

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **CARL WILSON,**

HEX2023-023

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 September 7, 2023, at the Tacoma Municipal Building,

12 747 Market Street, Tacoma, Washington.¹ Deputy City Attorney Jennifer Taylor represented

13 the Respondent City of Tacoma (the “City”), Animal Control and Compliance (separately

14 “Animal Control” of “ACC”). Appellant Carl Wilson (“Appellant” or “Wilson”) appeared at

15 the hearing *pro se*.

16 Witnesses were sworn and testified. Exhibits were submitted and admitted, and

17 arguments were presented and considered.

18 The following witnesses testified at the hearing (in order of appearance):

- 19
- Skyler Jackson
 - Eric O’Donnell, Animal Control Officer
- 20

21

¹ At the Appellant’s election the hearing was conducted in-person at the Tacoma Municipal Building, First Floor Council Chambers. Remote participation was also made available through the internet using Zoom conferencing at no cost, with participation available by both video and telephone. Witness Jackson participated via Zoom.

**FINDINGS OF FACT,
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- Carl Wilson²

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

FINDINGS OF FACT

1. Appellant Wilson is the owner of a black and white neutered male Pit Bull/Boxer mix dog named “Billy” and a tan and white spayed female Pit Bull dog named “Millie” (collectively the “Dogs”). Wilson resides at 3592 East K Street in the Tacoma city limits (the “Wilson Residence”). *Ex. R-1, Ex. R-2, Ex. R-8, R-9; O’Donnell Testimony.*

2. This appeal arises from Animal Control’s having issued Dangerous Dog Notices for the Dogs, dated July 26, 2023 (the “DDNs”). *Ex. R-1, Ex. R-2; O’Donnell Testimony.* The DDNs were served on Wilson by Officer O’Donnell on July 28, 2023. The DDNs ordered Wilson to immediately surrender the Dogs for impound pursuant to Tacoma Municipal Code (“TMC”) section 17.01.040. *Id.* Animal Control impounded the Dogs on July 28, 2023, in conformance with applicable provisions of the TMC and state law,³ and they have been in the custody of the Humane Society for Tacoma and Pierce County (the “Humane Society”) since that time. *O’Donnell Testimony; Ex. R-3, Ex. R-9.*

3. Wilson was previously served Potentially Dangerous Dog Notices for both the Dogs on December 22, 2021 (the “PDDNs”), and the Dogs were supposed to be abiding the restrictions set forth in the PDDNs. The PDDNs were not appealed. *O’Donnell Testimony; Ex. R-8.*

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

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

1 4. The DDNs were issued based on an incident that occurred on July 18, 2023, in the
2 vicinity of the Wilson Residence. *Exs. R-1~R-4; Jackson Testimony, O'Donnell Testimony,*
3 *Wilson Testimony.*

4 5. On July 18, 2023, beginning at around 8:45 pm, Jackson was outdoors taking his
5 two dogs for a walk. One dog is a 1.5-year-old Golden Retriever named Dale. The other is a 7-
6 year-old Corgi named Griffey. Both of Jackson's dogs were secured to his person by a belt
7 lead/leash. *Jackson Testimony; Ex. R-4.*

8 6. As the trio were walking near the Wilson Residence, Jackson "[h]eard a large
9 commotion," and then turned to see the Dogs coming his direction from the driveway of the
10 Wilson Residence. The Dogs were unsupervised, off leash and unmuzzled. The Dogs
11 approached Jackson and his dogs slowly at first, but as Jackson attempted to back away the
12 Dogs attacked his dogs, first Dale and then Griffey. During the attack, Jackson fell and injured
13 his left knee while attempting to get the Dogs to disengage. Jackson successfully got one of the
14 Dogs disengaged from Dale, and then restrained the other in a headlock, but that left Griffey
15 open to still be attacked by the "black dog." During the attack, both Dogs bit Jackson's dogs.
16 *Jackson Testimony; Ex. R-4.*

17 7. After much shouting and the noise of the attack, Wilson came outside to where
18 the attack was occurring. Jackson yelled at Wilson to control his Dogs apparently without much
19 effect. A neighbor came to the scene at some point and used pepper spray to get the Dogs to
20 completely disengage. *Id.*

21 8. Both Dale and Griffey received veterinary care the day after the incident. Dale had

