

January 3, 2023

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

King County Courthouse
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Seattle, Washington 98104
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file nos. **V22013449 and V22013578**

SHELLY BURTIS

Animal Services Enforcement Appeal

Activity no.: A22004396

Appellant: Shelly Burtis

[REDACTED]
Duvall, WA 98019

Telephone: [REDACTED]; Email: [REDACTED]

King County: Regional Animal Services of King County
represented by Sergeant Chelsea Eykel
Regional Animal Services of King County
21615 64th Avenue S
Kent, WA 98032

Telephone: (206) 263-5968; Email: raskcappeals@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. Regional Animal Services of King County (Animal Services) issued Notice of Violation and Order to Comply V22-013449 on August 19, 2022, and Notice and Order for Removal V22-013578, on September 22, 2022, to Shelly Burtis. Ms. Burtis appealed both orders and a hearing was held December 16, 2022. 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 find and conclude as follows.

Background

2. The Notice of Violation and Order to Comply identified five violations and two associated fines. Three violations were for the dog named Deuce, and two for the dog named Roxy:
 - Deuce: Notice and Order for Confinement KCC 11.04.290¹;
 - Deuce: Notice and Order for Abatement KCC 11.04.260²;
 - Deuce: Vicious Animal at Large 1st Violation KCC 11.04.230 I³, \$500 Civil Penalty;
 - Roxy: Notice and Order for Abatement KCC 11.04.260⁴; and
 - Roxy: Running at Large 1st Offence KCC 11.04.230 B⁵, \$50 Civil Penalty.⁶

3. The Notice and Order for Removal applies only to Deuce. It identified earlier violations (trespass on private property; notice and order for confinement; running at large, and vicious animal),⁷ and the violations this appeal addresses, and ordered:
 - Deuce must be removed from King County within forty-eight (48) hours from receipt of this notice;
 - Deuce must be microchipped as a means of permanent identification and you must notify Regional Animal Services of King County of the microchip numbers;
 - Any person whose animals are maintained in violation of this chapter shall incur a civil penalty not to exceed \$1,000 per animal and to be directly assessed by the director plus billable costs of the animal control authority;
 - You must provide Regional Animal Services of King County proof the new owner lives outside King County; and
 - You must disclose to any new owner that your animal, Deuce, was ordered removed from King County as your animal is a public nuisance or a threat to public safety.⁸

¹ KCC 11.04.290 A(1) (An animal which has been declared vicious “may be harbored, kept or maintained in King County only upon compliance with” specified requirements.).

² KCC 11.04.260 A (When an animal is “maintained in violation of this chapter, the manager of the regional animal services section shall commence proceedings to cause the abatement of each violation. ...”).

³ KCC 11.04.230 I (“Any vicious animal or animal with vicious propensities that runs at large at any time....”).

⁴ See FN 2.

⁵ KCC 11.04.230 B (“A dog running at large within the county.”).

⁶ Ex. D-4.

⁷ Ex. D7 (Identifying Violation V22-012876 on January 25, 2022: Animal Trespassing on Private Property, 1st Violation KCC 11.04.230K; Notice and Order for Confinement KCC 11.04.290; Running at Large 1st Offense KCC 11.04.230B; and Vicious Animal 1st Violation KCC 11.04.230H). The Hearing Examiner upheld these violations. Ex. D14.

⁸ Ex. D7-003.

Hearing Testimony

Testimony of Ryan Carter

4. On March 13, 2021, Ryan Carter was walking with his wife, who was seven months pregnant. Ms. Burtis' dog charged at her, barking and snarling. Mr. Carter yelled at the dog to keep him away.
5. On October 31, 2021, when his son was about five months old, Mr. Carter was walking with his wife, son, and dog, when Ms. Burtis' dog charged the family, barking and snarling. Mr. Carter jumped in front of his family, stomping and yelling. The dog would not go away. He could hear the owners yelling at the dog, but they did not come out. He yelled at the owners to come get the dog. He told his family to go away, as he stayed between them and the dog and kept yelling at the dog to get it to back away.
6. A man (Ms. Burtis' husband) ultimately came out. He yelled at Mr. Carter. He threatened to punch Mr. Carter. Mr. Carter called 911. Ms. Burtis' husband then realized his dog had charged the baby and baby carriage and backed down. 911 did not send a patrol, but suggested reaching out to animal control.
7. There have been at least four instances of a dog belonging to Ms. Burtis charging Mr. Carter and/or his family. The two incidents documented in writing are detailed above. The off-property charging has occurred when Mr. Carter and/or his family are walking from their home on 173rd to 300th Avenue and down to the mailboxes. When walking past the property on the one-car wide country road, they typically walk in the road's middle, moving to the side when a car drives by. When Ms. Burtis' dog has charged, the dog has come out of the bushes and onto the road, aggressively barking. Mr. Carter has dogs. None behave this way with people.

