

March 4, 2019

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V19008987**

JOEL JONATHAN ORTIZ
Animal Services Enforcement Appeal

Activity no.: A19000116

Appellants: **Joel Ortiz and Zachary Kasun**
714 E Pike Street Unit 416S
Seattle, WA 98122
Telephone: (512) 783-7541
Email: kasun.zachary@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, but withdraw rabies violation
Examiner's Decision:	Deny appeal and withdraw rabies violation

EXAMINER PROCEEDINGS:

Hearing Opened:	February 20, 2019
Hearing Closed:	February 20, 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.

1. Joel Ortiz was issued a Notice and Violation and Order to Comply (NVOC) on January 7, 2019, for violations that occurred on January 5, 2019.
2. On January 5, Complainants Derek and Elicia Bledsoe were hiking with their leashed dog, "Bravo," at Harvey Manning Park in Issaquah, WA.
3. An off-leash black lab type dog, later identified as Mr. Ortiz's dog "Pickle," attacked "Bravo." As Ms. Bledsoe attempted to pick up "Bravo," "Pickle" knocked her to the ground and bit Ms. Bledsoe's arm hard enough to leave visual bruising through her heavy coat.
4. Mr. Ortiz does not dispute that "Pickle" was off leash, but claims that "Pickle" was provoked by "Bravo." There is no evidence in the record to suggest provocation was present, and Mr. Ortiz was not a witness to the incident.
5. Mr. Ortiz was issued an (NVOC): for one count of Running at Large, 1st offense (KCC 11.04.230(b)); for one count of Running at Large at a Park or School, 1st offense (KCC 11.04.230(c)); and declaring "Pickle" a vicious animal (KCC 11.04.230(h)).
6. Pursuant to KCC 20.22.040(M), the Hearing Examiner has jurisdiction to hear and decide this appeal. Regional Animal Services of King County (RASKC) bears the burden of showing, by a preponderance of the evidence, that the animal's action was unprovoked.
7. 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."
8. KCC Chapter 11.04 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."
9. 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).
10. 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).

11. “Pickle” endangered the safety of Ms. Bledsoe and “Bravo” by attacking “Bravo” and biting Ms. Bledsoe on the arm, meeting the definition of a vicious animal.
12. There is nothing provided in the record to indicate that “Pickle” was provoked in any way prior to the attack, and Mr. Ortiz did not witness the incident.
13. RASKC was able to prove by a preponderance of the evidence that “Pickle’s” actions were in violation of KCC sections 11.04.230(b), 11.04.230(c), and 11.04.230(h).

DECISION:

Mr. Ortiz’s appeal is DENIED. He must pay all fines associated the above violations of KCC and comply with any ownership requirements for a vicious animal.

ORDERED March 4, 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 *April 3, 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 FEBRUARY 20, 2019, HEARING IN THE APPEAL OF JOEL JONATHAN ORTIZ, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V19008987

Michael McCarthy was the Hearing Examiner in this matter. Participating in the hearing were Sgt. Chelsea Eykel, Elicia Leivia, Derek Bledsoe, Joel Ortiz, and Zachary Kasun.

The following exhibits were offered and entered into the record:

Department-Offered Exhibits

Exhibit no. 1	Regional Animal Services of King County staff report to the Hearing Examiner
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- Exhibit no. 2 Online complaint form of January 5, 2019 incident by Derek Bledsoe, dated January 5, 2019
- Exhibit no. 3 RASKC investigation report no. A19000116
- Exhibit no. 4 Photographs of park property and injuries
- Exhibit no. 5 Map of park property
- Exhibit no. 6 Notice of violation no. V19008987, issued January 8, 2019
- Exhibit no. 7 Postal service tracking information no. 70173380000047741419
- Exhibit no. 8 Appeal, received January 10, 2019
- Exhibit no. 9 Health certificate for interstate travel of dogs and cats for Pickle by Zippi Vet, dated January 18, 2018
- Exhibit no. 10 Photographs of park property and injuries

Appellant-Offered Exhibits

- Exhibit no. A Health certificate for interstate travel of dogs and cats for Pickle by Zippi Vet, dated January 18, 2018
 Photograph of Pickle's injury
- Exhibit no. B Photographs of Pickle's injuries

MM/ld

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V19008987**

JOEL JONATHAN ORTIZ
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 March 4, 2019.



Liz Dop
Legislative Secretary

Derek Bledsoe, Elicia Leivia

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Joel Ortiz, Zachary Kasun

Hardcopy