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2014 FEB 13 AM 9:26
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City of Seattle

OFFICE OF HEARING EXAMINER

2013
ANNUAL REPORT

Office of Hearing Examiner
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February 2014

2013

City of Seattle

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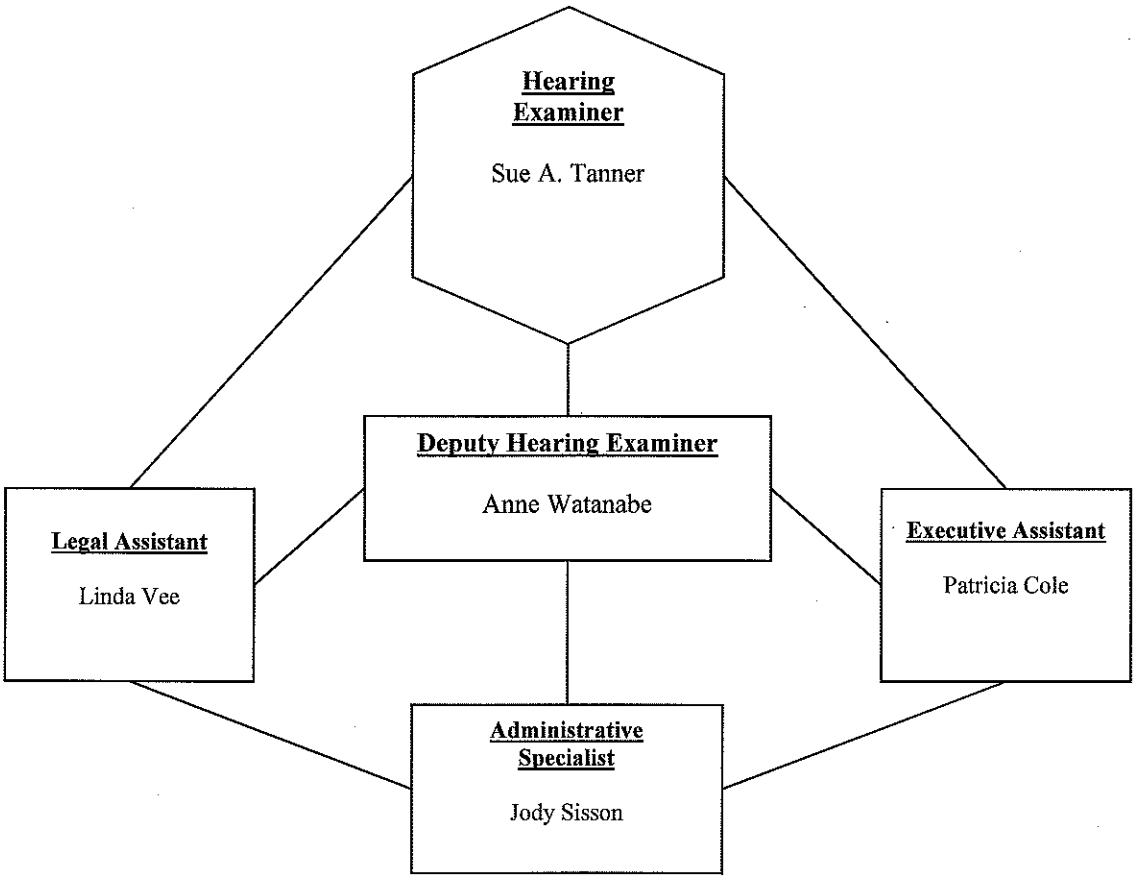
2013 Organizational Chart



CITY OF SEATTLE
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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 2013.

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: 1) 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]; 2) the Department of Finance and Administrative Services [tax assessments and licensing decisions]; 3) the Landmarks Preservation Board and Special Purpose District Commissions [certificates of approval for alterations]; and 4) the Department of Transportation [citations related to right-of-way use].

Original Jurisdiction. 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: 1) subdivision applications processed by the Department of Planning and Development; 2) complaints filed by the Office for Civil Rights and the City Attorney's Office for discrimination in employment, housing, public accommodation, or public contracts, or for violation of paid sick and safe time requirements or regulations governing the use of criminal history in employment decisions; 3) complaints for third party utility billing violations; 4) petitions for review of floating home moorage fee increases; and others.

[1] See complete list at pp. 18-19.

Recommendations. The City Council has retained jurisdiction over certain land use actions, including Council conditional uses, rezone proposals, major institution master plans, planned unit developments, and landmark controls and incentives. For these cases, the Hearing Examiner holds a public hearing for the Council, gathers information to establish the record, and forwards the record and 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. 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 through the website. A ListServe 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, 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, information on making a public records request, links to the Seattle Municipal Code and other resources relevant to matters that come before the Hearing Examiner, and other information.

