March 7, 2018

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SUMMARY ORDER

SUBJECT: Regional Animal Services of King County file no. **V18007754**

SIDONIE DE CASSIS
Animal Services Enforcement Appeal

Activity no.: A17010048

Appellant: Sidonie De Cassis
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Animal Services served a Notice of Violation and Order to Comply (NVOC) on Sidonie De Cassis (Appellant), asserting that her roosters have violated BMC 8.04.300.J, which declares as a nuisance, "Any domestic animal that howls, yelps, whines, barks or makes other oral noises, in such a manner as to disturb any person or neighborhood to an unreasonable degree." While disputing the facts—i.e. whether her roosters have disturbed a person or neighborhood to an unreasonable degree—Appellant raises a threshold legal challenge: as a matter of law does BMC 8.04.300.J even cover the clucks and crows a rooster makes, however loud and disturbing they may be?

We start with the low hanging fruit. Although a cluck or crow is not a howl, yelp, wine, or bark, those four are just examples; the breadth of coverage of those four words and the "or makes other oral noises" shows that the section is broad, covering basically whatever comes out of a domestic animal's mouth. So someone could not complain about a horse clip-clopping along the street, but one could complain about that horse neighing, if the neighing disturbed a person or neighborhood to an unreasonable degree.

The real question is whether a chicken qualifies as "any domestic animal" to which the noise prohibition applies. Animal Services is correct that 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 are certainly a good deal more domestic than, say, mules, which would be explicitly covered.[2] If the code just left it at "domesticated animal," we would look to a dictionary and common understandings and have little trouble finding a chicken domestic and subject to BMC 8.04.300.J

The problem for Animal Services is that the code does indeed define "domesticated animal," and it is "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." BMC 8.04.060.G. On first blush the "or other animal made to be domestic" sounds like the same broad catchall as "other oral noises." But on further scrutiny BMC 8.04.060.G is structured differently than BMC 8.04.300.G.

Animal Services' interpretation of BMC 8.04.060.G would be texturally accurate if the sentence were written as "'Domesticated animal' means a domestic beast, such as any dog, cat, rabbit, horse, mule, ass, bovine animal, lamb, goat, sheep, hog, or another animal made to be domestic." One would diagram that sentence as: "Domesticated animal" means [1] a domestic beast (such as any dog, cat, rabbit, horse, mule, ass, bovine animal, lamb, goat, sheep, hog), or [2] beyond beasts, any other animal made to be domestic. A rooster is an animal made to be domestic, and thus would qualify under that two-category definition. However, as the sentence is actually written, there is only one category of covered animals: "beasts," which is then illustrated by reference to eleven specific species and a more general "other animals." Everything that follows "beast, such as…" relates to the understanding of "beast."

Focusing on such grammatical niceties sounds hyper technical, something we try to avoid in our analysis and writing.[3] But occasionally, even something like a comma matters. Perhaps the most famous example stems from the Tariff Act of 1872, whereby Congress—intending to exempt fruiting plants from taxation—unintentionally enacted a law that exempted "Fruit, plants tropical and semi-tropical for the purpose of propagation or cultivation." The accidental comma after "fruit" cost the government millions in lost revenue, because tropical and semi-tropical fruit,

[1] https://www.bizjournals.com/seattle/news/2017/01/18/chickens-are-seattles-hot-apartment-amenity-rental.html.
[2] Outside of perhaps a narrow band of adjacent homes around Kelsey Creek Farm, one would not expect mules to play much role in Bellevue residents' lives. And yes, we remember Kelsey Creek Farm's most famous resident, Pasado (rest his soul), and Pasado's region-wide impact, but Pasado was a donkey, not a mule. http://www.pasadosafehaven.org/about/story/.
[3] Although the attorney briefs in this case employed Latin, we have not.

along with tropical and semi-tropical plants, were thus exempted.[4] More generally, our Court instructs us to "employ traditional rules of grammar to discern plain meaning." *Gray v. Suttell & Assocs.*, 181 Wn.2d 329, 339, 334 P.3d 14 (2014).

Moving beyond grammar, if the code definition had just left it at a reference to beasts, Animal Services would still have a good argument. While Merriam-Webster's first definition of "beast" is "a four-footed mammal as distinguished from a human being, a lower vertebrate, and an invertebrate," its second acceptable definition is "a lower animal as distinguished from a human being."[5] There would be some ambiguity—did the drafters mean "beast" in the first, narrower sense (four-footed mammals) or the second, broader sense (any nonhuman animal)?

