

December 22, 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. **V23014535-A23004796**

**NADINE BAXTER**

Animal Services Enforcement Appeal

Activity no.: A23004796

Appellant: **Nadine Baxter**

[REDACTED]  
Auburn, WA 98001

Telephone: [REDACTED]

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

Overview

1. Nadine Baxter appeals a Regional Animal Services of King County (Animal Services) violation order for her dog, Dyson, 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 her appeal.

### Background

2. On September 13 and October 6, 2022, Michael and Candy Lowery filed complaints for Dyson excessively barking. Exs. D7, D9.
3. On February 1, May 30, June 10, and August 3, 2023, the Lowerys filed additional complaints. Exs. D11, D13, D15, D3.
4. Animal Services issued Ms. Baxter a violation order for excessive nighttime barking on June 21, July 27, and July 28, 2023. Ex. D5. Ms. Baxter timely appealed, requesting only a reduction in fines. Exs. D16, D18. We went to hearing on December 8.

### Hearing Testimony

#### *Michael Lowery Testimony*

5. The Lowerys live two houses away from Ms. Baxter. He testified to multiple instances when Dyson barked prior to 7 AM or after 10 PM. He hears Dyson barking either when he is getting ready for bed or getting up in the morning. He does not hear the barking when he is already sleeping, but when he does hear it, the noise is disruptive and annoying. Mr. Lowery has a CPAP machine and a fan that he turns on to muffle the barking noise. He also keeps the windows closed.
6. Mr. Lowery obtained a decibel reader and measured the noise from his front door. The reader recorded over 70 dB on one occasion. He looked up the noise ordinance and found that appropriate noise levels should be at 55 dB or lower at night.
7. There was a period when Mr. Lowery suspected that Ms. Baxter took Dyson to a neighbor's house or kept Dyson inside because Dyson was not as loud as when he is out in the yard. During that time, Mr. Lowery could still hear Dyson, and the situation was not completely livable, but the noise was muffled. He reported the barking noise and from Animal Services' recommendation, he mailed a form letter to Ms. Baxter (she testified that she did not receive this). The barking continued so the Lowerys filed a formal complaint. Animal Services officers came out to investigate for many months, but the Lowerys did not see a change until right before our hearing. Mr. Lowery heard Dyson barking the morning of the hearing, but the duration was not long like it had been in the last year and a half.

#### *Candy Lowery Testimony*

8. The Lowerys live on a quiet road with woods in the front and back of the house and no other sounds. She has a brain circulatory disorder. Dyson's barking is like a distressed shrill and is audible even with white noise in the background. With her disorder, the barking sounds like a gun bang. When she wakes up from the barking, she can no longer go back to sleep; it feels like a hallucination. She recognizes she hears the noises differently from those without her disorder.

9. There was a period when it sounded like there was construction going on, or Dyson was at another house, and his barking was more muffled. She could still hear shrill barking and still needed to turn on the television to drown it out. Though the noise was muffled during that time, she could not enjoy her outdoor deck or the neighborhood lake.
10. Ms. Lowery acknowledged that Dyson’s barking duration has improved. At times, Dyson barks for at least an hour with an unmeasurable shrill, like a high pitch coyote cry; she has been concerned that Dyson is in distress. The noise is worse when it is quiet and then Dyson suddenly barks. There are other neighborhood dogs that bark, but they sound like typical dogs barking. Ms. Lowery notices that Dyson starts barking when he is outside and people are passing by the fence.
11. Ms. Lowery would appreciate Ms. Baxter being understanding of her disorder and take steps to prevent Dyson from barking. She clarified that though she would like Dyson to wear the bark collar all day, mid-afternoon through evening would be ideal. Mr. Lowery also agreed that the afternoon would be better to have less noise.

*Nadine Baxter Testimony*

12. Ms. Baxter testified that Dyson typically barks at other dogs or strangers; he is a good guard dog. There was a German shepherd that used to pass by the house and would bark at Dyson, so Dyson would bark back; however, that German shepherd passed away.
13. Ms. Baxter acknowledges that Dyson’s bark is very shrill; he gets frustrated when he sees other dogs and cannot get out of the fence. Dyson’s barking is more of alert barking, with three to four yips, and not overly long. Ms. Baxter purchased an air conditioner and started putting a bark collar on Dyson in the mornings. Ms. Baxter does not put the bark collar on all day because she lives alone and needs protection, though she is willing to put it on more often. She has seen improvements in Dyson as he ages and gets more training.

