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Division I



Docket No. 72667-6-I

King Cy. Sup. Ct. Cause No. 14-1-02159-0SEA

Seattle Muni. Ct. No. 585313

JANET NORMAN,

Defendant-Appellant,

-against-

CITY OF SEATTLE,

Plaintiff-Respondent.

APPELLANT'S BRIEF

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I. ASSIGNMENTS OF ERROR

1. Ms. Norman was denied constitutional and statutory procedural due process by facing prosecution for a matter that first required adjudication by administrative proceeding.

2. The trial court condoned the City's violation of Ms. Norman's equal protection and privileges & immunities rights, not only placing her in jeopardy of imprisonment but subjecting her dog Duncan to a death-eligible offense.

3. The trial court violated Ms. Norman's right to confront witnesses against her as required by the Sixth Amendment and Article I, section 22 by the admission of out-of-court statements which was hearsay.

4. Ms. Norman was denied the right to a fair trial by improper opinion and legal conclusion evidence.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Did the trial court ratify the City's violation of Ms. Norman's right to procedural due process by denying her notice and an opportunity to be heard, as codified by SMC 9.25.035-.36, forcing Ms. Norman to become a criminal defendant, risking going to jail and losing her property (i.e., Duncan), in order to challenge an animal control officer's unilateral, verbal decision to classify Duncan as "dangerous"?

B. Did the trial court ratify the City's violation of Ms. Norman's equal protection and privileges and immunities rights when it made a life-and-death decision to criminally prosecute Ms. Norman for owning an allegedly dangerous dog (with euthanasia mandated upon conviction) rather than to administratively declare her dog dangerous (permitting relocation upon final declaration), as contemplated by Ch. 9.25 SMC?

C. The Confrontation Clause requires that the prosecution offer an accused person the opportunity to cross-examine a witness. Further, the evidence rules exclude out-of-court statements admitted for their truth. Here, the prosecution did not call the victim to testify at trial, but instead relied on another witness who related what the victim told her in regards to the dog bite incident. Was Ms. Norman denied her right to confront witnesses against her because of the admission of this hearsay?

D. Opinion testimony is inadmissible as to guilt. No witness can express a legal opinion as to guilt. Here, a witness for the prosecution testified that the dog's bite was unprovoked, and another witness testified that Ms. Norman was cited for the bite. This testimony was an improper opinion and a legal conclusion. Was Ms. Norman denied the right to a fair trial by this improper opinion and legal conclusion evidence?

II. STATEMENT OF THE CASE

Janet Norman was charged with Negligent Control of an Animal and Owning a Dangerous Animal by the City of Seattle (City). The incident date was Sept. 22, 2012. This matter went to trial in January 2014. Ms. Norman was convicted of Owning a Dangerous Animal, and found not guilty of Negligent Control of an Animal. Her dog Duncan will be euthanized if she does not prevail on appeal.

Ms. Norman is seventy eight years old and has lived at the same home in South Seattle for many years. Melanie Grant lived across street from Ms. Norman. **CP 169**. Ms. Grant is a larger woman, weighing three hundred pounds, and cohabited with her mother Julia Coleman. *Id.* They have been neighbors of Ms. Norman for twenty years. **CP 173**.

Like many people in Seattle, Ms. Norman owned a dog. Even as an adult, Duncan still behaved like a puppy. **CP 344**. Duncan was skittish and shy. *Id.*, at **340, 345**. But, he will warm up. *Id.* Duncan also was wont to bark. *Id.* A loving dog, Duncan wags his body, wants to give kisses and lick people. *Id.*, at **345**. Ms. Coleman was familiar with Duncan. *Id.*, at **290-304**. Prior to September 2012, she never complained about Duncan's behavior. *Id.*

On Sept. 22, 2012, Ms. Grant, Dondre Johnson, Al Johnson, and Kashima Strong were across the street from Ms. Norman's house. **CP 301-302**. They were helping Ms. Grant with her car. At some point, Ms.

Grant went over to Ms. Norman's home. Ms. Grant did not call ahead. Instead, she knocked on the door. Ms. Norman had no idea that anyone was coming over to her house at that time. As she opened the door, Duncan slipped outside. Duncan bit Ms. Grant.

Including Duncan's alleged involvement in the incident at bar, and previously, at no time has the City (or any other jurisdiction) issued to Ms. Norman a civil infraction citation related to Duncan's behavior. Indeed, animal control had not been to Ms. Norman's residence before September 2012 for any complaints concerning Duncan. Nor had the City administratively declared Duncan dangerous. Ignoring this procedure, the City relied on a *verbal* notification from *animal control officer* Rachel Leahy informing Ms. Norman of her belief that Duncan was dangerous. She ordered Ms. Norman to remove Duncan from city limits within ten days or she *might* be criminally charged. **CP 322:6-15, 324:18—325:13.** Yet, neither Officer Leahy nor the City gave Ms. Norman an opportunity to be heard before an impartial magistrate, or even the Director of Seattle Animal Shelter. Ms. Norman was instead charged and the case proceeded to jury trial, but not before the court denied her pretrial motion to dismiss due to the City's failure to comply with the mandatory, administrative declaration procedure set forth in SMC 9.25.035. **CP 157-161.**

Ms. Norman was charged. The case proceeded to trial but not before extensive pre-trial hearings addressing the scope of the evidence, including the fact that the City did not call four eyewitnesses for trial. **CP 111-178; CP 238-289.** Ms. Grant, Ms. Strong, Mr. Johnson, and Mr. Johnson did not testify.

Officer James Jackson, employed by the City as an Animal Control Officer, testified in a pretrial hearing to determine the admissibility of Ms. Grant's and Ms. Norman's statements. **CP 252, 306.** He investigates animal bites. *Id.* Officer Jackson went to Ms. Norman's residence because Ms. Grant said Duncan bit her. **CP 252.** Ms. Grant told him that she did not provoke Duncan before the bite. **CP 261-262.** She did, however, punch the dog after the bite. *Id.* Ms. Norman told Officer Jackson that when Duncan slipped out of the door, Ms. Grant screamed and yelled. **CP 254.** Officer Jackson responded that the bite was unprovoked. **CP 255.** He also defined "provoked" for Ms. Norman. **CP 264.** Ms. Norman told him that she did not believe the bite was provoked. **CP 255.** She did, however, explain that Duncan had not been aggressive in the past. *Id.*

The City moved to admit Ms. Grant's statements to Officer Jackson. **CP 257, 261.** Defense counsel objected on grounds of hearsay and violation of Ms. Norman's Confrontation rights as Ms. Grant did not testify at trial. **CP 252, 271-272.** The City responded, "It's more to give

the background and the context to her response, which then would be an admission of a party opponent.” **CP 258-259**. The City offered Ms. Grant’s statements to show Ms. Norman’s reaction. **CP 278**. The trial court admitted the statements on the premise they were not offered to prove the truth of the matter. **CP 279**.

