

**FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Citation Issued to

Citation: 1059876-CT-002
(Corn)

FRANK MARTIN,

by the Director, Seattle Department
of Construction and Inspections.

Findings of Fact

1. The Department of Construction and Inspections (“Department”), issued a citation on January 6, 2025, to Frank Martin for a land use code violation at 130 N 59th Street. The citation followed a warning dated November 26, 2024 and included a \$150 fine.¹ Mr. Martin appealed the citation to the Hearing Examiner.

2. The Examiner conducted a hearing on February 6, 2025. Mr. Martin appeared, as did the Department, through its representative, Ms. Faye Emmanuel, Code Compliance Legal Liaison. Inspector Lauren Corn testified for the Department. Mr. Martin also testified. The Department submitted Exhibits 1-7. Mr. Martin submitted Exhibits 1-9. All exhibits were admitted without objection.

3. The citation, issued under SMC 10.52.031, alleged vegetation encroachment into the right of way in contravention of Ch. 10.52 SMC. At the hearing, the Department identified where the vegetation on Mr. Martin’s property had encroached into the public sidewalk and confirmed the property was brought into compliance on January 29.

4. Mr. Martin’s position was that the code was ambiguous as to what constituted obstruction of the right of passage. He also stated that he had not received the warning. The Department depicted where vegetation encroached into the public sidewalk and addressed vegetation removal requirements. The Department’s position was that while it mailed the warning, this is not a requirement, but was provided as a courtesy. The Department did not provide a certificate of mailing, so the mailing date could not be confirmed. The Department asked that the citation and penalty be upheld.

Conclusions

1. The Hearing Examiner has jurisdiction over this citation appeal.² The SMC provides for code citations for vegetation encroachment to be appealed to the Hearing Examiner.³

¹ Exs. D-2 and D-4.

² SMC 10.52.032, .035.

³ Ch. 10.52 SMC.

2. The citation is “prima facie evidence that a violation occurred and that the person cited is responsible.”⁴ An appellant may rebut this evidence through exhibits and testimony. The burden of proof is a preponderance of the evidence.⁵ When a violation has been corrected by the time of hearing, even if the citation is otherwise upheld, the penalty may be reduced.⁶ Factors considered “include whether the violation was caused by the act or neglect of another” or if correction was promptly commenced but “full compliance was prevented by a condition or circumstance beyond the control of the person cited.”⁷ Based on the totality of the circumstances, a determination is made based on whether the cited “person's explanation justifies reduction...”⁸

3. It is a property owner’s duty to remove vegetation growing from their property and into the public right-of-way.

A. It is the duty of the owner of the property and of any occupant of the property wherein or whereon any such nuisance exists to abate the nuisance by destroying, removing or trimming vegetation, and removing or destroying any health, safety or fire hazard.

B. In addition to duties the owner or occupant may have to abate nuisances, the owner or occupant of property shall:

1. Remove vegetation in or on an abutting sidewalk;

2. Destroy, remove or trim vegetation or parts thereof on the property, and which are also overhanging any sidewalk within eight (8) feet measured vertically from any point on the sidewalk....⁹

4. The code requires clearing of any vegetation which intrudes “in or on” the abutting sidewalk. Even when most individuals could readily walk past that vegetation, the code requires removal. If “in or on” the sidewalk, intruding vegetation must be removed.

5. The code refers to vegetation encroachments as nuisances. Under the code, “conditions are ... nuisances” if they constitute a fire, health or safety hazard.¹⁰ A safety hazard can cause injury to passersby simply by impeding full sidewalk use.

"Safety hazard" means vegetation which overhangs the streets, sidewalk or alley in such a way as to impede the free and full use of the street, sidewalk or alley ... and vegetation which creates injury to or the opportunity or risk for injury to passersby or the general public.¹¹

⁴ SMC 10.52.035.E.

⁵ Hearing Examiner Rules of Practice and Procedure 5.17(d).

⁶ SMC 10.52.035.F.

⁷ SMC 10.52.034.C; SMC 10.52.035.F.

⁸ SMC 10.52.034.C.

⁹ SMC 10.52.030.A-B.

¹⁰ SMC 10.52.020.

¹¹ SMC 10.52.010.J.

6. This language is not ambiguous. Private vegetation which encroaches into the public sidewalk violates Ch. 10.52 SMC. The width of the public right of way defines the clearance area. Not all sidewalks have the same width, so the code does not provide a specific horizontal width which must remain clear. It is logical for vegetation encroachment which impedes full use of the sidewalk to be categorized as a safety hazard. As with a public street, the entire sidewalk is open for public passage, so any encroachment which reduces use of that space impinges on the right of access and could be hazardous.

7. The Department established a violation. The code does not require additional outreach, though in practice, the Department focuses on compliance and attempts outreach to property owners, so typically provides a courtesy warning. Mr. Martin testified that he did not receive the warning and would have appreciated outreach from the Department before receiving the citation. This a Department judgment call. And, as the inspector's phone number is on the citation, upon receipt, a property owner may also conduct outreach. But, as with the Department, this is not required. A more satisfactory resolution may result through a conversation, as property owners in most vegetation encroachment cases typically express a wish to have a good relationship with their neighbors and resolve encroachment issues, as was the case here. But there is no outreach requirement for the Department or property owner.¹²

8. While Mr. Martin did not present sufficient evidence to rebut the Department position that vegetation growing on his property extended into the public sidewalk, once cited he promptly brought his property into compliance. Mr. Martin had questions on the scope of his removal responsibilities as his adjacent neighbor also had encroaching vegetation and he was unclear on code requirements.¹³ Given these factors and that full compliance was achieved before the hearing, reduction of the \$150 fine is reasonable.

Decision

The Citation is **UPHELD**, but with a reduced penalty of \$50.

Entered February 11, 2025.



Susan Drummond
Deputy Hearing Examiner

¹² To encourage a more facilitative discussion, the Office of Hearing Examiner offers mediation for disputes pending before the Office. HER 5.10.

¹³ Testimony, Mr. Martin; Ex. A-9. Once presented, the Department promptly addressed the code question.

NOTE: If a check or money order, or credit or debit card payment [Visa and MasterCard only] in the amount stated in the above Decision has not been received at the following address within 15 days of this decision, the outstanding penalty will be referred to a collection agency, and the costs of collection will be added to the penalty: **City of Seattle, Office of Hearing Examiner, P.O. Box 94729, Seattle, WA 98124-4729; (206) 684-0521.** Make checks or money orders payable to the “City of Seattle.” Credit and debit cards are accepted in-person and over-the-phone.

Concerning Further Review

NOTE: It is the responsibility of the person appealing a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner is the final decision for the City of Seattle. Under RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially pay for preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **FINDINGS AND DECISION** to each person below, in **FRANK MARTIN** Hearing Examiner File: **CIT-1059876-CT-002** in the manner indicated.

Party	Method of Service
Appellant Frank Martin fsmartin@q.com	<input type="checkbox"/> U.S. First Class Certified Mail <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Department SDCI Lauren Corn corn@seattle.gov Faye Emmanuel Faye.emmanuel@seattle.gov Kevin Hou Kevin hou@seattle.gov	<input type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: February 11, 2025

/s/ Sarah Grant
 Sarah Grant
 Administrative Specialist