

June 10, 2020

**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. **V20010573**

KAY JUN

Animal Services Enforcement Appeal

Activity no.: A20010671

Appellant: **Kay Jun**

[REDACTED]
Seatac, WA 98198

Telephone: [REDACTED]

Email: [REDACTED]

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

FINDINGS AND CONCLUSIONS:

Overview

1. Regional Animal Services of King County (Animal Services) asserts that Kay Jun's dog, Louise, qualifies as vicious. Ms. Jun appealed, with the thrust of her appeal being a request to reduce the penalty. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we uphold Louise's viciousness designation but reduce the penalty.

Background

2. On April 7, 2020, Christy Davis was out for a walk. As she came to a cul-de-sac, she saw a woman (Ms. Jun) at an adjacent picnic table, looking at her phone. Given Covid-related social distancing concerns, she moved off the sidewalk and into the cul-de-sac to give them a wide berth. She noticed that Ms. Jun’s dog (Louise) was on a leash, but that Ms. Jun was not holding the end.
3. As Ms. Davis passed at about a 20-foot distance, Louise came straight at her, barking and trying to get at her legs. She kicked her foot out to try to keep Louise away. She would stick out one foot and Louise would back up or move momentarily, but then come back when Ms. Davis dropped the leg. Ms. Davis had to repeat this this maybe five or six times. Ms. Jun was ineffective getting Louise under control. Finally, Ms. Davis put her hand out to try to reassure Louise. However, Louise snuck behind her and bit the back of her thigh, above her knee. The bite broke the skin; the bruising started later. Ex. 3.
4. Ms. Jun explained she was very sorry for what happened and takes full responsibility. Although she agreed events happened like Ms. Davis said, Ms. Jun did not think this was a vicious event. Louise is just a friendly puppy who loves people. Louise circles around people’s ankles, but in a friendly way. When Ms. Davis reached out to reassure Louise, Louise may have thought she was in danger. Ms. Jun usually does not take Louise outside except to go potty in the backyard; April 7 in fact was Louise’s first time playing in public. If we uphold the viciousness designation, she requests leniency and bringing down the fine, given her Covid-related economic distress.

Standards

5. “Vicious” is defined as, “performing the act of... 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,” with “[a]ny 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” qualifying as a nuisance. KCC 11.04.020.BB; KCC 11.04.230.H.
6. 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.

Analysis

7. There is no question that Louise bit a human being. However, Ms. Jun asserts that Louise was acting in self-defense. Ex. 7. That raises the specter of “provocation.” Kicking at a dog minding its own business would presumably qualify as provocation. However, Ms. Davis reacting by sticking her foot out that a dog that was *already* trying to get at her was not provocation. *Koivisto v. Davis*, 277 Mich. App. 492, 493, 497, 745

N.W.2d 824 (2008). And Louise continually coming back for more, after initially charging Ms. Jun from a significant distance, meant that Louise’s movements were not a split-second reaction, but a more sustained course of action.

8. The trigger that Ms. Jun points to was actually not Ms. Davis trying to keep Louise at bay with her feet, but rather Ms. Davis reaching down to try to reassure Louise. Reaching one’s hand out intending to pet a dog typically does not constitute provocation. *State v. Ruisi*, 9 Neb. App. 435, 443, 616 N.W.2d 19, 26 (2000). Moreover, this is not a scenario where a person sticks a hand in a dog’s face, and the dog reacts by nipping the intruding hand, which one could argue was proportional to that intrusion. Louise actually ran around *behind* Ms. Davis and bit the back of her leg. That was way out of proportion to extending a hand, and the response must be proportional to the trigger to qualify as legal provocation. *See Kirkham v. Will*, 311 Ill. App.3d 787, 792, 724 N.E.2d 1062 (2000).
9. Animal Services has met its burden of proving that Louise bit a person without provocation and constitutes a danger to the safety of persons off Louise’s premises.
10. The main thrust of Ms. Jun’s appeal is a financial one. The default penalty for a viciousness violation is \$500. While Ms. Jun should have kept Louise on a leash, she owned up to that. And the April 7 altercation was not the culmination of pattern of Louise being off-leash and allowed to roam. In fact, Louise was on a leash, and Ms. Jun was holding that leash until she dropped it momentarily to take a call. We think a significant penalty reduction is in order.

DECISION:

1. We deny Ms. Jun’s appeal as to Louise’s viciousness designation. Ms. Jun will need to ensure that she meets the four bulleted compliance items in the violation notice. Ex. 6 at 001.
2. We partially grant Ms. Jun’s appeal as to the monetary penalty, reducing the \$500 down to \$100.

ORDERED June 10, 2020.



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 *July 10, 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 MAY 27, 2020, HEARING IN THE APPEAL OF KAY JUN,
REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V20010573**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Christy Davis, and Kay Jun. 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 | [Online] Complaint form of April 7, 2020 incident by Christy Davis, dated April 7, 2020 |
| Exhibit no. 3 | Photograph of bite mark |
| Exhibit no. 4 | RASKC investigation report no. A2001067101 |
| Exhibit no. 5 | Animal quarantine notice |
| Exhibit no. 6 | Notice of violation no. V20010573, issued April 22, 2020 |
| Exhibit no. 7 | Appeal, received April 17, 2020 |
| Exhibit no. 8 | Photograph of subject area |

DS/jf

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CERTIFICATE OF SERVICE

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KAY JUN

Animal Services Enforcement Appeal

I, Jessica Oscoy, 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 June 10, 2020.



Jessica Oscoy
Legislative Secretary

Davis, Christy

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Jun, Kay

Hardcopy