

October 11, 2023

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

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V23014456-A23004335**

**OTTO WINDSOR**

Animal Services Enforcement Appeal

Activity no.: A23004335

Appellant: **Otto Windsor**

[REDACTED]  
Bellevue, WA 98005

Telephone: [REDACTED]

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[REDACTED]

King County: Regional Animal Services of King County  
*represented by* **Chelsea Eykel**  
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FINDINGS AND CONCLUSIONS:

Overview

1. Otto Windsor appeals a violation notice declaring his dog, Shadow, vicious and unlicensed and ordering it 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 uphold the viciousness violation but reduce the penalty for that and the licensing violation.

### Background

2. On July 13, 2023, Regional Animal Services of King County (Animal Services) issued violation notice V23014456-A23004335 to Otto Windsor for his dog, Shadow, being unlicensed, qualifying as vicious, and needing to be confined. Ex. D8. Mr. Windsor timely appealed. Ex. D9. We initially started our hearing on September 13; however, we learned that Mr. Windsor had not received Animal Services' exhibits. We sent Mr. Windsor the exhibits and pushed our hearing back to September 26.

### Hearing Testimony

#### *Neil Chasan Testimony*

3. Neil Chasan testified that he regularly walked his dog, Kiva, down the road in front of Mr. Windsor's house. Mr. Chasan would sit on the small retaining wall behind the fire hydrant and be on his phone while Kiva sat at his feet. Exs. D7, D10. For nine years, Mr. Chasan walked Kiva off leash, under voice command, with no issues.
4. On May 20, Mr. Chasan and Kiva went on their normal walk down Mr. Windsor's street and to the fire hydrant. They had been at the fire hydrant for 10 to 15 minutes. Mr. Windsor and Shadow approached. In the past, Kiva has attempted to herd other dogs. That day Kiva ran at Shadow, barking, probably with the intent to herd Shadow. Shadow responded by standing on Kiva and biting him, drawing blood. Mr. Chasan decided to leash Kiva on walks from then on. There was no report filed. Kiva absolutely initiated that interaction.
5. Mr. Chasan and a leashed Kiva returned a week later. Mr. Chasan and Mr. Windsor, without Shadow, spoke about the nature of dogs. Mr. Chasan agreed to keep Kiva leashed so he would not approach Shadow. It appeared to Mr. Chasan things were settled. It felt like May 20 was just dogs being dogs. There was a brief incident after this when Shadow aggressively barked at Kiva, but from a long distance away.
6. On May 31, Mr. Chasan was sitting on the same wall behind the fire hydrant, this time with a leashed Kiva laying down on the ground to his left. Ex. D7-004. The bushes and trees around the fire hydrant well make it difficult for someone to see if anyone is approaching on the street. There was no indication that Shadow was approaching; he did not bark. Shadow must have been walking along the tree line because Mr. Chasan did not see Shadow approach. Suddenly, Shadow was about three feet away from him and Kiva. Mr. Chasan realized Shadow's target was Kiva, so he pulled Kiva's leash to his right to get Kiva behind him. Shadow knocked down Mr. Chasan as a result of Shadow getting to Kiva.
7. Mr. Chasan's knees were both torn up and bleeding. His wrists and fingers were bloody. It was mostly from scraping when he fell; Shadow did not bite him. Mr. Chasan had surgery on his shoulder prior to this incident. When Mr. Chasan fell as Shadow pushed past him, he believes it disrupted the repair from that surgery.

8. Mr. Chasan got up and drove on Shadow's neck to try to wrestle her off Kiva. Initially Mr. Chasan did not know Mr. Windsor was there. Mr. Chasan believes Shadow was on a retractable leash because it was a thin, black cord; there was no tension on the leash.
9. Shadow was biting and shaking Kiva. Shadow delivered a deep bite under Kiva's left armpit that required surgery. There were around 30 bites all over Kiva. Shadow had Kiva's back leg in her mouth and was shaking. The attack ended when Mr. Chasan was wrestling Shadow away from Kiva and Mr. Windsor was finally able to pull Shadow away. Kiva pulled himself out of his collar and ran under a bush. Mr. Windsor and Shadow returned to their home.
10. Mr. Chasan took a minute to collect himself and then called Kiva, who was bleeding profusely. As Mr. Chasan and Kiva walked home, Mr. Windsor came and apologized. At first, Kiva was walking, but then Mr. Windsor suggested Mr. Chasan carry him.
11. Mr. Chasan attempted to take Kiva to a nearby vet; however, it was not an emergency vet, so they could not treat him. He took Kiva home and cleaned him. Kiva was shaking and in shock. Mr. Chasan could not get Kiva into an emergency vet until 5 AM the next day. There was a large gash on Kiva's torso below the spine and several bites in that area. There was deep bruising on the leg. The vet was concerned about a crushing leg bone injury. Kiva underwent surgery. Kiva had an appointment a week after surgery to check on the wound. Mr. Windsor paid the vet bill directly with the vet.
12. The deep bruising lasted around eight weeks. Kiva was on antibiotics and other medication, and Mr. Chasan had to nurse Kiva for three weeks. Kiva only went outside to use the bathroom. After three weeks Kiva could go on short walks. Prior to this incident, Kiva would walk seven miles every day and swim in the lake. It took months for Kiva to be able to run and swim again. Kiva's fur changed color where Shadow bit him, a constant reminder of the altercation. Eventually Mr. Chasan found a new trail for them to regularly walk on. However, Kiva still harbors fear towards big dogs, especially German shepherds.
13. Mr. Chasan and Kiva were never on the Windsor property. Mr. Chasan has seen Shadow mark the whole area east of the street.

