



## Legislation Passed October 24, 2017

The Tacoma City Council, at its regular City Council meeting of October 24, 2017, adopted the following resolutions and/or ordinances. The summary of the contents of said resolutions and/or ordinances are shown below. To view the full text of the document, click on the bookmark at the left of the page.

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### **Resolution No. 39845**

A resolution authorizing the execution of an Interlocal Agreement with the Metropolitan Park District of Tacoma, in the amount of \$450,000, excluding sales tax, including a 10 percent contingency, budgeted from the Surface Water Fund, to plug and abandon an existing stormwater pipe and replace it with a 54-inch diameter pipe as part of the Point Defiance Trail Phase I project.

[Geoffrey M. Smyth, P.E., Science and Engineering Division Manager;  
Michael P. Slevin III, P.E., Director, Environmental Services]

### **Resolution No. 39846**

A resolution setting Tuesday, November 7, 2017, at approximately 5:15 p.m., as the date for a public hearing by the City Council on the surplus and proposed sale of approximately 1,875 square feet of property, located at 543 North Stadium Way, to Ronald and Linda Coleman, for the amount of \$72,100.

[Greg Muller, Real Estate Officer; Chris Robinson, Power Superintendent]

### **Resolution No. 39847**

A resolution authorizing an increase to the contract with Columbia Ford Hyundai, Inc., in the amount of \$2,300,000, plus applicable sales tax, for a total of \$3,960,699, budgeted from the Public Works Fleet Equipment Rental Fund, for new Ford model vehicles to replace vehicles that are beyond their useful life and no longer cost effective to maintain in 2018 - Washington State Contract No. 05916.

[Paul Hanna, Assistant Division Manager; Kurtis D. Kingsolver, P.E., Director, Public Works]

### **Resolution No. 39848**

A resolution declaring surplus and authorizing the sale of approximately 1.35 acres of property, located on the north and south sides of State Route 302 in unincorporated Pierce County, to the Key Peninsula Metropolitan Park District, for the amount of \$16,250.

[Greg Muller, Real Estate Officer; Chris Robinson, Power Superintendent]

**Resolution No. 39849**

A resolution authorizing the use of up to \$50,000 of City Council Contingency Funds to create a Deportation Defense Subfund, for the purpose of assisting indigent Tacoma residents facing deportation with legal counsel at deportation hearings; directing the City Manager to conduct a request for proposals from entities when the Subfund has reached \$100,000, or three months have passed; and further directing the City Manager to negotiate and execute a professional services agreement outlining the scope of work and deliverables.

[Council Members Blocker, Ibsen and Walker Lee]

**Ordinance No. 28461**

An ordinance amending Chapter 1.23 of the Municipal Code, relating to the Hearing Examiner, to make necessary updates and corrections.

[Jeff H. Capell, Hearing Examiner]



## RESOLUTION NO. 39845

1 A RESOLUTION relating to construction of stormwater infrastructure; authorizing  
2 the execution of an Interlocal Agreement with the Metropolitan Park District  
3 of Tacoma, in the amount of \$450,000, excluding sales tax, including a  
4 10 percent contingency, budgeted from the Surface Water Fund, to plug  
and abandon an existing stormwater pipe and construct a replacement  
54-inch diameter pipe as part of the Point Defiance Trail Phase I project.

5 WHEREAS the Waterfront and Peninsula project area within Point Defiance  
6 Park, also known as the Triangle Area, is designed to create a more accessible,  
7 active, and thriving waterfront, and

8  
9 WHEREAS the Metropolitan Park District of Tacoma ("Metro Parks") has  
10 planned certain park improvements for the Triangle Area, including a larger  
11 vehicle/trailer parking area; an elevated walkway linking Ruston Way to Point  
12 Defiance; a new 11-acre park on the peninsula; and a stormwater facility, through  
13 partnership with the City, designed to protect the Puget Sound, and

