King County

HEARING EXAMINER GUIDE

CODE ENFORCEMENT APPEALS

Available in Russian
Available in Spanish
Available in Vietnamese

Hearing Examiner's Office
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www.kingcounty.gov/independent/hearing-examiner

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Hearing Examiner Guide
Code Enforcement Appeals

What is this guide?

This guide summarizes the hearing examiner process for code enforcement appeals. It is meant to help laypersons, and carries no legal weight. The examiner invites questions.

Who is the examiner?

The examiner is appointed by the King County Council to hold hearings and issue decisions on appeals of Department of Local Services (DLS) enforcement orders. The examiner is a neutral decision-maker, like a judge. The examiner's office works for the council, *not* for DLS. (When an agency *other* than DLS uses KCC Title 23 to bring an enforcement action, substitute that agency for "DLS" when reading thisguide.)

How about access?

Sign language interpretation is available, for free, by calling TDD Number (206) 296-1024. Non-English language interpreters are available, for free. For those with travel barriers, contact the examiner to discuss alternatives, like appearing by telephone. Call (206) 477-0860 or email Please make requests early in the process.

How do you start your appeal?

People who receive a decision from DLS—namely, a Notice and Order, Citation, Stop Work Order, Notice of Non-Compliance for a Voluntary Compliance Agreement, or a Civil Penalty Waiver Request Denial—may appeal to have the examiner hear their case. There is no appeal fee, but the following three requirements *must* be met to move forward:

1. **Timing.** The deadline to submit your appeal is 24 calendar days (17 calendar days for a penalty waiver request denial) after DLS *issues* its decision. When DLS posts a decision on the property or hands it directly to someone, the clock starts ticking that day. When DLS mails a decision, the clock starts ticking the day DLS mails it, not on the day you actually receive it.
2. **Delivery.** Getting your appeal statement to a post office by the deadline is *not* sufficient. DLS must actually *receive* your appeal by the deadline (and mail delivery often takes several days). Untimely appeals are barred—there is no flexibility. This may not seem fair, but it is the law. You can submit your appeal via:

- mail, with attention to the code enforcement section, or in-person (check https://kingcounty.gov/depts/local-services/permits.aspx for office hours) at 919 SW Grady Way, Suite 300 Renton, WA 98057; or
- email to your code enforcement officer; the officer's email address is typically on the cover letter DLS sends (ask the officer to confirm email receipt).

3. **Content.** Your appeal must include:
   a) Either a copy of the DLS decision(s) you are appealing or the DLS file number(s) and decision date(s);
   b) A description of your interest in the case (for example, you own the property);
   c) The error(s) you think DLS made in its decision ("I only cut down ___, not ___," or "I didn't construct ___," or "I had a permit for that," etc.);
   d) Specific reason(s) you think DLS's decision(s) should be reversed ("_____is legal," etc.) or modified ("The compliance deadline is unreasonable," etc.);
   e) How DLS's decision(s) harms or will harm you ("If I must _ , then _ "); and f)
   What outcome(s) you seek ("Overturn the order" or "Reduce the fine," etc.).

While your appeal does not have to include all the evidence (like a document) you want to submit to support your appeal, it should include all the matters or issues you want to raise—see c) and d) above. If you are not sure about exactly what to say, make sure you still get *an* appeal, even if imperfect, delivered to DLS by the deadline.

If you get your initial appeal to DLS on time, the examiner has authority to later allow you, prior to the hearing, to modify or add to the issues you originally raised. But, the examiner has *no* authority to hear an appeal if your original appeal statement did not arrive at DLS on time. **Whatever you do, make sure the agency receives your appeal by the deadline!**

Filing a timely appeal does not prevent you from resolving your case without going to a hearing. It simply preserves your right to object to DLS's order. Otherwise DLS's action becomes final and unchallengeable once the appeal deadline passes.

Is mediation a possibility?

Mediation may be available. First check Examiner Rule V (link at end). To initiate mediation, make a written request early in the process. Mediation often holds the most promise where the specific issue under appeal is part of a broader neighbor-versus-neighbor dispute is.

What can you expect before a hearing?

At least two weeks before a hearing, the examiner will send out a notice. Read that notice carefully. It sets the day, time, and format (telephone, video, in-person, etc.) of the hearing. It often includes descriptions of the examiner's initial interpretations of the issues for hearing and thoughts on potential resolution. It sets deadlines for amending the issues raised in an appeal statement (as described above) and for sending any information required *before* the hearing.

