

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **HARRY J. FRANQUI,**

HEX2023-025

4 **Appellant,**

**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 September 20, 2023,¹ before JEFF H.

11 CAPELL, the Hearing Examiner for the City of Tacoma, Washington. Deputy City Attorney
12 Jennifer J. Taylor represented the City of Tacoma, Animal Control and Compliance (“Animal
13 Control” or “ACC”) at the hearing. Appellant Harry J. Franqui (“Appellant” or “Franqui”)
14 appeared at the hearing *pro se*. Witnesses were sworn and testified. Exhibits were submitted
15 and admitted, and arguments were presented² and considered.

16 The following witnesses testified at the hearing (in order of appearance):

- 17
- Corinne L. Williams³
 - Cheri Page, ACC
 - Joe Satter-Hunt, ACC
 - Harry J. Franqui.
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21 ¹ The parties to this appeal agreed to holding the hearing solely in virtual format via Zoom. This hearing was then conducted over Zoom with no cost to any participant with video, internet, and telephonic access.

² Franqui’s Zoom connection failed during his closing statement. He was contacted by email and allowed to complete his closing statement in writing.

³ Individuals who participated in the hearing may be referred to by last name only hereafter. No disrespect is intended.

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

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

2 **FINDINGS OF FACT**

3 1. Appellant Harry J. Franqui currently resides within the Tacoma city limits at,
4 5823 S. Warner Street, Tacoma, WA 98409 (the “Franqui Residence”). Franqui is the owner
5 of a licensed sable⁴ male Belgian Malinois named Zeus (“Zeus” or the “Dog”). Zeus was
6 identified by witnesses Williams, Page, and Satter-Hunt during the hearing as the dog
7 involved in the incident described below. *Williams Testimony, Page Testimony, Satter Hunt*
8 *Testimony; Ex. R-1, Ex. R-2, R-5.*

9 2. Animal Control issued a Potentially Dangerous Dog Notice for Zeus dated
10 August 25, 2023, which is the subject of this appeal (the “PDDN”). *Page Testimony; Ex. R-1,*
11 *Ex. R-2.*

12 3. ACC’s decision to issue the PDDN to Appellant Franqui for Zeus was the result of
13 an incident that occurred on August 23, 2023, beginning in the alleyway behind, and then in the
14 environs around the Franqui Residence in the city of Tacoma.⁵ *Williams Testimony, Page*
15 *Testimony, Satter Hunt Testimony; Ex. R-2, Ex. R-4.*

16 4. On August 23, 2023, sometime prior to 11:48 am, Williams had been walking her
17 dog in her neighborhood. She lives more-or-less two houses away from the Franqui Residence.
18 As she was approaching her house near an alleyway, Zeus came quickly “out of nowhere”
19 running toward Williams and her dog “while snarling, barking and growling.” Williams ran and
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21 _____
⁴ There are references to Zeus being “brindle (black/brown)” in color from Williams’ statement. *Ex. R-5.* Franqui owns other dogs of the same breed.

⁵ The events of August 23, 2023, just referenced, that gave rise to the PDDN being issued are referred to hereinafter inclusively as the “Incident.”

1 hid in her neighbor's fenced yard because her door was locked, and she did not think she would
2 have adequate time to open it if she tried to get home. *Williams Testimony; Ex. R-3, Ex. R-4.*

3 5. While Williams was sheltering in her neighbor's yard, Zeus paced outside the
4 fence "being extremely aggressive" and jumping up on the gate to the yard. When Williams
5 attempted to leave her neighbor's yard, Zeus charged at the fence. *Williams Testimony; Ex. R-4.*

6 6. Franqui's backyard is fenced. Williams testified that she has seen Zeus jump the
7 fence before, but on the date of the Incident, she did not see how he came to be in the alleyway.
8 She did see that he had a chain attached to his neck/collar and the chain appeared to be broken.
9 She did note that the gate to Franqui's backyard was not open. *Williams Testimony.*

10 7. At the time of the Incident, Williams was afraid for her safety because of Zeus's
11 aggressive demeanor, and because of at least one past incident in which Williams testified that
12 Zeus tried to unsuccessfully bite her.⁶ *Williams Testimony.*

13 8. Williams called Animal Control, but the call was not answered. She then called
14 911. Animal Control arrived in response to the 911 call around 20-25 minutes later. Prior to
15 ACC's arrival, another neighbor had arrived home in a van that blocked Zeus from Williams'
16 location, and this allowed her to run home. ACC met with Williams shortly after she arrived
17 home. *Id.*

18 9. Both ACC officers Page and Satter-Hunt responded to Williams' call arriving close
19 in time, but separately. On her arrival, Page saw Zeus in the alleyway barking with the
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21 ⁶ The record reflected a history of complaint calls about Franqui's dogs being loose in the neighborhood. Most were anonymous and it appears that ACC was unable to substantiate any of the prior calls. Franqui testified that he feels like he is being targeted by ACC. That should not be the case. Franqui's accusations of discriminatory conduct on the City's part are troubling if true, but are ultimately beyond the scope of this hearing and generally beyond the Examiner's authority.

