

**STATE OF CONNECTICUT  
DEPARTMENT OF AGRICULTURE**

***IN THE MATTER OF*** : ***APPEAL OF***  
***“RICO”*** : ***DISPOSAL ORDER***  
***DOG OWNED BY YADIRA ROSA*** : ***September 18, 2014***

**PROPOSED FINAL DECISION**

***I***

***SUMMARY***

On July 10, 2013, the Waterbury Supervising Animal Control Officer, Mark Ring, acting under the provisions of Connecticut General Statutes (C.G.S.) §22-358(c), issued a Disposal Order to Yadira Rosa, owner of the dog named “Rico”. Yadira Rosa timely requested a hearing before the Commissioner of Agriculture pursuant to C.G.S. §22-358(c). A formal administrative hearing was held on September 18, 2014, with the undersigned, Bruce A. Sherman, serving as Hearing Officer pursuant to designation by Steven K. Reviczky, the Commissioner of Agriculture. At said hearing, Attorney Gary S. Roosa, representing the City of Waterbury, presented testimony, exhibits and arguments. Attorney Mark Solak, representing the respondent dog owner, Yadira Rosa, presented testimony, exhibits and arguments.

Based on the testimony presented and a full review of the entire record, the Hearing Officer is, therefore, recommending that the final decision maker *revoke* the Disposal Order issued on the dog “Rico” owned by Yadira Rosa.

## II

### ***FINDINGS OF FACT***

1. Commissioner Steven K. Reviczky appointed Bruce A. Sherman, an employee of the Department of Agriculture, to act as Hearing Officer and to issue to him a proposed final decision in the matter of the appeal of a Disposal Order issued by the City of Waterbury (City) on the dog named “Rico” owned by Yadira Rosa (Ms. Rosa). Hearing Officer Exhibit [Ex.] HO-3.
2. The Department of Agriculture gave proper notice of the hearing<sup>1</sup> to both parties. Ex. HO-4. Pursuant to Connecticut General Statutes (C.G.S.) §22-358(c), an administrative hearing was held and concluded on September 18, 2014. There was no request by either party to continue the hearing to call additional witnesses or for any other reason. (*See* transcript in its entirety).
3. The City presented the testimony of Sergeant (Sgt.) Renee Harvey of the Waterbury Police Department (WPD), who is the officer in charge of the WPD Animal Control Unit, and the testimony of WPD Supervising Animal Control Officer (ACO), Mark Ring. Exhibits [Exs.] W-1 through W-7 inclusive were admitted into evidence as full exhibits<sup>2</sup>. The City was represented by Attorney Gary S. Roosa. The owner presented her own testimony and Ex. DO-2 was admitted into evidence as a full exhibit. The owner was represented by Attorney Mark Solak.
4. The dog “Rico” is described as a black and tan male Rottweiler, two years of age (as of April 29, 2013) and weighing one hundred pounds. “Rico” did not have a current rabies

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<sup>1</sup> The Notice of Hearing (Ex. HO-4) stated that the Hearing Officer would rule on a Motion to Dismiss Appeal, dated July 28, 2014 and filed by the City of Waterbury. The City withdrew its Motion during the Hearing Officer’s opening statement. Tr. at pages 2-3.

<sup>2</sup> At the request of counsel for the dog owner, Exhibit W-1 was entered as a full exhibit for both parties. Tr. at pages 22-23.

vaccination nor did he have a current dog license on April 29, 2013. Tr. at pages 27, 43-44 and 66. Exs. W-1, W-3 and W-5.

