

JT:LM
5/3/73

ORDINANCE 102228

AN ORDINANCE relating to and providing administrative procedures for City departments and agencies; providing for the conduct of hearings, and establishing the Office of Hearing Examiner in connection therewith.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. SHORT TITLE. This ordinance shall constitute and may be referred to as the "Administrative Code" of the City of Seattle.

Section 2. DEFINITIONS. (a) "Agency means any City board, commission, committee, officer or department, including the City Council and its Committees, when acting in accordance with or pursuant to authorization by ordinance to make rules, hear appeals, or adjudicate contested cases.

(b) "Interested person" means any individual, partnership, corporation, association, or public or private organization of any character, significantly affected by or interested in proceedings before an agency, and shall include any party in a contested case.

(c) "Contested case" means any proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by ordinance to be determined after a hearing by a hearing examiner.

(d) "Rule" means any agency order, directive or regulation of general applicability, the violation of which subjects a person to a penalty or administrative sanction, or which establishes, alters or revokes:

1) any procedure, practice or requirement relating to agency hearings;

- 2) any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law;
- 3) any qualifications or standards for the issuance, suspension or revocation of licenses; or
- 4) any mandatory standards for any product or material which must be met before distribution or sale.

Such term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, declaratory rulings issued pursuant to Section 7, or rules relating to the use of public ways and property when the substance of such rules is indicated to the public by means of signs or signals.

(e) "License" includes the whole or part of any agency permit, certificate, approval, registration, or any form of permission required by law, including agency rule, to engage in any activity, but does not include a license required solely for revenue purposes.

Section 3. NOTICE AND HEARING ON ADOPTION OF RULES. Prior to the adoption, amendment or repeal of any rule, an agency shall:

- (a) Within the time specified by the ordinance authorizing such action, or if no time is specified, at least fourteen (14) days prior to the proposed action give notice thereof by (1) publication in the official City newspaper and, where appropriate, in such trade, industry, or professional publications as the agency may select, and (2) by mailing or delivery to the address specified by any person who has made written request therefor, which request shall be filed with the agency and renewed annually. Such notice shall include (1) a reference to the authority under which such rule is proposed,

(2) a statement of the express terms and description of the substance of the proposed rule or of the subjects and issues involved, and
(3) state the time and place of any public hearing, and the manner in which interested persons may present data, views or argument thereon to the agency.

(b) Afford all interested persons an opportunity to present data, views, or argument in regard to the proposed action; provided, that if the agency finds that oral presentation is unnecessary or impracticable, it may require that presentation be made in writing.

Section 4. PETITION FOR RULES. Any interested person may petition an agency requesting the adoption, amendment or repeal of any rule. Each agency shall prescribe by rule the procedure for submission, consideration and disposition of such petitions. Within sixty (60) days after the submission of a petition, the agency shall either deny such petition in writing (stating its reasons for the denial), or initiate rule-making proceedings concerning the subject of such petition in accordance with Section 3 of this ordinance.

Section 5. RULES TO BE FILED. Each agency shall file with the City Comptroller a certified copy of all agency rules in effect on the effective date of this ordinance and all such rules subsequently adopted, which rules shall become effective on the date of filing. The City Comptroller shall keep, index and compile copies of all such rules filed with him, and shall make such rules available for inspection by the public during regular business hours and furnish copies thereof to any person requesting the same and paying such fees as shall be prescribed by ordinance.

Section 6. PUBLIC INFORMATION. (a) In addition to other rulemaking requirements imposed by ordinance, each agency shall:

- (1) Adopt as a rule a description of its organization, stating the general course and method of its operations, location of its offices, and the methods whereby the public may obtain information or make submittals or requests.
- (2) Adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures prescribed or authorized by this or other ordinances, including a description of all forms and instructions used by the agency in connection therewith.
- (b) Each agency shall make available for public inspection all final opinions and orders, and all rules and written statements of policy or interpretation formulated, adopted, or used by the agency in the discharge of its functions.
- (c) Except to the extent that a person has actual knowledge thereof, no agency rule, order, or opinion shall be effective against any person, nor shall it be invoked by the City for any purpose until made available for public inspection as required herein.
- (d) Nothing in this section shall affect the confidentiality of records as provided by law.

Section 7. DECLARATORY RULING. On petition of any interested person, any agency may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or ordinance enforceable by it. Such petition shall be considered, and granted or denied in accordance with Section 4 of this ordinance. A declaratory ruling, if issued after argument and stated to be binding, is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court upon judicial review in the manner prescribed by law.

