

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS

ACTION AGENDA SUMMARY

DEPT: Animal Services *M. Ferraro*

BOARD AGENDA # *B-1

Urgent

Routine

AGENDA DATE August 1, 2006

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Introduce and Waive the First Reading of an Ordinance Amending Section 7.12.030 of the Stanislaus County Code Regarding the Composition and Duties of the Animal Court and Amend the Bylaws for the Animal Court

STAFF RECOMMENDATIONS:

1. Approve the amendment of Section 7.12.030 of the County Code, which will provide that the Animal Court eliminate the three-member panel format and replace the panel with a single hearing officer format. Three hearing officers will serve in a pre-established rotational capacity.
2. Approve the amendment to Section 7.12.030 of the County Code, that Animal Court serve as the administrative body to address potentially dangerous/vicious dog petitions.
(continued on page 2)

FISCAL IMPACT:

This Agenda Item amends the current Title 7, Chapter 7.12, Section 7.12.030 of the Stanislaus County Code. This section currently provides upon notice, administrative hearings on Department of Animal Services citations, with appeals of the administrative determinations to the Board of Supervisors. This amendment replaces the three-member panel with a single hearing officer appointed by the Board of Supervisors. Three hearing officers will be appointed and will serve in a pre-established rotation
(continued on page 2)

BOARD ACTION AS FOLLOWS:

No. 2006-630

On motion of Supervisor Grover, Seconded by Supervisor O'Brien
and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, DeMartini, and Chairman Simon

Noes: Supervisors: Mayfield

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION: INTRODUCED AND WAIVED THE FIRST READING OR ORDINANCE C.S. 966

This Item was removed from the consent calendar and placed on non-consent for discussion and consideration.

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No. ORD-55-4
BD-78-3

STAFF RECOMMENDATIONS:
(continued from page 1)

3. Approve and adopt amendments to bylaws as set forth in this agenda item.
4. Authorize the Clerk of the Board to conduct a recruitment to fill the three hearing officer vacancies subject to Board of Supervisor approval.

FISCAL IMPACT:
(continued from page 1)

on a monthly basis. Previously the appointed members were paid \$100 per Animal Court appearance, which totaled \$400 per month (three appointed members plus one alternate at \$100 each). With the establishment of an hearing officer format, the hearing officer will be paid \$300 per Animal Court appearance. This will result in a net savings of about \$1,200 annually. Additionally, this amendment will establish an administrative hearing procedure to hear and dispose of petitions filed to determine whether dogs in question are potentially dangerous or vicious.

DISCUSSION:

Background

On December 16, 2003 your Board approved the establishment of a notice-administrative hearing procedure, called Animal Court, to hear infraction citations issued by the Department of Animal Services rather than having these infractions be sent to Stanislaus County Superior Court. The establishment of Animal Court was to serve the community needs in a more efficient manner and promote a safe and healthy community. A panel of three citizens, with two alternates, was appointed.

Animal Court has been holding administrative hearings for the past two years, more recently on the first Wednesday of each month. The appointed members have individually served their two-year appointments and each received \$100 per diem of service. Matters have been resolved in a timely manner. The panel members are knowledgeable in animal behavior and care about the community they have been serving. They have struggled with tough issues and situations.

It has become apparent, however, that the panel format lacks collective knowledge necessary to apply the laws, which are the foundation from which the citations are issued and the intention to educate the public about responsible pet ownership; thus, modification of the hearing process is recommended.

The Director of Animal Services recommends that to more efficiently handle the matters, which come before Animal Court, the three-citizen panel be replaced with a

Approval to Introduce and Waive the First Reading of an Ordinance Amending Section 7.12.030 of the Stanislaus County Code Regarding the Composition and Duties of the Animal Court and Amend the Bylaws for the Animal Court
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single hearing officer, who is an active member of the California State Bar in good standing and in active practice for the last five years before appointment. Three hearing officers would be appointed by the Board of Supervisors after an open recruitment and applications are submitted. Each would serve a two year term and conduct Animal Court on a pre-assigned rotational basis (approximately 4 court sessions per hearing officer per year). After this time, their performance would be reviewed and agreements may be renewed. Hearing officers serving in a rotational capacity would eliminate any potential bias of having just one hearing officer. Further, a citizen may challenge the first hearing officer assigned and have his/her matter heard before the hearing officer next in order.

