

Seattle City Council Confirmation Questions Ryan Vancil, Seattle Hearing Examiner

1. Perhaps you can start by reminding the viewing public, what it is that the Hearing Examiner does?

The Office of Hearing Examiner (“OHE”) is a separate and independent office of the City created by the Seattle Municipal Code. The Office is charged with conducting fair and impartial quasi-judicial administrative hearings, authorized by the Code, to review the actions of various City departments. The Hearing Examiner's decision in a case is usually the City's final decision. The OHE currently handles more than 80 different types of matters, most of which are land-use permit appeals, but also include matters such as recommendations to Council on rezones and appeals related to tax assessments, licensing decisions, and discrimination.

2. What is your vision for the Office of the Hearing Examiner over the next 4 years? What do you see as the biggest opportunities or challenges for your office in the coming years?

It must be said at the outset that OHE currently operates at a high rate of efficiency within a tight budget and meeting its caseload demands with a small group of highly dedicated staff. Thus, a primary objective must be simply to maintain the office in its current level of functionality. That said, change is inevitable and necessary to improve performance, and I see the following opportunities and challenges approaching over the next few years:

- New caseload database system. OHE utilizes a Files and Records Information Tracking System (“FRITS”) to accept and process cases. OHE has been utilizing FRITS in its day-to-day operations since 2010. In November 2013, Seattle IT informed OHE that it would no longer support department-specific applications such as FRITS. FRITS is currently being maintained by an outside consultant. After several years of development OHE is on the threshold implementing a move from FRITS to integrating its database system with the Municipal Court’s case management system, MCIS, which is currently undergoing an upgrade. This process was initiated several years ago by my predecessor, and is not likely to be completed for approximately two years.
- Seattle Fire Department Citation System. The OHE is cooperating with the Seattle Fire Department (“SFD”) to implement a new citation process. The SFD citation process will add over 400 citations to the current OHE caseload which includes approximately 750 citations combined from SDCI and SDOT. Council may see proposed legislation related to this process in approximately July of this year,

with a current estimate that the citation process will be fully implemented by November 2019.

- Mediation. The Hearing Examiner is a member of The Land Use and Environmental Mediation Committee, which is a joint standing committee of the WSBA's Environmental and Land Use Law and Alternative Dispute Resolution sections. The committee works to promote more efficient, effective, and enduring resolutions in land use and environmental disputes through the use of mediation and related conflict resolution techniques. Through cooperation with the Committee and the King County Inter-Local Conflict Resolution Group, the OHE is proceeding with implementing efforts to enhance access to mediation for participants in OHE appeals. Primary goals of this effort will be to reduce the total caseload of the OHE, and to enable parties to reach resolution more efficiently, and which is frequently better suited to the parties' individual needs and situation.
- OHE RSJI – See response to #3 below.
- Remote/skype hearing participation. OHE remains committed to increasing access to hearings. One effort to increase access, and reduce costs to participants is to allow remote participation in a hearing by Skype. These efforts are in part limited by inefficiencies in the technology, and the need to uphold standards of quasi-judicial hearings, but none-the-less there are opportunities to increase use of this system to enhance the experience of hearing participants while meeting required standards.
- Staffing stabilization. The OHE functions with 5 staff positions, including the hearing examiner, deputy hearing examiner, executive assistant, legal assistant, and administrative assistant. Due to retirement in the office in the past several years the hearing examiner, deputy hearing examiner, and executive assistant roles were all replaced within the last year. Due to upcoming transitions the legal assistant, and administrative assistant roles will also have new hires. After these hires are in place the OHE anticipates a period of stability in each of the office positions which will enhance our ability to function as a team.
- Increasing/historic high caseload. Since most of the cases that come through the OHE are related to land use permit appeals, the caseload of the OHE is directly tied to the level of development in Seattle. As Council is aware, the City is currently experiencing a historic high in development. As a consequence, the OHE is also experiencing a historic high in its caseload, and can anticipate that to continue so long as the City continues along its current development trends.
- Contract Cities. Since 2004, the Hearing Examiner has provided hearing examiner services to other jurisdictions via contract. The OHE currently provides contract city services to Kirkland, Mercer Island, and Tukwila. As with Seattle, these contract cities are experiencing high levels of development, and are also looking to the Hearing Examiner to address an increasing number of case types. Given the continued increase in caseload for the OHE due to the need for the office's services by Seattle, the OHE must consider if the contract cities can continue to be accommodated.

3. Over this past year, have you had the opportunity to support the implementation of the City's Race and Social Justice Initiative (RSJI) with specific changes to how your Office operates or provides services to the public? Please explain the existing racial disparities and inequities you have identified, areas of opportunity to advance racial equity, and specific changes you've implemented. Do you have additional ideas about changes you'd like to make in the coming year(s) to further RSJI principles?

In the past the OHE has taken no steps to participate in or support RSJI. However, at the outset of my assuming the role of Hearing Examiner I committed the office to embracing the principles of this City initiative. My ambitions for what I could achieve in this regard in my first year were tempered by a very heavy caseload, and onboarding and training new staff to stabilize the OHE. However, we were able to take some steps forward, and are hopeful of more substantive outcomes in future years. Our efforts and plans include (please also see the attached OHE Racial and Social Justice Initiative 2019 Timeline):

