

June 30, 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 nos. **V22013574, V22013755, V22013813, V23013895, V23013896, V23013957, V23014096, and V23014121**

JAMES NGUYEN

Animal Services Enforcement Appeal

Activity nos.: A22005049, A22005938, A22006205, A23000061, A23000727,
and A23002178

Appellant: **Johnny Nguyen**

[REDACTED]
Seattle, WA 98178

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. A hearing was held on June 16, 2023. Regional Animal Services of King County appeared through Chelsea Eykel. Phong Nguyen, the Appellant, also appeared. We provided Mr. Nguyen with a Vietnamese interpreter. After hearing the witnesses'

testimony and observing their demeanor, studying the exhibits, and considering the parties' arguments and law, we find and conclude as follows.

Background

2. The case originally came to Animal Services as an animal cruelty matter for Mr. Nguyen's dog Musky. Animal Services investigated the complaint and found it warranted.¹ The situation was resolved. The ensuing violations appealed to the Examiner primarily involve Musky running at large and trespassing over numerous properties. One of the appealed citations involves another of Mr. Nguyen's dogs (Rosey) also running at large and trespassing, in addition to being unlicensed. Based on the nuisance violations (running at large and trespassing), Animal Services issued a Notice and Order for Removal to remove Musky from Mr. Nguyen's care.

Hearing Testimony

Testimony of Margaret Williams

3. Ms. Williams first encountered Musky in a trespass incident which she did not report. Two neighbors had followed Musky onto her property and asked if the dog belonged to her. With four of her own dogs, and as she loves dogs, she took the dog to a vet to see if it was microchipped. It was and had been reported missing two days prior. Mr. Nguyen was contacted and came to pick Musky up.
4. Two days later, Musky was on Ms. Williams' property again. This time she reported the incident to Animal Services. She had become aware of Musky's presence as she had heard her goats bleating in distress. The goats were raised with dogs so are not inherently afraid of them. They are dwarf goats and debudded (without horns), so cannot defend themselves against an attack by an animal such as Musky.
5. Musky had jumped two fences to get to the goats. When Ms. Williams came out due to the bleating, she saw Musky had chased the goats around the pen and cornered them. Ms. Williams collected the dog and contacted Animal Control.
6. Since then, Musky has been on her property on numerous occasions and Ms. Williams has repeatedly heard the goats bleating in distress. On one occasion, one of her goats was bitten behind the neck.
7. Mr. Nguyen had told Ms. Williams that one reason Musky gets inside her property is because she does not always have her front gated closed. But there are two layers of fencing. The inner-most fence is almost six-feet high and Musky still jumps it. In addition to harassing the goats, Musky has caused disturbances throughout the neighborhood. Ms. Williams has had neighbors come over and ask if the dog is Ms.

¹ Ex. D5 (A neighbor temporarily cared for Musky after it was loose in the neighborhood. Musky was friendly with her dog until showing food aggression. "[T]he dog seems very skinny, and I haven't seen any evidence of it receiving food or water from its owners. ... The owners have taken the dog back somehow, and are treating it the same way as before. We knew they kept it inside their house a few days because we could hear it howling inside. Today they have started leaving it outside on the chain again to howl endlessly."); Ex. D4 and Ex. D5.

Williams' as it had been on their properties as well. For example, on Christmas Day, one of her neighbors reported the dog had been running on his property and asked Ms. Williams if it was hers.

8. Ms. Williams has reported trespass and running at large numerous times. The dogs (Musky and Rosey) are not contained. She has had to provide additional protection for her goats due to these issues. Just last month (May) Musky was on her property and she did not file a report given time constraints.
9. Ms. Williams has spent \$500 to install an electric fence for further protection and it is providing a deterrent. Ms. Williams stated she has taken the majority of the burden to address Mr. Nguyen's dog, rather than him.
10. After she called Animal Control on one occasion, Mr. Nguyen confronted Ms. Williams and demanded the return of his dog. He put all of the blame for trespassing on Ms. Williams and took no responsibility. She told Mr. Nguyen to go through Animal Control.
11. Continuous trespassing has impacted Ms. Williams mentally, emotionally, and financially. She cannot leave without worrying if [Musky] will be on her property and harassing her goats. She has a guard dog which weighs over 100 pounds and often leaves him outside with the goats so he can protect them. She does not prefer this approach as he is an indoor dog, so she does not like to leave him outside for hours at a time, but feels she has no choice. This matter has taken up considerable time from dealing with Animal Control and taking added security measures.

