

**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

In re.

**SEATTLE WATERFRONT LID  
ASSESSMENT HEARING**

Hearing Examiner File:  
CWF-0001 - CWF-0441

**ORDER ON HEARING  
SCHEDULE AND CROSS  
EXAMINATION<sup>1</sup>**

On June 10, 2020, an optional prehearing conference was held for objectors planning to cross-examine the City's witnesses. The prehearing conference was provided as an opportunity for cross-examining objectors to coordinate their cross-examination efforts to ensure that questioning is not redundant, and make additional efforts to determine how the objectors will organize the cross-examination time objectors have.

**Preliminary Matters**

The Hearing Examiner issued additional direction concerning participation by several objectors seeking participation in cross-examination:

CWF-0097 – the Hearing Examiner granted the objector's motion for reconsideration to participate in cross-examination

CWF-0149 – the Hearing Examiner denied the objector's motion for reconsideration to participate in cross-examination

CWF-0176 – the Hearing Examiner granted the objector the right to participate, noting an error in Office of Hearing Examiner review of the original request to participate which had been denied

CWF-0188 – the Hearing Examiner clarified that the objector would not be allowed to participate in cross-examination

All other objectors participating in cross examination were identified in the Amended Order on Second Continuance of Hearing and Cross Examination issued May 28, 2020.

**Case Numbers for Objectors Participating in Cross-Examination**

CWF-0022

CWF-0057

CWF-0063

CWF-0097

CWF-0133

---

<sup>1</sup> This order supercedes all previous hearing scheduling orders.

CWF-0134  
CWF-0135  
CWF-0136  
CWF-0168  
CWF-0171  
CWF-0176  
CWF-0195  
CWF-0204/CWF-0398  
CWF-0208  
CWF-0218  
CWF-0219  
CWF-0220  
CWF-0206 [participation in cross-examination is limited. Objector only introduced single page objection with succinct comparison based objection, cross-examination is allowed only as to issue raised in objection.]  
CWF-0227  
CWF-0233, 0318, 0409-0441  
CWF-0259  
CWF-0264  
CWF-0280  
CWF-0314  
CWF-0333  
CWF-0336  
CWF-0352  
CWF-0353  
CWF-0358 [participation in cross-examination is limited. Evidence submitted with objection was not adequate, but analysis at hearing re. Crompton allows cross-examination as to such related issues only.]  
CWF-0375  
CWF-0390

### **Remaining Hearing Schedule and Procedure**

The following schedule has been developed from the discussion at the prehearing conference for the remainder of the hearing:<sup>2</sup>

Noon June 17 – City deadline to make a good faith effort to submit all exhibits electronically in advance of its hearing presentation to the Office of Hearing Examiner (via: [Galen.Edlund-Cho@seattle.gov](mailto:Galen.Edlund-Cho@seattle.gov)) and objectors at their designated representative's email.<sup>3</sup>

---

<sup>2</sup> The only remaining portions of the hearing are for the City to present its case, and participating objectors to cross-examine City witnesses. All objectors completed presentation of their cases in chief starting February 4<sup>th</sup> through mid-April, and that portion of the hearing is concluded with no additional opportunity to present evidence or argument except as provided herein.

<sup>3</sup> The parties have deadlines (Noon June 17 – City, and Noon June 22 for objectors) to submit electronically in advance exhibits they will introduce at hearing. Parties are asked to make a good faith effort to meet this deadline. Exhibits may be produced in hearing, but a party must be prepared to email a copy of any such exhibits to all other

June 18 and 19 - City presentation of case in chief.

Noon June 22 - Objector deadline to make a good faith effort to submit all exhibits they intend to introduce as part of cross-examination electronically in advance to the Office of Hearing Examiner (via: [Galen.Edlund-Cho@seattle.gov](mailto:Galen.Edlund-Cho@seattle.gov)) and the City at its designated email.

June 23 and 25 [with June 26 reserved if additional time is necessary] - Cross-examination of City witnesses by objectors.

Previous scheduling orders have indicated that attempts would be made to have these remaining portions of the hearing postponed until a hearing could be held in person. However, as we have all witnessed during the pandemic, circumstances are in constant flux and change, and the goal of an in-person hearing is now far too elusive to achieve. The schedule for “reopening” remains completely unpredictable. There is no evidence that King County (and therefore the City of Seattle) will enter Phase 3 (or even Phase 2) of the Governor’s stay at home order plan in the foreseeable future, even if opening proceeds without a return to Phase 1 or 2 due to a new outbreak. Therefore, in order to conclude this matter, the hearing will continue on the dates scheduled in a remote format using Zoom.

In accordance with earlier procedural rulings, the City is entitled to submit written declarations in lieu of live testimony up to the final day of its case (currently June 26<sup>th</sup>) - those declarations are not subject to cross examination, but instead are subject to a response declaration by objectors qualifying for cross-examination. Objectors qualifying for cross-examination may file closing argument briefing related only to matters raised during City witness presentation and cross-examination (including preserving objections). The City may file reply argument/declarative materials to objector’s responsive briefing/declarations.

