

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **TIMOTHY BAERG,**

**HEX2023-003**

4 **Appellant,**

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

5 **v.**

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

7 **Respondent.**

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10 **THIS MATTER** came on for hearing on May 18, 2023,<sup>1</sup> before JEFF H. CAPELL, the  
11 Hearing Examiner for the City of Tacoma, Washington. Deputy City Attorney Jennifer Taylor  
12 represented the City of Tacoma, Animal Control and Compliance (“Animal Control” or  
13 “ACC”) at the hearing. Timothy Baerg (“Appellant” or “Baerg”) appeared at hearing *pro se*.  
14 Witnesses were sworn and testified. Exhibits were submitted and admitted, and arguments  
15 were presented and considered.

16 Witnesses testifying at the hearing were as follows:

- 17
- 18 • Mara Gimse;
  - Eric O’Donnell ACC Officer; and
  - Timothy Baerg.<sup>2</sup>

19 From the evidence in the hearing record, the Hearing Examiner makes the following:

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<sup>1</sup> Effective October 10, 2022, State and City in-person meeting restrictions were lifted, however, the Appellant requested an appeal hearing solely via Zoom. This hearing was conducted over Zoom at no cost to any participant with video, internet audio, and telephonic access.

<sup>2</sup> Individuals who participated in the hearing may be referred to by last name only hereafter. No disrespect is intended.

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

1 **FINDINGS OF FACT**

2 1. Timothy Baerg currently resides within the Tacoma city limits at 821 South  
3 Yakima Avenue #210, Tacoma, WA 98405. He owns a black and white spayed female  
4 Husky name “Luna.”<sup>3</sup> *Baerg Testimony; Ex. R-1.*

5 2. Animal Control issued a Potentially Dangerous Dog Notice for Luna dated  
6 January 24, 2023 (the “PDDN”). The PDDN imposed restrictions on Luna. *See Ex. R-1 for the*  
7 *full list of restrictions originally imposed.* Animal Control imposed these restrictions in  
8 conformance with applicable provisions of the Tacoma Municipal Code (“TMC”) and state  
9 law.<sup>4</sup> *O’Donnell Testimony; Ex. R-1.*

10 3. The PDDN was issued as the result of an incident that occurred on December 29,  
11 2022, at around 1:52 pm, in the underground parking garage of the St. James apartments at 821  
12 South Yakima (the “Incident”). *Gimse Testimony, Baerg Testimony; Exs. R-1 and, R-4.*

13 4. At the time of the Incident, Mara Gimse was exiting the apartment building where  
14 both she and Baerg reside in order to walk her Australian Shepard Zoey. She had entered the  
15 underground parking garage on her way out,<sup>5</sup> and as she did so she saw Luna approaching her  
16 and Zoey loose and apparently unaccompanied. Luna may have had on a leash, but no one was  
17 controlling the leash or Luna at that point. *Gimse Testimony; Ex. R-4.*

18 5. Immediately prior, Luna had been with Baerg in the garage as he was working on  
19 his vehicle. According to Baerg, Luna was on a leash and being restrained by Baerg’s foot  
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21 <sup>3</sup> But see Finding of Fact (“FoF”) 8 below.

<sup>4</sup> TMC 17.01.010.27, TMC 17.04.050 and RCW 16.08.

<sup>5</sup> During Appellant Baerg’s cross-examination of Gimse, he began to make statements regarding whether Gimse was allowed to be in the parking garage. Because these were statements and not questions, and because the statements seemed to be based on hearsay, Baerg was cut off. During presentation of his own case, he offered no evidence on this topic, nor did he argue it again.

1 holding the leash down, but somehow she got loose as Gimse and Zoey entered the garage.

2 Baerg indicated that he had some of Luna's food on the floor while in the garage. *Baerg*  
3 *Testimony*.

4 6. Luna approached Gimse and Zoey from approximately three parking stalls'  
5 distance. Gimse yelled, "Get your dog!" as Luna approached, presuming Luna's owner to be  
6 present in the garage, but Luna made it to her location and attacked Zoey. In the process, Gimse  
7 fell and hit her head/face on one of the garage cement pillars. She landed between the dogs.  
8 Somewhere along the way, Gimse saw Luna bite Zoey on her back/leg area. Eventually, Baerg  
9 appeared and retrieved Zoey, ending any further physical contact between the dogs. Baerg did  
10 not see what happened prior to his retrieving Luna. *Gimse Testimony, Baerg Testimony; Ex. R-*  
11 *4*.

12 7. Gimse went to urgent care shortly after the incident and was diagnosed with an  
13 acute concussion. *Gimse Testimony; Ex. R-6*. When Gimse returned home, she found Zoey  
14 bleeding and so took her to receive veterinary care. Zoey was found to have laceration wounds  
15 that required sutures, drainage, and medication. *Gimse Testimony; Ex. R-5*.

