



City of Tacoma
Hearing Examiner

March 8, 2017

FIRST CLASS MAIL DELIVERY

Rob Melvin, Attorney at Law
1105 Tacoma Avenue South
Tacoma, WA 98402

Jennifer Taylor, Deputy City Attorney
City of Tacoma
747 Market Street, Room 1120
Tacoma, WA 98402
(Inter-office Mail Delivery)

Re: *Howard Vaughn v. City of Tacoma, Animal Control and Compliance*
File No.: HEX2016-033 (L16-086535)

To the Parties,

In reference to the above entitled matter, please find enclosed a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Decision entered on March 8, 2017.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1) – Findings, Conclusions, & Decision

cc: Joseph Satter-Hunt, Animal Control Supervisor, City of Tacoma

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED March 8, 2017, at Tacoma, WA.

Louisa Legg

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **HOWARD VAUGHN,**

4 **Appellant,**

5 **v.**

6 **CITY OF TACOMA,**
7 **ANIMAL CONTROL AND**
8 **COMPLIANCE,**

9 **Respondent.**

HEX 2016-033
(L16-086535)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION

10 **THIS MATTER** came on for hearing before PHYLLIS K. MACLEOD, the Hearing
11 Examiner for the City of Tacoma, Washington, on March 2, 2017, at the Tacoma Municipal
12 Building, 747 Market Street, Tacoma, Washington.¹ Appellant Howard Vaughn was
13 represented by Rob Melvin, Attorney at Law. Deputy City Attorney Jennifer Taylor represented
14 the City of Tacoma, Animal Control and Compliance (Animal Control). Witnesses were sworn
15 and testified. Exhibits were admitted and reviewed. Arguments were presented and
16 considered.

17 From the evidence in the hearing record, the Hearing Examiner enters the following:

18 **FINDINGS OF FACT**

19 1. The Appellant Howard Vaughn is the owner of a white and brown, neutered male,
20 pit bull named "Chase." On September 1, 2016, Tacoma Police Department (TPD) Officer
21

¹ The hearing was continued to this date, by agreement of the parties, to allow Mr. Vaughn to obtain legal counsel to represent him at the hearing.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION

City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3768

ORIGINAL

1 Derek Glowacki was dispatched to 217 East 65th Street, Tacoma, Washington in response to a
2 911 call from a Mr. Rashidi Slaughter. Mr. Slaughter had been acting incoherently during an
3 emergency telephone call and Officer Glowacki was dispatched to the location to determine
4 what his needs were for assistance. Officer Glowacki arrived at the site alone and was soon
5 joined by TPD Officer Leah Mixon. The two officers approached the front door of the
6 residence and knocked. Mr. Slaughter answered the door and clarified that he wanted private
7 medical transport rather than an emergency vehicle. The officers returned to their vehicles and
8 relayed this information to the dispatch center. The dispatch center indicated they needed
9 additional information from Mr. Slaughter to complete the transport request. In order to obtain
10 the necessary information, the officers both returned to the front of the residence and knocked
11 on the door again. *Glowacki Testimony; Ex. R-3; Ex. R-4.*

12 2. Rodney Roseboro answered the door. Officer Mixon was in front and Officer
13 Glowacki was off the stairs to the left behind her. The dog Chase was on a couch near the door
14 and when the door was opened, Chase leapt from the couch, ran out the door and charged at
15 Officer Glowacki. Chase bit Officer Glowacki on the lower left leg, breaking the skin and
16 leaving puncture marks. *Ex. R-6.* The officers told Mr. Roseboro to put the dog into the house
17 and he was able to do so after some difficulty. *Glowacki Testimony; Ex. R-3.* Neither officer
18 took any aggressive or abrupt action toward Chase that would provoke an attack. *Glowacki*
19 *Testimony.*

20 3. Officer Glowacki reported the dog bite incident to his superiors and a Tacoma
21 Fire Department aid unit responded to the location. The fire department personnel cleaned the

1 wound. Officer Glowacki then drove himself to the hospital where he was treated for the dog
2 bite wound and released. The injury was bleeding, but did not require stitches. *Glowacki*
3 *Testimony; R-4.*

4 4. Chase's owner, Howard Vaughn, was not present at 217 East 65th Street at the
5 time of the incident. Officer Glowacki was able to talk with Mr. Vaughn by telephone on the
6 same day as the attack regarding Chase's vaccination status. Officer Glowacki advised
7 Mr. Vaughn that he would be contacted by Animal Control. *Glowacki Testimony; Ex. R-4.*

8 5. Animal Control assigned Officer Katherine Madden to the incident at 217 East
9 65th Street. She went to the house on September 2, 2016, and made contact with Mr. Vaughn.
10 She indicated that Chase would have to be impounded for a bite quarantine based on the
11 September 1, 2016, biting episode. Officer Madden testified that Chase was aggressive toward
12 her when Mr. Vaughn brought him out on a leash. *Madden Testimony.* Mr. Vaughn disputes
13 that characterization and contends that Chase was pulling on the leash because he was anxious
14 to get to an area of the yard the dog typically used to relieve himself. *Vaughn Testimony.*
15 Officer Madden felt it necessary to use a catch pole as a protective barrier between herself and
16 Chase. She directed Mr. Vaughn to load his dog into the vehicle. *Madden Testimony.*

