



City of Tacoma  
Hearing Examiner

March 8, 2019

Kyle R. Ward  
5205 Clarkston Street  
Tacoma, WA 98404-1333  
[kylward2024@gmail.com](mailto:kylward2024@gmail.com)  
(Electronic & First Class Delivery)

Jennifer J. Taylor, Deputy City Attorney  
Office of the Tacoma City Attorney  
747 Market Street, Room 1120  
Tacoma, WA 98402-3701  
[jtaylor@ci.tacoma.wa.us](mailto:jtaylor@ci.tacoma.wa.us)  
(Electronic & Interoffice Mail Delivery)

**Re: *Kyle R. Ward v. City of Tacoma, Animal Control and Compliance***  
**File No.: HEX2019-002 (Dogs: Toby, Piper, & Scooter)**

Dear Parties,

In regard to the above referenced matter please find enclosed a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Order entered on March 8, 2019.

Sincerely,

Louisa Legg  
Office Administrator

Enclosure (1) – Findings, Conclusions, and Order

Cc: Joseph Satter-Hunt, Animal Control and Compliance Supervisor (Electronic Mail Delivery Only)  
Eric O'Donnell, Animal Control and Compliance Officer (Electronic Mail Delivery Only)  
Angie Krupa, Legal Assistant (Electronic Mail Delivery Only)

**CERTIFICATION**

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED March 8, 2019, at Tacoma, WA.

Louisa Legg

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **KYLE R. WARD,**

**HEX2019-002**

4 **Appellant,**

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

5 **v.**

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

7 **Respondent.**

8

9

10 **THIS MATTER** came on for hearing before JEFF H. CAPELL, the Hearing Examiner  
11 for the City of Tacoma, Washington, on February 28, 2019, at the Tacoma Municipal Building,  
12 747 Market Street, Tacoma, Washington. Deputy City Attorney Jennifer Taylor represented  
13 Respondent City of Tacoma (the "City"), Animal Control and Compliance (separately "Animal  
14 Control"). Appellant Kyle R. Ward ("Appellant" or "Ward") appeared at hearing *pro se*.  
15 Witnesses were sworn and testified. Exhibits were submitted and admitted, and arguments  
16 were presented and considered.

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

18 **FINDINGS OF FACT**

19 1. Appellant Kyle R. Ward and his fiancé<sup>1</sup> Megan Hesyck currently reside in the  
20 city of Tacoma at 5205 Clarkston St., Tacoma, WA 98404 (the "Subject Property"). Ward  
21

---

<sup>1</sup> For ease of reference, and without meaning any disrespect, after initial introduction and in citations, parties and witnesses will be referred to by last name only.

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

1 and Hesyck own three pit bull type dogs named “Toby,” “Piper” and “Scooter”<sup>2</sup> (collectively  
2 the “Dogs”) who reside with them at the Subject Property. Ward and Hesyck also have three  
3 children who reside with them. Both Ward and Hesyck testified that the Dogs had never  
4 shown any aggressive behavior or tendencies prior to the incident that gave rise to this  
5 appeal, and that the Dogs have significant exposure to their children, other people, and other  
6 dogs as well. *Ward Testimony, Hesyck Testimony; Exs. R-1~R-3 and Ex. R-4.*<sup>3</sup>

7 2. This appeal arises from Animal Control’s having issued individual Potentially  
8 Dangerous Dog Notices (collectively the “PDDNs”) for each of the Dogs, and having imposed  
9 restrictions on the Dogs in the PPDNs. *See Exs. R-1 through R-3 for the full list of restrictions*  
10 *originally imposed.* Animal Control imposed these restrictions in conformance with applicable  
11 provisions of the Tacoma Municipal Code (“TMC”) and state law.<sup>4</sup> *Exs. R-1~Ex. R-3, Ex. R-8;*  
12 *O’Donnell Testimony.*

13 3. The PDDNs were issued based on an incident that occurred on December 3, 2018,  
14 near the Subject Property in the vicinity of 54<sup>th</sup> and Clarkston. *Ferraz Testimony, Lowen*  
15 *Testimony, Ward Testimony, Hesyck Testimony, Declaration of Brendan Ross; Exs. R-1~R-9,*  
16 *and Ex. A-1.*

17 4. On December 3, 2018, Judith Ferraz, who lives in the general vicinity of the  
18 Subject Property at 5504 East E. Street, was out for a walk with her Beagle Toby.<sup>5</sup> Toby F is  
19 approximately 11 years old and weighs in at 35 pounds. Toby F. was leashed. As is often the  
20

21 <sup>2</sup> The Examiner adopts the spelling of the Dogs’ names used in Exhibits R-1~R-3.

