

December 12, 2022

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

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file nos. **V22013605** and **V22013606**

**WHITNEY AND ADAM MICHAEL**  
Animal Services Enforcement Appeal

Activity no.: A22004911

Appellants: **Whitney and Adam Michael**  
[REDACTED]  
Enumclaw, WA 98022  
Telephone: [REDACTED]  
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King County: Regional Animal Services of King County  
*represented by* **Chelsea Eykel**  
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FINDINGS AND CONCLUSIONS:

Overview

1. Whitney and Adam Michael (Appellants) challenge an order removing their dog, Dozer, from King County. Although Dozer's fatal attack of another dog was unprovoked, horrific, and devastating, after hearing witnesses testimony, observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and

the relevant law, we reverse the removal order, though we formally add a muzzle restriction.

### Background

2. On September 29, 2022, Regional Animal Services of King County (Animal Services) issued Whitney Michael a violation notice for her dog, Dozer, running at large, qualifying as vicious, and needing to be confined. Ex. D8. On that same day, Animal Services also issued a removal order for Dozer. Ex. D9. The Michaels timely appealed on October 11. We went to hearing on November 28.

### Hearing Testimony

#### *Testimony of Francisco Pons*

3. Francisco Pons took the time to testify from abroad (much appreciated). On September 9, he was walking home after a run when he saw a man [Frank Garcia] walking a small dog [Ziggy] on a leash. Mr. Pons then saw a dog [Dozer] running very fast on the sidewalk, heading south, behind Mr. Garcia and Ziggy. Mr. Pons also saw a young man behind Dozer, who he assumed was the owner.
4. Mr. Pons screamed at Mr. Garcia to watch out. It appeared that Mr. Garcia did not hear him, so Mr. Pons ran towards him. This all occurred in a few seconds. Dozer was very focused on Ziggy. When Dozer got very close to Ziggy, Ziggy tried to run away, but he could not because of the leash.
5. Dozer immediately bit down on Ziggy's neck; he did not pause to sniff or greet. Dozer bit down and moved Ziggy side-to-side. The damage was immediate. Since Ziggy's neck was small, Dozer's mouth was almost closed. Mr. Pons tried to open Dozer's jaw, but Dozer continued to bite down, and Mr. Pons could see blood. A woman from the dentist clinic came to assist. Mr. Pons asked her for a stick to open Dozer's mouth. Dozer finally took a little breath and Mr. Pons was able to gently take Ziggy out of his mouth. Dozer did not attack Mr. Pons; his fingers were injured from sticking them in Dozer's mouth. Ex. D3-002.
6. Mr. Garcia was in shock. The woman from the dental clinic gave Mr. Pons a cool towel for Ziggy. Mr. Pons held Ziggy for about five minutes. Other people gathered on the sidewalk, and someone called 911. The police arrived a minute or two later.
7. After Mr. Pons took Ziggy out of Dozer's mouth, Dozer sat on the sidewalk. He looked relaxed and maybe confused. The young man was holding onto Dozer and said he was not the owner.<sup>1</sup> Mr. Pons did not fear Dozer at that time. The police later told Mr. Pons that Ziggy passed away, which is very sad.

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<sup>1</sup> The other gentleman was, like Mr. Pons and the dental worker, also a good Samaritan bystander.

*Testimony of Sgt. Chelsea Eykel*

8. Sgt. Chelsea Eykel testified that she spoke with two witnesses to the incident who were unwilling to testify at the hearing:
  - The man who contained Dozer after the incident is a business owner in the area. He saw Dozer loose and tried to catch Dozer because he was concerned about a car hitting him. He saw Dozer focus in on Ziggy, run hard towards Ziggy, and bite. Dozer seemed dazed and calm after the incident. His statement was similar to Mr. Pons’.
  - The woman who ran out from the dental clinic was unwilling to testify because she has a medical condition aggravated by the trauma of the incident. She saw Dozer focus on Ziggy, not pause, and grab onto Ziggy. She ran out of the dental clinic and provided Mr. Pons with a stick. When Mr. Pons was able to open Dozer’s mouth, she took Ziggy out of his mouth. Her statement was similar to Mr. Pons’ and the business owner’s.

