

April 8, 2020

## MEMORANDUM

**To:** Seattle City Council  
**From:** Amy Gore, Analyst  
**Subject:** Council Bill 119770 - Suspension of Hearing Examiner Deadlines

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On April 13, 2020, the City Council will discuss and possibly vote on [Council Bill \(CB\) 119770](#), which would temporarily suspend deadlines required by the Seattle Municipal Code (SMC) for the Office of Hearing Examiner due to the COVID-19 emergency. This memorandum provides background on the Office of the Hearing Examiner, summarizes the proposed bill and identifies policy options for Council's consideration.

### Background

The Office of Hearing Examiner is an independent office which reviews the decisions and actions of departments to ensure those decisions are consistent with the rules and regulations of the City. In addition, the Office makes initial decisions in some cases, like subdivision applications, and provides recommendations to City Council on some land use decisions, like rezones, conditional uses or major institution master plans.

The Office of Hearing Examiner is granted authority by the SMC for over 75 jurisdictions. (See Attachment 1 for recent cases by topic and Attachment 2 for all jurisdictions of the Hearing Examiner). The majority of cases are reviews of citations issued by the Seattle Department of Construction and Inspection (SDCI) and the Seattle Department of Transportation (SDOT).

### COVID-19 Response

In response to direction from the Governor and Mayor, on March 16, 2020, Hearing Examiner Vancil published an [Emergency Rule](#) entitled "Temporary Operating Rules During COVID-19", effective for 60 days, which included the following:

1. closed the Office of the Hearing Examiner to the public,
2. amended rules to require remote hearings,
3. allowed parties to file documents electronically,
4. suspended payment of fees in person, and
5. allowed the late filing of fees when the office closure impeded payment.

On March 20, 2020, Councilmembers received a memo from the Hearing Examiner, detailing the Office's response to the stay at home orders. As noted in the memo, the Hearing Examiner has moved to remote hearings and is able to conduct most of the business of the office via remote technology. However, there are some instances where the limitations of remote

technology could infringe on due process rights and make it difficult to preserve records that meet legal standards required of the Office.

### **CB 119770**

Council Bill 119770 suspends SMC-imposed deadlines on Hearing Examiner actions during the civil emergency declared on March 3, 2020 by Mayor Jenny Durkan and ratified and confirmed by City Council on March 5, 2020 ([Resolution 31937](#)). The suspension of deadlines will automatically end with the termination of the civil emergency. The bill does not suspend deadlines for City Departments, appellants, or other participants in cases before the Hearing Examiner.

The bill includes a ratify and confirm clause, which allows the Hearing Examiner to take actions consistent with the intent of the bill between the date of passage and the effective date.

The bill reflects Council's intention that the Hearing Examiner will continue to conduct the business of the office where possible while still meeting the requirements of the Governor's [Stay at Home, Stay Healthy](#) order and the legal requirements of fair and accessible hearings.

### **Waterfront LID Levy Assessment**

The Office of Hearing Examiner was directed by the City Council to conduct the hearing for the final assessment roll for the Waterfront Local Improvement District (LID). These hearings are not subject to code-required deadlines and are therefore not impacted by this legislation. If the schedule is not modified (e.g. for COVID-19 related reasons or failure of remote hearing technology) then the Hearing Examiner expects the record of the hearing to close the second week of May, and he would be attempting to complete his recommendation to Council on the final assessment roll two to three weeks after the close of record.

### **Issue Identification**

Central Staff identified the following issues for council consideration.

#### **1. Period of Applicability**

The proposed bill is in effect until the repeal of the Civil Emergency declared on March 3, 2020. The Council could choose to set a specific date instead. However, if the stay home order is still in place on that date, Council may need to pass additional legislation extending the suspension of deadlines.

#### **2. Additional Code-Imposed Deadlines**

The current bill suspends the deadlines imposed on the Office of Hearing Examiner in setting hearing dates, filing decisions and other Office responsibilities. It does not suspend deadlines for City departments or for persons who are filing appeals of City decisions or other actions of

appellants or parties of the hearing. Council may want to consider examining other deadlines. This would require a new bill.

