

ITEM 4
INCORRECT REDUCTION CLAIM
PROPOSED DECISION

Civil Code Sections 1834 and 1846;
Food and Agriculture Code Sections 31108, 31752, 31752.5, 31753, 32001, and 32003;
As Added or Amended by Statutes 1998, Chapter 752 (SB 1785)

Animal Adoption

Fiscal Years 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003;
2005-2006, 2006-2007, and 2007-2008

13-9811-I-02

City of Los Angeles, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) addresses reductions made by the State Controller's Office (Controller) to reimbursement claims made by the City of Los Angeles (claimant) for costs incurred during fiscal years 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2005-2006, 2006-2007, and 2007-2008, under the *Animal Adoption* program.

The following reductions are in dispute:

- Reductions of care and maintenance costs (Finding 3) based on budgeted expenditures claimed in lieu of documented actual costs, claimed expenditures unrelated to care and maintenance, and understated animal census data, resulting in an overstatement of costs per animal per day; overstatement of the population of eligible animal population, based on the exclusions from reimbursement expressed in the Parameters and Guidelines; and adjustment to the number of reimbursable days based on excluding Saturday as a business day in accordance with *Purifoy v. Howell* (2010) 183 Cal.App.4th 166;
- Reductions of salaries and benefits for the increased holding period (Finding 4) based on employee hours that the claimant did not support as being related to the mandate; and
- Reductions of necessary and prompt veterinary care costs (Finding 7) based on claiming estimated materials and supplies costs, and unsupported materials and supplies costs; and based on misstated and unallowable hours.

In addition, the claimant raises two issues that do not directly relate to the Controller's audit findings. First, the claimant alleges that reimbursement is required for the construction of new facilities to comply with the mandate, which were paid for by taxpayer-approved bonds, to be repaid from local property assessments. The claimant argues that the Controller inappropriately determined that because the claimant's general fund revenues were not applied to the

construction costs alleged, the claimant cannot assert “costs mandated by the state,” within the meaning of Government Code section 17514, and reimbursement is not required.¹ The Controller notes that construction or space acquisition costs were never claimed during the audit period, and only raised during the pendency of the audit report.² And second, the claimant argues that it was denied the necessary time to comply with the requirements of the audit because the Controller placed the audit on hold for nine months “which left the City having to assemble documentation for a huge operation with less time than was provided by law.”³

Staff finds, as detailed below, that some of the reductions are incorrect as a matter of law, or are arbitrary, capricious, or entirely lacking in evidentiary support and, thus, recommends that the Commission partially approve this IRC.

The Animal Adoption Program

The *Animal Adoption* program arose from amendments to the Civil Code and Food and Agriculture Code made by Statutes 1998, chapter 752 (SB 1785⁴). The purpose of the test claim statute was to carry out the state policy that “*no adoptable animal* should be euthanized if it can be adopted into a suitable home” and “*no treatable animal* should be euthanized.”⁵ Generally, the program increases the holding period to allow for the adoption and redemption of stray and abandoned dogs, cats, and other specified animals before the local agency can euthanize the animal, and requires:

- verification of the temperament of feral cats;
- posting of lost and found lists;
- maintenance of records for impounded animals; and
- that impounded animals receive “necessary and prompt veterinary care.”

On January 25, 2001, the Commission partially approved the Test Claim, for the increased costs in performing the following activities only:

1. Providing care and maintenance during the increased holding period for impounded dogs and cats that are ultimately euthanized. The increased holding period shall be measured by calculating the difference between three days from the day of capture and four business days from the day after impoundment, as specified below in 3 (a) and 3 (b), or six business days from the day after impoundment (Food & Agr. Code, §§ 31108, 31752);

¹ Exhibit A, IRC, pages 15-16.

² Exhibit B, Controller’s Late Comments on the IRC, page 1010.

³ Exhibit A, IRC, page 16.

⁴ Sometimes referred to as the Hayden Bill.

⁵ Civil Code section 1834.4, Penal Code section 559d, and Food and Agricultural Code section 17005 as added or amended by Statutes 1998, chapter 752.

2. Providing care and maintenance for four business days from the day after impoundment, as specified below in 3 (a) and 3 (b), or six business days from the day after impoundment, for impounded rabbits, guinea pigs, hamsters, pot-bellied pigs, birds, lizards, snakes, turtles, or tortoises legally allowed as personal property that are ultimately euthanized (Food & Agr. Code, § 31753);
3. For dogs, cats, and other specified animals held for four business days after the day of impoundment, either:
 - (a) Making the animal available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or
 - (b) For those local agencies with fewer than three full-time employees or that are not open during all regular weekday business hours, establishing a procedure to enable owners to reclaim their animals by appointment at a mutually agreeable time when the agency would otherwise be closed (Food & Agr., Code §§ 31108, 31752, and 31753);
4. Verifying whether a cat is feral or tame by using a standardized protocol (Food & Agr. Code, § 31752.5);
5. Posting lost and found lists (Food & Agr. Code, § 32001);
6. Maintaining records on animals that are not medically treated by a veterinarian, but are either taken up, euthanized after the holding period, or impounded (Food & Agr. Code, § 32003); and
7. Providing “necessary and prompt veterinary care” for abandoned animals, other than injured cats and dogs given emergency treatment, that are ultimately euthanized (Civ. Code, §§ 1834 and 1846).

The Commission adopted the Parameters and Guidelines for this program on February 28, 2002. Those Parameters and Guidelines, in addition to the activities identified in the Test Claim Statement of Decision, as described above, provide reimbursement for one-time activities of developing policies and procedures; training; and developing or procuring computer software for maintaining records; as well as ongoing costs for:

- Acquisition of additional space or construction of new facilities, by purchase or lease, to provide appropriate or adequate shelter necessary to comply with the mandated activities during the increased holding period for impounded stray or abandoned dogs, cats, and other animals;⁶ and

⁶ Exhibit G, Proposed Parameters and Guidelines and Analysis, Hearing Item 4, February 28, 2002, pages 1607-1608.

- Remodeling/renovating existing facilities to provide appropriate or adequate shelter necessary to comply with the mandated activities during the increased holding period for impounded stray or abandoned dogs, cats, and other animals.⁷

On March 12, 2003, the Joint Legislative Audit Committee authorized an audit of the *Animal Adoption* mandate, which was completed by the Bureau of State Audits on October 15, 2003. The audit report recommended that the Legislature direct the Commission to amend the Parameters and Guidelines for the *Animal Adoption* mandate to correct the formula for determining the reimbursable portion of acquiring additional shelter space. In 2004, Assembly Bill (AB) 2224 (Stats. 2004, ch. 313) was enacted to direct the Commission to amend the Parameters and Guidelines for the *Animal Adoption* program to:

1. Amend the formula for determining the reimbursable portion of acquiring or building additional shelter space that is larger than needed to comply with the increased holding period to specify that costs incurred to address preexisting shelter overcrowding or animal population growth are not reimbursable.
2. Clarify how the costs for care and maintenance shall be calculated.
3. Detail the documentation necessary to support reimbursement claims under this mandate, in consultation with the Bureau of State Audits and the Controller's office.

On January 26, 2006, the Commission adopted the amended Parameters and Guidelines, applicable to claims beginning July 1, 2005, in accordance with AB 2224, to require, among other things, contemporaneous source documents to show the validity of costs claimed and their relationship to the reimbursable activities. The 2006 amendment also amended the formula for determining the reimbursable portion of acquiring or building additional shelter space and clarified the definition of “average daily census” of dogs and cats, for purposes of the formula used to calculate care and maintenance costs; this amendment is clarifying only, and does not affect the methodology used to calculate actual costs for this component.⁸

Procedural History

On September 4, 2002, the claimant signed its initial reimbursement claims for fiscal years 1998-1999, 1999-2000, and 2000-2001.⁹ On August 3, 2006, the Controller made initial payments on the fiscal years 1999-2000 and 2000-2001 claims.¹⁰ On August 10, 2006, the Controller made initial payment on the fiscal year 1998-1999 reimbursement claim.¹¹ On April 28, 2009, an audit

⁷ Exhibit G, Proposed Parameters and Guidelines and Analysis, Hearing Item 4, February 28, 2002, page 1609.

⁸ Exhibit G, Final Staff Analysis and Proposed Parameters and Guidelines Amendment, January 26, 2006, pages 1628; 1633-1634.

⁹ Exhibit A, IRC, pages 737; 763; 779.

¹⁰ Exhibit D, Controller’s Response to the Request for Additional Information, pages 1350-1360.

¹¹ Exhibit D, Controller’s Response to the Request for Additional Information, page 1352.

entrance conference was held.¹² On April 6, 2011, the Controller issued the final audit report.¹³ On April 7, 2014, claimant filed the IRC.¹⁴ On September 8, 2015, the Controller filed late comments on the IRC.¹⁵ Claimant did not file rebuttal to the Controller's comments.

On June 6, 2016, Commission staff issued a Request for Additional Information.¹⁶ On June 9, 2016, the Controller filed its Response to the Request for Additional Information.¹⁷ The claimant did not respond to the Request for Additional Information.

Commission staff issued the Draft Proposed Decision on August 25, 2016.¹⁸ On September 15, 2016, the Controller filed comments on the Draft Proposed Decision.¹⁹ Claimant did not file comments on the Draft Proposed Decision.

Commission Responsibilities

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.²⁰ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable

¹² Exhibit A, IRC, page 16.

¹³ Exhibit A, IRC, page 9.

¹⁴ Exhibit A, IRC, page 1 (April 6, 2014 fell on a Sunday, and therefore April 7, 2014 constitutes a timely filing within three years.).

¹⁵ Exhibit B, Controller's Late Comments on the IRC, page 988.

¹⁶ Exhibit C, Request for Additional Information.

¹⁷ Exhibit D, Controller's Response to the Request for Additional Information.

¹⁸ Exhibit E, Draft Proposed Decision.

¹⁹ Exhibit F, Controller's Comments on the Draft Proposed Decision.

²⁰ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”²¹

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.²²

The Commission must also review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with claimant.²³ In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.²⁴

Claims

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Issue	Description	Staff Recommendation
The Controller’s exclusion of “ineligible animals” when auditing allowable costs for care and maintenance (Finding 3) and necessary and prompt	The Parameters and Guidelines authorize local agencies to claim reimbursement for the cost of care and maintenance and prompt and necessary veterinary care for impounded stray or abandoned animals that “die during the increased holding period or are ultimately euthanized.” The Controller excluded from the population of “eligible animals” several categories of animals it claims are not within the scope of the mandated program, which resulted in a reduction of costs. The exclusions include, but are not limited to, the following:	<i>Partially Correct</i> – The Controller’s exclusion of eligible animals is correct as a matter of law, except for the following exclusions, which are incorrect as a matter of law and arbitrary, capricious, or entirely lacking in evidentiary support: <ul style="list-style-type: none">• The exclusion of animals deemed treatable upon arrival at the shelter and later euthanized during the increased holding period

