

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **TERRY L. SCHULLER,**

HEX2023-019

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 on August 3, 2023,¹ before JEFF H. CAPELL, the
11 Hearing Examiner for the City of Tacoma, Washington. Deputy City Attorney Jennifer Taylor
12 represented the City of Tacoma, Animal Control and Compliance (“Animal Control” or “ACC”)
13 at the hearing. Appellant Terry L. Schuller (“Appellant” or “Schuller”) appeared at the hearing
14 *pro se*. Witnesses were sworn and testified. Exhibits were submitted and admitted, and
15 arguments were presented and considered.

16 Witnesses testifying at the hearing were as follows (in order of appearance):

- 17
- Hector Contreras-Gardner²
 - Debra Pfrommer
 - Cheri Page, ACC Officer, and
 - Terry Schuller.
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¹ Appellant Schuller requested an in-person hearing that was conducted primarily in the Council Chambers. Remote participation over Zoom, at no cost to any participant with video, internet, and telephonic access was also available. The Hearing Examiner presided over the hearing via Zoom remote access, but a Hearing Examiner Office staff person was present and running things in the City Council Chambers.

² Individuals who participated in the hearing may be referred to by last name only hereafter. No disrespect is intended.

**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. Appellant Terry Schuller currently resides within the Tacoma city limits at
4 4926 Enetai Ave. NE, Tacoma, WA 98422. Schuller is the owner of a licensed tan and white
5 spayed female Pitbull dog name Brandy, and a black and white neutered male Pitbull dog
6 named Milo (collectively the “Dogs”). Schuller adopted the Dogs as rescues. *Schuller*
7 *Testimony, Page Testimony; Ex. R-1, Ex. R-2.*

8 2. Animal Control issued separate, individual Dangerous Dog Notices for Brandy
9 and Milo both dated June 22, 2023 (the “DDNs”), that led to the Dogs being impounded and
10 held at the Humane Society for Tacoma & Pierce County (“HSTPC”). *Id.*

11 3. ACC’s decision to issue the DDNs to Schuller for the Dogs was the result of an
12 incident that occurred on June 15, 2023, sometime around 4:20 pm to 4:30 pm, at 1879 50th
13 Street NE in the city of Tacoma.³ *Contreras-Gardner Testimony, Pfrommer Testimony; Schuller*
14 *Testimony; Exs. R-3~R-10B, and Ex. R-12.*

15 4. On June 15, 2023, at the aforementioned time, Contreras-Gardner’s calico cat,
16 Puff was outside at the front of Contreras-Gardner’s property located at 1879 50th Street NE,
17 in Tacoma. The Dogs took notice of Puff and ran across the street from Schuller’s front yard at
18 4926 Enetai Ave. NE. *Ex. R-12.*

19 5. The Dogs chased Puff into the yard and onto the porch area at 1879 50th Street
20 NE, the residence of Kaye Campeau, next door to Contreras-Gardner’s home. The Dogs then
21 attacked Puff inflicting injuries that led to Puff’s death. Schuller ran from his residence to where

³ The events of June 15, 2023, just referenced, that gave rise to the DDNs being issued are referred to hereinafter inclusively as the “Incident.”

1 the Dogs were attacking Puff, but he was unsuccessful in preventing or stopping the attack at
2 least insofar as he was unable to prevent the ultimately lethal consequences of the attack.

3 *Contreras-Gardner Testimony, Pfrommer Testimony; Schuller Testimony; Exs. R-3~R-10B, and*
4 *Ex. R-12.*

5 6. Campeau first heard, and then saw the attack on her porch. She found Contreras-
6 Gardner at his residence and informed him what was happening. He rushed to the scene.
7 Contreras-Gardner struck one or both of the Dogs causing injury to his hands in an effort to get
8 the Dogs to end the attack. The Dogs disengaged and Contreras-Gardner pinned down Brandy.
9 Contreras-Gardner's efforts came too late, however. He was unable to prevent Puff's death
10 from the injuries the Dogs had inflicted to that point, and Puff died within a short time
11 thereafter. The situation was, of course, highly charged and words were exchanged between
12 Contreras-Gardner and Schuller during the Incident. *Id.*⁴

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

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

16 CONCLUSIONS OF LAW

17 1. The Hearing Examiner has jurisdiction in this matter pursuant to Tacoma
18 Municipal Code ("TMC") 1.23.050.B.8 and 17.04.031.

19 2. Pursuant to TMC 17.04.031.B, in appeal proceedings before the Hearing
20 Examiner challenging a Dangerous Dog declaration, Animal Control bears the burden of
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⁴ It is noted here, although not as a finding, that Schuller apologized to Contreras-Gardner at the hearing and all involved seemed to have made amends with each other to some degree, to their credit. It is also noted that testimony went beyond the actual findings here, but only the findings above are necessarily material to the question of upholding the DDNs.

1 proving, by a preponderance of the evidence, that the animal(s) in question meet(s) the
2 definition of a Dangerous Dog. This definition is as follows:

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

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

20 4. “Preponderance of the evidence” means that the trier of fact is convinced that it is
21 more probable than not that the fact(s) at issue is/are true.⁵ The preponderance of the evidence

⁵ *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 standard is at the low end of the spectrum for burden-of-proof evidentiary standards in the U.S.
2 legal system, and is not particularly difficult to meet.⁶ Here, the material facts of the attack are
3 not in dispute and the City's evidence meets the required burden.

4 5. When a dog is declared dangerous, and that declaration is upheld after hearing,
5 the Hearing Examiner shall enter an order so stating and shall direct that the dog be humanely
6 euthanized. The Hearing Examiner may alternatively consider directing that a dog be sent to a
7 secure animal shelter or removed from the City and maintained at all times in compliance with
8 Chapter 16.08 RCW, but only upon request of the owner. *TMC 17.04.031.D.1, TMC*
9 *17.04.050.*

10 6. The evidence in the record does show that Brandy and Milo attacked Puff without
11 provocation causing fatal injury, thereby meeting the definition of being dangerous dogs. *TMC*
12 *17.01.101.15.b.*

13 7. At the hearing, Schuller argued the value of the Dogs to him and his wife, and he
14 requested that any consequences from the Incident come to bear on him and not on the Dogs.
15 While the Examiner certainly understands the sentiment behind this request, the Examiner can
16 only follow the codified law, as applicable here to the facts proved. There is no avenue
17 available in the Tacoma Municipal Code or other applicable laws to granting Schuller's request

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

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

⁶ *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).

1 **ORDER**

2 Based on the above Findings and Conclusions, the present appeal is DENIED and the
3 City of Tacoma’s individual Dangerous Dog Notices issued to dogs Brandy and Milo are
4 UPHELD.

5 Both dogs are to be humanely euthanized in accordance with the requirements of TMC
6 17.04.031.C and D, unless Appellant Schuller presents a request that Brandy and Milo be
7 removed from the City, together with submittal (ultimately) of a viable plan for compliance
8 with TMC 17.04.031.C and D in such removal. Such a request must be received within five
9 (5) business days of the issuance date hereof. If a request is submitted, the Appellant shall
10 state how much additional time is needed to submit a compliance plan for the Examiner’s
11 consideration. Appellant shall be responsible for all boarding fees for the Dogs at the HSTPC
12 until they are either released or euthanized.

13 **DATED** this 8th day of August, 2023.

14 
15 **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.