



City of Tacoma  
Hearing Examiner

September 5, 2019

José I. Rodriguez  
3318 South K Street  
Tacoma, WA 98418-4020  
[joserodriguezi@yahoo.com](mailto:joserodriguezi@yahoo.com)  
(Electronic & First Class Mail Delivery)

Jennifer Taylor, Deputy City Attorney  
Office of the Tacoma City Attorney  
747 Market Street, Room 1120  
Tacoma, WA 98402-3701  
[jtaylor@ci.tacoma.wa.us](mailto:jtaylor@ci.tacoma.wa.us)  
(Electronic & Interoffice Mail Delivery)

**Re: *José I. Rodriguez v. City of Tacoma, Animal Control and Compliance***  
**File No.: HEX2019-015 (LU19-100615)**

Dear Parties,

In regard to the above referenced matter, please find attached the Hearing Examiner's Findings of Fact, Conclusions of Law, and Order entered on September 5, 2019.

Sincerely,

Louisa Legg  
Office Administrator

Enclosure (1): Findings, Conclusions, and Order

Cc: Electronic Mail Delivery

Joseph Satter-Hunt, Animal Control and Compliance Supervisor  
Angie Krupa, Legal Assistant

**CERTIFICATION**

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED September 5, 2019, at Tacoma, WA.

1 OFFICE OF THE HEARING EXAMINER

2 CITY OF TACOMA

3 JOSÉ I. RODRIGUEZ,

HEX2019-015

4 Appellant,

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

5 v.

6 CITY OF TACOMA,  
7 ANIMAL CONTROL AND  
8 COMPLIANCE,

9 Respondent.

10 THIS MATTER came on for hearing before JEFF H. CAPELL, the Hearing Examiner  
11 for the City of Tacoma, Washington, on August 1, 2019, 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 José I. Rodriguez (“Appellant” or “Rodriguez”) appeared at hearing *pro*  
15 *se*. Witnesses were sworn and testified. Exhibits were submitted and admitted, and arguments  
16 were presented and considered. Those who offered testimony at the hearing are as follows:

17 City of Tacoma

18 Rachel Zakalik-Williams  
19 ACC Officer Robin Bowerman  
ACC Officer Eric O’Donnell

20 Appellant

21 José I. Rodriguez  
Andreina Montes

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

City of Tacoma  
Office of the Hearing Examiner  
Tacoma Municipal Building  
747 Market Street, Room 720  
Tacoma, WA 98402-3768  
Hearing.examiner@cityoftacoma.org  
Ph: (253) 591-5195

- 1 -  
**ORIGINAL**

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

2 **FINDINGS OF FACT**

3 1. This appeal arises from Animal Control's having issued a Potentially Dangerous  
4 Dog Notice (the "PDDN") for Appellant's dog Jefe, a blue Staffordshire bull terrier. The PDDN  
5 imposes restrictions on Jefe that must be complied with unless the PDDN is found to have been  
6 issued in error. *See Ex. R-1 for the full list of restrictions originally imposed.* Animal Control  
7 imposed these restrictions in conformance with applicable provisions of the Tacoma Municipal  
8 Code ("TMC") and state law.<sup>1</sup> *Bowerman Testimony, O'Donnell Testimony; Ex. R-1.*

9 2. The PDDN was issued based on an incident that occurred in the morning hours of  
10 May 5, 2019, near the 3400 block of South J Street. *Ex. A-1, Ex. R-1, Ex. R-2.*

11 3. On May 5, 2019, around 8:30 am, Montes and Jefe exited the home Montes shares  
12 with Rodriguez to take Jefe for a walk. Jefe had not been leashed before exiting the house to the  
13 front porch. Jefe was having difficulty with harnesses/collars at the time due to a recent surgery  
14 on his neck. *Montes Testimony.*

15 4. Before Montes could get Jefe leashed, a nearby flock of pigeons caught his  
16 attention and he bolted toward them. When Montes tried to retrieve him, he playfully evaded her  
17 for approximately five (5) minutes. The chase led both Montes and Jefe to an area across from  
18 South 34<sup>th</sup> Street, whereupon Zakalik-Williams and her dog Sheba appeared nearby, also being  
19 out for a walk. *Montes Testimony, Zakalik-Williams Testimony; Ex. A-1, Ex. R-3.*

20 5. When Jefe saw Zakalik-Williams and Sheba across the street, he approached them  
21 without any invitation or apparent provocation from Zakalik-Williams or Sheba. *Testimony*

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<sup>1</sup> TMC 17.01.010.27, 17.04.050 and RCW 16.08.090.

1 from Montes and Zakalik-Williams conflicts over whether Jefe approached Zakalik-Williams  
2 and Sheba in “a menacing fashion or apparent attitude of attack.” *TMC 17.01.010.27.b*. Montes  
3 indicated that Jefe’s “tail started wagging and he ran towards them.” *Ex. A-1*. Zakalik-Williams  
4 stated that Jefe approached them “aggressively.” *Ex. R-3*. Zakalik-Williams testified that she  
5 was scared as Jefe approached and asked Montes to “please get your dog.” *Ex. R-3*. Montes’  
6 own statement confirms that Zakalik-Williams appeared frightened at Jefe’s approach. *Montes*  
7 *Testimony; Ex. A-1*. Montes called out to Zakalik-Williams that Jefe is friendly. *Zakalik-*  
8 *Williams Testimony, Montes Testimony; Ex. A-1, Ex. R-3*.