²¹ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

²² *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

²³ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

²⁴ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

veterinary care (Finding 7).	<ul style="list-style-type: none"> • “Ineligible other animals such as rodents, livestock, or wild animals;” and ineligible birds, such as pigeons, doves, ducks, chickens, owls, pheasants, mallards, and gamefowls.” • Animals deemed treatable upon arrival at the shelter and later euthanized during the increased holding period because they became non-rehabilitatable. • Animals that may have been euthanized during the holding period because of the claimant’s misinterpretation of the required holding period in conflict with the Court of Appeal’s decision in <i>Purifoy v. Howell</i> (2010) 183 Cal.App.4th 166, which held that Saturday is not a “business day” for purposes of calculating the required holding period before an animal can be adopted or euthanized. 	<p>because they became non-rehabilitatable.</p> <ul style="list-style-type: none"> • Exclusions of “eligible animals” held for the required duration under <i>Purifoy</i>, based on the Controller’s recalculation of costs using an <i>average</i> number of days. <p>Any reduction of costs based on the incorrect exclusion of animals should be reinstated to the claimant to the extent the claimant can provide documentation to support the validity of the costs incurred.</p>
The remaining reductions made in Finding 3 to care and maintenance costs claimed.	The Controller determined that the claimant did not support its total annual costs claimed, based on estimated or otherwise unsupported expenditures reported; claimed inaccurate animal census data; and incorrectly claimed the number of reimbursable days, based on <i>Purifoy</i> , which the Controller reexamined and calculated as an average.	<p><i>Correct</i> – The Controller’s reductions on the basis of estimated or unsupported costs claimed for care and maintenance are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.</p> <p>The Controller’s adjustments to the yearly animal census data and to the number of reimbursable days do not result in a reduction of costs, and therefore the Commission does not have jurisdiction to determine these issues.</p>
Reductions made in Finding 4 to increased holding period costs.	The Controller reduced salaries and benefits claimed for making animals available for owner redemption or adoption on Saturdays, finding that the increased staffing required to comply with the mandate is only that which exceeds the minimum level of	<p><i>Correct</i> – The approved activity is to make animals available for adoption or owner redemption; the Controller’s limitation of reimbursement is consistent</p>

	staffing required for a day which the shelters were not open.	with the Parameters and Guidelines and the purpose of the test claim statute. Thus, the adjustments are correct as a matter of law. In addition, there is no evidence in the record to support a finding that the Controller's decisions were arbitrary or capricious.
The remaining reductions made in Finding 7 to necessary and prompt veterinary care.	The Controller reduced costs claimed for necessary and prompt veterinary care on the basis of an inadequate time study, estimated and unsupported materials and supplies costs, and misstated and unallowable hours claimed.	<i>Correct</i> – The claimant has the burden to support costs claimed by documentation that shows the validity of the costs and their relationship to the mandate; absent such a showing, the Controller's reductions are correct as a matter of law.
Claimant's request to be reimbursed for construction and facilities acquisition costs.	The claimant sought reimbursement during the course of the audit for construction costs that were not previously claimed in the annual reimbursement claims, and which were paid for by bonds issued by the claimant and repaid by property assessments.	<i>Deny</i> – The costs alleged were not timely claimed and, in any case, the claimant does not experience costs mandated by the state where required activities are funded by other than proceeds of taxes.
Claimant's charge that it did not have sufficient time to respond to the audit and all reductions should be reinstated.	Claimant asserts that the Controller's change in audit staff, which resulted in a nine month hold during the pendency of the audit, denied the claimant the time required by law, and that the claimant should not be expected to maintain documentation beyond the underlying record retention requirements of the Government Code.	<i>Deny</i> – The two year period to complete an audit is not an entitlement of the claimant; it is a time limitation on the Controller. Moreover, the Parameters and Guidelines require claimants to maintain supporting documentation until a claim is no longer subject to audit, independent of the background record retention requirements of the Government Code.

Staff Analysis

- A. The Controller's Exclusions of What It Deems "Ineligible Animals" Are Partially Incorrect as a Matter of Law, and Are Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support, Resulting in Some Incorrect Reductions in Findings 3 and 7 of the Audit Report.**

The Parameters and Guidelines for the *Animal Adoption* program authorize local agencies to claim reimbursement for the costs of care and maintenance during the increased holding period for impounded stray or abandoned animals that “die during the increased holding period or are ultimately euthanized,” based on a formula for determining actual costs. The Parameters and Guidelines also authorize reimbursement for providing necessary and prompt veterinary care as specified in the Parameters and Guidelines during the holding period for stray and abandoned animals that “die during the increased holding period or are ultimately euthanized.” Claimants are to calculate and claim their costs for these activities in part by determining the number of “stray or abandoned animals that die during the increased holding period or are ultimately euthanized.” The Controller calls this factor of the calculation “eligible animals” or “eligible animal population.”

The Controller, in its audit of allowable costs for care and maintenance and necessary and prompt veterinary care, states that the following animals were excluded from the population of “eligible animals”:

- Dogs and cats and other animals that were owner-surrendered or previously owned (only stray animals were included in the eligible population);
- Dogs, cats, and other animals that were ultimately adopted, transferred, rescued, or redeemed (only those animals with the outcome of “died” or “euthanized” were reviewed);
- Dogs, cats, and other animals that went missing from their kennels, were stolen, or escaped;
- Dogs, cats, and other animals that were DOA [dead on arrival];
- Dogs, cats, and other animals that were euthanized as requested by owners or if euthanasia was required/requested (“Dispo Req” or “Euth Req”);
- Dogs, cats, and other animals that were euthanized for humane reasons (usually on day 1);
- Dogs, cats, and other animals that were suffering from a serious illness or severe injury (usually euthanized on day 1 or died on day 1);
- Newborn animals that need maternal care and were impounded without their mothers (usually died or were euthanized within the first few days; the excluded categories included “Unweaned” or “8 weeks unsustainable”);
- Ineligible other animals such as rodents, livestock, or wild animals;
- Ineligible birds, such as pigeons, doves, ducks, chickens, owls, pheasants, mallards, and gamefowls;
- Dogs and cats that died in the shelter’s kennels outside of increased holding period (days 1, 2, 3, and day 7 and beyond), as per the requirements of the mandate. (Local agencies are eligible to receive reimbursement to care for dogs and cats that *died during the increased holding period* [days 4, 5, and 6]);

- “Other” animals that died in the shelters’ kennels on day 7 and beyond (after the increased holding period). (Local agencies are eligible to receive reimbursement to care for other animals that *died during the increased holding period* [days 2, 3 through 6].); and
- Dogs, cats, and other animals that were euthanized during the holding period as per the requirements of the mandate. The agencies are eligible to receive reimbursement to care for dogs and cats and other animals that were *euthanized after the holding period* (day 7 of the holding period and beyond).²⁵

Staff finds that most of these exclusions are correct as a matter of law. However, the Controller continues to dispute the findings and conclusions on the following exclusion of animals.

1. The Controller’s exclusion of animals that the claimant categorized as wildlife, evidence, or otherwise non-adoptable at intake, is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller excluded “[i]neligible other animals such as rodents, livestock, or wild animals;” and “[i]neligible birds, such as pigeons, doves, ducks, chickens, owls, pheasants, mallards, and gamefowls” from reimbursement, without any findings whether these animals can legally be owned as personal property. The test claim statute, however, mandates the claimant to hold birds and rabbits, both of which can be wild or domestic, and guinea pigs, and hamsters, both of which are “rodents,” and therefore the Draft Proposed Decision concluded that the Controller’s exclusion was too broad, and incorrect as a matter of law, absent findings or evidence in the record whether the Controller’s exclusion of “rodents,” “livestock,” or “wild animals” were animals not legally allowed as personal property. Additionally, the test claim statute expressly requires local agencies to hold stray or abandoned “birds...legally allowed as personal property” pending adoption or redemption. The statute does not distinguish between types of birds required to be held, some of which may be poultry (e.g. chickens and ducks), pets,²⁶ or wild animals,²⁷ depending on the breed and owner. However, the Controller stated in the audit report that it excluded “birds, such as pigeons, doves, ducks, chickens, owls, pheasants, mallards, and gamefowls,” without identifying any law rendering these birds illegal to possess as pets or specifying the birds actually held by the claimant.

In comments filed on the Draft Proposed Decision, the Controller explained that it relied on the claimant’s classification of animals at intake, which differentiated between animals that were stray or abandoned, and thus required to be held under the test claim statute, and those that were not adoptable. The Controller stated that animals classified by the claimant as “wildlife” or “evidence,” which usually included fighting birds that were not adoptable due to aggressive

²⁵ Exhibit A, IRC, pages 688-689 (pages 21 and 22 of the Audit Report).

²⁶ See California Penal Code section 5971(c)(1): “‘Pet animals’ means dogs, cats, monkeys and other primates, rabbits, *birds*, guinea pigs, hamsters, mice, snakes, iguanas, turtles, and any other species of animal sold or retained for the purpose of being kept as a household pet.” (Emphasis added.)

²⁷ Title 50 Code of Federal Regulations, section 21.13.

behavior, were excluded, and that these exclusions were based on the claimant's data, and not on any analysis or discretionary sorting by the Controller.

The claimant did not respond to the Controller's comments. Therefore, based on the evidence in the record, the Controller's exclusion of animals identified by claimant as not adoptable was correct as a matter of law, and there is no evidence in the record that the reduction is arbitrary or capricious.

2. The exclusion of animals deemed treatable upon arrival at the shelter and later euthanized during the increased holding period because they became non-rehabilitatable, is incorrect as a matter of law. Any reduction of costs on this basis should be reinstated to the extent the claimant can provide source documents to show the the validity of such costs and their relationship to the mandate.

The Controller excludes from reimbursement all costs incurred for the care and maintenance and prompt and necessary veterinary care of dogs, cats, and other animals that were euthanized *during* the increased holding period. The Controller states "agencies are eligible to receive reimbursement to care for dogs and cats and other animals that were *euthanized after the holding period*."²⁸ The Controller bases its finding to exclude these animals on the plain language of the Parameters and Guidelines, which provides that local agencies are eligible to receive reimbursement for care and maintenance costs and for necessary and prompt veterinary costs only for those animals "that die during the increased holding period or are ultimately euthanized." The Controller maintains that these costs are only eligible for reimbursement for those animals that die of natural causes during the increased holding period or are euthanized *after* the increased holding period. Thus, the Controller argues, if an animal is euthanized during the increased holding period, then no costs for that animal are eligible for reimbursement.

The Controller's interpretation of the Parameters and Guidelines is not correct. The Parameters and Guidelines provide that local agencies are eligible to receive reimbursement for care and maintenance and prompt and necessary veterinary costs only for those animals "that die during the increased holding period or are ultimately euthanized." The plain language of the phrase "animals that die during the increased holding period or are ultimately euthanized" is vague and ambiguous because the word "die" can include both death by natural causes and death by euthanasia. And the Parameters and Guidelines and the analyses adopted for the Parameters and Guidelines do not define what it means to "die" during the holding period.

Nevertheless, the decisions do *not* limit reimbursement to animals that die of natural causes during the increased holding period. Such a limitation would be contrary to the statutory scheme. Food and Agriculture Code sections 17005 and 17006 expressly contemplate an animal's health changing over the course of impoundment and require a shelter to hold an animal which is ill or injured— but not an animal which is irremediably suffering — for the relevant holding period on the ground that the animal's health may improve. In this respect, section IV. (B)(8) of the Parameters and Guidelines allows reimbursement for the initial physical examination of a stray or abandoned animal to determine the animal's baseline health status and classification as "adoptable, treatable, or non-rehabilitatable." The Parameters and Guidelines

²⁸ Exhibit A, IRC, page 689.

further authorize reimbursement for the administration of a wellness vaccine to “treatable” or “adoptable” animals, veterinary care to stabilize and/or relieve the suffering of a “treatable” animal, and veterinary care intended to remedy any applicable disease, injury, or congenital or hereditary condition that adversely affects the health of a “treatable” animal until the animal becomes “adoptable.” Even with veterinary care, the condition of the animal can change during the increased holding period and the animal can become non-rehabilitatable. If that occurs, the animal is not “adoptable” or “treatable” and may be euthanized under the law.

Therefore, to deny reimbursement for the costs incurred during the increased holding period for an animal that becomes non-rehabilitatable and that has to be euthanized during, but before the end of, the increased holding period conflicts with the test claim statute and the Parameters and Guidelines. Staff finds that reimbursement is required under these circumstances.

