

January 3, 2019

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
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hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V18008773**

KRISTINE TOWNS-VON STAUBER

Animal Services Enforcement Appeal

Activity no.: A18005304

Appellants: **Kristine and Leon Towns-von Stauber**
16518 Fremont Avenue N
Shoreline, WA 98133
Telephone: (206) 533-9036
Email: leonvs@occam.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:

EXAMINER PROCEEDINGS:

Hearing Opened: December 12, 2018
Hearing Closed: December 12, 2018

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:

1. The hearing regarding the above matter was held on December 12, 2018. Kristine and Leon Towns-von Stauber were in attendance. The complaining party, Complainant¹ was not present. Neither of the Towns-von Staubers witnessed the incident, thus there were no witnesses present at the hearing.
2. Lack of a present complainant is not always fatal to a claim. Reliable hearsay is admissible evidence in administrative hearings. Complainant's written testimony and the testimony of Regional Animal Services of King County (RASKC) is bolstered by the fact that the Towns-von Staubers were not witnesses to the event and were only able to offer hearsay evidence themselves. Further, the Towns-von Staubers did not dispute that the incident occurred or that Complainant sustained an injury on their property.
3. On October 17, 2018, Mr. Leon Towns-von Stauber was at home with his daughter, Serina, their dog, "Sandy," and Serina's friend, Karen.
4. Karen ordered food from Door Dash, which Complainant delivered to the Towns-von Stauber residence. Neither Mr. Towns-von Stauber nor Serina were present by the front door to witness the incident. The only witnesses to the incident were Complainant and Karen.
5. Karen and Complainant spoke at the door for an extended period of time, which visibly agitated "Sandy" and resulted in "Sandy" biting Complainant's leg. Complainant received puncture wounds and torn jeans as a result of the bite. (Exhibit 4)
6. Mr. and Mrs. Towns-von Stauber did not dispute that "Sandy" bit Complainant and Mrs. Towns-von Stauber stated at the hearing that she "regrets the puncture wound occurred from the bite." However, she claimed Complainant provoked "Sandy" by "reaching for her."
7. Pursuant to King County Code (KCC) 20.22.040(M), the Hearing Examiner has jurisdiction to hear and decide this appeal. RASKC bears the burden of showing, by a preponderance of the evidence, that the animal's action was unprovoked.

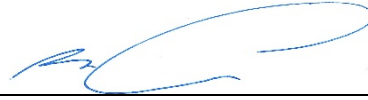
¹ Complainant requested we remove his name from the online report.

8. KCC 11.04.180 provides that “all violations of this chapter...are public nuisances.” KCC 11.04.230 provides as one definition of nuisance:
 - H. Any animal that has exhibited vicious propensities and constitutes a danger to the safety of persons...lawfully on the animal's premises....
9. The lawfulness of a person’s presence on another’s property depends on whether he or she is an invitee, licensee, or a trespasser. See, e.g., *Oliver v. Cook*, 194 Wn. App. 532, 544, 377 P.3d 265 (2016). “A person is an invitee if he or she is a business visitor invited on the property to conduct business with the possessor of the land.” *Smith v. Stockdale*, 166 Wn. App. 577, 568, 271 P.3d 917 (2012). Complainant was lawfully present on the animal’s premises because he was invited onto the Towns-von Stauber property to deliver food there.
10. KCC 11.04.020 defines “vicious” as:
 - ...having performed the act of... endangering the safety of any person, animal or property of another, including but not limited to, biting a human being... without provocation.
11. Chapter 11.04 KCC does not define “provocation.” However, KCC 11.04.020 provides that:
 - ...in construing this chapter, except where otherwise plainly declared or clearly apparent from the context, words shall be given their common and ordinary meaning.
12. The Court of Appeals has provided the definition of “provocation” as “the act of inciting another to do something, or something that affects a person's reason or self-control” as the standard in a dog-bite case. *Morawek v. City of Bonney Lake*, 184 Wn. App. 487, 493, 337 P.3d 1097 (2014) (citing Black's Law Dictionary (9th ed. 2009)). See also, Black’s Law Dictionary (10th ed. 2010).
13. Because the definition of the term is very broad, a majority of courts have applied the rule that “[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).
14. The act of delivering food to the Towns-von Stauber residence, as Complainant was invited to do, is not an “act of inciting another to do something.”
15. Reaching one’s hand out to pet a dog typically does not constitute “provocation.” See, *State v. Ruisi*, 9 Neb. App. 435, 443, 616 N.W.2d 19 (2000).
16. Even if Complainant did, in fact, try to pet “Sandy,” such act does not consist of provocation and “Sandy” fits the definition of a vicious animal as defined in KCC 11.04.020.

DECISION:

The vicious animal violation and NVOIC to comply regarding “Sandy” are hereby upheld.

ORDERED January 3, 2019.



Michael McCarthy
Hearing Examiner pro tem

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 4, 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 DECEMBER 12, 2018, HEARING IN THE APPEAL OF
KRISTINE TOWNS-VON STAUBER, REGIONAL ANIMAL SERVICES OF KING
COUNTY FILE NO. V18008773**

Michael McCarthy was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel and Kristine and Leon Stauber.

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 | Complaint form of date October 17, 2018, incident by Complainant, dated October 18, 2018 |
| Exhibit no. 3 | RASKC investigation report no. A18-005304-01 |
| Exhibit no. 4 | Photographs |
| Exhibit no. 5 | Animal Quarantine Notice, issued October 20, 2018 |
| Exhibit no. 6 | Notice of violation no. V18008773, issued October 22, 2018 |
| Exhibit no. 7 | Appeal, received November 8, 2018 |

MM/vsm

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V18008773**

KRISTINE TOWNS-VON STAUBER

Animal Services Enforcement Appeal

I, Vonetta Mangaoang, 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 3, 2019.

Vonetta Mangaoang

Vonetta Mangaoang
Senior Administrator



Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Towns-von Stauber, Kristine/Leon

Hardcopy