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BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

<p>In Re The Appeal of:</p> <p>BRENT IRVIN and YING QUAN, as Owners of dog named Austin,</p> <p style="text-align: center;">Appellants,</p> <p style="text-align: center;">v.</p> <p>CITY OF MERCER ISLAND,</p> <p style="text-align: center;">Respondent.</p>
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No. APL23-005

CITY OF MERCER ISLAND’S
STAFF REPORT

I. INTRODUCTION

The City of Mercer Island (“City”), through its contracted animal control authority, Regional Animal Services of King County (“RASKC), appropriately issued a potentially dangerous dog declaration for the dog “Austin” Irvin/Quan. On June 19, 2023, unprovoked, Austin bit Dr. Kim Lampson (Reiff), as well as chased/approached Dr. Lampson on the street/sidewalk in a menacing fashion or apparent attitude of attack. Further, Austin has a known propensity, tendency, or disposition to attack unprovoked, to cause injury or otherwise threaten the safety of humans or domestic animals, based on Dr. Lampson’s previous encounters with Austin in the summer of 2022, including another instance in which he bit her.

1 Accordingly, the dog thrice meets the definition of potentially dangerous dog per RCW
2 16.08.090 and Mercer Island City Code (“MICC”) 7.04.120. The City respectfully requests
3 the Hearing Examiner sustain the potentially dangerous dog declaration for Austin.
4

5 II. FACTS

6 Dr. Kim Lampson (Reiff) is expected to testify that she lives on or near SE 71st Street
7 in Mercer Island, which forms a loop along the western portion of the street. On June 19,
8 2023, Dr. Lampson was walking her miniature dachshund, Merlin, along a route that she
9 habitually walks. Ex. 2. Dr. Lampson was walking Merlin along the loop, on the left side of
10 the street, walking up the hill. Ex. 2. The dog “Austin” lives on the right side of the road,
11 across the street from where Dr. Lampson was walking. Ex. 2. During this walk, Dr. Lampson
12 could hear Austin barking from a deck positioned immediately above the garage on the
13 Irvin/Quan residence at 7510 SE 71st Street. *Id.* Dr. Lampson’s dog barked in response. Dr.
14 Lampson worked with her dog to quiet him down.
15

16 She then saw Austin running across the street. He bit Dr. Lampson without warning,
17 on her left thigh, drawing blood. Exs. 2, 3, 4. One of Austin’s owners, Brent Irvin, then showed
18 up. Dr. Lampson lifted up her pant leg to show that Austin had bit her, and Mr. Irvin
19 apologized.
20

21 Dr. Lampson filed a complaint with RASKC on June 22, 2023. Ex. 2. RASKC issued
22 a notice of potentially dangerous dog for Austin on July 3, 2023. Ex. 1. Appellants filed the
23 instant appeal on July 22, 2023. Ex. 19.

24 Dr. Lampson is also expected to testify that June 19, 2023, was not the only time that
25 Austin has bit her. Nearly a year prior, on August 30, 2022, Dr. Lampson was walking her
26 dog when she was Austin racing towards her, with a leash attached, but no one holding the

1 leash. Ex. 10. Dr. Lampson bent down to pick up her dog and Austin bit her on the upper
2 thigh, leaving a welt. Exs. 10, 11, 12, 13, 17. Further, Dr. Lampson is expected to testify that
3 Austin has previously gotten loose and charged at Dr. Lampson and her dog at least one or
4 two times previous to the June 19, 2023 incident. See also Ex. 13.

5
6 **III. LEGAL STANDARD**

7 A dog is potentially dangerous if “when unprovoked: [it] (a) inflicts bites on a human
8 or a domestic animal either on public or private property, or (b) chases or approaches a person
9 upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent
10 attitude of attack, or [c] any dog with a known propensity, tendency, or disposition to attack
11 unprovoked, to cause injury, or to cause injury or otherwise to threaten the safety of humans
12 or domestic animals.” MICC 7.04.020.

13 Pursuant to MICC 7.04.235(G), the City (through the animal control authority) has the
14 burden of proof to prove that the dog is a potentially dangerous dog by a preponderance of
15 the evidence.

16
17 **IV. ARGUMENT**

18 The dog “Austin” Irvin/Quan meets not just one, but all three of the criteria qualifying
19 a dog as a potentially dangerous dog.

20 First, Austin, unprovoked, did inflict a bite on Dr. Lampson on June 19, 2023 on public
21 or private property, while she was walking her dog Merlin. Ex. 2, 3, 4. Dr. Lampson is
22 expected to testify that she did nothing to provoke the bite from Austin—indeed, she was
23 walking her dog on the other side of the street.

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1 Further, Dr. Lampson is further expected to testify that on that same date, Austin did
2 approach Dr. Lampson upon the streets, sidewalks, or any public grounds in a menacing
3 fashion or apparent attitude of attack, unprovoked.

4 Finally, Austin has a known propensity, tendency, or disposition to attack unprovoked,
5 to cause injury or otherwise threaten the safety of humans or domestic animals, as evidenced
6 by the dog’s other bites/approaches to Dr. Lampson prior to the June 19, 2023 incident. Ex.
7 10, 11, 12, 13, 14, 17.

9 Therefore, because Austin meets not just one, but all three possible criteria for
10 classification as a potentially dangerous dog, the Hearing Examiner should uphold the issued
11 potentially dangerous dog declaration for Austin.