In response to the Draft Proposed Decision, the Controller argues that “the level of detail necessary to review each individual animal’s health status and progression of their disease prior to euthanasia simply isn’t available from the animal data statistics maintained in the claimant’s Chameleon database.” Accordingly, the Controller maintains that “it is impossible to determine whether the animals euthanized for medical reasons would fit in the hypothetical scenario described [above].”²⁹

As indicated above, the Controller’s interpretation of the mandate is incorrect as a matter of law and claimants are eligible to receive reimbursement to provide care and maintenance to an animal during the increased holding period if the animal was deemed treatable and adoptable at intake, but became non-rehabilitatable and was euthanized *during* the increased holding period. *However*, in order to receive reimbursement, section VI. of the Parameters and Guidelines requires claimants to provide source documents that show the evidence of the validity of such costs and their relationship to the mandate. The supporting documentation must be kept on file by the agency during the audit period required by Government Code section 17558.5. In this respect, claimants are required by Food and Agriculture Code section 32003 to maintain records on animals that are taken up, euthanized, or impounded. Such records shall identify the date the animal was taken up, euthanized, or impounded; the circumstances surrounding these events; and the names of the personnel performing these activities.³⁰ The Parameters and Guidelines are regulatory in nature and are binding on the parties.³¹

The Controller’s comments on the Draft Proposed Decision suggest that the claimant’s database does not contain source documents that show the evidence of the validity of these costs. However, the claimant’s IRC generally contends that it was denied the necessary time to submit additional material or else “it would have had enough time to address all of the Controller’s requests for additional information”.³²

²⁹ Exhibit F, Controller’s Comments on the Draft Proposed Decision, page 13.

³⁰ It is not clear from the record whether the Controller actually requested these records from the claimant based on the Controller’s interpretation that such costs were not reimbursable.

³¹ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

³² Exhibit A, IRC, pages 16-18.

Accordingly, any reduction of costs relating to the exclusion of animals deemed treatable upon arrival at the shelter and later euthanized during the increased holding period because they became non-rehabilitatable is incorrect as a matter of law. Such costs are reimbursable *to the extent* the claimant can provide source documents to prove the validity of such costs.

3. The Commission and the Controller are bound by the *Purifoy* decision and, thus, the Controller's exclusion of animals that were euthanized too early because Saturday was counted as a business day for the required holding period, is also correct as a matter of law. However, the Controller's recalculation of costs using an average number of reimbursable days is incorrect as a matter of law, and is arbitrary, capricious, and entirely lacking in evidentiary support, to the extent it results in an exclusion of "eligible animals" held for the time required under *Purifoy*.

As indicated above, the Controller excluded "dogs, cats, and other animals that were euthanized during the holding period as per the requirements of the mandate."³³ The Controller determined that animals may have been euthanized during the holding period because of claimant's misinterpretation of the required holding period, as clarified by the Court of Appeal's decision in *Purifoy*, which held that Saturday is not a "business day" for purposes of calculating the required holding period under the test claim statutes before a stray or abandoned dog can be adopted or euthanized.³⁴ Before the decision was issued, many local agencies were operating under the assumption that Saturday was a "business day" that could be counted as part of the holding period, which resulted in the disposal of some animals at least one day too early.³⁵ Pursuant to the *Purifoy* decision, the Controller excluded those animals from the number of "eligible animals that die during the holding period or are ultimately euthanized," because they were disposed of at least one day too early.

Staff finds that the court's interpretation of "business day" in *Purifoy* is binding, and that the Controller's exclusion of Saturday as a business day when calculating the increased holding period is correct as a matter of law. Thus, except in the circumstances described below, the Controller's exclusion of animals that were euthanized too early because Saturday was counted as a business day for the required holding period, is also correct as a matter of law.

However, when auditing and recalculating the number of reimbursable days pursuant to *Purifoy*, the Controller calculated an *average* increased holding period for all dogs and cats to be three days, and the average increased holding period for all other "eligible" animals to be six days, and did not state the total number of reimbursable days for each eligible animal. Even if the increased holding period averages three days for dogs and cats, or six days for other animals, the Parameters and Guidelines do not provide for reimbursement based on an average number of days. Moreover, the Controller's recalculation may result in the exclusion of eligible animals that are correctly held under the law, but are euthanized during the Controller's defined "average" holding period. For example, if a stray or abandoned dog or cat is impounded on a Monday or Sunday, the actual increased holding period under the law is two *calendar* days, and

³³ Exhibit A, IRC, page 689.

³⁴ *Purifoy v. Howell* (2010) 183 Cal.App.4th 166.

³⁵ Exhibit B, Controller's Late Comments on the IRC, page 1001.

not three days, and the dog or cat may be euthanized on day three (a day before the Controller's average and, thus, "during the holding period" as defined by the Controller). Similarly, for "other animals," the Controller applied an increased holding period of six days. However, if a stray bird or rabbit is impounded on a Monday, the actual increased holding period under the law is four calendar days, and not six days, and the bird or rabbit may be euthanized on day five (a day before the Controller's average and, thus, "during the holding period" as defined by the Controller). Therefore, the Controller's recalculation and use of the average number of reimbursable days results in an exclusion of "eligible animals" correctly held under the law.

The Controller agrees that the methodology excludes some eligible animals, but argues that a mathematical average provides the most reasonable and cost-effective way to analyze large quantities of data:

The Commission suggested that using an average reimbursable days potentially excludes a marginal amount of "eligible animals." We concur. However, we believe that it is equally possible that the use of this average also includes an equal number of non-eligible animals as well. The use of a mathematical average assumes some outliers. But in this case, it provides the most reasonable and cost-effective way to analyze unusually large quantities of animal data. In fact, the large size of the animal population (as noted above) makes the use of an average value statistically more accurate and decreases the probability of error.³⁶

The Controller does not express how much more accurate the use of an average number of days might be, but does explain that "claimant's animal data averaged between 50,000 and 60,000 line items per year..." and "[i]n order to compute the actual increased holding period days for every animal on an individual basis, we would need to know what day of the week the animal was impounded...manually open each animal record...[and] evaluate, based on the calendar of the specific week and year, the actual number of days in the increased holding period." Then, "[o]nce the animal's eligibility was established, someone would need to compute each animal's allowable costs using reimbursable days." The Controller concludes that this "would be impractical and most likely would not produce results materially different from using an average calculation."³⁷

Staff finds that the Controller's averaging method to calculate the increased holding period for all animals is incorrect as a matter of law, and arbitrary, capricious, and entirely lacking in evidentiary support.

The Parameters and Guidelines do not provide for reimbursement based on an average number of days in the increased holding period, but requires the determination of the actual increased holding period for each animal. And based on the *Purifoy* decision, the increased holding period must be calculated from the day of the week the animal was impounded to ensure that Saturday and Sunday are not counted as business days. As the Controller acknowledges, "[i]n order to compute the actual increased holding period days for every animal on an individual basis, we would need to know what day of the week the animal was impounded...manually open each

³⁶ Exhibit F, Controller's Comments on the Draft Proposed Decision, page 1453.

³⁷ Exhibit F, Controller's Comments on the Draft Proposed Decision, page 1453.

animal record...[and] evaluate, based on the calendar of the specific week and year, the actual number of days in the increased holding period.” As indicated above, the Controller’s methodology results in an exclusion of any “eligible animal” properly held under the law, but euthanized during the Controller’s average holding period. To the extent the Controller reduced costs for care and maintenance and necessary and prompt veterinary care because the Controller incorrectly excluded an animal under these circumstances, the reduction is incorrect as a matter of law.

Moreover, the methodology is arbitrary, capricious, and without any evidentiary support. Although the Controller states that it is “equally *possible* that the use of this average also includes an equal number of non-eligible animals,” which makes the methodology “reasonable,” there is no evidence in the record that the Controller’s three or six day average number of reimbursable days accurately reflects or is representative of the actual increased holding period for all stray or abandoned animals held by the claimant during the audit period, or representative of the mandated costs incurred by the claimant. Government Code section 17559 and section 1187.5 of the Commission’s regulations require that all assertions of fact be based on substantial evidence in the record. Substantial evidence has been defined by the courts as follows:

“Substantial” is a term that clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with “any” evidence. It must be reasonable in nature, credible, and of solid value; it must actually be “substantial proof” of the essentials which the law requires in a particular case.³⁸

And a “possibility” of a fact does not constitute substantial evidence in the record.

Accordingly, staff finds that the Controller’s recalculation of the increased holding period using an average number of reimbursable days is incorrect as a matter of law, and is arbitrary, capricious, and entirely lacking in evidentiary support, to the extent the recalculation results in an exclusion of “eligible animals” properly held for the duration required under *Purifoy*.

B. Except as Determined in Section A. of This Decision, the Controller’s Remaining Findings That Result in a Reduction of Costs for Care and Maintenance Under Finding 3 Are Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Parameters and Guidelines provide for reimbursement of care and maintenance costs for impounded stray or abandoned animals that die during the increased holding period or are ultimately euthanized either by claiming actual costs or by performing a time study.³⁹ The claimant used the actual cost method, which is a formula that requires the eligible annual cost of care to be divided by the yearly census of animals to arrive at an average cost per animal per day. The cost per animal per day is then multiplied by the eligible number of animals and the number of increased holding period days. The factors relating to the number of eligible animals was

³⁸ *People v. Olmsted* (2000) 84 Cal.App.4th 270, 277.

³⁹ Exhibit G, Proposed Parameters and Guidelines and Analysis, Hearing Item 4, February 28, 2002, pages 1611-1614.

discussed above in Section A. This section addresses the remaining findings that resulted in a reduction of costs for care and maintenance.

1. The Controller's reductions on the basis of estimated or otherwise unsupported costs claimed as part of the calculation of total annual costs for care and maintenance are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Parameters and Guidelines provide that the first step in calculating actual costs for care and maintenance is to identify the total annual cost of this component, including labor, materials, supplies, indirect costs, and contract services.⁴⁰ The Controller states that this claimant "used budgeted expenditure amounts that were not actual costs and were not pro-rated to the portion of costs relating to the care and maintenance functions."⁴¹

Staff finds that these reductions are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. While the Parameters and Guidelines use inclusive language to describe costs for this component ("total cost of care and maintenance includes labor, materials, supplies...") the care and maintenance costs cannot be interpreted beyond the reasonable scope of the approved activity, which is to provide care and maintenance during the increased holding period for impounded stray or abandoned animals that die during the increased holding period or are ultimately euthanized. Office supplies and printing supplies are general expenses of the animal shelter, and are beyond the scope of the mandated activity, and therefore reduction on this basis is correct as a matter of law. Moreover, the claimant agreed with the Controller that only a portion of salaries and benefits for Animal Care Technicians and Animal Care Technician Supervisor positions should be reimbursable, and the claimant proposed the proportional reimbursable share for these classifications, which the Controller accepted.⁴² The Controller's reduction on this basis is therefore not arbitrary, capricious, or entirely lacking in evidentiary support. And finally, the claimant filed the reimbursement claims using the actual cost method of claiming, but used "budgeted expenditure amounts," which are not equivalent to actual costs incurred for the mandate.

2. The Controller's adjustment of the yearly animal census data did not result in a reduction of costs claimed and therefore the Commission has no jurisdiction to determine this issue.

The Parameters and Guidelines provide that the total annual cost of care shall be divided by the total annual census of *all* animals that come to the shelter to determine the cost per animal per day. The Controller found that the claimant misstated its yearly animal census data. Specifically, the Controller found that the claimant failed to exclude animals that were deceased upon arrival at the shelter, and animals that went missing. The Controller accordingly eliminated those animals from the census.

⁴⁰ Exhibit G, Proposed Parameters and Guidelines and Analysis, Hearing Item 4, February 28, 2002, page 1611.

⁴¹ Exhibit A, IRC, page 684.

⁴² Exhibit A, IRC, page 684.