Testimony of Heather LaValle

8. Heather LaValle has lived in the area for about three years. She has been on walks when Ms. Burtis' two dogs are off the property. Ms. LaValle's daughters walk home from the nearby school bus stop and by Ms. Burtis' home, and have been intimidated by the two off-leash boxers. Once one of her daughters was walking the family dog, and as she passed Ms. Burtis' house the two dogs came out. The daughter started to run, but the street ended. As the dogs cornered her, she telephoned for help.

Testimony of Mark Kenworthy

9. Mark Kenworthy has a fenced yard that his dogs stay in. He has had to chase Ms. Burtis' dogs off his property. When Ms. Burtis' two dogs are told to return home, they bark and become aggressive. This contrasts with other dogs who have entered his property who simply take off when he yells at them.
10. On one occasion, Mr. Kenworthy was in his field when one of Ms. Burtis' dogs came up and began snarling, barking, and growling very aggressively, with hackles raised, lips pulled back, and all teeth showing. Mr. Kenworthy began yelling at the dog. Mr.

Kissinger (Ms. Burtis' husband) did nothing. He just stood and watched, doing nothing to call the dog off. Mr. Kenworthy has never seen a dog owner behave this way.

11. Other incidents occurred when Mr. Kenworthy was on his tractor. The dogs would trespass and act aggressively. These incidents occurred before August 16, 2022. On cross-examination, Mr. Kissinger stated Ms. Burtis and her husband had a motor cross establishment on the property with neighbor complaints from as far as a mile away and there was litigation over the use.

Testimony of Robert Neale

12. In June 2022, Robert Neale was driving home (up 300th and turning right onto 172nd). Roxy crossed the tree line, exited Ms. Burtis' property, and chased his car down the road, biting at a front tire. Mr. Neale proceeded slowly to avoid running over the dog. He called Animal Services because this issue has been going on for a while and occurred after the hearing involving Ms. Burtis' dogs and his goats, and he wanted to document that Roxy had left the property. Animal Services issued a warning.
13. Ms. Burtis' dogs have been getting loose and entering his property for some time. They attacked his barn dog. He did not file a complaint then, as he was trying to resolve the issue with Ms. Burtis. After Deuce killed his goats, he felt he needed to contact Animal Services. He has no personal animus towards Ms. Burtis. There was some litigation with other neighbors involving CC&R violations years ago. But he has dogs and loves them. He just wants dogs to stay on their property and not get out and behave aggressively.
14. When his dog was attacked, it was behind horse fencing that keeps his dog in, but the boxers scaled it. When his goats were killed, they were in their goat paddock.
15. Mr. Neale was working from home on August 16, 2022. He was on a zoom call. He looked up and saw both boxers about 15-feet away. Mr. Neale identified both of Ms. Burtis' dogs as the ones on his property. He was very concerned, as he has three new goats. He got off the call and ran out onto the front porch to chase them away. He immediately sent an e-mail out to the 300th group (neighborhood group), telling Ms. Burtis that her dogs were out, and submitted a complaint to Animal Services. The complaint was not read into testimony, but includes this statement:

I saw the two boxers belonging to Ms. Burtis on my property this morning. I ran outside yelling at them and chased them down our driveway onto 172nd Street. This is very frustrating as we had an animal control hearing about 3 months ago and one of her dogs was classified as a dangerous animal that was supposed to be kept on her property. Now both of her dogs are running loose again.⁹

⁹ Ex. D2-003. There have been a series of incidents, described in testimony and in the exhibits. *See e.g.*, Ex. D12-005 (“Your 2 boxers came onto our property today and attacked Gracie. She is bloodied. I don’t know the extent of her injuries yet. I chased them off down 172nd and they went toward your house.”).