14  
15 WHEREAS the Point Defiance Trail Phase I project, located within the  
16 Triangle Area, includes capping a superfund site with park improvements over an  
17 existing 91-year-old City stormwater pipe that the City planned to replace with a  
18 54-inch diameter pipe, and

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20 WHEREAS, given the proximity of these projects to one another, it is  
21 preferred that both projects be combined into a single public works project in order  
22 to achieve economy of scale, ensure overall project coordination and  
23 management, reduce overall costs, minimize impacts to the public, and maximize  
24 public benefit, and

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26 WHEREAS Metro Parks will manage and administer the project, including all  
public notifications, design and engineering, permitting, bidding, and construction;



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and the City will reimburse Metro Parks for its equitable share of the stormwater improvements, as well as the incremental construction management time associated with City bid items, all as more particularly set forth in the Interlocal Agreement on file in the office of the City Clerk; Now, Therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:**

That the proper officers of the City are hereby authorized to execute an Interlocal Agreement with the Metropolitan Park District of Tacoma, in the amount of \$450,000, excluding sales tax, including a 10 percent contingency, budgeted from the Surface Water Fund, to plug and abandon an existing stormwater pipe and construct a replacement 54-inch diameter pipe as part of the Point Defiance Trail Phase I project, said agreement to be substantially in the form of the document on file in the office of the City Clerk.

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Chief Deputy City Attorney



## RESOLUTION NO. 39846

1 A RESOLUTION relating to utility-owned surplus property; setting Tuesday,  
2 November 7, 2017, as the date for a public hearing on the sale of  
3 approximately 1,875 square feet of property located at 543 North Stadium  
4 Way in Tacoma, Washington, owned by the City of Tacoma, through its  
5 Department of Public Utilities, Light Division (d.b.a. "Tacoma Power"), and  
6 now surplus to the needs of the City, to Ronald L. and Linda R. Coleman  
7 for \$72,100.

8 WHEREAS the City of Tacoma, Department of Public Utilities, Light Division  
9 (d.b.a. "Tacoma Power"), owns approximately 1,875 square feet of real property  
10 located at 543 North Stadium Way, in Tacoma, Washington ("Property"), and

11 WHEREAS in 2009, pursuant to Utility Board Resolution U-10270, the  
12 Property was declared surplus to Tacoma Power's needs, and

13 WHEREAS Ronald L. and Linda R. Coleman have offered to purchase the  
14 Property for \$72,100, which is deemed acceptable by Tacoma Power and the  
15 Department of Public Works, Real Property Services Division, and

16 WHEREAS a restrictive covenant will be included in the quit claim deed  
17 prohibiting development of the Property, and

18 WHEREAS the Department of Public Works proceeded with the negotiated  
19 disposition process pursuant to Tacoma Municipal Code ("TMC") 1.06.280.F, and

20 WHEREAS, on October 11, 2017, by adoption of Public Utility Board  
21 Resolution No. U-10961, the Property was approved for sale, pending confirmation  
22 from the City Council, and

23 WHEREAS, pursuant to RCW 35.94.040 and TMC 1.06.280, the City  
24 Council shall conduct a public hearing on the proposed sale of City-owned real  
25 property; Now, Therefore,  
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BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

Section 1. That a public hearing on the sale of approximately 1,875 square feet of surplus property located at 543 North Stadium Way, in Tacoma, Washington, owned by the City of Tacoma, through its Department of Public Utilities, Light Division (d.b.a. "Tacoma Power") and now surplus to its needs, to Ronald L. and Linda R. Coleman for the amount of \$72,100, shall be held before the City Council in the Council Chambers on the first floor of the Tacoma Municipal Building, 747 Market Street, Tacoma, Washington on Tuesday, November 7, 2017, at approximately 5:15 p.m. or as soon thereafter as the same may be heard.

Section 2. That the Clerk of the City of Tacoma shall give proper notice of the time and place of said hearing.

