



# ORDINANCE NO. 28461

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

AN ORDINANCE relating to the Hearing Examiner; amending Chapter 1.23 of the Tacoma Municipal Code, relating to the Hearing Examiner, to make necessary updates and corrections.

WHEREAS Chapter 1.23 of the Tacoma Municipal Code (“TMC”) governs the Hearing Examiner’s role in conducting administrative hearings and issuing recommendations to the City Council and administrative decisions on appeals, and

WHEREAS it is necessary to amend TMC 1.23 in order to correspond with other related sections of the TMC and changes in controlling laws; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

That Chapter 1.23 of the Tacoma Municipal Code is hereby amended as set forth in the attached Exhibit “A.”

Passed \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney



**EXHIBIT "A"**

**Chapter 1.23  
HEARING EXAMINER**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

\* \* \*

**1.23.010 Creation and purpose.**

Recognizing:

- A. The need to provide an efficient and effective administrative adjudicatory system for acting upon quasi-judicial matters and for review of contested administrative determinations as provided for herein;
- B. The need to ensure, to the extent possible, that quasi-judicial administrative decisions are made in a fair and impartial manner; and
- C. The need to ensure that the principles of due process and the appearance of fairness are adhered to in regard to quasi-judicial matters.

The office of the Hearing Examiner is hereby created under the authority provided by Article 11, Section 11 of the Washington State Constitution and RCW 58.17.330 and RCW 35.63.130 in order to best satisfy these needs. The office shall be independent of City departments, boards and commissions and shall be responsible for impartial administration of administrative hearings in accordance with the provisions of this chapter.

\* \* \*

**1.23.050 Areas of jurisdiction.**

A. The Examiner shall receive and examine relevant information, conduct public hearings, maintain a record thereof, and enter findings of fact, conclusions of law, and recommendations to the City Council or other order, as appropriate, in the following matters:

- 1. Applications for rezoning of property (Chapter 13.05; [Section 13.06.650](#));
- 2. Formation of Local Improvement Districts (Chapter 10.04);
- 3. Approval of Local Improvement District assessments (Chapter 10.04);
- 4. Dangerous sidewalks proceedings (Chapter 10.18);
- 5. Petitions for street and alley vacations (Chapter 9.22);
- 6. Appeals of administrative determinations of the City Council (Section 1.06.820);
- 7. Appeals from the decision of the Landmarks Preservation Commission regarding [eCertificates of Approval](#) (Section ~~42.080~~[13.05.047.G](#)); and
- 8. Appeals of a decision of the City Council to remove a member of a City board, commission, committee, task force, or other multi-member body from office (Chapter 1.46).

B. In regard to the matters set forth below, the Examiner shall conduct adjudicative proceedings, maintain a record thereof, and enter findings of fact, conclusions of law, and a final decision or other order, as appropriate:

- 1. Applications for preliminary plat approval for subdivisions exceeding nine lots (Chapter 13.04);
- 2. Appeals from decisions of the Director of Planning and Development Services (Chapters 13.05 and 13.06);
- 3. Appeals from decisions of the City Engineer regarding removal of or pruning trees on City-owned property (Chapter 9.20);



- 1 4. Appeals from the decisions or order of the Health Officer regarding violations of the Infectious Waste  
2 Management Code (Section 5.04.170);
- 3 5. Appeals from the Health Officer's denial of a permit to operate a swimming pool under  
4 Chapter 5.50 (Section 5.50.030);
- 5 6. Appeals from denial or revocation of a permit for sidewalk vending (Section ~~6B.1804~~.120);
- 6 7. Appeals regarding determinations of unlawful discriminatory practice under the Human Rights  
7 Commission chapter (Chapter 1.29);
- 8 8. Appeals from determinations of the Chief of Police, or his or her designee, regarding Potentially  
9 Dangerous Dogs and Dangerous Dogs (Chapter 17.04);
- 10 9. Appeals arising out of the Tax and License Code (Title 6);
- 11 10. Appeals arising out of the City Environmental Code, Chapter 13.12 (Sections ~~13.12.680540~~ and  
12 ~~.820~~);
- 13 11. Appeals arising under the City's commute trip reduction ordinance (Chapter 13.15);
- 14 12. Actions brought under the City's Whistle Blower Policy;
- 15 13. Appeals from the film production coordinator's decisions regarding productions of motion pictures  
16 within the City (Section 11.10.140);
- 17 14. Appeals from denial of special permits regarding solid waste recycling (Section 12.09.070);
- 18 15. Matters referred for adjudication by the Civil Service Board under its rules of procedure (Charter  
19 Section 6.11(c));
- 20 16. Appeals arising under the City's concurrency management ordinance (Chapter 13.16);
- 21 17. Hearing of violations of the City's Ethics Code (Chapter 1.46);
- 22 18. Appeals from the ~~Public Works~~Environmental Services Director's determination of civil penalties or  
23 any other charge, order, requirement, decision, or determination issued by the Director or his or her staff  
24 pursuant to the sewage disposal and drainage regulations ordinance (Chapter 12.08);
- 25 19. Appeals from the ~~Public Works~~Environmental Services Director's determination of civil penalties for  
26 violations of the solid waste ordinance and appeals arising out of the imposition by the Director, or his or  
her staff, of solid waste utility charges; provided, that the Hearing Examiner shall not adjudicate claims  
with respect to any rate set by the City Council in a rate ordinance nor hear any challenge to the rate-  
making process (Chapter 12.09);
20. Appeals from the decision of the Community and Economic Development Department Director  
denying or canceling a final Certificate of Tax Exemption under Tacoma's Mixed-Use Center  
Development ordinance (Chapter 13.17);
21. Appeals arising from the imposition of charges for service issued by the Department of Public  
Utilities, as well as those arising from disputes concerning utility service, use of watershed or other  
Department property, and termination of any use; provided, that the Hearing Examiner shall not  
adjudicate claims with respect to any rate set by the City Council in a rate ordinance nor hear any  
challenge to the rate-making process (Chapters 12.06 and 12.10);
22. Appeals arising out of the City's Minimum Building and Structures Code (Chapter 2.01);
23. Appeals from sign enforcement (Section 13.05~~6.520~~ - ~~.522405~~);
24. Applications for projects that require land use permits from the City of Tacoma as well as from a  
neighboring jurisdiction transferred to the jurisdiction of the Hearing Examiner in accordance with  
Section 13.05.040.F;
25. Appeals from Chronic Nuisance Code enforcement (Section 8.30A.080);



