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CB117451

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April 9, 2012
Version #4

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117451

AN ORDINANCE relating to Hearing Examiner filing fees, amending Section 3.02.125 to increase the fees required for certain cases before the City Hearing Examiner, and amending Sections 7.20.080 and 22.220.140 to make those sections consistent with Section 3.02.125.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 3.02.125 of the Seattle Municipal Code, which section was last amended by Ordinance 123106, is amended as follows:

3.02.125 Hearing Examiner filing fees

A. The ((~~Filing fees~~)) filing fee for ((~~hearings~~)) a case before the City Hearing Examiner ((~~are as follows~~)) is $85.00, with the following exceptions:

Basis for ((~~Hearing~~)) Case	**Fee in dollars**
((~~Admission Tax Deficiency (Ch. 5.40)~~))	((~~$50~~))
Revocation of Admission Tax((~~, Revocation of~~ Exemption (((~~Sec.~~))Section 5.40.085)	No fee
((~~Ballard Avenue Landmark District (Ch. 25.16)~~))	((~~50~~))
((~~Business License Tax Deficiency (Ch. 5.45)~~))	((~~50~~))
Cable ((~~Television Ordinance~~)) Communications ((((~~Ch.~~)) Chapter 21.60)	No fee
((~~Columbia City Landmark District (Ch. 25.20)~~))	((~~50~~))
((~~Commercial Parking Tax~~	((~~50~~))

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Basis for ((~~Hearing~~)) Case	Fee in dollars
~~Deficiency (Ch. 5.35)~~))	
Basis for ((~~Hearing~~)) Case	**Fee in dollars**
((~~Commute Trip Reduction (CTR) (Ch. 25.02)~~))	((~~50~~))
Dangerous Animals (Chapter 9.25)	No fee
((~~Design Decision in Multiple Residence - Mixed Density Zone (Ch. 24.38)~~))	((~~50~~))
((~~Employee Hours Tax (Ch. 5.37)~~))	((~~50~~))
Energy Benchmarking Citation (Chapter 22.920	No fee
Fair Contracting Practices (Chapter 14.10)	No fee
Fair Employment Practices Ordinance ((((~~Ch.~~)) Chapter 14.04)	No fee
Floating Home Moorages((((~~Ch.~~)) Chapter 7.20)	((~~50~~)) 85 per petitioner 255 maximum
((~~/petitioner; maximum fee~~))	((~~150~~))
((~~Gambling Tax Deficiency(Ch. 5.52)~~))	((~~50~~))
((~~Grading Ordinance (Title 22, Subtitle VIII)~~))	((~~50~~))
((~~Harvard/Belmont Landmark District (Ch. 25.22)~~))	((~~50~~))
((~~Housing Code (Ch. 22.206)~~))	((~~50~~))
((~~Land Use Code Enforcement(Ch. 23.90)~~))	((~~50~~))
Land Use Code Citation (Chapter 23.91)	No fee
Landmark Preservation Controls and	No fee

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Basis for ((~~Hearing~~)) Case	**Fee in dollars**
Incentives (((~~Sec.~~))Section 25.12.530)	
Basis for ((~~Hearing~~)) Case	**Fee in dollars**
((~~Landmarks Preservation (Sec. 25.12.740 and Sec. 25.12.835)~~)))	((~~50~~))
((~~License Code (Title 6, Subtitle I)~~)))	((~~50~~))
((~~Master Use Permit (Ch. 23.76)~~)))	((~~50~~))
((~~Noise Ordinance (Ch. 25.08)~~)))	((~~50~~))
Noise Code Citation (Ch. 25.08)	No fee
Open Housing Ordinance ((((~~Ch.~~)) Chapter 14.08)	No fee
Paid Sick/Safe Leave (Chapter 14.16)	No fee
Public Accommodations Ordinance (Chapter 14.06)	No fee
((~~Pike Place Market Historical District (Ch. 25.24)~~)))	((~~50~~))
((~~Pioneer Square Minimum Maintenance Ordinance (Ch. 25.28, Subchapter II)~~)))	((~~50~~))
((~~Planned Unit Development(Ch. 24.66)~~)))	((~~50~~))
((~~Plumbing Code (Ch. 20.16, Uniform Plumbing Code, Ord. 116594)~~)))	((~~50~~))
((~~Property Tax Exemption, Cancellation of Exemption (Ch. 5.72)~~)))	((~~50~~))
((~~Radiofrequency Radiation Ordinance (Ch. 25.10)~~)))	~~50~~

