

February 4, 2022

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

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V21012661-A21005601**

**JENNIE FOGELSONGER**

Animal Services Enforcement Appeal

Activity no.: A21005601

Appellant: **Jennie Fogelsonger**

[REDACTED]  
Fall City, WA 98024

Telephone: [REDACTED]

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King County: Regional Animal Services of King County  
*represented by* **Rebecca Smokoska**  
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FINDINGS AND CONCLUSIONS:

Overview

1. Jennie Fogelsonger appeals a Regional Animal Services of King County (Animal Services) order removing her dog from King County. 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 the appeal, but we stay part of the penalty, and we extend the timeline for compliance.

### Background

2. In May 2015, Animal Services issued Ms. Fogelsonger a violation notice for her dogs, including Dusty, being unlicensed. Ex. D37.
3. In January 2016, Animal Services issued a violation notice for two of Ms. Fogelsonger's other dogs running at large and trespassing, and for those two dogs, along with Dusty, still being unlicensed. Ex. D34.
4. In July 2017, Dusty escaped and went after Ms. Ellington's dog. Ms. Fogelsonger explained at the time that someone must have accidentally left the gate open, allowing Dusty off the property. Ex. D31 at 002, n.1. Animal Services warned Ms. Fogelsonger that another such incident could lead to more serious violations. *Id.*
5. In October 2018, Animal Services issued Ms. Fogelsonger a violation notice for her four dogs, including Dusty, making excessive noise. Ex. D26. In February 2019, Animal Services issued Ms. Fogelsonger another such violation notice. Ex. D19. Ms. Fogelsonger and the complainant, Ms. Ellington, went to mediation, resulting in an agreement where Ms. Fogelsonger would, among other things, build a fence along the road front. Ex. D22 at 002.
6. In August 2020, Animal Services issued violation notice to Ms. Fogelsonger for Dusty, trespassing, and, more importantly, qualifying as vicious and needing confinement. Ex. D15. Ms. Fogelsonger appealed, explaining that workers had forgotten to close the gate. Ex. D17. Animal Services agreed to reduce the fees, and Ms. Fogelsonger dropped her appeal. Ex. D1-002. This left in place the compliance order, the critical element of which was:

Secure your animal in a fenced area suitable for the size of the animal when your animal is unattended and outside your home. Lock all passages with a padlock to prevent accidental release.

Ex. D15 at 001 (underscore added).

7. In November 2021, Animal Services issued a violation notice to Ms. Fogelsonger for Dusty being unlicensed, qualifying as vicious, and needing confinement. Ex. D4. Animal Services also issued an order to remove Dusty from King County. Ex. D6. Ms. Fogelsonger appealed the removal order in December 2021, explaining that someone had come over and left the gate open. Ex. D12. We went to hearing on January 25, 2022.

### Hearing Testimony

#### *Testimony of Niki Ellington*

8. Niki Ellington testified that on November 2, 2021, she was walking her dog, Wallace, on a harness and leash with her neighbor. They were heading back when Dusty ran out of the Fogelsonger's open gate and attacked Wallace. Ms. Ellington believes that Dusty intended to kill Wallace. The neighbor pulled up on Wallace's leash, but Dusty was

clamped onto Wallace. A dog fight ensued. Ms. Ellington kicked Dusty a couple times to get him off.

9. Ms. Ellington, the neighbor, and Wallace proceeded home. Luckily, Ms. Ellington did not need to bring Wallace to the vet. There was a significant bruise on Wallace that Ms. Ellington was keeping an eye on, but that healed. Ex. D9.
10. Ms. Ellington was able to identify Dusty by his physical features, and she is able to distinguish between Dusty and the other Fogelsonger dog, Jo Jo. Dusty has attacked Wallace at least fifteen times. Dusty has gotten out by squeezing through the fence or leaving through the open gate. There also was no fence for a while. Dusty has also attacked Ms. Ellington's son's dog, a Malamute, multiple times. The most egregious incident was when Dusty came down her driveway and attacked both of her dogs. Ms. Ellington did not report that incident, and she has not reported every incident.
11. Ms. Ellington discussed an additional altercation, one captured by the Ring video. Ex. D39. That round Dusty came onto Ms. Ellington's driveway and attacked her dogs.
12. Apart from barking, Ms. Ellington has not had issues with Ms. Fogelsonger's other dogs.