Testimony of Phong Nguyen

12. Going back to September 21, 2022, Mr. Nguyen stated he agreed to help a friend in raising the dog (Musky). The friend had kept the dog locked up in a cage outside. The dog barked a lot, and a neighbor complained to Animal Services. So, Mr. Nguyen agreed to take the dog to his house. At the time, he had to go to work. He stated he tied the dog up, left food and water, and returned to work that same day. The dog was making noise and a neighbor called the police due to the barking.
13. When the police got there, they did not see food or water. Mr. Nguyen stated he had left it there but the police didn't see it. Mr. Nguyen stated the chain he had used to tie the dog up got tangled as the dog had run around. The police saw this and said the restraint was too short.
14. Mr. Nguyen stated this was the first time he had adopted a dog and Musky is energetic and active. He stated he tried his best to keep the dog contained in his yard with fencing but it digs a hole and gets out. One time the dog went into the neighbor's yard, they called him, and he went to retrieve it. He says he knows it's not safe for the dog to be out as it could be hit by a car. Mr. Nguyen thinks the dog tries to get out as it is not used to his house. The first time when Musky got into Ms. Williams' property, Animal Control contacted him to bring the dog home and gave him a citation as Musky had played with the animals there. Animal Services didn't mention blood or injury to the goats. He stated he has tried to keep [Musky] contained but Musky is very smart. Musky is also very

friendly with friends’ dogs who have visited and there haven’t been issues. He reiterated that Musky does continually leave his property.

[Musky] goes to that neighbor’s house a lot because he likes to play with her dogs and likes to play with her goats. Whenever he gets out, I know that I can find the dog in her property. ... I know that it causes a nuisance to the neighbors....

15. Mr. Nguyen stated he tried to train Musky in the first few months after he adopted it. He stated that more recently he noticed the dog is more used to him and to his house and doesn’t want to escape anymore. He wants to help the dog and take care of it. He stated this is his first time dealing with legal matters, so he didn’t understand the process, which is why he did not originally appeal.
16. Mr. Nguyen knows he has to pay some fines. He requested a reduction as it has been difficult with COVID-19 and inflation.
17. At the end of his testimony, Mr. Nguyen added that the second time when the dog went to Ms. Williams’ house, his neighbor said that if it was to return, she would shoot the dog. And, one time when he went to her yard to pick it up, she had taken the dog to the back yard and contained it. Mr. Nguyen stated he pleaded with the neighbor to let him take the dog back home and she refused, and asked him to leave. He went home and waited for Animal Control to call him. He waited for hours and no one called so he called the police for help in bringing the dog back. They went to Ms. Williams house and returned the dog.

Legal Standards

18. Unappealed Violation Notices. Mr. Nguyen did not timely appeal the first three violation notices so the Hearing Examiner lacks jurisdiction over them.² The below summarizes these violations.
 - i. V22013574—September 21, 2022:
 - (1) Incident of cruelty to Musky, defined as, “Willfully and cruelly injure or kill any animal by any means causing it fright or pain,” KCC 11.04.250.A.1;³ and
 - (2) Musky and Rosey unlicensed in violation of KCC 11.04.030.A, which requires all dogs eight weeks old and older be licensed and registered.
 - ii. V22013755—a November 13, 2022, incident of Musky:

² KCC 11.04.260.B.6; KCC 20.22.080.

³ Ex. D6-001 (Officer observed a Siberian Husky chained on a 4’ heavy towing chain and padlock with “no cover or shelter and no access to water at all.”).