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

Requested by Public Utility Board  
Resolution No. U-10961



## RESOLUTION NO. 39847

1 A RESOLUTION related to the purchase of materials, supplies or equipment, and  
2 the furnishing of services; authorizing the increase of Contract  
3 No. 4600012874 with Columbia Ford Hyundai, Inc., in the amount of  
4 \$2,300,000, plus applicable sales tax, for a cumulative total of \$3,960,699,  
5 budgeted from the Public Works Fleet Equipment Rental Fund, for new Ford  
6 model vehicles to replace vehicles that are beyond their useful life and no  
7 longer cost effective to maintain in 2018, pursuant to Washington State  
8 Contract No. 05916.

9 WHEREAS the City has complied with all applicable laws and processes  
10 governing the acquisition of those supplies, and/or the procurement of those  
11 services, inclusive of public works, as is shown by the attached Exhibit "A,"  
12 incorporated herein as though fully set forth, and

13 WHEREAS the Board of Contracts and Awards has concurred with the  
14 recommendation for award as set forth in the attached Exhibit "A"; Now,  
15 Therefore,

16 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

17 Section 1. That the Council of the City of Tacoma concurs with the  
18 Board of Contracts and Awards to adopt the recommendation for award as set  
19 forth in the attached Exhibit "A."

20 Section 2. That the proper officers of the City are hereby authorized to  
21 increase Contract No. 4600012874 with Columbia Ford Hyundai, Inc., in the  
22 amount of \$2,300,000, plus applicable sales tax, for a cumulative total of  
23 \$3,960,699, budgeted from the Public Works Fleet Equipment Rental Fund, for new  
24 Ford model vehicles to replace vehicles that are beyond their useful life and no  
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1 longer cost effective to maintain in 2018, pursuant to Washington State Contract  
2 No. 05916, consistent with Exhibit "A."

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4 Adopted \_\_\_\_\_

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Mayor

7 Attest:

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City Clerk

10 Approved as to form:

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City Attorney

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## RESOLUTION NO. 39848

1 A RESOLUTION relating to surplus property; declaring certain real property  
2 owned by the Department of Public Utilities, Light Division (d.b.a. "Tacoma  
3 Power"), identified as portions of Pierce County Assessor Tax Parcel  
4 Nos. 0122164001, 0122211071, and 0122153058, covering approximately  
5 1.35 acres located on the north and south sides of SR 302 in  
6 unincorporated Pierce County, Washington, surplus to the needs of the  
7 City; and authorizing the negotiated sale and conveyance of said property  
8 to Key Peninsula Metropolitan Park District for the sum of \$16,250.

9 WHEREAS the City of Tacoma, Department of Public Utilities, Light  
10 Division (d.b.a. "Tacoma Power"), owns property identified as portions of Pierce  
11 County Assessor Tax Parcel Nos. 0122164001, 0122211071, and 0122153058,  
12 covering approximately 1.35 acres located on the north and south sides of  
13 SR 302 in unincorporated Pierce County, Washington ("Property"), with an  
14 estimated market value of \$16,250, as more fully described in the documents on  
15 file in the office of the City Clerk, and

16 WHEREAS Tacoma Power has determined the Property is no longer  
17 essential for continued effective utility service; however, an easement for  
18 Tacoma Power will be retained in the Property for continued use of the  
19 transmission line corridor, and

20 WHEREAS Key Peninsula Metropolitan Park District has offered to  
21 purchase the Property for \$16,250, which is deemed acceptable by Tacoma  
22 Power and the Department of Public Works, Real Property Services Division, and

23 WHEREAS the Department of Public Works proceeded with the negotiated  
24 disposition process pursuant to Tacoma Municipal Code ("TMC") 1.06.280.F, and  
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WHEREAS, on September 13, 2017, by adoption of Public Utility Board Resolution No. U-10957, the Property was declared surplus to Tacoma Power's needs and approved for sale, pending confirmation from the City Council, and