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Basis for ((~~Hearing~~)) Case	**Fee in dollars**
Refund Anticipation Loan ((((~~Ch.~~)) Chapter 7.26)	5
Basis for ((~~Hearing~~)) Case	**Fee in dollars**
Relocation Assistance (((~~Ch.~~)) Chapter 20.84)	No fee
((~~Seizure of Property – Controlled Substances (RCW 69.50.505(e))~~))	((~~No fee~~))
((~~Special Review Districts (Ch. 23.66)~~))	((~~50~~))
((~~Square Footage Business Tax (Ch. 5.46)~~))	((~~50~~))
((~~State Environmental Policy Act (SEPA)(when not a Master Use Permit component) (Ch. 25.04)~~))	((~~50~~))
SDOT Citation (Chapter 15.91)	No fee
Tenant Relocation Assistance (Chapter 22.210)	No fee
Third Party Utility Billing (Chapter 7.25)	5
((~~Utility tax (Ch. 5.48)~~))	((~~50~~))
~~Zoning Map Amendments (Rezones)(Ch. 23.34)~~ Type III or Type IV Land Use Application (Chapter 23.76)	No fee
Weed and Vegetation Citation (Chapter 10.52)	No fee
((~~Zoning Rulings and Interpretations (Ch. 23.88)~~))	((~~50~~))

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B. Filing fees are nonrefundable unless otherwise provided in this Code. The City Hearing Examiner may waive a fee if ((~~its assessment will cause~~)) the person seeking the waiver demonstrates that the fee will cause financial hardship ((~~to the appellant~~)).

((~~C. There is no fee for hearing appeals from an administrative assessment or an order under Sections 6.212.280 and 6.212.290.~~))

Section 2. Subsection B of Section 7.20.080 of the Seattle Municipal Code, which section was last amended by Ordinance 121276, is amended as follows:

7.20.080 Moorage fee increases—Hearing((.))

* * *

B. If at least 1/2 of the floating home moorage site lessees in a floating home moorage, excluding the moorage owner and those who have an ownership interest in the moorage, who are subject to a moorage fee increase in the same percentage amount (plus or minus one percent) believe that the demanded fee increase is unreasonable, they may collectively file a petition for review with the Hearing Examiner. The petition shall be in the form of a sworn statement which shall: (1) be signed by each petitioning moorage site lessee; (2) list separately the name and floating home address of each such moorage site lessee; and (3) include a statement of the intention of each moorage site lessee to contest the proposed moorage fee increase. In determining whether at least half of those affected have petitioned only one signature per moorage site will be counted. The petition shall be filed within 15 days of receipt of written notification of the moorage fee increase. The person or persons filing a petition for review shall pay a filing fee ((~~of $25 per petitioner, with a maximum fee of $75, to the Director of Finance and Administrative Services, which~~)) as provided in Section 3.02.125. The fee shall be refunded

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if no hearing is required. The Hearing Examiner may consolidate the petitions contesting moorage fee increases at the same moorage.

* * *

Section 3. Subsection A of Section 22.220.140 of the Seattle Municipal Code, which section was last amended by Ordinance 114865, is amended as follows:

22.220.140 Appeal -- From Director's order((.))

A. Within ((~~fifteen (~~))15((~~)~~)) days from the date of service and posting of an order issued by the Director, the owner may file a written notice of appeal with the Office of the Hearing Examiner. The notice of appeal shall state the specific errors in the Director's order of proceedings and the specific grounds upon which a reversal or modification of the order is sought. The Director's decision to grant or deny administrative relief pursuant to Section 22.220.120 and the issues determined therein shall not be appealable to the Hearing Examiner. The notice of appeal shall be accompanied by ((~~a~~)) <u>the</u> filing fee ((~~of Twenty-five Dollars ($25)~~)) <u>provided in Section 3.02.125</u>.

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Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2012, and signed by me in open session in authentication of its passage this

_____ day of _____, 2012.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2012.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2012.

_____

Monica Martinez Simmons, City Clerk

(Seal)

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Form revised: December 6, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Office of Hearing Examiner	Sue Tanner 684-0703	Linda Taylor-Manning 684-8376

Legislation Title:
AN ORDINANCE relating to Hearing Examiner filing fees, amending Section 3.02.125 to increase the fees required for certain cases before the City Hearing Examiner, and amending Sections 7.20.080 and 22.220.140 to make those sections consistent with Section 3.02.125.