26. Appeals arising from a decision to deny a special street use permit, pursuant to Subtitle 16B;
27. Appeals arising from a decision to deny a telecommunications system franchise, pursuant to Subtitle 16B;
28. Appeals arising from a decision to deny a telecommunications system license, pursuant to Subtitle 16B;
29. Appeals arising from the establishment of a reimbursement assessment area and levying of a reimbursement assessment upon benefited property owners, pursuant to Chapter 35.72 RCW and applicable City ordinances;
- ~~30. Appeals from the decision of the Landmarks Preservation Commission regarding certificates of approval and decisions on demolition applications (Section 13.07.160);~~
- ~~30~~1. Applications for wetland and stream development permits, wetland and stream assessments, and wetland delineation verifications in conjunction with a preliminary plat approval or reclassification (Chapter 13.11);-
- ~~31~~2. Appeals regarding overpayment of wages (Section 1.12.071);
- ~~32~~3. Administrative hearings related to the breach or termination of cable television franchises granted, pursuant to Subtitle 16A;
- ~~33~~4. Applications for Conditional Use Permits (Table "G" of Section 13.05.020.G, Chapter Section 13.06.640);
- ~~34~~5. Appeals from Poultry and Pigeons enforcement (Section 5.30.040);
- ~~35~~6. Appeals from determinations related to certification and enforcement of violations for Small Business Enterprise (Chapter 1.07).
- ~~36~~7. Appeals arising out of the Nuisance Code (Chapter 8.30).
- ~~37~~8. Appeals arising out of the Public Nuisance Vehicle Code (Chapter 8.23).
- ~~38~~9 Appeals arising out of the Noise Code (Chapter 8.122).

\* \* \*

**1.23.070 Burden of proof.**

- A. For those matters set forth in subsection A of Section 1.23.050, except subparagraphs A.3 and A.4 (formation of Local Improvement Districts and approval of Local Improvement assessments), the burden of proof shall be on the applicant or petitioner to establish, by a preponderance of the evidence, that the request is consistent with applicable legal standards.
- B. For the formation of Local Improvement Districts the Examiner shall, based on the evidence presented by the parties, determine whether the district should be formed based on statutory requirements set forth at RCW 35.43 and adopted City policies. In regard to Local Improvement District assessments, the assessment roll presented by the Department of Public Works or the Department of Public Utilities shall be presumed to be legally correct; and a party contesting a proposed Local Improvement District assessment shall have the burden of establishing, by a preponderance of ~~expert appraisal~~the evidence, that the method of assessment was founded on a "fundamentally wrong basis" and does not properly reflect the special benefits resulting from the improvements constructed.
- C. For the adjudicatory matters set forth in subsection B of Section 1.23.050, unless otherwise provided by law, the party seeking review has the burden to establish, by a preponderance of the evidence, that the matter is consistent or inconsistent with applicable legal standards and the lower decision should be reversed or otherwise modified. Evidence that is material and relevant to determination of the matter consistent with the applicable legal requirements, subject to administrative rules of proceedings before the Hearing Examiner, shall be admitted into the record whether or not such evidence had been submitted as a part of the administrative record below.