5. Ms. Rosa testified that she owned “Rico” since he was two months of age and that she enrolled him in a six-month long training program beginning when he was 4 months of age so that he would be obedient and listen to commands. She described the training as successful because “Rico” listens and responds to commands quickly and stated that, after the training program was completed, she and other family members continued to maintain the dog’s training. She acknowledged that she has a very large dog to protect her and her family and, as a result and at her own expense, she erected a perimeter fence at her residence with the landlord’s consent in order to allow “Rico” to get exercise. Tr. at pages 66-68 inclusive. She stated that “Rico” never created a problem with other people that came to her house or with other dogs.
6. Ms. Rosa testified that, on April 29, 2013, she, her three children, ages 13, 14 and 16 years, and her husband resided in a second floor apartment at 29 James St., Waterbury, CT (29 James St.). Tr. at page 60.
7. As the Investigating Officer, WPD Officer Matthew Benoit completed WPD Case Report # 2013-00023183 on the April 29, 2013 incident involving WPD officers, Ms. Rosa and her dog “Rico”. Ex. W-1.
8. On April 29, 2013, WPD Officers Benoit, Fortini and Gilbert were dispatched to 79 Congress Ave., Waterbury, CT (Congress Ave,) on an assault complaint. The victim, Gabriella Martinez, reported that she had been assaulted by Ms. Rosa. Ex. W-1.
9. After interviewing Gabriella Martinez, WPD Officers Benoit, Fortini and Gilbert then responded to the residence of Ms. Rosa at 29 James St., 2<sup>nd</sup> floor, Waterbury, CT, to

speak with her. Officers Benoit and Fortini went to the front door of the apartment on the second floor while Officer Gilbert went to the back door. All three officers were knocking on the respective doors while several times announcing their presence as Waterbury Police officers. Officer Benoit states in the WPD case report (Ex. W-1) that no one came to the front door but that he and Officer Fortini heard Officer Gilbert yell “Get off me”. Officers Benoit and Fortini went to the back and observed Officer Gilbert running down the staircase leading to the second floor and heard a dog “viciously” growling and barking which was coming from the second floor. Officer Gilbert had a laceration on his left arm which Officer Benoit described as profusely bleeding, and Officer Gilbert reported that he had been bitten by the Rottweiler that was on the second floor. Officer Fortini radioed for an ambulance and additional officers. Officer Gilbert was transported to St. Mary’s Hospital by AMR Ambulance for treatment of the bite wound described in the WPD case report as a laceration approximately 4 inches in length and 1 inch in width. Ex. W-1.

10. Officer Gilbert reported that he knocked on the back door multiple times while announcing “Waterbury Police” and eventually a young female came to the door who was later identified as Ms. Rosa’s daughter, Kenndra Castro (D.O.B. 8/28/96). He further stated that, while speaking with Kenndra Castro, the Rottweiler dog rushed past her and bit his arm holding it in a strong grasp. The dog released his arm after Officer Gilbert struck the dog on the top of the head. Officer Gilbert was able to retreat down the stairs as the dog went back inside. Officer Benoit stated that Officer Gilbert informed him that Kenndra Castro did not let the dog loose intentionally. Ex. W-1.

11. As additional officers arrived at 29 James St., contact was made with Ms. Rosa who secured her Rottweiler dog that she identified as “Rico” in a bedroom. Waterbury Animal Control responded, after being notified of the incident, and took custody of “Rico” removing him from the residence and transporting him to the Waterbury pound. This was done over the objections of Ms. Rosa who Officer Benoit described as irate and cursing. Ms. Rosa was unable to provide any documentation with regard to “Rico’s” dog license or rabies vaccination status. Ex. W-1.
12. Ms. Rosa provided testimony describing her account of the events that took place and actions taken by WPD officers at her residence on April 29, 2013. She stated that she and her three children, but not her husband, were home when WPD officers arrived at her residence. She stated that the officers were “banging” on both the front and back doors of the second floor apartment. When she went to the front door to open it to respond to the police, her oldest daughter (Kenndra Castro), her 16 year-old, went to open the back door with “Rico” close to her. When her daughter opened the door, the police were right there and “Rico” was barking. The police officer, instead of pushing back, actually stepped inside the house, pulled a gun out, and called and cursed at her daughter telling her, “Take care, control your (curse) dog or I am going to shoot him”. Her daughter had “Rico” by the collar but, when the police officer pulled the gun out cursing at her daughter, “Rico” pulled away from the daughter’s control and bit the officer. Ms. Rosa testified that the officer was inside her house when the bite occurred. When he got away from “Rico”, the officer went outside but “Rico” did not follow him. Ms. Rosa stated that she then commanded “Rico” to go in his cage located in the house and he did. She was arrested while inside her residence by WPD officers for the incident that occurred on

Congress Ave. earlier in the day. (see # 11. Below). The three children were then alone in the house when animal control arrived to remove “Rico” from the cage and take him out. Ms. Rosa stated that animal control removed him aggressively because “Rico” was fighting not to go because of his anxiety from being in the cage and having police officers (about five) in the house. Tr. at pages 72-77 inclusive.

