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OFFICE OF HEARING EXAMINER

2012
ANNUAL REPORT

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February 2013

2012

City of Seattle

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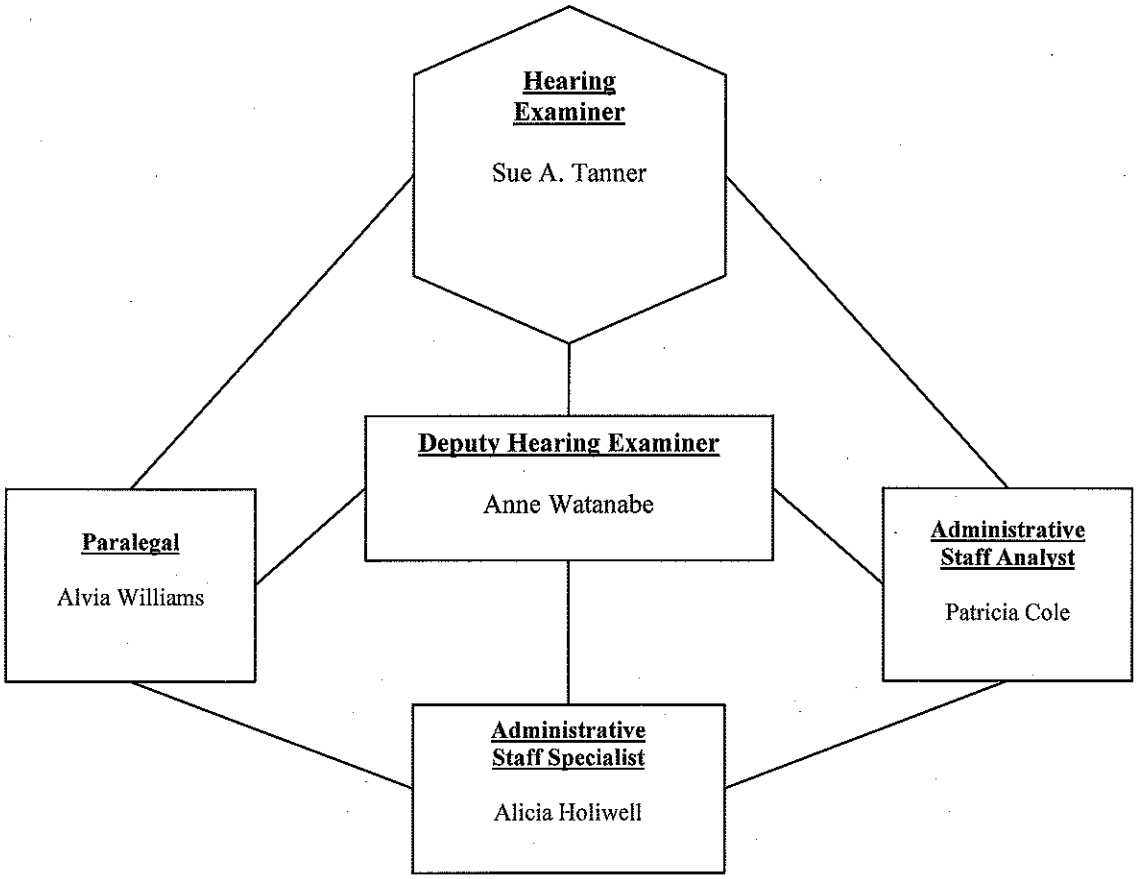
2012 Organizational Chart



CITY OF SEATTLE
OFFICE OF HEARING EXAMINER

2012 ANNUAL REPORT

Mission and Authority

The mission of the Office of Hearing Examiner is to conduct fair and 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 2012.

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 land use applications.

Jurisdiction

Appeals. The Office of Hearing Examiner currently has jurisdiction over more than 75 different types of matters.[1] 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 the Department of Planning and Development (Master Use Permits, SEPA determinations, Code Interpretations, Land Use and Noise Enforcement Citations and decisions on tenant relocation assistance); the Department of Finance and Administrative Services (tax assessments and licensing decisions); the Landmarks Preservation Board and Special Purpose District Commissions (certificates of approval for alterations); and the Department of Transportation (Citations related to right-of-way use).

Original Jurisdiction. When 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 subdivision applications processed by the Department of Planning and Development; 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 violation of paid sick and safe time requirements; complaints for third party utility billing violations; petitions for review of floating home moorage fee increases; and others.