*Testimony of Frank Garcia*

9. Frank Garcia testified that he was on his normal walking route with Ziggy. Dozer was running at full speed towards him; Dozer did not come from behind him. He believed Dozer might have come from behind a fence, but he is uncertain about this. Mr. Garcia was about ten to fifteen feet from the fence on the property next to the dental clinic. Mr. Garcia had just seconds to react.
10. When Dozer bit down on Ziggy there was no yelp. Mr. Garcia did not recall Dozer making any noise; he just seemed focused and intent. Ziggy was gone at the first bite. As shown in the video, Mr. Garcia started kicking and hitting Dozer, and it did not phase Dozer. Ex. D4. Mr. Pons jumped in pretty quickly. The woman from the dental clinic also tried to help. At that point, things are a blur for Mr. Garcia. He did not recall anything about a stick.
11. When Dozer let go of Ziggy, Mr. Garcia knew he was gone. An officer assisted Mr. Garcia with bringing Ziggy to an animal hospital. The first animal hospital was closed, so the officer drove him to another. At the open animal hospital, the veterinarian asked Mr. Garcia if they should attempt emergency measures, and he told them no. He chose to put down Ziggy. Ms. Garcia came later.
12. On rebuttal, Mr. Garcia testified that on the day of the incident, he was angry that Dozer had the potential opportunity to kill again. Mr. Garcia wished that the Michaels had reached out to them.

*Testimony of Kim Garcia*

13. Kim Garcia testified that the woman from the dental clinic called and told her that Ziggy was in trouble, he probably would not be okay, and Mr. Garcia needed her. Ms. Garcia drove to the dental clinic, and they drove to the vet. The veterinarian spoke to her about

the extent of Ziggy's injuries. The Garcias decided to put Ziggy down. They kept him in a blanket, so Ms. Garcia did not have to see the injuries. They said goodbye to Ziggy. Ms. Garcia is still feeling the grief.

14. Ms. Garcia does not think Dozer is a bad boy. He was unencumbered, alone, and free to do what his spirit wanted. When he is attached to a person, apparently, he is fine. But when alone, this is what happens.

*Testimony of Whitney Michael*

15. Whitney Michael apologized for what happened. She was not an eyewitness to the incident. Dozer never gets out, and he does not even try to get out. They have a full-fenced yard. When the Michaels realized Dozer was out, they were concerned about him getting hit by a car. Dozer was in a space that he is not used to; he is normally not out by himself. Ms. Michael opined that Dozer probably felt a lot of adrenalin. The Michaels cannot explain what happened or take it back.
16. Since the incident happened, she purchased a basket muzzle for when Dozer is outside, since they now know what he is capable of. They have always used a leash.
17. On the day of the incident, Mr. Michael was working on the car in the driveway. They have used a baby gate between the backyard and garage, which has worked for the past four years. They believe that Dozer laid down by the gate because it is shady there, and the gate then opened. They are no longer using the baby gate. The door between the garage and back yard will be closed when Dozer is in the backyard.
18. The incident was very uncommon for Dozer. People commented that after the incident, Dozer was calm and friendly. Dozer plays with tiny dogs and kids. He does not respond when people pull his tail. This is the first time Dozer has done anything like this.
19. On rebuttal, Ms. Michael testified that she asked Animal Control if they could reach out to the Garcias. The officer said that Animal Services does not give out contact information, and he strongly encouraged them not to contact the Garcias.
20. Ms. Michael has never denied what Dozer did that day. The Michaels are focusing on appealing the removal order. Abandoning or sheltering a dog changes them. She asked what would be gained from taking Dozer away from his family.

*Testimony of Adam Michael*

21. Adam Michael testified that it was a very unfortunate day. He would like to go back and change things.
22. Dozer is very fun and animated. From that day forward, they have made every possible adjustment to ensure Dozer does not get out again. The property has been fenced since they moved in. The fence is well-supported, stockade, and has rocks underneath. There are locks on the gates. The only weakness was the baby gate (which they previously

employed when the garage door was open). They have limited his walks. When they walk him, they only bring him to more remote Forest Service areas.

### Legal Standards

23. “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” defined as “either under competent voice control or competent signal control, or both, so as to be restrained from approaching any bystander or other animal and from causing or being the cause of physical property damage when off a leash or off the premises of the owner.” KCC 11.04.020.W, .AA; .230.B.
24. “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 “[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.
25. Removal from the County is authorized under KCC 11.04.290.A.1, which states that:
 

An animal, declared by the manager of the regional animal services section to be vicious, may be harbored, kept or maintained in King County only upon compliance with those requirements prescribed by the manager. In prescribing the requirements, the manager must take into consideration the following factors:

  - a. the breed of the animal and its characteristics;
  - b. the physical size of the animal;
  - c. the number of animals in the owner's home;
  - d. the zoning involved; size of the lot where the animal resides and the number and proximity of neighbors;
  - e. the existing control factors, including, but not limited to, fencing, caging, runs and staking locations; and
  - f. the nature of the behavior giving rise to the manager’s determination that the animal is vicious, including:
    - (1) extent of injury or injuries;
    - (2) circumstance, such as time of day, if it was on or off the property and provocation instinct; and

