King County

SEMI-ANNUAL REPORT OF THE KING COUNTY HEARING EXAMINER

JANUARY – JUNE 2017

The report provides information concerning compliance with the objectives and duties of the Hearing Examiner stated in Chapter 20.22 of the King County Code

David Spohr, Hearing Examiner

August 30, 2017

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Semi-Annual Report
Office of the King County Hearing Examiner

January – June 2017

David Spohr
King County Hearing Examiner

Overview

20.22.020 Chapter purpose

The office of hearing examiner is created and shall act on behalf of the council in considering and applying adopted county policies and regulations as provided in this chapter. The hearing examiner shall separate the application of regulatory controls from the legislative planning process, protect and promote the public and private interests of the community and expand the principles of fairness and due process in public hearings.

20.22.310 Semiannual report

The office of the hearing examiner shall prepare a semiannual report to the council detailing the length of time required for hearings in the previous six months, categorized both on average and by type of proceeding. The report shall provide commentary on office operations and identify any need for clarification of county policy or development regulations. The office shall file the report by March 1 and September 1 of each year…

The King County Hearing Examiner is appointed by the Metropolitan King County Council to provide a fair, efficient, and citizen-accessible public hearing process. We hear applications and appeals of many county administrative determinations, issue formal decisions, and make recommendations to Council.

Twice a year we report to Council on examiner operations; this report covers January 1 through June 30, 2017. We begin by explaining and reviewing specific examiner jurisdictions. We then apply these groupings to the current period, analyzing examiner workload and compliance with various deadlines. Throughout, we compare the current reporting period to previous periods. We describe some of our more interesting cases, discuss the few on appeal to the courts, and close by describing our initiatives and other recommendations.

Compared to the first half of 2016, our new case filings increased 83 percent, our number of hearings jumped 282 percent, our cumulative hours spent in hearings leapt 242 percent, and our reports issued soared 298 percent. Obviously, we have needed to make efficiency improvements to continue meeting our deadlines while offering first-rate service. We (and I very much mean the collective "we" of Vonetta Mangaoang, Elizabeth Dop, and our *pro tems*) have done so, maintaining 100 percent, 100 percent, and 97.5 percent compliance with our three, distinct examiner deadlines.

As described below, we became more proactive in providing substantive guidance in our hearing notices, helping customers make a foreign (to many) process less daunting. June culminated a long effort to revise our separate, 1995-era rules of procedure and rules of mediation; the Council replaced and consolidated those into a new, more comprehensive, yet also more streamlined, set of rules. We also worked on a recommendation for a justice-oriented and efficiency-enhancing change to the duplicative appeals system governing for-hire drivers' license appeals.

We appreciate the trust the Council puts in us, and we remain committed to courtesy, promptness, and helpfulness in assisting the public to make full and effective use of our services. In addition, we continue striving to timely issue well-written, clearly-reasoned, and legally-appropriate decisions and recommendations.

20.20.020 Classifications of land use decision processes

A. Land use permit decisions are classified into four types, based on who makes the decision, whether public notice is required, whether a public hearing is required before a decision is made and whether administrative appeals are provided.

….

EXAMINER JURISDICTION

There are two main avenues by which matters reach the examiner. Sometimes, the examiner acts in an appellate capacity, hearing an appeal by a party not satisfied with an agency determination. Other times, the examiner has "original jurisdiction," holding a public hearing on a matter regardless of whether anyone objects to the agency's recommended course of action. Depending on the type of case, at the end of a hearing the examiner may issue the County's final decision, a decision that is final unless appealed to Council, or a recommendation to Council. As to subject matter, the examiner has jurisdiction over eighty distinct matters, in arenas ranging from lobbyist disclosure (K.C.C. 1.07) to career service review (K.C.C. 12.16) to open housing (K.C.C. 12.20). But the examiner's caseload mainly consists of several common types. A non-exhaustive list, categorized by decision-making process, follows.

EXAMINER RECOMMENDATIONS TO THE COUNCIL (K.C.C. 20.22.060)

Applications for public benefit rating system-assessed valuation on open space land (K.C.C. 20.36.010)

Road vacation applications and appeals of denials (K.C.C. 14.40.015)

Type 4 land use decisions (K.C.C. 20.20.020(A)(4)):

- Zone reclassifications
- Plat vacations

EXAMINER DECISIONS, APPEALABLE TO THE COUNCIL (K.C.C. 20.22.050)

Type 3 land use decisions (K.C.C. 20.20.020(A)(3)):

- Preliminary plat
- Plat alterations

EXAMINER FINAL DECISIONS (K.C.C. 20.22.040)

Code compliance enforcement:

- Animal care and control (K.C.C. Ch. 11.04)
- For-hire transportation (K.C.C. Ch. 6.64)
- Land use (K.C.C. Ch. Title 23)
- Public Health (Bd. Of Health Code Ch. 1.08)

Threshold SEPA Determinations (K.C.C. 20.44.120)

