

March 29, 2019

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

King County Courthouse  
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Seattle, Washington 98104  
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**CORRECTED REPORT AND DECISION<sup>1</sup>**

SUBJECT: Regional Animal Services of King County file no. **V18008921**

**LISA HARRISON**

Animal Services Enforcement Appeal

Activity no.: A18007525

Appellant: **Lisa Harrison**  
3471 115th Avenue NE Unit 124  
Bellevue, WA 98004  
Telephone: (323) 447-1445  
Email: [lisaharrison@mac.com](mailto:lisaharrison@mac.com)

King County: Regional Animal Services of King County  
*represented by* **Chelsea Eykel**  
21615 64th Avenue S  
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**FINDINGS AND CONCLUSIONS:**

1. This case stems from a December 9, 2018, altercation involving Lisa Harrison's dog, Oliver. Animal Services cited Oliver for being "vicious," required Ms. Harrison to contain Oliver, and fined Ms. Harrison \$500. Ms. Harrison timely appealed. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we uphold the viciousness determination and compliance order, but partially reduce the penalty.

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<sup>1</sup> Our original decision contained inaccurate information pertaining to dog weights. We have removed that information.

2. The basic facts are not materially disputed. Ms. Harrison owns two dogs, Tallulah and Oliver. Oliver had a scar when she rescued him from Los Angeles, and a friend’s dog bit Oliver after she brought him home. More recently, around Halloween another dog got loose and came at Oliver and Tallulah, biting Oliver. In addition, there was a Ridgeback in the area that would often race around the perimeter of Ms. Harrison’s fenced patio and antagonize Oliver, making Oliver protective of his area.
3. Ms. Harrison described Oliver as “reactive” to other dogs. Therefore, she does not take him to off-leash parks, only walking him on a leash. Ms. Harrison has recently suffered several medical problems. At the time of the December 9 incident, she had mostly been confined to the bed and sofa. She agrees she got “sloppy” around that time, less vigilant about only letting Oliver out only on a leash (when not in her fenced patio).
4. Brady Cooper, along with his wife Kara Cooper, live in the same apartment complex, along with their dog, Bailey. Bailey had extensive knee surgery, and was not fully recovered by the time of the December 9 incident. The Coopers’ practice around that time was to carry Bailey down the stairs, let her do her business on a relatively flat grassy area while on a leash, then carry her back upstairs. Ex. 10.
5. On the night of December 9, after Mr. Cooper put Bailey down, he heard a dog and saw Oliver coming out of Ms. Harrison’s open, backlit apartment door. (Tallulah also came out, but did not really do anything but bark.) Mr. Cooper momentarily lost sight of Oliver in the dark, until Oliver hit him and Bailey, knocking him down and causing him to let go of Bailey’s leash. When he got up, he grabbed Bailey; however, Oliver had a hold of Bailey’s neck and would not let go.
6. Ms. Harrison came out and grabbed Oliver, lifting his back legs to try to get him to let go. At first Oliver would not release Bailey. She lifted Oliver’s legs even higher, and he eventually released his grip. As they were separating, Oliver nipped Mr. Cooper, breaking the skin on his finger. Ex. 3.
7. Ms. Cooper heard the altercation and came down from the third floor. She arrived only after the dogs had separated. Ms. Harrison put Oliver back in her apartment, and the Coopers carried Bailey back upstairs. Ms. Cooper got her nurse sister to come over, and they put Bailey in the bath. Most of Bailey’s injuries were to her neck, with one injury to the inside of her thigh. The next day the Coopers took Bailey to the veterinarian, who shaved her and treated her. Exhibit 4 depicts Bailey’s injuries.
8. Ms. Harrison subsequently discovered that Oliver had also been bitten in the altercation. Ex. 9. Since the incident, she has only let Oliver out on a leash or in the fenced patio.
9. Animal Services served a violation notice and confinement order. Ex. 7. Ms. Harrison timely appealed. Ex. 8. Unless directed to by law—and no special directive applies to today’s case—we do not grant substantial weight or otherwise accord deference to agency determinations. Ours is a true *de novo* hearing. For those matters or issues raised in an appeal statement, Animal Services bears the burden of proving (by a preponderance of the evidence) the violation and the remedy. We went to hearing on March 20. Participants at that hearing and the exhibits offered and entered are listed in the attached

