

October 27, 2023

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V23014484-A23004555**

MEGAN WASHINGTON

Animal Services Enforcement Appeal

Activity no.: A23004555

Appellant: **Megan Washington**

[REDACTED]
Snoqualmie, WA 98065

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

FINDINGS AND CONCLUSIONS:

Overview

1. Megan Washington appeals a Regional Animal Services of King County (Animal Services) notice and order for her dog, Rosie, for being unlicensed, running at large, and qualifying as potentially dangerous. 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 sustain Rosie's potentially dangerous dog designation and licensing violation but reduce the fine.

Background

2. On July 21, 2023, Animal Services issued violation notice V23014484-A23004555 to Megan Washington for her dog, Rosie, being unlicensed, running at large, and qualifying as a potentially dangerous animal. Ex. D5. Ms. Washington timely appealed. Ex. D8. We went to hearing on October 13.

Hearing Testimony

Jennifer Klock Testimony

3. Jennifer Klock testified that on July 18 she was walking with her dog, Ripley, on the trail around the back side of Swenson Park. Ex. D9. She saw two dogs [Rosie and another dog] running on the grass downhill from the trail. As Ms. Klock was coming to the far end of the trail, Rosie and the other dog came running up the hill towards her. She first saw them when they were about ten feet from her. The other dog stopped a short distance in front of her; Rosie continued running and went right onto Ripley. Normally, dogs will come up and stop in front of Ripley and go nose to nose. Here, Rosie went right over the top of Ripley.
4. Ms. Klock told Rosie “No!” and pulled Ripley’s leash to get him away. Ms. Klock pulled Ripley up and into her arms. As Ms. Klock was turning away, Rosie bit the backside of her arm. Ex. D4. The tip of Ripley’s tail was injured; however, Ms. Klock is unsure exactly when he sustained that injury, either on the ground or as Ms. Klock picked him up. Rosie jumped up three or four times, attempting to get Ripley. At some point Rosie stopped and ran down the hill. Ms. Washington is unsure what prompted Rosie to do that. Ms. Washington was at the bottom of the hill during the incident. Ms. Klock yelled down to tell Ms. Washington to leash her dog. Ms. Klock asked Ms. Washington if Rosie was up to date on her rabies vaccine, which she was. Ms. Washington leashed Rosie.
5. Ms. Klock went to urgent care, who cleaned the two deep puncture wounds on her arm. They flushed the wound, did an x-ray, and gave Ms. Klock a tetanus shot. The wound continued to bleed, so she received stitches. Ms. Klock took antibiotics. Ripley went to the vet. They cleaned his wound and gave him antibiotics.
6. Ms. Klock is more cautious on walks now, especially when other dogs approach Ripley. She no longer walks by the Washington house.
7. Ms. Klock had another incident with Rosie in the past. Ms. Klock and Ripley were on a walk when Ms. Washington had Rosie in her front yard, unleashed. Rosie came over and started nipping at Ripley. Ms. Klock picked up Ripley, and Rosie jumped up. Ms. Klock blocked her, and Ms. Washington retrieved Rosie.

Megan Washington Testimony

8. Megan Washington testified that she agrees with Ms. Klock’s description of the incident. Ms. Washington apologized for what happened. The incident was not visible to her because she was down the hill. Ms. Washington brought Rosie to the park to play with

her friend. She should have had Rosie on a leash; she has kept Rosie on a leash since then. Her yard is fully fenced, and she now has signage. Rosie is also licensed.

9. Rosie is attending a training course in Ellensburg for several weeks. It cost \$3000. Ms. Washington requests a reduction in the fines so she can apply those funds towards Rosie’s training.