WHEREAS, on October 10, 2017, pursuant to RCW 35.94.040 and TMC 1.06.280, the City Council conducted a public hearing on the proposed sale of said Property, and received one comment in favor of the proposed sale, and

WHEREAS, there being no foreseeable need for continued City ownership of the Property, the sale of said Property appears to be in the best interests of the City, pending final approval from the City Council; Now, Therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:**

Section 1. That continued ownership of approximately 1.35 acres of surplus property identified as portions of Pierce County Assessor Tax Parcel Nos. 0122164001, 0122211071, and 0122153058, covering approximately 1.35 acres located on the north and south sides of SR 302 in unincorporated Pierce County, Washington, owned by the City of Tacoma, through its Department of Public Utilities, Light Division (d.b.a. "Tacoma Power"), is not essential to the needs of the City and is hereby declared surplus pursuant to RCW 35.22.020 and Article I, Section 1.2, and Article IX of the Tacoma City Charter.

Section 2. That the proper officers of the City are hereby authorized to execute a Quit Claim Deed to convey the subject parcel to Key Peninsula



1 Metropolitan Park District, for the amount of \$16,250, said document to be  
2 substantially in the form of the deed on file in the office of the City Clerk.

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4 Adopted \_\_\_\_\_

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Mayor

7 Attest:

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City Clerk

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11 Approved as to form:

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City Attorney

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Requested by Public Utility Board  
Resolution No. U-10957

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## RESOLUTION NO. 39849

1 BY REQUEST OF COUNCIL MEMBERS BLOCKER, IBSEN, AND WALKER LEE

2 A RESOLUTION authorizing the use of up to \$50,000 of City Council Contingency  
3 Funds for the creation of a Deportation Defense Subfund for the purpose of  
4 assisting indigent Tacoma residents facing deportation at deportation  
5 hearings with legal counsel; directing the City Manager to conduct a request  
6 for proposals from entities when the Subfund has reached \$100,000, or  
7 three months have passed; and directing the City Manager to negotiate and  
8 execute a professional services agreement outlining the scope of work and  
9 deliverables.

10 WHEREAS, unlike criminal defendants in the United States, immigrants  
11 facing potential deportation are not constitutionally guaranteed counsel if they are  
12 not able to afford a private attorney, and

13 WHEREAS, in response to federal immigration practices, several cities,  
14 such as New York, Los Angeles, San Francisco, Chicago, Baltimore, and Seattle,  
15 have established defense funds for the purpose of providing legal counsel to  
16 indigent residents facing deportation at deportation hearings, and

17 WHEREAS a 2015 study published by the University of Pennsylvania Law  
18 Review reported that detained immigrants with legal counsel were ten times more  
19 likely to be granted legal residency than those without; and for immigrants who  
20 were not detained, those with a lawyer were five times more likely to avoid  
21 deportation than those without, and

22 WHEREAS, according to the City of Seattle's defense fund statistics,  
23 approximately 92 percent of individuals in Tacoma's immigration court are not  
24 represented, and

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WHEREAS the Northwest Immigrant Rights Project estimates that in any given year, approximately 50-100 Tacoma residents are detained, and

WHEREAS, although the use of up to \$50,000 of Council Contingency Funds is not enough to fully fund these services, the creation of a seed Subfund will allow others in the community to donate funds, increasing the number of indigent residents who can utilize these services, and

WHEREAS a resident will be defined as an individual who can establish residency in Tacoma prior to being detained, and

WHEREAS the City Manager is directed to conduct a request for proposals from entities when the Subfund has reached \$100,000, or three months have passed; and further, to negotiate and execute an agreement for services, outlining the scope of work and deliverables, and

WHEREAS RCW 35.33.145 and 35.34.250 authorize a withdrawal from the City Council Contingency Fund for any municipal expense, the necessity or extent of which could not have been foreseen or reasonably evaluated at the time of adopting the budget, and

WHEREAS the extent of the need for legal services to those being detained and facing deportation could not have been foreseen or reasonably evaluated at the time the City adopted its biennial budget, and

WHEREAS Ordinance No. 22569 requires an affirmative vote of not less than six members of the Council in order to withdraw moneys from this Council Contingency Fund; Now, Therefore,



BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

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Section 1. That one-time funding, in an amount of up to \$50,000, budgeted from the City Council Contingency Fund, for the purpose of creating a Deportation Defense Subfund to assist with legal counsel to indigent Tacoma residents facing deportation at deportation hearings, is hereby approved.

