

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **JOLENA GARMAN**

HEX2020-019

4 **Appellant,**

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

5 **v.**

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

7 **Respondent.**

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10 **THIS MATTER** came on for hearing¹ before JEFF H. CAPELL, the Hearing
11 Examiner for the City of Tacoma, Washington, on July 30, 2020. Deputy City Attorney
12 Jennifer Taylor represented the Respondent City of Tacoma (the “City”), Animal Control and
13 Compliance (separately “Animal Control”). Appellant Jolena Garman (“Appellant” or
14 “Garman”) appeared at the hearing *pro se*. Witnesses were sworn and testified. Exhibits were
15 submitted and admitted, and arguments were presented and considered.

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

17 Animal Control and Compliance Officer Robin Bowerman, Maria
18 Yandell, and Appellant Jolena Garman.

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

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¹ Due to National, State of Washington and City of Tacoma Proclamations of Emergency made in response to the COVID-19 virus, the City of Tacoma closed the Tacoma Municipal Building to the public until further notice on or around March 17, 2020. As a result, the public hearing in this matter was conducted virtually using Zoom teleconferencing with both internet and telephonic access.

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

1 **FINDINGS OF FACT**

2 1. Garman owns a neutered black and white male pit bull dog named “Flash” (the
3 “Dog”). *Bowerman Testimony, Garman Testimony; Ex. R-1, Ex. R-9.*

4 2. This appeal arises from Animal Control’s having issued a Dangerous Dog Notice
5 for the Dog, dated June 29, 2020 (the “DDN”). *Ex. R-1.* The DDN ordered Garman to
6 immediately surrender the Dog for impoundment pursuant to Tacoma Municipal Code
7 (“TMC”) section 17.01.040.² *Id.* Animal Control impounded the Dog on June 18, 2020, in
8 conformance with applicable provisions of the TMC and state law,³ and he has been in the
9 City’s custody since.⁴ *Bowerman Testimony; Ex.R-2, Ex. R-8, Ex. R-9.*

10 3. The DDN was issued as the result of an incident that occurred on June 18, 2020,
11 at 802 South J Street, in front of Unit J201, in the city of Tacoma (the “Subject Property”)
12 where Garman was residing at the time. *Bowerman Testimony, Garman Testimony, Yandall*
13 *Testimony; Ex.R-1~R-4, Ex. R-8.*

14 4. On June 18, 2020, Yandall was present outside and next door to Garman’s
15 apartment. Yandall’s friend, Rebeka Hatcher, lives in the adjacent apartment unit and had
16 called Yandall to come give her a ride. While Yandall was waiting outside Hatcher’s door, the
17 door to Garman’s apartment opened. Garman opened the door readying to take the Dog on a
18 walk. The Dog was leashed, but apparently the leash was long enough that the Dog could reach
19 the position where Yandall was standing. The Dog used this length to quickly approach and
20 then attack Yandall biting her on the left hand and causing her severe injury that required
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² This appears to have already been done prior to issuance of the DDN.

³ TMC 17.01.010.15, 17.04.050 *et seq.*, and RCW 16.08.

⁴ The Dog is being kept at the Humane Society of Tacoma-Pierce County.

1 medical attention. As part of her treatment, she received what appears to be four sutures.

2 *Yandall Testimony, Garman Testimony, Bowerman Testimony; Ex. R-1, Exs. R-4~R-8.*

3 5. Garman testified that, before taking the Dog on walks, her habit is to look out a
4 front-facing window to make sure no people are around. She testified that on June 18, 2020,
5 she did this and did not see Yandall. Garman also testified that she thought Yandall had
6 indicated that she offered her hand to the Dog to sniff, thus precipitating the bite. Yandall
7 refuted this and Bowerman testified that she was never told his by Yandall. Garman was not
8 outside the apartment when the bite occurred and so did not see whether Yandall offered a hand
9 as Garman contends. Ultimately, the evidence regarding Yandall's hand being offered is
10 inconclusive at worst, but appears to tip in Yandall's direction, as corroborated by Bowerman,
11 that no hand was offered. *Yandall Testimony, Garman Testimony, Bowerman Testimony; Ex.*
12 *R-1, Ex. R-4.*

13 6. After the attack Yandall immediately sought medical attention for the dog bite
14 wound to her left hand that also "required additional medical assessment..." *Yandell*
15 *Testimony; Exs. R-4~ R-6.*

