City of Tacoma
Hearing Examiner

December 8, 2017

Ricky C. Smith
3615 South 12th Street
Tacoma, WA 98405-2133
(Electronic, First Class, & Certified Mail Delivery)

Jennifer Taylor, Deputy City Attorney
City of Tacoma, Legal Department
747 Market Street, Room 1120
Tacoma, WA 98402-3701
(Electronic & Interoffice Mail Delivery)

Re: *Ricky C. Smith v. City of Tacoma, Animal Control and Compliance*
File No. HEX2017-015 (Dogs: Prince and Knuckles)

Dear Parties,

In regard to the above entitled appeal matter, please find a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Decision entered on December 8, 2017.

Sincerely,

Louisa Legg
Office Administrator

Cc: Joseph Satter-Hunt, City of Tacoma, Animal Control and Compliance Supervisor

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 December 8, 2017, at Tacoma, WA.

Louisa Legg

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

RICKY C. SMITH, **Appellant,** **v.** **CITY OF TACOMA, ANIMAL CONTROL AND COMPLIANCE,** **Respondent.**	**HEX2017-015** **(L086405 and L17-086427)** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

THIS MATTER came on for hearing before JEFF H. CAPELL, the Hearing Examiner for the City of Tacoma, Washington, on November 30, 2017, at the Tacoma Municipal Building, 747 Market Street, Tacoma, Washington. Deputy City Attorney Jennifer Taylor represented the City of Tacoma, Animal Control and Compliance ("Animal Control"). Appellant Ricky C. Smith represented himself *pro se*. Witnesses were sworn and testified. Exhibits were admitted and reviewed. Arguments were presented and considered.

From the evidence in the hearing record, the Hearing Examiner enters the following:

FINDINGS OF FACT

1. Appellant Ricky C. Smith (herein "Smith") is the owner of a brown and white male boxer dog named "Knuckles" and a brown and white male boxer dog named "Prince" (collectively, the "Dogs"). Smith resides at 3615 South 12th Street in Tacoma, Washington, which is also where the Dogs are normally kept. *Exs. R-1 and R-2; Smith Testimony.*

2. Smith has been an owner of the Dogs since they were pups. *Smith Testimony.* The Dogs are approximately three (3) years old at present. *Id.* Smith's yard is fenced, but at various times over the course of 2017, the Dogs have escaped the confines of the yard due to gaps in the fence, the gate being left open, or the Dogs possibly being able to jump the fence/gate. *Exs. R-3 and R-4; O'Donnell Testimony.*

3. Animal Control has been called or otherwise responded to the vicinity of Smith's home at least eight (8) times over the course of 2017 due either to the Dogs being out of Smith's yard unsupervised, or in follow up to such a call. These responses occurred on March 20, 2017, April 13, 2017, April 17, 2017, April 18, 2017, April 24, 2017, May 8, 2017, May 19, 2017, and May 20, 2017.[1] *Exs. R-3 through R-9; O'Donnell Testimony.*

4. Prior to the May 20, 2017 response, Animal Control received both verbal and written complaints regarding the Dogs being unsupervised, off-leash, and out in the neighborhood acting aggressively towards people. *Exs. R-3 through R-5; O'Donnell Testimony.* At least one of these prior incidents (March, 20, 2017) involved an allegation that one of the Dogs bit a person. *Ex. R-3.*

5. Based on the incidents and responses that occurred prior to May 19, 2017, Animal Control issued a warning letter to Smith dated May 9, 2017. *Ex. R-6; O'Donnell Testimony.* The letter informed Smith that the Dogs were under investigation, and that the allegations against the Dogs were "a matter of serious concern," but that no enforcement action was going to be taken at that time. *Id.*

[1] Animal Control has been to the Smith residence at least once (May 22, 2017) since the May 20, 2017 incident as well.

6. On the morning of May 20, 2017, Smith was with his children at home entertaining friends and playing video games. *Smith Testimony*. Smith testified that around 8 or 9 am he put the Dogs outside to relieve themselves and to "have some fun." Once the dogs were outside, they left the yard of the Smith house and travelled out into the neighborhood. *Eyers Testimony, Bozic Testimony, White Testimony.*

7. During this time, on the morning of May 20, 2017, Michael Eyers encountered the Dogs near his residence at 3707 South 12th Street in Tacoma.[2] *Ex. R-9; Eyers Testimony*. Eyers first saw the Dogs run down the alleyway near his house, and then after he exited his house, he saw the Dogs in the business parking lot near his home. *Id.* He called 911, as a result, because of his past encounters with the Dogs and what he perceived as their dangerousness. *Id.* Eyers testified that the Dogs saw him, and then approached him without his having called to the Dogs or otherwise making any attempt to draw the Dogs' attention. The Dogs then circled him aggressively, at which point he called 911 a second time because the prior call had dropped. One of the Dogs bit Eyers' pant leg pulling on it, and then both Dogs "took off." *Ex. R-9; Eyers Testimony*.

8. Eyers testified that, shortly after this first encounter, he heard the sound of dogs fighting, went toward the sound, and found the Dogs in an altercation with a Labradoodle being walked by its owner on South 12th Street. He testified that bystanders broke up the dog fight and then "a lady" pulled her Land Rover between the Dogs and the Labradoodle. A Tacoma police officer[3] then arrived at the scene. *Ex. R-9; Eyers Testimony*. Upon exiting his vehicle,

[2] Eyes testified that he was familiar with the Dogs prior to May 20, 2017, from two (2) previous encounters.
[3] Officer Wade White. *White Testimony*.

both Dogs lunged at the officer, whereupon he fired at them and then the Dogs ran off. *Id.* Eyers identified the Dogs as part of the May 20, 2017 incident from the photos made part of the record as Exhibit R-10.

