

March 13, 2019

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V19008992**

BENH VAN KIEU
Animal Services Enforcement Appeal

Activity no.: A19000127

Appellant: **Ben Kieu**
14252 59th Avenue S
Tukwila, WA 98168
Telephone: (206) 518-8306
Email: Kieu688@yahoo.com

King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
21615 64th Avenue S
Kent, WA 98032
Telephone: (206) 263-5968
Email: raskcappeals@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal, but provide option potentially avoiding later removal

EXAMINER PROCEEDINGS:

Hearing Opened:	February 27, 2019
Hearing Closed:	February 27, 2019

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

After hearing the witnesses’ testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties’ arguments and the relevant law, the examiner hereby makes the following findings, conclusions, and decision.

FINDINGS AND CONCLUSIONS:

1. In March 2017, Animal Services cited Benh Van Kieu for his Dobermans trespassing onto a neighbor’s yard. In June 2018, Animal Services again cited him for his dogs trespassing. In September 2018, he was cited for running at large, running in packs, and threatening a person in public; Mr. Kieu appealed and went to hearing in October.
2. We explained at the end of that hearing that we were overturning the “threatening” violation, and sustaining the “running in packs” and “running at large” violations.¹ We noted that this made two sustained violation notices in a three-month period (June and September). We referred to a code provision that three violations in a 12-month period triggers the removal process. And we encouraged Mr. Kieu to avoid such an outcome. As we phrased it in our written decision two weeks later, Mr. Kieu “obviously loves his dogs very much and wants to keep them. He will need to step up his game significantly to ensure that the dogs are secured, lest a removal order follow.”²
3. That lasted a little less than two months. On January 6, 2019, Mr. Kieu’s dogs were out again, prompting a complaint and a citation for running at large and running in packs. Exs. 2 & 6. Mr. Kieu timely appealed, and we went to hearing again. Ex. 9. Unless directed to by law—and no special directive applies to today’s case—the examiner does not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. Instead, for those matters or issues raised in an appeal statement, Animal Services bears “the burden of proving by a preponderance of the evidence both the violation and the appropriateness of the remedy it has imposed.” KCC 20.22.080.G;.210.
4. Before turning to the facts, we note that Mr. Kieu raises a legal argument that he is being double-charged. Ex. 9. “Running at large” involves a dog off the premises of the owner and not under the control of the owner, while “running in packs” involves two or more animals running off the owner’s premises and not being restrained or controlled. There is some overlap, but running in packs is an *additional* violation, presumably reflecting that animals loose in numbers create the potential for greater harm than a single animal creates.

¹ The “threatening” subsection is framed in terms of an animal “habitually” doing something; while the September encounter may have qualified as threatening, Animal Service had not sufficiently proved this was habitual. The “running in packs” and “running at large” violations did not require proof that a dog ever threatened anyone.

² https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2018/2018%20november/V18008611_Kieu.ashx?la=en.

5. As to what happened on January 6, Jennifer Anderson (also the complainant from our October hearing) testified that she went out on her porch, and the Kieu dogs came charging up the stairs at her. The male (Jack) was aggressive. She has observed Jack getting bolder and more aggressive with each incident.
6. She provided for videos from that day. Two are from two door cameras, showing the dogs up on the Anderson porches. Exs. 4B & 4D. She also provided two hand-held phone videos her wife recorded. One of these starts with the dogs in the Anderson front yard. The dogs then race around the side to Ms. Anderson's off-screen voice. The camera gets around the porch to record Jack barking at the foot of the stairs. The video shifts to the street, with a neighbor standing guard with a baseball bat near an elderly woman with her small dog. Ms. Anderson warns the woman that the dogs are out and to get inside; the woman picks up her dog and retreats. Ex. 4C. The other shows the dogs already in the street, while that neighbor smacks a baseball bat on his driveway. Ex. 4A.
7. Mr. Kieu testified that there was a windstorm the night of January 5. The next day, he let his dogs out in the backyard to get exercise while he ran an errand. He returned to find a downed tree on his fence, providing an escape route. The tree that the windstorm broke down would have been large enough to break even a more solid, wooden fence.
8. Mr. Kieu disputed that the video shows any aggression in his dogs. It would cost him \$15,000 for an actual fence, and he would need more time for that. He has built a six-foot fence in the front. The wire fence in the backyard, augmented by blackberry bushes, had proved sufficient up until the windstorm. In previous incidents, the dogs escaped not from the backyard, but from the street gate, when people left it open. He has, since our last hearing, made more use of off-leash dog parks, to work on his dogs' behavior. He is trying to find a new home for Jack.
9. Mr. Kieu thought that maybe the tree fell while he was out on January 6, as he had not seen any trees down when he opened the gate from the carport to let the dogs out. He agreed he did not thoroughly check the fence situation before letting them out. It seems unlikely that there would be a windstorm on January 5, yet only the following day would a tree would come down during the few hours he was out. It seems more likely that that tree came down during the windstorm, and he did not really check the fence perimeter before he let the dogs out the following day. And Mr. Kieu is ultimately responsible for containing his dogs. We uphold the violations.
10. In general, Mr. Kieu continued in a state of some denial. He brushed off the fear his dogs are causing his neighbors. He described his dogs' numerous escapes as always being someone (or something) else's responsibility. He even tried some victim blaming, questioning why Ms. Anderson would have gone outside, on *her own porch*, when his dogs were in her yard. His approach has thus far not instilled confidence that he has the situation in hand.
11. As we sketched out last round, three violations in a one-year period trigger removal provisions, and today's is the third violation. A somewhat exasperated Animal Services

representative said at the end of our last hearing that Animal Services intended to bring a removal order.