The problem—which highlights in its violation the maxim that less is often more—is that the code provides eleven specific examples of exactly what is meant by "beast." If even one of those eleven species were something other than a mammal—and a four-footed mammal at that—there would be an argument that the drafters were using "beast" in the broader sense. Unfortunately for Animal Services, all are strictly in the four-footed mammalian camp. Appellant is correct that "general terms appearing in any statute in connection with specific terms are to be given meaning and effect only to the extent that the general terms suggest items similar to those designated by the specific terms." *Condit v. Lewis Refrigeration Co.*, 101 Wn.2d 106, 111, 676 P.2d 466 (1984) (emphasis added).

Animal Services argues, correctly, that our state's "plain meaning" doctrine is a little broader than that employed by some other states; in Washington we judge the plain meaning "in the context of the whole statute, related statutory provisions, and the statutory scheme as a whole." *Estrella v. King County*, 190 Wn. App 142 (2015) (unpublished), *rev. denied*, 185 Wn.2d 1019, 369 P.3d 500 (2016). *See also Gray*, 181 Wn.2d at 339. Animal Services points to two other provisions of BMC chapter 8.04 as probative.

First, BMC 8.04.050.A explains that chapter 8.04's purpose includes "controlling errant animal behavior so that it shall not become a public nuisance." Yet "a general statement of statutory purpose" cannot be "construed in a way that would override a specific standard for implementing that purpose." *Hansen v. Hansen*, 270 P.3d 531, 534 (Utah 2012). As discussed below, BMC chapter 8.04 contains many provisions that apply to some animals but not to others.

Second, Bellevue's land use code includes chickens in the definition of "domestic animals, small." BMC 20.50.010.D. And BMC 8.04.050.B clarifies that in a conflict between the animal code and the land use code, the land use code prevails.[6] If the animal code did not already have a definition of "domesticated animal," we would look to the land use code's definition of "domestic animal" as an interpretive guide. *See, e.g., Veiga v. McGee*, 26 F.3d 1206, 1211 (2d.

[4] https://priceonomics.com/the-most-expensive-typo-in-legislative-history/.
[5] https://www.merriam-webster.com/dictionary/beast.
[6] There are obvious ways the land use code might trump the animal code; if for example the land use code barred mules from city limits, the fact that the animal code contemplates mules would not be a defense. Other intersections are more explicit. For example, one may not foster more dogs and cats than are otherwise allowed in the land use code without obtaining a private animal placement permit from Animal Services. BMC 8.04.210.A.

Cir. 1994) ("in the absence of a statutory definition of a term, the understanding of that term in an analogous statute is an excellent guide to interpretation").

The problem with this argument is that the animal code *does* define the term. And where "words are capable of having various meanings depending on the circumstances in which they are used, the definition in one legislative act has little or no value in determining its meaning in another [legislative act]." *Lake County v. Gateway Houses Foundation, Inc.*, 19 Ill. App. 3d 318, 325, 311 N.E.2d 371 (1974). In fact, where a statute defines a term, "such definition controls in the application of the statute, even though such definition may vary from that employed as to similar words in other statutes." *State v. New*, 197 Ohio App. 3d 718, 724, 968 N.E.2d 607 (2012).

Staying within the definition section of the animal code, BMC 11.04.060, certain definitions cover a broad swath of animals, or even all animals, while other definitions cover only a subset of animals. So (P) "livestock" includes, for instance, only those pigs over 120 pounds or over 20 inches high, while a (J) "grooming service" covers any animal brought in to enhance aesthetic value and/or health. Meanwhile, (I) "fostering" relates only to dogs or cats, while (X) "service animals" covers any animal trained to aid a disabled person. Even the word "pet" means different things, as a (T) "pet" is limited to dogs, cats, and other animal requiring a license, while one who exclusively sells birds, reptiles, fowl, and fish is nonetheless running a (U) "pet shop."

Beyond the definition section, certain provisions of BMC chapter 11.04 cover a broad swath of animals, while others are more narrowly tailored. The chapter is chock-full of regulations for kennels and catteries, which relate only to dogs and cats, and not to other housed animals. The chapter contains plenty of spaying and neutering references, but such provisions do not apply to animals other than dogs and cats. BMC 8.04.270.D.1, .310 & .430. And rabies vaccinations are only a requirement for dogs and cats, not for other animals. BMC 8.04.470. Thus not all animals are covered by all sections. And BMC 8.04.300.J only covers domestic animals, and domestic animals are limited to beasts.