[1] See complete list at p. 17-18.

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 a detailed written 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 several 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 and if indicated, a card in one of the City's six core languages, or Russian, is 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.

In 2011, we began accepting credit and debit cards for payment of filing fees and citation penalties. In 2012, we began offering the option of electronic filing of appeals and subsequent documents in our cases through a portal on the Office of Hearing Examiner website. We also began providing 24-hour public access to our case files through the website. To allow people to receive updates on proposed procedural changes and other matters, we added a ListServe to the website. We also 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, and may be submitted anonymously.

Hearing Examiner decisions dating back through 1990 are available in a searchable database through a link on the Hearing Examiner's website at 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, the most recent annual report, information on making a public records request, and links to the Seattle Municipal Code and other resources relevant to matters that come before the Hearing Examiner.

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.

Our workload for these contract cities increased significantly in 2012. We conducted 43 hearings and issued 45 decisions in their cases in 2012, compared with 27 hearings and 30 decisions in 2011, and 20 hearings and 25 decisions in 2010. The increase reflects the fact that two cities recently transferred some types of cases from the planning commission or city council to the hearing examiner, and that an area recently annexed by one city continues to generate a high number of cases. In addition to bringing in a modest amount of revenue for the City's general fund, working with other cities keeps us busy when our Seattle caseload fluctuates, adds variety to our caseload 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 2012:

In *Fremont Neighborhood Council et al. v. City of Seattle*, King Cy. Superior Ct.#08-2-41324-1SEA, the Superior Court and the Court of Appeals had each affirmed the Hearing Examiner's decision upholding the SEPA Determination of Nonsignificance issued by Seattle Public Utilities for reconstruction of the North Recycling and Disposal Station in Wallingford. The Neighborhood Council appealed to the Supreme Court but dismissed the appeal after settling with the City in 2012.

In *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, opponents of the location of a project to construct the "missing link" of the Burke-Gilman Trail had appealed the Hearing Examiner's decision upholding the SEPA Determination of Nonsignificance (DNS) issued for the project by SDOT. The Superior Court had affirmed most of the Examiner's decision but remanded part of the case to SDOT for completion of environmental review on the Shilsole Segment of the trail. SDOT had issued a revised DNS, which was appealed and upheld by the Examiner. Trail opponents also appealed that decision to the Superior Court, which affirmed most of the decision, but reversed one conclusion. The Court remanded the matter to SDOT for additional design work on the project so that impacts on adjoining land uses, and any proposed mitigation, could be better identified. SDOT responded by issuing another DNS, which was again appealed to the Examiner. In a 2012 decision, the Examiner reversed the DNS and remanded the matter to SDOT for preparation of an EIS on the impacts of the Shilshole Segment. The Examiner found no error in SDOT's decision on the rest of the trail, and opponents have appealed that decision to Superior Court.

In *17th and James, LLC v. City of Seattle*, King Cy. Superior Ct.#10-2-40043-5SEA, the proponent of an amendment to the Providence Medical Center (now Swedish Hospital Cherry Hill) Master Plan appealed a Hearing Examiner decision reversing DPD's determination that the request qualified as a minor amendment and invalidating the DNS issued for the proposal. The appeal was stayed pending further developments in the master planning process for the Swedish Hospital Cherry Hill campus. In 2012, the judicial appeal was voluntarily dismissed.

Two 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; and *Johnson v. City of Seattle*, King Cy. Superior Ct.#11-2-06591-0SEA. The court affirmed the Examiner's decisions in the cases, and that decision has been appealed to the Court of Appeals.

In *Johnson v. City of Seattle*, King Cy. Superior Ct.#11-2-15560-9SEA, a third land use citation decision involving the same party was appealed and assigned to a different judge. The court affirmed the Examiner's decision but remanded the case for a mitigation hearing on the citation. The appellant also appealed that decision to the Court of Appeals.

In *David Miller v. City of Seattle*, King Cy. Superior Ct. #12-2-21921-65SEA, a neighbor appealed a Hearing Examiner decision dismissing, for lack of jurisdiction, an appeal of a DPD determination that a four unit lot short subdivision was categorically exempt from SEPA review. The neighbor later voluntarily dismissed the judicial appeal.