13. Ms. Rosa also testified that “Rico” never had a problem with two other dogs (Pit Bulls) living in the same multifamily house or with other people, including kids, who came to her house until the April 29, 2013 incident when he bit Officer Gilbert. Tr. at pages 69-71 inclusive.

14. Officer Benoit states in the WPD case report that, based on the incident on Congress Ave., he placed Ms. Rosa under arrest for “Assault Third Degree Of A Pregnant Person, Criminal Trespass First Degree and Breach Of Peace Second Degree”. Exs. W-1 and W-2. He further states that, as a result of the animal control violations, Ms. Rosa was issued an Infraction (R490814-3) “For Failure to Have Rabies Vaccination, Owning an Unlicensed Dog, Owning a Dog Which Creates a Nuisance and Allowing a Dog to Roam”.<sup>3</sup> Ex. W-1.

15. Sgt. Renee Harvey (Sgt. Harvey), who has been employed by the Waterbury Police Department for sixteen and one half years, the last four of which she has served as the officer in charge of the Waterbury Animal Control Division (Tr. at page 25), testified that on April 29, 2013, the dog “Rico” did not have a current rabies vaccination as his rabies vaccination had expired in 2012. Under the authority of C.G.S. §22-358(c), Waterbury

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<sup>3</sup> The City of Waterbury did not introduce any further evidence documenting the infractions issued to Yadira Rosa for violations of animal control laws on April 29, 2013 or evidence documenting the disposition of the charges. Furthermore, there is no evidence in the record to support the violation of C.G.S. §22-364(a), *Allowing a Dog to Roam*, as cited in the WPD Case Report (Ex. W-1).

Animal Control quarantined “Rico” at the Waterbury pound for a period of 14 days as a result of the April 29, 2013 dog bite incident . Tr. at page 27. Ex. W-1 (Animal Bite/Attack Report). Sgt. Harvey did not testify as to whether “Rico” had a current dog license on April 29, 2013. Neither the narrative of the WPD Case Report nor the Animal Bite/Attack Report contained in the case report indicates that “Rico” was currently licensed. Ex. W-1.

16. A Waterbury Superior Court (GA04) document shows that Ms. Rosa made a court appearance on April 30, 2013 as a result of the charges resulting from the Congress Ave. incident with Gabriela Martinez. As a condition of Ms. Rosa’s release, the court document states that, if “Rico” was to be returned, she must maintain control of the dog at all times and maintain shots. Ex. W-2. Sergeant Harvey testified that (we) Waterbury Animal Control wanted the court to know what was going on with the dog and whether or not it should be released. Tr. at page 28.
17. Sgt. Harvey testified that Waterbury Animal Control issued a Restraint Order (dated May 2, 2013) on “Rico” to Ms. Rosa at the time “Rico” was returned to her after his release from the 14-day quarantine in the Waterbury pound. Sergeant Harvey further testified that she filled out the Restraint Order in the presence of Ms. Rosa and that Ms. Rosa was provided with a copy of the Restraint Order. Tr. at pages 29-30. Ex. W-3.
18. On May 30, 2013, an incident involving “Rico” occurred at or in close proximity to 29 James St. WPD Officer Nicola Ciaburri was dispatched at 0845 hours to 16 James St. regarding the complaint of a vicious dog that had been chasing neighbors. As the investigating officer, Officer Ciaburri issued a WPD Case Report # 2013-00029653. Ex. W-4. Upon Officer Ciaburri’s arrival, Waterbury (Assistant) Animal Control Officer

Dionne and WPD Sergeant D. Knapp were at the scene speaking with the owner of the dog identified as Yadira Rosa. Ex.W-4.

