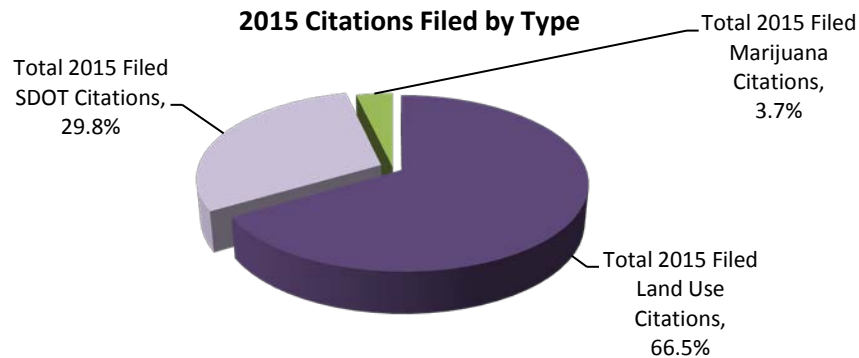
2015 Non-Citation Cases Filed by Type



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 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 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 2015 (487) was up by 75 over the number filed in 2014 and higher than the five-year average of 423. The 18 **marijuana citations** issued by FAS at the end of the year contributed to the increase, but most of it is attributable to the 51% increase in **SDOT citations** filed, which jumped from 94 in 2014 to 145 in 2015. Both **Noise Code and Land Use Code citations** are issued by DPD, so they are combined for tracking purposes. The number filed in 2015 (324) remained close to the number filed in each of the last two years (318 and 294 respectively).



Prehearing, Hearing and Decision Activity

Prehearing Conferences. The Office of Hearing Examiner held 37 prehearing conferences in cases scheduled for hearing in 2015. 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, 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 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 2015, the Office of Hearing Examiner issued 134 decisions in Seattle cases, up from the 115 issued in 2014. We are still below the 148 to 200 decisions issued each year between 2008 and 2011. What is notable, though, is that in 2015, decisions in non-citations (the most time-consuming case type) made up 60% of total decisions issued, whereas in 2010 and 2011, for example, they comprised just 30% to 40% of total decisions. As stated above, we also issued 41 decisions for contract cities.

Table 2 – 2015 Decisions Issued

| | 2015 | 2014 | 2013 | 2012 | 2011 | 2010 | Previous 5-Yr Average (10-14) |
|---|------|------|------|------|------|------|-------------------------------|
| B&O TAX ASSESSMENTS | 3 | 3 | 3 | 2 | 2 | 6 | 3 |
| CIVIL SERVICE APPEALS | 0 | 0 | 2 | 7 | 6 | 6 | 4 |
| COUNCIL RECOMMENDATIONS | 1 | 1 | 8 | 6 | 4 | 12 | 6 |
| ENERGY BENCHMARKINGS | 0 | 16 | 4 | 0 | 0 | 0 | 4 |
| LAND USE CODE INTERPRETATIONS | 6 | 1 | 2 | 1 | 1 | 1 | 1 |
| LANDMARKS/SPECIAL REVIEW DISTRICT (Pioneer Sq., Pike Mrkt, ID, etc.) | 6 | 1 | 0 | 1 | 0 | 3 | 1 |
| LICENSING (taxis, adult entertainment, etc.) | 1 | 1 | 0 | 0 | 2 | 7 | 2 |
| MASTER USE PERMITS (MUP) | 35 | 16 | 19 | 15 | 15 | 14 | 16 |
| OTHER JURISDICTIONS - Discrimination | 3 | 3 | 3 | 3 | 4 | 3 | 3 |
| SEPA-only Appeals (non MUP) | 11 | 3 | 5 | 1 | 8 | 6 | 5 |
| TENANT RELOCATIONS | 11 | 7 | 11 | 11 | 2 | 2 | 7 |
| THIRD PARTY UTILITY BILLINGS | 3 | 4 | 3 | 2 | 1 | 9 | 4 |
| TOTAL WITHOUT CITATIONS | 80 | 57 | 60 | 48 | 44 | 66 | 55 |
| LAND USE CITATION ENFORCEMENT ACTIONS | 38 | 35 | 50 | 38 | 67 | 73 | 53 |
| MARIJUANA CITATION ENFORCEMENT ACTIONS | 2 | 0 | 0 | 0 | 0 | 0 | 0 |
| SDOT CITATION ENFORCEMENT ACTIONS | 14 | 23 | 16 | 13 | 37 | 30 | 24 |
| TOTAL CITATIONS | 54 | 58 | 66 | 51 | 104 | 103 | 77 |
| GRAND TOTAL | 134 | 115 | 126 | 99 | 148 | 169 | 131 |

Non-Citation Decisions Issued

The number of non-citation cases proceeding to decision started strong at the beginning of 2015 and kept up the pace throughout the year. It was the first time in many years that the office hired a pro tem examiner to handle a case. We issued 80 non-citation decisions in 2015.