Section 2. That the City Manager is hereby directed to work with staff to conduct a request for proposals from entities when the Subfund has reached \$100,000, or three months have passed.

Section 3. That the City Manager is hereby directed to work with staff to negotiate and execute a professional services agreement, outlining the scope of work and deliverables.

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

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Deputy City Attorney



# ORDINANCE NO. 28461

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AN ORDINANCE relating to the Hearing Examiner; amending Chapter 1.23 of the Tacoma Municipal Code, relating to the Hearing Examiner, to make necessary updates and corrections.

WHEREAS Chapter 1.23 of the Tacoma Municipal Code (“TMC”) governs the Hearing Examiner’s role in conducting administrative hearings and issuing recommendations to the City Council and administrative decisions on appeals, and

WHEREAS it is necessary to amend TMC 1.23 in order to correspond with other related sections of the TMC and changes in controlling laws; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

That Chapter 1.23 of the Tacoma Municipal Code is hereby amended as set forth in the attached Exhibit “A.”

Passed \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:  
  
\_\_\_\_\_  
City Clerk

Approved as to form:  
  
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City Attorney



**EXHIBIT "A"**

**Chapter 1.23  
HEARING EXAMINER**

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**1.23.010 Creation and purpose.**

Recognizing:

- A. The need to provide an efficient and effective administrative adjudicatory system for acting upon quasi-judicial matters and for review of contested administrative determinations as provided for herein;
- B. The need to ensure, to the extent possible, that quasi-judicial administrative decisions are made in a fair and impartial manner; and
- C. The need to ensure that the principles of due process and the appearance of fairness are adhered to in regard to quasi-judicial matters.

The office of the Hearing Examiner is hereby created under the authority provided by Article 11, Section 11 of the Washington State Constitution and RCW 58.17.330 and RCW 35.63.130 in order to best satisfy these needs. The office shall be independent of City departments, boards and commissions and shall be responsible for impartial administration of administrative hearings in accordance with the provisions of this chapter.

\* \* \*

**1.23.050 Areas of jurisdiction.**

A. The Examiner shall receive and examine relevant information, conduct public hearings, maintain a record thereof, and enter findings of fact, conclusions of law, and recommendations to the City Council or other order, as appropriate, in the following matters:

- 1. Applications for rezoning of property (Chapter 13.05; [Section 13.06.650](#));
- 2. Formation of Local Improvement Districts (Chapter 10.04);
- 3. Approval of Local Improvement District assessments (Chapter 10.04);
- 4. Dangerous sidewalks proceedings (Chapter 10.18);
- 5. Petitions for street and alley vacations (Chapter 9.22);
- 6. Appeals of administrative determinations of the City Council (Section 1.06.820);
- 7. Appeals from the decision of the Landmarks Preservation Commission regarding [eCertificates of Approval](#) (Section ~~42.080~~[13.05.047.G](#)); and
- 8. Appeals of a decision of the City Council to remove a member of a City board, commission, committee, task force, or other multi-member body from office (Chapter 1.46).

