August 1, 2018

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
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www.kingcounty.gov/independent/hearing-examiner

SUMMARY ORDER

SUBJECT: Regional Animal Services of King County file no. **V18008352**

TRAMAINE ANDRE ISABELL
Animal Services Enforcement Appeal

Activity no.: A18003085

Appellant: **Tramaine Isabell**
26123 120th Place SE
Kent, WA 98030
Telephone: (206) 650-5367
Email: tkidmaine1@gmail.com

King County: Regional Animal Services of King County
represented by **Michael Lindquist**
21615 64th Avenue S
Kent, WA 98032
Telephone: (206) 263-5968
Email: raskcappeals@kingcounty.gov

Animal Services served a Notice of Violation and Order to Comply (NVOC) on Appellant, asserting that Kobe (a) was trespassing, (b) failed to display a current license, and (c) warrants a viciousness designation after attacking the neighbor's chickens. Appellant does not dispute either (a) or (b), so we do not need a hearing on those items.

Appellant does dispute (c), so normally we would need a hearing both to ascertain the facts surrounding whether Kobe "attacked" the neighbor's chickens and to entertain arguments on whether those facts amount to "vicious" behavior, defined as:

> having performed the act of, or having the propensity to do any act, endangering the safety of any person, animal or property of another, including, but not limited to, biting a human being or attacking a human being or domesticated animal without provocation.

KCC 11.04.020.BB.

A chicken is a domesticated animal in the common sense of the word, a not unusual backyard pet even in very urban areas. In our region, in fact, one does not even need a backyard to have chickens: an apartment rooftop will suffice.[1] One might argue that chickens are a textbook example of an animal made to be domesticated. They seem more domesticated than, say, mules, which (as seen below) are explicitly covered by the term, despite mules rarely appearing in urban backyards or apartment roofs. If the code just left it at "domesticated animal," we would look to dictionary and common understandings and have little trouble finding a chicken a "domesticated animal," and thus that an unprovoked attack on a chicken could qualify a dog for a viciousness designation.

But the County code does define "domesticated animal," and it is as "a domestic beast, such as any dog, cat, rabbit, horse, mule, ass, bovine animal, lamb, goat, sheep, hog or other animal made to be domestic." KCC 11.04.020.G. As we analyzed it at length in a recent decision, *De Cassis*,[2] under the canons of statutory interpretation a chicken simply does not qualify as a "domesticated animal". As we lamented in *De Cassis*, if even one of those eleven species were something other than a mammal—and a four-footed mammal at that—there would be a strong argument that the drafters meant "beast" to cover chickens. But all are strictly in the four-footed mammalian camp.

Kent's code does overlay the County's code and provide some additional definitions, including "domesticated fowl," "large domesticated animals," and "small domesticated animals." K(ent)CC 8.03.030.A, B, and F. However, Kent applies these definitions to only the zoning-related question of how many large or small domesticated animals or domesticate fowl one may keep on one's property, the answer to which depends on the square footage of that property. K(ent)CC 8.03.070. Nothing in Kent's code indicates any intent to change the definition of "domesticated animal" as it relates to what animals can commit a violation (such as create unreasonable noise) or can be violated (i.e., be attacked or bitten).

In *De Cassis* we thus had to toss out a claim that an appellant's rooster was a domesticated animal that made unreasonable noise so as to disturb a person or neighborhood. We explicitly recognized the harsh implications of our ruling—roosters can be 1600% louder than a dog—and we discerned no justification for limiting the types of domiciled animals covered by the unreasonable disturbance provision. Yet, despite finding our own decision "frustrating," we explained that when we decide cases, we have to interpret the codes "as they are written, and not as we would like them to be written." *Brown v. State*, 155 Wn.2d 254, 268, 119 P.3d 341 (2005).

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[1] https://www.bizjournals.com/seattle/news/2017/01/18/chickens-are-seattles-hot-apartment-amenity-rental.html.
[2] https://www.kingcounty.gov/~/media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2018/2018%20may/V18007754_De_Cassis_Updated.ashx?la=en.

We reach a similar conclusion today. We see no strong policy justification why a chicken *should* not qualify as a "domesticated animal" for purposes of the code's protection, in the same way, say, a rabbit would. But we have to apply the codes as written, and not how we wish they were written. And a chicken *does* not currently qualify as a "domesticated animal" for purposes of "attacking a…domesticated animal" an a viciousness designation.

That does not mean we find today's result acceptable, nor do we accept it. We have been hard at work the last few months, actively engaged in writing and meetings to overhaul the County animal codes. The latest draft redefines "domesticated animal" in a way that would cover chickens. Once the County codes are updated, violence against chickens would be actionable in Kent and elsewhere throughout the County. But the draft is not now law. More importantly, it was not law on June 30, the date of the alleged attack and the critical date for our purposes. So Appellant is entitled to judgment as a matter of law on this portion of the NVOC.

Appellant's appeal is DENIED as to the trespass and license display violations. Appellant shall pay to Animal Services the resulting $100 penalty by **August 31, 2018**.

Appellant's appeal is GRANTED as to the viciousness designation and the confinement order.

If for some reason we have misunderstood the situation, by **August 31, 2018**, either party is free to file, with the examiner, a motion for reconsideration explaining why the examiner should not be taking this step. Filing a timely motion for reconsideration postpones the deadline (described below the signature line) for lodging an appeal.

DATED August 1, 2018.

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 *August 31, 2018.* Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

DS/ed

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V18008352**

TRAMAINE ANDRE ISABELL
Animal Services Enforcement Appeal

I, Elizabeth Dop, 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.

☒ caused to be 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 August 1, 2018.

Elizabeth Dop
Legislative Secretary

Amos, Joel
Hardcopy

Isabell, Tramaine
Hardcopy

Lindquist, Michael
Regional Animal Services of King County