- All OHE staff members have participated in City RSJI trainings to the degree these are available. All staff members were enrolled in the People's Institute Undoing Racism Workshop, and spots have been secured in the September 2019 workshop to provide training for anticipated two new hires that will occur this summer. The Hearing Examiner has taken all RSJI classes except Internalized Racial Superiority which has been postponed several times by the class organizers, but will hopefully be completed in May 2019.
- The Office of Civil Rights has supported the OHE in its efforts by providing two days of training to OHE staff in how to apply the Racial Equity Toolkit.
- The OHE formed an RSJI change team - all OHE staff are members of the change team.
- Translation Project. The OHE has taken steps and identified others that need to be taken to enhance access for individuals who may not speak English, or for whom English is not a primary language. These steps include:
 - o Posting at the OHE front desk a sign guiding users to interpreter services in 20 different language.
 - o Translating a guide for users of the OHE citation appeals process into Spanish.
 - o Translating the Land Use/SEPA Decision Appeal Form into Spanish, and allowing Spanish speakers to submit the form completed in that language so that it may be translated to English for the record.
 - o Future projects include: (a) Adding a tag line at the bottom of the OHE website that directs users to interpreter services, (b) translating the guide for users of the OHE citation appeals process into the top seven languages identified by the City, (c) translating the Rules of Practice and

Procedure into Spanish, and (d) translating the Land Use/SEPA Decision Appeal Form into the top seven languages identified by the City.

- Project: Provide training and hiring of lawyers of color to act as *pro tem* hearing examiners.
- Project: Law School Student Outreach. Strategy: Provide targeted opportunities to law school students of color to understand land use law, and network with land use law professionals. Outreach with local law schools has been initiated, and this project will likely see greater implementation at the beginning of the 2019 academic year.
- Project: Community Outreach. As a quasi-judicial appeal forum handling land use matters that impact individuals across the City, the OHE sees relatively few people of color using its land use appeal systems. Addressing this issue will involve a multi-year project of community outreach and education.

4. In Seattle we have seen Land Use/SEPA appeals with little or no legal merit used to delay implementation of housing, land use, and zoning plans and policies, with appellants capitalizing on existing practices and procedures to delay proceedings and draw out appeals. What changes would you recommend to discourage this practice and ensure integrity of the appeal process?

The Hearing Examiner is empowered to dismiss a case that is “without merit on its face, frivolous, or brought merely to secure delay.” Where there is evidence that a party has filed its matter simply to seek delay this can be addressed on the Hearing Examiner’s own initiative or by a motion to dismiss brought by one of the other parties. However, a sophisticated appellant can craft a notice of appeal that passes muster on its face. Absent a showing of evidence that a case is frivolous or is simply brought for the purpose of delay, the Hearing Examiner cannot dismiss a case, and it can be difficult to prove these things if the appellant is familiar enough with procedural requirements to plead its case and appear as a legitimate appellant. Our current system of rules errs on the side of caution so that appellants who have legitimate cases do not get dismissed simply because the position they take is unpopular or opposed. Council must be extremely cautious about circumventing this current system on the basis of one or a few bad cases. In addition to protecting against the dismissal of legitimate cases, current case schedules are often adopted to ensure against development of appeal issues – a case that gets rushed through the Hearing Examiner process can get returned on appeal by Superior Court on the basis of a failure to uphold due process requirements (and the resulting delay would be exceptionally greater than a full process before the Hearing Examiner). Ultimately, the Council can consider timelines for appeals, and deadlines for decisions that may streamline the process. See also response to #5 below, wherein the Hearing Examiner is identifying some opportunities for improving appeal system efficiency.

5. What changes to practice rules that you promulgate, or other City policies and procedures that inform your hearing process and are subject to legislative change, would you recommend to make it possible for appeals to be resolved more quickly? What trade-offs might be associated with those changes and how could any disbenefits from those changes be mitigated?

I am currently in the process of drafting a complete rewrite of the Hearing Examiner Rules of Practice of Procedure (“HERs”). The re-write of the HERs will be based primarily on the existing HERs, but is necessary for modernization, clarification and improved procedural efficiency. The HER update process includes a cross-comparison with other jurisdictions in Washington. Once the draft rewrite is completed the draft is vetted via a public review process prior to adoption. Several of the proposed changes in the draft are being made to increase the procedural efficiency of hearings, including the following:

- Developing robust rules and procedures for mediation so parties are more aware of, and incentivized, to take advantage of the opportunity to resolve their cases in advance of a hearing.
- Reducing opportunities for motions for reconsideration. The current HERs allow parties to submit motions for reconsideration for any decision by a Hearing Examiner, even decisions that are not final for the case (e.g. decisions regarding partially dispositive pre-hearing motions). The purpose of the reconsideration is to provide parties and the Hearing Examiner an opportunity to address procedural or factual errors in the record. This process is frequently abused by individuals who simply do not agree with the decision of the Hearing Examiner, and they file motions that result in procedural delay, and a waste of resources.
- Clarifying that parties will be consulted as to the hearing schedule, but that ultimately the Hearing Examiner will proceed with a schedule that they are required to follow if efforts to coordinate schedules does not work. There is no rule addressing this at this time.
- Codifying procedural practices such as those concerning exhibit and witness presentation. These rules will increase efficiency of communication between the parties and with the OHE prior to a hearing, and will increase efficiency in the hearing.
- Allow email service between the parties to promote efficiency of exchange of materials. There is no rule addressing this at this time.

In addition to revising the HERs I am undertaking a re-write of the office Citizen Guide. Some language in the current draft of the Citizen Guide leads citizens to believe that the hearing process is easier to participate in than it actually is, and as a result some approach the hearing process in a manner that is less prepared than they should be. The new guide will include the information that the Hearing Examiner must treat *pro se* (non-attorney or self-represented) litigants in the same manner as attorneys.

At this time, I do not have specific recommendations concerning legislative improvements that Council may wish to consider, but anticipate having a report to Council in 2020 which will address issues related to legislation that could encompass this issue along with others.