19. The complainant, Cynthia Bryant of 16 James St., 1<sup>st</sup> floor, informed Officer Ciaburri that, while sitting on her front porch with friends and family, she observed another neighbor from across the street being chased by a black Rottweiler; that it was the same vicious dog that had bitten a police officer about one month previously; the same dog has terrorized the neighborhood for a number of months; she yelled to everyone to get inside the house; and that she fell while getting into the house and hurt her right leg which had a pre-existing injury . Champion Ambulance personnel responded after being called at Bryant's request but Bryant declined to go to the hospital saying she would see her own doctor. Officer Ciaburri attempted to locate the other neighbor at 23 James St. who Bryant alleged was chased by the dog. Officer Ciaburri was not successful in either locating or ascertaining the name of that neighbor. Ex. W-4.
20. With regard to the May 30, 2013 incident, Ms. Rosa told Officer Ciaburri that "Rico" must have seen something outside, jumped out of a second floor window and went after it. Ex. W-4. Ms. Rosa testified that she was outside of her fenced in yard with her kids talking with her neighbor from the first floor and a fist fight occurred between a number of people who were being loud. Her youngest daughter was coming home from the store and "Rico" jumped through a screened window of her 2<sup>nd</sup> floor apartment to the ground and ran toward the daughter who was coming home from the store. Ms. Rosa testified that other people ran when they saw "Rico" but that he did not harass, bite or attack anyone and that "Rico" responded to her commands to come to her. Tr. at pages 77-81 inclusive and 95-96.



21. WPD Officer Ciaburri reported that Ms. Rosa told him that this was not the first time (May 30, 2013) that “Rico” had jumped out of the 2<sup>nd</sup> floor window. Ex. W-4. However, on cross examination, Ms. Rosa testified that the May 30, 2013 incident was the first time that “Rico” had jumped out of the 2<sup>nd</sup> floor window and that she was actually shocked that he did so and suffered no injury. She denied telling Officer Ciaburri that it was not the first time “Rico” jumped from the 2<sup>nd</sup> floor window. Tr. at pages 88-90 inclusive.
22. Waterbury Assistant ACO Dionne, who was at the scene, notified Sgt. Harvey and it was decided that, as a result of this incident (May 30, 2013), and the previous dog bite incident (April 29, 2013) involving “Rico”, the dog would be removed from the residence. “Rico” was brought downstairs by Ms. Rosa’s husband (Emanuel Marroquin) and placed in the back of an animal control van without incident. Assistant ACO Dionne issued Ms. Rosa Misdemeanor Summons #MB592682 for Violation of Restraint Order, C.G.S. §22-358, and Violation of City Restraint Order, §92.24 (City of Waterbury Code of Ordinances). Exs. W-4 and DO-2.
23. On July 10, 2013, WPD Supervising ACO Mark Ring (ACO Ring) issued a Disposal Order on Ms. Rosa’s dog “Rico”. Ex. W-5. ACO Ring has worked in the Waterbury Animal Control Division for fifteen and one half years, the last seven of which he has held the position of Supervising ACO. Tr. at page 48. Sgt. Harvey testified that “Rico” was removed from Ms. Rosa’s residence on May 30, 2013 because of the violation of the (previously issued) Restraint Order; because animal control felt “Rico” was definitely dangerous and did not feel that the owner at the time could control the dog; and they (animal control) opted to issue a Disposal Order. When asked again on direct

examination the reason for issuing a Disposal Order, Sergeant Harvey stated “for violation of the restraining order”. Tr. at pages 32-33. Supervising ACO Ring testified that the Disposal Order was issued because of the violation of the Restraint Order and the dog’s disposition. Tr. at page 48. When asked by the Hearing Officer, ACO Ring testified that he was pretty sure that one of his assistants would more than likely have also issued a Quarantine Order on “Rico” when he was brought into the pound at the time the Disposal Order was issued.<sup>4</sup> Tr. at page 54.

24. On Saturday, July 7, 2013, an incident occurred at the Waterbury pound in which “Rico” escaped from the kennel in which he was being kept and allegedly attempted to attack kennel worker Cari Delorenzo who, at the time, was working alone at the pound. According to testimony from Sgt. Harvey and statements made in WPD Activity Reports, “Rico” (Impound #595) escaped from his kennel through a guillotine door that he damaged by ripping the door out of its track. Once escaped, he was roaming the perimeter and Delorenzo sought safety by locking herself in another kennel. Delorenzo reported that “Rico” was going in and out of the kennels on each side of the one in which she was in and he was jumping up and trying to bite her through the fencing on the top of the four-foot concrete wall of the kennel. She telephoned Sgt. Harvey who then responded to the pound. In the meantime, Delorenzo was able to secure “Rico” in another Kennel. Tr. at pages 33-38 inclusive. Exs. W-6 and W-7. Sgt. Harvey testified that, in her opinion, “Rico” would have attacked Delorenzo if she had not sought safety by locking herself in another kennel. Tr. at pages 44-45.

