

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2012-16 (SUB 1)

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING TITLE 7, ANIMALS, AND ADDING SECTION 7.08.011, INVESTIGATION OF CRUELTY TO ANIMALS COMPLAINTS, AND SECTION 7.08.015, SEIZURE OF ANIMALS

WHEREAS, the City of Dillingham (City) is recommending changing the length of time an animal can be held before being put up for adoption based on the City's standard operating procedures and State law as it pertains to animals taken into protective custody; and

WHEREAS, two new sections were added to Chapter 7.08, Animal Care, Section 7.08.011, Investigation of Cruelty to Animals Complaints, and Section 7.08.015, Seizure of Animals;

WHEREAS, the Dillingham Municipal Code was not updated when the position of Community Service Officer was replaced with Animal Control Officer in 2011; and

WHEREAS, the City is looking to make several other minor adjustments to Title 7, Animals;

BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Classification. This is a code ordinance.

Section 2. Amendment of Chapter 7.02, Definitions. Chapter 7.02 of the Dillingham Municipal Code is hereby amended as follows with new language in **bold letters** and underlined and deleted language in CAPS and [brackets].

Chapter 7.02 DEFINITIONS.

7.02.010 Definitions.

"Animal Control agent" is the person acting on or in behalf of the [COMMUNITY SERVICE OFFICER] **animal control officer** enforcing the provisions of this title.

[“COMMUNITY SERVICE OFFICER”] **Animal Control Officer** is the person designated by the city manager as having the responsibility of enforcing the provisions of this title.

"Animal Control Center" is any area, temporary or permanent, designated by the [COMMUNITY SERVICE OFFICER] **animal control officer** for the holding of animals. A center can be publicly or privately owned and operated.

"Unweaned animal" means an animal **younger than six weeks old** [TOO YOUNG TO BE WEANED], separated from the care of its mother, and/or an animal still dependent on its mother's milk.

Section 3. Amendment of Chapter 7.05, Animal control center. Chapter 7.05 of the Dillingham Municipal Code is hereby amended as follows with new language in **bold** letters and underlined and deleted language in CAPS and [brackets]. The proposed changes would extend the line of authority, and replace references to community service officer with animal control officer.

Chapter 7.05 Animal Control.

7.05.010 Animal control center.

A. The city shall maintain an animal control center under the direction of the city manager **or the city manager's designee.**

7.05.020 [COMMUNITY SERVICE OFFICERS] Animal control officers and agents.

A. A person designated by the city manager, as [COMMUNITY SERVICE OFFICER] **animal control officer** may be responsible for domestic animal registration, rabies vaccinations, investigation of animal bites, complaints, maintaining the animal control program and the animal control center, enforcement and issuance of civil citations, and the destruction and disposal of vicious or unwanted domestic animals.

Section 4. Amendment of Chapter 7.07 Animal Behavior. Chapter 7.07 of the Dillingham Municipal Code is hereby amended as follows with new language in **bold** letters and underlined and deleted language in CAPS and [brackets].

Chapter 7.07 Animal Behavior.

7.07.010 Animals creating disturbance or nuisance.

1. The [COMMUNITY SERVICE OFFICER] **animal control officer** or agent may, upon receiving a complaint alleging chronic animal noise, investigate and, if necessary, issue a warning notice to the animal owner or keeper.
3. Citations for chronic animal noise shall only be issued upon one of the following:
 - a. A complaint sworn by two or more persons living at different addresses, one of whom must be the original complainant, in the immediate neighborhood of the animal making the chronic noise and after completion of an investigation by [COMMUNITY SERVICE OFFICER] **animal control officer** or agent indicates that a citation is appropriate; or
 - b. A complaint sworn by one person living in the immediate neighborhood of the chronic noise where additional date and time specific evidence is provided and after completion of an investigation by [COMMUNITY SERVICE OFFICER] **animal control officer** or agent indicates that a citation is appropriate.

7.07.020 Dangerous animals.

A. The [COMMUNITY SERVICE OFFICER] **animal control officer** or agent has the authority to determine whether any animal has engaged in the behaviors specified in this section, thereby deeming the animal dangerous.

