

**CITY OF WASILLA
ORDINANCE SERIAL NO. 09-50**

AN ORDINANCE OF THE WASILLA CITY COUNCIL AMENDING WMC CHAPTER 7.08, ANIMAL CONTROL BOARD; WMC 7.20.080, ANIMAL CLASSIFICATION AND WRITTEN RELEASE ORDER REVIEW BY BOROUGH ANIMAL CONTROL BOARD; AND 7.28.010, IMPOUNDMENT PROCEDURE; TO REPLACE THE ANIMAL CONTROL BOARD WITH A HEARING OFFICER.

Section 1. Classification. This ordinance is of a general and permanent nature and shall become part of the city code.

Section 2. Amendment of chapter. WMC Chapter 7.08, Animal Control Board, is amended to read as follows:

Chapter 7.08 **Hearing Officer** [ANIMAL CONTROL BOARD]

7.08.010 **Hearing officer** [COMPOSITION].

A. Appeals and other proceedings under this chapter shall be heard by a hearing officer. To be appointed as a hearing officer, a person must have knowledge of this title, principles of due process, and animal treatment and behavior. A person may not act as hearing officer in any case in which the person or any member of the person’s immediate family has a substantial financial or personal interest, and must certify to the absence of any such interest on a form provided by the city clerk at the time of selection to hear an appeal or other proceeding. A hearing officer may not be a current city officer or employee.

B. The mayor from time to time shall solicit persons who are willing to serve as hearing officers, shall select qualified persons from among those who

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apply, and submit the names of those who have been selected to the council for approval.

C. The mayor shall maintain a list of persons who have been approved by the council to serve as hearing officers, and upon the commencement of an appeal or other proceeding under this chapter select from the list a person to serve as hearing officer for the appeal or other proceeding.

D. Compensation of a hearing officer shall be determined by council resolution from time to time.

[A. THE ANIMAL CONTROL BOARD SHALL BE COMPOSED OF FIVE MEMBERS WITH ONE ALTERNATE. THE TERM OF EACH APPOINTED MEMBER OF THE BOARD SHALL BE THREE YEARS. THE INITIAL TERMS SHALL BE STAGGERED AS FOLLOWS:

1. ONE FOR A ONE-YEAR TERM;
2. TWO FOR TWO-YEAR TERMS;
3. TWO FOR THREE-YEAR TERMS;
4. THE ALTERNATE'S INITIAL TERM SHALL BE FOR THREE YEARS.

B. MEMBERS OF THE ANIMAL CONTROL BOARD AND THE ALTERNATE SHALL BE APPOINTED BY THE MAYOR, SUBJECT TO CONFIRMATION BY THE ASSEMBLY. THERE SHALL BE ONE MEMBER SELECTED FROM EACH OF THE FOLLOWING GROUPS TO THE EXTENT PRACTICABLE:

1. LICENSED VETERINARIANS;
2. ORGANIZED AND RECOGNIZED ANIMAL INTEREST GROUPS;

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

3. ANIMAL TRAINERS, PREFERABLY EXPERIENCED IN HANDLING PROBLEM ANIMALS;

4. ANIMAL OWNERS FROM THE GENERAL PUBLIC;

5. AN INDIVIDUAL FROM THE GENERAL PUBLIC AT-LARGE.

C. THE ALTERNATE SHALL BE FROM ONE OF THE GROUPS LISTED UNDER SUBSECTION B OF THIS SECTION.

D. PREFERENCE SHALL BE GIVEN THOSE APPLICANTS IN EACH GROUP WHO HAVE EXPERIENCE IN QUASI-JUDICIAL OR SIMILAR MATTERS.

E. THE BOARD MEMBERS SHALL ANNUALLY APPOINT A CHAIRPERSON AND VICE-CHAIRPERSON.

F. WHERE REFERENCE IS MADE IN THIS TITLE TO THE ACTIONS TO BE TAKEN BY THE ANIMAL CONTROL BOARD OR OF THE ANIMAL CONTROL BOARD'S OTHER PROCEDURES, THE CITY MAY CONTRACT WITH AN AGENT TO ACT AS THE ADMINISTRATOR OR HEARING AGENCY OF ACTIONS AND PROCEDURES OF THE CITY.

7.08.020 Jurisdiction.

A. The hearing officer [ANIMAL CONTROL BOARD] has appellate jurisdiction over the chief animal control officer's classification [DETERMINATION] of an animal[S CLASSIFIED] as a nuisance or dangerous [BY THE CHIEF ANIMAL CONTROL OFFICER,] and related written administrative orders, and the forfeiture of an animal[S FORFEITED] pursuant to Section[S] 7.04.100(C)(1) or [AND] 7.20.040(E).

