

ADMINISTRATIVE HEARING DECISION AND ORDER
Potentially Dangerous / Vicious Animal
City of Burbank
Case #DR24-330 "Conan"

Agency: City of Burbank
Animal Shelter
1150 N. Victory Place
Burbank, California 91502

Appellant/Respondent:
Sylvia Franco
Nelson Grande
REDACTED
Burbank, California 91505

Hearing Date/Time: July 16, 2024, 9:30 AM

An administrative hearing ("HEARING") was held at the request of the city of Burbank ("CITY"), Animal Shelter. Information submitted by all parties, if any, together with pleadings, evidence, and all other documents submitted by the City was reviewed by the below-named hearing officer ("HEARING OFFICER"), and the following Decision and Order is issued below.

Notice:

The City served a notice of the hearing to the Hearing Officer and all concerned parties. The notice of the hearing regarding a potentially dangerous/vicious animal was scheduled on the above hearing date and time via Zoom, a proprietary videotelephony software program developed by Zoom Video Communications and was recorded. All persons testifying were sworn to tell the truth.

Parties:

Sylvia Franco, Owner of the dog, "Conan".
Nelson Grande, Owner of the dog, "Conan".
Deborah Dressi, Dog bite victim.
Stacie Wood-Levin, Senior Animal Control Officer for the City of Burbank
Donald Capes, Animal Control Officer for the City of Burbank
Brenda Castaneda, Animal Shelter Superintendent for the City of Burbank
Lissette Rojo, Administrative Analyst for the City of Burbank
Ray Johal, Senior Assistant City Attorney for the City of Burbank
Rodolfo Aguado, Assistant City Attorney for the City of Burbank
An unknown person who refused to identify themselves with a telephone number of (760)

REDACTED

Background:

On January 14, 2024, at approximately 4:15 p.m., the Burbank Police Department (BPD) contacted the City of Burbank Animal Shelter requesting assistance with a dog bite incident that occurred in the alleyway near [REDACTED] Burbank, California. Animal Control Officer (ACO) Donald Capes was dispatched to the location. Upon arrival, the victim, Deborah Dressi, had already been transported to Providence St. Joseph Medical Center in Burbank.

ACO Capes interviewed the dog owners, Sylvia Franco and Nelson Grande. The dog involved, "Conan," is a gray five-year-old male Pitbull/Labrador mix. Although Conan had a current rabies vaccine, he was not registered in the City of Burbank. During the interview, Franco explained that while she was talking to Dressi in the alleyway, Conan came out of the gate at the back of the residence and bit Dressi's arm. Franco admitted she was unable to get Conan to release Dressi's arm and was the person who called 911.

Testimony:

Stacie Wood-Levin:

Stacie Wood-Levin, Senior Animal Control Officer for the City of Burbank Animal Shelter, provided a declaration supporting the petition to designate Conan as a vicious dog. In her declaration, she stated that based on her experience and the evidence presented, there is probable cause to believe that Conan is a vicious dog. She also requested that Sylvia Franco be prohibited from owning, possessing, controlling, or having custody of any animal for up to three years.

Sylvia Franco:

Sylvia Franco testified that the incident was unintentional, and that Conan's actions were uncharacteristic. She explained that Conan had been in the backyard when he suddenly came through the gate and attacked Dressi. Despite her efforts, she could not get Conan to release his bite. Franco expressed regret for the incident and mentioned her previous compliance with animal control regulations, except for the current registration lapse.

Deborah Dressi:

Deborah Dressi testified that she was talking to Franco in the alley when Conan approached her, sniffed her, and then suddenly bit her arm. She described the attack as unprovoked and

detailed the extent of her injuries, including the need for twenty-eight sutures and a referral to a specialist for potential nerve damage. Dressi emphasized that neither Franco nor Grande immediately helped her and that Conan bit her arm for approximately three minutes before releasing her.

Nelson Grande:

Nelson Grande testified regarding the dog bite incident involving their dog, "Conan." He corroborated Sylvia Franco's account, stating that the incident occurred while Franco was speaking with Deborah Dressi in the alleyway near their residence. [REDACTED]

[REDACTED]

He confirmed that both he and Franco were unable to get Conan to release his grip on Dressi's arm immediately.