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. The brief case descriptions that follow highlight some of these cases that came before the Hearing Examiner in 2012. (The complete decision or recommendation can be found through a link at www.seattle.gov/examiner using the Hearing Examiner case number included in parentheses after each case description below.)

- Seattle University's campus is located in the heart of the City, surrounded by Capitol Hill, First Hill and Cherry Hill. The University proposed a new master plan that included new buildings and increased height limits east of 12th Avenue, near well-established single family residential areas. The proposed changes were opposed by neighbors who were alarmed at the prospect of taller buildings near the edge of the boundary they had long shared with the University. The EIS for the plan was appealed, the appellants citing the University's traffic, the height, bulk and scale of its proposed development, and the impacts on the nearby streetscape. The Examiner affirmed the adequacy of the EIS, concluding that it accurately described the new plan's impacts, including those on the surrounding neighborhoods. (MUP-12-013)

- Signs on historic buildings can be problematic. The exterior of the Medical-Dental Building is a designated historical landmark. An adopted signage plan guides review of sign applications, but compliance is not mandatory. Several signs approved by the Landmark Preservation Board since adoption of the signage plan are not consistent with the plan. Seattle Executive Fitness (SEF) worked with the Board's Architectural Review Committee (ARC) toward agreement on a business identification sign over the Building's Olive Way entry. Another sign already covers part of the clerestory windows above that entry, but the ARC wanted the SEF sign to be clear of the windows. The ARC and the Board's staff both acknowledged that the long, horizontal plane above the entry might be the only possible location for the sign. But the Board denied the application because of inconsistency with the signage plan and interference with the uninterrupted horizontal plane above the entry, a historic feature of the building. It appeared from the testimony in the appeal hearing that the best result would be to remand the matter to the Board for further consideration, but the Examiner determined she lacked jurisdiction to do so. The Examiner affirmed the Board's decision because, as proposed, the sign would have a significantly adverse effect on the Building's historic features and characteristics. However, the Examiner's decision noted that the Board would need to determine whether a wall sign could be placed in *any* location near the entry and still preserve the Building's historic features, or whether an alternative type of sign could better accomplish that purpose and still meet the Applicant's needs. (LP-12-001)

- Some may enjoy living within walking distance of a grocery store, but for others, such proximity may be a different matter. A proposed new grocery store (replacing an existing store) in the Queen Anne area was challenged by adjacent neighbors. Neighbors argued that large noisy delivery trucks would block a narrow alley used by pedestrians, including preschoolers, and that loading operations would generate noise and fumes at all hours. Given the nature of the impacts and the site's location, many of the mitigation measures imposed by DPD were operational in nature, such as limits on loading hours and delivery truck use of the alley. The appellants were skeptical that operational conditions would be enforced. But ultimately, the Examiner agreed with DPD that its conditions were adequate and enforceable, and affirmed the decision. (MUP-12-001)

- A small metal fabricating business was eligible for relocation assistance after Seattle Public Utilities (SPU) acquired its property for water quality facility improvements. SPU denied part of the business's claim for reimbursement as untimely because of a delay in submitting documentation to support it. The business appealed, and both parties sought judgment as a matter of law on the issue of whether the claim was timely given the late submittal of the documentation. Because the SPU project was undertaken with state financial assistance, state law and regulations governed the relocation assistance process. The applicable state regulations required that that all claims be filed within 18 months of the date the owner was displaced from the property, and that a claim for relocation payments be supported by documentation "reasonably required to support expenses incurred". The regulations also required the agency to promptly notify the claimant if additional documentation was needed to support the claim. In this case, there was no question that the claim was timely filed, or that SPU's agent had requested additional documentation for part of the claim. Considerable time elapsed while the business had work done in order to provide proof of actual expenses to replace the bids and estimates it had used in filing the claim. During that time, the agent's contract with SPU ended, and no one gave Pro Fab a deadline for supplying the additional documentation. The Hearing Examiner granted judgment for the business, concluding that without a deadline, the business's submission of the documentation was timely, and that SPU was required to consider the remaining claim items for reimbursement. (PWRA-12-001)

