

September 12, 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

SUMMARY ORDER

SUBJECT: Regional Animal Services of King County file no. **V23014463-A23004064**

KELLIE AND PHILIP WHITE

Animal Services Enforcement Appeal

Activity no.: A23004064

Appellants: **Kellie and Philip White**

[REDACTED]
Carnation, WA 98014

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

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Prior to yesterday's hearing, Animal Services had dismissed the Whites' licensing violation, as it has not required pet licenses for what it refers to as "barn cats." At yesterday's hearing, after the Whites explained that they had captured and rehomed Marshmallow, Animal Services dismissed the viciousness and trespass violations without prejudice, meaning it could reassert a violation if the situation arose again. If a situation occurs again in the future—either in this neighborhood or another neighborhood—it would be under the new code that went into effect July 14. We thus give a first blush (and not definitive) assessment of how the new code might play out here.

The definition of “harbored, kept or maintained” in place at the time of the alleged July 7 violation here required not only “performing any of the acts of providing care, shelter, protection, refuge, food or nourishment”—which the Whites acknowledge they have performed, at least in terms of they or their kids feeding Marshmallow—but that such provision of care be either “in such a manner as to control the animal’s actions, or that the animal or animals are treated as living at one’s house by the homeowner.” KCC 11.04.020.K. Our hearing was truncated, but it is not clear that Animal Services could have shown either the control or the treated-as-living components required to prove the Whites “harbored, kept or maintained” Marshmallow.

However, going forward “harbor, keep, or maintain” has been redefined as: “A. Providing animal care, shelter, protection, refuge, food, or nourishment; or B. Having custody of an animal.” “Custody” (which sounds similar to control or the treating-as-living) is no longer an additional requirement for being treated as harboring, keeping, or maintaining an animal. Simply feeding an animal, at least other than a one-off, would seemingly qualify the Whites (or Ms. Jensen) as “harboring, keeping, or maintaining” that animal.

If Marshmallow returned, the Whites fed him, and he thereafter returned to the Jensen property, it is not entirely clear how we would treat that, either in terms of a nuisance violation or a licensing violation.

As to nuisance violations, the trespass violation continues to be framed as a “*domesticated* animal entering upon a person’s property or premises without that person’s permission.” KCC 11.04.230.L. There is no longer a “viciousness” violation, but its replacement is still framed as a “*domesticated* animal that meets the definition of ‘potentially dangerous animal’ or ‘dangerous animal.’” KCC 11.04.230.F. A “domesticated animal” now “means any animal that is a companion animal, a service or assistive animal, livestock, or poultry.” KCC 11.01.140. It is not clear whether a feral cat or barn cat that someone, such as the Whites, feeds (thus meeting the “harbor, keep, or maintain” requirement) would qualify as a “domesticated animal” for purposes of responsibility for a nuisance violation. There may be a difference between a barn cat and a feral cat, although we note that “barn cat” is not a code-recognized term.

As to licensing violations, the pre-July 14, 2023, requirement was that, “All dogs and cats eight weeks old and older that are harbored, kept or maintained in King County shall be licensed and registered.” KCC 11.04.030.A. It did not exempt out feral dogs or cats—indeed nowhere in the whole KCC Title 11 was the term “feral” even used, let alone defined. That same KCC 11.04.030.A section now reads that “Any owner of a pet eight weeks old and older in King County for more than thirty days shall license and register that pet, but this provision does not apply to a pet walker, sitter, or other temporary custodian, if that person can verify the pet

owner’s name and contact information.”¹ And while the old definition of “pet” was “a dog or a cat or any other animal required to be licensed by this chapter,” KCC 11.04.020.T, the new “pet” definition is “any dog or any *nonferal* cat,” KCC 11.01.310. “Feral” is now defined as “any animal belonging to a species typically domesticated that lives and behaves like a wild animal.” KCC 11.01.170. It is not clear how a “barn cat” would fit into the license scheme.

In the unfortunate event that Marshmallow wanders fact into the neighborhood, so long as the Whites or their children do not provide care, shelter, protection, refuge, food, or nourishment for Marshmallow, Marshmallow would not be their responsibility, either for purposes of licensing or nuisance violations. So, that would be a safe harbor for the Whites.

If the above few paragraphs are more confusing than useful, we apologize. For purposes of today’s case, we DISMISS violation V23014463. There is no reason to dismiss the violations without prejudice, because if Marshmallow returned to the neighborhood, we would be analyzing any new activity under a different legal standard than applied to the June V23014463 notice and order.

If for some reason we have misunderstood the situation, by **October 12, 2023**, either party is free to file, with the examiner, a motion for reconsideration explaining why the examiner should not be dismissing this appeal. Filing a timely motion for reconsideration postpones the deadline (described below the signature line) for lodging an appeal.

DATED September 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 *October 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.

¹ “Owner” means any person who harbors, keeps, maintains, or has control of an animal except for individuals or organizations involved with providing care to a feral cat colony, such as trap, neuter, and release programs.” KCC 11.01.280. Feeding a cat, at least more than a one-off, but arguably qualify one as an “owner.”

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CERTIFICATE OF SERVICE

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KELLIE AND PHILIP WHITE
Animal Services Enforcement Appeal

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **SUMMARY ORDER** 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 September 12, 2023.



Jessica Oscoy
Office Manager

Eykel, Chelsea

Regional Animal Services of King County

Jensen, Ann

Hardcopy

White, Kellie/Philip

Hardcopy