

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **FRANKIE R. SWAIM,**

HEX2019-030

4 **Appellant,**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
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, after two initial continuances,¹ before JEFF H.
11 CAPELL, the Hearing Examiner for the City of Tacoma, Washington, on March 5, 2020, at the
12 Tacoma Municipal Building, 747 Market Street, Tacoma, Washington. Deputy City Attorney
13 Jennifer Taylor represented the Respondent City of Tacoma (the “City”), Animal Control and
14 Compliance (separately “Animal Control”). Appellant Frankie R. Swaim (“Appellant” or
15 “Swaim”) appeared at the hearing *pro se*. At the outset of the hearing convened on March 5,
16 2020, Swaim made a request to continue the hearing yet again because he needed more time to
17 prepare and he wanted to retain counsel. The City objected to Swaim’s request. The Examiner
18 ruled the City would be allowed to present its case in chief at the hearing as convened on
19 March 5th because it had both civilian and officer witnesses present, and due to the lack of any
20 prior notice from Swaim that he would be requesting another delay. The hearing was then
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¹ After being filed in November of 2019, the hearing in this appeal was first set for February 13, 2020, and then continued to February 27, 2020, before being first convened on March 5, 2020 after another continuance.

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1 recessed, and Appellant was allowed additional time to prepare and retain counsel before
2 presenting his case upon reconvening the hearing on March 31, 2020.

3 On March 31, 2020, at 10:45 am, with a 1:30 pm time for reconvening the hearing, the
4 Office of the Hearing Examiner received an email from attorney Frederick L. Hetter notifying
5 of his representation of Swaim and asking for yet another continuance. Given the short lead
6 time, the Examiner chose to convene the hearing as scheduled.² At the outset, the request for
7 continuance from Mr. Hetter on Swaim’s behalf was considered. Over the City’s objection, the
8 reconvened hearing was continued to a date to be determined on condition that Mr. Hetter
9 submit a formal written Notice of Appearance (“NOA”) and that he submit a statement of
10 defense within one week’s time. Mr. Hetter submitted his NOA later that same day (March 31,
11 2020). On April 4, 2020, Mr. Hetter submitted a list of theoretically possible defenses in a
12 dangerous dog hearing, along with the conclusion that “[t]he animal owner cannot provide any
13 competent evidence to contradict the city’s [sic] evidence, or support trespass or provocation.”
14 Mr. Hetter’s submission went on to request that “[t]he examiner not euthanize the animal, but
15 provide other remedies allowed by law.” No identification was made as to what those other
16 remedies might be. In closing, Mr. Hetter formally withdrew as Swaim’s legal counsel positing
17 that he had “[e]xhausted his skill to analyze and assist...”

18 After Mr. Hetter’s withdrawal, the parties were contacted and the hearing was noticed
19 to reconvene by Zoom teleconference and telephonic call-in on April 16, 2020, with a start time
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² Due to Governor Inslee’s order prohibiting public meetings that was in effect by March 31, 2020, the hearing had been noticed as convening via Zoom teleconference with telephonic call-in numbers as well. All parties were present with legal counsel at the teleconferenced hearing.

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1 of 1:30 pm. All parties were present on April 16, 2020, at which time Swaim’s testimony and
2 exhibits were added to the record, and the parties offered their closing arguments.

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

4 **FINDINGS OF FACT**

5 1. Swaim owns a blue/brown-brindle³ (with white markings) pit bull dog named
6 “Boyz” (the “Dog”).⁴ *Ex. R-1; Salisbury Testimony.*

7 2. This appeal arises from Animal Control’s having issued a Dangerous Dog Notice
8 for the Dog, dated November 4, 2019 (the “DDN”). *Salisbury Testimony, O’Donnell*
9 *Testimony; Ex. R-1.* The DDN ordered Swaim to immediately surrender the Dog for
10 impoundment pursuant to Tacoma Municipal Code (“TMC”) section 17.01.040. *Id.* Animal
11 Control impounded the Dog on October 24, 2019, in conformance with applicable provisions
12 of the TMC and state law,⁵ and he has been in the City’s custody since.⁶ *Salisbury Testimony,*
13 *O’Donnell Testimony; Ex.R-1, Ex. R-13.*

14 3. The DDN was issued based on an incident that occurred on October 23, 2019, in
15 the vicinity of 5230 South I Street in the city of Tacoma (the “Subject Property”) where Swaim
16 was residing at the time. *Knoeb Testimony, Salisbury Testimony, O’Donnell Testimony;*
17 *Ex.R-1.*⁷

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20 ³ This particular color type is somewhat difficult to nail down to just one selection from the palette. Some see it as
brown; some as “blue;” other times the Examiner has seen this same color referred to as “seal.”

21 ⁴ The record contains a fair bit of information regarding whether Boyz is, in fact, another dog owned by Swaim
named “Kane.” Ultimately, whether Boyz and Kane are the same dog had no bearing on the decision herein
rendered.

⁵ TMC 17.01.010.15, 17.04.050 *et seq.*, and RCW 16.08.

