

December 27, 2021

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

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Seattle, Washington 98104  
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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V21012591-A21004814**

**CANDICE MERCER**

Animal Services Enforcement Appeal

Activity no.: A21004814

Appellants: **Candice Mercer and Tyra Kusack**

[REDACTED]

[REDACTED] WA 98022

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County  
*represented by* **Rebecca Smokoska**  
Regional Animal Services of King County  
21615 64th Avenue S  
Kent, WA 98032  
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FINDINGS AND CONCLUSIONS:

Overview

1. Tyra Kusack appeals a notice and order declaring her dog Peanut vicious and needing to be confined. 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 but we slightly reduce the penalty.

### Background

2. On October 7, Animal Services issued a notice of violation and order to comply to Candice Mercer for her dog, Peanut, qualifying as vicious and needing to be confined. Ex. D9. Her daughter, Tyra Kusack, filed a timely appeal on October 19. Ex. D11. We went to hearing on December 15.
3. At hearing, Ms. Kusack requested redacting her children from the photographs in exhibit D5. We will black out the children's faces.

### Hearing Testimony

#### *Testimony of Christina Snyder*

4. Christina Snyder testified that on September 25 she and her mother were starting to hike. Towards the beginning of the trail, she saw a woman [Ms. Kusack] with three dogs on leash heading down the trail. There were two adult women and a few children behind her. Ms. Kusack was on Ms. Snyder's right side; Ms. Kusack pulled over to Ms. Kusack's side of the trail.
5. Ms. Snyder went to her left (i.e., the opposite side of the trail from Ms. Kusack and Peanut) to follow trail etiquette, when all of a sudden she felt excruciating pain in her leg. She looked down and saw a little dog [Peanut] staring up at her. Ms. Snyder could not remember if Peanut was on a leash or not. She pulled up her pant leg and saw broken skin, blood, and a bruise. She was about ten to fifteen feet from Ms. Kusack. Ms. Snyder did not stumble or trip while passing Ms. Kusack.
6. Ms. Snyder testified that her interaction with Peanut's group was hostile, and Ms. Snyder did not think they were going to be helpful. Ms. Snyder's mother was hysterical and being irrational. Ms. Snyder did not ask for the group's contact information, but her mother did. Ms. Snyder said she profiled the group and took pictures of the cars that she thought were theirs. Ms. Snyder's mother confirmed which cars Peanut's group left in. Ms. Snyder also took pictures on the trail. Ex. D3 and D5-001.
7. Ms. Snyder sought medical treatment. She needed a tetanus shot, bandage and an antibiotic. Ms. Snyder hikes often and has never been bit by a dog on the trail. Ten years ago, Ms. Snyder was attacked by three dogs while biking.
8. Ms. Snyder and her mother parked at her husband's ex-wife's property across the street, due to break ins at the trail head parking lot.

#### *Testimony of Mary Brown*

9. Mary Brown testified that on September 25 she and her daughter, Ms. Snyder, went for a hike. They were heading up the trail when she saw a group with three leashed dogs. Ms. Snyder was maybe fifteen feet from Ms. Kusack when she passed. Ms. Snyder suddenly made a U-turn and said the dog [Peanut] just bit her. Ms. Snyder did not stumble or fall on the trail.

10. The group with the dog was not giving them any information, such as vaccination status of the dog. Ms. Brown asked for their names and their contact information. They said they would only talk with Ms. Snyder, who had left at that point. No one in the group gave her contact information. Ms. Brown waited in the parking lot and took pictures of the dog to identify it.

*Testimony of Ofc. Silvia Reyes*

11. Animal Services Ofc. Silvia Reyes testified that the only available information to identify the dog owner from the incident were the two license plates the complaint provided. Ex. D2. One plate was an address in Enumclaw and the other an address in Auburn.
12. Ofc. Reyes went to the Enumclaw residence. The people at the residence would not give Ofc. Reyes their names. The woman [Ms. Kusack's mother] first denied being on the trail on the day of the incident. Ofc. Reyes was first shown one dog and then another dog that looked similar to the first. Yet Ofc. Reyes could hear that dog barking from another room and asked to be shown that dog too. The woman initially did not want to show the third dog. Then the dog came running and barking from the room, and it matched the photograph taken the day of the incident.
13. When Ofc. Reyes explained that she had pictures of the parties at the trail, the woman then dropped her denial of being there and went with there had been no bite, only a human fight. After Ofc. Reyes advised there was a photograph of the bite, the woman switched to other party [either Ms. Snyder or Ms. Brown] being a "fucking bitch." The woman did not mention anyone stumbling on the trail. The woman had no interest in providing a statement regarding the incident or any contact information. The woman did not mention another interaction involving another dog. The conversation was not progressing. Ofc. Reyes wrote a ticket to the dog's licensed owner.