- (1) Trespassing, defined as a “domesticated animal that enters upon a person’s property without the permission of that person,” KCC 11.04.230.K; and
- (2) Running at large, meaning “off the premises of the owner and not under the control of the owner, or competent person authorized by the owner, either by leash, verbal voice or signal control,” with “under control” defined as “either under competent voice control or competent signal control, or both, so as to be restrained from approaching any bystander or other animal and from causing or being the cause of physical property damage when off a leash or off the premises of the owner.” KCC 11.04.020.W, .AA; .230.B.⁴

iii. V22013813—a December 2, 2022, Musky trespass and running at large.⁵

19. Appealed Violation Notices. There are five consolidated appeals before the Examiner.

- i. V23013895—an alleged December 25, 2022, Musky trespass. Animal Services clarified this is a 3rd violation, for which the fine is \$200, rather than \$400.⁶
- ii. V23013896—an alleged January 5, 2023, Musky trespass. Animal Services clarified that this is a 4th Violation – for which the fine is \$400, rather than \$800.⁷
- iii. V23013957—an alleged February 2, 2023, Musky trespass and running at large. Animal Services clarified that this is a 5th Violation, for which the fine is \$800.⁸
- iv. V23014096—an alleged April 3, 2023, trespass and running at large for Musky *and* Rosey, as well as Rosey still not being licensed.⁹
- v. V23014121—notice and order for removal of Musky under KCC 11.04.290.B.1, which states that:

⁴ Ex. D9 (“Musky ... trespassed on” November 10 and 13, 2022. “On the 13th, dog was seen in complainant’s goat pen attacking a goat.”); Ex. D10-003; Ex. D-11.

⁵ Ex. D12-002 (Ms. Williams stated “the dog was found in her goat pen and that this was the third time (second time reported)....”); Ex. D13-003; Ex. D-14.

⁶ Due to the multiple violations on this case, there was a numbering error. As fines go up based on their number, this required correction. For alleged violation details, *see* Ex. D16-003 (“This is the fourth time the dog has been on my property. I was away from home on Christmas day but the caretaker for my animals reported seeing the dog around noon and I caught the dog on my security camera at around 10:30 am.”). *See also* Ex. D17 and D19 (videos); Ex. D20.

⁷ *See e.g.*, Ex. D21; D18-003.

⁸ Ex. D23-002 (“suspect dog was trespassing on private property and attempting to attack goats”); D24-003; D25.

⁹ Ex. D27-002 (“Musky observed pacing livestock fencing and creating distress in livestock.” Rosey is also seen on the video.); Ex. D28-003 (“The husky was more timid than usual but she allowed me to approach and I got a lead on her. It’s raining and cold outside so I’ve brought her into my home and would like animal control to pick her up today.”); Ex. D29.

Any animal constituting a public nuisance as provided in this chapter shall be abated and removed from the county by the owner or by the manager of the regional animal services section, upon the receipt of three notices and orders of violation by the owner in any one-year period.... Where... no finding was entered showing that the owner will be able to provide reasonable restraints to protect the public from repetitions of violations, the manager of the regional animal services section shall notify and direct the owner of the animal to abate or remove the same from the county within ninety-six hours from the notice....¹⁰

20. Dismissed Removal Order. Animal Services issued a Removal Order and Notice of Unredeemable Animal under KCC 11.04.290(A)(3) on March 29, 2023, and impounded Musky. While six violations had been issued, including for multiple trespass and running at large incidents, the code section the Order was issued under was based on a vicious animal finding, which had not been made. While six nuisance violations had occurred in seven months, which could have supported the order under subsection (B), as the Order was issued under a different subsection, the Examiner reversed it on April 7, 2023. Following that reversal, the Notice and Order for Removal now under appeal was issued. That order is described just above in Paragraph v.

