

December 21, 2023

**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 nos. **V22014676 and V22014677**

ADELINE ALIZEE

Animal Services Enforcement Appeal

Activity no.: A23005466

Appellant: Adeline Alizee; Cassandra
represented by **Joseph Martin**
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FINDINGS AND CONCLUSIONS:

Overview

1. Adeline Alizee appeals a notice and order for her dog, Oso, being unlicensed, unvaccinated, and potentially dangerous. After hearing witness testimony and observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we sustain the potentially dangerous dog designation, sustain the licensing violation but reduce that fine, and overturn the rabies vaccination violation (the vaccination-related code cited as the violation having been repealed).

Background

2. On September 11, 2023, Regional Animal Services of King County (Animal Services) issued violation notice V22014676 to Adeline Alizee for her dog, Oso, being unlicensed unaltered and not being vaccinated for rabies. Ex. D2. Animal Services also issued violation notice V22014677 for Oso qualifying as potentially dangerous. Ex. D3.
3. Ms. Alizee timely appealed. Ex. A1. We initially went to hearing on November 16 with a French interpreter. Once we realized the interpreter's dialect was not compatible with the witness's needs, we set a resumed hearing for December 7.

Hearing Testimony

Albert Nienau Testimony

4. Albert Nienau testified that on September 6 he arrived home and was heading to his apartment. He walked between the cars in front of his building so he could head up the stairs. He saw a young lady [Cassandra] walking a dog [Oso]. Mr. Nienau gave Cassandra and Oso a five-to-ten-foot berth as he passed because Oso took an aggressive stance. Oso reared back on his haunches and growled. Oso lunged forward and bit Mr. Nienau. Oso shook for a short amount of time and then released. Mr. Nienau was standing in the flowerbed when Oso bit. The incident lasted less than 20 seconds.
5. He immediately went to his apartment, which is on the second floor. There was no interaction on the stairs. The incident did not happen on the third floor; in fact, he has never been to the third floor.
6. Oso's bite punctured the Mr. Nienau's jean. There was what looked like a rug burn on the back of his leg and a four-millimeter puncture wound. He cleaned out the wound and bandaged it.
7. Mr. Nienau wanted to confirm if Oso had his rabies vaccination, so he spoke with Ms. Alizee. She apologized profusely. Mr. Nienau told her to use a shorter leash for Oso. Ms. Alizee said Oso should be wearing a muzzle, and he was up to date on his rabies shots. Since the incident, Mr. Nienau has seen Oso walked twice, both times without a muzzle.

Adeline Alizee Testimony

8. Adeline Alizee testified that she has had Oso for eight years. She got Oso for protection and support. Ms. Alizee thought Oso was up to date on his shots until she spoke with her vet. Oso's shots expired two months prior. Oso is neutered. The past jurisdiction Ms. Alizee lived in did not require dog licenses. She licensed Oso once she found out he needed one here. When the incident happened, she transferred Oso's chip to her name.
9. When Ms. Alizee spoke with Mr. Nienau, they met downstairs in the front of the building. Mr. Nienau said he had lost hours of work and that he is not meant to be seen. Ms. Alizee told Mr. Nienau to send her the bill once it was cleared. Oso has a muzzle

because he likes to bark. He wears the muzzle every time he goes outside. Her niece, Cassandra, is 13 years old.

*Cassandra Testimony*¹

10. Cassandra testified that she began living with her aunt (Ms. Alizee) in March 2023. Oso is a very good and respectful dog. He is sweet and protective.
11. Cassandra took Oso out the day of the incident because he had an accident. September 6 was the only time she walked Oso. She brought Oso down to the parking lot. Mr. Nienau had just pulled up in his car. He walked past Cassandra and Oso. She let Mr. Nienau go first up the stairs because she did not want Oso to bite. She waited for some time to pass before going up the stairs. She got to the third floor and Mr. Nienau was standing by. Oso then lunged at him. Mr. Nienau was not doing anything but walking slowly. Cassandra only saw Oso lunge and tug Mr. Nienau's pants.