We do not ignore the implications of such a ruling. Excluding chickens from the noise prohibitions is profoundly troubling. Roosters have been reported to emit 130 dB, more than the 90 dB reported for dogs.[7] If accurate, given the relationship of decibels to loudness, a rooster is not 44% louder than a dog (as one might think by 130/90) but *1600%* louder than a dog.[8] That is especially bad because roosters are renowned for their break-of-dawn crowing, and here Appellant's roosters have apparently been crowing as early at 4:50 a.m.[9] As we have detailed in numerous animal noise decisions, early morning/late night noise is far more likely to be unreasonably disturbing then daytime noise.[10] This is especially true when it comes to how long (duration-wise) a noise must occur to qualify; at night, whether an animal emits noise for six seconds or sixty seconds or six minutes or sixty minutes is somewhat irrelevant, because if the

[7] http://www.fresheggsdaily.com/2017/01/so-just-how-loud-is-roosters-crow.html.
[8] No, we have not lost our math marbles. The general rule of thumb for loudness is that increasing the power by 10 bB makes a sound twice as loud. https://www.gcaudio.com/tips-tricks/the-relationship-of-voltage-loudness-power-and-decibels/. So 100 dB is twice as loud as 90 dB, 110 dB is four times as loud as 90 dB, 120 dB is eight times as loud as 90 dB, and 130 dB is sixteen times as loud as 90 dB.
[9] For purposes of today's briefing, we accept the factual allegations contained in Animal Services' NVOC.
[10] *See, e.g.*, https://www.kingcounty.gov/~/media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2017/2017%20june/V17006669_Chen_Report.ashx?la=en at ¶¶ 25–30.

noise is sufficient to repeatedly wake someone up from sleep, even quickly quieting the animal after each episode is a bit like locking the barn door after the horse is gone—the damage for that night has already been done.

Moreover, it is not clear why there should be any special limit to the types of animals covered by the unreasonable disturbance provision. Since the prohibition is getting at how much an animal's noise is disturbing the neighbors, why is it important what species is doing the disturbing? Presumably one cannot be responsible for, say, a murder of crows descending on a parcel and creating a ruckus. Yet the code is clear that any act "providing care, shelter, protection, refuge, food or nourishment in such a manner as to control the animal's actions" qualifies as "harbored, kept or maintained." BMC 8.04.060.K. If one harbors, keeps, or maintains an animal that makes unreasonably disturbing noise, why should the nuisance determination turn on what species that animal is? Similarly why should a resident's duty to be a good neighbor be any less depending on the species of animal?

Yet when we decide cases, we 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). And here, as detailed above, the noise provision is not written to cover roosters.

That is not the Bellevue City Council's fault. As with almost every city in King County, Bellevue has adopted a close approximation of King County Code chapter 11.04. In fact, to the extent Bellevue has departed from the KCC, Bellevue appears *more* protective of its residents. For example, while there is no prohibition against any animal other than dogs running at large in the County, Bellevue requires all domesticated animal to be restrained from running at large. *Compare* KCC 11.04.230.B with BMC 8.04.300.B.

It is not even the fault of Animal Services or the King County Council. At this point it is ours. We announced many months ago that we were working on a comprehensive overhaul to KCC chapter 11.04—which once enacted by the King County Council would become the basis for cities to take another look at their respective codes. We intended to at least have a working draft by the end of 2017, but got waylaid by (in addition to timely and thoroughly managing our caseload) some other projects, including updating our hearing guides to assist laypeople and participating in the process to improve inquests into fatal police shootings. But today's frustrating decision re-emphasizes to us the importance of animal control codes, and next week we pledge to pick up—and then not re-shelve until we have a working draft of—possible amendments to KCC chapter 11.04.

Yet for today, and until the codes are updated, chicken noises are simply not covered by BMC 8.04.300.J. Therefore, Appellant is entitled to judgment as a matter of law. Appellant's appeal is GRANTED, and the January 2018 NVOC is DISMISSED.

DATED March 7, 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 *April 6, 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

March 7, 2018

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V18007754**

SIDONIE DE CASSIS
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.

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

DATED March 7, 2018.

Elizabeth Dop
Legislative Secretary

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