minutes. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

10. The definition of vicious behavior explicitly includes “biting a human being or attacking a human being or domesticated animal without provocation.” BMC 8.04.060.BB. In animal jurisprudence, “attack” typically has a lower threshold than an actual bite. *See, e.g., Matter of LaBorie v. Habes*, 52 Misc.2d 768, 679, 277 N.Y.S.2d 70 (1967) (“Actual biting is unnecessary to an ‘attack’”). Yet that would mean a dog merely “attacking” another animal would qualify as “vicious,” while a dog actually “biting” another other animal would not. The code only has internal cohesion if “attack” means something *more* violent than a simple bite.
11. Even under a stringent reading of “attack,” Oliver qualifies as vicious. Though Bailey apparently bit Oliver, ours is not the scenario where, for example, an unleashed dog jogs up, tail wagging, into a leashed dog's space, the leashed dog reacts strongly, and an altercation occurs in which both dogs wind up biting each other. In that scenario, we would question whether the leashed dog's (over)reaction “provoked” the unleashed dog, even though it was the unleashed dog's approach that created the situation.
12. Our facts here are very different. Oliver charged at a leashed dog, with enough force to knock down both the dog and a grown man. By the time Mr. Cooper could get back up, Oliver had a hold of Bailey's neck. Far from a nip and release, Oliver only let go of Bailey's neck after Ms. Harrison came out and repeatedly pulled him. And then Oliver nipped Mr. Cooper.
13. While appeals of viciousness determinations can be among our toughest animal case to resolve, here Oliver clearly meets the viciousness criteria. That there may be explanations from Oliver's past for why he would react violently to another dog does not change the analysis. We are not making moral judgments, only determining that Oliver “exhibited vicious propensities and constitutes a danger to the safety of persons or property off the animal's premises or lawfully on the animal's premises.” BMC 8.04.300.H.
14. Ms. Harrison expressed concern that Oliver is being deemed vicious to people. How one characterizes Oliver *vis-à-vis* people is really a matter of perspective. Oliver's contact with Mr. Cooper was relatively minor, and only secondary to his attacking Bailey. (Animal Services characterized Oliver's nip of Mr. Cooper as a “displacement bite” after Bailey was removed.) Yet Oliver knocked down Mr. Cooper to get at Bailey, and then nipped Mr. Cooper after finally letting go of Bailey.
15. Oliver may not have an aggressive bent towards people, *per se*. Yet if Oliver were not contained in the future and again went after someone's dog, a person could again get caught in the crossfire. In the end, this case is fundamentally about Oliver's behavior towards another dog, not towards a person. We would have upheld the viciousness designation even if there had been zero physical contact with Mr. Cooper while Oliver was attacking Bailey. We need not make an independent determination about Oliver and people.

16. The impact of sustaining the viciousness determination is that Ms. Harrison needs to follow the containment steps in the December 17 order. Ms. Harrison has apparently been doing that since the December 9 incident, restricting Oliver to the home, fenced patio, or leashed walks.
17. That leaves the monetary penalty. Ms. Harrison explained the financial hardship her recent medical problems have created. She accepted responsibility for allowing Oliver to exit her home, off-leash, and instigate the December 9 altercation. And she has contained Oliver since. In past cases where an owner took responsible steps after the violation to avoid a recurrence, we have reduced the otherwise applicable penalty. We do so again today.

DECISION:

1. We DENY Ms. Harrison's appeal as to Oliver's viciousness determination and containment requirements.
2. We PARTIALLY GRANT Ms. Harrison's appeal as to \$150 of the \$500 penalty, meaning the remaining penalty due Animal Services is \$350.

ORDERED March 29, 2019.



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David Spohr  
Hearing Examiner

**NOTICE OF RIGHT TO APPEAL**

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *April 29, 2019*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

**MINUTES OF THE MARCH 20, 2019, HEARING IN THE APPEAL OF LISA HARRISON, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V18008921**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Sergeant Chelsea Eykel, Brady Cooper, Kara Cooper, and Lisa Harrison.

The following exhibits were offered and entered into the record:

- |               |   |
|---------------|---|
| Exhibit no. 1 | Regional Animal Services of King County staff report to the Hearing Examiner, striking the last paragraph on page 001 |
|---------------|---|

- Exhibit no. 2 Complaint form of date December 9, 2018 incident by Brady Cooper, dated December 12, 2018
- Exhibit no. 3 Photographs of Brady Cooper’s injury and Bailey’s injuries
- Exhibit no. 4 Clinical summary of Bailey from The Vet Practice, dated December 12, 2018
- Exhibit no. 5 RASKC investigation report no. A18007525 (striking note 2 on page 004)
- Exhibit no. 6 Aerial map of neighborhood
- Exhibit no. 7 Notice of violation no. V18008921, issued December 17, 2018
- Exhibit no. 8 Appeal, received January 4, 2019
- Exhibit no. 9 Photographs of Oliver’s injuries
- Exhibit no. 10 Photograph of altercation location, and transmittal email, dated March 20, 2019 (striking the emails final paragraph)

DS/ld

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V18008921**

**LISA HARRISON**  
Animal Services Enforcement Appeal

I, Liz Dop, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **CORRECTED REPORT AND DECISION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED March 29, 2019.



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Liz Dop  
Legislative Secretary

**Cooper, Brady and Kara**

Hardcopy

**Eykel, Chelsea**

Regional Animal Services of King County

**Harrison, Lisa**

Hardcopy

**Lindquist, Michael**

Regional Animal Services of King County