

May 12, 2023

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

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V22013623-A22005057**

**BRYAN SERRANO**

Animal Services Enforcement Appeal

Activity no.: A22005057

Appellant: **Bryan Serrano**

[REDACTED]  
Seatac, WA 98168

Telephone: [REDACTED]

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King County: Regional Animal Services of King County  
*represented by* **Chelsea Eykel**  
Regional Animal Services of King County  
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FINDINGS AND CONCLUSIONS:

Overview

1. Bryan Serrano appeals a Regional Animal Services of King County (Animal Services) violation notice for his dog, Puffy, again making excessive noise. After hearing the witnesses' testimony and observing their demeanor (and we do not find either Mr. Serrano or the complainant credible), studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we grant Mr. Serrano's appeal.

### Background

2. In 2021, Animal Services issued Mr. Serrano three violation notices for Puffy’s noise, none of which were appealed. In June 2022, Animal Services issued Mr. Serrano a fourth violation notice, along with an order to remove Puffy from King County. Mr. Serrano timely appealed that violation notice and the removal order. We went to hearing in August, and in our September 13, 2022, decision we upheld the violation notice but overturned the removal order.
3. On September 19, 2022, Megan Snyder filed a complaint for Puffy barking excessively on September 16 (i.e. three days after we upheld the earlier violation) and 19. Ex. D3. Animal Services issued Mr. Serrano a violation notice. Ex. D4. Mr. Serrano timely appealed. Ex. D6.
4. In November 2022, we held a pre-hearing conference at which Ms. Snyder and Mr. Serrano jointly elected to attempt mediation. In December, the mediation coordinator advised us that Ms. Snyder had elected not to go forward with mediation.
5. We initially scheduled a hearing for February 2023; however, Mr. Serrano requested rescheduling due to work conflicts. We went to hearing on April 27, 2023, and provided Mr. Serrano with a Spanish interpreter. We left the record open until May 1, 2023, for Mr. Serrano to provide us with proof of payment for his prior violation notices. Ex. A1.

### Hearing Testimony

#### *Chelsea Eykel’s Testimony*

6. On April 24 or 25, 2023, Sergeant Eykel called Ms. Snyder, who relayed that she was happy with the situation and no longer saw a need for our April 27 hearing. However, Ms. Snyder called Sgt. Eykel on April 26 to complain about Puffy barking all day that day. Sgt. Eykel could hear a dog barking loudly over the course of their five-minute phone conversation.
7. Ms. Snyder later recorded the noise. Ex. D8. The recording is only 20 seconds long. Sgt. Eykel observed that the recording does not reflect neither the loudness of the noise she could earlier hear across a phone line, nor the tenor of the noise—the video sounds more like a regular bark, as opposed to the shrill, high-pitched wail she could hear over the phone.
8. Sgt. Eykel was surprised that Ms. Snyder had complained again the day prior to hearing, since Ms. Snyder had not reported anything since September 19.

#### *Megan Snyder’s Testimony*

9. Megan Snyder filed the September 2022 complaint, for Puffy again excessively barking. The pattern remains the same—Puffy excessively barks, followed by two days of no barking, and then consistent barking all day again. This starts when the Serranos leave

their home in the morning until around 3:00 p.m. when someone returns home. It seems like the Serranos leave Puffy outside all day until someone returns home.

10. The dogsitters typically control Puffy, but at times this responsibility is ignored, particularly when no one is home. Ms. Snyder notices that when the weather is nice and the Serranos are not home, the Serranos leave Puffy outside more, which is also when everyone has their windows open. Ms. Snyder also notices that Puffy is quiet for a period of time after examiner proceedings, but then the issue arises again.
11. Ms. Snyder testified that Puffy continued barking regularly after filing the September 2022 complaint, but only for a few hours. Puffy barks for several hours when people are home, but is then brought back inside the house; Puffy does not bark as much as when someone is at home. The Serranos' fence is tall and blocks Ms. Snyder's direct line of sight from her window, but she can tell it is definitely Puffy making the noise.
12. To rebut Mr. Serrano's claims that her complaints targeted him on racial grounds, Ms. Snyder explained that she has filed prior noise complaints against two sets of white neighbors. One complaint Ms. Snyder filed was on the prior owner that lived across the street from her, for their three large dogs barking all day. The other complaint was on the neighbor that lives behind her for her dogs barking and being aggressive.