Based on the formula in the Parameters and Guidelines for determining the costs for care and maintenance during the increased holding period, in which total annual costs are divided by the yearly animal census to arrive at a cost per animal per day, which is in turn multiplied by the remaining factors of eligible animals and reimbursable days, it appears that the adjustments made to the annual animal census data that reduced the total number of animals did not in fact result in any reduction. Because total annual costs are *divided* by the yearly animal census, any decrease in the animal census data would result in a corresponding increase in the cost per animal per day, which would then be multiplied by the remaining factors. Thus, the adjustment to the yearly animal census factor is in the claimant's favor. Because there is no reduction of costs claimed on the basis of the adjustments to the animal census data, the Commission has no jurisdiction and need not make a finding on this point.

3. The Controller's adjustment of reimbursable days *increases* the number of reimbursable days claimed by the claimant, thereby increasing reimbursement and, thus, the Commission does not have jurisdiction to determine this issue.

The last element of the calculation of actual costs for care and maintenance is to multiply the cost per animal per day times the number of eligible animals times the number of reimbursable days. The Parameters and Guidelines expressly require multiplying by "each reimbursable day" following the day of impoundment, and do not define reimbursable days based on an average number of days.⁴³

However, the reimbursement claims at issue in this IRC, claimed two reimbursable days for all dogs and cats, and four reimbursable days for all "other animals," and made no attempt to state the total number of reimbursable days for each eligible animal.⁴⁴ And, as indicated in section A.3. of this Decision, the Controller, like the claimant, calculated an *average* increased holding period for all dogs and cats to be three days, and the average increased holding period for all other "eligible" animals to be six days, and did not state the total number of reimbursable days for each eligible animal.⁴⁵ Because the Controller's audit *increased* the number of reimbursable days claimed by the claimant, by which all other elements of the formula are multiplied, the Controller's adjustment of reimbursable days results in increased reimbursement to the claimant and, thus, the Commission does not have jurisdiction to determine this issue.

C. The Controller's Reductions in Finding 4 Relating to Unallowable Employee Hours for Making Animals Available for Adoption or Owner Redemption Are Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Parameters and Guidelines provide that an agency desiring to apply the shortened holding period is eligible for reimbursement for making animals available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or, for local agencies with fewer than three full-time employees or that are not open during all regular weekday business hours,

⁴³ Exhibit A, IRC, pages 71-73.

⁴⁴ See, e.g., Exhibit A, IRC, pages 741-742.

⁴⁵ Exhibit A, IRC, page 690.

for establishing a procedure for owners to reclaim their animals by appointment.⁴⁶ For dogs and cats, reimbursement for this activity begins July 1, 1999. For “other animals” specified in Food and Agriculture Code section 31753, reimbursement for this activity begins January 1, 1999.⁴⁷

The Controller’s audit determined that the claimant overstated allowable hours and the number of allowable positions to comply with this activity. Specifically, the Controller states that the claimant “claimed hours for Animal Care Technicians, Animal Care Technician Supervisors, Animal Control Officers, and Clerk Typists for working on one of the weekend days.” However, the Controller found that the claimant did not take into account the difference between the regular staffing needs and the *increased* staffing needs to comply with the requirement of this component. The Controller further elaborates that its audit “inquired about the number of employees and classifications of staff members working when the shelter is closed to the public (Mondays) and the staffing needed to comply with the mandate and stay open during the increased hours (Saturdays).” The Controller was thus able to eliminate staffing and employee hours that were mainly dedicated to the general care and maintenance of the animals. Additionally, the Controller notes that for fiscal year 1998-1999 reimbursement began January 1, 1999, and therefore allowable hours were reduced by half for that fiscal year.⁴⁸

Staff finds that the Controller is correct that the reason to remain open on a Saturday, pursuant to the test claim statutes and the Commission’s Decision, is to promote owner redemption. Indeed, the express language of the reimbursable component at issue in Finding 4 is “Making the animal available for owner redemption...”⁴⁹ Therefore, the Controller’s attempt to limit reimbursement on Saturdays to those employees that are necessary to make animals available for owner redemption is consistent with the Parameters and Guidelines and the purpose of the test claim statute. Thus, the adjustments are correct as a matter of law. In addition, there is no evidence in the record to support a finding that the Controller’s decisions were arbitrary or capricious.

D. Except as Determined in Section A. of This Decision, the Controller’s Remaining Findings Supporting the Reductions in Finding 7 for Overstated Necessary and Prompt Veterinary Care Costs Are Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Parameters and Guidelines permit reimbursement for necessary and prompt veterinary care for stray or abandoned animals, other than injured cats and dogs given emergency treatment that die during the increased holding period or are ultimately euthanized. Necessary and prompt veterinary care means all reasonably necessary medical procedures performed by a veterinarian or someone under the supervision, including an initial physical examination; a wellness vaccine administered to adoptable or treatable animals; care to stabilize or relieve the suffering of a

⁴⁶ Exhibit A, IRC, page 74.

⁴⁷ Exhibit A, IRC, page 74.

⁴⁸ Exhibit A, IRC, pages 694 and 695.

⁴⁹ Exhibit A, IRC, page 74.

treatable animal; and veterinary care intended to remedy an injury or disease of a treatable animal.⁵⁰

The Controller's audit determined that the claimant claimed estimated and unsupported materials and supplies costs, and misstated and unallowable employee hours. Specifically, the Controller found that the claimant's time study for veterinary procedures was "inadequate," because it focused on recording time increments to perform non-routine veterinary procedures which must be examined on a case-by-case basis to determine eligibility. A new time study was conducted during the course of the audit, which the Controller found was allowable except for "[i]nputting animal medical statistics into the Chameleon database about animal's baseline health."⁵¹ In addition, the Controller found that the city claimed estimated and unsupported materials and supplies costs. During the first three years of the audit period, the claimant estimated that three percent of its operating costs were attributable to the mandate component of necessary and prompt veterinary care, and in the latter five years of the audit period, the claimant failed to support its materials and supplies costs. The Controller states that the claimant did not respond to this audit finding specifically, but during the audit "submitted summary reports containing year end expenditures by vendor for Account 3190 – Medical Supplies" totaling \$2,086,819. The Controller determined that "we are unable to consider the medical expenses submitted for reimbursement, because the city did not determine what portion of the costs actually related to eligible animals and allowable treatments that took place during the required holding period."⁵²

Staff finds that the claimant inappropriately claimed estimated costs, without any evidence or documentation to support the estimate, and that the claimant's alleged expense documentation does not constitute evidence that those costs are related to the mandated activities. The Parameters and Guidelines provide reimbursement for necessary and prompt veterinary care, but with certain limitations. For example, animals irremediably suffering from serious illness or injury and euthanized on day one, or newborn animals that cannot survive without their mother, and the mother has not also been impounded, are not included in the population of "eligible animals" for which reimbursement is required. Likewise, emergency treatment is not eligible for reimbursement, due to the requirements of prior law, nor is the administration of a rabies vaccination, or microchip implantation, or spay or neuter surgery and treatment. The exclusions are therefore substantial, and reimbursement is decidedly narrow. The claimant has the burden to show that costs claimed for materials and supplies and employee salaries and benefits fall within the reimbursable higher levels of service and were provided to animals within the eligible population, and therefore the summary expense reports for medical supplies are not sufficient in themselves to support the claim.

The claimant's time study suffers the same fault, because it included a number of non-routine veterinary procedures and costs that must be evaluated on a case-by-case basis. Absent some evidence that the procedures and costs within the time study were verified to be eligible for reimbursement, the Controller's rejection of the time study was correct as a matter of law, and

⁵⁰ Exhibit A, IRC, pages 74-75.

⁵¹ Exhibit A, IRC, page 703.

⁵² Exhibit A, IRC, pages 702-705.

not arbitrary, capricious, or entirely lacking in evidentiary support. Ultimately, all parts of the claim must be supported by some documentation from the claimant, which, according to the Parameters and Guidelines, must “show evidence of the validity of such costs and their relationship to the mandate.”⁵³

Based on the foregoing, except as provided in section A. of this Decision relating to “eligible animals,” staff finds that the Controller’s remaining findings supporting the reductions in Finding 7 of necessary and prompt veterinary care costs are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

E. The Controller’s Determination Not to Consider Claimant’s Request, Made During the Audit, for Reimbursement for the Construction of New Facilities Is Correct as a Matter of Law.

The Parameters and Guidelines provide for reimbursement for the construction of new facilities or acquisition of additional space to comply with the mandate beginning January 1, 1999. However, the claimant did not include costs for this component in its annual reimbursement claims for any of the years subject to audit, nor specifically state in which years such costs might have been incurred. The claimant only alleged costs for construction of new facilities during the course of the audit, which began April 28, 2009.⁵⁴ At that time, the annual claims for all fiscal years of the audit period had been filed, and only the fiscal year 2007-2008 claim could be subject to a revised claim, pursuant to the deadlines contained in Government Code section 17568. Moreover, the construction costs were funded by bonds issued pursuant to a ballot measure, Proposition F, passed by the voters in the November 2000 general election.⁵⁵

Staff finds the Controller’s determination not to reimburse costs for construction of new facilities, which were not claimed in the claimant’s annual reimbursement claim filings and which were funded by a local bond measure repaid by an additional assessment on real property, is correct as a matter of law. Government Code section 17560 permits a claimant by February 15 following a fiscal year, to “file an annual reimbursement claim that details the costs actually incurred for that fiscal year.” Section 17568 provides that if a local agency or school district submits an otherwise valid reimbursement claim to the Controller after the deadline specified in Section 17560, the Controller shall reduce the reimbursement claim in an amount equal to 10 percent of the amount that would have been allowed had the reimbursement claim been timely filed. In addition, section 17568 states that “[i]n no case shall a reimbursement claim be paid that is submitted more than one year after the deadline specified in Section 17560.” These provisions of the Government Code clearly place the burden on the claimant to timely and completely claim its mandated costs. Moreover, where a local agency has raised revenues outside its appropriations limit to cover the cost of mandated activities, funds thus expended are not reimbursable.⁵⁶

⁵³ Exhibit A, IRC, page 79.

⁵⁴ Exhibit A, IRC, page 709.

⁵⁵ Exhibit A, IRC, page 709.

⁵⁶ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

F. The Claimant's Allegation That the Controller Failed to Provide Adequate Time to Comply with the Requirements of the Audit Is Irrelevant, and Ignores the Claimant's Burden to Support Costs Claimed.

The claimant argues that it was “denied necessary time to comply with the requirements of the audit due to the SCO’s placing the audit on hold for staffing changes for nine months which left the City having to assemble documentation for a huge operation with less time than was provided by law.”⁵⁷ The claimant asserts that “[d]ue to the size of the City’s Animal Services Department, there were millions of line items to go through in order to locate some of the requested information that dated back as far as 12 years.” In addition, the claimant states that “some of the invoices had been destroyed as they exceeded the time limitation for record retention under the law.”⁵⁸ The claimant argues that it “cannot be expected to have to hold on to records from 1998 for an indeterminate amount of time and be forced to retain all detailed expenditure records.” The claimant concludes that “[s]uch a record retention requirement would cause a burden that is both inefficient and unnecessary.”⁵⁹

The claimant is wrong. All versions of the Parameters and Guidelines provide that all costs must be traceable to source documents. Such documents, in turn, must “show evidence of the validity of such costs and their relationship to the mandate.” And, all documentation in support of claimed costs “shall be made available to the State Controller’s Office, as may be requested.” Such documents must be kept on file during the period subject to audit, in accordance with Government Code section 17558.5.⁶⁰ Furthermore, the requirement in Government Code section 17558.5 for an audit to be completed “not later than two years after the date that the audit is commenced,” is a requirement on the Controller to complete its audits promptly; it is not intended to provide a claimant with up to two years to remedy a poorly-supported and insufficiently-documented reimbursement claim. Moreover, the undisputed evidence in the record shows that the claimant had a period of seven months, and an additional period of nine months, in which the Controller’s audit staff was actively working with the claimant to resolve the issues of the audit and to make clear the documentation necessary to support the claim.⁶¹ And, the Controller asserts, “[t]hroughout the audit process, we worked with the city’s staff to not only obtain proper supporting documentation, but also to arrange for alternative methods to support claimed costs.”⁶²

Based on the foregoing, staff finds that claimant’s allegation that the Controller failed to provide adequate time to comply with the requirements of the audit is irrelevant, and ignores the claimant’s burden to support costs claimed.

