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REPORT NO. R 81 1512
NOV 3 1981

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REPORT RE:

DEVELOPING STANDARDS FOR PERSONS WHO ENGAGE IN THE BUSINESS OF PROVIDING GUARD ANIMALS FOR HIRE

The Honorable Ad Hoc
Committee on Crime of
The City Council
Room 395, City Hall
Los Angeles, California 90012

(Council File No. 81-527 returned herewith)

Honorable Members:

By communication dated April 6, 1981, you requested a report from this office concerning an April 3, 1981, motion of Councilmen Farrell and Ferraro. The motion requested that "the City Attorney develop standards for persons who engage in the business of providing guard animals for hire; and further, that the minimum standard should require examination to assure that these persons and their animals are appropriately trained for anti-crime tasks and that such persons are bonded to assure some standard of fiscal and personal responsibility in the conduct of their business . . . ."

This office has discussed the matter with Mr. Robert Rush, General Manager of the Department of the Animal Regulation. Mr. Rush indicated that the current licensing requirements for guard and sentry animal trainers, as embodied in Los Angeles Municipal Code Section 53.64, do not adequately allow the Department of Animal Regulation to deny licenses to people who, although otherwise qualified, have criminal backgrounds. According to Mr. Rush, numerous trainers have committed acts of cruelty to animals after receiving their licenses. Many of these trainers have a history of committing violent acts.

Mr. Rush believes that there is also a need to regulate those businesses and individuals, who may or may not be trainers, but who provide guard animals for hire (hereinafter referred to as "Providers"). The providers are in a fiduciary relationship to the entity renting the animal and to the public at large to protect private property without endangering the public peace or the animals. When businesses provide guard animals to clients, the provider of the animal is often given keys or other forms of access to business locations. There has been at least one theft allegedly committed by a guard animal provider who was given access to a building and who had a history of theft offenses.

Mr. Rush believes that to fully protect the public's welfare, the Department of Animal Regulation should conduct a complete background investigation on every applicant for a sentry animal trainer's license and should have the authority to deny a license in situations where the applicant has a violence or theft related background. In addition, a licensing requirement, with similar stringent standards should be enacted for businesses engaged in providing guard or sentry animals for hire, and also for handlers who transport the animals to and from business locations.

This office has conducted extensive research into the question of the legality of denying licenses to sentry or guard animal trainers, providers and handlers due to a criminal history.

In Simpson v. City of Los Angeles (1953) 40 Cal.2d 271, 279, 253 P.2d 464, the court stated:

> ". . .It is well settled that the licensing of dogs and the regulation of the manner in which they shall be kept and controlled are within the legitimate sphere of the police power, and that statutes and ordinances may provide for impounding dogs and for their destruction or other disposition. (Citations) . . ."

The initial question presented is whether legislation can bar a person from practicing an otherwise lawful profession. As a general rule, a governmental agency may, as a valid exercise of its police power, require the obtaining of a license before conducting a business or activity. Burton v. Municipal Court (1968) 68 Cal.2d 684, 690, 68 Cal.Rptr. 721. In deciding whether a statute or ordinance barring a person from practicing a certain profession is

constitutional, the California Supreme Court in Newland v. Board of Governors (1977) 19 Cal.3d 705, 711, 139 Cal.Rptr. 620, reiterated a long standing rule regarding the subject when it stated :

> ". . . Numerous decisions have established that a statute can constitutionally bar a person from practicing a lawful profession only for reasons related to his fitness or competence to practice that profession." (See also Arneson v. Fox (1980) 28 Cal.3d 440, 448, 170 Cal.Rptr. 778)

Unless the activity to be regulated involves First Amendment rights, a statute or ordinance need only bear a rational relation to a valid governmental purpose and to the qualifications of the person to act in the profession. Perrine v. Municipal Court (1971) 5 Cal.3d. 656, 663, 97 Cal.Rptr. 320, cert. den. (1972) 404 U.S. 1038; Morrison v. State Bd. of Education (1969) 1 Cal.3d. 214, 234-35, 82 Cal.Rptr. 175. Although an ordinance should provide a fair warning to applicants of the types of conduct that could result in the denial of a license, the warning need not be specific. Sunset Amusement Co. v. Bd. of Police Commissioners (1972) 7 Cal.3d 64, 73, 101 Cal.Rptr. 768.

Although a governmental agency may deny a license to engage in a business or occupation, such a right cannot be taken away without due process of law. Thus, for any such licensing scheme, it would be necessary to provide the licensee with a fair and impartial hearing prior to any suspension or revocation of the license. Irvine v. State Board of Equalization (1940) 40 Cal.App.2d 280, 284-85, 104 P.2d 847; Stewart v. County of San Mateo (1966) 246 Cal.App.2d 273, 285, 54 Cal.Rptr. 599. The law is unclear whether an opportunity for a hearing is required for the initial denial of a license; however, better practice would dictate that an applicant who has been denied a license should be afforded an opportunity to be heard and present evidence. This procedure can be accomplished wholly within the Department of Animal Regulation.

