

December 15, 2021

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

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V21012588-A21005019**

**WESLEY NG**

Animal Services Enforcement Appeal

Activity no.: A21005019

Appellant: **Wesley Ng**

[REDACTED]  
Bellevue, WA 98006

Telephone: [REDACTED]

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

Overview

1. Wesley Ng appeals a violation notice and compliance order for his dogs. 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 overturn Luna's viciousness designation, uphold Leo's, reduce the monetary penalties, and offer a potential avenue for Leo to eventually return to off-leash dog parks.

### Background

2. On December 7 Animal Services issued a notice of violation and order to comply to Wesley Ng for his dog, Luna, running at large, qualifying as vicious, and needing to be confined, and his other dog, Leo, qualifying as vicious and needing to be confined. Ex. D7. Mr. Ng filed a timely appeal on October 14. Ex. D8. We went to hearing on December 1.

### Hearing Testimony

#### *Testimony of Dina Davis*

3. Dina Davis testified that she walks by herself through the neighborhood daily. On October 6, she saw Mr. Ng with his two dogs coming towards her on the same side of the street. Ms. Davis crossed the street because she had encountered Mr. Ng and his dogs two or three times before, and they had aggressively barked at her. On October 6, the dogs again behaved aggressively and started lunging at their leashes. Mr. Ng was trying to gain control of his dogs. Ms. Davis was about perpendicular with Mr. Ng and his dogs, on the other side of the street, when Mr. Ng attempted to grab [Leo]'s muzzle.
4. At that moment, [Luna] broke free from Mr. Ng's grasp and ran at Ms. Davis. Ms. Davis yelled at Mr. Ng to get his dog because she was frightened of the approaching dog. Luna circled around and tried to bite at Ms. Davis' legs three to five times. Luna made contact by bumping into Ms. Davis, but Luna did not bite her. While it felt like it took forever for Mr. Ng to cross the street, it likely was only a few seconds.
5. Mr. Ng came across the street and tried to grab Luna's leash. As he did so, Leo came around from behind Mr. Ng and latched onto Ms. Davis' arm below the elbow. Ms. Davis was wearing a thick fleece, yet the bite broke through the jacket and Ms. Davis' skin. The bite nearly knocked Ms. Davis down. She has a visual impairment, seeing double vision and her eyes rapidly shaking. When things come at her quickly or there is rapid movement, it causes balance problems.
6. Mr. Ng got the dogs' leashes and gained control of the dogs and took them about fifteen to twenty feet away from Ms. Davis. The dogs then got quite calm and stopped barking. Mr. Ng waited with Ms. Davis for a medic. The wound was painful for weeks, and Ms. Davis still has deep tissue damage. She needed a tetanus booster and was on antibiotics. Ex. D3-D5.
7. About a week before the October 6 incident, Ms. Davis encountered Mr. Ng with his dogs, who were viciously barking at her from across the street. Ms. Davis was frightened. During about two other past encounters, the dogs would bark and pull at their leashes. Since the October incident, she has been on edge. She now walks with a stick and pepper spray. Ms. Davis has always been cautious around dogs, but now she is cautious and scared.

*Testimony of Wesley Ng*

8. Wesley Ng acknowledged that pretty much everything Ms. Davis testified to was accurate. Mr. Ng explained that he did not hesitate to retrieve Luna after she ran over to Ms. Davis; he just wanted to first gain control of Leo. Mr. Ng is sorry about what happened. After Leo's bite, Mr. Ng was able to calm down the dogs.
9. Luna and Leo are rescue dogs. Mr. Ng got Luna in July and got Leo two weeks later, as Leo had to be neutered first. While Leo was healing from the surgery, he started showing aggressive behavior. On walks in August and September, Leo would bark at people.
10. The two dogs play off each other. While on walks, there are some people the dogs will bark at. Now Mr. Ng walks the two dogs separately. He can easily manage one dog at a time. Luna is perfectly fine and gentle. Leo has good and bad days and Mr. Ng is working with him. He uses a spray bottle and he is trying different training ideas. Keeping them separated has worked the best, so they do not feed off of each other.
11. Two days before the incident, Mr. Ng brought the dogs to the dog park and they were fine. The dogs look scary because they are big dogs.