Two weeks before a hearing, DLS submits to parties, interested persons, and the examiner a report summarizing the issues and providing most or all of the documents DLS intends to offer as exhibits at the hearing. Read these carefully.

DLS's files on a case are public records; anyone wanting to review the entire file prior to the hearing may arrange this with DLS (by email to permitrecords@kingcounty.gov or by calling (206) 296-6696). Similarly, anyone may request examiner documents; examiner records are usually available electronically, typically at no cost.

Who can participate in the appeal process?

Normally, only DLS and the person who filed the appeal are involved in matters like scheduling a conference or hearing, setting deadlines, making or responding to motions, and in deciding what evidence to present, witnesses to call, and questions to ask in a hearing.

Others with an interest in the case may request "intervenor" status to become a party. Please review Examiner Rule X.B (link at end) for information on requesting this. Intervenor requests are not automatically granted, but are reviewed on a number of specific criteria.

What typically happens at an appeal hearing?

What is the timing and format of the hearing?

The notice the examiner sends out will set the day, time, and format (telephone, video, in-person, etc.) for the hearing; read that carefully. Regardless of the hearing format, be on time, or you may forfeit your rights.

How will the hearing go?

1. Because DLS carries the burden of proof regarding any issues or matters you raised in your appeal, DLS must go first. DLS offers testimony and its documents, typically only those DLS sent out two weeks before the hearing. Although examiners have a lower threshold for admitting evidence than courts do, you may offer specific objections to any documents. You may question any witness.
2. Then, it is your turn to be sworn in and offer testimony and any documents. DLS may raise objections and ask you question. DLS may also question any witness you present.
3. Afterwards, each party has some time to respond to what the other party presented, followed by brief closing statements.
4. At any time, the examiner may ask questions.
5. All testimony must be under oath, which means the examiner swears in each witness.

How can I present the best case?

Closely read the notice the examiner sends out. Effective testimony and argument often explain how a specific law applies to your case. Presentations can be in the form of notes, written statements, photographs, documentary records, and visual aids.

Statements offered during the hearing, under oath and subject to cross examination (questioning), are generally given the most consideration. You may present documents and testimony describing any work you have done to address the situation.

What about hearing records?

Your hearing will be recorded, and you may request a copy of the recording and any documents. Depending on the volume of data requested, there may be a duplication cost, although the examiner's office maintains most records digitally.

What happens after the hearing?

Within ten business days (meaning weekends and holidays are excluded) of the hearing's close, the examiner sends a final decision, which includes findings of fact based upon the hearing record and conclusions drawn from those findings. It may wholly grant the appeal, wholly deny the appeal, or do something in the middle (modify conditions, reduce fines, etc.).

Examiner decisions end with general information for how to appeal. The examiner can offer no additional instruction beyond that written information. It is an appellant's responsibility to determine and meet the exact requirements for filing an appeal.

What is the proper way to communicate with the examiner's office?

While you may contact the examiner with *procedural* questions, any questions or statements related to the *substance* of the matter should be raised at a conference or hearing, or made in writing and addressed to all parties. Examiner staff screen correspondence and calls to prevent prohibited contacts to the examiner from either party. In general, emails should be sent to hearingexaminer@kingcounty.gov and copied to DLS's representative.

How does the examiner ensure I have a fair hearing?

Examiners are independent of DLS and do not give any deference to DLS or to any other agency. Examiners may not hear appeals where they have financial interests, have pre-judged the issues, or may appear biased by a relationship to a party or property. A person with reasonable grounds to believe an examiner might be influenced by a factor outside the record should promptly bring that concern to the examiner's attention.

What rules and laws typically apply?

To participate effectively, it often helps to become familiar with standards governing the decision-making process, especially KCC chapter 20.22, KCC Title 23, and the examiner's rules:

- King County Codes: http://www.kingcounty.gov/council/legislation/kc_code.aspx
- Examiner's rules: http://kingcounty.gov/independent/hearing-examiner/rules.aspx
- Examiner's page of common regulations (not exhaustive): https://www.kingcounty.gov/independent/hearing-examiner/regulations.aspx

Examiners base decisions primarily on those sources, on constitutional principles, and on appellate court decisions.

For past examiner decisions, by year, see http://www.kingcounty.gov/independent/hearing-examiner/case-digest/appeals/code-enforcement.aspx.

You may call the examiner's office with any questions.

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