

BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In Re The Appeal of:

PATRICIA S. WYNN, as Owner of dog named
Ruby,

Appellant,

v.

CITY OF MERCER ISLAND,

Respondent.

No. APL24-003

MOTION FOR DISMISSAL WITH
PREJUDICE

I. INTRODUCTION

The City of Mercer Island (“City”) respectfully requests the Hearing Examiner dismiss this proceeding pursuant to Hearing Examiner Rule of Procedure (“RoP”) 204. Appellant has not alleged a basis for the appeal upon which the Hearing Examiner has authority to grant relief. Appellant does not dispute the facts leading to the issuance of the potentially dangerous dog declaration. Instead, Appellant challenges only the Mercer Island City Code’s (“MICC”) six-foot fence provision. As explained within, the restraint provisions for potentially dangerous dogs are required by code, violations of which are subject to potential criminal penalty, and the Hearing Examiner lacks authority to waive these requirements on appeal. As the Hearing Examiner lacks authority to grant the relief requested, dismissal of the appeal is appropriate.

1 **II. RELEVANT FACTS**

2 It is undisputed that Appellant’s dog, Ruby Wynn (“Ruby”), caused injury to a French Bulldog on
3 August 13, 2024. Appellant acknowledges that she left a door and a driveway gate open and that Ruby left
4 Appellant’s property and “had contact with a French Bulldog, causing injury to the dog’s ear.” Declaration
5 of Eileen Keiffer In Support of Mercer Island’s Motion to Dismiss (“Keiffer Decl.”) at Ex. A. Appellant
6 asserts that she “apologized, took responsibility and promptly paid the veterinary bill.” *Id.* Following the
7 incident, on August 23, 2024, the City issued a “Notice of Declaration of Potentially Dangerous Dog” (the
8 “Declaration”). *Id.* at Ex. B. The Declaration included a summary of “Potentially Dangerous Dog Owner
9 Responsibilities,” which contains the restraint requirements found in MICC 7.04.120(E) and (F).

10 Appellant solely appeals “the requirement that the fencing on [Appellant’s] property be 6 feet.” *Id.*
11 She asserts that the dog “Ruby got out of an open gate because of human error....Requiring the fencing on
12 our property to be six feet is excessive, burdensome, and unnecessary....” *Id.* As discussed below, the
13 restraint requirements in MICC 7.04.120(E) are not so limiting; however, in any event, the Hearing
14 Examiner lacks authority to grant the type of relief requested.

15 **III. ISSUE PRESENTED**

16 Should this appeal be dismissed due to the Hearing Examiner’s lack of jurisdiction over the relief
17 requested by the Appellant? *Yes.*

18 **IV. ARGUMENT**

19 Under RoP 204, any party may request dismissal of all or part of an appeal at any time with notice
20 to all parties. The relief Appellant requests is simply beyond the authority of the Hearing Examiner to grant
21 and therefore, dismissal under RoP 204 is appropriate.

22 The Hearing Examiner’s jurisdiction under the MICC is narrow. *Chaussee v. Snohomish County*
23 *Council*, 38 Wn. App. 630, 636-39, 689 P.2d 1084 (1984), citing *State v. Munson*, 23 Wn. App. 522, 524,
24 597 P.2d 440 (1979). Specifically, a Hearing Examiner is only imbued with such authority as is granted to
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1 them by the City Council. *Woodinville Water Dist. v. King County*, 105 Wn. App. 897, 906, 21 P.3d 309
2 (2001) (“hearing examiners have only the authority delegated to them by the Council.”). Consideration of
3 equitable issues is beyond the scope of the Examiner’s jurisdiction and therefore, Hearing Examiners may
4 not consider equitable defenses. *Chausee*, 38 Wn. App. at 638.

5 Chapter 7.04 MICC is the Mercer Island City Council’s grant of authority to the Hearing Examiner
6 with respect to appeals of potentially dangerous dog declarations. Such appeal provision anticipates only
7 appeals adjudicating the facts supporting the declaration. To wit, the burden of proof is on the City, through
8 its animal control authority, to establish that the dog meets the definition of a potentially dangerous dog.
9 MICC 7.04.235(G). Similarly, the appeal process anticipates the owner of the dog presenting evidence in
10 defense of the dog. MICC 7.04.235(H). As to the Hearing Examiner’s authority in such appeals, the MICC
11 only permits the Hearing Examiner to uphold, dismiss, or modify the potentially dangerous dog declaration.
12 MICC 7.04.235(D) and (E).

