

*Corrected Copy 54*



# CITY OF SACRAMENTO

## OFFICE OF THE CITY CLERK

915 I STREET  
CITY HALL ROOM 308

SACRAMENTO, CALIFORNIA 95814  
TELEPHONE (916) 449-5426

CITY MANAGER'S OFFICE  
**RECEIVED**  
DEC 5 1980

LORRAINE MAGANA  
CITY CLERK

December 5, 1980

Honorable Mayor and City Council  
City Hall  
Sacramento, CA 95814

**APPROVED**  
BY THE CITY COUNCIL

DEC 9 1980

OFFICE OF THE  
CITY CLERK

Members in Session:

SUBJECT: Remand of Administrative Decision Involving Vicious Animal

### SUMMARY

At the regular Council meeting of December 2, 1980, the City Attorney presented a report on the Superior Court's decision to remand the administrative decision of Hermann Lorenz, hearing examiner for the City of Sacramento, involving a certain dog determined by the Animal Control Officer to be a vicious animal. The City Attorney advised Council of three options. They were:

1. To refer the matter back to the original hearing examiner,
2. To appoint a new hearing examiner, and
3. Council to hear matter.

Council adopted by motion, its decision to appoint a new hearing examiner.

This office has contacted Steven Bair of the Institute for Administrative Justice, a qualified attorney and experienced member of the American Arbitration Association. Both the City Attorney's office and the attorney representing the owner of the animal in question approve of the selection of Mr. Bair as hearing examiner in this matter.

### FINANCIAL DATA

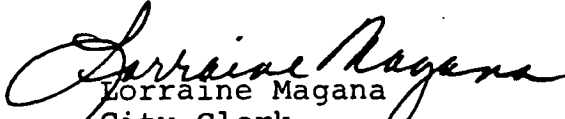
The estimated cost would be \$200.00 and would be available from the Animal Control budget.

### RECOMMENDATION

It is recommended that the following motion be adopted: The Council

hereby determines pursuant to Section 2.324, City Code, that this appeal will involve a lengthy factfinding process which will be more appropriately accommodated by a formal hearing before a hearing examiner. Therefore, the Council appoints Steven Bair as hearing examiner to hear the appeal on December 19, 1980, at the hour of 1:00 p.m. in the Council Chambers, City Hall, 915 "I" Street, Sacramento, California.

Sincerely,

  
Lorraine Magana  
City Clerk

LM/mm  
Atch.

cc: City Attorney  
James Lee  
Haskell B. Compton  
Animal Control

RECOMMENDATION APPROVED:

  
Walter J. Slipes  
City Manager

54



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Sincerely,

  
Lorraine Magana  
City Clerk

LM/mm  
Atch.

cc: City Attorney  
James Lee  
Haskell B. Compton  
Animal Control

RECOMMENDATION APPROVED:

  
Walter J. Slipe  
City Manager

ROLL CALL

SACRAMENTO CITY COUNCIL, SACRAMENTO REDEVELOPMENT AGENCY, SACRAMENTO HOUSING AUTHORITY, SACRAMENTO PARKING AUTHORITY

MOVED BY: Joe      SECONDED BY: Rob      DATE: DEC - 2 1980

MOTION: appoint new hearing officer

APPROVED  
BY THE CITY COUNCIL

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OFFICE OF THE  
CITY CLERK

|             | AYE | NO | ABSTAIN | ABSENT |
|-------------|-----|----|---------|--------|
| CONNELLY D6 | /   |    |         |        |
| FISHER D2   | /   |    |         |        |
| HOEBER D7   | /   |    |         |        |
| POPE D3     | /   |    |         |        |
| ROBERTS D1  | /   |    |         |        |

|             | AYE | NO | ABSTAIN | ABSENT |
|-------------|-----|----|---------|--------|
| ROBIE D8    | /   |    |         |        |
| RUDIN D4    | /   |    |         |        |
| THOMPSON D5 | /   |    |         |        |
| ISENBERG M  | /   |    |         |        |

NOTES: As only discussing procedure -

James P. Jackson, City Attorney, gave a verbal presentation. Three choices 1. refer to hearing officer 2. appoint another hearing officer 3. Council hear

Jim Lee, representing Mr. Compton, agrees to confine dog & request release of dog. agrees to new hearing officer or refer Council



# CITY OF SACRAMENTO

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CITY MANAGER'S OFFICE  
**RECEIVED**  
NOV 25 1980

JAMES P. JACKSON  
CITY ATTORNEY  
THEODORE H. KOBEY, JR.  
ASSISTANT CITY ATTORNEY  
LELIAND J. SAVAGE  
DAVID BENJAMIN  
SAM JACKSON  
WILLIAM P. CARNAZZO  
SABINA ANN GILBERT  
STEPHEN B. NOCITA  
DEPUTY CITY ATTORNEYS

DEPARTMENT OF LAW  
812 TENTH ST. SACRAMENTO, CALIF. 95814  
SUITE 201 TELEPHONE (916) 449-5346

November 25, 1980

Honorable City Council  
Council Chamber  
City Hall  
Sacramento, California

RE: REMAND OF ADMINISTRATIVE DECISION INVOLVING VICIOUS ANIMAL

Members in Session:

## SUMMARY

This is a case involving the City animal control officer's determination that a certain dog is a vicious animal within the meaning of City Code Section 6.101. An administrative decision upholding that determination has been set aside by the superior court for procedural irregularity. The case has been remanded to the City Council for reconsideration in light of the court's ruling. For reasons which follow we recommend that the case be referred to the same hearing officer, for reconsideration in light of the court's ruling.

