

September 27, 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
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file nos. **V21012194 and V21012201**

ANDREA BARDIN

Animal Services Enforcement Appeal

Activity no.: A21002761

Appellant: **Andrea Bardin**

Woodinville, WA 98072

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. Andrea Bardin appeals a violation notice and a removal order. 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 deny the appeal, except that we stay the monetary penalty associated with the removal order.

Background

2. On October 21, 2020, Animal Services issued Ms. Bardin notice and order V20011294 for Twix running at large, qualifying as vicious, and needing to be confined. Ex. D14.
3. On June 17, 2021, Animal Services issued Ms. Bardin violation notice V21012194 for Twix again qualifying as vicious. Ex. D5. On June 19, Animal Services issued Ms. Bardin an order to remove Twix from King County. Ex. D7. Ms. Bardin filed a timely appeal on July 12. Ex. D9. We went to hearing on September 15, 2021.

Hearing Testimony

Adele Parsons Testimony

4. Ms. Parsons was neighbors with Ms. Bardin. Ms. Bardin's dog, Twix, had exhibited aggressive behavior toward her and her boyfriend in the past. In October, Ms. Parsons was walking back from bringing her dog out to potty when she saw Twix run out from the garage. She picked up her dog, but Twix bit the back of Ms. Parsons arm and scratched her. Exs. D11-12.
5. In June, Ms. Parsons and her boyfriend were at Marymoor off-leash dog park with their dogs. They felt it safe to bring their dogs there, because Ms. Bardin said she would not take her dog off leash. Out of nowhere, Twix had his head in Ms. Parson's lap, close to her head. As she shielded herself, Twix bit her arm, scarring it. Ex. D3-003-04. She then turned around and started to run away, and Twix bit her again, this time on her thigh. Ex. D3-001-02.
6. Before Ms. Bardin moved out, Twix would bark and lunge when Ms. Parsons walked past the Bardins in the shared hallway; this was traumatic. There were times when Ms. Bardin's front door was open when Twix was inside; Ms. Parsons would have to quickly leave if she heard Twix coming.

Andrea Bardin Testimony

7. Ms. Bardin testified that she has spent money on training Twix. She has already moved out of King County and she is happy to comply with the removal order. In the past, Ms. Parsons and her boyfriend had provoked Twix. Twix has only shown antagonistic behavior towards them, not to other people or dogs.

Legal Standards

8. In V21012194, Animal Services asserts that Twix bit a person twice while inside an off leash dog park, qualifying again as vicious for "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," with the violation itself framed as, "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.”
KCC 11.04.020.BB; .230.H.

9. In V21012201, Animal Services seeks removal under KCC 11.04.290.B.2, which states that “Any animal that bites, attacks or attempts to bite one or more persons two or more times within a two-year period is declared to be a public nuisance and shall not be kept within unincorporated King County forty-eight hours after receiving written notice from the manager” (the first being the October 2020 bite).
10. We are the most exacting of Animal Services on removal orders, given the interests at stake. And while KCC 11.04.290.B.2 does not explicitly state that both bites of a person must be unprovoked to trigger removal, to avoid an absurd result, we have read in a requirement that a *provoked* bite/attack/attempted bite does not qualify. *See Tingey v. Haisch*, 159 Wn.2d 652, 664, 152 P.3d 1020 (2007) (avoiding reading that produces absurd results, because we do not presume legislature intended absurd results). Otherwise, a dog could, say, bite to defend herself against someone charging at her swinging a weapon, have the same scenario occur again within a two-year period, and yet face a mandatory (“shall”) removal despite never meeting the minimum qualification for a viciousness violation. *See* KCC 11.04.020.BB (bite only counts if “without provocation”).¹
11. 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

12. Ms. Bardin did not appeal Twix’s October 2020 viciousness designation, but even if she had, the result would have been the same. Unlike the scenario, where say, Ms. Parson’s dog got in Twix’s face, on October 18 Twix had to charge out of the garage a good distance to get at Ms. Parson’s dog. And even after Ms. Parsons picked up her dog (thus eliminating any threat her dog could even arguably be said to pose to Twix), the video shows Twix continuing his attack, biting Ms. Parsons in the process. Exs. 11-12. In no sense was Twix legally provoked to bite Ms. Parsons last October.
13. The October 2020 order prohibited Twix from being taken off her property except restrained on a leash, with a competent and capable person handling her at all times

