



AGENDA

October 10, 2023

BOARD OF APPEALS HEARING

9:00 a.m.

City Council Chambers

311 Vernon St.

Roseville, CA 95678

www.roseville.ca.us

THE CITY OF ROSEVILLE WELCOMES YOUR PARTICIPATION

If an agenda item is open to public comment, such public comment shall be addressed to the chair of the meeting.

Public Comment - Speakers have three minutes under Public Comment to speak on issues that are not listed on the agenda and are within the City's jurisdiction. The Brown Act does not permit any action or discussion on items not listed on the agenda.

Consent Calendar - If applicable, the Consent Calendar consists of routine items that may be approved by one motion. Any person can remove an item from the Consent Calendar to be discussed separately.

Agenda Items - Speakers have five minutes to address items that are listed on the agenda.

Americans with Disabilities Act - Notify the City Clerk or Secretary at least 72 hours in advance if special assistance is required to participate in a meeting including the need of auxiliary aids or services.

Audio/Visual Presentations - If making a presentation regarding an agenda item, audio/visual materials must be submitted to the City Clerk or Secretary at least 72 hours in advance.

Roseville City Clerk 311 Vernon Street, Roseville, CA 916-774-5200 TDD 916-774-5220

1. **CALL TO ORDER**
2. **ROLL CALL (SILENT)**
3. **IDENTIFICATION OF CHAIR**
4. **PLEDGE OF ALLEGIANCE**
5. **PUBLIC COMMENTS**
6. **CONSENT CALENDAR**
7. **MATTERS TO BE HEARD**

7.1. Appeal of Citation 21158 - Michael Jacques - 703 Sawyer Ct.

Appellant: Michael Jacques - 703 Sawyer Ct.

Complainant: Christina Amaya - 700 Sawyer Ct.

Roseville Municipal Code Sections:

7.12.010 Leash Law

7.12.050 Aggressive Behavior

7.16.010 Licensing

A. Staff Report

B. Complainant's Statement

C. Appellant's Response

D. Rebuttals and Panel Questions

E. Panel Discussion

F. Panel Decision

7.2. Appeal of Citation 21157- Ivan Derkach - 1496 Arrow Wood Ln.

Appellant: Ivan Derkach - 1496 Arrow Wood Ln

Complainant: Myrna Green - 1513 Barnwood Ln

Roseville Municipal Code Sections:

7.36.070, Bees - Hive Limitations, Second Offense

7.36.080, Bees - Distance from Building, Second Offense

A. Staff Report

B. Complainant's Statement

C. Appellant's Response

D. Rebuttals and Panel Questions

E. Panel Discussion

F. Panel Decision

8. ADJOURNMENT



BOARD OF APPEALS COMMUNICATION

Title: Appeal of Citation 21158 - Michael Jacques - 703 Sawyer Ct.
Contact: Kelly Aye 916-774-5325 kaye@roseville.ca.us

Meeting Date: 10/10/2023
Item #: 5.1.

RECOMMENDATION

Consider the appeal submitted by Michael Jacques for the following violations:

Violation: RMC 7.12.010 Leash law (1 count)

Total Amount due: \$50.00

“No person shall permit or allow any dog to run at large.”

Additional Information:

RMC Section 7.04.060 defines “at large” as follows:

A. “At large” means the following:

1. Off the premises of the owner or the person having care, custody, control or possession of the dog unless such dog is restrained by a leash or adequate enclosure. The leash shall not exceed six feet in length and shall be of sufficient strength to restrain the dog and must be held continuously by a responsible person capable of controlling the dog.
2. On the premises of the owner or the person having care, custody, control or possession of the dog unless such dog is restrained by means adequate and sufficient to prevent the dog from leaving the premises or under the control and in the immediate presence of the owner or person having care, custody, control or possession of the dog.

Violation: RMC 7.12.050 Aggressive Behavior (1 count)

Total Amount due: \$100.00

No person shall permit or allow any dog, when unprovoked, to engage in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are not on the property of the owner or keeper of the dog. (Ord. 6268 § 1, 2020.)

Violation: RMC 7.16.010 Licensing (1 count)

Total Amount due: \$50.00

A dog or cat over the age of four months must be licensed according to the provisions of this chapter.

BACKGROUND

Narrative:

August 4, 2023 @ approximately 2:27 PM

The following narrative is specifically regarding the Animal Control matter that is involved with this citation.

Roseville Police dispatch received a call from dog owner Christina Amaya, the complainant in this matter, residing at 700 Sawyer Ct. Christina advised the dispatcher that her dog was attacked and killed by the neighbors black Labrador Retriever the night prior.

At approximately 4:07 PM Roseville Police Animal Control Officer (ACO) Sammons contacted Christina via telephone. Christina provided the following statement in summary; on August 3rd at approximately 8PM, Christina was in her front yard with her chihuahua "Chico" which was not on a leash. Christina stated the neighbor who resides at 703 Sawyer Ct was walking his black lab on a leash in the neighborhood. Christina stated the black lab observed her chihuahua, slipped out of its collar/leash and attacked "Chico". Christina stated the lab grabbed "Chico", started shaking and would not let go. Christina stated once the lab let go of her chihuahua, she picked up her chihuahua, then the lab began chasing her and she had to run into her house to get away. Christina stated she transported "Chico" to Atlantic Street Vet however he did not survive.

Christina requested black lab owner Michael Jacques, the appellant in this matter be fined for Leash Law and Aggressive Behavior.

Animal Control Officer Sammons completed citation #21158 on behalf of Christina against Michael for Leash law and Aggressive Behavior The violations of RMC Sections 7.12.010 and 7.12.050 are based on the statements of the complainant and appellant and other evidence provided and were not directly witnessed by Animal Control Officer Sammons. Upon further review, Officer Sammons also determined that the subject's dog was not properly licensed and added the violation for failure to license.

On August 5th at approximately 08:58 AM, ACO Sammons contacted Michael via telephone. Michael provided the following statement in summary; On the night of August 3rd Michael was walking his dog on leash in the neighborhood. Michael stated the chihuahua ran off the property of 700 Sawyer Ct and a dog fight ensued. Michael stated he got down on the ground and pried his dog "Kaya's" mouth off the chihuahua. Michael stated "Kaya" pounced on the chihuahua, let go, then pounced again. Michael stated "Kaya" got out of her collar "later" but confirmed that she was loose at some point during the altercation. Michael stated he received punctures and scrapes to his left hand but was positive that he was not bitten by the chihuahua. Michael stated that "Kaya" was current on her rabies vaccination.

Due to Michael being unsure if his injuries were from a dog bite, Animal Control Officer Sammons advised Michael that "Kaya" would need to be on a rabies quarantine at his residence for ten days from the date of exposure.

At approximately 11:30 AM Animal Control Officer Sammons met with Michael at his residence. Michael signed the Rabies Quarantine Notice, Potentially Vicious form, and Potentially Vicious conditions.

After speaking with Michael, Animal Control Officer Sammons contacted Christina at her residence. Animal Control Officer Sammons advised Christina of the Potentially Vicious declaration for "Kaya".

After speaking with Christina, Michael approached Animal Control Officer Sammons again. Michael asked Animal Control Officer Sammons if he should be concerned about receiving rabies treatments. Michael then stated he was unsure if his injuries were from "Chico".

On August 8th, Animal Control Officer Cooper picked up "Chico" from Atlantic Street Vet and transported his body to Placer County Animal Services for Rabies testing.

On August 15th, Animal Control Officer Cooper released "Kaya" from quarantine as apparently healthy. Animal Control Officer Cooper advised Michael we would contact him once we received the rabies test results on "Chico".

On August 16th Animal Control Officer Cooper contacted Michael and advised him the rabies results for "Chico" were negative.

On August 19th Animal Control Officer Sammons contacted Michael to inquire if he wanted to cite Christina for "Chico" being loose off the property, he declined.

Respectfully Submitted,

Respectfully Submitted,

Nicole Sammons, Badge #3075

Animal Control Officer

ATTACHMENTS:

Description

7.12.010 Leash Law

7.04.060 At Large Defined

7.12.050 Aggressive Behavior

7.16.010 Licensing

Citation

Appeal

Appeal

Roseville, California Municipal Code

Title 7 ANIMALS

Chapter 7.12 DOGS-RUNNING AT LARGE

7.12.010 Leash law.

No person shall permit or allow any dog to run at large. This section may be cited as the “leash law.” (Ord. 6268 § 1, 2020.)

Contact:

City Clerk: 916-774-5263

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7.04.060 At large defined.

A. “At large” means the following:

1. Off the premises of the owner or the person having care, custody, control or possession of the dog unless such dog is restrained by a leash or adequate enclosure. The leash shall not exceed six feet in length and shall be of sufficient strength to restrain the dog and must be held continuously by a responsible person capable of controlling the dog.

2. On the premises of the owner or the person having care, custody, control or possession of the dog unless such dog is restrained by means adequate and sufficient to prevent the dog from leaving the premises or under the control and in the immediate presence of the owner or person having care, custody, control or possession of the dog.

B. A dog shall not be considered “at large” if it is:

1. A guide dog, signal dog, or service dog as defined in Section 54.1 of the California [Civil Code](#), as may be amended, while performing the duties it is trained to perform;

2. Assisting or in training to assist a peace officer who is engaged in law enforcement duties;

3. Enrolled and actively participating in a commercial dog training or obedience class, exhibition or competition;

4. Within the confines of a city-designated dog park and licensed pursuant to this chapter;

5. Securely confined in a vehicle. (Ord. 6268 § 1, 2020.)

Contact:

City Clerk: 916-774-5263

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7.12.050 Aggressive behavior.

No person shall permit or allow any dog, when unprovoked, to engage in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are not on the property of the owner or keeper of the dog. (Ord. 6268 § 1, 2020.)

Contact:

City Clerk: 916-774-5263

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Roseville, California Municipal Code

Title 7 ANIMALS

Chapter 7.16 LICENSING

7.16.010 Licensing.

A dog or cat over the age of four months must be licensed according to the provisions of this chapter. (Ord. 6268 § 1, 2020.)

Contact:

City Clerk: 916-774-5263

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CITY OF ROSEVILLE
NOTICE OF CITATION

21158

Date	8/4/2023	Time	11:01 hrs	Day of Week	Friday
Name (First, Middle, Last)					
Michael Anthony Jacques					
Residence Address					
703 Sawyer Ct. Roseville, CA 95747					
Business Address					
Description of Animal (if Applicable)					
Breed:	Lab	Color:	black	Age:	
Vehicle Make		License #:		Sex:	
Model:					
Color:		Year:			
Location of Violation					
700 Sawyer Ct.					
Date / Time of Violation					
8/3/23 2000 hrs					
Code / Ordinance					
Description of Violation					
RMC 7.12.010 Leash law					
RMC 7.12.050 Aggressive Behavior					
RMC 7.16.010 Licensing					
☒ VIOLATIONS NOT COMMITTED IN MY PRESENCE, CERTIFIED ON INFORMATION AND BELIEF.					
I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, THAT THE FOREGOING IS TRUE AND CORRECT.					
Date:	8/4/23	Issuing Officer:			
		Badge No.	N. Sammons 3075		
COMPLAINING PARTY					
X Signature:	Complaint				
I HEREBY ACKNOWLEDGE RECEIPT OF THIS CITATION.					
X Signature:	Complaint				
YOU DO NOT NEED TO DO ANYTHING AT THIS TIME. YOU WILL RECEIVE NOTICE BY MAIL WITHIN 14 DAYS. CITY ATTORNEY'S OFFICE (916) 774-5325					
1 - City Attorney Copy 2 - Defendant Copy 3 - Issue Dept Copy					

Administrative Citation Appeal Form

Request For Hearing



Name Michael A. Jacques	Email	Phone
Address 703 Sawyer Court	City Roseville	Zip 95747
Mailing Address (if different from above)	City	Zip
Citation Number 21158	Date of Citation 8/4/23	

Reason for appeal?

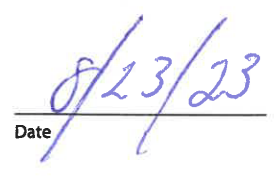
(Include all information to support your appeal here. Continue on second page if needed.)
SEE ATTACHED VERIFIED STATEMENT ON APPEAL.

RECEIVED

AUG 23 2023

ROSEVILLE
CITY ATTORNEY


Signature of Appellant


Date

Please mail or personally deliver this form within 30 days after the date of the citation notification letter to the Roseville City Attorney's office located at:

**City of Roseville
City Attorney's Office
311 Vernon Street
Roseville, CA 95678
(916) 774-5325 • FAX (916) 773-7348**

Forms received later than 30 days after the date of the citation notification letter will not be accepted pursuant to Roseville Municipal Code § 2.50.060.

BEFORE THE BOARD OF APPEALS
CITY OF ROSEVILLE

CITY OF ROSEVILLE,
Plaintiff and Respondent;
vs.
MICHAEL A. JACQUES,
Defendant and Appellant.

Case No.: 12193
Citation No.: 21158
VERIFIED STATEMENT ON APPEAL

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APPENDIX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Letter from the City Attorney, copy of citation
B	Exemplar of <i>Citation Appeal Decision</i> , Roseville Bd. Of Appeals
C	Declaration of Philip M.T. Jacques
D	Photograph of leash and Amazon purchase documentation
E	Photograph of scene of dog fight on Sawyer Court
F	Emails re: acquiring ownership of Kaya; vaccination invoice
G	Potentially Vicious Animal Report

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8 BEFORE THE BOARD OF APPEALS
9 CITY OF ROSEVILLE
10

11 CITY OF ROSEVILLE,
12 Plaintiff and Respondent;
13 vs.
14 MICHAEL A. JACQUES,
15 Defendant and Appellant.
16

Case No.: 12193
Citation No.: 21158
VERIFIED STATEMENT ON APPEAL

17 I. INTRODUCTORY SUMMARY
18

19 Defendant and Appellant Michael A. Jacques appeals from an
20 administrative citation issued by the City of Roseville Animal Control
21 Department on August 4, 2023, Citation No. 21158, based on a complaint by
22 one Christina Amaya. Count One charges violation of Roseville Municipal
23 Code¹ Sec. 7.12.0110 Animal at large, Count Two Charges violations of Sec.
24 7.12.050. Aggressive Behavior, and Count Three Charges violation of Sec.
25 7.16.010, Failure to License.
26

27 As will hereafter be discussed, the uncontroverted, and essentially
28

¹ All citations are to the Roseville Municipal Code, unless otherwise indicated.

1 incontrovertible, evidence will show that I am not guilty on Counts One and
2 Two. On Count Three, the uncontroverted and incontrovertible evidence will
3 show that that I am not guilty as a matter of law, and I will hereinafter call
4 upon the City Attorney of the City of Roseville to dismiss Count Three prior
5 to the hearing.

