

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **MICHAEL BROWN,**

HEX2020-013

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 April 23, 2020.¹ Deputy City Attorney Jennifer Taylor

12 appeared representing Respondent City of Tacoma (the “City”), Animal Control and

13 Compliance (separately “Animal Control”). Also present were City witnesses, Animal Control

14 and Compliance Officers Mia Salisbury and Eric O’Donnell.² Appellant Michael Brown

15 (“Appellant” or “Brown”) appeared at hearing *pro se*. Witnesses were sworn and testified.

16 Exhibits were submitted and admitted, and arguments were presented and considered.³

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

18

19 ¹ Due to the current declared state of emergency related to the Covid-19 pandemic and Governor Inslee’s prohibition on public gatherings, this hearing was conducted by teleconference with both internet video and telephonic access. All parties were agreeable to conducting the hearing in this manner.

20 ² For ease of reference, and without meaning any disrespect, after initial introduction of parties and witnesses, they will be referred to by last name only.

21 ³ Due the aforementioned unusual present circumstances and because the Appellant had no opportunity to cross-examine the City’s lone firsthand witness, at the request of the Appellant, the Examiner kept the hearing record open for one week to allow the Appellant the opportunity to submit a declaration from Phyllis Bowman potentially addressing provocation from a firsthand perspective. Brown submitted a written statement from Bowman, along with another written statement from Kristie Porter on April 29, 2020. Thereafter, on April 30, 2020, Brown submitted three photos. On May 4, 2020, the City submitted a rebuttal statement, whereupon the record closed.

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

1 **FINDINGS OF FACT**

2 1. Appellant Michael Brown owns a male fawn-colored Pit Bull named Maui
3 (“Maui” or “the Dog”). Brown resides in the City of Tacoma at 5812 South M Street (the
4 “Subject Property”). *O’Donnell Testimony; Salisbury Testimony; Exs. R-1~R-3, Ex. R-6.*

5 2. This appeal arises from Animal Control’s having issued a Potentially Dangerous
6 Dog Notice (“PDDN”) for Maui, and having imposed restrictions on him in the PDDN. *See Ex.*
7 *R-1 for the full list of restrictions originally imposed.* Animal Control imposed these
8 restrictions in conformance with applicable provisions of the Tacoma Municipal Code
9 (“TMC”) and state law.⁴ *Id.*

10 3. The PDDN was issued as the result of an incident that occurred on February 5,
11 2020, at or near the Subject Property. *O’Donnell Testimony; Salisbury Testimony; Exs. R-1~R-*
12 *3, Ex. R-6.*

13 4. Based on the “Handwritten Statement Form” of Michelle Ketron (*Exhibit R-3,*
14 *also referred to as the “Ketron Statement”*), Ketron was walking on the opposite side of M
15 Street from the Subject Property⁵ around 2:07 pm on the way to pick her daughter up from
16 school. While walking near the Subject Property one of Brown’s dogs came to the fence of the
17 front yard and “barked and growled aggressively” and then followed Ketron’s progress along
18 the fence line. *Exhibit R-3.*

19 _____
20 ⁴ TMC 17.01.010.27, 17.04.050 and RCW 16.08.

21 ⁵ There was some disagreement between the parties about which side of M Street Ketron was walking on when the incident occurred. Ketron reported to Animal Control that she was on the opposite side from the Subject Property. *Ex. R-3.* The Bowman statement indicates that “A dark haired caucasian [sic] woman [was] walking along the outside of the fence.” The Bowman statement is largely inconclusive on many points, including, from the outset, Ketron’s identity. Nothing in the Bowman statement positively identifies Ketron as the person Bowman saw. Ultimately, what side of the street Ketron was walking on is not dispositive of anything. Ketron’s actions relevant to any provocation is at issue here.

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1 5. The first dog was soon joined by a second. Both barked at Ketron. One then
2 pushed a gate in the fence open enough to exit the yard and both dogs did so. They then
3 approached and attacked Ketron causing wounds to her hands, arm and legs, as well as causing
4 a tear to her jacket. *O'Donnell Testimony; Salisbury Testimony; Exs. R-2~R-6.* Ketron's
5 injuries are shown in the Exhibit R-6 photographs. Ketron sought medical attention first from
6 the nurse at her daughter's school (Giaudrone Middle School), and then at MultiCare West
7 Tacoma Urgent Care. *O'Donnell Testimony; Ex. R-2~Ex. R-4.*

8 6. Ketron called what she described as "the non emerg line" to report the attack on
9 her way to Giaudrone Middle School. *Ex. R-3.* Animal Control Officers O'Donnell and
10 Salisbury were dispatched to the Subject Property as a result of Ketron's call, and ultimately
11 met up with her at the school where they obtained her story and witnessed her injuries and the
12 damage to her jacket. *O'Donnell Testimony; Salisbury Testimony; Ex. R-2.*

13 7. During O'Donnell and Salisbury's contact with Ketron and Brown, Ketron
14 identified Maui as one of the two dogs that bit her. *Id.*

15 8. Brown testified/argued that he thought something must have provoked Maui for
16 the attack on Ketron to have occurred. He did not witness the attack, however. *Brown*
17 *Testimony.* The Bowman statement does not speak to provocation—only that "on the day and
18 time in question," she noticed "A dark haired caucasian [sic] woman walking along the outside
19 of the fence" and that Brown's dogs "got out." *Ex. A-1.* It is inconclusive whether the woman
20 Bowman saw is Ketron. Bowman makes no mention of the dogs attacking this woman nor does
21 she mention anything that could be considered provocation. Walking along someone's fence

1 line does not constitute provocation sufficient to justify a dog attack.

2 9. Any Conclusion of Law below which may be more properly deemed or considered
3 a Finding of Fact, is hereby adopted as such.

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

5 **CONCLUSIONS OF LAW**

6 1. The Hearing Examiner has jurisdiction in this matter pursuant to Tacoma
7 Municipal Code (“TMC”) 1.23.050.B.8 and 17.04.032.A.

8 2. Pursuant to TMC 17.04.032.B, in appeal proceedings before the Hearing
9 Examiner challenging a Potentially Dangerous Dog declaration, Animal Control bears the
10 burden of proving, by a preponderance of the evidence, that the animal in question meets the
11 definition of a Potentially Dangerous Dog. This definition is as follows:

12 A “potentially dangerous dog” means any dog which:

- 13 a. unprovoked, bites or injures a human or domestic animal on
14 public or private property; or
- 15 b. unprovoked, chases or approaches a person or domestic animal
16 upon the streets, sidewalks, or any public or private property in a
17 menacing fashion or apparent attitude of attack; or
- 18 c. has a known propensity, tendency, or disposition to attack
19 unprovoked, to cause injury, or to otherwise threaten the safety of
20 humans or domestic animals. *TMC 17.01.010.27.*

21 3. The above criteria are disjunctive. As a result, the City must only prove that one
of the three criteria were met for a designation to be upheld on appeal. Animal Control alleged
subsection a. above as the basis for the PDDN issued to Brown regarding Maui.

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 appealable to the Pierce County Superior Court under applicable laws.
If appealable, the petition for review likely will have to be filed within thirty (30) days after
service of this Order from the Office of the Hearing Examiner.

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