Testimony of Shelly Burtis

16. Shelly Burtis stated she did not have any knowledge that her dogs left her property on August 16, 2022. In closing, Ms. Burtis requested that if the Order of Removal is upheld, she be provided a reasonable amount of time to rehome Deuce.

Analysis

17. We do not grant substantial weight or otherwise accord deference to agency determinations.¹⁰ 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.¹¹
18. Deuce and Roxy were witnessed running at large and trespassing on private property on August 16, 2022. This violates the confinement order both were under.
19. In a prior incident which resulted in Deuce’s confinement order, he was running at large, trespassing onto private property and crossing private fencing. He then attacked and killed two goats. As a result, he was designated a vicious animal.
20. The vicious animal designation was earlier appealed. In the decision upholding the designation, the Examiner explained:

A civil “vicious animal” citation may issue for:

Any animal that has exhibited vicious propensities and constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on the animal’s premises.¹²

“Vicious” means having performed the act of, or having the propensity to do any act, endangering the safety of any person, animal or property of another, including, but not limited to, biting a human being or attacking a human being or domesticated animal without provocation.¹³

The term “vicious” is a legal term. Under King County Code, it does not mean a dog is vicious all the time, or that the dog’s owner does not take good care of the dog. It simply means that the animal has exhibited certain propensities which present a danger to the safety of people and/or domesticated animals.¹⁴

¹⁰ Exam. R. XV.F.3.

¹¹ KCC 20.22.080.G; .210.B.

¹² KCC 11.04.230(H).

¹³ KCC 11.04.020(BB).

¹⁴ Ex. D14-004.

21. Deuce has since returned to that same property on which he killed the goats, again appearing in an area where goats are present.
22. Ms. Burtis contended that witnesses, including the individual whose goats were killed, were prejudiced by the past history and by a dispute over an earlier noise disturbance matter on Ms. Burtis' property. The evidence and testimony did not appear biased. The facts were presented logically and coherently and without inflammatory language. Several witnesses testified. The testimony was consistent, as were witness perceptions of both Roxy and Deuce. The written documentation provided was also consistent with the testimony. The testimony appeared truthful, with no witness trying to make the facts appear more favorable for supporting Animal Services' decisions.
23. Animal Services previously provided a warning to Ms. Burtis for Roxy running at large. Roxy was later observed running at large and trespassing on private property. The testimony and evidence provided is credible and internally consistent. The Notice of Violation and Order to Comply (which included the Notice and Order for Abatement KCC 11.04.260 and Running at Large 1st Offense KCC 11.04.230 B) for Roxy is supported by a preponderance of the evidence and is consistent with the KCC.
24. Deuce, a designated vicious animal, was observed running at large and trespassing onto private property in violation of Animal Services' orders. The testimony and evidence provided is credible and internally consistent. Animal Services' Notice of Violation and Order to Comply (which includes a Notice and Order for Confinement, Notice and Order for Abatement, and Vicious Animal at Large) for Deuce is supported by a preponderance of the evidence and is consistent with the KCC.
25. Ms. Burtis has not been able to confine Deuce to her property. Due to these circumstances, which resulted in violating Animal Services' confinement order, and given Deuce's earlier designation as a vicious animal, the Notice and Order for Removal is supported by a preponderance of the evidence and consistent with the KCC.
26. When a vicious animal violates an Animal Services order, the animal is subject to removal.

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.¹⁵

27. As an appeal was filed, the Notice and Order for Removal was effectively stayed. At Ms. Burtis' request, the stay should continue for 30-days to allow Ms. Burtis the opportunity to rehome Deuce.

¹⁵ KCC 11.04.290 A(3).

28. In her appeal, Ms. Burtis objected to the civil penalties associated with the KCC violations. The penalties in V22-013449 are authorized by code and Ms. Burtis did not identify a basis for their elimination or waiver.¹⁶ The situation has been ongoing, with no explanation provided for the compliance failures. However, the penalty associated with the removal order only comes due if the removal order itself (here, as modified by an examiner) is violated. Should Ms. Burtis comply with the modified removal order, there will be no penalty in V22-013578. If she does not, the full \$1,000 will come due, and Deuce may be impounded and Ms. Burtis would have no further say where, and to whom, Deuce is rehomed.¹⁷
29. The Department requested a stay of the penalty imposed with the Notice and Order for Removal to allow for compliance. This request should be granted.