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<sup>4</sup> The City presented no other evidence that a quarantine order was issued on the dog “Rico” when he was impounded as a result of the May 30, 2013 incident. Moreover, if the City did issue a quarantine order as a result of this incident, C.G.S. §22-358(c) does not provide the authority to do so because there is no evidence that “Rico” attacked or bit anyone.

25. ACO Ring testified that, from his observation of the damaged guillotine door from which “Rico” escaped, the door was bent and one of the tracks of the door was ripped out of the concrete wall allowing the door to swing free. In his opinion, the damage could only have occurred as a result of “Rico’s” pulling on the door with his teeth. Tr. at pages 49-51 inclusive. On cross examination, ACO Ring stated that he had not previously observed “Rico” doing damage to the door. Tr. at page 55. He further testified that the guillotine doors are inspected for security on a regular basis and that the tracks for the doors have been in place since the pound opened in June of 1999. Tr. at page 51-53.
26. Sgt. Harvey described “Rico’s” demeanor in the pound as mean and nasty and that he is a danger to pound employees who have instructions to be cautious around him. Tr. at pages 39-41 inclusive. On cross examination, Sgt. Harvey testified that, while at the pound after Cari Delorenzo’s call on July 7, 2013, she did not see any problem with the “Rico” nor did he harru or harass her. Tr. at page 42. ACO Ring testified that “Rico’s” behavior in the pound is aggressive toward him and his staff but that he could not say that “Rico is definitely dog aggressive. Tr. at page 56.
27. Sgt. Harvey testified that Ms. Rosa had not been to the Waterbury pound to see “Rico” nor had she called Waterbury Animal Control about him since August or September of 2013 but that she (Sgt. Harvey) had made no attempt to contact Ms. Rosa. Tr. at pages 39 and 43. Ms. Rosa testified that, because of an injury she suffered around the third week in August of 2013, she could no longer work causing her to lose her job; that her husband was deported; and, due to financial reasons, she and her three children moved to Puerto Rico to live with her mother in August of 2013 and that she returned to Hartford, Connecticut in December of 2014 and that she is currently employed. Tr. at pages 61-65

inclusive. On cross examination, Ms. Rosa testified that she was reluctant to contact Waterbury Animal Control after her return from Puerto Rico because she was afraid to hear the news that “Rico” was no longer alive. When asked if she cared about her dog, she stated that she cared a lot. Tr. at pages 92-93.

### ***III***

#### ***CONCLUSIONS OF LAW***

C.G.S. §22-358(c) provides that “[t]he commissioner, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may make any order concerning the restraint or disposal of any biting dog, cat or other animal as the commissioner or such officer deems necessary.” It further provides in §22- 358(c) that following a hearing on such order “the commissioner may affirm, modify or revoke such order as the commissioner deems proper.”

### ***IV***

#### ***DISCUSSION***

Acting under the authority of C.G.S. §22-358(c), the City of Waterbury (City) issued three orders on the dog “Rico” owned by Yadira Rosa (Ms. Rosa): (1) an off-premises, fourteen day Quarantine Order was issued on April 29, 2013, as a result of a bite incident that occurred on the same day; (2) a Restraint Order was issued on May 2, 2013 as a result of the same April 29, 2013 bite incident; and (3) a Disposal Order was issued on July 10, 2013 subsequent to a May 30, 2013 incident in which the dog “Rico” violated provisions of the previously issued Restraint Order.

Upon careful consideration of the entire record, including oral testimony and the exhibits of the parties, there is not sufficient evidence in the record to affirm the Disposal Order on the dog “Rico”.

