

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **VERONICA MONTEZ,**

**HEX2024-023**

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 December 5, 2024,<sup>1</sup> before JEFF H. CAPELL,  
11 the Hearing Examiner for the City of Tacoma, Washington. Appellant Veronica Montez  
12 (“Appellant” or “Montez”) appeared at the hearing *pro se*. Deputy City Attorney Jennifer J.  
13 Taylor represented the City of Tacoma, Animal Control and Compliance (“Animal Control” or  
14 “ACC”) at the hearing. Witnesses were sworn and testified. Exhibits were submitted and  
15 admitted, and arguments were presented and considered.

16 The following witnesses testified at the hearing (in order of appearance):<sup>2</sup>

- 17
- Christopher Pilch;
  - Alex Pilch;
  - Cheri Page, ACC;
  - Joseph Satter-Hunt, ACC; and
  - Veronica Montez.
- 18  
19

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

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<sup>1</sup> The hearing was conducted on December 5, 2024, over Zoom at no cost to any participant with video, internet, and telephonic access all available.

<sup>2</sup> Individuals who participated in the hearing may, at times, 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**

1  
2           1.    Appellant Veronica Montez currently resides within the Tacoma city limits at,  
3 1416 E. 38th Street, Tacoma, WA 98404 (the “Montez Residence”). Montez is the owner of  
4 a licensed, unaltered female Pit Bull Terrier named Lita, described as both “brown and  
5 white,” and also “gray” (“Lita” or the “Dog”).

6           2.    Animal Control issued a Potentially Dangerous Dog Notice for Lita dated  
7 October 24, 2024 (the “PDDN”), which is the subject of this appeal. *Page Testimony,*  
8 *Satter-Hunt Testimony; Ex. R-1.*

9           3.    ACC’s decision to issue the PDDN to Montez for Lita is based on an incident  
10 that occurred on October 20, 2024, around noon (these events are sometimes referred to  
11 herein collectively as the “Incident”). *C. Pilch Testimony, A. Pilch Testimony, Page*  
12 *Testimony, Satter-Hunt Testimony; Exs. R-1~R-4.*

13           4.    On October 20, 2024, at approximately 12:00 pm, Alex and Christopher Pilch  
14 were walking west along the public sidewalk on the south side of East 38th Street (in the  
15 city of Tacoma) past the Montez Residence, having come from the direction of the  
16 Fellowship Bible Church. Christopher was carrying his six-month old daughter. Alex was  
17 pushing her three-year old son in a stroller. They did not leave the public sidewalk while  
18 walking. *C. Pilch Testimony, A. Pilch Testimony; Ex. R-3, Ex. R-4.*

19           5.    Without warning, Lita slammed into Christopher’s left hip and then bit him in  
20 his abdominal area. Christopher exclaimed and then struck at the Dog with his free hand.  
21 Alex began yelling at the Dog in an effort to scare her away. Lita then turned and ran away

1 to the east side yard of the Montez Residence. Both Christopher and Alex indicated that Lita  
2 did not appear to have on a collar or a leash. Alex yelled in the direction of the house, but no  
3 one came out. When no one came out, the Pilches left the area heading to their home. *Id.*

4 6. Christopher sustained a puncture wound and scratches on his abdomen from  
5 the bite. His wounds are accurately depicted in the Exhibit R-5 photographs. Both  
6 Christopher and Alex identified Lita as the dog that bit Christopher from Lita's photo  
7 included in the record as part of Exhibit R-7. Montez also indicated that the photo in Exhibit  
8 R-7 is of her dog Lita. *Id., Ex. R-5, Ex. R-7.*

9 7. Alex reported the Incident to the City's 311 reporting line the same day as the  
10 Incident. ACC contacted the Pilches thereafter, took their statements, investigated the  
11 Incident, and then determined to issue the PDDN to Montez. ACC testified that there have  
12 been previous reports of similar incidents involving Lita to which ACC has responded, but  
13 that did not result in any Notices being issued. The City offered this last testimony and  
14 evidence (Exhibit R-6) seemingly to confirm identity and absence of mistake. *C. Pilch*  
15 *Testimony, A. Pilch Testimony; Ex. R-2, Ex. R-3, Ex. R-4, Ex. R-6, see ER 404(b).*

