

October 7, 2019

**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. **V19009576 and V19009577**

JOSE VILLEGAS*

Animal Services Enforcement Appeal

Activity no.: A19003690

Appellant: **Jose Villegas**

[REDACTED]
Kent, WA 98032

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:

1. Regional Animal Services of King County (Animal Services) served a violation notice and a removal order on Jose Villegas and his dog, Loba. Mr. Villegas timely appealed. 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, sustain the violation notice, and sustain the removal order.
2. In September 2014, Animal Services served a Notice of Violation and Order to Comply (NVOC) on Jose Villegas, asserting that his dog Loba had bit a person, declaring Loba vicious, and requiring Mr. Villegas to:

- secure Loba in a fenced area suitable for Loba’s size when Loba is unattended and outside the home;
- lock all passages with a padlock to prevent accidental release; and
- restrain Loba on a collar or harness and taking it off the property. Ex. 7 at 001.

Mr. Villegas did not appeal the NVOC, and so the viciousness designation and those compliance terms became fixed by the point later that September when the appeal period ran out.

3. The code decrees that an animal declared vicious may be kept in King County “only” upon compliance with those requirements prescribed in the NVOC. KCC 11.04.290.A.1. Where an owner fails to comply with any requirement prescribed in the NVOC, the animal shall not be kept in unincorporated King County. KCC 11.04.290.A.3.
4. In August 2018, Loba got out, trespassed, and ran at large. Rather than move directly to removal, Animal Services served another NVOC, which also was not appealed. Ex. 6 at 001. In January 2019, Loba got out again, and ran at large and on public property. And again, rather than move directly to removal, Animal Services served another NVOC, which also was not appealed. Ex. 6 at 001.
5. Finally in June, Lobo ran at large yet again. This time Animal Services served, in addition to another NVOC, a removal order. Exs. 5, 6. Mr. Villegas timely appealed. Ex. 9. We went to hearing on September 25.
6. Unless directed to by law—and no special directive applies to today’s case—the examiner does *not* grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. Ours is a true *de novo* hearing. 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.
7. Neighbor Antonio Vargas testified that he had seen the dog out a few times before he ever complained. After filing his complaint about the June incident, he then observed the dog loose again the week before our hearing. He has always kept his distance from the dog, and the dog has never threatened him. He does not always feel comfortable going out to do yard work when he knows a dog previously declared vicious may get loose again.
8. Mr. Villegas noted that he has started building a fence. He has an invisible fence collar. About three months ago he started taking Loba to training classes. He keeps her tied up now when outside. He will not let it happen again.
9. Unfortunately for Mr. Villegas and for Loba, his efforts are too little too late. He could have built the fence and taken Loba to training classes at the end of 2014, in 2015, in 2016, in 2017, or in 2018. In case the urgency was lost on him, he certainly got a

refresher when Animal Services served him with another NVOC in August 2018. He had the rest of 2018 and into 2019 to fix the problem.

10. In numerous cases overturning a removal order, we have written that the code does not provide third chances, but it typically provides second chances. In cases where we have sustained a removal order, we have typically written that as the converse, that the code provides second chances but not third chances. Here, Mr. Villegas got not only a second chance in August 2018, when Animal Services went with an NVOC and not a removal order, but he even got a third chance in January 2019, when Animal Services again held off serving a removal order. Only when it happened yet again in June 2019 did Animal Services serve a removal order.
11. By that point it was too late for Mr. Villegas and Loba. (We note that even after June, Loba was still not locked down, as he got loose yet again.) We sustain Animal Services' NVOC and its removal order. The fence work is not necessarily wasted effort; it can help contain a *future* dog Mr. Villegas may acquire. But Mr. Villegas will have to find a new home outside of King County for Loba, or turn Loba over to Animal Services for Animal Services to find Loba a new home.
12. Mr. Villegas shall follow the removal order requirements, namely:
 - micro-chipping Loba and providing the microchip number to Animal Services (if this has not already been accomplished);
 - disclosing to the potential new owner that Loba was ordered removed from King County as a public nuisance and threat to public safety; and
 - providing proof the new owner lives outside King County. Ex. 6 at 003.
13. However, the requirement that Mr. Villegas follow the above steps and re-home Loba within 48 hours is simply unreasonable. We will give him a month. Alternately, Mr. Villegas may surrender Loba to Animal Services, who will attempt to find a responsible home for Loba.
14. We sustain the \$500 violation for Loba running at large on June 22. However, the \$1,000 removal penalty will only kick in if Mr. Villegas fails to timely meet all of the requirements in paragraph 12 or to surrender Loba to Animal Services, or if Loba returns to King County after that.

DECISION:

1. We sustain the NVOC and the removal order.
2. By **November 6, 2019**, Mr. Villegas either shall surrender Loba to Animal Services or shall follow the other terms contained in the removal order.
3. If Mr. Villegas completes those by November 6, the penalty is \$500. If he does not, the penalty is \$1,500.

ORDERED October 7, 2019.



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 *November 6, 2019*. 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 SEPTEMBER 25, 2019, HEARING IN THE APPEAL OF JOSE VILLEGAS, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V19009576

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Antonio Vargas, and Jose Villegas. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered and entered into the record:

- | | |
|-----------------------|--|
| Exhibit no. 1 | Regional Animal Services of King County staff report to the Hearing Examiner |
| Exhibit no. 2 | Online Complaint form of June 22, 2019 incident by Antonio Vargas, dated July 2, 2019 |
| Exhibit no. 3 | Photograph of Loba running loose in neighborhood on July 2, 2019 |
| Exhibit no. 4 | RASKC investigation report no. A19003690 |
| Exhibit no. 5 | Notice of violation no. V19009576, issued July 8, 2019 |
| Exhibit no. 6 | Notice and order for removal no. V19009577, issued July 8, 2019 |
| Exhibit no. 7 | Notice and order for confinement no. V14003801 |
| Exhibit no. 8 | Map of subject area |
| Exhibit no. 9 | Appeal, received July 31, 2019 |
| <i>Exhibit no. 10</i> | <i>Photograph of Loba running loose in neighborhood on September 4, 2019 (Not entered)</i> |

DS/jo

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V19009576 and V19009577**

JOSE VILLEGAS*

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 October 7, 2019.



Jessica Oscoy
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Vargas, Antonio

Hardcopy

Villegas, Jose

Hardcopy