⁶ The Dog is being kept at the Humane Society of Tacoma-Pierce County.

⁷ *See also Declarations of Taylor Frank, Exs. R-5 and R-14.*

**FINDINGS OF FACT,
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1 4. On the afternoon of October 23, 2019, Timothy Knoeb (“Knoeb”) was walking
2 along the sidewalk in the vicinity of the Subject Property when he heard a whistle and someone
3 speaking. He turned around to see the Dog (Boyz) lunging at his face. Knoeb raised his hands
4 to protect himself, and the Dog bit him on his right hand, latching on and shaking his head
5 causing puncture wounds and lacerations to Knoeb’s hand. The Dog released Knoeb’s right
6 hand and attempted to latch onto Knoeb’s left arm, but could not get ahold in the same way as
7 he had Knoeb’s right hand. Knoeb was then able to run away and escape further contact with
8 the Dog, after which he sought medical attention for his injuries. *Knoeb Testimony; Ex. R-3.*

9 5. Knoeb sustained puncture and laceration wounds to his right hand that required
10 stitches and a drain tube. His left arm was bruised extensively from the Dog’s attempt to latch
11 onto him. *Knoeb Testimony; Exs. R-6 and R-7.* Knoeb testified that his wounds are healing, but
12 that he experiences numbness and sensitivity in his right hand, along with some loss of
13 function.

14 6. The Dog impounded was positively identified by Knoeb as the dog that attacked
15 him and caused his injuries. *Knoeb Testimony; Ex. R-13.*

16 7. Swaim offered testimony and written statements regarding the Dog’s good
17 character and that he is like a family member, but otherwise did not refute the incident and
18 injuries testified to by Knoeb.

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

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

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

2 **CONCLUSIONS OF LAW**

3 1. The Hearing Examiner has jurisdiction in this matter pursuant to Tacoma
4 Municipal Code (“TMC”) 1.23.050.B.8 and 17.04.031.A.

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

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

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

12 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

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

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

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

17 f. unprovoked, attacks a “dog guide” or “service animal” as defined in
18 Chapter 70.84 RCW and inflicts injuries that render the dog guide or service
animal to be permanently unable to perform its guide or service duties. *TMC*
19 *17.01.010.15.*

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1 3. The above criteria are disjunctive. As a result, the City must only prove that one
2 of the six criteria were met for a designation to be upheld on appeal. Animal Control alleged
3 subsection a. above as the basis for its DDN.⁸

4 4. TMC 17.01.010.31 defines “Severe injury” as “[a]ny physical injury that results in
5 (a) broken bones, (b) muscle, ligament, or tendon tears, (c) skin lacerations or puncture wounds
6 which require sutures or surgery, or (d) transmission of an infectious or contagious disease.

7 5. The City’s evidence did show by a preponderance that the Dog inflicted severe
8 injury on a human being on public property and that the attack was unprovoked.

9 6. When a dog is declared dangerous, and that declaration is upheld after a hearing,
10 “[t]he Hearing Examiner shall enter an order so stating and shall direct that the dog be
11 humanely euthanized.” *TMC 17.04.031*. As alternative to being humanely euthanized, TMC
12 17.04.031.C provides the following:

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

16 Swaim has made no request (application) under TMC 17.04.031.C(1). At the final
17 hearing, Swaim did ask for the opportunity to remove the Dog from the City. This request
18 is addressed in the Order below.

19 7. RCW 16.08.100 requires that for dangerous dogs, “The owner must pay the costs
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⁸ There is some indication in the record that Animal Control believed subsection d. to also be applicable based on Animal Control’s belief that Boyz is actually Kane because Kane had been the subject of a previous investigation for aggressive behavior. Making that determination is not necessary to the decision herein. In any event, Animal Control did not designate subsection d. in the DDN.

1 of confinement and control.” In that same vein, TMC 17.04.031.C states “The owner is
2 responsible for paying all fees owed to the City for the care of the animal.” Swaim owes these
3 costs in reimbursement to the City.

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

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

8 **ORDER**

9 1. Based on the above Findings and Conclusions, the present appeal is DENIED
10 and the City of Tacoma’s Dangerous Dog Notice issued to Frankie R. Swaim for his dog Boyz
11 is UPHHELD.

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

14 3. If Swaim has reimbursed the City for its costs within 10 calendar days from the
15 date this Order is issued, and has presented to the Office of the Hearing Examiner and the City
16 (through its legal counsel) a viable plan (in the Examiner’s sole judgment) for removing the
17 Dog from the City in compliance with TMC 17.04 and RCW 16.08, then the Examiner will
18 consider allowing removal of the Dog as an alternative to being humanely euthanized.

19 4. Barring a viable removal plan being approved by the Examiner, and if no such
20 plan is approved, and/or if the City’s costs are not reimbursed within ten calendar days, the
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1 Dog shall be humanely euthanized. Swaim may make arrangements through Animal Control
2 to visit the Dog prior to euthanization.

3 **DATED** this 22nd day of April, 2020.

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

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**FINDINGS OF FACT,
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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.

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