August 30, 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

SUBJECT: Regional Animal Services of King County file no. **V21012340-A21003401**

RADA FARKAS
Animal Services Enforcement Appeal

Activity no.: A21003401

Appellant: **Rada Farkas**
[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
21615 64th Avenue S
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Overview

As explained below, until Kenmore updates its code, the Examiner has no jurisdiction over Kenmore-based appeals; Kenmore functionally has an unworkable system for formal animal enforcement. So Animal Services' July 24 notice and order was invalid. However, our dismissal today is not a decision on the merits. It will not make the dispute go away, instead merely kicking the can down the road. It does not preclude Animal Services from reissuing a violation notice once Kenmore updates its code. However, as explained below, *mediation* holds promise and may be a more productive use of the complainant's and appellant's time than the appeal process, especially since the appeal process here will have to wait anyway until the code changes.

Jurisdictional Background

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, when the Board was the only appeal game in town.

The impact is that, until Kenmore updates its code, 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 Title 11 (requiring appeal to the Board) currently in force in Kenmore. And if one tried to get creative

and issue a notice and order with language advising an appeal to Board, the Board would reject any appeal for lack of jurisdiction.

Mediation as a Perhaps Better Alternative

Even for cases where we do have jurisdiction, noise disputes are the one type of animal case where we do not proceed directly to hearing on the merits. Instead, we always hold a conference call to determine whether participants want to try mediation before proceeding to an adversarial hearing. Noise cases are generally well-suited for mediation, for several reasons.

Both the animal owner and the complainant typically feel they are being harassed, the complainant by the noise they have to endure and the owner by all the complaints and by Animal Services. An adversarial hearing where witnesses are being cross-examined and tensions are high does little to alleviate the feeling of harassment.

Answering the question of whether an animal make noise "to an unreasonable degree, in such a manner as to disturb a person or neighborhood"—lends itself to a much broader inquiry than the typical dog case. Most animal cases focus on a single incident on a single day (e.g., the animal was either on the property of another without that person's permission on day *X*, and thus was trespassing, or it was not). Conversely, the scope of a noise inquiry is much broader, encompassing a record of barking over days and weeks or even months. The parties' reasonableness (e.g., what heated words were exchanged after a dog bite) is irrelevant to most appeals; conversely, in a noise case the steps the appellant took to control the noise and the steps the complainant took to mitigate the noise's impact are relevant. Whether the appellant is hardheaded and the complainant is thin-skinned matter in noise cases in a way that they would never matter in almost any other case type.

This leads to a much more complex adversarial process. Noise cases are among our longest animal hearings, because so much more history and behavior is relevant. Even before the hearing, we require the parties to turn over any barking-related materials (such as video, audio, logs, lists of noise incidents, etc.). Animal Services and the appellant sometimes each call neighbor witnesses to testify about the noise. Noise cases thus take a lot of resources to litigate. Mediation can be simpler, and we can typically arrange for free mediation.

Moreover, for most decisions we impose on the parties, one party—but not both—is likely to walk away angry. Yet in a noise cases we not infrequently wind up publicly criticizing *both* the complainant and appellant, which means *neither* party leaves satisfied. By comparison, mediation allows the parties to retain control of their dispute and to negotiate a satisfactory, face-saving outcome.

Beyond that, a decision that analyzes concepts such as "unreasonable" and "disturb" (concepts that do not lend themselves to bright lines) does not promise finality. For one set of hapless, warring neighbors, there were seven hearing in a five-year span involving the same barking dog, with the tally at four violation notices upheld and three violation notices overturned. Those neighbors (not to mention the County) expended an awful lot of blood, sweat, and tears and still do not have peace. A determination on whether to uphold what is essentially a $50 ticket is

hardly geared to be the final, definitive word on anything important. Conversely, a negotiated settlement can often be more durable and long-lasting.

