

January 15, 2020

**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 nos. **V19009984 and V19010065**

ANGEL GUTIERREZ
Animal Services Enforcement Appeal

Activity no.: A19007432

Appellant: **Angel Gutierrez**

[REDACTED]
Kent, WA 98030

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by **Shelby Russell**
Regional Animal Services of King County
21615 64th Avenue S
Kent, WA 98032
Telephone: (206) 263-5968
Email: raskcappeals@kingcounty.gov

On October 21, Animal Services Ofc. Aaron Wheatley issued a violation notice to Ms. Gutierrez regarding her dogs running at large on October 14. The notice went unclaimed and was eventually returned. The appeal window ran out on November 16.

Also on November 16, a different Animal Services officer, Dana Fowler, issued a violation notice regarding Ms. Gutierrez's dogs running at large on October 21 and being unlicensed. Ms. Gutierrez timely appealed the notice. She licensed her dogs, and Animal Services removed the licensing-related penalties, meaning only the October 21 running at large is in play.

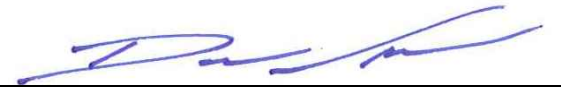
At today's hearing, Ms. Gutierrez explained steps she has taken to shore up the gate from which her dogs had been able to escape. Ex. 11. Animal Services explained that the complainant for both the October 14 and October 21 events elected not to participate in our hearing process. Ofc. Wheatley actually witnessed the dogs running at large on October 14, but he agreed he had no personal knowledge about October 21.

In our hearings, the examiner does 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.

The October 14 violation is water under the bridge, because that was not timely appealed. "If a person fails to timely deliver the appeal statement . . . , the office of the hearing examiner does not have jurisdiction to consider the appeal and the decision of the department . . . becomes final and unreviewable." KCC 20.22.080.H. But Ms. Gutierrez did timely appeal the alleged October 21 violation. All Animal Services can provide about October 21 are hearsay statements from an absent complainant. Here, that is not sufficient to meet Animal Services' burden of proving an October 21 violation.

We thus GRANT Ms. Gutierrez's appeal as to the October 21 allegation. We also EXTEND the deadline for her to pay the \$100 penalty for the October 14 violation until **March 15, 2020**.

ORDERED January 15, 2020.



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 *February 14, 2020*. 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 JANUARY 15, 2020, HEARING IN THE APPEAL OF ANGEL GUTIERREZ, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NOS. V19009984 AND V19010065

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Shelby Russell, Aaron Wheatley, and Angel Gutierrez. 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 | Notice of violation no. V19010065, issued November 16, 2019 |
| Exhibit no. 3 | Appeal, received December 5, 2019 |
| Exhibit no. 4 | RASKC investigation report no. A19007570 |
| Exhibit no. 5 | Complaint form by Kenny Richter, dated October 21, 2019 |
| Exhibit no. 6 | Notice of violation no. V19009984, issued October 23, 2019 |
| Exhibit no. 7 | RASKC investigation report no. A19007570 |
| Exhibit no. 8 | Complaint form of October 14 incident by Kenny Richter, dated October 14, 2019 |
| Exhibit no. 9 | Returned mail V19009984 for Angel Gutierrez |
| Exhibit no. 10 | Map of subject area |
| Exhibit no. 11 | Appellant: Photograph, submitted January 15, 2020 |

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CERTIFICATE OF SERVICE

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ANGEL GUTIERREZ

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 January 15, 2020.



Jessica Oscoy
Legislative Secretary

Gutierrez, Angel
Hardcopy

Richter, Kenny
Hardcopy

Russell, Shelby
Regional Animal Services of King County