

ORDINANCE NO. 2000-11-077

**AN ORDINANCE AMENDING BELLINGHAM MUNICIPAL CODE SECTIONS 11.18.040-11.18.050 AND 2.56.050 TO DESIGNATE THE HEARINGS EXAMINER TO REVIEW TOWING AND IMPOUNDMENT DECISIONS SUBJECT TO APPEAL TO THE MUNICIPAL COURT.**

WHEREAS, the City designates the Hearing Examiner as the appropriate "administrative hearings officer" to review towing and impound decisions pursuant to RCW 46.55.240(1)(d) and finds that such appeals from the Hearing Examiner's decisions to Municipal Court should be in the normal manner rather than de novo,

**NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**Section 1.** Bellingham Municipal Code ("B.M.C.") 11.18.040 shall be amended to read as follows:

***11.18.040 - Redemption Of Impounded Vehicles (Replaces Portions Of Rcw 46.55.120)***

Vehicles impounded by the City shall be redeemed only under the following circumstances:

A. Only the registered owner, a person authorized by the registered owner, or one who has purchased the vehicle from the registered owner, who produces proof of ownership or authorization and signs a receipt therefor, may redeem an impounded vehicle. A person redeeming a vehicle impounded pursuant to BMC 11.18.030 must prior to redemption establish that he or she has a valid driver's license and is in compliance with BMC 11.18.040B. A vehicle impounded pursuant to BMC 11.18.030 or BMC 11.18.020 (3) can be released only pursuant to a written order from the police department, the Hearing Examiner or a court.

B. Any person so redeeming a vehicle impounded by the City shall pay the towing contractor for costs of impoundment (removal, towing and storage) and the administrative fee imposed pursuant to BMC 11.18.070, prior to redeeming such vehicle. Such towing contractor shall accept payment as provided in RCW 46.55.120 (1) (b), as now or hereafter amended. If the vehicle was impounded pursuant to section 11.18.030 and was being operated by the registered owner when it was impounded, it may not be released to any person until all penalties, fines or forfeitures owed by the registered owner have been satisfied.

C. The Hearing Examiner ~~Chief of Police, or his/her designee,~~ is authorized to release a vehicle impounded pursuant to Section 11.18.030 prior to the expiration of any period of impoundment upon the petition of the spouse or domestic partner of the driver, based upon economic or personal hardship to such spouse or domestic partner resulting from the unavailability of the vehicle and after consideration of the threat to public safety that may result from the release of the vehicle, including but not limited to, the driver's criminal history, driving record, license status, and access to the

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vehicle. If the release is authorized, the person redeeming the vehicle still must satisfy the requirements of Section 11.18.040 A. and B.

**D.** Any person seeking to redeem a vehicle impounded as a result of a parking or traffic citation has a right to a hearing before the Hearing Examiner ~~an administrative hearings officer~~ to contest the validity of an impound or the amount of the removal, towing, and storage charges or administrative fee if such request is in writing, in a form approved by the Hearing Examiner ~~Chief of Police~~ and signed by the person, and is received by the Hearing Examiner ~~Chief of Police~~ within 10 days (including Saturdays, Sundays, and holidays) of the earlier date of the date the notice was mailed to such person pursuant to RCW 46.55.110, or the date the notice was given to such person by the registered tow truck operator pursuant to RCW 46.55.120(2) (a). Such hearing shall be provided as follows:

1. If all the requirements to redeem the vehicle, including the expiration of any period of impoundment under section 11.18.030, have been satisfied, then the impounded vehicle shall be released immediately and a hearing as provided for in Section 11.18.040 D. shall be held within 90 days of the written request for hearing.
2. If not all the requirements to redeem the vehicle, including expiration of any period of impoundment under section 11.18.030, have been satisfied, then the impounded vehicle shall not be released until after the hearing provided pursuant to Section 11.18.040 D., which shall be held within 2 business days (excluding Saturdays, Sundays, and holidays) of the written request for hearing.
3. Any person seeking a hearing who has failed to request such hearing within the time specified in Section 11.18.040 D. may petition the Hearing Examiner ~~Chief of Police, or his/her designee~~, for an extension to file a request for hearing. Such request shall only be granted upon the demonstration of good cause as to the reason(s) the request for hearing was not timely filed. For purposes of this section, good cause shall be defined as circumstances beyond the control of the person seeking the hearing that prevented such person from filing a timely request for hearing. In the event such extension is granted, the person receiving such extension shall be granted a hearing in accordance with this chapter.
4. If a person fails to file a timely request for a hearing and no extension to file such a request has been granted, the right to a hearing is waived, the impoundment and the associated costs of impoundment and administrative fee are deemed to be proper, and the City shall not be liable for removal, towing, and storage charges arising from the impoundment.
5. In accordance with RCW 46.55.240 (1) (d), a decision made by the Hearing Examiner ~~an administrative hearings officer~~ may be appealed to Bellingham Municipal Court for final judgment. ~~The hearing on the appeal under this subsection shall be de novo.~~ A person appealing such a decision must file a request for an appeal in Municipal Court within 15 days (including Saturdays, Sundays, and holidays) after the decision of the Hearing Examiner ~~administrative hearings officer~~ and must pay a filing fee in the same amount required for filing of a suit in District Court. If a person fails to file a request for an appeal within the

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time specified by this section or does not pay the filing fee, the right to an appeal is waived and the Hearing Examiner's ~~administrative hearings officer's~~ decision is final.