Legal Standards

12. Does Oso meet the definition of “potentially dangerous animal”? KCC 11.04.230.F. Per KCC 11.01.320:
 - A. “Potentially dangerous animal” means any animal that when unprovoked:
 1. Bites or inflicts injury on a human or domesticated animal;
 2. Chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack;
 3. Has a known propensity, tendency, or disposition to attack, to cause injury, or otherwise to threaten the safety of humans or domestic animals; or
 4. Jointly engages, with one or more animals in conduct meeting subsections A.1., A.2., or A.3., of this section, in which case all animals are deemed potentially dangerous, absent an affirmative demonstration that a specific animal was not responsible for a qualifying act.
 - B. Regardless of provocation, an animal is a “potentially dangerous animal” if it enters onto private property without the consent of the owner or occupant and bites a human or animal or chases or approaches a person in a menacing fashion or apparent attitude of attack.
 - C. An animal shall not be declared a “potentially dangerous animal” if the threat, injury, or bite alleged to have been committed by the animal was sustained by a person who was at the time committing a willful trespass upon the premises occupied by the owner of the animal, or who was abusing or assaulting the animal, or who was committing, or

¹ We do not identify minors by their full names.

attempting to commit a crime. This exclusion does not apply to actions taken in defense of oneself, other humans, animals, or property.

13. 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

14. Nuanced eyewitness testimony is usually critical. In such scenarios, the outcome often turns on testimony about lightning-fast actions, detailing precisely how an altercation started and exactly what occurred, micro-step by micro-step. For example, the eyewitnesses dispute may come down to, “He thrust his hand into my sitting dog’s face, so my dog gave him a back-off nip” versus, “No, the dog lunged towards me, so I stuck out my hand in defense.” Both witnesses might be generally credible, leaving us to wade through subtle distinctions and probabilities.
15. That is not today’s case. The eyewitness descriptions are three floors apart. Mr. Nienau explained that the entire altercation happened as he was walking from the parking lot to the entrance, before he retreated alone to his second-floor apartment. Cassandra explained that the altercation happened on the third floor. Either the bite occurred on the third floor and Mr. Nienau is completely useless as a witness, or all the action happened on the ground floor by the parking lot, at no point was Mr. Nienau on the third floor, and Cassandra is completely useless as a witness.
16. Our case gets easier because, while Mr. Nienau’s version has remained consistent between his initial complaint (exhibit D5) and his hearing testimony Appellant has offered multiple versions of events. In the appeal statement, the version offered was that:

As [Cassandra] and Oso approached the entry to their unit on the third floor, tenant Albert J. Nienau *approached them from behind*.
17. Cassandra completely undercut that in her testimony. The story she told at hearing was that after Mr. Nienau passed in the parking lot, she pulled Oso back and let Mr. Nienau go up the stairs *first*, and only then did she and Oso follow him. Her initial testimony was that Mr. Nienau was *already* on the third floor, just standing there, when Oso lunged at Mr. Nienau. Later in the hearing she undercut even that version, when she explained that Mr. Nienau was not really doing anything, just walking slowly by, which is why Oso was able to bite him; again, per her initial hearing version, Mr. Nienau was *in front* of her on the third floor, not coming from behind and passing them.
18. We note that under either version Cassandra provided at hearing, we would have upheld the potentially dangerous designation. Oso biting Mr. Nienau as he (a) was just standing there on the third floor as she and Oso walked by, or (b) slowly walked by them while not really doing anything, would not count as legal provocation. Provocation means “to torment, agitate, or harass an animal immediately before the attack, chase, or menacing

behavior, [and] does not include actions taken to defend oneself, other humans, animals, or property.” KCC 11.01.350. In animal jurisprudence, reviewing courts focus on how an average dog, neither unusually aggressive nor unusually docile, would react to an inciting act.² And a key touchstone of courts’ analyses is that “provocation” requires the dog’s reaction to be roughly proportional to the victim’s act.³ An average dog would not react to a person standing there, or walking by slowly, by biting their leg. And the bite was grossly disproportionate to anything Mr. Nienau is even alleged to have done.

