

April 28, 2022

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

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**SUMMARY ORDER**

SUBJECT: Regional Animal Services of King County file no. **V22013090-A2201846**

**TZU-YUN LU**

Animal Services Enforcement Appeal

Activity no.: A22001846

Appellant: **Tzu-Yun Lu**



King County: Regional Animal Services of King County  
*represented by* **Chelsea Eykel**  
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***Overview***

Animal Services served a violation notice asserting that Tzu-Yun Lu's (Appellant's) chickens violated BMC 8.04.300.K, which declares as a nuisance, "Any domesticated animal that enters upon a person's property without the permission of that person." Because the current Bellevue code does not include non-mammals such as chickens in its definition of "domesticated animal," even assuming that Appellant's chickens trespassed on April 12, that was not a code violation. We therefore GRANT the appeal, but not before offering thoughts on revisions to correct the code's blind spot in the future.

## *Analysis*

There is no question that a chicken is a domesticated animal in the common sense of the word, a not unusual backyard pet even in very urban areas. In our region, one does not even need a backyard to have chickens: an apartment rooftop will suffice.<sup>1</sup> One might argue that chickens are a textbook example of an animal made to be domesticated. They are certainly more domestic than, say, mules, which (as discussed below) would be explicitly covered.<sup>2</sup> If the code just left it at “domesticated animal,” we would look to a dictionary and common understandings and have little trouble finding a chicken domestic and subject to BMC 8.04.300.K.

However, the code defines “domesticated animal” as “a domestic beast, such as any dog, cat, rabbit, horse, mule, ass, bovine animal, lamb, goat, sheep, hog or other animal made to be domestic.” BMC 8.04.060.G. On first blush the “or other animal made to be domestic” sounds like a broad catchall. But as the sentence is written, there is only one category of covered animals: “beasts,” which is then illustrated by reference to eleven specific species and a more general “other animal.” Everything that follows “beast, such as...” relates to the understanding of “beast.”

Focusing on such grammatical niceties sounds hyper technical, something we try to avoid in our analysis and writing. But occasionally, even something like a comma matters. Perhaps the most famous example stems from the Tariff Act of 1872, whereby Congress—intending to exempt certain fruiting plants (such as banana trees) from taxation—unintentionally enacted a law that exempted “Fruit, plants tropical and semi-tropical for the purpose of propagation or cultivation.” The accidental comma after “fruit” cost the government millions in lost revenue, because tropical and semi-tropical fruit, along with tropical and semi-tropical plants, were thus exempted.<sup>3</sup> More generally, our Court instructs us to “employ traditional rules of grammar to discern plain meaning.” *Gray v. Suttell & Assocs.*, 181 Wn.2d 329, 339, 334 P.3d 14 (2014)

Moving beyond grammar, if the code definition had just left it at a reference to beasts, chickens might be covered. While Merriam-Webster’s first definition of “beast” is “a four-footed mammal as distinguished from a human being, a lower vertebrate, and an invertebrate,” its second acceptable definition is “a lower animal as distinguished from a human being.”<sup>4</sup> There would be some ambiguity—did the drafters mean “beast” in the first, narrower sense (mammals other than human being) or the second, broader sense (any nonhuman animal)? However, the code provides eleven specific examples of exactly what is meant by “beast.” If even one of those eleven species were something other than a mammal—and a four-footed mammal at that—there would be an argument that the drafters were using “beast” in the broader sense. However, all are strictly in the four-footed mammalian camp. And “general terms appearing in any statute in connection with specific terms are to be given meaning and effect only to the

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<sup>1</sup> <https://www.bizjournals.com/seattle/news/2017/01/18/chickens-are-seattles-hot-apartment-amenity-rental.html>.

<sup>2</sup> Outside of perhaps a narrow band of adjacent homes around Kelsey Creek Farm, one would not expect mules to play much role in Bellevue residents’ lives. (We are not counting Kelsey Creek Farm’s most famous resident, rest his soul, because Pasado was a donkey, not a mule.) <http://www.pasadosafehaven.org/about/story/>.

<sup>3</sup> <https://priceonomics.com/the-most-expensive-typo-in-legislative-history/>.

<sup>4</sup> <https://www.merriam-webster.com/dictionary/beast>.

extent that the general terms suggest items similar to those designated by the specific terms.” *Condit v. Lewis Refrigeration Co.*, 101 Wn.2d 106, 111, 676 P.2d 466 (1984) (emphasis added).