Because Ms. Grant did not testify, the City called her mother. **CP 290**. Ms. Coleman was not an eyewitness to the incident on 22 September 2012. **CP 293, 302**. She did not see her daughter go to Ms. Norman’s residence. *Id.* She did not see her go to the door and knock. *Id.* She did not see the bite. *Id.* She was told what happened by others. **CP 293-294, 299**. Her daughter told her Duncan bit her. *Id.* Ms. Norman told her that Duncan had never bit anyone before. **CP 294**. She also apologized for what happened. *Id.* She further testified that her daughter told her that Ms. Norman told her not to press charges. **CP 299**. The court overruled defense counsel’s objection. *Id.*

Officer Jackson testified after Ms. Coleman. **CP 306**. First, he never saw Duncan even though he is an animal control officer. **CP 309**. He contacted Ms. Grant on 22 September 2012, and she told him what happened, including that Duncan bit her. **CP 308**. He went to Ms. Norman’s residence. **CP 310**. He told her that he was there because her dog bit a neighbor. **CP 309-310**. He testified that Ms. Grant came over to

Ms. Norman's residence to borrow a tool, knocked on her door, Duncan came out, lunged and snapped, and bit her. **CP 310.** Ms. Norman told him that Duncan ran past her, and bit her neighbor. **CP 309, 310.** Duncan did not display any aggressive behavior. **CP 311.** Ms. Norman did not say that Duncan had been aggressive towards Ms. Grant in the past. *Id.*

The dispositive issue in the trial was whether Duncan was dangerous. To prove this, the City had to prove "that [Duncan], when unprovoked, inflict[ed] severe injury on or kill[ed] a human being or domestic animal on public or private property." **Jury Instruction No. 13.** Officer Jackson explained the dangerous animal statute to Ms. Norman. **CP 311.** Defense counsel's objection was overruled. **CP 311-312.** Eventually the trial court told the jury to disregard this evidence, but the City asked Officer Jackson to explain it again. *Id.* He explained the legal definition of "provoked bite" versus "unprovoked bite." **CP 312.** Defense counsel objected again and, again, the court overruled the objection. *Id.* Officer Jackson concluded that this was an unprovoked bite. **CP 313.**

Rachael Leahy testified next. **CP 319.** She worked for the City of Seattle as an animal control officer for seventeen years. **CP 319-20.** When Officer Leahy went to Ms. Norman's residence, she spoke with Ms. Norman. **CP 327.** She had no interaction with Duncan. *Id.* If Duncan had attacked her, barked at her, or bit her, she would have documented it. *Id.*

She went to the residence “to explain to her that her dog had bitten and caused severe injury.” **CP 321**. The trial court essentially sustained defense counsel’s objection on the basis that it stated a legal conclusion. *Id.* The City asked her again why she went to the residence. Leahy responded that she did so because the dog met the definition of a dangerous dog. *Id.* Defense counsel objected, resulting in a side bar on the record. **CP 321-322**. The trial court feared that Officer Leahy gave a legal conclusion. **CP 323**. It prohibited the witness from testifying that Duncan was dangerous. *Id.* But, it allowed her to testify that she had issued a citation because Duncan bit Ms. Grant. *Id.* The City rested its case.

Defense counsel called three witnesses—William Dameron, Colleen Retel, and Ms. Fritscher. Mr. Dameron and Ms. Retel testified about Duncan. **CP 239**. They had not seen Duncan with a muzzle, chained up, or attack anyone. **CP 341, 346**. Ms. Retel knew Duncan since he was a puppy. **CP 344**. He was described as a good dog who interacted with children. **CP 346**. The City objected and the trial court sustained the objection. *Id.*

Ms. Fritscher testified last for Ms. Norman. **CP 348**. Presented as a specialist in animal behavior, who had interned for Ph.D.-level Certified Applied Animal Behaviorist James C. Ha, she testified that dogs will growl and bark, which is normal canine behavior. **CP 348-349, 354**. She

assessed Duncan. **CP 349.** She tried to determine if Duncan was aggressive and distractible, and concluded that he was not typically aggressive. **CP 349-350.** The trial court sustained the City's objection and struck her testimony. *Id.*

The jury found Ms. Norman not guilty of Count I (Negligent Control of a Dangerous Animal) and guilty of Count II (Owning a Dangerous Animal). **CP 408.** After the trial, defense counsel moved to dismiss Count II as the City had not proven that the injury was unprovoked. **CP 412.** The trial court denied the motion. On Oct. 24, 2014, King County Superior Court Judge Monica Benton affirmed the conviction on Ms. Norman's RALJ appeal. On Jan. 29, 2015, Court of Appeals Mary Neel granted discretionary review to the aforementioned issues per RAP 2.3(b)(2) and (3). Duncan, meanwhile, has been detained for over one year.¹

III. ARGUMENT

A. City Bypasses Statutory Dangerous Animal Procedure and Violates Due Process by Forcing Ms. Norman to Become a Criminal Defendant to Save Duncan's Life.

For years prior to the filing of the charges against Ms. Norman, the City codified detailed steps to afford a modicum of due process where the

¹ Duncan was intaked on Mar. 26, 2014. Twelve dog months equals eighty-four human months given the much shorter life expectancy for larger-breed canines (or over five years). By the time this matter is argued, he will have been detained for probably over ten human years.

City believed a dog met the definition of dangerous as stated in SMC 9.25.020(G). *App. A (Relevant SMC definitions and provisions)*. First, the Director “shall notify the owner in writing” of the preliminary reasons for declaring a dog dangerous. **SMC 9.25.035(B)**. At that point, the dog owner enjoys the “right” to meet and confer with the Director of Seattle Animal Services within twenty days of his issuing a *preliminary* determination of dangerous dog. In so doing, SMC 9.25.035 follows the lead of the default provisions of the State’s Dangerous Dog Law, RCW 16.08.080(3). After that meeting, if the Director concludes that the animal is dangerous, he “shall enter an order so stating” and “shall direct either” euthanasia or banishment. **SMC 9.25.035(A)**. The dog owner then has a second “right” to appeal same to the Seattle Hearing Examiner in a review conducted *de novo*, where the City bears the burden of proving dangerousness by a preponderance of the evidence and the appellant the burden of proving why euthanasia as opposed to banishment should be afforded. **SMC 9.25.036**.