⁵⁷ Exhibit A, IRC, page 16.

⁵⁸ Exhibit A, IRC, page 17.

⁵⁹ Exhibit A, IRC, page 17.

⁶⁰ Exhibit A, IRC, page 79.

⁶¹ Exhibit A, IRC, pages 16-18; 711-714; Exhibit B, Controller’s Late Comments on the IRC, pages 24-26.

⁶² Exhibit B, Controller’s Late Comments on the IRC, page 1013.

Conclusion

Staff recommends that the Commission partially approve this IRC, and request, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission regulations, that the Controller reinstate costs that relate to the following incorrect reductions to the extent the claimant can provide documentation to support the validity of the costs incurred. Section VI. of the Parameters and Guidelines require claimants to provide source documents that show the evidence of the validity of such costs and their relationship to the mandate. The supporting documentation must be kept on file by the agency during the audit period required by Government Code section 17558.5. In this respect, claimants are required by Food and Agriculture Code section 32003 to maintain records on animals that are taken up, euthanized, or impounded. Such records shall identify the date the animal was taken up, euthanized, or impounded; the circumstances surrounding these events; and the names of the personnel performing these activities.⁶³

- Any reduction of costs relating to the exclusion of animals deemed treatable upon arrival at the shelter and later euthanized during the increased holding period because they became non-rehabilitatable.
- Any reduction of costs relating to the Controller's recalculation of costs following the *Purifoy* decision and its use of an average number of reimbursable days, to the extent the recalculation resulted in an exclusion of "eligible animals" correctly held under the law.

Staff further finds that all other reductions made by the Controller are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Finally, staff finds that the Controller's determination not to consider claimant's request, made during the audit, for reimbursement for the construction of new facilities is correct as a matter of law, and that the claimant's allegation that the Controller failed to provide adequate time to comply with the requirements of the audit is irrelevant.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to partially approve the IRC and authorize staff to make any technical, non-substantive changes following the hearing.

⁶³ It is not clear from the record whether the Controller actually requested these records from the claimant based on the Controller's interpretation that such costs were not reimbursable.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

**IN RE INCORRECT REDUCTION CLAIM
ON:**

Civil Code Sections 1834 and 1846; Food and Agriculture Code Sections 31108, 31752, 31752.5, 31753, 32001, and 32003; As Added or Amended by Statutes 1998, Chapter 752 (SB 1785)

Fiscal Years 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003; 2005-2006, 2006-2007, and 2007-2008

City of Los Angeles, Claimant

Case No.: 13-9811-I-02

Animal Adoption

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500 ET
SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted October 28, 2016)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on October 28, 2016. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] this IRC by a vote of [vote count will be included in the adopted Decision] as follows:

Member	Vote
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

Summary of the Findings

This IRC addresses reductions made by the State Controller's Office (Controller) to reimbursement claims made by the City of Los Angeles (claimant) for costs incurred during fiscal years 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2005-2006, 2006-2007, and 2007-2008, under the *Animal Adoption* program.

The following reductions are in dispute:

- Reductions of care and maintenance costs (Finding 3) based on what Controller found were budgeted expenditures claimed in lieu of documented actual costs, claimed expenditures unrelated to care and maintenance, and understated animal census data, resulting in an overstatement of costs per animal per day; overstatement of the population of eligible animal population, based on the exclusions from reimbursement expressed in the Parameters and Guidelines; and adjustment to the number of reimbursable days based on excluding Saturday as a business day in accordance with *Purifoy v. Howell* (2010) 183 Cal.App.4th 166;
- Reductions of salaries and benefits for the increased holding period (Finding 4) based on employee hours that the claimant did not support as being related to the mandate;
- Reductions of necessary and prompt veterinary care costs (Finding 7) based on claiming estimated materials and supplies costs, and unsupported materials and supplies costs; and based on misstated and unallowable hours.

In addition, the claimant raises two issues that do not directly relate to the Controller's audit findings. First, although the claimant did not include in its reimbursement claims costs for construction or acquisition of additional space, the claimant now alleges that reimbursement is required for such costs, which were paid for by taxpayer-approved bonds, to be repaid from local property assessments. And second, the claimant argues that it was denied the necessary time to comply with the requirements of the audit because the Controller placed the audit on hold for nine months "which left the City having to assemble documentation for a huge operation with less time than was provided by law."⁶⁴

The Commission partially approves this IRC, and requests, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, that the Controller reinstate costs that relate to the following incorrect reductions to the extent the claimant can provide documentation to support the validity of the costs incurred. Section VI. of the Parameters and Guidelines require claimants to provide source documents that show the evidence of the validity of such costs and their relationship to the mandate. The supporting documentation must be kept on file by the agency during the audit period required by Government Code section 17558.5. In this respect, claimants are required by Food and Agriculture Code section 32003 to maintain records on animals that are taken up, euthanized, or impounded. Such records shall identify the date the animal was taken up, euthanized, or

⁶⁴ Exhibit A, IRC, page 16.

impounded; the circumstances surrounding these events; and the names of the personnel performing these activities.⁶⁵

- Any reduction of costs relating to the exclusion of animals deemed treatable upon arrival at the shelter and later euthanized during the increased holding period because they became non-rehabilitatable.
- Any reduction of costs relating to the Controller's recalculation of costs following the *Purifoy* decision and its use of an average number of reimbursable days, to the extent the recalculation resulted in an exclusion of "eligible animals" correctly held under the law.

The Commission further finds that all other reductions made by the Controller are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Finally, the Commission finds that the Controller's determination not to consider claimant's request, made during the audit, for reimbursement for the construction of new facilities is correct as a matter of law, and that the claimant's allegation that the Controller failed to provide adequate time to comply with the requirements of the audit is irrelevant.

COMMISSION FINDINGS

I. Chronology

09/04/2002	Claimant signed its initial reimbursement claims for fiscal years 1998-1999, 1999-2000, and 2000-2001. ⁶⁶
08/03/2006	The Controller made initial payments on the fiscal year 1999-2000 and 2000-2001 claims. ⁶⁷
08/10/2006	The Controller made initial payment on the fiscal year 1998-1999 reimbursement claim. ⁶⁸
04/28/2009	An audit entrance conference was held. ⁶⁹
04/06/2011	Controller issued the final audit report. ⁷⁰
04/07/2014	The claimant filed this IRC. ⁷¹

⁶⁵ It is not clear from the record whether the Controller actually requested these records from the claimant based on the Controller's interpretation that such costs were not reimbursable.

⁶⁶ Exhibit A, IRC, pages 737; 763; 779.

⁶⁷ Exhibit D, Controller's Response to the Request for Additional Information, pages 1350-1360.

⁶⁸ Exhibit D, Controller's Response to the Request for Additional Information, pages 1350; 1352.

⁶⁹ Exhibit A, IRC, page 16.

⁷⁰ Exhibit A, IRC, page 9.

⁷¹ Exhibit A, IRC, page 1.

09/08/2015 The Controller filed late comments on the IRC.⁷²

06/06/2016 Commission staff issued the Request for Additional Information.⁷³

06/09/2016 The Controller filed the Response to the Request for Additional Information.⁷⁴

08/25/2016 Commission staff issued the Draft Proposed Decision.⁷⁵

09/15/2016 The Controller filed comments on the Draft Proposed Decision.⁷⁶

II. Background

The Animal Adoption Program

The *Animal Adoption* program arose from amendments to the Civil Code and Food and Agriculture Code made by Statutes 1998, chapter 752 (SB 1785⁷⁷). The purpose of the test claim statute was to carry out the state policy that “no adoptable animal should be euthanized if it can be adopted into a suitable home” and “no treatable animal should be euthanized.”⁷⁸ Generally, the program increases the holding period to allow for the adoption and redemption of stray and abandoned dogs, cats, and other specified animals before the local agency can euthanize the animal, and requires:

- verification of the temperament of feral cats;
- posting of lost and found lists;
- maintenance of records for impounded animals; and
- that impounded animals receive “necessary and prompt veterinary care.”

On January 25, 2001, the Commission partially approved the Test Claim for the increased costs in performing the following activities only:

1. Providing care and maintenance during the increased holding period for impounded dogs and cats that are ultimately euthanized. The increased holding period shall be measured by calculating the difference between three days from the day of capture (prior law) and four business days from the day after impoundment, as specified below in 3 (a) and 3 (b), or six business days from the day after impoundment (Food & Agr. Code, §§ 31108, 31752);

⁷² Exhibit B, Controller’s Late Comments on the IRC.

⁷³ Exhibit C, Request for Additional Information.

⁷⁴ Exhibit D, Controller’s Response to the Request for Additional Information.

⁷⁵ Exhibit E, Draft Proposed Decision.

⁷⁶ Exhibit F, Controller’s Comments on the Draft Proposed Decision.

⁷⁷ Sometimes referred to as the Hayden Bill.

⁷⁸ Civil Code section 1834.4, Penal Code section 559d, and Food and Agricultural Code section 17005 as added or amended by Statutes 1998, chapter 752.

2. Providing care and maintenance for four business days from the day after impoundment, as specified below in 3 (a) and 3 (b), or six business days from the day after impoundment, for impounded rabbits, guinea pigs, hamsters, pot-bellied pigs, birds, lizards, snakes, turtles, or tortoises legally allowed as personal property that are ultimately euthanized (Food & Agr. Code, § 31753);
3. For dogs, cats, and other specified animals held for four business days after the day of impoundment, either:
 - (a) Making the animal available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or
 - (b) For those local agencies with fewer than three full-time employees or that are not open during all regular weekday business hours, establishing a procedure to enable owners to reclaim their animals by appointment at a mutually agreeable time when the agency would otherwise be closed (Food & Agr., Code §§ 31108, 31752, and 31753);
4. Verifying whether a cat is feral or tame by using a standardized protocol (Food & Agr. Code, § 31752.5);
5. Posting lost and found lists (Food & Agr. Code, § 32001);
6. Maintaining records on animals that are not medically treated by a veterinarian, but are either taken up, euthanized after the holding period, or impounded (Food & Agr. Code, § 32003); and
7. Providing “necessary and prompt veterinary care” for abandoned animals, other than injured cats and dogs given emergency treatment, that are ultimately euthanized (Civ. Code, §§ 1834 and 1846).

The Commission first addressed the Parameters and Guidelines for *Animal Adoption* at its August 23, 2001 hearing, but the matter was continued for further public comment and analysis.⁷⁹ The Commission adopted the Parameters and Guidelines for this program on February 28, 2002.⁸⁰ The Parameters and Guidelines were then re-issued as corrected on March 20, 2002.⁸¹ Those Parameters and Guidelines, in addition to the activities identified in the Test Claim Statement of Decision, provide reimbursement for one-time activities of developing policies and procedures; training; and developing or procuring computer software for maintaining records; as well as:

- Acquisition of additional space or construction of new facilities, by purchase or lease, to provide appropriate or adequate shelter necessary to comply with the mandated activities

⁷⁹ Exhibit G, Minutes of Commission Hearing, August 23, 2001, pages 1689-1692.

