

June 16, 2022

**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

CORRECTED¹ REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file nos. **V22012991 and V22012992**

SERGEY KARASHCHUK

Animal Services Enforcement Appeal

Activity no.: A22001203

Appellants: **Sergey and Mary Karaschuk**

[REDACTED]
Kent, WA 98042

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. Sergey Karashchuk appeals both a violation notice for his dog trespassing and being a vicious animal at large, and an order to remove the dog from King County. After hearing witnesses testimony and observing demeanor, studying the exhibits admitted into

¹ After issuing our report yesterday, we noticed that we switched the two violation numbers. The text of the decision remains otherwise the same.

evidence, and considering the parties' arguments and the relevant law, we largely deny the appeal, but we amend the order to allow more time and options to rehome the dog.

Background

2. In September 2019, Carol Erskine's goat was mauled to death by an animal she identified as the German shepherd (Rex) owned by her next-door neighbor, Mr. Karashchuk. That October, Animal Services issued a notice asserting that Rex was trespassing and qualified as vicious, and ordering that Rex be contained. Mr. Karashchuk timely appealed and we went to hearing that November. Finding it significantly more likely than not that Rex trespassed onto the Erskine property and attacked and killed Ms. Erskine's goat, we denied Mr. Karashchuk's appeal. Exs. D28 and D29.
3. A few days later, we discovered that our then-recently-installed software had been incorrectly populating fields on several documents; in Mr. Karashchuk's situation that meant providing an artificially-shortened window to appeal our December 13 decision. We corrected those errors, re-issuing a substantively identical decision on December 19 that provided a fresh (and this time correct), 30-day appeal deadline.² No appeal was filed, making Rex's viciousness designation and confinement order final and unchallengeable after January 21, 2020.
4. In February 2020, Ms. Erskine filed a complaint that Rex was off the Karashchuk property, without a leash, in violation of the October 2019 confinement order. Ex. D12. The investigating Animal Services officer determined that Rex had been off the property without a leash, explained to Mr. Karashchuk that Animal Services' general response to such violations is to issue a removal order, but said he would check first with his supervisor. Ex. D13 at 003, n.3; Ex. D14 at 001. Animal Services wound up issuing only a warning notice and not a removal order, but wrote in that warning that if in the future Rex was not confined on his property or on a leash when off it, Animal Services would issue a removal order. Ex. D13 at 003, nn.4-5; Ex. D15.
5. On March 15, 2022, Animal Services issued a violation notice to Mr. Karashchuk for Rex trespassing on private property and being a vicious animal at large. Ex. D8 (V22012992-A22001203). The same day Animal Services ordered Mr. Karashchuk to remove Rex from King County. Ex. D9 (V22012991-A22001203). Mr. Karashchuk appealed on April 4. Ex. D11. We went to hearing on June 1.

Hearing Testimony

Testimony of Misty Mounts

6. Misty Mounts testified that on March 7 she and her daughters arrived at the Erskine property and immediately heard barking; Ms. Mounts believed it was a German shepherd barking, because she is a shepherd owner. She then saw Rex barking, lunging, and chasing two horses in their corral. Rex was nipping at the horses, but Ms. Mounts

² See https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2019/Other/V19009920_Karashchuk_Corrected.ashx?la=en.

believes Rex did not actually deliver a bite. The horses were trying to kick and chase Rex to get him to leave. The horses also tried to run away from Rex, but Rex kept coming back at them.

7. Rex did not respond to any voice commands. Rex was only deterred from reaching the horses when Ms. Erskine stood in his way. Ms. Erskine was then able to get a harness on Rex. Ms. Erskine did not let Rex go back to his property, because she wanted evidence that Rex was on her property. Mr. Karashchuk came to the property, and Ms. Erskine explained that she was waiting for the police.
8. It appeared to her that the Karashchuks were in the process of putting up a fence, but there was a section without fencing that was completely open. *See* Ex. D6 at 001. The Karashchuks told her Rex had a kennel area, but a little boy let him out.
9. Ms. Mounts has visited the Erskine property many times. The day of the incident was the first time she saw Rex and noticed the fencing materials on the Karashchuk property. Ms. Mounts and Ms. Erskine have been friends since the 90s.

