

July 20, 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 no. **V23014260-A23003386**

JASON JOHNSON

Animal Services Enforcement Appeal

Activity no.: A23003386

Appellant: **Jason Johnson**

[REDACTED]
Kenmore, WA 98028

Telephone: [REDACTED]

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King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
Regional Animal Services of King County
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After hearing the witnesses' testimony and observing their demeanor, studying the exhibits, and considering the parties' arguments and law, we find and conclude:

FINDINGS AND CONCLUSIONS:

Background

1. Regional Animal Services of King County (Animal Services) received a report from Timothy Salzman on May 18, 2023, stating he had been attacked by a rottweiler belonging to Jason Johnson (Carly). He had just left urgent care, where his injuries had

been treated. Animal Services investigated and then issued a Notice of Violation and Order to Comply on May 19, 2023, identifying these code violations:

- Vicious Animal, 1st Violation, KCC 11.04.230(H), \$500
 - Notice and Order for Confinement, KCC 11.04.290
 - Public Property Not Under Control, 1st Violation, KCC 11.04.230 M, \$50
2. The conditions in the Notice of Violation and Order to Comply include several requirements:
- Secure your animals in a fenced area suitable for the size of the animal when your animal is unattended and outside your home. Lock all passages with a padlock to prevent accidental release. (K.C.C. 11.04.230(I), 11.04.290 and/or Kenmore Municipal Code 6.05).
 - Restrain your animal using a leash with a collar or harness when taking it off your property. Your leash can extend no longer than 8’ in length. A competent and capable person must handle the animal at all times when attended outside. (K.C.C. 11.04.230(C), 11.04.290 and/or Kenmore Municipal Code 6.05).
 - Microchip your animal and provide the microchip number to the King County Animal Licensing Office (206-296-2712) within 14 days. (K.C.C. 11.04.290(A)(2)).
 - Vaccinate your animal for rabies, if not current. ... (K.C.C. 11.04.290(A)(2), K.C.C. 11.04.520).
3. Animal Services’ position is that given the circumstances of the unprovoked attack, the property’s four-foot fencing is inadequate to contain Carly and she should be muzzled while off the property.
4. Mr. Johnson appealed the Notice of Violation and Order to Comply. We held a hearing on July 14, 2023. Animal Services appeared through Sergeant Chelsea Eykel. Mr. Johnson also appeared.

Hearing Testimony

Testimony of Timothy Salzman

5. Timothy Salzman recounted the dog attack. On May 18, 2023, about 10:30 a.m. Prof. Salzman was walking near his home (about 400-500 yards away), with his headphones on, looking down. The attack happened in a flash. Until the dog [Carly] was in the air, he saw nothing. At that moment, Prof. Salzman saw something jump, instinctively put his arm out, and Carly latched onto it, pulling him down. Prof. Salzman stated he was grateful he put his arm up as he believes Carly would have grabbed his neck.

6. Prof. Salzman wrestled with Carly, trying to get his arm back. Because he could not get Carly to release, Prof. Salzman begged the owner [Jason Johnson] to assist. During the struggle, Prof. Salzman burst into tears. Instead of immediately controlling Carly, Mr. Johnson yelled at Prof. Salzman, using swear language, calling him a baby, and stating he was crying like a little girl. After 6-8 seconds, Carly finally released. Prof. Salzman stated he was in shock and bleeding and that “the blood was spurting, it was like a water fountain. The dog caught an artery I think.”
7. Carly then approached a second time. She was not lunging but striding toward Prof. Salzman with intention. This caused Prof. Salzman to jump back and that is when he said, “Are you really going to let that dog jump on me again?”
8. Prof. Salzman felt trapped, there were no cars, and no one else was present. He was praying for someone to pass by.
9. The first thought Prof. Salzman had during the attack was, “I beat cancer for three years and this is going to kill me.” So, he panicked. Mr. Johnson’s reluctance to help, coupled with the belittling and screaming, did not help.
10. Prof. Salzman then saw a woman [Ms. Thompson] coming down the hill. She had another rottweiler on a leash and Prof. Salzman said, “Are you going to let that dog jump on me too?” She said “No.” Ms. Thompson was calm, which helped diffuse the situation and allowed him to concentrate. He took down her contact information and told her he had to get to the emergency room. She agreed.
11. Ms. Thompson yelled at Mr. Johnson to get away, while Mr. Johnson continued yelling at Prof. Salzman. Mr. Johnson finally backed off and headed down the street, but then turned around and came back, letting the dog approach yet again. Ms. Thompson yelled at Mr. Johnson to leave and finally he did.
12. Prof. Salzman waited until Mr. Johnson had moved away from his home. He was bleeding profusely and by the time he got home, was lightheaded. He wrapped his arm in a towel, called his wife, and drove to the emergency room. Prof. Salzman was bleeding so much he could not put the seat belt on, so he drove with the seatbelt reminder beeping.
13. Once he got to the emergency room, he was taken right in. His wound was cleaned and bandaged. The doctor was angry about the incident and took several pictures, and told Prof. Salzman to go to the police.
14. After leaving the hospital, Prof. Salzman walked across the street to Kenmore City Hall. They told him to contact Animal Control, which Prof. Salzman did. He went home, wrote up what happened, and forwarded the photographs the medical staff and his wife had taken. Prof. Salzman described the photographs of his injury (Exhibit D4).
15. The police got back to Prof. Salzman about three hours later. They said because no guns or knives were involved, this was a matter for Animal Control, not them.