12 1) Whether Austin Is Friendly Is Immaterial; Austin’s Actions Meet the
13 Criteria for Potentially Dangerous Dog Under the RCW and MICC

14 As one of their appeal points, Appellants allege that Austin is a friendly dog. Ex. 19.
15 However, there is no exception to the definition of “potentially dangerous dog” under either
16 the RCW or the MICC for a dog that is “friendly.” Rather, “potentially dangerous dog” is a
17 term of art, precisely defined in the RCW and the MICC. That definition does not require a
18 dog to be “unfriendly.” Instead, it contains three types of criteria, and a dog meeting any one
19 of these criteria is sufficient to qualify a dog as potentially dangerous. As briefed above, the
20 dog Austin qualifies on all three criteria. Whether or not Austin is generally friendly is
21 irrelevant to the proceeding at hand.

22 2) Barking By Another Dog Is Insufficient To Establish Provocation

23 Appellants base appeal reasons 2, 3, and 4 on allegations that Dr. Lampson’s dog barks
24 at Austin and that she has approached Austin’s dog walker on several occasions in an excited
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1 manner. Ex. 19. Appellants appear to be making the argument that these circumstances
2 constituted provocation for the June 19, 2023 incident. This is incorrect.

3 Provocation is not defined in the MICC. Therefore, it is appropriate to apply the
4 dictionary definition. *Morawek v. City of Bonney Lake*, 184 Wash.App. 487, 493, 337 P.3d
5 1097 (2014). The Merriam Webster dictionary definition of provoke is:
6

- 7 1. a: to call forth (a feeling, an action, etc.) ...
8 b: to stir up purposely ...
9 c: to provide the needed stimulus for will provoke a lot of
10 discussion
- 11 2. a: to incite to anger
12 b archaic : to arouse to a feeling or action

13 Therefore, provocation must include a purposeful action to call forth, stir up, or incite a dog
14 to anger. Animal Control Officer Michael Carlson is expected to testify how King County
15 typically applies the standard of provocation and that provocation is often measured by the
16 reasonableness of the action(s) of the person or animal subject to the attack, as well as the
17 reasonableness of the conduct of the dog performing the attack.

18 Even if Merlin barked at Austin from the street, barking is routine dog behavior. Mere
19 barking from another dog is generally insufficient to provoke a bite on a human. Further,
20 assuming *arguendo* that Appellants establish at hearing that Dr. Lampson had previously
21 approached Austin’s dog walker in an excited manner, this too does not constitute provocation
22 for the June 19, 2023 incident. Dr. Lampson is expected to testify that on that date, she did
23 not taunt the dog, tease the dog, throw rocks at the dog, or otherwise threaten Austin.

24 Austin’s behavior on June 19, 2023—charging across the street and potentially from
25 off of the deck/balcony above the Irvin/Quan garage and biting Dr. Lampson was not a
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1 reasonable response to a neighboring dog barking from below and across the street. The
2 evidence will show that Austin’s actions on June 19, 2023 were unprovoked.

3 3) Whether Dr. Lampson Has Allowed Her Dog to Meet Austin Is Not Relevant

4 Finally, much of Appellants’ appeal focuses on whether or not Dr. Lampson allowed
5 her dog to meet Austin in a “more neutral setting.” Ex. 19. This is irrelevant. MICC 7.04.020
6 provides clear criteria for behavior constituting a potentially dangerous dog. Austin has met
7 all three. There is no basis in the RCW nor the MICC for the contention that a dog is not
8 potentially dangerous if the dog’s victim has refused to meet the dog in a “more neutral
9 setting.” Even if there were such a basis, Dr. Lampson’s text messages to Mrs. Quan indicate
10 that she was previously open to such a concept, thus directly contradicting this assertion of
11 Appellants. Ex. 13.

12
13 **V. CONCLUSION**

14 The behavior of the dog “Austin” Irvin/Quan meets all three possible criteria for a
15 “potentially dangerous dog” under the statute and the MICC. Again, a dog must only meet
16 one criteria to be classified as potentially dangerous; Austin qualifies three times over.
17 Accordingly, the City respectfully requests the Hearing Examiner uphold the potentially
18 dangerous dog notice issued for Austin by its contracted animal control authority, RASKC.

19 DATED this 20th day of October, 2023.

20
21 MADRONA LAW GROUP, PLLC

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CITY OF MERCER ISLAND
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DECLARATION OF SERVICE

I, Tori Harris, declare and state:

1. I am a citizen of the State of Washington, over the age of eighteen years, not a party to this action, and competent to be a witness herein.

2. On the 20th day of October 2023, I served a true copy of the foregoing City of Mercer Island’s Staff Report on the following counsel of record using the method of service indicated below:

<p>Aric S. Bomsztyk, WSBA #38020 Tomlinson Bomsztyk Russ 1000 Second Avenue, Suite 3660 Seattle, WA 98104-1046</p> <p><i>Attorney for Appellants</i></p>	<p><input checked="" type="checkbox"/> First Class, U.S. Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail: asb@tbr-law.com <input type="checkbox"/> E-Service pursuant to LGR</p>
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 20th day of October, 2023, at Seattle, Washington.

/s/ Tori Harris
Tori Harris