



CASE REPORT

DANGEROUS ANIMAL DECLARATIONS - PROCEDURAL DUE PROCESS, Charging a fee to obtain evidentiary review of a Dangerous Animal Declaration and providing inadequate standards of proof for the evidentiary hearing violate procedural due process. Downey v. Pierce County, No. 41055-9-II, Court of Appeals Division II (Nov. 29, 2011).

I. Facts. Ms. Downey's Great Pyrenees-mix dog allegedly attacked a seven-pound Pomeranian, injuring her so severely that she had to be euthanized. Subsequently, a Pierce County Animal Control Officer declared the dog a "dangerous animal" and issued a "Dangerous Animal Declaration" ("DAD"). The DAD form advised Downey that she could appeal the DAD to the County auditor by filing a written request and paying a \$250 review fee. If Downey chose not to appeal, the form advised that she could either relinquish her dog or purchase a \$500 dangerous animal permit, tattoo or microchip her dog, and otherwise comply with the Pierce County dangerous animal requirements. The auditor upheld the DAD after holding an informal, unrecorded hearing. Downey then appealed the auditor's decision to the County hearing examiner, which required a \$500 appellate review fee. Downey then filed in Pierce County Superior Court, appealing the hearing examiner's decision affirming the DAD and filing a declaratory judgment/taxpayer's derivative action requesting injunctive and/or declaratory relief. In the declaratory judgment/taxpayers' derivative action, Downey argued that (1) the Pierce County Code requirement that the person challenging a DAD pay a fee for an initial evidentiary hearing violated due process; (2) the Code's appellate fee requirement violated due process; and (3) the Code violated due process by failing to establish an adequate standard of proof and by not giving the auditor subpoena powers. The trial court granted the County's motion for summary judgment, and Downey appealed.

II. Applicable Law and Analysis. The Court of Appeals held that because (1) the Pierce County ordinance requires payment before receiving an evidentiary hearing and (2) the ordinance fails to establish an adequate standard of proof, the ordinance violates procedural due process. Procedural due process requires notice and a meaningful opportunity to be heard prior to depriving an individual of a property interest, such as a pet. Determining what process is due in a given situation requires consideration of (1) the private interest involved, (2) the risk that the current procedures will erroneously deprive a party of that interest, and (3) the governmental interest involved. The Court recognized the private interests of pet owners in keeping their pets, in not having to pay for additional annual registration and inspection fees and liability insurance, and in potentially being subject to criminal liability for violation of dangerous animal regulations. The Court also concluded that there was a high risk of erroneous deprivation if a pet owner cannot pay a review fee without first being given the opportunity for an evidentiary

hearing. The Court found that pet owners' interests and the risk of erroneous deprivation outweighed the governmental interest in protecting the public from dangerous animals and offsetting the expense of conducting preliminary administrative hearings. In addition, because Pierce County's procedures for review before the auditor did not create a record, the Court determined that the "closed nature" of the auditor's hearing still resulted in a high risk of erroneous deprivation, effectively making the hearing examiner's review the first evidentiary hearing offered by Pierce County. Therefore, the Court found that the \$500 review fee for the hearing examiner also violated procedural due process.

Finally, the Court held that the Pierce County Code violated procedural due process because it did not provide for adequate standards of proof. The Code allowed for an animal control officer to issue a DAD if the officer determined there was "probable cause" to believe the animal was dangerous, but the Code only required that the auditor determine if there was "sufficient evidence to support" the DAD. The Court held that this was improper because sufficiency of the evidence is a review standard, not a level of proof. Ultimately, the Court provided that the proper standard of proof to uphold DADs is the preponderance of the evidence standard.¹

III. Conclusion. Cities should revisit their dangerous animal ordinances and appeal procedures to determine if they comply with the procedural due process standards described in *Downey*. At a minimum, the ordinance should not require a fee for an owner to obtain a preliminary evidentiary hearing. The case makes clear that there is no constitutional due process right to appeal civil cases involving only property or financial interests. Therefore, if additional administrative appeals are allowed, fees may be charged for subsequent appeals, but only if the preliminary evidentiary hearing creates a reviewable record. In addition, the ordinance must clearly state that at the first evidentiary hearing, the appropriate standard of proof is the preponderance of the evidence standard. Although this case was limited to discussing dangerous animal ordinances, it may have application to a wider range of administrative hearings as well. Please contact your City Attorney for assistance with reviewing and revising applicable ordinances governing administrative hearings.

¹ Because *Downey* did not adequately direct the Court to any rules, ordinances, or authority establishing exactly what powers the auditor had with respect to subpoenas, *Downey* failed to overcome the presumption that the DAD ordinance is constitutional with respect to subpoena power.