

OFFICE OF THE CITY ADMINISTRATOR**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The City Administrator, pursuant to section 4(c)(1) of An Act to prevent cruelty to children or animals in the District of Columbia, and for other purposes, approved June 25, 1892 (27 Stat. 61 D.C. Official Code § 22-1004(c)(1)), and Mayor's Order 1988-16 (January 22, 1988), hereby gives notice of the adoption of the following emergency rulemaking. This emergency rulemaking will amend Title 24 of the *D.C. Municipal Regulations* (DCMR) to add a new Chapter 15 to establish hearing procedures at the Washington Humane Society for the owner of a seized animal to be able to contest the seizure, detention, and terms of release and treatment of the animal, the allegation of cruelty, abandonment, or neglect, and the imposition of the lien and costs assessed for caring and providing for the animal.

This emergency rulemaking is necessitated by the immediate need to protect the public welfare by providing a hearing procedure for animal seizures and thereby protect the rights of animal owners subject to such seizures.

This emergency rule was adopted on December 31, 2008, and became effective immediately. This emergency rule will remain in effect for up to one hundred twenty (120) days, unless earlier superseded by a notice of final rulemaking.

The City Administrator also hereby gives notice of the intent to adopt this rule, in final, in not less than thirty (30) days from the publication of this notice in the *D.C. Register*, or upon approval of this rulemaking by the Council, whichever occurs later.

Title 24 of the DCMR is amended by adding a new Chapter 25 to read as follows:

**CHAPTER 15 HEARING PROCEDURES FOR WASHINGTON
HUMANE SOCIETY**

1500 SCOPE AND PURPOSE

1500.1 The purpose of these rules is to establish a notice and hearing process for the owner of an animal seized pursuant to section 4(b)(1) of An Act to prevent cruelty to children or animals in the District of Columbia, and for other purposes, approved June 25, 1892 (27 Stat. 61 D.C.; Official Code § 22-1004(b)(1)) (2001), to contest the seizure, detention, and terms of release; the treatment of the animal; any allegation of cruelty, abandonment, or neglect; and the imposition of any lien and costs assessed for caring and providing for the animal.

1500.2 Copies of these rules shall be available from WHS upon request.

1501 NOTICE OF ACTION OR INTENDED ACTION

1501.1 The President of WHS or his or her designee shall send written notice by certified mail, return receipt requested, to the owner of the animal, within three (3) days of WHS taking possession of the animal under D.C. Official Code § 22-1004(b)(1).

1501.2 The President or his or her designee shall send the written notice to:

- (a) The owner's residential address, if known;
- (b) The owner's business address, if known and the owner's residential address cannot be determined; or
- (c) The address where the seizure took place, if neither the last known residential address nor the last known business address can be determined.

1501.3 The written notice shall include:

- (a) A statement setting forth the action WHS intends to take or has taken;
- (b) A brief description of the facts underlying the action or proposed action, including the time, place and issues involved;
- (c) The specific statute, regulation, rule, or policy supporting the action;
- (d) An explanation of the right to and method for requesting a hearing, including the name to whom a request for a hearing shall be directed, the proper means of contacting that individual, and the deadline for making the request;
- (e) An explanation of the right to be represented by legal counsel or by an individual who is not a lawyer, at the owner's own expense, or to represent himself or herself. A representative shall not be a WHS employee or a District employee whose work assignment includes investigation or adjudicating the District's animal cruelty or animal control laws or regulations;
- (f) An explanation of the right to present documents and witnesses in support of the appeal;
- (g) An explanation of the right to examine the case record; and
- (h) A statement that if the respondent is deaf or cannot readily understand or communicate the English language, he or she may apply to WHS for the appointment of a qualified interpreter.

1502 REQUEST FOR HEARING

- 1502.1 The owner of the animal may request a hearing by giving a timely and clear expression, in writing, that he or she is appealing one or more of the actions or intended actions described in § 1501.3(a). The request must be directed to the person specified by the President or his or her designee in its written notice pursuant to § 1501.3(d).
- 1502.2 A request for a hearing must be received within twenty (20) days of the date of the seizure.
- 1502.3 The owner of the animal shall include in the request for hearing his or her current home mailing address and phone number.
- 1503.4 The owner of the animal may designate another individual to be his or her representative. The owner of the animal shall include in the request for hearing a signed letter designating that individual as his or her representative. The designated representative may sign the request for hearing on behalf of the owner of the animal.

1503 DENIAL OR DISMISSAL OF REQUEST FOR HEARING

- 1503.1 The President or his or her designee may deny a request for a hearing if:
- (a) The sole issue raised by the respondent concerns the plain language of a District statute, regulation, or policy; or
 - (b) The request is not filed within the time period set forth in § 1502.2.
- 1503.2 The President or his or her designee may dismiss a request for a hearing if:
- (a) The respondent or his or her representative:
 - (1) Withdraws the request in writing;
 - (2) Dies; or
 - (3) Without good cause, does not appear at the hearing.
 - (b) The animal is humanely destroyed prior to the hearing pursuant to § 1510.3.

