

January 20, 2021

**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

ORDER OF DISMISSAL, ALLOWING FOR MOTION FOR RECONSIDERATION

SUBJECT: Regional Animal Services of King County file no. **V20011448-A20015176**

TEPPEI KONO

Animal Services Enforcement Appeal

Activity no.: A20015176

Appellant: **Teppei Kono**

[REDACTED]
Anchorage, AK 99504

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

Tukwila, and most other cities in King County, have long contracted with the County for animal-related services. Historically, the County's Board of Appeals (Board) was the sole administrative tribunal with authority to hear appeals of Animal Services' enforcement actions.

Not surprisingly, when cities such as Tukwila crafted their pertinent city code sections, they referenced (or adopted County code sections referencing) the Board as the appropriate appellate body. Most jurisdictions adopted a streamlined animal code, employing a section along the lines

of “the City adopts by reference Title 11, Animal Control, of the King County Code, as presently constituted or hereinafter amended, as the animal control regulations of the City,” and then making a few discrete changes (such as to leash laws or to the definition of “running at large”).

However Tukwila—and Bellevue—adopted their own comprehensive animal code. While originally almost a word-for-word rendition of the County code then in place, those two city codes contained no mechanism to automatically update that city’s code to incorporate amendments to the County’s code.

In 2016, County code changed so that the Examiner became the sole County administrative tribunal with jurisdiction to hear Animal Services-related appeals, replacing the Board. Any appeal filed with the Board thereafter would have been a dead end, as the Board no longer had authority to hear any animal-related cases. For jurisdictions adopting KCC Title 11 “as hereinafter amended,” the switch to the Examiner was automatic. For Bellevue and Tukwila, which still listed the Board, it was more complex.

In 2017, Bellevue and Tukwila (along with other cities) executed an amended interlocal agreement with King County that recognized the Examiner as the administrative tribunal for animal-related cases and required cities to update its code to reflect the change. Most cities, however, did not actually amend their animal codes.

In 2019, an appellant in a Bellevue animal case asserted the Examiner had no jurisdiction. After analyzing the issue in great detail, we concluded that, especially in light of the interlocal agreement that stated an explicit intent to use the Examiner, the better reading of those codes was the city expressing, essentially, “Instead of setting up a different appellate process, the city wants to use the County’s appeal process,” and not, “The city singles out the Board as the only County tribunal the city wants hearing appeals, and if the Board can no longer entertain animal appeals, the city no longer wants the County hearing appeals.”

However, in November 2020, the superior court went the other way, ruling that because Bellevue’s animal code still referenced the Board, the Examiner had no jurisdiction over Bellevue cases. The court enjoined the Examiner from hearing Bellevue cases until Bellevue updated its code accordingly. We thus dismissed all our pending Bellevue cases. In December 2020, Bellevue amended its code to replace all references to the Board with references to the Examiner.


Tukwila’s code, however, still references the Board. In a recent appeal involving a different city, we noted that, unless there was a distinction between Tukwila’s arrangement and Bellevue’s that we were missing, the court’s ruling in the Bellevue case seemed equally applicable to Tukwila’s situation, and Tukwila would need to amend its code before we would have jurisdiction to hear Tukwila appeals. Animal Services offered some informal points for why we might have jurisdiction over Tukwila appeals, but none seemed persuasive.

Today’s is the first Tukwila case to reach us since the superior court ruling in the Bellevue case. Under the court’s pronouncements there, we **DISMISS** the current appeal. However, by **February 19, 2021**, either party is free to file, with the examiner, a motion for reconsideration

explaining why the examiner should not be dismissing this appeal. Filing a timely motion for reconsideration postpones the deadline (described below) for lodging an appeal.

Assuming we do not receive a motion for reconsideration that persuades us to find jurisdiction over Tukwila appeals, we do not know exactly where dismissal would leave things here. Our dismissal is not a ruling on the merits, and it does not resolve anything about the December 2 events here. Our dismissal would simply reflect that the Examiner has no jurisdiction over animal appeals arising out of Tukwila until Tukwila amends its code.¹

DATED January 20, 2021.



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 *February 19, 2021*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

DS/lo

¹ There are three sections referencing the Board in Tukwila's current code. KCC 11.04.140 (TMC 7.12.050's counterpart, covering shelters, catteries, kennels, etc.) remains unchanged except for replacing the Board with the Examiner. However, KCC 11.04.260.B.6.a (TMC 7.12.260.B.6.a's counterpart relating to violation notices) has also been amended to provide persons 24 days, not just 14 days, to appeal. Finally, KCC 11.04.270 (TMC 7.12.270's counterpart related to appeals) is significantly streamlined, given that the examiner code (KCC chapter 20.22) and examiner rules <https://www.kingcounty.gov/independent/hearing-examiner/rules.aspx> contains detailed requirements for appeals and appeal processing. Bellevue's recent code amendments did not reflect these changes, creating confusion over, for example, how long a would-be-appellant has to file an appeal, what an appeal must contain, and how appeals are to be processed.

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20011448-A20015176**

TEPPEI KONO

Animal Services Enforcement Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER OF DISMISSAL, ALLOWING FOR MOTION FOR RECONSIDERATION** 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 January 20, 2021.



Lauren Olson
Legislative Secretary

Eiselstein, Henry Lou

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Kono, Teppei

Hardcopy