

January 24, 2019

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V18008733**

AMY SUE RIOUX

Animal Services Enforcement Appeal

Activity no.: A18005100

Appellants: **Amy and Dominic Rioux**
21122 NE 115th Street
Redmond, WA 98053
Telephone: (818) 472-0739
Email: amysuerioux@gmail.com

King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
21615 64th Avenue S
Kent, WA 98032
Telephone: (206) 263-5968
Email: raskcappeals@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal as to violation; reduce penalty; modify compliance order

EXAMINER PROCEEDINGS:

Hearing Opened:	January 9, 2019
Hearing Closed:	January 9, 2019

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, the examiner hereby makes the following findings, conclusions, and decision.

FINDINGS AND CONCLUSIONS:

Overview

1. Regional Animal Services of King County (Animal Services) served a violation notice on Amy Rioux, asserting that her dog, Roscoe, was trespassing and qualifies as vicious. We uphold the viciousness designation, reduce the monetary penalty, and modify the confinement order to allow the Rioux to continue taking Roscoe to off leash dog parks.

Background

2. According to next-door neighbor Amanda Copeland, she was inside while her young girls had the family puppy out in their yard. She heard the girls scream, and came out to see Roscoe on top of the puppy. Roscoe then ran off. Ms. Copeland watched the girls go into the fenced area, which contains their garden and chicken coop. Ex. 3 at 003.
3. Ms. Copeland later heard the girls screaming again, and saw that Roscoe had gotten into that fenced area. Her eight-year-old had a chicken in her hand, and Roscoe grabbed the chicken out of the child's hand. Ms. Copeland came out and, as she and the gardener tried to corral Roscoe, Roscoe dropped the chicken and exited the fenced area. Roscoe went around the back of the area, to a point where the garden fence is conterminous with the coop fencing, got through, grabbed the same chicken, and ran into the woods.¹ She heard disturbing noises from that direction that sounded like Roscoe killing the chicken. The chicken did not make it back alive. She is nervous to let her young children and puppy out.
4. Ms. Rioux explained that they frequently take Roscoe to the dog park, without incident. Roscoe is good with children. Similarly, Roscoe has been at dog daycare, also without incident. They have gone out of their way to contain Roscoe, including spending thousands of dollars on fencing and, post-incident, keeping Roscoe in his kennel unless they are home. On the date in question, they were out of town, and the dog sitter did not understand the difference between Roscoe's electric fence collar versus his bark collar. She described the Copelands' chickens as having been free range, and having come into the Rioux yard on previous occasions.
5. Animal Services issued a notice of violation and order to comply, asserting that Roscoe was trespassing and was vicious. Ex. 6. KCC 11.04.230.H deems a nuisance: "Any animal that has exhibited vicious propensities and constitutes a danger to the safety of persons or property off the animal's premises or lawfully on the animal's premises." And KCC

¹ The coop shares two walls with the garden area.

11.04.020.BB defines “vicious” as: “having performed the act of, or having the propensity to do any act, endangering the safety of any person, animal or property of another, including, but not limited to, biting a human being or attacking a human being or domesticated animal without provocation.”

6. Ms. Rioux did not dispute the trespass, but did challenge the viciousness determination, asserting that Roscoe had been provoked and that he did not otherwise meet the viciousness criteria. Ex. 7.

Analysis

7. Unless directed to by law—and no special directive applies to today’s case—the examiner does *not* grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. For those matters or issues raised in an appeal statement, Animal Services bears “the burden of proving by a preponderance of the evidence both the violation and the appropriateness of the remedy it has imposed.” KCC 20.22.080.G; .210. Here, Animal Services bears the burden of showing, by a preponderance of the evidence, that Roscoe’s action was unprovoked. *Morawek v. City of Bonney Lake*, 184 Wn. App. 487, 495, 337 P.3d 1097, 1101 (2014).
8. Ms. Rioux alleges that the Copelands have not contained their chickens, as required by law, but instead allow them to roam free in their backyard. She asserts this was a code violation and provoked Roscoe. Ex. 7.
9. “Provocation” is a staple of animal jurisprudence, and numerous courts that have analyzed the term in depth have noted that although dictionary definitions of “provocation” can be quite broad, the term applies more narrowly in the dog bite context. Otherwise, animal control ordinances “could be interpreted to mean that provocation exists whenever any external stimulus has precipitated the attack or injury by an animal, *i.e.*, whenever the animal’s actions are not completely spontaneous.” *Robinson v. Meadows*, 203 Ill. App. 3d 706, 710, 561 N.E.2d 111 (1990). Thus, as the overwhelming majority of courts apply “provocation” in dog cases, “[n]ot every occurrence that stimulates a dog to bite an individual should be a defense.” *Stroop v. Day*, 271 Mont. 314, 318, 896 P.2d 439 (1995). An action that merely stimulates or excites a dog, without more, cannot qualify as “provocation.” *Engquist v. Loyas*, 787 N.W.2d 220, 225 (Minn. 2010), *aff’d in relevant part*, 803 N.W.2d 400 (Minn. 2011). A roving chicken might stimulate a response, but that does not equate to “provocation.”
10. Moreover, provocation requires the dog’s reaction to be *proportional* to the victim’s act. *Bradacs v. Jacobone*, 244 Mich. App. 263, 273–75, 625 N.W.2d 108 (2001); *Kirkham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000); *Stroop*, 271 Mont. at 319. Ours is not the scenario where, for example, Roscoe merely chased a free-ranging chicken in some sort of one-sided game. Instead Roscoe twice grabbed, carried off, and very likely killed the chicken.
11. Lack of legal provocation is even more clear-cut here because the chickens were not out roaming at the time of the attack. Roscoe attacked while the chickens were in a fenced garden area. The chicken Roscoe selected as his victim was further confined by *the*

Copeland daughter's hand at the time Roscoe first bit it. And it was in its confined space when Roscoe reached through the fence, grabbed it, and ran to the woods, where Roscoe most likely killed it. Roscoe was not “provoked.”

