

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **MIRANDA WRIGHT,**

HEX2023-013

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 September 14, 2023,¹ before

11 JEFF H. CAPELL, the Hearing Examiner for the City of Tacoma, Washington. Deputy City
12 Attorney Jennifer J. Taylor represented the City of Tacoma, Animal Control and Compliance
13 (“Animal Control” or “ACC”) at the hearing. Appellant Miranda Wright (“Appellant” or
14 “Wright”) appeared at 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 were as follows (in order of appearance):

- 17
 - Robin Bowerman, ACC Officer.²
 - Miranda Wright.

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¹ The parties elected/agreed to hold the hearing in this matter solely in virtual format via Zoom. As a result, the hearing was conducted over Zoom at no cost to any participant with video, internet, and telephonic access.

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

**FINDINGS OF FACT,
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1 From the evidence in the hearing record, the Hearing Examiner makes the following:

2 **FINDINGS OF FACT**

3 1. Appellant Wright currently resides within the Tacoma city limits at
4 2341 South Cushman Avenue, Tacoma, WA 98405 (the “Wright Residence”). She is the
5 owner of a licensed brown, brindle and black male Boxer/German Shepherd mix dog named
6 Rainfire (“Rainfire” or the “Dog”). *Wright Testimony, Bowerman Testimony; Ex. R-1, Ex.*
7 *R-2.*

8 2. Animal Control issued a Potentially Dangerous Dog Notice for Rainfire dated
9 May 2, 2023 (the “PDDN”), that imposed restrictions on Rainfire. *See Ex. R-1 for the full list*
10 *of restrictions originally imposed.* Animal Control imposed these restrictions in conformance
11 with applicable provisions of the Tacoma Municipal Code (“TMC”) and state law.³ *Bowerman*
12 *Testimony; Ex. R-1.*

13 3. ACC’s decision to issue the PDDN to Wright regarding Rainfire was the result of
14 an incident that occurred on April 11, 2023, in the vicinity of the Wright Residence.⁴ *Bowerman*
15 *Testimony, Wright Testimony; Ex. R-1~Ex. R-4.*

16 4. On April 11, 2023, sometime between 9:00 am and 9:30 am, Andy Thach, of
17 1407 South 23rd Street, Tacoma, WA 98405, was walking to the bus stop at South 25th Street
18 and South Cushman Avenue to commute to work. As he passed the Wright Residence, Rainfire
19 slipped his collar at the side of Wright’s vehicle, approached Thach, knocked him down and
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21 ³ TMC 17.01.010.27, TMC 17.04.050 and RCW 16.08.

⁴ The events of April 11, 2023 that gave rise to the PDDN being issued are referred to hereinafter inclusively as the “Incident.” The Examiner notes that additional events and etc. were testified to, but are not set forth here as a finding of fact. Findings of Facts are not intended to be a complete retelling of all testimony at the hearing, but rather the Findings of Fact here are the facts that were proved and that are germane to the issue presented in the hearing, i.e., whether the PDDN should be upheld and under what conditions.

1 then inflicted scratches and at least two puncture-bite wounds to his leg and hand.⁵ Thach was
2 treated for his injuries by both Tacoma Fire paramedics, who were called at the scene, and then
3 Tran Urgent Care and Wellness Center. *Bowerman Testimony; Exs. R-2~R-7.*

4 5. At the time of the Incident, Wright had just taken her children to school and
5 Rainfire was along for the car ride. Wright and Rainfire were getting out of the car and
6 Rainfire was collared and leashed. Wright saw Thach passing on the sidewalk and she intended
7 to wait in-place with Rainfire before going inside while Thach passed. Rainfire got restless
8 waiting. Wright testified that she was nervous/fearful as Thach passed and that Rainfire may
9 have sensed that and thought he needed to defend Wright. Wright explained that Rainfire's
10 collar at the time of the Incident was new and not secure enough, enabling Rainfire to get free.
11 Rainfire then attacked Thach as already set forth above. *Wright Testimony.*

12 6. Wright immediately ordered a muzzle and a different, more secure collar for
13 Rainfire after the Incident. Wright has paid Thach \$500 to cover his medical expenses. After
14 the Incident, Wright also engaged in notable efforts to get Rainfire additional training in order
15 to help prevent future incidents. Wright's backyard is fully enclosed by a fence. Wright has
16 visibly posted signs warning of her Dog at the Wright Residence. *Wright Testimony.*

17 7. Based on Wright's responsible actions to further train Rainfire and engage other
18 protective measures, by the end of the hearing ACC and City legal counsel offered their
19 agreement with having the restrictions of the PDDN modified and those modifications are
20 addressed in the Order section below.