¹ In doing so, we explicitly reject *Wortham v. Chicago Department of Administrative Hearings*, 391 Ill. Dec. 940, 944-45, 31 N.E.3d 915 (2015), which held that, because the code did not specifically address one animal provoking another, the defense that dogs had provoked the appellant’s dog to bite back was not, as a matter of law, an available defense to a dangerous dog designation. Illinois courts have published many thoughtful opinions on provocation in the dog bite context. *Kirkham v. Will*, 311 Ill. App.3d 787, 792, 724 N.E.2d 1062 (2000); *Wade v. Rich*, 249 Ill. App. 3d 581, 589-90, 618 N.E.2d 1314 (1993); *Robinson v. Meadows*, 203 Ill. App.3d 706, 710, 561 N.E.2d 111 (1990); *Stehl v. Dose*, 83 Ill. App. 3d 440, 443, 403 N.E.2d 1301 (1980); *Nelson v. Lewis*, 36 Ill. App. 3d 130, 134, 344 N.E.2d 268 (1976). *Wortham* is not among them.

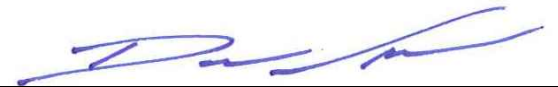
while outside. Ex. D14-001 (second bullet point). Ms. Bardin stated that she did not know that requirement applied in off-leash dog parks. That is a little difficult to accept, because the October order provided no exception. And we frequently receive appeals where the owner challenges the leash requirement precisely on the grounds that it would bar them from exercising their dog in off-leash parks, and the appellant requests that, even if we uphold the viciousness designation, we modify that compliance term to allow future off-leash runs; so there does not seem anything ambiguous about the scope of the leash requirement.

14. In any event, Animal Services does not seek removal under KCC 11.04.290.A.3 (failing to comply with a requirement for keeping a vicious dog in King County) but under B.2 (biting a person twice in the two-year period). And there is not even an allegation, let alone evidence, that on June 16 Ms. Parson was doing anything other than minding her own business and sitting on a bench when Twix came up and got in her face, first biting her arm as she shielded her face, and then even biting the back of her thigh as she attempted to flee. Ex. D3-001-04. In no sense was that bite provoked either. Not only was it a second vicious act again violating KCC 11.04.230.H, but it was a second unprovoked bite of a person in a two-year (actually, eight-month) period, warranting removal under KCC 11.04.290.B.2.
15. However, we have previously ruled that the monetary penalty associated with a removal order only kicks in if the removal order *itself* is violated. Ms. Bardin had, prior to the hearing date, removed Twix from King County. Thus, as Ms. Bardin is currently in compliance, we stay the removal order's monetary penalty.

DECISION:

1. We deny the appeal for V21012194 (the second viciousness violation) and its associated \$1000 penalty.
2. We deny the appeal as to V21012201 (the removal order); however, as Ms. Bardin is currently in compliance with the removal order, the associated monetary penalty is stayed so long as Ms. Bardin remains in compliance.

ORDERED September 27, 2021.



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 *October 27, 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 SEPTEMBER 15, 2021, HEARING IN THE APPEAL OF ANDREA BARDIN, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NOS. V21012194 & V21012201 -A21002761

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Adele Parsons, Chelsea Eykel, and Andrea Bardin. 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 June 16, 2021 incident by Adele Parsons, dated June 16, 2021
Exhibit no. D3	Photograph of bite wounds
Exhibit no. D4	RASKC investigation report no. A21002761
Exhibit no. D5	Notice of violation no. V21012194 -A21002761, issued June 17, 2021
Exhibit no. D6	Bite Quarantine Notice
Exhibit no. D7	Notice and order for removal no. V21012201-A21002761, issued June 19, 2021
Exhibit no. D8	Proof of Service
Exhibit no. D9	Appeal, received July 12, 2021
Exhibit no. D10	Online Complaint form of October 18, 2020 incident by Adele Parsons, dated October 19, 2020
Exhibit no. D11	Video from Surveillance Camera
Exhibit no. D12	Photograph of bite wounds
Exhibit no. D13	RASKC investigation report no. A20014485
Exhibit no. D14	Notice of violation no. V20011294-A20014485, issued October 21, 2020
Exhibit no. D15	Bite Quarantine Notice
Exhibit no. D16	Proof of Service
Exhibit no. D17	Map of subject area

DS/lo

September 27, 2021

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CERTIFICATE OF SERVICE

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ANDREA BARDIN

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 September 27, 2021.



Lauren Olson
Legislative Secretary

Bardin, Andrea
Hardcopy

Eykel, Chelsea
Regional Animal Services of King County

Parsons, Adele
Hardcopy