C.G.S. §22-358(c)<sup>5</sup> provides discretionary authority to require a bite quarantine order to be served by the offending dog either on or off the premises of the owner if the bite incident occurred on the premises of the owner as did that of the bite to WPD Officer Gilbert on April 29, 2013. C.G.S. §22-358(c) states in part, “When any dog, cat or other animal has bitten a person on the premises of the owner or keeper of such dog, cat or other animal, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional

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<sup>5</sup> The full subsection provides as follows: “If such officer finds that the complainant has been bitten or attacked by such dog, cat or other animal when the complainant was not upon the premises of the owner or keeper of such dog, cat or other animal the officer shall quarantine such dog, cat or other animal in a public pound or order the owner or keeper to quarantine it in a veterinary hospital, kennel or other building or enclosure approved by the commissioner for such purpose. When any dog, cat or other animal has bitten a person on the premises of the owner or keeper of such dog, cat or other animal, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may quarantine such dog, cat or other animal on the premises of the owner or keeper of such dog, cat or other animal. The commissioner, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may make any order concerning the restraint or disposal of any biting dog, cat or other animal as the commissioner or such officer deems necessary. Notice of any such order shall be given to the person bitten by such dog, cat or other animal within twenty-four hours. The owner of such animal shall pay all fees as set forth in section 22-333. On the fourteenth day of such quarantine the dog, cat or other animal shall be examined by the commissioner or someone designated by the commissioner to determine whether such quarantine shall be continued or removed. Whenever any quarantine is ordered under the provisions of this section, notice thereof shall be given to the commissioner and to the person bitten or attacked by such dog, cat or other animal within twenty-four hours. Any owner or keeper of such dog, cat or other animal who fails to comply with such order shall be guilty of a class D misdemeanor. If an owner or keeper fails to comply with a quarantine or restraining order made pursuant to this subsection, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may seize the dog, cat or other animal to ensure such compliance and the owner or keeper shall be responsible for any expenses resulting from such seizure. Any person aggrieved by an order of any municipal animal control officer, the Chief Animal Control Officer, any animal control officer or any regional animal control officer may request a hearing before the commissioner within fourteen days of the issuance of such order. Any order issued pursuant to this section that requires the restraint of an animal shall be effective upon its issuance and shall remain in effect during any appeal of such order to the commissioner. After such hearing, the commissioner may affirm, modify or revoke such order as the commissioner deems proper. Any dog owned by a police agency of the state or any of its political subdivisions is exempt from the provisions of this subsection when such dog is under the direct supervision, care and control of an assigned police officer, is currently vaccinated and is subject to routine veterinary care. Any guide dog owned or in the custody and control of a blind person or a person with a mobility impairment is exempt from the provisions of this subsection when such guide dog is under the direct supervision, care and control of such person, is currently vaccinated and is subject to routine veterinary care.

animal control officer may quarantine such dog, cat or other animal on the premises of the owner or keeper of such dog, cat or other animal.” Therefore, the City acted within the statutory authority of C.G.S. §22-358(c) in removing “Rico” from the owner’s premises and requiring that the fourteen-day quarantine to be served at the Waterbury pound instead of being served on the owner’s premises.

The City also acted within the statutory authority of C.G.S. §22-358(c) when issuing the Restraint Order on “Rico” May 2, 2013. C.G.S. §22-358(c) states in part, “The commissioner, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may make any order concerning the restraint or disposal of any biting dog, cat or other animal as the commissioner or such officer deems necessary.” The Restraint Order on “Rico” remains in place because there is no evidence in the record that it was revoked by the City after the Disposal Order was issued.

C.G.S. §22-358(c) authorizes the issuance of disposal orders but the basis on which the City made the decision to issue the Disposal Order on “Rico” on July 10, 2013 is at issue. First, the City issued the Disposal Order in response to the May 30, 2013 incident in which “Rico” violated provisions of the previously issued Restraint Order and was roaming. As cited above, C.G.S. §22-358(c) provides that any order may be made concerning the restraint or disposal of any biting dog. However, none of the evidence presented relative to the May 30, 2013 incident reveals that “Rico” bit anyone even though his actions while roaming may have appeared to be menacing according to witness accounts described in the WPD case report of the incident. The one and only bite documented in the evidence committed by “Rico” was that to WPD Officer Gilbert on April 29, 2013. Sgt. Harvey and ACO Ring testified that a decision was made to issue a Disposal Order on “Rico” because of the violation of the Restraint Order and it was felt that his

disposition made him dangerous. Sgt. Harvey also stated that (Waterbury) animal control felt that the owner at the time could not control the dog.