- For the third time in four years, businesses near the proposed Burke-Gilman Trail Extension Project (the Missing Link) challenged the City's environmental review of the project. The Hearing Examiner affirmed a 2008 DNS issued by Seattle Department of Transportation (SDOT). The businesses appealed the decision to superior court, which sent it back to the City to review the so-called "Shilshole Segment." SDOT issued a revised DNS in 2011, which was again affirmed by the Hearing Examiner on appeal. But the superior court sent the decision back for additional evaluation of the Shilshole Segment. In 2012, SDOT issued another DNS, but on appeal, the Hearing Examiner remanded the case for preparation of an EIS addressing impacts along the Shilshole Segment, including traffic hazards. The businesses appealed that decision to superior court, although SDOT subsequently announced plans to prepare an EIS for the entire trail project. (W-12-002)

- Mediation can sometimes produce better results than those achievable under the Code. An applicant sought to rezone property zoned Midrise and improved with low-income rental housing,"The Northgate Apartments". Midrise zoning included incentives that allowed additional floor area if prescribed levels of affordable housing

were provided. The applicant sought Neighborhood Commercial 3 zoning which did not include incentives for affordable housing. Relying on SEPA and a housing policy in the Comprehensive Plan, the Director's report proposed approval of the rezone with two conditions that would have required any proposed development to include some affordable and low-income housing. A community council, a housing coalition and an member of the public appealed the Director's SEPA determination. At their request, the parties were sent to mediation on the housing issue, and the Examiner later dismissed the SEPA appeals. At the rezone hearing, the applicant and Director presented an "Agreed Condition on Affordable Housing," supported by the community council and housing coalition, and asked the Examiner to recommend that the City Council impose it as a rezone condition in place of the housing conditions included in the Director's report. The Examiner concluded that the Agreed Condition was in many ways superior to the Director's proposed housing conditions. The Examiner determined that the application, with the proposed conditions, met the Code's rezone requirements and recommended that the City Council approve it, which it ultimately did. (CF 311240)

2012 Caseload

Table 3, on page 14, presents a complete summary of case activity for 2012. "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, 419, was lower than at any time during the last five years, largely due to an approximate 50% reduction in SDOT citation enforcement cases.

Table 1 – 2012 Cases Filed/Delegated*

	2012	2011	2010	2009	2008	2007	Previous 5-Yr. Average (07-11)
B&O TAX ASSESSMENTS	1	11	6	14	6	10	9
CIVIL SERVICE APPEALS	7	6	6	5	0	5	4
COUNCIL RECOMMENDATIONS	7	3	10	6	9	1	6
LAND USE CODE INTERPRETATIONS	2	1	4	15	8	6	7
LANDMARKS/SPECIAL REVIEW DISTRICT (Pioneer Sq., Pike Market, ID, etc.)	2	1	4	4	5	5	4
LICENSING (taxis, adult entertainment, etc.)	0	5	6	12	17	19	12
MASTER USE PERMITS (MUP)	28	17	25	22	39	39	28
OTHER JURISDICTIONS (Public Nuisance, Third Party Billing, etc.)	7	6	13	34	19	21	19
SEPA-only Appeals (non MUP)	3	10	6	2	7	2	5
TENANT RELOCATIONS	8	8	2	7	7	18	8
TOTAL WITHOUT CITATIONS	65	68	82	121	117	126	103
LAND USE CITATION ENFORCEMENT ACTIONS	278	274	479	341	361	316	354
SDOT CITATION ENFORCEMENT ACTIONS	76	147	90	99	161	65	112
TOTAL CITATIONS	354	421	569	440	522	381	467
GRAND TOTAL	419	489	651	561	639	507	569

*Civil Service cases are filed with the Civil Service Commission, which delegates some of them to the Office of Hearing Examiner for hearing and decisions.

Non-Citation Cases Filed

There were just 65 Non-Citation cases filed with the Office of Hearing Examiner in 2012, approximately the same as the number filed in 2011, but lower than the number filed in any other of the last five years. As it does each year, the mix of cases changed somewhat, as well.