<sup>3</sup> Ward also referenced information contained in the City’s Exhibit R-9 relating to prior contact that Toby and Scooter had with Pierce County Animal Control as evidence of these two dogs’ good dispositions.

<sup>4</sup> TMC 17.01.010.27, 17.04.050 and RCW 16.08.

<sup>5</sup> Ferraz’s Toby shares the same name as one of the Dogs. For the sake of differentiation, Appellant Ward’s Toby will be referred to as “Toby W” and Ferraz’s as “Toby F.”

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

1 case with Beagles,<sup>6</sup> Toby F can be very vocal when other dogs are present. *Ferraz Testimony*.  
2 Such was the case on December 3, 2018 while out walking around dusk when one of the Dogs  
3 appeared in view of Ferraz and Toby F.<sup>7</sup> *Id.* Ferraz testified that this dog barked at her and  
4 Toby F. Upon seeing this other dog and hearing the barking, Toby F barked in return and  
5 strained at his leash. *Id.* The dog then momentarily disappeared only to return accompanied by  
6 the other two Dogs. *Id.*

7 5. At this point, Toby F became more agitated, but was fully restrained by his leash.  
8 Ferraz shouted and waived at the Dogs to go away, but they did not; instead they approached  
9 and attacked Toby F. Ferraz attempted to protect Toby F by yelling and kicking at the Dogs in  
10 hopes of scaring them away. Her efforts were largely fruitless. At one point, after being kicked  
11 by Ferraz, one of the Dogs broke away from attacking Toby F to lunge at Ferraz. The dog did  
12 not actually bite Ferraz, and after the lunge returned to attacking Toby F. *Ferraz Testimony*;  
13 *Ex. R-4, Ex. A-1.*

14 6. At some point during the attack, a man driving a squarish vehicle approached the  
15 commotion, alighted from his vehicle, pointed something at the Dogs and yelled at them to go  
16 away, at which point they did disengage from attacking Toby F and left the immediate area. *Id.*;  
17 *see also Declaration of Brendan Ross.*

18  
19  
20  
21 <sup>6</sup> See e.g., <https://wagwalking.com/behavior/why-are-beagles-noisy> (Beagles have been known for their loudness. Although they are extremely cute, they are also incredibly noisy and use their barking to communicate more often than other dogs.)

<sup>7</sup> In her written statement, which is Exhibit R-4, Ferraz indicated that a black colored pit bull first approached her and Toby F. In her testimony Ferraz initially stated that a light-colored dog was first to approach, but on cross-examination indicated that her written statement was probably more correct.

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

1           7. The Dogs' attack left Toby F severely injured. Toby F was treated for injuries to  
2 his neck, face and eye by "bluepearl specialty + emergency pet hospital." *Ferraz Testimony*;  
3 *Exs. R-4~R-6.*

4           8. Ward and Hesych were not present at the Subject Property when the attack  
5 occurred. Tiffany Lowen was present, however, in her capacity as babysitter/nanny to the  
6 Ward/Hesych children. On December 3, 2018, Lowen had let the Dogs out of the house for a  
7 bathroom break. The Dogs disappeared from Lowen's view, and shortly thereafter, she heard  
8 screaming from outside. Lowen called Hesych who told Lowen to retrieve the Dogs. Upon  
9 opening the front door to the Subject Property, an unidentified man was shepherding the Dogs  
10 back to the Subject Property. Lowen testified that the time from the Dogs departure to return  
11 was approximately three to four minutes. *Lowen Testimony.*

12           9. Hesych returned to the Subject Property shortly thereafter. The Dogs were safely  
13 in the house and uninjured, but had blood on them. *Hesych Testimony.*

14           10. After what appears to be significant surgery and the passage of time, Toby F has  
15 recovered from his injuries except for a remaining issue with one eye that makes it difficult to  
16 close. *Ferraz Testimony.*

17           11. On December 3, 2018, the yard at the Subject Property was not enclosed by fencing,  
18 which enabled to Dogs to leave the yard and venture out into the neighborhood unattended.  
19 *Ward Testimony, Lowen Testimony.* Ward testified that, since December 2018, the fence has  
20 been completed and includes a 6 foot by 25 foot (as yet) roofless kennel/dog run as part of the  
21 fencing improvements. Animal Control has not inspected the fence for containment purposes

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

1 yet, and O'Donnell testified that a roofless, 6-foot high kennel would not meet TMC  
2 requirements for containment of a potentially dangerous dog.

