

October 3, 2023

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V23013975-A23000868**

JUNJUN PAN

Animal Services Enforcement Appeal

Activity no.: A23000868

Appellant: **Junjun Pan**

[REDACTED]
Renton, WA 98058

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

FINDINGS AND CONCLUSIONS:

Overview

1. Junjun Pan appeals a Regional Animal Services of King County (Animal Services) violation notice for his dog Max making excessive noise. 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 his appeal.

Background

2. In September 2022, Mark Blauman filed a complaint for Max barking. Ex. D11.
3. In February 2023, Mr. Blauman filed a complaint for Max barking again, and Animal Services issued Mr. Pan a violation notice. Exs. D3, D6. In March, Mr. Pan timely appealed. Ex. D12.
4. We held a pre-hearing conference in April, where Animal Services explained that the complainants appreciated the Appellant's efforts to curb the sleep-disturbing barking. We issued a stay for three months, stating that by July Animal Services should email an update on whether it wants to dismiss its violation notice, set an examiner proceeding, or take some other action. Ex. D7.
5. In July, Sgt. Eykel emailed:

I spoke to the complainant and he stated the barking has increased in the early morning hours. He does want to acknowledge the overall improvement in the barking, and also did not want to rush to a hearing because he could not be sure the increased barking was not due to the fireworks and increased activity due to the Fourth of July. Animal Services would like to request a 30 day extension to the stay.
6. In August, Sgt. Eykel emailed:

After speaking to the complainant Animal Services would like to request either mediation or a hearing in this matter. The complainant states the barking is much worse and is disturbing their child's sleep in the late night and early morning hours.
7. On September 13, Mr. Blauman provided a barking log and recordings. Exs. D4-D5. Mr. Pan requested a hearing. We went to hearing on September 27 with a Mandarin interpreter.
8. At the hearing, Sgt. Eykel testified that Animal Services had received two other anonymous complaints, particularly concerned for Max's welfare; Animal Services found no concerns with Max's welfare.

Hearing Testimony

Mark Blauman Testimony

9. Prior to involving Animal Services, Mr. Blauman posted resource letters from Animal Services' website on Mr. Pan's door and tried talking to him to resolve the noise issue; they never had an official conversation. Mr. Blauman started keeping a journal [barking log] two years ago and started a second journal this summer when the noise returned. Many of the recordings go on for 45 seconds.

10. The exhibit dated August 15 was recorded between 10 p.m. to midnight; the exhibit dated August 17 was recorded at about 9 p.m.; the September 12 recording contains barking from two dogs around 10:30 p.m. (Max is the one barking most consistently, and the other dog is the other neighbor's); the September 13 recording was recorded around 9 p.m.; the exhibit labeled 9.6, is a recording from around August 2022, between 4-7 a.m.
11. The Blauman's and their two young children's sleeping schedules have been disrupted by Max's barking, particularly in the early morning and bedtime hours. One of the children has been having difficulty sleeping in his own bed because he fears Max's barking during the middle of the night. Mr. Blauman defines morning as the hours between 4-7 a.m. and up to 8:30 a.m. at times, and night hours as 9 p.m. to midnight and up to 3 a.m. at times.
12. Mr. Blauman has tried being reasonable regarding Max's barking over the last two years. He acknowledges that there are other neighborhood dogs that also bark occasionally; however, Max's barking is continuous, particularly between midnight to 4 a.m. or 3 a.m. to 6 a.m. There is a German shepherd nearby that barks, but when its owner comes outside that dog stops barking. The other dogs bark as if alerting to something, but then lay back down; unless Max is outside those dogs' barking continues. When Max is inside there is typically less barking from the neighborhood dogs.
13. Mr. Blauman bought air conditioners over the summer to maintain his windows closed and minimize the barking noise, but they can still hear the barking.
14. Behind Mr. Blauman's house are two other German shepherds who also bark. He's been in communication with Animal Services about that situation.

Junjun Pan Testimony

15. Mr. Pan testified that one of his neighbors starts his car at 4 a.m. and that triggers Max to bark. Also, when the other neighborhood dogs start barking, that triggers Max to bark. Max's purpose is to alert Mr. Pan of any danger. Mr. Pan believes he had addressed Mr. Blauman's concerns after receiving the citation. If Max needs to go potty, Mr. Pan lets him outside after 10:30 p.m., and Mr. Pan is usually at the door waiting for him to return. Mr. Pan lets Max outside in the daytime during the hot summer days. If there are people outside, Max will start barking, but Max is not the only barking dog at that time.
16. Mr. Pan has not previously used a bark collar, but he is willing to try it.

Legal Standards

17. The legal standard is easy to state—does the animal bark “to an unreasonable degree, in such a manner as to disturb a person or neighborhood,” KCC 11.04.230.J¹—and more complex to apply. However, we have established consistent benchmarks, two of which are applicable here.

¹ Subsection J has recently been renamed as subsection K, but with the same standard. We will use “J.” because that was the subsection name at the time Animal Services served its notice and order.