16 8. By his own admission, Baerg did not see Luna's attack on Zoey. Baerg testified  
17 that he does not believe Luna is a potentially dangerous dog, but he could not refute that the  
18 attack happened or provide any evidence of provocation.<sup>6</sup> By the end of the hearing, Baerg  
19 indicated that Luna has been rehomed at present with his mother in Puyallup and that he is not  
20 contesting the restrictions imposed in the PDDN.  
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<sup>6</sup> Baerg apparently made statements to Gimse about Luna's food having played some role in provoking the Incident, but the evidence admitted and testimony taken do not support that, if for no other reason than that Gimse and Zoey were never in close proximity to Luna's food before Luna approached them.



1 domestic animal on public **OR** private property.” [Emphasis added.] *TMC 17.01.010.27.a; Ex.*  
2 *R-1.*

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

6 5. “Preponderance of the evidence” means that the trier of fact is convinced that it is  
7 more probable than not that the fact(s) at issue is/are true.<sup>7</sup> The preponderance of the evidence  
8 standard is at the low end of the spectrum for burden-of-proof evidentiary standards in the U.S.  
9 legal system, and is not particularly difficult to meet.<sup>8</sup> Here, the material facts of the Incident  
10 are not in dispute and the City’s evidence meets the required burden.

11 6. The evidence in the record does show that Luna attacked Zoey without  
12 provocation, and that both Gimse and Zoey were injured, thereby causing Luna to meet the  
13 definition of being a potentially dangerous dog. *FoF 6 and 7.*

14 7. The restrictions imposed by Animal Control in the PDDN are appropriate here,  
15 and as set forth above, were no longer contested by the time of the hearing’s conclusion. *FoF 8.*  
16 The Examiner sees no need to revise them. Restrictions such as those imposed here serve to  
17 protect members of the community (and their pets) from dangerous behavior and attacks  
18 because a dog so restricted should not be able to get loose and engage in dangerous behavior if  
19 the restrictions are met, and even in cases where a dog gets loose, the muzzle should still  
20 provide needed protection. The restrictions also serve to protect the life of the dog(s) so  
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<sup>7</sup> *Spivey v. City of Bellevue*, 187 Wn.2d 716, 733, 389 P.3d 504, 512 (2017); *State v. Paul*, 64 Wn. App. 801, 807, 828 P.2d 594 (1992).

<sup>8</sup> *In re Custody of C.C.M.*, 149 Wn. App. 184, 202-203, 202 P.3d 971, 980 (2009); *Mansour v. King County*, 131 Wn. App. 255, 266, 128 P.3d 1241, 1246-1247 (2006).

1 restricted from coming into possible greater jeopardy by preventing future incidents that could  
2 lead to more severe consequences (such as euthanization, which is not at issue here).

3 8. Luna's relocation to Puyallup takes her out of the City's jurisdiction for so long as  
4 she remains outside the city limits. *FoF 8*. This relocation notwithstanding, if Luna returns to  
5 the city limits of Tacoma, she will be subject to the PDDN and the restrictions set forth therein  
6 and herein.

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

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

11 **ORDER**

12 Based on the above Findings and Conclusions, the present appeal is DENIED and the  
13 City of Tacoma's Potentially Dangerous Dog Notice issued to Luna is UPHELD.

14 Luna is subject to the following restrictions which must be adhered to at all times when Luna  
15 is present in the city of Tacoma:

- 16 1) Luna must not be outside a proper enclosure on the premises of the owner,  
17 or be inside the premises of the owner; and
- 18 2) Luna must not go beyond the proper enclosure on the premises of the owner  
19 unless she is securely leashed and humanely muzzled in a manner that will  
20 prevent her from biting any person or animal and she must be under the  
21 physical control of a responsible person; and
- 3) A clearly visible warning sign informing that there is a potentially dangerous  
dog on the property must be posted conspicuously and such sign must  
include a warning symbol that informs children of the presence of a  
potentially dangerous dog.

1 The following notification obligations of the PDDN also remain in full force and  
2 effect:

3 The owner shall immediately notify Tacoma Animal Control, followed by written  
4 notice, when a dog which has been classified as potentially dangerous:

5 A. is loose or unconfined; provided that, the owner shall first call 911;

6 B. has bitten a human being or attacked another animal; provided, the  
owner shall first call 911;

7 C. is sold or given away, or dies; or

8 D. is moved to another address.

9 The foregoing notification requirements are meant to apply if Luna is again within the  
10 Tacoma city limits.

11 **DATED** this 23rd day of May, 2023.

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

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.