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July 28, 2023

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SERVICE BY E-MAIL (First class mail service if requested)

City of Mercer Island
Animal Control Officer
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AND

C/o Bio F. Park, City Attorney
9611 SE 36th Street
Mercer Island, WA 98040
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Subject: Scheduling Guidance for Animal Control Administrative Appeal: APL23-005 (Ref. case number RASKC #A23-003981)

Dear Principal Parties:

I write in my capacity as the City of Mercer Island Hearing Examiner (“Examiner”).

On July 24, 2023, I received the appeal which Brent Irvin and Ying (Molly) Quan filed on July 22, 2023, with the City of Mercer Island, *in re* a Notice of Potentially Dangerous Dog (“Notice”) issued by the City’s Animal Control Officer on or about July 3, 2023. The Notice declares “Austin,” a neutered male Australian Shepherd, to be a Potentially Dangerous Dog as that term is defined in Mercer Island City Code (“MICC”) 7.04.020. The City has assigned this appeal file number APL23-005.

The procedures which must be followed in such appeals are set forth in MICC 7.04.235.

The MICC provides for a 20 calendar day appeal period from date of issuance of the Notice. [MICC 7.04.235(A)] The content requirements for an animal control appeal are set forth in MICC 7.04.235(B). It would appear that the Irvin/Quan appeal was timely and complete when filed.

All proceedings in the foreseeable future in this appeal will be either remote or hybrid (remote with in-person attendance available). Mercer Island uses the “Zoom” platform for its remote proceedings. The hearing type will be determined before a hearing date is selected.

The MICC contains basic regulations for animal control appeals. In addition, I promulgated Rules of Procedure (“RoP”) on December 2, 2019, pursuant to MICC 3.40.080(B). Please note that the current RoP are different from those of my predecessor. I have more recently promulgated an Emergency Rule addressing electronic filing of documents. (I have attached a copy of both the new RoP and the Emergency Rule to the e-mail version of this letter. The City also maintains copies of the RoP which it can provide to appellants.)

Subsection 7.04.235(C) MICC requires that a hearing to consider this appeal “shall be scheduled not more than 60 days from the date of the filing of the notice of appeal” on not less than 20 days notice. The 60th day for this appeal falls on Wednesday, September 20, 2023.

Subsection 7.04.235(C) MICC also provides that the Hearing Examiner will send notice of the hearing date to the appellant and Animal Control Officer. To ensure fairness to all principal parties, I set the hearing date in consultation with the principal parties; the City issues the required hearing notices. RoP 224 requires both parties to pre-file any documents they intend to offer as exhibits. RoP 225 provides a shortened version of the RoP 224 process. This proceeding will utilize the RoP 225 shortened version. I urge both parties to familiarize themselves with the RoP, especially those specifically pertaining to appeals and hearings.

The RoP provide for prehearing conferences. [RoP 208] The Examiner has sole discretion to convene prehearing conferences. [RoP 208(a)] Any principal party may request that the Examiner convene a prehearing conference; the Examiner may call for a prehearing conference on his own initiative. [RoP 208(c)] **At this time I do not believe that a prehearing conference is necessary in this appeal.** However, I will fairly consider any request for a prehearing conference. Unless waived by the principal parties, I am required to give not less than seven days notice of a prehearing conference. [RoP 208(c)]

Allowing four work days for the parties to advise me of their date preferences, five work days after that for the City to prepare and issue the required hearing notice, and the required 20-day period between notice issuance and hearing date, the earliest that we could convene the hearing will be August 31, 2023. **I am presently available on September 6, 7, and 20 (afternoon only).** (I schedule hearings on a first-come-first-served basis, so the longer it takes us to choose a date, the greater the likelihood that another jurisdiction

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may have reserved my services. Time is of the essence. Also, I will be on vacation from September 11 through 15.)

Please communicate your availability and date preference(s) directly to me by E-mail by August 4, 2023, at the latest. My E-mail address is “jegalt755@gmail.com”. The City’s response must consider the availability of an appropriate hearing room (if the hearing will use the hybrid format) as well as the availability of needed staff. I will select a date and time based upon timely received responses.

Please be aware that *ex parte* communication with me is strictly limited. (See RoP 120.) You may communicate with me only on scheduling or other procedural matters. Whenever you communicate with me on such matters, you must cross-copy your communication to all other parties.

Last but by no means least, two procedural items: 1) If you are willing to continue to accept e-mail service from me in this case, please so advise when you communicate your date preferences; and 2) If you have key associates or assistants that I should include in e-mail service to you, please provide their names and e-mail addresses in your e-mail.

Sincerely,

\s\ *John E. Galt*

John E. Galt
City of Mercer Island Hearing Examiner