## 1 OFFICE OF THE HEARING EXAMINER 2 CITY OF TACOMA 3 JAZMINE CARTER HEX2020-021 4 Appellant, 5 FINDINGS OF FACT, CONCLUSIONS OF LAW, v. 6 AND ORDER CITY OF TACOMA, 7 ANIMAL CONTROL AND COMPLIANCE, 8 Respondent. 9 10 **THIS MATTER** came on for hearing before JEFF H. CAPELL, the Hearing 11 Examiner for the City of Tacoma, Washington, on July 30, 2020. Deputy City Attorney 12 Jennifer Taylor represented the Respondent City of Tacoma (the "City"), Animal Control and 13 Compliance (separately "Animal Control"). Appellant Jazmine Carter ("Appellant" or 14 "Carter") appeared at the hearing pro se. Witnesses were sworn and testified. Exhibits were 15 submitted and admitted, and arguments were presented and considered. 16 Witnesses testifying at the hearing were as follows: 17 1. Zac Lanz, 2. Animal Control and Compliance Officer Robin Bowerman, 18 3. Animal Control and Compliance Officer Eric O'Donnell, 4. Animal Control and Compliance Officer Joseph Satter-Hunt, and 19 5. Appellant Jazmine Carter. 20 21

<sup>1</sup> Due to National, State of Washington and City of Tacoma Proclamations of Emergency made in response to the COVID-19 virus, the City of Tacoma closed the Tacoma Municipal Building to the public until further notice on or around March 17, 2020. As a result, the public hearing in this matter was conducted virtually using Zoom teleconferencing with both internet and telephonic access.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER City of Tacoma
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From the evidence in the hearing record, the Hearing Examiner makes the following:

## FINDINGS OF FACT

- 1. Carter owns a brownish-grey and white unaltered male pit bull dog named "Flash" ("Flash" or the "Dog"). *Carter Testimony, Bowerman Testimony; Ex. C-1, Ex. C-2, Ex.C-7*.
- 2. This appeal arises from Animal Control's having issued a Dangerous Dog Notice for Flash, dated July 4, 2020 (the "DDN"), which was served on Appellant Carter on July 9, 2020. *Bowerman Testimony, O'Donnell Testimony; Ex. R-1*. The DDN ordered Carter to immediately surrender the Dog for impoundment pursuant to Tacoma Municipal Code ("TMC") section 17.01.040. *Id.* This did not happen.<sup>2</sup> Although Animal Control had contact with Carter on July 4, 2020, and requested that she surrender the Dog at that time, Animal Control was not able to impound the Dog, in conformance with applicable provisions of the TMC and state law,<sup>3</sup> until July 10, 2020, at which point Carter surrendered the Dog directly to personnel at the Humane Society of Tacoma-Pierce County. The Dog has been in the City's custody since.<sup>4</sup> *Bowerman Testimony, O'Donnell Testimony, Satter-Hunt Testimony, Carter Testimony; Ex. C-1, Ex. C-2, Ex. C-7*.
- The DDN was issued based on an incident that occurred on or around June 29,
   at 5412 South Steele Street in the city of Tacoma (the "Subject Property") where Carter

21 Testimony and exhibits showed that a somewhat prolonged exchange between Animal Control and Appellant Carter took place during which Carter contended that the Dog had been placed with a friend whose residence location was unknown to her.

<sup>&</sup>lt;sup>3</sup> TMC 17.01.010.15, 17.04.050 et seq., and RCW 16.08.

<sup>&</sup>lt;sup>4</sup> The Dog is being kept at the Humane Society of Tacoma-Pierce County.

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and Zac Lanz were residing in separate apartments. Carter and Lanz's apartment doors face each other across a hallway/entryway. *Bowerman Testimony, Lanz Testimony, Carter Testimony; Exs. C-1~C-3, Ex. C-6*.