Contracting

Since 2004, the Hearing Examiner has been authorized by Seattle Municipal Code to provide hearing examiner services to other jurisdictions via contract. We currently provide contract examiner services to five cities: Kirkland, Mercer Island, Puyallup, Shoreline and Tukwila. Our workload for these contract cities has increased significantly during the last several years. We conducted 44 hearings and issued 50 decisions in contract city cases in 2013 whereas in 2010, we held only 20 hearings and issued just 25 decisions for contract cities. The change reflects the fact that two cities transferred some types of cases from the planning commission or city council to the hearing examiner in 2011, and that an area annexed by one city several years ago 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 2013:

In *Residents of Pearson Plat v. City of Seattle*, King Cy. Superior Ct.#13-2-26822-1SEA, neighbors appealed a Hearing Examiner decision affirming a decision by DPD that approved a two-lot short subdivision which relied on the "75/80" exception to minimum lot area. After the appeal was filed, the case was resolved via a stipulated order of dismissal.

Total Outdoor Corp. v. City of Seattle, King Cy. Superior Ct.#13-2-27162-1SEA, involved an appeal by Total Outdoor Corporation and Keep Washington Beautiful from a Hearing Examiner's decision that dismissed their appeal of the SEPA DNS issued by the Director of DPD for proposed amendments to the City's Sign Code. The Examiner concluded that neither of the appellants met the legal test for standing to appeal a SEPA determination. The Examiner's decision was appealed to both Superior Court and the Growth Management Hearings Board, and both entities entered orders dismissing the appeals.

In *George W. Rechnagel v. City of Seattle*, King Cy. Superior Ct.#13-2-25189-2SEA, a neighboring property owner appealed a decision by the Hearing Examiner that affirmed the SEPA DNS issued by the Director of SPU for repair of a failing culvert in Thornton Creek. The Superior Court granted the City's motion to dismiss the appeal.

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

Three decisions in land use citation cases were appealed to court and consolidated: *Johnson v. City of Seattle*, King Cy. Superior Ct.#10-2-44876-4SEA, #11-2-06591-0SEA; and 11-2-15560-9SEA. The court affirmed the Examiner's decisions in the cases, and the matter has been appealed to the Court of Appeals, with a decision expected in 2014.

Several appeals of Hearing Examiner decisions on challenges to the SEPA determinations issued for a project to construct the "missing link" of the Burke-Gilman Trail remain pending in Superior Court while SDOT prepares an EIS for the project: *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.

The superior court had not entered orders by year's end in appeals of several 2013 Hearing Examiner decisions: *Strong v. City of Seattle*, Superior Ct.#13-2-40088-0SEA; *Swifty Printing and Digital Imaging, Inc. v. City of Seattle*, Superior Ct.#13-2-40017-1SEA; *Corporation of the Catholic Archbishop of Seattle, et al. v. City of Seattle*, Superior Ct.#13-2-28550-9SEA (removed to U.S. Dist. Ct., USDC #13-cv-01589); and *Wedbush Securities, Inc. v. City of Seattle*, Superior Ct.#13-2-22355-4SEA. 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. The brief case descriptions that follow highlight some of these cases that came before the Hearing Examiner in 2013. (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.)

- The issue of public safety on city streets was at the center of two appeals decided in 2013. One case involved a proposal by a non-profit provider of mental health and other treatment services to construct an independent living facility in the Lake City area for low income veterans diagnosed with mental illness and addiction. The intended residents would have been through intensive treatment and demonstrated their ability to remain clean and sober in the long-term. An existing homeless drop-in center on the property was to be co-located as a tenant in the new building although completely separated from the residential facility. Area residents challenged the SEPA DNS issued for the proposal, asserting that the proposal would likely have significant impacts on police and fire services, particularly in conjunction with impacts from other low income service facilities in the area. The appellants demonstrated that the proposed project would be located in a complex and troubled area. However, the Examiner affirmed the DNS because they did not show that the project would have a significant adverse impact on police and fire services either alone, or when considered together with other development in the area. The Examiner noted that the appellants' concerns about the impacts of the co-located drop-in center were sufficiently addressed in the center's lease, which gave the applicant/lessor clear tools to enforce the lease's behavioral requirements. (MUP-13-004)