*Testimony of Jennie Fogelsonger*

13. Ms. Fogelsonger testified that she put up a fence to follow the confinement terms. The owner of the property is planning on putting in a power gate this summer.
14. The gate is never left open by Ms. Fogelsonger. For the August 2020 incident, someone working on the property left the gate open. For the November 2021 incident, the owner's daughter left the gate open. Ms. Fogelsonger was not home during the incident. She returned home from being out, and the daughter did not know anything happened.
15. Ms. Fogelsonger is asking for Dusty to be redeemable. Ms. Fogelsonger believes that if she had the opportunity, she would be able to control Dusty. Dusty is able to be around other dogs, such as her son's dog. Dusty does not attack every dog.
16. She brings Dusty to the dog park. He will stay close to Ms. Fogelsonger. Dusty has interacted with other dogs off leash, and she believed that was okay because it was at a dog park.
17. Ms. Fogelsonger did not put padlocks on the gates because the owner had workers coming and going. Ms. Fogelsonger now has padlocks, but she did not use padlocks in the past.
18. Ms. Fogelsonger has been reading about how she can be a better pack leader. She is learning how to calm down and be consistent. Ms. Fogelsonger has dealt with difficult issues, such as getting custody of her granddaughter, become her mother's guardian, and grieve her mother's death. Dusty helped Ms. Fogelsonger through this. Dusty was not her number one priority during these difficult times. Ms. Fogelsonger wants to have the opportunity to work with Dusty in the neighborhood.

19. In 2019, Ms. Fogelsonger and Ms. Ellington tried mediation. Ms. Fogelsonger agreed to work on Dusty’s socialization and keep Dusty with her when she left the house. Ms. Fogelsonger brought Dusty with her everywhere. She did not bring Dusty on walks in the neighborhood, but on the trails. She was only thinking about keeping Dusty away.

#### Legal Standards

20. Animal Services seeks to remove Dusty from King County under KCC 11.04.290.A.3, which states that:

Failure to comply with any requirement prescribed by the manager [*in the 2020 order*] constitutes a misdemeanor. Such an animal shall not be kept in unincorporated King County after forty-eight hours after receiving written notice from the manager. Such an animal or animals found in violation of this section shall be impounded and disposed of as an unredeemed animal and the owner or keeper of the animal or animals has no right to redeem the animal or animals.

21. 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.
22. We are the most exacting of Animal Services on removal orders, given what is at stake. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (nature of private interest impacted is factor in determining how much process is due); Exam. R. XII.B.4 (in proceeding involving divestiture of legally cognizable rights, examiner may require adherence to court rules to “assure that due process of law is afforded”); *Repin v. State*, 198 Wn. App. 243, 284, 392 P.3d 1174 (2017) (Fearing, C.J., concurring) (analyzing court decisions recognizing “the bond between animal and human and the intrinsic and an estimable value a companion animal”). We have overturned more removal orders than we have sustained.

#### Analysis

23. In some past removal appeals, the owner was following the compliance order (such as the term requiring a competent and capable person have the dog on a leash when off the property) and something unexpected happened and containment was lost (say the dog being walked on a leash broke loose from its collar and escaped). Even though the *result* there was a failure to contain, as the owner was complying with the compliance terms at the time things went south, we have sometimes overturned the removal order. That could have been the case here if, for example, Ms. Fogelsonger had been following the August 2020 requirement that, when unattended and outside the home, Dusty be secured in a fenced area with all passages locked “with a padlock to prevent accidental release,” and yet Dusty busted through a fence panel. Instead, despite numerous times the gate had been left open in the past and Dusty had escaped, Ms. Fogelsonger did not even purchase a padlock, let alone install it, until well after the November 2021 attack. Dusty’s escape on November 2 should have surprised no one.