6 7 II. PROCEDURAL POSTURE & REQUEST FOR PROCEDURAL FINDING

9 **1.16.020 Prosecution by city attorney.**

10 The city attorney may prosecute violations of the provisions of this code or of any ordinance or resolution of the city, or
11 take such other legal action as may be necessary to secure the compliance. (Ord. 1301 § 3, 1975; prior code § 1.12(b).)

12 **1.20.010 Violations—General penalty.**

13 A. It is unlawful to violate any of the provisions of this code, or to do any act prohibited by this code, or to omit or fail to
14 do any act required by this code.

15 B. Except where violation of this code is expressly made a misdemeanor, the violation of any provision of this code
16 shall be punishable as an infraction. Penalties for infraction and misdemeanor violations of this code shall be the same as
17 provided in the general laws of the state.

18 The City of Roseville, and this Board, do not use formal forms of
19 caption. If this case were captioned, the defendant believes the caption
20 shown above would be the proper form. The significance is as follows:

21 Sec. 1.20.010 provides that, any violation of the Municipal Code not
22 specified to be a misdemeanor is an infraction. Sec. 1.16.020 allocates to
23 the City Attorney the duty to "prosecute" violations of the code. In accord,
24 the cover letter dated August 11, 2023 for delivery of the subject citation
25 (Exhibit "A,") states "you have been charged..." and the letter refers to the
26 charges as "counts." "Prosecute," "charge," and "counts" are criminal
27 nomenclature. This language used by the City is instructive, but the
28 Municipal Code itself is dispositive as to the nature of these proceedings:
29 Sec. 1.16.020 defines these alleged violations as "infractions." In law, that

1 which governs is the substance of a thing, not its form. See, Civil Code Sec.
2 3528. This is the only opportunity for the guilt or innocence of the defendant
3 to be determined in the first instance. Thus, I contend that, application of
4 the "administrative" label or form to these proceedings notwithstanding, in
5 substance this is a case of prosecution of a criminal infraction case.
6 Defendant hereby enters a plea of "not guilty" on Counts 1,2, and 3².

7 And the issue is not merely one of form. Infraction cases are criminal
8 cases and, most saliently, invoke the principles that the burden of proof is
9 allocated to the city-designated prosecutor, the City Attorney, and that the
10 standard of proof is "beyond a reasonable doubt." A helpful discussion of
11 these principles appears in this portion of the California Courts website:
12 Basics of Criminal Court - criminal selfhelp (ca.gov).

13 The law in California on the required quantum of proof in infraction
14 cases is absolutely unequivocal: "The prosecution bears the burden at trial of
15 proving defendant's guilt for the cited infraction beyond a reasonable doubt."
16 *People v. Cotsrilos* (2020) 50 Cal.App.5th 1023, 1032. See also, Penal Code
17 Secs. 19.6, 1096.

18 In reviewing minutes of past adjudications by this Board, and the
19 Board's apparently standard form entitled *Citation Appeal Decision*,
20 (Exemplar, Ex. B,) the first disposition option for the Board to choose from
21 among the "check the box" options is:

22
23 **DENY THE APPEAL AND UPHOLD THE CHARGE because the**
24 **City or Complainant proved by a preponderance of the**
25 **evidence that the violation(s) occurred and that the**
Appellant is the responsible party.

26
27 ² Sec. 120.010(B) provides "...Penalties for infraction... violation of this code shall be the same as provided in the
28 general laws of the State." Tautologically, and as I will discuss in particular presently, when the City accepts the
benefit of revenue for its treasury from the prosecution of infraction crimes, it is likewise properly charged with
the *burden* of providing the due process all infractors in the State are entitled to as a matter of law.

1 That a clear record be made for review in the Superior Court, I hereby
2 object to the Board using the incorrect legal standard for adjudicating
3 infraction crimes, and I respectfully request that this matter be determined
4 according to the proper legal standard for infractions of "beyond a
5 reasonable doubt."

6 Nothing in the enabling statute, Government Code Sec. 53069.4
7 relieves "local agencies"³ from the due process protections afforded to every
8 criminal defendant, including the statutory requirement that culpability, even
9 for infractions, be adjudicated under the "beyond a reasonable doubt"
10 standard⁴. I contend that the City of Roseville would lack jurisdiction to
11 assign a different standard of proof in infraction matters than is assigned by
12 the Penal Code and case law relevant to infraction offenses. In any event, no
13 provision of the Municipal Code purports to exempt administrative citation
14 proceedings from the statutory standard of proof in the matter of alleged
15 violations the City itself chose, in enacting Sec. 1.20.010, to characterize as
16 infraction crimes. I contend that any Board determination using the
17 preponderance of evidence standard in adjudicating these proceedings would
18 therefore be contrary to law.

19 Under Sec. 2.50.090(A), the Board is required to issue a written
20 decision upon these proceedings. That a clear record be made for review, I
21 respectfully request that the written decision specify the standard of proof
22 utilized by the Board.

23 ////

25 ³ Cf: Government Code Sec. 54951. The City of Roseville is a charter city, and is therefore able to avail itself of this
26 statute. See, cacities.org.

27 ⁴ Reasonable doubt is defined as follows: 'It is not a mere possible doubt; because everything in human affairs is
28 open to some possible or imaginary doubt. It is that state of the case, after the entire comparison and
consideration of all of the evidence leaves the minds of the jurors in that condition that they cannot say they feel
an abiding conviction of the truth of the charge.' Penal Code Sec. 1096.

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III. FACTS

The evidence will show:

I am a resident of the City of Roseville, and have resided at 703 Sawyer Court for nearly four years. I make a point of living quietly, and rarely interact with my neighbors much beyond an occasional greeting. I do not know Christina Amaya, complainant herein, and did not know her name until I received the cover letter to the instant citation. I do not recall with certainty, but I believe Ms. Amaya and family members and significant other(s) have resided in the house across the street, and one house to the right, 701 Sawyer Court, for at least the last two years, perhaps longer.

Ms. Amaya owned a very small Chihuahua dog, weighing perhaps five pounds⁵. Ms. Amaya routinely allowed Chico to wander the neighborhood unattended, both when the residents were home, and when they were not⁶. In this calendar year of 2023, I personally observed Chico wandering in this fashion at least four times each week on average. In 2023 he charged me while I was walking my dog on at least five occasions. His affect was always the same: charging at full speed, teeth bared, barking and snarling. This year, at least five times I personally observed him charging delivery people on the block, displaying the same affect. Twice within the last sixty days I found him in my garage. When I shooed him away, he charged at me in the same manner before running off. On another occasion in the last sixty days he did not charge me, but stood in my driveway barking at me without

⁵ I did not know the dog's name while it was living. On August 16, in response to my inquiry, Animal Control advised that they believe the dog's name was "Chico," thus that is the name I will use herein.

⁶ One odd example occurred on or about June 20, 2023: I was walking my dog at about 10:00 p.m. when I heard what sounded like a person insistently knocking on a door. There is a street light immediately in front of 701 Sawyer. The sound was being made by Chico. He was on his haunches, rapidly pawing the screen door with both front paws, creating the knocking sound. No one was home. This was one of many many times when I observed Chico outside the house when no one was home.

1 moving before running away. On yet another occasion in the last sixty days
2 I had left the side door to my garage open, and found him in my back yard.
3 When I went to shoo him away, he charged me in the usual manner before
4 running away.

5 I had a Labrador retriever named Lucy. Lucy turned 14 years old on
6 April 22. She was diagnosed with lymphoma on April 24. With medication
7 she rallied for seven weeks, but then went into decline for three weeks, and
8 died on July 8.

9 I walked Lucy three times every day, once before work, and twice in
10 the evening. As she grew old in recent years, on warm days the evening
11 walks would be at dusk, or after dark, so to spare her the physical stress of
12 walking in the heat.

13 Prior to this year, on approximately fifteen occasions Chico charged
14 Lucy and me when we were walking⁷. Lucy was very a docile and calm dog,
15 and would rarely show much reaction, and Chico would retreat when I
16 shooed him. Still, his owner's failure to restrain him as required by the
17 Municipal Code, and his hostile behavior, were consistent and highly
18 annoying, so I made a practice of looking outside before I would take Lucy
19 out, and would wait to go out on the many occasions I saw him wandering
20 unattended.

21 I am informed and believe, and thereon allege, that the complainant's
22 screen door may have a defective latch. Several times in this calendar year,
23 and numerous times in prior years, as Lucy and I passed 701 Sawyer, Chico
24 would charge through the screen door at us, always with the same affect I
25 have already described. Again, each time I was able to shoo him away.
26 Then, approximately two weeks before Lucy died, we were walking past 701

27
28 ⁷ See the next paragraph. If I did not actively look for him, and avoid walking Lucy when I saw him out wandering, I
infer there would have been numerous additional occasions.

1 Sawyer on a Saturday morning, on the opposite side of the street, when
2 Chico burst through the front screen door and charged us in the usual
3 manner. I was heartbroken that my much-beloved, dying, and increasingly
4 frail dog, literally fell over on the spot in stress and fright. I positioned
5 myself between the dogs and was prepared to repel Chico's charge if need
6 be. However, a man whom I believe to be Ms. Amaya's significant other ran
7 from the garage and scooped up the snarling Chico. I confess that it was in a
8 frustrated tone that I admonished the man as to Lucy's frail condition and
9 expressed complaint that Chico was constantly wandering unattended. He
10 said nothing, but returned to the house. Thereafter, there was no change in
11 Chico's wandering after I called the issue to the man's attention.

12 On July 29 I was gifted Kaya, the dog which is the subject of this
13 action. Kaya lived with a family in Nevada City. Kaya is a five year old
14 English Labrador Retriever, and weighs approximately fifty pounds.

15 On August 3, at about 7:45 p.m., I was preparing to take Kaya for a
16 walk. As was my custom with Lucy, I looked outside to see if Chico was
17 wandering unattended. He was. I went back inside for about 30 minutes to
18 make sure he was not around. At about 8:15 I did not see Chico wandering,
19 and I took Kaya out, on her lead. As I was crossing the street diagonally in
20 front of 701, Chico burst through the screen door. He charged, as always, at
21 full speed, teeth bared, snarling and barking. His approach took but a few
22 seconds. Before I could proactively react, when he got close to Kaya she
23 pounced on him and instantly had him in her mouth.

24 The outcome of a dog fight between a five pound and a fifty pound dog
25 can be scarcely be in doubt. Nevertheless, to try to save the Chico's life, I
26 dove into the middle of the fight. I straddled Kaya and put my hands in her
27 mouth, trying to extricate Chico. I got him loose once, but then she was able
28 to capture him again.

1 Meanwhile, about five people rushed from Ms. Amaya's house. In the
2 stress I did not perceive fully, but I believe two or three of them were
3 teenage or young teenage girls. Presently, all were on the ground, trying to
4 separate the dogs. The others were all just hitting Kaya, and one ran to get
5 a water hose. It was I who opened Kaya's mouth, and I believe it was one of
6 the young women who was able to remove and pick up Chico.

7 Seconds before one of the young women was able to pick up Chico, my
8 adult son Philip, aged 22, who had been out on an errand, arrived on the
9 scene in his car. He parked in the middle of the street and ran into the fray
10 of the six or seven people and two dogs in the middle of the street. The
11 second time I was able to free Chico from Kaya's mouth, Philip grabbed Kaya
12 by her collar and pulled her by her collar to a place about twenty feet away.
13 During the midst of this process, her collar and attached lead came off⁸.
14 However, from the time Philip started to drag her away, we never lost
15 control of Kaya.

16 One of the young women yelled for Philip to move his car so Chico
17 could be taken to the hospital. He did so immediately while I stayed with
18 Kaya and replaced her collar and lead. After recovering for a few minutes I
19 led Kaya across the street, back to home, on her lead.

20 Chico died, though I do not know if he was still alive at the scene, or
21 died at the hospital.

22 As they do not bear on my innocence, I do not append photographs of
23 the following here, but will bring them to the hearing: I suffered significant
24 injuries in attempting to save Chico. I sustained 27 puncture wounds to my
25 hands; 21 superficial and 6 significant. Infection set into my left hand, which
26 required two doctor visits and a course of antibiotics to address. At this

27
28 ⁸ Philip will be produced at the hearing to testify to these facts. By way of preview of his testimony, his declaration
is Exhibit C.

1 writing I still have swelling in my left middle finger and right ring finger and,
2 with that symptom persisting at this late date, I fear that in the future I may
3 suffer the onset of arthritis or other long term residuae. Both elbows were
4 scraped, and both knees were badly scraped and bloody. I am not a young
5 man; I had bruises and tremendous stiffness and discomfort for over a week
6 as a result of my efforts to save Chico⁹.

7 The person I believe to be Ms. Amaya approached me the next day.
8 Her tone and manner were calm and professional, as was mine. I expressed
9 my regret at her dog's death, but also recounted to her his habitual
10 wandering and charging. She said "But he never bit anyone." I assume this
11 will be the testimony at the hearing. I have no reason to disbelieve this
12 statement. I was never afraid of Chico, because he was so small that I knew
13 I could counter any attack resulting from one of his charges. However, I
14 want to emphasize that Chico's approach, across numerous encounters over
15 the years, was always exactly the same: Charging at full speed, teeth bared,
16 snarling, and barking. Even if he did not intend to actually attack, his
17 approach was indistinguishable from what one would expect if he was
18 actually commencing an attack. I contend it is unreasonable to contemplate
19

20 ⁹ I want to make clear that, though I have suffered both general and special damages within the jurisdiction of the
21 Small Claims Court, I have no intention of seeking redress for my injuries. The instant wholly specious complaint
22 notwithstanding, Ms. Amaya is undoubtedly aware that it was her failure to properly train and restrain Chico that
23 was the sole legal and moral cause of his horrific death. Having so recently lost Lucy, my precious companion of 14
24 years, I know the grief she is feeling. I have forgiven her for causing injury to me, and wish to put this traumatic
and injurious incident behind me, once this unmeritorious citation is disposed of.

25 In the same vein, on August 19 I was contacted by the Animal Control officer, who advised me that I could make
26 complaint against Ms. Amaya on account of her violation of the leash law. I emphatically declined such an option.
27 Notwithstanding Ms. Amaya's inexplicable action in causing these unjust and unsustainable charges to be brought
28 against me, as stated I have forgiven her and I want nothing more than to be shut of this nightmarish matter. I
hope the City also chooses not to issue a citation of its own volition. I think Ms. Amaya has probably learned a
bitter lesson from her neglect of her dog and flagrant and chronic defiance of the law, and I do not think any
further punishment is in order.

1 that another dog, Kaya, could distinguish his dramatically hostile approach
2 from that of a dog that really did intend to attack.