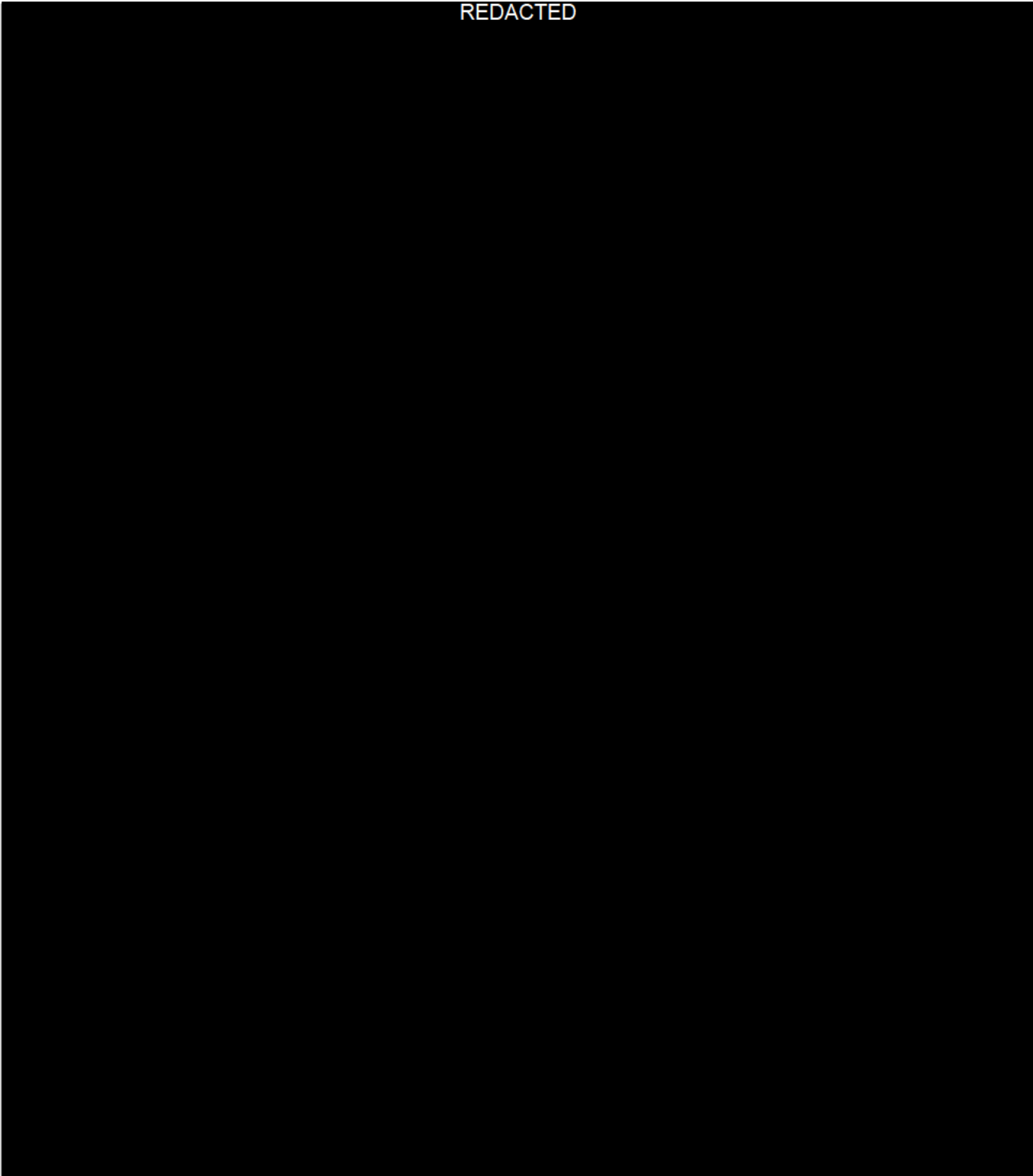
Grande described Conan as generally well-behaved and friendly, though occasionally protective. He mentioned that Conan had never shown such aggressive behavior before this incident. Grande emphasized that Conan was up to date on his rabies vaccination, although he admitted that the dog was not registered with the City of Burbank at the time of the incident.

