

January 12, 2023

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

King County Courthouse  
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**SUMMARY ORDER**

SUBJECT: Regional Animal Services of King County file no. **V22013625-A22005306**

**MELISSA MURPHY**

Animal Services Enforcement Appeal

Activity no.: A22-005306

Appellant: **Melissa Murphy**

[REDACTED]  
Enumclaw, WA 98022

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](mailto:raskcappeals@kingcounty.gov)

At yesterday's hearing, Ms. Murphy and Sgt. Eykel participated but the complainant did not. We announced early on that, without a complainant, we would set aside the viciousness violation. We took no testimony on, nor do we make any findings about, what exactly happened on September 25.

Instead, our focus yesterday was on steps moving forward, both to protect the public and because "[a]ny 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.” KCC 11.04.290.B.2.

While that code provision does not explicitly state that both bites of a person within two years must be unprovoked to trigger removal, to avoid an absurd result we have read in a requirement that a provoked bite/attack/attempted bite does not qualify.<sup>1</sup> And we make no findings about September 25. But September 25 possibly qualifies as one such unprovoked bite of a person, meaning the margin for error for Kam would be essentially zero for the next 20 months.

With us overturning the viciousness violation, there is (along with no monetary penalty) no binding compliance order. So, it is up to the Murphys to weigh their options. Transferring their delivery address to the mom’s home, putting up the gate, and ensuring Kam is crated or otherwise contained before they open the gate, all seem wise. The obvious and easy next step would be affixing to the gate, and to any other entry area, a sign such as



which both gives a written warning and provides a strong visual signal for non-English speakers or for the reading impaired. But again, the ball at this point is solely in the Murphys’ court.

We GRANT the Murphys’ appeal of this notice and order V22013625.

DATED January 12, 2023.

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David Spohr  
Hearing Examiner

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<sup>1</sup>See *Tingey v. Haisch*, 159 Wn.2d 652, 664, 152 P.3d 1020 (2007) (avoid interpreting a code in a way that produces absurd results, because we do not presume legislature intended absurd results). Otherwise, a dog could, say, bite to defend herself against someone charging at her swinging a weapon, have the same scenario occur again within two years, and yet face a mandatory (“shall”) removal despite never meeting the minimum qualification for a viciousness violation. See KCC 11.04.020.BB (bite only counts if “without provocation”). In doing so, we explicitly reject *Wortham v. Chicago Department of Administrative Hearings*, 391 Ill. Dec. 940, 944-45, 31 N.E.3d 915 (2015), which held that, because the code did not specifically address one animal provoking another, the defense that dogs had provoked the appellant’s dog to bite back was not, as a matter of law, an available defense to a dangerous dog designation. Illinois courts have published many thoughtful opinions on provocation in the dog bite context. *Kirkham v. Will*, 311 Ill. App.3d 787, 792, 724 N.E.2d 1062 (2000); *Wade v. Rich*, 249 Ill. App. 3d 581, 589–90, 618 N.E.2d 1314 (1993); *Robinson v. Meadows*, 203 Ill. App.3d 706, 710, 561 N.E.2d 111 (1990); *Stehl v. Dose*, 83 Ill. App. 3d 440, 443, 403 N.E.2d 1301 (1980); *Nelson v. Lewis*, 36 Ill. App. 3d 130, 134, 344 N.E.2d 268 (1976). *Wortham* is not among them.

### **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 *February 13, 2023*. 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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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V22013625-A22005306**

**MELISSA MURPHY**  
Animal Services Enforcement Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **SUMMARY ORDER** 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 January 12, 2023.



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Lauren Olson  
Legislative Secretary

**Cribbs, Kelsey**  
Hardcopy

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

**Murphy, Melissa**  
Hardcopy