

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **ANDREW RAVELO,**

HEX2020-035

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 December 10, 2020.¹ Deputy City Attorney Jennifer

12 Taylor appeared representing Respondent City of Tacoma (the “City”), Animal Control and

13 Compliance (separately “Animal Control”). Present as witnesses for the City, were Ashley

14 Turner and Marquise Allen, and Animal Control and Compliance Officers Mia Salisbury and

15 Joseph Satter-Hunt.² Appellant Andrew Ravelo (“Appellant” or “Ravelo”) appeared at hearing

16 *pro se*. Witnesses were sworn and testified. Exhibits were submitted and admitted, and

17 arguments were presented and considered.

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

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¹ 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.

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

1 **FINDINGS OF FACT**

2 1. Appellant is the owner of a male black and white colored Border Collie/
3 Siberian Husky mix named Benji (“Benji” or “the Dog”). Ravelo resides in the City of
4 Tacoma at 1116 South 23rd Street (the “Subject Property”). *Ex. C-1, Ex. C-2.*

5 2. This appeal arises from Animal Control’s having issued a Potentially Dangerous
6 Dog Notice (“PDDN”) for Benji, and having imposed restrictions on him in the PDDN. *See Ex.*
7 *C-1 for the full list of restrictions imposed.* Animal Control imposed these restrictions in
8 conformance with applicable provisions of the Tacoma Municipal Code (“TMC”) and
9 Washington State law.³ *Id.*

10 3. The PDDN was issued as the result of an incident that occurred on August 23,
11 2020, at or near the Subject Property. *Turner Testimony, Allen Testimony; Salisbury*
12 *Testimony; Exs. C-1~C-3, Ex.C-6.*

13 4. On August 23, 2020, Turner was walking her dog Cosmo near “23rd Street and L
14 Street” about one house away from the Subject Property. Cosmo is a Chihuahua Pomeranian
15 mix and weighs between nine and ten pounds. While walking at this location, without warning
16 or provocation, Benji and another dog previously owned by Ravelo named Kaylie⁴ left the
17 porch at the Subject Property and attacked Cosmo. *Turner Testimony; Exhibit C-3.*

18 5. Kaylie bit Cosmo first on the torso and then shook him until Cosmo slipped free
19 of the harness he was wearing. At that point, Benji bit and shook Cosmo in a similar manner.
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21 ² For ease of reference, and without meaning any disrespect, after initial introduction of parties and witnesses, they will generally be referred to by last name only.

³ TMC 17.01.010.27, 17.04.050 and RCW 16.08.

⁴ Kaylie has apparently been rehomed outside of the Tacoma City limits. Turner refers to Kaylie as “tan” in her written statement—Exhibit C-3.

1 Turner testified at the hearing that Kaylie then bit Cosmo one more time.⁵ *Id.* Cosmo sustained
2 injuries to his abdomen that were treated that same day closely following the incident at the
3 VCA Pacific Avenue Animal Hospital. The largest wound was roughly the shape (diameter) of
4 a dime and was stapled closed. *Id.*, *Allen Testimony*; *Ex. C-5*.

5 6. Ravelo was not present at the Subject Property on August 23, 2020, and did not
6 witness the attack, being out of town at the time. Ravelo's dogs were being tended to at that
7 time by an individual named Roy Miller. Miller was still at the Subject Property when Animal
8 Control visited there the day following the incident. Based on statements made to Officer
9 Salisbury, Miller did witness at least part of the attack as he "pulled the dogs off and put them
10 inside." *Ravelo Testimony*, *Turner Testimony*, *Salisbury Testimony*; *Ex. C-2*, *Ex. C-3*.

11 7. In his testimony, Ravelo questioned the credibility of various testimony and
12 evidence offered by the City as follows:

13 (a) Ravelo testified that when he met with Turner and Allen after the attack
14 and after he returned to Tacoma, Turner told him only Kaylie was involved
in the attack;

15 (b) Ravelo stated that unnamed people who witnessed the attack told him
16 that only Kaylie was involved in the attack;

17 (c) Ravelo questioned the veracity of Turner's statement that Cosmo was
18 bit three times and had three wounds on his abdomen because the third bite
is not recounted in Turner's written statement and only one wound is
plainly visible in the Exhibit C-5 pictures; and

19 (d) Ravelo pointed out what he views as discrepancies with the dates of
20 contact with Animal Control during its investigation.

