August 26, 2021

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
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hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

ORDER OF DISMISSAL

SUBJECT: Regional Animal Services of King County file no. **V21012260-A21002977**

MARGARET MARIGER
Animal Services Enforcement Appeal

Activity no.: A21002977

Appellant: **Margaret Mariger**
[redacted]
Kenmore, WA 98028
Telephone: [redacted]
Email: [redacted]

King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
Regional Animal Services of King County
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Kenmore, 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 Kenmore crafted their pertinent city animal code sections, they 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"). *See, e.g.*, Black Diamond 6.04.010; Covington 6.05.010; Duvall 6.14.050; Enumclaw 7.01.010; Kent 8.03.020; Lake Forest Park 6.08.020; Maple Valley 6.05.010; North Bend 6.04.010; Redmond 7.04.005; Sammamish 11.05.010; and Seatac 6.05.030.

However, in Kenmore's 2010 ordinance that became KMC 6.05.010, it adopted most of KCC Title 11 but explicitly stated that, "Except as provided in KMC 6.05.020 (license fees and penalties), future amendments to Title 11 of the King County Code shall not automatically be adopted, but shall require city council approval by way of an ordinance to become effective within the City."

In 2016, KCC Title 11 changed, making the Examiner 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 matters. For jurisdictions adopting KCC Title 11 "as hereinafter amended," the switch to the Examiner was automatic. But Kenmore had made the choice to require more work on its end before KCC Title 11 amendments could become effective.

On first blush there seemed a small sliver of hope for an orderly system. KMC 6.05.030 states that, "The city manager or designee, and the regional animal services section of King County, are authorized to enforce the provisions of this title, consistent with the enforcement provisions set forth in Title 11 of the King County Code." Thus, since Animal Services is authorized to enforce under the provisions set forth in KCC Title 11, and Title 11 channels appeals through the Examiner, would the Examiner have jurisdiction? However, on further reflection, that reading would only work if KMC 6.05.030 were adopted *after* the 2016 KCC Title 11 change to the Examiner. And KMC 6.05.030 was adopted in 2010, six years before the switch to the Examiner.

The impact is that, until Kenmore updates its code, it has an unworkable system for formal animal enforcement. Animal Services can investigate, talk to and advise parties, and even issue warning notices (as warning notices are not appealable orders). But if Animal Services (or even the city manager) wished to issue another notice and order, they would be placed in an impossible situation. KCC 11.04.260.B requires notices and orders to advise a recipient to appeal to the Examiner, a requirement inconsistent with the 2010-era of the Title 11 (requiring appeal to the Board) currently in force in Kenmore. Even if Animal Services tried to get creative and issue and the notice and order to include language advising an appeal to Board, the Board would reject any appeal for lack of jurisdiction.

Thus, Animal Services should not serve any additional notices and orders on cases arising out of Kenmore until Kenmore updates its code. There are two ways Kenmore could do this:

- The easiest and more dynamic way would be the model followed by most other contract cities, here amending KMC 6.05.010 to include adopting by reference Title 11 "as presently constituted or hereinafter amended, as the animal control regulations of the City."

- A more static way would be to simply readopt the current KMC 6.05.010, which would make the 2016 version of Title 11 operable. However, there is a vastly improved version of Title 11 currently in the works that will likely be introduced in the next six months or so. Kenmore would then need a second piece of legislation for that upgraded Title 11 to become effective.

We DISMISS WITHOUT PREJUDICE the current appeal. Our dismissal is not a ruling on the merits. While the June 30 notice and order Animal Services served on Ms. Mariger is invalid, and there is thus no outstanding running at large violation, viciousness designation, monetary penalty, or confinement order, Animal Services is not barred from, re-issuing (after Kenmore updates its code) a notice and order for the same underlying events. Our dismissal simply reflects that we have no jurisdiction over animal appeals arising out of Kenmore until Kenmore amends its code.

We recognize that dismissal leaves everybody hanging. And while we have no authority to enter findings, because we heard testimony yesterday, we will offer some informal thoughts. These are, of course, non-binding, and in the spirit of a problem-solving attempt to avoid simply kicking the can down the road.

Although there is not, as of today, an active viciousness determination and compliance order, Ms. Mariger understands Ginger's level of reactivity to other dogs—the impulse that prompted Ginger to run off her property and attack a leashed dog on June 24. Ms. Mariger has essentially agreed to live with most of the requirements to keep a vicious dog in King County. However, she disputes two.

She believes an invisible fence is effective containment for Ginger, because it has been effective at all times other than June 24, a day she inadvertently kicked out the plug with her then-walker. There are several reasons why invisible fences are typically insufficient. The first is that a determined dog will often take the electric shock and burst through the perimeter to get at someone or something. We have seen that in several other cases. But there is no evidence of that here.

The other electric fence shortcomings are technical malfunction or human error. Here, it was Ms. Meriger kicking out the power source. In past appeals we have seen batteries fail, the power go out, or an owner fail to properly configure something. Ms. Meriger now double checks the batteries before letting Ginger out. That is not the same level of protection as a wooden fence with a padlock on the gate to prevent accidental release, but it is something. And having tried several muzzles that failed, Ms. Meriger is getting Ginger a custom-made muzzle. So the combination of electric fence that, when on, has prevented Ginger from escaping, and a muzzle that would minimize the worst violence Ginger could do if she escapes, would tend to provide protection.

As to Ms. Meriger walking Ginger, first she said she would try to train and get Ginger equipped with an electric restraint system, contrary to the confinement term that requires a solid leash of no longer than eight feet. Animal Services pointed out the numerous problems with an electric "leash," both for the handler and in sometimes making the dog *more* aggressive. By the end of

the hearing, Ms. Meriger had pivoted to agreeing to walk Ginger on a solid leash, and with a custom muzzle.

Animal Services pointed out that Ginger had pulled Ms. Meriger to the ground on walks. However, Ms. Meriger countered that neither of those times did she let go of the leash, even on the ground. If she indeed holds on, that is a risk to *Ms. Meriger*, but not to the public. Again, the combination of solid leash which Ms. Mariger has apparently not, to-date, dropped, and a muzzle that should minimize the worst violence Ginger could do on a walk, would tend to provide protection.

Again, those are simply thoughts. If Animal Services believes it necessary to reissue a notice and order after Kenmore changes its code, and if that is appealed, we will take more testimony and argument and reach an actual decision. The above six paragraphs are simply musings.

DATED August 26, 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 27, 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

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21012260-A21002977**

MARGARET MARIGER
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** 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 26, 2021.

Lauren Olson

Lauren Olson
Legislative Secretary

Eykel, Chelsea
Regional Animal Services of King County

Leseberg, Phillipa
Hardcopy

Mariger, Margaret
Hardcopy