3 I deeply regret the loss of Ms. Amaya's dog. I also deeply regret that,
4 though far more than sufficient cause existed, literally scores of times, for
5 me to complain to Animal Control about Chico's neglectful owners, I never
6 did so out of a desire "not to cause trouble¹⁰." Now I know that was
7 cowardice on my part, and, if I had reported Ms. Amaya's routine violations
8 of the leash law, Chico would probably be alive today. That does not equate
9 to culpability on these charges. As I will explain in the following sections, in
10 light of the evidence in my possession, the City cannot carry its burden, and
11 the appeal of all three charges must be sustained. The unfortunate, violent,
12 and undoubtedly incredibly painful death of Chico was caused proximately,
13 legally, and morally, by the neglect of his owners, and not by any action of
14 mine¹¹.

15 IV. EVIDENCE & ARGUMENT

16 A. IN LIGHT OF THE EVIDENCE, THE CITY CANNOT 17 CARRY ITS BURDEN AS TO COUNTS ONE AND TWO.

18 COUNT ONE

19 **7.12.010 Leash law.**

20 No person shall permit or allow any dog to run at large. This section may be cited as the "leash law." (Ord. 6268 § 1,
21 2020.)

22
23 Count One alleges violation of Sec. 7.12.010.

24
25 ¹⁰ Beside the violations of the leash law, particularly when the residents were away, Chico's loud and persistent
26 barking --- often nearly nonstop for hours at a time, on countless occasions would have supported a citation for
27 violation of Sec. 7.25.010.

28 ¹¹ I was informed by Animal Control on August 16 that postmortem testing of Chico revealed that he did not have
rabies. I am informed and believe and thereon allege that this testing would not have been necessary if his owner
had been able to demonstrate that he was current on his vaccinations, as Kaya is.

1 It should be noted that, to my knowledge, there are no witnesses
2 to the commencement of the fight. I had Kaya on her lead when Chico
3 charged us. I will testify to this on my oath. This is powerfully, I would
4 contend incontrovertibly, corroborated by the fact that there are numerous
5 bloodstains on her lead. To my mind it is simply impossible for there to be
6 blood on the lead unless it was still attached to Kaya's collar when I tried to
7 break up the fight, and throughout the fight.

8 The blood stains are difficult to photograph against the dark purple
9 leash material. Nevertheless, in the photos appended as Exhibit D I think
10 that a number of stains can be discerned. I count a total of at least
11 seventeen blood stains on the lead. I will produce the lead at the hearing
12 for the Board to examine and ask that it be admitted into evidence¹². In
13 light of the foregoing, I contend that, even if the standard of proof which
14 the City must meet were the preponderance of the evidence, as opposed to
15 the proper standard of beyond a reasonable doubt, the City cannot meet its
16 burden on Count One. To my mind, that the collar came off when my son
17 was laboring to remove Kaya from the scene does not change this analysis.

18 I request that the appeal to Count One be sustained.
19

20 COUNT TWO

21 7.12.050 Aggressive behavior.

22 No person shall permit or allow any dog, when unprovoked, to engage in any behavior that requires a defensive action by
23 any person to prevent bodily injury when the person and the dog are not on the property of the owner or keeper of the dog. (Ord.
24 6268 § 1, 2020.)

25 First Defense – Alleged Facts Do Not Fit the Language of the

26
27 ¹² Page 2 of Exhibit D is the printout from my Amazon account showing that the lead was purchased on July 24 in
28 anticipation of Kaya's arrival. I will testify that no incidents occurred between when the leash arrived at my home
on July 25, to the date of this incident, which could have resulted in the deposit of blood on the lead.

1 **Enactment:** I contend that Sec. 7.12.050 on its face does not apply to the
2 facts alleged here. No person (except me) suffered any injury from Kaya's
3 teeth, and no person was obliged to take "...a defensive action..." to
4 "...prevent bodily injury." On interpretation of this language see Code of
5 Civil Procedure Sec. 1858.

6 I infer from examining the Board's archived minutes that it may be
7 that Animal Control routinely charges owners under Sec. 712.12.050 when
8 one dog injures or kills another dog. I do not concede that application of the
9 section to such a fact pattern is a reasonable interpretation of the
10 enactment *at all*. However, at the very least, I contend that my
11 interpretation of the fairly poorly-drafted statutory language, that it does
12 not refer to circumstances where one dog kills or injures another and no
13 person is required to take defensive action to protect him or herself, is at
14 least as tenable as the apparent interpretation and application by the City.
15 Such being the case, the "rule of lenity" applies: Under the rule of lenity,
16 "[w]hen language which is susceptible of two constructions is used in a
17 penal law, the policy of this state is to construe the statute as favorably to
18 the defendant as its language and the circumstance of its application
19 reasonably permit. The defendant is entitled to the benefit of every
20 reasonable doubt as to the true interpretation of words or the construction
21 of a statute." *People v. Overstreet* (1986) 42 Cal.3d 891, 896. Accordingly,
22 the appeal should be sustained as to Count Two.

23 **Second Defense – City Cannot Carry its Burden, Even if the**
24 **Enactment Applies:** If, for the sake of argument, Sec. 7.12.50 had any
25 applicability to this case, then the City will not be able to carry its burden on
26 an element of the offense, that is, that Kaya was "unprovoked."

27 As already discussed, the evidence will show (1) that Chico
28 routinely acted in a hostile and provocative manner; (2) that Kaya was on

her lead when charged by Chico, and; (3) that Chico charged Kaya in his usual hostile manner at the outset of the subject fight.

Moreover, the evidence will show that the fight occurred at or about the exact middle of the street. This will be established by my testimony, as, to my knowledge, no other person witnessed the beginning of the fight. My testimony will be corroborated by the photograph that is Exhibit E, and its related physical evidence:

I am informed and believe, and thereon allege, that one of Ms. Amaya's young female family or friend had artificial fingernails, and that some of these broke off during the fight. I pointed these out to Animal Control at the time of their onsite investigation August 5, and Ex. E is the photograph I took at the time the officers were there¹³. I later collected two of the fingernails, and will produce them at the hearing.

Thus the physical evidence will corroborate my testimony that Chico, unattended and unrestrained, confronted Kaya in the middle of the street, acting in a hostile and provocative manner, so that the City will be unable to prove by any standard, let alone beyond a reasonable doubt, the "unprovoked" element of Sec. 7.12.050.

**B. IN LIGHT OF THE INCONTROVERTIBLE EVIDENCE, DEFENDANT IS NOT
GUILTY AS A MATTER OF LAW ON COUNT THREE**

7.16.010 Licensing.

A dog or cat over the age of four months must be licensed according to the provisions of this chapter. (Ord. 6268 § 1, 2020.)

////

////

¹³ The circled spots on Ex. E are the fingernails.

1 **7.16.020 Application.**

2 Within 30 days after a person acquires ownership of a dog and/or cat, he or she shall make application for the issuance of
3 a license. Such application shall contain the following information:

- 4 A. The name, address and telephone number of the owner;
5 B. Breed, sex, color, age, and name of dog and/or cat;
6 C. Whether the dog and/or cat is spayed or neutered;
7 D. Vaccine expiration date and name of veterinarian who administered vaccine;
8 E. The name, address and telephone number of a person who may be contacted concerning the dog and/or cat in an
9 emergency. (Ord. 6268 § 1, 2020.)

10 I cannot be convicted of Sec. 7.16.010 unless I failed to license Kaya
11 within 30 days of acquiring ownership of Kaya. Sec. 7.16.020.

12 Ex F is an exhibit of two parts: The first is a series of five emails on
13 July 25 and 26 between me and the family with which Kaya was living in
14 Nevada City, making arrangements for me to meet and acquire ownership of
15 Kaya on July 29, which I did. That family cared for her very much, and the
16 second part of Ex. F is an invoice from Mother Lode Veterinary Hospital in
17 Grass Valley, documenting that they brought Kaya current on all vaccines, at
18 their expense, in Nevada County, on July 27, the day after I indicated in the
19 emails that I would be coming to meet (and presumably acquire ownership
20 of Kaya.) Thus, even now as this is written, less than thirty days have
21 elapsed since I acquired ownership of Kaya, and I cannot be convicted of
22 failure to license under 7.16.10 until the time for licensing under 7.16.020
23 has elapsed.¹⁴

24 The California Rules of Professional govern the practice of law by
25
26
27
28

¹⁴ I will be timely applying for a license for Kaya, no later than August 28.

1 lawyers in this state. The discussion to rule 5-110, *Special Responsibilities of*
2 *a Prosecutor*, states "A prosecutor has the responsibility of a minister of
3 justice and not simply that of an advocate. This responsibility carries with it
4 specific obligations to see that the defendant is accorded procedural justice
5 [and] that guilt is decided upon the basis of sufficient evidence..."¹⁵ Subd.
6 (A) of Rule 5-110 states "The prosecutor in a criminal case shall... Not
7 institute or continue to prosecute a charge that the prosecutor knows is not
8 supported by probable cause."

11 By submission of this filing, opposing counsel, the City Attorney of the
12 City of Roseville, is notified that the evidence in Ex. F cannot be, and
13 therefore will not be, controverted. To the extent that there was ever
14 probable cause to bring Count Three, that probable cause is shown by Ex. F
15 to no longer exist. Defendant reminds the City Attorney that Sec. 1.16.020
16 designates the City Attorney as the prosecutor in this cause and therefore
17 Rule 5-110 is hereby brought to the prosecutor's attention, and defendant
18 respectfully insists that the prosecutor forthwith and with all deliberate
19 speed, dismiss Count Three.

23 In the event that the City Attorney fails the responsibility imposed
24 under rule 5-110, then defendant requests that the appeal to Count Three
25 be summarily sustained.

27 ¹⁵ The same point is made in the American Bar Association *Criminal Justice Standards for the Prosecution Function*
28 ((Fourth Ed., 2017): ...(b) The primary duty of the prosecutor is to seek justice within the bounds of the law, not
merely to convict...

1 V. AFFIRMATIVE RELIEF REQUESTED

2
3 **7.04.150 Potentially vicious defined.**

"Potentially vicious animal" means any of the following:

- 4 A. Any dog which, when unprovoked, on two separate occasions reported to a Roseville animal control officer and/or
5 Roseville police department, within the prior 36-month period, engages in any behavior that requires a defensive action by any
6 person to prevent bodily injury when the person and the dog are not on the property of the owner or keeper of the dog.
- 7 B. Any dog which, when unprovoked, bites a person or otherwise engages in aggressive behavior, causing a less
8 severe injury than as defined in Section 7.04.152.
- 9 C. Any dog which, when unprovoked and while not on the property of the owner or keeper of the dog, has killed,
10 seriously bitten or inflicted injury to a domestic animal to the extent that the domestic animal required documented veterinary
11 care. (Ord. 6268 § 1, 2020.)

12 **7.46.020 Circumstances under which dog may not be declared potentially vicious.**

A dog may not be declared potentially vicious if:

- 13 A. The injury or damage was sustained by a person who, at the time of the injury or damage was sustained, was:
- 14 1. Committing a willful trespass or other tort upon the private property of the owner or person having the right to
15 control the animal;
 - 16 2. Teasing, tormenting, abusing or assaulting the dog;
 - 17 3. Committing or attempting to commit a crime.
- 18 B. The injury or damage was sustained by a domestic dog that, at the time the injury or damage was sustained, was
19 teasing, tormenting, abusing or assaulting the dog, or trespassing upon the private property of the owner or keeper of the dog.
- 20 C. The dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or
21 assault.
- 22 D. Nothing in this chapter shall apply to trained police dogs, while on duty. (Ord. 6268 § 1, 2020.)

23 At this time, Kaya has been summarily adjudicated by the City of
24 Roseville to be a potentially vicious dog. Notification thereof, Ex. G,
25 provides the citee with no information concerning Secs. 7.04.150 and
26 7.46.20, including not even identifying the enactments under which the
27 determination is purportedly made. I will testify that (1) I have never been
28 advised whether the determination was made under 7.04.150, subdivision
(B) or (C), or both. I contend I can hardly be expected to contest, i.e.,
appeal a Charge when I have never been advised what violation is alleged

1 to have occurred. (2) The Animal Control officer told me that the
2 determination is necessary any time on dog kills another. That is not
3 correct, as Sec. 7.46.020 subdivisions (B) or (C) would provide a complete
4 affirmative defense to the declaration of potential viciousness.
5

6 I contend that the lack of any reference in the City's notification to
7 Secs. 7.04.150 and 7.46.20 is a serious constitutional violation, that is, lack
8 of notice of the charging statute, and therefore lack of meaningful
9 opportunity to be heard. That a citizen be held liable for commission of an
10 infraction when never advised as to what the charging enactment is, is a
11 fundamental violation of due process that ought not be allowed to stand.¹⁶
12
13

14 On the infraction charges, the City Attorney has the burden of proof,
15 and the standard is beyond a reasonable doubt. On an affirmative defense,
16 I have the burden of proof, and the standard is the preponderance of the
17 evidence.
18

19 For all of the reasons hereinabove stated, I contend that the evidence
20 preponderates in my favor that Kaya was provoked by Chico, so that the
21 "unprovoked" element Sec. 704.150 (B) or (C) does not exist. Moreover,
22 the evidence preponderates in favor of a determination that Chico was "a
23 domestic dog" that was killed when he was "...teasing, tormenting, abusing
24 or assaulting..." Kaya, so that Sec. 7.46.020(B) provides a complete defense
25
26

27
28 ¹⁶ To defendant's mind, Ex. F's notification of a right to appeal the determination, when he is never advised of the enactment he is alleged to have violated, falls far short of curing the due process violation.

