

December 6, 2019

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

King County Courthouse  
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Seattle, Washington 98104  
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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V19009666**

**ANUJ BANSAL**

Animal Services Enforcement Appeal

Activity no.: A19004676

Appellant: **Anuj Bansal**

[REDACTED]  
Sammamish, WA 98074

Telephone: [REDACTED]

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King County: Regional Animal Services of King County  
*represented by* **Shelby Russell**  
Regional Animal Services of King County  
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**FINDINGS AND CONCLUSIONS:**

Overview

1. On July 29, Anju Bansal's dog, Nandi, escaped off the Bansal property and accosted Terry McGuire for about 10 to 15 seconds, threatening her, but not actually making contact. Animal Services cited Nandi for running at large and viciousness. Mr. Bansal appealed. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the

relevant law, we sustain the running at large violation and overturn the viciousness designation; Nandi's behavior on July 29 comes perilously close to, but does not quite meet, the criteria.

### Legal Standard

2. The County 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.

KCC 11.04.020.BB. And KCC 11.04.230.H declares as 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.”

3. Our state's system, employed in most other local jurisdictions, has two tiers. “Dangerous” requires something like inflicting “severe injury” (meaning broken bones or disfiguring lacerations) on a person or killing a domestic animal—significantly more than the County's “vicious” criteria. RCW 16.08.070(2). Conversely, the state's “*potentially dangerous*” designation covers, among other items, a dog that chases or approaches a person “in a menacing fashion,” RCW 16.08.070(1), a lower threshold than the County's “vicious” criteria. The County, unfortunately, has only a single tier. A dog is either “vicious” or it is nothing.
4. We have not required an actual bite to sustain a viciousness designation, given the “including, but not limited to” language in the County definition. However, we have consistently required something more than just the chase-or-approach-a-person-in-a-menacing-fashion behavior that would be sufficient to sustain a potentially dangerous dog designation under the state's two-tiered system. Our viciousness rulings have tracked RCW 9A.28.020, which includes in the definition of “criminal attempt” the requirement that the accused perform some “act which is a substantial step toward the commission of that crime”—here, some step towards actual contact, not just proximity.
5. Turning to some examples, in one appeal the dog lunged at the complainant, but the complainant swatted the dog's head away. In another, the complainant fended off the dog's advances with some firewood he had been chopping. In both those scenarios, the dog had not just gotten close and barked aggressively, it had actually made a move to bite the complainant. We upheld both those viciousness designations. To use a human-on-human scenario, getting up in another person's grill while shouting threats would not be enough. Conversely, taking a swing—even if the swing does not connect—would be.

6. In addition, meeting the KCC 11.04.020.BB definition is only the *first* requirement for upholding a viciousness designation. In addition to the backwards-looking having “exhibited vicious propensities” (i.e., having performed an act endangering safety) there is also a forward- or at least current-looking requirement that the dog “constitutes a danger to the safety of persons or property.” KCC 11.04.230.H (underline added). Where the animal has *already* bit a person, appellants have had extremely low success rate arguing to us that because their dog is normally so friendly and well-behaved, the dog will not bite again and we should overturn the viciousness designation.<sup>1</sup> But those are scenarios where the dog *already* bit (or at least attempted to bite) somebody.
7. We are especially wary of upholding a viciousness designation on something less than actual or attempted violence because the consequences of a viciousness designation are stark. An animal declared vicious may “only” be kept in the County upon compliance with all the requirements prescribed by Animal Services (here, those set forward in Animal Services’ July 29 order). KCC 11.04.290.A.1. A failure to comply with *any* of those requirements can result in removal of the animal from the County. *Id.* at A.3. That is true even if there is no second act of aggression. So, for example, if Mr. Bansal did not padlock a fence and Nandi later got out, Nandi could be removed from the County, even if the subsequent incident involved nothing more than Nandi wandering onto a neighbor’s property and wagging his tail. That “one more strike and you’re out” approach may make sense for a dog who committed (or at least attempted to commit) a violent act, but not where the incident that prompted the viciousness designation was simply the dog invading personal space and barking aggressively.

