

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **JAZMINE CARTER**

HEX2020-021

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 hearing¹ before JEFF H. CAPELL, the Hearing
11 Examiner for the City of Tacoma, Washington, on July 30, 2020. Deputy City Attorney
12 Jennifer Taylor represented the Respondent City of Tacoma (the “City”), Animal Control and
13 Compliance (separately “Animal Control”). Appellant Jazmine Carter (“Appellant” or
14 “Carter”) appeared at the hearing *pro se*. Witnesses were sworn and testified. Exhibits were
15 submitted and admitted, and arguments were presented and considered.

16 Witnesses testifying at the hearing were as follows:

- 17
- 18 1. Zac Lanz,
 - 19 2. Animal Control and Compliance Officer Robin Bowerman,
 - 20 3. Animal Control and Compliance Officer Eric O’Donnell,
 - 21 4. Animal Control and Compliance Officer Joseph Satter-Hunt, and
 5. Appellant Jazmine Carter.

¹ Due to National, State of Washington and City of Tacoma Proclamations of Emergency made in response to the COVID-19 virus, the City of Tacoma closed the Tacoma Municipal Building to the public until further notice on or around March 17, 2020. As a result, the public hearing in this matter was conducted virtually using Zoom teleconferencing with both internet and telephonic access.

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

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

3 **FINDINGS OF FACT**

4 1. Carter owns a brownish-grey and white unaltered male pit bull dog named
5 “Flash” (“Flash” or the “Dog”). *Carter Testimony, Bowerman Testimony; Ex. C-1, Ex. C-2,*
6 *Ex. C-7.*

7 2. This appeal arises from Animal Control’s having issued a Dangerous Dog Notice
8 for Flash, dated July 4, 2020 (the “DDN”), which was served on Appellant Carter on July 9,
9 2020. *Bowerman Testimony, O’Donnell Testimony; Ex. R-1.* The DDN ordered Carter to
10 immediately surrender the Dog for impoundment pursuant to Tacoma Municipal Code
11 (“TMC”) section 17.01.040. *Id.* This did not happen.² Although Animal Control had contact
12 with Carter on July 4, 2020, and requested that she surrender the Dog at that time, Animal
13 Control was not able to impound the Dog, in conformance with applicable provisions of the
14 TMC and state law,³ until July 10, 2020, at which point Carter surrendered the Dog directly to
15 personnel at the Humane Society of Tacoma-Pierce County. The Dog has been in the City’s
16 custody since.⁴ *Bowerman Testimony, O’Donnell Testimony, Satter-Hunt Testimony, Carter*
17 *Testimony; Ex. C-1, Ex. C-2, Ex. C-7.*

18 3. The DDN was issued based on an incident that occurred on or around June 29,
19 2020, at 5412 South Steele Street in the city of Tacoma (the “Subject Property”) where Carter
20

21 ² Testimony and exhibits showed that a somewhat prolonged exchange between Animal Control and Appellant
Carter took place during which Carter contended that the Dog had been placed with a friend whose residence
location was unknown to her.

³ TMC 17.01.010.15, 17.04.050 *et seq.*, and RCW 16.08.

⁴ The Dog is being kept at the Humane Society of Tacoma-Pierce County.

1 and Zac Lanz were residing in separate apartments. Carter and Lanz’s apartment doors face
2 each other across a hallway/entryway. *Bowerman Testimony, Lanz Testimony, Carter*
3 *Testimony; Exs.C-1~C-3, Ex. C-6.*

4 4. On June 29, 2020, a social gathering was taking place at Carter’s apartment.
5 Carter indicated that Lanz was not initially invited to the social gathering. Because of prior
6 incidents with the Dog, Animal Control had cautioned Carter to keep the Dog in a closed
7 bedroom when guests were present at her apartment.⁵ Carter was attempting to close the Dog
8 into a separate room when the Dog escaped from her control and went to the front door of the
9 apartment that one of her guests had opened. Carter did not see what happened after the Dog
10 escaped her control momentarily, until she went out the front door to find the Dog attacking
11 Lanz. *Carter Testimony, Bowerman Testimony; Ex. C-2.*

12 5. For Lanz’s part, he was standing outside his front door in the space between his
13 and Carter’s apartments around 11:20 pm on the fringe of the social gathering. He saw Carter’s
14 front door open, and then the Dog bolted out and attacked him, attaching by bite to his right
15 torso. Lanz indicated that getting the Dog to release his hold took the efforts of several people
16 and that he (Lanz) blacked out briefly in the process of getting the Dog off him. The attack
17 caused extensive bruising and multiple puncture wounds to Lanz’s torso that required medical
18 treatment including a doctor’s suturing. *Lanz Testimony; Exs. C-2~C-6.*

19 6. As mentioned, Carter witnessed the end of the attack. After the Dog’s removal,
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⁵ Lanz testified that Flash bit him one time prior to June 29, 2020, when he was present at Carter’s apartment. His testimony seemed to indicate that he did not report that incident chalking it up to the Dog being territorial, so it is unclear whether this prior bite had anything to do with Animal Control’s contact with Carter regarding the Dog that took place prior to the June 29, 2020 incident.