Summary of the Legislation:
This legislation would raise Hearing Examiner filing fees from $50.00 to $85.00 to cover filing costs and account for inflation in the cost of living, as measured by the consumer price index, since the fees were last increased in 1992. The bill would also remove inconsistencies between the appeal fees for two types of cases, as established in two different sections of the Code, and update formatting.

Background:
Hearing Examiner filing fees have not changed since 1992, when they were raised from $25.00 to $50.00. The Office of Hearing Examiner (OHE) reviewed filing fees to determine whether they were covering the true costs associated with the filing of each case. OHE has calculated the salary, benefits and overhead costs incurred for the steps involved in setting up a new case at between $80.00 and $85.00. OHE also determined that a $50.00 filing fee in 1992 would be an $81.00 fee in today's dollars. In contacting other larger jurisdictions in the Puget Sound region, OHE found that some have no fees, some have fees intended to cover part of the direct examiner costs associated with processing a case to completion, and others have fees that are intended to cover most or all those costs. None have a fee that recovers the actual costs incurred by the examiner's office in setting up a new case. Based on the need to cover OHE costs, the rate of inflation, and the need to maintain access to the appeal process for all segments of the public, OHE is proposing that the filing fee be raised to $85.00.

Please check one of the following:

____ **This legislation does not have any financial implications.**
(Please skip to "Other Implications" section at the end of the document and answer questions a-h. Earlier sections that are left blank should be deleted. Please delete the instructions provided in parentheses at the end of each question.)

__X__ **This legislation has financial implications.**
(If the legislation has direct fiscal impacts (e.g., appropriations, revenue, positions), fill out the relevant sections below. If the financial implications are indirect or longer-term, describe them in narrative in the "Other Implications" Section. Please delete the instructions provided in parentheses at the end of each title and question.)

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Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2012 Revenue	2013 Revenue
General Fund 00100	HXM	Filing Fees	$1,400 - $2,485	$1,400 - $2,485
TOTAL			$1,400 - $2,485	$1,400 - $2,485

Revenue/Reimbursement Notes: Not applicable

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
No.

b) **What is the financial cost of not implementing the legislation?**
If the legislation were not implemented, the City would not recover the full costs associated with the filing of a case with OHE. Since it is impossible to accurately project what the case load will be in 2012 and 2013, OHE derived the range of revenue reflected above by: 1) determining the approximate number of $50.00 filing fees paid during both the lowest and the highest earning years during the last ten-year period; and 2) multiplying those numbers by $35.00, the additional amount that would be collected in each filing fee under the proposed ordinance.

c) **Does this legislation affect any departments besides the originating department?**
Although the legislation would not directly affect other departments, it would raise the cost for someone to appeal many departments' decisions. Those departments were provided with a copy of the legislation and given 14 days in which to comment on it. Just five responses were received; none expressed an opinion on the legislation.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** Not applicable.

e) **Is a public hearing required for this legislation?**
A public hearing is not required but may be held.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.

g) **Does this legislation affect a piece of property?**
No.

h) **Other Issues:**
Not applicable.

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City of Seattle

Office of Hearing Examiner
Sue A. Tanner, Hearing Examiner
Anne Watanabe, Deputy Hearing Examiner

April 5, 2012

Honorable Sally Clark, President
Seattle City Council
CH 02-10

RE: Proposed Council Bill Raising Hearing Examiner Filing Fees

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that would raise Hearing Examiner filing fees to cover filing costs and account for inflation in the cost of living, as measured by the consumer price index, since the fees were last increased in 1992.

Background

In November of 1991, Ordinance 115925 was adopted by the City Council and took effect January 1, 1992. The Ordinance raised filing fees for most Hearing Examiner cases from $25.00 to $50.00. (No filing fee is charged for some matters, such as discrimination cases, which are filed by the City Attorney's Office, and citation cases, in which the appellant is contesting a penalty imposed by the City for violation of the Code.) Filing fees have remained at $50.00 since 1992.

