

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **JANNICA JONES SCOTT,**

HEX2024-006

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 June 6, 2024,¹ 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 (separately the “City”), Animal Control and

13 Compliance (“Animal Control” or “ACC”) at the hearing. Appellant Jannica Jones Scott

14 (“Appellant” or “Scott”) appeared *pro se* at the hearing. Witnesses were sworn and testified.

15 Exhibits were submitted and admitted, and arguments were presented and considered.

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

- 17
- Tina Harkins;²
 - Blaire Stock;
 - Eric O’Donnell, ACC;
 - Joe Satter- Hunt, ACC; and
 - Jannica Jones Scott.
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20 From the evidence in the hearing record, the Hearing Examiner makes the following:

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¹ The hearing was conducted, at the parties’ agreement, over Zoom, with no cost to any participant. Video, internet, and telephonic access were all available.

² 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**

FINDINGS OF FACT

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2 1. Appellant Jannica Jones Scott currently resides within the Tacoma city limits at
3 2538 Martin Luther King Jr. Way,³ Tacoma, WA 98405 (the “Scott Residence”). Scott is
4 the owner of a licensed, chocolate/brown-colored, unaltered, male American Staffordshire/
5 American Pit Bull Terrier dog named King James (“KJ” or the “Dog”). KJ was still a
6 juvenile at approximately five months old at the time of the Incident, as set forth below. KJ
7 was identified by witnesses Tina Harkins and Blaire Stock during the hearing as the dog
8 involved in the Incident. *Scott Testimony, Harkins Testimony, Stock Testimony, O’Donnell*
9 *Testimony; Ex. R-1, Ex. R-2, Ex. R-5.*

10 2. Animal Control issued a Potentially Dangerous Dog Notice for KJ dated
11 April 19, 2024, which is the subject of this appeal (the “PDDN”). *O’Donnell Testimony,*
12 *Hunt Testimony; Ex. R-1.*

13 3. ACC’s decision to issue the PDDN to Scott for “King James or KJ” is based on an
14 incident that occurred on March 25, 2024 (these events are sometimes referred to herein
15 collectively as the “Incident”). *O’Donnell Testimony, Hunt Testimony; Ex. R-1, Ex. R-2.*

16 4. On March 25, 2024, at approximately 7:00 pm, Harkins was walking her dog
17 Wickett northbound on the sidewalk across the street (east side of MLK Way) from the Scott
18 Residence (on the west side of MLK Way) in the 2500 block of Martin Luther King Jr. Way.
19 Wickett is a three-year-old, 12-pound Shih Tzu. Wickett was leashed while walking. *Harkins*
20 *Testimony; Ex. R-1~Ex. R-3.*

21 5. As she approached the Scott Residence from across the street, Harkins saw four

³ Martin Luther King Jr. Way is abbreviated at times herein as “MLK Way.”

1 dogs in the fenced yard of the Scott Residence. One of the dogs looked as if it might jump over
2 the fence. As a truck passed in the street, Harkins view of the Scott Residence and the dogs was
3 temporarily obstructed. Once the truck passed, Harkins saw that the dogs had exited the yard
4 and were approaching her and Wickett. Harkins testified that the dogs sniffed at Wickett and
5 she hoped they would leave after making the usual canine introductions. Instead, after Wickett
6 appeared to become somewhat nervous, KJ latched onto Wickett by biting on Wickett's
7 neck/face/head area. *Harkins Testimony; Ex. R-2.*

8 6. Harkins screamed and hit KJ trying to get him to release his grip on Wickett, but
9 Harkins was initially unsuccessful. KJ then released Wickett temporarily, only to bite onto
10 Wickett's head area again. *Id.*

11 7. During this time, both DeAnna Emerson (of 2522 MLK Way) and Blaire Stock (of
12 2530 MLK Way) heard Harkins' screams and came out to the scene of the Incident—Emerson
13 apparently first, and then Stock. Stock saw Emerson get KJ to disengage his bite-hold on
14 Wickett's head, and she then helped Emerson get KJ and the other dogs back inside the fence of
15 the Scott Residence. Stock testified that she knew the dogs, including KJ, resided at the Scott
16 Residence. She also testified that she had seen the Scott dogs outside of their fenced yard in the
17 neighborhood at times other than the Incident. *Harkins Testimony, Stock Testimony; Ex. R-3~R-5.*

18 8. Both Harkins and Stock testified that they saw only KJ bite Wickett, even though
19 the other dogs were present.

20 9. Wickett sustained injuries to his head and neck from KJ's bite(s) and ultimately
21 had to have his left eye surgically removed due to the Incident. Harkins also sustained injuries

1 to her hands, but she was not sure how they were incurred in the confusion of the Incident.