Legal Standards

12. Animal Services asserts that Luna was "running at large" on October 6, defined as "off the premises of the owner and not under the control of the owner, or competent person authorized by the owner, either by leash, verbal voice or signal control" and "under control" itself including the need to be "restrained from approaching any bystander or other animal" when "off the premises of the owner." BMC 8.04.060.W, .AA; .300. Mr. Ng does not dispute this.
13. Animal Services asserts that both Luna and Leo qualify as "vicious," 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. BMC 8.04.060.BB, .300.H. Mr. Ng does dispute this.
14. 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

### *Leo's Viciousness Designation*

15. The analysis for Leo is straightforward. Rather than just *trying* to bite Ms. Davis (as Luna did), Leo actually did bite her. And rather than some back off nip, Leo bit with enough force to go through her thick fleece coat and deliver a wound that was painful for weeks and left Ms. Davis with deep tissue damage. And October 6 was not some completely out of left field one-off, having barked aggressively at Ms. Davis on multiple occasions. And Mr. Ng was candid (more on that below) that Leo began exhibiting aggression after his surgery and even now, after training, has good days and bad days. Leo performed an act endangering the safety of a person, and constitutes a danger. We uphold his viciousness designation.

### *Luna Viciousness Designation*

16. The case against Luna is more nuanced. An actual bite is not necessary (given the “including, but not limited to” language in the “vicious” definition). Luna definitely performed the vicious act on October 6, endangering Ms. Davis’s safety. And a single act of vicious behavior is typically enough to meet Animal Services’ burden to show that the animal constitutes a danger. But not always.
17. While we do not disagree with Ms. Davis’s assessment that Luna was actively trying to bite her, it is interesting that Luna lunged at her three to five times and was close enough to contact Ms. Davis’s foot, yet did not land a single bite. But even if we assume Luna really was trying to bite, what makes our scenario different is Leo’s role. It was Leo who ratcheted things up on October 6 to the point that Mr. Ng had (per Ms. Davis’s testimony) to take his focus off Luna to grab Leo’s muzzle, allowing Luna to break free.
18. Mr. Ng described Luna as gentle and only engaging in response to Leo (whom he described as having aggression issues after his surgery) getting worked up, which meshes with Ms. Davis’s testimony about Luna managing to break loose only after Mr. Ng had to devote his attention to controlling Leo’s outburst. To be sure, owner reflections like Mr. Ng’s are often biased and self-serving (in the same way our reflections on our own children would be). We see an amazing amount of obliviousness and denial on our docket. Yet owner statements comparing their animals with *each other* are typically less biased and self-serving than other statements (the same way our description of one of our children as, say, kinder or smarter than our other child would likely carry more weight than us simply lauding our children as kind or smart).
19. None of that excuses Luna endangering Ms. Davis on October 6, it does raise a serious question of whether, if Leo did not instigate things, Luna would have tried to get at Ms. Davis. And if Leo were contained in the future and not walked alongside Luna, would an unconstrained Luna still pose a danger to a person? That is a much closer call, and one we have less confidence in than the obvious one that Leo constitutes a danger. We overturn Luna’s viciousness designation.