- The other appeal with a public safety focus involved a proposal to construct a mixed use building that would include low income housing above commercial space on Third Avenue in Belltown. A nearby business appealed the design review approval for the proposal. The appellant also requested a code interpretation from DPD stating that because the proposal was located in an area where low income housing and services were concentrated, it qualified as a "high impact use" that was prohibited in the Downtown Mixed Commercial zone. DPD

determined that the interpretation request was untimely, so the Examiner considered only the design review appeal. DPD had granted a development standard departure that allowed office use of seven linear feet of street frontage that would normally be required to remain in retail use. The issue was whether the departure would result in a development that better met the intent of adopted design guidelines related to pedestrian safety and security. The Examiner noted that the record showed careful consideration of pedestrian safety and security during the review process, and that expert testimony on both sides of the appeal showed that both office and retail uses could provide "eyes on the street" and enliven the sidewalk, depending upon the specific use and how it was conducted. The Examiner concluded that DPD's decision on the departure had not been shown to be clearly erroneous and therefore affirmed it. (MUP-13-017)

- Under the so-called "75/80" exception, the City's Land Use Code allows new lots in single family zones to be created even if the lots are below the minimum lot size for the zone. The exception applies if the lot is 75 percent of the lot area for the zone and 80 percent of the mean lot area within the same blockface and zone, according to information in existence at the time of the application. Thus, a few feet can make a big difference, as can the age of the information relied upon. Neighbors of a proposed short plat appealed DPD's decision allowing the creation of two lots that did not meet the minimum lot size, arguing that newer survey information showed that the lots would be approximately three feet shy of the required lot area. But because DPD relied on the "facts in existence as of the date of the application," as required by Code, rather than newer surveys or Assessor's data, the Hearing Examiner affirmed the DPD decision. (MUP-13-005)

- Neighbors appealed a DPD design review decision approving an assisted living facility. The Appellants argued that the public notice for the first design review board meeting described a three-story, rather than a four-story building, that the Board failed to take comments on the proposed height change, and that the Board should have incorporated community consensus about height into the its recommendation. The Hearing Examiner ruled that the inaccurate public notice did not invalidate the Board's final recommendation, since the project's height was accurately described in the public notice for the final recommendation meeting. The Hearing Examiner also concluded that because the Board lacked authority to set height limits (set by City Council) the Board was not required to take public comments on the proposed height increase, or to incorporate opposition to the proposed height in its design review recommendation. (MUP-13-001)

- Constructing a light rail system through a developed urban area involves years of disruption, but the impacts fall most heavily on those closest to the construction sites. The owners of a small multifamily building directly across the street from the University District Station site for the Northgate Link Extension Light Rail Tunnel appealed DPD's approval of a noise variance, seeking project conditions to reduce nighttime noise impacts, particularly during warm weather months. They also challenged a temporary use permit for staging areas and demolition that would support tunnel construction at the site, seeking conditions requiring replacement of a loading zone adjacent to the building, and security for pedestrians walking along the exterior of the site perimeter. The evidence in the record showed that during the years of construction, both vehicle and pedestrian traffic would be significantly reduced, and that the remaining pedestrians would need to travel for several blocks in

an alley and on a narrow sidewalk between brick buildings on one side and a 16 foot high plywood wall on the other. The Examiner determined that the appellants had not contradicted the technical evidence in the record that supported the noise variance and affirmed DPD's decision approving it. The Examiner also affirmed DPD's decision approving the temporary use permit but revised the permit conditions to: 1) provide for an alternative loading zone and associated improvements in the alley adjacent to the apartment building; and 2) require Sound Transit to submit, for DPD approval, a plan to address public safety at the exterior site perimeter. (MUP-12-027 & HC-12-002)

- A property owner appealed a DPD interpretation which concluded that his property was not a legal building site because it did not fit within any of the exceptions to minimum lot size that are set forth in SMC 23.44.010.B.1.d. At the time the owner submitted the interpretation request, the Code exceptions included lots "established as a separate building site in the public records of the county or City prior to July 24, 1957, by deed, contract of sale, mortgage, property tax segregation, platting or building permit." But a Code amendment enacted before DPD issued the interpretation removed the words "property tax segregation," which was the exception the owner relied on in his claim to a legal building site. DPD concluded that "property tax segregation" was no longer an exception, and none of the other factors listed in SMC 23.44.010.B.1.d applied to the lot. The Hearing Examiner affirmed DPD's interpretation that the remaining factors in SMC 23.44.010.B.1.d did not apply to the lot. The Examiner rejected the owner's argument that he was vested to the earlier version of the Code, since he had not applied for a building permit for the property prior to the Code amendment. The decision is on appeal before the Court of Appeals. (S-13-001)

2013 Caseload

Table 3, on page 15, presents a complete summary of case activity for 2013. "Cases Filed" and "Decisions Issued" are shown in tables found on pages 7 and 11, respectively and discussed in more detail below. The total number of cases filed, 446, was up slightly from the 419 filed in 2012. The number of SDOT citation enforcement cases, which declined by 50% between 2011 and 2012, continued to decline in 2013. However, Land Use citation enforcement actions increased slightly, and non-citation cases increased by 33%.