1. The Lesson of State v. Bash.

In addition to unreasonably seizing Duncan, the City thwarted Ms. Norman’s procedural due process rights, going so far as to patently refuse to follow the codified process. In *State v. Bash*, **130 Wn.2d 594 (1996)**, Chief Justice Durham’s concurrence notes that failure of Yakima County

animal control to declare Bash and Delzer's dogs "dangerous" or "potentially dangerous" was dispositive of the appeal and mandated dismissal of the felony charges under RCW 16.08.100(3). After all, she remarked, the crime defined in RCW 16.08.100(3) is not "self-executing," but "must be implemented and enforced by local animal control authorities" by taking the preliminary step of declaring the dog in question "dangerous." *Id.* at 612-613. Justice Durham anticipated Ms. Norman's argument here by comparing the crime of driving while license suspended to the crime of owning a dog who aggressively attacks or causes severe injury or death to a human. *Id.*, at 613 (recognizing grounds for due process challenge to prosecution lacking antecedent notice of dangerous dog).

The City may attempt to neutralize the straightforward and on-point opinion of Justice Durham in *Bash*, saying a concurring appellate opinion has no precedential value. But *In re Isadore*, 151 Wn.2d 294, 302 (2004) which may be cited by the City, does not take such a firmly dismissive stance. "A plurality opinion has limited precedential value," even if nonbinding. Besides, her citation to *State v. Whitney*, 78 Wash.App. 506 (1995) is binding. Attempting to distinguish knowledge from notice, the City may next cite to *Auburn v. Solis-Marcial*, 119 Wash.App. 398 (2003), to support the view that personal service is not

the exclusive means of proving knowledge in a criminal prosecution for violation of a permanent protection order. Even so, where did the City prove Ms. Norman's actual knowledge of the "fact" that her dog was dangerous? Did some other animal control officer issue her a written notice or order, or was she supposed to research Ch. 9.25 SMC, and herself make the self-incriminating determination that her dog is dangerous and, thus, forbidden within city limits?

The City may remark that Ms. Norman had "notice" that Duncan was "dangerous" by Officer Leahy giving Ms. Norman her opinion of such, but an opinion by a field officer does not a Director's declaration make, especially when the two codified rights (of a meeting and of an appeal) were denied her. The notice provision elucidated within SMC 9.25.035 is not discharged by such an oral communication. **SMC 9.25.035(B)**(requires preliminary notice to be "in writing").

SMC 9.25.083(A) uses the word "fact" and a dispositive, legal conclusion ("that the animal is dangerous"), not the words "allegation," "declaration," or "notification." Where has there been a finding of **fact** or conclusion of law that Duncan is "dangerous"? How is Ms. Norman knowledgeable of this disputed legal conclusion or acting in reckless disregard of this "fact"? To avoid prosecution by *ipse dixit* (saying it just does not make it so), through a unilateral determination of the prosecuting

authority and to avoid obliterating a dog owner's property and liberty interests, look to the rest of Ch. 9.25 SMC.

Taken as a whole (particularly SMC 9.25.035(B) and (D)), it is clear that a dog may only be declared "dangerous," as defined by SMC 9.25.020(G) (without differentiation among sub-subsections (1) through (4)), when the Director has conducted an investigation and concluded as much, issuing the requisite notices and providing an opportunity to challenge same before ordering the dog out of the city or killed. To prosecute under SMC 9.25.083(A) requires proof that the City first issued Ms. Norman an order declaring Duncan dangerous and furnishing her the chance to enjoy all the due process rights that attached. To prosecute under SMC 9.25.083(B) requires a removal order declaring Duncan dangerous, with the same due process protections. Neither order having been issued, the City had no right to ban Duncan from city limits, much less prosecute Ms. Norman.

2. *The Lesson of State v. Cowan.*

The City may argue that Ms. Norman received the most due process possible in a criminal trial and that she should not complain that she was deprived of an administrative proceeding that would impose a lower standard of proof. The Ohio Supreme Court rejected such an argument in *State v. Cowan*, 103 Ohio St.3d 144(2004), holding that the

defendant's due process rights were violated by lack of a pre-charge hearing:

****850 *148 {¶ 12} However, appellant argues that R.C. 955.22 is constitutional because appellee was afforded the right to challenge her dogs' classification at her criminal trial. Appellee responds that the ability to challenge this label at a later criminal trial does not offer her a meaningful opportunity to be heard before her property rights have been infringed by official state action. We agree with appellee.**

{¶ 13} Once the dog warden made the unilateral decision to classify appellee's dogs as vicious, R.C. 955.22 was put into effect and restrictions were placed upon appellee and her dogs. No safeguards, such as a right to appeal or an administrative hearing, were triggered by this determination to challenge the viciousness label or its ramifications. In fact, it was not until appellee was formally charged as a criminal defendant that she could conceivably challenge the viciousness designation under R.C. 955.22. **We find it inherently unfair that a dog owner must defy the statutory regulations and become a criminal defendant, thereby risking going to jail and losing her property, in order to challenge a dog warden's unilateral decision to classify her property.**

Id., at 147-148 (emphasis added). The reason why *Cowan* carries even greater force on these facts is that, unlike R.C. 955.22, the SMC *does provide* a right to be heard on whether her dog was dangerous – viz., SMC 9.25.035-.36, yet the City *refused to give it to her*. *See also Akron v. Lewis*, 179 Ohio App.3d 649, 658 (2008) (striking down Summit County

dangerous dog code on same grounds).

The City may respond that the jury in *State v. Cowan* was not charged with determining the dog's dangerousness. A close reading of the opinion, however, suggests not that the jury was not *instructed* on the issue, but that the *State* told the jury that it did not have to decide it. It next may embrace *Youngstown v. Traylor*, **123 Ohio St.3d 132 (2009)**, a 5-2 split decision. Unlike the Youngstown ordinance at issue, which "does not classify or label dogs as vicious," and "does not place any responsibilities on the dog owner until the state proves its case beyond a reasonable doubt," but "simply requires dog owners to keep their dogs on their property," the City takes the position that Ms. Norman bore the responsibility of removing Duncan from the jurisdiction long before the jury reached a verdict. *Id.*, at 137. Putting aside the factual dissimilarities, the dissenters said it best at 138-39.

In 2011, the Ohio Court of Appeals distinguished *Youngstown* and vacated criminal convictions under the state dog law, stating, "In short, the court in *Traylor* held that the Youngstown dog ordinance was significantly different from R.C. 955.22, and those differences allowed it to survive a constitutional due process challenge." *State v. Mallis*, **196 Ohio App.3d 640, 646 (2011)**. As noted above, the City's dangerous dog law goes far beyond Youngstown's by not merely

ordering containment, but instead outright banishment or death.