[REDACTED]

[REDACTED]

Grande expressed his understanding of the regulations and admitted their lapse in registering Conan with the city. He assured that all other regulatory requirements, such as maintaining an up-to-date rabies vaccination, had been met.

Grande conveyed his regret over the incident and the distress it caused to Dressi. He assured that steps would be taken to prevent any future incidents, emphasizing their commitment to ensuring Conan's behavior was managed and compliant with local regulations.



Evidence:

1. ACO Capes' Bite Report:

- Documented the incident and included interviews with the involved parties. The report confirmed Conan's rabies vaccination but noted the dog's lack of city registration.

2. Medical Records of Deborah Dressi:

- Dressi's medical records indicated that she received twenty-eight sutures for her injuries and was referred to a specialist for potential nerve damage. These records supported her testimony about the severity of the injuries.

3. Photographs of Injuries:

- Photographs showing the extent of Dressi's injuries, corroborating her account of the attack.

4. Previous Incident Record:

- The Animal Shelter's records showed

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5. BPD Incident Report:

- Officer Garner's (BPD) report confirmed Franco's account that Conan bit Dressi without provocation and detailed the interviews with both Franco and Dressi. The report noted that Dressi described Conan as always barking and aggressive when she walked through the alley.

6. Violation Notices:

- ACO Capes issued a written warning to Franco for several violations of the Burbank Municipal Code, including failure to control the animal, failure to register the dog, failure to show proof of current rabies vaccination and lack of secure shelters.

7. Relevant Municipal Codes:

- Sections of the Burbank Municipal Code were provided to support the legal framework for the petition.

Applicable City of Burbank Municipal Code (BMC) Sections

5-1-1101: ANIMALS CAUSING HAZARD:

No animal shall be allowed to cause or to constitute a hazard or menace to the health, peace or safety of the community. [Added by Ord. No. 2467; formerly numbered Section 6-83; renumbered by

Ord. No. 3058, eff. 2/21/87.]

5-1-1602: DEFINITIONS:

A. As used in this article, the term "potentially dangerous animal" means any of the following:

1. Any animal which, when unprovoked, on two separate occasions within the prior 36-month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the animal are off the property of the owner or keeper of the animal;
2. Any animal which, when unprovoked, bites a person causing a less severe injury than as defined in subsection C of this section;
3. Any animal which, when unprovoked, on two separate occasions within the prior 36-month period, has killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal off the property of the owner or keeper of the animal.
4. Any animal which, after its owner or keeper has been notified that the animal is

not properly licensed, vaccinated, restrained, or maintained so as to be contained on the owner's property, as required by this chapter, and continues to be in violation of this chapter, and/or is not in compliance with any specific orders made by the hearing officer.

5. Any animal previously determined, by a presiding judicial or administrative officer, to be a potentially dangerous animal which, after its owner or keeper has been notified of this determination, continues behavior described in subsection A of this section or is maintained in violation of Food and Agriculture Code sections 31641, 31642, or 31643 or this article.

B. As used in this article, the term "vicious animal" means any of the following:

1. Any animal which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a human being;

2. Any animal previously determined, by a presiding judicial or administrative officer, to be a potentially dangerous or vicious animal which, after its owner or keeper has been notified of this determination, continues behavior described in subsections A or B of this section or is maintained in violation of Food and Agriculture Code sections 31641, 31642, or 31643 or this article.³

3. Any animal seized under Penal Code section 599aa and upon the sustaining of a conviction of the owner or keeper under Penal Code sections 597.5(a) or 597b.

C. As used in this article, the term "severe injury" means any physical injury to a human being

that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery.

D. As used in this article, the term "enclosure" means a fence or structure suitable to prevent

the entry of young children, and which is suitable to confine a potentially dangerous or vicious

animal in conjunction with other measures which may be taken by the owner or keeper of the

animal. The enclosure shall be designed in order to prevent the animal from escaping. Any

enclosure must conform with the requirements of Penal Code section 597t.

E. As used in this article, the term "impounded" means taken into the custody of the City's

Animal Shelter. [Added by Ord. No. 24-4,011, eff. 4/19/24.]