B. In regard to the matters set forth below, the Examiner shall conduct adjudicative proceedings, maintain a record thereof, and enter findings of fact, conclusions of law, and a final decision or other order, as appropriate:

- 1. Applications for preliminary plat approval for subdivisions exceeding nine lots (Chapter 13.04);
- 2. Appeals from decisions of the Director of Planning and Development Services (Chapters 13.05 and 13.06);
- 3. Appeals from decisions of the City Engineer regarding removal of or pruning trees on City-owned property (Chapter 9.20);





- 1 4. Appeals from the decisions or order of the Health Officer regarding violations of the Infectious Waste  
2 Management Code (Section 5.04.170);
- 3 5. Appeals from the Health Officer's denial of a permit to operate a swimming pool under  
4 Chapter 5.50 (Section 5.50.030);
- 5 6. Appeals from denial or revocation of a permit for sidewalk vending (Section ~~6B.1804~~.120);
- 6 7. Appeals regarding determinations of unlawful discriminatory practice under the Human Rights  
7 Commission chapter (Chapter 1.29);
- 8 8. Appeals from determinations of the Chief of Police, or his or her designee, regarding Potentially  
9 Dangerous Dogs and Dangerous Dogs (Chapter 17.04);
- 10 9. Appeals arising out of the Tax and License Code (Title 6);
- 11 10. Appeals arising out of the City Environmental Code, Chapter 13.12 (Sections ~~13.12.680540~~ and  
12 ~~.820~~);
- 13 11. Appeals arising under the City's commute trip reduction ordinance (Chapter 13.15);
- 14 12. Actions brought under the City's Whistle Blower Policy;
- 15 13. Appeals from the film production coordinator's decisions regarding productions of motion pictures  
16 within the City (Section 11.10.140);
- 17 14. Appeals from denial of special permits regarding solid waste recycling (Section 12.09.070);
- 18 15. Matters referred for adjudication by the Civil Service Board under its rules of procedure (Charter  
19 Section 6.11(c));
- 20 16. Appeals arising under the City's concurrency management ordinance (Chapter 13.16);
- 21 17. Hearing of violations of the City's Ethics Code (Chapter 1.46);
- 22 18. Appeals from the ~~Public Works~~Environmental Services Director's determination of civil penalties or  
23 any other charge, order, requirement, decision, or determination issued by the Director or his or her staff  
24 pursuant to the sewage disposal and drainage regulations ordinance (Chapter 12.08);
- 25 19. Appeals from the ~~Public Works~~Environmental Services Director's determination of civil penalties for  
26 violations of the solid waste ordinance and appeals arising out of the imposition by the Director, or his or  
her staff, of solid waste utility charges; provided, that the Hearing Examiner shall not adjudicate claims  
with respect to any rate set by the City Council in a rate ordinance nor hear any challenge to the rate-  
making process (Chapter 12.09);
20. Appeals from the decision of the Community and Economic Development Department Director  
denying or canceling a final Certificate of Tax Exemption under Tacoma's Mixed-Use Center  
Development ordinance (Chapter 13.17);
21. Appeals arising from the imposition of charges for service issued by the Department of Public  
Utilities, as well as those arising from disputes concerning utility service, use of watershed or other  
Department property, and termination of any use; provided, that the Hearing Examiner shall not  
adjudicate claims with respect to any rate set by the City Council in a rate ordinance nor hear any  
challenge to the rate-making process (Chapters 12.06 and 12.10);
22. Appeals arising out of the City's Minimum Building and Structures Code (Chapter 2.01);
23. Appeals from sign enforcement (Section 13.05~~6.520~~ - ~~.522405~~);
24. Applications for projects that require land use permits from the City of Tacoma as well as from a  
neighboring jurisdiction transferred to the jurisdiction of the Hearing Examiner in accordance with  
Section 13.05.040.F;
25. Appeals from Chronic Nuisance Code enforcement (Section 8.30A.080);



