

August 4, 2021

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V21011978-A21001998**

PETER MARSHALL

Animal Services Enforcement Appeal

Activity no.: A21001998

Appellant: **Peter Marshall**

[REDACTED]
Bellevue, WA 98004

Telephone: [REDACTED]

Email: [REDACTED]

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 AND CONCLUSIONS:

Overview

1. Peter Marshall appeals a Regional Animal Services of King County (Animal Services) violation notice and compliance order that his dog, Kapy, was running at large. 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 his appeal. We also offer some thoughts on Bellevue's leash law.

Background

2. On May 1, Animal Services issued a notice and order to Peter Marshall for a running at large violation. Ex. D6. (Animal Services also issued a warning notice to Peter Marshall for a vicious animal, but a warning is not an actual finding nor an appealable order. Ex. D7. It is not relevant to our case.) Mr. Marshall timely appealed on May 26. Ex. D8. We went to hearing on July 21.
3. Christopher Nichols testified that, on April 30, he walked his two Boston Terriers in front of the Marshall house, about six to eight feet into the road. As they passed the open Marshall front gate, Mr. Marshall's dog [Kapy] came rushing out into the street, and an altercation ensued between Kapy and one of Mr. Nichols' dogs. Ex. D8-008. Mr. Marshall came out about 20 to 30 seconds later. (Mr. Nichols offered further testimony about the dog and human interaction after that point, but we noted that this was irrelevant; by that point Kapy had either run at large or he had not.) Mr. Nichols was able to pick up his dog and continue walking up the street.
4. Mr. Nichols explained that Kapy is often unleashed, so Mr. Nichols normally picks up his dogs when they pass the Marshall house. He has not had issues with Kapy in the past. One of his terriers is mellow, while the other is a rescue and has some behavior issues, so Mr. Nichols keeps him away from other dogs. On rebuttal, Mr. Nichols reiterated that the gate was open that day. Mr. Nichols' dogs were right by him. His conversation with Mr. Marshall happened in the street.
5. Peter Marshall testified that he was in the yard with Kapy, behind the fence and the gate, when he heard angry dog sounds outside the gate. He went to the gate and saw two dogs at the gate, barking and snarling. It appeared their aggression was directed at Kapy, who was inside the gate with him. He noticed that Mr. Nichols' leashes were long, loose, and tangled, and they were not restraining the dogs from barking and snarling at Kapy.
6. An argument ensued. Mr. Marshall opened the gate and went out to talk more directly to Mr. Nichols, with Kapy following behind. He neglected to keep Kapy behind the gate, and Kapy got out into the street. One of Mr. Nichols dogs was nipping at Kapy's legs. Mr. Marshall thinks Kapy shied away from the attacking dog, did not pursue the attack, and disengaged. (Mr. Marshall offered further testimony about the dog and human interaction after he and Kapy walked out, but we noted that this too was not relevant to our narrow issue.)
7. Mr. Marshall emphasized that Kapy is always under voice control. He reiterated that Kapy did not rush out of the gate. Instead, Mr. Marshall opened the gate and Kapy followed behind him.

Legal Standards

8. Animal Services asserts that Kapy was "running at large" on April 30, defined as "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" and "under

control” itself including the need to be “restrained from approaching any bystander or other animal” when “off the premises of the owner.” BMC 8.04.060.W, .AA; .300.B.

9. 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.B.

Analysis

10. The seemingly critical piece is whether the gate was (a) initially open and Kapy came through it, off his property, and approached the terriers or, (b) Kapy was initially behind a closed gate, and only once Mr. Marshall and Mr. Nichols started arguing and Mr. Marshall opened the gate and came out, did Kapy enter the street.
11. It is conceivable that Mr. Nichols had nothing better to do than to stand in the street outside the Marshall’s closed gate, with Kapy secured behind that gate, and let the three dogs bark at each other until Mr. Marshall came over and opened the gate, letting Kapy out. In our 800+ animal appeals, we have seen weirder behavior. But nothing about Mr. Nichols struck us as odd, and his version makes much more logical sense. Everything else about his testimony seemed credible; for example, he volunteered that one of his terriers is reactive and does not respond well to other dogs. We decide cases on a preponderance-of-the-evidence standard, and we find a greater than 50% chance that Kapy first got out through an open gate and approached the terriers, with Mr. Marshall only then entering the picture. That is a running at large violation.
12. We note that this does not mean Mr. Marshall is lying. He seems to honestly remember the sequence differently. In the end, we conclude that his recollection of the timing of the gate being open is less likely to be accurate than Mr. Nichols, but we cast no dispersions.
13. On reflection, we find that even that seemingly critical fact (did Kapy rush out an open gate, or only later exit behind Mr. Marshall?) is not so critical. Our result would be the same even under Mr. Marshall’s version. Under his version, the gate was initially closed, but Mr. Marshall opened it and allowed Kapy to exit the premises. Even if the terrier was the aggressor once the dogs interacted, Kapy was not under sufficient control so as to be restrained from approaching another animal. That would still be enough to sustain the violation. BMC 8.04.060.W, .AA; .300.B.

Additional Thoughts

14. In its staff report, Animal Services cited a provision in BMC chapter 8.05. Unlike the basic animal control regulations of chapter 8.04 (cited above), 8.05 contains various leash restrictions. Animal Services noted at hearing that its citation to 8.05 was inadvertent. Still, we address that, to set expectations going forward.

15. Under BMC 8.05.020.A, “at large” is defined not in terms of effectively keeping a dog from approaching others via whatever method works (leash, verbal voice or signal control), but as “off the premises of the owner and not under the control of the owner by leash; provided, that an animal within an automobile or other vehicle of its owner shall be deemed to be upon the owner’s premises.” And BMC 8.05.030 generally makes it “unlawful for owners to allow their dogs to be at large, unleashed or without restraint.”
16. As a practical matter, Animal Services focuses its enforcement efforts on violations of the basic animal control statute (in Bellevue, chapter 8.04) and not on technical leash law violations (in Bellevue, chapter 8.05). Here, Animal Services cited Mr. Marshall not because Kapy was unleashed, but because Kapy was not prevented from approaching another animal. Similarly, in past cases Animal Services has cited violations of BMC 8.04.300, a special restriction that applies to unleashed dogs in public parks (obviously, not those designated as off-leash parks) and public beaches. We cannot recall a single case, from Bellevue, where Animal Services cited a chapter 8.05 violation. But technically, in Bellevue, dogs off their premises (and not inside a vehicle), must be under control “by leash.”

DECISION:

We deny Mr. Marshall’s appeal.

ORDERED August 4, 2021.



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 *September 3, 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 JULY 21, 2021, HEARING IN THE APPEAL OF PETER
MARSHALL, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.
V21011978-A21001998**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Christopher Nichols, and Peter Marshall. 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 April 30, 2021 incident by Christopher Nichols, dated April 30, 2021
Exhibit no. D3	Email and photo of Kapy and Mr. Marshall, dated April 30, 2021
Exhibit no. D4	Photograph of gate and hedge and driveway
Exhibit no. D5	RASKC investigation report no. A21001998
Exhibit no. D6	Notice of violation no. V21011978-A21001998, issued May 1, 2021
Exhibit no. D7	Warning Notice no. V21011979-A21001998
Exhibit no. D8	Appeal, received May 26, 2021
Exhibit no. D9	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21011978-A21001998**

PETER MARSHALL
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 August 4, 2021.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Marshall, Peter

Hardcopy

Nichols, Christopher

Hardcopy