

October 28, 2020

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V20010973-A20012967**

LINDSAY BIRCHFIELD AND MARA GUSTAFSON

Animal Services Enforcement Appeal

Activity no.: A20012967

Appellants: **Lindsay Birchfield and Mara Gustafson**

Seattle, WA 98178

Telephone: [REDACTED]

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King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
Regional Animal Services of King County
21615 64th Avenue S
Kent, WA 98032
Telephone: (206) 263-5968
Email: raskcappeals@kingcounty.gov

FINDINGS:

1. **Hearing.** A telephonic hearing was held on October 14, 2020. Appellants, Lindsay Birchfield and Mara Gustafson, appeared, as did Sergeant Eykel, Code Enforcement Officer for King County Regional Animal Services.
2. **Exhibits.** The exhibits listed in the minutes below were admitted without objection.
3. **Witnesses.** Sworn testimony was received from Sergeant Eykel, Nathan Bays, Lindsay Birchfield, and Mara Gustafson.
4. **Notice of Violation.** Following receipt of a July 28 complaint, Officer Miller issued Lindsay Birchfield a Notice of Violation and Order to Comply, with three violations for Mx. Birchfield's two dogs, Charlie and Leo.

Vicious Animal, 1st Violation. KCC 11.04.230(H), \$500 per dog¹

Notice and Order for Confinement. KCC 11.04.290, \$0

Running at Large, 1st Offense. KCC 11.04.230(B), \$50 per dog²

5. **Incident – Morning of July 23, about 8:00 AM.** The facts are largely undisputed. Mr. Bays was walking Albus, his 40-pound dog (part Poodle, part Irish Setter), on a leash. He was on the opposite side of the street from the Birchfield/Gustafson residence at 10625 Dixon Drive S. As he passed the house, Leo (an Old English Bulldog) and Charlie (a Boxer/Lab mix)³ rushed the fence surrounding their yard, barking. Albus continued walking and did not bark back.

Almost immediately, the first dog ran up to the fence and pushed through the chain link gate, followed by the second dog. Both dogs ran across the street, barking, nipping, and trying to bite Albus. Albus yelped and attempted to escape. He ran in circles to try to evade the dogs, and eventually pulled his leash from Mr. Bays' hand. There was no one else on the street. Mr. Bays shouted as loud as he could to alert the owners.

Albus then ran into a nearby side yard where the two dogs cornered him, with Leo biting at him. Mr. Bays ran over, still shouting. Leo climbed nearly on top of Albus, biting and barking at him. At that point, Charlie was standing off to the side. During the melee, Leo bit Albus.

Though he yelled and kicked at him, Mr. Bays was unable to get Leo off Albus. Lindsay Birchfield arrived and quickly pulled Leo off by the back leg. At the hearing, Mx. Birchfield confirmed that Charlie was to the side and Leo had bitten Albus.

¹ KCC 11.04.035(C)(2)(a).

² KCC 11.04.035(C)(1)(a)

³ Per owner clarification.

Mx. Birchfield took the dogs back to the house and then returned. Mx. Birchfield returned, apologized, and offered to pay for veterinary care (Albus was bleeding from the front legs), which she subsequently did.

Mr. Bays took Albus to Blue Pearl Veterinary Care, where the puncture wounds were clipped and cleaned. The bites were worst on the right front leg, with three or four puncture wounds. The clinic dispensed antibiotic and anti-inflammatory drugs for 7-10 days. Albus limped for a few days but is now fine.

Mr. Bays debated about whether to file a complaint, but given his children sometimes walk Albus, elected to raise the issue with Regional Animal Services.