Type 2 land use decisions (K.C.C. 20.20.020(A)(2)):

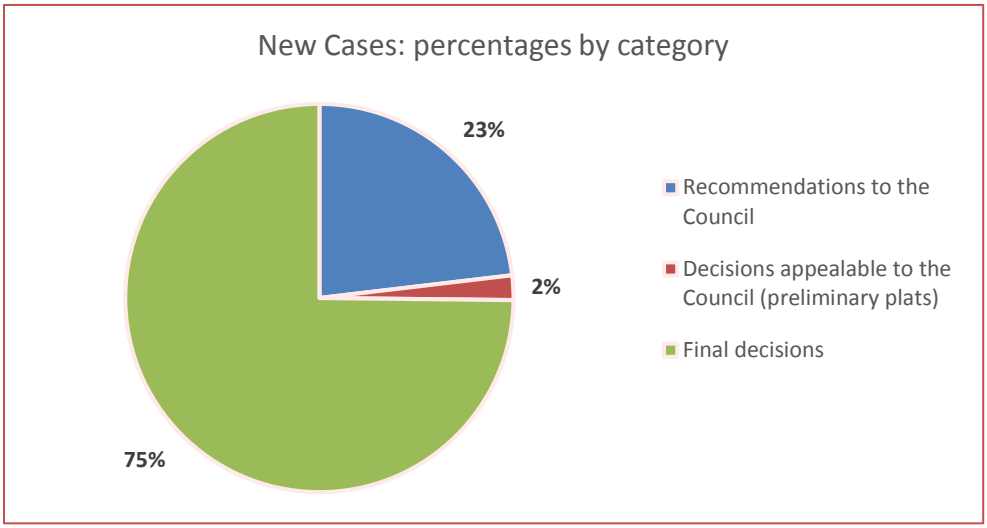
- Conditional use permits
- Reasonable use exceptions
- Shoreline substantial development permits
- Short plats, short plat revisions/alterations
- Temporary use permits
- Zoning variances

NEW CASES

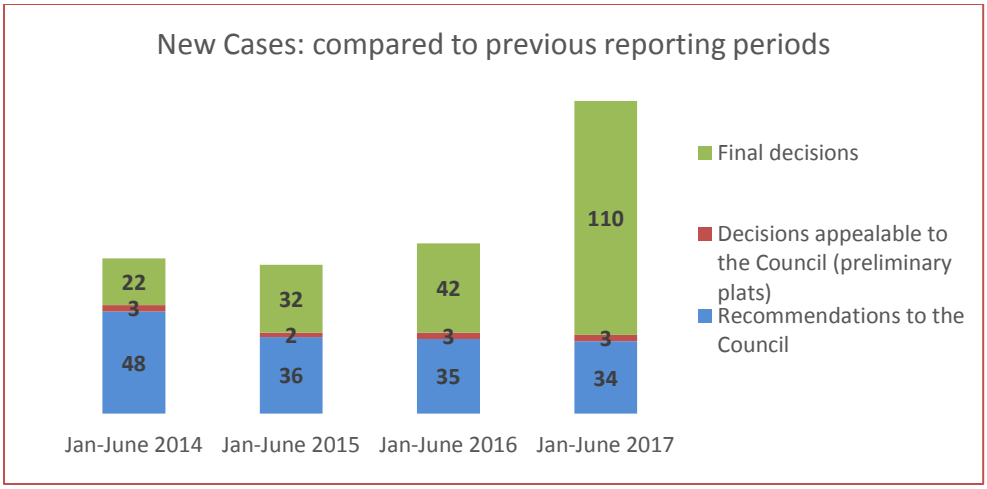
During the first half of 2017, we received 147 new cases, consisting of:

NEW CASES JANUARY —JUNE 2017	Number of Cases
RECOMMENDATIONS TO THE COUNCIL	
Open space	32
Road vacation	2
DECISIONS APPEALABLE TO THE COUNCIL	
Preliminary plats	3
FINAL DECISIONS	
Animal Services enforcement	77
For-hire license enforcement	15
Land use enforcement	18
TOTAL	**147**

More generally, our new case filings, broken down into class, were:

