

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **REGINA HUSBANDS,**

HEX2023-027

4 **Appellant,**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION 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 December 7, 2023,¹ before JEFF H. CAPELL, the
11 Hearing Examiner for the City of Tacoma, Washington. Deputy City Attorney
12 Jennifer J. Taylor represented the City of Tacoma, Animal Control and Compliance (“Animal
13 Control” or “ACC”) at the hearing. Appellant Regina Husbands (“Appellant” or “Husbands”)
14 appeared at the hearing without legal counsel, but with the assistance of her daughter Kecia
15 Husbands.² Witnesses were sworn and testified. Exhibits were submitted and admitted, and
16 arguments were presented and considered.

17 The following witnesses testified at the hearing (in order of appearance):

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- 19 • Lynette Proctor;³
 - Eric O’Donnell, ACC;
 - Emma Loviska;
 - 20 • Kecia Husbands; and

21 ¹ This hearing was continued twice upon the request of Appellant and without any objections from the City. The hearing was then conducted over Zoom with no cost to any participant with video, internet, and telephonic access.

² Both Regina and Kecia Husbands represented that Champagne is a family-owned dog that is not solely owned by Regina Husbands. Kecia Husbands is Regina Husbands’ daughter. Without any objections from the City, Kecia Husbands was allowed to be the primary representative of the Appellant family at the hearing.

³ Individuals who participated in the hearing may be referred to by first or last name only hereafter. No disrespect is intended.

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

- Regina Husbands.

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

FINDINGS OF FACT⁴

1. Appellant Regina Husbands currently resides within the Tacoma city limits at, 1253 Huson Drive, Tacoma, WA 98405 (the “Husbands Residence”). Husbands and her family are the owners of a licensed neutered male Pit Bull dog named Champagne (“Champagne” or the “Dog”). Champagne was identified by witnesses Lynette Proctor, Kecia Husbands, and Animal Control Officer O’Donnell during the hearing as the dog involved in the incident described below. *Proctor Testimony, O’Donnell Testimony; Ex. R-1~ Ex. R-4.*

2. Animal Control issued a Dangerous Dog Notice for Champagne dated September 12, 2023, which is the subject of this appeal (the “DDN”). *O’Donnell Testimony; Ex. R-1.*

3. ACC’s decision to issue the DDN to Appellant Husbands for Champagne was the result of an incident that occurred on September 4, 2023 (these events are sometimes referred to below collectively as the “Incident”). *Proctor Testimony, O’Donnell Testimony; Ex. R-2, Ex. R-4.*

4. On September 4, 2023, at approximately 8:45 pm, Proctor left her home at 1243 Huson Drive⁵ to take her two small family dogs for a walk in the neighborhood. The two dogs included her own dog (Lhasa Apso mix) and her daughter’s Shih Tzu named Bruce Wayne.

⁴ The parties, and readers generally, should be advised that more testimony than what the Examiner finds here as facts was presented at the hearing. Not all testimony has a bearing on determining whether the City has proved the elements of a Dangerous Dog for purposes of this appeal, however.

⁵ This location is now Proctor’s prior residence as she indicated at the hearing that she had moved.

1 Both dogs were leashed. *Proctor Testimony; Ex. R-2, Ex. R-4.*

2 5. As Proctor and her dogs were passing in front of the Husbands Residence walking
3 along the public sidewalk, Champagne exited outside the house to the yard through a screen
4 door, cleared the front yard fence, and latched onto Bruce Wayne's hindquarters. Champagne
5 refused to release his grip on Bruce Wayne for some time, even taking him up toward the house
6 despite still being leashed to Proctor. Proctor testified that all this happened very quickly. *Id.*

7 6. At some point, Champagne released his grip on Bruce Wayne and Proctor was able
8 to scoop him up. Proctor then ran home, got in her car and took Bruce Wayne to receive
9 veterinary help. She received the same in short order at the Summit Veterinary Clinic. *Id.*

10 7. Bruce Wayne was severely injured from the Incident and had lost a lot of blood.
11 The attending veterinarian asked Proctor if "extreme measures" should be engaged to save
12 Bruce Wayne, and Proctor authorized such. Despite that, Bruce Wayne died a short time later.
13 *Id.*

14 8. The Husbands offered several statements (*Exs. A-2~A-6*), including an in-person
15 statement from witness Loviska, attesting to Champagne's good character prior to the Incident.
16 Both Regina and Kecia offered their own testimony about Champagne's good character and his
17 importance to their family.

18 9. Kecia offered her account of the incident indicating that she thought Champagne
19 did not immediately attack Bruce Wayne upon scaling the front yard fence, but rather just
20 sniffed him and then Bruce Wayne reacted. Even if that were the case, rather than being as
21 Proctor described, such a reaction from Bruce Wayne would not be unwarranted after a larger

1 dog (Champagne) scales the fence and approaches in what could be seen as an aggressive
2 fashion. Kecia testified that she thought Champagne was simply engaging in a “game of
3 strength” with Bruce Wayne.