#### *Bryan Serrano's Testimony*

13. After the last hearing, Bryan Serrano was scared Puffy would be taken away from him, so he hired his sister to dog sit Puffy. On the day Ms. Snyder filed her September 2022 complaint, his sister was picking up his daughters from school, but she was gone no longer than thirty minutes. Mr. Serrano did not have money to continue paying his sister, so he switched to keeping Puffy inside the house until his daughter comes home around 3:30 p.m. When Puffy is outside, he is only outside for one to two minutes to go potty. Their windows are always closed.
14. As to April 26, 2023, Mr. Serrano's wife came home from work early. When Mr. Serrano arrived around 4:00 p.m., everyone was inside. He believes Ms. Snyder is just sensitive to noise and is just always paying attention to the Serranos' schedules because she is always looking outside.
15. Mr. Serrano is frustrated at the allegation that Puffy is barking for long periods of time, yet there is no evidence. There is also no evidence proving that it is Puffy making that noise. Mr. Serrano has a good relationship with his neighbors across the street that have lived there for about four months, and they have never complained. Mr. Serrano contemplated giving Puffy up for adoption, but ultimately decided to keep him because he knows that he is able to control him. Puffy no longer wears his bark collar because the Serranos keep him inside the house most of the time. Mr. Serrano feels content with what the examiner's decision ultimately is because he has done his best to remedy the situation.

### Legal Standards

16. The issue is easy to state—since our August 29, 2022, hearing on the first set of appeals, has Puffy barked “to an unreasonable degree, in such a manner as to disturb a person or neighborhood,” KCC 11.04.230.J—and more complex to apply. However, over the course of our 90+ noise cases we have established several consistent benchmarks to guide our analysis:
- A. We draw a sharp distinction between nighttime barking and daytime barking, construing section .230.J consistently with the general County noise code, which makes numerous daytime versus nighttime distinctions.<sup>1</sup> That the timing of a noise matters significantly is not controversial, nor new. For example, as one pre-Civil War court described it, “The peace of Sunday may be disturbed by acts which, on other days, cannot be complained of.”<sup>2</sup> Replace “Sunday” with “midnight” and “on other days” with “noon,” and that proposition remains equally true 164 years later. Animal Services carries a significantly higher burden for appeals involving daytime noise (meaning after 7:00 a.m. on weekdays/9:00 a.m. on weekends and before 10:00 p.m. every evening) than for nighttime noise.
  - B. The day/night distinction is strongest when it comes to how long (duration-wise) barking must occur for us to find it to an “unreasonable degree, in such a manner as to disturb a person or neighborhood.” During the day, a dog barking for several minutes, several times a day, does not even approach a violation. Conversely, during nighttime hours (i.e., after 10:00 a.m. and before 7:00 a.m. on weekdays and 9:00 a.m. on weekends), whether a dog barks six seconds or sixty seconds or six minutes or sixty minutes is somewhat irrelevant. If the barking wakes someone up from sleep, even quickly quieting the dog down after each episode is locking the barn door after the horse is gone—the damage for a given night’s sleep is already done. If that happens enough nights, that is a violation, even if each barking episode itself is relatively brief. The responsibility an owner has to take to keep quiet hours quiet is much higher than during daytime hours.
  - C. Daytime barking must be far more significant than nighttime barking to qualify as “unreasonable.” While one’s right to make nighttime noise “must be limited by the right of the neighbors in the area to be free of disturbing noises during normal sleeping hours,”<sup>3</sup> there is nowhere near the same community expectation that daytime hours will be quiet. During the day lawnmowers whirr. Trucks back up and emit loud warning beeping. Children scream as they play. Power tools

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<sup>1</sup> KCC 11.04.230.J and KCC chapter 12.86 were jointly amended by Ordinance 18000 in 2015. The noise code lists numerous sounds exempt from noise code limitations between 7:00 a.m. (9:00 a.m. on weekends) and 10:00 p.m. KCC 12.86.510. In that same ordinance, the Council amended the law to explicitly add that, “The hour of the day at which the sound occurs may be a factor in determining reasonableness.” Ord. 18000 at § 72 (codified at KCC 12.86.410.A.).

Although decibels are not determinative, from 10 p.m. and 7:00 a.m. (9:00 a.m. on weekends) the maximum permissible sound levels are reduced by ten decibels. KCC 12.86.120.A. Ten decibels may not seem like much; however, reducing the decibel level by 10 dBs halves the perceived loudness. <http://www.siue.edu/~gengel/ece476WebStuff/SPL.pdf>.

<sup>2</sup> *Commonwealth v. Jendell*, 2 Grant 506, 509 (Pa. 1859).