6. **Yard Gate.** The yard gate is normally secured with a bungee cord, but the Appellants believe an Amazon delivery driver had left it undone after dropping off a delivery the night before. That may have been how the dogs were able to escape. Since the incident, the Appellants have had their landlord change the gate latch.
7. **Conditions.** Animal Services' Notice of Violation and Order to Comply imposed these conditions:
 - Secure your animals in a fenced area suitable for the size of the animal when your animal is unattended and outside your home. Lock all passages with a padlock to prevent accidental release.
 - Restrain your animal using a leash with a collar or harness when taking it off your property. Your leash can extend no longer than 8' in length. A competent and capable person must handle the animal at all times when attended outside.
 - Microchip your animal and provide the microchip number to the King County Animal Licensing Office (206-296-2712) within 14 days.
 - Vaccinate your animal for rabies, if not current. ...⁴

8. **Appellants' Position.** The Appellants confirmed the latch has been fixed, both dogs have undergone training, and their dogs will never be outside unattended. The dogs' behavior is not something they have witnessed before or anticipated. In closing, they expressed great regret that Leo had acted aggressively and that Charlie had participated. They do not wish their neighbors to feel unsafe or uncomfortable when walking outside.

The Appellants' principal concern is the risk of an automatic order of removal to issue should there be a relatively minor incident, without any opportunity to address the issue. Sergeant Eykel provided some context on enforcement proceedings, explaining that each incident is evaluated on its own merits. For example, a momentary "running at large situation" would not be cause to remove the animal, as the remedy addresses more serious events, and there is an appeal opportunity.

⁴ See Dept. Exhibit 6, Notice of Violation and Order to Comply.

CONCLUSIONS:

1. **Jurisdiction.** The Examiner has jurisdiction over appeals of King County Regional Animal Services civil citations.⁵ Regional Animal Services issued three charges for the two dogs: vicious animal, notice and order for confinement, and running at large. In defending the appeal of these citations, it has the burden of proof.
2. **Vicious Animal.** A civil citation for a “vicious animal” may issue for:

Any animal that has 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.⁶

“Vicious” means having performed the act of, or having the propensity to do any act, endangering the safety of any person, animal or property of another, including, but not limited to, biting a human being or attacking a human being or domesticated animal without provocation.⁷

It is undisputed that Leo attacked and bit Albus, Mr. Bays’ dog. The attack was unprovoked. Leo was walking on a leash with Mr. Bays, on the opposite side of the street from the yard where the two dogs were. Both dogs were barking; Albus was not. Both dogs escaped the fenced yard without provocation. Both dogs ran across the street, confronting Leo, and barked and nipped at him. Leo bit and punctured Albus’s skin, injuries which required veterinary care. Leo endangered and attacked a domesticated animal without provocation. This meets the code definition of a vicious dog.

Although Charlie participated in much of this, it is less clear whether Charlie meets the vicious dog definition. He participated in charging, barking, and nipping at Albus. He did not actually bite Albus. Had it not been for Leo, he may have stayed behind the fence. Once in the side yard, Charlie stayed back; it was Leo who had to be pulled off Albus. Though a close call, it was Leo’s presence which exacerbated the situation, and without whom it may not have occurred. Given the burden of proof, the Examiner concludes a vicious animal citation should issue only to Leo.

3. **Notice and Order for Confinement.** A vicious animal may only be kept in King County subject to prescribed requirements.⁸ A vicious animal citation is only issued to Leo, so the Notice and Order for Confinement only applies to Leo. Given this is a first-time violation, and the circumstances, removal is not at issue in this proceeding. However, Regional Services did impose conditions to protect against future incidents. These conditions must be complied with.

⁵ KCC 11.04.270.

⁶ KCC 11.04.230(H).

⁷ KCC 11.04.020(BB).

⁸ KCC 11.04.290.

4. **Running at Large.** Animal Services issued a running at large citation to both dogs.

“Running at large” means to be off the premises of the owner and not under the control of the owner, or competent person authorized by the owner, either by leash, verbal voice or signal control.⁹

Both Leo and Charlie were off their owners’ premises and not under owner control by leash, voice, or signal. The two dogs broke free of the fence, ran outside their yard, and charged a leashed dog peaceably walking on the opposite side of the street. Animal Services has demonstrated both dogs were running at large on the morning of July 23.

