

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

DECISION

FILE NUMBER: APL23-008
(Ref. Animal Control Case No. RASKC A23-005183)

APPELLANT: ¹ Tamara Shoop
7230 West Ridge Road
Mercer Island, WA 98040
tamara.shoop@yahoo.com

RESPONDENT: Animal Control Officer
City of Mercer Island
C/o Eileen M. Keiffer
Madrona Law group, PLLC
14205 SE 36th Street
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AND

C/o Bio F. Park, City Attorney
9611 SE 36th Street
Mercer Island, WA 98040
bio.park@mercergov.org

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

EXAMINER DECISION: Declaration of Potentially Dangerous Dog **UPHELD**

DATE OF DECISION: November 6, 2023

INTRODUCTION ²

Tamara Shoop (“Shoop”) filed an appeal on September 18, 2023, from a Declaration of Potentially Dangerous Dog (“Declaration”) issued on August 30, 2023, against “Tucker” by an Animal Control Officer (“ACO”) from Regional Animal Services of King County (“RASKC”). ³ (Exhibits 7 and 1, respectively ⁴)

¹ The address listed here is Appellant’s former address. Her current address was not stated during the hearing.

² Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

³ Mercer Island contracts with RASKC for animal control services.

John E. Galt, Mercer Island Hearing Examiner ("Examiner"), held a remote open record hearing on November 2, 2023. The City gave notice of the hearing as required by the Mercer Island City Code ("MICC"). (Exhibit 8)

Testimony under oath was presented by:

Tamara Shoop
Allison Wilcox

Terence Adamse

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

Appellant Shoop appeared *pro se*.

The following exhibits were offered and admitted:

- Exhibits 1 – 9: As listed on Respondent's Exhibit List
- Exhibit 1001: Temperament statements from Gabrielle Schilling and William Flower (Entered as Appellant's rebuttal exhibit)
- Exhibit 9001: Letter, Hearing Examiner to Principal Parties, September 21, 2023 (Scheduling)
- Exhibit 9002: Email string, November 2, 2023 (Request for late submittal of Appellant exhibits)
- Exhibit 9003: Email string, September 21 – 28, 2023 (Hearing date selection)

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 August 30, 2023, the ACO issued the Declaration against Tucker based on probable cause to believe that Tucker met the City's definition of a Potentially Dangerous Dog. The Declaration was issued pursuant to MICC 7.04.120. (Exhibit 1)
2. Tucker, a 5-year old, white neutered male Bichon/Cavalier, is owned by Shoop, whose former (and current) residence is located within the City of Mercer Island ("City"). (Exhibit 1) Shoop appealed the Declaration on September 18, 2023. (Exhibit 7; testimony)

⁴ 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 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.

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. 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 or about August 24, 2023, Terence Adamse ("Adamse") filed a RASKC Online Complaint Form, signed under penalty of perjury, asserting that Tucker bit him on August 23, 2023. (Exhibit 2)
6. At the time of the incident giving rise to the Declaration, Shoop lived at 7230 W Ridge Road in Mercer Island ⁵ and Adamse was a delivery van driver for Amazon. ⁶
7. At about 1:50 p.m. on August 23, 2023, Adamse arrived at the Shoop residence to deliver a package. He reviewed Amazon's delivery notes for the Shoop address which said to deliver to the front door. Adamse exited the van and walked up the sidewalk to the front door. As he approached the front door he saw that it was open. Adamse put the package down, stepped back a step or two, and took a picture of the package as required by Amazon. As he was doing this, Tucker ran out of the house barking and bit Adamse on his left shin. Adamse turned to leave and Tucker reportedly bit him again on the back of his leg. Adamse did not see or feel the bites immediately, so he returned to his van. In response to the commotion at the front door, Shoop came out of the house. Shoop told Adamse to leave packages on the sidewalk in the future. (Exhibits 2; 7; testimony)
8. Adamse took a picture of the bite on his shin while sitting in the van immediately after the incident. (Exhibit 3) The record contains no visual evidence of the reported second bite.

⁵ Shoop has since moved to an apartment in Mercer Island. (Testimony)

⁶ Adamse is no longer employed as a delivery van driver by Amazon. (Testimony)

9. No evidence suggests that Adamse provoked Tucker in any way.
10. Shoop testified that while Tucker is a barker, she has never had any aggressive behavior trouble with him before. (Testimony) Two of Shoop's friends who are dog trainers and who have interacted with Tucker in the past submitted email statements asserting that Tucker is a well-behaved dog. (Exhibit 1001)
11. 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 on the afternoon of August 23, 2023, Tucker charged out of the open front door of Shoop's residence and bit deliveryman Adamse on the shin.
2. The fundamental question then is: Did Adamse provoke Tucker to bite? The Examiner concludes the answer is clearly No, Adamse did not. Provocation typically requires one to actively do something to

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annoy the animal. Delivering a package is not provocation. Neither is taking a picture of the package after its delivery.

3. Tucker, unfortunately, meets the MICC's definition of potentially dangerous dog. The Declaration must, therefore, be upheld.

The bite on August 23, 2023, was unprovoked. Tucker may normally be a well-behaved, lovely dog. But the MICC does not require repetitive biting to meet the definition of potentially dangerous dog. The code is written such that a single biting incident is sufficient if there is no provocation.

4. 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)] Frankly, this should be less onerous for Shoop now that she lives in an apartment than it would have been at her former house. If Tucker behaves for the next 24 months, Shoop may then petition the City to remove the potentially dangerous dog designation from Tucker. [MICC 7.04.125]
5. 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 "Tucker" under file number RASKC A23-005183.

Decision issued November 6, 2023.

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)]