B. It is unlawful for any owner or keeper to permit it to:

1. Growl, snap at, jump upon, or otherwise menace, injure, or frighten persons or other animals; provided that this subsection shall not apply if the person or animal is trespassing or otherwise acting in violation of the law.
2. Chase, run after, or jump at vehicles or persons using the public thoroughfares within the city limits.

C. A person who owns or is in lawful possession of property upon which there is an animal who acts in the manner described in subsection B of this section, or who observes an animal who acts in the manner described in subsection B of this section, on public property or a public thoroughfare may take the animal into custody and hold the animal pending transfer to a [COMMUNITY SERVICE OFFICER] **animal control officer** or agent; provided no animal may be held in such private custody for more than twenty-four hours. A person who takes an animal into custody under this subsection shall:

1. Immediately call the [COMMUNITY SERVICE OFFICER] **animal control officer** or agent to request a pick up of the animal.
2. File a written witness statement with the [COMMUNITY SERVICE OFFICER] **animal control officer** or agent, describing the incident.

D. Any animal who acts in the manner described in subsection B of this section, may be immediately impounded by the community service officer or agent. The [COMMUNITY SERVICE OFFICER] **animal control officer** or agent shall take the written witness statement of the person holding the animal or the written witness statement and may issue to the owner or keeper of the dangerous animal a citation or warning to comply. (Ord. 03-06 § 1 (part), 2003.)

7.07.030 Vicious Animals.

A. Any animal who bites a person or animal without provocation, or which, by its actions, gives indication that it is able to bite any person or animal without provocation, shall be deemed vicious.

B. Any animal who bites a person or animal without provocation and is currently vaccinated, shall be immediately quarantined for no less than ten days at the expense of the owner. A date of euthanasia for the animal shall be scheduled for no less than forty-eight hours after completion of quarantine.

C. Any animal who bites a person or animal without provocation and is unvaccinated, shall be immediately impounded and quarantined for no less than ten days at the expense of the owner or keeper, and the owner or keeper may be found in violation of Chapter 7.13, subject to fees and/or fines established within Sections 7.16.010 and 7.16.020, and to comply with Chapter 7.14. Before completion of quarantine, the owner or keeper will be given a written notice of the date of euthanasia. A date of euthanasia shall be scheduled for no less than forty-eight hours after completion of quarantine.

D. Vicious animals shall be euthanized, as established in Section 7.11.010, by the [COMMUNITY SERVICE OFFICER] **animal control officer** or agent not less than forty-eight hours after providing actual written notice to the owner or keeper of the dog, by hand delivery to the owner or keeper, or by posting at the last known residence of the owner or keeper. Such notice shall advise the owner or keeper of the following:

1. Planned time of euthanization of the animal;

2. That the animal will be impounded and/or quarantined immediately upon issuance of notice;

3. That the owner or keeper has an opportunity to be heard before the city manager, or the city manager's designee, should they wish to appeal the [COMMUNITY SERVICE OFFICER'S] animal control officer's or agent's determination that the animal is vicious.

E. The issues to be considered at any appeal hearing shall be limited to the following:

1. Whether the animal bit a person or domestic animal;

2. Whether the animal caused damage to property;

3. Whether the bite or damage was without provocation;

4. Whether the animal by its actions, gave indication that it is able to bite any person or animal without provocation.

F. The owner or keeper of an animal deemed vicious has the option to have such animal euthanized by someone of their choosing (i.e., veterinarian, close acquaintance, etc.), providing proof of date, time, and location to community service officer or agent of the euthanasia.

G. Animals whose owner or keeper cannot be identified or located by the [COMMUNITY SERVICE OFFICER] animal control officer or agent shall be impounded and quarantined for no less than ten days before being euthanized. If during such quarantine the owner or keeper becomes known, or a person claims to be the owner or keeper, that person shall be provided notice pursuant to subsection D of this section.

H. Any animal deemed vicious and reasonably suspected of being rabid may, at the discretion of the [COMMUNITY SERVICE OFFICER] animal control officer or agent, be euthanized, before completion of quarantine and without notice to the owner or keeper. (Ord. 03-06 § 1 (part), 2003.)