1 to the determination of viciousness. Likewise, the evidence also supports a
2 finding by the preponderance of the evidence that Kaya acted in my
3 defense, so that Sec. 7.46.020(C) likewise provides a complete defense.
4

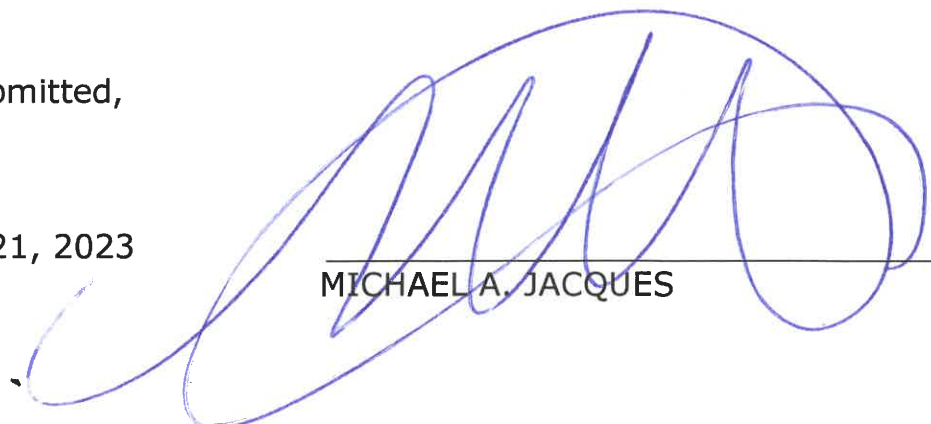
5 Rules of Professional Conduct, Rule 5-110(F) and (G) impose an
6 affirmative obligation on the prosecutor to right the wrong caused by the
7 unjustified determination that Kaya is "potentially vicious." By this filing I
8 call upon the prosecutor to cause that determination to be vacated and set
9 aside. If the prosecutor will not act, then I can upon this Board to order that
10 the City of Roseville set aside the determination.
11
12

13 VI. REQUEST FOR DISCOVERY 14

15
16 By service of this statement on the City Attorney I request all
17 discovery provided for in Penal Code Sec. 1054.1 and pursuant to *Brady v.*
18 *Maryland* (1963) 373 U.S. 83.
19

20
21 Respectfully submitted,
22

23
24 Dated: August 21, 2023
25

26
27 
28 MICHAEL A. JACQUES

1 VERIFICATION
2 (Code of Civil Procedure Sec. 446)

3 I, Michael A. Jacques, declare as follows:
4

5 I have read the foregoing *Verified Statement on Appeal*, and know the
6 contents thereof. The facts therein stated are true and correct of my own
7 knowledge except those facts stated on my information and belief and, as
8 to those facts, I believe them to be true.
9

10 I declare under penalty of perjury under the laws of the State of
11 California that the foregoing is true and correct, and that this verification is
12 executed by me on August 21, 2023, at Roseville, Placer County, California.
13

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16
17 MICHAEL A. JACQUES
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A



City Attorney
311 Vernon Street
Roseville, California 95678

August 11, 2023

Michael A. Jacques
703 Sawyer Ct.
Roseville, CA 95747

Re: Administrative Citation No.: 21158
Location of Violation: 703 Sawyer Ct.
Case No.: 12193

Dear Michael Jacques:

You have been charged with the following violations of the Roseville Municipal Code sections, as a result of a complaint filed against you by Christina Amaya:

<u>RMC Section</u>	<u>Description</u>	<u>Fine Amount</u>
7.12.010	Animal at Large, 1 count	\$50.00
7.12.050	Aggressive Behavior, 1 count	\$100.00
7.16.010	Failure to License, 1 count	\$50.00

A copy of the citation is enclosed for your information. The total amount due is two hundred dollars (\$200.00). Please make your payment by **September 10, 2023** to the following address:

City of Roseville
City Attorney's Office
311 Vernon Street
Roseville, CA 95678

We accept checks or money orders made payable to the City of Roseville, or we can accept debit/credit card payments via telephone.

If you wish to contest the citation, you may do so by filing an appeal. To file an appeal electronically, please visit the City's website at www.roseville.ca.us and complete the Administrative Citation Appeal form. You can also complete the form and return by mail to the address listed above. All appeals must be completed and returned to the City Attorney's office within 30 days of the date of this notice.

For payment questions or questions regarding the appeal process, please contact the City Attorney's Office at (916) 774-5325.

Sincerely,

TRAVIS E. COCHRAN
Deputy City Attorney

21158

CITY OF ROSEVILLE
NOTICE OF CITATION

Date		Time		Day of Week	
Name (First, Middle, Last)					
Residence Address					
Business Address					
Driver's Lic. No.			State	Class	Date of Birth
Sex M F	Hair	Eyes	Height	Weight	Decent Age
Description of Animal (If Applicable)					
Breed:		Color:	Age:	Sex:	
Vehicle Make			License #:		
Model:			Year:		
Color:					
Location of Violation					
Date / Time of Violation					
Code / Ordinance			Description of Violation		
☐ VIOLATIONS NOT COMMITTED IN MY PRESENCE, CERTIFIED ON INFORMATION AND BELIEF.					
I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, THAT THE FOREGOING IS TRUE AND CORRECT.					
Date:			Issuing Officer:		
			Badge No.:		
COMPLAINING PARTY					
X Signature:					
I HEREBY ACKNOWLEDGE RECEIPT OF THIS CITATION.					
X Signature:					
YOU DO NOT NEED TO DO ANYTHING AT THIS TIME. YOU WILL RECEIVE NOTICE BY MAIL WITHIN 14 DAYS. CITY ATTORNEY'S OFFICE (916) 774-5325					
1 - City Attorney Copy		2 - Defendant Copy		3 - Issue Dept Copy	

B



City Attorney
311 Vernon Street
Roseville, California 95678

CITATION APPEAL DECISION

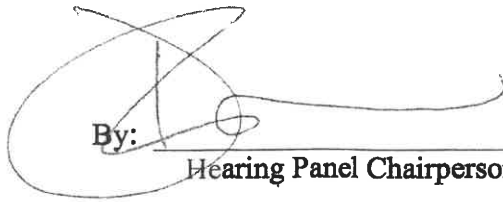
Name of Appellant: Robert Ruud

Citation Number: 21133

Roseville Municipal Code Section: 7.25.010, Animal Noise

- ☐ DENY THE APPEAL AND UPHOLD THE CHARGE because the City or Complainant proved by a preponderance of the evidence that the violation(s) occurred and that the Appellant is the responsible party.
- ☐ DENY THE APPEAL AND UPHOLD THE CHARGE because the Appellant failed to appear.
- ☐ GRANT THE APPEAL AND DISMISS THE CHARGE because the City or Complainant did not prove by a preponderance of the evidence:
- ☐ That the violation(s) occurred; and/or
- ☐ That the Appellant is the responsible party.
- ☐ DENY THE APPEAL AND UPHOLD THE CHARGE but waive the fine in the interest of justice.
- ☒ GRANT THE APPEAL AND DISMISS THE CHARGE because the City/Complainant failed to appear.
- ☐ GRANT THE APPEAL AND DISMISS THE CHARGE at the request of the City/Complainant.

Dated: 10/22/23

By: 

Hearing Panel Chairperson

Notice to Appellant: Under California Government Code Section 53069.4, any appeal of today's Hearing Panel decision must be filed with Placer County Superior Court within twenty (20) days of today's date.

C

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7
8 BEFORE THE BOARD OF APPEALS
9 CITY OF ROSEVILLE
10

11 CITY OF ROSEVILLE,
12 Plaintiff and Respondent;
13 vs.
14 MICHAEL A. JACQUES,
15 Defendant and Appellant.
16

Case No.: 12193
Citation No.: 21158
DECLARATION OF
PHILIP M. T. JACQUES

17
18 I am the son of Michael Jacques, and live with him at 703 Sawyer
19 Court, Roseville.

20
21 Though I did not know his name while he was alive, I am very familiar
22 with the dog Chico. I park on the street in front of our house. Dozens of
23 times in recent years I was surprised (because he was so small and I could
24 not see him while I was in the car,) to open my car door and see him
25 standing there, and he would start barking and snarling at me. He charged
26 me at a run on a number of other occasions. One time I had been out very
27 late and arrived home around 1:00 a.m. Chico had apparently been out at
28

1 that late hour, and charged me from the driveway of where he lived.

2 Our communal mailboxes are at the inside end of our court. On a
3 number of occasions I saw him charge the postal worker, barking and
4 snarling. On many occasions when arriving home in the evening I would
5 hear him barking from inside the house or inside the back yard, seemingly
6 incessantly.
7

8 I had been on an errand on August 3, 2023 and returned home in my
9 car about 8:15. p.m. On pulling into Sawyer Court I could immediately see
10 that there was a disturbance in the middle of the street. I saw my father
11 and four or five other people on the ground. I could also see my dog Kaya,
12 and Chico. I stopped the car and ran the short distance to the disturbance.
13 About the time I got there, one of the young women picked up Chico.
14

15 I wanted to move Kaya out of the area. With little time to think, I
16 thought pulling her by her collar would be more effective control than by
17 the lead. I grabbed her collar with both hands, and started pulling her
18 forward. Sometime as I was leaving the street, crossing the sidewalk, and
19 entering the lawn, the collar slipped forward over her head. However, by
20 that moment, my father had joined me and, with our hands, we were able
21 to continue moving and controlling Kaya. One of the young women shouted
22 for me to move my car so Chico could be taken to the hospital. I did so
23 immediately while, I am informed and believe and thereon allege, that my
24 father was replacing Kaya's collar with the lead attached.
25
26
27
28

1 I declare under penalty of perjury under the laws of the State of
2 California that the foregoing is true and correct of my own knowledge,
3 except as to those facts stated on my information and belief and, as to
4 those matters, I believe them to be true. This verification is executed by me
5 on August 21, 2023, at Roseville, Placer County, California.
6

7
8
9 

10 _____
11 PHILIP M.T. JACQUES
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D

PetSafe Easy Walk Harness (S/M)(Black)
\$22.95 ✓prime

Sponsor

last purchased Jul 24, 2023
in. x 6 ft. , Deep Purple

View order

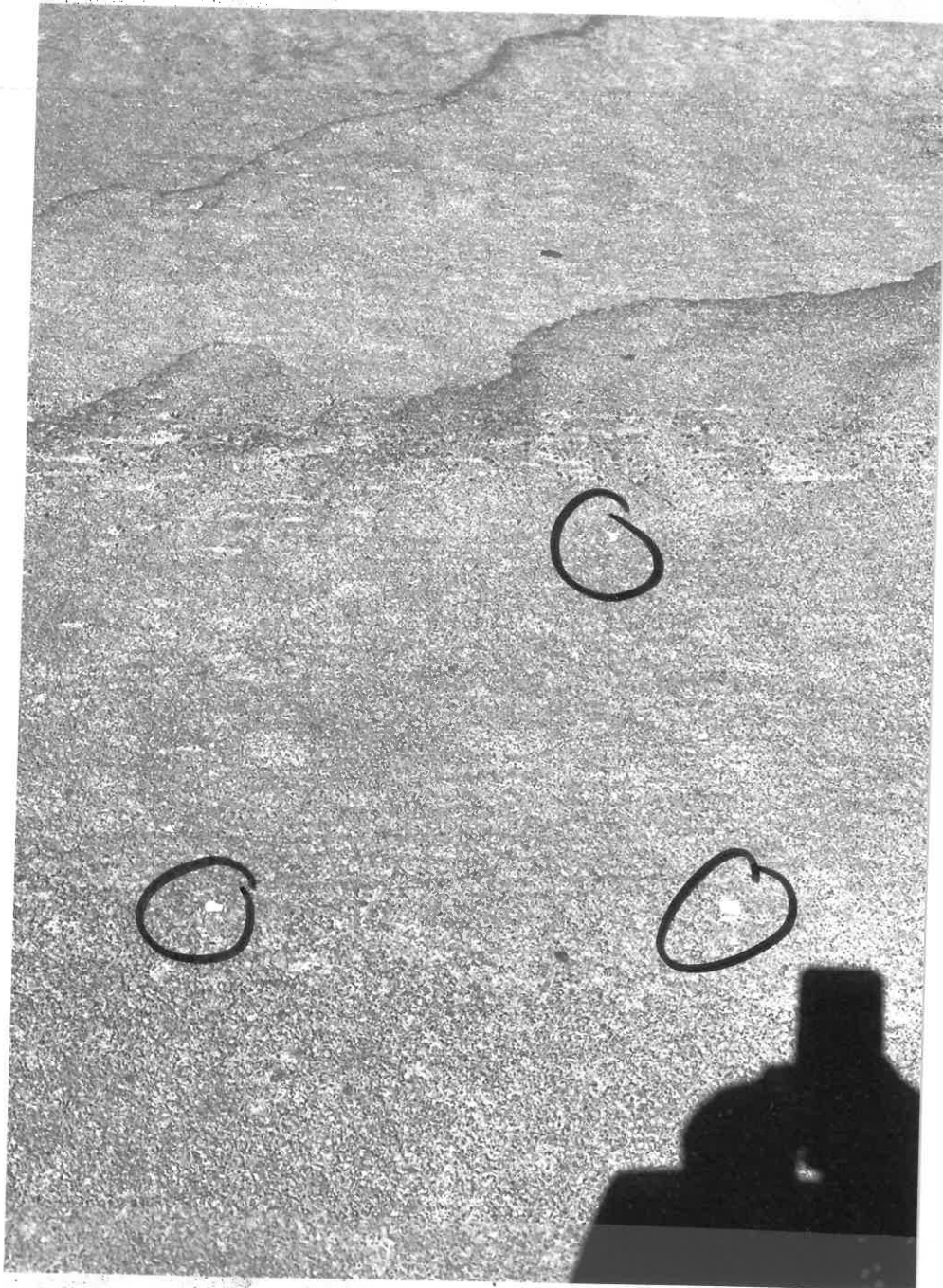
Set reminder

Visit the PetSafe Store 4.6 ★★★★★ 29,
PetSafe Nylon Dog Leash - Strong, Durable, Traditional Style Leash
with Easy to Use Bolt Snap - 1 in. x 6 ft., Deep Purple



300+ bought in past month

E



F

Michael A. Jacques

From: edward harvey
Sent: Tuesday, July 25, 2023 6:19 PM
To: Anna Harvey; Michael A. Jacques
Subject: Re: Kaya

Michael,

I'll plan on seeing you at the house around 2pm on Saturday afternoon. We're at in Nevada City. My phone number is

Best,
Ed

From: Anna Harvey
Sent: Tuesday, July 25, 2023 5:04 PM
To: Michael A. Jacques
Cc: edward harvey
Subject: Re: Kaya

He says any time after 1:45 is good!

Get Outlook for iOS

From: Michael A. Jacques
Sent: Tuesday, July 25, 2023 3:17:14 PM
To: Anna Harvey
Cc: edward harvey
Subject: RE: Kaya

Thanks, Anna. Look forward to hearing from you, Edward.
Michael

From: Anna Harvey
Sent: Tuesday, July 25, 2023 3:13 PM
To: Michael A. Jacques
Cc: edward harvey
Subject: Re: Kaya

Dear Michael,

It sounds like Kaya would be very happy with you! I've CC'ed my dad to this email so he can tell you a time that would work.

Though I won't be there, I look forward to you meeting our sweet Kaya!

Best,
Anna

Ed Harvey

Mother Lode Veterinary Hospital
11509 La Barr Meadows Road
Grass Valley, CA 95949
United States
(530) 272-6651
<http://www.motherlodevet.com>



Ed Harvey - Invoice Balance - \$63.00 - 7/27/2023

Account Summary

Description	Invoice Total	Amount Paid	Amount Due
7/27/2023 - Invoice # 110324	\$63.00	\$0.00	\$63.00
Total	\$63.00	\$0.00	\$63.00

Invoice Number 110324
Date 7/27/2023

Patient	Provider	Description	Date	Quantity	Subtotal	Tax	Total
Kaya	Hospital Provider,	Lepto- 1 Year Vaccine	7/27/2023	1	\$33.50	0	\$33.50
Kaya	Hospital Provider,	Bordetella Intranasal- 1 Year Vaccine	7/27/2023	1	\$29.50	0	\$29.50
					Subtotal		\$63.00
					Tax		\$0.00
					Invoice Total		\$63.00
					Amount Paid		\$0.00
					Amount Remaining		\$63.00

Ed Harvey - Invoice Balance - \$63.00 - 7/27/2023 3:01 PM

If your pet was prescribed medication today, you are entitled to prescription counseling. Please let our staff know if we can provide this service to you.