### Analysis

8. We now turn to the evidence. We found Ms. McGuire extremely credible. Her written complaint stated that Nandi “was jumping up at me, trying to bite me. I basically put my foot in its face to hopefully keep it from biting me.” Ex. 4 at 003. That sounds very much like the attempted violence we noted above typically has been sufficient to sustain a viciousness designation—the dog trying to bite, and the intended victim staying it off.
9. However, to her credit Ms. McGuire was thoughtful and circumspect in her hearing testimony. In answering whether Nandi was *actually* trying to bite her, she gave a very measured response. Nandi was aggressively barking at her, and it was a “possibility” that Nandi might bite her. Had Nandi kept accosting her for 5 to 10 minutes, she “felt” that a bite definitely could have happened. (Instead, the Bansal child retrieved Nandi within, in her estimation, 10-15 seconds.) She clarified that she “assumed” Nandi was trying to bite her and that she “felt” like a bite was Nandi’s intent. However, she was candid that she could not recall if Nandi was actually trying to chomp down on her.

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<sup>1</sup> We certainly could construct a hypothetical where we would not sustain a viciousness designation even for an unprovoked bite. Suppose someone is blowing soap bubbles to a girl and a dog. The dog and girl are chasing the bubbles to pop them, the girl with her hand, the dog with his mouth. At some point they both lunge for the same bubble, with her hand reaching it just as his mouth clamps down on both hand and bubble. The dog “bit[] a human being...without provocation,” but we would not find (absent other facts) that the dog “constitutes a danger.”

10. There is no question that Ms. McGuire felt threatened. In fact, we took Mr. Bansal to task at hearing for his offensive question to her of why she felt threatened. Of course she felt threatened by an aggressive dog charging at her and invading her personal space, barking madly. What reasonable person would not? But a viciousness designation is not a proxy for how the *owner* stacks up. That Mr. Bansal behaved obnoxiously and appeared to be in a state of denial says nothing about whether *Nandi* meets the viciousness criteria. Nor does the fact that Nandi would qualify as a “potentially dangerous” dog, if the County had that designation available, mean that Nandi qualifies as “vicious” under the system we currently have.
11. Ms. McGuire accurately summed it up that it was a “pretty fine line” with whether Nandi was actually trying to get at her. And when we explained the legal criteria for a County viciousness designation (as opposed to the state’s two-tiered system), she commented that her complaint was not aimed at earning Nandi a viciousness determination. Instead, she just wanted to keep it from happening again.
12. In the end, to go back to our human-on-human scenario, we think the July 29 incident was closer to a person getting up in someone else’s face and shouting threats, than it was to that person taking a swing. Animal Services did not quite meet its burden of proof, and we overturn the viciousness designation.

#### DECISION

1. We deny Mr. Bansal’s appeal as to the running at large violation. Mr. Bansal shall pay the \$50 penalty to Animal Services by **January 6, 2020**.
2. We grant Mr. Bansal’s appeal as to the viciousness violation.

ORDERED December 6, 2019.



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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 *January 6, 2020*. 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 NOVEMBER 20, 2019, HEARING IN THE APPEAL OF ANUJ BANSAL, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V19009666**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Shelby Russell, Terri McGuire, and Anuj Bansal. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

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 | Notice of violation no. V19009666, issued August 1, 2019                              |
| Exhibit no. 3 | RASKC investigation report no. A19004676  |
| Exhibit no. 4 | Online Complaint form of July 29, 2019 incident by Terri McGuire, dated July 30, 2019 |
| Exhibit no. 5 | E-mail from Terri McGuire, dated July 31, 2019  |
| Exhibit no. 6 | Appeal, received August 25, 2019  |
| Exhibit no. 7 | Map of subject area   |
| Exhibit no. 8 | Appellant: Vaccine Status Report, submitted November 20, 2019                         |

DS/jo

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V19009666**

**ANUJ BANSAL**

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 December 6, 2019.

*Vonetta Mangaoang*

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Vonetta Mangaoang  
Senior Administrator

**Bansal, Anuj**  
Hardcopy

**McGuire, Terri**  
Hardcopy

**Russell, Shelby**  
Regional Animal Services of King County