

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **MICHAEL BROWN,**

**HEX2020-013**

4 **Appellant,**

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

5 **v.**

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

7 **Respondent.**

8  
9  
10 **THIS MATTER** came on for hearing before JEFF H. CAPELL, the Hearing Examiner  
11 for the City of Tacoma, Washington, on April 23, 2020.<sup>1</sup> Deputy City Attorney Jennifer Taylor  
12 appeared representing Respondent City of Tacoma (the “City”), Animal Control and  
13 Compliance (separately “Animal Control”). Also present were City witnesses, Animal Control  
14 and Compliance Officers Mia Salisbury and Eric O’Donnell.<sup>2</sup> Appellant Michael Brown  
15 (“Appellant” or “Brown”) appeared at hearing *pro se*. Witnesses were sworn and testified.  
16 Exhibits were submitted and admitted, and arguments were presented and considered.<sup>3</sup>

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

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19 <sup>1</sup> 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 teleconference with both internet video and telephonic access. All parties were agreeable to conducting the hearing in this manner.

20 <sup>2</sup> For ease of reference, and without meaning any disrespect, after initial introduction of parties and witnesses, they will be referred to by last name only.

21 <sup>3</sup> Due the aforementioned unusual present circumstances and because the Appellant had no opportunity to cross-examine the City’s lone firsthand witness, at the request of the Appellant, the Examiner kept the hearing record open for one week to allow the Appellant the opportunity to submit a declaration from Phyllis Bowman potentially addressing provocation from a firsthand perspective. Brown submitted a written statement from Bowman, along with another written statement from Kristie Porter on April 29, 2020. Thereafter, on April 30, 2020, Brown submitted three photos. On May 4, 2020, the City submitted a rebuttal statement, whereupon the record closed.

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

1 **FINDINGS OF FACT**

2 1. Appellant Michael Brown owns a male fawn-colored Pit Bull named Maui  
3 (“Maui” or “the Dog”). Brown resides in the City of Tacoma at 5812 South M Street (the  
4 “Subject Property”). *O’Donnell Testimony; Salisbury Testimony; Exs. R-1~R-3, Ex. R-6.*

5 2. This appeal arises from Animal Control’s having issued a Potentially Dangerous  
6 Dog Notice (“PDDN”) for Maui, and having imposed restrictions on him in the PDDN. *See Ex.*  
7 *R-1 for the full list of restrictions originally imposed.* Animal Control imposed these  
8 restrictions in conformance with applicable provisions of the Tacoma Municipal Code  
9 (“TMC”) and state law.<sup>4</sup> *Id.*

10 3. The PDDN was issued as the result of an incident that occurred on February 5,  
11 2020, at or near the Subject Property. *O’Donnell Testimony; Salisbury Testimony; Exs. R-1~R-*  
12 *3, Ex. R-6.*

13 4. Based on the “Handwritten Statement Form” of Michelle Ketron (*Exhibit R-3,*  
14 *also referred to as the “Ketron Statement”*), Ketron was walking on the opposite side of M  
15 Street from the Subject Property<sup>5</sup> around 2:07 pm on the way to pick her daughter up from  
16 school. While walking near the Subject Property one of Brown’s dogs came to the fence of the  
17 front yard and “barked and growled aggressively” and then followed Ketron’s progress along  
18 the fence line. *Exhibit R-3.*

19 \_\_\_\_\_  
20 <sup>4</sup> TMC 17.01.010.27, 17.04.050 and RCW 16.08.

