January 23, 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

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V17007523** and **V17007534**

LUIS VELEZ MURILLO
Animal Services Enforcement Appeal

Activity no.: A17008441

Appellant: **Luis Velez Murillo**
22804 NE 22nd Street
Sammamish, WA 98074
Telephone: (425) 647-9987
Email: 425luisvelez@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

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Grant appeal in part, deny appeal in part

EXAMINER PROCEEDINGS:

Hearing Opened:	January 10, 2018
Hearing Closed:	January 10, 2018

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, the examiner hereby makes the following findings, conclusions, and decision.

FINDINGS AND CONCLUSIONS:

1. In February 2017, Luis Velez Murillo received a Notice of Violation and Order to Comply (NVOC) related to his dogs, brothers Spike and Louie. Ex. 12. The most serious of the allegations was that both Spike and Louie qualified as vicious, as at least one of them bit a visitor to the house, Tyler Pellet. Exs. 12 & Ex. 4. In addition, the NVOC required Mr. Velez to meet certain items in order to keep Spike and Louie in the County, including "secure your animals in a fenced area suitable for the size of the animal when your animal is unattended and outside your home. Lock all passages with a padlock to prevent accidental release." Ex. 12.

2. Mr. Velez did not appeal, and thus by March (when the appeal window for the February NVOC expired), Spike's and Louie's viciousness designations, as well as the NVOC's requirements (including the one related to securing Louie and Spike) were cemented in place.

3. On October 14, 2017, Louie and Spike got out again, apparently when Mr. Velez's little brother forgot to latch the gate. Louie and Spike ran at large, where they were spotted by Tyler Pellet's father. Ex. 4. More importantly, they accosted neighbor Christopher Evans near his garage. Ex. 3.

4. Animal Services served Mr. Velez with another NVOC, asserting that Spike and Louie were running at large, trespassing, and vicious, and fining him $2,400. Ex. 7. Animal Services also served Mr. Velez with a removal order, asserting that Spike and Louie were not being kept in conformance with the February 2017 NVOC requirements, and thus needed to be removed from the County, and assessing an additional $1,000 per dog related to the removal order. Ex. 8. Thus the total penalty in play to today id $4,400.

5. Mr. Velez timely appealed, agreeing that Spike is a problem, but asserting that Louie only acts up once his brother instigates an altercation. Ex. 10. At hearing, Mr. Velez did not contest that Spike needs to be removed, but Mr. Velez asked to keep Louie. He also requested a significantly reduced fine, contingent on him removing Spike. No witnesses participated for Animal Services. Animal Services continued to request that we uphold the order removing Louie as well as Spike.

6. Unless directed to by law—and no special directive applies to today's case—the examiner does *not* grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. Ours is a true *de novo* hearing. 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.

7. In past decisions, such as *Moore—V16005906*, we have detailed at some length the relationship between the severity of the interest being affected and the amount of process—including the opportunity for cross examination—due an appellant.[1] As removing a pet from her owner is perhaps the most severe civil sanction in Animal Services' arsenal, we review removals with our highest scrutiny. No witnesses to the October 2017 incident participated in our hearing or were available for Mr. Velez to cross examine. Instead, Animal Services' entire case rested on hearsay—statements made outside of the hearing room, offered to prove the truth of the matters asserted.

8. On one level, Mr. Velez's argument that Louie is not vicious comes too late. As noted above, Louie was declared "vicious" in February 2017, and by March (when the appeal window for the February NVOC expired) Louie's status as a vicious dog was set in stone. Yet on another level, Mr. Velez's claim that Spike is the real troublemaker, and that Louie only constitutes a danger in Spike's presence, is not inconsistent with the record and is relevant to the decision of whether Louie's removal is warranted.

9. Mr. Pellet's written statement noted that his son had been bitten in February by "one of these dogs." Ex. 4 at 002 (emphasis added). And while both dogs eventually menaced Mr. Evans on October 14, 2017, he noted that one was the instigator. As Mr. Evans explained to Animal Services, "the first dog, which was approximately 50 yards away, charged at him from across the street and his lawn…. [T]he second dog, which was approximately 100 yards away, *began charging at him when the first dog started*" the aggression. Ex. 2 at 003, note 2 (emphasis added).

10. Given the severity of the sanction (removal of Louie) that Mr. Velez challenges, and the fact that Animal Services' case is based entirely on hearsay, Animal Services has not met its burden of proof on proving Louie's removal is warranted.

11. As to the remainder of the NVOC, running at large and trespassing are minor violations we review with no heightened scrutiny. We normally hold Animal Services to a tougher standard with regard to a viciousness allegation, given the high stakes; beyond the monetary penalty comes the need to meet certain vicious dog requirements, and the risk that if those confinement terms are not met the dog can be removed from the County. However, unlike our usual viciousness scenario, Louie is *already* vicious in the eyes of the law, given the unappealed February 2017 NVOC declaring him so. Thus, the October 2017 NVOC did not create any new requirements, restrictions, or risks not already firmly in place. Under this more relaxed standard, and in the absence of any appellant testimony or argument refuting Mr. Pellet's and Mr. Evans' written statements about what happened on October 14, 2017, Animal Services has met its burden of proof on all the violations.