**Section 2:** B.M.C. 11.18.050 shall be amended as follows

***11.18.050 - Post-Impoundment Hearing Procedures***

Hearings requested pursuant to Section 11.18.040 shall be held by the Hearing Examiner ~~an administrative hearings officer designated by the Chief of Police~~. The Hearing Examiner ~~hearings officer~~ shall determine whether the impoundment was proper and whether the associated removal, towing, storage, and administrative fees were proper. The Hearing Examiner ~~administrative hearings officer~~ shall not have the authority to determine the commission or mitigation of any parking infraction .

**A.** At the hearing, an abstract of the driver's driving record is admissible without further evidentiary foundation and is prima facie evidence of the status of the driver's license, permit, or privilege to drive and that the driver was convicted of each offense shown on the abstract. In addition, a certified vehicle registration of the impounded vehicle is admissible without further evidentiary foundation and is prima facie evidence of the identity of the registered owner of the vehicle.

**B.** If the impoundment is found to be proper, the Hearing Examiner ~~administrative hearings officer~~ shall enter an order so stating. In the event that the costs of impoundment (removal, towing, and storage) and administrative fee have not been paid or another applicable requirements of Section 11.18.040 have not been satisfied or any period of impoundment under Section 11.18.030 has not expired, the Hearing Examiner's ~~administrative hearings officer's~~ order shall also provide that the impounded vehicle shall be released only after payment to the City of any fines imposed on any underlying traffic or parking infraction and satisfaction of any other applicable requirements of Section 11.18.040 B. and payment of the costs of impoundment and the administrative fee to the towing company and after expiration of any period of impoundment under Section 11.18.030.

**C.** If the impoundment is found to be improper, the Hearing Examiner ~~administrative hearings officer~~ shall enter an order so stating and order the immediate release of the vehicle. If the costs of impoundment and administrative fee have already been paid, the Hearing Examiner ~~administrative hearings officer~~ shall enter judgment against the City and in favor of the person who has paid the costs of impoundment and administrative fee in the amount of the costs of impoundment and administrative fee.

**D.** In the event that the Hearing Examiner ~~administrative hearings officer~~ finds that the impound was proper, but that the removal, towing, and storage or administrative fees charged for the impoundment were improper, the administrative hearings officer shall determine the correct fees to be charged. If the costs for impoundment and the administrative fees have been paid, the Hearing Examiner ~~administrative hearings officer~~ shall enter a judgment against the City and in favor of the person who has paid the costs of impoundment and administrative fee for the amount of overpayment.

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E. No determination of any facts made at a hearing under this section shall have any collateral estoppel effect on a subsequent criminal prosecution and such determination shall not preclude litigation of those same facts in a subsequent criminal prosecution.

F. An appeal of the Hearing Examiner's ~~administrative hearings officer's~~ decision in Municipal Court shall be conducted according to, and is subject to, the procedures of this section. If the court finds that the impoundment or removal, towing, storage, or administrative fees are improper, any judgment against the City shall include the amount of the Municipal Court filing fee.

**Section 3.** B.M.C. 2.56.050 is hereby amended as follows:

***2.56.050 - Powers And Jurisdiction***

The Hearing Examiner shall have the power to receive and examine available information, conduct public hearings and prepare a record thereof and enter decisions as provided by ordinance.

A. The decision of the Hearing Examiner on the following matters which shall be within the jurisdiction of the Hearing Examiner notwithstanding any other provision of the Bellingham Municipal Code shall be final unless such decision is appealed to the City Council as provided in this chapter:

1. Applications for preliminary plat approval for subdivisions exceeding nine lots;
2. Appeals from the determination of the Planning and Community Development Director and variances relating to Planned Development Contracts and Design Review Contracts, including Institutional Site Plans, and Design Review Contracts;
3. Appeals provided for in Title 6 of the Bellingham Municipal Code;
4. Appeals provided for in Title 16 of the Bellingham Municipal Code;
5. Appeals arising out of Title 18 of the Bellingham Municipal Code;
6. Variances from the terms of Title 18 of the Bellingham Municipal Code;
7. Appeals of determinations of the Public Works Director provided for in Titles 13, 14 or 15 of the Bellingham Municipal Code;
8. Appeals of determinations of the Parks and Recreation Director provided for in Title 8 or Chapter 13.40 of the Bellingham Municipal Code
9. Applications for co-housing developments.