Table 1 – 2013 Cases Filed/Delegated*

	2013	2012	2011	2010	2009	2008	Previous 5-Yr. Average (08-12)
B&O TAX ASSESSMENTS	7	1	11	6	14	6	8
CIVIL SERVICE APPEALS	2	7	6	6	5	0	5
COUNCIL RECOMMENDATIONS	9	7	3	10	6	9	7
ENERGY BENCHMARKINGS	4	0	0	0	0	0	0
LAND USE CODE INTERPRETATIONS	5	2	1	4	15	8	6
LANDMARKS/SPECIAL REVIEW DISTRICT (Pioneer Sq., Pike Market, ID, etc.)	0	2	1	4	4	5	3
LICENSING (taxis, adult entertainment, etc.)	0	0	5	6	12	17	8
MASTER USE PERMITS (MUP)	23	28	17	25	22	39	26
OTHER JURISDICTIONS (Dangerous Animals, Public Nuisance, etc.)	5	4	4	6	27	17	12
SEPA-only Appeals (non MUP)	9	3	10	6	2	7	6
TENANT RELOCATIONS	16	8	8	2	7	7	6
THIRD PARTY UTILITY BILLING	7	3	2	7	7	2	4
TOTAL WITHOUT CITATIONS	87	65	68	82	121	117	91
LAND USE CITATION ENFORCEMENT ACTIONS	294	278	274	479	341	361	347
SDOT CITATION ENFORCEMENT ACTIONS	65	76	147	90	99	161	115
TOTAL CITATIONS	359	354	421	569	440	522	461
GRAND TOTAL	446	419	489	651	561	639	552

*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 87 Non-Citation cases filed with the Office of Hearing Examiner in 2013, up by approximately one-third from the low point in 2012 when just 65 non-citations cases were filed. As it does each year, the mix of cases changed somewhat.

Appeals from **tax assessments** went from 1 in 2012 back up to 7 in 2013, just one short of the five-year average of 8.

The Civil Service Commission delegates some **civil service appeals** to the Hearing Examiner for hearing and decision. In 2012, only 2 cases were delegated. In 2011, the Office of Hearing Examiner worked with the Commission and the Personnel Department

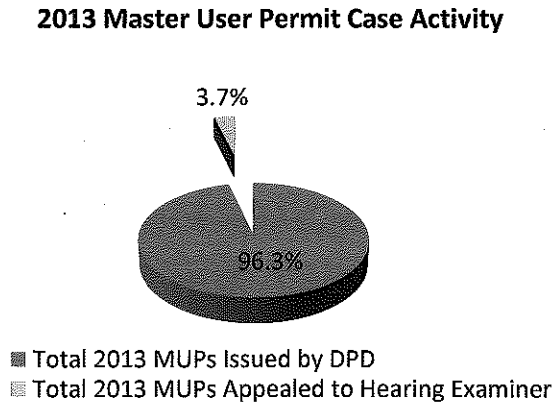
to place the Pro Tem Hearing Examiner position on the same pay band as the Hearing Examiner and Deputy Hearing Examiner. As a result, the Commission has been able to attract contract pro tem examiners to handle most of the Commission's cases. Consequently, we expect to see fewer cases delegated to the Hearing Examiner in the future.

Cases involving **recommendations to the City Council** went up from 3 in 2011 to 7 in 2012 and 9 in 2013, slightly above the previous five-year average.

Five appeals from DPD **Land Use Code interpretations** were filed in 2013, more than were filed in 2012 and 2011 and close to the five-year average of 6.

For the first time in at least ten years, **no landmark and special district appeals** were filed in 2013. There is usually an average of 4 or 5 cases filed each year. And for the second year in a row, there were **no appeals of licensing decisions** filed in 2013.

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 2012. MUP appeals increased to 28 in 2012 and dropped slightly in 2013 to 23. The Department of Planning and Development issued 593 MUPs in 2013, a 21% increase over the 490 MUPs issued in 2012. In most years, approximately 5% of MUP decisions are appealed to the Hearing Examiner, but in 2013, only 3.7% were appealed.

