

**BEFORE the HEARING EXAMINER for the
CITY of MERCER ISLAND**

DECISION

FILE NUMBER: APL23-006
(Ref. Animal Control Case No. A23-004616)

APPELLANT: Jeffrey (Jeff) Greenfield
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RESPONDENT: Animal Control Officer
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AND

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TYPE OF CASE: Appeal from a Declaration of Potentially Dangerous Dog (“Buster”)

EXAMINER DECISION: Declaration of Potentially Dangerous Dog UPHELD

INTRODUCTION ¹

Jeffrey (Jeff) Greenfield (“Greenfield”) filed an appeal on August 18, 2023, from a Declaration of Potentially Dangerous Dog (“Declaration”) issued on July 30, 2023, against Buster by an Animal Control Officer (“ACO”) from Regional Animal Services of King County (“RASKC”). ² (Exhibits 21 and 1, respectively ³)

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

² Mercer Island contracts with RASKC for animal control services.

³ Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. Citations to exhibits that are available electronically in PDF

John E. Galt, Mercer Island Hearing Examiner ("Examiner"), held a remote open record hearing on October 17, 2023. The City gave notice of the hearing as required by the Mercer Island City Code ("MICC"). (Exhibit 23)

Testimony under oath was presented by:

Maria Toro
Jeff Greenfield

Dominique Sheperd, ACO
Sarah Cooper

Respondent ACO was represented by Eileen Keiffer, Attorney at Law.

The following exhibits were offered and admitted:

Exhibits 1 – 23 as listed on the City of Mercer Island's File Produced Under Hearing Examiner Rule 224

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law.

FINDINGS OF FACT

1. On July 30, 2023, ⁴ the ACO issued the Declaration against Buster based on probable cause to believe that Buster met the City's definition of a Potentially Dangerous Dog. The Declaration was issued pursuant to MICC 7.04.120. (Exhibit 1)
2. Buster is owned by Greenfield, whose residence is located within the City of Mercer Island ("City"). (Exhibit 1) Greenfield appealed the Declaration on August 18, 2023. (Exhibit 21)
3. Under MICC 7.04.020, the term "potentially dangerous dog"

means any dog that when unprovoked: (a) inflicts bites on a human or a domestic animal either on public or private property, or (b) chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to cause injury or otherwise to threaten the safety of humans or domestic animals.

⁴ use PDF page numbers, not source document page numbers. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Decision is based upon all documents in the record. The Date of Notice on the Declaration is a typographical error. The correct Date of Notice is as stated herein. (Testimony of ACO Shepherd)

4. A declaration of potentially dangerous dog must be based upon the following types of evidence, any amount or combination of which results in probable cause:
 1. A declaration of a person that the animal has acted in a manner which causes it to fall within the definition of "potentially dangerous dog;"
 2. Animal bite report(s) filed with the animal control authority;
 3. Action(s) of the animal witnessed by any employee of the animal control authority or law enforcement officer; or
 4. Other substantial evidence, such as photographs of injuries caused by the animal, medical reports, etc.

[MICC 7.04.120(A)]

5. On July 24, 2023, Maria Toro ("Toro") filed a RASKC Online Complaint Form, signed under penalty of perjury, asserting that Buster had bit her on July 22, 2023. (Exhibit 9)
6. Greenfield resides with his fiancée, Sarah Cooper ("Cooper"), in a house at 8014 Avalon Place in Mercer Island. The Greenfield residence is equipped with (at least) one "Ring" recording security camera. That camera is mounted high on a wall in the residence's foyer, facing the front door. Double, fully glazed French doors open to a room to the right of the front door (left of the front door from the Ring camera's position) which Greenfield uses as his office. (Exhibits 1; 19; and Greenfield testimony) The events which form the basis of the Declaration occurred on July 22, 2023, in full view of the Ring camera.
7. Six Ring Camera video segments were entered into the record, five of which sequentially cover the period from about 14:19 hours through 14:22 hours on July 22, 2023.⁵ In chronological sequence, the video segments are Exhibits 19, 16, 18, 17, and 15. The following chronology is based upon those video segments and the testimony of Cooper, Greenfield, and Toro.

Greenfield had hired Toro, a masseuse, to give him and Cooper massages on the afternoon of July 22, 2023. The massages were apparently given in a second story room⁶ and had been completed by 14:19. The video begins at 14:19:16; the foyer is empty but Buster can be heard vigorously barking in the office, whose doors are closed; Buster barks continuously until 14:19:45. At 14:19:19 Toro enters the foyer from behind the camera (from inside the house). Greenfield enters the foyer from the house at about 14:19:24 and talks with Toro. At 14:19:45 Greenfield opens the right-hand office door, he enters the office leaving the door open, and Buster stops barking. Buster is not visible in the office at this point, even though the door is open. At 14:19:54 Toro squats down in the Foyer to put on her shoes (which she had presumably taken off when she had arrived earlier).

⁵ A time stamp appears in the lower right corner of the Ring videos. The time is record in 24-hour (military) time format. 14:19 hours is the same as 2:19 p.m. in the 12-hour time system. The Examiner will use the 24-hour time system in this Decision since that is what is recorded on the videos.

⁶ Coooper testified that she came down stairs after her massage.