12. We are the most exacting on Animal Services when the issue is removal, removal having the most at stake of practically any animal enforcement case we see. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (nature of private interest being effected factor in determining how much process is due); Exam. R. XII.B.4 (in proceeding involving divestiture of legally cognizable rights, examiner may require adherence to court rules to “assure that due process of law is afforded”). *See also Repin v. State*, 198 Wn. App. 243, 284, 392 P.3d 1174 (2017) (Fearing, C.J., concurring) (analyzing court decisions recognizing “the bond between animal and human and the intrinsic and an estimable value a companion animal”). It is the scenario were we would be most likely to seize upon what in another scenario we might consider a mere technicality.
13. Yet the provision under which Animal Services would seek removal states:

Any animal constituting a public nuisance as provided in this chapter shall be abated and removed from the county by the owner or by the manager of the regional animal services section, upon the receipt of three notices and orders of violation by the owner in any one-year period...³

The March 2017 violation is outside the framework. Yet Mr. Van Kieu received notices and orders in June 2018, September 2018, and now January 2019.⁴ So it might be too late.

14. However, we have a different suggestion, one that might prevent Animal Services from serving a removal order. While Appellant testified that would cost him upwards of \$15,000 to put in an actual fence around the property, a steel dog enclosure of around 100 square feet appears to cost in the vicinity of \$500, plus a little more for supplies to keep the dogs from digging under. He can install one of those in his backyard. Until he can install the structure, keep his dogs inside the house unless he is there and actively supervising them in the backyard or they are being taken off-site on leashes. After he installs the structure, secure them in there when not inside the house or being actively supervised in the backyard or being taken them off-site on leashes.
15. This might forestall an ugly removal fight with an uncertain end. It would not completely eliminate the chance that something could go wrong. Mr. Kieu would need, for example, to periodically monitor the structure to ensure the dogs are not digging under enclosure. Yet having a backyard fence in working order would provide a second layer of containment, if they manage to escape the enclosure. And such a setup would seem to significantly increase the odds that he can keep his dogs, in the senses both of containing them and in not receiving a removal order.

³ Animal Services manages enforcement for the City of Tukwila. TMC 7.12.170. The provisions discussed above are substantively the same. Running in packs (KCC 11.04.020.R, .230.O; TMC 7.12.020.23, .230.14); running at large (KCC 11.04.020.W, .230.B; TMC 7.12.020, TMC 7.20.020); and removal (KCC 11.04.290.B.1; TMC 7.12.290.B.1).

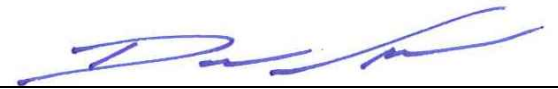
⁴ Animal Services also issued Mr. Kieu warnings, but warnings are not violations or appealable decisions.

16. In addition, if he controls his dogs and avoids another violation through September 5, then his dogs will not be on the verge of removal. In that scenario, Jack and Jill would have only one violation notice in the previous 12 months. That would not mean Mr. Kieu could thereafter be lax, but at least by September 5, Jack and Jill would no longer be in “one more strike and you’re out” territory. We will adjust the monetary penalty, below, to incentivize containment.

DECISION:

1. We DENY Mr. Kieu’s appeal as to the violations.
2. As to the penalty, if by April 12 Mr. Kieu provides to Animal Services receipts with at least \$200 spent on a containment solution, the penalty is halved to \$200.

ORDERED March 13, 2019.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County’s final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *April 12, 2019*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

MINUTES OF THE FEBRUARY 27, 2019, HEARING IN THE APPEAL OF BENH VAN KIEU, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V19008992

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Sgt. Chelsea Eykel, Jennifer Andersen, Ben Kieu.

The following exhibits were offered and entered into the record:

- | | |
|---------------|--|
| Exhibit no. 1 | Regional Animal Services of King County staff report to the Hearing Examiner |
| Exhibit no. 2 | Online complaint form of January 6, 2019 incident by Jennifer Andersen, dated January 6, 2019 |
| Exhibit no. 3 | RASKC investigation report no. A19000127 |
| Exhibit no. 4 | <ol style="list-style-type: none"> A. Video of Jill and Jack B. Video of Jill and Jack |

	C.	Video of Jill and Jack
	D.	Video of Jill and Jack
Exhibit no. 5		Photograph of property
Exhibit no. 6		Notice of violation no. V19008992, issued January 8, 2019
Exhibit no. 7		Postal service tracking history
Exhibit no. 8		Aerial map of neighborhood
Exhibit no. 9		Appeal, received January 19, 2019

DS/ld

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V19008992**

BENH VAN KIEU
Animal Services Enforcement Appeal

I, Liz Dop, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED March 13, 2019.



Liz Dop
Legislative Secretary

Andersen, JenniferMichele

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Kieu, Ben

Hardcopy