

December 6, 2022

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

King County Courthouse
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V22013549-A22004978**

JAMES MCGAVOCK

Animal Services Enforcement Appeal

Activity no.: A22004978

Appellant: **James McGavock**

[REDACTED]
Seatac, WA 98188

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. James McGavock appeals a Regional Animal Services of King County (Animal Services) violation notice for his dog, Nika, being unlicensed and unaltered, qualifying as 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 grant the appeal as to the viciousness violation and reduce the licensing penalty.

Background

2. On June 10, 2022, Roseanna Honken filed a complaint that one of Mr. McGavock's dogs [Nika] bit her inside a local convenience store on June 5. Ex. D10. Ms. Honken provided a photograph of the injury. Ex. D11. On June 22, Animal Services issued Mr. McGavock a warning notice. Ex. D12.
3. On June 27, Nika allegedly lunged at and bit Barbara Ostlund (a resident of Mr. McGavock's apartment complex), per a complaint Ms. Ostlund filed on September 13. Ex. D3. Ms. Ostlund provided a photograph of the injury to her upper leg. Ex. D4.
4. In August, Nika allegedly bit Mr. McGavock's next door neighbor, Dolores Guerrero. Ex. D2 at 002, n.1.
5. Nika allegedly was at it again on September 13, biting fellow resident Jeff Almanzar. Mr. Almanzar filed a written statement the following day. Ex. D5. Mr. Almanzar also provided a photograph of his injury. Ex. D6.
6. On September 14, Animal Services issued Mr. McGavock a violation notice declaring Nika vicious. Ex. D7. On September 26, Mr. McGavock timely appealed. Ex. D13. On October 13, Mr. McGavock submitted an amended appeal. Ex. A1. We went to hearing on November 18.

Hearing Testimony

Testimony of Chelsea Eykel

7. Sgt. Eykel testified that Animal Services has received several complaints about Nika. Sgt. Eykel reached out to all four victims.
 - The original complainant, Ms. Honken, was willing to testify; Sgt. Eykel had walked her through the steps to join the hearing and was surprised by Ms. Honken's absence.
 - Ms. Guerrero also reported an injury from Nika, but did not want to file a complaint.
 - Ms. Ostlund, who lives in proximity to Mr. McGavock, filed a complaint but had concerns about testifying and wanted to avoid conflict.
 - Mr. Almanzar was adamant that his written statement and photograph he submitted should be enough and opted not to testify—even after Sgt. Eykel explained to him that his written statement would probably be insufficient.
8. Mr. McGavock has been slow to control Nika's behavior, particularly since Nika has impacted a vulnerable population. Mr. McGavock does not dispute that Nika bit the

victims, so Animal Services argues that the viciousness designation and order of confinement should be upheld, and also recommended that Nika wear a muzzle in public. If Mr. McGavock has another incident, Animal Services would issue an order to remove Nika from King County.

9. The property manager may have assisted Ms. Honken and Ms. Ostlund in filing their complaint because those victims had technological challenges doing it themselves. For Mr. Almanzar's complaint, Officer Nickelson assisted him in submitting his report and photograph.

Testimony of James McGavock

10. Mr. McGavock testified that on June 5, his dogs were not loose inside the convenience store. A lady [Ms. Honken] came out and told him that his dog [Nika] bit her; Mr. McGavock denied it and kept walking. Ms. Honken then obtained Mr. McGavock's contact information from his property manager.
11. Mr. McGavock and Ms. Ostlund have been close friends for years. On June 27, Ms. Ostlund gave one of Mr. McGavock's dogs, Max, a treat, and Nika must have gotten jealous; Nika nipped Ms. Ostlund. On November 8, Mr. McGavock encountered Ms. Ostlund, who told him that Animal Services talked to her about her complaint and she told them that it was not her report and she wanted nothing to do with a hearing.
12. Mr. McGavock and Ms. Guerrero are good friends and at times cook for each other. Mr. McGavock does not recall an incident with Nika and Ms. Guerrero.
13. On September 13, Mr. Almanzar was going out of the building as Mr. McGavock was coming inside, and they were both startled. Nika nipped Mr. Almanzar's pants, but did not bite him. The photograph that Mr. Almanzar provided the following day shows a fresh injury, not a day-old injury. On a separate day, Mr. McGavock again was about to exit the building when he saw Mr. Almanzar, so he questioned him if he was coming inside. Mr. Almanzar just stood there, as if he were trying to antagonize Nika. Mr. McGavock and Mr. Almanzar have always had a bad relationship and Mr. Almanzar does not like him.
14. Regarding the licensing, Mr. McGavock testified that he attempted to email Animal Services but did not get a response. Mr. McGavock even went to Petco for assistance and they ran into the same issues with the online form; the form would not accept a license for Nika that was between 6-12 months old.
15. Mr. McGavock's wife passed away on July 8 and his world turned upside down. He admits there was a delay [in addressing Nika's behavior] during that difficult time, but there have been no incidents with Nika within the last two months. Since September 13, Mr. McGavock has done everything he listed in his appeal to address Nika's behavior, except for muzzling him, because Officer Nickelson recommended him not to (for Nika's protection). There was an incident in the community courtyard when four dogs were loose and chased Nika into a retention pond, but Nika did not attack them (Nika was leashed).