⁸⁰ Exhibit G, Proposed Parameters and Guidelines and Analysis, Hearing Item 4, February 28, 2002. (Note that, at this time the Commission did not issue a “Decision and Parameters and Guidelines” after adoption of parameters and guidelines as it does currently.)

⁸¹ Exhibit A, IRC, page 65 [Parameters and Guidelines, issued February 28, 2002; corrected March 20, 2002].

during the increased holding period for impounded stray or abandoned dogs, cats, and other animals.⁸²

- Remodeling/renovating existing facilities to provide appropriate or adequate shelter necessary to comply with the mandated activities during the increased holding period for impounded stray or abandoned dogs, cats, and other animals.⁸³

Section VI. of the Parameters and Guidelines also require claimants to provide source documents that show the evidence of the validity of such costs and their relationship to the mandate. The supporting documentation must be kept on file by the agency during the audit period required by Government Code section 17558.5. In this respect, claimants are required by Food and Agriculture Code section 32003 to maintain records on animals that are taken up, euthanized, or impounded. Such records shall identify the date the animal was taken up, euthanized, or impounded; the circumstances surrounding these events; and the names of the personnel performing these activities.

On March 12, 2003, the Joint Legislative Audit Committee authorized an audit of the *Animal Adoption* mandate, which was completed by the Bureau of State Audits on October 15, 2003. The audit report recommended that the Legislature direct the Commission to amend the Parameters and Guidelines for the *Animal Adoption* mandate to correct the formula for determining the reimbursable portion of acquiring additional shelter space. In 2004, AB 2224 (Stats. 2004, ch. 313) was enacted to direct the Commission to amend the Parameters and Guidelines for the *Animal Adoption* program to:

1. Amend the formula for determining the reimbursable portion of acquiring or building additional shelter space that is larger than needed to comply with the increased holding period to specify that costs incurred to address preexisting shelter overcrowding or animal population growth are not reimbursable.
2. Clarify how the costs for care and maintenance shall be calculated.
3. Detail the documentation necessary to support reimbursement claims under this mandate, in consultation with the Bureau of State Audits and the Controller's office.

On January 26, 2006, the Commission adopted the amended Parameters and Guidelines, applicable to claims beginning July 1, 2005, in accordance with AB 2224, to require, among other things, contemporaneous source documents to show the validity of costs claimed and their relationship to the reimbursable activities. The 2006 amendment also clarified the definition of “average daily census” of dogs and cats, for purposes of the formula used to calculate care and maintenance costs; this amendment is clarifying only, and does not affect the methodology used to calculate actual costs for this component.⁸⁴

⁸² Exhibit A, IRC, page 67 [Parameters and Guidelines, corrected March 20, 2002, page 3].

⁸³ Exhibit A, IRC, page 69 [Parameters and Guidelines, corrected March 20, 2002, page 5].

⁸⁴ Exhibit G, Final Staff Analysis and Proposed Parameters and Guidelines Amendment, January 26, 2006.

The Controller's Audit and Summary of the Issues

In Finding 3, the Controller disallowed \$967,883 for care and maintenance costs during the increased holding period. The Controller determined that the claimant incorrectly reported its annual expenditures for this component, and incorrectly calculated the annual census of dogs and cats and other animals, resulting in an overstatement of the costs per animal per day in each year. That cost per animal per day, the Controller found, was then incorrectly applied to an overstated number of eligible stray or abandoned animals that died during the increased holding period or were ultimately euthanized; and finally, multiplied by an incorrect number of reimbursable days, based on the court of appeal's determination in *Purifoy*⁸⁵ that Saturday is not a business day for purposes of the Hayden Bill.⁸⁶

In Finding 4, the Controller disallowed a net \$2,045,732 over the entire audit period for costs incurred to make animals available for adoption or redemption on Saturdays, based on overstated allowable hours and the number of employees for whom hours were allowable. Specifically, the Controller found that hours for Animal Care Technicians, Animal Care Technician Supervisors, Animal Control Officers, and Clerk Typists were claimed without considering the scope and requirements of the mandate. Only the increased staffing needed to comply with the requirement of making animals available for owner redemption or adoption is reimbursable, and therefore only a portion of Saturday staffing is attributable to the increased level of service. By comparing the Saturday staff hours claimed to the staffing levels needed when the shelter is closed to the public on Mondays, and examining monthly schedules provided by the claimant, the Controller found that the hours and employees needed to comply with the mandate included:

- Animal Care Technicians (10 positions, 9 hours each);
- Animal Care Technician Supervisor (1 position, 9 hours); and
- Front Counter Clerks (10 positions, 8 hours each).⁸⁷

The Controller allowed hours for these positions for 52 weeks during each year of the audit period, except fiscal year 1998-1999, for which reimbursement began on January 1, 1999.⁸⁸ The Controller also found an understatement in productive hourly rates.⁸⁹

In Finding 7, the Controller disallowed a net \$1,827,843 over the entire audit period for necessary and prompt veterinary care costs. The Controller found that the claimant estimated its materials and supplies costs (rather than documenting actual costs), claimed unsupported materials and supplies costs, claimed misstated and unallowable hours, and understated its productive hourly rates.⁹⁰ Specifically, the Controller found that for the first three years of the

⁸⁵ *Purifoy v. Howell* (2010) 183 Cal.App.4th 166.

⁸⁶ Exhibit A, IRC, page 683.

⁸⁷ Exhibit A, IRC, page 695.

⁸⁸ Exhibit A, IRC, page 695.

⁸⁹ Exhibit A, IRC, page 694.

⁹⁰ Exhibit A, IRC, page 704.

audit the claimant estimated three percent of its operating costs were attributable to the mandate, without any documentation for actual costs. In the latter five years of the audit, the claimant did not support its materials and supplies costs for necessary and prompt veterinary care as being attributable to activities or services eligible for reimbursement.⁹¹ In addition, the claimant misstated salaries and benefits by using a time study that recorded hours worked for non-routine veterinary medical procedures, as opposed to repetitive activities. The Controller found that non-routine procedures were not appropriate for a time study due to the variability of time spent, and due to the need to examine each activity on a case-by-case basis to ensure claiming of only eligible activities within the scope of the mandate.⁹² And finally, the Controller determined that the claimant understated its productive hourly rates, resulting in an adjustment in the claimant's favor of \$1,658.

The claimant did not claim costs for space acquisition and facilities construction or renovation in its reimbursement claims. However, the audit report indicates that during the course of audit fieldwork the claimant "inquired about the eligibility of costs it incurred for the construction and renovation of animal shelters under the mandated program."⁹³ It is undisputed that during the audit period the claimant constructed new shelters and renovated existing shelters, using bond funds approved by the voters in the November 2000 general election. Proposition F provided for the issuance of bonds, for the purposes of constructing new animal shelters and fire stations, to be repaid through additional assessments on residents' property tax bills.⁹⁴ The Controller concluded that although the claimant had performed the required analysis to determine that the additional shelter space was needed in order to comply with the provisions of the mandate, the claimant funded the construction and renovation with bond funds, rather than the city's revenue-limited general fund. Additionally, costs for this construction were not included in the reimbursement claims submitted by claimant to the Controller. Therefore, the Controller determined that the costs were not reimbursable.⁹⁵ The claimant strenuously objects to that determination, and maintains that the Proposition F funds "are clearly proceeds of taxes and local revenue to the extent they were used to pay for state mandated costs associated with the increased cost of building animal shelters."⁹⁶

III. Positions of the Parties

City of Los Angeles

⁹¹ Exhibit A, IRC, page 704.

⁹² Exhibit A, IRC, page 702.

⁹³ Exhibit A, IRC, page 709.

⁹⁴ Exhibit A, IRC, page 709.

⁹⁵ Exhibit A, IRC, page 709.

⁹⁶ Exhibit A, IRC, page 710.

Section 5 of the IRC form states the total amount incorrectly reduced during the audit period as \$5,425,813.⁹⁷ However, the claimant specifically challenges only findings 3, 4, and 7, which total \$4,841,458.⁹⁸

The claimant's primary challenge to the Finding 3 reductions for care and maintenance costs is based on the assertion that the Controller incorrectly applied the *Purifoy* decision,⁹⁹ which declared that Saturday is not a business day for purposes of the increased holding period. The claimant alleges that the Controller incorrectly calculated allowable costs for care and maintenance.¹⁰⁰ The claimant argues that this IRC presents good policy reasons to deny retroactive application of the *Purifoy* decision to the audit period, and that any and all costs denied on this basis should be reinstated.¹⁰¹

In addition, the claimant challenges Finding 4, arguing that the Controller is misinterpreting the Parameters and Guidelines by allowing only a portion of staff hours when the shelter is open to the public on Saturdays. The claimant asserts that the mandated program requires the local agency to open its shelter on Saturdays "for normal business operations that are reasonably required by the Hayden Bill which is not limited to the redemption of animals."¹⁰² The claimant argues that it "should be allowed to staff its shelter as it sees fit to accomplish the goals set forth in statute."¹⁰³

And, with respect to Finding 7, the claimant argues that the Controller's interpretation of documentation requirements resulted in an incorrect disallowance of "submitted expenses within expenditure account 3190 medical supplies (\$2,086,819)."¹⁰⁴

The claimant also challenges the Controller's determination that funds raised through a local assessment measure, Proposition F, and used for construction or space acquisition costs do not constitute increased costs mandated by the state.¹⁰⁵ The claimant argues that there is nothing in Government Code section 17514 that makes a distinction between mandated activities paid for out of a local government's general fund revenues and those paid for with restricted bond or assessment funds.¹⁰⁶

Finally, the claimant argues that it was denied the necessary time to comply with the requirements of the audit, because the Controller's audit staff placed the audit "on hold for

⁹⁷ Exhibit A, IRC, page 5.

⁹⁸ Exhibit A, IRC, page 683; 694; 702.

⁹⁹ *Purifoy v. Howell* (2010) 183 Cal.App.4th 166.

¹⁰⁰ Exhibit A, IRC, page 10.

¹⁰¹ Exhibit A, IRC, pages 11-13.

¹⁰² Exhibit A, IRC, pages 13-14.

¹⁰³ Exhibit A, IRC, page 14.

¹⁰⁴ Exhibit A, IRC, page 14.

¹⁰⁵ Exhibit A, IRC, page 15.

¹⁰⁶ *Ibid.*

staffing changes for nine months which left the City having to assemble documentation for a huge operation with less time than was provided by law.”¹⁰⁷ The claimant alleges that the audit began with an entrance conference on April 28, 2009, and “City staff worked closely with the SCO’s auditing staff for a period of 7 months providing the requested documents and spending over 200 hours of City staff time.”¹⁰⁸ But in November 2009, “work on the audit was temporarily discontinued by the SCO when their Audit Manager...transferred to another unit...”¹⁰⁹ The claimant states that on July 19, 2010, a second entrance conference was held and the audit resumed. The claimant states that the auditor “requested documentation that required a significant amount of City resources in order to locate the information requested.”¹¹⁰ The claimant alleges that it then “provided an additional 250 hours of staff time to address these requests.”¹¹¹ The claimant continues: “Adding to the frustration, some of the invoices had been destroyed as they exceeded the time limitation for record retention under the law.”¹¹² The claimant states that it “cannot be expected to have to hold on to records from 1998 for an indeterminate amount of time and be forced to retain all detailed expenditure records.”¹¹³ Furthermore, the claimant states that although the audit staff did make requests for information between November 2009 and July 2010, “it would not have made any difference in the City’s staffing resources that it could lend to review the amount of documents requested...”¹¹⁴

The Controller held an exit conference on January 12, 2011, and stated the intention to issue a final audit report in April. The claimant states that it acted in good faith to comply with all audit material requests, but that “[a] short time after the exit meeting, the City lost Linda Barth, the Department’s Assistant General Manager, who was the main contact person for the audit causing a further setback in the City’s attempt to provide the remaining information requested.”¹¹⁵ The Controller issued its draft audit report on March 10, 2011, and the claimant requested a 30 day extension.¹¹⁶ The claimant states that it was granted only two days “so that the State could file their audit report within the two year statute of limitations.”¹¹⁷ The claimant argues that had the

¹⁰⁷ Exhibit A, IRC, page 17.