Legal Standards

10. Ms. Washington does not contest that Rosie was running at large and unlicensed on July 18. (Where the animal was unlicensed at the time of the violation but the owner licenses the dog for our hearing, we typically reduce the licensing penalty.) She does dispute that Rosie meets 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 attempting to commit a crime. This exclusion does not apply to actions taken in defense of oneself, other humans, animals, or property.
11. As to whether Animal Services can show an altercation was unprovoked, per our code “provoked” 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.¹ And a key touchstone of courts' analyses is that "provocation" requires the dog's reaction to be roughly proportional to the victim's act.²

12. 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

13. The issue in this matter is whether Rosie meets the statutory definition of a potentially dangerous dog.
14. King County Code 11.01.302 states in pertinent part that the term "potentially dangerous animal" refers to "...any animal that when unprovoked: bites or inflicts injury on a human or domesticated animal; chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack".
15. Here, we find that Rosie was off leash in a public park playing with her "dog best friend," as Ms. Washington stated in her appeal statement. Ex. D8-001. While running with the other dog, Rosie ran up a trail out of Ms. Washington's view and approached Ms. Klock and her dog, Ripley. While the other dog stopped short, Rosie continued towards Ms. Klock and Ripley, ultimately biting Ripley on the tail. As Ms. Klock picked up Ripley, Rosie bit Ms. Klock on the arm. Ms. Klock required medical attention including wound cleaning, x-rays, and stitches.
16. In analyzing our facts against the statute, Rosie meets the statutory definition of a potentially dangerous dog. She approached Ms. Klock and Ripley on public grounds (a park), and ultimately bit, not only Ripley but subsequently Ms. Klock. There is no evidence here that Rosie was provoked by Ms. Klock or Ripley. Perhaps, if the bite were to Ripley's face rather than tail, there could be more to consider here. In that scenario, the argument could be made that Rosie was somehow provoked by Ripley's growling or barking (though there was not testimony about barking or growling), but a bite to the backside or tail of an animal makes it clear that Ripley was not in a defensive posture. Regardless of the interaction between Rosie and Ripley, there was no provocation to bite Ms. Klock. We uphold Rosie's potentially dangerous dog designation.
17. As to the dollar amount, Ms. Washington apologized profusely for the harm Rosie caused to Ms. Klock and Ripley; that is a step in the right direction. Ms. Washington has taken several remedial measures since this incident. She has enrolled Rosie in a multi-

¹ *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)).

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

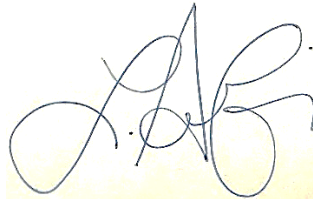
week, out-of-home training program in Ellensburg which costs \$3000, and she placed a warning sign on her gate saying “Warning. Beware of Dog. Keep Gate Closed.” Ex. D8-006. She stated that the purpose of her appeal today was not to dispute the designation but to request that the “\$700-\$800” assessed to her as a result of this incident not be charged to her, and she instead be allowed to put that money towards Rosie’s training costs. (Per the violation notice, the penalties were \$675—\$500 for potentially dangerous, \$50 for running at large, and \$125 for lack of a license. Ex. D5.)

18. We often reduce the otherwise applicable penalty in cases where the owner takes steps to avoid any further occurrences. Here, Ms. Washington already licensed Rosie and has enrolled her in a weeks-long training program and placed a warning sign for the public. It is appropriate to reduce the fine from \$675 to \$200 in light of those measures.

DECISION:

1. We uphold the initial July 18, 2023, designation of potentially dangerous dog for Rosie.
2. We reduce the total penalty from \$675 to \$200.

ORDERED October 27, 2023.



Leila Arefi
Hearing Examiner *pro tem*

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 27, 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 OCTOBER 13, 2023, HEARING IN THE APPEAL OF MEGAN
WASHINGTON, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NO. V23014484-A23004555**

Leila Arefi was the Hearing Examiner pro tem in this matter. Participating in the hearing were Chelsea Eykel, Jennifer Klock, Megan Washington. 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 | RASKC investigation report no. A23004555 |
| Exhibit no. D3 | Online Complaint form of July 18, 2023, incident by Jennifer Klock, dated July 20, 2023 |
| Exhibit no. D4 | Photograph of Ms. Klock’s injuries |
| Exhibit no. D5 | Notice of violation no. V23014484-A23004555, issued July 21, 2023 |
| Exhibit no. D6 | Potentially Dangerous Dog declaration |
| Exhibit no. D7 | Bite Quarantine |
| Exhibit no. D8 | Appeal, received August 5, 2023 |
| Exhibit no. D9 | Map of subject area |

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V23014484-A23004555**

MEGAN WASHINGTON
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 27, 2023.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Klock, Jennifer

Hardcopy

Washington, Megan

Hardcopy