16. Mr. McGavock is concerned that the property manager has been assisting the complainants in filing reports, claiming that the reports are biased and untrue. He also claims that the property management turned off his internet to sabotage his hearing. Mr. McGavock submitted notice to the property manager on plans to move out by January 31, 2023.
17. Mr. McGavock agreed that Nika is not easy. He will see if his son can take Nika in Texas.

Legal Standards

18. Animal Services asserts that Nika was unaltered and unlicensed, in violation of KCC 11.04.030.A, which requires all dogs eight weeks old and older be licensed and registered.
19. More seriously, Animal Services asserts that Nika qualifies as vicious, 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 “[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.” KCC 11.04.020.BB; .230.H
20. 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

21. Mr. McGavock is extremely lucky. The witnesses from two of the incidents (Ms. Guerrero and Ms. Ostlund) elected not to pursue their matters out of friendship for, and proximity to, Mr. McGavock. Ms. Honken seemed willing to testify but then did not appear at hearing. And Mr. Almanzar apparently decided that because he personally believed that his written statement *should* be sufficient, he did not actually need to participate in the hearing—despite Animal Services counseling him that out-of-court statements likely would not be enough.
22. A statement made outside of the hearing room, offered for the truth of what it asserts, typically qualifies as “hearsay.” We typically allow in hearsay statements, such as the written record here. However, admissibility is not the same thing as weight. And while we often sustain minor infractions such as trespass or running-at-large based solely on hearsay evidence, we cannot recall ever sustaining a serious charge such as a viciousness designation without live testimony at a hearing, given under oath and subject to cross examination.
23. Today’s case is as close as we have come to sustaining a viciousness designation without actual testimony. Mr. McGavock seems somewhat oblivious to the dangers Nika poses,

especially to a vulnerable senior population. He has taken recent steps to train her, but about the best he could acknowledge was that Nika is “not easy.” He seemed far more content to push conspiracy theories and people being out to get him as explanations for Nika’s aggression.

24. Even without Ms. Guerrero and Ms. Ostlund, had either Mr. Almanzar or Ms. Honken testified we likely would have upheld Nika’s viciousness designation. And if both Mr. Almanzar *and* Ms. Honken had testified, Nika very well might have met KCC 11.04.290.B.2’s criteria of an “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.”
25. However, we have only the record we have, including zero complainant-witnesses at our hearing. And based on our record, we overturn Nika’s viciousness designation. In the long run, it would certainly be better for everyone if Nika were in rural Texas or someplace other than around a vulnerable senior population. And in the short run, Mr. McGavock would be wise to muzzle Nika whenever he leaves his own room. And if Nika goes after someone again, Animal Services might bring another violation notice or even a removal order.
26. As to the licensing violation, immediately after being notified, Mr. McGavock licensed his other dog and attempted to license Nika, but was unable to do so, given Nika’s youth. He has now licensed Nika. Under those circumstances, a penalty reduction is in order.

DECISION:

1. We overturn Nika’s viciousness designation and the associated \$500 penalty.
2. We uphold the licensing violation, but we reduce the penalty to \$100.

ORDERED December 6, 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 *January 5, 2023*. 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 NOVEMBER 18, 2022, HEARING IN THE APPEAL OF JAMES MCGAVOCK, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V22013549-A22004978

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel and James McGavock. 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	RASKC investigation report no. A22004978
Exhibit no. D3	Online Complaint form of June 27, 2022, incident by Barbara Ostlund, dated September 13, 2022
Exhibit no. D4	Photograph of Ms. Ostlund's injuries
Exhibit no. D5	Online Complaint form of September 13, 2022, incident by Jeff Almanzar, dated September 14, 2022
Exhibit no. D6	Photograph of Mr. Almanzar's injury
Exhibit no. D7	Notice of violation no. V22013549-A22004978, issued September 14, 2022
Exhibit no. D8	Bite Quarantine Notice, dated September 14, 2022
Exhibit no. D9	RASKC investigation report no. A22003043
Exhibit no. D10	Online Complaint form of June 5, 2022, incident by Roseanna Honkch, dated June 10, 2022
Exhibit no. D11	Photograph of bite to Ms. Honken
Exhibit no. D12	Warning Notice V22013277-A22003043, dated June 22, 2022
Exhibit no. D13	Appeal, received September 26, 2022
Exhibit no. D14	Map of subject area
Exhibit no. D15	Signed online Complaint form of June 27, 2022, incident by Barbara Ostlund, dated September 13, 2022, submitted November 18, 2022

The following exhibits were offered and entered into the record by the appellant:

Exhibit no. A1	Supplemental Appeal, received October 13, 2022
Exhibit no. A2	Rebuttal exhibit

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V22013549-A22004978**

JAMES MCGAVOCK

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 December 6, 2022.



Jessica Oscoy
Office Manager

Almanzar, Jeff

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

McGavock, James

Hardcopy

Ostlund, Barbara

Hardcopy