1504 REVIEW OF REQUEST FOR HEARING

- 1504.1 The President or his or her designee may, at any time before or after the hearing, schedule a conference with the respondent and/or his or her representatives, either in person or by phone, to attempt to reach an agreement on conditions for the

return of the animal to the owner. The conference shall not delay the scheduling and holding of the hearing.

1504.2 The President or his or her designee shall grant a formal hearing to any owner of an animal seized under D.C. Official Code § 22-1004(b)(1) who complies with the provisions of § 1502, unless:

- (a) The President dismisses or denies the request for a hearing pursuant to § 1503;
- (b) The President and the respondent agree on conditions for the return of the animal to the owner prior to the formal hearing; or
- (c) The respondent withdraws the request for a formal hearing.

1505 WRITTEN SUMMARY OF REASONS SUPPORTING SEIZURE AND CUSTODY

1505.1 The WHS humane officer who seized the animal shall prepare a written summary explaining the reasons why the humane officer seized the animal and why WHS continues to retain custody of the animal. An incident report qualifies as a written summary under this chapter provided that it complies with § 1505.2.

1505.2 The written summary shall include:

- (a) The facts supporting the humane officer's determination that seizure was necessary to protect the animal from neglect or cruelty, if the seizure was made pursuant to D.C. Official Code § 22-1004(b)(1);
- (b) The actions that the owner must take in order to regain custody of the animal, and
- (c) If the humane officer determines that WHS cannot return the animal to the owner without subjecting the animal to ongoing neglect or cruelty, the facts supporting a determination that WHS should retain permanent custody of the animal.

1505.3 The humane officer may append to the written summary:

- (a) Documentary evidence collected during the course of the investigation, including written notes taken by the humane officer or other WHS employees;
- (b) Physical evidence collected during the course of the investigation;
- (c) Written statements by other WHS employees or third-party witnesses; and

(d) Medical reports based on first-hand examinations of the animal.

1505.4 The humane officer may seek assistance from other WHS employees in the preparation of the written summary.

1505.5 The written summary, and any evidence appended to the summary, shall be completed at least three (3) days before the date of the scheduled hearing. The completed written summary, and any evidence appended to the summary, shall be made available to the respondent and his or her representative for examination and/or duplication. Any duplication costs shall be paid for by the respondent.

1505.6 The failure to make available to the respondent and his or her representatives the written summary and any evidence appended to the summary is good cause for a continuance of the hearing pursuant to § 1507.4.

1506 WRITTEN SUMMARY OF EXPENSES FOR CARE AND PROVISION OF ANIMAL

1506.1 The WHS humane officer who seized the animal shall prepare a written summary of the expenses undertaken by WHS for the care and provision of the animal during the custodial period, if WHS intends to collect expenses from the owner as authorized pursuant to D.C. Official Code § 22-1004.

1506.2 The written summary of expenses shall include:

(a) The expenses for feeding of the animal during the custodial period;

(b) The expenses for lodging of the animal during the custodial period;

(c) The expenses for medical care of the animal during the custodial period, along with the medical records justifying the expenses;

(d) Incidental expenses for the care and provision of the animal during the custodial period; and

(e) The projected expenses from the date on which the written expense summary is filed to the date on which WHS expects to relinquish custody of the animal.

1506.3 The humane officer may seek assistance from other WHS employees in the preparation of the written summary of expenses.

1506.4 The written summary of expenses shall be completed at least three (3) days before the date of the scheduled hearing. The completed written expenses summary shall

be made available to the respondent and his or her representative for examination and/or duplication. Any duplication costs shall be paid for by the respondent.

1506.5 The failure to make available to the respondent and his or her representatives the written summary of expenses is good cause for continuing the hearing under § 1507.4.

1507 PRE-HEARING PROCEDURES

1507.1 The President or his or her designee shall notify the respondent, both in writing and, if possible, by phone, of the date, time, and place of the hearing. The notice shall be provided at least three (3) days in advance of the hearing.

1507.2 The hearing shall be held within ten (10) days of the date of the hearing request, unless the time is extended for good cause.