18. First, 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.² 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.”³ Replace “Sunday” with “midnight” and “on other days” with “noon,” and that proposition remains true 164 years later. Animal Services carries a significantly lower burden for appeals involving nighttime noise (meaning before 7:00 a.m. on weekdays/9:00 a.m. on weekends and after 10:00 p.m. each evening) than for daytime noise.
19. This day/night distinction is especially true 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.” At night, whether a dog barks six seconds or sixty seconds or six minutes or sixty minutes is somewhat irrelevant. If the barking is enough to wake 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 is already done. Conversely, during the day, a dog barking for ten minutes while and after a driver drops off a package is par for the course. So, the strategy of an owner to “if my dog starts barking when I let him out, I will bring him back inside” is a fine solution during the day but may be completely insufficient at night.
20. Second, 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.⁴ Similarly, our Court instructs us to guard against measuring conduct “by its effect on those who are inordinately timorous or belligerent.”⁵ 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.⁶
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.

² 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>.

³ *Commonwealth v. Jendell*, 2 Grant 506, 509 (Pa. 1859).

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

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

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

Analysis

22. While the noise need not disturb a whole neighborhood (the code standard being disturbing a person or neighborhood), we must distinguish between whether the noise truly “disturbs” (interferes with normal functioning) versus merely “annoys” (irritates). Sleep is about the most basic life function, and sleep for young children has added importance. Mr. Blauman explained the dramatic effect the barking has had on their young kids (and thus also on the parents), even after they installed and turned on air conditioners to muffle the noise. It does not take a long period of barking to wake someone up at night; mere seconds can be enough.
23. That does not mean that there is anything like a zero-tolerance policy against nighttime barking. A dog occasionally waking a neighbor is to be expected. The evidence pre-2023 is, judging from the barking logs Mr. Blauman submitted, somewhat spotty, on the order of less than one episode of nighttime barking per month. Ex. D4 at 001, June 2021–October 2022. Ex. D4 at 001. But the situation deteriorated in 2023. Exs. D3 at 002, D4 at 001. Animal Services has proven that barking to an unreasonable degree, in such a manner as to disturb at least one household and maybe more.
24. We certainly respect Mr. Pan’s safety concerns and desire for protective dogs. But what we are hear on those videos and audio recording is *not* “alert” barking, the type of rapid-fire, agitated barking a dog makes to, say, warn when a UPS driver comes to deliver a package. Warning barking is typically intense for a short duration, completely ending soon as the (potential) intruder leaves the area. Instead, Max’s is more of a sustained, almost bored or distressed barking. Max is not protecting anyone from anything during those episodes Mr. Blauman recorded. And again, the real problem here is not that Max is barking or for how long Max is barking, it is *when* Max is barking—before 7:00 a.m. on weekdays/9:00 a.m. on weekends and after 10:00 p.m. each evening—on many nights per month.
25. Moving forward, we realize that while 10 p.m. is a normal adult bedtime, young children typically have bedtimes well before that. People working a graveyard shift who need to sleep during the day, or people who elect to work in the home office, may also be more bothered by daytime barking than the average person. As noted above Courts require us to apply an objective standard, and not simply look at the sensitivity of a particular person. The code captures this by requiring not only that the barking “disturb a person” (which barking at, say, 9:45 p.m. would for a small child) but that the barking be to an “unreasonable degree.” At some point, daytime barking can become unreasonable. But outside the code-recognized quiet hours, the standard for showing unreasonable barking is much higher.
26. It should not take a dramatic effort for Mr. Pan to comply in the future. Even before obtaining a bark collar, Mr. Pan might want to try simply paying attention to Max. He might find that, if Max needs to go out to relieve himself after 10 p.m. or before 7 a.m. (9 a.m. on weekends), if Mr. Pan accompanies Max in the yard and stands with him while Max goes potty, Max may not bark at all. And if that does not work, purchasing and using a properly-fitted bark collar should work. While bark collars can present problems

for animals forced to essentially remain quiet for hours on end, here we are likely talking about a few minutes each night/early morning when he relieves himself.

DECISION:

We deny Mr. Pan's appeal.

ORDERED October 3, 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 *November 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.

**MINUTES OF THE SEPTEMBER 27, 2023, HEARING IN THE APPEAL OF
JUNJUN PAN, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.
V23013975-A23000868**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Mark Blauman, Chelsea Eykel, and Junjun Pan. 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
Exhibit no. D2	RASKC investigation report no. A23-000868
Exhibit no. D3	Online Complaint form of February 2023 incidents by Mark Blauman, dated February 11, 2023
Exhibit no. D4	Barking log
Exhibit no. D5	Videos of barking
Exhibit no. D6	Notice of violation no. V23013975-A23000868, issued February 13, 2023
Exhibit no. D7	Order of Stay, issued April 20, 2023
Exhibit no. D8	Email, status updates
Exhibit no. D9	RASKC investigation report no. A20-014335
Exhibit no. D10	RASKC investigation report no. A22-005016
Exhibit no. D11	Online Complaint form of September 16, 2022, incident by Mark Blauman, dated September 16, 2022
Exhibit no. D12	Appeal, received March 9, 2023
Exhibit no. D13	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V23013975-A23000868**

JUNJUN PAN

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, through Quadient-Impress, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED October 3, 2023.



Jessica Oscoy
Office Manager

Blauman, Mark
Hardcopy

Eykel, Chelsea
Regional Animal Services of King County

Pan, Junjun
Hardcopy