

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **SUZANNE DYE,**

HEX2022-014

4 **Appellant,**

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

5 **v.**

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

7 **Respondent.**

8

9

10 **THIS MATTER** came on for hearing on October 27, 2022,¹ before JEFF H. CAPELL,
11 the Hearing Examiner for the City of Tacoma, Washington. Deputy City Attorney Jennifer
12 Taylor represented the City of Tacoma, Animal Control and Compliance (“Animal Control” or
13 “ACC”) at the hearing. Suzanne Dye (“Appellant” or “Dye”) appeared at hearing *pro se*.
14 Witnesses were sworn and testified. Exhibits were submitted and admitted, and arguments
15 were presented and considered.

16 Witnesses testifying at the hearing were as follows:

- 17
- Robin Bowerman, ACC Officer
 - Deborah Bedinger
 - David Bedinger²
 - Suzanne Dye, on her own behalf.
- 18
- 19
- 20

21 ¹ Effective October 10, 2022, State and City in-person meeting restrictions were lifted, however, the Appellant requested an appeal hearing solely via Zoom. This hearing was conducted over Zoom at no cost to any participant with video, internet audio, and telephonic access.

² For ease of reference, and without meaning any disrespect, after initial introduction of parties and witnesses, they may occasionally be referred to by last name only, unless more differentiation is needed. In the case of the Bedingers, using first names for them from this point on is for distinction and not intended to be disrespectful or overly familiar.

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

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

2 **FINDINGS OF FACT**

3 1. Suzanne Dye currently resides within the Tacoma city limits at 412 South 53rd
4 Street, Tacoma, WA 98408. She owns a black and gray spayed female Husky name “Jayde.”
5 *Ex. R-1. Bowerman Testimony.*

6 2. Animal Control issued a Potentially Dangerous Dog Notice for Jayde dated
7 August 25, 2022 (the “PDDN”). The PDDN imposed restrictions on Jayde. *See Ex. R-1 for the*
8 *full list of restrictions originally imposed.* Animal Control imposed these restrictions in
9 conformance with applicable provisions of the Tacoma Municipal Code (“TMC”) and state
10 law.³ *Bowerman Testimony; Ex. R-1.*

11 3. The PDDN was issued as the result of an incident that occurred on July 5, 2022, at
12 around 10:00 am, in the yard of 236 South 54th Street.⁴ *Deborah and David Bedinger*
13 *Testimony; Exs. R-1, R-4, and R-5.*

14 4. At the time of the Incident, Deborah Bedinger (Deborah) saw Jayde loose and
15 unaccompanied from inside her house at 244 South 54th Street. Deborah called to her husband
16 David Bedinger (David) to come and assist her in retrieving Jayde. Deborah indicated that
17 Jayde had been out loose before and that she had helped retrieve her in the past. On this
18 occasion, Deborah said Jayde appeared to be tracking something or following a smell. Jayde
19 then ran across the street to the Boyer residence at 236 South 54th Street. *Deborah Bedinger*
20 *Testimony; Ex. R-4.*

21

³ TMC 17.01.010.27, TMC 17.04.050 and RCW 16.08.

⁴ The events of July 5, 2022 that gave rise to the PDDN being issued are referred to hereinafter inclusively as the “Incident.”

1 5. The Boyer’s cat Lola appeared to be sleeping or lounging in the yard, and Jayde
2 took the cat in her mouth. Deborah saw no signs of provocation from Lola prior to Jayde’s
3 actions. Jayde appeared to drop Lola only to pick her back up and shake her several times. *Id.*

4 6. David caught up to the scene of the Incident after hearing the scream of an animal
5 in distress as he approached. David described what he saw as Jayde attacking a cat, biting and
6 chomping on her. David saw that the cat had been mauled, had a distorted, broken front leg,
7 and seemed to be in shock. David then grabbed Jayde from behind and pulled her away from
8 the cat. *David Bedinger Testimony; Ex R-5.*

9 7. At this point, Deborah grabbed Lola away from Jayde. Deborah then also noticed
10 that one of Lola’s legs was “obviously broken.” As she was picking Lola up, Lola bit Deborah
11 on the left hand near her thumb. Deborah indicated that she thought Lola bit her because she
12 was terrified and in shock. David corroborated Deborah’s observations about why Lola
13 inflicted the bite. Deborah later received treatment for the bite. *Bedingers’ Testimony; Exs. R-*
14 *4~ R-7.*

15 8. Lola’s owner then came out of her house and took Lola inside with her where
16 Lola died around 20 minutes later. *Bedingers’ Testimony; Exs. R-3~ R-5.*