Legal Standards

14. Does Dyson make noise, to an unreasonable degree, in such a manner as to disturb a person or neighborhood? KCC 11.04.230.K. However, we have established consistent benchmarks.
15. First, we draw a sharp distinction between nighttime barking and daytime barking, construing section .230.K consistently with the general County noise code, which makes numerous daytime v. nighttime distinctions.<sup>1</sup> That the timing of a noise matters

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<sup>1</sup> KCC 11.04.230.K (at the time, .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.siu.edu/~gengel/ece476WebStuff/SPL.pdf>

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 true 164 years later. 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> Thus, Animal Services carries a significantly lesser burden for alleged violations like today’s case, 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.

16. 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.<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> 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.<sup>6</sup>
17. Third, “unreasonable” does not simply mean more barking than the average dog. Dogs bark along a bell curve, starting with a thin slice of unusually quiet dogs, moving to the fat part of the bell curve with most dogs making less than average through average through more than average noise, to a thin slice of unusually noisy dogs at the far end of the curve. During the day, simply making more noise than the prototypical dog does not suffice; daytime noise must be at the far end of the bell curve. The scenario is somewhat different at night, because (at least outside the situation of say a farm dog in the agricultural zone actively guarding livestock from nocturnal predators) the expectation is that owners will bring their dogs inside with them.
18. Fourth, something beyond timing, loudness, and duration figure into the impact of noise on the average listener. Noises made seemingly in distress—either active pain or loneliness—are more likely to disturb a typical person 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 sound of children at play, and thus far easier to brush off and far less disturbing, than even softer, shorter duration sounds of a child in distress. There is a qualitative, as well as quantitative, aspect to noise.
19. In analyzing those factors, 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

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<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).

<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. Acree*, 148 Wn.2d 738, 748–49, 64 P.3d 594 (2003) (“reasonable” depends on balancing competing interests).

of the evidence both the violation and the appropriateness of the remedy it has imposed. KCC 20.22.080.G; .210.B.

### Analysis

20. Today's case is a simple one. Animal Services limited its violation notice to nighttime barking. At least until the fall, Ms. Baxter had a long history of repeatedly letting Dyson out before 7 AM where, unsurprisingly, he would bark. Ms. Baxter did not really challenge the existence of the violation. Ex. D16. Animal Services easily meets its burden of proof of showing the violation. And while we frequently reduce fines for say, a \$500 potentially dangerous animal designation or a \$250 licensing violation, we do not reduce them for the basic \$50 penalty applicable to most violations, especially not here, with the frequent warnings Ms. Baxter received stretching back to 2022.
21. Yet ending this report with that would not be very helpful to anyone. Presumably in the future Ms. Baxter will simply keep Dyson inside (or have his bark collar on) until at least 7 AM (9 AM on weekends). Yet the Lowerys continue to complain about *daytime* barking. We make no findings today on daytime barking, but drawing from our extensive experience analyzing appeals under the criteria set forth above and considering some of the testimony at our December 8 hearing, we offer some thoughts to create realistic expectations for the Lowerys and Ms. Baxter and perhaps to avoid future violation notices and appeals.
22. Animal Services carries a significantly higher burden for alleged violations involving daytime noise (meaning after 7:00 a.m. on weekdays/9:00 a.m. on weekends and before 10:00 p.m. each evening) than for nighttime noise. A dog does not need to just bark a little louder or for a little longer than the typical dog; daytime noise must be at the far end of the bell curve.
23. As the courts instruct us, we must apply an objective standard to analyzing noise. We empathize with Ms. Thomas's condition; that is dreadful to endure. But we cannot weigh whether Dyson's barks to an unreasonable degree, in such a manner as to disturb a person or neighborhood, by viewing that barking through the lens of Ms. Thomas's heightened sensitivity due to her disorder. It must be objectively unreasonable and disturbing.
24. We did not entertain the audio recordings this round, but the Lowerys testified that Dyson's bark is much louder than a typical dogs. The investigating officer echoed this, finding Dyson had a loud bark. Ex. D10 at 001, n. 1. Obviously, the louder the sound, the less frequent the duration and repetition would need to be to qualify as unreasonable and disturbing.
25. However, relying on decibel readings is a much greater stretch. The process is more involved than simply buying an over-the-counter noise meter and pointing it at an object.
26. The sound meters used for enforcement purposes must be more sophisticated than the relatively inexpensive, over-the-counter, "Type III" variety. At least a "Type II" machine capable of field calibration and file recording is mandatory, as is a tachometer,

