

June 14, 2022

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

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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V22013049-A22000235**

ANDREW VERNER
Animal Services Enforcement Appeal

Activity no.: A22000235

Appellant: **Andrew Verner**
[REDACTED]
Vashon, WA 98070
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
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FINDINGS AND CONCLUSIONS:

Overview

1. Andrew Verner appeals a violation notice for his dog, Covi, threatening persons in public, running in a park, and being unlicensed-unaltered. After hearing witnesses' testimony and observing demeanor, studying the exhibits admitted into evidence, and considering party arguments and the relevant law, we largely deny the appeal. However, to avoid a due process problem we created by erroneously listing a violation in our notice, we dismiss the running in a park violation. And we reduce the licensing penalty.

Background

2. On January 11, 2022, Jeff Falk filed a complaint asserting that on December 24, 2021, he and his 73-year-old mother, Cheryl Weise, were walking through the Dockton Forest on Vashon Island when an altercation occurred with Mr. Verner and Mr. Verner's dog, Covi. Ex. D2. Animal Services left a notice for Mr. Verner, but did not follow-up when Mr. Verner failed to reply. Ex. D3 at 002, n.2.
3. On March 2, Jeff Falk filed another complaint asserting that the previous day, while again walking through Dockton Forest, Covi was again off-leash and not under control. Ex. D4. This time Animal Services issued Mr. Verner a violation notice. Ex. D6.
4. Mr. Verner timely appealed. Ex. D7. We went to hearing on June 1.

Hearing Testimony

Testimony of Jeffrey Falk

5. Mr. Falk testified that on December 24 he was walking through Dockton Forest with his puppy, Rosie, and his mom, Cheryl Weise. They encountered Mr. Verner, Mr. Verner's child, and a large German Shepherd-type dog [Covi] about twenty feet away. Covi was ahead of Mr. Verner, off-leash. Ms. Weise mentioned that Covi was a dog to be concerned about, so they should be on guard.
6. When Covi saw them, he started barking, growling, snarling, and baring his teeth. Covi is a big intimidating dog with huge jaws; he looked like he wanted to attack. Mr. Verner called Covi back, grabbed him, put him on a leash, and took him off the trail. It seemed like Mr. Verner was unable to control Covi, grasping as hard as he could to contain him.
7. Though Mr. Falk felt frightened, he knew they had to pass to get by. As they approached, Covi became agitated and tried going towards them. Mr. Falk grew up with dogs, yet he was scared. Covi was trying to get away from his owner, and Mr. Falk feared that if Covi got loose, he would try to tear apart his mom or their puppy. Mr. Falk found it concerning that Covi was reacting in such an aggressive manner, especially with a small child (Mr. Verner's daughter) next to him and because Vashon has no emergency room. He described the situation as deteriorating quickly from a walk in the park to an angry animal that wanted to attack.
8. On March 1, Mr. Falk and Ms. Weise were walking through Dockton Forest again, when about twenty feet away, they saw Mr. Verner with Covi ahead of him, again off-leash. Mr. Verner called Covi back and put him on a leash, though the leash did not seem sturdy enough.

Testimony of Cheryl Weise

9. Christmas Eve was not the first interaction she had with Covi. Maybe two years ago, as she walked past the Verner house, Covi came out on the road, to within about 5 feet from her, before he stopped. Mr. Verner retrieved Covi. It was very frightening.

10. As to the December 24 incident, Ms. Weise testified that once Covi saw them he immediately began barking. Mr. Verner grabbed Covi's neck and tried to put him on a leash, but had difficulty controlling him. Covi was dragging Mr. Verner. Mr. Verner's child began crying and screaming, "Daddy, Daddy!" as she was also frightened. Finally, Mr. Verner took Covi off to the side of the trail, allowing them to pass by. Covi is as tall as Mr. Falk, about six feet tall when Covi stands on his hindlegs.
11. On March 1, Mr. Falk saw Covi first and told Ms. Weise to grab Rosie. Mr. Verner was trying to get his leash on Covi and had Covi around the neck, which was the only way he was controlling Covi. Even then, Covi was pulling Mr. Verner, and they were tussling. The incident frightened Ms. Weise very much, as she had never had that close a call with a dog before. Covi was definitely not under voice control, but was again pulling Mr. Verner.
12. Ms. Weise disputed that most people let their dogs run off leash in the Dockton Forest. She walks every day with her dog, and she estimates that 95% of the other dogs she sees the are on a leash. The leash requirement is clearly noted by signage.

Testimony of Michael Verner

13. As to the earlier incident in the street, Covi would have been a puppy at the time. Covi has always been a large dog, reaching his full-length before he was six months old. He currently weighs about 100 pounds. They have long-since put in an electric fence, and Covi wears a shock collar at home.
14. Covi was never properly socialized, and he seems to get louder when on a leash. Due to COVID, group obedience classes were not being offered, so Mr. Verner took on the challenge of training Covi himself. After a year, Covi was able to go on runs with Mr. Verner, always under voice control.
15. Mr. Verner realizes that Covi can strike fear due to his size, but when he comes across most people nothing unusual happens. However, when people show fear of Covi, Covi begins to growl and his hair goes up. Snarling and showing his teeth would not be out of the norm when Covi knows someone is afraid of him. But Covi responds immediately to voice command and stops in his tracks when he comes upon people. Covi gets more protective and barks more when he is on a leash.
16. Mr. Verner testified that he could not really place the December 24 incident, and his memory of that was not so vivid. He recalls calling Covi back and putting the leash on his harness; Covi always wears a full harness on walks. If he was seen holding Covi, it may have been to calm him down, not to restrain him. He does not recall his daughter crying. Covi has never dragged him because Mr. Verner is so strong.
17. As to the March 1 incident, Mr. Verner recalls calling Covi back, putting the leash on his harness, moving off the trail, and being in full control; Covi was not dragging him.
18. Mr. Verner acknowledges that the park has a leash requirement; however, it is a "cultural norm" to have dogs off-leash at that park, since Vashon Island has no off-leash dog

parks. One should not have to pay \$20 to ride a ferry and waste an entire day, just to locate an off-leash dog park off the island.

