

1 **OFFICE OF THE HEARING EXAMINER**
2 **CITY OF TACOMA**

3 **ALLEN A. M. E. CHURCH OF**
4 **TACOMA**, a Washington Public Benefit
5 Corporation,

6 **Appellant,**

7 **v.**

8 **CITY OF TACOMA**, a Washington
9 Municipal corporation, through its
10 Neighborhood and Community
11 Services Department,

Respondent.

HEX.NCSD.2020-0005
(CA #60000182834)

ORDER GRANTING THE CITY OF
TACOMA’S MOTION TO DISMISS

12 **THIS MATTER** comes now before the undersigned Hearing Examiner for the City of
13 Tacoma, Washington, as the result of a written motion to dismiss, dated, and received by the
14 Office of the Hearing Examiner on July 16, 2020, from Respondent, City of Tacoma,
15 Neighborhood and Community Services Department (“City”), through its legal counsel, Deputy
16 City Attorney Debra E. Casparian. In its motion, 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. 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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1 Office of the Hearing Examiner. Based on the pleadings filed in this Appeal, the Hearing
2 Examiner makes the following:

3 **FINDINGS OF FACT**

4 1. The genesis of the present Appeal is a “Notice of Violation/Stop Work Order” that
5 the City issued to the Appellant on May 22, 2018.¹ Appellant (in this matter) filed an appeal of
6 that initial notice with the Hearing Examiner one month later, on June 22, 2018. Because
7 appeals of this type must be filed within ten (10) days of the issuance date of the Notice of
8 Violation or Civil Penalty, and because Appellant’s filing was well outside that ten (10) day
9 timeframe, the appeal of the “Notice of Violation/Stop Work Order” was dismissed on July 31,
10 2018, on the City’s motion due to untimely filing.²

11 2. Since the initial appeal and dismissal, the City has continued to issue Civil
12 Penalties for the same violation from May of 2018 to April of 2020.³ According to the City’s
13 motion, and the Appellant’s appeal paperwork,⁴ the Civil Penalty on appeal here was issued on
14 or about March 2, 2020.⁵

15 3. The Civil Penalty invoice included a copy of Tacoma Municipal Code (“TMC”)
16 section 8.30.090 regarding appeal requirements for a Civil Penalty of the type the City issued
17 on or about March 2, 2020.⁶ The TMC excerpt included language regarding the timing of filing
18 for appeals.⁷

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20 ¹ *Ex. A to City’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
21 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.*

⁶ *Id.*

⁷ *Id.*

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.

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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).

1 **NOTICE**

2 **RECONSIDERATION/APPEAL OF EXAMINER'S DECISION**

3 **RECONSIDERATION:**

4 Any aggrieved person or entity having standing under the ordinance governing the matter, or
5 as otherwise provided by law, may file a motion with the Office of the Hearing Examiner
6 requesting reconsideration of a decision or recommendation entered by the Examiner. A
7 motion for reconsideration must be in writing and must set forth the alleged errors of
8 procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14
9 calendar days of the issuance of the Hearing Examiner's decision/recommendation, not
10 counting the day of issuance of the decision/recommendation. If the last day for filing the
11 motion for reconsideration falls on a weekend day or a holiday, the last day for filing shall be
12 the next working day. The requirements set forth herein regarding the time limits for filing of
13 motions for reconsideration and contents of such motions are jurisdictional. Accordingly,
14 motions for reconsideration that are not timely filed with the Office of the Hearing Examiner
15 or do not set forth the alleged errors shall be dismissed by the Hearing Examiner. It shall be
16 within the sole discretion of the Hearing Examiner to determine whether an opportunity shall
17 be given to other parties for response to a motion for reconsideration. The Hearing Examiner,
18 after a review of the matter, shall take such further action as he/she deems appropriate, which
19 may include the issuance of a revised decision/recommendation. (*Tacoma Municipal Code*
20 *1.23.140*).

21 **NOTICE**

APPEAL TO SUPERIOR COURT OF EXAMINER'S DECISION

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
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.

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