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

B. The hearing officer [ANIMAL CONTROL BOARD] has original jurisdiction over the determination of animals classified as vicious by the chief animal control officer.

7.08.030 Proceedings.

[A. THE BOARD'S P]Proceedings before the hearing officer shall be [GOVERNED BY ROBERT'S RULES OF ORDER, MODERN EDITION, EXCEPT AS OTHERWISE PROVIDED BY THIS TITLE. ALL BOARD MEETINGS SHALL BE] open to the public and electronically recorded [TAPED, AND MINUTES SHALL BE KEPT].

B. Proceedings before the hearing officer shall be subject to the following order and time limitations, unless the hearing officer, for good cause shown, permits a change in the order or an extension of time [AGENDA. THE AGENDA FOR ANIMAL CONTROL BOARD MEETINGS SHALL BE AS FOLLOWS]:

[1. CALL TO ORDER;

2. ROLL CALL, DETERMINATION OF QUORUM, APPROVAL OF

AGENDA;

3. APPROVAL OF MINUTES OF PREVIOUS MEETING;]

1[4]. Opening presentation by city staff: fifteen (15) minutes;

2[5]. Opening presentation by animal owner: twenty (20) minutes;

3[6]. Rebuttal remarks by city staff: ten (10) minutes;

4[7]. Witness statements (witnesses are subject to examination by the

hearing officer [ANIMAL CONTROL BOARD]);

5[8]. Closing remarks by city: ten (10) minutes;

6[9]. Closing remarks by animal owner: ten (10) minutes;

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

7[10]. Rebuttal remarks by city: five minutes;

8[11] Hearing officer's [BOARD'S] deliberation and oral presentation of findings, conclusions and order;

[12. NEXT CASE ON THE AGENDA FOLLOWING THE PROCEDURES SET FORTH IN SUBSECTION (B)(4) THROUGH (11) OF THIS SECTION;

13. OLD BUSINESS;

14. NEW BUSINESS;

15. CORRESPONDENCE, INFORMATION AND REPORTS, INCLUDING ANY REPORTS BY THE CHIEF ANIMAL CONTROL OFFICER;

16. ADJOURNMENT.]

7.08.040 Filing fees.

A. A one hundred dollar (\$100.00) filing fee shall accompany an appeal to the hearing officer [ANIMAL CONTROL BOARD] from the chief animal control officer's classification of an animal as a nuisance or dangerous [A DETERMINATION] and related administrative orders, or a forfeiture of an animal pursuant to Section 7.04.100(C)(1) or 7.20.040(E) [THAT AN ANIMAL IS A NUISANCE, DANGEROUS, VICIOUS, OR FROM AN ANIMAL FORFEITURE DECISION].

B. A one hundred dollar (\$100.00) filing fee shall accompany a request for a hearing before the hearing officer [ANIMAL CONTROL BOARD] to determine an animal's viciousness.

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

C. [A ONE HUNDRED DOLLAR (\$100.00) FILING FEE SHALL ACCOMPANY AN APPEAL FROM A FORFEITURE DETERMINATION MADE PURSUANT TO SECTIONS 7.04.100(C)(1) AND 7.20.040(E).

D.]A person filing an appeal under this section may apply in writing on a form approved by the mayor [MANAGER] for a payment schedule for the filing fee. A person requesting a payment schedule shall be required to have the full amount of the filing fee paid no later than five days prior to the scheduled date of the appeal hearing.

D[E]. A person granted a payment schedule who fails to make the full payment at least five days prior to the hearing date of the appeal shall forfeit the appeal and shall forfeit any money paid to date for the appeal. The decision or order of the chief animal control officer shall remain in effect.

E[F]. A person who files an appeal under this section may withdraw that appeal by a written request to the clerk prior to the day of the appeal hearing. If an appeal is withdrawn, the filing fee shall be reimbursed to the person who filed the appeal based on the following schedule:

<u>Time of Appeal Withdrawal</u>	<u>Amount of Refund</u>
1. Filing date through five days <u>after filing date</u>	100 percent
2. Six through ten days after filing date	50 percent
3. Eleven through fifteen days after filing date	25 percent
4. More than 16 days after filing date	0 percent

7.08.050 Hearings.

A. General Procedures. An appeal or other proceeding under this chapter shall be conducted [ANIMAL OWNER AGGRIEVED BY THE CHIEF ANIMAL

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CONTROL OFFICER'S CLASSIFICATION OF AN ANIMAL, RELATED WRITTEN ADMINISTRATIVE ORDER OR AN ANIMAL FORFEITURE DECISION IS ENTITLED TO A HEARING BEFORE THE ANIMAL CONTROL BOARD,] pursuant to the following procedures:

1. A request for a hearing shall be in writing and filed with the clerk within five days of the date of the chief animal control officer's written administrative order.

