

August 9, 2021

**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. **V21011980-A21001978**

CAROL CHITTUM

Animal Services Enforcement Appeal

Activity no.: A21001978

Appellants: **Carol and Andy Chittum**

[REDACTED]
Fall City, WA 98024

Telephone: [REDACTED]

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King County: Regional Animal Services of King County
represented by **Tim Anderson**
Regional Animal Services of King County
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FINDINGS AND CONCLUSIONS:

Overview

1. Regional Animal Services of King County (Animal Services) issued a violation notice to Carol Chittum, related to excessive dog barking and unlicensed dogs. Ms. Chittum timely appealed. We went to hearing. After taking the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we deny the appeal but reduce the licensing penalty.

Background

Procedural Posture

2. On May 1, Carol Chittum was issued a notice of violation and order to comply listing both her dogs, for both excessive noise and for being unlicensed unaltered. Ex. D2. Ms. Chittum filed a timely appeal on May 25. Ex. D3. We held a pre-hearing conference on June 16 and went to hearing on July 26.

Nancy Marshall Testimony

3. Ms. Marshall testified that she submitted the latest online noise complaint after the Chittum dogs were out barking until 3:00 a.m. on April 29. Ex. D5. This was not the first time this had happened, and it was not her first complaint. When the dogs are incessantly barking, Ms. Marshall will call Ms. Chittum; sometimes no one will pick up and nothing changes with the dogs, while other times the dogs will quickly stop barking. She knows the barking is coming from the Chittum house, because she can identify what Ms. Chittum's dogs sound like after being her neighbor for 18 years. She also knows it is the Chittum dogs because when Ms. Marshall calls Ms. Chittum, the dogs will often stop barking.
4. Ms. Marshall did not report the barking to Animal Services until around four years ago. Before that, she did not know an agency would take up that type of complaint. Ms. Marshall contacted Animal Services only after a friend suggested it.
5. After dealing with the barking for 18 years, it is irritating and causing Ms. Marshall to stress. The dogs are out in the middle of the night when the temperature is around 30 degrees, which she sees as improper animal care.
6. Ms. Marshall sleeps with the windows closed and puts in ear plugs or noise canceling headphones. However, she can only do so much to drown out the noise, because her own animals have been attacked by bears and bobcats in the past. Thus, she needs to be able to hear enough that she can respond if her chickens and goats are fussing outside. If she hears the dogs bark in the middle of the night, she is woken up.
7. Ms. Marshall has spoken to Ms. Chittum many times about the barking. In response, Ms. Chittum will ask Ms. Marshall if she is scared of dogs, and advise that her dogs have learned how to open doors. Ms. Chittum will apologize, and the situation will improve for a short while, but a few weeks later it will get worse again.
8. Ms. Marshall does not care if the dogs occasionally bark. All of Ms. Marshall's neighbors have dogs. Those dogs bark, but they do not bark to the excessive amount of Ms. Chittum's dogs. Ms. Marshall expects a normal amount of barking. There has been non-stop barking for hours, for instance, from 6:00 p.m. to 10:00 p.m. on July 11.
9. Ms. Marshall's barking log is not comprehensive, as she lost a computer in the fall of 2020, and her log with it. Ex. D18. Ms. Marshall does not video every time the dogs bark, because it requires her to get dressed, turn off the alarm, and go outside. She

considers anything over 15 to 20 minutes of constant barking to be unreasonable. She also considers any barking after 10 p.m. to be unacceptable. Since the ticket was issued to Ms. Chittum, the barking has improved.

Jerry Marshall Testimony

10. Mr. Marshall testified that when the dogs bark, it is incessant, lasting hours at all times during the day and into the night. Once it starts, it does not stop until Ms. Chittum brings her dogs inside. The barking will interrupt their sleep, and it prevents them from enjoying their property and woods.
11. Mr. Marshall and his wife have spoken with Ms. Chittum many times about the barking, and Ms. Chittum does nothing. Ms. Chittum will say the dogs are barking at wild animals. A coyote or animal will not stand outside for four hours while Ms. Chittum's dogs bark at it. Ms. Chittum will shift the blame towards the Marshalls, by asking if he is afraid of dogs.
12. When other neighbors' dogs bark for more than five minutes, they will bring their dogs inside. The neighbor directly uphill from his house has two Labrador dogs. There is a neighbor further up the street with two small dogs. Another neighbor has two dogs that are penned outside. However, the Marshalls rarely hear those dogs.
13. Mr. Marshall knows the barking is coming from Ms. Chittum's dogs. Most of the recordings are done at the edge of the property, which is around 20 to 25 feet away from the Chittum pens, with the phone facing the Chittum property. The barking is the same every time. Whippets have a very distinctive high pitch bark. The Labradors uphill have a deep, throaty bark, while the tiny dogs in the neighborhood have an even higher pitched bark than the whippets.
14. He did not pave the road; instead, Bloodworth Homes initiated the paving. Everyone on the road agreed to pay for paving, except for Ms. Chittum. She chose not to pay, so the rest of the neighbors chipped in to pay her share. She called the County and got a Stop Work Order. This all occurred in 2007. The Marshalls have had issues with barking coming from the Chittum dogs since they moved in in 2003.
15. Mr. Marshall never told Ms. Chittum to get off the road or slapped anyone's car. He has not spoken to Ms. Chittum in months.