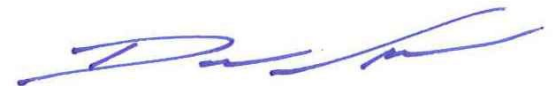
windscreen, and anemometer; a decade ago when we did a deep dive on the subject such machines cost in the vicinity of \$1000. And cost was not limited to one-time purchase, because the machine had to be taken or shipped annually to the manufacturer or qualified laboratory to be recertified, a process typically costing (a decade ago) several hundred dollars. *See* WAC 173-58-030.

27. On top of that, the technician needs to be trained in how to properly use the meter. Recordings themselves require setting up the equipment, calibrating the meter in the field, taking an ambient (background) measurement, and then taking the actual measurement. As of *circa* 2012 at least, the standard was that outside of constant sounds (like the uniform sound of a generator), the measurement typically had to last at least an hour. During that hour it could be difficult to avoid capturing extraneous noises. Post recording additional field calibration work was required, along with taking any notes (like documenting weather conditions).
28. Thus, decibel-based enforcement does not seem like a viable avenue.
29. And finally, the *quality* of the barking matters. Distress-type noises are more likely to disturb than, say, rambunctious barking of a dog in play. We recall one appeal involving schnauzers. The neighbors' complaints about how grating the barking was seemed over-the-top; our first take was that the neighbors were likely embellishing how distressing the barking was, perhaps riling each other up with their gripes. But then we listened to the audio. It truly did sound like an animal in its death throes being eaten alive. So just as if Dyson's barking really is significantly louder than the average dog it would make it easier for Animal Services to prove the violation, if Dyson's barking really is significantly more shrill than the average dog—and Ms. Baxter somewhat admitted this—that would compound the problem for Ms. Baxter.
30. Hopefully, it will not come to that. Some owners seem to have trouble working a bark collar (or some dogs are just more committed to barking and willing to bark through the discomfort), but Ms. Baxter has apparently mastered the bark collar. It does not mean she needs to keep Baxter collared during all daytime hours, but it is certainly a useful tool. And hopefully the Baxters and Ms. Lowery can work out some sort of arrangement they can each live with; we wish them luck in those endeavors.

DECISION:

We deny Ms. Baxter's appeal.

ORDERED December 22, 2023.



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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 *January 22, 2024*. 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 DECEMBER 8, 2023, HEARING IN THE APPEAL OF NADINE BAXTER, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V23014535-A23004796

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Nadine Baxter, Chelsea Eykel, and Candy and Michael Lowery. 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. A23004796
Exhibit no. D3	Online Complaint form of May 31, 2023, incident by Lowerys, dated August 3, 2023
<i>Exhibit no. D4</i>	<i>Videos from Lowerys, not entered into the record due to technical difficulties</i>
Exhibit no. D5	Notice of violation no. V23014535-A23004796, issued August 4, 2023
Exhibit no. D6	RASKC investigation report no. A22004964
Exhibit no. D7	Online Complaint form of September incident by Lowerys, dated September 13, 2023
Exhibit no. D8	RASKC investigation report no. A22005386
Exhibit no. D9	Online Complaint form of September/October incident by Lowerys, dated October 6, 2022
Exhibit no. D10	RASKC investigation report no. A23000699
Exhibit no. D11	Online Complaint form of January incident by Lowerys, dated February 1, 2023
Exhibit no. D12	RASKC investigation report no. A23003567
Exhibit no. D13	Online Complaint form of May incident by Lowerys, dated May 30, 2023
Exhibit no. D14	RASKC investigation report no. A23003802
Exhibit no. D15	Online Complaint form of June incident by Lowerys, dated June 10, 2023
Exhibit no. D16	Appeal, received August 16, 2023
Exhibit no. D17	Map of subject area
Exhibit no. D18	Letter from Ms. Lowery, dated November 21, 2023

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

Exhibit no. A1	Letter, dated November 28, 2023
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December 22, 2023

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V23014535-A23004796**

**NADINE BAXTER**

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 December 22, 2023.



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Jessica Oscoy  
Office Manager



**Baxter, Nadine**

Hardcopy

**Eykel, Chelsea**

Regional Animal Services of King County

**Lowery, Michael/Candy**

Hardcopy