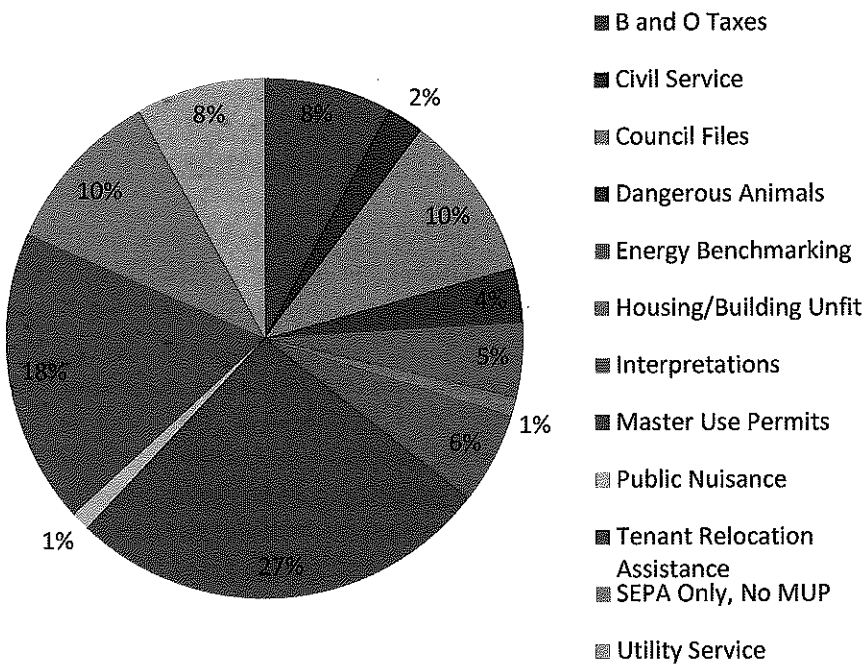


SEPA-only appeals are appeals of environmental determinations made for two types of proposals: 1) proposals, such as legislation, that do not require a MUP or Council land use decision; and 2) proposals that require a MUP or a Council land use decision, but a department other than DPD makes the environmental determination on the proposal. In 2012, just 3 SEPA-only appeals were filed, but in 2013, the number of appeals increased to 9, higher than all but one of the last five years.

There were 16 **appeals from denials of tenant relocation assistance**, up significantly from the 8 appeals filed in each of the last two years and well above the previous five-year averaage of 6.

Third party utility billing cases are initiated by a complaint by a tenant of a building in which utility services for the building are master-metered and then billed to tenants in accordance with a formula developed to roughly determine usage on a per-unit basis. The utilities are normally billed through a third party billing agent, and the City's third party billing regulations, Chapter 7.25 SMC, impose detailed requirements for the billing practices associated with master-metered utilities. The number of third party utility billing cases filed has gradually increased as more tenants have become aware of the Code requirements. In some years, just 2 or 3 cases were filed, but we received 7 third party billing cases each year in 2009, 2010 and 2013.

2013 Non-Citation Cases Filed by Type

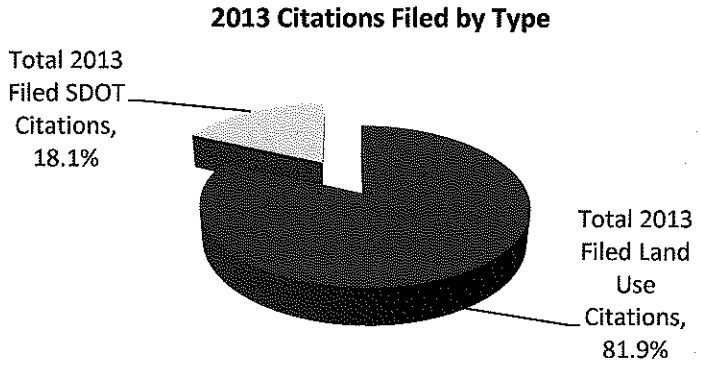


Citation Enforcement Cases Filed

Because citation enforcement cases follow a unique procedure, we track them separately from other categories of cases. When a citation is issued, a copy is sent to the Office of Hearing Examiner. In addition, all DPD citations are uploaded from DPD's Hansen tracking system into the Office of Hearing Examiner's electronic case management system. If someone files an appeal of a citation, it is removed from the others and set up for an appeal hearing and decision. For citations that are neither paid nor appealed, the Office of Hearing Examiner prepares and sends out Code-required orders of default which note the failure of the party to respond, find that the violation has been committed and impose the cited penalty. The total number of DPD and SDOT citations filed in 2013 (359) was just five more than the number filed in 2012 and down significantly from the five-year average of 461.

Both **Noise Code and Land Use Code citations** are issued by DPD, so they are combined for tracking purposes. The number filed in 2013 (294) was higher than the number filed in 2012 (278) and 2011 (274) but still well below the number filed in 2010

(479). The number of **SDOT citations** (use of right-of-way without a permit, vending violations, etc.) filed in 2013 (65) was down for the second year in a row. In 2012, 76 SDOT citations were filed, but in 2011, we received 147 citations.