9. At about this same time on May 20, 2017, James Bozic, who lives at the corner of South 12th Street and S. Washington Street in Tacoma, went outside when he heard the sound of dogs barking. *Ex. R-8; Bozic Testimony*. Upon exiting his house, he saw the Dogs barking and lunging at Michael Eyers. *Id.* Eyers appeared to be making a phone call. *Id.* Eyers then extricated himself from the Dogs and went into his house. *Id.* Around five (5) minutes later, Bozic witnessed the Dogs aggressively pursuing a man and his dog that were out for a walk. *Id.* Bozic tried to scare the dogs away with no effect. *Id.* His efforts to "corral" the Dogs was also unsuccessful. *Id.*

10. Bozic then witnessed Officer Wade White's arrival at the scene. *Id.* Bozic testified that Officer White stepped out of his vehicle and moved to speak with other people on the scene when the Dogs, without provocation, lunged at him. *Id.* Officer White responded by firing two (2) rounds at the Dogs, whereupon the Dogs fled in the direction of their home. *Id.* Bozic testified additionally that he was familiar with the Dogs prior to the May 20, 2017 incident, and that on numerous occasions he had seen them loose in the neighborhood acting aggressively. *Bozic Testimony*. Bozic identified Prince and Knuckles as the dogs involved in the May 20, 2017 incident from the photos in Exhibit R-10.

11. Tacoma Police Officer Wade White ("White" or "Officer White") testified that he was asked to respond to the area of South 12th Street and S. Washington Street in Tacoma two

(2) times on the morning of May 20, 2017. The first call was at approximately 8:06 am, when he was asked to respond to a report of two (2) aggressive "bulldogs" in the area. *White Testimony.* On his first arrival, he found nothing that required his attention and did not see the Dogs as reported. *White Testimony.*

12. Shortly thereafter, White was called to this location at around 9:18 am, again on a report of aggressive dogs. *Id.* On his arrival he saw two (2) boxers on the sidewalk; one was in a "down position." *Id.* White initially assessed the scene as non-threatening. *Id.* He stopped his car in the street, and got out to contact the people on the scene. *Id.* At the time, the Dogs were 25 to 30 feet away from him. *Id.* As he started to walk away from his vehicle, the Dogs charged at him full speed with hackles up. *Id.* At this point, Officer White perceived the Dogs to be a visible threat, and he reacted by firing one round at each of the Dogs. *Id.* The Dogs reacted by fleeing down the alley. *Id.* As part of Officer White's post-shooting investigation, he had contact with Smith, who identified himself as an owner of the Dogs. *Id.*

13. As a result of the May 20, 2017 incident and cumulative prior history, Animal Control issued Potentially Dangerous Dog Notices for Knuckles and Prince on May 30, 2017, indicating that the Dogs had in an unprovoked situation, chased or approached a person or domestic animal upon the streets, sidewalks, or any public or private property in a menacing fashion or apparent attitude of attack; or had a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to otherwise threaten the safety of humans or domestic animals.. *Exs. R-1 and R-2; O'Donnell Testimony.*

14. Any Conclusion of Law hereinbefore stated which may be properly deemed or

considered a Finding of Fact herein is hereby adopted as such.

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

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction in this matter under Tacoma Municipal Code ("TMC") 1.23.050.B.8 and TMC 17.04.032.

2. In appeal proceedings before a hearing examiner involving challenges to a Potentially Dangerous Dog Notice, the animal control authority bears the burden of proving that the dog is potentially dangerous by a preponderance of the evidence. *TMC 17.04.032.B.* In order to prevail in this matter, Animal Control must establish that Mr. Smith's dogs Knuckles and Prince (the "Dogs") meet the following definition of a potentially dangerous dog:

> "Potentially dangerous dog" means a dog which:
>
> a. unprovoked, bites or injures a human or domestic animal on public or private property; or
>
> b. unprovoked, chases or approaches a person or domestic animal upon the streets, sidewalks, or any public or private property in a menacing fashion or apparent attitude of attack; or
>
> c. has a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to otherwise threaten the safety of humans or domestic animals.

TMC 17.01.010.27.

3. City of Tacoma Animal Control has shown, by a preponderance of the evidence, that the dogs Knuckles and Prince are potentially dangerous dogs under the above set forth definition, subsections b. and c.

4. The actions of Knuckles and Prince on May 20, 2017, meet the definition of a potentially dangerous dog contained in TMC 17.01.010.27.b and c., as set forth verbatim above. Accordingly, and based on the evidence presented in this matter, the Hearing Examiner concludes that the City of Tacoma Animal Control's Potentially Dangerous Dog Notices declaring Smith's dogs Knuckles and Prince to be potentially dangerous dogs under TMC 17.01.010.27.b. and .c, should be affirmed and Appellant Smith's appeal denied.

5. Any Finding of Fact which may be properly deemed or considered a Conclusion of Law is hereby adopted as such.

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

DECISION

The City of Tacoma Animal Control's Notices of Potentially Dangerous Dog covering Ricky Smith's boxer dogs named Knuckles and Prince are affirmed and the appeal in this matter is denied. The dogs must be maintained according to the governing restrictions for a potentially dangerous dog under the Tacoma Municipal Code.

DATED this 8th day of December, 2017.

JEFF H. CAPELL, Hearing Examiner

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 l4 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 the terms of RCW Chapter 34.05, Part V. The petition for review must be filed within thirty (30) days after service of the final Order. *RCW 34.05.542.*