(3) circumstances surrounding the result and complaint, such as neighborhood disputes, identification, credibility of complainants and witnesses,

while KCC 11.04.290.A.2 states that:

Requirements that may be prescribed include, but are not limited to, the following:

- a. Erection of additional or new fencing adequate to keep the animal within the confines of its property;
- b. Construction of a run within which the animal is to be kept. Dimensions of the run shall be consistent with the size of the animal;
- c. Keeping the animal on a leash adequate to control the animal, the length and location to be determined by the manager. When unattended the leash must be securely fastened to a secure object;
- d. Maintenance of the animal indoors at all times, except when personally controlled on a leash adequate to control the animal by the owner or a competent person at least fifteen years old; and
- e. Removal of the animal from the county within forty-eight hours from receipt of such a notice.

26. 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

27. The Michaels' appeal explicitly did not contest the running-at-large violation or confinement order. Ex. D11.
28. The Michaels appeal sort of contested Dozer's viciousness designation ("appeal or reduce fines"), but at hearing (and after having been advised of the code criteria in our prehearing order) they agreed that this was appropriate. Even if they had challenged the viciousness designation, it would not been successful and would have only cut into their credibility. Although there is some dispute about precise pieces of the attack (such as whether Dozer came from behind or in front and whether Mr. Pons actually used a stick or only his hands to pry Dozer's jaws off Ziggy), the material facts are clear.
29. Mr. Garcia and a leashed Ziggy were just minding their own business on a public sidewalk when Dozer charged. Unlike some altercations where dogs meet and only then does a situation escalate, Dozer attacked with the single-minded determination. And

while sometimes a larger dog can inflict significant damage with a single bite-and-release, this was sustained ferocity, shaking the life out of Ziggy despite multiple people attempting to detach Dozer.

30. That Dozer quickly returned to a calm state afterwards actually makes it *worse*, not better. Ours is not a scenario where, say, on July 4 a dog freaked out by the constant barrage of fireworks and lashes out at nearby people or animals. Instead, after Dozer killed Ziggy, he was calm and easy to contain.
31. Dozer performed an act endangering the safety of an animal, namely fatally attacking Ziggy without provocation. Dozer constitutes a danger to animals off the Michael property. We sustain Dozer's vicious designation.
32. As to the penalty associated with the viciousness violation, where an owner shows that the animal did something despite (not due to a lack of) the owner's responsible behavior and/or where the owner takes significant steps after the violation to avoid a recurrence, we often reduce the otherwise applicable penalty.
  - Before the fact, there is no evidence that the Michaels knew or should have known the threat, let alone the lethal threat, that Dozer presented. Nor is there an indication that Dozer had a habit of running loose. We found the Michaels credible that Dozer is not an escaper and September 9 was an aberration. That they immediately set out to look for Dozer bolsters this; appeals involving dogs that are repeatedly loose tend to have laissez-faire owners who seem content to let their dogs free range and return whenever.
  - After the fact, the Michaels have taken steps to avoid a repeat. They purchased a basket muzzle for when Dozer is outside, since they now know what he is capable of. The property is fully-fenced, with locks on the gates. They no longer rely on a baby gate. They have limited his walks around other dogs. They attempted to get the Garcias' contact information from Animal Services, but the officer would not release that information and advised them not to contact the Garcias, counsel they followed.

We find a penalty reduction in order.

33. It may seem odd on first blush that we reduce the penalty for such egregious violence, while in other cases involving far less violence we sustained the full penalty. But the consistency is that a penalty is designed to punish or incentivize certain human behavior. Whether to reduce, and if so by how much to reduce, a penalty relates to the *owner's* (not the animal's) behavior before or after the animal does something. And, as noted above, the Michaels took what at the time appeared objectively reasonable steps to contain Dozer, and afterwards even went beyond the terms of the containment order (by muzzling Dozer when outside).
34. Of our hundred-plus appeals involving a removal order, most have involved a dog previously declared vicious and ordered confined who on a *later* date violates that confinement order. A small few have involved a situation where there had been no prior viciousness designation or confinement order, but the dog had performed at least one

other act of violence, or at least aggression, on a different day. We cannot recall one where Animal Services served a removal order based on a single act—even lethal violence—against another animal, where there was no evidence of other violence or at least other acts of aggression.