Certainly, BMC 8.04.050.A explains the chapter’s purpose as including “controlling errant animal behavior [not just errant domesticated animal behavior] so that it shall not become a public nuisance.” Yet “a general statement of statutory purpose” cannot be “construed in a way that would override a specific standard for implementing that purpose.” *Hansen v. Hansen*, 270 P.3d 531, 534 (Utah 2012). BMC chapter 8.04 contains many provisions that apply to some animals but not to others. For example, several of BMC 11.04.060’s definitions cover a broad swath of animals, or even all animals, while other definitions cover only a subset of animals.<sup>5</sup> And outside the definition section, certain BMC chapter 11.04 provisions cover a broad swath of animals, while others are more narrowly tailored to, say, dogs and cats.<sup>6</sup> Thus, not all animals are covered by all sections of BMC chapter 11.04. Specifically, BMC 8.04.300.K only covers domesticated animals, and domesticated animals are limited to mammals other than humans.

As a policy matter, it is not clear why there should be any special limit to the types of animals covered by a nuisance violation. Why is it important what *type* of animal a person harbors, keeps, or maintains, if that animal is committing a specific violation? And why should a resident’s duty to be a good neighbor be any less depending on the animal species? Yet when we decide cases, we interpret the codes “as they are written, and not as we would like them to be written.” *Brown v. State*, 155 Wn.2d 254, 268, 119 P.3d 341 (2005). And the trespass violation is not written to cover chickens. Animal Services’ violation notice is thus void on its face.

### ***Future-Looking***

As with every city in King County that contracts with Animal Services, Bellevue has adopted a close approximation of County animal code. As we understand it, Bellevue (and other cities) are currently reviewing a complete rewrite of KCC Title 11. The last draft we reviewed would solve today’s problem in two ways, first, making it unlawful for “For any owner to cause or permit an animal” (not just a domesticated one) to commit a nuisance and, second, defining “domesticated animal” as “any animal that is a companion animal, a service or assistive animal, livestock or poultry.”

Bellevue is free to either adopt some version of the language from the new County code as its own, or to adopt the County code by reference and then make explicit any tweaks Bellevue desires. Most jurisdictions take this latter approach, adopting 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). *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

<sup>5</sup> For example, (P) “livestock” includes, for instance, only those pigs over 120 pounds or over 20 inches high, while a (J) “grooming service” covers any animal brought in to enhance aesthetic value and/or health. Meanwhile, (I) “fostering” relates only to dogs or cats, while (X) “service animals” covers any animal trained to aid a disabled person. Even the word “pet” means different things, as a (T) “pet” is limited to dogs, cats, and other animal requiring a license, while one who exclusively sells birds, reptiles, fowl, and fish is nonetheless running a (U) “pet shop.”

<sup>6</sup> BMC 8.04.270.D.1, .310, .430 & .470.

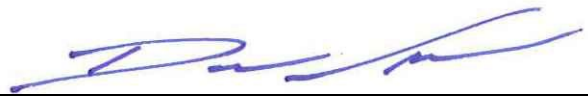
7.04.005; Sammamish 11.05.010; and Seatac 6.05.030. For those jurisdictions, any improvements to the County code are automatically incorporated, without the need for further time and resource expenditures from the city. For those that do not, we have run into problems where the County code evolves but the city's stays static.<sup>7</sup> Yet both approaches could solve today's problem.

### ***Conclusion***

Until Bellevue updates its code, chickens are not covered by the nuisance violations in BMC 8.04.300 that reference "domesticated animals." Therefore, Appellant is entitled to judgment as a matter of law. We GRANT Appellant's appeal and DISMISS Animal Services' April 2022 violation notice.

If for some reason we have misunderstood the situation, by **May 30, 2022**, 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 the signature line) for lodging an appeal.

DATED April 28, 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 *May 30, 2022*. 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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<sup>7</sup> See [https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2021/Nov%202021/V21012202\\_Albin.ashx?la=en](https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2021/Nov%202021/V21012202_Albin.ashx?la=en)

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V22013090 -A2201846**

**TZU-YUN LU**

Animal Services Enforcement Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **SUMMARY ORDER** 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 April 28, 2022.



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Lauren Olson  
Legislative Secretary

**Eykel, Chelsea**

Regional Animal Services of King County

**Kelly, Tim**

Hardcopy

**Lu, Tzu-Yun**

Hardcopy