A second concern is the fact that C.G.S. §22-358(c) does not specifically provide authority to issue a disposal order on a dog as a means of redress solely for violation of a restraint order. In addition, there is no evidence that the City, at any time, informed “Rico’s” owner Yadira Rosa that a violation of the Restraint Order, not involving a bite incident, would result in a Disposal Order being issued nor did the evidence show that there was any written agreement or stipulation in place between the City and the owner that would provide for such.

The City had alternative means available to redress the violation of the Restraint Order, short of issuing the Disposal Order. Instead it issued the Disposal Order along with seizing the dog “Rico” and issuing Ms. Rosa a class D misdemeanor summons both pursuant to C.G.S. §22-358(c).<sup>6</sup> C.G.S. §22-358(c) states in part, “If an owner or keeper fails to comply with a quarantine or restraining order made pursuant to this subsection, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may seize the dog, cat or other animal to ensure such compliance”. It also states in part, “Any owner or keeper of such dog, cat or other animal who fails to comply with such order shall be guilty of a class D misdemeanor”.

Two other means of redress, in addition to seizing the offending dog and issuing a misdemeanor summons pursuant to C.G.S. §22-358(c), were available to the City for violation of the Restraint Order, short of issuing a Disposal Order on “Rico”, which are authorized in

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<sup>6</sup> For violation of the Restraint Order issued pursuant to C.G.S. §22-358(c), the City also charged Yadira Rosa with a municipal infraction for violation of §92.24 (B), *Restraint of Vicious and Dangerous Dogs*, of the City of Waterbury Code of Ordinances.

C.G.S. §22-363<sup>7</sup>, *Nuisance*, and C.G.S. §22-364<sup>8</sup>, *Dogs Roaming at Large*. The City did not, however, cite Ms. Rosa for violations of these two statutes.

The City presented evidence in support of its assertion that “Rico” is a sufficient danger to the public to warrant the issuance of a Disposal Order. The City did so by citing two incidents involving “Rico” that occurred at 29 James St.; one incident that occurred at the Waterbury pound; and observations made by animal control personnel of “Rico’s” behavior while housed at the Waterbury pound.

The first incident cited by the City was that in which Officer Gilbert was bitten by “Rico” while on the premises of the dog’s owner at 29 James St. on April 29, 2013. From the evidence, it is reasonable to conclude that “Rico” bit Officer Gilbert in response to what he sensed as a threat to the family members with whom he lived and his territory. Already agitated by the noise and commotion made by the police officers trying to gain entry to the residence, it is the opinion of this Hearing Officer that “Rico” likely perceived Officer Gilbert as an immediate threat, especially to Ms. Rosa’s daughter, once the officer appeared in the opened door. When Officer

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<sup>7</sup> Sec. 22-363. Nuisance. No person shall own or harbor a dog or dogs which is or are a nuisance by reason of vicious disposition or excessive barking or other disturbance, or, by such barking or other disturbance, is or are a source of annoyance to any sick person residing in the immediate vicinity. Violation of any provision of this section shall be an infraction for the first offense and a class D misdemeanor for each subsequent offense and the court or judge may make such order concerning the restraint or disposal of such dog or dogs as may be deemed necessary.

<sup>8</sup> Sec. 22-364. Dogs roaming at large. Intentional or reckless subsequent violation. (a) No owner or keeper of any dog shall allow such dog to roam at large upon the land of another and not under control of the owner or keeper or the agent of the owner or keeper, nor allow such dog to roam at large on any portion of any public highway and not attended or under control of such owner or keeper or his agent, provided nothing in this subsection shall be construed to limit or prohibit the use of hunting dogs during the open hunting or training season. The unauthorized presence of any dog on the land of any person other than the owner or keeper of such dog or on any portion of a public highway when such dog is not attended by or under the control of such owner or keeper, shall be prima facie evidence of a violation of the provisions of this subsection. Violation of any provision of this subsection shall be an infraction.