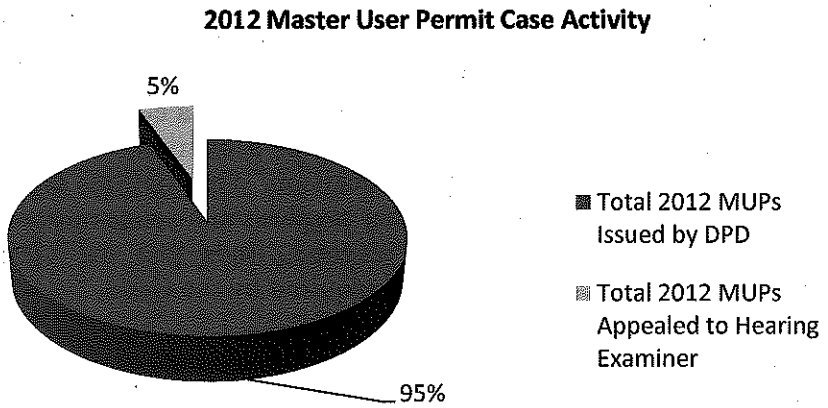
Appeals from **tax assessments** went from 14 in 2009 down to 6 in 2010, back up to 11 in 2011, and down to just 1 in 2012.

The Civil Service Commission delegates some **civil service appeals** to the Hearing Examiner for hearing and decision. In 2012, 7 cases were delegated, which is approximately the same as the number delegated in four of the previous five years.

Cases involving **recommendations to the City Council** went up from 3 in 2011 to 7 in 2012, which was approximately the same as the previous five-year average.

Just 2 appeals from DPD **Land Use Code interpretations** were filed in 2012, lower than the number filed in all but one of the last five years. **Landmark and special district appeals** were also nearly non-existent again in 2012 with just 2 being filed. **There were no appeals of licensing decisions** filed in 2012. The previous five-year average is 12.

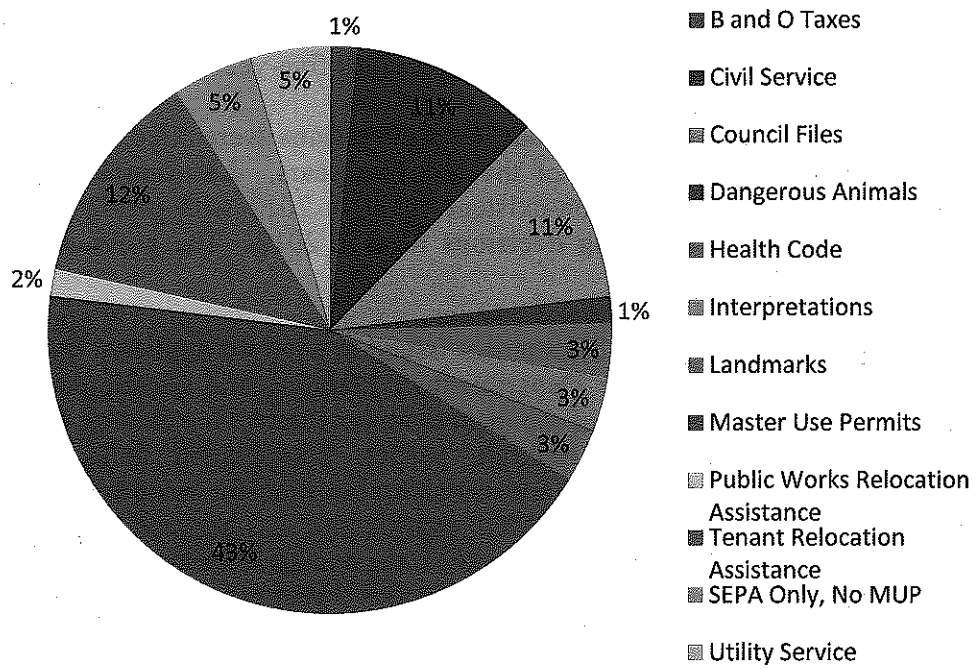
A **Master Use Permit, or MUP,** is a document issued to a permit applicant that includes all land use decisions made by the Department of Planning and Development on the application. MUP appeals are some of the most complex matters handled by the Hearing Examiner, as they often involve multiple parties, complicated facts, substantial controversy, several days for hearings and considerable time for 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. In 2011, the number decreased further to 17, but it increased to 28 in 2012, which is equal to the previous 5-year average. Of the 490 MUPs issued by the Department of Planning and Development, just 5% were appealed, which is consistent with the appeal rate in most of the previous years.



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 for which a department other than DPD makes the environmental determination on the proposal. The previous five-year average for SEPA-only appeals is 5, but just 3 were filed during 2012.

There were 8 **appeals from denials of tenant relocation assistance**, the same number that were filed in 2011, and consistent with the number filed in 2008 and 2009. This is still well below the 24 appeals filed in 2007.