<sup>3</sup> *Altman v. Ryan*, 435 Pa. 401, 407, 257 A.2d 583, 605 (1969).

screech. Waste collectors bang trash cans. Cars honk. And dogs most definitely bark. At some point, the quality and quantity of such repeatedly-occurring daytime barking becomes legally unreasonable, but it is a high threshold.

- D. And something beyond the barking’s timing, loudness, and duration matters to the average listener. Distress-sounding noises are more likely to disturb a non-sociopath than noises made during play. That is not a phenomena unique to dog barking. For example, in the summer our neighborhood is filled with screaming children. But it is almost always the sound of children at play, noises easier to ignore and far less disturbing than even fainter, shorter-duration sounds of a child in distress. There is a qualitative, as well as quantitative, aspect to noise.
- E. Finally, while the noise need not disturb a neighborhood (the code standard is “a person or neighborhood”), in analyzing whether noise truly “disturbs,” our Court reminds us to focus on an objective “unreasonableness” standard, and not to allow any given complainant to make a “subjective determination” of a noise violation.<sup>4</sup> Similarly, our Court instructs us to guard against measuring conduct “by its effect on those who are inordinately timorous or belligerent.”<sup>5</sup> So, in looking at both “unreasonable” and “disturb,” we review the steps an appellant took to control the noise and the steps a complainant took to mitigate the noise’s impact.<sup>6</sup>
17. 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.

### Analysis

#### *Credibility*

18. In the noise decision we issued earlier this week on a separate appeal, we found the complainants and appellant credible and “to all be reasonable people trying their best to work through a bad situation...and being empathetic to each other’s needs.” This case is the polar opposite. Neither Ms. Synder nor Mr. Serrano were credible or showed any empathy.
19. While Mr. Serrano has made significant—and effective—*efforts* since last fall to limit Puffy’s barking (a point to return to below), his *statements* themselves were the opposite of effective. His:

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<sup>4</sup> *City of Spokane v. Fischer*, 110 Wn.2d 541, 544–45, 754 P.2d 1241 (1988).

<sup>5</sup> *Seattle v. Eze*, 111 Wn.2d 22, 29–30, 759 P.2d 366 (1988) (citations omitted).

<sup>6</sup> *See, e.g., State v. Acrey*, 148 Wn.2d 738, 748-49, 64 P.3d 594 (2003) (“reasonable” depends on balancing competing interests).

- questioning how Ms. Snyder or Animal Services could identify that it was Puffy doing the barking was silly, because by now *everybody involved* with this two-year dispute has (unfortunately) had to learn exactly what Puffy sounds like (and to endure it);
- paranoia showed through again when he asserted that Ms. Snyder is only paying attention to his schedules because she is always looking outside—instead of recognizing that Puffy’s long history of barking has *forced* Ms. Snyder to pay attention;
- complaints of racial targeting could have had legs (unconscious bias is a part of all of us), except that Ms. Snyder has proven herself to be an equal-opportunity complainer (discussed again below);
- assertion that Ms. Snyder’s window is a *half-mile* from Puffy was ludicrous; a half mile is 2640 feet, while Google Maps estimates the edge of Puffy’s fence is 117 feet from the side of the Snyder house; Mr. Serrano exaggerated the distance by a factor or over 20; and
- overly-dramatic assertion like “divine justice” continued to undermine his standing.

20. Ms. Snyder was also far from credible.

- She testified that Puffy barked for up to six hours on September 16. That exaggerated her September complaint, where she wrote that Puffy barked for 4:24 minutes (exhibit D3 at 002);
- She testified that she only made complaints when Puffy barked for an extended period of time. Yet she wrote in her September 19 complaint that Puffy started barking at 10:35 a.m., a complaint she filed at 10:44 a.m.—a mere *nine minutes* after the barking started (exhibits D3 at 002, 001);
- All but one of our previous 90+ noise appeal featured a complaining witness testifying to some variation of: “I get that some dogs bark a lot. I have never had a real problem with any dogs’ barking other than this dog. There is something way different about the [*quantity/ quality/ timing/ duration, etc.*] of this dog than anything I have ever experienced before.” Yet Ms. Snyder admitted that she took exception to not one but *two* other neighbors’ dogs’ barking, and even filed a complaint against both those neighbors (in addition to her complaints against the Serranos).

21. One can view dog barking along a bell curve, starting with (1) a thin slice of unusually quiet dogs, moving to (2) the fat part of the bell curve with the vast majority of dogs making less than average through average through more than average noise (quantity and quality), and ending with (3) a thin slice of unusually obnoxious dogs at the far end of the curve. Simply making more (qualitatively and quantitatively) noise than average is insufficient. The noise must be at the (3) far end of the bell curve to be a violation.