12. However, while Roscoe’s attack on the chicken was not provoked, it was not an attack on a “domesticated animal.” Because of the how the “domesticated animal” definition reads, a chicken does not qualify.² Thus, the portion of the definition that calls out “attacking a...domesticated animal without provocation” as an example of behavior that definitively rises to “vicious,” is inapplicable.
13. We thus probe whether Roscoe “performed the act of...endangering the safety of any person, animal or property of another.” KCC 11.04.020.BB. We analyze not a single, split-second event, but a series. Roscoe got after the Copelands’ puppy, then came back to the property after being run off, chased the chickens in the fenced area, snatched a chicken from a young child’s hand, was chased out again, circled back again, snatched the chicken from its enclosure, dragged it off, and likely killed it. Taken together, Roscoe meets the definition and constitutes a danger. We sustain the violation.
14. As to the penalty amount, the Rioux have spent significantly on fencing. Post-incident they have kept Roscoe in his kennel when they are away. Ms. Copeland confirmed that they have not seen Roscoe on their property since October. In past scenarios where an owner showed that the animal did something despite (not due to a lack of) the owner’s actions and/or where the owner took responsible steps after the violation to avoid a recurrence, we have reduced the otherwise applicable penalty. We do so again today.
15. As to the implications of the violation, Ms. Rioux expressed concern with the bar against taking Roscoe to an off-leash dog park, and with potential complexities finding dog services for a dog with a viciousness designation. We cannot command a private care provider to do or not do something, but we have jurisdiction over the restriction in Animal Services’ confinement order that would preclude Roscoe from running at an off-leash park. The Rioux have taken Roscoe to dog parks numerous times, incident-free. We have observed in countless past case that a dog that behaves unacceptably when unsupervised behaves just fine in the calming presence of its owner. We amend the terms of compliance in Animal Services’ order to allow the Rioux to continue taking Roscoe to the off leash park.

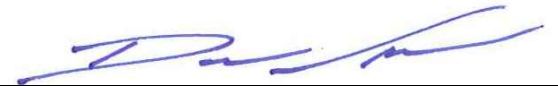
DECISION:

1. The appeal is **DENIED** as to the trespass and viciousness violations.
2. The applicable penalty is **REDUCED** to \$200, provided the Rioux pay this amount to Animal Services by **March 25, 2019**.

² https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2018/2018%20may/V18007754_De_Cassis_Updated.ashx?la=en (analyzing a Bellevue definition identical to KCC 11.04.020.G).

3. Animal Services' October 11, 2018, compliance order is MODIFIED as follows (A. through D. being substantively unchanged, and E. being new):
 - A. Secure Roscoe in a fenced area suitable for his size when unattended and outside the home. Lock all passages with a padlock to prevent accidental release.
 - B. Restrain Roscoe using a leash no more than eight feet long, with a collar or harness, when taking him off your property. A competent and capable person must handle Roscoe at all times when attended outside.
 - C. If not already completed, microchip Roscoe and provide the microchip number to the King County Animal Licensing Office (206) 296–2712 by **March 25, 2019**.
 - D. Keep Roscoe current on his rabies vaccination.
 - E. Roscoe may run in sanctioned off-leash dog parks, provided an adult Rioux is present, and provided Roscoe is leashed at all times when he is not in the car or in the fenced, off-leash area.

ORDERED January 24, 2019.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *February 25, 2019*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

MINUTES OF THE JANUARY 9, 2019, HEARING IN THE APPEAL OF AMY SUE RIOUX, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V18008733

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Sergeant Chelsea Eykel, Amanda Copeland, and Amy Rioux.

The following exhibits were offered and entered into the record:

- | | |
|---------------|---|
| Exhibit no. 1 | Regional Animal Services of King County staff report to the Hearing Examiner |
| Exhibit no. 2 | Online complaint form of October 4, 2018 incident by Erik and Amanada Copeland, dated October 5, 2018 |

Exhibit no. 3	Text message with photographs of property from Erik Copeland
Exhibit no. 4	Photograph of dog
Exhibit no. 5	RASKC investigation report no. A18005100
Exhibit no. 6	Notice of violation no. V18008733, issued October 11, 2018
Exhibit no. 7	Appeal, received October 30, 2018
Exhibit no. 8	Aerial photograph of neighborhood

DS/ld

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V18008733**

AMY SUE RIOUX

Animal Services Enforcement Appeal

I, Liz Dop, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED January 24, 2019.



Liz Dop
Legislative Secretary

Copeland, Erik and Amanda

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Rioux, Amy and Dominic

Hardcopy