In 2011, the Office of Hearing Examiner (OHE) began looking at the possibility of raising filing fees, not as a source of revenue, but to assure that OHE was recovering the true costs associated with the filing of each case. OHE reviewed the federal Bureau Of Labor Statistics website several times to determine the change in the CPI between 1992, the date when filing fees were last raised, and the present date. The change in the CPI between 1992 and May of 2011 was 59%. In February of 2012, the change had risen to 60%, and in March of 2012, it had risen to 62%.

OHE also contacted other larger jurisdictions in 2011, and again in 2012, to determine what they charge for filing hearing examiner cases. The results are shown in the table below.

Mailing: P.O. Box 94729 Seattle, WA 98124-4729
700 Fifth Avenue, Seattle Municipal Tower, Suite 4000, Seattle, WA 98104
(206) 684-0521 FAX (206) 684-0536 www.seattle.gov/examiner
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Jurisdiction	Filing Fee	Comments
Bellevue	No charge	There have been several years of discussions about charging a filing fee, but there is concern about potentially reducing access to the process, and no action has been taken.
Portland	$149 – less complex cases $1,583 – more complex cases	These amounts are part of the city's land use fee schedule and are intended to cover most direct HE costs associated with a case. They are paid by the applicant as part of the permit fee.
Spokane	$250 – all matters	
Tacoma	$300 - land use appeals $100 - animal control appeals no charge - all other appeals	The land use appeal fee is part of the city's land use fee schedule and is intended to cover some of the direct HE costs associated with a case.
Vancouver	$165 – most cases $87 – cases filed by a "recognized neighborhood association"	
King County	$250	This amount is intended to cover some of the direct HE costs associated with a case.
Pierce County	$2,200 – SEPA appeal $3,000 – appeal of other administrative decisions	These amounts are part of the county's land use fee schedule and are intended to cover most direct HE costs associated with a case.
Snohomish County	$500	This amount is intended to cover some of the direct HE costs associated with a case.
Spokane County	$1,367	This amount is reviewed each year and is intended to cover most direct HE costs associated with a case.
Thurston County	No filing fee, but a deposit is required	HE time is billed at $200 per hour. The deposit amount ranges from $400 to $2,000 based upon the typical number of HE hours required for a particular case type.

Proposed Amendments

A "filing fee" is normally intended to cover costs associated with the filing of a case, not necessarily the costs of handling the case through decision issuance, or to generate

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revenue. OHE has calculated the salary, benefits and overhead costs incurred for the steps involved in setting up a new case at between $80.00 and $85.00. During 2006, 2007 and 2008, the three years out of the last ten during which the highest number of cases were filed, OHE collected a yearly average of $3,200 in fees. Clearly, doubling or tripling the existing filing fee would not bring in significant revenue, but it could impede access to the appeal process for a significant segment of the public. Individuals who join together to file a group appeal would likely be unaffected. But a considerably higher fee could create a barrier in cases where there is just one appellant, or where one person has appeal issues that are substantially different from those raised in a group's appeal.

I am recommending that the Council raise the filing fee for most Hearing Examiner cases to $85.00. This would constitute a 70% increase in the filing fee and would cover the costs incurred in setting up a new case. It would also account for both the rate of inflation since 1992 and the fact that the rate of inflation has increased in recent months. Had this fee been in place between 2006 and 2011, OHE would have received between $1,400 and $2,485 each year in additional revenue from filing fees. I intend to revisit the issue of filing fees annually, and would expect to retain a filing fee of $85.00 for between two and five years.

The types of cases heard by the Hearing Examiner have increased significantly since the filing fee table in Section 3.02.125 was developed. Because the filing fee is the same for all but a few types of cases, it is most efficient for the table to list just the exceptions to the normal fee. The proposed ordinance would amend the table to make this change, which would also eliminate the need to amend Section 3.02.125 each time a future Code amendment adds a new case type to the Hearing Examiner's jurisdiction.

Finally, the proposed legislation would correct inconsistencies between the fees established in Section 3.02.125 for floating home moorage fee cases and downtown housing maintenance appeals, and the fees set forth in the Code sections that regulate those matters. The ordinances establishing the applicable fees in Section 3.02.125 were adopted more recently than the ordinances that set the filing fees contained in Sections 7.20.080 and 22.220.140. Therefore, the proposed legislation would amend the two Code sections to simply refer back to Section 3.02.125 for the correct amount of the filing fee in these cases.

Thank you for considering this legislation. Please contact me if I can answer any questions about it.

Sincerely,

Sue A. Tanner
Hearing Examiner

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