2. Within five days of receipt of the written request for a hearing by the clerk, a hearing date shall be set no sooner than twenty (20) calendar days, nor later than thirty (30) calendar days after receipt of the request.

3. The chief animal control officer shall file the record with the city clerk regarding the case within five days after receipt of a notice of appeal.

4. Witness lists, written briefs, and other information to be considered by the hearing officer [ANIMAL CONTROL BOARD] shall be filed by the parties no less than seven days before the hearing.

5. Within ten (10) days after the hearing, [UPON HEARING THE EVIDENCE,] the hearing officer [BOARD] shall deliberate and issue written findings and conclusions based on the [EVIDENCE ON THE] record [WITHIN TEN DAYS OF THE HEARING]. The decision shall include an order stating the amount of fees and costs associated with the care of the animal while the case was pending.

B. Vicious Animal Hearings. Vicious animal hearings include the following additional procedures:

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1. The standard of proof to be applied to vicious animal adjudications is the preponderance of the evidence standard. The preponderance of the evidence standard of proof is met when evidence as a whole shows the facts sought to be proved are more probable than not.

2. All animals found vicious by the hearing officer [ANIMAL CONTROL BOARD] shall be humanely euthanized.

C. Nuisance or Dangerous Animal Hearings. Nuisance or dangerous animal hearings are subject to the following additional procedures:

1. The hearing officer [ANIMAL CONTROL BOARD] shall give deference to the written administrative order issued by the chief animal control officer if the decision of the chief animal control officer is supported by the substantial evidence in the record.

2. The hearing officer [ANIMAL CONTROL BOARD] may affirm, reverse or modify the classification of an animal as a nuisance or dangerous and may modify the written administrative order issued by the chief animal control officer. However, the mandatory conditions set forth in Section 7.20.090 if the animal is classified as a nuisance, or Section 7.20.050 if the animal is classified as dangerous, shall not be modified by the hearing officer [BOARD].

D. Forfeiture Hearings. Forfeiture hearings pursuant to Section 7.04.100(C)(1) or 7.20.040(E) are subject to the following additional procedures:

1. The hearing officer [ANIMAL CONTROL BOARD] shall give deference to the written administrative order issued by the chief animal control officer, and the determination by the chief animal control officer of the fees and expenses to be

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

paid by the owner, if the decision of the chief animal control officer is supported by [THE] substantial evidence in the record.

2. The hearing officer [ANIMAL CONTROL BOARD] may affirm or reverse the chief animal control officer's decision in a forfeiture proceeding.

3. If the hearing officer [ANIMAL CONTROL BOARD] reverses the decision of the chief animal control officer in a forfeiture proceeding, the hearing officer [IT] may order conditions of release prior to releasing the animal to its owner.

E. Substantial Evidence. For the purpose of forfeiture, nuisance and dangerous animal hearings, substantial evidence means the relevant evidence a reasonable mind might accept as adequate to support a conclusion.

7.08.060 Reconsideration.

The hearing officer [ANIMAL CONTROL BOARD] may reconsider a [ITS] decision upon petition of a party [THE PARTIES] who filed a written argument.

A. The motion for reconsideration shall be filed within five business days after the hearing officer's [ANIMAL CONTROL BOARD'S] decision has been mailed or personally served by the chief animal control officer (or agent authorized by contract with the city).

B. The city clerk shall notify the interested parties of a hearing to review the petition and decide whether to reconsider the matter. The hearing officer [ANIMAL CONTROL BOARD] may also hear oral argument of the interested parties. In determining whether to reconsider the matter, no additional evidence shall be taken. A decision shall be reconsidered only if:

1. There was a clerical error in the decision;

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

2. The decision resulted from fraud or mistake; or

3. There is newly discovered evidence or a change in circumstances which, by due diligence, could not have been discovered before the original [ANIMAL CONTROL BOARD] hearing.

C. If the petition for reconsideration is granted, the **hearing officer** [ANIMAL CONTROL BOARD] shall decide the matter immediately or set the matter for rehearing.

D. For purposes of appeal to the appropriate court:

1. Where the **hearing officer** [ANIMAL CONTROL BOARD] denies the petition for reconsideration, the **hearing officer's** [ANIMAL CONTROL BOARD'S] decision on the petition for reconsideration is the final decision;

2. Where the **hearing officer** [ANIMAL CONTROL BOARD] grants the petition for reconsideration, the **hearing officer's** [ANIMAL CONTROL BOARD'S] decision on reconsideration is the final decision.

