

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **TYLER SCOTT,**

HEX2021-012

4 **Appellant,**

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

5 **v.**

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

7 **Respondent.**

8

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10 **THIS MATTER** came on for hearing before JEFF H. CAPELL, the Hearing Examiner

11 for the City of Tacoma, Washington, on June 10, 2021.¹ Deputy City Attorney Jennifer Taylor

12 appeared representing Respondent City of Tacoma (the “City”), Animal Control and

13 Compliance (separately “Animal Control”). Present as witnesses for the City, were Megan

14 Ryan, and Animal Control and Compliance Officers Mia Salisbury, Robin Bowerman, and

15 Joseph Satter-Hunt.² Appellant Tyler Scott (“Appellant” or “Scott”) appeared at hearing *pro se*.

16 During the presentation of his case, without prior notice and over the City’s objection, Scott

17 moved to have Jamilyn Salas offer brief testimony in addition to his own. This request was

18 granted.

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21 ¹ Due to the current declared state of emergency related to the COVID-19 pandemic and Governor Inslee’s prohibition on public gatherings, this hearing was conducted by video teleconference with both internet video and telephonic access.

² For ease of reference, and without meaning any disrespect, after initial introduction of parties and witnesses, they will generally be referred to by last name only. Satter-Hunt did not end up offering testimony.

**FINDINGS OF FACT,
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1 From the evidence in the hearing record, the Hearing Examiner makes the following:

2 **FINDINGS OF FACT**

3 1. Appellant Scott currently resides within the Tacoma city limits at 1442 East
4 29th Street, Tacoma, WA 98404 (the “Subject Property”). Scott is the owner of a grayish
5 black and white colored Pit Bull named Nina (“Nina” or the “Dog”).

6 2. Animal Control issued a Potentially Dangerous Dog Notice for Nina, dated
7 April 26, 2021 (the “PDDN”). The PDDN imposed restrictions on Nina. *See Ex. R-1 for the full*
8 *list of restrictions originally imposed.* Animal Control imposed these restrictions in
9 conformance with applicable provisions of the Tacoma Municipal Code (“TMC”) and state
10 law.³ *Exs. R-1 and Ex. R-2; Salisbury Testimony, Bowerman Testimony.*

11 3. The PDDN was issued as the result of an incident that occurred “around noon” on
12 April 21, 2021, near 2806 East Portland Avenue in Tacoma, across the street from the Subject
13 Property. *Ryan Testimony; Exs. R-1~Ex. R-6.* Exhibit R-6 is a surveillance video showing the
14 incident that is the basis for the PDDN. The video was obtained shortly after the incident, from
15 a nearby business with which Ryan has an affiliation. No party to this appeal has disputed that
16 the video accurately depicts what took place among the dogs, Ryan, Scott, Salas and other
17 bystanders—at least visually. There is no audio.

18 4. Scott contended at the hearing that Nina never bit Ryan, and only barked at her.
19 This contention is the primary basis of his challenge to the PPDN. *Scott Testimony.* This
20 contention notwithstanding, it is clear from the testimony, video, and other evidence presented
21 at the hearing, and admitted to the record, that as Ryan was approaching her vehicle, two dogs

³ TMC 17.01.010.27, 17.04.050 and RCW 16.08.

1 ran at her from the Subject Property across the street, and in animated fashion, harassed her in a
2 manner that reasonably put her in fear. Ryan then moves back and forth in what appears to be
3 an attempt to get away from the dogs while they follow her jumping up on her several times.
4 After about 20 seconds of this, Scott appears and collects the dogs, who remain rather
5 animated. Salas assists Scott in retrieving the dogs near the midpoint of the street. It is
6 undisputed that Nina was one of the two dogs. *Ryan Testimony, Scott Testimony; Ex. R-1, Ex.*
7 *R-3, Ex. R-6.* At one point, after Scott and Salas take the dogs back across the street, Nina runs
8 back toward where Ryan was standing together with several bystanders across from Salas who
9 had come back to the scene by that point, but Salas intercepts her and takes her back across the
10 street once again. *Salas Testimony; Ex. R-6.* Salas testified that Nina came back across the
11 street out of concern for her (Salas) due to the heated discussion that was taking place at that
12 moment.