21 <sup>5</sup> There was some disagreement between the parties about which side of M Street Ketron was walking on when the incident occurred. Ketron reported to Animal Control that she was on the opposite side from the Subject Property. *Ex. R-3.* The Bowman statement indicates that “A dark haired caucasian [sic] woman [was] walking along the outside of the fence.” The Bowman statement is largely inconclusive on many points, including, from the outset, Ketron’s identity. Nothing in the Bowman statement positively identifies Ketron as the person Bowman saw. Ultimately, what side of the street Ketron was walking on is not dispositive of anything. Ketron’s actions relevant to any provocation is at issue here.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
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1           5.     The first dog was soon joined by a second. Both barked at Ketron. One then  
2 pushed a gate in the fence open enough to exit the yard and both dogs did so. They then  
3 approached and attacked Ketron causing wounds to her hands, arm and legs, as well as causing  
4 a tear to her jacket. *O'Donnell Testimony; Salisbury Testimony; Exs. R-2~R-6.* Ketron's  
5 injuries are shown in the Exhibit R-6 photographs. Ketron sought medical attention first from  
6 the nurse at her daughter's school (Giaudrone Middle School), and then at MultiCare West  
7 Tacoma Urgent Care. *O'Donnell Testimony; Ex. R-2~Ex. R-4.*

8           6.     Ketron called what she described as "the non emerg line" to report the attack on  
9 her way to Giaudrone Middle School. *Ex. R-3.* Animal Control Officers O'Donnell and  
10 Salisbury were dispatched to the Subject Property as a result of Ketron's call, and ultimately  
11 met up with her at the school where they obtained her story and witnessed her injuries and the  
12 damage to her jacket. *O'Donnell Testimony; Salisbury Testimony; Ex. R-2.*

13           7.     During O'Donnell and Salisbury's contact with Ketron and Brown, Ketron  
14 identified Maui as one of the two dogs that bit her. *Id.*

15           8.     Brown testified/argued that he thought something must have provoked Maui for  
16 the attack on Ketron to have occurred. He did not witness the attack, however. *Brown*  
17 *Testimony.* The Bowman statement does not speak to provocation—only that "on the day and  
18 time in question," she noticed "A dark haired caucasian [sic] woman walking along the outside  
19 of the fence" and that Brown's dogs "got out." *Ex. A-1.* It is inconclusive whether the woman  
20 Bowman saw is Ketron. Bowman makes no mention of the dogs attacking this woman nor does  
21 she mention anything that could be considered provocation. Walking along someone's fence

1 line does not constitute provocation sufficient to justify a dog attack.

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

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

5 **CONCLUSIONS OF LAW**

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

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

12 A “potentially dangerous dog” means any dog which:

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

21 3. The above criteria are disjunctive. As a result, the City must only prove that one  
of the three criteria were met for a designation to be upheld on appeal. Animal Control alleged  
subsection a. above as the basis for the PDDN issued to Brown regarding Maui.

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

4 5. The City presented evidence<sup>6</sup> showing by a preponderance that the attack occurred  
5 and caused the injuries recounted above (*FoF 5*).

6 6. Brown presented no evidence refuting the attack. He argued that provocation must  
7 have occurred. Argument is not evidence, however,<sup>7</sup> and Brown's actual evidence did not show  
8 that the attack was provoked.


9 7. 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 Notices issued to Maui is UPHELD. All  
16 restrictions set forth in the Potentially Dangerous Dog Notice must be adhered to accordingly.

17 **DATED** this 6th day of May, 2020.

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19 \_\_\_\_\_  
20 **JEFF H. CAPELL, Hearing Examiner**

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<sup>6</sup> The Ketron Statement (Exhibit R-3) and the testimony of O'Donnell and Salisbury, together with Exhibits R-4 and R-5 most germanely.

<sup>7</sup> *Jones v. Hogan*, 56 Wn.2d 23, 31-32, 351 P.2d 153, 159 (1960); *Hollins v. Zbaraschuk*, 200 Wn. App. 578, 594, 402 P.3d 907, 915 (2017); *State v. Frost*, 160 Wn.2d 765, 782, 161 P.3d 361, 370 (2007).

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

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 appealable to the Pierce County Superior Court under applicable laws.  
If appealable, the petition for review likely will have to be filed within thirty (30) days after  
service of this Order from the Office of the Hearing Examiner.

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