

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **RUSS RATLIFF,**

HEX2020-003

4 **Appellant,**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
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 before JEFF H. CAPELL, the Hearing Examiner

11 for the City of Tacoma, Washington, on February 27, 2020, at the Tacoma Municipal Building,

12 747 Market Street, Tacoma, Washington. Deputy City Attorney Jennifer Taylor represented

13 Respondent City of Tacoma (the “City”), Animal Control and Compliance (separately “Animal

14 Control”). Appellant Russ Ratliff (“Appellant” or “Ratliff”) appeared at hearing *pro se*.

15 Witnesses were sworn and testified. Exhibits were submitted and admitted, and arguments

16 were presented and considered.

17 Witnesses testifying at the hearing were as follows:

18 Lydia Ross, Scott Birdseye, Anna Birdseye, Animal Control Officer Robin

19 Bowerman, and Appellant Russ Ratliff.

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

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

2 **FINDINGS OF FACT¹**

3 1. Appellant Ratliff currently resides within the city limits of Tacoma at 521
4 South 51st Street, Tacoma, WA 98409 (the “Subject Property”). Ratliff is the owner of a
5 sable colored German Shepherd named Sufjan.

6 2. Animal Control issued a Potentially Dangerous Dog Notice for Sufjan dated
7 January 8, 2020 (the “PDDN”). The PDDN imposed restrictions on Sufjan. *See Ex. C-1 for the*
8 *full 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.² *Exs. C-1 and Ex. C-2; Bowerman Testimony.*

11 3. The PDDN was issued as the result of an incident that occurred on October 30,
12 2019, near the Subject Property. *Ross Testimony, Bowerman Testimony; Exs. C-1~Ex. C-3.*

13 4. On October 30, 2019, Lydia Ross was living near the Subject Property at 518
14 South 49th Street in the city of Tacoma. *Ross Testimony; Ex. C-3.* Ross was employed by Anna
15 and Scott Birdseye to walk their two dogs, Frankie and Stanley five days a week. *Id.* Frankie (5
16 to 6 lbs.) and Stanley (13 lbs.) are both small terrier mix dogs (collectively the “Birdseye
17 Dogs”). *Id., Scott Birdseye Testimony.*

18 5. Around 12:25 pm on October 30, 2019, Ross was walking the Birdseye Dogs
19 along the sidewalk in the immediate vicinity of the Subject Property. *Ross Testimony.* Both
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21 ¹ It is noted at the outset that Appellant did not contest any material facts that underlie the City’s issuance of the PDDN. Rather, he appealed in order to contest the imposition of restrictions on Sufjan. Much more was testified to and presented in the City’s Exhibits than are listed as Findings of Fact here. Findings of Fact are limited to facts both material and relevant to the elements of a potentially dangerous dog under Tacoma Municipal Code (“TMC”) 17.01.010.27.

² TMC 17.01.010.27, 17.04.050 and RCW 16.08.

1 were harnessed and on leashes. *Id.* The Birdseye Dogs were in the right-of-way planting strip
2 when Sufjan exited the Subject Property unrestrained heading straight for the Birdseye Dogs.
3 *Id.* Ross lifted them into the air by their leashes in an effort to protect them, but Sufjan jumped
4 up and bit Frankie. *Id.* Stanley slipped out of his harness and ran from the scene, leading Sufjan
5 to follow, thus ending the attack on Frankie. *Id.* Stanley was not attacked. *Id.*

6 6. Sufjan’s bite left Frankie with a severe laceration to his abdomen that required
7 three surgical procedures to address. *Scott Birdseye Testimony; Exs. C-6 and C-7.*

8 7. Ratliff testified that, as a UPS employee, he was trained to expect all dogs to be
9 potentially dangerous.³ He testified that in his work he has encountered many dogs of various
10 breeds and sizes, and that he has experienced many incidents where dogs acted aggressively.
11 He offered his opinion that he believes all dogs are indeed potentially dangerous, and that on
12 the day of the incident, Sufjan acted no differently than any other dog would have.

13 8. Ratliff further testified that he thinks the restrictions imposed by the PDDN are
14 inhumane. Ratliff indicated that, by his appeal, he is only contesting the PDDN restrictions and
15 the label of “Potentially Dangerous Dog” being applied to Sufjan because he believes they will
16 make it more difficult to rehome Sufjan.

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

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

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³ Findings of Fact 7 and 8 largely recount Ratliff’s testimony which is in the nature of argument. It is a fact that Ratliff testified as above, but the Examiner does not find necessarily that Ratliff’s contentions are factually accurate in all circumstances.

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

1 **CONCLUSIONS OF LAW**

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

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

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

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

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

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

21 5. There was no evidence of provocation here. The evidence showed by a

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

1 preponderance that Sufjan bit Frankie causing severe injuries while Frankie was present on
2 public right-of-way.

3 6. Ratliff's plea in this appeal was to not have the Potentially Dangerous Dog label
4 and restrictions applied to Sufjan because that would make rehoming the dog more difficult.
5 Neither the restrictions, nor the label require Ratliff to rehome Sufjan. If the restrictions are
6 abided, Sufjan could stay living in the Ratliff home. On the other hand, if the City proves its
7 case—as it has here—the Examiner does not have the flexibility to ignore the proven facts and
8 lift the Potentially Dangerous Dog Designation. The Examiner does have some flexibility in
9 tailoring restrictions, but under the circumstances here, the Examiner concludes that Animal
10 Control's recommended restrictions are appropriate.

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

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

15 **ORDER**

16 Based on the above Findings and Conclusions, the present appeal is DENIED and the
17 City of Tacoma's Potentially Dangerous Dog Notice issued to Sufjan is UPHeld. All
18 restrictions must be adhered to as set forth in the Potentially Dangerous Dog Notice issued on
19 January 8, 2020.

20 **DATED** this 10th day of March, 2020.

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JEFF H. CAPELL, Hearing Examiner

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

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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 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,
CONCLUSIONS OF LAW,
AND ORDER**