

December 13, 2023

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V23014643-A23005317**

CASANDRA MAKI

Animal Services Enforcement Appeal

Activity no.: A23005317

Appellant: **Cassandra Maki**

Isaquah, WA 98027

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. Cassandra Maki appeals a notice and order designating her dog, Luna, 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 deny her appeal as to Luna. However, we reduce the penalty for that violation and for the licensing fees.

Background

2. On September 1, 2023, Regional Animal Services of King County (Animal Services) issued violation notice V23014643-A23005317 to Cassandra Maki for her dog, Pacino, being unlicensed unaltered, and her other dog, Luna, being unlicensed unaltered and qualifying as potentially dangerous. Ex. D5. Ms. Maki timely appealed. Ex. D7.
3. Ms. Maki timely appealed. Ex. D7. We went to hearing on November 29, 2023.

Hearing Testimony

Daniel Hsu Testimony

4. Daniel Hsu testified that on August 31 he was delivering a package for Amazon. He parked his car in front of the garage and exited his car and walked towards the house. He was about twenty feet away from his car when two dogs, a large one [Pacino] and small one [Luna], rushed towards him. The dogs' owner [Ms. Maki] was behind the dogs and was rushing after them. Ms. Maki tried to call the dogs, but they were too fast.
5. Mr. Hsu became very nervous. Mr. Hsu backed away and said, "No, no, no." He focused on Pacino, since it was the bigger dog. Luna rushed towards him, jumped, and bit his leg. Luna did not hesitate before biting; it was all very fast. Mr. Hsu does not own a dog and he does not have experience or knowledge on how to deal with dogs. Pacino and Luna rushing him was very scary.
6. After he was bit, he shouted at the dogs to stop. Ms. Maki stopped the dogs. Ms. Maki said he should not have been shouting because the dogs think that is playing. Mr. Hsu gave Ms. Maki the package and got into his car.
7. Mr. Hsu left the property and checked his leg. He saw three holes in his pants. Lifting his pant leg, he saw a mark and broken skin. Ex. D4. He called Amazon emergency health and then went to a nearby clinic.

Cassandra Maki Testimony

8. Cassandra Maki testified that Mr. Hsu pulled in front of the garage and walked around the back of his car, which was a blind corner. Ms. Maki was taking her dogs out to go potty. Mr. Hsu saw the dogs, and it was immediately clear that he has a fear of dogs. He immediately started jumping and high-pitched shouting, "No." To her dogs, that is a high-pitched scream and play. Pacino and Luna ran up to him. Ms. Maki tried to recall the dogs and tell them to stop jumping. It took around twenty to thirty seconds. Mr. Hsu stopped, and the dogs went to the grass. Ms. Maki apologized and took the package.
9. Ms. Maki did not see a bite. She saw Mr. Hsu's leg coming down and Luna jumping up, and they made contact on the back of his leg at that point. It seemed more like an impact than a bite. Mr. Hsu's pant leg never came up. Ms. Maki believes there was nothing aggressive during the interaction.

Legal Standards

10. Does Luna qualify as potentially dangerous under KCC 11.04.230F? Per KCC 11.01.320:
- A. “Potentially dangerous animal” means any animal that when unprovoked:
- i. Bites or inflicts injury on a human or domesticated animal;
 - ii. Chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack;
 - iii. Has a known propensity, tendency, or disposition to attack, to cause injury, or otherwise to threaten the safety of humans or domestic animals; or
 - iv. 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. 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

12. The issue in this matter is whether Luna meets the statutory definition of a potentially dangerous dog and whether Mr. Hsu’s fearful behavior towards the dogs constituted provocation.
13. Here, we find that Luna was in the yard with her owner and another household dog, Pacino, when Mr. Hsu arrived to deliver a package. While delivering the package, Mr. Hsu saw Luna and Pacino come running towards him as they were out for a potty break.