16. The wound bled for a week. Prof. Salzman learned that is how the emergency room treats deep puncture wounds inflicted by an animal. They do not stitch them. In case the dog hasn't had all its shots, it's best to allow the wound to cleanse itself. As a result, Prof. Salzman continually bleed through and routinely changed his bandages.
17. Prof. Salzman conducts at the UW School of Music. In the ten days after the incident, he had three concerts to conduct. He has been conducting for 45 years, and this is his thirty-seventh year with UW. The wounded arm is the arm he conducts with.
18. Prof. Salzman had just faced a horrific battle with bladder cancer. He feels he just conquered that hurdle and then had to face this. Though his emotional state has improved with time, and he installed security cameras, he has had trouble sleeping and noises at night can alarm him. The deeper punctures from Carly's lower jaw took the longest to heal and there is still scarring.

Testimony of Jodi Salzman

19. Ms. Salzman is a teacher. She was teaching her fourth-grade class when her husband, Mr. Salzman, called on the day the bite happened. He was severely upset and could not answer her questions in a functional, calm manner. She could tell an awful event had just happened. Mr. Salzman told her a dog had bitten him and he was going to the emergency room. He then hung up. For about ten minutes, Ms. Salzman continued to teach, but was worried. Mr. Salzman called again, crying. He could not find his keys and he was having difficulty making decisions. She stated she would be on the way and went to the emergency room.
20. Mr. Salzman was there when Ms. Salzman arrived. He was clutching his arm. Mr. Salzman still had blood on his shoes from the event and the puncture wounds were deep. He had a towel he was holding. There was blood all over the towel, and on his sweats below.
21. Ms. Salzman took pictures, which resemble the ones shown earlier. The doctor remarked that this was a horrific situation and if they needed a statement, he would be happy to provide it. Everyone at the emergency room was alarmed and concerned for Mr. Salzman's welfare.

Testimony of Jason Johnson

22. Mr. Johnson expressed confusion over the situation. He stated he had been running down the hill with his dog, Carly, and Carly bit Prof. Salzman. Mr. Johnson understands that. He understands he has to pay for the bills. However, as he is presently unemployed, he objected to the penalties.
23. But Mr. Johnson did not understand "all this stuff about me." Carly jumped up and bit Prof. Salzman. Mr. Johnson did not know Carly would do that. Carly latched onto Prof. Salzman's arm. He added Carly weighs 100 pounds so "of course" his arm will go down. He emphasized that Carly bit Prof. Salzman once. Though he understands that is "messed up."

24. Carly was on a retractable leash and when she unlatched, he pulled her off. Mr. Johnson stated it was ridiculous for Mr. Salzman to have been scared for his life and he should not be scared in his own house. He reiterated that a single bite was involved, the animal is not a “vicious animal,” and did not cause “severe injury.”

