



King County

HEARING EXAMINER GUIDE

TITLE 23

CODE ENFORCEMENT APPEALS



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What is this guide?

This guide summarizes the hearing examiner process for code enforcement appeals. It is meant to help laypersons, and it carries no legal weight. We invite 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, Permitting Division (Permitting) enforcement orders. The examiner is a neutral decision-maker, like a judge. The examiner's office works for the council, *not* for Permitting. (When an agency *other* than Permitting uses KCC Title 23 to bring an enforcement action, substitute that agency for "Permitting" when reading this guide.)

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 hearingexaminer@kingcounty.gov. Please make requests early in the process.

How do you start your appeal?

People who receive a decision from Permitting—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 and 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 Permitting issues its decision. When Permitting posts a decision on the property or hands it directly to a person of suitable age, the clock starts ticking that day. When Permitting mails a decision, the clock starts ticking the day Permitting 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. Permitting 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://www.kingcounty.gov/depts/local-services/permits.aspx> for office hours) at 35030 SE Douglas Street, Suite 210, Snoqualmie, WA 98065, or
- email to your code enforcement officer; the officer's email address is typically on the cover letter Permitting sends (ask the officer to confirm email receipt).

3. Content. Your appeal statement must include:

- a) Either a copy of the Permitting decision(s) you are appealing or the Permitting 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 Permitting 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 Permitting’s decision(s) should be reversed (“__ is legal,” etc.) or modified (“The compliance deadline is unreasonable,” etc.);
- e) How Permitting’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 does need to 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 Permitting by the deadline.

If you get your initial appeal to Permitting 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 Permitting 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 Permitting’s action. Otherwise Permitting’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 only the tip of a broader neighbor-versus-neighbor conflict.

What can you expect before a hearing?

Several weeks before a hearing, the examiner sends out a notice. Read that notice carefully. It sets the day, time, and location of the hearing. It sometimes 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, Permitting submits to the parties and to the examiner a report summarizing the issues and providing most or all of the documents Permitting intends to offer as exhibits at the hearing. Read these carefully.

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

Who can participate in the appeal process?

Normally, only Permitting and the person who filed the appeal are involved in matters like (re) 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?

Where and When?

Hearings are usually held on Tuesdays and Thursdays. Although the examiner's office is in downtown Seattle, hearings are typically held at Permitting's second floor offices in Snoqualmie, as transportation is tougher on the examiner but easier for participants, especially given the free parking at Permitting. Be on time, or you may forfeit your rights. Very occasionally, a prior hearing runs overtime and delays the next hearing's start. Please enter the room quietly (proceedings are recorded), refrain from side conversations, and turn off all phones.

How will the hearing go?

1. Because Permitting carries the burden of proof regarding any issues or matters you earlier raised, Permitting speaks first. Permitting offers testimony and its documents, typically only those Permitting 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 documents. Permitting may raise any objections and ask questions of you or any witness.
3. Anyone wanting to introduce any document should bring at least three copies.
4. Afterwards, each party has some time to respond to what the other party presented, followed by brief closing statements.

5. At any time, the examiner may ask questions.
6. All testimony must be under oath, which means the examiner swears in each witness.

How can I present the best case?

First, carefully read the notice the examiner sends out before hearing. 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 in-person (or at least by telephone) and subject to cross examination (questioning) are generally given the most consideration. You may present documents and testimony describing any remedial 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/or 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 that includes findings of fact based on 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 our office?

While you may contact the examiner with *procedural* questions, any questions or statements that deal with the *substance* of the appeal 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 Permitting's representative. (Examiner documents usually list the Permitting representative's email on the first page.)

How does the examiner ensure I have a fair hearing?

Examiners are independent of Permitting and do not give any deference to Permitting 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 code enforcement decisions, by year, see <http://www.kingcounty.gov/independent/hearing-examiner/case-digest/appeals/code-enforcement.aspx>. ns.

You may call the examiner's office with questions.

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