9           6. Zakalik-Williams’ and Montes’ statements diverge on another point at this stage  
10 of the incident. Montes testified that as Jefe approached Zakalik-Williams, Zakalik-Williams  
11 kicked at him presumably out of fear, and then Jefe began to bite Sheba and things became a  
12 “blur.” *Ex. A-1*. Zakalik-Williams’ statement is that she did not kick Jefe until he was attacking  
13 Sheba in order to get him off her dog. *Ex. R-3*. The foregoing notwithstanding, it is undisputed  
14 that Jefe bit Sheba multiple times. There is also no evidence of Sheba doing anything to  
15 provoke Jefe. It also appears undisputed that Jefe’s initial attack was on Sheba, not Zakalik-  
16 Williams, and that Zakalik-Williams sustained her injuries in trying to protect Sheba from  
17 Jefe’s attack. *Zakalik-Williams Testimony, Montes Testimony; Ex. A-1, Ex. R-3, Ex. R-4*.

18           7. After the initial attack, the dogs were separated and Jefe was briefly leashed, but  
19 quickly “wriggled out of his collar and got away from” Montes only to begin biting Sheba once  
20 more after pursuing Sheba under a truck parked along the street. *Id.* During these attacks,  
21

1 Zakalik-Williams was trying to separate the dogs and to protect Sheba. In the process, she  
2 sustained multiple bite wounds from Jefe on her left hand and right leg that required medical  
3 treatment and stitches. *Zakalik-Williams Testimony; Ex. R-3, Ex. R-4, Ex. R-5, Ex. R-7.*

4 8. Ultimately the melee was quelled with the help of two neighbors, neither of whom  
5 were bitten. *Zakalik-Williams Testimony, Montes Testimony; Ex. A-1, Ex. R-3, Ex. R-4.*

6 Zakalik-Williams had her injuries treated at MultiCare in Tacoma; Sheba was seen and treated  
7 at Northeast Veterinary Hospital in Seattle, and exhibited “two partial thickness wounds on  
8 [her] LF arm near elbow.” *Ex. R-5, Ex. R-6.* Montes testified that Jefe had injuries to his cheek  
9 and a limp after the incident.

10 9. Animal Control investigated the incident after the fact and determined that Jefe’s  
11 behavior during the incident met the elements to qualify Jefe as a “Potentially dangerous dog”  
12 under TMC 17.01.010.27.a. *Bowerman Testimony, O’Donnell Testimony; Ex. R-1, Ex. R-2.*

13 10. Animal Control then served the PDDN on Rodriguez on June 22, 2019.  
14 *Bowerman Testimony; Ex. R-1.*

15 11. Both Montes and Rodriguez testified that Jefe had no incidents of aggression in  
16 his thirteen months of life leading up to the May 5, 2019 incident. Three of Jefe’s neighbors  
17 and his trainer also offered statements regarding Jefe’s generally good disposition. *Exs. A-3*  
18 *through A-6.*

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

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

**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.A.

4 2. In appeal proceedings before the Hearing Examiner challenging a Potentially  
5 Dangerous Dog declaration, Animal Control bears the burden of proving, by a preponderance  
6 of the evidence, that the animal in question meets the definition of a Potentially Dangerous  
7 Dog. *TMC 17.04.032.B*. The definitional elements are 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  
12 upon the streets, sidewalks, or any public or private property in a  
13 menacing fashion or apparent attitude of attack; or
- 14 c. has a known propensity, tendency, or disposition to attack  
15 unprovoked, to cause injury, or to otherwise threaten the safety of  
16 humans or domestic animals.

17 *TMC 17.01.010.27*.

18 3. The above criteria are disjunctive. As a result, the City must only prove that one  
19 of the three criteria were met for a designation to be upheld on appeal. In the PDDN, Animal  
20 Control designated subsection a. above as the basis for its issuance.

21 4. Here, Jefe approached Zakalik-Williams and Sheba of his own accord. The  
evidence of whether there was provocation for Jefe’s initial attack on Sheba is inconclusive at  
best. In any event, any provocation on Zakalik-Williams’ part does not excuse Jefe’s attack on

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

1 Sheba, especially when that attack occurred in two distinct phases. Once Jefe was disengaged  
2 from attacking Sheba and leashed, his escape from the leash and reengaged attack had no  
3 independent provocation under any version of the facts presented through the testimony and  
4 evidence in the record. As a result, the Examiner concludes that the City met its burden to show  
5 that the PDDN was validly issued under TMC 17.01.010.27.a.

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

9 6. 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 Jefe is UPHELD together with  
16 the restrictions/conditions contained therein.

17 **DATED** this 5th day of September, 2019.

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

20  
21 **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.

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