13 5. As alluded to above, the commotion attracted the attention of several bystanders
14 who came to Ryan's aid, one of whom called for emergency assistance. *Ryan Testimony;*
15 *Ex. R-6.* Tacoma Fire Department medical personnel responded to the scene first, and provided
16 some treatment to Ryan's bite wounds. Animal Control arrived shortly thereafter. *Ryan*
17 *Testimony, Salisbury Testimony; Ex. R-2.*

18 6. Ryan testified that when the dogs attacked her, they tried to pull her down by her
19 purse. Bite marks were photographed on her leather binder (portfolio). *Ryan Testimony; Ex. R-4.*
20 Ryan also testified that at least one of the dogs bit her on the left leg, but that she was unsure in
21 the commotion which dog bit her, or whether it was both. She testified that the dogs attempted

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1 to bite her right leg also. Photographs were taken of the bite injuries and Ryan received medical
2 treatment for these injuries, both on the scene and later at CHI Franciscan Urgent Care. *Id.*;
3 *Ex. R-3*. The video shows Ryan pointing to and being concerned with her left leg, and the
4 bystanders appear to examine her injuries. *Ex. R-6*.

5 7. Scott contends that only the other dog, Chief, bit Ryan and that he (Scott) could
6 see the whole incident as it took place because he had been out in his yard.⁴ Given the location
7 of Ryan's vehicle being essentially in between the location of the attack, and the Subject
8 Property, where Scott was, the Examiner finds it difficult to conclude that the entire incident—
9 even though only about 20 seconds in duration—would have been visible to Scott. *Scott*
10 *Testimony; Ex. R-6*. The video is not conclusive regarding which dog bit Ryan. Nevertheless, it
11 is not disputed that Ryan was, in fact, bit by at least one of the dogs. As will be discussed
12 further below, whether Nina actually bit Ryan is not dispositive in this appeal given Animal
13 Control's decision to issue a PDDN under TMC 17.01.010.27.b, and not a Dangerous Dog
14 notification.

15 8. Animal Control did impound both dogs on the day of the incident because a bite
16 had been inflicted, it was not certain that only one dog had engaged in biting, and if so which
17 dog it was. Scott testified that Nina was kept in impound for 25 days. Why the impound lasted
18 for that duration is unclear in the record, although Scott testified it took some effort to get Nina
19 released.

20 9. Any Conclusion of Law below which may be more properly deemed or considered
21 a Finding of Fact, is hereby adopted as such.

⁴ Salas supported this contention, but without any basis because she admitted she had not witnessed the incident herself.

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

2 **CONCLUSIONS OF LAW**

3 1. The Hearing Examiner has jurisdiction in this matter pursuant to Tacoma
4 Municipal Code (again, the “TMC”) 1.23.050.B.8 and 17.04.032.

5 2. Pursuant to TMC 17.04.032.B, in appeal proceedings before the Hearing
6 Examiner challenging a Potentially Dangerous Dog declaration, Animal Control bears the
7 burden of proving, by a preponderance of the evidence, that the animal in question meets the
8 definition of a Potentially Dangerous Dog. This definition is as follows:

9 [A] “potentially dangerous dog” means any dog which:

- 10 a. unprovoked, bites or injures a human or domestic animal on
11 public or private property; or
12 b. unprovoked, chases or approaches a person or domestic animal
13 upon the streets, sidewalks, or any public or private property in a
14 menacing fashion or apparent attitude of attack; or
15 c. has a known propensity, tendency, or disposition to attack
16 unprovoked, to cause injury, or to otherwise threaten the safety of
17 humans or domestic animals. *TMC 17.01.010.27.*