35. That does not mean that a one-time event involving another animal might not warrant removal. And September 9 was truly horrific. In a totally unprovoked attack, Dozer took Ziggy’s life, devastated the Garcias and deprived them of their beloved companion, and even traumatized at least one bystander. And Dozer could pose the same threat if he escaped again. Even if we cannot recall another scenario where Animal Services issued a removal order based solely on a first (and only) instance of violence/aggression against another animal,<sup>2</sup> it makes sense that Animal Services did so here.
36. Yet the code, cited above, provides for removal at the end of a list of other options for handling a vicious dog. And we are the most exacting of Animal Services on removal orders, given the interests at stake.<sup>3</sup> September 9 did not happen because of any laxness from the Michaels, given that their containment system had previously worked and Dozer had no history of aggression that should have put them on heightened alert. Since then, the Michaels have implemented the containment order (exhibit D8 at 001) and even voluntarily added to this by muzzling Dozer when he is outside, along with avoiding areas where other dogs are likely to be. Provided Dozer is wearing a basket muzzle whenever he is outside the home (we will add this as a requirement), the chance of something catastrophic like this happening again is greatly reduced.
37. In the end, this is a close case, coming down to who bears the burden of proof. The Michaels do not bear the burden of disproving that removal is warranted. Rather, Animal Services bears the burden of proving the appropriateness of the remedy it has imposed. And Animal Services cannot quite do that here. We reverse the removal order.

#### DECISION:

1. We SUSTAIN the running at large (with its \$50 penalty) and viciousness violations.
2. We REDUCE the \$500 penalty for the viciousness violation to \$250.
3. We MODIFY Animal Services’ September 29, 2020, compliance order as follows:
  - A. Secure Dozer in a fenced area suitable for his size, and with a basket muzzle, when unattended and outside the home. Lock all passages with a padlock to prevent accidental release.

<sup>2</sup> While Mr. Pons suffered a minor injury to his fingers from Dozer’s mouth (exhibit D3 at 002), Mr. Pons clarified that this was from him sticking his hand in Dozer’s mouth, not from Dozer biting him.

<sup>3</sup> *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (nature of private interest impacted is factor in determining how much process is due); Exam. R. XII.B.4 (higher standards in proceeding involving divestiture of legally cognizable rights); *Mansour v. King County*, 131 Wn. App. 255, 265, 128 P.3d 1241, 1246 (2006) (in the context of an order removing a dog from King County, “the more important the decision, the higher the burden of proof.”) *Repin v. State*, 198 Wn. App. 243, 284, 392 P.3d 1174 (2017) (Fearing, C.J., concurring) (analyzing court decisions recognizing “the bond between animal and human and the intrinsic and an estimable value a companion animal”).



- B. Restrain Dozer using a leash no more than eight feet long, with a basket muzzle and with a collar or harness, when taking Dozer off your property. A competent and capable person must handle Dozer at all times when attended outside.
- C. If not already completed, microchip Dozer and provide the microchip number to the King County Animal Licensing Office (206) 296–2712.
- D. Keep Dozer current on his rabies vaccination.

ORDERED December 12, 2022.




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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 11, 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 28, 2022, HEARING IN THE APPEAL OF WHITNEY AND ADAM MICHAEL, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V22013605 & V22013606**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Francisco Pons, Frank Garcia, Kim Garcia, Whitney Michael, and Adam Michael. 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 | Enumclaw Police Report   |
| Exhibit no. D3 | Photographs  |
| Exhibit no. D4 | Ring Video   |
| Exhibit no. D5 | Online Complaint form of September 9, 2022, incident by Frank Garcia, dated September 10, 2022 |
| Exhibit no. D6 | Veterinary Record  |
| Exhibit no. D7 | RASKC investigation report no. A22004911   |
| Exhibit no. D8 | Notice of violation no. V22013605-A22004911, issued September 29, 2022                         |

Exhibit no. D9	Notice and order for removal no. V22013606-A22004911, issued September 29, 2022
Exhibit no. D10	NVOC mailing/tracking history
Exhibit no. D11	Appeal, received October 17, 2022
Exhibit no. D12	Map of subject area

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

Exhibit no. A1	Letter
Exhibit no. A2	Character Witness Statement Elisa Moore
Exhibit no. A3	Photographs
Exhibit no. A4	Scot Sorum Statement

DS/lo

December 12, 2022

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file nos. **V22013605 and V22013606**

**WHITNEY AND ADAM MICHAEL**  
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 12, 2022.



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Lauren Olson  
Legislative Secretary

**Enumclaw Police**

Hardcopy

**Eykel, Chelsea**

Regional Animal Services of King County

**Garcia, Frank/Kim**

Hardcopy

**Michael, Whitney/Adam**

Hardcopy

**Pons, Francisco**

Hardcopy