

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **LUKE AND EMILY STROM,**

HEX2021-029

4 **Appellants,**

**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 February 3, 2022,¹ before JEFF H. CAPELL,
11 the Hearing Examiner for the City of Tacoma, Washington. Deputy City Attorney Jennifer
12 Taylor represented the City of Tacoma, Animal Control and Compliance (“Animal Control” or
13 “ACC”) at the hearing. Luke and Emily Strom (collectively the “Appellants” or the “Stroms”)
14 appeared at hearing *pro se*. Witnesses were sworn and testified. Exhibits were submitted and
15 admitted, and arguments were presented and considered.

16 Witnesses testifying at the hearing were as follows:

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- Joe Satter-Hunt, ACC Officer
 - Robin Bowerman, ACC Officer
 - Leah Deliannis
 - Andrew Deliannis
 - Judy Godulas
 - John Godulas
 - Emily Strom
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¹ Due to ongoing State and City in-person meeting restrictions, the Office of the Hearing Examiner is continuing to conduct hearings over Zoom. This hearing was conducted over Zoom at no cost to any participant with video, internet audio, and telephonic access.

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

1 4. On September 25, 2021,⁵ at around 6:45 pm, Leah Deliannis, her son Andrew
2 Deliannis, and Leah’s parents, John and Judy Godulas, had taken the Deliannis’ dog Rosie out
3 on her leash for a walk. Rosie was an “elderly border collie” with “severe medical
4 conditions.”⁶ *Id.*

5 5. The Deliannis walking party passed in front of the Strom residence, first on the
6 opposite street-side sidewalk, and then again on the same side as the Strom residence on the
7 public sidewalk. During both passings, the Dogs were “going ballistic” inside the Strom
8 residence. *Leah Deliannis Testimony, Luke Strom Testimony; Ex. R-4.* Luke Strom theorized
9 that his Dogs somehow knew that something was wrong with Rosie because of her age and
10 weakened condition, and that was what set the Dogs off. *Luke Strom Testimony.*

11 6. While passing the Strom residence on the sidewalk the second time on the same
12 side of the street, Judy stopped to admire the Stroms’ Dogs and comment on them while Rosie
13 and the rest of the walking contingent had made it as far as the front corner of the property next
14 door to the Stroms. Luke testified that he saw Judy stop and attempted to speak with her to not
15 be rude, but could not hear what she was saying over the commotion of his Dogs barking. Luke
16 opened the door slightly and the Dogs pushed their way out. They then ran straight for Rosie.
17 *Leah Deliannis Testimony, Andrew Deliannis Testimony, John Godulas Testimony, Luke Strom*
18 *Testimony; Exs. R-1~R 4, and Exs. R-8~Ex. R-10.*

19 7. The Dogs then surrounded Rosie and started attacking her in tandem. The Dogs
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⁵ At the hearing, some testimony pointed to September 21, 2021 as the date of the incident. This appears to have been a mistake perhaps due to the way questions from counsel were phrased. In any event, the date of the Incident is not material to the decision herein.

⁶ Some time after the Incident, Rosie’s age and preexisting health condition led to her being put to sleep.

1 both bit Rosie. One of the Dogs had Rosie in a bite hold on her face. Rosie attempted to defend
2 herself without effect. Andrew, John and Leah all made various efforts to get the Dogs to stop
3 their attack and disengage from Rosie. Luke Strom was present nearby during the attack. He
4 testified that he retrieved the Dogs in short order and took them back inside. From the
5 Deliannis party's perspective, he seemed somewhat detached about what was happening. In any
6 event, at one point John hit one of the Dogs, and he and Andrew were able to get the Dogs to
7 then break away. After they disengaged, Luke led his Dogs away and back into his residence.

8 *Id.*

9 8. Rosie suffered a "deep abrasion" above her eye and "small ruptured blood
10 vessels" in the eye itself from the attack. *Exs. R-6 and R-7.* Rosie was provided medical
11 evaluation and treatment immediately after the Incident by ER Client Uptown Animal Hospital
12 in Gig Harbor. After initially not reporting the Incident to Animal Control, Leah reported the
13 Incident on or around October 27, 2021, on the advice of her regular vet. *Leah Deliannis*
14 *Testimony; Ex. R-3, Ex. R-7.*

15 9. The Stroms submitted two letters from people describing their familiarity and
16 good experiences with the Dogs. *Exs. A-1 and A-2.* The Stroms initially testified that the Dogs
17 had never engaged in any behavior such as that which occurred in the Incident, but then backed
18 away from that assertion when it was referenced that the City was aware of, and had
19 documented one prior incident in which at least one of the Dogs had exhibited aggression
20 toward another dog. The Stroms offered their opinion at the hearing that no one would consider
21 the Dogs dangerous. *Luke Strom Testimony, Emily Strom Testimony; Ex. R-3.*

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

1 4. When a dog is declared potentially dangerous, and that declaration is upheld after
2 hearing, the Hearing Examiner has the authority to impose or revise conditions or restrictions
3 in conformance with TMC Title 17 and RCW 16.08. *TMC 17.04.032, TMC 17.04.050*. State
4 law, at RCW 16.08.080(9), gives a local authority a fair amount of latitude in placing
5 additional restrictions upon owners of dangerous, and presumably potentially dangerous dogs.