Testimony of Carol Erskine

10. Carol Erskine testified that on March 7 she found Rex in her mustang corral, chasing and nipping at the horses. The horses were charging at the fence, trying to get out. Exhibit D4 at 001 and 002 shows the mustang's damaged fence in the foreground. She agreed it was possible that her mustangs could attack Rex.
11. Ms. Erskine chased, cornered, and harnessed Rex. Rex dragged Ms. Erskine toward the rabbit hutch and was trying to get at her rabbits. She gave Rex to the police, who then gave Rex to Animal Services. Ms. Erskine brought Rex over to the rabbit hutch to show the police Rex's response to the rabbits.
12. Ms. Erskine noted that Rex was in a terrible condition. There were clumps of hair falling off, and he smelled like feces and urine. Rex also was bleeding on his lower jaw, between his teeth and bottom lip, which she attributed to Rex being kicked by a horse.
13. Ms. Erskine's woven horse mesh fence is 48-inches tall, with a four-inch post. The horses would not reach over the fence to get grass because there is no grass there. The fence was not broken before the incident.
14. Ms. Erskine has another horse, an Arabian, she keeps in the pasture, separated from the mustangs in their corral (lest the horses fight again.) While she did not see Rex in the pasture on March 7, after the incident she noted what appeared to be a bite with canine holes and scrapes on the Arabian's lips. Ex. D4 at 003.

Testimony of Sergey Karashchuk

15. Sergey Karashchuk testified that he was at work when his wife called him about the incident. Mr. Karashchuk arrived home at 3:45 p.m. He saw Ms. Erskine holding Rex

outside the corral. She told him he would have to pay for this. Ms. Erskine said she wanted to wait for the police to arrive.

16. Mr. Karashchuk has been dealing with this since 2019. He feels like this is a personal vendetta. He got an anti-harassment order against Ms. Erskine, which has since lapsed. The Karashchuks and Ms. Erskine were working through counseling. Mr. Karashchuk offered to pitch in 50/50 on a fence, but Ms. Erskine declined this offer. About 80 to 90 percent of the fence was in place the day of the incident. Today the fence is totally complete on Ms. Erskine's end.
17. Mr. Karashchuk agreed that Rex breached the property, and he was supposed to be confined to his kennel. His brother-in-law was outside with Rex at the time. Mr. Karashchuk argued again that Rex is not vicious.

Testimony of Mary Karashchuk

18. Mary Karashchuk testified that on the day of the incident her younger brother was outside with her three-year-old son. Her brother told her that Rex ran into the neighbor's yard. Ms. Karashchuk went outside and saw Rex in the mustang corral. She did not see him in the open field. Rex was being chased. Ms. Karashchuk did not see Rex being vicious or violent. She did not see him lunge or attack. He was just running in circles. She did not see blood on Rex.
19. Ms. Karashchuk told Rex to come to her, and he did. Ms. Karashchuk was asking Ms. Erskine to bring Rex closer to her, but Ms. Erskine would not listen or reason with her. Ms. Erskine screamed at her. Mr. Karashchuk, the police, and Animal Services arrived. Ms. Karashchuk went to the school bus to get her son. Ms. Karashchuk spoke with Ms. Mounts, who was also over there. Ms. Mounts said that she had only been to the property three to four times before.

Legal Standards

20. In V22012992, Animal Services asserts that Rex trespassed, defined as a “domesticated animal that enters upon a person’s property without the permission of that person,” and was a “vicious animal or animal with vicious propensities that runs at large at any time it is off the owner’s premises and not securely leashed on a line or confined and in the control of a person of suitable age and discretion to control or restrain the animal.” KCC 11.04.230.K & I.
21. In V22012991, Animal Services seeks Rex’s removal under KCC 11.04.290.A.3, which states:

Failure to comply with any requirement prescribed by the manager [*here, in the 2019 order*] constitutes a misdemeanor. Such an animal shall not be kept in unincorporated King County after forty-eight hours after receiving written notice from the manager. Such an animal or animals found in violation of this section shall be impounded and disposed of as an

unredeemed animal and the owner or keeper of the animal or animals has no right to redeem the animal or animals.