Carol Chittum Testimony

16. Carol Chittum testified that there was an issue with paving the road. There are no CCRs, which has caused her distress. King County recommended the road stay gravel instead of asphalt, which would send the drainage down to her house.
17. On July 13, she was leaving her home with one of her caregivers. Mr. Marshall smacked the side of her caregiver's car and told her to get off his road. She asserts that all of Mr. Marshall's complaints are stemming from issues around the road, and does not relate to her dogs. Until just recently, she had an amicable relationship with the Marshalls.

18. Once, Ms. Chittum let her dogs out to use the bathroom before bed. The dogs barked for less than a minute at a coyote, and Ms. Chittum then called them back inside. She never leaves her dogs outside when she is gone. They are inside the house with no ability to get out. When they are outside, they are in one of two pens. One of those pens is not near the Marshall's property. There are dogs all around, and she does not understand how the Marshalls can guarantee that the barking is coming from her property.
19. When she lets her dogs out to use the bathroom, if it is cold outside, it will take them less than five minutes to do their business. If it is during the day, she will let them stay outside to sun themselves. She lets them run around in the fenced area, but she never leaves them out. She does not leave them outside when she is gone because it could be dangerous for her dogs. The dogs are not outside when she is asleep. She does not nap during the day. She takes the dogs out to pee before bed around ten or eleven. The dogs sleep in her bedroom with her. She does not see any reason why the dogs would bark when she is asleep. They do not bark when people come to the door.

Andy Chittum Testimony

20. Andy Chittum testified that after viewing the videos, it is not clear that the barking is from his mother's dogs. The barking log covers around three years, while the videos are only around 30 to 40 seconds long. He thinks the Marshalls could have obtained a recorder that could have recorded longer barking spells. The Marshalls have submitted around seven minutes total of barking videos over the past three years. Exs. D6-D16.

Timothy Anderson Testimony

21. Sgt. Anderson confirmed that Ms. Chittum licensed her dogs in May.

Legal Standards

22. Animal Services asserts that both Ms. Chittum's dogs were unaltered and unlicensed as of April 29, in violation of KCC 11.04.030.A, which requires all dogs eight weeks old and older be licensed and registered.
23. Animal Services also asserts a violation of KCC 11.04.230.J., which defines as a nuisance "Any animal that howls, yelps, whines, barks or makes other oral noises to an unreasonable degree, in such a manner as to disturb a person or neighborhood."
24. We do not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. 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.B.

Analysis

25. Ms. Chittum's theory of the case is that all of the Marshalls complaints stem from controversy around the road, and are not related to her dogs. The idea that the Marshalls

are fabricating complainants and putting all that time and effort into manufacturing log notes (exhibit D8) and heading outside, especially in the middle of the night, to record barking (exhibits D6-D16) because they are still angry about road financing way back in 2007 is highly implausible. Advancing such a conspiracy theory not only was wholly unpersuasive, but it also cost Ms. Chittum a lot of credibility.

26. Ms. Chittum lost more credibility with her repeated questioning of whether the Marshalls are scared of dogs. That line of inquiry would be completely relevant if the Marshalls were, say, complaining that the whippets were being aggressive or threatening. Probing what the exact behavior was (How close did they actually get to you? Were their tails wagging while they barked?) and the Marshalls' response (Why did you interpret that as threatening instead of merely annoying? Do you have a heightened fear of dogs?) would seem prudent. Here, when the complaint was merely the timing, duration, and repetition of the noise, it came across as Ms. Chittum deflecting her responsibility to keep her dogs from barking to an unreasonable degree and disturbing a person or neighborhood.
27. The identity of the dogs doing the barking is critical, but the standard of review is not whether the Marshalls or Animal Services can "guarantee" it is the Chittum dogs. Ours is not a criminal case, where a prosecutor must prove the point "beyond a reasonable doubt." Instead, we review facts under a "preponderance" standard, meaning something is more likely true than not (in mathematical terms, 51%). We found Mr. Marshall's testimony about the barking sounds of the various dogs in the neighborhood persuasive. And it would be an unbelievable coincidence if multiple times the Marshalls had called Ms. Chittum and magically the barking quickly ceased, and yet that barking was actually coming from different dogs on a different property who just happened to choose that moment to stop.
28. Additionally, we have listened to hundreds of audio recordings in barking dog cases. Beyond the obvious big dog v. small dog, we do not claim any special powers of breed identification based on sound. But what we can discern is the *difference* between recorded barks, to be able to determine, for example, "The barking in exhibit ___ matches exhibits ___ and ___, but exhibit ___ sounds like a different dog." Here, all the recordings match. While it is theoretically possible that the Marshalls stood at the property line, pointed a phone at the Chittum property, and somehow every time recorded not the Chittum dogs right next door, but dogs, say, on the opposite side of the Chittum property, it is far less likely than that it was the Chittum dogs.
29. Mr. Chittum's point that the audio tapes are of short duration is true, and could matter for daytime barking. But this is a nighttime barking case. At night, whether a dog barks six seconds or sixty seconds or six minutes or sixty minutes is somewhat irrelevant. If the barking is enough to wake someone up from sleep on multiple nights, even quickly quieting the dog down after each episode is a bit like locking the barn door after the horse is gone—the damage for a given night is already done.
30. Animal Services would not have met its burden of showing daytime barking. There is no reasonable expectation that daytime hours will be fairly quiet. During the day lawnmowers whirr. Trucks back up and emit loud warning beeps. Children scream.