G



ROSEVILLE ANIMAL CONTROL
1051 Junction Blvd., Roseville, CA 95678
(916) 774-5090 www.roseville.ca.us/police



PAGE 1 OF 1

JULIAN	YEAR	RPT NUMBER
	2023	41520

COPY TO:	ATTY	CPS	DA	DET	VNET	SIU	LT.	CAPT.	OTHER:	PRESS	INDEX	
CRIME/INCIDENT				CLASSIFICATION						DATE OCCURRED		TIME OCCURRED
SERVICES - ANIMAL				POTENTIALLY VICIOUS ANIMAL REPORT						8/3/23		2000hrs

blackened
area is
as appears
in the original

Your dog has been determined by Roseville Animal Control to be "Potentially Vicious". A potentially vicious animal can become a serious threat to public safety and welfare. It is the duty of the animal owner or custodian to take all the necessary steps to prevent this animal from biting or attacking another person or from biting, attacking or causing injury to another animal.

Pursuant to Roseville Municipal Code sections 7.46.060 & 7.46.070, you may appeal the Animal Control Officer's classifications of the above referenced animal as potentially vicious. To file an appeal, you must submit a written request to appeal to the Police Chief. The request must be received within 10 calendar days of the date of this notice of the potentially vicious animal classification.

Any future violations may result in your animal being declared vicious. In the case of a potentially vicious animal the Animal Control Officer has the power to:

- A. Impound such animal in the animal control center;
- B. Release such animal to the control of its owner upon any conditions which may reasonably be required to insure the public safety;
- C. Issue citation(s);
- D. If a potentially vicious animal is later declared vicious, the Animal Control Officer has the further power to cause such animal to be destroyed if, in his or her opinion, the release of such animal would create a threat to the public safety.

I have read and understand the above:

Owner/Custodian: [Signature]

Date: 8-5-23

REPORTING OFFICER ID#	DATE/TIME	DISPO:	CONNECTING CASE:	APPROVED BY:	DATE/TIME:
N. GARDNER #3075					

Administrative Citation Appeal Form

Request For Hearing



Name Michael A. Jacques	Email	Phone
Address 703 Sawyer Court	City Roseville	Zip 95747
Mailing Address (if different from above)	City	Zip
Citation Number 21158	Date of Citation 8/4/23	

Reason for appeal?

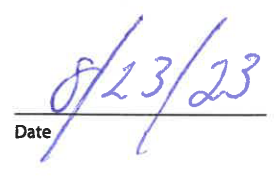
(Include all information to support your appeal here. Continue on second page if needed.)
SEE ATTACHED VERIFIED STATEMENT ON APPEAL.

RECEIVED

AUG 23 2023

ROSEVILLE
CITY ATTORNEY


Signature of Appellant


Date

Please mail or personally deliver this form within 30 days after the date of the citation notification letter to the Roseville City Attorney's office located at:

**City of Roseville
City Attorney's Office
311 Vernon Street
Roseville, CA 95678
(916) 774-5325 • FAX (916) 773-7348**

Forms received later than 30 days after the date of the citation notification letter will not be accepted pursuant to Roseville Municipal Code § 2.50.060.

BEFORE THE BOARD OF APPEALS
CITY OF ROSEVILLE

CITY OF ROSEVILLE,
Plaintiff and Respondent;
vs.
MICHAEL A. JACQUES,
Defendant and Appellant.

Case No.: 12193
Citation No.: 21158
VERIFIED STATEMENT ON APPEAL

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APPENDIX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Letter from the City Attorney, copy of citation
B	Exemplar of <i>Citation Appeal Decision</i> , Roseville Bd. Of Appeals
C	Declaration of Philip M.T. Jacques
D	Photograph of leash and Amazon purchase documentation
E	Photograph of scene of dog fight on Sawyer Court
F	Emails re: acquiring ownership of Kaya; vaccination invoice
G	Potentially Vicious Animal Report

BEFORE THE BOARD OF APPEALS
CITY OF ROSEVILLE

CITY OF ROSEVILLE,
Plaintiff and Respondent;
vs.
MICHAEL A. JACQUES,
Defendant and Appellant.

Case No.: 12193
Citation No.: 21158
VERIFIED STATEMENT ON APPEAL

I. INTRODUCTORY SUMMARY

Defendant and Appellant Michael A. Jacques appeals from an administrative citation issued by the City of Roseville Animal Control Department on August 4, 2023, Citation No. 21158, based on a complaint by one Christina Amaya. Count One charges violation of Roseville Municipal Code¹ Sec. 7.12.0110 Animal at large, Count Two Charges violations of Sec. 7.12.050. Aggressive Behavior, and Count Three Charges violation of Sec. 7.16.010, Failure to License.

As will hereafter be discussed, the uncontroverted, and essentially

¹ All citations are to the Roseville Municipal Code, unless otherwise indicated.

1 incontrovertible, evidence will show that I am not guilty on Counts One and
2 Two. On Count Three, the uncontroverted and incontrovertible evidence will
3 show that that I am not guilty as a matter of law, and I will hereinafter call
4 upon the City Attorney of the City of Roseville to dismiss Count Three prior
5 to the hearing.

6 7 II. PROCEDURAL POSTURE & REQUEST FOR PROCEDURAL FINDING 8

9 **1.16.020 Prosecution by city attorney.**

10 The city attorney may prosecute violations of the provisions of this code or of any ordinance or resolution of the city, or
11 take such other legal action as may be necessary to secure the compliance. (Ord. 1301 § 3, 1975; prior code § 1.12(b).)

12 **1.20.010 Violations—General penalty.**

13 A. It is unlawful to violate any of the provisions of this code, or to do any act prohibited by this code, or to omit or fail to
14 do any act required by this code.

15 B. Except where violation of this code is expressly made a misdemeanor, the violation of any provision of this code
16 shall be punishable as an infraction. Penalties for infraction and misdemeanor violations of this code shall be the same as
17 provided in the general laws of the state.

18 The City of Roseville, and this Board, do not use formal forms of
19 caption. If this case were captioned, the defendant believes the caption
20 shown above would be the proper form. The significance is as follows:

21 Sec. 1.20.010 provides that, any violation of the Municipal Code not
22 specified to be a misdemeanor is an infraction. Sec. 1.16.020 allocates to
23 the City Attorney the duty to "prosecute" violations of the code. In accord,
24 the cover letter dated August 11, 2023 for delivery of the subject citation
25 (Exhibit "A,") states "you have been charged..." and the letter refers to the
26 charges as "counts." "Prosecute," "charge," and "counts" are criminal
27 nomenclature. This language used by the City is instructive, but the
28 Municipal Code itself is dispositive as to the nature of these proceedings:
29 Sec. 1.16.020 defines these alleged violations as "infractions." In law, that

1 which governs is the substance of a thing, not its form. See, Civil Code Sec.
2 3528. This is the only opportunity for the guilt or innocence of the defendant
3 to be determined in the first instance. Thus, I contend that, application of
4 the "administrative" label or form to these proceedings notwithstanding, in
5 substance this is a case of prosecution of a criminal infraction case.
6 Defendant hereby enters a plea of "not guilty" on Counts 1,2, and 3².

7 And the issue is not merely one of form. Infraction cases are criminal
8 cases and, most saliently, invoke the principles that the burden of proof is
9 allocated to the city-designated prosecutor, the City Attorney, and that the
10 standard of proof is "beyond a reasonable doubt." A helpful discussion of
11 these principles appears in this portion of the California Courts website:
12 Basics of Criminal Court - criminal selfhelp (ca.gov).

13 The law in California on the required quantum of proof in infraction
14 cases is absolutely unequivocal: "The prosecution bears the burden at trial of
15 proving defendant's guilt for the cited infraction beyond a reasonable doubt."
16 *People v. Cotsrilos* (2020) 50 Cal.App.5th 1023, 1032. See also, Penal Code
17 Secs. 19.6, 1096.

18 In reviewing minutes of past adjudications by this Board, and the
19 Board's apparently standard form entitled *Citation Appeal Decision*,
20 (Exemplar, Ex. B,) the first disposition option for the Board to choose from
21 among the "check the box" options is:

22
23 **DENY THE APPEAL AND UPHOLD THE CHARGE because the**
24 **City or Complainant proved by a preponderance of the**
25 **evidence that the violation(s) occurred and that the**
Appellant is the responsible party.

26
27 ² Sec. 120.010(B) provides "...Penalties for infraction... violation of this code shall be the same as provided in the
28 general laws of the State." Tautologically, and as I will discuss in particular presently, when the City accepts the
benefit of revenue for its treasury from the prosecution of infraction crimes, it is likewise properly charged with
the *burden* of providing the due process all infractors in the State are entitled to as a matter of law.

1 That a clear record be made for review in the Superior Court, I hereby
2 object to the Board using the incorrect legal standard for adjudicating
3 infraction crimes, and I respectfully request that this matter be determined
4 according to the proper legal standard for infractions of "beyond a
5 reasonable doubt."

6 Nothing in the enabling statute, Government Code Sec. 53069.4
7 relieves "local agencies"³ from the due process protections afforded to every
8 criminal defendant, including the statutory requirement that culpability, even
9 for infractions, be adjudicated under the "beyond a reasonable doubt"
10 standard⁴. I contend that the City of Roseville would lack jurisdiction to
11 assign a different standard of proof in infraction matters than is assigned by
12 the Penal Code and case law relevant to infraction offenses. In any event, no
13 provision of the Municipal Code purports to exempt administrative citation
14 proceedings from the statutory standard of proof in the matter of alleged
15 violations the City itself chose, in enacting Sec. 1.20.010, to characterize as
16 infraction crimes. I contend that any Board determination using the
17 preponderance of evidence standard in adjudicating these proceedings would
18 therefore be contrary to law.

19 Under Sec. 2.50.090(A), the Board is required to issue a written
20 decision upon these proceedings. That a clear record be made for review, I
21 respectfully request that the written decision specify the standard of proof
22 utilized by the Board.

23 ////

25 ³ Cf: Government Code Sec. 54951. The City of Roseville is a charter city, and is therefore able to avail itself of this
26 statute. See, cacities.org.

27 ⁴ Reasonable doubt is defined as follows: 'It is not a mere possible doubt; because everything in human affairs is
28 open to some possible or imaginary doubt. It is that state of the case, after the entire comparison and
consideration of all of the evidence leaves the minds of the jurors in that condition that they cannot say they feel
an abiding conviction of the truth of the charge.' Penal Code Sec. 1096.

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III. FACTS

The evidence will show:

I am a resident of the City of Roseville, and have resided at 703 Sawyer Court for nearly four years. I make a point of living quietly, and rarely interact with my neighbors much beyond an occasional greeting. I do not know Christina Amaya, complainant herein, and did not know her name until I received the cover letter to the instant citation. I do not recall with certainty, but I believe Ms. Amaya and family members and significant other(s) have resided in the house across the street, and one house to the right, 701 Sawyer Court, for at least the last two years, perhaps longer.

Ms. Amaya owned a very small Chihuahua dog, weighing perhaps five pounds⁵. Ms. Amaya routinely allowed Chico to wander the neighborhood unattended, both when the residents were home, and when they were not⁶. In this calendar year of 2023, I personally observed Chico wandering in this fashion at least four times each week on average. In 2023 he charged me while I was walking my dog on at least five occasions. His affect was always the same: charging at full speed, teeth bared, barking and snarling. This year, at least five times I personally observed him charging delivery people on the block, displaying the same affect. Twice within the last sixty days I found him in my garage. When I shooed him away, he charged at me in the same manner before running off. On another occasion in the last sixty days he did not charge me, but stood in my driveway barking at me without

⁵ I did not know the dog's name while it was living. On August 16, in response to my inquiry, Animal Control advised that they believe the dog's name was "Chico," thus that is the name I will use herein.

⁶ One odd example occurred on or about June 20, 2023: I was walking my dog at about 10:00 p.m. when I heard what sounded like a person insistently knocking on a door. There is a street light immediately in front of 701 Sawyer. The sound was being made by Chico. He was on his haunches, rapidly pawing the screen door with both front paws, creating the knocking sound. No one was home. This was one of many many times when I observed Chico outside the house when no one was home.

1 moving before running away. On yet another occasion in the last sixty days
2 I had left the side door to my garage open, and found him in my back yard.
3 When I went to shoo him away, he charged me in the usual manner before
4 running away.

5 I had a Labrador retriever named Lucy. Lucy turned 14 years old on
6 April 22. She was diagnosed with lymphoma on April 24. With medication
7 she rallied for seven weeks, but then went into decline for three weeks, and
8 died on July 8.

9 I walked Lucy three times every day, once before work, and twice in
10 the evening. As she grew old in recent years, on warm days the evening
11 walks would be at dusk, or after dark, so to spare her the physical stress of
12 walking in the heat.

13 Prior to this year, on approximately fifteen occasions Chico charged
14 Lucy and me when we were walking⁷. Lucy was very a docile and calm dog,
15 and would rarely show much reaction, and Chico would retreat when I
16 shooed him. Still, his owner's failure to restrain him as required by the
17 Municipal Code, and his hostile behavior, were consistent and highly
18 annoying, so I made a practice of looking outside before I would take Lucy
19 out, and would wait to go out on the many occasions I saw him wandering
20 unattended.

21 I am informed and believe, and thereon allege, that the complainant's
22 screen door may have a defective latch. Several times in this calendar year,
23 and numerous times in prior years, as Lucy and I passed 701 Sawyer, Chico
24 would charge through the screen door at us, always with the same affect I
25 have already described. Again, each time I was able to shoo him away.
26 Then, approximately two weeks before Lucy died, we were walking past 701

27
28 ⁷ See the next paragraph. If I did not actively look for him, and avoid walking Lucy when I saw him out wandering, I
infer there would have been numerous additional occasions.

1 Sawyer on a Saturday morning, on the opposite side of the street, when
2 Chico burst through the front screen door and charged us in the usual
3 manner. I was heartbroken that my much-beloved, dying, and increasingly
4 frail dog, literally fell over on the spot in stress and fright. I positioned
5 myself between the dogs and was prepared to repel Chico's charge if need
6 be. However, a man whom I believe to be Ms. Amaya's significant other ran
7 from the garage and scooped up the snarling Chico. I confess that it was in a
8 frustrated tone that I admonished the man as to Lucy's frail condition and
9 expressed complaint that Chico was constantly wandering unattended. He
10 said nothing, but returned to the house. Thereafter, there was no change in
11 Chico's wandering after I called the issue to the man's attention.