Additionally, unlike something like a dog biting a passerby, which is a one-time event between a complainant and appellant who often have no pre-existing or continuing relationship, noise cases typically involve neighbors who must continue living together. Rather than spending so much effort trying to prove how "right" each side is, it may be more efficient to channel that energy into finding a lasting solution. A skilled mediator can address such neighbor issues far better than even the wisest judge can.

And finally, in some animal cases (such as a good Samaritan turning in a roaming dog, or where Animal Services believes an animal is a threat to the public, or an animal neglect/cruelty case), Animal Services is the real party-in-interest. In noise cases, by contrast, Animal Services tends to have little interest beyond keeping neighborhood peace. Thus, if the complainant and appellant can reach some sort of understanding, Animal Services does not typically offer a contrary view.

Thus, if either the complainant or appellant is amenable to trying mediation to resolve this dispute while we wait, please let us know. The pertinent portion of our Rules follows:

MEDIATION

Introduction

Mediation is an informal dispute settlement process in which a trained, neutral individual called a mediator helps people work together to resolve disagreements and find mutually acceptable solutions. Mediation can save time and money, protect participants' privacy, allow participants to retain control over the process and outcome, allow consideration of options beyond those an examiner would have authority to address, and generally create more satisfactory results than what an examiner might otherwise impose. The examiner encourages using mediation to reach voluntary and mutually acceptable resolutions.

Initiation

Mediation may be requested at any time by any party or interested person, or it may be suggested by the examiner or Council.

Mediation does not automatically stay examiner timelines. If all parties agree to mediate and to extend the deadlines, the examiner continues the proceedings. In the absence of uniform agreement, if any one party, plus at least one party or interested person with an opposing position, agree to mediate any substantial issue in dispute, the examiner takes that into consideration in determining whether to extend, for up to thirty (30) days, an examiner deadline.

Process

The examiner may provide information on mediation resources, including *pro bono* or low-cost mediation services, but the examiner does not warrant or

represent the fitness or suitability of any such resource. Participants shall be the sole judges of the qualifications of the persons they select as mediators.

Mediators shall generally be responsible for mediation conduct, such as: communicating with mediation participants; determining whether parties or interested persons other than those who had previously requested or agreed to pursue mediation should participate; and the terms, sequence, timing, cost, cost share, and other components of the mediation. Absent an explicit agreement to the contrary, the mediation shall be conducted pursuant to the Uniform Mediation Act, chapter 7.07 RCW.

Conclusion

When the mediator determines the mediation process is complete, the mediator shall (consistent with RCW 7.07.060) report to the examiner, attaching any signed agreement(s).

If no agreement was reached, the examiner process shall proceed as if no mediation had occurred.

If an agreement is reached, the examiner may accord it substantial deference in determining a subsequent examiner action, but an agreement does not necessarily obviate the need for (nor limit the scope of) a public process otherwise required by law. The settlement's impact depends on several factors, such as: whether the case is an application (where the examiner has a duty to issue a determination) or an appeal (where the examiner's only jurisdiction is the appeal); whether the mediation resolved all issues for all parties and interested persons; and what the examiner is being requested to do (grant a motion withdrawing an order or appeal, versus issue an order on the merits).

Conclusion

We DISMISS WITHOUT PREJUDICE the current appeal. Our dismissal is not a ruling on the merits. While the July 24 notice and order Animal Services served on Rada Farkas was invalid on jurisdictional grounds and there is thus no outstanding noise violation, Animal Services is not barred from re-issuing a notice and order, for the same underlying events, after Kenmore updates its code. In the interim, we encourage the parties to explore mediation. If either party is interested in or has questions about mediation, please contact us.

DATED August 30, 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 29, 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

August 30, 2021

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21012340-A21003401**

RADA FARKAS
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 30, 2021.

Lauren Olson

Lauren Olson
Legislative Secretary

Eykel, Chelsea
Regional Animal Services of King County

Farkas, Rada
Hardcopy

McQuade, Lisa
Hardcopy