Analysis

21. We do not grant substantial weight or otherwise accord deference to agency determinations.¹¹ 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.¹²
22. Two unappealed orders and notices of violation exist for Musky which involve trespass and running at large. Animal Services need only demonstrate a third order and notice of violation was properly issued to sustain its Notice of Order of Removal. Before the Examiner are four additional alleged violations.
23. Mr. Nguyen admitted Musky continually enters Ms. William's property. He knows that if the dog is missing, the likely place to find Musky is there. Musky has been loose and running at large and trespassing repeatedly both on Ms. William's property and within the neighborhood. This occurred on multiple occasions, as identified in the violation notices, but also outside these time frames through a series of unreported incidents, including as recently as last month. Animal Services demonstrated Mr. Nguyen is not able to keep Musky on his property and that Musky has become a nuisance.
24. Mr. Nguyen understands what is occurring. He did not explain why he has not taken the necessary steps to ensure his dogs, particularly Musky, are properly maintained on his

¹⁰ Ex. D31 (Notice and Order for Removal).

¹¹ HER XV.F.3.

¹² KCC 20.22.210.B; HER XV(E); KCC 11.04.270.

property. The evidence shows Musky continually runs at large and trespasses onto private property, including jumping over private fencing to get to Ms. Williams’ goats. The evidence is sufficient to show Musky presents a risk to the neighbor’s goats.

25. As Ms. Williams’ testimony demonstrated, there are readily available methods for caring for and containing a dog such as Musky. Though not the owner, she was readily able to take the necessary measures to retrieve Musky and contain him. The dog owner has not taken any comparable measures.
26. Three notices within a 12-month violation supports issuance of a Notice and Order for Removal. There are two unappealed citations for running at large and trespass and this decision upholds four additional violations. The Notice and Order for Removal should be upheld to protect the neighborhood and resolve the nuisance situation. Animal Services has demonstrated Musky’s owner will not address these issues. Given there has been minimal effort by the dog owner to resolve the situation, there is no basis for penalty reduction, except for the clarifications Animal Services provided at the hearing.

DECISION:

1. The first three violations (V22013574, V22013755, and V22013813) were not timely appealed, so the Examiner lacks jurisdiction over them. They must stand.
2. The ensuing four violations involving animal trespass and running at large (V23013895, V23013896, V23013957, V23014096), were timely appealed and are upheld.
3. We uphold Musky’s removal order (V23014121). By **July 28, 2023**, Mr. Nguyen shall either:
 - A. Find a potential new owner or caretaker outside of unincorporated King County and outside the cities listed in footnote¹³, disclose to that person that Musky was ordered removed as a threat to public safety, have that person agree to take Musky on, actually get Musky out, and provide Animal Services both with proof that this person lives outside unincorporated King County and those contract cities and with the person’s contact information, or
 - B. Surrender Musky to Animal Services.

¹³ In addition to unincorporated King County, the contract cites where the same legal standard applies are currently:

A.	Beaux Arts Village	B.	Bellevue	C.	Black Diamond
D.	Carnation	E.	Clyde Hill	F.	Covington
G.	Duvall	H.	Enumclaw	I.	Issaquah
J.	Kenmore	K.	Kent	L.	Lake Forest Park
M.	Maple Valley	N.	Mercer Island	O.	Newcastle
P.	North Bend	Q.	Redmond	R.	Sammamish
S.	SeaTac	T.	Shoreline	U.	Snoqualmie
V.	Tukwila	W.	Woodinville	X.	Yarrow Point

4. If Mr. Nguyen successfully meets A. or B., and thereafter does not allow Musky to return to unincorporated King County or a contract city listed in footnote 13, the \$1000 penalty attached to the removal order is waived. If not, that \$1000 penalty is reinstated and Animal Services may impound Musky as an unredeemable animal.
5. The penalties contained within these violations are upheld, except as reduced consistent with Animal Services' clarification at hearing, as detailed in Paragraph 19.

ORDERED June 30, 2023.



