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BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In Re The Appeal of:

JEFF GREENFIELD, as Owner of dog named
Buster,

Appellant,

v.

CITY OF MERCER ISLAND,

Respondent.

No. APL23-006

CITY OF MERCER ISLAND’S
STAFF REPORT

I. INTRODUCTION

The City of Mercer Island (“City”), through its animal control authority, Regional Animal Services of King County (“RASKC”), appropriately issued a potentially dangerous dog declaration for the dog “Buster” Greenfield. Buster, unprovoked, bit Ms. Maria Toro, thus classifying him as a potentially dangerous dog, pursuant to RCW 16.08.090 and MICC 7.04.120. The City respectfully requests the Hearing Examiner sustain the potentially dangerous dog declaration.

II. FACTS

On July 22, 2023, Ms. Maria Toro was at the residence of Appellant Mr. Greenfield for purposes of providing masseuse services, which she provided on the second floor of the

1 residence. Ms. Toro was asked by her client if she would potentially provide dog walking
2 services. Ms. Toro replied that she would like to meet the dog first.

3 Ms. Toro went downstairs, where Mr. Greenfield was obtaining a check for Ms. Toro
4 for the masseuse services. He invited her to meet the dog “Buster.” Ms. Toro took a step
5 towards the study/library where Buster was located to greet him, but the dog rushed toward
6 her. Ex. 2, 9, 16. Buster jumped up and bit Ms. Toro on the stomach, just above her belly
7 button, breaking the skin. Ex. 2-4, 6, 8, 16. She told the dog “no.” Ms. Toro attempted to
8 calm the dog with a dog treat, which she broke into pieces and fed to him in the foyer of the
9 residence. Ex. 16, 18. Ring video footage of the events show Buster then going back from
10 the foyer into the library. Ex. 17

11 When Ms. Toro turned to leave the residence, she was obstructed by a large box that
12 was in the foyer of the residence. Ex. 17. At that time, Buster emerged again from the library,
13 lunging and barking at Ms. Toro. Ex. 17. While leaving the residence, Ms. Toro observed
14 that the dog was extremely animated, so much so that she reported to RASKC that she
15 “thought he might go thru the screen window.” Ex. 9.

16 Ms. Toro submitted a complaint to RASKC on July 25, 2023. Ex. 9. Ms. Toro
17 submitted photos to RASKC that demonstrated three distinct punctures on her stomach. Ex.
18 3, 6, 8. The photos also show the bruise on the back of her arm, which Ms. Toro will testify
19 her belief that it was caused by a bite from Buster while she was leaving the residence. Ex.
20 4.

21 RASKC issued a notice of potentially dangerous dog for Buster on July 30, 2023. Ex.
22 1. Mr. Greenfield appealed the notice on August 18, 2023. Ex. 21.

23 III. LEGAL STANDARD

24 A dog is potentially dangerous if “when unprovoked: [it] (a) inflicts bites on a human
25 or a domestic animal either on public or private property, or (b) chases or approaches a person
26 upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude

1 of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked,
2 to cause injury, or to cause injury or otherwise to threaten the safety of humans or domestic
3 animals.” MICC 7.04.020.

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

7 IV. ARGUMENT

8 While unprovoked, the dog Buster Greenfield bit Ms. Toro. The City expects to call
9 both the bite victim, Ms. Toro, as well as Animal Control Officer Dominique Shepherd, to
10 testify that Buster did bite Ms. Toro, and that the bite was unprovoked.

11 1) The Bites Were Unprovoked

12 Provocation is not defined in the MICC. Therefore, it is appropriate to apply the
13 dictionary definition. *Morawek v. City of Bonney Lake*, 184 Wash.App. 487, 493, 337 P.3d
14 1097 (2014). The Merriam Webster dictionary definition of provoke is:

- 15 1. a: to call forth (a feeling, an action, etc.) ...
16 b: to stir up purposely ...
17 c: to provide the needed stimulus for will provoke a lot of discussion
- 18 2. a: to incite to anger
19 b archaic : to arouse to a feeling or action

20 Therefore, provocation must include a purposeful action to call forth, stir up, or incite a dog
21 to anger.

22 The City expects to call Ms. Toro at hearing to testify as to the circumstances of the
23 bite, and that she did not provoke an attack by Buster. The Ring video from the Greenfield
24 residence shows Ms. Toro interacting with Buster, where she does not taunt, tease, take
25 aggressive postures, or otherwise act in a threatening manner towards either Buster or the
26 occupants of the residence. Exs. 15-20. Indeed, Ms. Toro was invited to meet the dog prior
to potentially providing dog walking services for him.