(b) Any owner or keeper of any dog who, knowing of the vicious propensities of such dog and having violated the provisions of subsection (a) of this section within the preceding year, intentionally or recklessly violates the provisions of subsection (a) of this section shall be fined not more than one thousand dollars or imprisoned not more than six months, or both, if such dog, while roaming at large, causes physical injury to another person and such other person was not teasing, tormenting or abusing such dog.



Gilbert escaped “Rico’s” grasp and retreated, “Rico” did not pursue him further to continue the attack and he responded to the owner’s commands.

The second incident cited by the City occurred on May 30, 2013 in which “Rico” violated the previously issued Restraint Order by jumping out of the second floor window of Ms. Rosa’s residence at 29 James St. apparently in response to a commotion outside made by individuals having a fist fight. Ms. Rosa was outside at the time and her youngest daughter was walking up the street returning from the store. Based on Ms. Rosa’s testimony, it appears that “Rico” jumped from the second floor window because he saw either Ms. Rosa, her daughter or both of them while the commotion was taking place. The City presented evidence that “Rico” was chasing people and that one neighbor stated that another neighbor was blocked by “Rico” from entering their house. However, investigating officers could not locate or identify the neighbor in question who was allegedly blocked by “Rico” from entry into their house. There is no evidence that “Rico” bit anyone during this incident, and Ms. Rosa testified that “Rico” responded to her commands.

A third incident cited by the City in support of its assessment that “Rico” is a sufficient danger to the public to warrant the issuance of a Disposal Order occurred at the Waterbury pound on July 7, 2013 and after the issuance of the Disposal Order. The City presented evidence that “Rico” escaped from the kennel in which he was housed through a guillotine door that he damaged by biting and pulling on it. Once he escaped, he then tried to attack Cari Delorenzo. Again, there was no evidence relative to this incident that “Rico” bit anyone and Sgt. Harvey testified that, after she arrived at the pound on that day in response to a call from Delorenzo, she did not have any problem with “Rico” nor did he harru or harass her. It is the opinion of this Hearing Officer that “Rico” had ample opportunity to bite Cari Delorenzo, even though she took

evasive and protective actions, had he chosen to do so.

Finally, the City presented Sgt. Harvey's and ACO Ring's observations of "Rico's" behavior while housed at the Waterbury pound as evidence. Sgt. Harvey described "Rico's" demeanor as mean and nasty and said that he is a danger to pound employees. ACO Ring stated that "Rico's" behavior in the pound is aggressive toward him and his staff but he could not say if "Rico" is definitely dog aggressive. The degree to which "Rico's" behavior in the pound is altered by his confinement and being separated from familiar surroundings is unknown. In this Hearing Officer's opinion, therefore, "Rico's" behavior in the pound, considered alone is not a substantially reliable indicator in determining the level of danger he presents to the public.

In summary, the City issued a Restraint Order on the dog "Rico" as a result of him biting a police officer when the officer entered the owner's residence on April 29, 2013. An incident occurring on May 30, 2013, in which there was no evidence of a bite but the Restraint Order was violated, gave rise to the City issuing a Disposal Order on "Rico". The City presented testimony and other evidence relative to "Rico's" behavior and demeanor and the owner's ability to control the dog in support of its assessment that a Disposal Order is necessary to protect the public. The owner, Yadira Rosa, through her own testimony which this Hearing Officer found to be forthright and credible, stated that "Rico" had undergone behavioral training and that she is willing to pursue further training; that he responds to her commands; and that his behavior cited in the incidents giving rise to the Restraint and Disposal Orders, including that associated with the bite to Officer Gilbert, was that of a protective nature but not of a vicious nature. It is the opinion of this Hearing Officer, that "Rico's" behavior was that of an innate protective nature but not that of a vicious nature when he bit Officer Gilbert and when he violated the Restraint Order. If he had exhibited a vicious behavior in either incident, he likely would have pursued Officer

Gilbert to continue the attack and he would have bitten those who he allegedly chased after jumping from the second floor window of the residence.

V

***PROPOSED FINAL DECISION***

After consideration of testimony and exhibits presented by the parties, I recommend that the final decision maker in this matter *revoke* the Disposal Order issued by the City of Waterbury on the dog named “Rico” owned by Yadira Rosa.

Dated:  
February 6, 2015



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Bruce A. Sherman, DVM, MPH  
Hearing Officer