

**BEFORE THE ADMINISTRATIVE HEARING OFFICE
FOR THE MUNICIPALITY OF ANCHORAGE**

MUNICIPALITY OF ANCHORAGE,
(ANIMAL CARE AND CONTROL)
Plaintiff,

v.

STEPHANIE BUSCH,
Appellant.

**MOA Administrative
Hearing Office**

JUL 13 2023

Administrative Hearing Office No.: 25-010
Animal Control Case No: A25-078587

FINAL DECISION AND ORDER

I. Summary of Proceeding

On June 12, 2025, the Municipality of Anchorage Animal Care and Control (Animal Control) classified a dog belonging to Ms. Stephanie Busch as a Level 2 animal after determining that the dog caused physical injury to another dog. Ms. Busch requested a hearing to contest the classification. After considering the evidence, the Level 2 classification is AFFIRMED, except for the requirement for a secure enclosure, which is NOT AFFIRMED.

II. Evidence Considered

The hearing was held on July 17, 2025. The hearing was recorded, and all evidence was presented on the record. Ms. Busch was advised of her rights at the hearing, including her right to counsel, and she elected to proceed without retaining counsel. Animal Control Sergeant Wyatt, the complainant¹, and Ms. Busch all testified under oath. Animal Control offered the following exhibits, which were admitted as evidence without objection:

Exhibit 1: Investigation Report for Case Number A25-078587
Exhibit 2: Activity History for Case Number A25-078587

¹ Complainants' names are redacted pursuant to AMC 3.90.040.D.

- Exhibit 3: Animal Care and Control Notice, dated June 18, 2025, and photos of service
- Exhibit 4: Email from Stephanie Busch
- Exhibit 5: Email from complainant's husband to Animal Control, with attached photos of dog
- Exhibit 6: Veterinary records from VCA Animal Hospital
- Exhibit 7: Notice to Comply and Notice of Level 2 Classification

Ms. Busch offered the following exhibits, which were admitted as evidence without objection:

- Exhibit A: Photos of backyard and fence
- Exhibit B: Letter from Catlan Sardina

III. Findings of Fact

The following findings are based on a preponderance of the evidence in the record.

1. The Municipality of Anchorage Animal Care and Control is charged with enforcing Title 17 concerning animals.
2. Ms. Busch lives within the municipality of Anchorage and owns an American Pitbull named Edna.
3. The complainant lives nearby and owns a black lab named Sox.
4. Ms. Busch said Edna and Sox do not get along. She said she wanted to socialize the dogs and have them spend time with each other, but the complainant did not desire to do so.
5. The complainant said that Edna has attacked her dog in the past. She said at some point during the winter, she was walking her dog Sox on a leash when Edna ran out loose and approached them. She said Edna was snarling and baring her teeth, but did not cause any injury to Sox so she did not report the situation to animal control.
6. On June 12, 2025, Ms. Busch was working in her garage with the garage door open.
7. Two children who live next door were outside playing with their dog Glacier in the front yard. Ms. Busch said that her dog Edna and Glacier play well together, and she did not have concerns about the dogs playing together.

8. Edna was wearing an electronic shock collar. Ms. Busch said that she normally sits in the front yard with the control in her hand. However, since the dogs had played together in the past, she returned to her garage and was busy working inside the garage.

9. Glacier's owner said that the two dogs often play aggressively together, but there have never been concerns Edna being an aggressive dog or trying to injure Glacier. The two dogs share a backyard fence and are familiar with each other.

10. At the same time, the complaint was returning to her property from walking her dog Sox. The complainant was walking in her own driveway with Sox on a leash when Edna spotted the dog.

11. Edna bolted away from the children and ran onto the complainant's property.

12. The complainant testified that Edna charged towards Sox, and was biting Sox. She said Sox was not fighting back, that Edna had control of Sox's windpipe, and Sox appeared to be out of breath and "going limp." She dropped the leash and was screaming.

13. Ms. Busch ran over and pulled Edna off Sox.

14. The complainant noticed that Sox's ear was bleeding and she was concerned his windpipe was injured. The complainant took Sox to the vet hospital, where Sox received several sutures to repair a laceration to his ear. There was no lasting damage or injury to his windpipe.

15. Ms. Busch disputed that Sox was not fighting back. She said Edna sustained a bite injury to her ear as well, but the injury did not require any treatment.

