OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

In the Matter of **DEBORAH A. FISHER,** **Appellant,** **v.** **CITY OF TACOMA,** a Washington corporation through its Planning and Development Services Department**,** **Respondent.**	**File No. HEX2025-065** **(PDSD Acct #300158206)** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

THIS MATTER came on for hearing before JEFF H. CAPELL, the Hearing Examiner for the City of Tacoma, Washington, (the "City"), on October 15, 2025.[1] Appellant Deborah A. Fisher ("Appellant"), represented herself at the hearing. The City's Planning and Development Service Department ("PDS") was represented by Deputy City Attorney Charles S. Lee.

The following exhibits were admitted into the record:

Appellant
A-1: 1040-SR_US_IncomeTaxReturnForSeniors_Fisher_Redacted.

City
R-1 Assessor-Treasurer ePIP Property Profile.
R-2 10/16/24 Notice of Violation.
R-3 1/16/25 Photo - 802 S Alder.
R-4 1/16/25 Photo - Posting at Front Door.
R-5 3/6/25 Photo- Hedge and Pole.
R-6 3/6/25 Photo- Hedge and Pole (Different Angle).
R-7 3/6/25 Photo- Hedge and Pole (Different Angle).

[1] At the request of the Appellant, this hearing was conducted in-person in the City Council Chambers with alternative Zoom access at no cost to any participant.

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R-8 3/6/25 Photo - Hedge (Different Angle).
R-9 3/6/25 Photo- Hedge (Different Angle).
R-10 3/6/25 Photo- Hedge w/Mini Excavator.
R-11 3/6/25 Photo- Hedge Removed.
R-12 3/6/25 Photo- Hedge Removed (Different Angle).
R-13 3/6/25 Photo- Hedge Removed (Different Angle).
R-14 3/6/25 Photo- Hedge Removed (Different Angle).
R-15 3/6/25 Photo- Hedge Removed (Different Angle).
R-16 COT Excel Spreadsheet.
R-17 COT Contract Payment.
R-18 Abatement Invoice

The following testified at the hearing under oath and penalty of perjury:

Appellant
Deborah A. Fisher

City
Keith Williams, Code Enforcement Inspector, PDS
Sean Hart, Owner of GEC NW, Inc.
Christina Tate, Customer Service Lead Representative, PDS

Based upon the evidence presented, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. This appeal concerns nuisance abatement costs assessed to Appellant Deborah A. Fisher for the abatement of a nuisance at real property she owns at 802 South Alder Street, Tacoma, WA 98405-2547 (the "Subject Property"). *Williams Testimony, Hart Testimony, Tate Testimony; Ex. R-1~Ex. R-18*.

2. The City issued a Notice of Violation to Appellant dated "10/16/2024" for a "Nuisance Code Violation" at the Subject Property (the "NOV"). The NOV was based on City Code Enforcement inspectors having visited the Subject Property and witnessing significant

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vegetation overgrowth from the Subject Property into public right-of-way areas that impeded traversal in the right-of-way. *Williams Testimony; Ex. R-2~Ex. R-18*.

3. Appellant did not appeal the NOV. The NOV at the section titled "What is the property owner required to do?" states the following:

> Within eighteen (18) calendar days from the date of this notice, the property owner is required to:
>
> • VOLUNTARILY COMPLY by correcting the violation(s) or
> • WORK WITH YOUR INSPECTOR TO CREATE A REPAIR PLAN that meets the City of Tacoma's requirements.

The City received no communications from the Appellant regarding a plan to abate the nuisance on her own. *Williams Testimony; Ex. R-2*.

4. The next section of the NOV titled "What if the property owner does not comply?" states the following:

> If after **18 calendar days from the date of this letter, your property** is still in violation of the Nuisance code and no plan of repair or appeal has been submitted, **the City may issue civil penalties** and utilize all reasonable options to gain compliance. Options include **taking legal action to file a civil suit** against the property owner and obtain a court-issued warrant from Pierce County Superior Court to enter the property and abate the violation(s). City abatement costs may result in a property lien filed with Pierce County. The City may use any lawful means to collect payments due, including referring the debt to a collections agency.

Ex. R-2.

5. After more than the 18 calendar days' time period referenced in the NOV had passed with no word from the Appellant, the City made arrangements with its contractor, GEC NW, Inc., to abate the nuisance at the Subject Property. GEC NW, Inc. abated the vegetation

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overgrowth from the impacted right-of-way areas without entering the Subject Property. *Williams Testimony, Hart Testimony; Ex.R-10~Ex. R-15.*

6. GEC NW, Inc. then billed the City for its abatement work. The abatement work and billing included (without limitation), removal of the overgrowth, equipment costs, travel time and disposal costs. *Hart Testimony, Tate Testimony; Ex. R-16, Ex. R-17*.