16 3. The above criteria are disjunctive. As a result, the City must only prove that one
17 of the three criteria was met for a designation to be upheld on appeal. Animal Control alleged
18 that subsection b. was the basis for its PDDN. *See Ex. R-1.*

19 4. When a dog is declared potentially dangerous, and that declaration is upheld after
20 a hearing, the Hearing Examiner has the authority to impose conditions or restrictions in
21 conformance with TMC Title 17 and RCW 16.08. *TMC 17.04.032, TMC 17.04.050.*

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1 5. Although provocation can be a defense to conduct that would otherwise make a
2 dog potentially dangerous, there was no evidence of provocation here. The evidence showed by
3 a preponderance that Nina⁵ approached Ryan in a menacing fashion with an apparent attitude
4 of attack on public right-of-way. Ryan was, in fact, attacked and bit. Scott contended that Nina
5 only barked at Ryan and therefore the PDDN should not be upheld. The video shows this to not
6 be accurate. Nina's participation may have been less than that of Chief in initial duration, but
7 Nina nonetheless engaged in behavior that meets the criteria set forth in TMC 17.01.010.27.b
8 above. Because Animal Control chose to use subsection b. as the basis for the PDDN, which
9 dog bit Ryan is not material to a decision on upholding the PDDN except insofar as the bite
10 shows that menacing behavior and an actual attack did occur. Scott's contention that Nina's
11 isolated behavior does not meet the criteria of subsection b. is not supported by the evidence.
12 Again, the evidence does show, by a preponderance, that Nina engaged in menacing behavior
13 and was a participating accomplice in the attack on Ryan, regardless of whether she landed a
14 bite.

15 6. In the end, it appears that both dogs benefitted from Animal Control not being
16 able to prove which dog inflicted the bite, or whether both dogs bit, because that inability led to
17 the issuance of Potentially Dangerous Dog Notices and not Dangerous Dog Notices, which
18 might have otherwise been the result.

19 7. Scott's contention, at the hearing, that Nina's 25 days in impound should be
20 sufficient penalty here is not supported by the law. There is no provision in the TMC, or in
21 state law, for "incarceration" of a dog as some sort of satisfaction for the behavior set forth in

⁵ Together with the other dog, Chief.

1 TMC 17.01.010.27.b. Likewise, time in impound does nothing to insure that future attacks do
2 not occur. Dogs, as smart as they are, likely do not equate time in impound as having any
3 correlation to their behavior, and so being impounded likely has no deterrent or corrective
4 effect. The restrictions set forth in the PDDN do correlate to deterrence, however. They serve to
5 protect members of the community from menacing behavior and attacks because a restricted
6 dog should not be able to get loose and engage in such behavior if the restrictions are met. The
7 restrictions also protect the life of the dog from coming into possible jeopardy by preventing
8 future attacks that could lead to more severe consequences than those imposed here.

9 8. Any Finding of Fact, which may be more properly deemed or considered a
10 Conclusion of Law, is hereby adopted as such.

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

13 **ORDER**

14 Based on the above Findings and Conclusions, the present appeal is DENIED and the
15 City of Tacoma's Potentially Dangerous Dog Notice issued to Nina is UPHeld. All
16 restrictions must be adhered to as set forth in the Potentially Dangerous Dog Notice dated
17 April 26, 2021.

18 **DATED** this 16th day of June, 2021.

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21 **JEFF H. CAPELL, Hearing Examiner**

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1 **NOTICE**

2 **RECONSIDERATION/APPEAL OF EXAMINER'S DECISION**

3 **RECONSIDERATION TO THE OFFICE OF THE HEARING EXAMINER:**

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

20 **NOTICE**

21 This matter may be appealed to Superior Court under applicable laws. If appealable, the
petition for review likely will have to be filed within thirty (30) days after service of the
final Order from the Office of the Hearing Examiner.

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