12 On July 29 I was gifted Kaya, the dog which is the subject of this
13 action. Kaya lived with a family in Nevada City. Kaya is a five year old
14 English Labrador Retriever, and weighs approximately fifty pounds.

15 On August 3, at about 7:45 p.m., I was preparing to take Kaya for a
16 walk. As was my custom with Lucy, I looked outside to see if Chico was
17 wandering unattended. He was. I went back inside for about 30 minutes to
18 make sure he was not around. At about 8:15 I did not see Chico wandering,
19 and I took Kaya out, on her lead. As I was crossing the street diagonally in
20 front of 701, Chico burst through the screen door. He charged, as always, at
21 full speed, teeth bared, snarling and barking. His approach took but a few
22 seconds. Before I could proactively react, when he got close to Kaya she
23 pounced on him and instantly had him in her mouth.

24 The outcome of a dog fight between a five pound and a fifty pound dog
25 can be scarcely be in doubt. Nevertheless, to try to save the Chico's life, I
26 dove into the middle of the fight. I straddled Kaya and put my hands in her
27 mouth, trying to extricate Chico. I got him loose once, but then she was able
28 to capture him again.

1 Meanwhile, about five people rushed from Ms. Amaya's house. In the
2 stress I did not perceive fully, but I believe two or three of them were
3 teenage or young teenage girls. Presently, all were on the ground, trying to
4 separate the dogs. The others were all just hitting Kaya, and one ran to get
5 a water hose. It was I who opened Kaya's mouth, and I believe it was one of
6 the young women who was able to remove and pick up Chico.

7 Seconds before one of the young women was able to pick up Chico, my
8 adult son Philip, aged 22, who had been out on an errand, arrived on the
9 scene in his car. He parked in the middle of the street and ran into the fray
10 of the six or seven people and two dogs in the middle of the street. The
11 second time I was able to free Chico from Kaya's mouth, Philip grabbed Kaya
12 by her collar and pulled her by her collar to a place about twenty feet away.
13 During the midst of this process, her collar and attached lead came off⁸.
14 However, from the time Philip started to drag her away, we never lost
15 control of Kaya.

16 One of the young women yelled for Philip to move his car so Chico
17 could be taken to the hospital. He did so immediately while I stayed with
18 Kaya and replaced her collar and lead. After recovering for a few minutes I
19 led Kaya across the street, back to home, on her lead.

20 Chico died, though I do not know if he was still alive at the scene, or
21 died at the hospital.

22 As they do not bear on my innocence, I do not append photographs of
23 the following here, but will bring them to the hearing: I suffered significant
24 injuries in attempting to save Chico. I sustained 27 puncture wounds to my
25 hands; 21 superficial and 6 significant. Infection set into my left hand, which
26 required two doctor visits and a course of antibiotics to address. At this

27
28 ⁸ Philip will be produced at the hearing to testify to these facts. By way of preview of his testimony, his declaration is Exhibit C.

1 writing I still have swelling in my left middle finger and right ring finger and,
2 with that symptom persisting at this late date, I fear that in the future I may
3 suffer the onset of arthritis or other long term residuae. Both elbows were
4 scraped, and both knees were badly scraped and bloody. I am not a young
5 man; I had bruises and tremendous stiffness and discomfort for over a week
6 as a result of my efforts to save Chico⁹.

7 The person I believe to be Ms. Amaya approached me the next day.
8 Her tone and manner were calm and professional, as was mine. I expressed
9 my regret at her dog's death, but also recounted to her his habitual
10 wandering and charging. She said "But he never bit anyone." I assume this
11 will be the testimony at the hearing. I have no reason to disbelieve this
12 statement. I was never afraid of Chico, because he was so small that I knew
13 I could counter any attack resulting from one of his charges. However, I
14 want to emphasize that Chico's approach, across numerous encounters over
15 the years, was always exactly the same: Charging at full speed, teeth bared,
16 snarling, and barking. Even if he did not intend to actually attack, his
17 approach was indistinguishable from what one would expect if he was
18 actually commencing an attack. I contend it is unreasonable to contemplate
19

20 ⁹ I want to make clear that, though I have suffered both general and special damages within the jurisdiction of the
21 Small Claims Court, I have no intention of seeking redress for my injuries. The instant wholly specious complaint
22 notwithstanding, Ms. Amaya is undoubtedly aware that it was her failure to properly train and restrain Chico that
23 was the sole legal and moral cause of his horrific death. Having so recently lost Lucy, my precious companion of 14
24 years, I know the grief she is feeling. I have forgiven her for causing injury to me, and wish to put this traumatic
and injurious incident behind me, once this unmeritorious citation is disposed of.

25 In the same vein, on August 19 I was contacted by the Animal Control officer, who advised me that I could make
26 complaint against Ms. Amaya on account of her violation of the leash law. I emphatically declined such an option.
27 Notwithstanding Ms. Amaya's inexplicable action in causing these unjust and unsustainable charges to be brought
28 against me, as stated I have forgiven her and I want nothing more than to be shut of this nightmarish matter. I
hope the City also chooses not to issue a citation of its own volition. I think Ms. Amaya has probably learned a
bitter lesson from her neglect of her dog and flagrant and chronic defiance of the law, and I do not think any
further punishment is in order.

1 that another dog, Kaya, could distinguish his dramatically hostile approach
2 from that of a dog that really did intend to attack.

3 I deeply regret the loss of Ms. Amaya's dog. I also deeply regret that,
4 though far more than sufficient cause existed, literally scores of times, for
5 me to complain to Animal Control about Chico's neglectful owners, I never
6 did so out of a desire "not to cause trouble"¹⁰. Now I know that was
7 cowardice on my part, and, if I had reported Ms. Amaya's routine violations
8 of the leash law, Chico would probably be alive today. That does not equate
9 to culpability on these charges. As I will explain in the following sections, in
10 light of the evidence in my possession, the City cannot carry its burden, and
11 the appeal of all three charges must be sustained. The unfortunate, violent,
12 and undoubtedly incredibly painful death of Chico was caused proximately,
13 legally, and morally, by the neglect of his owners, and not by any action of
14 mine¹¹.

15 IV. EVIDENCE & ARGUMENT

16 A. IN LIGHT OF THE EVIDENCE, THE CITY CANNOT 17 CARRY ITS BURDEN AS TO COUNTS ONE AND TWO.

18 COUNT ONE

19 **7.12.010 Leash law.**

20 No person shall permit or allow any dog to run at large. This section may be cited as the "leash law." (Ord. 6268 § 1,
21 2020.)

22
23 Count One alleges violation of Sec. 7.12.010.

24
25 ¹⁰ Beside the violations of the leash law, particularly when the residents were away, Chico's loud and persistent
26 barking --- often nearly nonstop for hours at a time, on countless occasions would have supported a citation for
27 violation of Sec. 7.25.010.

28 ¹¹ I was informed by Animal Control on August 16 that postmortem testing of Chico revealed that he did not have
rabies. I am informed and believe and thereon allege that this testing would not have been necessary if his owner
had been able to demonstrate that he was current on his vaccinations, as Kaya is.

1 It should be noted that, to my knowledge, there are no witnesses
2 to the commencement of the fight. I had Kaya on her lead when Chico
3 charged us. I will testify to this on my oath. This is powerfully, I would
4 contend incontrovertibly, corroborated by the fact that there are numerous
5 bloodstains on her lead. To my mind it is simply impossible for there to be
6 blood on the lead unless it was still attached to Kaya's collar when I tried to
7 break up the fight, and throughout the fight.

8 The blood stains are difficult to photograph against the dark purple
9 leash material. Nevertheless, in the photos appended as Exhibit D I think
10 that a number of stains can be discerned. I count a total of at least
11 seventeen blood stains on the lead. I will produce the lead at the hearing
12 for the Board to examine and ask that it be admitted into evidence¹². In
13 light of the foregoing, I contend that, even if the standard of proof which
14 the City must meet were the preponderance of the evidence, as opposed to
15 the proper standard of beyond a reasonable doubt, the City cannot meet its
16 burden on Count One. To my mind, that the collar came off when my son
17 was laboring to remove Kaya from the scene does not change this analysis.

18 I request that the appeal to Count One be sustained.
19

20 COUNT TWO

21 7.12.050 Aggressive behavior.

22 No person shall permit or allow any dog, when unprovoked, to engage in any behavior that requires a defensive action by
23 any person to prevent bodily injury when the person and the dog are not on the property of the owner or keeper of the dog. (Ord.
24 6268 § 1, 2020.)

25 First Defense – Alleged Facts Do Not Fit the Language of the

26
27 ¹² Page 2 of Exhibit D is the printout from my Amazon account showing that the lead was purchased on July 24 in
28 anticipation of Kaya's arrival. I will testify that no incidents occurred between when the leash arrived at my home
on July 25, to the date of this incident, which could have resulted in the deposit of blood on the lead.

1 **Enactment:** I contend that Sec. 7.12.050 on its face does not apply to the
2 facts alleged here. No person (except me) suffered any injury from Kaya's
3 teeth, and no person was obliged to take "...a defensive action..." to
4 "...prevent bodily injury." On interpretation of this language see Code of
5 Civil Procedure Sec. 1858.

6 I infer from examining the Board's archived minutes that it may be
7 that Animal Control routinely charges owners under Sec. 712.12.050 when
8 one dog injures or kills another dog. I do not concede that application of the
9 section to such a fact pattern is a reasonable interpretation of the
10 enactment *at all*. However, at the very least, I contend that my
11 interpretation of the fairly poorly-drafted statutory language, that it does
12 not refer to circumstances where one dog kills or injures another and no
13 person is required to take defensive action to protect him or herself, is at
14 least as tenable as the apparent interpretation and application by the City.
15 Such being the case, the "rule of lenity" applies: Under the rule of lenity,
16 "[w]hen language which is susceptible of two constructions is used in a
17 penal law, the policy of this state is to construe the statute as favorably to
18 the defendant as its language and the circumstance of its application
19 reasonably permit. The defendant is entitled to the benefit of every
20 reasonable doubt as to the true interpretation of words or the construction
21 of a statute." *People v. Overstreet* (1986) 42 Cal.3d 891, 896. Accordingly,
22 the appeal should be sustained as to Count Two.

23 **Second Defense – City Cannot Carry its Burden, Even if the**
24 **Enactment Applies:** If, for the sake of argument, Sec. 7.12.50 had any
25 applicability to this case, then the City will not be able to carry its burden on
26 an element of the offense, that is, that Kaya was "unprovoked."

27 As already discussed, the evidence will show (1) that Chico
28 routinely acted in a hostile and provocative manner; (2) that Kaya was on

her lead when charged by Chico, and; (3) that Chico charged Kaya in his usual hostile manner at the outset of the subject fight.

Moreover, the evidence will show that the fight occurred at or about the exact middle of the street. This will be established by my testimony, as, to my knowledge, no other person witnessed the beginning of the fight. My testimony will be corroborated by the photograph that is Exhibit E, and its related physical evidence:

I am informed and believe, and thereon allege, that one of Ms. Amaya's young female family or friend had artificial fingernails, and that some of these broke off during the fight. I pointed these out to Animal Control at the time of their onsite investigation August 5, and Ex. E is the photograph I took at the time the officers were there¹³. I later collected two of the fingernails, and will produce them at the hearing.

Thus the physical evidence will corroborate my testimony that Chico, unattended and unrestrained, confronted Kaya in the middle of the street, acting in a hostile and provocative manner, so that the City will be unable to prove by any standard, let alone beyond a reasonable doubt, the "unprovoked" element of Sec. 7.12.050.

**B. IN LIGHT OF THE INCONTROVERTIBLE EVIDENCE, DEFENDANT IS NOT
GUILTY AS A MATTER OF LAW ON COUNT THREE**

7.16.010 Licensing.

A dog or cat over the age of four months must be licensed according to the provisions of this chapter. (Ord. 6268 § 1, 2020.)

////

////

¹³ The circled spots on Ex. E are the fingernails.

1 **7.16.020 Application.**

2 Within 30 days after a person acquires ownership of a dog and/or cat, he or she shall make application for the issuance of
3 a license. Such application shall contain the following information:

- 4 A. The name, address and telephone number of the owner;
5 B. Breed, sex, color, age, and name of dog and/or cat;
6 C. Whether the dog and/or cat is spayed or neutered;
7 D. Vaccine expiration date and name of veterinarian who administered vaccine;
8 E. The name, address and telephone number of a person who may be contacted concerning the dog and/or cat in an
9 emergency. (Ord. 6268 § 1, 2020.)

10 I cannot be convicted of Sec. 7.16.010 unless I failed to license Kaya
11 within 30 days of acquiring ownership of Kaya. Sec. 7.16.020.

12 Ex F is an exhibit of two parts: The first is a series of five emails on
13 July 25 and 26 between me and the family with which Kaya was living in
14 Nevada City, making arrangements for me to meet and acquire ownership of
15 Kaya on July 29, which I did. That family cared for her very much, and the
16 second part of Ex. F is an invoice from Mother Lode Veterinary Hospital in
17 Grass Valley, documenting that they brought Kaya current on all vaccines, at
18 their expense, in Nevada County, on July 27, the day after I indicated in the
19 emails that I would be coming to meet (and presumably acquire ownership
20 of Kaya.) Thus, even now as this is written, less than thirty days have
21 elapsed since I acquired ownership of Kaya, and I cannot be convicted of
22 failure to license under 7.16.10 until the time for licensing under 7.16.020
23 has elapsed.¹⁴

24 The California Rules of Professional govern the practice of law by
25
26
27
28

¹⁴ I will be timely applying for a license for Kaya, no later than August 28.

1 lawyers in this state. The discussion to rule 5-110, *Special Responsibilities of*
2 *a Prosecutor*, states "A prosecutor has the responsibility of a minister of
3 justice and not simply that of an advocate. This responsibility carries with it
4 specific obligations to see that the defendant is accorded procedural justice
5 [and] that guilt is decided upon the basis of sufficient evidence..."¹⁵ Subd.
6 (A) of Rule 5-110 states "The prosecutor in a criminal case shall... Not
7 institute or continue to prosecute a charge that the prosecutor knows is not
8 supported by probable cause."

11 By submission of this filing, opposing counsel, the City Attorney of the
12 City of Roseville, is notified that the evidence in Ex. F cannot be, and
13 therefore will not be, controverted. To the extent that there was ever
14 probable cause to bring Count Three, that probable cause is shown by Ex. F
15 to no longer exist. Defendant reminds the City Attorney that Sec. 1.16.020
16 designates the City Attorney as the prosecutor in this cause and therefore
17 Rule 5-110 is hereby brought to the prosecutor's attention, and defendant
18 respectfully insists that the prosecutor forthwith and with all deliberate
19 speed, dismiss Count Three.

