

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **TONI McINTOSH,**

**HEX2023-022**

4 **Appellant,**

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

5 **v.**

6 **CITY OF TACOMA,  
ANIMAL CONTROL AND  
COMPLIANCE,**

7 **Respondent.**

8

9

10 **THIS MATTER** came on for hearing on August 31, 2023,<sup>1</sup> before JEFF H. CAPELL,  
11 the Hearing Examiner for the City of Tacoma, Washington. Deputy City Attorney Jennifer  
12 Taylor represented the City of Tacoma, Animal Control and Compliance (“Animal Control” or  
13 “ACC”) at the hearing. Appellant Toni McIntosh (“Appellant” or “McIntosh”) appeared at the  
14 hearing *pro se*. Witnesses were sworn and testified. Exhibits were submitted<sup>2</sup> and admitted,  
15 and arguments were presented and considered.

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

- 17
- 18 • Raymond Picon<sup>3</sup>
  - Robin Bowerman, ACC
  - Toni McIntosh
  - Anthony McIntosh
  - 19 • Gregory Turner

20

---

21 <sup>1</sup> 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.

<sup>2</sup> McIntosh also submitted several cases as proposed authority on the issues presented in this appeal. The cases are addressed in the Conclusions of Law herein below.

<sup>3</sup> 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**

- John Simpson
- Urouse Q. Williams, and
- Kim T. McIntosh.<sup>4</sup>

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

### FINDINGS OF FACT

1. Appellant Toni McIntosh currently resides within the Tacoma city limits at 6716 South J Street, Tacoma, WA 98408 (the “McIntosh Residence”). McIntosh is the owner of a licensed<sup>5</sup> black and white neutered male Pitbull named Tank (“Tank” or the “Dog”). At places in the hearing record, Tank’s coloring is referred to as also being gray or brown. That notwithstanding, Tank was identified by Picon using Exhibit K, and his identity was not disputed or otherwise challenged during the hearing. *McIntosh<sup>6</sup> Testimony, Bowerman Testimony, the Character Witnesses Testimony; Ex. R-1, Ex. R-2, R-7, Ex. D, Ex. L.*

2. Animal Control issued a Potentially Dangerous Dog Notice for Tank dated July 26, 2023, which is the subject of this appeal (the “PDDN”). *Ex. R-1, Ex. R-2.*

3. ACC’s decision to issue the PDDN to Toni McIntosh for Tank was the result of an incident that occurred on July 7, 2023, just after 7:00 am, at the McIntosh Residence in the city of Tacoma.<sup>7</sup> *Picon Testimony, McIntosh Testimony, Bowerman Testimony; Ex. R-2, Ex. R-3.*

//

---

<sup>4</sup> The last five witnesses listed here were present essentially to give character testimony for Tank. They did not witness the Incident. As such, they will at times herein be referred to collectively as the “Character Witnesses.”

<sup>5</sup> McIntosh obtained a City license for Tank on July 7, 2023, the same day as the Incident.

<sup>6</sup> Where just the surname “McIntosh” is used herein, it will delineate the Appellant, Toni McIntosh. Others who share that surname will be distinguished through first name use as necessary.

<sup>7</sup> The events of July 7, 2023, just referenced, that gave rise to the PDDN being issued are referred to hereinafter inclusively as the “Incident.”

1           4. On the date of the Incident, Picon had been tasked, in his role as a delivery driver,  
2 with delivering several bags of groceries to the McIntosh Residence. He arrived in his vehicle  
3 at around 7:17 am and parked on the street, nearer to a neighboring residence. He retrieved the  
4 delivery items, confirmed the address, and proceeded to walk toward the front door of the  
5 McIntosh Residence via the driveway and front walk by the steps to the front door. He did not  
6 message McIntosh that he had arrived. Picon indicated that he received delivery instructions  
7 through “the app” to not disturb McIntosh and to leave the delivery items in a plastic delivery  
8 box near the front door. He opened the delivery box to find it full of other packaged items. He  
9 then momentarily attempted to contact McIntosh through the app for more instructions, but this  
10 attempted communication was not completed. *Picon Testimony; Ex. R-3.*

11           5. McIntosh corroborated that she had given instructions for the delivery items to be  
12 left in the box and that she was not to be disturbed. McIntosh testified that she did not know the  
13 items would be delivered as early as they were, and she was not aware that Picon had arrived at  
14 her house until the Incident was essentially underway. McIntosh’s Exhibit L shows the front of  
15 the McIntosh Residence, including the front door, and the delivery box near the front door.<sup>8</sup>  
16 *McIntosh Testimony.*

17           6. McIntosh’s Exhibit D is a screenshot of the delivery instructions she contends  
18 were provided to Picon. Picon testified that the instructions in Exhibit D are altered from what  
19 he received on his end, but he did not say how. Regardless, Picon did not ring the doorbell, as  
20

---

21 <sup>8</sup> At the hearing, McIntosh seemed to misinterpret Picon’s testimony as having placed the delivery box right in front of the front door to the McIntosh Residence, essentially on the front step blocking the door. That was not his statement although he did contend that the box was closer to the front door than pictured in Exhibit L. His testimony and his written statement (*Ex. R-3*) were consistent that the delivery box was merely “near the front door,” which Exhibit L clearly shows to be accurate.

