



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK
915 I STREET SACRAMENTO, CALIFORNIA 95814
CITY HALL ROOM 203 TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

June 10, 1980

APPROVED
BY THE CITY COUNCIL

JUN 10 1980

OFFICE OF THE
CITY CLERK

Honorable Mayor and City Council
City Hall
Sacramento, CA 95814

Members in Session:

SUBJECT: Appeal of Earlie C. Deloney, Jr. from the decision of the Animal Control Officer

SUMMARY

Attached is the appeal of Earlie C. Deloney, Jr., for declaring his dog a vicious animal as required by Section 6.104, City Code.

Under Sections 2.323 and 2.324, City Code, the Council may appoint a hearing examiner to hear the appeal if it finds that "the appeal may involve a lengthy factfinding process which would be more appropriately accommodated by a formal hearing before a hearing examiner".

FINANCIAL DATA

The estimated cost would be \$100.00 and would be available from the Department of Animal Control budget.

RECOMMENDATIONS

1. If the Council should decide to appoint a hearing examiner, 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 David McMurtry as a hearing examiner to hear the appeal on June 25, 1980 at the Council Chamber's.
2. If the Council should decide to consider the appeal itself, it is recommended that the hearing be set for July 8, 1980.

Sincerely,

Lorraine Magana
City Clerk

NOTICE OF APPEAL

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO

MAY 30 10 27 AM '80

DATE: 29 May 80

Pursuant to Section 2.320, City Code, I wish to appeal the decision of The
Animal Control Officer Tom Hoover made on May 23, 198
regarding Vicious Animal Ord Sec 6.101

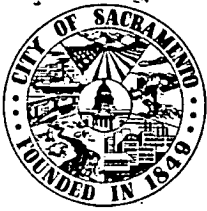
as required by _____, City Code.

My reason for appealing is as follows: The Dog was provoked
by this little boy and his friends. They
threw rocks at him and on several occasions
have shot him with B.B. guns. His right
rear leg has been broken by one of their
air guns. His head and nose have several
cuts where he has been hit by rocks while
chained in the yard.

PLEASE PRINT:

NAME: Earlie C DeLoney JR
ADDRESS: 4601 36th St
CITY: Sacramento STATE: Calif ZIP CODE: 95820
TELEPHONE NUMBER: 451-4925

Earlie C DeLoney Jr.
SIGNATURE



CITY OF SACRAMENTO
CITY CLERK'S OFFICE
CITY OF SACRAMENTO

MAY 27 2 22 PM '80

DEPARTMENT OF ANIMAL CONTROL
2127 FRONT STREET SACRAMENTO, CALIFORNIA 95818
TELEPHONE (916) 449-5623

TOM HOOVER
CHIEF ANIMAL CONTROL OFFICER

RUBEN MORA
SENIOR ANIMAL CONTROL OFFICER

May 23, 1980

*Final day to file
6-2-80*

Earlie DeLoney
4601 - 36th Street
Sacramento, California 95817

Dear Mr. Earlie Deloney

Your animal has been deemed a "Vicious Animal" under Sacramento City Ordinance, Section 6.101. In that on May 21, 1980 your dog bit Gilbert Mareno Jr, age 8 years, of 3415 22nd Ave Sacramento, California. This is the sixth recorded bite we have in our files.

You are hereby notified that your animal is to be put to sleep on June 4, 1980.

If you would like to appeal this determination of the Chief of Animal Control to a Hearing Officer, please file a notice of such appeal with the City Clerks Office prior to June 2, 1980.

Very Truly Yours,

Tom Hoover

Tom Hoover
Chief of Animal Control

cc: City Clerk
City Attorney



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET

CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

June 11, 1980

Earlie C. Deloney Jr.
4601 - 36th Street
Sacramento CA 95820

Dear Mr. Deloney:

On June 10, 1980, the City Council determined that pursuant to Section 2.324, City Code, your appeal of the decision of the Animal Control Officer regarding a vicious animal, will involve a lengthy factfinding process which will be more appropriately accommodated by a formal hearing before a hearing examiner.

Therefore, the Council appointed David McMurtry as Hearing Examiner to hear your appeal June 25, 1980, 9:00 A.M., at the Council Chamber, 915 - I Street, 2nd floor, Sacramento, California.

Sincerely,

Anne Mason
Deputy City Clerk

am

cc: David McMurtry

Item No.



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5428

LORRAINE MAGANA
CITY CLERK

June 11, 1980

Earlie C. Deloney Jr.
4601 - 36th Street
Sacramento CA 95820

Dear Mr. Deloney:

On June 10, 1980, the City Council determined that pursuant to Section 2.324, City Code, your appeal of the decision of the Animal Control Officer regarding a vicious animal, will involve a lengthy factfinding process which will be more appropriately accommodated by a formal hearing before a hearing examiner.

Therefore, the Council appointed David McMurtry as Hearing Examiner to hear your appeal June 25, 1980, 9:00 A.M., at the Council Chamber, 915 - I Street, 2nd floor, Sacramento, California.