19. Moreover, we do not believe that Mr. Nienau was ever on the third floor or that anything happened there. In the version Appellant offered in the appeal statement, Mr. Nienau was behaving weirdly or oddly and *followed* Cassandra and Oso, approaching them from behind on the third floor. It is not terribly plausible that a man who lives on the second floor would follow a girl and dog up to the third floor, yet stranger things have happened, and we never discount the potential creep factor. Yet Appellant offered no explanation/theory for why a man who lives on the second floor would choose that day to just randomly walk up to the third floor, all by himself, only to *later* be followed up the stairs by Cassandra and Oso.
20. We thus find that, far more likely than not, the action occurred near the parking lot. Mr. Nienau was trying to skirt around Cassandra and Oso along the flower bed next to the sidewalk. Testimony & Ex. D16. Mr. Nienau was not doing anything out of the ordinary. As he passed at a distance of at least five feet, Oso lunged and bit him on the thigh. An average dog would not behave thusly, and biting Mr. Nienau, especially with enough force to go through his pant leg, break the skin, and leave significant bruising, was grossly disproportionate to any incitement Mr. Nienau might have caused. Exs. D6-D10. Oso thus, “when unprovoked: [bit] or inflict[ed] injury on a human,” qualifying him as potentially dangerous.
21. As to the licensing penalty, where an animal is not licensed at the time of the violation but the appellant licenses before our hearing, we typically reduce the licensing penalty. We do so today as well. Moreover, Oso was neutered at the time, meaning the base licensing violation should have been \$125, not \$250.
22. As to the vaccination violation, the code cited (KCC 11.04.520), was repealed in July, prior the September violation notice here. There may be another provision elsewhere in the County rules and regulations requiring vaccination and setting a penalty for noncompliance, but Animal Services has not cited it. We overturn this violation and its \$50 penalty.

² *Bradacs v. Jacobone*, 244 Mich. App. 263, 273, 625 N.W.2d 108, 113 (2001) (citing *Kirkham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000)).

³ *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792.

DECISION:

1. For V23014677 (potentially dangerous), we deny the appeal.
2. For V23014676, we grant the portion of the appeal related to the \$50 rabies vaccination and we reduce the licensing penalty to \$60.

ORDERED December 21, 2023.



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 22, 2024*. 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 16, 2023, HEARING IN THE APPEAL OF
ADELINE ALIZEE, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NOS. V23014677 & V22014677**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Mari Isaacson, Albert Nienau, Joe Martin, Adeline Alizee, and Cassandra. 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
Exhibit no. D2	Notice of violation no. V23014677-A23005466, issued September 11, 2023
Exhibit no. D3	Potentially Dangerous Dog
Exhibit no. D4	RASKC investigation report no. A23005466
Exhibit no. D5	Mr. Nienau statement
Exhibit no. D6	Photo
Exhibit no. D7	Photo
Exhibit no. D8	Photo
Exhibit no. D9	Photo
Exhibit no. D10	Photo
Exhibit no. D11	Photo
Exhibit no. D12	Photo
Exhibit no. D13	Photo
Exhibit no. D14	Photo
Exhibit no. D15	Photo
Exhibit no. D16	Photo
Exhibit no. D17	Medical records

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

Exhibit no. A1	Appeal Statement
Exhibit no. A2	Rabies Vaccination Certificate
Exhibit no. A3	Licensing

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file nos. **V22014676 and V22014677**

ADELINE ALIZEE

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, through Quadient-Impress, 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 21, 2023.



Lauren Olson
Legislative Secretary

Alizee; Cassandra, Adeline

Hardcopy

Isaacson, Mari

Prosecuting Attorney's Office

Martin, Joseph

Lee Smart

Hardcopy

Nienau, Albert

Hardcopy