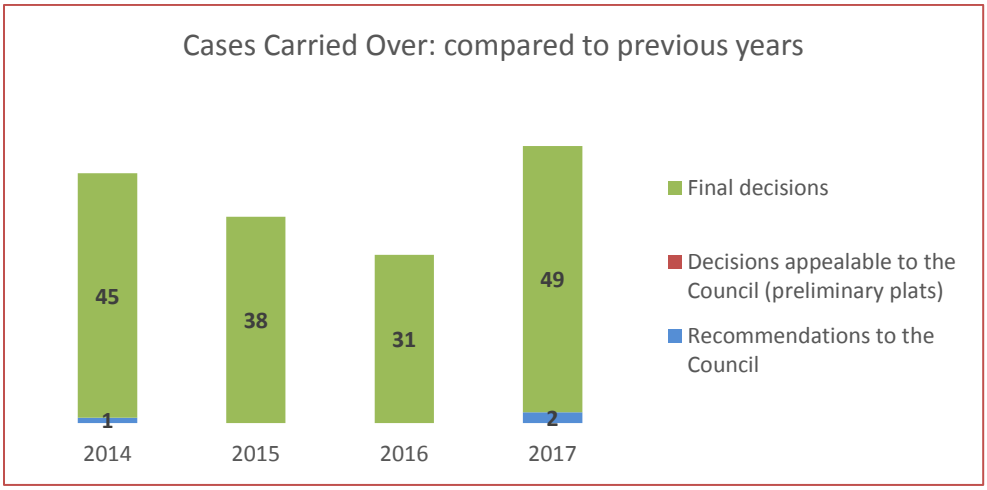


The 147 new case filings for the first half of 2017 represented an 83 percent increase from the 80 new cases we received in the first half of 2016.



Cases Carried over from Previous Years

At the end of each year we carry a certain number of cases into the next year. A few are matters on appeal; our case is stayed while a court decides. Some are cases continued at the joint request of the parties, while the parties attempt to reach an amicable resolution. And some are actively moving through the hearing process.



For the 51 cases carried into 2017, over half came to us last year (most, towards the end of the calendar year), a quarter in 2015, and the remainder before that.

Cases Carried Over	2008	2009	2010	2011	2012	2013	2014	2015	2016
Recommendations to the Council									
Active processing									2
Final Decisions									
Appealed to Superior Court				1				2	
Active processing			1				2	1	22
Continued on-call	1	1		1	1	1	2	9	4
TOTAL=51									

20.22.030.C.

For the purposes of proceedings identified in K.C.C. 20.22.050 and 20.24.060, the public hearing by the examiner shall constitute the hearing required by the King County Charter by the council.

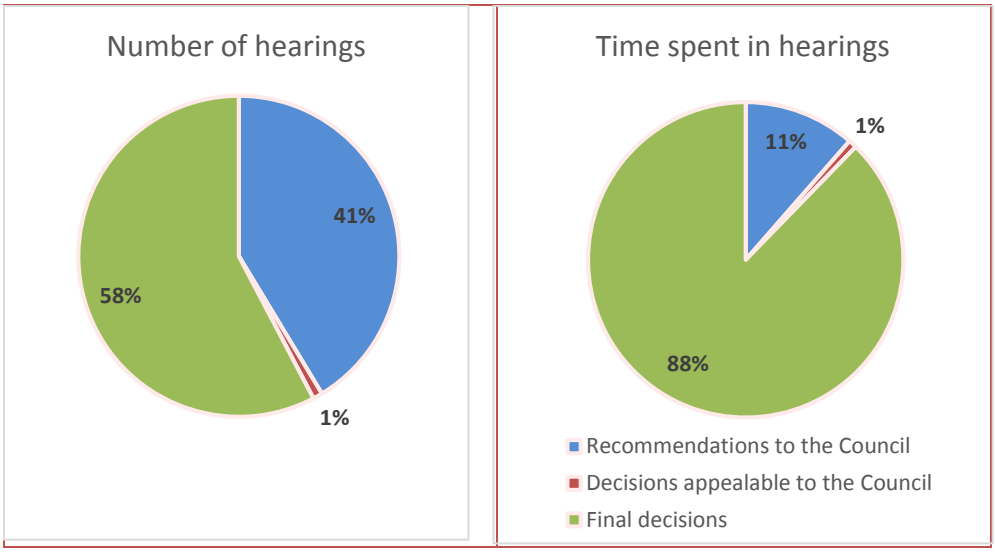
20.22.120.A. Prehearing conference

On the examiner's own initiative, or at the request of a party, the examiner may set a prehearing conference.

PROCEEDINGS

We attempt to extend a high level of service to all our participants. After all, even matters raising no novel legal issues or creating little impact beyond the parties are still crucially important to those parties. But not all types of cases require the same level of examiner involvement. For example, the average land use enforcement hearing took seven times longer than the average open space taxation hearing.

Number of Hearings January – June 2017	Number of hearings	Cumulative length of time
RECOMMENDATIONS TO THE COUNCIL		
Open space	39	5:24
Rezone	1	0:54
Road vacation	3	0:54
DECISIONS APPEALABLE TO THE COUNCIL		
Preliminary plats	1	0:32
FINAL DECISIONS		
Animal Services enforcement	27	27:00
Land use enforcement	21	21:19
For-hire license enforcement	12	6:54
TOTAL	**104**	**63:00**