Section 5. Amendment of Chapter 7.08.020(A). Chapter 7.08.020(A) of the Dillingham Municipal Code is hereby amended to read as follows:[new language in bold letters and underlined and deleted language in CAPS and [brackets]:

A. [THE CITY COMMUNITY SERVICE OFFICER] **Before a police officer or animal control officer or agent may take an animal and place it into protective custody, the police officer shall request an immediate inspection and opinion by a veterinarian licensed under AS 08.98 that placement into protective custody is in the immediate best interest of the animal. If a veterinarian is not available to perform an inspection, before a peace officer may take an animal, the peace officer shall communicate with a veterinarian who has, after hearing a description of the condition of the animal and its environment, advised either orally or in writing that it is in the immediate best interest of the animal that it be placed into protective custody. If the officer is not able to communicate with a veterinarian, before the officer may take an animal and place it into protective custody, if in the judgment of the officer it is in the immediate best interest of the animal that it be placed into protective custody.** [SHALL HAVE THE DISCRETION TO DECIDE IF ANY ANIMAL SUBJECTED TO CRUELTY AS DESCRIBED IN SECTION 7.08.010, MAY BE TAKEN, IMPOUNDED AND/OR QUARANTINED, IN WHICH CASE THE ANIMAL SHALL BE DEEMED IN PROTECTIVE CUSTODY].

Section 6. Amendment of Chapter 7.08 Animal care. Chapter 7.08 of the Dillingham Municipal Code is hereby amended by adding two new sections to be numbered 7.08.011 and 7.08.015 to read as follows : The proposed changes would add a section on investigation of cruelty to animals complaints and on the language

7.08.011 Investigation of cruelty to animals complaints.

A person who believes that cruelty to animals has taken place may file a written complaint with the public safety department.

7.08.015 Seizure of animals.

A. A police officer shall place an animal in protective custody before removing the animal from the location where it was found. If the animal is removed, the police officer shall place the animal with a veterinarian licensed under AS 08.98 or, if a veterinarian is not readily available, with a responsible public or private custodian who has previously volunteered to accept animals seized under this Chapter and who has been accepted as a custodian by the City to be sheltered, cared for, and provided necessary medical attention.

B. A police officer who has removed an animal shall immediately notify the animal's owner in writing of the removal and of the owner's right to petition the court under this Chapter for return of the animal. Notification may be delivered in person, posted at the owner's residence, or mailed to the owner.

C. If a removed animal's owner is unknown and cannot be ascertained with reasonable effort, the animal shall be considered a stray or abandoned.

Section 7. Amendment of Section 7.08.020 . Section 7.08.020 of the Dillingham Municipal Code is hereby amended as follows with new language in **bold** letters and underlined and deleted language in CAPS and [brackets]. The proposed changes would extend the line of authority, and replace references to community service officer with animal control officer.

7.08.020 Protective custody.

A. The [COMMUNITY SERVICE OFFICER] **animal control officer** or agent shall have the discretion to decide if any animal subjected to cruelty as described in Section 7.08.010, may be taken, impounded and/or quarantined, in which case the animal shall be deemed in protective custody.

B. The decision made by the veterinarian or the police officer authorizing the destruction of an animal destroyed under this chapter is a discretionary act as that phrase is used in AS 09.65.070(d)(2). A person may not recover damages for the destruction of the animal unless the owner shows that the destruction was an abuse of discretion.

[B.] C. Custody of the animal may not be regained by the owner or keeper while a prosecution for cruelty is pending. The owner or keeper may be subject to fees and/or fines for duration of impoundment and/or quarantine described in Sections 7.16.010 and 7.16.020.

[C.] D. Upon a defendant's conviction for cruelty under this title or AS 11.61.140, the court may order that the defendant forfeit ownership, custody, and control of the animal which was the subject of the cruelty.

[D.] **E.** Unless otherwise ordered by the court, the owner or keeper of an animal impounded pursuant to this section may redeem the animal as provided in Chapter 7.03 after completion of the prosecution.

Section 8. Amendment of Chapter 7.09 Impoundment. Chapter 7.09 of the Dillingham Municipal Code is hereby amended as follows with new language in **bold** letters and underlined and deleted language in CAPS and [brackets].

Chapter 7.09 Impoundment.

7.09.010 Terms.

A. Unidentified animals found to be in violation of this title may be impounded and held at the animal control center for a [FIVE-] **ten** day period. If not claimed by the owner or keeper by the expiration of the [FIVE-] **ten** day period, the animal shall become the property of the city and may be destroyed at the discretion of the [COMMUNITY SERVICE OFFICER] **animal control officer** or agent.