24. Additionally, we have sometimes been persuaded by a no-harm-no-foul argument, overturning removal orders where, after getting a viciousness designation and compliance order, a dog, say, gets loose and wanders the street, thus violating the containment requirement, but not actually doing anything aggressive while out. Here Dusty did not merely wander off, he attacked Wallace yet again, clamping onto Wallace. Ms. Fogelsonger did not challenge that Dusty re-qualified as vicious on November 2, but even if she had, we would have upheld the violation. Exs. D4, D9, D12.
25. And finally, sometimes the initial altercation, and a later violation of the compliance order, were two isolated aberrations on an otherwise spotless record of responsible animal ownership. Nothing could be further from that here. We accept Ms. Ellington's testimony that Dusty had attacked Wallace at least 15 times. At least as early as 2017, Animal Services was warning Ms. Fogelsonger of the need to contain her dogs, and Ms. Fogelsonger was already making excuses, blaming people for accidentally leaving the gate open and allowing Dusty to escape off the property. Ex. D31 at 002, n.1. And that sorry state of affairs continued largely unabated.
26. Ms. Fogelsonger may genuinely believe that if she had the opportunity now, she would be able to control Dusty. But the time to control Dusty was in 2017 or 2018 or 2019, or certainly by August 2020 when she received the viciousness designation and confinement order. By November 2021, Ms. Fogelsonger was the boy crying wolf too many times. And even after the November 2021 incident Ms. Fogelsonger did not padlock the gate for at least another week. Ex. D10 & D8. Her efforts now are far too little, too late. Ms. Ellington and Wallace should not have had to put up with the violence they have had to endure for this long, and they will not have to live in fear for much longer. We sustain the removal order.
27. We will extend the timeline for removal, however. The steps Animal Services requires an owner to undertake to comply with the removal order—find a suitable new home, outside of King County, for a dog with a potential new owner who must be made aware that the dog has been ordered removed as a threat to public safety, get that person to accept the risk and responsibility, and then get the dog microchipped and out of King County, then give that new owners' contact information to Animal Services—seem near impossible to meet within the 48 hours Animal Services allows. Ex. D6 at 003. We will extend the compliance period from two days to two weeks.

### *Penalty*

28. Ms. Fogelsonger did not appeal V21012660, and even if she had, we would have sustained the viciousness designation and the full \$500 penalty. However, Animal Services agreed that Dusty was licensed as of November 2, so that portion of the violation was issued in error.
29. As to the \$1000 penalty for the removal order (V21012661), we have consistently ruled that this penalty only kicks in when the removal order itself is violated. We set forth amended conditions below, but so long as those conditions are met, there are no penalties associated with the removal order.

## DECISION:

1. We deny Ms. Fogelsonger’s appeal, except that there is no penalty associated with licensing, only with viciousness, and the removal order penalty is currently shelved.
2. By **February 18, 2022**, Ms. Fogelsonger shall either:
  - A. Microchip Dusty (if not previously microchipped); disclose to a new caretaker/owner that Dusty was ordered removed from King County as a threat to public safety; remove Dusty from King County; and provide that new out-of-King-County caretaker’s/owner’s street address (and mailing address, if different), along with a phone and email, to Animal Services.

OR

- B. Surrender Dusty to Animal Services, for Animal Services to attempt to rehome Dusty outside King County.
3. So long as Ms. Fogelsonger fulfills these requirements and Dusty is not thereafter brought back into King County, there is no penalty associated with the removal order. If the requirements are not met, the \$1000 penalties will come due.

ORDERED February 4, 2022.