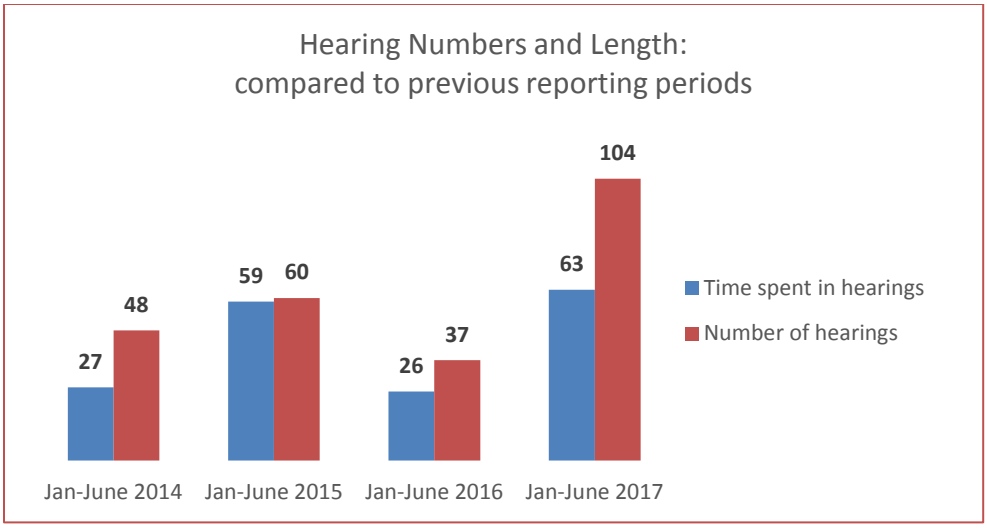


Compared to the first half of 2016, our number of hearings tripled from 37 to 104 and our cumulative hours spent in hearings more than doubled from 26 to 63 hours.

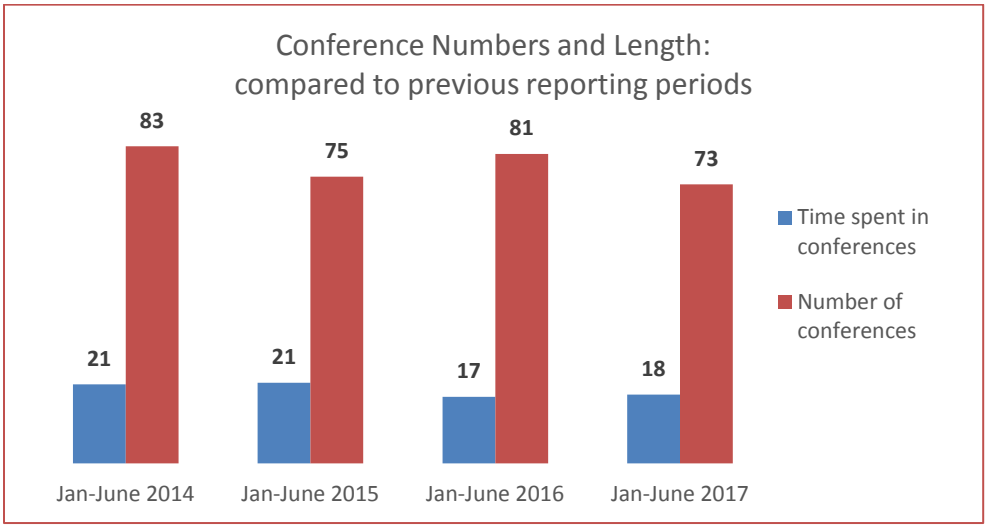
20.22.030.1

G. The examiner shall use case management techniques to the extent reasonable including:

1. Limiting testimony and argument to relevant issues and to matters identified in the prehearing order;
2. Prehearing identification and submission of exhibits, if applicable;
3. Stipulated testimony or facts;
4. Prehearing dispositive motions, if applicable;
5. Prehearing conferences;
6. Voluntary mediation; and
7. Other methods to promote efficiency and to avoid delay.

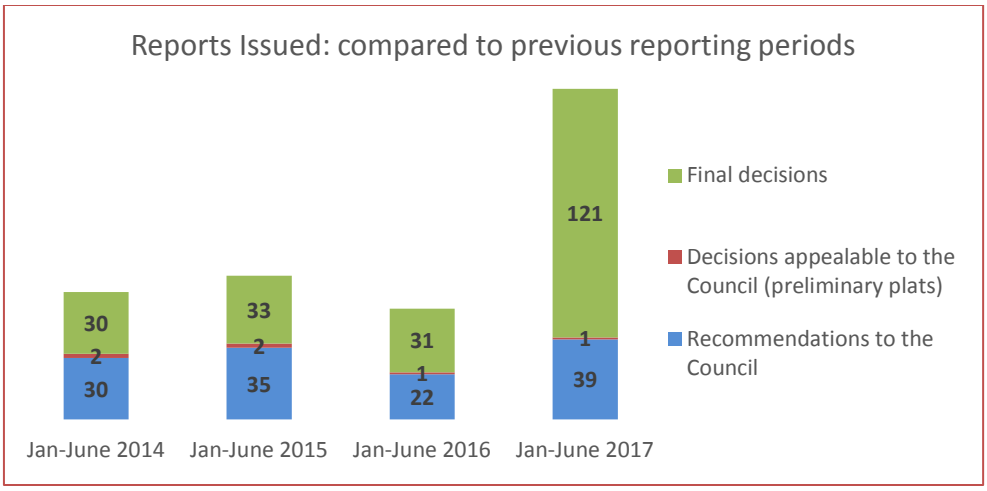


We made a significant policy shift in 2014 to hold periodic status conference calls (typically at 90-day intervals) in every case "continued on-call." These conferences ensure we stay on top of cases, keep parties' feet to the fire, and more speedily resolve cases—either through the parties' amicable resolution or (where the parties appear at loggerheads) by ending the continuance, going to an adversarial hearing, and writing a decision.