Prehearing, Hearing and Decision Activity

Prehearing Conferences. The Office of Hearing Examiner held 34 prehearing conferences in cases scheduled for hearing in 2013. 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, 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, tax, dangerous animal and third party billing cases, and are scheduled in other types of cases as needed. They sometimes provide the catalyst for eventual settlement of a case, as the parties work during the conference to clarify the issues underlying the appeal and often stay for additional private discussions after the hearing examiner leaves the room. Prehearing conferences in cases for our contract cities are less frequent and are usually held via telephone.

Prehearing Decisions. Prehearing motions are frequently filed in MUP, landmark, SEPA, interpretation, tax 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 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 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 2013, the Office of Hearing Examiner issued 126 decisions in Seattle cases, up from the 99 issued in 2012 although still well below the 150 to 200 decisions issued each year between 2008 and 2011. As noted above, we also issued 50 decisions for contract cities.

Table 2 – 2013 Decisions Issued

	2013	2012	2011	2010	2009	2008	Previous 5-Yr Average (08-12)
B&O TAX ASSESSMENTS	3	2	2	6	10	3	5
CIVIL SERVICE APPEALS	2	6	5	3	1	0	3
COUNCIL RECOMMENDATIONS	8	6	4	12	5	7	7
ENERGY BENCHMARKING	4	0	0	0	0	0	0
LAND USE CODE INTERPRETATIONS	2	1	1	1	6	4	3
LANDMARKS/SPECIAL REVIEW DISTRICT (Pioneer Square, Pike Market, ID, etc.)	0	1	0	3	1	6	2
LICENSING (taxis, adult entertainment, etc.)	0	0	2	7	17	2	6
MASTER USE PERMITS (MUP)	19	15	15	14	30	37	22
OTHER JURISDICTIONS (Dangerous Animals, Public Nuisance, etc.)	3	3	4	3	6	2	4
SEPA-only Appeals (non MUP)	5	1	8	6	3	5	5
TENANT RELOCATIONS	11	11	2	2	4	6	5
THIRD PARTY UTILITY BILLINGS	3	2	1	9	4	0	3
TOTAL WITHOUT CITATIONS	60	48	44	66	87	72	63
LAND USE CITATION ENFORCEMENT ACTIONS	50	38	67	73	77	94	70
SDOT CITATION ENFORCEMENT ACTIONS	16	13	37	30	38	22	28
TOTAL CITATIONS	66	51	104	103	115	116	98
GRAND TOTAL	126	99	148	169	202	188	161

Non-Citation Decisions Issued

The total number of non-citation decisions issued in 2013 (60) was 12 higher than the number issued in 2012 (48) and close to the previous five year average (63).

The number of **B&O Tax appeals** decided in 2013 remained low (3), similar to the number decided in 2008, 2010 and 2011.

Just 2 decisions were issued in **Civil-Service appeals** in 2013. As noted under "Non-Citation Cases Filed" above, the number of civil service appeals sent to the Office of Hearing Examiner is expected to remain low now that the Commission is able to attract contract pro tem examiners to hear most appeals.

Recommendations to Council on land use actions involve the same hearing, research, record review and writing time required for MUP decisions and are included in the total decision figures in Tables 2 and 3. There were 8 recommendations to Council in 2013, two more than the number issued in 2012 and slightly higher than the previous five-year average of 7. Six recommendations involved rezone applications, one was related to a Council conditional use application for an upgrade to facilities at the West Point Sewage Treatment Plant, and one involved an application for approval of a new master plan for Virginia Mason Medical Center.

In 2013, the Office of Hearing Examiner heard and decided the first appeals from administrative review decisions by the Office of Sustainability and the Environment on **energy benchmarking** notices of violation. We issued 4 decisions in energy benchmarking cases. Now that building owners are familiar with the energy benchmarking process and the computer program used for reporting, it is unlikely that we will see many of these cases in the future.

Over the last ten years, there have normally been between one and four decisions issued in appeals of **Land Use Code Interpretations**, and that remained true in 2013 when we issued just 2 interpretation decisions.

No decisions were issued in **landmarks and special districts** appeals in 2013, which usually generate between one and six decisions per year. And for the second year in a row, no **licensing appeal decisions** were issued in 2013.