*Testimony of Tyra Kusack*

14. Tyra Kusack testified that before the incident Ms. Kusack's sister was behind her with their two larger dogs. Ms. Kusack's two daughters were ahead of her, and Ms. Kusack was side-by-side with her mother and Peanut. Ms. Kusack had full control of Peanut the entire incident. Ms. Kusack stepped to the side of the trail and moved down to a gap in the trees, which was about five to six feet wide. She had Peanut's harness in one hand and his leash wrapped up in the other hand. She was crouched over Peanut, with him between her legs. Ms. Snyder slid into Peanut, by maybe just one step. Peanut only turned his head. Something made Peanut snap at Ms. Snyder. The picture on the trail is not where the bite occurred. Ex. D5-001.
15. Ms. Kusack tried to offer help to Ms. Snyder and told her she had a medical kit in her car. Ms. Kusack and her family waited an hour at the trailhead looking for Ms. Snyder. Moments before the incident, a blue truck came barreling down the trail. Ms. Kusack has a restraining order in another case. It has been very traumatizing for her family.
16. It was Ms. Kusack's mother who spoke with Ofc. Reyes after the incident. Ms. Kusack's mother is blind.

17. Ms. Kusack testified that Peanut is the nicest dog, and she was shocked Peanut bit. Peanut is very friendly. Peanut did not bite maliciously, but only because he was provoked.

#### Legal Standards

18. Did Peanut perform an 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 is Peanut an “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.
19. 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

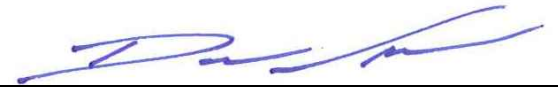
20. Credibility is critical to any hearing, and it is hard to see how Peanut’s people could have done a better job of undermining theirs if they tried. Refusing to provide a bite victim with contact information at the scene is a wonderful way to undercut a later position that, “We have nothing to hide.” Then lying to an officer about being at the scene and refusing to show the officer the biting dog, then (when caught in a lie) changing the story from not being there that day to being there but there being no bite, then (when advised there were bite pictures) calling the victim a “fucking bitch,” compounded this and shot holes in the “Peanut was totally provoked to bite” story.
21. We did not find Ms. Kusack’s version (that she had full control of Peanut the entire incident, with Peanut between her legs, when Ms. Snyder slid into Peanut and provoked Peanut to bite) nearly as plausible as Ms. Snyder’s and Ms. Brown’s (that as Ms. Snyder passed at several feet’s distance, without making any slide or stumble towards Peanut, Peanut darted out and bit her). Peanut endangered the safety of a person, by biting a human being without provocation, and constitutes a danger to the safety of persons off the animal’s premises. We sustain the violation notice and order of confinement.
22. That leaves only the penalty amount. On one level, the idea of any penalty reduction here seems ludicrous, given that Peanut’s people refused to give contact information on the trail—requiring Animal Services to track them down to vainly try to get their version post-bite—and then lied to the investigating officer. Yet no matter how disappointed we are in the *post*-bite approach here, where an owner shows that the animal did something despite (not due to a lack of) the owner’s responsible caretaking, we typically reduce the penalty.
23. Ms. Snyder’s and Ms. Brown’s testimonies were clear: Ms. Kusack was dutifully holding Peanut on a leash, and even stepped to the side of the trail to let Ms. Snyder pass. That

seems exactly what a responsible owner would do. We do not attribute Peanut suddenly going at Ms. Snyder and biting her to anything irresponsible Ms. Kusack was doing or failing to do.<sup>1</sup> The penalty reduction we think warranted is obviously not close to what it would have been if Peanut's people handled themselves differently *after* the bite. However, we still find a small penalty reduction in order, given the circumstances under which the bite occurred.

DECISION:

1. We deny Ms. Kusack's appeal as to the viciousness designation and order to contain Peanut.
2. We reduce the applicable penalty from \$500 to \$400.

ORDERED December 27, 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 26, 2022*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

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<sup>1</sup> It would be different if Peanut had earlier bitten a different trail walker. The record contains a text from another trail regular who had an earlier encounter with a leashed dog that looked like Peanut and who bit her on the trail, before the woman walking the biting dog hurried off. Ex. D7. While the fact pattern sounds eerily similar—a leashed dog looking like Peanut bit someone on the trail and then the owner left without providing contact information—it is hearsay, as the victim of that other bite was not offered as a witness to testify under oath and subject to cross-examination. We do not accord the text weight.

**MINUTES OF THE DECEMBER 15, 2021, HEARING IN THE APPEAL OF  
CANDICE MERCER, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE  
NO. V21012591-A21004814**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Rebecca Smokoska, Christina Snyder, Mary Brown, Silvia Reyes, and Tyra Kusack. 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 September 25, 2021 incident by Christina Snyder, dated September 27, 2021
Exhibit no. D3	Photographs of Christina Snyder's injury
Exhibit no. D4	Photograph of suspect dog
Exhibit no. D5	Photographs of suspect dog owner
Exhibit no. D6	Photographs of associated vehicles
Exhibit no. D7	Screenshots of text messages between Christina Snyder and another hiker
Exhibit no. D8	RASKC investigation report no. A21004814
Exhibit no. D9	Notice of violation no. V21012591-A21004814, issued October 7, 2021
Exhibit no. D10	Proof of Service
Exhibit no. D11	Appeal, received October 19, 2021
Exhibit no. D12	Map of subject area

DS/lo

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V21012591-A21004814**

**CANDICE MERCER**

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 27, 2021.



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Lauren Olson  
Legislative Secretary

**Brown, Mary**  
Hardcopy

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

**Kusack, Tyra**

**Reyes, Silvia**  
Regional Animal Services of King County

**Smokoska, Rebecca**  
Regional Animal Services of King County

**Snyder, Christina**  
Hardcopy

**Tyra Kusack, Candice Mercer**  
Hardcopy