7. City staff reviewed GEC NW, Inc.'s invoice and found that it conformed with the work performed and that it was not out of line with a typical bill for this type of abatement work. By Invoice # 91253061 dated "05/29/2025," the City billed the Appellant for the amount of $4,468.87 which added costs for City inspector time. *Tate Testimony; Ex. R-16~Ex. R-18*.

8. Appellant did not challenge the factual basis for the NOV at the hearing,[2] nor did she challenge the amount she has been billed for reimbursement. Instead, she offered Exhibit A-1 as proof that she has limited income and cannot afford to pay the reimbursement. She also offered that, in the past, she has taken care of this type of overgrowth herself through a landscaper that she employs from time to time. She testified that she has lived at the Subject Property for 40 years and that there has never been a problem before.

9. Any conclusion of law herein which may be deemed a finding of fact is hereby adopted as such.[3]

[2] Any such challenge would likely have been an inappropriate collateral challenge since the NOV was not timely challenged by appeal prior to the abatement.

[3] The abbreviations "FoF" for findings of fact and "CoL" for conclusions of law may be used hereafter.

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CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction to conduct hearings on appeals arising out of the Public Nuisance Code. *Tacoma Municipal Code (TMC)* 1.23.050.B.36 and 8.30.130. The proceedings are conducted *de novo. TMC 1.23.060.*

2. Under TMC 8.30.130.H, "The City shall have the burden of proof to establish, by a preponderance of the evidence, that the abatement costs were reasonable" in a hearing such as this.

3. "Preponderance of the evidence" means that the trier of fact is convinced that it is more probable than not that the fact(s) at issue is/are true, or that "[t]he proposition on which that party has the burden of proof is more probably true than not true."[4] Here, the initial proposition is that the City must establish that the costs were incurred and that they were reasonable. If the City establishes the foregoing by a preponderance of the evidence, the Appellant may then refute that establishment through Appellant's own testimony and evidence.

4. The preponderance of the evidence standard is at the low end of the spectrum for burden-of-proof evidentiary standards in the U.S. legal system and is more easily met than higher burdens.[5] That said, the Examiner must base his decisions on applicable law (both statutory and case law) and admissible evidence, not on mere speculation or argument alone. In

[4] *Spivey v. City of Bellevue*, 187 Wn.2d 716, 733, 389 P.3d 504, 511~512 (2017); *State v. Paul,* 64 Wn. App. 801, 807, 828 P.2d 594 (1992).

[5] *In re Custody of C.C.M.*, 149 Wn. App. 184, 202-203, 202 P.3d 971, 980 (2009). Another somewhat recent case referred to it thusly: "The lowest legal standard of proof [in the U.S. legal system] requires the proponent to prove its case by a preponderance of the evidence." *Mansour v. King County*, 131 Wn. App. 255, 266, 128 P.3d 1241, 1246-1247 (2006).

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addition, in Washington State, Hearing Examiners generally do not have the jurisdictional authority to base decisions on equitable principles.[6]

5. The City presented evidence and testimony that showed by a preponderance that (a) the NOV was issued, (b) Appellant never responded to the NOV, (c) she did not abate the overgrowth herself, (d) the City did abate the overgrowth through its contractor, and (e) the costs were incurred, customary and reasonable. *FoF 2, 3, and 5~8*.

6. The Appellant provided no evidence to refute the City's *prima facie* case. While her submission of her tax return (*Ex. A-1*) does show limited financial means, she presented no authority that would allow the Examiner to address her financial situation in the context of the billed abatement costs such that he could "[r]educe the amount billed, or waive the costs" under TMC 8.30.130.I.

7. Any finding herein which may be deemed a conclusion is hereby adopted as such.

ORDER

1. The City met its burden of proof under TMC 8.30.130.H. The Appellant was unsuccessful in refuting the City's evidence.

2. Therefore, the Appellant's appeal in DENIED.

3. The abatement costs stand as invoiced by the City. *Ex. R-18*.

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[6] *Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 689 P.2d 1084 (1984).

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4. Given the Appellant's financial status, the City should allow her maximum flexibility in scheduling the repayment of the abatement costs.

DATED this 22nd day of October, 2025.

JEFF H. CAPELL, Hearing Examiner

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RECONSIDERATION/APPEAL OF EXAMINER'S DECISION

RECONSIDERATION:

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 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 l4 calendar days of the issuance of the Hearing Examiner's decision/recommendation, not 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 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 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, 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. (*Tacoma Municipal Code* 1.23.140)

APPEAL TO SUPERIOR COURT OF EXAMINER'S DECISION:

N O T I C E

Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing Examiner's decision is 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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