Power tools create a cacophony. Waste collectors bang trash cans. Cars honk. And dogs bark. At some point, the quality and quantity of such daytime barking becomes legally unreasonable, but it is a high threshold not met by the current evidence in the record.

31. Instead, the crux of this case is nighttime barking—between 10 p.m. and 7:00 a.m. (9:00 a.m. on weekends). KCC 12.86.120.A; KCC 12.86.510; KCC 12.86.410.A. Beyond the code, the importance of noise timing is not controversial, nor new. For example, in one pre-Civil War noise case, the court reasoned that, “The peace of Sunday may be disturbed by acts which, on other days, cannot be complained of.” *Commonwealth v. Jendell*, 2 Grant 506, 509 (Pa. 1859). Replace “Sunday” with “3:00 a.m.” and “on other days” with “at 3:00 p.m.,” and that proposition remains true 160+ years later. One’s right to make nighttime noise “must be limited by the right of the neighbors in the area to be free of disturbing noises during normal sleeping hours.” *Altman v. Ryan*, 435 Pa. 401, 407, 257 A.2d 583, 605 (1969).
32. We disagree with Ms. Marshall’s premise that *no* barking after 10 p.m. is acceptable. But we are not discussing a one-off or something that had only happened a few nights over the last few years, the occasional fluke. While Ms. Chittum stuck with her guns that the dogs are locked inside with her every night, that is not what the evidence shows. Whether that is because, as Ms. Marshall testified, Ms. Chittum said the dog had learned how to open doors, or Ms. Chittum may consciously let the dogs out after 10 p.m. and her sleep medication means she may not hear the dogs, exhibit D4 at 003, n.3, or some other reason, Animal Services has met its burden of proving, by a preponderance of the evidence, that Ms. Chittum’s dogs bark to an unreasonable degree (at night), so as to disturb the Marshalls.
33. Going forward, the dispute seems fairly easy to solve. Ms. Chittum just needs to double check at 10 p.m. that the dogs are secured inside the house. That does not mean there is carte blanche for, say, allowing the dogs repeatedly barking for hours and hours during the day. But the critical issue to date is nighttime barking. It seems an easily fixable problem.
34. Finally, where a pet is unlicensed as of the date of violation, but the owner licenses the pet prior to the hearing, we typically reduce the penalty. We do so here as well.

DECISION:

We deny Ms. Chittum’s appeal. However, we reduce the licensing penalty from \$250 per dog to \$150 per dog.

ORDERED August 9, 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 *September 8, 2021*. 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 JULY 26, 2021, HEARING IN THE APPEAL OF CAROL CHITTUM, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V21011980-A21001978

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Tim Anderson, Nancy Marshall, Jerry Marshall, Carol Chittum, and Andy Chittum. A verbatim recording of the hearing is available in the Hearing Examiner's Office. The following exhibits were offered and entered into the record by Animal Services:

Exhibit no. D1	Regional Animal Services of King County staff report to the Hearing Examiner
Exhibit no. D2	Notice of violation no. V21011980-A21001978, issued May 1, 2021
Exhibit no. D3	Appeal, received May 25, 2021
Exhibit no. D4	RASKC investigation report no. A21001978-01
Exhibit no. D5	Online Complaint form of April 2021 incident by Nancy Marshall, dated April 29, 2021
Exhibit no. D6	Video, dated December 24, 2019
Exhibit no. D7	Video, dated April 22, 2020
Exhibit no. D8	Video, dated June 16, 2020
Exhibit no. D9	Video, dated July 2, 2020
Exhibit no. D10	Video, dated September 3, 2020
Exhibit no. D11	Video, dated September 5, 2020
Exhibit no. D12	Video, dated October 6, 2020
Exhibit no. D13	Video, dated January 20, 2021
Exhibit no. D14	Video, dated February 27, 2021
Exhibit no. D15	Video, dated April 28, 2021
Exhibit no. D16	Video, dated May 31, 2021
Exhibit no. D17	Email from Nancy Marshall, dated July 8, 2021
Exhibit no. D18	Barking log from Nancy Marshall, March 2018 to June 2021
Exhibit no. D19	Previous violation, V20010241
Exhibit no. D20	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21011980-A21001978**

CAROL CHITTUM
Animal Services Enforcement Appeal

I, Lauren Olson, 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 August 9, 2021.



Lauren Olson
Legislative Secretary

Anderson, Tim

Regional Animal Services of King County

Chittum, Carol, Andy

Hardcopy

Marshall, Nancy & Jerry

Hardcopy