### *Dog Park Ban*

20. Mr. Ng challenges the portion of the compliance order that requires dogs to be leashed anytime they are off their property. Left as-is, that would act as a lifetime ban against Leo running free in off-leash dog parks. It is a harsh remedy, one with serious negative consequences on a dog's long-term health prognosis, both physical and social.
21. Animal Services has met its burden of showing that the ban is appropriate at present. In certain scenarios—say, a dog bites a pizza delivery guy who opened the home's front door—one could argue that the overly-protective-of-home scenario bears little resemblance to what one encounters in dog parks. Here, however, Leo seeing a person and going ballistic (on multiple occasions) has obvious implications for dog parks; dogs attacking other dogs' owners in off-leash areas is a fairly common fact pattern in our appeals. And we recall one recent appeal where a lay owner erroneously concluded that her training had made an activity safe again for her dogs, only for the past behavior to repeat itself.<sup>1</sup> That is not to disparage Mr. Ng and his efforts, only to note that Mr. Ng is a professional in a field *other than* animal behavior.
22. But again, we are wary of permanently closing the dog park door. And Leo's violence here was not so egregious (unlike past scenarios where, for example, the dog severely wounded or killed another dog or left a person with permanent injuries) that *any* risk of a repeat is simply too much to bear. If Leo can earn a Canine Good Citizenship (CGC) training certificate, the equities would weigh in favor of allowing a return to dog parks under certain circumstances.

### *Penalties*

23. Where the violation occurred despite, not because of, the care the owner was exercising and/or the owner takes steps to prevent a repeat, we typically reduce the penalty. Both are on display here. Mr. Ng was walking his dogs on leashes at the time, not letting them run amok. During the previous encounters Ms. Davis described, the dogs were barking at her, but Mr. Ng had been able to control them. And Leo was only in range to bite Ms. Davis because Mr. Ng had come over to retrieve Luna. Additionally, unlike the recent appeal we footnoted, where despite one or both of that appellant's dogs having broken free of her grip on earlier walks, she foolishly decided that she was capable of walking them again at the same time (with predictable results),<sup>2</sup> Mr. Ng has stopped walking both dogs at the same time. It does not seem like a heavy penalty serves much purpose here.

### DECISION:

1. We UPHOLD Luna's running at large violation and Leo's viciousness designation and OVERTURN Luna's viciousness designation

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<sup>1</sup> [https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2021/Nov%202021/V21012541\\_Ma](https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2021/Nov%202021/V21012541_Ma) at ¶¶ 38, 20 & 33.

<sup>2</sup> [https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2021/Nov%202021/V21012541\\_Ma](https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2021/Nov%202021/V21012541_Ma) at ¶¶ 46-47.

2. We REDUCE the penalty to \$200, provided Mr. Ng pays this amount to Animal Services by **January 14, 2022**.
3. We MODIFY Animal Services' October 7, 2021, compliance order as follows:
  - A. Secure Leo 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 Leo using a leash no more than eight feet long, with a collar or harness, when taking him off your property. A competent and capable person must handle him at all times when attended outside. Absent a Canine Good Citizenship (CGC) training certificate, a single person does not qualify as capable of handling both Leo and Luna at once.
  - C. If not already completed, microchip Leo and provide the microchip number to the King County Animal Licensing Office (206) 296–2712 by **January 14, 2022**.
  - D. If Leo earns a CGC training certificate, he may return to sanctioned off-leash dog parks, provided Mr. Ng is present, and provided Leo is leashed at all times when not in the car or in the fenced, off-leash area.

ORDERED December 15, 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 *January 14, 2022*. 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 DECEMBER 1, 2021, HEARING IN THE APPEAL OF  
WESLEY NG, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.  
V21012588-A21005019**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Dina Davis, and Wesley Ng. 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 October 6, 2021 incident by Dina Davis, dated October 6, 2021
Exhibit no. D3	Photograph of injuries to Ms. Davis' arm
Exhibit no. D4	Photograph of heavy coat Ms. Davis was wearing
Exhibit no. D5	Photograph of scars left by the bite
Exhibit no. D6	RASKC investigation report no. A21005019
Exhibit no. D7	Notice of violation no. V21012588-A21005019, issued October 7, 2021
Exhibit no. D8	Appeal, received October 14, 2021
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. **V21012588-A21005019**

**WESLEY NG**

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 December 15, 2021.



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Lauren Olson  
Legislative Secretary



**Davis, Dina**  
Hardcopy

**Eykel, Chelsea**  
Regional Animal Services of King County

**Ng, Wesley**  
Hardcopy