19. Mr. Verner takes responsibility for Covi's actions; however, no one has been hurt by Covi. If he had, he would not have appealed the notice. Having Covi off-leash is a risk he is willing to take, because Covi is under 100% recall. He has now contacted a trainer to see if there are classes in his price range.

Analysis

General Standard

20. 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.

Threatening Animal

21. Mr. Verner's approach was startling. He recognized that Covi can strike fear into people, and that when people are fearful of Covi, Covi begins to growl and his hair goes up. And Mr. Verner acknowledged that snarling and showing teeth are not out of the norm for Covi in such situations. And yet he was totally willing to create abject fear in his neighbors so that he could enjoy the convenience of running with his dog without the encumbrance of a leash. Relying on voice control is a "risk" he was totally willing to take, never mind that terrified people on a stroll had no choice whether they wanted to accept that risk or not.
22. Covi's response, and thus Mr. Verner's, would be far less alarming if, for example, Covi bristled snarled and showed his teeth when people tried to come up to Covi to engage or pet him, with Covi just trying to signal people taking such liberties to back off. Yet Covi traumatizes the very people who are already scared to begin with. Mr. Verner's self-confidence that he has total control is surely small consolation to those people.
23. Covi qualifies as a "domesticated animal that habitually snaps, growls, snarls, jumps upon or otherwise threatens persons lawfully using the public sidewalks, streets, alleys or other public ways." KCC 11.04.230.G. We sustain the first violation.

Running in a Park

24. There is no question that the dog leash requirements are clearly posted at Dockton Forest. Postings are not suggestions or inspirational. While Mr. Verner may think himself above the law, he is not. And while we found credible Ms. Weise's testimony that the overwhelming majority of visitors to Dockton Forest obey the signs and have their dogs on a leash, even if others routinely flaunt it, that does not get Mr. Verner out of anything.

25. Mr. Verner does not need to accept the situation as-is. We do not dispute that Vashon would benefit from an off-leash area, or perhaps from multiple off-leash areas. The physical and mental benefits to dogs from having an area where they can freely exercise and socialize hardly need repeating. We will provide Mr. Verner with the personal email contact for Friends into Dogs Organization (FIDO), a group working to add off-leash capacity on Vashon. We encourage him to push for change. But in the interim, the signs mean what they say.
26. The problem with the second violation, however, is of our making. In our hearing notices, we typically quote the pertinent legal standard, attempting help laypeople better prepare for their hearing. Here, however, in our May 5 notice we quoted not the running-in-park violation Animal Services *actually* cited Mr. Verner for, but the general running-at-large standard.
27. The two touchstones of procedural due process are notice reasonably calculated to inform interested parties of an action against them and a meaningful opportunity to be heard. *Johnson v. City of Seattle*, 184 Wn. App. 8, 18, 335 P.3d 1027, 1033 (2014). By inadvertently citing the wrong code for the second violation, our notice actively *misinformed* Mr. Verner of one of the actions against him. We thus dismiss the running in parks without prejudice. A dismissal without prejudice is a procedural dismissal, not a decision on the merits.

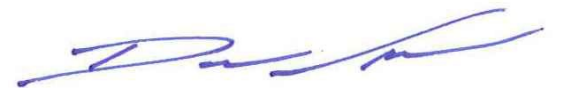
Licensing

28. Covi was unlicensed at the point he was cited for being an unaltered, unlicensed pet. Ex. D6 at 001. All dogs eight weeks and older must be licensed and registered. KCC 11.04.030.A. However, we make two reductions. First, as Animal Services recognized, Covi was actually *altered* at the time of the violation, meaning the penalty should have been \$125, not \$250. Second, Mr. Verner licensed Covi after the violation; where an individual has duly licensed a pet after the violation but before our hearing, we typically reduce the penalty. We reduce the licensing penalty to \$75.

DECISION:

1. We uphold the animal threatening violation and its \$50 penalty.
2. We dismiss, without prejudice, the running in park violation.
3. We reduce the licensing penalty from \$250 to \$75.

ORDERED June 14, 2022.



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 *July 14, 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 JUNE 1, 2022, HEARING IN THE APPEAL OF ANDREW VERNER, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V22013049-A22000235

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Jeff Falk, Cheryl Weise, and Andrew Verner. 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 24, 2021, incident by Jeff Falk, dated January 11, 2022
Exhibit no. D3	RASKC investigation report no. A22000235
Exhibit no. D4	Online Complaint form of March 1, 2022, incident by Jeff Falk, dated March 2, 2022
Exhibit no. D5	RASKC investigation report no. A22001067
Exhibit no. D6	Notice of violation no. V22013049-A22000235, issued March 30, 2022
Exhibit no. D7	Appeal, received April 24, 2022
Exhibit no. D8	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V22013049-A22000235**

ANDREW VERNER
Animal Services Enforcement Appeal

I, Jessica Oscoy, 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 June 14, 2022.



Jessica Oscoy
Office Manager

Eykel, Chelsea

Regional Animal Services of King County

Falk, Jeff

Hardcopy

Verner, Andrew

Hardcopy

Weise, Cheryl