17 9. On his way to the scene of the Incident, David had grabbed an extra leash from his
18 house which he used to secure Jayde. Shortly after that Dye arrived on the scene in her car and
19 retrieved Jayde. *Bedingers’ Testimony, Dye Testimony; Exs. R-4 and R-5.* Dye explained at the
20 hearing that Jayde had only been able to get free to roam the neighborhood due to
21 distractions with getting her son to a medical appointment.⁵

⁵ These circumstances are certainly unfortunate, and Dye’s son’s challenges are all the more so. The Dye family has the Examiner’s sympathy. Nonetheless, consequences can arise from unfortunate circumstances. On the fortunate

- 1 a. unprovoked, bites or injures a human or domestic animal on
2 public or private property; or
- 3 b. unprovoked, chases or approaches a person or domestic animal
4 upon the streets, sidewalks, or any public or private property in a
5 menacing fashion or apparent attitude of attack; or
- 6 c. has a known propensity, tendency, or disposition to attack
7 unprovoked, to cause injury, or to otherwise threaten the safety of
8 humans or domestic animals. *TMC 17.01.010.27.*

9 3. The above criteria are disjunctive. As a result, the City must only prove that one
10 of the three criteria were met for a designation to be upheld on appeal. In the PDDN, Animal
11 Control checked subsection a. as the basis for issuance. Subsection a. is itself disjunctive in that
12 a dog can be found potentially dangerous if it “unprovoked, bites **OR** injures a human **OR**
13 domestic animal on public **OR** private property.” [Emphasis added.] *TMC 17.01.010.27.a; Ex.*
14 *R-I.*

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

18 5. “Preponderance of the evidence” means that the trier of fact is convinced that it is
19 more probable than not that the fact(s) at issue is/are true.⁶ The preponderance of the evidence
20 standard is at the low end of the spectrum for burden-of-proof evidentiary standards in the U.S.
21 legal system, and is not particularly difficult to meet.⁷ Here, the material facts of the attack are
not in dispute and the City’s evidence meets the required burden.

6. The evidence in the record does show that Jayde attacked (and killed) Lola

⁶ *Spivey v. City of Bellevue*, 187 Wn.2d 716, 733, 389 P.3d 504, 512 (2017); *State v. Paul*, 64 Wn. App. 801, 807, 828 P.2d 594 (1992).

1 without provocation, thereby meeting the definition of being a potentially dangerous dog. *FoF*
2 *5~7 and 10.*⁸

3 7. The restrictions imposed by Animal Control in the PDDN are appropriate here.
4 The Examiner sees no need to revise them. Nothing presented at the hearing warrants revision.
5 Restrictions such as those imposed here serve to protect members of the community (and their
6 pets) from dangerous behavior and attacks because a dog so restricted should not be able to get
7 loose and engage in dangerous behavior if the restrictions are met. The restrictions also serve to
8 protect the life of the dog(s) so restricted from coming into possible greater jeopardy by
9 preventing future attacks that could lead to more severe consequences (such as euthanization—
10 again not at issue here).

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

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

15 **ORDER**

16 Based on the above Findings and Conclusions, the present appeal is DENIED and the
17 City of Tacoma’s Potentially Dangerous Dog Notice issued to Jayde is UPHELD.

18 Jayde is subject to the following restrictions which must be adhered to at all times:

- 19 1) Jayde must not be outside the house of her owner unattended unless there is
20 a proper (as inspected and approved by ACC) five-sided enclosure on the
21 premises of the owner for Jayde to occupy;
- 2) Jayde must not go beyond the proper enclosure on the premises of the owner
(either being in the house or a five-sided enclosure) unless she is securely

⁷ *In re Custody of C.C.M.*, 149 Wn. App. 184, 202-203, 202 P.3d 971, 980 (2009); *Mansour v. King County*, 131 Wn. App. 255, 266, 128 P.3d 1241, 1246-1247 (2006).

⁸ “FoF” is the abbreviation for Finding(s) of Fact.

1 leashed and humanely muzzled in a manner that will prevent her from biting
2 any person or animal and she must be under the physical control of a
responsible person; and

3 3) A clearly visible warning sign informing that there is a potentially dangerous
4 dog on the property must be posted conspicuously and such sign must
5 include a warning symbol that informs children of the presence of a
potentially dangerous dog.

6 The following notification obligations of the PDDN also remain in full force and
7 effect:

8 The owner shall immediately notify Tacoma Animal Control, followed by written
9 notice, when a dog which has been classified as potentially dangerous:

10 A. is loose or unconfined; provided that, the owner shall first call 911;

11 B. has bitten a human being or attacked another animal; provided, the
owner shall first call 911;

12 C. is sold or given away, or dies; or

13 D. is moved to another address.

14 **DATED** this 2nd day of November, 2022.

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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 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.