22. It is theoretically possible that Ms. Snyder just happens to reside in a perfect storm of not one, not two, but three almost off-the-charts barking scenarios. But it is far more

likely that she is overly sensitive to noise, with an unrealistic view of what standards her neighbors must meet during the day to accommodate her work preferences. And, as cited above, our Court instructs us not to allow any given complainant to make a “subjective determination” of a noise violation, as well as to guard against measuring conduct “by its effect on those who are inordinately timorous or belligerent.”<sup>7</sup>

### *V22013623 Analysis*

23. Looking at our facts, while there was some discussion of barking after September 19, 2022, and before April 26, 2023, Animal Services agreed that between those periods, the barking was kept a level that not itself qualifies a violation. Even if we accept Ms. Snyder’s testimony about the quality and quantity of barking on September 16, September 19, and April 26, that is essentially three unacceptable days in a seven-month period. And that is not enough to qualify as a violation.
24. We grant Mr. Serrano’s appeal.

### *Forward-Looking*

25. That is not to let Mr. Serrano off the hook—if Puffy’s barking returns to the unacceptable levels of last fall, there may be more violation notices, more assessed monetary penalties, potentially more removal orders, more appeals, and more hearings. We note that Mr. Serrano does not need to restrict Puffy to only going outside for a few minutes, during daytime hours, to relieve himself. Ms. Snyder’s complaints were not when Puffy was outside and playing with a family member—that type of barking almost never draws complaints from anyone. It seems to be the whining Puffy inflicts when he is left *alone* outside and feels sorry for himself. Just having someone outside and engaging with Puffy when Puffy is outside would seem to go a long way.
26. And should another dispute arise, Animal Services is in a tough spot. We have a complainant or appellant that both lack credibility and an accurate barometer of what qualifies as “unreasonable” or an unacceptable level of disturbance. Mediation could be of great assistance, since a mediator is focused on solutions, not judgment.<sup>8</sup> But if we go to another hearing, it would be helpful to elicit witness testimony, either pro or con, from other neighbors, especially the household wedged between the Serranos and Snyders. Puffy’s barking should be even louder for that intervening neighbor—sound follows the inverse square law, so as the sound source’s distance doubles, the sound’s intensity drops by *three-quarters*.<sup>9</sup> Typically, people will participate in a hearing (especially

<sup>7</sup> *City of Spokane v. Fischer*, 110 Wn.2d 541, 544–45, 754 P.2d 1241 (1988); *Seattle v. Eze*, 111 Wn.2d 22, 29–30, 759 P.2d 366 (1988) (citations omitted).

<sup>8</sup> Our original notice setting a pre-hearing conference noted that:

For most decisions we impose on the parties, one party—but not both—is likely to walk away angry. Yet in a noise cases, where we must consider an appellant’s and complainant’s reasonableness, 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.

The parties jointly agreed at conference to attend mediation, but Ms. Snyder later withdrew. So, we are where we are.

<sup>9</sup> <http://hyperphysics.phy-astr.gsu.edu/hbase/Acoustic/invsqs.html>.

where they need to only click on a link or call in, versus physically coming to the courthouse) voluntarily, if requested. And if not, a party can ask us to issue a subpoena to compel a witness's presence.

**DECISION:**

We overturn violation V22013623.

ORDERED May 12, 2023.



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 *June 12, 2023*. 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 APRIL 27, 2023, HEARING IN THE APPEAL OF BRYAN SERRANO, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V22013623-A22005057**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Bryan Serrano, and Megan Snyder. 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	Email, from Megan Snyder, dated September 19, 2023
Exhibit no. D3	Online Complaint form by Megan Snyder, dated September 19, 2022
Exhibit no. D4	Notice of violation no. V22013623-A22005057, issued October 6, 2022
Exhibit no. D5	NVOC mailing/tracking history
Exhibit no. D6	Appeal, received October 19, 2022
Exhibit no. D7	Map of subject area
Exhibit no. D8	Recording, submitted April 27, 2023

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

Exhibit no. A1	Screenshot, proof of payment, submitted April 27, 2023
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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V22013623-A22005057**

**BRYAN SERRANO**

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 May 12, 2023.



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Jessica Oscoy  
Office Manager

**Eykel, Chelsea**

Regional Animal Services of King County

**Serrano, Bryan Mr.**

Hardcopy

**Snyder, Megan**

Hardcopy