**1.23.080 Prehearing conference.**

The Hearing Examiner, at his/her discretion, may conduct a prehearing conference. The purpose of the prehearing conference shall be: (1) to determine the feasibility of settlement of the matter; (2) to obtain agreement as to issues of fact or law and facts to be presented at hearing and the simplification or limitation thereof; (3) to determine the possibility of obtaining admissions of facts and authenticity of documents, which will avoid unnecessary proof at hearing; (4) to determine the admissibility of exhibits; (5) to obtain stipulation as to all or part of the facts in the case; (6) to determine the number of expert and lay witnesses to be called by the parties and their names, when possible; (7) to determine the approximate time necessary for the presentation of the evidence of the respective parties; (8) to establish a hearing schedule; and (9) to obtain all other information which may aid in the prompt disposition of the cases.

The Examiner, following the prehearing conference, shall issue a prehearing order, which shall, unless properly amended, control the further course of proceedings in the matter. Prehearing conferences may be held in person or telephonically, at the discretion of the Hearing Examiner

**1.23.090 Report by Department.**

When a matter identified in subsection A of Section 1.23.050 has been set for public hearing, the ~~Department of Public Works, or other~~ appropriate department of City government, shall coordinate and assemble the comments and recommendations of other City departments, other governmental agencies, and utility providers having an interest in the matter, and shall prepare a report summarizing the factors involved and the ~~Department of Public Works', or other~~ appropriate departments' findings and recommendation. At least seven days prior to the scheduled hearing, the report shall be filed with the Examiner and copies thereof shall be mailed to the applicant, in matters involving permit applications, and shall be made available for use by any interested parties at the cost of reproduction.

\* \* \*

**1.23.105 Hearing Examiner subpoenas.**

A. ~~A s~~Subpoenas may be issued by the Hearing Examiner or an attorney of record in a given appeal, and may be served by any person 18 years of age or over, competent to be a witness, but who is not a party to the matter in which the subpoena is issued.

B. Each witness subpoenaed by the Hearing Examiner (or attorney of record) as a witness shall be allowed the same fees and mileage as provided by law to be paid witnesses in courts of record in this state.

C. If a person fails to obey a subpoena issued by the Hearing Examiner (or attorney of record) in an adjudicative proceeding, or obeys the subpoena but refuses to testify or produce documents when requested concerning a matter under examination, the Hearing Examiner or attorney of record issuing a subpoena may petition the Tacoma Municipal Court for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, shall set forth in what specific manner the subpoena has not been complied with, and shall request an order of the court to compel compliance. Upon such petition, the court shall enter an order directing the person to appear before the court at a time and place fixed in the order to show cause why the person has not obeyed the subpoena or has refused to testify or produce documents. A copy of the court's show cause order shall be served upon the person. If it appears to the court that the subpoena was properly issued, and that the particular questions the person refused to answer or the requests for production of documents were reasonable and relevant, the court shall enter an order that the person appear before the Hearing Examiner at the time and place fixed in the order and testify or produce the required documents, and on failing to obey this order the person shall be dealt with as for contempt of court.

\* \* \*



**1.23.120 Consolidated review of multiple permit applications and of environmental appeals with the underlying land use action.**

1 Multiple land use applications for the same development project shall be consolidated for review before  
2 the Hearing Examiner if one of the permits or approvals required is within the original jurisdiction, as  
3 opposed to appellate jurisdiction, of the Examiner. Likewise, an environmental appeal brought pursuant  
4 to Section 13.12.820 shall be consolidated for purposes of review with the underlying permit matter(s),  
5 unless the environmental appeal involves the issuance of a ~~Determination~~Declaration of Significance  
6 pursuant to WAC 197-11-360. In the latter event, the environmental appeal may be considered separately  
7 from the underlying permit application(s).

8 \* \* \*

**1.23.160 Appeal of Hearing Examiner decisions.**

9 A. Appeal of those matters in which the Hearing Examiner enters a final decision as set forth in  
10 subsection B of Section 1.23.050, except in regard to applications from preliminary plat approval, may be  
11 brought by any party to the adjudicative proceeding which led to the decision entered. In regard to  
12 applications for preliminary plat approval, any aggrieved person having standing under the ordinance  
13 governing such application, or as otherwise provided by law, may appeal the Examiner's decision as  
14 provided herein.

15 B. Appeals from decisions of the Hearing Examiner in regard to those matters set forth in subsection B of  
16 Section 1.23.050 shall be appealable to the Superior Court for the State of Washington; provided,  
17 however, that those determinations regarding civil penalties, as set forth in subsections B. ~~1.820~~ and  
18 ~~B. 1.924, and disputes concerning utility service, as set forth in subsection B.21,~~ shall be appealable to the  
19 Tacoma Municipal Court. Any court action to set aside, enjoin, review or otherwise challenge the  
20 decision of the Examiner shall be commenced within 21 days of the entering of the decision by the  
21 Examiner, unless otherwise provided by statute. ~~However, decisions of the Examiner in regard to~~  
22 ~~shoreline permit applications under RCW 90.58 shall be appealable to the State Shorelines Hearings~~  
23 ~~Board in accordance with the applicable provisions of the referred to statute.~~

24 \* \* \*

25  
26