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At 14:20:01 Greenfield extends his arm through the open door and gives Toro some dog treats which she had previously given to him. At 14:20:04 Toro is squatting down in the foyer, facing the open office door, and talking to Buster who is still not visible in the office. At 14:20:17 Greenfield is standing behind his office desk. At about 14:20:24 Greenfield asks Toro to whom he should make out the check for the massages and she responds while in the foyer tying one of her shoes. At 14:20:30 Toro stands and slowly approaches the open office door. At 14:20:31 Toro reaches the office door threshold. At approximately 14:20:32 and :33 Toro places one foot over the threshold and Buster barks, charges, and hits Toro's stomach with his nose. The contact is so short that it is not possible to see precisely what happened. Both Buster and Toro then retreat a few steps. At 14:20:35 Toro has backed a few feet away from the office door and Buster comes out of the office into the foyer; Buster does not go after Toro at this time. At 14:20:37 Buster walks away from Toro in the foyer. Greenfield comes out of the office at 14:20:38. Buster then goes to Greenfield, ignoring Toro. Between 14:20:43 and :45, Toro directs Buster to "sit" while Greenfield is at his side. Buster sits and Toro gives him treats. Between 14:21:00 and :10 Toro gets Buster to "shake" her hand with his paw while giving him more treats; Greenfield returns into the office. At 14:21:52 Buster returns into the office.

At 14:21:56 Toro turns her back to the open office door to speak with Cooper who has just entered the foyer. Buster charges out of the office a second time barking at Toro's back. At 14:21:59 Greenfield calls Buster back into the office; Buster stops barking.

At 14:22:05 Toro opens the front door to leave. At 14:22:15 Greenfield hands a check to Cooper who hands it to Toro. Toro leaves. The incident is over.

8. Later that day Toro discovered that she had sustained one and possibly two small puncture wounds on her abdomen, slightly above and to her left of her belly button. (Exhibits 3; 6; 8; 10; 12; 13; 14) The location of the wound is best determined from Exhibit 14 at MI_0158. Toro also sustained a bruise on the back of her upper right arm. (Exhibit 4) The photograph shows no evidence of a dog bite in that area. The source of the bruise is unclear from the record.
9. Greenfield argues that Toro provoked Buster by walking into the office – his space. He asserts that he did not invite Toro to enter his office. Greenfield argues that Buster may well have "nipped" Toro, but that he did not "bite" her. (Exhibit 21; and Greenfield testimony)

Toro does not believe that she provoked Buster. Rather, she feels that by leaving the office door open Greenfield essentially invited her to enter the office. (Toro testimony)

The parties made other arguments which the Examiner finds immaterial to the issue on appeal.

10. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁷

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

The Examiner has authority under MICC 7.04.235(C) and (E) to hear and decide appeals from Declarations of Potentially Dangerous Dog issued pursuant to Chapter 7.04 MICC by the ACO. The Examiner issues a written decision following an open record appeal hearing. [MICC 7.04.235(C), (E), and (F)] The Examiner’s Decision is not subject to reconsideration. [MICC 7.04.235(I)] The Examiner’s final decision is conclusive and may be reviewed in Superior Court. [MICC 3.40.100]

Review Criteria

The Examiner is the trier of fact and must determine if the cited dog meets the definition of a potentially dangerous dog as quoted in Finding of Fact 3, above. “The [Examiner] may uphold, dismiss, or modify the potentially dangerous dog declaration or final dangerous dog determination.” [MICC 7.04.235(E)]

Vested Rights

There are no vested rights considerations in this case.

Standard of Review

The ACO has the burden of proving the violation by a preponderance of the evidence. [MICC 7.04.235(G)]

CONCLUSIONS OF LAW

1. The preponderance of the evidence proves that Buster inflicted a puncture wound on Toro’s abdomen on the afternoon of July 22, 2023. A puncture wound is a bite. A “nip” is a bite if it breaks the skin as happened here. While it is true that the video does not show any blood on Toro’s tee shirt after the bite, that is not unusual for a small puncture wound.
2. The fundamental question then is: Did Toro provoke Buster to bite her? The Examiner concludes the answer is clearly No, she did not. Provocation requires one to actively do something to annoy the animal. Here, Greenfield entered his office and left the office door wide open. Buster stopped barking as soon as Greenfield went into the office. At no time can Greenfield be heard warning Toro to stay away from the office. Greenfield could see Toro the entire time she was moving slowly towards the office door. In fact, about 30 seconds before Toro crossed the office door threshold and Buster charged her, Greenfield reached out of the office and handed Toro some dog treats to give to Buster. Toro had no reason to believe that simply crossing the office door threshold would cause Buster to attack her.

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3. Buster may well be a fine pet and friendly to people he knows. (See support letters attached to Exhibit 21.) That does not change the fact that Buster, unprovoked, bit Toro on July 22, 2023.
4. Issuance of the Declaration was consistent with MICC provisions and must, therefore, be upheld.
5. The MICC requires that a potentially dangerous dog be under physical control (leashed) at all times when outside of an enclosed residence or outside enclosure. [MICC 7.04.120(E)] If Buster behaves for the next 24 months, Greenfield may then petition the City to remove the potentially dangerous dog designation from Buster. [MICC 7.04.125]
6. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner hereby **UPHOLDS** the Declaration of Potentially Dangerous Dog issued against Buster under file number A23-004616.

Decision issued October 23, 2023.

ls\ *John E. Galt*

John E. Galt
Hearing Examiner

NOTICE OF RIGHT OF APPEAL

This decision is final and conclusive and may be reviewable by an action for writ of review filed in King County Superior Court. [MICC 3.40.100] Applicable statutes and court rules govern any appeal to Superior Court.

Reconsideration of the Examiner's Decision in animal control appeal cases is not allowed under the MICC. [MICC 7.04.235(I)]