Section 53.64 of the Los Angeles Municipal Code provides for the licensing of sentry dog trainers. This section includes requirements that the applicant have a minimum of 2,000 hours of actual commercial experience as a trainer and have trained at least seven (7) dogs. In addition, the applicant must not have sustained

a conviction for any act constituting cruelty to animals within the five (5) years prior to the application. Currently, there is no license requirement for sentry or guard animal providers or handlers.

There are several alternatives available to strengthen Section 53.64 and to guarantee an equally strong licensing requirement for sentry or guard animal providers and handlers:

1. Standards similar to those established for the Board of Police Commissioners in Section 103.27, et seq., of the Los Angeles Municipal Code could be granted to the Department of Animal Regulation. Those standards were specifically validated in Sunset Amusement Co. v. Bd. of Police Commissioners (1972) 7 Cal.3d 64, 72-74, 101 Cal.Rptr. 768, in so far as they are not applied to activities protected by the First Amendment of the United States Constitution.

The provisions of Sections 103.27, et seq., provide numerous general grounds for the denial of permits required to be obtained from the Board of Police Commissioners. These provisions could be legally implemented to regulate the licensing of animal trainers, providers and handlers so long as the grounds for denial are rationally related to the qualifications of the applicant to perform the duties required of the particular profession.

2. Standards similar to those established in California Business and Professions Code Sections 480 and 490 could be legally applied to sentry or guard animal trainers, providers and handlers.

In part, Sections 480 and 490 allow the denial of a license to perform a lawful occupation if the applicant has been convicted of a crime or "done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another. . . ." Section 480 also provides that a license may be denied only if the crime or act is "substantially related to the qualifications, functions or duties of the business or profession. . . ." Sections 480 and 490 of the Business and Profession Code were approved by the California Supreme Court in Arneson v. Fox (1980) 28 Cal.3d 440, 448, 170 Cal.Rptr. 788.

Although Section 480 of the Business and Profession Code requires that the crime or act be "substantially related" to the person's qualifications, legally, the crime or act need only be "rationally" related if the activity is not protected by the First Amendment. Pieri v. Fox (1979) 96 Cal.App.3d 802, 158 Cal.Rptr. 256.

3. The ordinances could provide that a license for a sentry or guard animal trainer, provider or handler may be denied if the applicant for said license has been convicted of a crime involving moral turpitude. This standard is utilized in Los Angeles Municipal Code Section 71.08 in regulating automotive transportation. Although this wording is legally valid, the crime itself must still be rationally related to the applicant's fitness or competence to practice the profession.

This office recommends against the use of the moral turpitude alternative. Since moral turpitude is a vague term, statutes containing moral turpitude provisions have generated a great deal of litigation.

4. The ordinances could provide that conviction of specified crimes may result in the denial of a sentry or guard animal trainers, providers or handlers license. Any crime so specified must be rationally related to the applicant's fitness or competence to practice the profession. The problem with this alternative is that it would severly limit the power of the Department of Animal Regulation to deny licenses. An applicant who committed a crime or act relating to his or her fitness to train, provide or handle sentry or guard animals could not be denied a license unless the conviction was for a crime listed in the ordinance.

This office recommends that this Honorable Committee propose an amendment to Section 53.64 of the Los Angeles Municipal Code to include standards similar to those enunciated in Los Angeles Municipal Code Section 103.27, et seq., or in Business and Professions Code Sections 480 and 490. In addition, new ordinances should be considered requiring the licensing of all sentry or guard animal providers and handlers, with similar standards to those included in Section 53.64. The inclusion of either the standards enacted in Sections 103.27, et seq., or in Sections 480 and 490 should provide the Department of Animal Regulation with sufficient guidance without being overly restrictive.

The issuance of a license to a sentry or guard animal provider should also require that the licensee obtain and provide proof of a security bond conditioned upon the faithful and honest conduct of the business of a sentry or guard animal provider. The exact requirements of such a bond could be patterned after those required for Special Officers in Los Angeles Municipal Code Section 52.34. This Honorable Committee may also want to consider requiring that the licensee obtain and provide proof of worker's compensation insurance and general liability insurance.

It is our conclusion that more stringent standards may be developed for persons who engage in the business of training sentry or guard animals and that regulations may be implemented for those persons and entities who provide the animals for hire, including the requirement of a surety bond and liability insurance.

If we may offer any further assistance, please call upon us.

Respectfully submitted,

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Enclosure

cc: Robert Rush, General Manager
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