June 4, 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. **V18007916**

ESTHER WENNERLIND
Animal Services Enforcement Appeal

Activity no.: A18000605

Appellant: Esther Wennerlind
represented by **Christina Faucett**
2606 NE 2nd Street
Renton, WA 98056
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Email: christina@faucettlegal.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:	Grant appeal in part, deny appeal in part

EXAMINER PROCEEDINGS:

Hearing Opened:	May 23, 2018
Hearing Closed:	May 23, 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 February 19, 2018, Animal Services received a complaint that puppies were being sold from the subject property under filthy conditions. Ex. 2. The following day, an investigating Animal Services officer approached the property and observed a "brown/gray Terrier mix" and a "brown and white Cocker Spaniel." Ex. 3 at 002. The respondent, later identified as Esther Wennerlind, came out of the residence, but stated that she would not answer any questions without a warrant. *Id.*

2. On March 8, Animal Services issued a Notice of Violation and Order to Comply (NVOC) to Ms. Wennerlind (Appellant) for two unlicensed, unaltered pets—a Terrier and a Cocker Spaniel. Ex. 4. Appellant belatedly filed an appeal. Ex. 5. Animal Services filed a motion to dismiss that appeal as untimely, a motion we would have granted, but for the fact that Animal Services did not appear at our scheduled motion hearing. Ex. 6. After denying the motion, we went to a hearing on the merits on May 23.

3. 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.

4. The two pertinent code provisions are KCC 11.04.030.A, which requires that:

> All dogs and cats eight weeks old and older that are harbored, kept or maintained in King County shall be licensed and registered. Licenses shall be renewed on or before the date of expiration[,]

and KCC 11.04.030.K, which defines "Harbored, kept or maintained" as

> performing any of the acts of providing care, shelter, protection, refuge, food or nourishment 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.

5. As to the Terrier, Appellant's assertion is that it is not hers, and she had no duty to license it. Oftentimes, an appellant's attempts to divert licensing responsibility to others does not get very far, given the all-encompassing nature of the above codes, and what come across as excuses. For example, in one memorable past case, when we asked at hearing, "Well, than whose dog is it?" appellant answered that he was just watching a dog for a friend, but then he could not remember the friend's name, and as to the friend's contact information, he did not know, but he was pretty sure she had recently moved.

6. This case is different. Appellant's mother, Beverly Wennerlind, appeared at hearing, and testified that the Terrier was hers, that she feeds and pays the Terrier's vet bills, and that she recently licensed the Terrier. Ex. 8. She testified that on the February date in question, Appellant was in the middle of a 10-day stint watching the Terrier while Ms. Wennerlind was on vacation.

7. That is not necessarily dispositive, because there is no formal ownership standard to be met before the requirement to license kicks in. Even simply providing care, shelter, protection, refuge, food or nourishment, in such a manner as to control the animal's actions, is sufficient. Appellant was doing this in February.

8. And yet there almost has to be some type of minimal temporal threshold. Given a strict reading of KCC 11.04.030.K, for example, a neighbor who agreed to come over and walk and feed a dog when the dog's owner was working late one evening would be on the hook not only to make sure the dog did not escape while the neighbor was walking or feeding the dog (a reasonable expectation) but also for licensing the dog (an unreasonable expectation). That would be the equivalent of expecting a valet parking attendant to not only park a guest's car legally and not scratch it (a reasonable expectation), but also to ensure that the guest had a valid driver's permit and that the car was duly licensed and up-to-date on taxes (an unreasonable expectation).

9. This case is a little bit in between, because as the daughter, Appellant's situation is not quite the neighbor's in the above scenario. Yet given that Ms. Wennerlind has accepted responsibility and licensed the Terrier, we conclude that, despite the code's wording, Animal Services has not met its burden of proof for Appellant and the Terrier.[1]

10. The Spaniel is decidedly different. Appellant does not deny that she owns a Spaniel, that her Spaniel was with her when Animal Services came to the fence on February 20, that her Spaniel has not been altered, and that her Spaniel was not licensed on February 20—or licensed even by the time of hearing. Instead, her defense is that Animal Services cited a *Cocker* Spaniel, while in reality the dog is a *Springer* Spaniel.

11. Not infrequently, dog identification is a major issue. For example, in *Miller–V17006837* we devoted a dozen pages to analyzing whether Animal Services had correctly identified the dog.[2] Here, there is no serious question that the only other dog (aside from the Terrier) Animal Services observed on February 20 was Appellant's Spaniel. Appellant did not somehow misunderstand what dog Animal Services was referring to. That Animal Services incorrectly listed the type of Spaniel is here either irrelevant or at worst-case harmless error. Her argument is too cute by a half. Animal Services easily meets its burden.

12. We often reduce the penalty in a licensing case when an appellant duly licenses the dog after receiving the NVOC but prior to our hearing. Here, in contrast, although Appellant received the NVOC in early March (or certainly before her early April appeal statement), she still had not licensed the dog by our late May hearing. Thus, no penalty reduction is warranted. It would probably be in her best interest to license her Spaniel soon, to avoid later complications.

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[1] We also note that the Terrier was, as of the time of the NVOC, altered.

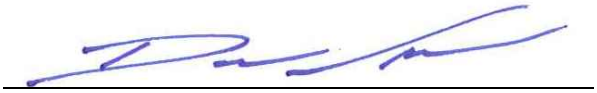
[2] https://www.kingcounty.gov/~/media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2017/2017%20june/V17006837_Miller_Report.ashx?la=en.

DECISION:

1. Esther Wennerlind's appeal is GRANTED as to the Terrier.

2. Esther Wennerlind's appeal is DENIED as to the Spaniel. The $250 penalty applicable to the Spaniel is due to Animal Services by **July 5, 2018**.

ORDERED June 4, 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 *July 5, 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 MAY 23, 2018, HEARING IN THE APPEAL OF ESTHER WENNERLIND, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V18007916

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Sergeant Michael Lindquist, Christina Faucett, Esther Wennerlind, and Beverly Wennerlind.

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. V18007916
Exhibit no. 2	Complaint form of February 9, 2018 incident by Patricia Paterson, dated February 19, 2018
Exhibit no. 3	Investigation report no. A18000605
Exhibit no. 4	Notice of violation no. V18007916, issued March 9, 2018
Exhibit no. 5	Appeal, received April 4, 2018
Exhibit no. 6	Motion to dismiss appeal, dated April 11, 2018
Exhibit no. 7	United States Postal Service tracking no. 7017070000058496768 results
Exhibit no. 8	RASKC pet license receipt no. R18-731654, dated May 2, 2018

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V18007916**

ESTHER WENNERLIND
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 June 4, 2018.

Elizabeth Dop
Legislative Secretary

Faucett, Christina
Hardcopy

Lindquist, Michael
Regional Animal Services of King County

Wennerlind, Beverly
Hardcopy

Wennerlind, Esther
Hardcopy