

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **JEFF BRAETAN DOWNING,**

4 **Appellant,**

5 **v.**

6 **CITY OF TACOMA**, a Washington
7 Municipal corporation, through its
8 Department of Public Utilities,

9 **Respondent.**

HEX2023-014

(Utility Account #101284567)

ORDER OF DISMISSAL

10 **THIS MATTER** came before the undersigned Hearing Examiner for the City of
11 Tacoma, Washington, for hearing on August 24, 2023, commencing at 9:00 am.¹ The City of
12 Tacoma (herein “Respondent” or “TPU”) made an appearance through its representative
13 Rachel Frias, Customer Accounts Supervisor. Jeff Braetan Downing (herein “Appellant”)
14 failed to initially appear at the appointed start time of 9:00 am. Within minutes the Examiner’s
15 hearing clerk reached the Appellant by telephone. Soon thereafter Appellant appeared *pro se*
16 through Zoom and admitted he thought the hearing was scheduled for a later date. Appellant
17 requested a continuance of the hearing because his witnesses were not present. The Appellant’s
18 continuance request was granted by the Hearing Examiner as TPU had no objections.
19 Mr. Downing agreed to contact the Hearing Examiner’s office later that same day to discuss
20 proposed continued hearing dates after he had a chance to contact his witnesses. Again, TPU
21 had no objections.

¹ By agreement of the parties the hearing on August 24, 2023 was conducted virtually using Zoom teleconferencing (Zoom) with both internet and telephonic access at no cost.

1 The Appellant failed to contact the Hearing Examiner’s office as he had agreed during
2 the hearing,² and here has been no contact from the Appellant in response to other
3 communications from the Office of the Hearing Examiner.

4 Therefore, the present appeal is hereby DISMISSED without prejudice in accordance
5 with Hearing Examiner Rule of Procedure 1.19.

6 **SO ORDERED** this 27th day of November 2023.

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 JEFF H. CAPELL, Hearing Examiner

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20 ² Following the hearing, on August 28, 2023 the Hearing Examiner’s staff sent an email to both parties in the
21 matter stating the Hearing Examiner’ office had not received any communication from the Appellant and offered
proposed continued hearing dates. Later that same day TPU responded via email with its hearing date preference.
On August 30, 2023 the Hearing Examiner’s staff again sent an inquiry email to both parties. The attempt to reach
the Appellant was to no avail. The email delivery receipts for those sent on August 28 and 30, 2023 indicated that,
“Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:
‘Jeff Downing’ (jeffd0127@gmail.com). On September 28, 2023, the Examiner directed his staff to check the
Appellant’s case again on October 9, 2023 and again on November 13, 2023 to see if the Appellant made any
attempt to contact the Hearing Examiner’s office by that time. There has been no contact from the Appellant since
the hearing held on August 24, 2023.

1 **NOTICE**

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

3 **RECONSIDERATION TO THE OFFICE OF THE HEARING EXAMINER:**

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 Examiner's decision/recommendation, not counting the
10 day of issuance of the decision/recommendation. If the last day for filing the motion for
11 reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next
12 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 Examiner. It shall be within
16 the sole discretion of the Examiner to determine whether an opportunity shall be given to
17 other parties for response to a motion for reconsideration. The Examiner, after a review of
18 the matter, shall take such further action as he/she deems appropriate, which may include the
19 issuance of a revised decision/recommendation. (*Tacoma Municipal Code 1.23.140.*)

20 **NOTICE**

21 This matter may be appealed to Superior Court under applicable laws. If appealable, the
petition for review likely will have to be filed within thirty (30) days after service of the
final Order from the Office of the Hearing Examiner.