

July 5, 2019

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

King County Courthouse  
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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V19009259**

**EMILY ZISETTE**

Animal Services Enforcement Appeal

Activity no.: A19001340

Appellant: **Emily Zisette**

[REDACTED]  
Tukwila, WA 98168

Telephone: [REDACTED]

Email: [REDACTED]

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

**FINDINGS AND CONCLUSIONS:**

Overview

1. Regional Animal Services of King County (Animal Services) asserts that on March 16, 2019, one of Emily Zisette's dogs trespassed onto a neighbor's property and then ran at large. Ms. Zisette timely appealed. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we deny Ms. Zisette's appeal.

## Background

2. Next-door neighbor (and complainant) Robert King testified that on March 16 he was sitting in his front yard with another neighbor, identified as Candace, when one of Ms. Zisette’s dogs entered his yard. He recognized it as Ms. Zisette’s dog from its brown undercoating and having seen it three or so times before. He produced a shot of himself sitting with Candace, with a small black dog behind them. Ex. 3. It carries a timestamp of 3:26 p.m., although Mr. King testified that his camera’s clock does not adjust for daylight savings time. (If so, that would time the recording to approximately 2:26 p.m., as daylight savings time started on March 11.)
3. The action then moves to the alley. The video shows a woman who appears to be the same Candace as in the yard shot, walking her own dog on a leash. Ex. 4. A small black dog, looking like the one in the yard shot, walks loose. The dog then goes up on the rockery on what is identified as the Zisette property. The action becomes partially obscured by a car, but Candace’s upper body is visible walking up to the Zisette fence and adjusting something at the Zisette fence line. Ex. 5 According to the statement Candace gave Animal Services, she observed the dog go back through an opening in the wire fence and into the Zisette property, and she pulled the wire closed and attempted to keep it from reopening. Ex. 5 at 2.
4. Ms. Zisette testified that she and her father, Robert Zisette, were working in the yard with their dogs on March 16. Ms. Zisette produced a photo she took of one of her dogs at 3:31 p.m. She has two similar-looking miniature pincher mixes, and there are a few dogs in the neighborhood, similar-looking to hers, that have run loose. She did not see any brown on the dog in the photo/video, while her dog (at least one of her dogs) has some brown on the underside.
5. Ms. Zisette testified that she talked to Candace, who could not positively identify the dog she tried to secure in the Zisette yard. While Candace said she found the gate open and had shut it on the dog that went into the Zisette yard, Ms. Zisette opined that it was possible that Candace put another dog in the Zisette yard. Perhaps *that* dog had gotten out again without the Zisettes noticing. Ms. Zisette clarified that she saw no other dog on her property that day.
6. Mr. Zisette testified that he was working in his daughter’s yard on March 16, and remembered her taking pictures. He described another dog in the neighborhood that he thinks looks more like the dog in the photo. He did not think it was possible they had not secured their back gate. He questioned why the timestamp would not adjust for daylight savings time.

## Analysis


7. 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. Ours is a true *de novo* hearing. For those matters or issues raised in an appeal statement, Regional Animal Services of King County (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.
8. Trespass is defined as a “domesticated animal that enters upon a person’s property without the permission of that person.” KCC 11.04.230.K. “Running at large” means “off the premises of the owner and not under the control of the owner, or competent person authorized by the owner, either by leash, verbal voice or signal control.” KCC 11.04.020.W; .230.B.
  9. It is difficult for us to discern much specific about the dog from the photo/video, such as whether or not it has any brown on it. Ms. Zisette is correct that it is possible that a different small, black dog trespassed onto Mr. King’s property that day, walked loose in the alley, entered the Zisette property, and—if Candace did not sufficiently secure the fence/gate—exited the Zisette property before the Zisettes noticed its presence.
  10. We do not decide cases based on the criminal law standard of proof beyond a reasonable doubt. Instead, we analyze whether Animal Services has shown the violations by a balance of the evidence. While alternative explanations are possible, reviewing all the evidence, we think the most likely series of events on March 16 is as follows. Around 2:30—about an hour before Ms. Zisette took her photo—one of Ms. Zisette’s dogs got out and trespassed onto Mr. King’s property. Her dog then ran at large in the back alley, before going back onto the Zisette property. Candace then secured the gate/fence. The reason the Zisettes did not see someone else’s dog on their property that day is that there was no other dog on their property. It was just her dogs in her yard, except for the few minutes that one of her dogs got out, trespassed, and ran at large. We sustain the violation.
  11. As to the correct penalty amount, this is the second appeal involving a Zisette dog. In September 2018, Animal Services served a violation notice citing Appellant for trespass (\$50) and a warning for running at large (\$0). Appellant appealed that violation notice, but then dropped her appeal, rendering the September notice a final determination. The March 2019 violation notice cited Ms. Zisette for both trespass (second violation, \$100) and running at large (first violation, \$50).
  12. Neither Animal Services notice identified which Zisette dog was the violator—both said “Dog 1.” However, the pertinent penalty is not pegged to a particular animal being involved in multiple violations but to “one previous similar code violation within one year.” KCC 11.04.035.C.1.b. Regardless of which of her dogs was involved in either incident, the September 2018 trespass was a similar violation to the March 2019 incident and thus a second violation.

#### DECISION:

1. We DENY Ms. Zisette’s appeal.
2. Ms. Zisette shall pay the \$150 penalty to Animal Services by September 5, 2019.

ORDERED July 5, 2019.



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David Spohr  
King County 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 *August 5, 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 JUNE 21, 2019, HEARING IN THE APPEAL OF EMILY ZISETTE, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V19009259**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Robert King, Emily Zisette, and Robert Zisette. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

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 March 16, 2019 incident by Robert King, dated March 25, 2019 |
| Exhibit no. 3 | Photograph of Mr. King's front yard camera with time stamp                            |
| Exhibit no. 4 | Video of Mr. King's front yard  |
| Exhibit no. 5 | RASKC investigation report no. A19001340  |
| Exhibit no. 6 | Notice of violation no. V19009259, issued A19001340                                   |
| Exhibit no. 7 | Appeal, received April 5, 2019  |
| Exhibit no. 8 | Map of subject area   |
| Exhibit no. 9 | Appeal letter, received June 7, 2019  |

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V19009259**

**EMILY ZISETTE**

Animal Services Enforcement Appeal

I, , 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 July 5, 2019.

**Eykel, Chelsea**

Regional Animal Services of King County

**King, Robert Ernest**

Hardcopy

**Zisette, Emily**

Hardcopy

**Zisette, Robert**