16 8. Montez was at work at the time of the Incident. She did not see the events of  
17 the Incident. She testified that her father-in-law was at the Montez Residence on October 20,  
18 2024, at around 12 noon when the Incident took place. She was unsure why he would not  
19 have responded to any commotion outside. *Montez Testimony.*

20 9. Montez further testified that when she left for work, Lita was tethered to the  
21 front porch of the Montez Residence with a locking collar, and so she did not understand

1 how Lita could have got loose. She testified further that her neighbors have cameras and  
2 none of them caught any footage of the Incident. *Id.*

3 10. Christopher did not seek medical treatment for his bite wound choosing instead  
4 to treat himself using his own knowledge of first aid practices. *C. Pilch Testimony.*

5 11. As part of its investigation, ACC impounded Lita and had her housed at The  
6 Humane Society for Tacoma & Pierce County (the “Humane Society”) on October 24,  
7 2024. *Page Testimony.*

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

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

11 **CONCLUSIONS OF LAW**

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

14 2. Pursuant to TMC 17.04.032.B, in appeal proceedings before the Hearing  
15 Examiner challenging a Potentially Dangerous Dog declaration, Animal Control bears the  
16 burden of proving, by a preponderance of the evidence, that the animal(s) in question meet(s)  
17 the definition of a Potentially Dangerous Dog. This definition is as follows:

18 “Potentially Dangerous dog” means any dog which:

- 19 a. unprovoked, bites or injures a human or domestic animal on  
20 public or private property; or  
21 b. unprovoked, chases or approaches a person or domestic  
animal upon the streets, sidewalk, or any public or private  
property in a menacing fashion or apparent attitude of attack;  
or

1 c. has a known propensity, tendency, or disposition to attack  
2 unprovoked, to cause injury, or to otherwise threaten the  
3 safety of humans or domestic animals. *TMC 17.01.010.27.*

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

6 4. “Preponderance of the evidence” means that the trier of fact is convinced that it is  
7 more probable than not that the fact(s) at issue is/are true.<sup>3</sup> The preponderance of the evidence  
8 standard is at the low end of the spectrum for burden-of-proof evidentiary standards in the U.S.  
9 legal system, and is not particularly difficult to meet.<sup>4</sup> Here, the material facts that are the basis  
10 of the PDDN are not in dispute.

11 5. When a dog is declared potentially dangerous, and that declaration is upheld after  
12 hearing, the Hearing Examiner shall enter an order so stating. The Hearing Examiner may  
13 impose any additional condition(s) of confinement set forth in RCW 16.08, including, but not  
14 limited to, posting of warning signs and maintenance of liability insurance coverage. *TMC*  
15 *17.04.032.C.*

16 6. The evidence in the record does show that Lita is potentially dangerous based on  
17 the elements and evidence. Uncontroverted testimony showed that Lita bit Christopher Pilch.  
18 There is no evidence of provocation.

19 7. The restrictions imposed by Animal Control in the PDDN are appropriate.  
20 Restrictions such as those imposed here serve to protect members of the community (and their  
21 pets) from dangerous behavior and attacks, or menacing behavior that can lead to an attack,

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<sup>3</sup> *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).

<sup>4</sup> *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 because a dog so restricted should not be able to get loose or roam unrestricted (i.e., unmuzzled  
2 and unattended), and/or engage in other dangerous behavior such as happened here, so long as  
3 the restrictions are met. The restrictions also serve to protect the life of a dog with prior history  
4 from coming into possible greater jeopardy by preventing future incident/attacks that could  
5 lead to more severe consequences (such as euthanization, which is not at issue here).

6 8. Montez asked that Lita not be required to be spayed. The Examiner is unable to  
7 honor this request. TMC 17.04.032.C. states that, "The Hearing Examiner shall order that a  
8 potentially dangerous dog be spayed or neutered." This is mandatory, not discretionary.