16. Ms. Busch testified that Edna is not an aggressive dog. She normally maintains control of Edna and she believes this was a one-time incident due to her not watching the animal and being busy in the garage. She believes Edna was excited from playing with Glacier when she saw Sox.

17. Sergeant Wyatt testified that she reviewed the definition of level two behavior and determined that classification of Edna was appropriate because Edna caused physical injury to the complainant's dog. She said that animal control reviewed the

exceptions to classification and determined none of the exceptions applied. In this case, Sergeant Wyatt felt that it was important that the complainant was with her dog on her own property, with her dog on a leash, and Edna ran onto the complainant's property, indicating Edna was not defending herself or her property.

18. Sergeant Wyatt did not issue a citation for Edna being uncontrolled during the incident. She said she reviewed the prior history for Edna and determined that Ms. Busch had never been warned or cited in the past for failing to properly control the animal. Therefore, she believed a notice to comply (warning letter without civil fine) was more appropriate.

19. Ms. Busch testified that she was not contesting the level 2 classification or any of the conditions, except for the requirement for a secure enclosure. She said they hired a fence company to repair their backyard fence, which is photographed in Exhibit A. She said they are not allowed to build a secure enclosure with a roof in their backyard, and they would be forced to euthanize Edna if they are required to build a secure enclosure.

IV. Conclusions of Law

A. Jurisdiction and Standard of Review

The Administrative Hearing Officer has jurisdiction over this appeal pursuant to AMC 17.05.100, which affords the right to an administrative hearing on decisions of Animal Control, including animal classifications. The issue in this case is whether Animal Control properly classified Edna as a level two animal based on Edna causing physical injury to another animal. Animal Control bears the burden of proving each issue by a preponderance of the evidence,² which is the equivalent of showing that something is "probable" -i.e., more likely than not.³

² See AMC 14.30.090C; *West v. Municipality of Anchorage*, 174 P.3d 224, 227-28 (Alaska 2007).

³ See AMC 14.30.090C; *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007); *Holton v. States*, 602 P. 2d 1228, 1238 & n. 17 (Alaska 1979); see also Alaska Civil Pattern Jury Instruction §2.04.

For most issues, administrative hearings are quasi-judicial proceedings in which the administrative hearing officer may hear and decide *de novo* all matters appealed and may exercise independent judgment as to the weight of evidence supporting the decision that is being appealed.⁴ Thus, whether Edna caused physical injury to an animal is a factual issue that is reviewed *de novo*.

However, once level two behavior is established, the standard of review for whether an exception to classification applies is more complex. AMC 17.40.020(B) gives Animal Control “discretionary authority to refrain from classifying an animal” if one of the exceptions to classification applies. Because the code gives animal control discretion to determine whether an exception to classification applies, Animal Control’s determination should be given deference, so long as it is reasonable, supported by the evidence in the record as a whole, and there is no abuse of discretion.⁵ Therefore, while the ultimate issue of whether the animal was properly classified is reviewed *de novo*, discretionary decisions by animal control that are based on expertise or specialized knowledge in animal behavior — such as whether an animal’s behavior creates a risk to public safety, or whether restrictions promote the humane treatment of animals — receive deference if there is a reasonable basis for the decisions.

B. Edna displayed level two behavior

AMC 17.40.020.A.2 establishes the standard for classifying an animal based on level two behavior. Pursuant to that section, level two behavior is established if “an animal bites or causes physical injury to any domestic animal.” *Physical injury* means an impairment of physical condition or pain either of which is accompanied by visible scrapes, cuts, punctures, bruising, or other evidence of similar injuries.⁶

⁴ AMC 3.60.050.

⁵ See *Cook Inlet Pipe Line Co. v. Alaska Public Utilities Com’n*, 836 P.2d 343, 348 (Alaska 1992) (applying reasonable basis standard to issues involving agency expertise and specialized knowledge.).

⁶ AMC 17.05.010 (Definition of physical injury)

Here, it was not disputed that Edna caused injury to the complainant's dog. Edna bit the dog on its ear, causing a laceration that required stitches. Therefore, Edna displayed level two behavior.