While Mr. Hsu was focusing on the larger dog, Pacino, Luna made contact with his leg. Ms. Maki believes that Luna perceived Mr. Hsu's actions of screaming and jumping prior to the bite as play and contends that Luna was provoked into play by Mr. Hsu.

14. We cannot find that a person screaming or jumping in fear, while being approached by two dogs, qualifies 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.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
15. When comparing the facts of our case to the statutory and jurisprudential definition of provocation, jumping and screaming in fear do not meet the statutory requirements for a dog to be provoked. Mr. Hsu's reaction to being approached by the dogs cannot be found to constitute tormenting, agitating, or harassing Luna and therefore, he did not provoke Luna.
16. Additionally, Ms. Maki testified that Luna was provoked into play and the injury occurred as Luna's mouth accidentally came into contact with Mr. Hsu's leg as he was jumping and screaming. Ms. Maki also testified that Mr. Hsu's pant leg never came up during the interaction. It is difficult to believe that an accidental mouth contact with a person's leg while fully covered with pants would have caused a break in the skin such as the laceration that Mr. Hsu sustained. Ms. Maki's interpretation would be more believable if Mr. Hsu's skin were not broken and only bruised. The fact that Mr. Hsu's skin was broken through his pants is an indication of the force that he was bitten with.
17. We do acknowledge and accept Ms. Maki's assertion that Luna and Pacino are loving and friendly dogs; however, the focus is not on whether Luna's actions were mean-spirited or from some motivation but rather that the bite occurred under circumstances not rising to legal provocation.
18. As to the dollar amount for the potentially dangerous dog violation, we often reduce the otherwise applicable penalty in cases where the incident happened despite, not because of, the steps the owner was taking at the time of the violation and/or the steps the owner takes afterwards to avoid further occurrences. Here, rather than a situation where the dogs were running amok in the neighborhood and bit a passerby, they were contained on the Maki property at the time of the incident. Ms. Maki was apologetic and sympathetic to the plight of Mr. Hsu. Ms. Maki also took remedial measures to avoid an incident like this again; she has installed a sequence of two driveway chimes that go off in her house anytime someone goes past them, to avoid the dogs encountering a stranger on the property again. We reduce that penalty.

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)).

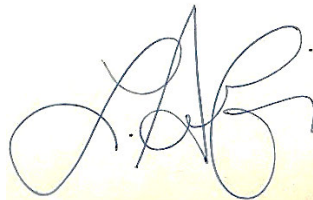
² *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273-75; *Kirkham* at 792.

19. In addition, Ms. Maki did not dispute that as of August 31, 2023, neither Luna or Pacino were licensed; however, they were altered which would make the base licensing penalty \$125 and not \$250. And because Ms. Maki promptly licensed them after the violation, we reduce the licensing penalty as well.

DECISION:

1. We uphold the potentially dangerous dog designation for Luna and the violation for Luna and Pacino being unlicensed but *altered* dogs.
2. We reduce the total penalty dangerous dog penalty from \$500 to \$150 and the licensing penalty to \$60 per dog. The total penalty due is \$270.

ORDERED December 13, 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 *January 12, 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 29, 2023, HEARING IN THE APPEAL OF
CASANDRA MAKI, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NO. V23014643-A23005317**

Leila Arefi was the Hearing Examiner *pro tem* in this matter. Participating in the hearing were Chelsea Eykel, Daniel Hsu, and Casandra Maki. 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. A23005317
Exhibit no. D3	Online Complaint form of August 31, 2023, incident by Daniel Hsu, dated August 31, 2023
Exhibit no. D4	Photograph of injuries
Exhibit no. D5	Notice of violation no. V23014643-A23005317, issued September 1, 2023
Exhibit no. D6	Appeal, received September 21, 2023
Exhibit no. D7	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V23014643-A23005317**

CASANDRA MAKI

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 13, 2023.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Hsu, Daniel

Hardcopy

Maki, Casandra

Hardcopy