- 4. On June 29, 2020, a social gathering was taking place at Carter's apartment. Carter indicated that Lanz was not initially invited to the social gathering. Because of prior incidents with the Dog, Animal Control had cautioned Carter to keep the Dog in a closed bedroom when guests were present at her apartment. Carter was attempting to close the Dog into a separate room when the Dog escaped from her control and went to the front door of the apartment that one of her guests had opened. Carter did not see what happened after the Dog escaped her control momentarily, until she went out the front door to find the Dog attacking Lanz. Carter Testimony, Bowerman Testimony; Ex. C-2.
- 5. For Lanz's part, he was standing outside his front door in the space between his and Carter's apartments around 11:20 pm on the fringe of the social gathering. He saw Carter's front door open, and then the Dog bolted out and attacked him, attaching by bite to his right torso. Lanz indicated that getting the Dog to release his hold took the efforts of several people and that he (Lanz) blacked out briefly in the process of getting the Dog off him. The attack caused extensive bruising and multiple puncture wounds to Lanz's torso that required medical treatment including a doctor's suturing. *Lanz Testimony; Exs. C-2~C-6*.
  - 6. As mentioned, Carter witnessed the end of the attack. After the Dog's removal,

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<sup>&</sup>lt;sup>5</sup> Lanz testified that Flash bit him one time prior to June 29, 2020, when he was present at Carter's apartment. His testimony seemed to indicate that he did not report that incident chalking it up to the Dog being territorial, so it is unclear whether this prior bite had anything to do with Animal Control's contact with Carter regarding the Dog that took place prior to the June 29, 2020 incident.

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she went into Lanz's apartment to help treat his injuries and encouraged him to go to the hospital. Lanz initially declined, being worried about cost. Sometime later that same night (early morning), having changed his mind about the need for medical treatment, Lanz texted Carter using the pretext of coming over to her apartment to play "beer pong" to gain entry into the social gathering. Carter invited him over. Rather than playing "beer pong," upon entering, Lanz asked Carter to drive him to the hospital because he had no other way at that time to get there. Carter did so and stayed with him while he received treatment. *Lanz Testimony, Carter Testimony*.

- 7. Carter testified that Lanz had told her previously about making meowing noises around Flash to mess with him. Lanz denied that his meowing is intended to antagonize the Dog, but rather that he does it as a call to his own cats. *Lanz Testimony, Carter Testimony*.
- 8. Lanz positively identified the Dog that was impounded as the dog that attacked him and caused his injuries. *Lanz Testimony; Ex. C-9.* Carter did not dispute that it was her Dog that attacked Lanz on June 29, 2020. Upon questioning from the City's counsel, Carter agreed that Lanz's injuries were severe.
- 9. On July 30, 2020, as the hearing was getting underway, Carter sent (or had sent) to the Office of the Hearing Examiner multiple emails purporting to be from her friends or acquaintances asserting that Flash is an affectionate dog, and that they have never seen him be aggressive. *Exs. A-1.2~A-1.16*. Another late submitted email purported to be from "Curtis M Fanta, PA-C" of the Federal Way UW Neighborhood Clinic stating "She is needs to have her trained emotional support dog with her due to anxiety." [Sic] *Ex. A-1.1*. Other than this

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1	statement, no evidence was presented of Flash's training or certification as an "emotional	
2	support dog." <sup>6</sup>	
3	10. Carter's submitted emails notwithstanding, the admitted record contains a report	
4	of an additional prior incident in King County in which Flash severely injured an individual	
5	leading to Flash being banned from King County. Ex. C-2. Carter confirmed the banning in her	
6	own testimony.	
7	11. Any Conclusion of Law below which may be more properly deemed or considered	
8	a Finding of Fact, is hereby adopted as such.	
9	Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:	
10	CONCLUSIONS OF LAW	
11	The Hearing Examiner has jurisdiction in this matter pursuant to Tacoma	
12	Municipal Code ("TMC") 1.23.050.B.8 and 17.04.031.A.	
13	2. Pursuant to TMC 17.04.031.B, in appeal proceedings before the Hearing	
14	Examiner challenging a Dangerous Dog Declaration, Animal Control bears the burden of	
15	proving, by a preponderance of the evidence, that the animal in question meets the definition of	
16	a Dangerous Dog. This definition is as follows:	
17	"Dangerous dog" means any dog that, according to the records of the	
18	appropriate authority:	
19	a. unprovoked, inflicts severe injury on or kills a human being on public or private property; or	
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21	<sup>6</sup> Post-hearing, and after the record had closed, Carter emailed the Office of the Hearing Examiner again, conveying secondhand information regarding how well Flash is behaving during his confinement at the Humane Society of Tacoma-Pierce County. The Examiner understands the difficulty involved when a beloved pet's mortality is at stake. These situations are tragic for all involved. Unfortunately, there is no provision in the law that allows character testimony for the dog, however abundant, to obviate the facts of an incident that gives rise to a DDN being issued.	
	FINDINGS OF FACT City of Tacoma	

