

February 9, 2022

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V21012730-A21005923**

JOHN AND COURTNEY MALGESINI

Animal Services Enforcement Appeal

Appellants: **John and Courtney Malgesini**

[REDACTED]
Duvall, WA 98019

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. John and Courtney Malgesini appeal some of a violation notice for their dog, Clark. After hearing witnesses' testimony and observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we uphold the licensing, running at large, chasing vehicles, and on public property not under control violations, reverse Clark's vicious determination, and reduce the licensing penalty.

Background

2. In November 2021, Regional Animal Services of King County (Animal Services) issued John Malgesini a violation notice for his dog, Clark, running at large, chasing vehicles, not being under control, being unlicensed and unaltered, qualifying as vicious, and needing to be confined. Ex. D2. The Malgesinis timely appealed the following month. Ex. D6. We went to hearing on February 2, 2022.

Hearing Testimony

Testimony of Jerry Miller

3. Mr. Miller testified that he and his partner, Rick Amish, have had many encounters with the Malgesinis' dog, Clark. On many occasions as they bicycled past the Malgesini residence, Clark chased after them. When they pass riding downhill, they have typically been able to outrun Clark; when they pass riding uphill, they cannot outrun Clark. Sometimes Mr. Malgesini and his son would come outside to call Clark back home, or Mr. Miller and Mr. Amish would yell at Clark to go home and Clark would return home.
4. About three years ago, Mr. Malgesini was in his driveway and saw Clark chasing Mr. Miller and Mr. Amish on their bicycles. That time Mr. Malgesini called Clark back home. That is how they knew the dog's name was "Clark" and that Mr. Malgesini at least was aware of the problem.
5. Given that Clark has previously chased them, Mr. Miller and Mr. Amish typically ride with caution as they near the Malgesini residence, to ensure that Clark is not outside. On the day in question (November 28), as they rode uphill towards the Malgesini residence, they did not see Clark, so they kept going.
6. Mr. Amish was ahead of Mr. Miller and already past the Malgesini residence. Mr. Miller was behind him and was just passing the Malgesini driveway. Suddenly Clark shoved against Mr. Miller's bike and knocked him over, bruising Mr. Miller's side and scraping his knee in the process. Clark was barking and growling at him; he was scared that Clark was going to bite.
7. Mr. Miller put his bike in front of him, as he and Mr. Amish shouted, "Go home!" to Clark and tried to get the Malgesinis' attention, hoping that someone would come outside; no one did.
8. Mr. Miller and Mr. Amish drove by the Malgesini property about two weeks ago and did not see Clark outside. Out of caution and fear, they no longer bike on that road.

Testimony of Rick Amish

9. Mr. Amish testified that, on the day in question, he and Mr. Miller were riding their bicycles uphill. As soon as they passed the Malgesini driveway, Mr. Amish heard Mr. Miller screaming. Mr. Amish looked back and saw Mr. Miller on the ground, with Clark hovering over him. Mr. Amish went on the Malgesini driveway and yelled loudly for the owners to come out, but they did not.
10. Mr. Amish rides alone at times, and Clark has gotten close enough that Mr. Amish could swat Clark's nose. Clark chased after Mr. Amish and Mr. Miller about 70% of the time they passed the Malgesini residence.

Testimony of Courtney Malgesini

11. Ms. Malgesini is apologetic about the incident. One of the Malgesinis would have come out to call Clark home, but on that day they were sick with Covid and must have not heard the commotion. Though Ms. Malgesini has seen Clark chase a car and go on the road before, she was unaware that Clark had chased bicyclists or was an issue to some neighbors. Some neighbors, when they walk by the Malgesini property and see Clark outside, end up taking him on their walk.
12. Since the incident, Clark has been confined inside the home and has been on leash when he needs to go outside. Clark is a farm dog, looking after the Malgesini household and property, including their driveway. He is protective, but not vicious. In the future, Ms. Malgesini plans to build a fenced enclosure on the road side of their 10-acre property.

Legal Standards

13. KCC 11.04.030.A. requires all dogs eight weeks old and older that are harbored, kept or maintained in King County be licensed and registered.
14. “Running at large,” means “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,” with “under control” itself including “restrained from approaching any bystander or other animal” when “off the premises of the owner.” KCC 11.04.020.W. & AA., KCC 11.04.230.B.
15. It a nuisance for a dog to be “on any public property not under control by the owner or other competent person,” with “under control” being defined as above. KCC 11.04.020.AA., KCC 11.04.230.M.
16. KCC 11.04.230.F. declares as a nuisance a “domesticated animal that chases, runs after or jumps at vehicles using the public streets and alleys.”
17. Most seriously, “vicious” is defined as “[h]aving 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., KCC 11.04.230.H.

18. 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.; KCC 11.04.210.B.