## BACKGROUND INFORMATION

Acting pursuant to City Code Section 6.101 et seq., the City Animal Control Officer determined a certain dog (a pit bull dog named "Bullard") to be a "vicious animal" and decided that under the circumstances the dog should be destroyed. Upon appeal, that decision was upheld by a hearing officer appointed by the City Council. The dog owner thereafter contested the matter in superior court.

The superior court determined that the hearing officer placed the burden of proof on the dog owner at the administrative hearing. The court further determined that the burden of proof should be on the animal control officer, to prove that the dog in question is a vicious animal. The court therefore vacated the hearing officer's decision, remanded the matter back to the City Council, and ordered a reconsideration of the evidence in light of the aforementioned ruling on the burden of proof issue.

**APPROVED**  
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The City Council may refer this matter to a hearing officer (City Code Sections 2.320-2.329). A de novo hearing is not required in this matter (NLRB vs. Donnelly Garment Co. (1946) 330 US 219, 91 L.Ed. 254; Cole vs. L.A. Community College District (1977) 68 C.A.3d 785). The matter may and should be decided upon the existing record, with the evidence being reconsidered in light of the superior court's ruling (id.; accord, Ford Motor Co. vs. NLRB (1938) 305 US 364, 83 L.Ed. 221; Corey vs. Board of Medical Examiners (1977) 66 C.A.3d 538). The existing findings may be modified accordingly (ibid.). In our opinion, the matter may be referred to Mr. Herman Lorenz, the original hearing officer, for decision (NLRB vs. Donnelly Garment, supra; Cole vs. L.A. Community College Dist., supra.)

As stated by the United States Supreme Court, ". . . a remand [of administrative proceedings] does not dismiss or terminate the administrative proceedings. If findings are lacking which may properly be made upon the evidence already received, the court does not require the evidence to be reheard. If further evidence is necessary, . . . that evidence may be taken" (Ford Motor Co. vs. NLRB, supra, 83 L.Ed. 221, 230.

"There is nothing in the statute, or in the principles governing judicial review of administrative action, which precludes the court from giving an administrative body an opportunity to meet objections to its order by correcting irregularities in procedure, or supplying deficiencies in its record, or making additional findings where these are necessary, or supplying findings validly made in the place of those attacked as invalid." (id., 83 L.Ed. at 231).

"Certainly it is not the rule of judicial administration that . . . a judge is disqualified from sitting in a retrial because he was reversed on earlier rulings. We find no warrant for imposing upon administrative agencies a stiffer rule, whereby examiners would be disentitled to sit because they ruled strongly against a party in the first hearing", NLRB vs. Donnelly Garment Co., supra, 91 L.Ed. 854, 867.

Since the prior hearing officer has already received the evidence and observed the demeanor of the witnesses, and there is no need for a new hearing or a new hearing officer, we believe that the matter should be referred to the same hearing officer for reconsideration of the evidence in light of the superior court's ruling. An entirely new hearing or a hearing before a different hearing officer would be unnecessarily time consuming and costly, and would serve no useful purpose.

RECOMMENDATION

For the foregoing reasons it is recommended that this matter be referred to Mr. Herman Lorenz for reconsideration of the evidence in light of the superior court's ruling.

Very truly yours,

JAMES P. JACKSON  
City Attorney

*Stephen Nocita*

STEPHEN B. NOCITA  
Deputy City Attorney

RECOMMENDATION APPROVED:

*Walter J. Slupe*  
\_\_\_\_\_  
WALTER J. SLUPE, City Manager

SBN:GD





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TELEPHONE (916) 449-5426

LORRAINE MAGANA  
CITY CLERK

December 10, 1980

Steven Bair  
Attorney at Law  
925 "G" Street  
Sacramento, CA 95814

Dear Mr. Bair:

On December 9, 1980, the Sacramento City Council appointed you as Hearing Examiner in the matter of the appeal of Haskell B. Compton from the decision of the City Animal Control Officer declaring Mr. Compton's dog a "vicious animal."

Hearing has been set for December 19, 1980, at the hour of 1:00 p.m., City Council Chamber, City Hall, Second Floor, 915 "I" Street, Sacramento, California.

If this office can be of any further assistance to you, please feel free to contact me at 449-5426.

Sincerely,

Anne Mason  
Deputy City Clerk

AM/mm/54

cc: James Lee  
City Attorney  
Animal Control Officer