3. *The Inapplicable Rabon Trilogy.*

The City may respond that *Rabon v. City of Seattle*, 84 Wash.App. 296 (1996), *rev'd*, 135 Wn.2d 278 (1998); and *Rabon v. City of Seattle (Rabon II)*, 107 Wash.App. 734 (2001) control. However, the trilogy of cases did not answer the question of whether bypassing the administrative procedure violated due process; instead, it focused on post-conviction disposition. The City may remark how “bizarre” it would be to have to prove the dog’s dangerousness in an administrative hearing and again in the criminal hearing.

But SMC 9.25.083(B) proves such is not the case. The City would only have to persuade a jury of the existence of either an unappealed order by the Director of Seattle Animal Control to remove the dog, or a Hearing Examiner’s ruling upholding said order. In essence, the City must prove that the legal status of the dog at issue formally and constitutionally changed from nondangerous to dangerous. If that metamorphosis violated due process, how could a criminal charge founded upon that metamorphosis be constitutional? Citation to *Rabon v. City of Seattle* (Rabon II), 107 Wash.App. 734 (2001) serves merely as a nonbinding distraction since the arguments made by Ms. Norman were not considered

by either the Court of Appeals or Supreme Court² and, furthermore, the comment likely to be referenced by the City is *dictum*. *Rabon II* determined whether Mr. Rabon had a constitutional due process right to a disposition hearing for his dog found dangerous after a criminal trial, not the extent of that right preceding that trial. Further, *Rabon II* focused on “a person’s interest in keeping a vicious dog,” not the interest in avoiding the designation of that dog as vicious at the outset. *Id.*, at 744.

4. *The Proper Procedural Due Process Measure.*

The City may next contend that procedural due process challenges apply the analytical framework of *Medina v. California*, 505 U.S. 437 (1992), not *Mathews v. Eldridge*, 424 U.S. 319 (1976), citing *State v. Hurst*, 173 Wn.2d 597 (2012). To prove a violation, so it asserts, first requires that the movant show that the claimed error “offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.” *Medina*, at 445. Where the rule is not so ranked, the court must determine “whether the rule transgresses any recognized principle of ‘fundamental fairness’ in operation.” *Id.*, at 448. This *Medina/Mathews* distinction might matter if the challenged procedure pertained to the burden or standard of proof

² “The Supreme Court in *Rabon* did not address the constitutional issue of due process[.]” *Rabon v. City of Seattle*, 107 Wash.App. at 743.

arising in a criminal case proceeding.

Ms. Norman does not assert that a procedural infirmity occurred *in the criminal case*, as in using the appropriate standard of proof in an incompetency hearing to determine whether a felony defendant can stand trial (the issue in *Medina* and *Hurst*). Her objection lies in what should have transpired *before* a criminal charge was ever filed; further, her objection is substantive – since the deprivation of the pre-charge procedure constitutes a complete failure of proof of one of the elements with which she was later charged.

B. On the Horns of a Dangerous Animal Dilemma: the Privileges & Immunities Clause Violation.

The City argues that it may elect to use either the criminal or administrative (i.e., civil) procedure to deem a dog dangerous based on precisely the same facts and same elements, yet it imposes the supreme canine penalty (i.e., permanent destruction) in the case of criminal prosecution. Administratively declared, SMC 9.25.035(A) and (E) contemplate relocation, while SMC 9.25.083(C) mandates euthanasia. Such a construct, which treats one set of individuals as criminal defendants and another set as civil infraction defendants, violates **Wash.Const.Art. I, § 12. *State v. Zornes*, 78 Wn.2d 9, 20-22 (1970)**'s holding relative to the Federal Constitution was abrogated by *City of*

Kennewick v. Fountain, 116 Wn.2d 189 (1991). The line of cases starting with *Olsen v. Densmore*, 48 Wn.2d 545 (1956) and extending through *Zornes* relative to the State Constitution remain strong and dispositive here. Chief Justice Madsen noted as much in her concurrence in *State v. Kirwin*, 165 Wn.2d 818, 831 (2009). The State Constitution provides greater protection than the Federal Constitution under *State v. Gunwall*, 106 Wn.2d 54 (1986).³

Add the identical elements scenario present here; that the specific holdings of *Zornes* (at 23) and *Densmore* (at 550) –stating that charging a defendant under the statute with the harsher penalty in the “identical elements” case violates the State Constitution—have not been reversed, and it follows that SMC 9.25.083(C), in prescribing different punishment for precisely the same violation (i.e., a dog is found dangerous), violates the State Constitution, requiring Duncan’s release.

The gravamen of Ms. Norman’s challenge is based on the disparate penalty to Duncan, her property. Technically, there is no civil infraction counterpart to the crime of owning a dangerous animal. The additional penalty for permitting a dog to engage in “dangerous” behavior means the difference between life and death: administratively declared under SMC

³ See also *Grant Cy. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 811 (2004) and *Madison v. State*, 161 Wn.2d 85, 94 (2007).

9.25.035, a “dangerous” dog may survive outside the Seattle environs, but criminally charged under SMC 9.25.083, a “dangerous” dog must be killed.

In other words, the criminal charge mandates forfeiture while the administrative process permits relocation and, thus, does not terminate ownership or possessory rights irreversibly. In that context, claimed violation of both the federal Equal Protection Clause and state Privileges & Immunities clauses cannot be seriously defended, for the City has no legitimate or compelling reason to choose death over deportation, particularly where the allegedly dangerous dog could be impounded and held pending appeal. *State v. Ankney*, 53 Wash.App. 393 (1989), did not address the confiscatory aspect present here because violation of the King County Code had no similar death-dealing provision.

C. Ms. Norman was Denied her Right to Confront the Witnesses against her when the Trial Court Admitted Melanie Grant’s Out-of-court Statements to Officer James Jackson.

The victim, Ms. Grant, did not testify at Ms. Norman’s trial. She was the material witness for the City. And, the jury heard her “story” that Duncan bit her without “provocation.”