DECISION:

1. The Notice of Violation and Order to Comply V22-013449 is upheld, including the associated \$550 in civil penalties, which shall be paid to Regional Animal Services of King County within 30-days (**February 3, 2023**).
2. The Notice and Order for Removal V22-013578 is upheld. The stay in place during the appeal is continued through **February 3, 2023**, to allow Ms. Burtis the opportunity to rehome Deuce consistent with the Notice and Order of Removal. If compliance is achieved by **February 3, 2023**, there is no \$1,000 penalty; if not, Ms. Burtis shall pay the full amount to Regional Animal Services of King County, also by **February 3, 2023**.

ORDERED January 3, 2023.



Susan Drummond
Hearing Examiner Pro Tem

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 *February 2, 2023*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

¹⁶ KCC 11.04.230.C.

¹⁷ KCC 11.04.200, .290.A.3.

**MINUTES OF THE DECEMBER 16, 2022, HEARING IN THE APPEAL OF
SHELLY BURTIS, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NOS. V22013449 & V22013578**

Susan Drummond was the Hearing Examiner pro tem in this matter. Participating in the hearing were Shelly Burtis, Ryan Carter, Chelsea Eykel, Mark Kenworthy, Heather LaValle, and Robert Neale. 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	Online Complaint form of August 16, 2022, incident by Robert Neale, dated August 16, 2022
Exhibit no. D3	RASKC investigation report no. A22004396
Exhibit no. D4	Notice of violation no. V22013449-A22004396, issued August 19, 2022
Exhibit no. D5	Warning Notice V22013450-A22004396, dated August 19, 2022
Exhibit no. D6	NVOC mailing/tracking history
Exhibit no. D7	Notice and order for removal no. V22013578-A22004396, issued September 22, 2022
Exhibit no. D8	NVOC mailing/tracking history
Exhibit no. D9	RASKC investigation report no. A22000459
Exhibit no. D10	Online Complaint form of January 25, 2022, incident by Robert Neale, dated January 25, 2022
Exhibit no. D11	Online Complaint form of January 19, 2022, incident by Taylor Marie Carter, dated January 26, 2022
Exhibit no. D12	Emails from neighborhood regarding Ms. Burtis’ dogs
Exhibit no. D13	Notice of violation no. V22012876-A22000459, issued January 28, 2022
Exhibit no. D14	Hearing Examiner Report and Decision, dated May 4, 2022
Exhibit no. D15	RASKC investigation report no. A22002939
Exhibit no. D16	Online Complaint form of June 4, 2022, incident by Robert Neale, dated June 4, 2022
Exhibit no. D17	Warning Notice V22013234-A22002939, dated June 7, 2022
Exhibit no. D18	Appeal, received September 15, 2022
Exhibit no. D19	Appeal, received October 18, 2022
Exhibit no. D20	Map of subject area

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

Exhibit no. A1	Summary
Exhibit no. A2	Email, from Rob Neale, dated January 25, 2022
Exhibit no. A3	Email, from Jessica Cabales, dated October 28, 2022
Exhibit no. A4	Photograph of Roxy and Deuce on August 16, 2022
Exhibit no. A5	n/a
Exhibit no. A6	Email, from Jessica Cabales, dated December 11, 2021
Exhibit no. A7	Email, from Nicole Pascua, dated October 24, 2021

Exhibit no. A8	Email, from Rob Neale, dated December 11, 2021
Exhibit no. A9	Email, from Jessica Cabales, dated December 7, 2021
Exhibit no. A10	Email, from Jesse McIntyre, dated December 6, 2021
Exhibit no. A11	Email, from Amanda Williams, dated January 25, 2022

January 3, 2023

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file nos. **V22013449 and V22013578**

SHELLY BURTIS

Animal Services Enforcement Appeal

I, Jessica Oscoy, 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 January 3, 2023.



Jessica Oscoy
Office Manager

Burtis, Michelle
Hardcopy

Carter, Ryan

Eykel, Chelsea
Regional Animal Services of King County

Kenworthy, Mark

LaValle, Heather

Neale, Robert
Hardcopy