Section 8. HEARINGS IN CONTESTED CASES. (a) In any contested case all parties shall be afforded an opportunity for hearing after not less than twenty days notice in writing; provided that a hearing may be had on shorter notice where substantial injury to a party would otherwise result; provided further, that unless otherwise provided by ordinance or rule, no hearing shall be required in any case except upon the demand of a party.

(b) Notice of such hearing shall include:

- (1) a statement of the time, place and nature of the proceeding;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the ordinances and rules involved;
- (4) a short and plain statement of the matters asserted.

If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon request, a more definite and detailed statement shall be furnished.

(c) Notice shall be given in person or by mail to each party, or may be transmitted through regular messenger service to any agency, officer, or employee of the City. Additional notice may be required by ordinance or rule.

(d) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(e) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

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- (f) The record in a contested case shall include:
- (1) all pleadings, motions, and intermediate rulings;
 - (2) evidence received or considered;
 - (3) a statement of matters officially noticed;
 - (4) questions and offers of proof, objections, and ruling thereon;
 - (5) proposed findings and conclusions;
 - (6) any decision, opinion, or report by the examiner presiding at the hearing.
- (g) Oral proceedings shall be electronically recorded. A copy of the record or any part thereof shall be transcribed and furnished to any party to the hearing upon request therefor and payment of the reasonable costs thereof.
- (h) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.
- (i) Each agency shall adopt appropriate rules of procedure consistent with this and other applicable ordinances for notice, hearing and agency review of contested cases.
- (j) The examiner presiding at the hearing shall admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs, and shall give effect to the rules of privilege recognized by law.
- (k) All evidence, including records and documents in the possession of the agency which the examiner desires to consider shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case.

(1) Examiners may take notice of judicially cognizable facts and of general, technical, or scientific facts within their specialized knowledge in the evaluation of the evidence presented to them; provided, that parties shall be notified during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

(m) Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

Section 9. REPORT AND REVIEW OF EXAMINER'S RECOMMENDATION OR DECISION IN CONTESTED CASES. (a) Within such period as may be fixed by agency rule or applicable ordinance, the examiner presiding at the hearing in a contested case shall prepare a written recommendation or decision which shall be filed as a public record and copies thereof mailed to each party and to other interested persons as provided by agency rule or applicable ordinance. Such recommendation or decision shall contain a brief summary of the evidence considered and shall state the examiner's findings and conclusions upon which such recommendation or decision is based, together with a brief statement of the examiner's reasons therefor. If the decision is to be made by the agency, an examiner's recommendation shall be in the form of a proposed decision which may be adopted by the agency as its decision in the case.

(b) Where a decision is to be made by an agency based upon an examiner's recommendation, the agency shall set a date for consideration of the examiner's proposed decision, and shall give notice thereof to all parties not later than ten days prior to such date;

provided, that at the discretion of the examiner, and upon written showing of adequate reason for the delay, evidence not previously presented may be submitted to the examiner prior to the date set for consideration of such proposed decision, and if the examiner determines to accept and consider such evidence, he shall immediately give notice to each party of record and to the agency which shall remand such proposed decision to the examiner for further consideration and hearing in accordance with Section 8 of this ordinance, and for such modification of such proposed decision as the examiner may make pursuant to such hearing.

In connection with the consideration by the agency of any proposed decision, any party may file written exceptions to such proposed decision or part thereof and may submit a proposed substitute decision together with a written argument in support thereof. Following consideration of such proposed decision and any proposed substitute decision, written exceptions, and/or arguments, the agency may adopt, reject, or modify such proposed decision or any part thereof, and shall issue its decision with its written findings and reasons for any changes from the examiner's proposed decision.

Section 10. OFFICE OF HEARING EXAMINER. (a) There is hereby created an Office of Hearing Examiner, the duties of which shall be to conduct hearings in contested cases as provided in this ordinance, and, in accordance with agency rules or other applicable ordinance, to make such investigations and hear such appeals, protests and other matters as may be referred by an agency.

(b) Appointment to the Office of Hearing Examiner, which shall not be included in the Classified Civil Service, shall be made by the City Council, from among three persons recommended by a committee

composed of the City Personnel Director, the Director of the Seattle/King County Office of Citizen Complaints, and a representative of the Seattle-King County Bar Association; provided that no appointment shall be made under the authority of this section except upon the filing by the Civil Service Commission as a permanent record in the office of the City Comptroller, of its recommendation that such office, as a professional or administrative office or position similar to offices and positions designated in Article XVI, Section 11 of the City Charter, should not be included in the classified civil service. Each hearing examiner shall be appointed to an initial term of one (1) year, and may thereafter be reappointed to subsequent four (4) year terms, subject to removal for cause by the City Council.