Such recommendation will support the Director of Animal Services' intention to provide not only swift adjudication of citations, but also promote responsible pet ownership.

Additionally, the duties of Animal Court would be visibly expanded. Food and Agricultural Code section 31621 provides that a county may establish an administrative hearing procedure to hear and dispose of petitions where a determination is required as to whether a dog is to be declared a potentially dangerous or vicious dog. While your Board was aware that Animal Court may hear such matters based on the April 20, 2004 Agenda Item B-1, such activity was not actively pursued.

This recommendation is the result of a joint effort which included the Department of Animal Services, Chief Executive Office, and County Counsel.

POLICY ISSUE:

The Board of Supervisors has determined the reformatting of Animal Court serves the best interest of the citizens of the community and ensures a safe and healthy community.

STAFFING IMPACT:

The approval of the proposed amendments to the Animal Court will have no staffing impacts associated with these recommendations.

ORDINANCE NO. C.S. _____

AN ORDINANCE RELATING TO ANIMAL COURT

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS, STATE OF CALIFORNIA, DO ORDAIN AS FOLLOWS:

Section 1. Section 7.12.030 of the Stanislaus County Code is hereby amended to read as follows:

"7.12.030 Notice-Administrative hearings and appeals administrative decision.

Notice of Hearing. The Animal Services administrative hearing, hereafter called Animal Court, shall be a public hearing. The hearings shall be held on the first Wednesday of each month. The person issued a notice of violation shall have at least 30 days from the date on the violation (the date of issuance) to appeal the violation. Upon receipt of the appeal, the matter will be set for hearing at the next Animal Court. Notice of the hearing shall be issued in person or by mail through the U.S. Postal Service.

The citizen requesting the hearing shall be responsible for the cost(s) of the hearing and will be required to leave a deposit in the amount shown in the fee schedule for the alleged violations, Stanislaus County Code, Chapter 7.50, unless a lesser amount is permitted to be deposited at the discretion of the Director of Animal Services. If the citizen fails to appear at the scheduled hearing, the deposit shall be forfeited and any additional fees owed for the alleged violations will be the citizen's responsibility to pay. If the citizen appears at Animal Court and is found guilty of the offense charged, the fees imposed by the Animal Court will be deducted from the

deposit. If the fees imposed by Animal Court exceed the amount of the deposit, the citizen will be responsible to pay the difference. If the fees imposed are less than the deposit, the difference will be refunded to the citizen. If the citizen is determined to be not guilty, the deposit will be refunded.

Hearing procedure.

The following sets forth the procedural rules applicable to the administrative hearing:

At the date, time and place set for the hearing, one of three hearing officers, appointed by the Board of Supervisors, in a fixed rotational order, shall hear testimony presented by both Animal Services and the citizen appealing the issuance of a violation. The citizen may challenge the hearing officer first assigned to the matter. As a result, the hearing may be continued until the next month to be held before the hearing officer next in order. The hearing officer shall review all evidence introduced at hearing of each alleged violation of Title 7 in order to determine whether the alleged violation conforms to the law and whether it is supported by substantial evidence. The Animal Court shall record the hearing in a suitable format and shall preserve the recording, all photographs and other documentary evidence introduced at the hearing for the 36-month period immediately following closure of the hearing.

The Animal Court shall render a written decision upon conclusion of the hearing, unless it is determined that further investigation into the matter is warranted. If this occurs, the matter will be continued until the next scheduled hearing at which time the new evidence shall be presented to the hearing officer and a decision shall be rendered. Any and all costs incurred by the County, including fines, shall immediately

become payable to the County. Any person not making immediate payment shall be subject to approved County collection procedures.

