

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **ROBERT MILLER,**

**HEX2023-004**

4 **Appellant,**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
DECISION 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 on March 23, 2023,<sup>1</sup> before JEFF H. CAPELL,  
11 the Hearing Examiner for the City of Tacoma, Washington. Deputy City Attorney Jennifer  
12 Taylor represented the City of Tacoma, Animal Control and Compliance (“Animal Control” or  
13 “ACC”) at the hearing. Appellant Robert Miller (“Appellant” or “Miller”) appeared at hearing  
14 *pro se*. Witnesses were sworn and testified. Exhibits were submitted and admitted, and  
15 arguments were presented and considered.

16 Witnesses testifying at the hearing were as follows (in order of appearance):

- 17
- Charlee Jones
  - Eric O’Donnell, ACC Officer
  - Robert Miller, and
  - Casey Acklin.<sup>2</sup>
- 18
- 19

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<sup>1</sup> The hearing was conducted in-person in the City Council Chambers of the Tacoma Municipal Building located at 747 Market Street in the City of Tacoma with additional participation available at no cost over Zoom.

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

2  
3 **FINDINGS OF FACT**

4 1. Appellant Miller currently resides within the Tacoma city limits at 3617  
5 Tacoma Avenue S., Tacoma, WA 98408 (the “Tacoma Ave. Property”). He is the owner of a  
6 licensed brown brindle and white male pit bull-type dog named Buddy. *O’Donnell*  
7 *Testimony, Jones Testimony, Miller Testimony; Ex. R-1, Ex. R-12.*

8 2. Animal Control issued a Potentially Dangerous Dog Notice for Buddy dated  
9 February 14, 2023 (the “PDDN”), that imposed restrictions on Buddy. *See Ex. R-1 for the full*  
10 *list of restrictions originally imposed.* Animal Control imposed these restrictions in  
11 conformance with applicable provisions of the Tacoma Municipal Code (“TMC”) and state  
12 law.<sup>3</sup> *O’Donnell Testimony; Ex. R-1.*

13 3. The PDDN was issued primarily as the result of an incident that occurred on  
14 February 8, 2023, at around 10:30 am, in the vicinity of the Tacoma Ave. Property.<sup>4</sup> A second  
15 incident occurred that same day at 615 South G Street, #10, Tacoma, WA 98504 (separately the  
16 “Second Incident”), the events of which also contributed to ACC’s decision to issue the PDDN  
17 to Miller regarding Buddy. *Jones Testimony, Miller Testimony, Acklin Testimony, O’Donnell*  
18 *Testimony; Exs. R-1~R-4, Ex. R-7.*

19 4. On February 8, 2023, at around 10:30 am, Charlee Jones was taking both her

20 //

21 <sup>3</sup> TMC 17.01.010.27, TMC 17.04.050 and RCW 16.08.

<sup>4</sup> The events of February 8, 2023 that gave rise to the PDDN being issued are referred to hereinafter inclusively as the “Incident.” The Examiner notes that a considerable amount of testimony not recounted here as a finding of fact was testified to by the parties. Findings of Facts are not intended to be a complete retelling, but rather are the facts that are germane to the issue presented in the hearing, i.e., whether the PDDN should be upheld.

1 one-year-old German Shepherd (Milah), and her one-year-old Yorkshire Terrier (Otto) on a  
2 walk. Her course took her across the front of the Tacoma Ave. Property along the sidewalk.  
3 Both Buddy and Miller were present at this property when Jones and her dogs passed by, as  
4 was Acklin. *Jones Testimony, Acklin Testimony, Miller Testimony; Ex. R-4.*

5 5. As the Jones party of three passed by the Tacoma Ave. Property, Buddy ran out to  
6 Jones' dogs first attempting to bite Milah at the back of the neck. Jones pulled the German  
7 Shepherd away and attempted to shield Buddy away from her dogs. She then called in the  
8 direction of Buddy's perceived owner asking to "please come get your dog!" *Jones Testimony;*  
9 *Ex. R-4.*

10 6. Jones then tried to cross the street to put distance between her dogs and Buddy,  
11 but before she could do so, Buddy managed to grab Otto by the head and pull on him. Buddy  
12 shook Otto while Otto was in his grasp. Jones again appealed to the person/people present at  
13 the Tacoma Ave. Property to help get Buddy away from her dogs. *Id.*