C. Animal Control properly classified the dog as a level two animal

The introductory language of AMC 17.40.020(B) states that Animal Control "shall have discretionary authority" to refrain from classifying an animal if the facts fit an exception to classification. Thus, Animal Control had the discretion – but was not obligated – to refrain from classifying Edna if any of the listed exceptions applied.

Sergeant Wyatt testified that animal control considered all the exceptions and determined classification was appropriate based on the circumstances. Animal control was rightly concerned about the threat to public health, safety, and welfare that Edna poses. The complainant was simply walking her dog on a leash and was on her own property when Edna ran towards them and attacked the dog. The bite was more than a minor nip, it was severe enough to require sutures to repair and forcing the complainant to incur veterinary expenses. Ms. Busch said she was not contesting the decision to classify Edna as a level two animal.

D. The requirement for a secure enclosure was not supported by the evidence in the record as a whole

Once an animal is classified as a level two animal, the following condition is specified in the code: "*Level two. Animals classified as level two shall be confined in a location which may include a secure enclosure or under control by leash only.*"⁷ The use of the word "may" indicates that a secure enclosure is not required for every animal classified as level two, and animal control has discretionary authority to require this restriction. AMC 17.40.040 gives animal control the "discretion to increase or decrease a classified animal's restrictions based upon relevant circumstances." A limitation on this

⁷ AMC 17.40.040.B.2 (emphasis added).

discretion is that the requirement for the use of a secure enclosure may not be reduced or modified for level three or level four animals.⁸ But because Edna was classified as a level two animal, the requirement for a secure enclosure is optional.

In this case, I believe the requirement for the use of a secure enclosure may have been imposed based on the mistaken belief that it was required in every case. There was no evidence presented for why that condition was required in this case. The photographs in Exhibit A, Ms. Busch's testimony, and the letter from their neighbor established that Ms. Busch has spent money to construct a sufficient and adequate fence around her backyard. Edna has not had any issues with this fence and the risk of Edna escaping from it seems minimal. Pitbulls are not known as particularly tall animals, capable of jumping over chain link fences. The risk of escape seems to be primarily due to human error, such as a gate being left open – which would be no different if the animal were kept in a secure enclosure with a roof. Therefore, the condition does not seem to serve any purpose in this case. Sergeant Wyatt's testimony that there have not been any prior incidents of the dog being uncontrolled does support the fact that Ms. Busch attempts to be a responsible dog owner who will keep Edna confined in the fence in the future.

Ms. Busch also testified that her family is not able to build a secure enclosure in their backyard. It is common knowledge that many homeowners' associations prohibit outdoor kennels and the outdoor keeping of animals. This requirement could pose a significant challenge in trying to rehome the dog. Ms. Busch testified that they would be forced to euthanize the animal if they were required to have a secure enclosure, instead of using their fenced-in backyard. This does not seem necessary or consistent with the humane treatment of animals.

I do believe that future incidents like this can be avoided if Ms. Busch keeps Edna in the fenced-in backyard or on a leash. Unfortunately, she has learned the hard way that verbal command or an electronic collar are not sufficient means of control when Edna is in the front yard or off her property.

⁸ AMC 17.40.085.B.

FINAL ORDER

The undersigned hereby orders, based on the evidence presented, that the level two classification of Edna is AFFIRMED, except for the requirement for a secure enclosure in paragraph number 4, which is modified to read as follows:

4. "Animals classified as level two shall be under control by confinement or under control by leash only. (Control by confinement means to control an animal in a humane manner within any fully fenced pen, kennel, yard, or structure, which prevents the exit of any animal confined therein solely on its own volition and the protrusion through the outer perimeter of the enclosure of the animal's paws and/or teeth to an extent which would enable the animal to physically injure a person or another animal)."

DATED and effective as of this 18th day of July 2025, Anchorage, Alaska.

By: 

Paul M. Ervasti
Administrative Hearing Officer

APPEAL RIGHTS

This decision is final. Persons may appeal this order to the Alaska Superior Court, Third Judicial District in Anchorage, Alaska within thirty (30) days of issuance pursuant to Alaska Rules of Appellate Procedure. Any person seeking reconsideration shall serve all parties with a copy of same and with proof of that service.

Certificate of Service

I, Kathi Flanders, hereby certify that I emailed a true and correct copy of the foregoing to:

Stephanie Busch


Animal Care and Control

on this 18 day of July, 2025

Kathi Flanders