

ORDINANCE NO. 2002-03-020

AN ORDINANCE AMENDING BELLINGHAM MUNICIPAL CODE SECTIONS 7.08.090 AND 2.56.050 TO CHANGE PROCEDURES FOR REDEMPTION OF STRAY DOGS.

WHEREAS, the City wishes to protect the health, welfare and safety of its citizens and their property by preventing dogs from straying; and

WHEREAS, the City has an ordinance in place that requires that any unaltered dogs impounded more than once in a twelve month period be spayed or neutered by the animal control agency prior to the release of the dog; and

WHEREAS, owners of dogs who repeatedly stray, not the taxpaying public, should bear the costs of altering the dogs; and

WHEREAS, the City and the animal control authority recognizes that there are uncommon situations where a dog has been impounded twice or more in a one year period through no fault of its owner; and

WHEREAS, the City desires to provide a fair system of hearings and appeals to afford relief in such cases, consistent with the principles of due process;

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Section 7.08.090 of the Bellingham Municipal Code shall be amended as follows:

7.08.090 - Impoundment - Redemption - Disposition

A. Redemption of Dog by Owner.

(1) Unless otherwise provided in this chapter, the owner of an impounded dog may claim the same at any time prior to sale or disposal by the Humane Society and shall be entitled to possession thereof upon payment of all legal charges and expenses incidental to the impoundment, boarding, and keeping of the dog.

(2) Any unaltered dog impounded more than once within a 12-month period shall be spayed or neutered by the animal control authority prior to the release of the dog. The cost of the spay or neuter shall be charged to the owner, who shall pay the charge prior to redeeming the dog.

(3) The owner of an unaltered dog that has been impounded more than once within a 12-month period may, within 72 hours of impoundment, request a hearing before the animal control authority. If, after consideration of all relevant evidence, the animal control authority determines that the owner has shown good cause to excuse the circumstances leading to the impoundment of the dog, the dog may be released without being subject to the spaying or neutering requirements of sub-paragraph A(2) of

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this section. If good cause is found, the animal control authority may, however, condition the return of the dog in an unaltered state upon the owner's fulfillment of reasonable conditions designed to avert future incidents. The owner may, upon written notice given to the animal control authority and the hearing examiner within 72 hours of the animal control authority's decision, appeal the animal control authority's decision to the City's Hearing Examiner, whose review shall be limited to whether the animal control authority's decision was arbitrary or capricious. The filing of a request for hearing or appeal, upon notice to the animal control authority, shall stay the 72 hour redemption period of paragraph B of this section until the completion of the hearing or appeal.

B. Disposition of Dogs. Any dog not redeemed by its owner within 72 hours of the impoundment, not including Sundays or legal holidays, may be humanely destroyed by an approved method, or may be placed for adoption with a new owner, provided that the new owner agrees in writing to surgically sterilize the dog within one month of maturity; agrees that the dog will not be used, sold, or donated for experimental purposes, and provides proper licensing.

C. Disposition of Sick or Injured Dog. When in the judgment of a licensed veterinarian or the animal control authority, a dog that has been impounded should be destroyed for humane reasons, the dog may be destroyed before the expiration of the required holding period. Such cases must be documented in writing by the Humane Society.

Section 2. Section 2.56.050 of the Bellingham Municipal Code shall be 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 or other decision making body or board 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;

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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:

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;
7. Appeals provided for in Title 7 of the Bellingham Municipal Code.

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

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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;

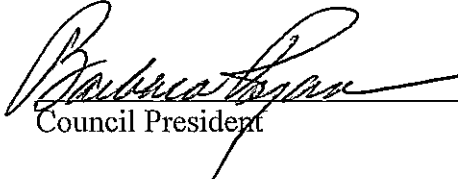
3. Regulate the course of the hearing in accordance with this chapter and other applicable ordinances;
4. Hold conferences for the settlement or simplification of the issues by consent of the parties;
5. Dispose of procedural requests or similar matters;
6. Take any other action authorized by ordinance.

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 18TH day of MARCH, 2002.



Council President

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APPROVED by me this 22nd day of March, 2002.

Mark Atamb
Mayor

ATTEST:

Therese Hol
Finance Director

APPROVED AS TO FORM:

Jean Hoisington
Office of the City Attorney

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