

October 5, 2020

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

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V20011045-A20013347**

**CARRIE NUNEZ**

Animal Services Enforcement Appeal

Activity no.: A20013347

Appellant: **Carrie Nunez**

[REDACTED]  
SeaTac, WA 98188

Telephone: [REDACTED]

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King County: Regional Animal Services of King County  
*represented by* **Chelsea Eykel**  
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**FINDINGS AND CONCLUSIONS:**

Overview

1. Regional Animal Services of King County (Animal Services) served a violation notice on Carrie Nunez, asserting that her dog, Titus, was loose on public property and qualified as vicious. Ms. Nunez timely appealed. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we uphold the violations, modify the compliance order to allow resumption of off-leash dog park trips, and significantly reduce the penalty.

## Background

2. On August 14, 16-year-old Mahfuz Abdulrahman was walking along the public sidewalk in front of a driveway and parking lot for a self-storage business. Ex. D5 at 001. As he crossed perpendicular to the driveway, he saw a dog (Titus) running at him from the driveway and heard a boy (Ms. Nunez’s 11-year-old son) screaming to call Titus back. As Titus came onto the sidewalk and at him from behind, Mahfuz was scared and started screaming. He turned and tried to protect himself by swinging his phone; Titus bit the phone. Titus also bit his arm, piercing his sweater sleeve and leaving a small mark. Titus bit his foot, ripping off his shoe as he turned to run, leaving him with a small abrasion and a pulled calf muscle. Ex. D4.
3. Seeking protection, Mahfuz ran into what he thought was the business office, but turned out to be the Nunez residence attached to the storage business. (Ms. Nunez manages the business.) He tried to close the door, but Titus squeezed through. He pushed on Titus’s neck, trying to keep Titus at bay. Titus did not get (i.e. bite) him again after he made it inside. He was pretty much screaming the whole time. Ms. Nunez came to the top of the stairs and screamed at him to get out. (He realized, in hindsight, that this was reasonable, because she would not have known why he was barging into her residence.) He did not remember the son inside the residence, but instead thought the son stayed outside.
4. Ms. Nunez explained that her son had Titus out, going to the bathroom by some trees on the property. Ex. D5 at 001. Her son later told her that Titus had been jumping on Mahfuz as Mahfuz ran away. She heard yelling, and when she came to the top of the stairs, she saw her son on the stairs handling Titus. Her son was between Titus and Mahfuz. Mahfuz was screaming (which in hindsight she recognizes was reasonable).
5. Ms. Nunez thought some of Mahfuz’s marks could be from Titus’s long nails, but she did not discount his testimony. She opined that Titus was jumping because Mahfuz and her son were screaming, and Mahfuz was running. Titus was hyped up and thought it was a game. Titus is a sweet and good-natured dog.
6. Ms. Nunez explained that even before the event, they only let Titus run outside after they pulled the driveway gate closed and padlocked it for the night. Now he wears a harness even when going to the bathroom during the day. She no longer allows her son to handle Titus. Up until they received the violation notice, they typically took Titus to the Crestview dog park twice a day, once with her in the morning, and once with her 16-year-old daughter after school. They had never had any problems with Titus. Since receiving the containment order, they have complied and not allowed Titus off-leash. She would like to resume those outing, because Titus is rambunctious, and the dog park helps him release his high energy. They have been responsible in terms of licensing, veterinarian visits, and micro-chipping.

## Legal Standard

7. Animal Services’ more minor assertion is that Titus was “on any public property not under control by the owner or other competent person,” with “under control” being defined as “either under competent voice control or competent signal control, or both,

so as to be restrained from approaching any bystander or other animal and from causing or being the cause of physical property damage when off a leash or off the premises of the owner.” KCC 11.04.020.AA, .230.M. Ex. D6. Ms. Nunez does not challenge this., D8.

8. More serious is Animal Services assertion that Titus qualifies as “vicious,” 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,” and that he “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.” KCC 11.04.020.BB; .230.H. Ex. D6. Ms. Nunez challenges this, along with a confinement restriction and the \$500 penalty. Ex. D8.
9. 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. We give no deference to Animal Services. Exam. R. XV.F.3.

### Analysis

10. The major discrepancy involves what happened inside the Nunez residence’s front door. Mahfuz testified he was holding off Titus when Ms. Nunez came to the top of the stairs, while the son was outside. Ms. Nunez testified she saw her son holding Titus, and Mahfuz was to the side. That does not necessarily mean someone is not telling the truth; as Mahfuz stated, he was in a panic, and as Ms. Nunez explained, it all happened so fast. We think her recollection is probably more accurate, as she was not in a state of shock at the time.
11. However, what happened inside the apartment is not really critical here.
12. First, Mahfuz stated that Titus did not bite him inside. That May have been because Mahfuz or the son was holding Titus, or for some other reason. However, the *result* of his trip to the interior is not in dispute—Titus did not bite Mahfuz inside.
13. Second, suppose, for example, Titus had not already chased and bitten Mahfuz, causing Mahfuz to retreat into the residence. Suppose instead that a screaming Mahfuz randomly entered the Nunez residence and Titus responded to that invasion by biting Mahfuz. In that hypothetical scenario, we would likely conclude that Mahfuz legally provoked Titus. Instead, the important action in the real scenario was the activity outside that prompted Mahfuz to stumble in.
14. Mahfuz agrees he screamed when Titus came at him (and continue to scream throughout). However, where a dog frightens someone, causing the soon-to-be victim to scream in fear, the scream typically cannot be said to count as legal provocation for the dog responding to the scream by biting the victim. *Robinson v. Meadows*, 203 Ill. App. 3d 706, 709, 713, 561 N.E.2d 111 (1990). There is no evidence or even inference that Mahfuz did anything other than walk along a public sidewalk, minding his own business,