13 Appellant does not allege facts upon which the Examiner could dismiss or modify the potentially
14 dangerous dog declaration. Appellant does not dispute that Ruby caused injury to the French bulldog, nor
15 that Ruby was incorrectly classified as a potentially dangerous dog. Keiffer Decl. at Ex. A. Having failed
16 to do so in her original appeal, it is too late for her to now revise her appeal to argue that her dog does not
17 meet the criteria for the potentially dangerous dog. Such argument would have had to been made within the
18 deadline to file the appeal. MICC 7.04.235(B).

19 Appellant’s request for relief is at heart, a request for equitable relief. Her appeal alleges that a six-
20 foot fencing height is excessive and burdensome. Keiffer Decl. at Ex. A. As a preliminary matter, Appellant
21 has misinterpreted MICC 7.04.120(E). This section does not require a six-foot fence as Appellant
22 represents. Rather, MICC 7.04.120(E) provides:

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24 E. Restraint. Notwithstanding any other provisions of this chapter, it is unlawful for an
25 owner of a potentially dangerous dog to permit the dog to be allowed or permitted to run
free and physically unrestrained or off leash or not otherwise under physical restraint,
unless within a fenced yard or similar restraint reasonably designed to prevent the dog from

1 running free and physically unrestrained. It is provided, however, that the top of such fence
2 shall be at least six feet in height as measured from the ground level, unless there is a
3 secured top—full enclosure—to the fenced-in area; and it is further provided, that such
4 fence or enclosure area shall comply with all applicable city codes. For purposes of this
5 section, a dog solely under voice and/or signal control shall be considered to be “physically
6 unrestrained.” Any person who violates this section shall be guilty of a misdemeanor.

7 Thus, *if* the Appellant wishes to allow Ruby to run freely on her property, *then* the area must have a six-
8 foot fence *or* it must have a secure top that fully encloses the area, such as a dog run. Other restraint
9 alternatives that would be compliant with this section may include, but are not limited to, keeping Ruby on
10 a leash while on the property or tether, neither of which would require a six-foot fence so long as the dog
11 is under physical restraint. Thus, so long as Appellant utilizes other options to ensure Ruby is secure and
12 unrestrained, nothing in this section requires her to install a six-foot fence.

13 Furthermore, with respect to the appeal to the Hearing Examiner, waiver or modification of the
14 restraint requirements is not within the discretion of the animal control authority (nor the Hearing
15 Examiner). While the Declaration of Potentially Dangerous Dog included the MICC restraint references for
16 “Potentially Dangerous Dog Owner Responsibilities” (Keiffer Decl. at Ex. B), that portion of the
17 declaration is included because the MICC expressly requires such declarations to include “[a] statement
18 that the dog is subject to the restrictions or controls placed on the animal or owner as a result of the
19 declaration...” MICC 7.04.120(B)(6). It is not a provision placed within the declaration through the
20 discretion or determination of the City’s animal control officer. It is instead, a mandatory criminal code
21 provision that is not waivable or modifiable by the City’s animal control authority nor the Hearing
22 Examiner. As stated above, the Hearing Examiner lacks the authority to grant equitable type relief, such as
23 waiving any specific restraint requirement on the basis that it is burdensome or excessive, nor does the
24 Hearing Examiner have the authority to modify criminal provisions within the MICC. Therefore, because
25 Appellant has requested relief beyond what the Examiner may grant, dismissal of this appeal is appropriate.

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V. **CONCLUSION**

Appellant does not request relief that can be granted by the Hearing Examiner. Accordingly, Respondent City of Mercer Island moves the Hearing Examiner to dismiss the instant appeal with prejudice pursuant to ROP 204.

DATED this 27th day of September, 2024.

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Attorneys for City of Mercer Island

1 **DECLARATION OF SERVICE**

2 I, Reina McCauley, declare and state:

3 1. I am a citizen of the State of Washington, over the age of eighteen years, not a party to this
4 action, and competent to be a witness herein.

5 2. On the 27th day of September, 2024, I did cause a true copy to be served of the foregoing
6 **MOTION TO DISMISS** on the following parties using the method of service indicated below:
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<p>8 Patricia S. Wynn 7951 Island Crest Way 9 Mercer Island, WA 98040</p> <p>10 <i>Appellant</i></p>	<p><input checked="" type="checkbox"/> First Class, U.S. Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail: pswynn@comcast.net</p>
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11
12 I declare under penalty of perjury under the laws of the State of Washington that the foregoing
13 is true and correct.

14 DATED this 27th day of September, 2024, at Auburn, Washington.

15
16 */s/Reina McCauley*
17 Reina McCauley