5-1-1603: PROCEDURE FOR DECLARING ANIMAL POTENTIALLY DANGEROUS AND/OR

VICIOUS:

A. If an animal control officer or a law enforcement officer, hereinafter referred to as the Investigating Officer, has investigated and determined that there exists probable cause to

believe that an animal is potentially dangerous or vicious, considering all relevant evidence, and

not solely based on the breed of the animal, they shall petition the Superintendent of the City's Animal Shelter, or their designee, to determine whether the animal is potentially dangerous or vicious. The Superintendent, or their designee, shall thereafter set a hearing pursuant to Food and Agriculture Code section 31621 for the purpose of determining whether or not the animal in question should be declared potentially dangerous or vicious.

B. The Superintendent of the City's Animal Shelter, or their designee, shall notify the owner or keeper of the animal that an administrative hearing to determine whether the animal is potentially dangerous or vicious will be held by serving a notice of the hearing and a copy of the petition, either personally or by first-class mail with return receipt requested. Service shall be deemed complete at the time notice is personally served or deposited in the mail. Failure of any person to receive notice shall not affect the validity of any proceedings under this chapter. The notice shall include the date, time, and location of the administrative hearing, a statement that the purpose is to determine whether the animal (named and described) is a potentially dangerous or vicious animal, and that if the animal in question is found to be potentially dangerous or vicious, certain remedies, up to and including destruction, may be demanded by the City.

C. The hearing shall be held promptly within no less than five working days nor more than ten working days after service of notice upon the owner or keeper of the animal.⁴

D. The Superintendent of the Animal Shelter, or their designee, hereinafter referred to as the Hearing Officer, shall preside over the administrative hearing. The hearing shall be open to the public. At the administrative hearing, the owner or keeper of the animal may present evidence as to why the animal in question should not be declared potentially dangerous or vicious. Failure by the owner or keeper to appear at the hearing results in forfeiture of the privilege to present evidence. The Hearing Officer shall hear and consider all relevant evidence, objections or protests and shall receive testimony under oath relative to the alleged potentially dangerous

and/or vicious animal. The Hearing Officer may admit into evidence all relevant evidence, including incident reports and affidavits of witnesses. The Hearing Officer may find, upon a preponderance of evidence, that the animal in question is potentially dangerous or vicious and may make other orders authorized by this article. The hearing may be continued from time to time.

E. If the animal in question is found to be potentially dangerous and/or vicious as defined by Burbank Municipal Code section 5-1-1602 et seq., the Hearing Officer may issue any one or more of the following orders:

1. The animal shall be properly licensed by the Animal Shelter and vaccinated against rabies. The Animal Shelter shall include the potentially dangerous or vicious designation in the registration records of the animal. The Animal Shelter may charge a potentially dangerous animal registration fee in addition to the regular licensing fee to provide for the increased costs of maintaining the records of the animal.
2. The animal shall be maintained on the owner or keeper's property, or property occupied by the owner or keeper, hereinafter referred to as the Premises, and shall, at all times, be kept indoors, or in a secure enclosure with a secondary perimeter fenced yard from which the animal cannot escape, and into which children cannot trespass. The animal may not be allowed off the Premises unless it is restrained by a substantial leash, of a fixed length of no more than six feet, humanely muzzled, and under the immediate control of a responsible adult capable of restraining the animal. In the event that the animal escapes from the Premises, the owner or keeper shall immediately notify the City's Animal Shelter.
3. If the animal in question dies or is sold, transferred, or permanently removed from the City, the owner or keeper shall notify the City of the changed condition and new location of the animal, in writing, within two business days of the changed condition.
4. An animal determined to be vicious may be destroyed by the Animal Shelter when it is found, after proceedings set forth in this article, that the release of the animal would create a significant threat to the public health, safety, and welfare.
5. The owner or keeper may be prohibited by the City from owning, possessing, controlling, or having custody of any animal for a period of up to three years, when it is found, after proceedings set forth in this article, that ownership or possession of an animal by that person would create a significant threat to the public health, safety, and welfare.
6. The owner or keeper shall pay any and all costs incurred by the City in the administration of the processes set forth in this article, including but not limited to, costs incurred by the City for housing, maintaining, feeding and providing care, including medical care for the animal during such time as the animal is in the custody

of the City.

7. The owner or keeper may be mandated to spay or neuter the animal, as applicable.

8. The owner or keeper may be ordered to attend animal training/handling classes and submit proof of enrollment and attendance to the Superintendent of the Animal Shelter, or their designee.