Confrontation Clause violations are reviewed *de novo*. *State v. Jasper*, 174 Wn.2d 96, 108, 271 P.3d 876 (2012). Where there is a violation, it is reviewed for harmless error. *Chapman v. California*, 386

U.S. 18, 21-2, 87 S.Ct. 824 (1967). The Confrontation Clause does not allow the admission of out-of-court statements of a witness who did not appear at trial unless there was an opportunity for cross-examination. ***Crawford v. Washington*, 541 U.S. 36, 59, 124 S.Ct. 1354 (2004).**

“An officer may appropriately describe the context and background of a criminal investigation, so long as the testimony does not incorporate out-of-court statements.” ***State v. Lillard*, 122 Wash.App. 422, 437, 93 P.3d 969 (2004).** But, courts “must guard against any backdoor admission of inadmissible hearsay statements that violate the confrontation clause.” ***State v. Berinard*, 182 Wash.App. 106, 129, 327 P.3d 1290 (2014); *State v. Mason II*, 169 Wn.2d 910, 921, 162 P.3d 396 (2007).** The proposition that out-of-court statements are admissible as “background” information violates the Confrontation clause because they are in fact used for their truth. ***Mason II*, 169 Wn.2d at 921, 162 P.3d 396.** While *Crawford* did not prevent the use of statements for purposes other than its truth, this did not mean that the “Framers meant to leave the Sixth Amendment’s protections to the vagaries of the rules of evidence.” ***Crawford*, 541 U.S. at 59, 61, 124 S.Ct. 1354.** “*Crawford* and *Davis* require that we carefully examine the admission of every statement secured by the police primarily for investigative purposes.” ***Mason II*, 169 Wn.2d at 921, 162 P.3d 396.**

At Ms. Norman's trial, Ms. Grant did not testify. Her out-of-court statements were admitted through Officer Jackson. She *de facto* testified through him. Over an objection, the trial admitted the statements. The statements were not offered to prove that Duncan bit her, and not to prove that the bite was unprovoked. The trial court admitted the victim's out-of-court statements to show Ms. Norman's reaction, and for "background" or "context." **CP 278-279.**

The proposition that out-of-court statements are admissible as "background" information violates the Confrontation Clause because they are in fact used for their truth. In order for the statement to have an effect on Ms. Norman, it had to be admitted for the truth. That is, if Duncan actually bit the victim. If he had, then it would not have been relevant. It was relevant because it was a true statement, hence hearsay, and why the admission violated the Confrontation Clause.

Compounding the error, it was not necessary to admit the victim's actual statement to show the effect on Ms. Norman. Officer Jackson could have testified about the context without repeating the victim's out-of-court statements. The courts "must guard against any backdoor admission of inadmissible hearsay statements that violate the confrontation clause." ***Berinaud*, 182 Wash.App. at 129, 327 P.3d 1290.**

The trial court discussed and focused on the rules of evidence to justify the admission of the out-of-court statements despite the fact that the victim did not testify. **CP 278-279.** *Crawford* criticized this kind of reasoning. *Crawford*, 541 U.S. at 59 & 61, 124 S.Ct. 1354. This was a backdoor attempt to admit substantive evidence of Ms. Norman's guilt, and not an explanation of "context" or "background." It was not harmless error. Ms. Grant was a dispositive witness for the City, and the jury heard her "story" without the benefit of cross-examination. In closing, the City emphasized what Ms. Grant told Officer Jackson. **CP 400.** Accepting the City's argument, any such statement would circumvent the Sixth Amendment's vital Confrontation protection.

D. Ms. Norman was Denied the Right to a Fair Trial by Officer Jackson's Improper Opinion and Legal Conclusion that the Bite was Unprovoked, where that Question was for the Jury.

Officer Jackson testified that Duncan's bite was "unprovoked." This testimony was an improper opinion and a legal conclusion. The jury, not the officer, was to decide this issue. Officer Leahy testified that she cited Ms. Norman because of her dog, which was also an improper opinion.

The trial court has discretion to admit or deny evidence. *State v. Demery*, 144 Wash.2d 753, 758, 430 P.3d 1278 (2001); see *City of Seattle v. Heatley*, 70 Wash.App. 573, 577, 854 P.2d 658 (1993). A trial

court's decision to admit or deny evidence is upheld unless there is abuse of discretion. *Id.* Opinion testimony is inadmissible to show guilt or innocence of a defendant. *State v. Black*, 109 Wn.2d 336, 348, 745 P.2d 12 (1987). "Lay and expert witnesses may not testify as to the guilt of the defendants, either directly or by inference." *State v. Olmedo*, 112 Wash.App. 525, 530, 49 P.3d 960 (2002). This evidence is unfairly prejudicial "because it invades the exclusive province of the jury." *Demery*, 144 Wash.2d at 759; *see Heatley*, 70 Wash.App. at 577. Whether the evidence is an improper opinion, the court considers the circumstances of the case, the type of witness involved, the specific nature of the testimony, the nature of the charges, the type of defense, and other evidence before the jury. *Heatley*, 70 Wash.App. at 579, 854 P.2d 658.

The evidence rules may, however, allow a witness to testify in the form of an opinion or inference based on the perception of a witness, helpful to a clear understanding of the witness's testimony or the determination of fact in issue, and is not based on expert knowledge. ER 701. Furthermore, ER 704 allows testimony in the form of an opinion even if it embraces an ultimate issue to be decided by a jury. In *State v. Nelson*, the defendant was charged with animal fighting and operating an unlicensed private kennel. 152 Wn.App. 755, 763-64, 219 P.2d 100 (2009). The prosecution called Eric Sakach as an expert on animal fighting

rings. *Id.* at 763. This expert was allowed to express an expert opinion that the defendants were engaged in a dogfighting operation. *Id.*, at 767. *Nelson* upheld the admission of expert testimony in an animal ordinance case. *Id.* This “expert opinion” was not on the ultimate issue of guilt. *Id.* at 768. “The opinion was a classic expert opinion, which the jury was invited to accept or reject.” *Id.*

But, there are limits to ER 701 and 704. *Demery*, 144 Wash.2d at 759, 30 P.3d 1278. In *State v. Olmedo*, the defendant was charged with unlawful storage of anhydrous ammonia. 112 Wash.App. at 525, 49 P.3d 960. Anhydrous ammonia was stored in particular tanks. *Id.* The prosecution called Richard Beckman as an expert to testify whether the tanks were approved for the storage of the chemical. *Id.*, at 529. They did not meet the legal requirements. *Id.* *Olmedo* held that Mr. Beckman’s testimony was an improper legal conclusion. *Id.*, at 532. A witness cannot testify in the form of an opinion regarding the guilt of the defendant because it invades the province of the jury. *Id.*; see also *State v. Clausing*, 147 Wash.2d 620, 56 P.3d 550 (2002). “Each courtroom comes equipped with a ‘legal expert,’ called a judge, and it is his or her province alone to instruct the jury on the relevant legal standards.” *Burkhart v. Wash. Metro. Area Transit Auth.*, 112 F.3d 1207, 1213 (D.C.Cir.1997). “To allow a lay person to answer a legal question puts the lawyers in the

impossible position of making these legal arguments to a lay jury.” *Clausing*, 147 Wash.2d at 630, 56 P.3d 550. Inadmissible legal conclusions or opinions include evidence about how the particular law applies in the case. *Olmedo*, 112 Wash.App. at 532, 49 P.3d 960.