to trigger Titus charging him. Mahfuz used his phone in defense, but where a dog is already attacking a person, defensive actions (where proportionate) do not count as legal “provocation.” *Giandalone v. Zepieri*, 86 Misc. 2d 79, 80, 381 N.Y.S.2d 621 (1976). And Titus bit Mahfuz more than once.

15. Titus may normally be a sweet dog, but he endangered Mahfuz, including biting him without provocation, and constitutes a danger to someone on a sidewalk, meeting the above-quoted criteria for a viciousness designation.
16. The real question is the remedy—both the requirement that Titus only be allowed off the property without a leash, and the penalty.
17. In prescribing the requirements for maintaining a vicious dog in King County, the code clarifies that keeping a vicious animal on a leash is a requirement that “may” (discretionary) not “shall” (mandatory) be added. KCC 11.04.290.A.2. And we take into consideration, among other factors, the nature of the behavior giving rise to the viciousness determination, including the extent of the injuries and the circumstances surrounding the incident. KCC 11.04.290.A.1.f. While not amounting to legal provocation, the circumstances here—the screaming (from Mahfuz as well as his Nunez’s son) and Mahfuz running (and in the direction the Nunez’s door)—make his attack at least understandable. And, critically, Titus’s bites, and Mahfuz’s injuries, were mild.
18. Moreover, the August 14 altercation happened despite, not because of, the Nunez’s caretaking. This was not a scenario of Titus being left to roam the neighborhood. With no prior incidents, there would have been no reason to think that having her son let Titus out, even without a leash, to go potty on his on property, while her son supervised, could be problematic.
19. Even before the incident, they only let Titus run unsupervised when their gate was closed and padlocked, safely containing him. After the fact, they have only let Titus out under Ms. Nunez or her 16-year-old daughter’s supervision and on a leash, or after the gate is closed and padlocked. They abided by the compliance order and ceased taking Titus to the dog park. In short, they are responsible owners. And that has two implications.
20. First, although we have never eliminated a penalty entirely, we think a substantial reduction, from \$500 down to \$100, is in order here.
21. Second, while the Nunez’s should look into training (especially by calling Animal Services, which may be able to provide some need-based assistance), we find it appropriate to amend the compliance order to allow Nunez and/or her daughter to take Titus to a sanctioned off-leash park to run off his energy.

## DECISION:

1. We DENY the appeal as to the violations.
2. We REDUCE the otherwise-applicable penalty to \$100.
3. We MODIFY Animal Services' August 17, 2020, compliance order as follows (A. through D. being substantively unchanged, and E. being new):
  - A. Secure Titus 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 Titus using a leash no more than eight feet long, with a collar or harness, when taking Titus off your property. A competent and capable person must handle Titus at all times when attended outside.
  - C. If not already completed, microchip Titus and provide the microchip number to the King County Animal Licensing Office (206) 296–2712. *[Note, Ms. Nunez has already accomplished this.]*
  - D. Keep Titus current on his rabies vaccination.
  - E. Titus is allowed to run in sanctioned off-leash dog parks, provided Ms. Nunez or her daughter is present, and provided Titus is leashed at all times when not in the car or in the fenced, off-leash area. *[Note, this is not meant to permanently bar her son from ever taking Titus to an off-leash park. But as the August 14 events showed and Ms. Nunez recognized, an 11-year-old is not capable of controlling Titus.]*

ORDERED October 5, 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 *November 4, 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 OCTOBER 1, 2020, HEARING IN THE APPEAL OF CARRIE NUNEZ, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V20011045-A20013347**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Mahfuz Abdulrahman, and Carrie Nunez. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

The following exhibits were offered and entered into the record by Animal Services:

Exhibit no. D1	Regional Animal Services of King County staff report to the Hearing Examiner
Exhibit no. D2	Online Complaint form of August 14, 2020 incident by Mahfuz Ziyad Abdulrahman, dated August 15, 2020
Exhibit no. D3	RASKC investigation report no. A20013347
Exhibit no. D4	Photograph of jacket, bites and scraps, phone case, and phone
Exhibit no. D5	Photograph of parking lot, street, and phone call log
Exhibit no. D6	Notice of violation no. V20011045-A20013347, issued August 17, 2020
Exhibit no. D7	Bite Quarantine Notice, issued August 15, 2020
Exhibit no. D8	Appeal, received August 25, 2020
Exhibit no. D9	Map of subject area

DS/lo

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V20011045-A20013347**

**CARRIE NUNEZ**

Animal Services Enforcement Appeal

I, Lauren Olson, 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 October 5, 2020.



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Lauren Olson  
Legislative Secretary

**Abdulrahman, Mahfuz**

Hardcopy

**Ali, Ziyad**

**Eykel, Chelsea**

Regional Animal Services of King County

**Nunez, Carrie**

Hardcopy