(c) Each hearing examiner shall be a qualified person having training and experience for the conduct of administrative or quasi-judicial hearings, or shall have such other qualifications as may be prescribed by ordinance providing for the appointment of a special hearing examiner.

Section 11. POWERS OF HEARING EXAMINERS. In the performance of duties prescribed by this or other ordinances, hearing examiners may:

(1) Administer oaths and affirmations, examine witnesses, rule upon offers of proof, receive relevant evidence, and conduct discovery procedures which may include propounding interrogatories and taking oral depositions pursuant to rules promulgated by the agency; provided, that no person shall be compelled to divulge information which he could not be compelled to divulge in a court of law;

- (2) Upon the request of an agency or any party, or upon his own volition, issue and cause to be served subpoenas for the attendance of witnesses and for production for examination of any books, records, or other information in the possession and under the control of any witness; provided that any such subpoena shall state the name and address of the witness sought, and if for the production of books, documents or things, shall specifically identify the same and the relevance thereof to the issues involved;
- (3) Regulate the course of the hearing in accordance with agency rules and this and other applicable ordinances;
- (4) Hold conferences for the settlement or simplification of the issues by consent of the parties;
- (5) Dispose of procedural requests or similar matters;
- (6) Make decisions or recommendations in accordance with Section 9 of this ordinance; and
- (7) Take any other action authorized by ordinance or agency rule consistent therewith.

In case of failure or refusal without lawful excuse of any person duly subpoenaed to attend pursuant to such subpoena, or to be sworn, or to answer any material and proper question, or to produce upon reasonable notice any material or proper books or records or other information in his possession and under his control, the hearing examiner may invoke the aid of the Corporation Counsel who shall apply to the appropriate court for an order or other court action necessary to secure enforcement of the subpoena.

Section 12. AGENCY ACTION UPON JUDICIAL REVIEW. Whenever any party aggrieved by a final order or decision in a contested case seeks

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judicial review thereof, the agency may in accordance with guidelines established by rules filed pursuant to Section 5 of this ordinance, and upon application therefor within ten (10) days after the filing of the petition for review and notice to all parties, stay enforcement of such order or decision pending such judicial review. When judicial review is sought as to any order or decision made after hearing, the agency shall at the request of any party and upon payment of the reasonable costs thereof, prepare and transmit to the reviewing court a certified copy of the entire record of the proceedings or such shortened record as may be agreed to by the parties or ordered by the court. At the request or direction of the court, the agency may take additional evidence and modify its findings or order or decision in accordance therewith. Such additional evidence and any modification shall become a part of the record and where appropriate shall be prepared and transmitted to the reviewing court as provided above.

Section 13. The provisions of this ordinance shall be operative 60 days after approval.

Passed by the City Council the 29 day of MAY, 1973, by a two-thirds vote of all of its members and signed by me in open session in authentication of its passage this 29 day of MAY, 1973.

S/ LIEM E. TUAI
President of the City Council

Approved by me this 5 day of JUNE, 1973.

S/ WES UHLMAN
Mayor

Filed by me this 5 day of JUNE, 1973.

ATTEST: *C. H. Glendon*
City Comptroller and City Clerk

By: *J. F. Fenton*
Deputy Clerk

(SEAL)

Published _____

STATE OF WASHINGTON)
COUNTY OF KING) SS
CITY OF SEATTLE)

I, E. L. KIDD, Comptroller and City Clerk of the City of Seattle, do hereby certify that the within and foregoing is a true and correct copy of the original instrument as the same appears on file, and of record in this department

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of The City of Seattle, this

APR 26 1978

E. L. KIDD
Comptroller and City Clerk

By:

G. C. Geisert

Deputy Clerk

44 - Administrative Procedures

Ord. 102228	} certified copies	12 pages
106348-A		2 pages
106724		3 pages
107903		7 pages

NOTE! all of these ordinances were published!

found in the Compilation of Published Ordinances

102228-1973 106724-1977

106348A-1977 107903-1979

Administrative Procedures

(Certified copies)

12 pages	1.35
2 pages	.50
3 pages	.75
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	2.15
7 pages	.85
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	\$3.00

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"Compilation of Published Ordinances"

1973 106724-1977
 1977 107963-1979