Reports Issued

At the conclusion of a case, we issue a final report closing out the matter. These closings are sometimes summary dismissals (such as when the parties settle a dispute) but more often are final determinations based on taking evidence and argument at a hearing and deciding the case on the merits. We issued 161 reports this period, a threefold increase from the first half of 2016.



Beyond the numbers, our more interesting cases involved:

- One feature that makes Animal Control cases so fascinating is the high emotional content of proceedings involving owners whose animals have been alleged to be vicious or to have violated other codes, sitting opposite complainants who have perhaps been attacked or had a child or pet attacked. Another feature is that unlike other areas, where our decision often turns on documentary evidence and legal interpretation, animal cases so often turn on sharply contrasting eyewitness testimony. It requires us to employ all of our tools and powers of witness credibility assessment. To the left is a link to a decision where the witness testimony was "the most fundamentally irreconcilable of any case we have presided over," and unlike most disputes, where differences in memory or perception "are, if not always easy to resolve, at least easy to understand, the testimony [there was] something else; the witnesses might as well be from different planets."[1]
- On September 5, Council will consider our recommendation in a road vacation case. The County's Water and Land Resources Division (WLRD) petitioned the Council to vacate a public right-of-way, the last property interest WLRD was acquiring within in an area along the Cedar River that WLRD had turned into a natural area. There was no question that the road was useless and should be vacated; the issue we spotted turned on compensation. The starting point for the compensation analysis in a road vacation case is the appraised value of the right-of-way to be vacated. Road Services did not include any monetary analysis in its report to us because it concluded that the right-of-way had "little or no economic value." That was correct in terms of viewing Road Service's property interest as it exists today—eroded completely through by a new inlet, limited to salmon recovery purposes, and abutting properties no longer capable of housing riverfront residences. But as we explained in our recommendation to Council, that is an incorrect lens to view market value through; for at least 130 years,

[1] http://www.kingcounty.gov/~/media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2017/2017%20april/V17006547_Masciocchi.ashx?la=en

property acquired for a public project has been valued by *disregarding* decreases or increases attributable to the public project (here, the creation of a natural resource area). Council is slated to consider our recommendation on September 5.[2]

- Our for-hire drivers' license denial cases are among our weightiest, with public safety on one side of the ledger and driver livelihood (often for those with limited English proficiency who assert their limited alternative employment prospects) on the other. While some are cut and dry—for example, a DUI results in a five-year mandatory denial ("shall deny"), meaning there is typically little to discuss—for others denial is discretionary ("may deny"). So, for something like certain driving conduct (such as a series of traffic infractions, not including a disqualifying event like a DUI) we listen to all the testimony, read all the documents, and analyze the whole picture before deciding whether to grant the appeal or not; sometimes we uphold the agency's denial related to an applicant's driving record, while other times we reverse. But our heaviest cases often involve a conviction for a crime pertaining to physical violence, where we have to attempt to translate how an assault (outside the driving context) translates into passenger and public safety. Sometimes we uphold RALS' denial related to an assault conviction[3], while other times we reverse RALS' denial related to an assault conviction[4], but in all cases the stress is high. Weighty cases, and our least enjoyable to decide.

Appellate Activity

At the request of Council, we now regularly include information involving appeals of examiner decisions.

McMilian is a long running case we have reported on previously, involving abutting sites used as a wrecking yard. The then-examiner issued the initial report regarding the northerly parcel in 2009. The Court of Appeals mostly affirmed, but on one issue remanded. In 2012, the then-examiner issued a decision on remand, which McMilian unsuccessfully appealed, as the Court of Appeals decided in 2014. Turning to the southerly parcel, in 2016 the examiner (this time a *pro tem* examiner) denied in part and granted in part McMilian's appeal. McMillan again appealed. The superior court also denied in part and granted in part McMilian's appeal, and remanded it. The *pro tem* examiner has requested certain things of the parties before the next proceeding, scheduled for September.