Legal Standards and Analysis

25. We do not grant substantial weight or otherwise accord deference to agency determinations.¹ 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.²
26. A nuisance animal is “[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.”³ “Vicious means having 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.”⁴
27. The term “vicious” is a legal term. Under the KCC, it does not mean a dog is vicious all the time, or that the dog’s owners do not take good care of the dog. It simply means that the animal has exhibited certain propensities which present a danger to others.
28. Carly, without provocation, attacked Prof. Salzman, leaping towards his neck. Prof. Salzman lifted his forearm to protect himself, and Carly’s jaw latched onto his arm, biting him, puncturing his skin at multiple points, and causing profuse bleeding. After Carly latched on, she did not promptly release.
29. Carly’s owner, Mr. Johnson, could not control his animal and did not immediately call off the dog. Instead of yelling at his dog to release, he yelled at Prof. Salzman, exacerbating the situation. Had Ms. Thompson not appeared, the injuries would likely have been more severe. As the dog advanced again, there was a risk of a second attack. Had Prof. Salzman not been a grown adult, but a child, the injuries could have resulted in death. Further injuries were only averted because Prof. Salzman blocked the attack with his forearm and because Ms. Thompson played a key role in de-escalating the situation. The resulting puncture wounds were deep and continued to ooze blood for a week. They were severe.
30. The vicious designation is warranted. Carly presents a danger to the personal safety of others. To protect the public safety, the confinement measures Animal Services outlined are necessary to ensure this type of event does not happen again. These measures include increasing the property’s fence height and muzzling any time Carly is off her owner’s

¹ HER XV.F.3.

² KCC 20.22.210.B; HER XV(E); KCC 11.04.270.

³ KCC 11.04.230(H).

⁴ KCC 11.04.020(BB).

property. The citations should be upheld and Animal Services' outlined conditions imposed.

31. Penalties are prescribed by code but reduction can be appropriate when responsibility is taken to ensure a code violation does not repeat.⁵ In the appeal document, Mr. Johnson acknowledged this.

There is no excuse for Carly's unacceptable behavior towards Prof. Salzman, only that the fault lies with me, not Carly. I allowed her to run ahead thus setting her up to fail. I am correcting my behavior, keeping Carly much closer, not allowing her to get ahead of me, and looking for other ways to improve by studying the techniques of animal behaviorists and dog trainers such as Cesar Milan and Joel Beckman. Carly will return to Dog Obedience training with Deneese Elfesen at The Canine Resource Center.... I'm not going to allow anything like this to happen to anyone ever again.⁶

32. At the hearing, the tenor of accountability present in the appeal statement was absent. Mr. Johnson exhibited anger and frustration with others present and was not able to express empathy for the individual who his dog had bit. The emotional response at the hearing bore similarities to Carly's attack, when emotions escalated the incident and anger was directed not at the perpetrator, but at the injured individual.⁷ Animal Services may have discretion on payment timing based on Mr. Johnson's employment situation, but a basis for penalty reduction was not demonstrated.

DECISION:

1. The vicious animal citation, including the penalty, is upheld.
2. The Notice of Order for Confinement is upheld.
3. The Public Property Not Under Control, including the penalty, is upheld.
4. The conditions, which include a requirement for adequate fencing on the property to contain Carly, are upheld.
5. When Carly is off her owner's property, she is required to wear a muzzle.

ORDERED July 20, 2023.



Susan Drummond
King County Hearing Examiner *pro tem*

⁵ KCC 11.04.035.

⁶ Exhibit D8 (Appeal), p. 1.

⁷ See The Body Keeps the Score, Bessel van der Kolk (2014).

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 *August 21, 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 JULY 14, 2023, HEARING IN THE APPEAL OF JASON JOHNSON, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V23014260-A23003386

Susan Drummond was the Hearing Examiner pro tem in this matter. Participating in the hearing were Chelsea Eykel, Tim Salzman, Jodi Salzman, and Jason Johnson. 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. A23003386
Exhibit no. D3	Online Complaint form of May 18, 2023, incident by Timothy Salzman, dated May 18, 2023
Exhibit no. D4	Photograph of Mr. Salzman's injuries
Exhibit no. D5	Urgent care record
Exhibit no. D6	Notice of violation no. V23014260-A23003386, issued May 19, 2023
Exhibit no. D7	Bite Quarantine Notice
Exhibit no. D8	Appeal, received June 9, 2023
Exhibit no. D9	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V23014260-A23003386**

JASON JOHNSON

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 July 20, 2023.



Lauren Olson
Legislative Secretary