14 7. Acklin responded first and then Miller joined the effort and they eventually pried  
15 Otto away from Buddy's grasp. After what Jones reported as an acrimonious exchange between  
16 herself and either Miller and Acklin,<sup>5</sup> Jones left to get treatment for Otto who was bleeding.  
17 *Acklin Testimony, Jones Testimony; Ex. R-4.*

18 8. The same day of the Incident, Otto was treated at Tacoma Animal Hospital for  
19 severe wounds to his head, neck and leg areas at significant expense. At the time of the hearing  
20 Otto was still recovering and suffering from the effects of the injuries he sustained from Buddy.  
21 *Jones Testimony; Ex. R-5, Ex. R-6.*

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<sup>5</sup> Jones was unsure which of the two she had engaged with in conversation.



1           3.    The above criteria are disjunctive. As a result, the City must only prove that one  
2 of the three criteria were met for a designation to be upheld on appeal. In the PDDN, Animal  
3 Control checked subsection a. as the basis for issuance. *Ex. R-1.*

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

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

12           6.    The evidence in the record does show that Buddy attacked Otto without  
13 provocation causing Otto injury, thereby meeting the definition of being a potentially  
14 dangerous dog. *TMC 17.01.010.27.a.*

15           7.    The restrictions imposed by Animal Control in the PDDN are appropriate here.  
16 The Examiner sees no need to revise them. Nothing presented at the hearing warrants revision.  
17 Although both Acklin and Miller indicated that Buddy has never been involved in anything  
18 similar to the Incident before, the events of February 8, 2023, are serious enough to justify the  
19 restrictions imposed. Restrictions such as those imposed here serve to protect members of the  
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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).

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

1 community (and their pets) from dangerous behavior and attacks because a dog so restricted  
2 should not be able to get loose and engage in dangerous behavior if the restrictions are met.  
3 The bond/insurance requirement is intended to protect potential victims going forward. The  
4 restrictions also serve to protect the life of a dog so restricted from coming into possible greater  
5 jeopardy by preventing future attacks that could lead to more severe consequences (such as  
6 euthanization).

7 8. 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 Buddy is UPHeld. Buddy is  
14 subject to the following restrictions which must be adhered to at all times:

15 1) Dog Buddy must not be outside a proper enclosure on the premises of the  
16 owner; or

17 2) Dog Buddy must not go beyond the proper enclosure on the premises of the  
18 owner unless Buddy is securely leashed and humanely muzzled in a manner  
19 that will prevent him from biting any person or animal and he is under the  
20 physical control of a responsible person; and

21 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 potentially dangerous  
dog; and

4) Appellant Miller must provide (1) evidence of a surety bond issued by a  
surety insurer qualified under chapter 48.28 RCW in a form acceptable to the  
animal control authority in the sum of at least two hundred fifty thousand

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

1 dollars, payable to any person injured by the potentially dangerous dog: *or* (2) a  
2 policy of liability insurance, such as homeowner's insurance, issued by an  
3 insurer qualified under title 48 RCW in the amount of at least two hundred fifty  
4 thousand dollars (\$250,000), insuring the owner for any personal injuries  
5 inflicted by the potentially dangerous dog.

6  
7 Once the requirement of paragraph 4) above has been met, Buddy may be released  
8 from the Tacoma & Pierce Humane Society. If Appellant finds he is unable meet this  
9 requirement, he may contact the Office of the Hearing Examiner (with cc to Animal Control)  
10 to request a conference between the parties to discuss the consequence of this inability, or  
11 other alternatives.

12 The following notification obligations of the PDDN also remain in full force and  
13 effect:

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

- 16 A. is loose or unconfined; provided that, the owner shall first call 911;
- 17 B. has bitten a human being or attacked another animal; provided, the  
18 owner shall first call 911;
- 19 C. is sold or given away, or dies; or
- 20 D. is moved to another address.

21 **DATED** this 28th day of March, 2023.

  
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**JEFF H. CAPELL, Hearing Examiner**

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

- 7 -

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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.

**FINDINGS OF FACT,  
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