

March 2, 2021

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

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V20011431 and V20011432**

**MAUREEN NEWMAN**

Animal Services Enforcement Appeal

Activity no.: A20015196

Appellant: **Maureen Newman**

[REDACTED]  
Sammamish, WA 98075

Telephone: [REDACTED]

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King County: Regional Animal Services of King County

*represented by* **Chelsea Eykel**

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**OVERVIEW**

1. Regional Animal Services of King County (Animal Services) served a violation notice asserting Maureen Newman's dogs, Phoebe and Tucker qualified as vicious. Animal Services ordered Tucker confined and Phoebe removed from King County. Ms. Newman timely appealed both. 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 deny Ms. Newman's appeal, but we reduce the monetary penalty and we extend the deadline for removing Phoebe.

## BACKGROUND

### V19009487 (Chen)

2. Wangchun Chen lives next to Ms. Newman. He testified that, at some unspecified point a few years ago, Phoebe came off the Newman property and followed Mr. Chen, growling at him but not actually making contact. Then in 2018, as Mr. Chen walked by, Phoebe came off the property and crashed into him; it hurt his knee a little because Phoebe is a strong dog, but Phoebe did not bite him. Later that same afternoon as he walked his daughter home, the same thing happened—contact, but no bite. He did not file a complaint.
3. However, on June 10, 2019, as Mr. Chen walked by, Phoebe came off the Newman property again. This time Phoebe bit him on the leg, before retreating back onto the property. Ex. D11. Mr. Chen then filed a complaint with Animal Services. Ex. D10
4. Animal Services issued a violation notice and compliance order declaring Phoebe vicious and setting terms of compliance. Ex. D14. Animal Services explained that Phoebe would need to be behind a physical fence capable of restraining her. Ms. Newman appealed, trying to shift some responsibility to Mr. Chen because his family is afraid of dogs and he has a temper. Ex. D15. Animal Services and Ms. Newman settled that by reducing the penalty and Ms. Newman agreeing to abide by the viciousness designation and confinement order. We thus dismissed her appeal in August 2019.
5. Mr. Chen noted that while Phoebe sometimes barks at him from the Newman property, Phoebe has not come at him since her June 2019 bite.
6. The confinement order for Phoebe required, among other items:

Secure your animal 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.

Ex. D14 at 001. Ms. Newman, however continued to allow Phoebe to use the doggy door to go in and out, without a solid fence, let alone a padlocked one, in place to restrain her.

### V19009487 (Clark)

7. Neighbor Rachel Clark testified that on November 28, 2019, Rachel Clark and her daughter were walking along the street, approximately three feet from the Newman property. Her 11-year-old son was traveling with them on his skateboard, perhaps seven feet from the Newman property boundary. Phoebe came to the edge of the invisible fence line, and ran back and forth inside the property line. However, then Phoebe came out into the street and bit her son, before retreating back onto the Newman property. Ex. D17.

8. Ms. Clark took her son to urgent care for his leg injury. While the bite seemed severe enough to warrant stitches, the care provider informed her that, unless the bite was on the face, they avoid stitches because a stitched area is more likely to create infection. Ms. Clark filed a complaint the following day. Ex. D16.
9. Animal Services served a violation notice for Phoebe again behaving viciously and for being a vicious dog running at large. Ex. D20. In addition, Animal Services ordered Phoebe removed from King County. Ex. D21. Ms. Newman appealed both, agreeing this time it was “owner error.” Exs. D23-25. She also constructed a fence around the house in January 2020. The parties again settled, with Ms. Newman paying \$1,000 and the removal order stayed, so long as no more incidents happened in the six months following the bite. Ex. D18 at 005, n.9. We dismissed her appeal as moot in February. When no more violations occurred prior to, the removal order was voided at the end of May.
10. Ms. Newman did not padlock the fence’s gate, as the confinement terms required, later writing that she did not padlock it because that would create a “severe inconvenience and hardship” for her. Ex. D6 at 001.