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

1 aforementioned-chain around his neck. She saw the van that Williams described as well. Page
2 saw Satter-Hunt secure Zeus on a catch pole and load him into her van. *Page Testimony, Satter-*
3 *Hunt Testimony.*

4 10. When Satter-Hunt arrived on the scene of the Incident, Zeus charged at him when
5 he exited his vehicle. Satter-Hunt did nothing to provoke this response. *Satter-Hunt Testimony.*

6 11. Page primarily conducted the investigation after the Incident. As the ACC
7 supervisor, Satter-Hunt reviewed the file and the decision was made to issue the PDDN. *Page*
8 *Testimony, Satter-Hunt Testimony.*

9 12. Franqui works long hours away from home. He was not home at the time of the
10 Incident. ACC left him a notice on his door on the date of the Incident regarding Zeus being
11 impounded. He was later served the PDDN on August 25, 2023. *Franqui Testimony, Page*
12 *Testimony.*

13 13. Franqui does not believe Zeus to be a Potentially Dangerous Dog. He relies on
14 Zeus for companionship and emotional support. Franqui testified that he will abide by the
15 restrictions set forth in the PDDN, but does not believe they are entirely justified. He indicated
16 that he will get a 5-sided enclosure for Zeus in his backyard. He testified that Zeus behaves
17 well in his presence around other people and other dogs. *Franqui Testimony.*

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

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

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

1 **CONCLUSIONS OF LAW**

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

4 2. Pursuant to TMC 17.04.032.B, in appeal proceedings before the Hearing
5 Examiner challenging a Potentially Dangerous Dog declaration, Animal Control bears the
6 burden of proving, by a preponderance of the evidence, that the animal(s) in question meet(s)
7 the definition of a Potentially Dangerous Dog. This definition is as follows:

8 “Potentially Dangerous dog” means any dog which:

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

18 3. The above criteria are disjunctive. As a result, the City must only prove that one
19 of the listed criteria was met for a designation to be upheld on appeal. In the PDDN, Animal
20 Control checked subsection b. as the basis for issuance to the Dog.
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4. “Preponderance of the evidence” means that the trier of fact is convinced that it is
more probable than not that the fact(s) at issue is/are true.⁷ The preponderance of the evidence
standard is at the low end of the spectrum for burden-of-proof evidentiary standards in the U.S.

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).

1 legal system, and is not particularly difficult to meet.⁸ Here, the material facts that are the basis
2 of the PDDN are not in dispute. Zeus approached and then chased Williams in a menacing
3 fashion, and then approached Satter-Hunt again in a menacing fashion. Franqui did not witness
4 the Incident and testified mainly of his observances of Zeus's behavior at other times. This kind
5 of general character testimony cannot negate first-hand testimony of actions that meet the
6 definition of "potentially dangerous dog." The City's evidence meets the required burden. TMC
7 17.01.010.27.

8 5. When a dog is declared potentially dangerous, and that declaration is upheld after
9 hearing, the Hearing Examiner shall enter an order so stating. The Hearing Examiner may
10 impose any additional condition(s) of confinement set forth in RCW 16.08, including, but not
11 limited to, posting of warning signs and maintenance of liability insurance coverage. *TMC*
12 *17.04.032.C.*

13 6. The evidence in the record does show that Zeus is potentially dangerous based on
14 the elements and evidence. As part of the restrictions upheld/imposed here, the Examiner
15 concludes that Zeus should not be left unattended in the backyard of the Franqui Residence
16 unless secured in a 5-sided enclosure.

17 7. Otherwise, the restrictions imposed by Animal Control in the PDDN are
18 appropriate. Nothing presented at the hearing warrants additional revision(s). Restrictions such
19 as those imposed here serve to protect members of the community (and their pets) from
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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).

1 dangerous behavior and attacks, or menacing behavior that can lead to an attack, because a dog
2 so restricted should not be able to get loose or roam unrestricted (i.e., unmuzzled), and/or
3 engage in other dangerous behavior, so long as the restrictions are met. The restrictions also
4 serve to protect the life of a dog with prior history from coming into possible greater jeopardy
5 by preventing future incident/attacks that could lead to more severe consequences (such as
6 euthanization, which is not at issue here).

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

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

11 **DECISION AND ORDER**

12 Based on the above Findings and Conclusions, the present appeal is DENIED and the
13 City of Tacoma's Potentially Dangerous Dog Notice issued to Zeus is UPHELD.

14 Zeus is subject to the following restrictions which must be adhered to at all times when
15 Zeus is present in the city of Tacoma:

- 16 1) Zeus must not be outside a proper 5-sided enclosure on the premises of the
17 owner, or must be inside the premises of the owner; and
- 18 2) Zeus must not go beyond the proper enclosure on the premises of the owner
19 unless he is securely leashed and humanely muzzled in a manner that will
20 prevent him from biting any person or animal and he must be under the
21 physical control of a responsible person; and
- 2) Zeus should not be left unattended in the backyard of the Franqui Residence
unless securely enclosed in a 5-sided kennel/humane enclosure; and
- 4) A clearly visible warning sign informing that there is a potentially dangerous
dog on the property must be posted conspicuously and such sign must

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

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include a warning symbol that informs children of the presence of a potentially dangerous dog.

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

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

- A. is loose or unconfined; provided that, the owner shall first call 911;
- B. has bitten a human being or attacked another animal; provided, the owner shall first call 911;
- C. is sold or given away, or dies; or
- D. is moved to another address.

DATED this 25th day of September, 2023.



JEFF H. CAPELL, Hearing Examiner

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,
CONCLUSIONS OF LAW,
DECISION AND ORDER**