¹⁰⁸ Exhibit A, IRC, page 16.

¹⁰⁹ Exhibit A, IRC, pages 16-17.

¹¹⁰ Exhibit A, IRC, page 17.

¹¹¹ Exhibit A, IRC, page 17.

¹¹² Exhibit A, IRC, page 17 (citing Gov. Code § 34090 which requires a two-year retention period).

¹¹³ Exhibit A, IRC, page 17.

¹¹⁴ Exhibit A, IRC, page 17.

¹¹⁵ Exhibit A, IRC, page 17.

¹¹⁶ Exhibit A, IRC, page 17.

¹¹⁷ Exhibit A, IRC, page 17.

audit not been put on hold for nine months, it would have had sufficient time to address the auditor's request for additional information which would have resulted in fewer reductions.¹¹⁸

State Controller's Office

The Controller acknowledges that whether Saturday is considered a business day affects the allowable cost calculations for care and maintenance costs (Finding 3).¹¹⁹ And, the Controller acknowledges that many animal shelters were operating under the assumption that they could count Saturday as a business day, but the *Purifoy* decision rendered that assumption incorrect.¹²⁰ The Controller notes that the definition of a business day is only one of several reasons for reduction in Finding 3, and that the claimant did not address "all of the elements that determine allowable costs for the Care and Maintenance cost component."¹²¹ The Controller does not specify what portion of the reduction is attributable to the definition of a business day.¹²²

With respect to unallowable employee hours associated with making animals available for adoption or redemption on a Saturday (Finding 4), the Controller asserts that the claimant included costs for employee hours and employee positions that were not reimbursable under the Parameters and Guidelines. The Controller states that the claimant "did not take into account the difference between the regular staffing needs and the increased staffing needs to comply with the requirement of this component."¹²³ The Controller reasoned that because the mandate is to remain open on Saturdays or weekday evenings for owner redemption or adoption, only the increased staff necessary for owner redemption or adoption activities is reimbursable; staff that would be caring for animals even during the hours the shelter is closed are not reimbursable.¹²⁴

With respect to overstated necessary and prompt veterinary care costs (Finding 7), the Controller found that the claimant claimed "estimated materials and supplies costs (\$488,137), claimed unsupported materials and supplies costs (\$608,849), claimed misstated and unallowable hours (\$732,515), and understated productive hourly rates (\$1,658)."¹²⁵ Even though the claimant provided additional documentation of veterinary supplies, the Controller reviewed this information and stated "[w]e concluded that we are unable to consider the medical expenses submitted for reimbursement, because the city did not determine what portion of the costs

¹¹⁸ Exhibit A, IRC, pages 16-17.

¹¹⁹ Exhibit B, Controller's Late Comments on the IRC, page 14.

¹²⁰ Exhibit B, Controller's Late Comments on the IRC, page 18.

¹²¹ Exhibit B, Controller's Late Comments on the IRC, page 18.

¹²² Exhibit A, IRC, pages 683-693.

¹²³ Exhibit A, IRC, page 694.

¹²⁴ Exhibit A, IRC, pages 694-695. Providing care and maintenance during the increased holding period, which could include a Saturday, is reimbursed under other components of the Parameters and Guidelines.

¹²⁵ Exhibit A, IRC, page 702.

actually related to the eligible animals and allowable treatments that took place during the required holding period.”¹²⁶

With respect to the claimant’s assertion that costs incurred for construction and renovation of its shelters should be reimbursed, the Controller first notes that the claimant “did not claim any costs during the audit period under the Acquisition of Additional Space and/or Construction of New Facilities cost component.” Only later, during the audit fieldwork, “the city inquired about the eligibility of costs it incurred for the construction and renovation of animal shelters under the mandated program.”¹²⁷ In addition, the Controller noted that in the November 2000 general election, the city’s voters passed Proposition F, “which allowed the city to issue bonds for the purposes of constructing new animal shelter facilities and fire stations.” The Controller found that “this non-discretionary revenue source was used to build the city’s animal shelters and none of the city’s discretionary general fund moneys were involved.” Accordingly, the Controller determined that “the city did not incur any increased costs to construct/remodel its animal shelters under Government Code section 17514.”¹²⁸

Finally, in response to the claimant’s assertion that the Controller placed “unreasonable time constraints” on the claimant, and the alleged burdens involved in producing sufficient documentation of costs within those time constraints, the Controller explains that audit staff repeatedly, consistently, and in painstaking detail, discussed with the claimant the reimbursement criteria, missing documentation, and the timeline for the release of the final audit report.¹²⁹ The Controller maintains that even though auditing staff changed during the course of the audit “we maintained regular communication with the city’s staff, made timely documentation requests, and held multiple status meetings...”¹³⁰ The Controller also stated in the audit report that “[s]ubsequent to the July 19, 2010 meeting, the city’s mandated cost consultant was no longer involved in the audit process (i.e., did not participate in any audit discussions with department representatives nor had any contact with SCO auditor...”¹³¹ The Controller asserts that its auditor-in-charge visited the claimant’s shelters during the week of October 19, 2010, and at that time “we provided department representatives with a detailed write-up of our preliminary findings...[including] a list of documentation still needed to complete calculations for training, computer equipment and software license renewal, care and maintenance, lost-and-found lists, and veterinary care.”¹³² The Controller further stated:

On November 23, 2010, we made another attempt to request documentation that had not yet been provided. This included the expenditure amounts for care and maintenance costs, veterinary expenditures relating to reimbursable activities, and

¹²⁶ Exhibit A, IRC, page 705.

¹²⁷ Exhibit A, IRC, page 709.

¹²⁸ Exhibit A, IRC, page 709.

¹²⁹ Exhibit A, IRC, pages 711-713.

¹³⁰ Exhibit B, Controller’s Late Comments on the IRC, page 25.

¹³¹ Exhibit A, IRC, page 712.

¹³² Exhibit A, IRC, page 712.

the proration analysis for the Chameleon software that relates to the mandated activities. All of these items were originally requested in July 2010.¹³³

The Controller also notes that the claimant's mandated cost consultant did not attend the exit conference meeting January 12, 2011. The Controller states that at that meeting, "we advised department representatives again that we would be issuing a final report no later than early April."¹³⁴ However, the Controller also states that after the report was issued, "we would still consider additional information that the city provided and adjust the final audit report as appropriate."¹³⁵ In conclusion, the Controller states that "[t]he department did not provide any more documentation to us after the exit meeting, up to the issuance of the draft report on March 10, 2011."¹³⁶

In response to the Draft Proposed Decision, the Controller "maintains that the reductions in costs identified above were consistent with the intent of the mandated program and the reimbursable criteria."¹³⁷ More specifically, the Controller argues that its analysis of eligible animals, and the exclusion of certain "birds" and "other animals" was not arbitrary, but was based on "extensive interviews at various animal shelters...and used animal shelter staff expertise to properly understand the animal data, categorize various animal populations without bias, and determine allowable animal populations that meet the criteria of the parameters and guidelines for this program."¹³⁸ Further, the Controller states that the audit report "included all examples of excluded animals or birds, regardless of the materiality level."¹³⁹ The Controller also explained that "[t]he claimant's database specifically identified an intake type as 'wildlife' and did not categorize wild animals primarily as 'stray' or 'abandoned' because in the vast majority of cases, these animals are not adoptable."¹⁴⁰ With respect to "rodents," which the Draft Proposed Decision analyzed as being too broad a category for disallowance, the Controller states that it "considered rodents excluded only if they were categorized as wildlife upon intake."¹⁴¹ Similarly, with respect to "birds, such as pigeons, doves, ducks, chickens, owls, pheasants, mallards, and gamefowls," the Controller states that "pigeons were taken in as predominantly 'wildlife,'" while "gamefowls were typically impounded under intake type 'evidence' and predominantly included fighting birds that were confiscated for humane reasons and were euthanized either because of their injuries or aggressive behavior."¹⁴² Thus, the Controller

¹³³ Exhibit A, IRC, page 713.

¹³⁴ Exhibit A, IRC, page 713.

¹³⁵ Exhibit A, IRC, page 713.

¹³⁶ Exhibit A, IRC, page 713.

¹³⁷ Exhibit F, Controller's Comments on the Draft Proposed Decision, page 1447.

¹³⁸ Exhibit F, Controller's Comments on the Draft Proposed Decision, page 1448.

¹³⁹ Exhibit F, Controller's Comments on the Draft Proposed Decision, page 1449.

¹⁴⁰ Exhibit F, Controller's Comments on the Draft Proposed Decision, page 1449.

¹⁴¹ Exhibit F, Controller's Comments on the Draft Proposed Decision, page 1449.

¹⁴² Exhibit F, Controller's Comments on the Draft Proposed Decision, pages 1449-1450.

asserts that its exclusions were based primarily on the categorization of animals as non-adoptable made at intake by shelter staff, and that these exclusions constituted less than two percent of the total animal records.¹⁴³

With respect to the exclusion of animals deemed treatable on arrival at the shelter but later euthanized before the end of the increased holding period because they became non-treatable or non-rehabilitatable, the Controller argues that the phrase “die during the increased holding period or are ultimately euthanized,” as it applies to the eligibility of animals for reimbursement, is not vague or in need of interpretation.¹⁴⁴ The Controller states that this phrase “was also consistent with the type of details captured in the claimant’s Chameleon database for all animal records.”¹⁴⁵ The Controller states that “the DPD described a hypothetical scenario of an animal coming in sick being deemed treatable, then non-rehabilitatable, and ultimately euthanized within the increased holding period as a result of its health changing.”¹⁴⁶ The Controller asserts that “[t]his scenario is simply impossible to track with the data being captured.” The Controller states that “the level of detail necessary to review each animal’s health status and progression of their disease prior to euthanasia simply isn’t available from the animal data statistics maintained in the claimant’s Chameleon database.”¹⁴⁷

Finally, with respect to the determination that the Controller’s use of an average number of holding period days may have resulted in the improper exclusion of animals that were held the correct number of days prior to euthanasia, the Controller argues that its audit “methodology is unbiased and mathematically sound...[and] claimant clearly agreed, as the claimed information also used the average increased holding period days as well to compute claimed costs.”¹⁴⁸ The Controller further states:

The Commission suggested in its DPD that the SCO should evaluate each animal’s intake information to determine the actual increased holding period of each animal. However, this suggestion assumes that an infinite amount of detail exists in each animal record and also assumes a practical ease of performing such calculations. In reality, it is practically impossible.

The claimant’s animal data averaged between 50,000 and 60,000 line items per fiscal year, as noted in our comments above. The animal census data contains each animal’s date of impoundment and the date of outcome. The Controller computed each animal’s total number of holding period days, but used an average number of reimbursable days to determine the allowable population of animals and to compute allowable costs.

¹⁴³ Exhibit F, Controller’s Comments on the Draft Proposed Decision, page 1451.

¹⁴⁴ Exhibit F, Controller’s Comments on the Draft Proposed Decision, page 1451.

¹⁴⁵ Exhibit F, Controller’s Comments on the Draft Proposed Decision, page 1452.

¹⁴⁶ Exhibit F, Controller’s Comments on the Draft Proposed Decision, page 1452.

¹⁴⁷ Exhibit F, Controller’s Comments on the Draft Proposed Decision, page 1452.

¹⁴⁸ Exhibit F, Controller’s Comments on the Draft Proposed Decision, page 1452.