B. Identified animals found to be in violation of this title and found not restrained may be taken to the owner or keeper or impounded at the animal control center. A reasonable attempt will be made to notify the owner or keeper by phone, in person, or by letter that their animal is being held at the animal control center. Identified animals not claimed by the owner or keeper by the expiration of the [FIVE-] **ten** day period shall become the property of the city and may be disposed of at the discretion of the [COMMUNITY SERVICE OFFICER] **animal control officer** or agent.

C. Abandoned or unwanted animals brought to the animal control center by citizens for impoundment may or may not be accepted for impoundment by the city. Upon acceptance, such animals shall become the property of the city and may be disposed of at the discretion of the [COMMUNITY SERVICE OFFICER] **animal control officer**.

Section 9. Amendment of Chapter 7.10 Adoption. Chapter 7.10 of the Dillingham Municipal Code is hereby amended as follows with new language in **bold** letters and underlined and deleted language in CAPS and [brackets]. The proposed changes would bring this section in line with the City of Dillingham's procedures for operating an animal shelter..

Chapter 7.10 Adoption.

7.10.010 Adoption Requirements.

A. A person may adopt an animal that is held in the care and custody of the city and/or animal control center no sooner than [FIVE-] **ten** days after the date of impoundment unless the city has received a release from the owner. They shall pay the adoption fee established under Section 7.16.010.

B. If the person interested in adoption had been previously registered to the potential adoptee or known to have been the keeper of the animal, the person upon adoption shall pay all applicable fees and penalties established in Section 7.16.010.

C. An owner may prevent the animal's adoption by

(1) petitioning the Superior Court for the Third Judicial District in Dillingham for the animal's immediate return, subject, if appropriate, to court-imposed conditions; or

(2) posting a bond or security with the City of Dillingham in an amount determined by the city manager to be sufficient to provide for the animal's care for a minimum of 30 days from the date the animal was removed.

D. If the animal control officer still has custody of the animal when the bond or security posted expires and the court has not ordered an alternative disposition, the animal becomes the city's personal property. If the court has not allowed the city to adopt out the animal and the city continues to care for the animal, the owner of the animal shall post a bond or otherwise pay in advance for the City's continuing costs of care for the animal until a final decision is made by the trial court.

Section 10. Amendment of Chapter 7.11 Euthanasia. Chapter 7.11 of the Dillingham Municipal Code is hereby amended as follows with new language in **bold** letters and underlined and deleted language in CAPS and [brackets]. The proposed changes would bring this section in line with the City of Dillingham's procedures for operating an animal shelter, and would replace references to community service officer with animal control officer.

Chapter 7.11 Euthanasia.

7.11.010 General.

A. The following animals may be euthanized at any time:

1. An animal exhibiting symptoms of a major infectious or contagious disease, as determined by a licensed veterinarian if available, that is a danger to the health and safety of the public or other animals within the city.
2. An animal that in the judgment of the [COMMUNITY SERVICE OFFICER] **animal control officer** or agent is injured or suffering to the extent that it should be euthanized for humane reasons. When possible the opinion of a licensed veterinarian will be obtained prior to euthanasia under this subsection.
3. An animal deemed dangerous or vicious.
4. An animal, not the subject of a pending hearing or court decision, who poses an unreasonable risk of physical injury and/or is deemed dangerous or vicious.
5. An adoption eligible animal, remaining unadopted following expiration of the [FIVE-] **ten** day minimum term of availability in Section 7.09.010.

B. Euthanasia of an animal shall be accomplished by a licensed veterinarian, or a technician trained and certified under the "Permit For Use of Drugs To Euthanize Domestic Animals" as specified in AS 08.02.050.

C. The [COMMUNITY SERVICE OFFICER] **animal control officer** shall maintain a list of animals euthanized including a description of the animal and the condition for euthanasia, available for review by the general public.

