July 3, 2018

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

# REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V18008109**

**GENE MICHAEL GRANTHAM**
Animal Services Enforcement Appeal

Activity no.: A18001531

Appellant: **Gene Grantham**
42731 SE 175th Place
North Bend, WA 98045
Telephone: (425) 888-3421
Email: gmgrantham@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
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SUMMARY OF RECOMMENDATIONS/DECISION:

| | |
|---|---|
| Department's Preliminary Recommendation: | Deny appeal |
| Department's Final Recommendation: | Deny appeal |
| Examiner's Decision: | Deny appeal |

EXAMINER PROCEEDINGS:

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| Hearing Opened: | June 27, 2018 |
| Hearing Closed: | June 27, 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. On April 30, 2018, Regional Animal Services (Animal Services) of King County served a notice of violation, asserting that on April 19 Gene Grantham (Appellant) walked his two dogs off leash in the Wilderness Rim community park. Ex. 6. The violation for each dog carried a $25 penalty, $50 in total. *Id.* Appellant filed a timely statement of appeal. Ex. 8. We went to hearing last week.

2. Ours is a true *de novo* hearing. 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. For those matters or issues raised in an appeal statement to an enforcement action, Animal Services bears the burden of proof. KCC 20.22.080.G; .210.B. The general rule, across civil and criminal disciplines, is that the government bears the initial burden of proving a statutory violation, while one claiming the benefit of an exception to the statutory prohibition bears the burden of establishing that she comes within the exception. *See, e.g., United States v. First City National Bank of Houston*, 386 U.S. 361, 366 (1967) (civil); *United States v. Guzman-Mata*, 579 F.3d 1065, 1072 (9th Cir. 2009) (criminal).

3. For the vast majority of the County, there is no bar to an owner taking his dog out without a leash. It is a declared a nuisance to allow a dog to "run at large," but that is defined as "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" itself including the need to be "restrained from approaching any bystander or other animal" when "off the premises of the owner." KCC 11.04.020.W, AA; .230.B (italics added). So, if an owner has sufficient voice control to keep the dog from approaching people or animals, that is normally just fine and dandy.

4. However, "it is the intention of King County to enforce a dog leash law in selected areas of King County." KCC 11.08.010. To do this the Council may—where ten percent of the registered owners within a given area petition for a dog control zone or on its own initiative—create a special dog control zone. KCC 11.08.040. Within these narrow geographic confines:

> It is unlawful for owners, residing within a designated dog control zone, to allow their dogs to be at large or without restraint, except that this section shall not apply where the dogs are engaged in obedience training, lawful hunting activity, lawful competition sanctioned by a nationally recognized body or a local chapter thereof, or lawful training in preparation for such hunting or competition, are working dogs engaged in the herding of livestock, or are working dogs engaged in sanctioned search and rescue activities.

5. KCC 11.08.030. The Wilderness Rim community is on that short list of dog control zones. KCC 11.08.160. And although we do not read in a *mens rea* requirement, the park was duly posted as a "DOG CONTROL ZONE: ALL DOGS MUST BE ON LEASH," Exhibit 4 at 006, and Appellant has been engaged in a long-running dispute with his neighbors over whether he can walk his dogs in Wilderness Rim without a leash.

6. Jessica Besso testified that for several years she has seen Appellant almost daily walking his dogs. She took the photograph on April 19 showing a man in the park with dogs not on leashes. Ex. 11. While she agreed the photo was blurry and taken from a distance, she had no question that it was Appellant. Neither do we. All Appellant succeeded in doing by challenging this aspect of the violation was harm his credibility, when this was not the crux of the dispute.

7. Instead, Appellant's thrust is that what he does during his (almost) daily walks with his dogs in the park qualifies as "obedience training," and thus meets the exception that the dog leash law in a dog control zone "shall not apply where the dogs are engaged in obedience training." The "well-established rule is that a defendant who relies on an exception to a statute made by a proviso or distinct clause… has the burden of establishing and showing that he comes within the exception." *State v. Carter*, 161 Wn. App. 532, 542 n.7, 255 P.3d 721 (2011) (quoting *United States v. Green*, 962 F.2d 938, 941 (9th Cir. 1992)).