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1	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
2	c. while under quarantine for rabies bites a person or domestic animal; or
3	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
	have engaged in potentially dangerous behavior; or
5	e. is owned or harbored primarily or in part for the purpose of dog fighting or is a dog trained for dog fighting; or
7	f. unprovoked, attacks a "dog guide" or "service animal" as defined in 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. <i>TMC</i>
8	17.01.010.15.
9	3. The above criteria are disjunctive. As a result, the City must only prove that one
10	of the six criteria were met for a designation to be upheld on appeal. Animal Control alleged
11	subsection a. above as the basis for its DDN.
12	4. TMC 17.01.010.31 defines "Severe injury" as "[a]ny physical injury that results in
13	(a) broken bones, (b) muscle, ligament, or tendon tears, (c) skin lacerations or puncture wounds
14	which require sutures or surgery, or (d) transmission of an infectious or contagious disease.
15	5. The City's evidence did show by a preponderance that the Dog inflicted severe
16	injury on a human being on an area of property typically open to the public and that the attack
17	was unprovoked. There was no evidence here of provocation. Lanz's meowing, done for
18	whatever purpose on previous occasions, does not constitute provocation at the time of the
19	attack because there is no evidence that Lanz was meowing on June 29, 2020, prior to being
20	attacked by Flash. In addition, being an "emotional support dog" is not a defense that excuses

the attack and resulting injuries here.

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1	6. When a dog is declared dangerous, and that declaration is upheld after a hearing,	
2	"[t]he Hearing Examiner shall enter an order so stating and shall direct that the dog be	
3	humanely euthanized." TMC 17.04.031. As alternative to being humanely euthanized, TMC	
4	17.04.031.C provides the following:	
5	Upon application of the owner, however, a dangerous dog may be either (1) sent	
6 7	at the owner's expense to a secure animal shelter and maintained at all times in 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. [Emphasis added.]	
8	Carter has made no request (application) under TMC 17.04.031.C(1). <sup>7</sup>	
9	7. RCW 16.08.100 requires that for dangerous dogs, "The owner must pay the costs	
10	of confinement and control." In that same vein, TMC 17.04.031.C states "The owner is	
11	responsible for paying all fees owed to the City for the care of the animal." Carter owes these	
12	costs in reimbursement to the City.	
13	8. Any Finding of Fact, which may be more properly deemed or considered a	
14	Conclusion of Law, is hereby adopted as such.	
15	Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing	
16	Examiner issues the following:	
17	ORDER	
18	Based on the above Findings and Conclusions, the present appeal is DENIED	
19	and the City of Tacoma's Dangerous Dog Notice issued to Carter for her dog Flash is	
20	UPHELD.	
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<sup>&</sup>lt;sup>7</sup> It would appear that any relocation to King County would not be an option in any event.

1	2. Carter is hereby ordered to reimburse the City for its costs of confinement, control
2	and care in accordance with the authority cited in Conclusion of Law 7 above.
3	3. Once the applicable appeal period has passed, the Dog shall be humanely
4	euthanized. Carter may make arrangements through Animal Control to visit the Dog prior to
5	euthanization.
6	<b>DATED</b> this 7th day of August, 2020.
7	MADEL
8	JEFF H. CAPELL, Hearing Examiner
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11	<u>NOTICE</u>
12	RECONSIDERATION/APPEAL OF EXAMINER'S DECISION
13	RECONSIDERATION TO THE OFFICE OF THE HEARING EXAMINER:
14	Any aggrieved person or entity having standing under the ordinance governing the matter, or
15	as otherwise provided by law, may file a motion with the Office of the Hearing Examiner requesting reconsideration of a decision or recommendation entered by the Examiner. A
16	motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14
17	calendar days of the issuance of the Examiner's decision/recommendation, not counting the day of issuance of the decision/recommendation. If the last day for filing the motion for
18	reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next working day. The requirements set forth herein regarding the time limits for filing of motions
19	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
20	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
21	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. ( <i>Tacoma Municipal Code 1.23.140.</i> )
	FINDINGS OF FACT,  City of Tacoma

**CONCLUSIONS OF LAW,** 

AND ORDER

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1	NOTICE
2	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
3	final Order from the Office of the Hearing Examiner.
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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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