3 12. On December 4, 2018, Ferraz reported the incident to Animal Control. Animal  
4 Control investigated what had happened, including, without limitation, taking witness  
5 statements (*Ex. R-4*), investigating the Dogs' prior history (*Ex. R-9*), and obtaining reports on  
6 Toby F's injuries and treatment (*Ex. R-5, Ex. R-6*). Upon concluding his investigation,  
7 O'Donnell issued one PPDN for each of the Dogs. The PPDNs were dated December 27, 2018,  
8 and were served on Ward on December 28, 2018. *O'Donnell Testimony*.

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

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

### 12 CONCLUSIONS OF LAW

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

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

19 A "potentially dangerous dog" means any dog which:

- 20 a. unprovoked, bites or injures a human or domestic animal on  
21 public or private property; or

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

- 1           b. unprovoked, chases or approaches a person or domestic animal  
2           upon the streets, sidewalks, or any public or private property in a  
3           menacing fashion or apparent attitude of attack; or
- 4           c. has a known propensity, tendency, or disposition to attack  
5           unprovoked, to cause injury, or to otherwise threaten the safety of  
6           humans or domestic animals.

7 *TMC 17.01.010.27.*

8           3. The above criteria are disjunctive. As a result, the City must only prove that one  
9           of the three criteria were met for a designation to be upheld on appeal. Animal Control alleged  
10           that both subsection a. and b. above were the basis for its PDDNs.

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

14           5. Here, the Dogs approached, attacked, and bit Toby F without provocation causing  
15           serious injury. Toby F's barking from a distance cannot reasonably be considered to constitute  
16           provocation justifying the Dogs' approach and attack. Given that all three of the Dogs were  
17           involved in the attack, Animal Control's issuing a PDDN to all three was supported by a  
18           preponderance of the evidence, thus showing that the elements of TMC 17.01.010.27.a and b  
19           were met.

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

**ORDER**

Based on the above Findings and Conclusions, the present appeal is DENIED and the City of Tacoma's Potentially Dangerous Dog Notices issued to Toby W, Piper and Scooter are UPHELD. All restrictions set forth in the Potentially Dangerous Dog Notices must be adhered to with the following modification:

To the extent that the fence at the Subject Property is inspected and meets Animal Control/TMC requirements for containment and maintained that condition, the Dogs need not be muzzled when they are within the fenced yard and under adult supervision.

DATED this 8<sup>th</sup> day of March, 2019.



JEFF H. CAPELL, Hearing Examiner

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

**ORIGINAL**

City of Tacoma  
Office of the Hearing Examiner  
Tacoma Municipal Building  
747 Market Street, Room 720  
Tacoma, WA 98402-3768  
Hearing.examiner@cityoftacoma.org  
Ph: (253) 591-5195



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

**NOTICE**

**RECONSIDERATION/APPEAL OF EXAMINER’S DECISION**

**RECONSIDERATION TO THE OFFICE OF THE HEARING EXAMINER:**

Any aggrieved person or entity having standing under the ordinance governing the matter, or as otherwise provided by law, may file a motion with the Office of the Hearing Examiner requesting reconsideration of a decision or recommendation entered by the Examiner. A motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14 calendar days of the issuance of the Examiner's decision/recommendation, not counting the day of issuance of the decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next working day. The requirements set forth herein regarding the time limits for filing of motions for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole discretion of the Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The Examiner, after a review of the matter, shall take such further action as he/she deems appropriate, which may include the issuance of a revised decision/recommendation. (*Tacoma Municipal Code 1.23.140.*)

**NOTICE**

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,  
CONCLUSIONS OF LAW,  
AND ORDER**

City of Tacoma  
Office of the Hearing Examiner  
Tacoma Municipal Building  
747 Market Street, Room 720  
Tacoma, WA 98402-3768  
Hearing.examiner@cityoftacoma.org  
Ph: (253) 591-5195