Kirkes involved a complainant upset that DPER was not issuing a notice and order to an (alleged) violator who had begun the permit process to rectify the (alleged) violations. We dismissed complainant's appeal both on standing grounds and on the merits, ruling that, so long as the alleged violator was continuing to meet the

[2] http://www.kingcounty.gov/~/media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2017/V-2669_KingCountyWaterAndLandResourcesDivision.ashx?la=en

[3] http://www.kingcounty.gov/~/media/independent/hearing-examiner/documents/case-digest/appeals/for-hire%20enforcement/2017/17367_Yimam_Report.ashx?la=en

[4] http://www.kingcounty.gov/~/media/independent/hearing-examiner/documents/case-digest/appeals/for-hire%20enforcement/2017/53134_Lazaryan_OrderOnReconsideration.ashx?la=en

20.22.100.B.1

For appeals initiated by delivering the appeal statement to the responsible department or division…The examiner shall hold a prehearing conference or a hearing within forty-five days, and shall complete the appeal process, including issuing a determination, within ninety days of the date the office of the hearing examiner receives those materials.

20.22.100.C.

For applications for which the responsible department or division issues a recommendation and an examiner holds a public hearing and issues a decision or recommendation, the examiner shall complete the application review, including holding a public hearing and transmitting the report required by K.C.C. 20.22.220, within ninety days from the date the council refers the application to the office of the hearing examiner. Any time required by the applicant or the responsible department or division to obtain and provide additional information requested by the examiner and necessary for the determination on the application and consistent with applicable laws, regulations and adopted policies is excluded from the ninety-day calculation.

20.22.100.F.

The examiner may extend the deadlines in this section for up to thirty days. Extensions of over thirty days are permissible with the consent of all parties. When an extension is made, the examiner shall state in writing the reason for the extension.

applicable deadlines for obtaining a permit to rectify the (alleged) violations, DPER could not be said to have made a "determination not to issue a [notice and] order" (the trigger for potential examiner involvement). Kirkes appealed to Superior Court, but then dismissed his appeal soon after filing.

Remlinger dealt with the intersection between critical areas, shoreline jurisdiction, salmon, and agriculture, and turned on terminology—whether certain activities qualify as "clearing" and whether features on the property qualified as a "stream," "aquatic area," "channel," and/or "ditch." Remlinger had cleared (without permits) a large area of the buffer to a critical area, an area critical not because of anything particularly noteworthy or because (under normal conditions) it drained anything other than agricultural fields; instead, DPER deemed it critical because (during flood conditions) floodwaters conveyed salmon from the river into the area. We denied Remlinger's motion for a directed verdict, but wrote that although nothing in our critical areas code exempts that scenario from regulation, that "if the court chooses to do so, it could certainly weigh in on whether some other principle makes, as a matter of law, the factual scenario (established thus far) exempt from our code's reach," and we allowed Remlinger to seek a writ prior to completing our hearing process. The Superior Court did reverse, but DPER has appealed this reversal to the Court of Appeals, from whom we expect a decision in 2018. Stay tuned.

Compliance with Code-Mandated Deadlines

Statutory requirements impose deadlines for swift and efficient examiner processing of certain case matters. The code-established deadlines discussed below represent our three principal time requirements. In short, despite our 83 percent increase in new case filings, 282 percent jump in number of hearings, 242 percent leap in cumulative hours spent in hearings, and 298 percent rise in reports issued, we were 100 percent compliant with two of the deadlines and 97.5 percent with the other, meaning we exceeded the 95 percent compliance goal we set for each deadline for each reporting period.

Deadline One—45 Days from Appeal Transmittal to First Proceeding

For appeals, the examiner must hold a prehearing conference or hearing within 45 days of receiving the appeal packet. We were compliant in all of our cases.

Deadline—1 Averages and Compliance 45 days from appeal transmittal to first proceeding	Average days	Percent Compliant
Final Decisions		
Animal Services enforcement	33	100%
For-hire license enforcement	37	100%
Land use enforcement	32	100%
TOTAL	**34**	**100%**

Where the parties jointly request an extension (such as when an appellant is working to obtain a permit that would resolve a code enforcement case) the examiner may grant a lengthy extension to Deadline One. In addition, the examiner may (on examiner motion, or on the contested request of one of the parties) extend the deadline, but only up to 30 days. We strive to keep examiner-initiated or non-consensual extensions to a minimum (five percent or less of our cases). We used our extension, once, for six days, in a case for which we needed to arrange for an interpreter.

Deadline Two—90 Days from Application Referral/Appeal Transmittal to Report

For appeals and for applications, the examiner should wrap up review, including issuing a final determination, within 90 days of receiving the appeal packet, or (for applications) within 90 days of Council referring the application to the examiner. We were compliant in all of our cases.

As with Deadline One, an examiner may (on his or her own motion or at the contested request of one of the parties) extend Deadline Two for up to 30 days. Here too, we strive to keep examiner-initiated extensions to a minimum. Only one case (an open space tax matter) took over 90 days to process, and there the parties had requested that we continue the initial hearing.