V20011431 and V20011432 (Swanson)

11. On December 3, 2020, Christopher Swanson was delivering packages for Amazon. He drove up to the base of the driveway, and looked at the delivery instructions; they explained that he should drop off deliveries at the front door. He always looks for warning signs, like “Beware of Dog,” but saw none near the gate. The gate was not locked, so he opened the latch and walked the short distance from the gate to the door. He left the gate open, as he always does when making deliveries, so he has an avenue of escape.
12. He set the deliverables down at the door, snapped the proof-of-delivery photo, and attempted to leave. He heard a commotion, and turned to see the dogs [Phoebe and Tucker] run fast to the window glass. This did not bother him, as he likes “strong breeds.” However, as he tried to exit, he heard a dog door open, turned again, and saw both dogs charge him.
13. There was no growling or warning; the dogs came at started biting him as soon as they got to him. They kept coming at him, full speed. He swung at them to back them off, but they kept going. He retreated out of the fenced area, but determined that he would not stand much chance in an open driveway. Thus, he retreated along the fence, to give him partial protection.
14. Both dogs were still biting him, but with his dual clothing layers and gloves (it was cold), the bites were less severe. As one dog latched onto his leg, and he lowered his head to punch down at that dog, the other dog jumped for his neck. He partially deflected the bite up into his face. He punched her off, but the dog than reloaded and bit his chest, dragging him to the ground. He pushed off the ground, and sprung over the fence, before sprinting into the open door of the house.

15. He called 911. He opined that without his extensive martial arts training and peak physical condition, he is not sure he would have made it out alive. He later counted five puncture wounds. Ex. D3. Mr. Swanson filed a complaint with Animal Services. Ex. D2.
16. Ms. Newman explained how she reacted that day, but she did not dispute Mr. Swanson’s account of what the dogs did, and she accepted responsibility.<sup>1</sup> She thinks when the envelope and box Mr. Swanson was delivering hit the door, that startled her dogs.
17. Animal Services served a violation notice asserting Phoebe (for a third time) and Tucker (for a first) qualified as vicious, and ordering Tucker confined. Ex. D5 (V20011431). Animal Services also ordered Phoebe removed from King County. Ex. D7 (V20011432). Ms. Newman timely appealed. Ex. D6. We went to hearing on March 2.
18. We do not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. For those matters or issues raised in an appeal statement, Animal Services bears the burden of proving by a preponderance of the evidence both the violation and the appropriateness of the remedy it has imposed. KCC 20.22.080.G; .210.

## ANALYSIS

### V20011431 (Vicious)

19. To start with whether Phoebe and/or Tucker qualify as “vicious,” which KCC 11.04.020.BB defines as:

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.

KCC 11.04.230.H declares as a nuisance, “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.”
20. This was one of the more savage and sustained attacks we can recall. Most appeals of viciousness designations involve a single bite, akin to Phoebe biting Mr. Chen and the Clark boy. Whether or not, had Mr. Swanson not ably defended himself, the result would have been fatal, it was really bad as-is, and likely would have been significantly worse for someone without a martial arts and fitness background. The fact the dogs dragged him to the ground—where the real damage can begin—puts this case in a very small subset of our most serious dog-on-person attacks.

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<sup>1</sup> Mr. Swanson testified that Ms. Newman did nothing to try to stop the attack; Ms. Newman offered a different version regarding her actions. *See also* Ex. A1. It is not necessary to wade into dispute because it does not impact the issues before us. By that point, either Phoebe and Tucker met the legal standard discussed in paragraphs 19 and 29, or they did not. We do not devote further space to the topic of what Ms. Newman did in the seconds and minutes after the dogs started attacking Mr. Swanson.

21. While not disputing Mr. Swanson’s account of his interactions with her dogs on December 3, Ms. Newman asserts that Mr. Swanson hurrying to the front door and tossing packages provoked her dogs to act, and thus that “he was as much to blame” as the dogs were. Exhibit D6. It is Animal Services burden to prove the attack was without provocation.<sup>2</sup>
22. As our High Court instructs us, when analyzing “terms of art,” we look to “well-established meanings” of words in their specific context. *State, Dept. of Ecology v. Theodoratus*, 135 Wn.2d 586, 589, 957 P.2d 1241 (1998). “Provocation” is a staple of animal jurisprudence, and numerous courts that have analyzed the term in depth have noted that although dictionary definitions of “provocation” can be quite broad, the term applies more narrowly in the dog bite context. Otherwise, animal control ordinances “could be interpreted to mean that provocation exists whenever any external stimulus has precipitated the attack or injury by an animal, *i.e.*, whenever the animal’s actions are not completely spontaneous.” *Robinson v. Meadows*, 203 Ill. App. 3d 706, 710, 561 N.E.2d 111 (1990).
23. Thus, “[n]ot every occurrence that stimulates a dog to bite an individual should be a defense.” *Stroop v. Day*, 271 Mont. 314, 318, 896 P.2d 439 (1995). An action that merely stimulates or excites a dog, without more, cannot qualify as “provocation.” *Engquist v. Loyas*, 787 N.W.2d 220, 225 (Minn. App. 2010), *aff’d in relevant part*, 803 N.W.2d 400 (Minn. 2011). In addition, provocation requires the dog’s reaction to be proportional to the victim’s act. *Bradacs v. Jiacobone*, 244 Mich. App. 263, 273–75, 625 N.W.2d 108 (2001); *Kirkham v. Will*, 311 Ill. App.3d 787, 792, 724 N.E.2d 1062 (2000); *Stroop*, 271 Mont. at 319.
24. Dictionary definitions of “provocation” are so expansive that, if taken literally, an animal control ordinance “could be interpreted to mean that provocation exists whenever any external stimulus has precipitated the attack or injury by an animal, *i.e.*, whenever the animal’s actions are not completely spontaneous.” *Robinson v. Meadows*, 203 Ill. App.3d 706, 710, 561 N.E.2d 111 (1990). To do so would make it open season on people like Mr. Chen or the Clark boy traveling on a public street or sidewalk, or for a postal carrier or delivery person like Mr. Swanson dropping off something, or an erstwhile Girl Scout trying to sell cookies. As *Robinson* explained it:

A dog may attack an innocent child riding his bicycle down a public street because the movement of the bicycle has excited it or the sounds of traffic have startled it. Similarly, a dog may bite a bald-headed man walking down the hallway of his apartment building because, for whatever reason, the dog has developed a fear of men without hair. In each case, “provocation” could be said to exist if that term were given its broad and literal interpretation.

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<sup>2</sup> Although provocation is typically an affirmative defense, *Patterson v. New York*, 432 U.S. 197, 202-03 (1977), here lack of provocation is part of the definition itself. KCC 11.04.020 (“biting a human being or attacking a human being or domesticated animal without provocation”). Thus, Animal Services bears the burden of showing, by a preponderance of the evidence, that Phoebe’s and Tucker’s actions were unprovoked. See also *Morawek v. City of Bonney Lake*, 184 Wn. App. 487, 495, 337 P.3d 1097, 1101 (2014).

203 Ill. App. 3d at 710–11.

25. Mr. Swanson hustling to do his job and drop off packages was in no sense legal provocation. Even if, say, the dogs running out of the house and snarling and snapping at Mr. Swanson to scare him off might have been proportional, actually biting him, let alone biting him multiple times, not to mention dragging him to the ground, was grossly disproportionate to any “provocation” he created.
26. Similarly, Mr. Swanson fighting back was not itself provocation. A “person need not wait till he or she is injured or maimed before taking defensive action against a menacing animal.” *Matter of Brooks v. Hemingway*, 107 Misc. 2d 190, 192-93, 433 N.Y.S.2d 551 (1980). Where a dog is already in attack mode, a person has a right to defend herself. *See Koivisto v. Davis*, 277 Mich. App. 492, 493, 497, 745 N.W.2d 824 (2008) (victim’s response to dogs’ violent behaviors cannot be considered ‘provocation’ for the dogs biting victim); *Giandalone v. Zepieri*, 86 Misc. 2d 79, 80, 381 N.Y.S.2d 621 (1976) (where dog attacked first, victim’s action did not “provoke” dog).
27. Phoebe and Tucker severely endangered Mr. Swanson’s safety, biting him repeatedly without provocation. They exhibited vicious propensities and constitute a significant danger to the safety of persons lawfully on the animals’ premises. We uphold the violations and Tucker’s confinement terms, saving until later the penalty amount discussion.
28. Moving forward, Animal Services is concerned that the 46.5 inch fence will prove insufficient for Tucker. Ms. Newman testified that neither Tucker nor Phoebe have ever tried to scale it or would be able to. Obviously, Ms. Newman is on notice regarding concerns about fence height, but fence height had nothing to do with the attack on Mr. Swanson—it was the absence of a padlock. In fact, perversely, if the fence had been higher, Mr. Swanson might not have been able to scale it and escape the attack. And the dogs did not or could not follow Mr. Swanson over the fence to continue pursuing him, despite being enraged and in full-on attack mode at the time. Ms. Newman will need to microchip Tucker and keep him current on his rabies vaccine.