22. 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

23. Mr. Karashchuk does not dispute the trespass violation.
24. The vicious-animal-at-large violation does not turn on whether Rex did anything independently vicious on March 7, only that Rex was declared vicious in 2019—a designation that became final and unreviewable when the window to appeal our decision upholding that designation lapsed in January 2020—and thereafter ran at large on March 7. Mr. Karashchuk disputes that Rex is vicious, even from the fatal 2019 altercation. Ex. D11 and hearing testimony. However, once Rex’s viciousness designation became final, viciousness and the requirement to contain Rex were no longer up for debate. On March 7, Rex was a vicious animal that ran off the Karashchuk property and was not securely leashed on a line or otherwise confined. We sustain that violation as well.
25. As to what Rex actually did on March 9, we do not base our decision on the wound on the Arabian; while the marks look similar to those we have observed a dog deliver, it is not that conclusive, nor did anybody see Rex in the pasture. Instead, what we find most credible is Ms. Mounts’ eyewitness testimony of seeing Rex in the corral, barking, chasing, lunging, and nipping at (albeit not actually biting) the mustangs, and circling back even after the horses tried to chase him away.
26. Mr. Karashchuk blamed Ms. Erskine for not contributing to their shared fence. But it was not Ms. Erskine’s job to keep Rex out; it was the Karashchuks’ responsibility to keep Rex confined on the property, or on a leash when off it, pursuant to his confinement order.
27. We are the most exacting of Animal Services on removal orders, given what is at stake. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (nature of private interest impacted is factor in determining how much process is due); Exam. R. XII.B.4 (in proceeding involving divestiture of legally cognizable rights, examiner may require adherence to court rules to “assure that due process of law is afforded”); *Repin v. State*, 198 Wn. App. 243, 284, 392 P.3d 1174 (2017) (Fearing, C.J., concurring) (analyzing court decisions recognizing “the bond between animal and human and the intrinsic and an estimable value of a companion animal”). We have overturned more removal orders than we have sustained.
28. Sometimes the altercation that drew the initial vicious designation and compliance order was, relatively speaking, towards the milder end of the viciousness scale. Occasionally, in reviewing the record in analyzing a later removal order, we even suspect that, had the initial viciousness designation been timely appealed, we likely would have overturned it.

But in 2019 Rex mauled Ms. Erskine's goat to death. We heard the testimony then, looked at the exhibits, and sustained the viciousness designation; it was gruesome.

29. Additionally, we have sometimes been persuaded by a no-harm-no-foul argument, overturning removal orders where, after getting a viciousness designation and compliance order, a dog, say, gets loose and wanders the street, thus violating the containment requirement but not actually doing anything else. That would have been the case if Animal Services filed a removal order after Rex got on the street in 2020; we likely would have overturned it. It is not true this round, when Rex returned to the scene of his 2019 attack (Ms. Erskine's property), entered the mustangs' pen, and barked, lunged, nipped at, and chased the two horses in their corral, re-traumatizing Ms. Erskine.
30. Finally, occasionally the initial altercation, and later the compliance order violation, are two isolated aberrations on an otherwise spotless record of responsible animal ownership. That would have been true if Animal Services sought removal order after Rex got out in February 2020. But Animal Services issued a warning notice instead of a removal order then, noting that if in the future Rex was not confined on his property Animal Services would issue a removal order. And March 2022 even involved a similar fact pattern—Rex escaping the property, unleashed, when a brother-in-law visited and was allowed access to an unkenneled Rex and an unfinished perimeter fence. Ex. D14.
31. We thus sustain Rex's removal order. But we offer four caveats.
 - Although the removal order was issued with a \$1000 penalty, we have interpreted that fine as kicking in only if the removal order *itself* is violated.
 - While the code requires that the animal be removed from King County within two days, two days is not enough time to complete all the steps Animal Services requires for compliance with a removal order (exhibit D9 at 003). We often give an owner two weeks to accomplish those items; we do so today as well.
 - We have consistently interpreted a removal order as a requirement to remove the dog only from unincorporated King County and from those King County contract cities where the same legal standard applies (see below footnote) and thus from which removal also would be warranted. Unaffiliated cities within King County may have their own restrictions, but they are not necessarily the same as those jurisdictions who follow KCC Title 11; so long as Rex does not return to unincorporated King County or to one of the contract cities, there is no violation of the removal order. This broadens the potential places to which the Karashchuks can rehome Rex.
 - If the Karashchuks are not timely able to find housing for Rex, they may turn him over to Animal Services, who can rehome Rex outside its jurisdiction.