6 5. Although provocation can be a defense to conduct that would otherwise make a
7 dog potentially dangerous, there was no evidence of provocation here that justifies the Dogs’
8 attack. In their testimony, the Stroms seemed to attempt to place blame for the Dogs’ attack on
9 (a) the fact that Rosie walked by their residence twice making the Dogs agitated, (b) the fact
10 that Judy stopped to talk, and (c) the contention that the Dogs sensed something not right with
11 Rosie due to her age and weakened condition. While all of these might be part of a factual
12 explanation of what led up to the Dogs attacking Rosie, they are not legal justification by
13 provocation. Provocation is present when a dog gets attacked after acting aggressively toward
14 the dog that ultimately attacks. There is no evidence of aggressive behavior on Rosie’s part
15 toward the Stroms’ Dogs. Rosie’s condition may have acted as a biological or evolutionary
16 trigger to the Dogs somehow, but that is not justifiable provocation in our presumably civilized
17 present society. Dog owners are responsible for controlling their dogs whatever their natural
18 proclivities may be toward an older weaker dog. Nothing the walking party did could be
19 considered provocation such that it would justify or negate the Dogs’ attack either.

20 6. “Preponderance of the evidence” means that the trier of fact is convinced that it is
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1 more probable than not that the fact(s) at issue is/are true.⁷ The preponderance of the evidence
2 standard is at the low end of the spectrum for burden-of-proof evidentiary standards in the U.S.
3 legal system, and is not particularly difficult to meet.⁸ Here, the material facts of the attack are
4 not in dispute and the City's evidence meets the required burden. The Stroms' letters regarding
5 the Dogs' usual good disposition does not negate what happened on the Incident.

6 7. The evidence in the record does show that Cali and Blue attacked Rosie without
7 provocation, thereby meeting the definition of their being potentially dangerous dogs. As the
8 City contended at the hearing, the evidence also shows by a preponderance that the Dogs
9 chased or approached a person or domestic animal upon the streets, sidewalks, or any public or
10 private property in a menacing fashion or apparent attitude of attack, without being provoked to
11 do so. *TMC 17.01.010.27.b*.

12 8. The restrictions imposed by Animal Control in the PDDNs are appropriate here.
13 The Examiner sees no need to revise them. Nothing presented at the hearing warrants revision.
14 Restrictions such as those imposed here serve to protect members of the community (and their
15 pets) from dangerous behavior and attacks because a dog so restricted should not be able to get
16 loose and engage in dangerous behavior if the restrictions are met. The restrictions also serve to
17 protect the life of the dog(s) so restricted from coming into possible greater jeopardy by
18 preventing future attacks that could lead to more severe consequences (such as euthanization).

19 9. Any Finding of Fact, which may be more properly deemed or considered a
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⁷ *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).

⁸ *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,
DECISION AND ORDER**

1 Conclusion of Law, is hereby adopted as such.

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

4 **ORDER**

5 Based on the above Findings and Conclusions, the present appeal is DENIED and the
6 City of Tacoma's Potentially Dangerous Dog Notices issued to Cali and Blue are UPHELD.

7 Cali and Blue are subject to the following restrictions which must be adhered to at all times:

8 1) Dogs Cali and Blue must not be outside the house of their owners
9 unattended unless there is a proper (as inspected and approved by ACC) five-
sided enclosure on the premises of the owner for Cali and Blue to occupy;

10 2) Dogs Cali and Blue must not go beyond the proper enclosure on the
11 premises of the owners (either being in the house or a five-sided enclosure)
12 unless they are securely leashed and humanely muzzled in a manner that will
prevent them from biting any person or animal and they must be under the
physical control of a responsible person; and

13 3) A clearly visible warning sign informing that there are potentially dangerous
14 dogs on the property must be posted conspicuously and such sign must include
15 a warning symbol that informs children of the presence of potentially
dangerous dogs.

16 The following notification obligations of the PDDN also remain in full force and
17 effect:

18 The owners shall immediately notify Tacoma Animal Control, followed by
19 written notice, when a dog which has been classified as potentially dangerous:

20 A. is loose or unconfined; provided that, the owner shall first call 911;

21 B. has bitten a human being or attacked another animal; provided, the
owner shall first call 911;

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C. is sold or given away, or dies; or

D. is moved to another address.

DATED this 9th day of February, 2022.



JEFF H. CAPELL, Hearing Examiner

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