1 Based on the filed appeal, the City expects Appellant to argue that Ms. Toro’s location
2 in proximity to the library constitutes provocation. Ex. 21. However, Ms. Toro simply
3 attempting to enter the library does not constitute provocation under the definition of provoke.
4 Indeed, Ms. Toro will testify that she was never instructed not to go into the library, but to
5 the contrary, she was invited to meet Buster. Further, in the *Morawek* case, the Court rejected
6 an argument that the location of the victim alone constitutes evidence of provocation.
7 *Morawek*, 184 Wash.App. at 494.

8
9 2) Appellant’s Distinction Between a “Nip” and a “Bite” is Meaningless under the
RCW and the MICC

10 In his appeal, Appellant appears to concede that Buster did bite Ms. Toro. That appeal
11 states that Appellant “will stipulate from the picture of the wound and the proximity of Buster
12 to [Ms. Toro] in the video, that he might have nipped her.” Ex. 21. The distinction between
13 a nip and a bite is not recognized pursuant to the MICC nor the RCW. Neither provide that a
14 nip is a lesser category of bite or that this is reason to set aside a potentially dangerous dog
15 declaration. The statutory and MICC standards remain that if Buster bit Ms. Toro without
16 provocation, the definition of potentially dangerous dog applies.

17 3) There Is a Preponderance of Evidence that Buster Bit Ms. Toro

18 The City expects to call Ms. Toro at the hearing to testify that Buster did indeed bite
19 her unprovoked. Further, Ms. Toro produced written statements to RASKC regarding both
20 the biting and the circumstances surrounding the incident. Ex. 9. She also produced photos
21 of the bite on her stomach and bruise on her arm. Exs. 3-4, 6, 8, 10, 12-13. Finally, the Ring
22 videos provided by Mr. Greenfield show the dog lunging, barking animatedly, and otherwise
23 behaving aggressively towards Ms. Toro. Exs. 16-19.

24 Appellant also claims that Ms. Toro’s demeanor is inconsistent with someone
25 sustaining a dog bite. However, Ms. Toro explains in her communications to RASKC that
26 she thinks adrenaline may have kicked in. Ex. 9. ACO Shepherd is expected to testify that
this type of reaction is not uncommon when bitten by an animal.

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4) Whether Buster Has Previously Bitten Is Irrelevant

Whether Buster has inflicted bites previously is immaterial. The RCW and MICC plainly provide that if a dog inflicts bites on a human or domestic animal on public or private property, it is classified as a potentially dangerous dog. RCW 16.08.090 and MICC 7.04.020.

The testimonials provided by the Appellant by Ms. Sandy Siconolfi and Ms. Analia Arredondo only bolster the fact that Buster could inflict bites unprovoked. Both Ms. Siconolfi and Arrendondo classify Buster as “fairly territorial” and “very territorial,” respectively. Ex. 21.

5) Hardship is Not a Reason to Overturn a PDD Notice

Appellant finally argues that allowing the potentially dangerous dog notice would work hardship on him, the dog, and his entire family. Hardship is not a reason given under the MICC to rescind or modify a potentially dangerous dog notice.¹ Therefore, the Hearing Examiner should disregard Appellant’s allegation of hardship as immaterial to the appeal at hand.

V. CONCLUSION

In conclusion, the dog “Buster” Greenfield, while unprovoked, bit Ms. Toro. Accordingly, the dog meets the statutory and MICC definitions of potentially dangerous dog. The City respectfully requests the Hearing Examiner uphold RASKC’s issuance of a potentially dangerous dog notice for “Buster” Greenfield.

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¹ Even were hardship recognized under the MICC, Appellant does not specify what hardship would be suffered by Appellant, the dog in question, and Appellant’s entire family. The City reserves the right to further respond to this allegation at hearing, should Appellant present evidence on this issue.



DATED this 6th day of October, 2023.

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MADRONA LAW GROUP, PLLC

By: /s/ Eileen M. Keiffer
Eileen M. Keiffer, WSBA No. 51598

CITY OF MERCER ISLAND
OFFICE OF THE CITY ATTORNEY

By: /s/ Bio Park
Bio Park, WSBA No. 36994

Attorneys for the City of Mercer Island

DECLARATION OF SERVICE

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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 6th day of October, 2023, I served a true copy of the foregoing City of Mercer Island’s Staff Report on the following parties of record using the method of service indicated below:

Jeff Greenfield 8014 Avalon Place Mercer Island, WA 98040 Pro Se Appellant	<input 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: greenfieldjeff@hotmail.com <input type="checkbox"/> EService pursuant to LGR
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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 6th day of October, 2023, at Seattle, Washington.

Tori Harris