1	OFFICE OF THE H	EARING EXAMINER
2	CITY OI	F TACOMA
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4	ALLEN A. M. E. CHURCH OF TACOMA, a Washington Public Benefit	HEX.NCSD.2020-0005 (CA #60000182834)
5	Corporation,	
6	Appellant,	ODDED CDANTING THE CITY OF
		ORDER GRANTING THE CITY OF TACOMA'S MOTION TO DISMISS
7	V.	
8	CITY OF TACOMA , a Washington	
9	Municipal corporation, through its Neighborhood and Community	
10	Services Department,	
11	Respondent.	
12	THIS MATTER comes now before the	e undersigned Hearing Examiner for the City of
13	Tacoma, Washington, as the result of a writter	motion to dismiss, dated, and received by the
14	Office of the Hearing Examiner on July 16, 20	20, from Respondent, City of Tacoma,
15	Neighborhood and Community Services Depa	rtment ("City"), through its legal counsel, Deputy
16	City Attorney Debra E. Casparian. In its motic	on, the City moved for dismissal of the above
17	captioned Nuisance Civil Penalty appeal (this	"Appeal"). The City based its motion on the
18	allegation that this Appeal was not timely filed	l. Appellant, Allen A. M. E. Church of Tacoma
19	(the "Appellant") was given an opportunity to	respond to the City's motion pursuant to Hearing
20	Examiner Rule of Procedure 1.09(b). On July	2, 2020, Appellant filed its response with the
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ORDER GRANTING CITY'S

MOTION TO DISMISS

1. The genesis of the present Appeal is a "Notice of Violation/Stop Work Order" that the City issued to the Appellant on May 22, 2018.¹ Appellant (in this matter) filed an appeal of that initial notice with the Hearing Examiner one month later, on June 22, 2018. Because 2. or about March 2, 2020.⁵ 15 3. 16 on or about March 2, 2020.⁶ The TMC excerpt included language regarding the timing of filing 18 for appeals.⁷ 19 ¹ Ex. A to Citv's motion. 2 All the foregoing is referenced in the City's motion, and is a matter of record in the files of the Office of the Hearing Examiner as well. ³ City's motion, p. 2; Affidavit of Debra E. Casparian, Ex. B to City's motion. ⁴ See Ex. C to the City's motion. ⁵ Ex. B to the City's motion.

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 7 Id.

ORDER GRANTING CITY'S MOTION TO DISMISS

City of Tacoma Office of the Hearing Examiner Tacoma Municipal Building 747 Market Street, Room 720 Tacoma, WA 98402-3701 Hearing.examiner@cityoftacoma.org P: (253) 591-5195 F: (253) 591-2003

appeals of this type must be filed within ten (10) days of the issuance date of the Notice of Violation or Civil Penalty, and because Appellant's filing was well outside that ten (10) day timeframe, the appeal of the "Notice of Violation/Stop Work Order" was dismissed on July 31, 2018, on the City's motion due to untimely filing.² Since the initial appeal and dismissal, the City has continued to issue Civil Penalties for the same violation from May of 2018 to April of 2020.³ According to the City's motion, and the Appellant's appeal paperwork,⁴ the Civil Penalty on appeal here was issued on The Civil Penalty invoice included a copy of Tacoma Municipal Code ("TMC") section 8.30.090 regarding appeal requirements for a Civil Penalty of the type the City issued

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FINDINGS OF FACT

Office of the Hearing Examiner. Based on the pleadings filed in this Appeal, the Hearing Examiner makes the following:

⁶ Id.

4. Appellant's Notice of Appeal was sent via email and was date stamped "received"
 by the City Clerk's Office on June 23, 2020. It was received in the Office of the Hearing
 Examiner the same day.
 5. Thereafter, the City filed its Motion to Dismiss Appeal Due to Untimely Filing.

5. Thereafter, the City filed its Motion to Dismiss Appeal Due to Untimely Filing
and Declaration of Debra E. Casparian in Support on July 1, 2020. The Appellant filed its
response to the City's motion via email on July 2, 2020.⁸ The Appellant's response does not
address the City's motion and the issue presented therein of untimely filing at all.