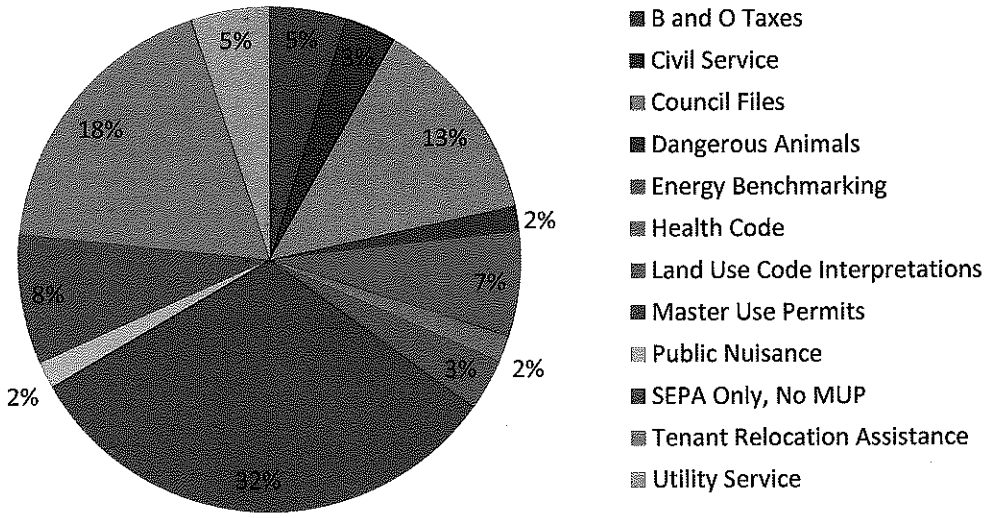
As always, the greatest number of decisions issued in a non-citation jurisdiction was for **MUP appeals**. The number issued in 2010, 2011, and 2012 was 14 to 15 per year for each of the last three years, which was approximately half the number issued in 2007, 2008, and 2009. In 2013, MUP appeal decisions rose to 19.

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

For the second year in a row, we issued 11 decisions in **appeals of the denial of tenant relocation assistance**, more than twice the previous five-year average of 5.

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

2013 Non-Citation Decisions Issued by Type

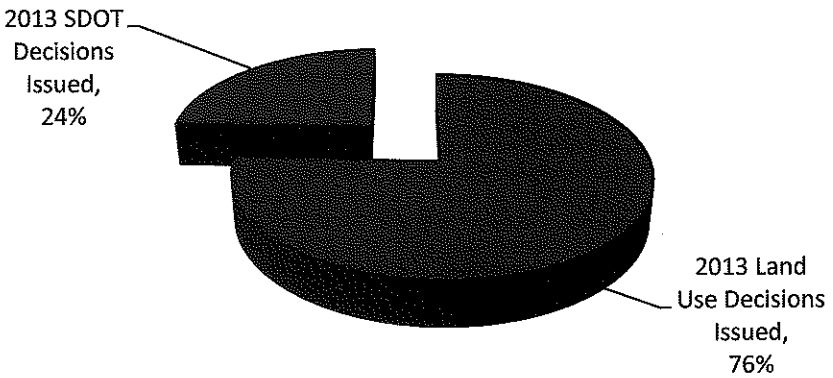


Citation Decisions Issued

A total of just 66 citation decisions were issued in 2013, up from 51 issued in 2012, but well below the previous five-year average.

In **Land Use/Noise Code citation appeals**, 50 decisions were issued, up from the 38 decisions issued in 2012, but well below the previous five-year average of 70. In **SDOT citation appeals**, 16 decisions were issued, also up slightly from the 13 issued in 2012 , but well below the previous five-year average of 28.

2013 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 49 percent of the time, reversed, remanded or modified the Department's decision 45 percent of the time, and dismissed the appeal on procedural grounds 6 percent of the time.

Table 3 – 2013 Case Activity Summary

	2013 Cases Filed				2013 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	0	7	7	2	3	3	1	2
CIVIL SERVICE*	2	2	4	0	2	3	0	1
COUNCIL RECOMMENDATIONS	1	9	10	8	8	1	0	1
DANGEROUS ANIMALS	0	3	3	0	1	3	0	0
ENERGY BENCHMARKING	0	4	4	4	4	0	0	0
HEALTH CODE (NOISE)	2	0	2	1	1	1	0	0
HOUSING & BUILDING UNFIT	0	1	1	1	0	1	0	0
INTERPRETATION*	0	5	5	1	2	3	0	1
LANDMARKS*	1	0	1	0	0	0	0	1
MASTER USE PERMIT (MUP)*	3	23	26	13	19	10	0	3
PUBLIC NUISANCE	0	1	1	1	1	0	0	0
SEPA-ONLY*	0	9	9	2	5	3	0	4
TENANT RELOCATION	2	16	18	12	11	3	0	3
THIRD PARTY BILLING*	1	7	8	3	3	4	0	1
TOTAL	12	87	99	48	60	35	1	17
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)	37	294	331	57	50	47	203	24
SDOT (Use of Public Property)	24	65	89	20	16	7	49	13
TOTAL CITATIONS	61	359	420	77	66	54	252	37
TOTAL INCLUDING CITATIONS	73	446	519	125	126	89	253	54