DECISION:

1. We deny the appeal as to V22012992 (the trespass and vicious-animal-at-large violations).

2. We deny the appeal as to V22012991 (the removal order) except that by **June 29, 2022**, the Karashchuks shall either:
- A. Find a potential new owner outside of unincorporated King County and outside the cities that contract with Animal Services,³ disclose to that person that Rex was ordered removed as a threat to public safety, have that person agree to take Rex on, actually get Rex out, and provide Animal Services both proof that this new owner lives outside unincorporated King County and those contract cities, and the new owner’s contact information, or
 - B. Surrender Rex to Animal Services, who will then rehome him.
3. If the Karashchuks successfully meet A. or B., and thereafter do not allow Rex to return, the \$1000 penalty associated with the removal order is waived. If not, the \$1000 penalty is reinstated and Animal Services may impound Rex as an unredeemable animal.

ORDERED June 16, 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 18, 2022*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

³ In addition to unincorporated King County, the contract cites where the same legal standard applies are currently:

A.	Beaux Arts Village	B.	Bellevue	C.	Black Diamond
D.	Carnation	E.	Clyde Hill	F.	Covington
G.	Duvall	H.	Enumclaw	I.	Issaquah
J.	Kenmore	K.	Kent	L.	Lake Forest Park
M.	Maple Valley	N.	Mercer Island	O.	Newcastle
P.	North Bend	Q.	Redmond	R.	Sammamish
S.	SeaTac	T.	Shoreline	U.	Snoqualmie
V.	Tukwila	W.	Woodinville	X.	Yarrow Point

**MINUTES OF THE JUNE 1, 2022, HEARING IN THE APPEAL OF SERGEY
KARASHCHUK, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NOS. V22012991 and V22012992**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Misty Mounts, Carol Erskine, Sergey Karashchuk, and Mary Karashchuk. 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 | RASKC investigation report no. A22001203 |
| Exhibit no. D3 | King County Sherriff’s report, dated March 7, 2022 |
| Exhibit no. D4 | Photograph of injured horse and damaged fence |
| Exhibit no. D5 | Video of Rex on Ms. Erskine’s property |
| Exhibit no. D6 | Photograph of Karashchuk’s unsecured yard |
| Exhibit no. D7 | Online Complaint form of March 7, 2022, incident by Carol Erskine, dated March 7, 2022 |
| Exhibit no. D8 | Notice of violation no. V22012992-A22001203, issued March 15, 2022 |
| Exhibit no. D9 | Notice and order for removal no. V22012991-A22001203, issued March 15, 2022 |
| Exhibit no. D10 | NVOC mailing/tracking history |
| Exhibit no. D11 | Appeal, received April 4, 2022 |
| Exhibit no. D12 | Online Complaint form of February 4, 2020, incident by Carol Erskine, dated February 6, 2020 |
| Exhibit no. D13 | RASKC investigation report no. A20001010 |
| Exhibit no. D14 | Email Statement from Mr. Karashchuk, dated February 8, 2020 |
| Exhibit no. D15 | Written Warning V2010339, dated February 8, 2020 |
| Exhibit no. D16 | RASKC investigation report no. A22001011 |
| Exhibit no. D17 | Email from Postal Worker, dated February 28, 2022 |
| Exhibit no. D18 | RASKC investigation report no. A20013990 |
| Exhibit no. D19 | Email from Postal Worker, dated September 19, 2020 |
| Exhibit no. D20 | RASKC investigation report no. A20010949 |
| Exhibit no. D21 | Online Complaint form of April 11, 2020, incident by Ashley Erskine, dated April 12, 2020 |
| Exhibit no. D22 | RASKC investigation report no. A20010426 |
| Exhibit no. D23 | Online Complaint form of March 26, 2020, incident by Ashley Erskine, dated March 26, 2020 |
| Exhibit no. D24 | RASKC investigation report no. A20001444 |
| Exhibit no. D25 | Online Complaint form of February 12, 2020, incident from Carol Erskine, dated February 12, 2020 |
| Exhibit no. D26 | Online Complaint form of September 27, 2019, incident by Carol Erskine, dated September 28, 2019 |
| Exhibit no. D27 | RASKC investigation report no. A19006842 |

Exhibit no. D28 Notice of violation no. V19009920-A19006842, issued October 15, 2019
Exhibit no. D29 Hearing Examiner’s Report and Decision V19009920-A19006842, dated
December 13, 2019
Exhibit no. D30 Maps of subject area

DS/lo

June 16, 2022

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file nos. **V22012991 and V22012992**

SERGEY KARASHCHUK
Animal Services Enforcement Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **CORRECTED 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 16, 2022.



Lauren Olson
Legislative Secretary

Erskine, Carol

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Karashchuk, Sergey/Mary

Hardcopy

Mounts, Misty

Hardcopy