**Attachments:**

1. Hearing Examiner Cases by Topic 2014 to 2019
2. Hearing Examiner Jurisdictions

cc: Kirstan Arestad, Executive Director  
Aly Pennucci, Supervising Analyst

## Attachment 1 - Hearing Examiner Cases by Topic 2014 to 2019

	2014	2015	2016	2017	2018	2019
<b>Cases without Citations</b>						
B & O Tax Appeals	4	6	2	1	8	9
Council Land Use Actions	0	3	7	6	3	6
Dangerous Animals	2	0	3	1	0	1
Discrimination	1	7	20	10	4	2
Energy Benchmarking Appeals	16	0	0	3	0	0
Floating Homes	0	0	1	2	3	2
Grading and Drainage	1	0	0	0	0	0
Health Codes	0	1	0	2	9	2
Housing and Building Unfit for Habitat	0	0	0	0	0	1
Labor Standards	0	0	0	0	1	4
Land Use Code Interpretations	3	4	7	3	11	2
Landmarks - Special Review Districts	1	7	3	2	2	0
Licensing Appeals	2	3	3	8	8	3
Master Use Permits	23	33	25	37	31	32
Public Nuisance	2	0	0	0	0	0
Public Works Relocation	0	0	0	1	0	0
School Development Departure	0	0	0	0	1	0
SEPA-Only Appeals (Non MUP)	3	10	8	14	14	6
Tenant Relocation Assistance Eligibility	6	13	17	10	10	13
Utility Service Appeals-3rd Party Billing	5	3	3	13	7	3
<b>Total Cases without Citations</b>	<b>69</b>	<b>90</b>	<b>99</b>	<b>113</b>	<b>112</b>	<b>86</b>
<b>Cases with Citations</b>						
Land Use Citation Enforcement Actions	317	364	403	340	195	132
SDOT Citation Enforcement Actions	94	145	273	348	402	404
Marijuana Citation Enforcement Actions	0	16	32	29	11	2
<b>Total Cases with Citations</b>	<b>411</b>	<b>525</b>	<b>708</b>	<b>717</b>	<b>608</b>	<b>538</b>
<b>Grand Total</b>	<b>480</b>	<b>615</b>	<b>807</b>	<b>830</b>	<b>720</b>	<b>624</b>

Source: [Office of Hearing Examiner 2019 Annual Report](#)

## Attachment 2 - Hearing Examiner Jurisdictions

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### **Land Use & Environmental** [Administered by Department of Construction and Inspections]

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#### Appeals:

- Downtown Housing Maintenance (SMC 22.220.140)
- Denial or Revocation of Rental Housing Registration (SMC 22.214.045)
- Environmental Determinations (SMC 25.05.680)[Admin. by any City dept. as lead agency]
- Environmentally Critical Areas:
  - Conditional Use (SMC 25.09.260)
  - Reasonable Use Exception (SMC 25.09.300)
  - Variance (SMC 25.09.160.C, 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, 23.91.010, 23.91.012)
- Land Use Code Interpretations (SMC 23.88.020)
- Land Use Regulations (SMC 23.47A.004)
- Adult Cabarets (SMC 23.49.030)
- Land Use Regulations – Industrial (SMC23.50.012)
- Land use Regulations – Affordable Housing Impact Mitigation Program for Commercial Development – (SMC 23.58B.030)
- Land Use Regulations – Mandatory Housing Affordability for Residential Development (SMC 23.58C.035)
- Land Use Regulations – Seattle Shoreline Master Program Regulations (SMC 23.60A.064, 23.60A.202, 23.60A.203, 23.60A.204, 23.60A.214)
- Land Use Regulations – Station Area Overlay District (SMC 23.61.016)

- Land Use Regulations – Master Planned Communities (SMC 23.75.085, 23.75.120)
- 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 25.08.590, 25.08.610, SMC 25.08.655)
- Noise Code Citations (SMC 25.08.900, 25.08.910, 25.08.920, 25.08.930, 25.08.940, 25.08.950)
- Pioneer Square Minimum Maintenance Violations (SMC 25.28.280, 25.28.300, 25,28.310)
- 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 22.210.100, 22.210.110, 22.210.120, 22.210.150, 22.210.160)
- Weed and Vegetation Citations (SMC 10.52.031, 10.52.032, 10.52.034, 10.52.035, 10.52.034, 10.52.036) [Admin. by DPD]

Land use decisions on Type III applications:

- Subdivisions (SMC 23.76.024 and SMC 23.22.054)

Recommendations to City Council on Type IV applications (SMC 23.76.036, SMC 23.76.052, SMC 23.76.054):

- 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 (SMC 23.69.032)
- Rezone Applications (SMC 23.34)

## **School Reuse & Departures** [Administered by Department of Neighborhoods]

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- School Development Standard Departures (SMC 23.79.012) within MUP decision
- School Reuse/SUAC (SMC 23.78.014) within MUP decision