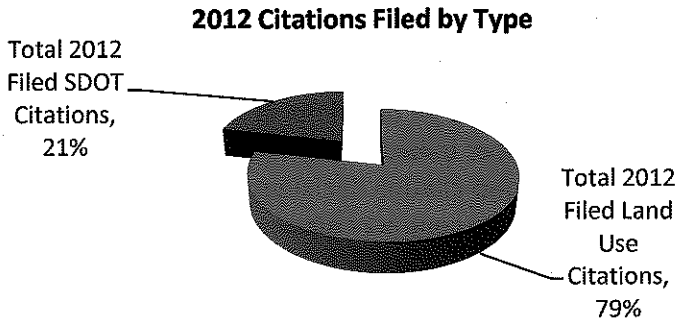
2012 Non-Citation Cases Filed by Type



Citation Enforcement Cases Filed

Because citation enforcement cases follow a unique procedure, we track them separately from other categories of cases. When citations are issued, a copy is sent to the Office of Hearing Examiner. 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 orders of "default" which note the failure of the party to respond, finds that the violation has been committed and imposes the cited penalty, as required by the Code.

Both **Noise Code and Land Use Code citations** are issued by DPD, so they are combined for tracking purposes. The number filed in 2012 (278) was approximately the same as the number filed in 2011 which, in turn, was down about 43% from the number filed in 2010 (479). The number of **SDOT citations** (use of right-of-way without a permit, vending in a no-vending area, etc.) filed in 2012 (76) was down nearly 50% from the number filed in 2011 (147), although that number was unusually high compared to the two preceding years.



Prehearing, Hearing and Decision Activity

Prehearing Conferences. The Office of Hearing Examiner held 30 prehearing conferences in cases scheduled for hearing in 2012. 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 determine the parties' interest in mediation, and if a case will not be mediated, 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 issues 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 and tax appeals, and are scheduled in other types of cases as needed. They sometimes provide the catalyst for eventual settlement of the 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 often held via telephone. We held 3 of them in 2012.

Prehearing Decisions. Prehearing motions are frequently filed in MUP, landmark, SEPA, interpretation, tax and civil service cases. Most are on substantive or procedural legal issues that the parties can address fully in written memoranda. They often 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 motions 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 to hear. 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 2012, the Office of Hearing Examiner issued just 99 decisions in Seattle cases, 49 fewer than in 2011. That number is lower than the number issued in any of the preceding five years. The dropoff was entirely in citation decisions; non-citation decisions actually increased in 2012. As noted above, we also issued 45 decisions for contract cities.

Table 2 – 2012 Decisions Issued

	2012	2011	2010	2009	2008	2007	Previous 5-Yr Average (07-11)
B&O TAX ASSESSMENTS	2	2	6	10	3	8	6
CIVIL SERVICE APPEALS	6	5	3	1	0	2	2
COUNCIL RECOMMENDATIONS	6	4	12	5	7	2	6
LAND USE CODE INTERPRETATIONS	1	1	1	6	4	2	3
LANDMARKS/SPECIAL REVIEW DISTRICT (Pioneer Sq., Pike Mrkt, ID, etc.)	1	0	3	1	6	2	2
LICENSING (taxis, adult entertainment, etc.)	0	2	7	17	2	23	10
MASTER USE PERMITS (MUP)	15	15	14	30	37	27	25
OTHER JURISDICTIONS (Public Nuisance, Third Party Billing, etc.)	5	5	12	10	2	5	7
SEPA-only Appeals (non MUP)	1	8	6	3	5	1	5
TENANT RELOCATIONS	11	2	2	4	6	24	8
TOTAL WITHOUT CITATIONS	48	44	66	87	72	96	73
LAND USE CITATION ENFORCEMENT ACTIONS	38	67	73	77	94	66	75
SDOT CITATION ENFORCEMENT ACTIONS	13	37	30	38	22	18	29
TOTAL CITATIONS	51	104	103	115	116	84	104
GRAND TOTAL	99	148	169	202	188	180	177

Non-Citation Decisions Issued

A total of 48 non-citation decisions were issued in 2012, slightly more than the number issued in 2011, but much lower than the previous five-year average of 73.

The number of **B&O Tax appeals** decided in 2012 (2) was lower than the number decided in any of the preceding five years, but just one below the number of decisions issued in 2008.

