



# Agenda Bill

City Council Regular Business Meeting - 16 Dec 2019

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**Department**

Legal

**Staff Contact**

Lisa Marshall, City Attorney

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**Agenda Bill Title**

Continued Discussion and Potential Action to Adopt Ordinance No. 719, Amending the Criminal Code to Adopt by Reference RCW 16.52.207 Animal Cruelty, Second Degree

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**Summary**

The Burien Municipal Code does not adopt by reference RCW 16.52.207, Animal Cruelty, Second Degree. RCW 16.52.207 states as follows:

“Animal cruelty in the second degree – Penalty.

(1) A person is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty:

- (a) The person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal; or
- (b) The person takes control, custody, or possession of an animal that was involved in animal fighting as described in RCW [16.52.117](#) and knowingly, recklessly, or with criminal negligence abandons the animal, and (i) as a result of being abandoned, the animal suffers bodily harm; or (ii) abandoning the animal creates an imminent and substantial risk that the animal will suffer substantial bodily harm.

(2) An owner of an animal is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the owner knowingly, recklessly, or with criminal negligence:

- (a) Fails to provide the animal with necessary shelter, rest, sanitation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure;
- (b) Under circumstances not amounting to animal cruelty in the second degree under (c) of this subsection, abandons the animal; or
- (c) Abandons the animal and (i) as a result of being abandoned, the animal suffers bodily harm; or (ii) abandoning the animal creates an imminent and substantial risk that the animal will suffer substantial bodily harm.

(3) Animal cruelty in the second degree is a gross misdemeanor.

(4) In any prosecution of animal cruelty in the second degree under subsection (1)(a) or (2)(a) of this section, it shall be an affirmative defense, if established by the defendant by a preponderance of the

evidence, that the defendant's failure was due to economic distress beyond the defendant's control."

First Degree Animal Cruelty is a felony; the City only has jurisdiction over misdemeanors and gross misdemeanors. It is important that the City be able to address through criminal prosecution animal cruelty resulting from extreme neglect.

In 2017, the City of Burien police department obtained a search warrant to enter property upon which an eyewitness observed approximately 40 sick and malnourished puppies. The puppies appeared to have suffered from extreme neglect. Upon service of the warrant, animal control and the Burien police department removed approximately 38 sick malnourished puppies from the property. Two of the puppies perished prior to the removal. While the City was able to enforce animal control violations through the civil process set forth in BMC Title 6, the City lacked the authority to charge the individual responsible for the violation with second degree animal cruelty. Adoption of RCW 16.52.207 by reference will provide the City with the ability to prosecute such violations.

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**Options**

1. Adopt Ordinance No. 719
2. Do Not Adopt Ordinance No. 719

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**Administrative Recommendation**

Adopt Ordinance No. 719

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**Suggested Motion**

Move to adopt Ordinance No. 719, amending Burien Municipal Code section 9.20.100, Animals, Crimes Relating to, to add Animal Cruelty in the Second Degree.

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**Attachments**

[A. Proposed Ordinance No. 719](#)

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# CITY OF BURIEN, WASHINGTON

## ORDINANCE NO. 719

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### AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, AMENDING BURIEN MUNICIPAL CODE SECTION 9.20.100, ANIMALS, CRIMES RELATING TO, TO ADD ANIMAL CRUELTY IN THE SECOND DEGREE, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE

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WHEREAS, the City of Burien adopted by reference King County's animal code as the animal code for the City of Burien; and

WHEREAS, King County's animal code provides for civil enforcement of animal code violations; and

WHEREAS, the City of Burien in BMC 9.20 has adopted by reference certain of those state laws regarding crimes related to animals; and

WHEREAS, the City of Burien has not adopted by reference RCW 16.52.207, Animal Cruelty in the Second Degree;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Amendment. BMC 9.20.100 is hereby amended to read as follows:

**9.20.100 Crimes relating to animals – Adopted by reference.**

The following sections of RCW Title 9 as now in effect, and as may subsequently be amended, are adopted by reference to establish crimes relating to animals under the Burien criminal code:

RCW

9.08.020 Diseased animals.

9.08.030 False certificate of registration of animals – False representation as to breed.

9.08.070 Dogs – Taking, concealing, injuring, killing, etc. – Penalty.

**16.52.207 Animal Cruelty in the Second Degree**

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this

Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, AT A REGULAR BUSINESS MEETING THEREOF THIS 18TH DAY OF NOVEMBER, 2019.

CITY OF BURIEN

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Jimmy Matta, Mayor

ATTEST/AUTHENTICATED:

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Megan Gregor, City Clerk

Approved as to form:

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Lisa Marshall, City Attorney

Filed with the City Clerk:

Passed by the City Council:

Ordinance No.:

Date of Publication: