

MUNICIPALITY OF ANCHORAGE,  
(ANIMAL CARE AND CONTROL)  
Plaintiff,  
  
v.  
  
KATHY JOLLEY,  
Appellant.

Administrative Hearing Office No.: 25-007  
Animal Control Case No: A25-077946

## MOA/AC v. Kathy Jolley - AHO Case #24-007 - 1

- Exhibit 1: Investigation Report for Case Number A25-077946
- Exhibit 2: Activity History for Case Number A25-077946
- Exhibit 3: Notice to Surrender and/or Deliver Animal, dated May 8, 2025
- Exhibit 4: Medical records for the complainant's husband and son. Emails dated May 7, 2025, from the complainants to Officer Smith, and photographs of injuries.
- Exhibit 5: Home quarantine regulations, Notice of Violation, and Notice of Level 4 Classification
- Exhibit 6: Animal Control registration information for the dog Enzo.

Mr. Fitzgerald submitted the following exhibits on behalf of Ms. Jolley, which were admitted as evidence without objection:

- Exhibit A: Vaccination certificate
- Exhibit B: Letter dated May 12, 2025, from Scott Rapp, DVM
- Exhibit C: Email dated May 12, 2025, from Elijah Thomas, ROC-k9 training
- Exhibit D: Email dated May 12, 2025, from Naomi Hanks
- Exhibit E: Letter from Fallon Allen
- Exhibit F: Email in support of Enzo dated May 12, 2025, from the Gaines Family

### **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. Jolley and her 21-year-old daughter Trinity live in Anchorage and own a one-year-old male Bull Mastiff named Enzo.
3. Enzo is a large dog and weighs approximately 150 pounds.
4. On May 3, 2025, Trinity was preparing to take Enzo outside in the front yard. She attached a leash to his collar and opened the front door. She then realized that she had forgotten her shoes and turned around to retrieve them.

5. The complainant lives nearby with her husband and 7-year-old twin sons. The boys often play or ride their bikes outside.

6. On the afternoon of May 3, 2025, the complainant's husband was outside in his driveway teaching one of the boys to rollerblade. The other boy was riding his bike on the street near Ms. Jolley's house.

7. As Trinity turned around to retrieve her shoes, the boy riding his bike fell and started crying.

8. Enzo pulled the leash away from Trinity and bolted out the front door towards the boy. Trinity and Ms. Jolley both testified that Enzo tends to try to escape open doors, and this is something they are working with a trainer to fix.

9. The complainant's husband was already walking towards his son, who was still on the ground crying. He saw Enzo walking up to his son, and assumed the dog was curious about why the boy was crying. As he was approaching his son, he saw Enzo "attack" the boy, biting him on the face.

10. The complainant's husband ran to his son and pulled Enzo by the collar to get him off his son. He saw that his son's face was bleeding. He then picked up his son and started running towards his house.

11. Enzo followed him, biting him on the rear end as he was running.

12. He ran up his driveway and saw that his other son was struggling to get into the house with his rollerblades on. He put the son that he was carrying in the house and turned around to protect the other son. While he was doing this, Enzo bite the other son on his elbow pad, causing a small scratch on the son's forearm.

13. While this was happening, Trinity Jolley was running after Enzo trying to gain control of him. Eventually, another neighbor helped her grab Enzo and bring him to the Jolley's backyard.

14. Once the complainant's family was inside, the complainant noticed that her husband's pants were ripped on the back, where Enzo had bitten him, and that her son who was riding the bike had puncture wounds on his face and scratches on his chest. She had her husband get in the shower and wash his wounds with soap and water while she treated her son's wounds by irrigating them with water and applying antiseptic.

15. The complainant's family then went to the hospital for treatment.

16. The complainant's husband was treated for abrasions from the dog bite. The abrasions are shown on page 23 of Exhibit 4.

17. The complainant's son was treated for facial lacerations and multiple abrasions. He required 14 stitches to repair the lacerations on his face. The lacerations to his face and stitches are shown on pages 18-20 of Exhibit 4. The abrasions on his chest are shown on page 21 of Exhibit 4.

18. Hospital staff reported the injuries to animal control.

19. Animal Control Officer Smith investigated the situation and determined that it was appropriate to classify Enzo as a level 4 animal because Enzo caused physical injury to a person while unrestrained. He testified that level 4 behavior is established under AMC 17.40.020.A.4 if an unrestrained animal inflicts an aggressive bite *or* causes physical injury to any human. In this case, he determined that Enzo caused physical injury to a human, but he did not find that Enzo inflicted an aggressive bite.

20. Captain Jonsen testified that after an officer determines classification of an animal is appropriate, the case goes to him or the shelter manager for review and decision. He said that both himself and the shelter manager are designated by the Chief Animal Control Officer to make classification decisions. When doing so, he said that both him and the shelter manager consider whether the basis for the classification is supported by the evidence, and whether any exception to classification under AMC 17.40.020.B applies. In this case, he believed classification was appropriate and none of the exceptions to classification applied. The shelter manager signed the notice of classification.

21. Officer Smith testified that Enzo was under observation when he was quarantined at the animal control shelter during the investigation. Officer Smith did not observe any signs of Enzo being aggressive and does not believe that Enzo is an aggressive animal.

22. On May 13, 2025, Ms. Jolly went to pick up Enzo from animal control after the quarantine period was over. She attempted to give Officer Smith the letters contained in Exhibits A-F, which are generally letters of support from friends and acquaintances who say that Enzo is not aggressive and they trust him around their children, along with a letter of support from the dog's vet and trainer.

23. Officer Smith does not remember the exact details of this interaction. Ms. Jolly testified that he told her something along the lines of "hold on to them for now," indicating that he did not want to accept them.

24. Captain Jonsen testified that Exhibits A-F would not have made a difference in the decision to classify Enzo as a level 4 animal. He testified that Enzo might be friendly and non-aggressive around friends, under supervision by his owners, and in familiar settings. But when he was faced with an unfamiliar situation of having an unknown child crying on the road in front of his house, he reacted in a way that caused injury to the child.

Captain Jonsen believed these facts warranted classification, regardless of how Enzo might behave in other situations.

25. The complainant testified that this incident impacted her family and children. The children are scared to go outside and ride their bikes. She said the bite marks on her son's face are healing, but the scars are still visible. She said she has seen Trinity walking Enzo on a leash in the neighborhood, and there are times when Enzo appears to be pulling Trinity. She was aware of the Jolley's owning a large mastiff named "Crush" in the past and did not have any problems with this dog. She said Crush was an older dog and was very different from Enzo.

26. Both Ms. Jolley and Trinity Jolley testified that Enzo is a friendly dog and is not aggressive.

27. Both described him as an energetic one-year-old prone to engage in "puppy-like" behavior.

28. Trinity testified that Enzo appeared playful when he approached the complainant's son. She said Enzo has tried to play with headgear in the past by pulling a hat off a child and pulling a scrunchie out of her hair. She believes Enzo was playfully trying to pull the bike helmet off the child.

29. Both Ms. Jolley and Trinity Jolley testified that Enzo engages in "mouthing," which they explained is when a puppy playfully puts its mouth over something. Ms. Jolley has gotten some bruises on her forearms from this type of playful behavior, but Enzo has never broken skin before. Ms. Jolley believes he has a very strong mouth and does not realize the power of his teeth. She feels that if he had attempted to bite the child, he would have caused severe damage. She believes Enzo was "mouthing" during this incident and did not bite anyone.

30. Ms. Jolley hired a trainer to work with Enzo twice a week. Trinity also works on training him. They are working on preventing the mouthing behavior, to not bolt out of open doors and run away, and to be more obedient on leash. However, Ms. Jolley said that he is still a puppy, and they do have some more work to do with his training, which they are doing.

31. Ms. Jolly also testified that Enzo is not fully developed, and a vet has told her that it would be unhealthy to have him neutered before he is fully developed. She asked that the condition requiring him to be neutered be eliminated. Captain Jonsen replied that animal control would give Ms. Jolley time to comply and would not require an animal to be neutered before a vet thought it was appropriate.

32. Mr. Fitzgerald stated in his closing argument that the classification should be downgraded to either level 3 or level 1. He believes Enzo was restrained when the incident occurred, and the rule of lenity should require downgrading the classification to either level 3 or level 1. He believes Enzo is not aggressive and the classification should also be downgraded as a discretionary decision.

#### **IV. Conclusions of Law**

##### **A. Jurisdiction**

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.

##### **B. Burden of proof and standard of review**

The issues in this case are whether Animal Control properly classified Enzo as a level four animal due to Enzo causing physical injury to a human while unrestrained.

Animal Control bears the burden of proving that its classification decision was proper by a preponderance of the evidence,<sup>2</sup> which is the equivalent of showing that something is “probable” -i.e., more likely than not.<sup>3</sup>

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.<sup>4</sup> Thus, whether Enzo caused physical injury to a human while unrestrained is a factual issue that is reviewed *de novo*.

However, once level four 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.<sup>5</sup> Therefore, while the ultimate issue of whether the animal was properly classified is reviewed *de novo*, 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 decision.

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

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

<sup>4</sup> AMC 3.60.050.

<sup>5</sup> 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.).



C. Enzo was unrestrained and displayed level four behavior

AMC 17.40.020A.4 establishes the standard for classifying an animal based on level four behavior. Pursuant to that section, level four behavior is established if any of several sets of circumstances exist, including “[a]n unrestrained animal inflicts an aggressive bite or causes physical injury to any human.”<sup>6</sup> *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.<sup>7</sup> AMC 17.10.020 requires the owner of an animal to restrain it all times. Restrain or restraint means to confine or control an animal.<sup>8</sup> Animals may be under control by any of the five methods listed in the definition of “control” in AMC 17.05.010. Relevant to this case, a dog under control by command must respond promptly and accurately to verbal or visual commands; a dog under control by confinement in an enclosure such as a house must not be able to exit the confined space on the animal’s own volition; and a dog under control by leash requires the leash to be in the secure possession of a person physically capable of monitoring, directing, and restricting the animals movements.<sup>9</sup> Regardless of the method of control used, the control of an animal must “simultaneously monitor, direct, and restrain an animal’s movements and activities, in a humane manner, so as to prevent violations of title 17.”<sup>10</sup>

In this case, Enzo caused physical injury to at least two, possibly three humans. Under the code definition a “bite” means “an animal bite that breaks the skin or results in significant evidence of biting.”<sup>11</sup> Regardless of whether Enzo was intending to cause damage, or was engaging in playful “mouthing” behavior, his mouth broke the skin on the face of a seven-year-old child, causing puncture wounds that required numerous stitches to repair. The lacerations on the child’s chest and the father’s rear-end also broke the skin and qualify as physical injuries. Finally, the small scratch on the other child’s arm would have

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<sup>6</sup> AMC 17.40.020A.4.

<sup>7</sup> AMC 17.05.010 (Definition of physical injury)

<sup>8</sup> AMC 17.05.010 (Definition of restraint)

<sup>9</sup> AMC 17.05.010 (Definition of control)

<sup>10</sup> *Id.*

<sup>11</sup> AMC 17.05.010 (Definition of bite)

qualified as physical injury to a third person. Although Ms. Jolley and Trinity downplay this as playful behavior, it caused significant injury to a young child's face. I also find it troubling that Enzo continued to chase the father and nip at him as he was trying to protect his children.

I also find that Enzo was uncontrolled when he bolted out the front door and attacked the child. Although Trinity was controlling Enzo when she had a hold of his leash and he was in the house, she apparently lost her grip and allowed Enzo to run out of the house uncontrolled. Enzo did not respond to commands to stop, and Trinity was not able to restrict his movements as he approached the child and bit his face. Nor was he under control as he followed the child's father back to his house, biting his rear-end and biting the other child on his elbow pad. Therefore, he was not under restraint. Animal control proved that Enzo engaged in level four behavior by causing physical injury to a human while unrestrained.

