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BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In Re the Appeal of:

TAMARA SHOOP, as Owner of dog named
Tucker,

Appellant,

v.

CITY OF MERCER ISLAND,

Respondent.

No. APL23-008

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 “Tucker” Shoop. On August 23, 2023, Tucker, unprovoked, bit Mr. Terence Adamse twice while Mr. Adamse was delivering a package to the Shoop residence. Accordingly, the dog meets the definition of potentially dangerous dog per RCW 16.08.090 and Mercer Island City Code (“MICC”) 7.04.120. The City respectfully requests the Hearing Examiner sustain the potentially dangerous dog declaration for “Tucker” Shoop.

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II. FACTS

Mr. Adamse is expected to testify that he works for Amazon and that on August 23, 2023, he was delivering a package to the Shoop residence at 7230 West Ridge Road on Mercer Island. Ex. 2. Mr. Adamse walked to the front door to deliver the package and noticed the front door was open, as he set the package down. *Id.* As he was taking a picture of the delivered package, a small white dog ran out of the Shoop residence and bit Mr. Adamse on his left foreleg, breaking the skin. Ex. 2, 3. Mr. Adamse turned to leave and as he turned around, the dog bit him again on the back of his right leg. Ex. 2, 3.

Mr. Adamse returned safely to his van, and saw a female appear. Ex. 2. She told him to leave the package at the end of the sidewalk next time. *Id.* He told her that her dog had just bit him, but she appeared to either not hear Mr. Adamse or dismiss the statement that he was bit. *Id.*

Mr. Adamse filed a complaint with RASKC on August 24, 2023. Ex. 2. RASKC issued a notice of potentially dangerous dog for Tucker on August 30, 2023. Ex. 1. Appellant filed the instant appeal on September 11, 2023. Ex. 7.

III. LEGAL STANDARD

A dog is potentially dangerous if “when unprovoked: [it] (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 (c) 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.” MICC 7.04.020.

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

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IV. ARGUMENT

The dog “Tucker” Shoop meets the criteria qualifying a dog as a potentially dangerous dog because it, unprovoked, inflicted two bites on Mr. Adamse. Mr. Adamse is expected to testify that he was merely delivering a package and that he did not taunt the dog, tease the dog, threaten the dog, harm the dog, or take any actions that would appear threatening to the dog prior to the bites.

The dog Tucker also qualifies as a potentially dangerous dog because it, unprovoked, chased or approached Mr. Adamse on the streets, sidewalks, or any public ground or private property in a menacing fashion or apparent attitude of attack.

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

Appellant alleges that Tucker is a “good natured” dog. Ex. 7. However, there is no exception to the definition of “potentially dangerous dog” under the RCW nor the MICC for a dog that is “good natured.” Rather, “potentially dangerous dog” is a term of art, which is precisely defined in the RCW and the MICC. That definition does not require a dog to be “bad natured.” Instead, it contains three types of criteria, and a dog meeting any one of these criteria is sufficient to qualify a dog as potentially dangerous. As briefed above, the dog Tucker qualifies on two of the three criteria.

2) The Bite/Attack Was Unprovoked

Appellant speculates that Mr. Adamse may have moved Tucker away with his leg. Ex. 7. However, this is not enough to constitute provocation. Provocation is not defined in the MICC. Therefore, it is appropriate to apply the dictionary definition. *Morawek v. City of Bonney Lake*, 184 Wash.App. 487, 493, 337 P.3d 1097 (2014). The Merriam Webster dictionary definition of provoke is:

- 1. a: to call forth (a feeling, an action, etc.) ...
- b: to stir up purposely ...
- c: to provide the needed stimulus for will provoke a lot of discussion

- 2. a: to incite to anger
- b archaic : to arouse to a feeling or action

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

Animal Control Officer Allison Wilcox is expected to testify how King County typically applies the standard of provocation and that provocation is often measured by the reasonableness of the action of the person as well as the reasonableness of the conduct of the dog.

Mr. Adamse was doing nothing more than delivering a package to a residence that had ordered such a package. There is no fault on Mr. Adamse that the door to the residence was open. Again, he is expected to testify that he did not yell at, taunt, tease, or act aggressively towards the dog Tucker. Further, Mr. Admase is expected to testify that he did not attempt to move the dog away with his leg. However, assuming arguendo that he did, that alone would likely be insufficient to constitute provocation. Small dogs can often times be underfoot and in close proximity to human legs. Such an action would not be a purposeful action to incite a dog to anger. It is worth repeating that Tucker inflicted not just one, but two bites on Mr. Adamse, including one on the back of his leg, when he was retreating from the property.

V. CONCLUSION

Here, the behavior of the dog “Tucker” Shoop meets not just one, but two of possible criteria for a “potentially dangerous dog” under the statute and the MICC. Accordingly, the City respectfully requests the Hearing Examiner uphold the potentially dangerous dog notice issued by its contracted animal control authority, RASKC.

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DATED this 23rd day of October, 2023.

MADRONA LAW GROUP, PLLC

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Attorneys for the 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 23rd 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>Tamara Shoop 7230 West Ridge Road Mercer Island, WA 98040</p> <p><i>Appellant</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: tamara.shoop@yahoo.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 23rd day of October, 2023, at Seattle, Washington.

/s/ Tori Harris
Tori Harris