1507.3 The notice of hearing shall:

- (a) Include a summary of or a copy of the rules governing the hearing process;
- (b) Advise the respondent:
 - (1) Of his or her right to be represented by a lawyer or other person at the hearing, at the respondent's own expense;
 - (2) Of the right to present documents and witnesses, including WHS employees, in support of the appeal;
 - (3) Of the right to examine and duplicate, at respondent's expense, the written summary, and any evidence appended to the summary, described in § 1505 at least three (3) days prior to the date of the hearing;
 - (4) Of the right to examine and duplicate, at respondent's expense, the written summary of expenses described in § 1506 at least three (3) days prior to the date of the hearing;
 - (5) Of the right to examine any part of the case record, except for information that the President or his or her designee classifies as confidential, at least three (3) days prior to the hearing;
 - (6) That if the respondent or a witness is deaf or cannot readily understand or communicate the spoken English language, the respondent may apply to WHS for the appointment of a qualified interpreter and such services will be provided;

- (7) Of the name and telephone number of the person to call if the respondent cannot attend the hearing; and
- (8) That failure to attend the hearing without good cause may result in dismissal of the appeal.

1507.4 The respondent may request a change of the date, time, or place of the hearing. If the President or his or her designee finds that good cause for a change exists, he or she shall set another date, time, or place for the hearing. The time limit established by § 1502.2 shall be extended by the period of delay.

1507.5 The respondent may request, in writing, assistance to secure the attendance at the hearing of any WHS employee. The request shall state the reasons why the employee's attendance is required. If the President or his or her designee decides that the employee's attendance is necessary for the fair determination of the issues on appeal, the President or his or her designee shall require the employee, if still employed by WHS, to be present at the hearing.

1507.6 The President or his or her designee may require the presence at the hearing of any WHS employee.

1507.7 The respondent may examine and/or duplicate the written summary, and any evidence appended to that summary, described in § 1505 at least three (3) days prior to the hearing.

1507.8 The respondent may examine and/or duplicate the written summary of expenses described in § 1506 at least three (3) days prior to the hearing.

1507.9 The respondent may examine any part of the case record, except for information that the President or her designee classifies as confidential, at least three (3) days prior to the hearing.

1508 HEARING PROCEDURES

1508.1 The hearing shall be presided over by the President or his or her designee. The designee may not have been involved in the initial seizure of the animal or in the preparation of the summaries described in § 1505 and § 1506.

1508.2 The President or his or her designee shall receive written and oral documentary evidence, but shall exclude irrelevant, immaterial, and unduly repetitious evidence.

1508.3 The WHS shall present its evidence at the hearing either with the assistance of counsel or through the WHS humane officer who seized the animal and prepared the summaries described in § 1505 and § 1506. The President or his or her

designee and the respondent may examine the humane officer. The summaries described in § 1505 and § 1506 shall be submitted into evidence.

- 1508.4 The President or his or her designee may:
- (a) Examine witnesses introduced on behalf of WHS;
 - (b) Examine witnesses introduced by the respondent;
 - (c) Examine any documentary evidence introduced by the respondent; and
 - (d) Request that the humane officer testify again after the respondent presents his or her case.

- 1508.5 Either WHS or the respondent may:
- (a) Call and examine witnesses;
 - (b) Introduce documentary evidence;
 - (c) Examine any documentary evidence introduced by the humane officer;
 - (d) Cross-examine witnesses presented by the WHS on any matter relevant to the issues under review even if that matter was not covered in the direct examination; and
 - (e) Submit rebuttal evidence.

- 1508.6 Each hearing shall be recorded. The hearing need not be transcribed unless a copy of such record is timely requested by the respondent, who shall bear the costs.

- 1508.7 The recording, exhibits, all papers, requests, and other documents filed in the proceedings, the decisions, and the findings and conclusions constitute the exclusive record of the hearing. The record shall be available to the respondent for a period of two years or until any litigation relating to the decision has ended, whichever is later.

1509 FINAL DECISION OF WHS PRESIDENT

- 1509.1 The President or his or her designee shall prepare a final written decision within five (5) days after the hearing, which shall be mailed to the respondent within three (3) days after the decision. The President or her designee may also call the respondent to inform him or her of the decision.

- 1509.2 The decision shall:

- (a) Be based solely upon the record;
- (b) Make final determinations whether:
 - (1) The animal was subject to neglect or cruelty at the time of the seizure;
 - (2) The animal would be subject to ongoing neglect or cruelty if the owner of the animal regained custody and if so, whether there are any conditions that the owner can satisfy to protect the animal from ongoing neglect or cruelty; and
 - (3) The expenses undertaken by WHS during the custodial period were reasonably necessary to maintain the health of the animal, if WHS intends to collect expenses from the owner as authorized pursuant to D.C. Official Code § 22-1004.
- (c) Be supported by, and in accordance with, reliable, probative, and substantial evidence; and
- (d) Inform the respondent of his or her right to appeal the decision pursuant to § 1513.

1509.3 Consistent with confidentiality requirements, WHS shall prepare periodic compilations of fair hearing decisions and shall make them accessible to the public. The compilations shall not include any identifying information about the owner of the animal.