D. Animal Control's Classification was not an Abuse of Discretion

Even if an animal displays behavior that would support a classification, Animal Control has the discretion under AMC 17.40.020B to not classify an animal if the Chief Animal Control Officer determines that an exception to classification applies. The code gives Animal Control broad discretionary authority in the classification of animals<sup>12</sup> in recognition of the specialized expertise that Animal Control has in animal behavior. I find that Animal Control did not abuse that discretion in this case.

Here, Captain Jonsen testified that he and the shelter manager examined each exception and determined that none applied. I agree. Because animal control has broad discretionary authority under AMC 17.40.020B.9, I do believe that statements showing Enzo is not aggressive in other contexts, and is responding well to training, are relevant and should have been considered. But I also agree that this evidence does not overcome the need to protect the public health, safety, and welfare of other people, especially

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<sup>12</sup> AMC 17.40.020B(9)

children. Enzo is a large dog with a powerful mouth. Even if he is not trying to cause damage, his mouth caused lacerations to a child's face that required 14 stitches to repair. An inch difference might have caused more serious injury such as eye damage. The threat to public safety is too severe. If Enzo responds well to training as he gets older, the classification might later be removed or reduced. But for now, level four classification is warranted by the code and appropriate under the facts.

I do not believe it is appropriate to downgrade the classification to a level three or level one. Level one behavior would have been proven if the dog had only menaced or chased a human, without causing any physical injury. Level three behavior would have been proven if the dog caused physical injury, even if it was properly restrained at the time. In this case, as noted earlier, the dog caused physical injury to a human while unrestrained. Therefore, this fits squarely within level four behavior, as regulated by the code.

I also do not believe the rule of lenity is a reason to downgrade the classification in this case. The rule of lenity is a tool of interpretation for criminal statutes requiring ambiguous criminal statutes be resolved in favor of the defendant and against the government.<sup>13</sup> The rule only comes into play when, after employing normal methods of statutory construction, the legislature's intent cannot be ascertained or remains ambiguous.<sup>14</sup> As noted earlier, I do not find any ambiguity in the code and the dog's behavior squarely fits within level four behavior. Additionally, it is not appropriate to use the rule of lenity, designed for criminal cases, in an animal control case. Doing so would mean that anytime there is any doubt about whether it is necessary to classify an animal to protect a child from a dog, the doubt gets resolved in favor of the dog. That is not appropriate or required. Animal control considered all the exceptions to classification and its discretionary decision to not refrain from classifying the animal was reasonable, supported by the evidence, and appropriate under the circumstances.

Regarding the arguments made about the requirement that Enzo be neutered in the future, AMC 17.40.040 states that animal control "may" require written verification that a

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<sup>13</sup> *Municipality of Anchorage v. Brooks*, 397 P.3d 346, 349 (Alaska App. 2017).

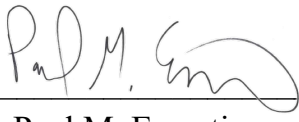
<sup>14</sup> *Id.*

classified animal has been spayed or neutered. Captain Jonsen's testimony shows that animal control will be willing to work with Ms. Jolley in the future to make sure they do not require the dog to be neutered before a vet believes the animal is old enough for the procedure. If Ms. Jolley believes that animal control is being unreasonable in the future or that they are going against a vet's advice, Ms. Jolley may apply to the chief animal control officer to have that condition modified pursuant to AMC 17.40.085.

### **FINAL ORDER**

The undersigned hereby orders, based on the evidence presented, that the level four classification of Enzo is AFFIRMED.

DATED and effective as of this 14<sup>th</sup> 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 mailed a true and correct copy of the foregoing to:

Kathi Jolley

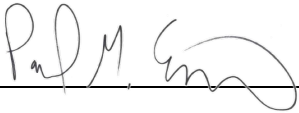
[REDACTED]  
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Kevin Fitzgerald

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Animal Care and Control

on this 14<sup>th</sup> day of July, 2025 ,

  
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