

May 10, 2023

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

King County Courthouse
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V23013955-A23000707**

ROXXANNE GRISSOM

Animal Services Enforcement Appeal

Activity no.: A23000707

Appellant: **Roxanne Grissom**

[REDACTED]
Sammamish, WA 98029

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
Kent, WA 98032
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FINDINGS AND CONCLUSIONS:

Overview

1. Roxanne Grissom appeals a Regional Animal Services of King County (Animal Services) violation notice for her dog, Bango, making excessive noise and being unlicensed. 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 offer some forward-looking thoughts and a penalty reduction.

Background

2. On January 21 Shannon and Giovanni Inton, along with Christy Bibgy, filed a complaint for Bango making excessive noise on multiple dates and times. Exs. D7 & D8.
3. On January 24 Shannon, Giovanni, and Jaiden Inton filed another complaint. Ex. D9.
4. On February 2 Shannon Inton, Jaiden Inton, and Christy Bigby filed yet another complaint. Ex. D3. They submitted multiple recordings of the barking. Ex. D4.
5. On February 4 Animal Services issued Mx. Grissom a violation notice. Ex. D5. Mx. Grissom timely appealed. Ex. D10.
6. On March 22 we held a pre-hearing conference. Animal Services' representative and two complainants appeared, but Mx. Grissom did not. We could not accomplish much without Mx. Grissom, so we scheduled a remote hearing on the merits. We went to hearing on April 26.

Hearing Testimony

Testimony of Shannon Inton

7. Shannon Inton is Mx. Grissom's next-door neighbor. She lives with her family in a five-bedroom apartment. The neighboring walls are very thin. She testified that for months she has had interrupted sleep due to Bango's excessive noise. The duration lasts at least fifteen minutes, but sometimes for thirty minutes or up to three hours. Ms. Inton assumes Mx. Grissom is not home at the time of the noise because she has not heard anyone talking to Bango. Ms. Inton also assumes that Bango is left in the bathroom since she can hear echoing and scratching of the door.
8. On January 20, Bango's noise started at 1:00 a.m. and on January 21 it started at 4:30 a.m. The noise's duration was at least 30 minutes on and off, which is when it became enough of a problem to file a complaint. On those days, her son came into her room complaining about the noise. Ms. Inton decided to file a complaint once her and her sons' daily routines were affected by interrupted sleep.
9. Prior to filing the January 21 complaint, Ms. Inton's sleep was interrupted an average of about 2-3 times per week. Since early February the nighttime barking is down to about once every two weeks. The daytime noise has recently been about 2-3 times a day for at least thirty minutes.
10. Ms. Inton can hear the noise in every room of their apartment. She has tried turning the radio and television on, but she can still hear the noise over those. The noise occasionally still occurs at night, but usually is more frequent in the daytime. The daytime noise does not impact her as much now, since she changed her work schedule and is not home most of the day. The noise could be more frequent, but she does not share a direct wall with Mx. Grissom like her son (Jaiden) does.

11. Bango’s whining disturbs Ms. Inton’s mental well-being. It sounds like a dog in distress and in need of help. The noises Bango makes are not those of a dog protecting the home or being triggered by a visitor, but more a howling noise like he needs attention. Such sounds are more disturbing to her than if Bango was barking in response to something. At times even after Bango stops barking Ms. Inton can still hear the barking in her head.

Testimony of Jaiden Inton

12. Jaiden Inton testified that he is a lenient person and loves dogs. He has heard excessive barking coming from other apartments and typically those owners will say, “Be quiet, that’s enough.” But Bango’s barking duration and the type of noise he makes is unique. The frequency this is occurring became a problem for Mr. Inton. With Bango, the noise is non-stop, loud, and consistent—it sounds like he does this until he can no longer maintain the same noise and it turns to a mere howl (like when a dog is inside a kennel needing to go potty) and he continues scratching at the door and whining. Mr. Inton is a light sleeper, at times waking up to faucet dripping at night. The neighboring walls are also “paper thin.”
13. Bango’s barking has kept Mr. Inton up at night, making it difficult to get up in the morning and then go to work. Noise times are scattered, but occur about 2-4 times a week. Sometimes the noise occurs before 7:00 a.m. for a duration of about 30 minutes to 2 hours. Other times the noise starts at 10:00 a.m. and other times between 2-3 p.m., when Mr. Inton returns home from work. Mr. Inton recorded multiple videos, not all of which have been included as evidence.
14. Prior to Mx. Grissom moving in, Mr. Inton had visited the prior neighbors, so he is familiar with the apartment layout. He believes that Bango is unattended inside the bathroom for 30 minutes to 3 hours at a time. Mr. Inton heard Bango’s noise two days prior to the hearing and the duration was just as frequent; the frequency has remained unchanged between daytime and nighttime.
15. Mr. Inton has taken steps to remedy the situation, such as putting earbuds and placing a stack box fan in his room, but the noise exceeds the remedies. He often contemplates how to resolve this issue; he has called the police department, but they have told him that if no one is at the Grissom home that they cannot assist. All that Mr. Inton feels he can do now is sit and pray for himself and for Bango.