9. The owner or keeper may be required to provide evidence to the Superintendent of the Animal Shelter, or their designee, of insurance coverage of no less than \$100,000.00 for combined claims of bodily injury to, or death of, any person, or for damage to property owned by any other person, which may result from the ownership, keeping, or maintenance of the animal, regardless of whether the animal is on the Premises or not.

10. The owner or keeper of the animal may be required to provide a permanent identification by means of an implanted microchip that shall be registered with the City's Animal Shelter. A photograph of the animal may also be required to be kept on record for identification, in addition to registration as a potentially dangerous animal.

F. If it is determined that an animal in question is found to be potentially dangerous, but shall

not be destroyed, the Hearing Officer shall impose any other conditions upon the ownership of the animal that are reasonably necessary to protect the public health, safety, and welfare.

G. If the Hearing Officer finds by a preponderance of evidence that the animal which is the

subject of the hearing is potentially dangerous and/or vicious, the Hearing Officer shall prepare

findings and an order, which shall specify and make specific orders with respect to the animal

as authorized by this article. A copy of the findings and order shall be served to the owner or

keeper of the animal either personally or by first class postage prepaid no later than ten business days after the conclusion of the hearing. Service shall be deemed complete at the time

notice is personally served or deposited in the mail. [Added by Ord. No. 24-4,011, eff. 4/19/24.]⁶

5-1-1606: APPEARANCE OF THE OWNER OR KEEPER NOT REQUIRED TO MAKE ORDERS:

The Hearing Office or the court hearing the appeal may decide all issues for or against the

owner or keeper of the animal even if the owner or keeper fails to appear at a hearing. [Added

by Ord. No. 24-4,011, eff. 4/19/24.]

The following is a link to the complete Burbank Municipal Code Title 5 Police & Public

Safety, Chapter 1 Animals, Article 16. Potentially Dangerous and Vicious Animals section:

<https://www.codepublishing.com/CA/Burbank/#5-1-1601>

California Food & Agriculture Codes

A vicious dog is defined by the California Food and Agriculture Code, Section 31603. "Vicious dog" means any of the following:

(a) Any dog seized under Section 599aa of the Penal Code and upon the sustaining of a conviction of the owner or keeper under subdivision (a) of Section 597.5 of the Penal Code.

(b) Any dog which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a human being.

(c) Any dog previously determined to be and currently listed as a potentially dangerous dog which, after its owner or keeper has been notified of this determination, continues the behavior described in Section 31602 or is maintained in violation of Section 31641, 31642, or 31643.

31604. "Severe injury" means any physical injury to a human being that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery.

31645. (a) A dog determined to be a vicious dog may be destroyed by the animal control department when it is found, after proceedings conducted under Article 2 (commencing with Section 31621), that the release of the dog would create a significant threat to the public health, safety, and welfare.

(b) If it is determined that a dog found to be vicious shall not be destroyed, the judicial authority shall impose conditions upon the ownership of the dog that protect the public health, safety, and welfare.

(c) Any enclosure that is required pursuant to subdivision (b) shall meet the requirements of Section 31605.

31646. The owner of a dog determined to be a vicious dog may be prohibited by the city or county from owning, possessing, controlling, or having custody of any dog for a period of up to three years, when it is found, after proceedings conducted under Article 2 (commencing with Section 31621), that ownership or possession of a dog by that person would create a significant threat to the public health, safety, and welfare.

Findings:

I find that the facts of record are sufficient to order that the dog, "Conan" (a five-year-old male Pitbull/Labrador mix) **shall be declared a vicious dog** as determined by the Burbank Municipal Codes, The California Penal Code, and by the California Food and Agricultural Codes noted above.

Order

“Conan” shall be relinquishment to the Burbank Animal Shelter to be euthanized. Additionally, Sylvia Franco and Nelson Grande shall be prohibited from owning, possessing, controlling, or having custody of any animal for a period of up to three years per California Penal Code, Section 597.1(g).

It is so ordered:

Date: July 18, 2024

A handwritten signature in black ink, appearing to read "Brian Podolsky", written over a horizontal line.

Brian Podolsky
Administrative Hearing Officer