12. Mr. Velez requests that we waive a significant amount of the penalty, conditioned on him getting Spike out of the County. Animal Services does not object to this approach.[2] As we have already overturned Louie's removal order, that negates $1,000 of the $4,400 in

[1] http://www.kingcounty.gov/~/media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2016/september%202016/V16005906_Moore.ashx?la=en at ¶¶ 2–7.
[2] As noted above, Animal Services maintains that Louie should also be included in the removal, but for reasons stated above, we overturn Louie's removal order.

play today. We will stay $2,900 of the remaining $3,400 penalty, provided that by February 22, 2017, Mr. Velez meet the requirements listed below.

13. Finally, given Louie's viciousness designation, Mr. Velez must meet all the NVOC requirements if Louie is to continue remaining in the County. Exs. 7 at 001, 12 at 001. Mr. Velez should re-read exhibits 7 and 12 carefully. The requirements include securing Louie in a fenced area suitable for his size when unattended and outside the home and locking all passages with a padlock to prevent accidental release. Installing a simple spring hinge to ensure the gate snaps back and latches should be a fairly inexpensive solution that should provide an extra layer of security, in case Mr. Velez's brother (or someone else) forgets to re-lock the gate. If Louie gets out again, not only will there likely be significant monetary penalties, but the result of a future removal hearing may be very different than today's decision.

DECISION:

1. Mr. Velez's appeal is DENIED as to Spike's removal and GRANTED as to Louie's removal.

2. We SUSPEND $2,900 of the remaining $3,400 penalty, provided that by **February 22, 2018**, Mr. Velez completes all the following:

    A. As to Spike and Louie: microchip both dogs, provide these microchip numbers to Animal Services, and provide Animal Services with proof that each dog is up-to-date on his rabies vaccine;[3]

    B. As to Louie, provide Animal Services with proof that the gate(s) to any area that Louie is allowed to run in is secured, including with a padlock(s), to prevent accidental release; and

    C. As to Spike, either:

        i. Remove Spike from King County and provide Animal Services with proof both that the new owner lives outside King County, and that the new owner has been advised that Spike was ordered removed from King County as a public nuisance or a threat to public safety; or

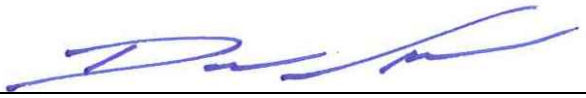
        ii. Surrender Spike to Animal Services at the above Kent address; and

    D. Pay the remaining $500 penalty to Animal Services.

3. If any of the above steps are not met, then the entire $3,400 penalty is due to Animal Services by **February 23, 2018**.

[3] Some or all of these steps may already have been accomplished; Mr. Velez should check with Animal Services to ensure it has the information it needs.

ORDERED January 23, 2018.



David Spohr
King County 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 *February 22, 2018.* 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 JANUARY 10, 2018, HEARING IN THE APPEAL OF LUIS VELEZ MURILLO, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V17007523

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Sergeant Michael Lindquist and Luis Velez.

The following exhibits were offered and entered into the record:

Exhibit no. 1	Regional Animal Services of King County staff report to the Hearing Examiner for file no. V17007523
Exhibit no. 2	RASKC investigation report no. A17008441
Exhibit no. 3	Complaint form of October 14, 2017 incident by Michael Evans, dated October 14, 2017
Exhibit no. 4	Complaint form of October 14, 2017 incident by A. Michael Pellett, dated October 14, 2017
Exhibit no. 5	Complaint form of October 14, 2017 incident by Camille Pellett, dated October 14, 2017
Exhibit no. 6	Email of complaint form of October 14, 2017 incident by Cole Parker, dated October 18, 2017
Exhibit no. 7	Notice of violation no. V17007523, issued October 14, 2017
Exhibit no. 8	Notice and order for removal no. V17007534, issued October 17, 2017
Exhibit no. 9	United States Postal Services tracking information no. 70162070000062128325
Exhibit no. 10	Appeal, received October 30, 2017
Exhibit no. 11	RASKC investigation report no. A17002577
Exhibit no. 12	Notice of violation no. V17006620, issued November 22, 2017
Exhibit no. 13	RASKC receipt no. R17623234, dated April 27, 2017
Exhibit no. 14	Affidavit of proof of service of violation no. V17006620, dated March 1, 2017

January 23, 2018

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V17007523** and **V17007534**

LUIS VELEZ MURILLO
Animal Services Enforcement Appeal

I, Vonetta Mangaoang, 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.

☒ 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.

☒ caused to be placed via County INTEROFFICE MAIL to County staff to addresses on record.

DATED January 23, 2018.

Vonetta Mangaoang

Vonetta Mangaoang
Senior Administrator

Christopher Evans, Michael
Hardcopy

Lindquist, Michael
Regional Animal Services of King County

Velez Murillo, Luis
Hardcopy