2 *Harkins Testimony; Ex. R-11.*

3 10. Wickett's injuries were treated by both BluePearl Veterinary Partners in
4 Lakewood, and Banfield Pet Hospital in Tukwila. *Harkins Testimony; Ex. R-9, Ex. R-10.*

5 11. ACC Officer O'Donnell ended up investigating the Incident, and under the
6 supervision of Officer Satter-Hunt, made the determination to issue the PDDN to Scott for KJ.
7 O'Donnell then served it on her on April 22, 2024. *O'Donnell Testimony, Hunt Testimony;*
8 *Ex. R-1, Ex. R-2.*

9 12. Scott testified that she was home at the time of the Incident. She indicated that she
10 had let the dogs out into the yard to play and that her windows were open. She testified that she
11 heard no noises around the time of the Incident that would have indicated anything was amiss.
12 She testified that she has a video doorbell and that there was no footage on it that showed
13 anything corroborating the testimony of Harkins and/or Stock.

14 13. Scott did admit that her dogs have dug holes and used them to escape from her
15 yard, but that she blocks the holes when they are found. A second incident with KJ was
16 reported about a week after the Incident in which KJ was outside the yard of the Scott
17 Residence. Scott did acknowledge that KJ was out of the yard at that time.

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

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

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1 CONCLUSIONS OF LAW

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

4 2. Pursuant to TMC 17.04.032.B, in appeal proceedings before the Hearing
5 Examiner challenging a Potentially Dangerous Dog declaration, Animal Control bears the
6 burden of proving, by a preponderance of the evidence, that the animal(s) in question meet(s)
7 the definition of a potentially dangerous dog. This definition is as follows:

8 “Potentially dangerous dog” means any dog which:

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

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

21 4. “Preponderance of the evidence” means that the trier of fact is convinced that it is
more probable than not that the fact(s) at issue is/are true.⁴ The preponderance of the evidence
standard is at the low end of the spectrum for burden-of-proof evidentiary standards in the U.S.

⁴ *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 legal system and is not particularly difficult to meet.⁵ The City’s evidence meets the required
2 burden. *TMC 17.01.010.27.; TMC 17.04.032.*

3 5. When a dog is declared potentially dangerous, and that declaration is upheld after
4 hearing, the Hearing Examiner may maintain or revise conditions already imposed by ACC, or
5 add or delete conditions as appropriate.⁶ TMC 17.04.032, subsection C concludes by stating
6 that “The Hearing Examiner *shall order* that a potentially dangerous dog be spayed or
7 neutered.” [Emphasis added.] This requirement is not discretionary to the Examiner.

8 6. The evidence in the record does show that KJ is potentially dangerous based on
9 the evidence as it aligns with the TMC. KJ did “[b]ite[] or injure[] a...domestic animal, on
10 public property (the MLK right-of-way), and this was done without provocation. Wickett’s
11 nervous response to KJ’s approach and sniff cannot be considered provocation, nor was that
12 argued by the Appellant.

13 7. The Examiner does not conclude that any witness or party here is not credible.
14 Scott’s testimony regarding not hearing anything and her camera not recording anything
15 showing the Incident does not negate the testimony of Harkins and Stock, however.

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

18 Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing
19 Examiner issues the following:
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⁵ *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).

⁶ *TMC 17.04.032.C.*

DECISION AND ORDER

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3 1. Based on the Findings and Conclusions above, the present appeal is DENIED
4 and the City of Tacoma’s Potentially Dangerous Dog Notice issued to King James (KJ) is
5 UPHELD.

6 2. Appellant Scott is hereby ordered to abide by the following conditions/
7 restrictions:

8 a. KJ must not “be outside the proper enclosure on the premises of the
9 owner.” In other words, KJ must be kept indoors at the Scott
10 Residence, or only be outside if enclosed in a five-sided kennel with a
11 floor and walls of sufficient height that they cannot be scaled, or
12 otherwise in compliance with b. below. Fencing around the yard does
13 not satisfy this requirement.

14 b. KJ must not “go beyond the proper enclosure on the premises of the
15 owner unless he is securely leashed and humanely muzzled in a
16 manner that will
17 prevent him from biting any person or animal and is under the physical
18 control of a responsible person.”

19 c. Scott must post a clearly visible warning sign that there is a potentially
20 dangerous dog on the property. In addition, Scott must conspicuously
21 display a sign with a warning symbol that informs children of the
 presence of a potentially dangerous dog.

 d. KJ must be neutered within 60 days from the issuance of this Decision.

 3. Scott shall immediately notify Animal Control, followed by written notice, if KJ:

 a. is loose or unconfined; provided that, Scott shall first call 911;

 b. has bitten a human being or attacked another animal; provided, Scott
 shall first call 911;

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c. is sold or given away, or dies; or

d. is moved to another address.

DATED this 13th day of June, 2024.



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.