1 Exhibit D instructs, and he attempted to leave the delivery items in the box “to the right of the  
2 mailbox,” which is, as already pointed out, near the front door. McIntosh’s offered instructions  
3 show as the highlighted Drop-off option, “Leave at my door,” which is then modified by the  
4 more precise instruction about using the delivery box. Picon attempted to comply with these  
5 instructions until he found the delivery box full. McIntosh argued that Picon did not follow the  
6 delivery instructions, and that this failure somehow caused the Incident. Nowhere in the  
7 Exhibit D instructions does it say to approach the delivery box in a manner that ensures you are  
8 not seen from the front door. There is nothing on the face of the Exhibit D instructions that  
9 Picon violated, and there is nothing he did that could be considered provocation for the  
10 Incident.

11 7. The McIntosh Residence has both a main door and a screen/storm door at the  
12 main entrance (*see Exhibit L*). When Picon arrived, the main door was open. The screen door  
13 was more-or-less in a closed position, but apparently not latched. Tank either saw, smelled or  
14 heard Picon and quickly pushed past the screen door while Picon was at the delivery box.  
15 McIntosh testified that she may have gasped at Picon’s unexpected presence, and that Tank  
16 reacted to that in a protective fashion. There is no evidence, beyond his mere presence to  
17 deliver items ordered by McIntosh, that Picon did anything provocative, however. *Picon*  
18 *Testimony, McIntosh Testimony; Ex. R-2, Ex. R-3.*

19 8. After Tank had exited through the front door he attacked Picon. Tank’s attack  
20 caused severe injuries to Picon’s left ankle, right hip, and right arm. All these areas of Picon’s  
21 body were more-or-less covered by clothing, but Tank tore through Picon’s

1 clothes to inflict the injuries Picon suffered. McIntosh came out the front door after the attack  
2 started, and eventually subdued Tank. McIntosh was herself injured by her efforts. Both Picon  
3 and McIntosh fell to the ground at some point *Id.*<sup>9</sup>

4 9. Picon sought medical treatment for his injuries at Tacoma General Hospital. His  
5 wounds were sutured with over 20 stitches and he was given antibiotics. He reported the  
6 Incident to ACC the same day, and ACC began its investigation still that same day. ACC's  
7 investigation led to issuance of the PDDN on July 26, 2023. *Picon Testimony, Bowerman*  
8 *Testimony; Ex. R-2, Ex. R-3~Ex. R-5.*

9 10. The Character Witnesses all testified of their familiarity with Tank and that they  
10 have never seen him be aggressive or attack people or animals. Several offered their opinions  
11 that Tank was only acting to protect McIntosh, although none were present at the Incident.  
12 Others argued that there should be no consequences for a first-time incident. McIntosh herself  
13 argued that Tank was only being protective, and that if she had known Picon would be on her  
14 property at that time, or that if Picon had made his delivery in such a manner as to remain out  
15 of Tank's sight, the Incident would not have occurred.

16 11. Any Conclusion of Law below which may be more properly deemed or considered  
17 a Finding of Fact, is hereby adopted as such.

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

19 //

20 //

21 \_\_\_\_\_  
<sup>9</sup> As with most Potentially Dangerous or Dangerous Dog hearings, there were more facts offered about the Incident from both sides, but the full play-by-play is not necessary to a factual analysis of whether the elements of TMC 17.01.010.27 have been met.

**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 a. as the basis for issuance to the Dog.

21 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.<sup>10</sup> The preponderance of the evidence

//

---

<sup>10</sup> *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 standard is at the low end of the spectrum for burden-of-proof evidentiary standards in the U.S.  
2 legal system, and is not particularly difficult to meet.<sup>11</sup> Here, the material facts of the attack are  
3 not in dispute in any event, and the City’s evidence meets the required burden.

