November 28, 2018

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

ORDER OF DISMISSAL

SUBJECT: Regional Animal Services of King County file no. **V18008658**

RICHARD FREDERICK TIETJEN
Animal Services Enforcement Appeal

Activity no.: A18004812

Appellants: **Rich and Tracy Tietjen**
24602 SE Summit Landsburg Road
Ravensdale, WA 98051
Telephone: (206) 715-7195
Email: rich@tubroconstruction.com

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

On September 21, 2018, Regional Animal Services of King County ("RASKC") issued a Notice of Violation and Order to Comply ("NVOC"), asserting that the Tietjens' dog, Bruce, had bitten someone and qualified as "vicious." The NVOC was signed for at the Tietjen house on September 29.

By law, appeals of decisions must be "received by the department" (here, RASKC) within 24 days of the "date of issuance of the decision." KCC 20.22.080.B. That meant RASKC had to receive the appeal by October 15, in order for the appeal to have been timely. Instead, the

Tietjens got an appeal in the mail on November 2 (42 days after it was issued) and RASKC received it on November 5 (45 days after issuance).[1]

We scheduled a telephonic hearing for earlier this morning. RASKC, the complainant, and even another interested person promptly called in. Mr. Tietjen did not. We waited our customary ten minutes after the start time to announce we were dismissing the appeal. Mr. Tietjen may have until **January 28, 2019**, to pay the $500 penalty.

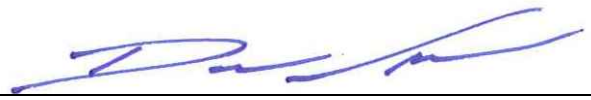
In many scenarios, an examiner has a fair amount of discretion and flexibility. For example if an appeal is timely but inadequate in content, an examiner "may" dismiss the appeal, but alternatively "may" allow a party to clarify the appeal issues. KCC 20.22.090.B. Requiring clarification, instead of dismissal, is almost always the approach we choose in such a scenario. We would do so here if *content* were the shortcoming in the Tietjen appeal.

However, untimely appeal statements are decidedly different. The examiner "shall"—not "may"—dismiss an untimely appeal. KCC 20.22.090.A. There is no alternative option an examiner can select. Where "a person fails to timely deliver the appeal statement…, the office of the hearing examiner does not have jurisdiction to consider the appeal and the decision of the department…becomes final and unreviewable." KCC 20.22.080.H. Dismissal of the Tietjen appeal is thus mandatory.

The upshot is that because the September NVOC decision is now final and unreviewable, the Tietjens should carefully read the four bulleted points at the bottom of that NVOC, including the requirement to keep Bruce in a fenced area (locked with a padlock to insure against accidental release) when unattended outside the home, and the requirement that Bruce be on a leash when taken off the property. If the NVOC is violated, it could result in Bruce's removal from the county, so the Tietjens should double down to ensure their beloved dog stays with them.

If for some reason we have misunderstood the situation, by **December 28, 2018,** either party is free to file, with the examiner, a motion for reconsideration explaining why the examiner should not be dismissing this appeal. Filing a timely motion for reconsideration postpones the deadline (described below the signature line) for lodging an appeal.

DATED November 28, 2018.



David Spohr
Hearing Examiner

[1] The "date of issuance" (September 21) was the legal start date for the 24-day appeal window. But even if the law were written differently, and the date the NVOC made it to the Tietjen house was the start date, Tietjens still would not have gotten their appeal into the mail until the 37th day.

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 *December 28, 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/ld

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V18008658**

RICHARD FREDERICK TIETJEN
Animal Services Enforcement Appeal

I, Liz Dop, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER OF DISMISSAL** 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.

☒ 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 November 28, 2018.

Liz Dop
Legislative Secretary

Andert, Paula Jean
Hardcopy

Eykel, Chelsea
Regional Animal Services of King County

Spencer, Amber Joye
Hardcopy

Tietjen, Rich and Tracy
Hardcopy