The written decision rendered by the hearing officer shall contain findings of fact and conclusions of law. The decision shall also set forth the right to appeal the decision of the Animal Court to the Board of Supervisors. A copy of the decision shall be mailed, by certified mail, to the last known address of the alleged violator/owner(s) of the animal.

Appeal procedure.

Decisions of the Animal Court may be appealed to the Board of Supervisors. The appeal shall be filed with the Clerk of the Board within fifteen days after the mailing of the decision of the Animal Court provided the appellant follows the following steps:

1. Delivers to the Clerk of the Board of Supervisors within fifteen days after the decision is made a written appeal which clearly sets forth the reasons for the appeal; and
2. The appellant shall be responsible for the cost of the appeal and the record.

The Board of Supervisors shall schedule the appeal for hearing within sixty days after the appeal is filed with the Clerk of the Board.

If upon appeal the Board finds that no violation exists, then the costs of the appeal and the record shall be borne by the County, and all assessed fees shall be refunded to the appellant.

Potentially Dangerous and Vicious Dogs.

If a petition is to be filed alleging probable cause to believe that a dog is potentially dangerous or vicious pursuant to Food and Agricultural Code, Division 14, Chapter 9, commencing with sections 31602 et seq., and specifically section 31621, the petition shall be filed with Animal Court to hear and dispose of the petition. Animal Court shall notify the owner or keeper of the dog that a hearing will be held under the provisions set forth sections 31621 and 31622. In order that such hearing be held timely, the hearing may take place, after proper service of the notice and a copy of the petition, at a special session of Animal Court. An appeal from an Animal Court's determination on this issue shall be to Superior Court as set forth in section 31622, not before the Board of Supervisors.

Section 2. This ordinance shall take effect thirty (30) days from and after the date of its passage, and before the expiration of fifteen (15) days after its passage, it shall be published once with the names of the members voting for and against the same in the Modesto Bee, a newspaper published in the County of Stanislaus, State of California.”

Upon motion of Supervisor _____ seconded by Supervisor _____, the foregoing Ordinance was passed and adopted at a regular meeting of the Board of Supervisors of the County of Stanislaus, State of California, this ____ day of _____, 2006, by the following-called vote:

- AYES: Supervisors:

- NOES: Supervisors:

- ABSENT: Supervisors:

Ray Simon, Chairman
of the Board of Supervisors of the
County of Stanislaus, State of California

ATTEST:

CHRISTINE FERRARO TALLMAN, Clerk of the
Board of Supervisors of the County of Stanislaus,
State of California

By _____
Liz King, Deputy Clerk

APPROVED AS TO FORM:
MICHAEL H. KRAUSNICK
County Counsel

By *Deirdre McGrath*
Deirdre McGrath, Deputy County Counsel

ANIMAL COURT

BYLAWS

ARTICLE I. Name.

The name of this body shall be the Stanislaus County Animal Court.

ARTICLE II. Authority.

Stanislaus County Board of Supervisors' Resolution 2003-116 dated December 16, 2003, approved Ordinance 869 which amended Section 7.12.030 originally, set the authority for the formation and operation of this Animal Court. Resolution 2006- dated August 1, 2006 amends these ByLaws to their present state.

ARTICLE III. Purpose.

The purpose of Animal Court shall be:

To hold public administrative hearings and render decisions for violations to County Code, Chapter 7 as the violations relate to animal breeding, care, licensing, well being and control.

In addition, Animal Court will be the jurisdiction for hearing animal matters under the applicable Food and Agricultural Code sections (including but not limited to section 31621), which allow for the County to establish an administrative hearing procedure. Statutory requirements set forth in the code shall be followed. Neither misdemeanor nor felony citations will be heard by Animal Court.

ARTICLE IV. Composition, Term and Fees.