D. Except as provided in A. 1, 2 and 3 of this Section, an animal exhibiting symptoms of a major infectious or contagious disease as determined by a licensed veterinarian if available, or who in the judgment of the animal control officer or agent is injured or diseased to such an extent that it should be euthanized for humane reasons, an animal

may not be euthanized within 10 business days after the animal is taken into custody. An owner may prevent the animal's destruction by

(1) petitioning the Superior Court for the Third Judicial District in Dillingham for the animal's immediate return, subject, if appropriate, to court-imposed conditions; or

(2) posting a bond or security with the City of Dillingham in an amount determined by the city manager to be sufficient to provide for the animal's care for a minimum of 30 days from the date the animal was removed.

E. If the animal control officer still has custody of the animal when the bond or security posted expires and the court has not ordered an alternative disposition, the animal becomes the city's personal property. If the court has not allowed the city to euthanizing or adopt out the animal and the city continues to care for the animal, the owner of the animal shall post a bond or otherwise pay in advance for the City's continuing costs of care for the animal until a final decision is made by the trial court.

Section 11. Amendment of Chapter 7.15 Incidence of Rabies. Chapter 7.15 of the Dillingham Municipal Code is hereby amended as follows with new language in **bold** letters and underlined and deleted language in CAPS and [brackets]. The proposed changes would replace references to community service officer with animal control officer.

Chapter 7.15 Incidence of Rabies

7.15.010 Handling requirements.

A. The city [COMMUNITY SERVICE OFFICER] **animal control officer**, under the direction of the city manager, shall cooperate with other agencies in establishing a rabies control program for the city.

B. All persons shall report to a [COMMUNITY SERVICE OFFICER] **animal control officer** or agent any suspected or positively diagnosed occurrence of rabies as soon as such occurrence becomes known to the person.

D. Any loose animal suspected of rabies, running at large uncontrolled and evading attempts to be caught shall be shot by a [COMMUNITY SERVICE OFFICER] **animal control officer** or agent and the head sent to the appropriate laboratory for examination of rabies disease.

E. Only a [COMMUNITY SERVICE OFFICER] **animal control officer** or agent may remove the carcass of any suspected or confirmed rabid animal from the location where the animal was killed or found.

F. The carcass of an animal suspected of being rabid shall upon demand be surrendered to a [COMMUNITY SERVICE OFFICER] **animal control officer** or agent or to the Department of Health and Social Services. (Ord. 03-06 § 1 (part), 2003.)

Section 12. Amendment of Chapter 7.16 Fees, Fines, and Failure to Comply. Chapter 7.16 of the Dillingham Municipal Code is hereby amended as follows with new language in **bold** letters and underlined and deleted language in CAPS and [brackets]. The proposed changes would replace references to community service officer with animal control officer.

Chapter 7.16 Fees, Fines, and Failure to Comply

7.16.030 Allocation of fees.

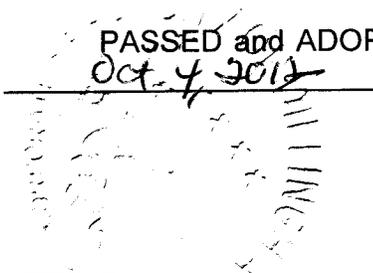
A. Those fees and fines obtained by the city of Dillingham through registration, adoption, and/or Title 7 violations of animals, may, subject to annual appropriation therefore, be allocated to events organized to educate, encourage, and provide opportunity for vaccination and sterilization of animals for Dillingham residents.

B. A program for educating and enhancing Dillingham residents' access to vaccination and sterilization opportunities may be coordinated by the [COMMUNITY SERVICE OFFICER] **animal control officer** or agent. Events may include but not be limited to spay/neuter clinics and printed or recorded public information. (Ord. 03-06 § 1 (part), 2003.)

Section 13. Effective Date. This ordinance is effective upon passage.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on

Oct. 4, 2012



SEAL:

Alice Ruby
Alice Ruby, Mayor

ATTEST:

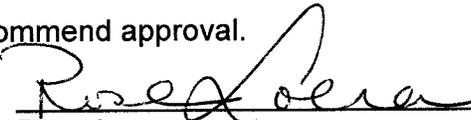
Janice Williams
Janice Williams, City Clerk

Subject: An ordinance of the Dillingham City Council amending Title 7, Animals, and adding Chapters 7.08.011, Investigation of cruelty to animals, and 7.08.015, Seizure of animals

Agenda of: October 4, 2012

Council Action:

Manager: Recommend approval.