- 26. Appeals arising from a decision to deny a special street use permit, pursuant to Subtitle 16B;
- 27. Appeals arising from a decision to deny a telecommunications system franchise, pursuant to Subtitle 16B;
- 28. Appeals arising from a decision to deny a telecommunications system license, pursuant to Subtitle 16B;
- 29. Appeals arising from the establishment of a reimbursement assessment area and levying of a reimbursement assessment upon benefited property owners, pursuant to Chapter 35.72 RCW and applicable City ordinances;
- ~~30. Appeals from the decision of the Landmarks Preservation Commission regarding certificates of approval and decisions on demolition applications (Section 13.07.160);~~
- ~~30~~1. Applications for wetland and stream development permits, wetland and stream assessments, and wetland delineation verifications in conjunction with a preliminary plat approval or reclassification (Chapter 13.11);-
- ~~31~~2. Appeals regarding overpayment of wages (Section 1.12.071);
- ~~32~~3. Administrative hearings related to the breach or termination of cable television franchises granted, pursuant to Subtitle 16A;
- ~~33~~4. Applications for Conditional Use Permits (Table “G” of Section 13.05.020.G, Chapter Section 13.06.640);
- ~~34~~5. Appeals from Poultry and Pigeons enforcement (Section 5.30.040);
- ~~35~~6. Appeals from determinations related to certification and enforcement of violations for Small Business Enterprise (Chapter 1.07).
- ~~36~~7. Appeals arising out of the Nuisance Code (Chapter 8.30).
- ~~37~~8. Appeals arising out of the Public Nuisance Vehicle Code (Chapter 8.23).
- ~~38~~9 Appeals arising out of the Noise Code (Chapter 8.122).

\* \* \*

**1.23.070 Burden of proof.**

A. For those matters set forth in subsection A of Section 1.23.050, except subparagraphs A.3 and A.4 (formation of Local Improvement Districts and approval of Local Improvement assessments), the burden of proof shall be on the applicant or petitioner to establish, by a preponderance of the evidence, that the request is consistent with applicable legal standards.

B. For the formation of Local Improvement Districts the Examiner shall, based on the evidence presented by the parties, determine whether the district should be formed based on statutory requirements set forth at RCW 35.43 and adopted City policies. In regard to Local Improvement District assessments, the assessment roll presented by the Department of Public Works or the Department of Public Utilities shall be presumed to be legally correct; and a party contesting a proposed Local Improvement District assessment shall have the burden of establishing, by a preponderance of ~~expert appraisal~~the evidence, that the method of assessment was founded on a “fundamentally wrong basis” and does not properly reflect the special benefits resulting from the improvements constructed.

C. For the adjudicatory matters set forth in subsection B of Section 1.23.050, unless otherwise provided by law, the party seeking review has the burden to establish, by a preponderance of the evidence, that the matter is consistent or inconsistent with applicable legal standards and the lower decision should be reversed or otherwise modified. Evidence that is material and relevant to determination of the matter consistent with the applicable legal requirements, subject to administrative rules of proceedings before the Hearing Examiner, shall be admitted into the record whether or not such evidence had been submitted as a part of the administrative record below.



**1.23.080 Prehearing conference.**

The Hearing Examiner, at his/her discretion, may conduct a prehearing conference. The purpose of the prehearing conference shall be: (1) to determine the feasibility of settlement of the matter; (2) to obtain agreement as to issues of fact or law and facts to be presented at hearing and the simplification or limitation thereof; (3) to determine the possibility of obtaining admissions of facts and authenticity of documents, which will avoid unnecessary proof at hearing; (4) to determine the admissibility of exhibits; (5) to obtain stipulation as to all or part of the facts in the case; (6) to determine the number of expert and lay witnesses to be called by the parties and their names, when possible; (7) to determine the approximate time necessary for the presentation of the evidence of the respective parties; (8) to establish a hearing schedule; and (9) to obtain all other information which may aid in the prompt disposition of the cases.

The Examiner, following the prehearing conference, shall issue a prehearing order, which shall, unless properly amended, control the further course of proceedings in the matter. Prehearing conferences may be held in person or telephonically, at the discretion of the Hearing Examiner

**1.23.090 Report by Department.**

When a matter identified in subsection A of Section 1.23.050 has been set for public hearing, the ~~Department of Public Works, or other~~ appropriate department of City government, shall coordinate and assemble the comments and recommendations of other City departments, other governmental agencies, and utility providers having an interest in the matter, and shall prepare a report summarizing the factors involved and the ~~Department of Public Works', or other~~ appropriate departments' findings and recommendation. At least seven days prior to the scheduled hearing, the report shall be filed with the Examiner and copies thereof shall be mailed to the applicant, in matters involving permit applications, and shall be made available for use by any interested parties at the cost of reproduction.

