

August 4, 2021

**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](mailto:hearingexaminer@kingcounty.gov)  
[www.kingcounty.gov/independent/hearing-examiner](http://www.kingcounty.gov/independent/hearing-examiner)

**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V21011884-A21001647**

**MISTYLEENE PALADO**

Animal Services Enforcement Appeal

Activity no.: A21001647

Appellant: **Mistyleene Palado**

Des Moines, 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](mailto:raskcappeals@kingcounty.gov)

**FINDINGS AND CONCLUSIONS:**

Overview

1. On April 12, 2021, Regional Animal Services of King County (Animal Services) issued a notice and order to Mistyleene Palado. Ex. D5. Ms. Palado timely appealed on May 5. Ex. D8. We went to hearing on July 21. 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 violation but significantly reduce the penalty.

### Background

2. Aaron Whallon testified that he was at the dog park with his wife and their golden retriever, Franklin. As they were starting to head out, Franklin stopped by the dog watering station. Mr. Whallon was standing on the path, while Franklin was drinking. Ex. D9. A small group of people (including Ms. Palado) and their dogs were about 25-30 yards away. One of those dogs (Tiny) began running towards him. Since he was at a dog park, it seemed natural to him that a dog would be barking and running towards him.
3. As Tiny approached, Mr. Whallon turned around to face away from Tiny, to avoid Tiny's attention. However, Tiny bit down on his right ankle, then released and backed away. Tiny continued to bark, but it did not come at him again.
4. Mr. Whallon called the non-emergency police line and was directed to wait in the parking lot. After speaking with Officer Fowler, he brought his wife and dog home, and then went to urgent care to get the wound treated and bandaged.
5. Ms. Palado testified that she and Tiny have regularly visited the dog park for six years. They have never had any problems with Tiny biting. Usually Tiny will just bark at people, Ms. Palado tells her to stop, and Tiny walks away. Ms. Palado and her dogs will walk around the park, then Ms. Palado will throw a ball for her other dog while Tiny runs around. Ms. Palado is not sure what happened that day, because this behavior is unusual for Tiny. Tiny is friendly and loveable.
6. Ms. Palado has decided that she will not bring Tiny back to the dog park, because she does not want a similar situation to happen again. She intends to take Tiny to a training class.

### Legal Standard

7. Animal Services asserts that Tiny qualifies as "vicious," meaning 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 "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.
8. We do 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.B.

### Analysis

9. This case is straightforward. Ms. Palado initially questioned whether Mr. Whallon had done something to provoke Tiny. Ex. D8. That is understandable; dog owners are often

surprised and confused in similar scenarios, and Tiny had never done anything like that before.

10. The “provocation” inquiry in animal jurisprudence “focuses ‘on how an average dog, neither unusually aggressive nor unusually docile, would react to an alleged act of provocation.’” *Bradacs v. Jacobone*, 244 Mich. App. 263, 273, 625 N.W.2d 108, 113 (2001) (citing *Kirkham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000)). And a key touchstone of courts’ analyses is that “provocation” requires the dog’s reaction to be proportional to the victim’s act. *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792.
11. There is just nothing here even remotely approaching “provocation.” Unlike a scenario where we have conflicting witness versions of events, here it is undisputed Mr. Whallon was standing well away from Tiny. Not only did Mr. Whallon not engage or antagonize Tiny, but even as Tiny ran to him, Mr. Whallon did not undertake any *defensive* measures. He did not shout at Tiny or try to kick him away. Instead he turned *away* from Tiny, to try to ignore Tiny’s attention. However, Tiny bit him from behind anyway. Tiny “bit[] a human being...without provocation,” meeting the definition of “vicious.” KCC 11.04.020.BB.
12. That is not the end of our analysis. In addition to having performed a vicious act like an unprovoked bite, we must satisfy ourselves that the dog “constitutes a danger.” KCC 11.04.230.H. An unprovoked dog bite does not *automatically* mean a dog constitutes a danger. To choose a simple hypothetical (rather than a more complex actual fact pattern), suppose it is July 4. Fireworks have been going off all day and evening, and a dog is spooked by all the explosions. A good Samaritan extends a hand to try to comfort the shaking dog, and the dog delivers a back-off nip. 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 (2000). Yet that would be a scenario where, depending on the other facts, we could conclude that while the bite was not legally provoked, the dog nonetheless does not constitute a danger.
13. Our actual facts here are very different from that hypothetical scenario. From all accounts this was just a normal, uneventful day at a dog park. And Tiny’s bite was no back off nip but a nasty bite, the most serious we can recall a Chihuahua ever delivering. Ex. D4. We find that Tiny constitutes a danger.
14. That leaves only the penalty amount. There is no evidence that Tiny had ever done more than bark at people before. And unlike the normal scenario where people have a duty to keep their dog in check when off their own property, this went down at a sanctioned dog park, where letting dogs run around freely is the entire point. As Mr. Whallon observed, he did not initially think it was at all troubling that a dog was barking at him and running towards him—this was a dog park, after all. There would have been nothing putting Ms. Palado (or Mr. Whallon, or anyone else) on heightened alert, until the moment Tiny actually chomped down on Mr. Whallon. And since the event, Ms. Palado has refrained from bringing Tiny back to the dog park (to avoid a similar outcome) and plans to get Tiny some training. We think a significant penalty reduction is in order.

## DECISION:

We uphold the notice and order but reduce the penalty to \$150.

ORDERED August 4, 2021.

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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 *September 3, 2021*. 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 JULY 21, 2021, HEARING IN THE APPEAL OF MISTYLEENE PALADO, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V21011884-A21001647

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Aaron Whallon, and Mistyleene Palado. 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 April 11, 2021 incident by Aaron Whallon, dated April 11, 2021
Exhibit no. D3	RASKC investigation report no. A21001647
Exhibit no. D4	Photograph of bite wound
Exhibit no. D5	Notice of violation no. V21011884-A21001647, issued April 12, 2021
Exhibit no. D6	Bite Quarantine Notice and Order
Exhibit no. D7	NVOC mailing/tracking history
Exhibit no. D8	Appeal, received May 5, 2021
Exhibit no. D9	Map of subject area

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V21011884-A21001647**

**MISTYLEENE PALADO**  
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 August 4, 2021.



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Lauren Olson  
Legislative Secretary

**Eykel, Chelsea**

Regional Animal Services of King County

**Palado, Mistyleene**

Hardcopy

**Whallon, Aaron**

Hardcopy