Testimony of Christina Bigby

16. Christina Bigby is Mx. Grissom’s other next-door neighbor. Ms. Bigby bedroom does not abut the Grissom home; she hears Bango’s howling noise usually only after her daughter wakes her. Ms. Bigby has called the apartment management, concerned that Bango was alerting that something was wrong; management was unable to assist. Ms. Bigby also called the non-emergency line to report the noise, but she does not know if anything came of that. In January, Ms. Bigby would find her daughter sleeping on the couch about twice a week. Even her daughter’s cat would not come out from under the bed.

17. Ms. Bigby works with children, and she described Bango’s noise as like “listening to a baby crying,” like it is in distress. This makes her heart break. Bango’s noise has been less than usual recently, but Ms. Bigby also purchased a large fan and a sound machine. Her daughter has been sleeping longer, though the cat still will not come out from under the bed.

Testimony of Roxanne Grissom

18. Roxanne Grissom rescued Bango from a shelter in Texas. She learned that Bango had anxiety issues and thought that it was only around certain people; she now knows it is more than that. Bango has abandonment issues, so when she leaves the house she acknowledges that he whines more than usual.
19. Mx. Grissom is disabled and is home most of the time, but there are times when she leaves the house, like for doctor appointments. Initially, she would take Bango to appointments, but later switched to keeping him at home so he could learn to be separated from her. Weekdays she usually leaves between 7-8 a.m. and returns around 9:00 a.m. She leaves the house about four times a week (Mondays, Wednesdays, Fridays, and Saturdays) for about 1.5 hours at a time. On Saturdays she typically leaves around 8:30-9:00 a.m. and returns around 10:00 a.m.
20. On Saturdays Mx. Grissom ensures that there is someone home when she leaves so that Bango does not stay crying. Besides her regular doctor visits, she usually only leaves the house to fill a prescription, so she is home regularly, though she is gone a few times in the evenings. At times she steps outside to have a cigarette, but that is for no longer than 10 minutes. She is usually home between 9:00 p.m. to 7:00 a.m.; she does not have many recollections of leaving the house past 10 p.m. (perhaps only a few times she has returned home between 9-11 p.m.).
21. Bango does not usually go inside the bathroom and Mx. Grissom does not lock him in there when she leaves. Bango is not kept in a kennel other than temporarily when a maintenance person comes. Mx. Grissom lives in a studio apartment, so it is a big single room with no other spot to move Bango to. It is challenging for Mx. Grissom to take Bango with her to doctor appointments because Bango gets anxious in car rides or on the bus; it seems that Mx. Grissom is doing more harm taking him outside than leaving him alone in the apartment.
22. Mx. Grissom does not have cameras set-up, so she cannot testify to what goes on when she is not home. Mx. Grissom believes it would benefit her to watch more videos so she can learn tips to remedy Bango’s situation, but she feels he has been doing much better in the last month or so. When Mx. Grissom returns home she does not hear any barking, so she thought the situation was improving. She acknowledges how frustrating this situation is for the neighbors.
23. Regarding the licensing portion of the appeal, Mx. Grissom testified that she was unaware how to prove disability to obtain Bango’s license. She promised to get a license in early May.

Legal Standards

24. The question is easy to state—does Bango bark “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, we have established consistent benchmarks.
- 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 v. nighttime distinctions.¹ 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.”² Replace “Sunday” with “midnight” and “on other days” with “noon,” and that proposition remains 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 widest 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 “unreasonable.” 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 like 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 is relatively brief.
- C. Daytime barking must be far more significant than nighttime barking to qualify as “unreasonable.” There is simply not the same reasonable expectation that daytime hours will be fairly quiet. During the day lawnmowers whirr. Trucks back up and emit loud warning beeping. Children scream as they play. Power tools screech. Waste collectors bang trash cans. Cars honk. And dogs bark. At some point, the quality and quantity of such daytime barking becomes legally unreasonable, but it is a high threshold.
- D. For the average person, something beyond time of day/night, loudness, duration figures into the impact of noise on the average listener. Noises made in distress

¹ 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>.

² *Commonwealth v. Jendell*, 2 Grant 506, 509 (Pa. 1859).

are more likely to disturb a typical non-sociopath than noises made during play. And that is not just true for dogs. For example, in the summer our neighborhood is filled with children screaming. But it is almost always the sound of children at play, sounds far easier to ignore and far less disturbing than even softer, shorter durations of a child in distress. In short, there is a qualitative, as well as quantitative, aspect to noise.