4 10. Regardless of how Bruce Wayne reacted to Champagne’s approach, there is no
5 evidence of Bruce Wayne doing anything other than being present on the sidewalk that
6 provoked Champagne to come at Bruce Wayne initially. Champagne then clearly caused his
7 injuries and death. We cannot ascertain what Champagne’s intentions were (nor is that
8 necessary here), but the result of his actions is clear.

9 11. Officer O’Donnell testified regarding his investigation of the Incident and his
10 issuance of the DDN. He also testified that he had investigated a prior report involving
11 Champagne, in which no declaration was issued. *Ex. R-2, Ex. R-3.*

12 12. Officer O’Donnell impounded Champagne on or around September 5, 2023, and
13 Champagne has been in the custody of the Humane Society of Tacoma/Pierce County (the
14 “HSTPC”) since that time. *O’Donnell Testimony, Ex. R-2.*

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

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

18 **CONCLUSIONS OF LAW**

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

21 2. Pursuant to TMC 17.04.031.B, in appeal proceedings before the Hearing

1 Examiner challenging a Dangerous Dog declaration, Animal Control bears the burden of
2 proving, by a preponderance of the evidence, that the animal(s) in question meet(s) the
3 definition of a Dangerous Dog. This definition is as follows:

4 “Dangerous dog” means any dog which:

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

17 3. The above criteria are disjunctive. As a result, the City must only prove that one
18 of the listed criteria was met for a designation to be upheld on appeal. In the DDN, Animal
19 Control checked subsection b. as the basis for issuance to the Dog.

20 4. “Preponderance of the evidence” means that the trier of fact is convinced that it is

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1 more probable than not that the fact(s) at issue is/are true.⁶ The preponderance of the evidence
2 standard is at the low end of the spectrum for burden-of-proof evidentiary standards in the U.S.
3 legal system and is not particularly difficult to meet.⁷ Here, the material facts that are the basis
4 of the DDN are not in dispute. Champagne approached Bruce Wayne in an animated, if not
5 aggressive fashion. Bruce Wayne did not invite or provoke this approach. Bruce Wayne
6 suffered injuries from being attacked initially on the sidewalk, and the injuries led to his death
7 a short time later. Nothing in TMC 17 allows for character evidence to negate a Dangerous Dog
8 Notice.⁸ The City's evidence meets the required burden. *TMC 17.01.010.15.; TMC 17.04.031.*

9 5. When a dog is declared dangerous, and that declaration is upheld after hearing, the
10 Hearing Examiner shall enter an order so stating and shall direct that the dog be humanely
11 euthanized. The Hearing Examiner will consider directing that a dog be sent to a secure animal
12 shelter or removed from the City and maintained at all times in compliance with Chapter 16.08
13 Revised Code of Washington (RCW) only upon request of the owner. Here, the Husbands have
14 requested the opportunity to pursue this alternative. *TMC 17.04.031.D.*

15 6. The evidence in the record does show that Champagne is dangerous based on the
16 evidence as it aligns with the TMC. That notwithstanding, the Examiner concludes that
17 Champagne can be rehomed or given to an animal rescue agency if the transfer and rehoming
18 can be accomplished in compliance with TMC 17.04.031.D (reproduced in full below for
19 reference as Appendix A).

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21 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).

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 The Examiner understands Champagne's importance to the Husbands family and sympathizes with them in this
very difficult circumstance, but that does not give him the authority to do anything different from what TMC 17
requires.

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visit Champagne prior to transfer elsewhere or euthanization, as well as possibly for the preservation of remains.

DATED this 20th day of December, 2023.



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.

APPENDIX A—TMC 17.04.031.D.

TMC 17.04.031

D. If the Hearing Examiner finds a dog to be dangerous, the Hearing Examiner shall enter an order so stating and shall direct that the dog be humanely euthanized. The Hearing Examiner will consider directing that a dog be sent to a secure animal shelter or removed from the City and maintained at all times in compliance with Chapter 16.08 RCW only upon request of the owner

1. The owner shall bear the burden to establish (1) that an animal shelter is available that meets the criteria for a secure animal shelter, that the animal shelter will accept the dog, and that the owner is willing and able to pay all expenses for transporting the dog and maintaining the dog; or (2) that the dog can be maintained at all times in compliance with Chapter 16.08 RCW in a location outside the City and that the owner is willing and able to pay all expenses for transporting the dog and maintaining the dog.

2. To meet his or her burden, the owner must provide the Hearing Examiner with (1) proof that all conditions required Chapter 16.08 RCW and all other conditions required by state or local law for maintaining a dangerous animal have been met; (2) written proof that the animal control authority in the jurisdiction to which the animal is being moved has been informed of the relocation; (3) written proof that the animal control authority in the jurisdiction to which the animal is being moved has consented to the relocation; (4) written agreement by the dog's owner to indemnify and hold the City harmless from any and all future liability including any and all claims, demands, damages, liabilities, causes, suits or action of any kind or nature whatsoever relative to past or future care and custody of the animal and to the dog's future behavior. If any of the above requirements are not met, the dog shall not be released and shall be humanely euthanized. The dog's owner is responsible for all boarding fees between the issuance of the Hearing Examiner's Order declaring the dog to be dangerous and the time it is determined that the dog will or will not be released to a secure animal shelter or location out of the City.