16 7. There is no dispute as to the identity of the dog that attacked Ms. Garman and
17 caused her injuries. *Yandell Testimony, Garman Testimony; Ex. R-2~Ex. R-4, Ex. R-9 (first*
18 *page only).* Yandall identified the Dog using the photo in page one of Exhibit R-9. Garman did
19 not dispute that it was her dog Flash that bit Yandall's left hand. *Id.*

20 8. There is also no dispute over the level of injury inflicted upon Yandall's left hand.
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**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

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

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

4 **CONCLUSIONS OF LAW**

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

7 2. Pursuant to TMC 17.04.031.B, in appeal proceedings before the Hearing
8 Examiner challenging a Dangerous Dog Declaration, Animal Control bears the burden of
9 proving, by a preponderance of the evidence, that the animal in question meets the definition of
10 a Dangerous Dog. This definition is as follows:

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

13 a. unprovoked, inflicts severe injury on or kills a human being on public or
private property; or

14 b. unprovoked, inflicts injuries requiring a domestic animal to be euthanized
or kills a domestic animal while the dog is off the owner’s property; or

15 c. while under quarantine for rabies bites a person or domestic animal; or

16 d. was previously declared to be a potentially dangerous dog, the owner
17 having received notice of such declaration, and the dog is again found to
have engaged in potentially dangerous behavior; or

18 e. is owned or harbored primarily or in part for the purpose of dog fighting
or is a dog trained for dog fighting; or

19 f. unprovoked, attacks a “dog guide” or “service animal” as defined in
20 Chapter 70.84 RCW and inflicts injuries that render the dog guide or service
21 animal to be permanently unable to perform its guide or service duties. *TMC*
17.01.010.15.

1 3. The above criteria are disjunctive. As a result, the City must only prove that one
2 of the six criteria were met for a designation to be upheld on appeal. Animal Control alleged
3 subsection a. above as the basis for its DDN.

4 4. TMC 17.01.010.31 defines “Severe injury” as “[a]ny physical injury that results in
5 (a) broken bones, (b) muscle, ligament, or tendon tears, (c) skin lacerations or puncture wounds
6 which require sutures or surgery, or (d) transmission of an infectious or contagious disease.

7 5. The City’s evidence did show by a preponderance that the Dog inflicted severe
8 injury on a human being on public property and that the attack was unprovoked. The evidence
9 is at least inconclusive that a hand was offered, as found above. In any event, unless the hand
10 was used in some menacing manner in the Dog’s direction, it would not constitute provocation.
11 Simply offering a hand to sniff by way of introduction is not a provocative action that would
12 justify the attack suffered here.

13 6. When a dog is declared dangerous, and that declaration is upheld after a hearing,
14 “[t]he Hearing Examiner shall enter an order so stating and shall direct that the dog be
15 humanely euthanized.” *TMC 17.04.031*. As alternative to being humanely euthanized, TMC
16 17.04.031.C provides the following:

17 *Upon application of the owner*, however, a dangerous dog may be
18 either (1) sent at the owner’s expense to a secure animal shelter and
19 maintained at all times in compliance with RCW Chapter 16.08; or
20 (2) removed from the City and maintained at all times in
21 compliance with RCW Chapter 16.08 at the owner’s expense.
 [Emphasis added.]

7. RCW 16.08.100 requires that for dangerous dogs, “The owner must pay the costs

1 of confinement and control.” In that same vein, TMC 17.04.031.C states: “The owner is
2 responsible for paying all fees owed to the City for the care of the animal.” Garman owes these
3 costs in reimbursement to the City.

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

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

8 **ORDER**

9 1. Based on the above Findings and Conclusions, the present appeal is DENIED
10 and the City of Tacoma’s Dangerous Dog Notice issued to Jolena Garman for her dog Flash is
11 UPHELD.

12 2. Garman is hereby ordered to reimburse the City for its costs of confinement,
13 control and care in accordance with Conclusion of Law 7 above.

14 3. In accordance with controlling law, the Dog shall be humanely euthanized.
15 Garman may make arrangements through Animal Control to visit the Dog prior to
16 euthanization.

17 **DATED** this 4th day of August, 2020.

18 
19 _____
20 **JEFF H. CAPELL, Hearing Examiner**

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

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.

**FINDINGS OF FACT,
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