- E. While the noise need not disturb a neighborhood (the code standard being disturbing a person or neighborhood), in analyzing whether noise truly “disturbs,” our Court reminds us to focus on an objective “unreasonableness” standard, and to not allow any given complainant to make a “subjective determination” of a noise violation.³ Similarly, our Court instructs us to guard against measuring conduct “by its effect on those who are inordinately timorous or belligerent.”⁴ And 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.⁵
25. The examiner does 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.

Analysis

26. This is tough case. Not uncommonly we encounter a hypersensitive, entitled complainant with unrealistic expectations for how quiet the neighbors have to keep their dogs. Even more commonly we encounter an insensitive appellant living in a state of denial bordering on delusional. This case is the polar opposite—we found the Intons, Ms. Bigby, and Mx. Grissom to *all* be reasonable people trying their best to work through a bad situation—a dog with serious anxiety and abandonment issues—and being empathetic to each other’s needs.
27. The nighttime barking is the easiest to analyze. In the months leading up to the early February violation notice, Ms. Inton, her son (Jaden), all had their sleep consistently interrupted by Bango’s nighttime barking. Ambient noise and other measures did not help. And while some of the barking recordings are more classic barking, some of those are the especially-unnerving whimpering of a dog in distress. We sustain the violation notice on that ground alone.
28. Mx. Grissom has made improvements since receiving violation notice. Ms. Inton observed that while her sleep had been interrupted an average of about 2-3 times per week, since early February that is down to about once every other weeks. Ms. Bigby used

³ *City of Spokane v. Fischer*, 110 Wn.2d 541, 544–45, 754 P.2d 1241 (1988).

⁴ *Seattle v. Eze*, 111 Wn.2d 22, 29–30, 759 P.2d 366 (1988) (citations omitted).

⁵ *See, e.g., State v. Acrey*, 148 Wn.2d 738, 748-49, 64 P.3d 594 (2003) (“reasonable” depends on balancing competing interests).

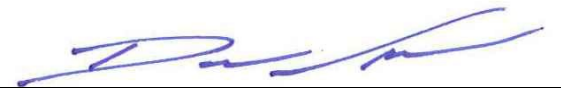
to find her daughter sleeping on the couch about twice a week to escape Bango's noise; now her daughter has more regular sleep. We will reduce the \$50 penalty to \$25, both to recognize the steps Mx. Grissom has taken and her financial straits.

29. Daytime barking is still an issue but, as noted above, that is a more nuanced topic; at a certain point too much is too much, but we do not rule on the daytime barking here.
30. We will weigh in on the future. Animal Services explained how difficult it is to train a dog with separation anxiety not to whine when the owner leaves, even for those with financial and other resources to throw at the problem. Mx. Grissom may continue with her efforts, but at some point revolving her life around Bango's needs may not be the wisest move. That is obviously her prerogative, but if she is not able to control Bango's whining, more penalties will follow, penalties Mx. Grissom can ill-afford to pay.
31. Finally, as to penalties, Mx. Grissom had still not (at the time of our hearing) purchased a \$15 dog license for someone with her disabilities. If she purchases the license (or surrenders Bango to Animal Services, who can find a more suitable home for Bango) within thirty days, we will waive the \$250 penalty. Otherwise, that may be yet another cost Mx. Grissom can ill-afford.

DECISION:

1. We deny the appeal as to the noise violation, but we reduce the penalty from \$50 to \$25.
2. We deny Mx. Grissom's appeal for the licensing violation, but so long as by **Friday, June 9, 2023**, she either purchases a disabled pet license or give Bango to Animal Services, we waive the entire \$250 penalty.

ORDERED May 10, 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 9, 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 26, 2023, HEARING IN THE APPEAL OF ROXXANNE
GRISSOM, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.
V23013955-A23000707**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Christy Bigby, Chelsea Eykel, Roxanne Grissom, and Shannon and Jaiden Inton. 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	RASKC investigation report no. A23-000707
Exhibit no. D3	Online Complaint form, by Shannon Inton, Jaiden Inton, and Christy Bigby, dated February 2, 2023
Exhibit no. D4	Recording of barking dog
Exhibit no. D5	Notice of violation no. V23013955-A23000707, issued February 4, 2023
Exhibit no. D6	RASKC investigation report no. A23-000407
Exhibit no. D7	Email complaint, by Shannon Inton, dated January 21, 2023
Exhibit no. D8	Online Complaint form, by Shannon Inton, Giovanni Inton, and Christy Bigby, dated January 21, 2023
Exhibit no. D9	Online Complaint form, by Shannon Inton, Giovanni Inton, and Jaiden Inton, dated January 24, 2023
Exhibit no. D10	Appeal, received February 27, 2023
Exhibit no. D11	Map of subject area

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

Exhibit no. A1.	Email, from Roxanne Grissom, dated April 18, 2023
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May 10, 2023

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V23013955-A23000707**

ROXXANNE GRISSOM

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 10, 2023.



Jessica Oscoy
Office Manager

Bigby, Christy

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Grissom, Roxanne

Hardcopy

Inton, Jaiden/Shannon

Hardcopy