V20011432 (Removal)

29. Animal Services seeks to remove Phoebe under KCC 11.04.290.B.2, which states that:
 

Any animal that bites, attacks or attempts to bite one or more persons two or more times within a two-year period is declared to be a public nuisance and shall not be kept within unincorporated King County forty-eight hours after receiving written notice from the manager.
30. We are the most exacting of Animal Services on removal orders, given the interests at stake. We have overturned more removal orders than we have sustained. And while KCC 11.04.290.B.2 does not explicitly state that both bites of a person within a two-year

period must be unprovoked to trigger removal, to avoid an absurd result, we have read in a requirement that any bite/attack/attempted bite be legally unprovoked to qualify.<sup>3</sup>

31. As analyzed above, Phoebe (and Tucker) biting Mr. Swanson was not provoked. Because the viciousness designations related to Phoebe biting Mr. Chen in June 2019 and the Clark boy in June 2019 were resolved with those viciousness findings in place, by definition those were unprovoked.<sup>4</sup> In case there was any lingering question, Mr. Chen and Ms. Clark described those events, neither of which qualify “provoked,” as the courts interpret that term in the dog bite context.
32. It was sensible for Animal Services to suspend the November 2019 removal order to give Ms. Newman a chance to install a fence and follow the confinement requirements for keeping Phoebe in King County. After all, if she had locked the fence gate with a padlock, as required (exhibit D14 at 001, first bullet), Mr. Swanson would have come to no harm.
33. And yet she squandered that chance, continuing to let Phoebe have free reign (via the doggy door) of a fenced area that she purposefully elected not to secure with a padlock, in direct contravention of the confinement order. She wrote that she did not padlock the gate because of the “severe inconvenience and hardship” this would have created. Ex. D6 at 001. That confinement term—that a dog be allowed outside without its owner in attendance only if in a fenced area with all passages padlocked—was not a suggestion or optional. It was a requirement of keeping Phoebe in King County. And, however inconvenient or hardship producing it was for her, that was not nearly as severe as the inconvenience and hardship her choice created for Mr. Swanson when he entered an unpadlocked gate and Phoebe viciously and repeatedly attacked him.
34. KCC 11.04.290.B.2 employs mandatory “shall” language, so we sustain the removal order. But even if the code employed “may” language and removal was discretionary, we would still uphold it here, and by a wide margin, despite the thumb on the scale we place against removals.

### Monetary Penalty

35. There are three monetary penalties in play here.

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<sup>3</sup> Otherwise a dog could, say, bite to defend herself against someone charging at her swinging a weapon, have the same scenario occur again within a two-year period, and yet face a mandatory (“shall”) removal despite never meeting the minimum qualification for a viciousness violation. See KCC 11.04.020.BB (bite only counts if “without provocation”). In doing so, we explicitly reject *Wortham v. Chicago Department of Administrative Hearings*, 391 Ill. Dec. 940, 944-45, 31 N.E.3d 915 (2015), which held that, because the code did not specifically address one animal provoking another, the defense that dogs had provoked the appellant’s dog to bite back was not, as a matter of law, an available defense to a dangerous dog designation. Illinois courts have published many thoughtful opinions on provocation in the dog bite context. *Kirkham v. Will*, 311 Ill. App.3d 787, 792, 724 N.E.2d 1062 (2000); *Wade v. Rich*, 249 Ill. App. 3d 581, 589–90, 618 N.E.2d 1314 (1993); *Robinson v. Meadows*, 203 Ill. App.3d 706, 710, 561 N.E.2d 111 (1990); *Stehl v. Dose*, 83 Ill. App. 3d 440, 443, 403 N.E.2d 1301 (1980); *Nelson v. Lewis*, 36 Ill. App. 3d 130, 134, 344 N.E.2d 268 (1976). *Wortham* is not among them.

<sup>4</sup> As noted above, by definition a “vicious” designation only covers attacks and bites that were “without provocation.” KCC 11.04.020.BB.

36. The first is the \$1,000 for Phoebe’s viciousness violation on December 3. The base \$500 penalty was doubled because Animal Services considered it a second or subsequent viciousness violation. In one sense it was a third viciousness violation (Chen, Clark, and Swanson). However, the code states that \$500 doubles to \$1000 only for “subsequent [viciousness] violations within one year.” KCC 11.04.035.C.2.b. Phoebe bit the Chen boy on November 28, 2019, and Animal Services served a violation that following day. Phoebe bit Mr. Swanson on December 3, 2020, and Animal Services served a violation two days later. It is close, but the Swanson attack was a few days beyond one year, making it the first viciousness violation within one year and \$500 the default penalty.
37. The remaining \$500 of that penalty for Phoebe was well-earned. Having already bitten two people, Ms. Newman elected not to comply with the padlock requirement, and that that led directly to Mr. Swanson’s injuries. We do not reduce that penalty further.
38. The \$500 penalty for Tucker is different. Neither Mr. Chen nor Ms. Clark mentioned any past altercations with Tucker—either coming off the property or even barking at anyone—that should have alerted Ms. Newman that Tucker would do what he did to Mr. Swanson on December 3. While Ms. Newman still had the normal duty regarding Tucker that any owner does for any of their dogs—like keeping them from running at large or trespassing onto a neighbor’s property—at no time on December 3 (or at any other time) is Tucker reported to have left his property.<sup>5</sup> And the padlock requirement applied only to Phoebe, not to Tucker. We will reduce the penalty from \$500 to \$300.
39. Finally, the \$1,000 penalty for a removal order only kicks in for failing to comply with that removal order. Because she timely appealed that order, she is not currently in violation. And although the code requires removal within two days, KCC 11.04.290.B.2, because the required terms (see below) seem near impossible to meet within two days, we will extend that deadline to two weeks.