*Ann Swanson Testimony*

14. Ann Swanson testified that on May 20 she saw Mr. Windsor taking Shadow for a walk. Shadow was sitting next to Mr. Windsor when Kiva came charging towards Shadow. As soon as Kiva came close to Shadow, Shadow bit Kiva. Mr. Chasan and his partner came and got control of Kiva. Mr. Chasan said Kiva is a herding dog, and he probably thought Shadow was a sheep. Mr. Windsor brought Shadow home and returned to Mr. Chasan. Mr. Chasan told Mr. Windsor that he would call if he was going to walk by the Windsor house.
15. Shadow gets along with all five dogs that live on her street. Ms. Swanson has never seen any aggression from Shadow to people or animals. Shadow is very friendly.

16. Ms. Swanson did not see the second incident, but she heard it. She then saw Mr. Windsor bring Shadow home and then go back to Kiva and Mr. Chasan.

*Otto Windsor Testimony*

17. Otto Windsor testified that he has had Shadow for three years. He walks her daily and he has never had any issues until the incident with Kiva.
18. On May 20, Kiva was off leash, and he viciously charged at Shadow. Shadow stood by Mr. Windsor and when Kiva got close, Shadow responded. She was protecting herself and Mr. Windsor.
19. On May 31, Mr. Windsor did not see Mr. Chasan or Kiva before Shadow was already there. Shadow may have been spooked by Mr. Chasan and Kiva. Mr. Windsor could not see who attacked who because he was still rounding the bushes by the time it started. When he got closer, he saw Shadow biting Kiva. Mr. Chasan fell, but Shadow never pushed or bit him. Mr. Chasan and Mr. Windsor tried to pull the dogs apart. Shadow's long, retractable leash would not pull her back, so Mr. Windsor grabbed her collar. Mr. Windsor took Shadow inside and came back to try to comfort Kiva. After the incident, Kiva walked home. Mr. Windsor saw Kiva running maybe a week after the surgery.
20. Shadow is 80 pounds and Kiva is probably around 20 pounds. Shadow may have territorial aggression over the area by the fire hydrant because she goes there three to four times a day. Everything that happened in the May 31 incident was due to the May 20 incident.
21. Shadow is extremely intelligent and remembers everything. Shadow is Mr. Windsor's sixth German shepherd, and he believes Shadow is not vicious.
22. Mr. Windsor has complied with Animal Services confinement order. Mr. Windsor uses a short leash now that is no longer than eight feet and a choker collar. Mr. Windsor is also more vigilant while walking Shadow in areas where someone could be hidden.

Legal Standards

23. Does Shadow qualify as vicious, defined as, "performing the act of... 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 "[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" qualifying as a nuisance. BMC 8.04.060.BB, .300.H.
24. 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