Sincerely,

Anne Mason
Deputy City Clerk

am

cc: David McMurtry
Animal Control
Item No. **63**

RODDA and McMURTRY
Attorneys at law

6-10-80

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO

JUL 3 11 30 AM '80

July 1, 1980

Annie

Ms. Lorraine Magana
City Clerk
City of Sacramento
915 I Street
Sacramento, CA 95814

In re: Appeal of Earlie C. Deloney Jr.
from Decision of Chief Animal Control Officer

Dear Ms. Magana:

Enclosed is the original copy of my report as the hearing officer in the above-entitled matter. I am sending a copy of my report to Mr. Tom Hoover, Chief of Animal Control, and Mr. Earlie C. Deloney, the appellant.

Very truly yours,

David W. McMurry

DAVID W. McMURTRY

DWM:kn

Enclosure

Cc's: Mr. Tom Hoover
Mr. Earlie C. Deloney

1 In the Matter of the Appeal of) HEARING OFFICER'S
2 EARLIE C. DELONEY, JR. from the) FINDINGS AND
3 Decision of the Chief Animal) DETERMINATIONS
4 Control Officer)
5)

6 This matter came on to be heard on June 25, 1980, before
7 DAVID W. McMURTRY, hearing officer appointed by the Council of the
8 City of Sacramento, pursuant to Section 2.324 of the Sacramento
9 City Code.

10 SUBJECT OF APPEAL

11 This is an appeal from EARLIE C. DELONEY, JR., from the
12 decision of the Chief Animal Control Officer of the City of
13 Sacramento determining that his dog, a German Sheperd, was a
14 vicious animal which should be destroyed pursuant to Section 6.103
15 of the Sacramento City Code.

16 SUMMARY OF EVIDENCE PRESENTED AT HEARING

17 Testimony was received at the hearing from Rueben Mora,
18 Senior Animal Control Officer, Tom Hoover, Chief Animal Control
19 Officer, and Earlie C. Deloney, Jr., the owner of the dog which
20 is the subject of this appeal. Mr. Mora testified that the
21 German Sheperd dog that was involved in this appeal hearing is
22 approximately three years old. He testified that since November 22,
23 1977, this dog has been involved in six separate dog bite incidents
24 that have occurred in the immediate vicinity of Mr. Deloney's
25 home at 4601 36th Avenue, Sacramento, California. Six victims
26 of these bite attacks range in age from five years of age through
27 eleven years of age. None of the attacks occurred on the property
28 of Mr. Deloney; most occurred on the sidewalk immediately in front
of his home. Mr. Mora indicated that in each case the victim of

1 the dog bite reported that the dog was running at large at the
2 time the bite attack occurred.

3 Evidence was presented by Mr. Deloney indicating that
4 the dog is kept in an enclosed area located immediately in front
5 of his house. Mr. Deloney stated that there is a fence that
6 runs along the sidewalk on the front and side of the house which
7 is approximately five feet tall. He indicated that the dog was
8 allowed to roam in the yard area immediately adjacent to the
9 sidewalk. He stated that the dog had been the victim of
10 numerous attacks from small children, including attacks involving
11 the use of BB guns and similar air powered weapons. Mr. Deloney
12 testified that the dog was not vicious in nature, but had been
13 excited by the activity of children in the neighborhood in that
14 it was the children who provoked the dog that had been bitten.

15 Under questioning, Mr. Deloney admitted that he was not
16 present at the time of any of the dog bite incidents and that
17 he did not have personal knowledge that the victims of these
18 attacks were children who he suspected of provoking the dog.
19 Mr. Deloney indicated that he knew that the dog was capable of
20 leaping over the fence which runs along the sidewalk at the front
21 and side of his house, but testified that he did not wish to
22 teather the dog because such acts on his part made it easier for
23 the neighborhood children to torment the animal.

24 Mr. Hoover testified that the oldest of the children
25 was eleven years of age and that most were not old enough to
26 use or possess a BB gun or similar weapon.

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1 FINDINGS AND CONCLUSIONS

2 Section 6.101 of the Sacramento City Code defines a
3 "vicious animal" as one "...which has on one or more occasions
4 attacked, bitten, maled or otherwise injured any person or animal
5 without provocation by such person or other animal." The question
6 to be determined in the hearing is as follows: Was sufficient
7 evidence produced at the hearing from which one could conclude
8 that the dog in question was a "vicious dog"?

9 I am of the opinion that sufficient evidence was
10 introduced at the hearing to sustain the determination made by
11 the Chief Animal Control Officer that the animal was a "vicious
12 animal" as that term was defined by the City Code. In so doing,
13 I do not disbelieve the testimony of Mr. Deloney that his animal
14 had been subjected to numerous attacks by children in the
15 neighborhood and that element of provocation may have been involved
16 in the six attacks described in detail by the Senior Animal
17 Control Officer. I believe that the evidence introduced indicates
18 that the dog, by reason of being tormented by neighborhood
19 children, has a propensity to attack children who pass in front
20 of Mr. Deloney's residence. No evidence was presented to suggest
21 that the children who were ultimately bitten by this animal were
22 the same children as those who provoked the dog. Accordingly, I
23 am concluding that the attacks were made without provocation of
24 the sort which would excuse the conduct of the dog under the
25 definition of "vicious animal," as that term is used in the City
26 Code.

27 The Chief Animal Control Officer has ordered that the
28 German Sheperd dog be destroyed, and I see nothing improper in such

1 an order in this case.

2 For the reasons stated above, the appeal of Mr. Deloney
3 will be denied.

4 DATED: July 1, 1980.

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David W Mc Murtry

DAVID W. McMURTRY
Hearing Examiner