

## **ARTICLE VII. HEARING**

### **Sec. 4-110. Purpose**

The purpose of this article shall be to create procedures to assure full access to administrative remedies in the application or enforcement of this chapter and for the mediation of disputes involving any animal subject to this chapter. Such procedures shall be administered by the director and conducted by a hearing officer.

(Ord. No. 927, §1; Ord. No. 1444, §1)

### **Sec. 4-111. Cause for hearing**

Hearings may be held to determine the following:

- (a) That an animal is creating a nuisance within the meaning of this chapter.
- (b) That an animal is a dangerous animal within the meaning of this chapter.
- (c) That an animal is a vicious animal within the meaning of this chapter.
- (d) That a kennel or cattery, or animal facility license has been denied or revoked in accordance with the provisions of this chapter.
- (e) In compliance with Penal Code Section 597.1 of the state.
- (f) At the request of the director in order to attempt mediation of other such matters as may arise from the keeping of animals.
- (g) A person shall be deemed to have requested a hearing be held when the person complies with the applicable appeal or complaint provisions of this chapter.

(Ord. No. 927, §1; Ord. No. 1444, §1)

### **Sec. 4-112. Authority of hearing officer**

The hearing officer shall be authorized, within the scope of authority given by article I and the director, to conduct hearings to resolve conflicts arising from the application and enforcement of this chapter, to make binding determinations, and to mediate disputes related to the keeping of animals pursuant to this chapter.

(Ord. No. 927, §1; Ord. No. 1444, §1)

### **Sec. 4-113. Oaths and subpoenas**

The hearing officer shall have the power to administer oaths or affirmations. At the request of either the director or any other party to the appeal, subpoenas may be issued for the attendance of witnesses by the hearing officer, upon request.

(Ord. No. 927, §1; Ord. No. 1444, §1)

**Sec. 4-114. Hearing**

(a) Not later than thirty (30) calendar days following the date of filing either an appeal as prescribed by section 4-98 or a complaint as prescribed in section 4-72, the hearing officer shall conduct a hearing to determine whether the requested action should be upheld or denied. Written notice of the time, date, and place of the hearing shall be served upon the director, the complainant or appellant, and the animal owner not later than fourteen (14) calendar days preceding the date of the hearing. The procedures governing the conduct of the hearing shall be as follows:

(1) During the hearing, the burden of proof shall rest with the complainant, or person filing the appeal and such proof shall be based upon a preponderance of the evidence. The provisions of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) shall not be applicable to such hearing nor shall formal rules of evidence in civil or criminal judicial proceedings be applicable. The complainant or appellant and the animal owner may appear, present evidence, and examine and cross-examine witnesses.

(2) Absent extraordinary circumstances as determined by the hearing officer, no animal may be presented as evidence or be present during the hearing.

(3) In the event the complainant or appellant or the animal owner fails to appear at the time, date, and place appointed for the hearing, the hearing shall be conducted in the absence of the complainant or appellant or animal owner and the hearing officer shall render a decision based upon evidence presented during the hearing.

(4) For good cause as determined by the hearing officer, the hearing may be continued, but not for more than thirty (30) calendar days. Notice of the continuance, if granted, and the new date and time of the hearing shall be made to all parties by the hearing officer.

(5) The hearing shall be tape recorded and the tape recordings and all documents presented as evidence shall be maintained for a period of three (3) years as a part of the record of the hearing.

(b) Unless otherwise agreed to by the parties, within fourteen (14) calendar days of the conclusion of the hearing, the hearing officer shall issue a written decision, including, but not limited to, findings of fact and conclusions relative to the following:

(1) Whether, based upon the evidence presented during the hearing, the action requested is approved or denied; and

(2) What disposition should be made as a consequence.

(c) The hearing officer shall make a disposition based upon consideration of all of

the facts and circumstances revealed by the evidence presented in the hearing and may order either:

- (1) That the director release the animal in question;
  - (2) That the director release the animal in question to the owner subject to such conditions or special registration requirements as may be specified in this chapter or required to ensure public safety and animal welfare;
  - (3) That the director release the animal in question to the owner subject to payment of such fees and expenses as may be applicable according to the provisions of this chapter;
  - (4) That the director remove the animal in question for disposition in accordance with the applicable provisions of this chapter; or
  - (5) That the director issue, with relevant conditions as the hearing officer may find appropriate, or revoke the subject license.
- (d) Unless otherwise agreed to by the parties, notice of the written decision, shall be filed with the director and shall be personally served upon or deposited in the United States Mail to the complainant or appellant and the animal owner not later than twenty-one (21) calendar days following the date on which the hearing was concluded.
- (e) Failure to comply with any procedural requirements or time limits of this article shall not deprive the hearing officer of jurisdiction over the issue and shall not invalidate any hearing conducted or order made pursuant to this article unless such failure constitutes a denial of due process of law.

(Ord. No. 927, §1; Ord. No. 1444, §1)

**Sec. 4-115. Finality of determination**

The decision of the hearing officer shall be final.

(Ord. No. 1101, §1; Ord. No. 1444, §1)

**Sec. 4-116. Disposition of animal**

Except as otherwise provided, in the event that the hearing officer orders destruction of an animal, the director shall immediately impound or continue to impound said animal until fourteen (14) days following the date of personal service upon or deposit in the United States Mail of notice of the hearing officer's decision to the owner.

(Ord. No. 1444, §1)

**Sec. 4-117. Release of animal**

(a) No animal impounded pursuant to article III of this chapter shall be released to

any person other than the owner of such animal, prior to a decision of the hearing officer. Should the owner fail to redeem the animal by the date specified in the decision of the hearing officer, the animal shall be disposed of at the discretion of the director.

(b) Notwithstanding any other provision in this section or a decision or order by the hearing officer to the contrary, the director shall not release an animal impounded pursuant to article III of this chapter to the owner absent compliance with the provisions relating to redemption prescribed by section 4-43, including, but not limited to, the payment by the owner of all fees and charges for impoundment.

(Ord. No. 1444, §1)

**Sec. 4-118. Notification of change**

After an animal is declared to be dangerous, vicious, or a nuisance, the director must be notified and approve a change in the location where the animal is kept. The person owning the animal so declared must notify the director of the change in writing. Such notification must include the name and the original residential and occupational addresses and telephone numbers, and the new address and telephone number where the animal is to be kept. Should the animal die, the owner shall bring the animal to the shelter and notify the director at the time the remains are delivered.

(Ord. No. 1444, §1)

**Sec. 4-119. Failure to comply**

Failure of the owner to comply with the provisions of this article or the order of the hearing officer is a misdemeanor.

(Ord. No. 1444, §1)

**Sec. 4-120. Reconsideration of order**

If, after a period of two (2) years from the date of the determination by the hearing officer that the animal is dangerous, vicious, or a nuisance, it can be demonstrated that the owner has complied with the order of the hearing officer and that no further cause exists for the order to stay in force, the owner may apply to the director, in writing, for reconsideration of the conditions for keeping or the provisions for special registration of the animal. Upon investigation by the director, relief may be granted and the owner so notified in writing.

(Ord. No. 1444, §1)