23 In the event that the City Attorney fails the responsibility imposed
24 under rule 5-110, then defendant requests that the appeal to Count Three
25 be summarily sustained.

27 ¹⁵ The same point is made in the American Bar Association *Criminal Justice Standards for the Prosecution Function*
28 ((Fourth Ed., 2017): ...(b) The primary duty of the prosecutor is to seek justice within the bounds of the law, not
merely to convict...

V. AFFIRMATIVE RELIEF REQUESTED

7.04.150 Potentially vicious defined.

"Potentially vicious animal" means any of the following:

- A. Any dog which, when unprovoked, on two separate occasions reported to a Roseville animal control officer and/or Roseville police department, within the prior 36-month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are not on the property of the owner or keeper of the dog.
- B. Any dog which, when unprovoked, bites a person or otherwise engages in aggressive behavior, causing a less severe injury than as defined in Section 7.04.152.
- C. Any dog which, when unprovoked and while not on the property of the owner or keeper of the dog, has killed, seriously bitten or inflicted injury to a domestic animal to the extent that the domestic animal required documented veterinary care. (Ord. 6268 § 1, 2020.)

7.46.020 Circumstances under which dog may not be declared potentially vicious.

A dog may not be declared potentially vicious if:

- A. The injury or damage was sustained by a person who, at the time of the injury or damage was sustained, was:
 - 1. Committing a willful trespass or other tort upon the private property of the owner or person having the right to control the animal;
 - 2. Teasing, tormenting, abusing or assaulting the dog;
 - 3. Committing or attempting to commit a crime.
- B. The injury or damage was sustained by a domestic dog that, at the time the injury or damage was sustained, was teasing, tormenting, abusing or assaulting the dog, or trespassing upon the private property of the owner or keeper of the dog.
- C. The dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault.
- D. Nothing in this chapter shall apply to trained police dogs, while on duty. (Ord. 6268 § 1, 2020.)

At this time, Kaya has been summarily adjudicated by the City of Roseville to be a potentially vicious dog. Notification thereof, Ex. G, provides the citee with no information concerning Secs. 7.04.150 and 7.46.20, including not even identifying the enactments under which the determination is purportedly made. I will testify that (1) I have never been advised whether the determination was made under 7.04.150, subdivision (B) or (C), or both. I contend I can hardly be expected to contest, i.e., appeal a Charge when I have never been advised what violation is alleged

1 to have occurred. (2) The Animal Control officer told me that the
2 determination is necessary any time on dog kills another. That is not
3 correct, as Sec. 7.46.020 subdivisions (B) or (C) would provide a complete
4 affirmative defense to the declaration of potential viciousness.
5

6 I contend that the lack of any reference in the City's notification to
7 Secs. 7.04.150 and 7.46.20 is a serious constitutional violation, that is, lack
8 of notice of the charging statute, and therefore lack of meaningful
9 opportunity to be heard. That a citizen be held liable for commission of an
10 infraction when never advised as to what the charging enactment is, is a
11 fundamental violation of due process that ought not be allowed to stand.¹⁶
12
13

14 On the infraction charges, the City Attorney has the burden of proof,
15 and the standard is beyond a reasonable doubt. On an affirmative defense,
16 I have the burden of proof, and the standard is the preponderance of the
17 evidence.
18

19 For all of the reasons hereinabove stated, I contend that the evidence
20 preponderates in my favor that Kaya was provoked by Chico, so that the
21 "unprovoked" element Sec. 704.150 (B) or (C) does not exist. Moreover,
22 the evidence preponderates in favor of a determination that Chico was "a
23 domestic dog" that was killed when he was "...teasing, tormenting, abusing
24 or assaulting..." Kaya, so that Sec. 7.46.020(B) provides a complete defense
25
26

27
28 ¹⁶ To defendant's mind, Ex. F's notification of a right to appeal the determination, when he is never advised of the enactment he is alleged to have violated, falls far short of curing the due process violation.

1 to the determination of viciousness. Likewise, the evidence also supports a
2 finding by the preponderance of the evidence that Kaya acted in my
3 defense, so that Sec. 7.46.020(C) likewise provides a complete defense.
4

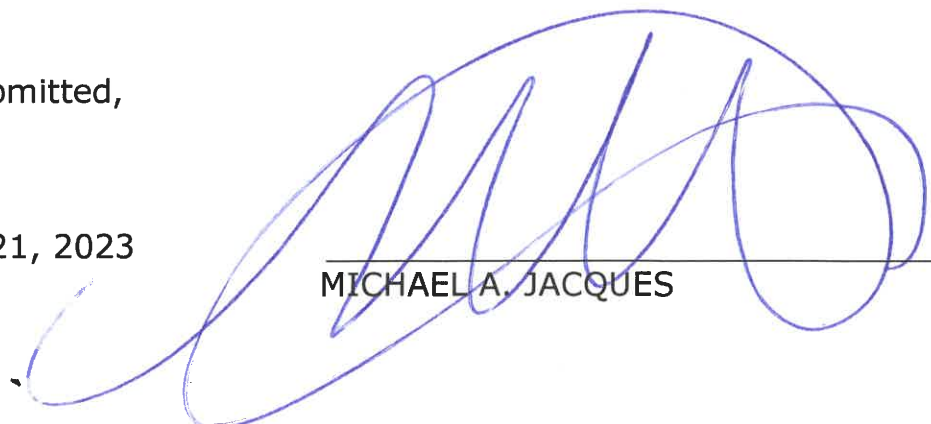
5 Rules of Professional Conduct, Rule 5-110(F) and (G) impose an
6 affirmative obligation on the prosecutor to right the wrong caused by the
7 unjustified determination that Kaya is "potentially vicious." By this filing I
8 call upon the prosecutor to cause that determination to be vacated and set
9 aside. If the prosecutor will not act, then I can upon this Board to order that
10 the City of Roseville set aside the determination.
11
12

13 VI. REQUEST FOR DISCOVERY 14

15
16 By service of this statement on the City Attorney I request all
17 discovery provided for in Penal Code Sec. 1054.1 and pursuant to *Brady v.*
18 *Maryland* (1963) 373 U.S. 83.
19

20
21 Respectfully submitted,
22

23
24 Dated: August 21, 2023
25

26
27 
28 MICHAEL A. JACQUES

1 VERIFICATION
2 (Code of Civil Procedure Sec. 446)

3 I, Michael A. Jacques, declare as follows:
4

5 I have read the foregoing *Verified Statement on Appeal*, and know the
6 contents thereof. The facts therein stated are true and correct of my own
7 knowledge except those facts stated on my information and belief and, as
8 to those facts, I believe them to be true.
9

10 I declare under penalty of perjury under the laws of the State of
11 California that the foregoing is true and correct, and that this verification is
12 executed by me on August 21, 2023, at Roseville, Placer County, California.
13

14
15
16
17 MICHAEL A. JACQUES
18
19
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21
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A



City Attorney
311 Vernon Street
Roseville, California 95678

August 11, 2023

Michael A. Jacques
703 Sawyer Ct.
Roseville, CA 95747

Re: Administrative Citation No.: 21158
Location of Violation: 703 Sawyer Ct.
Case No.: 12193

Dear Michael Jacques:

You have been charged with the following violations of the Roseville Municipal Code sections, as a result of a complaint filed against you by Christina Amaya:

<u>RMC Section</u>	<u>Description</u>	<u>Fine Amount</u>
7.12.010	Animal at Large, 1 count	\$50.00
7.12.050	Aggressive Behavior, 1 count	\$100.00
7.16.010	Failure to License, 1 count	\$50.00

A copy of the citation is enclosed for your information. The total amount due is two hundred dollars (\$200.00). Please make your payment by **September 10, 2023** to the following address:

City of Roseville
City Attorney's Office
311 Vernon Street
Roseville, CA 95678

We accept checks or money orders made payable to the City of Roseville, or we can accept debit/credit card payments via telephone.

If you wish to contest the citation, you may do so by filing an appeal. To file an appeal electronically, please visit the City's website at www.roseville.ca.us and complete the Administrative Citation Appeal form. You can also complete the form and return by mail to the address listed above. All appeals must be completed and returned to the City Attorney's office within 30 days of the date of this notice.

For payment questions or questions regarding the appeal process, please contact the City Attorney's Office at (916) 774-5325.

Sincerely,

TRAVIS E. COCHRAN
Deputy City Attorney

21158

CITY OF ROSEVILLE
NOTICE OF CITATION

CITY OF ROSEVILLE NOTICE OF CITATION									
Date			Time			Day of Week			
Name (First, Middle, Last)									
Residence Address									
Business Address									
Driver's Lic. No.					State		Class		Date of Birth
Sex M F		Hair	Eyes	Height	Weight		Decent		Age
Description of Animal (If Applicable)									
Breed:			Color:			Age:		Sex:	
Vehicle Make					License #:				
Model:					Year:				
Location of Violation									
Date / Time of Violation					Description of Violation				
Code / Ordinance									
☐ VIOLATIONS NOT COMMITTED IN MY PRESENCE, CERTIFIED ON INFORMATION AND BELIEF.									
I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, THAT THE FOREGOING IS TRUE AND CORRECT.									
Date:					Issuing Officer: Badge No.				
COMPLAINING PARTY									
X Signature:									
I HEREBY ACKNOWLEDGE RECEIPT OF THIS CITATION.									
X Signature:									
YOU DO NOT NEED TO DO ANYTHING AT THIS TIME. YOU WILL RECEIVE NOTICE BY MAIL WITHIN 14 DAYS. CITY ATTORNEY'S OFFICE (916) 774-5325									
1 - City Attorney Copy			2 - Defendant Copy			3 - Issue Dept Copy			

B



City Attorney
311 Vernon Street
Roseville, California 95678

CITATION APPEAL DECISION

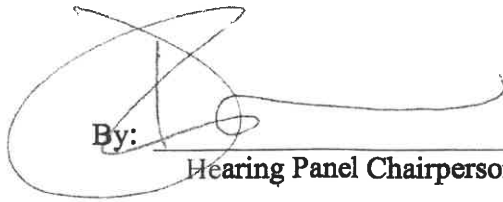
Name of Appellant: Robert Ruud

Citation Number: 21133

Roseville Municipal Code Section: 7.25.010, Animal Noise

- ☐ DENY THE APPEAL AND UPHOLD THE CHARGE because the City or Complainant proved by a preponderance of the evidence that the violation(s) occurred and that the Appellant is the responsible party.
- ☐ DENY THE APPEAL AND UPHOLD THE CHARGE because the Appellant failed to appear.
- ☐ GRANT THE APPEAL AND DISMISS THE CHARGE because the City or Complainant did not prove by a preponderance of the evidence:
- ☐ That the violation(s) occurred; and/or
- ☐ That the Appellant is the responsible party.
- ☐ DENY THE APPEAL AND UPHOLD THE CHARGE but waive the fine in the interest of justice.
- ☒ GRANT THE APPEAL AND DISMISS THE CHARGE because the City/Complainant failed to appear.
- ☐ GRANT THE APPEAL AND DISMISS THE CHARGE at the request of the City/Complainant.

Dated: 10/22/23

By: 

Hearing Panel Chairperson

Notice to Appellant: Under California Government Code Section 53069.4, any appeal of today's Hearing Panel decision must be filed with Placer County Superior Court within twenty (20) days of today's date.

C

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8 BEFORE THE BOARD OF APPEALS
9 CITY OF ROSEVILLE
10

11 CITY OF ROSEVILLE,
12 Plaintiff and Respondent;
13 vs.
14 MICHAEL A. JACQUES,
15 Defendant and Appellant.
16

Case No.: 12193
Citation No.: 21158
DECLARATION OF
PHILIP M. T. JACQUES

17
18 I am the son of Michael Jacques, and live with him at 703 Sawyer
19 Court, Roseville.
20

21 Though I did not know his name while he was alive, I am very familiar
22 with the dog Chico. I park on the street in front of our house. Dozens of
23 times in recent years I was surprised (because he was so small and I could
24 not see him while I was in the car,) to open my car door and see him
25 standing there, and he would start barking and snarling at me. He charged
26 me at a run on a number of other occasions. One time I had been out very
27 late and arrived home around 1:00 a.m. Chico had apparently been out at
28

1 that late hour, and charged me from the driveway of where he lived.

2 Our communal mailboxes are at the inside end of our court. On a
3 number of occasions I saw him charge the postal worker, barking and
4 snarling. On many occasions when arriving home in the evening I would
5 hear him barking from inside the house or inside the back yard, seemingly
6 incessantly.
7

8 I had been on an errand on August 3, 2023 and returned home in my
9 car about 8:15. p.m. On pulling into Sawyer Court I could immediately see
10 that there was a disturbance in the middle of the street. I saw my father
11 and four or five other people on the ground. I could also see my dog Kaya,
12 and Chico. I stopped the car and ran the short distance to the disturbance.
13 About the time I got there, one of the young women picked up Chico.
14

15 I wanted to move Kaya out of the area. With little time to think, I
16 thought pulling her by her collar would be more effective control than by
17 the lead. I grabbed her collar with both hands, and started pulling her
18 forward. Sometime as I was leaving the street, crossing the sidewalk, and
19 entering the lawn, the collar slipped forward over her head. However, by
20 that moment, my father had joined me and, with our hands, we were able
21 to continue moving and controlling Kaya. One of the young women shouted
22 for me to move my car so Chico could be taken to the hospital. I did so
23 immediately while, I am informed and believe and thereon allege, that my
24 father was replacing Kaya's collar with the lead attached.
25
26
27
28

1 I declare under penalty of perjury under the laws of the State of
2 California that the foregoing is true and correct of my own knowledge,
3 except as to those facts stated on my information and belief and, as to
4 those matters, I believe them to be true. This verification is executed by me
5 on August 21, 2023, at Roseville, Placer County, California.
6

7
8
9 

10 _____
11 PHILIP M.T. JACQUES
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D

