May 9, 2022

## OFFICE OF THE HEARING EXAMINER KING COUNTY, WASHINGTON

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

## **REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. V22012909-A2000666

## PATRICK HALFERTY

Animal Services Enforcement Appeal

Activity no.: A22000666

Appellant: **Patrick Halferty** 

North Bend, WA 98045 Telephone: Email:

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. Patrick Halferty appeals an order designating his dog as vicious and requiring the dog be contained. After hearing the witnesses' testimony (here, undisputed) and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we grant the appeal.

### **Background**

- 2. On February 12, 2022, Regional Animal Services of King County (Animal Services) issued a violation notice to Patrick Halferty for his dog, Lucy, qualifying as vicious and needing to be confined. Ex. D2.
- 3. Mr. Halferty appealed on March 2. Ex. D7. We went to hearing on April 25.

## Hearing Testimony

## Testimony of Richard Andrews

- 4. Richard Andrews testified that on January 12 he was walking his terrier chihuahua mix, Baxter, past Mr. Halferty's house. Suddenly, a brown pitbull [Lucy] ran from the Halferty garage and around a car. Lucy ran up and bit down on Baxter's hind quarters. There was not much of a confrontation. Mr. Andrews spun around to face Mr. Halferty's house. Mr. Andrews started yelling and kicking Lucy.
- 5. After about ten to fifteen seconds, Mr. Halferty came out and got Lucy off Baxter. Mr. Andrews picked up Baxter and looked over his wounds. At the time, the wounds did not look like much. You could see penetration on Baxter's left rib cage and multiple marks on his hind quarters and abdomen. Baxter was able to walk. Mr. Andrews' described the interaction as a bloodless coup.
- 6. Due to the span of the bite marks on Baxter, Mr. Andrews believes that Lucy bit twice. The first bite was to the hind quarters. The second bite got Baxter's hind quarters, abdomen, and rib cage. The stretch of teeth marks went from Baxter's rib cage to his lower thigh.
- 7. That evening, Baxter seemed to be okay. Mr. Andrews reached out to several vets, and finally was able to bring Baxter to a vet in Issaquah. The Issaquah vet gave Baxter a lot of medication because the wounds had become infected. The wound became more infected, so Mr. Andrews brought him to a vet in Kirkland. Over the next five days Baxter had five surgeries. Ex. D6. Apart from being scared of big dogs, Baxter is fine now. Mr. Halferty covered all the vet bills and also gave the Halfertys a gift basket.
- 8. Mr. Andrews contemplated whether to submit a report with Animal Services because he knew it might designate the dog as vicious. Mr. Andrews decided to submit a report due to a previous interaction between his partner and Lucy. [The partner was not present to testify about those events.]

## Testimony of Patrick Halferty

9. Patrick Halferty agreed that Mr. Andrews had characterized the incident correctly. That day, Mr. Halferty's son had let Lucy into the garage. Lucy was in the garage for about thirty seconds before she darted out. Mr. Halferty was appalled by what happened. He has never seen Lucy act like that in the ten years he has had her. Lucy does get worked

up and mount other dogs when she plays, but Lucy has never bitten another dog aside from that day.

- 10. Right after the incident, Mr. Halferty requested Mr. Andrews to come back when he figured out the vet bill, so Mr. Halferty could take care of it. Mr. Halferty did not hear from Mr. Andrews for a month. He did not have Mr. Andrew's contact information or know where he lived. [There was a one-month gap between the incident and Animal Services issuing the violation notice.]
- 11. Lucy has been to a fair amount of training for her spatial awareness issues. She gets too close to dogs but has never bitten. Lucy interacts the same with the other small neighbor dogs. Mr. Halferty is following the confinement order.

### Legal Standards

- 12. Animal Services asserts that Lucy qualifies as vicious, defined 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," with the violation itself framed as, "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." KCC 11.04.020.BB; .230.H.
- 13. 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.

### <u>Analysis</u>

- 14. Appeals of animal enforcement orders typically come down to witness credibility, with us determining which competing version of the facts we find the most plausible. That is not this case here. Mr. Andrews was measured and did not overplay anything. Mr. Halferty agreed that Mr. Andrews was correctly characterizing the event, and Mr. Halferty seemed credible as well. So, our role is how to apply the agreed-upon facts to the legal standard described above.
- 15. Several factors argue in favor of a viciousness designation:
  - While it is a little hard to determine from the pictures whether there was one bite or two, Mr. Andrews' assessment—that, given the spacing between the teeth there were two bites—seems more likely than not accurate. And two bites make the altercation more serious.
  - Rather than a nip and release, Lucy held on until Mr. Halferty removed her.

- The result of the interaction was very damaging; infection set in, requiring significant medical attention.
- Lucy performed acts endangering the safety of an animal.
- 16. However, several factors argue against the designation.
  - Often in cases involving a pitbull, the pitbull shakes and tears the smaller dog, inflicting significant, sometimes fatal, injuries. Lucy did not.
  - Often, even without a shake, given the tremendous jaw strength a pitbull possesses, a pitbull bites down with enough force to seriously, sometimes even fatally, crush or puncture the internal organs of the other dog. This was more just Lucy seizing another dog.
  - While the *result* was traumatic, in that infection set in, the activity that caused that result was not ultraviolent. Per Mr. Andrews, Baxter walked away, and seemed okay until infection set in.
  - This was not the more automatic qualifier of "attacking...a domesticated animal without provocation." We would not characterize this as an "attack." Instead, we adopt Mr. Andrews apt description of the interaction as a "bloodless coup."
  - Mr. Halferty has implemented the containment order, lessening the danger Lucy poses.
- 17. Certainly, if we were operating under the state's designation system, Lucy would qualify as a "potentially dangerous dog," having inflicted unprovoked bites on a domesticated animal. RCW 16.08.070(1). But the County's viciousness standard is higher. This is close to the line; we have leaned in both directions over the last two weeks, which helps explain why we are issuing this decision on the final day of our ten-business-day window. In the end, we are not convinced that Animal Services has proven its case by a preponderance of the evidence.

DECISION:

We GRANT Mr. Halferty's appeal.

ORDERED May 9, 2022.

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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 *June 8, 2022*. 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 APRIL 25, 2022, HEARING IN THE APPEAL OF PATRICK HALFERTY, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V22012909-A2000666

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Richard Andrews, and Patrick Halferty. 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	Notice of violation no. V22012909-A2000666, issued February 12, 2022
Exhibit no. D3	NVOC mailing/tracking history
Exhibit no. D4	RASKC investigation report no. A22000666
Exhibit no. D5	Online Complaint form of January 12, 2022, incident by Richard
	Andrews, dated February 10, 2022
Exhibit no. D6	Documents and Veterinary Records submitted by Richard Andrews, dated
	April 5, 2022
Exhibit no. D7	Appeal, received March 2, 2022
Exhibit no. D8	Photograph of Baxter's injuries
Exhibit no. D9	Map of subject area
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# **CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. V22012909-A2000666

## PATRICK HALFERTY

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.

Description of 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 May 9, 2022.

Cauren Olson

Lauren Olson Legislative Secretary

#### Andrews, Richard

Hardcopy

### Eykel, Chelsea

Regional Animal Services of King County

### Halferty, Patrick

Hardcopy

### Smokoska, Rebecca

Regional Animal Services of King County