In the circumstances of this case, Officer Jackson’s testimony was inadmissible opinion evidence, and amounted to a legal conclusion. “Dangerous animal” is a legal element of the crime of Owing a Dangerous Animal. “Dangerous animal” is carefully defined: “when unprovoked, inflicts severe injury on or kills a human being or domestic animal on public or private property.” Jury Instruction No. 13. Biting Ms. Grant did not prove Duncan was a “dangerous animal.” The City had to prove that Duncan’s bite was “unprovoked” to obtain a guilty verdict for Owing a Dangerous Animal.

Ms. Norman’s defense at trial was that the City could not prove the bite was “unprovoked.” There was no dispute that Duncan bit Ms. Grant. Hence, provocation became the dispositive issue. Ms. Grant did not testify at trial. Presumably, she had personal knowledge whether the bite was “provoked” or “unprovoked.” Officer Jackson, however, was allowed to testify that he explained the dangerous animal statute, and the legal definition of a “provoked bite” versus “unprovoked bite.” And, he told the jury this was an “unprovoked” bite.

The specific nature of Officer Jackson’s testimony “undermined the jury’s independent determination of the facts.” *Olmedo*, 112 Wash.App. at 531, 49 P.3d 960. For comparison, the trial court seemed to understand the harm of testimony that Duncan was dangerous. Officer Leahy testified that Duncan bit Ms. Grant, and “caused severe injury.” CP 321. The trial court sustained the objection, and prohibited her from testifying that Duncan was dangerous. *Id.* Nevertheless, the trial court allowed another witness, Officer Jackson, to testify that Duncan’s bite was “unprovoked”; hence, a “dangerous animal.” The jury, not Officer Jackson, was tasked to determine this legal conclusion.

Also, “the type of witness involved” shows that Officer Jackson’s opinion and legal conclusion were improper. At first glance, the *Nelson* decision would seem to support the trial court’s decision to allow Officer Jackson’s testimony. 152 Wn.App. at 755, 219 P.2d 100. As here, in *Nelson*, a witness testified about the characteristics in an animal case as an expert per ER 702 and 703. *Nelson* upheld the expert’s opinion based on the unique nature of expert testimony under an ER 702 analysis. *Id.*, at. 767-68.

Nelson does not apply here. Officer Jackson was not endorsed as an expert witness for the City. The City did make a pretrial motion to endorse him or anyone else as an expert witness. In fact, the City moved to

exclude expert testimony. Moreover, the trial court did not instruct the jury with **WPIC 6.51**,⁴ the Expert Testimony instruction. Therefore, Officer Jackson was not an expert, and he could not base his opinion on ER 702.

Officer Jackson's opinion that Duncan's bite was "unprovoked" could only be based on ER 701. But, it was clear that his testimony exceeded the limits of ER 701. He could not base an opinion that the bite was "unprovoked" because he was not present when it happened. Yes, he saw the bite wound, but that was not enough to conclude the bite was "unprovoked." The trial court understood this concept when it excluded Ms. Norman's experts from testifying because they were not present when the bite happened. **CP 242-245**. Further, Officer Jackson never saw and examined Duncan. **CP 309**.

Officer Jackson's opinion that the bite was "unprovoked" was based on what Ms. Grant and others told him, his own observations, and his expertise as an animal control officer. For example, Ms. Grant specifically told him that she did nothing to provoke Duncan. *Id.* Yet, she

⁴ "A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts. You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any other witness."

did not testify. Because he was not testifying as an expert, he could not use Ms. Grant's hearsay to ground his opinion.⁵ Yet, it is clear that his testimony was "based on scientific, technical, or other specialized knowledge within the scope of rule 702." ER 701. ER 701 makes it clear that a lay witness cannot base an opinion on this sort of expert knowledge.

Finally, Officer Jackson, as a law enforcement officer, had a "special aura of reliability." A police officer's opinion testimony may be especially prejudicial because it "often carries a special aura of reliability." *State v. King*, 167 Wn.2d 324, 331, 219 P.3d 642 (2009). "Police officers' area of expertise is in determining when an arrest is justified, not in determining when there is guilt beyond a reasonable doubt." *State v. Qualle*, 177 Wash.App. 603, 614, 312 P.3d 726 (2013). When a law enforcement officer gives an opinion, the jury will be influenced by it. *Demery*, 144 Wash.2d at 762, 30 P.3d 1278; *see also State v. Carlin*, 40 Wash.App. 698, 703, 700 P.2d 322 (1985), *overruled on other grounds by Heatley*, 70 Wash.App. at 573, 854 P.2d 658.

Compounding Officer Jackson's testimony, Officer Leahy testified that she issued a citation to Ms. Norman because Duncan bit Ms. Grant. Evidence of the issuance or non-issuance of a citation by a police officer is

⁵ "Out of court statements offered at trial as the basis of an expert's opinion are not hearsay." *State v. Lucas*, 167 Wash.App. 100, 109, 271 P.3d 394, (2012).

inadmissible opinion evidence. *Demery*, 144 Wash.2d at 760-61, 430 P.3d 1278; *see also Warren v. Hart*, 71 Wash.2d 512, 514, 429 P.2d 873 (1967). This evidence also constituted an improper opinion that Duncan was a “dangerous animal.”

1. *These issues may be raised on appeal, and the error is not harmless.*

This evidence was an inadmissible opinion and a legal conclusion of constitutional magnitude. It went to the central issue in the case. There was an objection to Officer Jackson’s testimony. Even if there was not a proper objection, Ms. Norman can still raise this issue on appeal. Finally, there was not an objection to Officer Leahy’s testimony.

2. *Officer Jackson’s and Leahy’s testimony raises a constitutional issue.*

A party may raise a claim of error on appeal that was not raised at trial unless the claim involves manifest error affecting a constitutional right. *State v. O’Hara*, 141 Wn.App. 900, 909-11, 174 P.3d 114 (2007) *reversed on other grounds*, 167 Wn.2d 91 (2009). “Constitutional errors are treated special because they often result in serious injustice to the accused.” *State v. Scott*, 110 Wash.2d 682, 686, 757 P.2d 492 (1988). “Permitting a witness to testify as to the defendant’s guilt raises a constitutional issue because it invades the province of the jury and the defendant’s constitutional right to a trial by jury.” *Olmedo*, 112

Wash.App. at 533, 49 P.3d 960; Demery, 144 Wash.2d at 759; 30 P.3d 1278. The prosecution has the burden to prove this error was harmless beyond a reasonable doubt. *State v. Spotted Elk*, **109 Wash.App. 253, 261, 34 P.3d 906 (2001).**

Law enforcement gave improper opinions and improper legal conclusions as to Ms. Norman's guilt. Officer Jackson opined that Duncan's bite was "unprovoked" and, thus, Duncan was a "dangerous animal." If "unprovoked," Ms. Norman would be found guilty. Likewise, Officer Leahy testified that she cited Ms. Norman, which was an inference of guilt.