1510 AUTHORITY OF WHS UNDER D.C. OFFICIAL CODE § 22-1004(B)(2)

1510.1 Except as provided in § 1510.2, WHS may not take any action authorized by D.C. Official Code § 22-1004(b)(2):

- (a) During the period in which the owner maintains a right to request a hearing pursuant to § 1502;
- (b) During the period after the owner has requested a hearing pursuant to § 1502 and before the President or his or her designee has issued a final decision pursuant to § 1509;
- (c) During the period in which the owner maintains a right to request an appeal pursuant to § 1513;

- (d) During the period after which the owner has requested an appeal pursuant to § 1512 and before the District of Columbia Superior Court has issued a decision; and
- (e) During the periods described in § 1511.3; and
- (f) During the period described in § 1514.

1510.2 Notwithstanding § 1510.1, WHS may humanely destroy the animal at any time pursuant to a written determination by a veterinarian that destroying the animal is the only humane way to relieve the animal's suffering.

1511 RETURN OF ANIMAL ON CONDITION OF PROTECTIVE ACTION

1511.1 The President or his or her designee may condition the return of an animal on the owner's agreement to undertake specified actions to protect the animal against ongoing neglect and cruelty.

1511.2 The President or his or her designee may reach agreement with the owner on the conditions for return outside of the formal hearing process or may impose conditions for return in its final decision pursuant to § 1509.

1511.3 WHS may enforce the conditions of return by:

- (a) Requiring that the owner comply with the conditions after the return of the animal. The President or his or her designee may specify a time period, lasting no fewer than fifteen (15) and no more than thirty (30) days, during which the owner must demonstrate compliance with the conditions of the return; or
- b) Requiring that the owner comply with the conditions prior to the return of the animal. The President or his or her designee may specify a time period, lasting no fewer than fifteen (15) and no more than thirty (30) days, during which the owner must demonstrate compliance with the conditions of the return.

1511.4 If the owner has failed to comply with the requirements of release, the President or his or her designee may make a written determination that the owner has failed to comply with the conditions of the animal's release pursuant to § 1511.3, which shall be mailed or delivered to the owner within three (3) days. Such a determination authorizes WHS to retake or maintain custody of the animal pursuant to D.C. Official Code § 22-1004(b)(1).

1512 RETURN OF ANIMAL ON CONDITION OF PAYMENT

1512.1 WHS may require the owner to pay the reasonable expenses incurred by WHS during the custodial period. The reasonableness of the expenses shall be determined by the President or his or her designee, as set forth in § 1509.2(b)(3).

1512.2 WHS may retain custody of the animal until the owner reimburses WHS for such expenses.

1513 APPEAL

1513.1 An owner may seek judicial review before the District of Columbia Superior Court within five (5) days of:

(a) The President or his or her designee mailing notice of a final decision under § 1509.1; or

(b) The President or his or her designee mailing or delivering notice that the owner has failed to comply with the conditions of release pursuant to § 1511.

1514 PENDING CRIMINAL INVESTIGATION OR ACTION

1514.1 The hearing process described in this chapter shall be stayed during the pendency of any criminal investigation or action arising out of the treatment of an animal seized by WHS. The President or his or her designee shall send written notice by certified mail informing the owner that WHS will maintain possession of the animal during the pendency of the criminal investigation or action.

1514.2 At the conclusion of the criminal investigation or action, the President or his or her designee may initiate the hearing process described in this chapter by sending notice to the owner of the animal under § 1501.

1514.3 If the President or his or her designee chooses not to initiate the hearing process under § 1514.2, the President or his or her designee shall send written notice to the owner of the animal setting forth the action WHS intends to take or has taken with the animal.

1515 DEFINITIONS

1515.1 For purposes of this Chapter, the following terms and phrases shall have the meanings ascribed:

“Animal” - the animal or animals seized by a WHS humane officer pursuant to D.C. Official Code § 22-1004.

“Custodial Period” - the period during which WHS maintains custody of the animal after the WHS humane officer seizes the animal pursuant to D.C. Official Code § 22-1004.

“Designee” - any WHS employee designated by the President of WHS to act on behalf of the President under any sub-chapter authorizing or requiring the President to act.

“Owner” - the record owner of the animal or animals seized by a WHS humane officer pursuant to D.C. Official Code § 22-1004.

“President” - the President of WHS.

“Representative” - the individual(s) designated by the respondent to represent the respondent during the hearing process prescribed in this chapter.

“Respondent” - the owner of the animal who requests a hearing under § 1502.

“Washington Humane Society or WHS” - the entity authorized by law to protect animals from neglect or cruelty.

Comments on this rule should be submitted, in writing, to Matthew Kelley, Program Analyst, Office of the City Administrator, 1350 Pennsylvania Avenue, NW, Suite 533, Washington, DC, 20004, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of this rule are available Monday through Friday during normal business hours from the above address.