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1 numerous bite injuries that required staples and then sutures along with drainage. Griffey
2 received wounds to his posterior that were treated to prevent infection. *Jackson Testimony; Ex.*
3 *R-4 ~ R-7.*

4 9. Although the Dogs do not have a documented history of violence towards
5 humans, they do have an established history of violence toward other animals, and they were
6 not abiding by the restrictions of the PPDNs at the time of the July 18, 2023 attack. *Jackson*
7 *Testimony, O'Donnell Testimony; Ex. R-8.*

8 10. Wilson did not dispute the facts of the attack or the Dog's prior history. He
9 explained that he has been going through a very difficult period. He sincerely apologized for
10 the attack on Jackson's dogs. Wilson indicated that he may want to remove the Dogs from the
11 City, and he explained that he could return Billy to the rescue shelter from which he came as
12 part of his adoption agreement. Wilson also asked that, if the Dogs are to be humanely
13 euthanized, he be afforded the opportunity to visit the dogs prior to their euthanization and he
14 made it clear that he wants separate cremains of his dogs. Wilson was referred to the Humane
15 Society for an answer to his visitation and cremation questions. *Wilson Testimony, O'Donnell*
16 *Testimony.*

17 11. Any Conclusion of Law below which may be more properly deemed or considered
18 a Finding of Fact, is hereby adopted as such.

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

20 CONCLUSIONS OF LAW

21 1. The Hearing Examiner has jurisdiction in this matter pursuant to Tacoma

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

1 Municipal Code (“TMC”) 1.23.050.B.8 and 17.04.031.A.

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

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

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

9 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

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

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

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

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

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

20 4. “Preponderance of the evidence” means that the trier of fact (the Examiner) is
21 convinced that it is more probable than not that the fact(s) at issue is/are true.⁴ The

⁴ *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).

1 preponderance of the evidence standard is at the low end of the spectrum for burden-of-proof
2 evidentiary standards in the U.S. legal system, and is not particularly difficult to meet.⁵ Here,
3 the material facts of the July 18, 2023 attack are not in dispute, nor is the existence of the prior
4 incident that gave rise to the PDDNs.

5 5. In any event, the City’s evidence did show by a preponderance that the Dogs have
6 again been found to have engaged in potentially dangerous behavior.

7 6. When a dog is declared dangerous, and that declaration is upheld after a hearing,
8 “[t]he Hearing Examiner shall enter an order so stating and shall direct that the dog be
9 humanely euthanized.” *TMC 17.04.031*. As an alternative to being humanely euthanized, TMC
10 17.04.031.C provides the following:

11 Upon application of the owner, however, a dangerous dog may be either (1) sent
12 at the owner’s expense to a secure animal shelter and maintained at all times in
13 compliance with RCW Chapter 16.08; or (2) removed from the City and
14 maintained at all times in compliance with RCW Chapter 16.08 at the owner’s
15 expense.

16 7. RCW 16.08.100 requires that for dangerous dogs, “The owner must pay the costs
17 of confinement and control.” In that same vein, TMC 17.04.031.C states “The owner is
18 responsible for paying all fees owed to the City for the care of the animal.” Wilson owes these
19 costs in reimbursement to the City. If relocation of the Dogs is viably proposed, these fees will
20 have to be paid before the Dogs are released.

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

⁵ *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).

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

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

3 **ORDER**

4 1. Based on the above Findings and Conclusions, the present appeal is DENIED
5 and the City of Tacoma's Dangerous Dog Notices issued to Carl Wilson for his dogs Billy and
6 Mille are UPHHELD.

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

9 3. If Wilson opts to remove the Dogs from Tacoma's jurisdiction, he should submit
10 a plan to Animal Control and to the Office of the Hearing Examiner within thirty (30) days
11 from the date this Decision and Order is issued.

12 4. Barring a viable removal plan being approved by Animal Control and the
13 Examiner, or if the City's costs are not reimbursed within thirty days, the Dogs shall be
14 humanely euthanized. Wilson may make arrangements through the Humane Society to visit
15 the Dogs prior to euthanization, as well as for the preservation of their remains.

16 **DATED** this 14th day of September, 2023.

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18 _____
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.

**FINDINGS OF FACT,
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