PetSafe Easy Walk Harness (S/M)(Black)
\$22.95 ✓prime

Sponsor

last purchased Jul 24, 2023
in. x 6 ft. , Deep Purple

View order

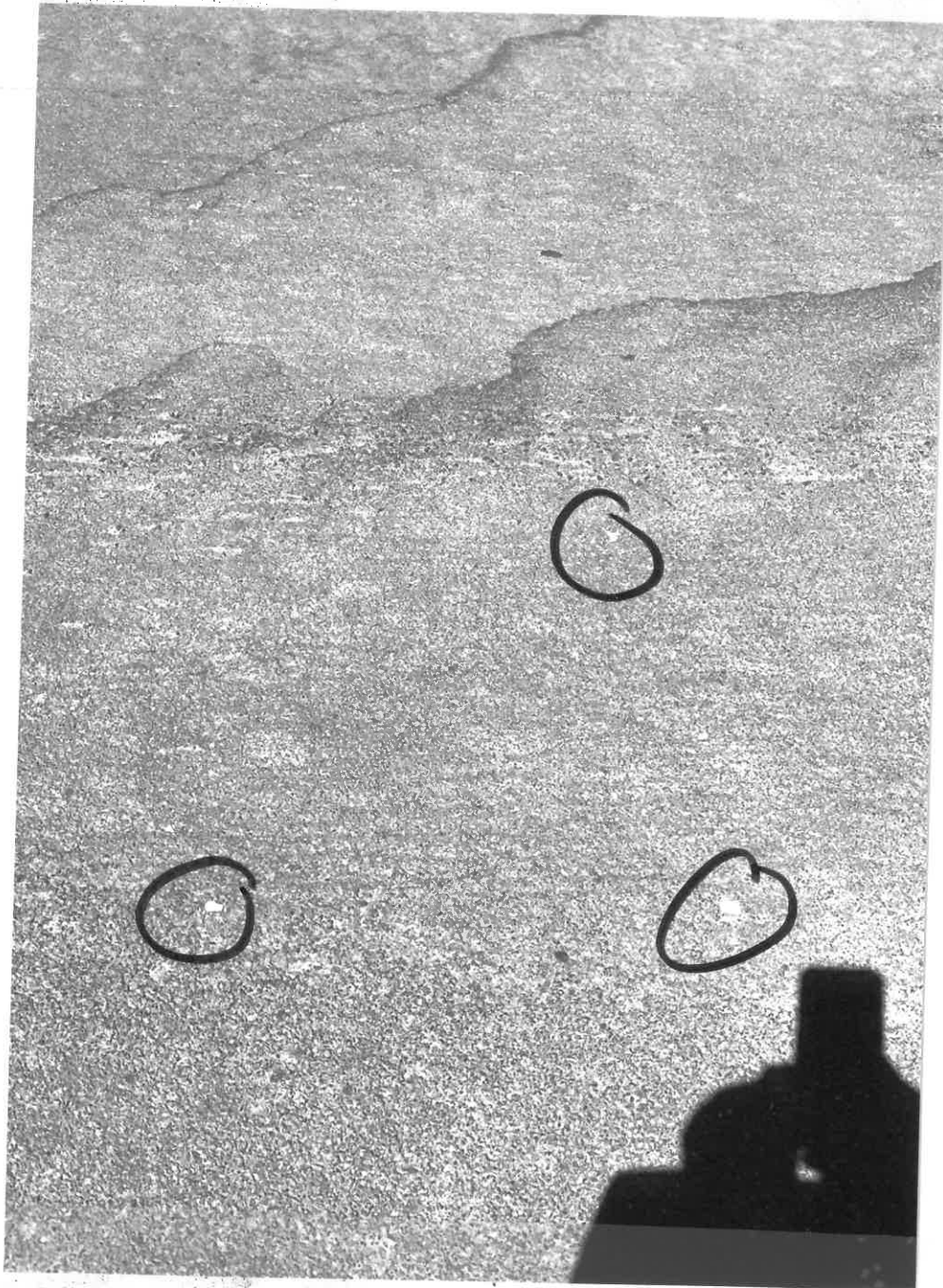
Set reminder

Visit the PetSafe Store 4.6 ★★★★★ 29,
PetSafe Nylon Dog Leash - Strong, Durable, Traditional Style Leash
with Easy to Use Bolt Snap - 1 in. x 6 ft., Deep Purple



300+ bought in past month

E



F

Michael A. Jacques

From: edward harvey
Sent: Tuesday, July 25, 2023 6:19 PM
To: Anna Harvey; Michael A. Jacques
Subject: Re: Kaya

Michael,

I'll plan on seeing you at the house around 2pm on Saturday afternoon. We're at in Nevada City. My phone number is

Best,
Ed

From: Anna Harvey
Sent: Tuesday, July 25, 2023 5:04 PM
To: Michael A. Jacques
Cc: edward harvey
Subject: Re: Kaya

He says any time after 1:45 is good!

Get Outlook for iOS

From: Michael A. Jacques
Sent: Tuesday, July 25, 2023 3:17:14 PM
To: Anna Harvey
Cc: edward harvey
Subject: RE: Kaya

Thanks, Anna. Look forward to hearing from you, Edward.
Michael

From: Anna Harvey
Sent: Tuesday, July 25, 2023 3:13 PM
To: Michael A. Jacques
Cc: edward harvey
Subject: Re: Kaya

Dear Michael,

It sounds like Kaya would be very happy with you! I've CC'ed my dad to this email so he can tell you a time that would work.

Though I won't be there, I look forward to you meeting our sweet Kaya!

Best,
Anna

Ed Harvey

Mother Lode Veterinary Hospital
11509 La Barr Meadows Road
Grass Valley, CA 95949
United States
(530) 272-6651
<http://www.motherlodevet.com>



Ed Harvey - Invoice Balance - \$63.00 - 7/27/2023

Account Summary

Description	Invoice Total	Amount Paid	Amount Due
7/27/2023 - Invoice # 110324	\$63.00	\$0.00	\$63.00
Total	\$63.00	\$0.00	\$63.00

Invoice Number 110324
Date 7/27/2023

Patient	Provider	Description	Date	Quantity	Subtotal	Tax	Total
Kaya	Hospital Provider,	Lepto- 1 Year Vaccine	7/27/2023	1	\$33.50	0	\$33.50
Kaya	Hospital Provider,	Bordetella Intranasal- 1 Year Vaccine	7/27/2023	1	\$29.50	0	\$29.50
					Subtotal		\$63.00
					Tax		\$0.00
					Invoice Total		\$63.00
					Amount Paid		\$0.00
					Amount Remaining		\$63.00

Ed Harvey - Invoice Balance - \$63.00 - 7/27/2023 3:01 PM

If your pet was prescribed medication today, you are entitled to prescription counseling. Please let our staff know if we can provide this service to you.

G



ROSEVILLE ANIMAL CONTROL
1051 Junction Blvd., Roseville, CA 95678
(916) 774-5090 www.roseville.ca.us/police



PAGE 1 OF 1

JULIAN	YEAR	RPT NUMBER
	2023	41520

COPY TO:	ATTY	CPS	DA	DET	VNET	SIU	LT.	CAPT.	OTHER:	PRESS	INDEX
----------	------	-----	----	-----	------	-----	-----	-------	--------	-------	-------

CRIME/INCIDENT	CLASSIFICATION	DATE OCCURRED	TIME OCCURRED
SERVICES - ANIMAL	POTENTIALLY VICIOUS ANIMAL REPORT	8/3/23	2000hrs

blackened
area is
as appears
in the original

Your dog has been determined by Roseville Animal Control to be "Potentially Vicious". A potentially vicious animal can become a serious threat to public safety and welfare. It is the duty of the animal owner or custodian to take all the necessary steps to prevent this animal from biting or attacking another person or from biting, attacking or causing injury to another animal.

Pursuant to Roseville Municipal Code sections 7.46.060 & 7.46.070, you may appeal the Animal Control Officer's classifications of the above referenced animal as potentially vicious. To file an appeal, you must submit a written request to appeal to the Police Chief. The request must be received within 10 calendar days of the date of this notice of the potentially vicious animal classification.

Any future violations may result in your animal being declared vicious. In the case of a potentially vicious animal the Animal Control Officer has the power to:

- A. Impound such animal in the animal control center;
- B. Release such animal to the control of its owner upon any conditions which may reasonably be required to insure the public safety;
- C. Issue citation(s);
- D. If a potentially vicious animal is later declared vicious, the Animal Control Officer has the further power to cause such animal to be destroyed if, in his or her opinion, the release of such animal would create a threat to the public safety.

I have read and understand the above:

Owner/Custodian: [Signature]

Date: 8-5-23

REPORTING OFFICER ID#	DATE/TIME	DISPO:	CONNECTING CASE:	APPROVED BY:	DATE/TIME:
N. GARDNER #3075					



BOARD OF APPEALS COMMUNICATION

Title: Appeal of Citation 21157- Ivan Derkach - 1496 Arrow Wood Ln.

Contact: Kelly Aye 916-774-5325 kaye@roseville.ca.us

Meeting Date: 10/10/2023

Item #: 5.2.

RECOMMENDATION

Consider the appeal submitted by Ivan Derkach for the following violations:

Violation: RMC 7.36.070 Bees- Hive Limitations (1 count)

Total Fine Amount: \$100.00

"Except upon property zoned for agricultural purposes pursuant to the zoning code, no person shall keep more than two hives of bees."

Violation: RMC 7.36.080 Bees- Distance from Building (1 Count)

Total Fine Amount: \$100.00

"Bees, whether kept pursuant to Section 7.36.070 or upon agriculturally zoned premises, shall be kept at least 500 feet from any building or structure in which persons or animals normally live or are kept."

BACKGROUND

Narrative:

August 4, 2023 @ approximately 1:51 PM

The following narrative is specifically regarding the Animal Control matter that is involved with this citation.

Roseville Police dispatch received a call from reporting party, Myrna Green, the complainant in this matter, residing at 1513 Barnwood Ln. to make a complaint about her neighbors residing at 1496 Arrow Wood Ln owning bees. Myrna stated to the dispatcher that she was having an ongoing issue with her neighbor having bees.

At approximately 3:31 PM Roseville Police Animal Control Officer Sammons contacted Myrna. Myrna stated her neighbor, Ivan Derkach, the appellant in this matter still had bees/boxes. Myrna stated that she is unable to use her backyard without being swarmed by bees or removing dead bees from her pool prior to use. Myrna stated that she can hear Ivan in his backyard tending to the

bees/boxes. Myrna requested Ivan be fined for the violations of keeping bees.

Animal Control Officer Sammons completed citation #21157 on behalf of Myrna against Ivan for Bees-Hive Limitations and Bees-Distance from Building. The violations of sections 7.36.070 and 7.36.080 are based on the statements of the complainant and appellant and other evidence provided and were not directly witnessed by Animal Control Officer Sammons.

Prior complaints:

May 18, 2023 @ 08:43 AM

Myrna called in to report her neighbor behind her residence, Ivan Derkach, was keeping bees and she was getting swarmed. Myrna requested a citation be issued against Ivan for keeping bees. Animal Control Officer Cooper issued citation #21137 on behalf of Myrna against Ivan for violations of 7.36.070 and 7.36.080. Animal Control Officer Cooper also mailed Ivan a Notice to Comply to remove the bees from his property.

July 15, 2020 @ approximately 08:05 AM

Roseville Police Animal Control dispatch received a complaint from Myrna stating that Ivan was still in possession of beehives in his backyard. Myrna stated to dispatch that her fence repair company was refusing to fix the fence due to the bees. Myrna requested Ivan be cited for the keeping of bees. Animal Control Officer Cooper issued citation #20454 on behalf of Myrna against Ivan for violations of 7.36.070 and 7.36.080.

September 8, 2018 @ approximately 11:25 AM

Roseville Police Animal Control dispatch received a complaint from Myrna stated that her neighbors to the rear of her residence have a beehive in their backyard. Animal Control Officer Cooper responded to Ivan's residence and was unable to verify there was beehive from the front yard of the residence. Animal Control Officer Cooper left a door card at the residence for Ivan and Nadia Derkach advising there was a complaint received regarding beehives and that the hives need to be removed.

Respectfully Submitted,

Nicole Sammons

Animal Control Officer

ATTACHMENTS:

Description

7.36.070 Bee Hive Limitations

7.36.080 Bee Hive Distance from Building

Citation

Ivan Derkach Appeal

7.36.070 Bees—Hive limitations.

Except upon property zoned for agricultural purposes pursuant to the zoning code, no person shall keep more than two hives of bees.
(Ord. 6268 § 1, 2020.)

Contact:

City Clerk: 916-774-5263

Published by [Quality Code Publishing, Seattle, WA](#). By using this site, you agree to the [terms of use](#).

7.36.080 Bees—Distance from building.

Bees, whether kept pursuant to Section [7.36.070](#) or upon agriculturally zoned premises, shall be kept at least 500 feet from any building or structure in which persons or animals normally live or are kept. (Ord. 6268 § 1, 2020.)

Contact:

City Clerk: 916-774-5263

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CITY OF ROSEVILLE
NOTICE OF CITATION

21157

Date	8/4/2023	Time	1516hrs	Day of Week	Friday
Name (First, Middle, Last)					
Ivan Derkach					
Residence Address					
1496 Arrow wood Ln. Roseville, CA 95747					
Business Address					

Description of Animal (If Applicable)			
Breed: Bees	Color:	Age:	Sex:
Vehicle Make	License #:		
Model:	Year:		
Color:	Year:		
Location of Violation			
1496 Arrow wood Ln			
Date / Time of Violation			
08/4/23 1351hrs			
Code / Ordinance		Description of Violation	
RMC 7.36.070		Bee-Hive Limitations	
RMC 7.36.080		Bees-Distance from Building	
☒ VIOLATIONS NOT COMMITTED IN MY PRESENCE, CERTIFIED ON INFORMATION AND BELIEF.			
I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, THAT THE FOREGOING IS TRUE AND CORRECT.			
Date:	8/4/23	Issuing Officer:	N. Sammons 3075
Badge No.			
COMPLAINING PARTY			
X Signature: Complaint			
I HEREBY ACKNOWLEDGE RECEIPT OF THIS CITATION.			
X Signature: Complaint			
YOU DO NOT NEED TO DO ANYTHING AT THIS TIME. YOU WILL RECEIVE NOTICE BY MAIL WITHIN 14 DAYS. CITY ATTORNEY'S OFFICE (916) 774-5325			
1 - City Attorney Copy 2 - Defendant Copy 3 - Issue Dept Copy			



REQUEST FOR HEARING

Appeal of Administrative Citation

RECEIVED

Name:

Ivan Derkach

SEP 11 2023

Address:

1496 Arrowwood Ln
Roseville, CA 95747

ROSEVILLE
CITY ATTORNEY

Mailing Address:

☒ Same as above

Phone Number:

Email:

Citation Number:

21157

Date of Citation:

08-04-23

Reason for Appeal:

(Include all information and evidence to support your appeal here. Attach additional pages if necessary.)

Dear City of Roseville!

I am Ivan Derkach WAS not expecting to receive a
family of bees during the season. Since my first notice
I have been working on removing the bees from my home
and finding a safe environment for them. It is a slow and
difficult process to removing them. It will be done as soon as possible.

Signature of Appellant:

Date:

09-05-23

**Please return this form along with a copy of the citation
no later than 30 days after the date of your citation notification letter to:**

City of Roseville
City Attorney's Office
311 Vernon Street
Roseville, CA 95678
(916) 774-5325 • FAX (916) 773-7348