

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **AYDEN OSMOTHERLY,**

HEX2023-021

4 **Filing Party,**

ORDER ON UNTIMELY FILING

5 **v.**

6 **CITY OF TACOMA**, a Washington
7 Municipal corporation, through its
8 Animal Control and Compliance
9 Division,

Regulatory Authority.

10
11 **THIS MATTER** comes now before the undersigned Hearing Examiner for the City of
12 Tacoma, Washington, as the result of an emailed notice of appeal from Osmotherly, Ayden
13 Osmotherly (“Osmotherly”), filed with the Office of the Hearing Examiner (“OHEX”) on
14 August 1, 2023. Based on the August 1, 2023 appeal filing (the “Appeal”), the Hearing
15 Examiner makes the following:

16 **FINDINGS OF FACT**

- 17 1. Osmotherly is the owner of a neutered male black and tan German Shepherd mix
18 dog named Odin (the “Dog”).
- 19 2. The matter began with Tacoma Animal Control and Compliance’s (“Animal
20 Control” or “ACC”) issuance of a Dangerous Dog Notice (“DDN”) for the Dog to Osmotherly,
21 dated July 10, 2023.

1 3. The DDN clearly states “You may request a hearing before the City Hearing
2 Examiner by submitting a written request and proof of a current pet license to the Office of the
3 Hearing Examiner within ten (10) days of the date of service of this notice...” with a stated
4 appeal deadline date of July 25, 2023, providing fifteen (15) days to appeal instead of the ten
5 (10) day appeal period provided by the Tacoma Municipal Code (“TMC”) 17.04.031.A.

6 4. Osmotherly first contacted the OHEX, via telephone call, on July 25, 2023,
7 speaking briefly with OHEX Office Administrator, Louisa Legg (“OA Legg”). During this brief
8 conversation, OA Legg provided the OHEX’s fax number for Osmotherly’s intended appeal. In
9 a subsequent phone call with OA Legg on August 1, 2023, Osmotherly expressed that he was
10 unable to fax the notice of appeal on July 25, 2023, and instead faxed the appeal on July 26,
11 2023.

12 5. After receiving no faxes from Osmotherly, and receiving the emailed notice of
13 appeal on August 1, 2023, further investigation into the issue revealed the OHEX no longer had
14 fax service due to a recent update of multi-function devices City-wide. Due to this unfortunate
15 turn of events the Examiner elected to provide Osmotherly the opportunity to provide proof of
16 the attempted July 26, 2023 fax, either by sending the OHEX a copy of the faxed document or a
17 copy of the fax transmittal log corroborating the date of the fax. To date neither of the requested
18 documents have been produced.

19 6. Before dismissing the appeal, pursuant to Hearing Examiner Rule of Procedure
20 2.10(a), the Examiner decided to provide Osmotherly the chance to explain why the requested
21 documentation had not been provided.


1 beyond ten (10) calendar days after the notice it sought to appeal was issued. ² Osmotherly's
2 request for a hearing was not timely filed under TMC 17.04.031(A).

3 2. Filing an appeal within the specified appeal period is critical to the appeal being
4 heard. *Nickum v. City of Bainbridge Island*, 153 Wn. App. 366, 378, 223 P.3d 1172, 1177
5 (2009).³ Barring extremely unusual circumstances, an untimely appeal must be dismissed.
6 *Glass v. Windsor Navigation Co.*, 81 Wn.2d 726, 727, 504 P.2d 1135, 1137 (1973). Again,
7 Osmotherly's appeal was not timely filed.

8 3. Any finding of fact above that should be more properly deemed or considered a
9 conclusion of law is hereby adopted as such.

10 NOW THEREFORE, having reviewed the file herein and otherwise being fully advised,
11 the Hearing Examiner HEREBY dismisses this Appeal as untimely in accordance with Hearing
12 Examiner Rule of Procedure 2.10(a), TMC 17.04.031(A), and controlling case law.

13 **ORDERED** this 4th day of October, 2023.

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16 **JEFF H. CAPELL, Hearing Examiner**

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² As mentioned above in FoF 3, ACC provided a 15-day appeal period; however, even with the five (5) extra days, Osmotherly's appeal was received days after the appeal period had expired.

³ See also *Keep Watson Cutoff Rural v. Kittitas County*, 145 Wn.App. 31, 37-39 (2008); *Graham Thrift Group v. Pierce County*, 75 Wn. App. 263, 267 (1994).

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
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.*)

13 **NOTICE**

14 This matter may be appealed to Superior Court under applicable laws. If appealable, the
15 petition for review likely will have to be filed within thirty (30) days after service of the
16 final Order from the Office of the Hearing Examiner.
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