* 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	3						3
CIVIL SERVICE						1	1
DANGEROUS ANIMALS						1	1
ENERGY BENCHMARKING	4						4
HEALTH CODE		1					1
INTERPRETATION	1						1
MASTER USE PERMIT	8	4		1			13
PUBLIC NUISANCE	1						1
SEPA-ONLY	1				1		2
TENANT RELOCATION	6			2	3		11
Sub-Total	24	5	0	3	4	2	38
DPD (Land Use Code)	19		30	1			50
SDOT (Use of Public Property)	8		4			4	16
Sub-Total	27		34	1		4	66
Total	51	5	34	4	4	6	104

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

Standards of Review for Appeals by Case Type

Business and Occupation Tax Appeals

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

Civil Service Appeals

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

Dangerous Animal Appeals

The Director has "the burden of proving by a preponderance of the evidence that the Director's decision [declaring an animal dangerous or ordering humane disposal of animal] was correct." In the case of an order requiring humane disposal of a dangerous animal, the Director has "the burden of proving that the Director's decision not to allow the animal be sent to a secure animal shelter was not arbitrary and capricious." (SMC 9.25.036.C)

Energy Benchmarking Appeals

"The certified statement or declaration authorized by RCW 9A.72.085 submitted by the Director shall be prima facie evidence that a violation occurred and that the person cited is responsible. The certified statement or declaration of the Director ... and any other evidence accompanying the report, shall be admissible without further evidentiary foundation ... The person cited may rebut the evidence and establish that the cited violation(s) did not occur or that the person contesting the citation is not responsible for the violation. If the notice of violation is sustained at the hearing, the Hearing Examiner shall enter an order finding that the person cited committed the violation. If the violation remains uncorrected, the Hearing Examiner shall impose the applicable penalty." (SMC 22.920.170.E)

Health Code (Noise) Appeals

The appeal of a decision authorizing a noise variance is to be considered de novo, and the Director's decision is given no deference. (SMC 25.08.610.D)

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)

Master Use Permit Appeals (most land use permits and most SEPA appeals)

The appeal "shall clearly identify each component of a ... permit being appealed" and state "specific objections to the Director's decision and the relief sought". The Director's decision "shall be given substantial weight, except for determinations on variances, conditional uses, and special exceptions, which shall be given no deference." (SMC 23.76.022)

Public Nuisance (Graffiti)

The Director has the burden of proving "by a preponderance of the evidence that the property contains graffiti, that the person issued the notice is a responsible party, that the required abatement is reasonable, and that the required abatement" was not completed by the required date. (SMC 10.07.050)

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 Noise 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 23.91.012 & 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)
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)
Use of Criminal History in Employment Decisions Complaints (SMC 14.17.060)

LANDMARKS AND SPECIAL DISTRICTS [Administered by the Dept. of Neighborhoods]

Certificates of Approval for Designated Landmarks (SMC 25.12.740)
Landmark Controls & Incentives (SMC 25.12.530) [Recommendations to City Council]
Landmarks Code Interpretations (SMC 25.12.845)
Special Review Districts' Certificate of Approval and Code Interpretations
- Ballard Avenue Landmark District (SMC 25.16.110 & SMC 25.16.115)
- Columbia City Landmark District (SMC 25.20.110 & SMC 25.20.115)
- Fort Lawton Landmark District (SMC 25.21.130 & 25.21.135)
- Harvard Belmont Landmark District (SMC 25.22.130 & SMC 25.22.135)
- International District (SMC 23.66.030)
- Pike Place Market Historical District (SMC 25.24.080 & SMC 25.24.085)
- Pioneer Square Historical District (SMC 23.66.030)

HEALTH AND PUBLIC SAFETY CODE VIOLATIONS

Graffiti Nuisance Violations (SMC 10.07.050) [Administered by Seattle Public Utilities]
Health Code Permit Actions (SMC 10.01.220) [Admin. by Seattle-King County Public Health]
Infectious Waste Management Ordinance Violations (SMC 21I43I090) [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]
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]
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)
Whistleblower Retaliation Complaints (SMC 4.20.865) [Filed by the Ethics and Elections Commission]

City of Seattle

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

FILED
CITY OF SEATTLE

2014 FEB 13 AM 9:26

CITY CLERK

MEMORANDUM

DATE: February 13, 2014

TO: Monica Martinez Simmons, City Clerk

FROM: Sue A. Tanner, Hearing Examiner

SUBJECT: 2013 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 2013 Report to that committee.

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

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