## **Civil Rights** [Administered by the Office for Civil Rights]

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- Employment Discrimination Complaints (SMC 14.04.150, 14.04.170, 14.04.180, 14.04.185)
- Unfair Public Accommodations Practices (SMC 14.06.040, 14.06.110, 14.06.120, 14.06.130, 14.06.140)
- All-Gender Single-Occupant Restrooms Requirements (SMC 14.07.040)
- Fair Housing (SMC 14.08.170, 14.08.180, 14.08.200)
- Use of Criminal Records in Housing (SMC 14.09.085, 14.09.090,
- Fair Contracting Practices (SMC 14.10.120, 14.10.130, 14.10.140, 14.10.150)
- Paid Sick/Safe Leave Appeals (SMC 14.16.050, 14.16.070, 14.16.085, 14.16.090, 14.16.100, 14.16.105)
- Fair Chance Employment Appeals (SMC 14.17.045, 14.17.060, 14.17.065, 14.17.075, 14.17.080)
- Minimum Wage Appeals (SMC 14.19.050, 14.19.070, 14.19.085, 14.19.090, 14.19.100, 14.19.105)
- Wage Theft Appeals (SMC 14.20.030, 14.20.050, 14.20.065, 14.20.070, 14.20.080, 14.20.085)
- The Use of Conversion Therapy on Minors (SMC 14.21.050)
- Secure Scheduling (SMC 14.22.065, 14.22.085, 14.22.100, 14.22.105, 14.22.115, 14.22.120)
- Domestic Workers (SMC 14.23.095, 14.23.095, 14.23.100, 14.23.105, 14.23.115, 14.23.120)
- Protecting Hotel Employees from Violent or Harassing Conduct (SMC 14.26.150, 14.26.170, 14.26.180, 14.26.210, 14.26.220)
- Protecting Hotel Employees from Injury (SMC 14.27.150, 14.27.170, 14.27.180, 14.27.190, 14.27.210, 14.27.220)
- Improving Access to Medical Care for Hotel Employees (SMC 14.28.150, 14.28.170, 14.28.180, 14.28.210, 14.28.220)
- Hotel Employees Job Retention (SMC 14.29.170, 14.29.180, 14.29.190, 14.29.210, 14.29.220)

## **Landmarks & Special Districts** [Administered by the Dept. of Neighborhoods]

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- Certificates of Approval for Designated Landmarks (SMC 25.12.740)
- Factors to be considered by Board or Hearing Examiner (SMC 25.12.750)
- Hearing Examiner procedure (SMC 25.12.760)
- Landmark Controls & Incentives (SMC 25.12.530) [Recommendations to City Council]
- Owner’s objections to Board’s recommendation (SMC 25.12.535)
- Scheduling of hearing (SMC 25.12.540)
- Hearing Examiner procedure (SMC 25.12.560)
- Basis for Hearing Examiner’s recommendations. (SMC 25.12.570)
- Hearing Examiner recommendations – Referral to Council (SMC 25.12.610)
- Service of notices (SMC 25.12.840)
- Landmarks Code Interpretations (SMC 25.12.845)
- Conformance with general development (SMC 25.12.980)
- Special Review Districts’ Certificate of Approval and Code Interpretations
  - Certificate of Approval – Application, review and appeals (23.66.030)
  - 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 25.21.110, 25.21.130 & 25.21.135)
  - Harvard Belmont Landmark District (SMC 25.21.110, 25.22.130 & SMC 25.22.135)
  - International District (25.24.080 & 25.24.085)
  - Pike Place Market Historical District (SMC 25.24.080 & SMC 25.24.085)
  - Pioneer Square Historical District (SMC 25.28.280, 25.28.300, 25.28.310)
  - Sand Point Naval Air Station Landmark District (SMC 25.30.090, 25.30.110, 25.30.120)

## **Health & Public Safety Code Violations**

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- 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]
- Frozen Dairy Food Products (SMC 10.18.140) [Administered by Seattle-King County Public Health]
- Noise Variance (SMC25.08.610)

- Radiofrequency Radiation Ordinance Violations (SMC 25.10.540) [Admin. by Seattle-King County Public Health]
- Corrosion Prevention (SMC21.08.350, 21.08.360) [Admin. By Seattle-King County Public Health]

**City Taxes & Licenses** [Admin. by Financial and Admin. Serv., Revenue & Consumer Affairs]

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- 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 and other Tax Assessments (SMC 5.55.140, 5.55.150, 5.55.230)
- Income Tax on High-Income residents (SMC 5.65.160, 5.65.170, 5.65.230)
- Multifamily Housing Property Tax Exemption (SMC 5.72.110)
- 2004 Multifamily Housing Property Tax Exemption Program (SMC 5.73.110)
- 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 6.214.320, SMC 6.02.290, SMC 6.202.240, SMC 6.202.270, Chap. 6.500 SMC, SMC 6.10.120, SMC 6.10.130, 6.208.020, 6.214.320, 6.295.160, 6.295.180)
- 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, 6.310.735)
- 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)
- Marijuana Business License Citations (SMC 6.500.147, 6.500.150, 6.500.170)
- Short-Term Rentals 6.600.120)

**Cable Communications** – [Administered by the Office of Cable Communications]

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- Franchise Termination (SMC 21.60.120)

## Miscellaneous Jurisdictions

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- Civil Service Appeals (SMC 4.04.250) [Delegation from Civil Service Commission]
- Commuter Benefit (SMC 14.30.150)
- 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]
- Rental Agreement (7.24.130) [admin. By DCI]
- 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]
- 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]
- Compensation and Working Conditions Generally (SMC 4.20.225, 4.20.860, 4.20.870)
- Documentation of Eligibility for certain uses of Sick Leave and Funeral Leave (SMC 4.30.865)
- Floating Home Moorages (SMC 7.20.080, 7.20.090, 7.20.100, 7.20.110)
- Refund Anticipation Loan Regulation (SMC 7.26.070)