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

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

### 13 **DECISION AND ORDER**

14 Based on the above Findings and Conclusions, the present appeal is DENIED and the  
15 City of Tacoma's Potentially Dangerous Dog Notice issued to Lita is UPHELD.

16 Lita is subject to the following restrictions which must be adhered to at all times when  
17 Lita is present in the city of Tacoma:

- 18 1) Lita must not be outside a proper 5-sided enclosure on the premises of her  
19 owner, or must be inside the premises of her owner; and
- 20 2) Lita must not go beyond the proper enclosure on the premises of her owner  
21 unless she is securely leashed and humanely muzzled in a manner that will  
prevent her from biting any person or animal and she must be under the  
physical control of a responsible person; and

- 1 3) Lita should not be left unattended in the yard of the Montez Residence  
2 unless securely enclosed in a 5-sided kennel/humane enclosure; and  
3 4) A clearly visible warning sign informing that there is a potentially  
4 dangerous dog on the property must be posted conspicuously and such sign  
5 must include a warning symbol that informs children of the presence of a  
6 potentially dangerous dog.

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

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

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

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

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

15 D. is moved to another address.

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

### 18 **DECISION AND ORDER**

19 Based on the above Findings and Conclusions, the present appeal is DENIED and the  
20 City of Tacoma's Potentially Dangerous Dog Notice issued to Lita is UPHELD.

21 Lita is subject to the following restrictions which must be adhered to at all times when  
Lita is present in the city of Tacoma:

- 1) Lita must not be outside a proper 5-sided enclosure on the premises of the  
owner, or must be inside the premises of the owner; and

- 1                   2) Lita must not go beyond the proper enclosure on the premises of the owner  
2                    unless she is securely leashed and humanely muzzled in a manner that will  
3                    prevent her from biting any person or animal and she must be under the  
4                    physical control of a responsible person; and
- 5                   3) Lita should not be left unattended in the yard of the Montez Residence  
6                    unless securely enclosed in a 5-sided kennel/humane enclosure; and
- 7                   4) A clearly visible warning sign informing that there is a potentially  
8                    dangerous dog on the property must be posted conspicuously and such sign  
9                    must include a warning symbol that informs children of the presence of a  
10                  potentially dangerous dog.

11                  The following notification obligations of the PDDN also remain in full force and  
12                  effect:

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

- 15                  A. is loose or unconfined; provided that, the owner shall first call 911;
- 16                  B. has bitten a human being or attacked another animal; provided, the  
17                  owner shall first call 911;
- 18                  C. is sold or given away, or dies; or
- 19                  D. is moved to another address.

20                  Lita may be released from impound at the Human Society once the 5-sided  
21                  kennel/humane enclosure is in place at the Montez Residence.<sup>5</sup> Montez shall submit proof of  
the enclosure being in place to this Office and the ACC. Montez must pay Lita's boarding  
charges to the Humane Society in conformance with TMC 17.04.040.E. To the extent the  
Humane Society will agree to payment of boarding fees in installments, and release Lita  
before payment in full, the Examiner has no problem with that, but he does not hereby order

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<sup>5</sup> Montez indicated at the hearing that she had such an enclosure, but it still needed to be assembled.



1 the Humane Society to do so.

2 Lita must be spayed. To the extent that the Humane Society can accommodate spaying  
3 Lita prior to release, that should be done. If scheduling prohibits a prompt spaying procedure,  
4 Lita may be released from impound prior to being spayed, but Lita must be spayed within two  
5 months of the issuance of this Decision and Order and proof submitted to this Office and the  
6 ACC. If compliance is not achieved and Lita is not spayed within two months of the issuance  
7 of this Decision and Order, ACC may impound Lita and she may again be held at the Humane  
8 Society, at Montez's cost, until she can be spayed and released.

9 Montez must comply with the Licensing and chipping requirements of TMC  
10 17.040.040.A.

11 **DATED** this 11th day of December, 2024.

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13   
14 **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.