Evidently, the trial court was aware of and deeply concerned about legal opinion testimony. Officer Leahy testified in front of the jury that the Duncan was "dangerous." The trial court noted that:

what we are attempting to avoid is the specific conclusion that her dog met the definition of dangerousness, so that's a decision that the jurors are going to be making, and so you can indicate based upon information that you had, you provided the following warning.

CP 324. Yet, the trial court allowed Officer Jackson to testify to the exact same issue "provocation." **CP 313.**

Ms. Grant did not testify at trial. There were also three other civilian witnesses who were at Ms. Grant's house who did not testify. **CP 301-302.** The jury relied on the law enforcement's opinion that this bite

was “unprovoked.” Whether Duncan’s bite was “provoked” or “unprovoked” was a decision for the jury to make, and not for Officer Jackson and Leahy.

3. *Ms. Norman was denied effective assistance of counsel because her trial attorney did not object.*

In addition, Ms. Norman may raise these issues because her trial counsel was ineffective for not objecting. *Strickland v. Washington*, 466 U.S. 668, 685-8, 104 S.Ct. 2052 (1984); *State v. Thomas*, 109 Wn.2d 222, 229, 743 P.2d 816 (1987). To prevail on a claim of ineffective assistance, the defendant must establish counsel’s performance was objectively deficient and caused prejudice. *State v. Emery*, 174 Wn.2d 741, 754-55, 278 P.3d 653 (2012). Deficient performance is that which falls below an objective standard of reasonableness. *State v. Stenson*, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997). Reasonable attorney conduct includes an obligation to investigate pertinent law. *State v. Woods*, 138 Wn.App. 191, 197-98, 156 P.3d 309 (2007).

There was no legitimate reason for trial counsel’s failure to object. Officer Jackson gave an improper conclusion and a legal opinion about Duncan’s “provocation.” Evidence that an officer gave a citation is clearly improper opinion. Case law could not be clearer about the improper nature

of this testimony. Trial counsel should have objected. The failure fell below an objective standard.

IV. CONCLUSION

Based on the foregoing arguments, Ms. Norman and Duncan urge this court to vacate the former's conviction and free the latter of his capital restraints.

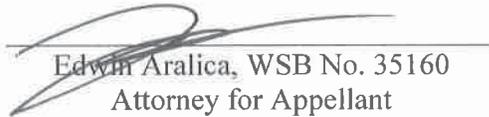
Dated this Apr. 16, 2015

ANIMAL LAW OFFICES



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ACA DIVISION



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 16, 2015, I caused a true and correct copy of the foregoing, to be served upon the following person(s) in the following manner:

[x] Email (stipulated); hard copy delivered as courtesy on Apr. ____, 2015

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A



Seattle Municipal Code

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Title 9 - ANIMALS

Chapter 9.25 - ANIMAL CONTROL

9.25.020 Definitions—A — E.

As used in this chapter, except where a different meaning is plainly apparent from the context, the following definitions apply:

- A. "Abandon" means the act of leaving an animal:
 - 1. Without food, water, or care for 24 hours or more; or
 - 2. In a situation where the conditions present an immediate, direct, and serious threat to the life, safety, or health of the animal.
- B. "Alter" means to permanently render an animal incapable of reproduction.
- C. "Animal" means any living nonhuman mammal, bird, reptile, or amphibian.
- D. "Animal Control Officer" means any person who is employed with the Animal Control section of the Department or appointed by the Director for the purpose of aiding in the enforcement of any ordinance, or relating to the licensing control, quarantine, seizure or impoundment of animals.
- E. "At large" means a dog or other animal inside The City of Seattle, off the premises of the owner, and not under control by a leash of 8 feet in length or shorter. "At large" does not include an animal on property other than the animal's owner with the permission of a lawful occupant of that property.
- F. "City" means The City of Seattle.
- G. "Dangerous animal" means any animal:
 - (1) That, when unprovoked, inflicts severe injury on or kills a human being or domestic animal on public or private property;
 - (2) Whose owner has been previously found to have committed a civil violation of [9.25.084.G](#) or has been convicted of a crime under [12A.06.060](#) of the Seattle Municipal Code and whose owner is found to have committed a violation of either [9.25.084.G](#) or [12A.06.060](#) of the Seattle Municipal Code with respect to the behavior of that same animal;
 - (3) That, under circumstances other than as described in subsection G(2) above, has been the subject of one or more findings that its owner has committed a civil violation of [9.25.084.G](#) or has been convicted of a crime under [12A.06.060](#) of the Seattle Municipal Code, whether involving the same or a different owner, whose owner is found to have committed a violation of either [9.25.084.G](#) or [12A.06.060](#) of the Seattle Municipal Code; or
 - (4) Whose owner has received a written notification alleging behavior that would be in violation of either [9.25.084.G](#) or [12A.06.060](#) of the Seattle Municipal Code issued under the laws of any other city, county or state agency within or outside of the State of Washington, which animal again engages in behavior that is in

violation of either [9.25.084.G](#) or [12A.06.060](#) of the Seattle Municipal Code.

The breed of a dog shall not be considered in any determination whether a dog is a "dangerous animal" under this section.

- H. "Director" means the Director of Finance and Administrative Services of The City of Seattle or his/her authorized representative.
- I. "Department" means the Department of Finance and Administrative Services of The City of Seattle.
- J. "Disposed of in a humane manner" means euthanized by a lethal dose of sodium pentobarbital or its equivalent.
- K. "Detain" means to place an animal in custody.
- L. "Domestic Animal" means an animal that is livestock, a companion animal, or both.
 - 1. "Livestock" means any species of animal commonly used by inhabitants of Washington State for food, fiber, or draft purposes.
 - 2. "Companion animal" means any species of animal commonly kept by inhabitants of Washington State as a pet or for companionship, except that snakes exceeding 8 feet in length, venomous reptiles (regardless of whether the venom glands have been removed), and venomous amphibians (regardless of whether the venom glands have been removed) are not domestic animals, even if such animals are commonly kept by inhabitants of Washington State pets or for companionship.
- M. "Exotic animal" means any species of animal that is both: (1) not a domestic animal, and (2) capable of killing or seriously injuring a human being. Subject to the preceding sentence, the definition of "exotic animal" contained in this section includes but is not limited to:
 - 1. All animals of the order Primates (as primates) except humans;
 - 2. All animals of the family Canidae (as dogs, wolves, jackals, or foxes) and their hybrid, except for the domestic dog *Canis familiaris*;
 - 3. All animals of the family Felidae (as lions, tigers, jaguars, leopards, cougars, or cheetahs) and their hybrid, except for the domestic cat *Felis catus*;
 - 4. All animals of the family Ursidae (as bears);
 - 5. All animals of the family Hyaenidae (as hyenas);
 - 6. All animals of the order Crocodylia (as alligators, crocodiles, gavials, or caimans);
 - 7. All animals of the family Elephantidae (as elephants);
 - 8. All animals of the order Perissodactyla (as horses, rhinoceroses, or tapirs);
 - 9. All animals of the order Artiodactyla (as camels, cattle, deer, giraffes, goats, hippopotamuses, llamas, pigs, or sheep);

"Exotic animal" also includes all venomous reptiles and amphibians, (regardless of whether the venom glands have been removed), and all snakes that are 8 feet or more in length.