Deadline—2 Averages and Compliance 90 days from application referral/ appeal transmittal to report	Average days	Percent Compliant
Recommendations to the Council		
Open space	40	100%
Rezone	49	100%
Road vacation	61	100%
Decisions Appealable to the Council		
Preliminary plats	38	100%
Final Decisions		
Animal Services enforcement	35	100%
For-hire license enforcement	43	100%
Land use enforcement	48	100%
TOTAL	**39**	**100%**

Deadline Three—10 Business Days from Hearing Close to Report

The last deadline relates to all types of hearings, requiring the examiner to issue findings and conclusions no later than ten business days after completing a hearing. We set 95 percent compliance as our goal coming into each year, and we met or exceeded this in each category. Our 97.5 percent overall compliance did

not quite match the 100 percent across the board compliance we achieved in the first half of 2016, but given our increased workload, it seems acceptable.

DEADLINE—3 AVERAGES AND COMPLIANCE 10 BUSINESS DAYS FROM HEARING CLOSE TO REPORT	Average days	Percent compliant
RECOMMENDATIONS TO THE COUNCIL		
Open space	9	97%
Rezone	5	100%
Road vacation	7	100%
DECISIONS APPEALABLE TO THE COUNCIL		
Preliminary plats	8	100%
FINAL DECISIONS		
Animal Services enforcement	4	98%
For-hire license enforcement	3	100%
Land use enforcement	4	95%
Land use permit	1	100%
TOTAL	**5**	**97.5%**

OFFICE INITIATIVES

RULES OF PROCEDURE

This period marked the successful culmination of our lengthy, to-the-studs overhaul of our 1995 Rules of Procedure and separate 1995 Rules of Mediation, when Council approved our new and greatly improved (combined) Rules of Procedure and Mediation in June.

Enhancements included: adding definitions of terms; liberalizing and clarifying the process for amending appeal statements; improving and modernizing procedures for filing and service; simplifying our byzantine, nine-page mediation rules into a single page; better explaining expectations and procedures surrounding discovery; spelling out the subpoena process; clarifying how one "intervenes" in an examiner matter; making explicit our exclusion of unconstitutionally obtained evidence; providing new, specially-tailored measures for select classes of cases; amending what had been too broad and yet too shallow an agency burden of proof; and eliminating open-ended examiner discretion to defer to agency determinations.

Committed to continually improving all areas of our operations, we do not intend to sit on our Rules. We can already envision discrete areas (such as proposing specially-tailored measures to the new classes of cases we have been developing an expertise in) that might benefit from future work. But with the overhaul completed, any such changes in the foreseeable future should be bite-sized—an

addition of a subsection here, a tweak to a subsection there—and not a fundamental reimagining.

Proactive Hearing Notices

Historically, most examiner notices setting a hearing have been relatively boilerplate: the hearing will be on __ date, in __ location, by __ date disclosures are required, parties bringing exhibits should __, etc. We realized that in many instances the parties, especially *pro se* appellants for whom the entire process is foreign and scary, would benefit from some substantive guidance. Thus in our notices of hearing, we increasingly provide an initial take on the issues, something (to choose one example) like:

> To make sure we are all on the same page for hearing, we understand the issues to be as follows: Animal Services asserts that [*dog name*] is "vicious," which KCC ___ defines as ___. The hearing will decide whether [*dog name*] meets the code's definition.
>
> As we read Appellant's appeal, she says she did everything possible to contain [*dog name*] on the date in question. That is relevant to the penalty amount, but not to whether the viciousness designation should stand. The focus of the viciousness designation is on the dog, not on the owner. For example, in a past case where an appellant irresponsibly let his dog charge out and an altercation ensued, but where (after hearing all the testimony) we concluded that what the appellant's dog did during the altercation did not meet the code criteria (above) for a viciousness designation, we overturned the viciousness designation, making it clear that "a viciousness designation is not a proxy for holding some person responsible." Conversely, in a separate case where a totally responsible owner was walking her dog down the sidewalk, on a harness, and the dog unexpectedly lunged and bit a passerby minding his own business, we reduced the $500 monetary penalty significantly, but still upheld the viciousness designation, because the dog met the code criteria.
>
> That is not to in any way signal what we predict the strength of the evidence will be at hearing or prejudge the merits, only to explain some general parameters. And if, after reading the above definition of vicious, Appellant wishes to amend or add to her appeal statement, she may do so by [*deadline*]. If we go to hearing, we will listen to all the testimony and look at the pertinent documents or pictures and decide the matter.

> Alternatively, the parties may attempt to work out a resolution short of hearing.

That way the parties understand what they are getting into a little better, expectations are managed, and (increasingly) it seems that cases are being resolved short of a hearing.

REGULATORY CHANGE RECOMMENDATIONS

The code requires our semi-annual reports to identify any needed regulatory clarification.

FOR-HIRE DRIVER'S LICENSES

On September 26, the Government Accountability and Oversight Committee is currently scheduled to consider a motion (2017-0302) asking the Executive to renegotiate a 1995 cooperative agreement (Agreement) between then-Executive Locke and then-Mayor Rice involving for-hire driver hailing rights. When it considers the matter, we ask the Council to consider adding a request to eliminate a duplicative appeal provision.