4 5. When a dog is declared potentially dangerous, and that declaration is upheld after  
5 hearing, the Hearing Examiner shall enter an order so stating. The Hearing Examiner may  
6 impose any additional condition of confinement set forth in RCW 16.08, as now exists or as  
7 may be amended hereafter, including, but not limited to, posting of warning signs and  
8 maintenance of liability insurance coverage. *TMC 17.04.032.C.*

9 6. The evidence in the record does shows that Tank attacked Picon without  
10 provocation causing injury, thereby meeting the definition of being a potentially dangerous  
11 dog. *TMC 17.01.010.27.a.* Nothing in Picon’s conduct in making his delivery to the McIntosh  
12 Residence constitutes provocation under TMC 17.01.010.27. McIntosh may have personally  
13 understood how she wanted the delivery to happen in a slightly different manner than actually  
14 instructed (i.e., not being seen from the front door), but that understanding was not conveyed to  
15 Picon. His actions in making his delivery were reasonable and not provocative in any way.  
16 Furthermore, he was there legally as a business invitee and did nothing that would change his  
17 status to that of a trespasser.<sup>12</sup>

18 7. As explained during the hearing, the cases McIntosh submitted are not controlling  
19 here. They are at best only persuasive authority because they are for the most part either not  
20  
21

---

<sup>11</sup> *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).

<sup>12</sup> *See Washington Pattern Jury Instruction 120.05 Business or Public Invitee—Definition.*

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

1 Washington cases or are not published.<sup>13</sup> They are also not particularly on point.<sup>14</sup>

2 8. Nothing in TMC Title 17 or in controlling case law allows the Examiner to  
3 essentially give a first incident a free pass, as was argued for at the hearing by the Appellant  
4 and the Character Witnesses. The Examiner can only follow controlling laws as they apply to  
5 the proven facts.

6 9. The restrictions imposed by Animal Control in the PDDN are appropriate. The  
7 Examiner sees no need to revise them. Nothing presented at the hearing warrants revision.  
8 Restrictions such as those imposed here serve to protect members of the community (and their  
9 pets) from dangerous behavior and attacks because a dog so restricted should not be able to get  
10 loose or walk around unprotected (i.e., unmuzzled), and engage in dangerous behavior, so long  
11 as the restrictions are met. The restrictions also serve to protect the life of a dog so restricted  
12 from coming into possible greater jeopardy by preventing future attacks that could lead to more  
13 severe consequences (such as euthanization).

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

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

18 //

19 //

21 <sup>13</sup> See the following link setting forth the distinction between mandatory and persuasive authority:  
[https://www.law.cornell.edu/wex/persuasive\\_authority#:~:text=A%20decision%20by%20a%20court%20of%20one%20jurisdiction%20is%20persuasive,bind%20the%20forum%20state%20court](https://www.law.cornell.edu/wex/persuasive_authority#:~:text=A%20decision%20by%20a%20court%20of%20one%20jurisdiction%20is%20persuasive,bind%20the%20forum%20state%20court).

<sup>14</sup> <https://legal-dictionary.thefreedictionary.com/On+Point>: (A statute or case is “on point” if it has direct application to the facts of a case currently before at tribunal for determination.)

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



1 **ORDER**

2 Based on the above Findings and Conclusions, the present appeal is DENIED and the  
3 City of Tacoma’s Potentially Dangerous Dog Notice issued to Tank is UPHELD.

4 Tank is subject to the following restrictions which must be adhered to at all times  
5 when Tank is present in the city of Tacoma:

- 6 1) Tank must not be outside a proper enclosure on the premises of the owner,  
7 or be inside the premises of the owner; and
- 8 2) Tank must not go beyond the proper enclosure on the premises of the owner  
9 unless he is securely leashed and humanely muzzled in a manner that will  
10 prevent him from biting any person or animal and he must be under the  
11 physical control of a responsible person; and
- 12 3) A clearly visible warning sign informing that there is a potentially dangerous  
13 dog on the property must be posted conspicuously and such sign must  
14 include a warning symbol that informs children of the presence of a  
15 potentially dangerous dog; and
- 16 4) The owner must provide (1) evidence of a surety bond issued by a surety  
insurer qualified under Chapter 48.28 RCW in a form acceptable to Animal  
Control in the sum of at least two hundred fifty thousand dollars, payable to  
any person injured by the potentially dangerous dog; or (2) a policy of  
liability insurance, such as homeowner's insurance, issued by an insurer  
qualified under Title 48 RCW in the amount of at least two hundred fifty  
thousand dollars, insuring the owner for any personal injuries inflicted by  
the potentially dangerous dog.

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

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

- 21 A. is loose or unconfined; provided that, the owner shall first call 911;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

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 6th day of September, 2023.



---

**JEFF H. CAPELL, Hearing Examiner**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
DECISION 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.