The number of **tax assessment** decisions issued in 2015 remained low (3), as it has since 2011. And there were no **civil service** decisions issued by the office last year.

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. Recommendations remained low in 2015, with just 1 being issued. It addressed a new master plan for the Swedish Medical Center Cherry Hill campus and is currently before the Council.

There were no **discrimination and no energy benchmarking** appeal decisions issued in 2015. Sixteen were issued in 2014, but we anticipated that, as building owners became familiar with the energy benchmarking process and the computer program used for reporting, there would be fewer of these appeals.

Over the last ten years, there have normally been between one and four decisions issued on appeals of **Land Use Code interpretations**. But in 2015, we issued 6 interpretation decisions.

Landmarks/special districts appeals have also been low in recent years but increased in 2015 to 6. All concerned proposals in special districts, rather than landmarks: Pike Place Market; Columbia City; and Pioneer Square.

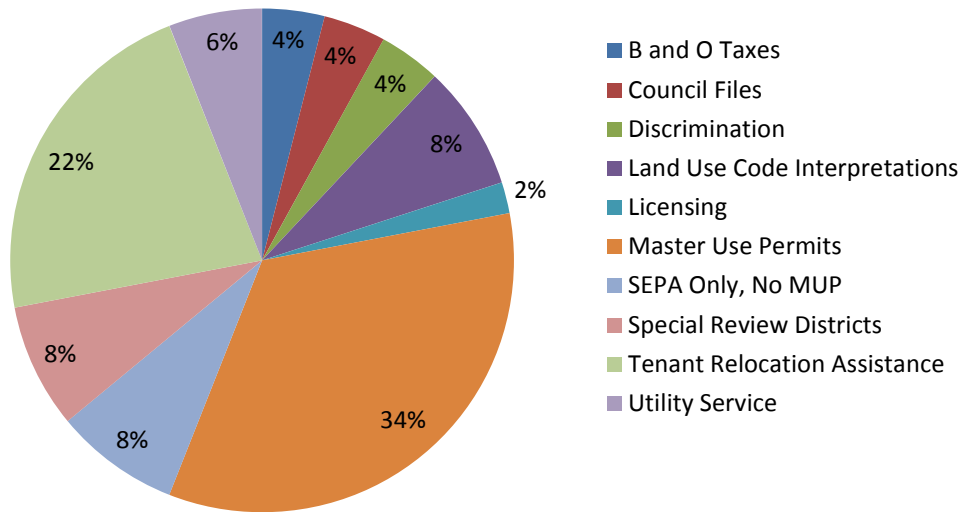
As in 2014, we issued just one decision in a **licensing** appeal. The case involved a decision by FAS not to renew a tow truck company's license.

MUP appeals generated 35 decisions in 2015, which is approximately double the number issued in any of the five preceding years. We have not issued that many MUP decisions since 2008. Decisions issued in **SEPA-only** appeals (11) were also high. We have not issued that many since 2003.

We issued 11 decisions in appeals of the denial of **tenant relocation assistance**, consistent with the number issued in 2013 and 2012, but higher than the 7 issued in 2014.

Just 3 decisions were issued on **third party utility billing** complaints, which is consistent with all prior years shown on the table except 2010, when we issued 9 decisions in this case type.