Susan Drummond
King County 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 *July 31, 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 JUNE 16, 2023, HEARING IN THE APPEAL OF JAMES
NGUYEN, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NOS.
V22013574, V22013755, V22013813, V23013895, V23013896, V23013957,
V23014096, & V23014121**

Susan Drummond was the Hearing Examiner pro tem in this matter. Participating in the hearing were Chelsea Eykel, Margaret Williams, and Johnny Nguyen. 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. A22004892
- Exhibit no. D3 A22004892 Online Complaint form of September 7 and 8, 2022 incident by Tanner Buchanan, dated September 8, 2022
- Exhibit no. D4 RASKC investigation report no. A22005049
- Exhibit no. D5 A22005049 Emailed complaint, dated September 18, 2022
- Exhibit no. D6 Notice of violation no. V22013574-A22005049, issued September 21, 2022
- Exhibit no. D7 RCW 16.52.350
- Exhibit no. D8 Photograph of Musky tethered illegally
- Exhibit no. D9 RASKC investigation report no. A22005938
- Exhibit no. D10 A22005938 Online Complaint form of November 13, 2022, incident by Margaret Williams, dated November 13, 2022
- Exhibit no. D11 Notice of violation no. V22013755-A22005938, issued November 13, 2022
- Exhibit no. D12 RASKC investigation report no. A22006205
- Exhibit no. D13 A22006205 Online Complaint form of December 2, 2022, incident by Margaret Williams, dated December 2, 2022
- Exhibit no. D14 Notice of violation no. V22013813-A22006205, issued December 2, 2022
- Exhibit no. D15 RASKC investigation report no. A23000061
- Exhibit no. D16 Online Complaint form of December 25, 2022, incident by Margaret Williams, dated January 5, 2023
- Exhibit no. D17 Video
- Exhibit no. D18 Online Complaint form of January 5, 2023, incident by Margaret Williams, dated January 5, 2023
- Exhibit no. D19 Video
- Exhibit no. D20 Notice of violation no. V23013895-A23000061, issued January 6, 2023
- Exhibit no. D21 Notice of violation no. V23013896-A23000061, issued January 6, 2023
- Exhibit no. D22 NVOC mailing/tracking history
- Exhibit no. D23 RASKC investigation report no. A23000727
- Exhibit no. D24 A23000727 Online Complaint form of February 2, 2023, incident by Margaret Williams, dated February 2, 2023
- Exhibit no. D25 Notice of violation no. V23013957-A23000727, issued February 4, 2023

Exhibit no. D26 Notice and order for removal no. V23013959-A23000727, issued March 29, 2023

Exhibit no. D27 RASKC investigation report no. A23002178

Exhibit no. D28 A23002178 Online Complaint form of April 3, 2023, incident by Margaret Williams, dated April 3, 2023

Exhibit no. D29 Notice of violation no. V23014096-A23002178, issued April 3, 2023

Exhibit no. D30 Notice of Unredeemable

Exhibit no. D31 Notice and order for removal no. V23014121-A23002178, issued April 11, 2023

Exhibit no. D32 NVOC mailing/tracking history

Exhibit no. D33 A22005049 Appeal, received January 18, 2023

Exhibit no. D34 Motion to Dismiss

Exhibit no. D35 A22005938 Appeal, received January 18, 2023

Exhibit no. D36 Motion to Dismiss

Exhibit no. D37 A23000061 Appeal, received January 18, 2023

Exhibit no. D38 A23000727 Appeal, received March 30, 2023

Exhibit no. D39 A23002178 Appeal, received April 20, 2023

Exhibit no. D40 Map of subject area

June 30, 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

CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file nos. **V22013574, V22013755, V22013813, V23013895, V23013896, V23013957, V23014096, and V23014121**

JAMES NGUYEN
Animal Services Enforcement Appeal

I, Lauren Olson, 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 June 30, 2023.



Lauren Olson
Legislative Secretary

Buchanan, Tanner

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Nguyen, Johnny Mr.

Hardcopy

Williams, Margaret

Hardcopy