New legislation may amend this section!

The above represents the most recent SMC update, which includes ordinances codified through Ordinance 124495 with effective dates prior to 13 June, 2014 except 124105 and 124490 which is awaiting certification by King County.

Recently approved legislation may not yet be reflected in Seattle Municipal Code. See the legislative history at the bottom of each section to determine if new legislation has been incorporated.

[Search for recently approved legislation referencing this section.](#) (Searches for legislation approved within the past six months, which may not yet be incorporated into the SMC. See the legislative history for each section to confirm whether an ordinance is reflected.)

[Search for proposed legislation that refers to this section.](#) (Searches for Council Bills introduced since 01/2013 and not yet passed.)

Note: The above searches are provided to assist in research, but they are not guaranteed to capture all relevant legislation. Search directly on the [Council Bills and Ordinances Index](#) for the most comprehensive results.

For research assistance, contact the Seattle City Clerk's Office at (206) 684-8344, or by e-mail, clerk@seattle.gov.

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Title 9 - ANIMALS

Chapter 9.25 - ANIMAL CONTROL

9.25.024 Definitions—U — Z.

- A. "Unprovoked" means that an animal is not "provoked." An animal is "provoked" if the animal was being tormented physically abused or hurt at the time of the incident. An animal also is "provoked" if a reasonable person would conclude that the animal was defending itself, its owner or an immediate family member of its owner, or another person within its immediate vicinity from an actual assault or was defending real property belonging to its owner or an immediate family member of its owner from a crime being committed on the owner's property at that time. An animal is not "provoked" if the victim is alleged to have provoked the animal and the victim is less than six (6) years old.

Ord. [121178](#) § 3, 2003.

New legislation may amend this section!

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Title 9 - ANIMALS

Chapter 9.25 - ANIMAL CONTROL

9.25.036 Appeal of Director's determination.

Appeal.

- A. Availability of Appeal. An owner may appeal a determination of the Director declaring an animal to be dangerous or directing the disposition of an animal by filing a notice of appeal and written request for a hearing, with the Hearing Examiner by five (5:00) p.m. on the tenth calendar day after the date of delivery of the Director's order. A notice that an animal is to be humanely disposed of that is based either on a conviction of the animal's owner of possessing a dangerous animal or on a conviction of the animal's owner of negligent control of an animal may not be appealed under this section. The date of delivery of the Director's order shall be the date evidenced by a signed returned receipt, an affidavit of service, or three (3) days after the date of mailing as shown in a declaration of mailing. When the last day of the appeal period falls on a Saturday, Sunday, or City holiday, the period shall run until five (5:00) p.m. on the next business day.
- B. Process.
 1. An appeal shall conform to the requirements of Hearing Examiner Rule 3.01(d) in that it must be in writing, and contain the following:
 - a. A brief statement as to how the owner is significantly affected by or interested in the decision of the Director;
 - b. A brief statement of the owner's issues on appeal, noting owner's specific exceptions and objections to the Director's Determination and Order;
 - c. The relief requested, such as reversal of the Director's Order;
 - d. Signature, address, and phone number of the owner, and name and address of owner's designated representative, if any.
 2. The Hearing Examiner shall summarily dismiss an appeal without hearing which the Hearing Examiner determines to be without merit on its face, frivolous, or brought merely to secure a delay.
 3. Any person beneficially interested or the Director shall only obtain judicial review of the Hearing Examiner's decision by applying for a Writ of Review in the Superior Court of Washington in and for King County in accordance with the procedure set forth in Chapter 7.16 RCW and other applicable law and local court rules within ten (10) days of the date of the decision.
- C. Standard of Review. Appeals shall be considered de novo. The City shall have the burden of proving by a preponderance of the evidence that the Director's decision was correct. In the case of an order ordering the humane disposal of exotic animals or livestock under SMC [9.25.030](#) A4, the owner shall have the burden of proving that a reasonable alternative disposition is available. In the case of a

directive of humane disposal for dangerous animals, the City shall have the burden of proving that the Director's decision not to allow the animal to be sent to a secure animal shelter was not arbitrary and capricious.

Ord. [122489](#) , § 1, 2007; Ord. [119998](#) § 7, 2000; Ord. 117218 § 4(part), 1994.

New legislation may amend this section!

The above represents the most recent SMC update, which includes ordinances codified through Ordinance 124495 with effective dates prior to 13 June, 2014 except 124105 and 124490 which is awaiting certification by King County.

Recently approved legislation may not yet be reflected in Seattle Municipal Code. See the legislative history at the bottom of each section to determine if new legislation has been incorporated.

[Search for recently approved legislation referencing this section.](#) (Searches for legislation approved within the past six months, which may not yet be incorporated into the SMC. See the legislative history for each section to confirm whether an ordinance is reflected.)

[Search for proposed legislation that refers to this section.](#) (Searches for Council Bills introduced since 01/2013 and not yet passed.)

Note: The above searches are provided to assist in research, but they are not guaranteed to capture all relevant legislation. Search directly on the [Council Bills and Ordinances Index](#) for the most comprehensive results.

For research assistance, contact the Seattle City Clerk's Office at (206) 684-8344, or by e-mail, clerk@seattle.gov.

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Seattle Municipal Code

Information retrieved August 1, 2014 12:34 PM

Title 9 - ANIMALS

Chapter 9.25 - ANIMAL CONTROL

9.25.083 Owning dangerous animals prohibited—Exception.

- A. It is unlawful to own a dangerous animal (other than a licensed guard or attack dog) with knowledge that the animal is dangerous, or with reckless disregard of the fact that the animal is dangerous.
- B. It is unlawful to possess within the City of Seattle any animal that has been ordered removed from the City of Seattle pursuant to SMC [9.25.035](#)
- C. An animal whose owner is convicted of or pleads guilty to violating this section shall be humanely destroyed.

Ord. [121178](#) § 6, 2003; Ord. [119998](#) § 22, 2000; Ord. 112335 § 1(part), 1985.

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