8. Animal Services asserts that because Appellant does not belong to a national dog training chapter, he cannot qualify. However, the "sanctioned by a nationally recognized body or a local chapter thereof" limits only the exception for "lawful competition." KCC 11.08.030. The sanctioning does not apply to "obedience training." For example, suppose we had a hypothetical appellant testify as follows:

> *I volunteer with the local Humane Society. We find it hard to find new homes for dogs that don't respond to human commands. So most Saturdays I take a handful of dogs from the shelter to the nearby park* [which in our hypothetical happens to be in dog control zone] *and run them through some obedience drills. I am not a professional trainer, but I am often able to able to give them some basic skills that make them more adoptable.*

The fact that our hypothetical appellant would not be a sanctioned or recognized trainer would not eliminate the exception's applicability to her. Animal Services' interpretation is too strict.

9. Appellant's argument errs in the opposite direction. He essentially argues that each time he walks his dogs he is working on off-leash recalls and "proofing" them. He opines that "any walk" is an opportunity to train and reinforce positive behavior, to constantly be reinforcing the behavior of that dog. He asserts that when someone throws a ball or Frisbee to a dog, that should be considered obedience training. The videos of him do not show him actively engaged in training. Exs 5A & 5B. But even assuming these were simply brief clips, and that longer video would have shown him actively engaged in giving his dog commands on each walk, his broad definition of obedience training "conflicts with the principle that statutory exceptions are construed narrowly in order to

give effect to the legislative intent underlying the general provisions." *Foster v. Washington State Dept. of Ecology*, 184 Wash.2d 465, 473, 362 P.3d 959 (2015). Instead, like the courts,

> We narrowly construe exceptions to statutory provisions. Narrow construction ensures that we give effect to the legislative intent underlying the general provisions. Narrow judicial construction means we will choose, when a choice is available, a restrictive interpretation over a broad, more liberal interpretation.

*City of Union Gap v. Washington State Dept. of Ecology*, 148 Wn. App. 519, 527, 195 P.3d 580 (2008) (citations omitted). Here that intent is enforcing a dog leash law in selected areas of King County. KCC 11.08.010. The exception would apply to our hypothetical Humane Society appellant, but not to our actual Appellant.

10. Again, nothing we say here is meant to interpret the general rules that apply County-wide. As noted in paragraph 3, throughout most of the County the terms "at-large" and "restrained" are relatively relaxed—voice or signal control is sufficient, even off the owner's property, so long as the animal is restrained from approaching a bystander or other animal. However within the dog control zones, those terms are stricter. "At large" means to "be off the premises [or out of the car] of the owner and not under the control of the owner *by leash*" and "restrained" means "maintained and remain[ing] within the property limits of its owner or keeper." KCC 11.08.020.A & .D. Appellant must follow these definitions within Wilderness Rim.

11. Appellant argues that we should apply a rule of lenity. He includes a lengthy block quote from *In re Disciplinary Proceeding Against Haley*, 156 Wn.2d 324, 126 P.3d 1262 (2006), about applying the rule of lenity in civil proceedings with penal sanctions. This is unavailing. First, he neglected to mention that his quoted excerpt was from the *dissent*. 156 Wn.2d at 347–48 (Alexander, C.J., dissenting). More to the point, the sanctions here are nowhere near penal.