17 6. In the course of her official duties, Officer Madden had received complaints about
18 Chase prior to the incident in question. Three of the complaints involved Chase biting a
19 human. Due to lack of sworn statements and backup material, no potentially dangerous dog
20 notices were issued regarding prior reported incidents. *Madden Testimony.*

21 7. After conducting her investigation of the September 1, 2016, incident, obtaining a

1 statement from Officer Glowacki, and reviewing the police report and pictures of the injury,
2 Officer Madden issued a Potentially Dangerous Dog Notice to Mr. Vaughn regarding his pit
3 bull Chase. The Potentially Dangerous Dog Notice for Chase, dated September 14, 2016,
4 indicated that he had unprovoked, bitten or injured a human or domestic animal on public or
5 private property. *Ex. R-1*. The Notice was served on Mr. Vaughn on September 23, 2016, after
6 several unsuccessful attempts to contact him. *Madden Testimony; Ex. R-1*.

7 8. Mr. Vaughn insists that Chase is not any more dangerous than a typical dog. He
8 has seen Chase interact with a wide variety of persons without any aggressive behavior. He has
9 taken steps to avoid problems of this sort in the future such as having Chase neutered and
10 enrolling Chase in dog training classes. Mr. Vaughn further indicated that he is now living
11 with Chase in Puyallup, rather than Tacoma. *Vaughn Testimony*.

12 9. Any Conclusion of Law hereinbefore stated which may be deemed properly
13 considered a Finding of Fact herein is hereby adopted as such.

14 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

15 CONCLUSIONS OF LAW

16 1. The Hearing Examiner has jurisdiction in this matter under Tacoma Municipal
17 Code (TMC) 1.23.050.B.8 and TMC 17.04.032.

18 2. In appeal proceedings before a hearing examiner involving challenges to a
19 potentially dangerous dog notice, the animal control authority bears the burden of proving that
20 the dog is potentially dangerous by a preponderance of the evidence. *TMC 17.04.032.B*. In
21 order to prevail in this matter, Animal Control must establish that Mr. Vaughn's dog Chase

1 meets the following definition of a potentially dangerous dog:

2 “Potentially dangerous dog” means any dog which:

- 3 a. unprovoked, bites or injures a human or domestic animal on public or
4 private property; or
- 5 b. unprovoked, chases or approaches a person or domestic animal upon
6 the streets, sidewalks, or any public or private property in a menacing
7 fashion or apparent attitude of attack; or
- 8 c. has a known propensity, tendency, or disposition to attack
9 unprovoked, to cause injury, or to otherwise threaten the safety of
10 humans or domestic animals.

11 *TMC 17.01.010.27.*

12 3. The City has shown, by a preponderance of the evidence, that the dog Chase was
13 unprovoked when he bit Officer Derek Glowacki on the left leg on September 1, 2016,
14 inflicting an injury that broke the skin and left puncture marks. Mr. Vaughn argues that this is
15 technically a first dog bit offense for Chase. However, as the City correctly emphasizes, action
16 meeting the applicable definition supports a potentially dangerous dog notice, even if the action
17 is based on a single incident.

18 4. The actions of Chase on September 1, 2016, meet the definition of a potentially
19 dangerous dog contained in TMC 17.01.010.27.a, which provides that a potentially dangerous
20 dog includes an animal that “unprovoked, bites or injures a human or domestic animal on
21 public or private property....” It is undisputed that Chase bit and injured Officer Glowacki
without provocation. Accordingly, the Hearing Examiner concludes that City of Tacoma
Animal Control’s Potentially Dangerous Dog Notice declaring Mr. Vaughn’s dog Chase to be a

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

1 potentially dangerous dog under TMC 17.01.010.27.a, should be affirmed.

2 5. Any Finding of Fact which may be deemed to be properly considered a Conclusion
3 of Law is hereby adopted as such.

4 Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing
5 Examiner issues the following:

6 **DECISION**

7 The City of Tacoma, Animal Control's Notice of Potentially Dangerous Dog covering
8 Howard Vaughn's pit bull named Chase is AFFIRMED and the appeal in this matter is
9 DENIED. At any time Chase is in the City of Tacoma, the dog must be maintained according
10 to the governing restrictions for a potentially dangerous dog under the Tacoma Municipal
11 Code.

12 **DATED** this 8th day of March, 2017.

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14 PHYLLIS K. MACLEOD, Hearing Examiner

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NOTICE

RECONSIDERATION/APPEAL OF EXAMINER'S DECISION

RECONSIDERATION TO THE OFFICE OF THE HEARING EXAMINER:

Any aggrieved person or entity having standing under the ordinance governing the matter, or as otherwise provided by law, may file a motion with the Office of the Hearing Examiner requesting reconsideration of a decision or recommendation entered by the Examiner. A motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14 calendar days of the issuance of the Examiner's decision/recommendation, not counting the day of issuance of the decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next working day. The requirements set forth herein regarding the time limits for filing of motions for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole discretion of the Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The Examiner, after a review of the matter, shall take such further action as he/she deems appropriate, which may include the issuance of a revised decision/recommendation. (*Tacoma Municipal Code 1.23.140.*)

NOTICE

This matter may be appealed to Superior Court under the terms of RCW Chapter 34.05, Part V. The petition for review must be filed within thirty (30) days after service of the final Order. *RCW 34.05.542.*

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