#### DECISION

1. Except as modified below, we deny Ms. Newman’s appeal for both V20011431 and V20011432.
2. Because Phoebe’s violation was the first in a one-year period, the monetary penalty is \$500, not \$1000. For Tucker, we reduce the penalty from \$500 to \$300. The total penalty due for V20011431 is \$800.
3. For V20011432, by **March 18, 2021**, Ms. Newman must either:
  - A. Find and disclose to a potential new owner that Phoebe was ordered removed from King County as a threat to public safety, have that person or entity agree to take Phoebe, get Phoebe out of King County, and provide Animal Services proof that this new owner lives outside King County, or
  - B. Relinquish Phoebe to Animal Services.

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<sup>5</sup> Tucker pursued Mr. Swanson outside, and along the fence, but the fence is well off the property line. Ex. D9 at 003.



So long as Ms. Newman timely and successfully meets one of those two courses, the penalty applicable to a removal order is waived. If not, a \$1,000 penalty kicks in.

ORDERED March 2, 2021.

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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 1, 2021*. 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 2, 2021, HEARING IN THE APPEAL OF MAUREEN NEWMAN, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V20011431 and V20011432-A20015196**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Wangchun Chen, Rachel Clark, Chris Swanson, and Maureen Newman. 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 December 3, 2020 incident by Christopher Swanson, dated December 4, 2020 |
| Exhibit no. D3  | Photograph of bite wounds   |
| Exhibit no. D4  | RASKC investigation report no. A20015196  |
| Exhibit no. D5  | Notice of violation no. V20011431-A20015196, issued December 5, 2020                              |
| Exhibit no. D6  | Appeal for V20011431, received December 31, 2020  |
| Exhibit no. D7  | Notice and order for removal no. V20011432-A20015196, issued December 5, 2020                     |
| Exhibit no. D8  | Photograph of unlocked gate   |
| Exhibit no. D9  | Appeal for V20011432, received December 16, 2020  |
| Exhibit no. D10 | Online Complaint form of June 10, 2019 incident by Wangchun Chen, dated June 10, 2019             |
| Exhibit no. D11 | Photograph of bite  |
| Exhibit no. D12 | RASKC investigation report no. A19002713  |
| Exhibit no. D13 | Bite Quarantine Notice A19002713  |

Exhibit no. D14 Notice of violation no. V19009487-A19002713, issued June 11, 2019  
Exhibit no. D15 Appeal for V19009487, received June 27, 2019  
Exhibit no. D16 Online Complaint form of November 28, 2019 incident by Rachel Clark, dated November 29, 2019  
Exhibit no. D17 Photograph of bite  
Exhibit no. D18 RASKC investigation report no. A19008601  
Exhibit no. D19 Bite Quarantine Notice A19008601  
Exhibit no. D20 Notice of violation no. V19010118-A19008601, issued November 29, 2019  
Exhibit no. D21 Notice and order for removal no. V19010123-A19008601, issued November 30, 2019  
Exhibit no. D22 Proof of Service  
Exhibit no. D23 Email dated December 2, 2019  
Exhibit no. D24 Appeal for V19010123, received December 26, 2019  
Exhibit no. D25 Addendum to Appeal  
Exhibit no. D26 Map of subject area

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

Exhibit no. A1 Response to D2

DS/lo

March 2, 2021

**OFFICE OF THE HEARING EXAMINER  
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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V20011431 and V20011432**

**MAUREEN NEWMAN**  
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 March 2, 2021.



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Lauren Olson  
Legislative Secretary

**Chen, Wanghun**

Hardcopy

**Clark, Rachel & Jacob**

Hardcopy

**Eykel, Chelsea**

Regional Animal Services of King County

**Newman, Maureen**

Hardcopy

**Swanson, Chris**

Hardcopy

**Swanson, Chris Michael**

Hardcopy