Decisions issued in **Civil-Service appeals** were up slightly in 2012 to 6. Five were issued in 2011 and 3 in 2010.

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 were 6 recommendations to Council in 2012 which is the same as the previous five-year average. Three recommendations involved rezone applications; two were related to Council conditional use applications for upgrades to county sewage treatment facilities at the North Beach Pump Station and the West Point Sewage Treatment Plant; and one involved an application for approval of a new master plan for Seattle University.

As in 2010 and 2011, just 1 **Land Use Code Interpretation appeal** decision was issued in 2012, which is lower than the five-year average of 3. Only 1 decision was issued in a **landmarks and special districts** appeal in 2012, as well, which is slightly below the previous five-year average.

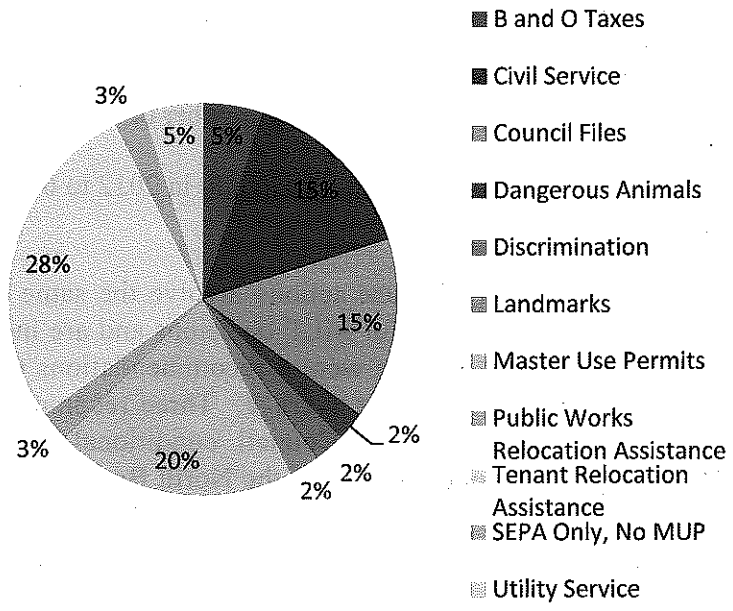
For the first time in many years, there were no **licensing appeal decisions** issued in 2012. Just 2 decisions were issued in 2011, well below the number issued in 2007, 2009 and 2010, but equal to the number issued in 2008.

As always, the greatest number of decisions issued in a non-citation jurisdiction was for **MUP appeals**. The number has remained at 14 to 15 per year for each of the last three years, which is approximately half the number issued in 2007, 2008, and 2009.

Just one decision was issued in a **SEPA-only appeal** in 2012, well below the five-year average of 5.

We issued 11 decisions in **appeals of the denial of tenant relocation assistance**, the highest number since 2007, and above the five-year average of 8.

2012 Non-Citation Decisions Issued by Type

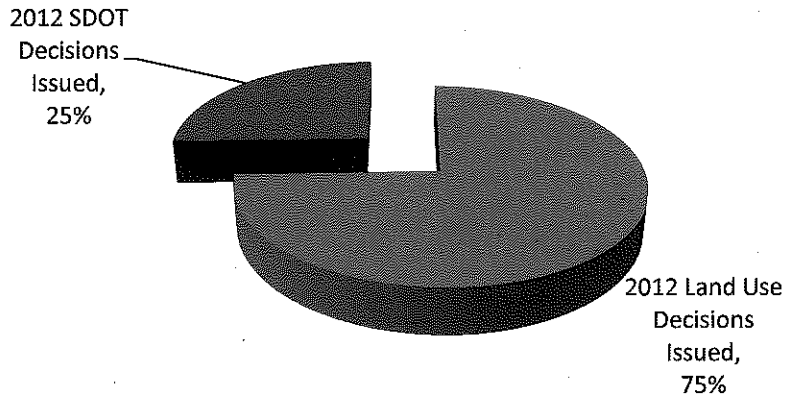


Citation Decisions Issued

A total of just 51 citation decisions were issued in 2012, approximately half the number issued in 2010 and 2011.