12. The portion of our animal code that most closely approximates penal sanctions relates to removing a dog from the County. As an appellate judge in a sister circuit recently wrote, "[m]any decisions, including Washington decisions, recognize the bond between animal and human and the intrinsic and inestimable value of a companion animal." *Repin v. State*, 198 Wn. App. 243, 287, 392 P.3d 1174 (2017) (Fearing, C. J, concurring). Our circuit has been harsher, ruling that a removal order "does not sever the relationship between a dog and owner; as so long as [the owner] moves out of King County, his relationship with [the dog] can continue uninterrupted." *Mansour v. King County*, 131 Wn. App. 255, 266, 128 P.3d 1241 (2006). Our circuit seems tone deaf, especially given the housing crunch in the Puget Sound area and the difficulty of finding alternative, affordable housing. So, while not explicitly announcing a rule of lenity, we have held Animal Services to a high standard in removal cases.[1]

[1] See, e.g. https://www.kingcounty.gov/~/media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2017/february%202017/V16006259_Hawes.ashx?la=en and https://www.kingcounty.gov/~/media/independent/hearing-examiner/documents/case-

13. Our case is as distant from a removal order as we can imagine. The violations here are $25 penalties, only half the $50 penalty applicable to most violations, a fifth of the $125 penalty for an unlicensed but altered dog, a tenth of the $250 penalty for an unlicensed unaltered dog, and one twentieth of the penalty for a vicious dog. KCC 11.04.035.C. Only in the most white privilege-y sense could having to use a leash while one walks dogs be considered a *penal* sanction. We do not import the rule of lenity from criminal jurisprudence into how we analyze dog leash cases.

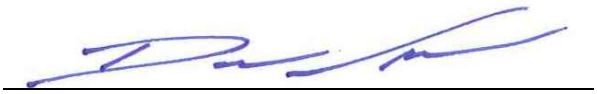
14. Appellant raised a legitimate, legal question, one requiring serious legal research and statutory interpretation. But in the end, Appellant comes nowhere close to proving that the obedience training exception applies to his daily walks with his dogs. So long as he has his dogs under voice control sufficient to keep them from approaching bystanders or other animals, he may continue to walk them off leash almost any place in the County *but* Wilderness Rim. He simply cannot do so within Wilderness Rim.

DECISION:

1. Appellant's appeal is DENIED.

2. The $50 penalty is due to Animal Services by July 17, 2018.

ORDERED July 3, 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 2, 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 JUNE 27, 2018, HEARING IN THE APPEAL OF GENE MICHAEL GRANTHAM, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V18008109

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Sergeant Michael Lindquist, Jessica Besso, and Gene Grantham.

The following exhibits were offered and entered into the record:

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digest/appeals/animal%20enforcement/2017/2017%20march/V16006259_Hawes_OrderOnMotionForReconsideration.ashx?la=en (denying Animal Services' motion for reconsideration).

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|---|---|
| Exhibit no. 1 | Regional Animal Services of King County staff report to the Hearing Examiner for file no. V18008109 |
| Exhibit no. 2 | Online complaint form of April 19, 2018 incident by Jessica Besso, dated April 20, 2018 |
| Exhibit no. 3 | RASKC investigation report no. A18001531 |
| Exhibit no. 4 | Photographs of dogs and property |
| Exhibit no. 5 | |
| | A. Video of dogs |
| | B. Video of dogs |
| Exhibit no. 6 | Notice of violation no. V18008109, issued May 1, 2018 |
| Exhibit no. 7 | United States Postal Service tracking no. 70163010000068331090 results |
| Exhibit no. 8 | Appeal, received May 19, 2018 |
| Exhibit no. 9 | Emails from Jessica Besso to RASKC with complaint, dated April 20, 2018 to June 11, 2018 |
| Exhibit no. 10 | Appellant hearing memorandum, received June 20, 2019 |
| Exhibit no. 11 | Appellant objection to exhibits and rebuttal photograph dated April 19, 2018 |

DS/ed

July 3, 2018

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## CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V18008109**

**GENE MICHAEL GRANTHAM**
Animal Services Enforcement Appeal

I, Elizabeth Dop, 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.

DATED July 3, 2018.

Elizabeth Dop
Legislative Secretary

July 3, 2018

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Animal Services Enforcement Appeal

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DATED July 3, 2018.

Elizabeth Dop
Legislative Secretary

**Besso, Jessica**
Hardcopy

**Grantham, Gene**
Hardcopy

**Lindquist, Michael**
Regional Animal Services of King County