The Board of Supervisors shall appoint three hearing officers who will rotate monthly, in a pre-assigned order, in conducting Animal Court. Each of the hearing officers will serve for a two-year period. After the two-year period, each hearing officer's performance will be reviewed and services may or may not be renewed. Hearing officers will each receive \$300 in fees for preparation and conducting monthly Animal Court, including subsequent case(s) management (required after the hearing to submit the matter) for each monthly rotation. If a hearing officer's services are required before his next pre-assigned court date, because of a continued matter or to hear a matter that cannot wait until the next regular session of Animal Court, which is at the discretion of the Animal Services Director, the hearing officer shall receive an hourly fee of \$110 hourly. If a hearing officer is required to replace another hearing officer for an unexpected reason on a regularly assigned hearing date, he/she shall receive the \$300 fee.

ARTICLE V. Hearings.

Section 1. Frequency and Time of Hearings. The regular sessions of Animal Court shall be held on the first Wednesday of each month at 1010 Tenth Street, at 6:00 p.m. Room

location shall be posted in the agenda and be based on room availability at Tenth Street Place. As noted above, based on pre-assigned rotation, one of the hearing officers shall preside at the hearing. If a matter is carried over/continued to the next session, or other extenuating circumstances require, an additional hearing officer will attend for that limited purpose.

Section 2. Public Participation. The hearing shall be open to the public as provided for in the Brown Act. The hearing officer shall conduct the hearing, receive evidence, administer oaths, rule on questions of law and admissibility of evidence, issue conclusions of law and findings of fact, and prepare the record of the proceedings.

ARTICLE VI. Hearing Rules.

The conduct of the meeting shall be as an informal administrative hearing. The California Rules of Evidence shall not apply. The hearing officer will be tasked with obtaining the facts of the case and reaching a determination on the citation before Animal Court. If a violation is found, the hearing officer will have the discretion to order fines in infraction cases and other orders as permitted by law. The fines will not be higher than those set forth by the violations found in the citation. If a dog is determined to be potentially dangerous or vicious, the hearing officer may make other orders authorized in the Food and Agricultural Code.

If a citizen believes he/she will not receive a fair hearing before the hearing officer first assigned to his/her matter, he/she may challenge that hearing officer, and have the matter continued to the next month, if necessary, for a hearing before the hearing officer next in order.

ARTICLE VII. Qualifications.

The hearing officers shall be attorneys at law having been admitted to practice before the courts of this state for at least five years prior to their appointments.

ARTICLE VIII. Conflict of Interest.

When any matter involves a potential conflict, or bias, such as the hearing officer knows the citizen cited, the matter shall be assigned to one of the other two hearing officers at the next regularly scheduled hearing date.

ARTICLE IX. Agenda and Recording.

The record of the hearing shall note the time and date of Animal Court, name of the hearing officer present, a summary of the official actions taken by Animal Court, and such other information that will concisely reflect the hearing's content.

ARTICLE X. Adoption and Amendment

Section 1. Adoption. These ByLaws shall become effective immediately upon approval by the Board of Supervisors.

Section 2. Amendment. These ByLaws may be amended by a majority vote of the Board of Supervisors.

ORDINANCE C.S. 966

NOTICE IS HEREBY GIVEN that on August 15, 2006, at 9:00 a.m., or as soon thereafter as the matter may be heard, the Stanislaus County Board of Supervisors will meet in the Basement Chambers, 1010 10th St., Modesto, CA, to consider the adoption and the waiving of the second reading of Ordinance C.S. 966 amending Section 7.12.030 of the Stanislaus County Code regarding the composition and the duties of the Animal Court. This ordinance would eliminate the three-member panel format and replace the panel with a single hearing officer format. In addition, this ordinance establishes the Animal Court as the administrative body to address potentially dangerous/vicious dog petitions.

NOTICE IS FURTHER GIVEN that a full copy of the proposed ordinance is available for review in the Clerk of the Board Office, 1010 10th Street, Suite 6700, Modesto, CA. For further information, call the Department of Animal Services at 558-7387.

BY ORDER OF THE BOARD OF SUPERVISORS

DATED: August 1, 2006

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk
of the Board of Supervisors
of the County of Stanislaus,
State of California



BY: Elizabeth A. King, Assistant Clerk of the Board