7.08.070 Appeals to Superior Court.

A. Appeals by the animal owner or **city** [MUNICIPALITY] from the written decision of the **hearing officer** [ANIMAL CONTROL BOARD] shall be to the superior court and governed by the 600 Series of the Alaska Rules of Appellate Procedure. The city clerk (or agent authorized by contract with the city) shall estimate the cost of preparing the transcript of the [PUBLIC] hearing and compiling the record on appeal. The appellant shall deposit the estimated costs for preparation of the transcript and record with the city clerk in advance. Upon completion of the record on appeal, the city clerk shall refund any excess deposit or charge to the appellant for costs exceeding the deposit.

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B. The hearing before the Superior Court is an administrative appeal heard solely on the record established before the hearing officer [ANIMAL CONTROL BOARD].

7.08.080 Fees upon appeal.

An animal whose owner is awaiting a decision on appeal may remain in impoundment at the chief animal control officer's sole decision. The owner is responsible for all fees and expenses reasonably incurred from the date of impoundment. A request to appeal a decision of the chief animal control officer to the hearing officer [ANIMAL CONTROL BOARD] shall be accompanied by advance payment of room and board fees calculated from the date of the decision of the chief animal control officer to the date set for hearing by the hearing officer [ANIMAL CONTROL BOARD].

Section 3. Amendment of section. WMC 7.20.080, Animal classification and written release order review by borough animal control board, is amended to read as follows:

7.20.080 Animal classification and written release order review by hearing officer [BOROUGH ANIMAL CONTROL BOARD].

A. An owner aggrieved by the classification or the written release order for an animal as nuisance, dangerous or vicious may have the decision reviewed by the hearing officer [ANIMAL CONTROL BOARD] as set forth Chapter 7.08.

B. A victim or victim owner aggrieved by the decision of the chief animal control officer's classification or conditional release order for an animal where classification resulted from an incident involving the victim or victim owner may appeal

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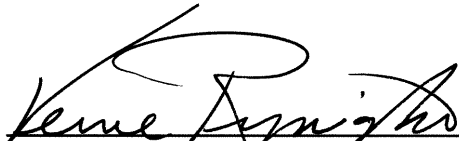
that decision to the hearing officer [ANIMAL CONTROL BOARD] by following the procedures set forth in Chapter 7.08 and paying the required costs and filing fees. If the victim is under the age of majority the victim's parent or authorized guardian may appeal the decision.

Section 4. Amendment of subsection. Subsection D of WMC 7.28.010, Impoundment procedure, is amended to read as follows:

D. Vicious Animals. All vicious animals shall be impounded whenever possible and held at the animal control shelter. If the owner of a vicious animal can be located within the holding period set forth in subsection A of this section, a hearing before the hearing officer [ANIMAL CONTROL BOARD] may be held at the owner's request pursuant to Chapter 7.08 to adjudicate the animal as vicious.

Section 5. Effective date. This ordinance shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on June 22, 2009.


VERNE E. RUPRIGHT, Mayor

ATTEST:

KRISTIE SMITHERS, MMC, City Clerk

[SEAL]

Vote: Cox, Hall, Harris, Holler, and Larson in favor. Woodruff absent.

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**CITY OF WASILLA
LEGISLATION STAFF REPORT**

Ordinance Serial No. 09-50: AMENDING WMC CHAPTER 7.08, ANIMAL CONTROL BOARD; WMC 7.20.080, ANIMAL CLASSIFICATION AND WRITTEN RELEASE ORDER REVIEW BY BOROUGH ANIMAL CONTROL BOARD; AND 7.28.010, IMPOUNDMENT PROCEDURE; TO REPLACE THE ANIMAL CONTROL BOARD WITH A HEARING OFFICER.

Agenda of: June 8, 2009
Originator: Deputy Administrator

Date: June 1, 2009

Route to:	Department	Signature/Date
X	Chief of Police	<i>JC Palmer</i>
X	Director of Finance	<i>[Signature]</i> 6-1-09
X	Deputy Administrator	<i>Marion L. Gale</i> 5/11
X	City Clerk	<i>[Signature]</i>

REVIEWED BY MAYOR VERNE E. RUPRIGHT: *[Signature]*

FISCAL IMPACT: yes\$ or no Funds Available yes no

Account name/number:

Attachments: Ordinance Serial No. 09-50 (12 pp)

SUMMARY STATEMENT:

AM 09-27 is a contract with the Mat-Su Borough for Animal Control Services. The Contract designates fees for specific services such as emergency animal pickup and shelter. The contract does not provide for any legal or adjudicatory services. Those are Wasilla's responsibility.

As staff we concluded this can be handled by having the code enforcement or another officer issue a citation. It will then be handled as any other municipal ordinance citation.

A more difficult fix is what to do with dog classified as "Vicious". Our Ordinance envisions an Animal Control Board to hear appeals. We do not have a board in place and haven't for years. The Borough is not contracting to take this task.

We are proposing this ordinance to allow the City to appoint a hearing officer, as needed, instead of establishing a board to hear any appeal which may be filed.