City Manager: 
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Chief of Police / Nancy Chamberlain	NJC	
X	City Clerk / Janice Williams	JW	

Fiscal Note: Yes _____ No X Funds Available: Yes _____ No _____

Other Attachment(s):

- Memorandum from Atty. Chandler, dated September 21, 2012

Summary Statement.

Ordinance No. 2012-16 has been vetted through the Code Review Committee and the City's Attorney. However, the Attorney's comments were not received until after the ordinance was introduced. His comments were vetted back through the committee, reviewed, and the ordinance was amended as Ordinance No. 2012-16 (SUB 1). The ordinance was further amended based on the Attorney's memo of September 21, of which a copy is attached.

An advertisement for a public hearing on Ordinance No. 2012-16 was advertised in the Bristol Bay Times, September 27 edition, to meet the mandatory requirement that a public hearing of a proposed ordinance shall follow publication by at least five days.

(Clerk Note: At the Council meeting on October 4, 2012 the substitute ordinance will be recommended for adoption and the process will go as follows:

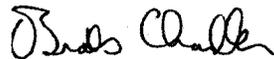
"I move to amend Ordinance No. 2012-16 by substituting Ordinance No. 2012-16 (SUB 1)." The Council will vote on the amendment.

If the amendment is approved the Council will vote on whether to adopt Ordinance No. 2012-16 (SUB 1.)

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MEMORANDUM

TO: JANICE WILLIAMS, CITY CLERK



FROM: BROOKS CHANDLER
CITY ATTORNEY

DATE: SEPTEMBER 21, 2012

RE: ANIMAL CONTROL ORDINANCE

This memorandum expands upon our comments to the draft animal control ordinance.

The draft ordinance adds some new code provisions pretty much word for word from Chapter 3.55 of the Alaska Statutes. We are not sure if the folks working on the ordinance assumed these provisions applied in Dillingham or whether they wanted them to apply. If they presumed they already applied the answer, in our opinion, is no. We believe that under AS 29.35.200(b)(5) the City's animal control ordinance trumps the AS 3.55 provisions. These would apply only outside city boundaries or in instances where a city has not adopted animal control provisions. So the draft ordinance may be based on a mistaken assumption.

On the other hand, the committee may have thought these provisions were a good idea for Dillingham- a perfectly legitimate viewpoint. If that is the case, I do have some additional concerns to point out.

Proposed DMC 7.011(B) in my opinion is not necessary to provide authority to seek a search warrant. Under DMC 7.08.010 it is a crime to fail to provide proper care to an animal. As a general matter of law, police officers who have probable cause to believe a crime has been

committed may obtain a search warrant. It is not necessary to specify this process for each particular unlawful act. So I do not believe this provision is necessary in Dillingham even though it is included in AS 03.55.

Section 7.08.011(C) could be cumbersome depending on the availability of veterinarians. In addition, it creates a conflict with 7.08.020(A) which allows the animal control officer to take animals into custody using their discretion without consulting a vet. If we do want to include a veterinarian consult requirement, rather than adopt 7.08.011(C) as a new section we should rework 7.08.020(A).

Similarly, rather than adopt a new section 7.08.020(C), any tweaks to euthanasia or adoption should be reflected in changes to DMC 7.11 and 7.10. That way someone that wants to know the rules and process can find them in a single chapter. For example, changing the adoption holding period from five days to ten days is a simple one word amendment to DMC 7.10.010(A).

Everyone should recognize that any court process associated with preventing euthanasia or adoption will usually be lengthy. Courts will not elevate the priority of these cases. The costs associated with long term city care of animals whose owners are petitioning courts will be significant. So this remedy may look better to dog owners on paper than it is in practice.

The change we previously recommended to section 7.08.020(B) was done to reduce the potential liability for destruction or loss of an animal of both the city and whatever private veterinarian may be involved in these decisions. Under Alaska law damages are extremely limited in this type of case, however, the costs of defending claims could be significant. It is much more difficult to prove that discretion was abused than it is to prove that someone acted negligently. It is possible those working on the ordinance want to make it easier to win these kinds of lawsuits. If that is the recommendation of the committee the changes we suggested to this section of the draft ordinance should be removed.

Because I was not sure if the committee thought the provisions referenced above applied automatically in Dillingham we have not attempted to rework the ordinance based on these comments. This could easily be accomplished so let me know if this is desired.