2015 Non-Citation Decisions Issued by Type

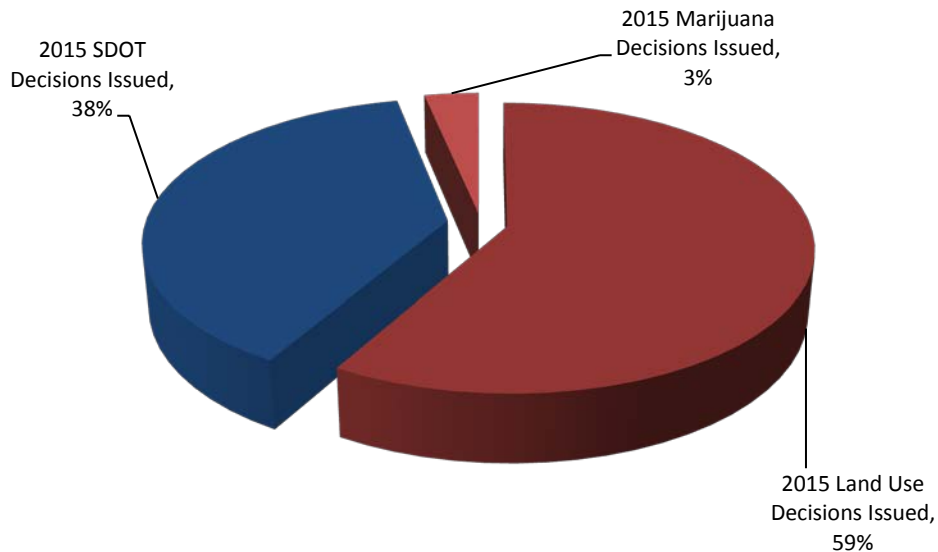


Citation Decisions Issued

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 2015, citation decisions issued in 2015 continued the downward trend of the last several years. Just 54 citation decisions were issued, which is consistent with the last three years, but well below the previous five-year average of 77.

In **Land Use/Noise Code citation** appeals, 38 decisions were issued, similar to the 35 issued in 2014 but below the previous five-year average of 53. In **SDOT citation** appeals, just 14 decisions were issued, down from the number issued during the two prior years and from the previous five year average of 24. Two decisions were issued in **marijuana citation** cases.

2015 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 51 percent of the time, reversed, remanded or modified the Department's decision 45 percent of the time, and dismissed the appeal on procedural grounds 4 percent of the time.

Table 3 – 2015 Case Activity Summary

| | 2015 Cases Filed | | | | 2015 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 | 3 | 6 | 9 | 2 | 3 | 4 | 0 | 3 |
| COUNCIL RECOMMENDATIONS | 0 | 3 | 3 | 2 | 1 | 0 | 0 | 1 |
| DISCRIMINATION | 0 | 7 | 7 | 2 | 3 | 3 | 0 | 2 |
| GRADING & DRAINAGE | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 0 |
| HEALTH CODES | 0 | 1 | 1 | 0 | 0 | 1 | 0 | 0 |
| INTERPRETATION* | 2 | 3 | 5 | 4 | 6 | 1 | 0 | 0 |
| LICENSING | 1 | 3 | 4 | 1 | 1 | 3 | 0 | 0 |
| MASTER USE PERMIT (MUP)* | 9 | 33 | 42 | 25 | 35 | 10 | 0 | 7 |
| SEPA-ONLY* | 1 | 10 | 11 | 5 | 11 | 4 | 0 | 2 |
| SPECIAL REVIEW DISTRICTS* | 0 | 7 | 7 | 4 | 6 | 1 | 0 | 2 |
| TENANT RELOCATION | 1 | 14 | 15 | 11 | 11 | 3 | 0 | 1 |
| THIRD PARTY BILLING* | 1 | 3 | 4 | 3 | 3 | 1 | 0 | 0 |
| TOTAL | 19 | 90 | 109 | 59 | 80 | 32 | 0 | 18 |
| CITATION ENFORCEMENT | Pending Appeals at Start of Year | Cases Filed | Total Caseload | Cases Heard | Decisions Issued ** | Cases Dismissed (No Hearing) *** | Defaults Issued | Pending Appeals at End of Year |
| DPD (Land Use & Noise Code) | 47 | 324 | 371 | 43 | 38 | 45 | 258 | 25 |
| FAS (Marijuana Businesses) | 0 | 18 | 18 | 2 | 2 | 1 | 13 | 2 |
| SDOT (Use of Public Property) | 16 | 145 | 161 | 14 | 14 | 46 | 88 | 13 |
| TOTAL CITATIONS | 63 | 487 | 550 | 59 | 54 | 92 | 359 | 40 |
| TOTAL INCLUDING CITATIONS | 82 | 577 | 659 | 118 | 134 | 124 | 359 | 58 |

* 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 | 1 | | | 1 | | | 2 |
| INTERPRETATION | 1 | | | 2 | 1 | | 4 |
| LANDMARKS/SPECIAL REVIEW | 2 | | | | 2 | | 4 |
| LICENSING | 1 | | | | | | 1 |
| MASTER USE PERMIT | 10 | 5 | | 1 | 1 | | 17 |
| SEPA-ONLY | 4 | | | | | | 4 |
| TENANT RELOCATION | 10 | | | 1 | | | 11 |
| Sub-Total | 29 | 5 | | 5 | 4 | | 43 |
| DPD (Land Use Code) | 12 | | 23 | | | 3 | 38 |
| FAS (Marijuana Businesses) | 1 | | | | | 1 | 2 |
| SDOT (Use of Public Property) | 7 | | 7 | | | | 14 |
| Sub-Total | 20 | | 30 | | | 4 | 54 |
| Total | 49 | 5 | 30 | 5 | 4 | 4 | 97 |

*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)

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 (Towing)

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]