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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 *March 7, 2022*. 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 JANUARY 25, 2022, HEARING IN THE APPEAL OF JENNIE FOGELSONGER, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V21012661-A21005601**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Rebecca Smokoska, Niki Ellington, and Jennie Fogelsonger. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

The following exhibits were offered by Animal Services and entered into the record:

Exhibit no. D1	Regional Animal Services of King County staff report to the Hearing Examiner
Exhibit no. D2	Online Complaint form of November 2, 2021, incident by Niki Ellington, dated November 7, 2021
Exhibit no. D3	RASKC investigation report no. A21005601
Exhibit no. D4	Notice of violation no. V21012660-A21005601, issued November 8, 2021
Exhibit no. D5	NVOC mailing/tracking history
Exhibit no. D6	Notice and order for removal no. V21012661-A21005601, issued November 8, 2021
Exhibit no. D7	NVOC mailing/tracking history
Exhibit no. D8	Photograph of open gate, taken by N. Ellington November 2, 2021
Exhibit no. D9	Photograph of Wallace’s stomach with scratches and bruising
Exhibit no. D10	Photograph of closed gate, taken by Ofc. Russell November 8, 2021
Exhibit no. D11	Google Map of neighborhood
Exhibit no. D12	Appeal, received December 6, 2021
Exhibit no. D13	RASKC investigation report no. A20013317
Exhibit no. D14	Online Complaint form of August 13, 2020 incident by Nikii Ellington, dated August 13, 2020
Exhibit no. D15	Notice of violation no. V20011043-A20013317, issued August 17, 2020
Exhibit no. D16	NVOC mailing/tracking history
Exhibit no. D17	Appeal
Exhibit no. D18	RASKC investigation report no. A19000690
Exhibit no. D19	Notice of violation no. V19009106-A19000690, issued February 16, 2019
Exhibit no. D20	NVOC mailing/tracking history
Exhibit no. D21	Appeal, received February 28, 2019
Exhibit no. D22	Settlement Agreement for V19009106, dated May 16, 2019
Exhibit no. D23	RASKC investigation report no. A18005329
Exhibit no. D24	Noise complaint form from Jason Hall, dated October 19, 2018
Exhibit no. D25	Noise complaint form from Joe Beach, dated October 19, 2018
Exhibit no. D26	Notice of violation no. V18008777-A18005329, issued October 22, 2018
Exhibit no. D27	Mail Receipt for V18008777
Exhibit no. D28	RASKC investigation report no. A18005084
Exhibit no. D29	Noise complaint form from Jason Hall, dated October 3, 2018
Exhibit no. D30	RASKC investigation report no. A18004420
Exhibit no. D31	RASKC investigation report no. A17005494

Exhibit no. D32	Online Complaint form of July 7, 2017 incident by Niki Ellington, dated July 7, 2017
Exhibit no. D33	RASKC investigation report no. A16000269
Exhibit no. D34	Notice of violation no. V16005581-A16000269, issued January 28, 2016
Exhibit no. D35	Returned Envelope for V16005581
Exhibit no. D36	RASKC investigation report no. A15001215
Exhibit no. D37	Notice of violation no. V15047555
Exhibit no. D38	NVOC mailing/tracking history
Exhibit no. D39	Video submitted by N. Ellington for A20013317

The following exhibits were offered by the Appellant and entered into the record:

Exhibit no. A1	Email from Simeon Stoyanov
Exhibit no. A2	Video, 20220110_162333
Exhibit no. A3	Video, 20220110_085234
Exhibit no. A4	Video, 20220110_085216

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February 4, 2022

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V21012661-A21005601**

**JENNIE FOGELSONGER**

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 February 4, 2022.



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Lauren Olson  
Legislative Secretary

**Ellington, Niki**

Hardcopy

**Eykel, Chelsea**

Regional Animal Services of King County

**Fogelsonger, Jennie**

Hardcopy

**Smokoska, Rebecca**

Regional Animal Services of King County