In **Land Use/Noise Code citation appeals**, 38 decisions were issued, which was down from the number issued in any of the preceding five years and approximately half of the previous five-year average. In **SDOT citation appeals**, 13 decisions were issued, which was approximately one-third of the number issued in 2011 and approximately one-half the previous five-year average.

2012 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 approximately 12% of the appeals for which the Examiner issued a final order or decision, the appeal was dismissed, often at the request of the appellant. The Examiner affirmed the City decision being appealed in approximately 49% of the appeals, modified and affirmed the decision in 2% of the appeals, affirmed the decision but reduced the penalty in 29% of the appeals, and reversed the decision of the Department in 8% of the appeals.

Table 3 – 2012 Case Activity Summary

	2012 Cases Filed				2012 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	1	4	2	2	2	0	0
CIVIL SERVICE*	2	7	9	6	6	1	0	2
COUNCIL RECOMMENDATIONS	0	7	7	6	6	0	0	1
DANGEROUS ANIMALS	0	1	1	1	1	0	0	0
DISCRIMINATION	1	0	1	1	1	0	0	0
HEALTH CODE	0	2	2	0	0	0	0	2
INTERPRETATION*	1	2	3	2	1	3	0	0
LANDMARKS*	1	2	3	1	1	1	0	1
MASTER USE PERMIT (MUP)*	3	28	31	8	15	20	0	3
PUBLIC WORKS RELOCATION ASSISTANCE*	0	1	1	1	1	0	0	0
SEPA-ONLY*	4	3	7	1	1	6	0	0
TENANT RELOCATION	6	8	14	12	11	1	0	2
THIRD PARTY BILLING*	1	3	4	2	2	1	0	1
TOTAL	22	65	87	43	48	35	0	12
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 Code)	24	278	302	40	38	48	177	37
SDOT (Use of Public Property)	16	76	92	13	13	12	43	24
TOTAL CITATIONS	40	354	394	53	51	60	220	61
TOTAL INCLUDING CITATIONS	62	419	481	96	99	95	220	73

* 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	Dismissed	Total
B & O TAX ASSESSMENTS	1	1				2
CIVIL SERVICE	5			1		6
DANGEROUS ANIMALS				1		1
INTERPRETATION					1	1
LANDMARKS	1					1
MASTER USE PERMIT	12	1			2	15
PUBLIC WORKS RELOCATION ASSISTANCE				1		1
SEPA-ONLY				1		1
TENANT RELOCATION	5			3	3	11
Sub-Total	24	2	0	7	6	39
DPD (Land Use Code)	14		19		5	38
SDOT (Use of Public Property)	6		7		0	13
Sub-Total	20	0	26	0	5	51
Total	44	2	26	7	11	90

***Includes only 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)

Interpretation Appeals

The DPD Director's interpretation "shall be given substantial weight, and the burden of establishing the contrary shall be upon the appellant. The Hearing Examiner shall summarily dismiss an appeal without hearing which is determined to be without merit on its face, frivolous, or brought merely to secure delay." (SMC 23.88.020.G.5)

Landmark Preservation Appeals (certificates of approval)

No Code provision on burden of proof, so the default is 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 Works Relocation Assistance Appeals

The person "appealing has the burden of proving by a preponderance of the evidence that the Department's decision was incorrect." (SMC 20.84.225)

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:

Commute Trip Reduction (SMC 25.02.080)[Admin. by SDOT]
Downtown Housing Maintenance (SMC 22.220.140)
Energy Benchmarking Citations (SMC 22.920.140)
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 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)

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 21!43!090) [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 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 6.02.290, 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]
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) [Administered by SDOT]
Restricted Parking Zone Appeal (SMC 11.16.317) [Administered 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]
Side Sewer Contractor Registration Appeal (SMC 21.16.065) [Admin. by SPU]
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)

City of Seattle

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

Received
FEB 22 2013
City of Seattle
Office of the City Clerk

MEMORANDUM

DATE: February 22, 2013

TO: Monica Martinez Simmons, City Clerk

FROM: Sue A. Tanner, Hearing Examiner

SUBJECT: 2012 ANNUAL REPORT

Enclosed is the Office of Hearing Examiner's Annual Report for filing with the City Clerk and referral to the City Council. Historically, the City Council's Planning, Land Use, and Sustainability Committee has processed the Hearing Examiner's annual reports for filing, and I will be arranging a date to present the 2012 Report to that committee.

If you have any questions, please contact me at 4-0703.

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