Analysis

19. The Malgesinis do not contest the running at large, chasing vehicles, and on public property not under control violations. Indeed, it would have been pointless to do so. On November 28 Clark was off his premises, on a public street and not under any semblance of control, unrestrained from approaching Mr. Miller, and chased a vehicle (Mr. Miller’s bicycle¹). As they had plenty of warning that Clark was escaping off the property and did little or nothing to stop it, we do not reduce the associated penalties. As to the licensing violation, the Malgesinis licensed Clark the day after returning from vacation; in such circumstances we typically reduce the licensing penalty.
20. Whether Clark qualifies as “vicious” is a different question. A dog does not have to actually bite or attack to qualify as vicious, given the “including, but not limited to” language. The KCC 11.04.020.BB’s standard is performing an act “endangering the safety of any person,” which Clark certainly did on the November 28. So, Clark meets the definition of “vicious.” However, the nuisance violation itself requires not only having performed a vicious act, but that the animal “constitutes a danger.” KCC 11.04.230.H. That is harder for Animal Services to show when a dog has not at least tried to bite.
21. The Malgesinis have been somewhat negligent in their historically lackadaisical approach to containing Clark, a dog they knew had run out on the public street and chased vehicles. And yet they allowed Clark to run free rein, oblivious to the risks he posed to others (or that vehicles posed to him). Yet the code criteria above does not turn on whether an owner is responsible or irresponsible. A viciousness designation carries stiff compliance terms (such as having the dog on a leash at all times when off the property, which acts as a lifetime ban from dog parks). It sticks with the dog even if the dog winds up in the hands of more careful owners with better control. It can limit the dog’s options in other ways, as many veterinarians, doggy daycares, dog walkers, and kennels will not take on the added risk of a vicious dog. It and raises the specter of future removal of the dog from the County. *See* KCC 11.04.290.A.3.
22. Under the state’s two-tiered system, Clark definitely qualifies as a “potentially dangerous dog,” having “chase[d] or approach[e]d a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack.” RCW 16.08.070(1). But under the County standard, can we say that Animal Services has met its burden of

¹ In Washington, a “Vehicle” includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, including bicycles.” RCW 46.04.670 (underscore added).

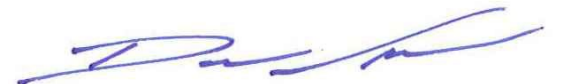
proving that Clark constitutes a danger, especially as the Malgesinis do not seem in a state of denial (Ms. Malgesini was apologetic and seemed to grasp the risk Clark poses) and given the control the Malgesinis have reliably exercised since November 28 and Clark's non-history of biting? That is a much closer call. On our facts we cannot quite conclude that Animal Services has met its burden.

23. Certainly, the Malgesinis are catching a break here. And they have a choice. They can continue keeping Clark contained, as they have dutifully done so since November 28, or they can return to their laissez-faire ways, which not only would result in a \$300 penalty next time (as the \$150 in nuisance penalties here would double), but—were there another incident where Clark gets out and again causes mayhem—may result in a viciousness designation that sticks. Yet on today's facts, we reverse Clark's viciousness designation.

DECISION:

1. We uphold the running at large, chasing vehicles, and on public property not under control violations and the associated \$150 in penalties.
2. We uphold the licensing violation, but reduce the licensing penalty from \$125 to \$70.
3. We reverse Clark's viciousness designation and the associated \$500 penalty.

ORDERED February 9, 2022.



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 *March 11, 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 FEBRUARY 2, 2022, HEARING IN THE APPEAL OF JOHN
AND COURTNEY MALGESINI, REGIONAL ANIMAL SERVICES OF KING
COUNTY FILE NO. V21012730-A21005923**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Rick Amish, Courtney Malgesini, Jerry Miller, and Rebecca Smokoska. 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 | Notice of violation no. V21012730-A21005923, issued November 29, 2021 |
| Exhibit no. D3 | RASKC investigation report no. A21005923 |
| Exhibit no. D4 | Online Complaint form of November 28, 2021 incident by Jerry Miller, dated November 28, 2021 |
| Exhibit no. D5 | J. Miller Letter and addendum, dated November 28, 2021 |
| Exhibit no. D6 | Appeal, received December 19, 2021 |
| Exhibit no. D7 | Google Map of subject area (overview) |
| Exhibit no. D8 | Google Map of subject area (close up) |

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21012730-A21005923**

JOHN AND COURTNEY MALGESINI

Animal Services Enforcement Appeal

I, Jessica Oscoy, 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 February 9, 2022.



Jessica Oscoy
Office Manager

Amish, Rick

Malgesini, John/Courtney

Hardcopy

Rick Amish, Jerry Miller

Hardcopy

Smokoska, Rebecca

Regional Animal Services of King County