5. **Conditions.** Animal Services may impose conditions where a Ch. 11.04 KCC violation is found to abate the violation.¹⁰ The conditions were not otherwise challenged, so remain in effect.
6. **Penalties.** Penalty amounts were not at issue in the hearing. However, given the Appellants’ expenditures for dog training classes and veterinary costs, which were made on their own initiative, along with the Appellants immediately fixing the gate latch, and their attention to other security measures, reducing the vicious animal penalty by half is reasonable.
7. **Parties’ Professionalism.** The Appellants were taken by surprise by this unfortunate event, and once made aware of it did everything reasonable to remedy the situation. In addition to acknowledging the seriousness of the situation and apologizing, they reimbursed Mr. Bays for his veterinary expenses, fixed the latch on the gate, looked into raising fence height, promised to not leave their dogs unattended in their yard, and enrolled both dogs in training classes. Mr. Bays also handled what was an extremely difficult situation for both himself and Albus, a situation which he was concerned could repeat when his children were walking the dog, with extraordinary professionalism. The Examiner appreciates the parties’ efforts, including that of King County Regional Animal Services, for taking appropriate responsibility for the set of events and sensitively addressing the situation after its occurrence.

DECISION:

1. The vicious animal citation is upheld for Leo, but not Charlie. Only one civil penalty amount of \$250 is owed for this violation.
2. The Notice of Order for Confinement remains in place for Leo, but not Charlie. Though conditions are in place, removal is not now at issue.
3. The running at large citation for both dogs is upheld, with a civil penalty amount of \$50 for Leo, and \$50 for Charlie.

⁹ KCC 11.040.020(W).

¹⁰ KCC 11.04.260.

ORDERED October 28, 2020.



Susan Drummond
King County Hearing Examiner *pro tem*

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 *November 27, 2020*. 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 OCTOBER 14, 2020, HEARING IN THE APPEAL OF LINDSAY BIRCHFIELD AND MARA GUSTAFSON, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V20010973-A20012967

Susan Drummond was the Hearing Examiner *pro tem* in this matter. Participating in the hearing were Chelsea Eykel, Nathan Bays, Lindsay Birchfield, and Mara Gustafson. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

The following exhibits were offered and entered into the record by Animal Services:

Exhibit no. D1	Regional Animal Services of King County staff report to the Hearing Examiner
Exhibit no. D2	Online Complaint form of date July 23, 2020 incident by Nathan Bays, dated July 28, 2020
Exhibit no. D3	RASKC investigation report no. A20012967
Exhibit no. D4	Photographs of Albus’s leg
Exhibit no. D5	Medical record, dated July 23, 2020
Exhibit no. D6	Notice of violation no. V20010973-A20012967, issued August 1, 2020
Exhibit no. D7	Appeal, received August 25, 2020
Exhibit no. D8	Map of subject area

The following exhibits were offered and entered into the record by the Appellant:

Exhibit no. A1	Photograph of Leo and Charlie
Exhibit no. A2	Photograph of front gate at 10625 Dixon Dr. S.
Exhibit no. A3	Email exchange with Seattle Apartment Managers
Exhibit no. A4	Summary of veterinary visit, dated August 1, 2020
Exhibit no. A5	Registration for Reactive Dog training, dated August 9, 2020
Exhibit no. A6	Confirmation of private dog training
Exhibit no. A7	Character reference from Jaime Kowieski
Exhibit no. A8	Invoices from previous private dog training

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20010973-A20012967**

LINDSAY BIRCHFIELD AND MARA GUSTAFSON

Animal Services Enforcement Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **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 October 28, 2020.



Lauren Olson
Legislative Secretary

Bays, Nathan

Hardcopy

Birchfield/Gustafson, Lindsay/Mara

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County