If we are able to maintain the above hearing dates, the schedule for submitting the declarations and briefing will be as follows:

July 7 – Deadline for Objectors to file closing argument brief to address any issues raised during City presentation or cross-examination of City’s witnesses. Objectors may also submit responses to declarations submitted by the City.

July 14 – Deadline for City to submit reply to objectors’ responding declarations.

The remote hearing format may be compromised by technology to such a degree that a continuance of all or a portion of the hearing is required, and the above dates will be changed by a new order accordingly.

---

parties, and any witness that will need to reference the exhibit. The Examiner may also allow some screen sharing of exhibits being referenced, but this can result in a greater pressure on the remote hearing system, and should not be depended on by the parties as a primary means of sharing or submitting exhibits. The City must ensure that each witness is prepared to receive exhibits by email during the hearing.

## Hearing Participation

The City and objectors planning to cross-examine the City's witnesses will participate directly in the hearing. Other objectors and the public may listen to the hearing via a listening line that will be established (information on the public access line will be posted on the Office of Hearing Examiner website hearing schedule at: <http://www.seattle.gov/hearing-examiner>). The Examiner is currently attempting to establish live streaming of the remainder of the hearing with the Seattle Channel. If live streaming can be established, then information on observing the hearing in that manner will also be posted on the hearing schedule on the Office of Hearing Examiner website.

The City and objectors planning to cross-examine the City's witnesses will be sent an electronic invitation for participation via Zoom.

The Office of Hearing Examiner has established remote hearing protocols the City and and objectors planning to cross-examine the City's witnesses should familiarize themselves with, and which can be found at:  
<http://www.seattle.gov/Documents/Departments/HearingExaminer/CODV19%20HXE%20Factsheets/Remote%20System%20Hearing%20Protocol.pdf>.

Objections - During the City's presentation of its case, and during cross-examination, objectors and the City may raise objections respectively. However, due to the limitations of technology for a remote hearing, the Hearing Examiner has directed participants to limit objections to only those that must absolutely be raised during the in person portions of the hearing. Objectors are reminded that objections that are not raised during the City's presentation can be preserved by identifying them in the closing briefing due July 7<sup>th</sup>. In addition, the parties are reminded that this is an administrative hearing resulting in a recommendation only, and that some objections are likely to be inappropriate in this setting. For example, hearsay evidence is generally allowed in these hearings. Similarly, challenging the relevance of testimony or evidence is unlikely to be necessary or helpful as these hearings have a broad allowance for letting in evidence, and parties should be more focused on highlighting that certain evidence carries little weight or value during their own argument rather than trying to prohibit it from being entered into the record. The Hearing Examiner reserves the right to not allow a party or parties to raise objections if he determines they are overly disruptive of the remote hearing.

Objectors were asked in the prehearing conference to be prepared at the start of cross-examination (June 23<sup>rd</sup> in the current schedule) to provide a list by case number, the order in which each objector will be proceeding in cross-examining a specific witness. Objectors who have not coordinated with other objectors, and who do not know where they are on a list will likely simply be moved to the bottom following more organized objectors. A primary thing to keep in mind is that repeat questions are not allowed to be raised to a witness by subsequent objectors – once one objector asks a witness a question no one gets to ask the same question or a similar question of a witness that will illicit the same response, as this would be of no value to the record.

Reminder: while it is not required that you be an attorney to participate in cross-examination, no special accommodation will be made for non-attorneys. If you are a non-attorney participating in

cross-examination, you will still be required to follow the same procedural requirements and processes as attorneys. This process is governed primarily by:

Applicable Office of Hearing Examiner Rules of Practice and Procedure:  
<http://www.seattle.gov/Documents/Departments/HearingExaminer/Waterfront%20LID/Waterfront-LID-Assessment-Roll-Hearing-Rules-of-Practice-and-Procedure.pdf>

The Washington State Civil Rules of Evidence:  
[http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.rulesPDF&groupName=ga&setName=ER](http://www.courts.wa.gov/court_rules/?fa=court_rules.rulesPDF&groupName=ga&setName=ER)

Hearing participants may find information in the Office of Hearing Examiner Public Guide helpful:  
<http://www.seattle.gov/Documents/Departments/HearingExaminer/Public-Guide-Revised-2018.pdf>

All information from the hearing record, including objections, exhibits submitted, copies of transcripts and recordings of hearings are located in a specially established site for this hearing on the Office of Hearing Examiner's website at [www.seattle.gov/hearing-examiner](http://www.seattle.gov/hearing-examiner).

Entered this 12<sup>th</sup> day of June, 2020.

\_\_\_\_\_  
s/Ryan Vancil  
Ryan Vancil, Hearing Examiner