1 she went into Lanz’s apartment to help treat his injuries and encouraged him to go to the
2 hospital. Lanz initially declined, being worried about cost. Sometime later that same night
3 (early morning), having changed his mind about the need for medical treatment, Lanz texted
4 Carter using the pretext of coming over to her apartment to play “beer pong” to gain entry into
5 the social gathering. Carter invited him over. Rather than playing “beer pong,” upon entering,
6 Lanz asked Carter to drive him to the hospital because he had no other way at that time to get
7 there. Carter did so and stayed with him while he received treatment. *Lanz Testimony, Carter*
8 *Testimony.*

9 7. Carter testified that Lanz had told her previously about making meowing noises
10 around Flash to mess with him. Lanz denied that his meowing is intended to antagonize the
11 Dog, but rather that he does it as a call to his own cats. *Lanz Testimony, Carter Testimony.*

12 8. Lanz positively identified the Dog that was impounded as the dog that attacked
13 him and caused his injuries. *Lanz Testimony; Ex. C-9.* Carter did not dispute that it was her
14 Dog that attacked Lanz on June 29, 2020. Upon questioning from the City’s counsel, Carter
15 agreed that Lanz’s injuries were severe.

16 9. On July 30, 2020, as the hearing was getting underway, Carter sent (or had sent)
17 to the Office of the Hearing Examiner multiple emails purporting to be from her friends or
18 acquaintances asserting that Flash is an affectionate dog, and that they have never seen him be
19 aggressive. *Exs. A-1.2~A-1.16.* Another late submitted email purported to be from “Curtis M
20 Fanta, PA-C” of the Federal Way UW Neighborhood Clinic stating “She is needs to have her
21 trained emotional support dog with her due to anxiety.” [Sic] *Ex. A-1.1.* Other than this

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1 statement, no evidence was presented of Flash’s training or certification as an “emotional
2 support dog.”⁶

3 10. Carter’s submitted emails notwithstanding, the admitted record contains a report
4 of an additional prior incident in King County in which Flash severely injured an individual
5 leading to Flash being banned from King County. *Ex. C-2*. Carter confirmed the banning in her
6 own testimony.

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

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

10 **CONCLUSIONS OF LAW**

11 1. The Hearing Examiner has jurisdiction in this matter pursuant to Tacoma
12 Municipal Code (“TMC”) 1.23.050.B.8 and 17.04.031.A.

13 2. Pursuant to TMC 17.04.031.B, in appeal proceedings before the Hearing
14 Examiner challenging a Dangerous Dog Declaration, Animal Control bears the burden of
15 proving, by a preponderance of the evidence, that the animal in question meets the definition of
16 a Dangerous Dog. This definition is as follows:

17 “Dangerous dog” means any dog that, according to the records of the
18 appropriate authority:

19 a. unprovoked, inflicts severe injury on or kills a human being on public or
20 private property; or

21 ⁶ Post-hearing, and after the record had closed, Carter emailed the Office of the Hearing Examiner again, conveying secondhand information regarding how well Flash is behaving during his confinement at the Humane Society of Tacoma-Pierce County. The Examiner understands the difficulty involved when a beloved pet’s mortality is at stake. These situations are tragic for all involved. Unfortunately, there is no provision in the law that allows character testimony for the dog, however abundant, to obviate the facts of an incident that gives rise to a DDN being issued.

- 1 b. unprovoked, inflicts injuries requiring a domestic animal to be euthanized
2 or kills a domestic animal while the dog is off the owner’s property; or
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4 c. while under quarantine for rabies bites a person or domestic animal; or
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6 d. was previously declared to be a potentially dangerous dog, the owner
7 having received notice of such declaration, and the dog is again found to
8 have engaged in potentially dangerous behavior; or
9
10 e. is owned or harbored primarily or in part for the purpose of dog fighting
11 or is a dog trained for dog fighting; or
12
13 f. unprovoked, attacks a “dog guide” or “service animal” as defined in
14 Chapter 70.84 RCW and inflicts injuries that render the dog guide or service
15 animal to be permanently unable to perform its guide or service duties. *TMC*
16 *17.01.010.15*.

17 3. The above criteria are disjunctive. As a result, the City must only prove that one
18 of the six criteria were met for a designation to be upheld on appeal. Animal Control alleged
19 subsection a. above as the basis for its DDN.

20 4. TMC 17.01.010.31 defines “Severe injury” as “[a]ny physical injury that results in
21 (a) broken bones, (b) muscle, ligament, or tendon tears, (c) skin lacerations or puncture wounds
which require sutures or surgery, or (d) transmission of an infectious or contagious disease.

5. The City’s evidence did show by a preponderance that the Dog inflicted severe
injury on a human being on an area of property typically open to the public and that the attack
was unprovoked. There was no evidence here of provocation. Lanz’s meowing, done for
whatever purpose on previous occasions, does not constitute provocation at the time of the
attack because there is no evidence that Lanz was meowing on June 29, 2020, prior to being
attacked by Flash. In addition, being an “emotional support dog” is not a defense that excuses
the attack and resulting injuries here.

**FINDINGS OF FACT,
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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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