

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **JOHN TOPLIFF,**

HEX2021-003

4 **Appellant,**

5 **v.**

**DENIAL OF REQUEST
FOR RECONSIDERATION**

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

9 **Respondent.**

10 **THIS MATTER** comes now before JEFF H. CAPELL, Hearing Examiner for the City
11 of Tacoma, on Appellant John Topliff’s Request for Reconsideration filed on September 14,
12 2021, in the Office of the Hearing Examiner (the “Request”). The Request seeks
13 reconsideration of the Hearing Examiner’s ruling dated August 31, 2021 (the “Decision”).

14 The Request asks the Hearing Examiner to do two things: (1) waive the \$250 licensing
15 fee referenced in hearing Exhibit R-1 and required by Tacoma Municipal Code (“TMC”)
16 17.04.040.A, and (2) revise conditions/restrictions in the Decision to allow for 15 to 20
17 minutes of outside exercise/play time with Halfin.¹

18 TMC 1.23.140 and Hearing Examiner Rule of Procedure (“HEXRP”) 2.20 govern
19 requests for reconsideration. HEXRP 2.20 provides in part as follows:

20 **2.20 Reconsideration**

21 (a) Any party feeling that the decision of the Examiner is based on errors of
procedure, fact or law may make a written request for reconsideration within 14

¹ Although not stated in the Request, the Examiner presumes that Topliff is asking for this exercise/play time to be with Halfin off leash and unmuzzled. The Examiner makes that assumption because Halfin is already permitted to be in the yard muzzled and leashed for activities such as those requested with no time limit necessarily.

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1 calendar days of the issuance of the Examiner’s decision. This request shall set
2 forth the alleged errors, and the Examiner may, after review of the record, take
3 such further action as is deemed appropriate, which may include the issuance of a
revised decision.

4 TMC 1.23.140 similarly provides in part that “A motion for reconsideration must be in
5 writing and must set forth the alleged errors of procedure, fact, or law...”²

6 Appellant has not alleged any errors of procedure, fact, or law in asking for
7 reconsideration. Reconsideration does not entitle parties to an already resolved matter to
8 seek alternative or additional relief, absent *an error or oversight* which materially affects
9 the substantial rights of the parties.³ Parties cannot use a motion for reconsideration to get a
10 “second bite at the apple.”⁴

11 As a result, the Hearing Examiner finds and concludes as follows:

12 **Waiver of Licensing Fee**

13 The City Council is the legislative body of the municipal corporation that is the City
14 of Tacoma. As such, the City Council legislatively enacted the \$250 licensing fee for
15 potentially dangerous dogs found at TMC 17.04.040.A. The Hearing Examiner is unaware
16 of any authority that would authorize him to waive enforcement of this City legislation, nor
17 does Appellant Topliff cite to any. Topliff did not request this waiver at the hearing. As a
18 result, the Examiner must deny this request as beyond his authority and also beyond the
19 proper bounds of a request for reconsideration given that Topliff has not based the request
20 on any errors of procedure, fact, or law.

21 _____
² The Examiner also looks to Civil Rule (“CR”) 59 (New Trial, Reconsideration, and Amendment of Judgments) of the Washington State Rules for Superior Court as guidance on reconsideration requests.

³ CR 59; *see also, Vaughn v. Vaughn*, 23 Wn. App. 527, 531, 597 P.2d 932 (1979).

⁴ 15A Karl B. Tegland & Douglas J. Ende, Washington Practice: Handbook On Civil Procedure § 65.1 at 520 (2009).

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