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**1.23.105 Hearing Examiner subpoenas.**

A. ~~A s~~Subpoenas may be issued by the Hearing Examiner or an attorney of record in a given appeal, and may be served by any person 18 years of age or over, competent to be a witness, but who is not a party to the matter in which the subpoena is issued.

B. Each witness subpoenaed by the Hearing Examiner (or attorney of record) as a witness shall be allowed the same fees and mileage as provided by law to be paid witnesses in courts of record in this state.

C. If a person fails to obey a subpoena issued by the Hearing Examiner (or attorney of record) in an adjudicative proceeding, or obeys the subpoena but refuses to testify or produce documents when requested concerning a matter under examination, the Hearing Examiner or attorney of record issuing a subpoena may petition the Tacoma Municipal Court for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, shall set forth in what specific manner the subpoena has not been complied with, and shall request an order of the court to compel compliance. Upon such petition, the court shall enter an order directing the person to appear before the court at a time and place fixed in the order to show cause why the person has not obeyed the subpoena or has refused to testify or produce documents. A copy of the court's show cause order shall be served upon the person. If it appears to the court that the subpoena was properly issued, and that the particular questions the person refused to answer or the requests for production of documents were reasonable and relevant, the court shall enter an order that the person appear before the Hearing Examiner at the time and place fixed in the order and testify or produce the required documents, and on failing to obey this order the person shall be dealt with as for contempt of court.

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**1.23.120 Consolidated review of multiple permit applications and of environmental appeals with the underlying land use action.**

1 Multiple land use applications for the same development project shall be consolidated for review before  
2 the Hearing Examiner if one of the permits or approvals required is within the original jurisdiction, as  
3 opposed to appellate jurisdiction, of the Examiner. Likewise, an environmental appeal brought pursuant  
4 to Section 13.12.820 shall be consolidated for purposes of review with the underlying permit matter(s),  
5 unless the environmental appeal involves the issuance of a ~~Determination~~Declaration of Significance  
6 pursuant to WAC 197-11-360. In the latter event, the environmental appeal may be considered separately  
7 from the underlying permit application(s).

8 \* \* \*

**1.23.160 Appeal of Hearing Examiner decisions.**

9 A. Appeal of those matters in which the Hearing Examiner enters a final decision as set forth in  
10 subsection B of Section 1.23.050, except in regard to applications from preliminary plat approval, may be  
11 brought by any party to the adjudicative proceeding which led to the decision entered. In regard to  
12 applications for preliminary plat approval, any aggrieved person having standing under the ordinance  
13 governing such application, or as otherwise provided by law, may appeal the Examiner's decision as  
14 provided herein.

15 B. Appeals from decisions of the Hearing Examiner in regard to those matters set forth in subsection B of  
16 Section 1.23.050 shall be appealable to the Superior Court for the State of Washington; provided,  
17 however, that those determinations regarding civil penalties, as set forth in subsections B. ~~1.820~~ and  
18 ~~B. 1.924, and disputes concerning utility service, as set forth in subsection B.21,~~ shall be appealable to the  
19 Tacoma Municipal Court. Any court action to set aside, enjoin, review or otherwise challenge the  
20 decision of the Examiner shall be commenced within 21 days of the entering of the decision by the  
21 Examiner, unless otherwise provided by statute. ~~However, decisions of the Examiner in regard to~~  
22 ~~shoreline permit applications under RCW 90.58 shall be appealable to the State Shorelines Hearings~~  
23 ~~Board in accordance with the applicable provisions of the referred to statute.~~

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