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⁵ Without Thach's own testimony regarding the wound to his face shown on page one of Exhibit R-4, testimony was inconclusive as to whether it was a bite, although the medical records in Exhibit R-5 do list a "Dog bite of face."

1 4. “Preponderance of the evidence” means that the trier of fact is convinced that it is
2 more probable than not that the fact(s) at issue is/are true.⁶ The preponderance of the evidence
3 standard is at the low end of the spectrum for burden-of-proof evidentiary standards in the U.S.
4 legal system, and is not particularly difficult to meet.⁷ Here, the material facts of the attack are
5 not in dispute and the City’s evidence meets the required burden.

6 5. When a dog is declared potentially dangerous, and that declaration is upheld after
7 hearing, the Hearing Examiner has the authority to impose or revise conditions or restrictions
8 in conformance with TMC Title 17 and RCW 16.08. *TMC 17.04.032, TMC 17.04.050.*

9 6. The evidence in the record does show that Rainfire attacked Thach without
10 provocation causing injuries that needed medical treatment, thereby meeting the definition of
11 being a potentially dangerous dog. *TMC 17.01.010.27.a.* Wright offered that her own actions
12 and emotional response to Thach passing by “provoked” Rainfire’s attack. As the Examiner
13 explained at the hearing, such actions or emotional responses from the Dog’s owner generally
14 cannot constitute legal excuse for the attack as provocation, and do not do so here.

15 7. The restrictions imposed by Animal Control in the PDDN were appropriate at the
16 time of issuance. As referenced in Findings of Fact 6 and 7, the Examiner agrees with
17 modifications proposed by ACC/the City by the end of the hearing. These modifications are set
18 forth in the Order below. Wright’s statements at the hearing showed her understanding that
19 restrictions, such as those imposed here, serve to protect members of the community (and their
20 pets) from dangerous behavior and attacks because a dog so restricted should not be able to get

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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).

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1 loose and engage in dangerous behavior if the restrictions are met. Sometimes an owner's
2 reasonable efforts (the Dog was collared and leashed here) can even go awry. Restrictions also
3 serve to protect the life of a dog so restricted, because of incident history, from coming into
4 possible greater jeopardy by preventing future attacks that could lead to more severe
5 consequences (such as euthanization).

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

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

10 **ORDER**

11 The present appeal is DENIED and the City of Tacoma's Potentially Dangerous Dog
12 Notice issued to Rainfire is UPHELD as modified below. Rainfire is subject to the following
13 restrictions which must be adhered to at all times:

14 1) Rainfire must not be outside a proper enclosure on the premises of the owner;
15 or

16 2) Rainfire must not go beyond the proper enclosure on the premises of the
17 owner unless Rainfire is securely leashed and humanely muzzled in a manner
18 that will prevent him from biting any person or animal and he is under the
19 physical control of a responsible person;

20 3) When Rainfire is inside the Wright Residence or is in Wright's fully
21 enclosed backyard, he need not be muzzled;

4) A clearly visible warning sign informing that there is a potentially
dangerous dog on the property must be posted (or as here the posting
maintained) conspicuously and such sign must include a warning symbol that
informs children of the presence of potentially dangerous dog.

1 The following notification obligations of the PDDN also remain in full force and
2 effect:

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

- 5 A. is loose or unconfined; provided that, the owner shall first call 911;
- 6 B. has bitten a human being or attacked another animal; provided, the
owner shall first call 911;
- 7 C. is sold or given away, or dies; or
- 8 D. is moved to another address.

9 If the above conditions have all been abided by without further incident, meaning there
10 are no other violations of Tacoma Municipal Code Title 17, for one year's time after the
11 issuance of this Decision and Order, and all license/micro-chip requirements have been met,
12 Wright may file a request to have the Potentially Dangerous Dog designation for Rainfire
13 rescinded. Such request must be submitted to the Office of the Hearing Examiner and to
14 Animal Control.

15 **DATED** this 22nd day of September, 2023.

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17 **JEFF H. CAPELLI, Hearing Examiner**

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**FINDINGS OF FACT,
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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.