25. There is not much dispute about May 20. Kiva ran up to Shadow, invading Shadow’s space. Whether Kiva was trying to herd or trying to attack Shadow is irrelevant because Shadow’s response—delivering a single bite to Kiva—was well within the norm of what an average dog would do and was roughly proportional to Kiva’s aggressive encroachment.
26. That is not at all our scenario for May 31.
27. Mr. Windsor did not see the start of the altercation, so we do not have an eyewitness dispute. We found Mr. Chasan credible, and his description straightforward and plausible. As he and Kiva sat there, with Kiva on a leash, Kiva did not even notice Shadow or take any action to incite Shadow to respond. Instead, Shadow charged, and even though Kiva was retreating (as opposed to May 20, when Kiva was advancing) as Mr. Chasan tried to pull Kiva behind him, Shadow plowed through Mr. Chasan to get to Kiva.
28. Not only did Shadow bite Kiva, but he *kept* biting Kiva, a full-blown attack that resulted in a deep bite under Kiva’s left armpit and seizing Kiva’s back leg in her jaws and shaking, requiring Mr. Chasan to wrestle Shadow loose. Even Mr. Windsor agreed he had difficulty restraining Shadow until Shadow ran out of steam. Ex. D9 at 002. Mr. Chasan may have overestimated the bite marks at 30, but this was no split-second encounter; as the vet described it, Shadow inflicted “multiple bite wounds.” Ex. D5 at 002. Shadow repeatedly bit and inflicted harm on Kiva, harm that lasted physically for weeks and emotionally still. Ex. D4
29. Our first question is whether Shadow “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.” BMC 8.04.300.H. Shadow endangered Mr. Chasan’s safety, but more importantly Kiva’s when she attacked him. Mr. Windsor alleges, however, that Kiva’s May 20 approach provoked Shadow’s May 31 attack.
30. Under the code in place since July, “provocation” is limited to actions that “torment, agitate, or harass an animal *immediately before* the attack, Chasan, or menacing behavior.” KCC 11.01.350. Thus, under the new definition, as a matter of law Kiva’s May 20 actions would not be provocation for Shadow’s May 31 attack. However, that definition was not in place on May 31; thus, we employ only the standard “provocation” inquiry courts apply, focusing on how an average dog (neither unusually aggressive nor unusually docile) would react to an inciting act,<sup>1</sup> with key touchstone being that “provocation” requires the dog’s reaction to be roughly proportional to the victim’s act.<sup>2</sup>

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<sup>1</sup> *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)).

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

31. This case would be a closer call if Shadow had inflicted those multiple bites, including not only the gashes but grabbing Kiva’s leg and shaking it, on May 20, after Kiva foolishly ran at Shadow. But May 31 is an easy case. Even if the carryover effect from Kiva running at Shadow on May 20 could have justified, say, Shadow chasing Kiva and delivering a “get out of here” bite on May 31, Shadow inflicted much more than that on Kiva on May 31. Shadow’s attack on May 31 was grossly disproportionate to any incitement Kiva created. Shadow qualifies as vicious.
32. That is not the end of the analysis, because the violation is framed as, “Any animal that has exhibited vicious propensities [which Shadow did, in abundance, on May 31] and constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on the animal’s premises”? BMC 8.04.300.H. While an unprovoked endangering act is *typically* enough to that—after all, what is better evidence that a dog constitutes a danger than evidence that, given some set of circumstances not arising to “provocation” a dog will do something violent—in some appeals when the endangering act is at the low end of the spectrum (say, not involving a bite, or only a relatively superficial bite) and there are other extenuating circumstances, we have overturned a viciousness designation, we have found extenuating circumstances such that we have overturned a viciousness designation, even after an unprovoked act. That is not our scenario. We get that despite the territorial aggression Mr. Windsor opined that Shadow has, Shadow has not had issues with other dogs. But the violence Shadow inflicted on May 31 was more than sufficient for Animal Services to prove that Shadow constitutes a danger. We uphold the violation and containment order.
33. As to the penalty amount, there is no indication that Mr. Windsor should have suspected that Shadow go berserk on May 31, or that May 31 happened because Mr. Windsor was doing anything irresponsible. Even on May 20, Shadow reacted like an average dog would, delivering a single bite to a charging dog. And there is no indication that the retractable leash had in the past not been sufficient to keep Shadow restrained. We reduce the viciousness penalty. And where a person licenses and animal after the violation before hearing, we typically reduce the licensing penalty; we do so here as well.

DECISION:

We deny Mr. Windsor’s appeal, except that we reduce the viciousness penalty to \$200 and the licensing penalty to \$75.

ORDERED October 11, 2023.



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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 *November 10, 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 SEPTEMBER 26, 2023, HEARING IN THE APPEAL OF OTTO WINDSOR, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V23014456-A23004335**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Sergeant Chelsea Eykel, Neil Chasan, and Otto Windsor. 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  | Online Complaint form of May 31, 2023, incident by Neil Chasan, dated July 11, 2023 |
| Exhibit no. D3  | RASKC investigation report no. A23004335  |
| Exhibit no. D4  | Photograph of Kiva's injuries   |
| Exhibit no. D5  | Veterinary Report   |
| Exhibit no. D6  | Photograph of Mr. Chasan's injuries   |
| Exhibit no. D7  | Photograph of area where the attack took place                                      |
| Exhibit no. D8  | Notice of violation no. V23014456-A23004335, issued July 13, 2023                   |
| Exhibit no. D9  | Appeal, received July 24, 2023  |
| Exhibit no. D10 | Map of subject area   |

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V23014456-A23004335**

**OTTO WINDSOR**

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 October 11, 2023.



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Lauren Olson  
Legislative Secretary



**Chasan, Neil**

Hardcopy

**Eykel, Chelsea**

Regional Animal Services of King County

**Swanson, Ann**

Hardcopy

**Windsor, Otto**

Hardcopy