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⁵ Turner's written statement does not recount this second biting by Kaylie, which came from her hearing testimony. As Ravelo correctly pointed out during the hearing, Kaylie's conduct is not at issue in this appeal. Ultimately, the number of bites, particularly those inflicted by Kaylie, is not that material. Again, Kaylie is not the subject of the PDDN on appeal here.

1 Turner refuted 7(a) above in her own testimony at the hearing as well as in her written
2 statement. Further refutation comes from Ravelo's own testimony that after his return to
3 Tacoma, he surrendered Benji to the Humane Society because he understood from Miller that
4 Benji had been the primary aggressor in the attack upon Cosmo. Ravelo did, however, later
5 change course and retrieved Benji from the Humane Society's custody.

6 The Examiner can give no weight to Ravelo's statement referenced in 7(b) above
7 because it is hearsay from unidentified declarants. Next, the fact that only one wound is visible
8 from the Exhibit C-5 photographs, and that only that wound required stapling is not dispositive
9 of any issue in this appeal, nor does it necessarily undermine Turner, Allen and Salisbury's
10 credibility, all of whom testified that there were three bite wounds. Ravelo never saw Cosmo's
11 wounds himself and the Exhibit C-5 photos are not of a high enough quality that smaller
12 wounds would necessarily be visible. Lastly, any discrepancies between contact dates are not
13 elemental to the issues presented in this appeal, nor do they necessarily harm any witness's or
14 parties' credibility in regard to elemental, material testimony and evidence. No one disputes
15 that these contacts took place. When they happened exactly is less relevant.

16 8. Summarizing the foregoing contested credibility issues that are material to this
17 appeal, the Examiner finds as follows:

- 18 ◦ The greater weight of testimony and evidence shows by a preponderance
19 that Benji was involved in the attack on Cosmo and that he bit Cosmo.
- 20 ◦ At the very least, the testimony and evidence shows that without
21 provocation Benji chased or approached a domestic animal upon the
streets, sidewalks, or any public or private property in a menacing
fashion or apparent attitude of attack.”⁶

⁶ TMC 17.04.010.27.b.

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

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

4 **CONCLUSIONS OF LAW**

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

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

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

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

20 3. The above criteria are disjunctive. As a result, the City must only prove that one
21 of the three criteria were met for a designation to be upheld on appeal. In the PDDN, Animal
Control alleged only subsection a. above as the basis for the PDDN being issued to Ravelo
regarding Benji. At the hearing, Animal Control Officer Salisbury correctly offered that
subsection b. also appears to have been met based on the testimony of Turner.

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

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 preponderance of the evidence standard is at the low end of the spectrum for
5 burden-of-proof evidentiary standards in the U.S. legal system, and is not particularly difficult
6 to meet.⁷

7 6. The City presented evidence showing by a preponderance that the attack occurred
8 and caused the injuries recounted above, and that Benji played a role in that attack. *Finding of*
9 *Fact (“FofF”) 4~8.* Perhaps unwittingly, some of Ravelo’s own testimony supported that
10 Benji played a role in the attack. *FoF 7.* While Ravelo made an admirable attempt to call into
11 question the City witnesses’ credibility, the greater weight of evidence supports, by a
12 preponderance, the Examiner’s findings above that the attack occurred, and that Benji
13 participated in the attack, and even bit Cosmo.

14 7. As a result, the Examiner concludes that the PPDN was properly issued and
15 should be upheld.

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

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⁷ *In re Custody of C.C.M.*, 149 Wn. App. 184, 202-203, 202 P.3d 971, 980 (2009). Another somewhat recent case referred to it thusly: “The lowest legal standard of proof [in the U.S. legal system] requires the proponent to prove its case by a preponderance of the evidence.” *Mansour v. King County*, 131 Wn. App. 255, 266, 128 P.3d 1241, 1246-1247 (2006).

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

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

3 **ORDER**

4 Based on the above Findings and Conclusions, the present appeal is DENIED and the
5 City of Tacoma’s Potentially Dangerous Dog Notice issued to Benji is UPHELD. All
6 restrictions set forth in the Potentially Dangerous Dog Notice must be adhered to accordingly,
7 together with licensing requirements as set forth at TMC 17.04.040.

8 **DATED** this 16th day of December, 2020.

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

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**