Pursuant to the 1995 agreement, Seattle performs licensing functions related to for-hire *vehicles*, while the County performs licensing functions related to for-hire *drivers*. Thus the County's Records and Licensing Section (RALS) reviews and decides on for-hire applications for a dual County/Seattle driver's license. RALS then issues a single letter approving or denying both licenses. Government at its cooperative, streamlined best.

However, those benefits currently disappear once RALS issues a license denial, because the Agreement provides that the City and County each handle their own appeals. Thus, RALS's single denial document has to be appealed to two places—to us to decide the County portion of the letter and to Seattle to appeal the City portion of the letter. This is problematic on at least three levels.

From the perspective of a licensee, it means having to file two separate appeals (Seattle's due at the 10-day mark, ours due at the 24-day mark) regarding the same underlying facts and typically the same controlling legal standard. Once properly filed, the licensee must attempt to navigate two administrative ladders, including dealing with two sets of rules of procedure. And the licensee must take time out of multiple workdays (foregoing income) to attend parallel hearings. This scheme would be problematic for any licensee, but as a large percentage of applicants have limited English proficiency, no attorney, and require an interpreter at our hearing, the scheme raises significant equity and social justice concerns.

From an administrative perspective, these parallel appeal processes increase staff time and cost, as RALS must prepare for and participate in at least two different administrative hearings. At least two hearing offices have to process appeals, taking the time to arrange for a proceeding (at least a hearing, and sometimes also a prehearing conference), prepare for the session, take testimony, physical evidence, and argument, and then consider and rule on the same set of underlying events and often apply a legal standard identical to the other jurisdiction's.

And from a jurisprudential perspective, the current system creates the specter of inconsistent results. To be sure, there are some substantive differences between the County/Seattle standards[5]; in such scenarios, different outcomes might be completely acceptable, even required. But where the controlling legal standard is the same, absent some materially different evidence produced in one of the hearings, a split result (i.e., one officer affirms a denial while the other officer overturns a denial) creates an inconsistency that does not enhance anyone's confidence in the fairness of the process. And the appearance of fairness doctrine is a hallmark of the examiner system. Absent a different legal standard, an applicant fit to drive in one place should be fit to drive in the other, and an applicant not fit to drive in one place should not be driving in either.

Thus, we urge the Council to consider offering a new motion to request the Executive, when renegotiating the Agreement, to create a unitary appeal process. It certainly would put little strain on us, on those rare occasions where the substantive standard is materially different, to perform some extra analysis in deciding a combined appeal. And it would promote equity and social justice, improve administrative efficiency, and eliminate inconsistent hearing outcomes.

Keeping Small Animals in Unincorporated King County

Sometimes we tackle fundamental issues, like the for-hire drivers' license discussion directly above. Other times the issue is…chickens. On properties in the unincorporated area under 20,000 square feet (a little less than half an acre), KCC 21A.30.020 allows three small animals per dwelling unit to be kept outside. The owner of a 10,000-square-foot lot in unincorporated Skyway was thus limited to three chickens, while an owner of a similar-sized property in the surrounding cities would have been allowed eight (Seattle), ten (Tukwila), or eight (Renton) chickens. This seems odd, given that unincorporated areas are usually *less* (or at least not more) restrictive than cities when it comes to animal husbandry. If Council had recently acted, we would have accepted its measured judgment without comment. But there has been no change in the basic framework—three chickens on lots less than (depending on how one reads our code) 20,000 square feet or half an acre—since 1993, before any of our current

[5] We have not, in our few dozen for-hire licenses cases, faced a single factual scenario controlled by a materially different substantive standard between the jurisdictions. But at least hypothetically it could occur. For example, among the list of automatic license disqualifiers under both the County and the Seattle system is "a criminal conviction… for a crime pertaining to…driving under the influence of alcohol or a controlled substance." KCC 6.64.600.A.3. See also SMC 6.310.430.A.4. The substantive difference is that for the County, license denial is mandatory for *five* years, while for Seattle, the mandatory denial period is *three* years, followed by a *two*-year discretionary denial period. So, for example, for an applicant with a four-year old DUI conviction, we would have to affirm a denial of the County portion of the license outright (the operative code language being "*shall* deny") but then would need to engage in an additional analysis of whether (balancing all the facts) to sustain a denial of the Seattle portion of the license (the operative code language being "*may* deny"). Again, we have yet to actually entertain such a fact pattern.

Councilmembers were Councilmembers. Thus we recommend that Council consider this issue whenever it updates KCC Title 21A.

CONCLUSION

The first half of 2017 was a big leap in terms of case volume. Yet we have weathered the transition, and now have an efficient system in place to continue a smooth-running process, while maintaining our high standards. Our semi-annual report for the last half of 2017 will be presented on or before March 1, 2018.

Submitted August 30, 2017,

David Spohr, Hearing Examiner