B. The decision of the Hearing Examiner on the following matters which shall be within the jurisdiction of the Hearing Examiner, notwithstanding any other provision in the Bellingham Municipal Code, shall be final, subject only to judicial challenge:

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1. Applications for conditional use permits pursuant to Chapter 20.16, and adaptive use permits and Landmark special valuation pursuant to Chapter 17.80, of the Bellingham Municipal Code;
2. Applications for variance pursuant to Chapter 20.18 of the Bellingham Municipal Code;
3. Applications for permits, certificates or approvals relating to non-conforming uses pursuant to Chapter 20.14 of the Bellingham Municipal Code;
4. Appeals from determinations and interpretations of the Director of Planning and Community Development provided for in Title 20 of the Bellingham Municipal Code, except for decisions relating to Planned Development Contracts and Design Review Contracts, and appeals from the Landmark Review Board relating to Certificates of Alteration pursuant to Chapter 17.80 of the Bellingham Municipal Code.
5. Applications for permanent, non-exempt home occupation permits, and such temporary, non-exempt home occupation permits as shall be referred to the Hearing Examiner by the Director of Planning and Community Development, pursuant to Section 20.10.045 of the Bellingham Municipal Code;
6. Hearings related to towing and impoundment, pursuant to Chapter 11.18 of the Bellingham Municipal Code, subject to appeal as provided by Section 11.18.050;

C. On the following matters, which shall be within the jurisdiction of the Hearing Examiner notwithstanding any other provision in the Bellingham Municipal Code, the Hearing Examiner shall enter findings of fact, conclusions of law, and recommendations to the City Council:

1. Applications for rezoning of property, except when such rezoning is to be considered as part of adoption of an area-wide comprehensive plan;
2. Formation of a local improvement district;
3. Approval of local improvement district assessments;
4. Petitions for street and alley vacations;

D. In the performance of duties prescribed by this chapter or other ordinances, the Hearing Examiner may:

1. Administer oaths and affirmations, examine witnesses, rule upon offers of proof, receive relevant evidence, and conduct discovery procedures which may include propounding interrogatories and taking oral depositions pursuant to Washington State Court Rules; provided, that no person shall be compelled to divulge information which he could not be compelled to divulge in a court of law;

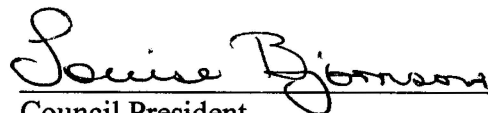
2. Upon the request of the Planning and Community Development Department or any party, or upon the Hearing Examiner's own volition, issue and cause to be served subpoenas for the attendance of witnesses and for the production for examination of any books, records, or other information in the possession or under the control of any witness; provided that such subpoena shall state the name and address of the witness sought, and if for the production of books, documents or things, shall specifically identify the same and the relevance thereof to the issues involved;
3. Regulate the course of the hearing in accordance with this chapter and other applicable ordinances;
4. Hold conferences for the settlement or simplification of the issues by consent of the parties;
5. Dispose of procedural requests or similar matters;
6. Take any other action authorized by ordinance.

In case of failure or refusal without lawful excuse of any person duly subpoenaed to attend pursuant to such subpoena, or to be sworn, or to answer any material and proper question, or to produce upon reasonable notice any material, books, records or other information in his possession and under his control, the Hearing Examiner may invoke the aid of the City Attorney who shall apply to the appropriate court for an order or other court action necessary to secure enforcement of the subpoena.

**E.** The Hearing Examiner is hereby empowered to act in lieu of the Board of Adjustment, the City Council, the Planning Commission and such other officials, Boards or Commissions as may be assigned for those matters listed in subsections A., B. and C. above. Wherever existing ordinances, codes or policies authorize or direct the Board of Adjustment, or other officials, Boards or Commissions to undertake certain activities which the Hearing Examiner has been assigned, such ordinances, codes or policies shall be construed to refer to the Hearing Examiner.

**F.** The Hearing Examiner may include in a decision any conditions of approval that are necessary to insure that the proposal complies with all applicable code criteria and comprehensive plan policies and does not adversely affect surrounding properties.

PASSED by Council this 13TH day of NOVEMBER, 2000.

  
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Council President


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APPROVED by me this 17<sup>th</sup> day of November, 2000.

  
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Mayor

ATTEST:

  
\_\_\_\_\_  
Finance Director

APPROVED AS TO FORM:

  
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Office of the City Attorney

Published: 11/17/00

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