6. Any conclusion of law below that should be more properly deemed or considereda finding of fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. TMC 8.30.090 states that "A person to whom a civil penalty is directed may request a hearing by the Hearing Examiner. Such notice must be in writing and must be received by the City Clerk no later than 10 calendar days after the civil penalty has been issued." Appellant filed its request for a hearing well beyond ten (10) calendar days after the notice it sought to appeal was issued. Appellant's request for a hearing was not timely filed under TMC 8.30.090.

2. Filing an appeal within the specified appeal period is critical to the appeal being heard. *Nickum v. City of Bainbridge Island*, 153 Wn. App. 366, 378, 223 P.3d 1172, 1177 (2009).⁹ Barring extremely unusual circumstances, an untimely appeal must be dismissed. *Glass v. Windsor Navigation Co.*, 81 Wn.2d 726, 727, 504 P.2d 1135, 1137 (1973). Again, Appellant's appeal was not timely filed.

⁸ Appellant's response is captioned "Allen AME Church's Motion to Uphold Appeal."

ORDER GRANTING CITY'S MOTION TO DISMISS

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1	3. Any finding of fact above that should be more properly deemed or considered a	
2	conclusion of law is hereby adopted as such.	
3	NOW THEREFORE, having reviewed the file herein and the City's motion, and	
4	otherwise being fully advised, the Hearing Examiner HEREBY grants the City's motion to	
5	dismiss this Appeal as untimely in accordance with Hearing Examiner Rule of Procedure	
6	2.10(a), TMC 8.30.090, and controlling case law.	
7	ORDERED this 9th day of July, 2020.	
8	AMAGel	
9	JEFF H. CAPELL, Hearing Examiner	
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	⁹ See also Keep Watson Cutoff Rural v. Kittitas County, 145 Wn.App. 31, 37-39 (2008); Graham Thrift Group v. Pierce County, 75 Wn. App. 263, 267 (1994). City of Tacoma	
	Office of the Hearing Examiner	

ORDER GRANTING CITY'S MOTION TO DISMISS

1	<u>NOTICE</u>	
2	RECONSIDERATION/APPEAL OF EXAMINER'S DECISION	
3	<u>RECONSIDERATION</u> :	
4	Any aggrieved person or entity having standing under the ordinance governing the matter, or as otherwise provided by law, may file a motion with the Office of the Hearing Examiner requesting reconsideration of a decision or recommendation entered by the Examiner. A	
5 6	motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14 calendar days of the issuance of the Hearing Examiner's decision/recommendation, not	
7	counting the day of issuance of the decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next working day. The requirements set forth herein regarding the time limits for filing of	
8	motions for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set forth the alleged errors shall be dismissed by the Hearing Examiner. It shall be	
9	within the sole discretion of the Hearing Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The Hearing Examiner,	
10	after a review of the matter, shall take such further action as he/she deems appropriate, which may include the issuance of a revised decision/recommendation. (<i>Tacoma Municipal Code</i>	
11	1.23.140).	
12	ΝΟΤΙCΕ	
13	APPEAL TO SUPERIOR COURT OF EXAMINER'S DECISION	
14	Pursuant to the Official Code of the City of Tacoma, Section 1.23.160 and RCW 36.70C.040, the Hearing Examiner's decision may be appealable to the Superior Court for the State of	
15 16	Washington. Any court action to set aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner shall be commenced within 21 days of the entering of the decision by the Hearing Examiner, unless otherwise provided by statute.	
17	the frearing Examiner, unless otherwise provided by statute.	
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	City of Tacoma	
	ORDER GRANTING CITY'S MOTION TO DISMISSOffice of the Hearing Examiner Tacoma Municipal Building 747 Market Street, Room 720 Tacoma, WA 98402-3701 Hearing.examiner@cityoftacoma.org P: (253) 591-5195 F: (253) 591-2003	