In order to compute the actual increased holding period days for every animal on an individual basis, we would need to know what day of the week the animal was impounded. In order to do so, someone would have to manually open each animal record and check what day of the week an animal came into the shelter. They would then need to evaluate, based on the calendar of the specific week and year, the actual number of days in the increased holding period. Once the animal's eligibility was established, someone would need to compute each animal's allowable costs using the reimbursable days. This task would be impractical and most likely would not produce results materially different from using an average calculation.

The Commission suggested that using an average reimbursable days potentially excludes a marginal amount of "eligible animals." We concur. However, we believe that it is equally possible that the use of this average also includes an equal number of non-eligible animals as well. The use of a mathematical average assumes some outliers. But in this case, it provides the most reasonable and cost-effective way to analyze unusually large quantities of animal data. In fact, the large size of the animal population (as noted above) makes the use of an average value statistically more accurate and decreases the probability of error.¹⁴⁹

IV. Discussion

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to a local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁵⁰ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable

¹⁴⁹ Exhibit F, Controller's Comments on the Draft Proposed Decision, pages 1452-1453.

¹⁵⁰ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁵¹

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.¹⁵² Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’”...“In general...the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support...” [Citations.] When making that inquiry, the “ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ”¹⁵³

The Commission must review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with claimant.¹⁵⁴ In addition, section 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.¹⁵⁵

A. The Controller’s Exclusions of What It Deems “Ineligible Animals” Are Partially Incorrect as a Matter of Law, and Are Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support, Resulting in Some Incorrect Reductions in Findings 3 and 7 of the Audit Report.

The Parameters and Guidelines for the *Animal Adoption* program authorize local agencies to claim reimbursement for the costs of care and maintenance during the increased holding period for impounded stray or abandoned animals that “die during the increased holding period or are ultimately euthanized,” based on a formula for determining actual costs. The Parameters and Guidelines also authorize reimbursement for providing necessary and prompt veterinary care as

¹⁵¹ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁵² *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

¹⁵³ *American Bd. of Cosmetic Surgery, Inc., supra*, 162 Cal.App.4th 534, 547-548.

¹⁵⁴ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹⁵⁵ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

specified in the Parameters and Guidelines during the holding period for stray and abandoned animals that “die during the increased holding period or are ultimately euthanized.” Claimants are to calculate and claim their costs for these activities in part by determining the number of “stray or abandoned animals that die during the increased holding period or are ultimately euthanized.” The Controller calls this factor of the calculation “eligible animals” or “eligible animal population,” and determined that the claimant overstated costs by overstating the number of eligible animals for several reasons.¹⁵⁶

“Eligible animals” under the test claim statute means any stray or abandoned cat, dog, “rabbit, guinea pig, hamster, potbellied pig, bird, lizard, snake, turtle, or tortoise that is legally allowed as personal property.”¹⁵⁷ The following animals are excluded from “eligible animals” by statute or because the Commission found there were no increased costs under Government Code section 17556(d) due to fee authority sufficient to cover the costs of the program:

- “Animals that are irremediably suffering from a serious illness or severe injury.”¹⁵⁸
- Animals too severely injured to move or where a veterinarian is not available, in the field, and it would be more humane to dispose of the animal.¹⁵⁹
- “Newborn animals that need maternal care and have been impounded without their mother.”¹⁶⁰
- Animals for which fees sufficient to cover the costs of the program may be collected including:
 - Owner relinquished animals, and
 - Animals that are ultimately redeemed, adopted, or released to a nonprofit animal rescue or adoption organization.¹⁶¹

The Controller, in its audit and recalculation of allowable costs for care and maintenance and necessary and prompt veterinary care, states that the following animals were excluded from the population of “eligible animals”:

- Dogs and cats and other animals that were owner-surrendered or previously owned (only stray animals were included in the eligible population);

¹⁵⁶ Exhibit A, IRC, pages 688, 690, and 703 (Final Audit Report).

¹⁵⁷ Food and Agriculture Code sections 31108, 31752 and 31753. See also Parameters and Guidelines, amended January 26, 2006, pages 6-15.

¹⁵⁸ Food and Agriculture Code section 17006.

¹⁵⁹ Penal Code sections 597.1(e) and 597f(d).

¹⁶⁰ Food and Agriculture Code section 17006.

¹⁶¹ Exhibit G, Final Staff Analysis and Proposed Parameters and Guidelines Amendment, January 26, 2006, see pages 1630-1640.

- Dogs, cats, and other animals that were ultimately adopted, transferred, rescued, or redeemed (only those animals with the outcome of “died” or “euthanized” were reviewed);
- Dogs, cats, and other animals that went missing from their kennels, were stolen, or escaped;
- Dogs, cats, and other animals that were DOA [dead on arrival];
- Dogs, cats, and other animals that were euthanized as requested by owners or if euthanasia was required/requested (“Dispo Req” or “Euth Req”);
- Dogs, cats, and other animals that were euthanized for humane reasons (usually on day 1);
- Dogs, cats, and other animals that were suffering from a serious illness or severe injury (usually euthanized on day 1 or died on day 1);
- Newborn animals that need maternal care and were impounded without their mothers (usually died or were euthanized within the first few days; the excluded categories included “Unweaned” or “8 weeks unsustainable”);
- Ineligible other animals such as rodents, livestock, or wild animals;
- Ineligible birds, such as pigeons, doves, ducks, chickens, owls, pheasants, mallards, and gamefowls;
- Dogs and cats that died in the shelter’s kennels outside of increased holding period (days 1, 2, 3, and day 7 and beyond), as per the requirements of the mandate. (Local agencies are eligible to receive reimbursement to care for dogs and cats that *died during the increased holding period* [days 4, 5, and 6]);
- “Other” animals that died in the shelters’ kennels on day 7 and beyond (after the increased holding period). (Local agencies are eligible to receive reimbursement to care for other animals that *died during the increased holding period* [days 2, 3 through 6].); and
- Dogs, cats, and other animals that were euthanized during the holding period as per the requirements of the mandate. The agencies are eligible to receive reimbursement to care for dogs and cats and other animals that were *euthanized after the holding period* (day 7 of the holding period and beyond).¹⁶²

The Commission finds that some of the Controller’s exclusions of “eligible animals” are incorrect as a matter of law, and are arbitrary, capricious, or entirely lacking in evidentiary support.

1. The Controller’s exclusion of animals that the claimant categorized as wildlife, evidence, or otherwise non-adoptable at intake, is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

¹⁶² Exhibit A, IRC, pages 688-689 (pages 21 and 22 of the Audit Report).

The Parameters and Guidelines authorize reimbursement to provide care and maintenance for impounded “stray or abandoned” rabbits, guinea pigs, hamsters, pot-bellied pigs, birds, lizards, snakes, turtles, and tortoises legally allowed as personal property that die during the increased holding period or are ultimately euthanized, pursuant to Food and Agriculture Code section 31753 as follows:

Care and Maintenance for Impounded Stray or Abandoned Animals Specified in Food and Agriculture Code Section 31753 that Die During the Increased Holding Period or are Ultimately Euthanized (Food & Agr. Code, § 31753)

Beginning January 1, 1999 - Providing care and maintenance for four or six business days from the day after impoundment for impounded stray or abandoned rabbits, guinea pigs, hamsters, pot-bellied pigs, birds, lizards, snakes, turtles, and tortoises legally allowed as personal property that die during the increased holding period or are ultimately euthanized.

Exclusions

Eligible claimants are not entitled to reimbursement for the care and maintenance of the following population of animals:

- a. Stray or abandoned animals that are irremediably suffering from a serious illness or severe injury (Food & Agr. Code, § 17006);
- b. Newborn animals that need maternal care and have been impounded without their mothers (Food & Agr. Code, § 17006);
- c. Stray or abandoned animals too severely injured to move or where a veterinarian is not available and it would be more humane to dispose of the animal (Pen. Code, §§ 597.1, subd. (e), 597f, subd. (d));
- d. Owner relinquished animals; and
- e. Stray or abandoned animals that are ultimately redeemed, adopted, or released to a nonprofit animal rescue or adoption organization.¹⁶³

The Parameters and Guidelines also authorize reimbursement to provide prompt and necessary veterinary care for these animals.

The Controller’s audit report states, without explanation, that the following animals were excluded from the list of “eligible animals” for which reimbursement is allowed:

- Ineligible other animals such as rodents, livestock, or wild animals; and
- Ineligible birds, such as pigeons, doves, ducks, chickens, owls, pheasants, mallards, and gamefowls.¹⁶⁴

The Draft Proposed Decision concluded that the Controller’s stated exclusion of eligible animals was incorrect as matter of law, because some of these specified animals are allowed by state law

¹⁶³ Exhibit A, IRC, pages 72-73.

¹⁶⁴ Exhibit A, IRC, page 689.

as personal property unless restricted by local ordinance, and the Controller cited no law and made no findings specifying why the specific animals were excluded.

Food and Agriculture Code section 31753 provides, in pertinent part:

Any rabbit, guinea pig, hamster, pot-bellied pig, bird, lizard, snake, turtle, or tortoise legally allowed as personal property impounded in a public or private shelter shall be held for the same period of time, under the same requirements of care, and with the same opportunities for redemption and adoption by new owners or nonprofit...animal rescue or adoption organizations as cats and dogs.¹⁶⁵

The phrase “legally allowed as personal property” applies to all the animals listed in the statute. Under the rules of statutory construction, where a list of things is followed by a qualifying word or phrase, such as “legally allowed as personal property,” it is presumed that “qualifying words, phrases and clauses are to be applied to the words or phrases immediately preceding and are not to be construed as extending to or including others more remote.”¹⁶⁶ In that case, the phrase “legally allowed as personal property would apply only to its “last antecedent,” which in Section 31753 is “tortoises.” However, there is an exception, which applies in this case, that “[w]hen several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be applicable to all.”¹⁶⁷ Under that construction, “legally allowed as personal property” applies to the entire list, including “...bird, lizard, snake, turtle, or tortoise...” This latter construction is consistent with Section 1(c)(3) of the test claim statute (Statutes 1998, chapter 752), which states that the intent of the act includes extending public shelter responsibilities from dogs and cats to “other legal pets.”¹⁶⁸ In addition, several of the code sections reenacted or amended by Statutes 1998, chapter 752, state that it is the policy of the state of California “that *no adoptable animal* should be euthanized if it can be adopted into a suitable home.”¹⁶⁹

All property must be real or personal in nature,¹⁷⁰ and animals, to the extent they are legally allowed to be property, fall into the latter category.¹⁷¹ Even many types of wild animals may be legally allowed as personal property in certain circumstances.¹⁷² And whether a particular

¹⁶⁵ Food and Agriculture Code section 31753 (Stats. 1998, ch. 752) (emphasis added).

¹⁶⁶ *Lickter v. Lickter* (2010) 189 Cal.App.4th 712, 726 [quoting *White v. County of Sacramento* (1982) 31 Cal.3d 676, 680; *Board of Port Commrs. v. Williams* (1937) 9 Cal.2d 381, 389.].

¹⁶⁷ *Lickter v. Lickter* (2010) 189 Cal.App.4th 712, 726 [citing *People v. Corey* (1978) 21 Cal.3d 738, 742; (quoting *Wholesale T. Dealers v. National etc. Co.* (1938) 11 Cal.2d 634, 659).].

¹⁶⁸ Statutes 1998, chapter 752, section 1.

¹⁶⁹ See, e.g., Civil Code section 1834.4; Food and Agriculture Code section 17005; Penal Code section 599d (as added or amended, Stats. 1998, ch. 752) (emphasis added).

¹⁷⁰ Civil Code section 657.

¹⁷¹ See Civil Code sections 658-660, 662 (further defining real property); see also Civil Code section 663 (stating that all property which is not real is defined as personal).

¹⁷² See, e.g., Civil Code section 656 and California Code of Regulations, title 14, section 671.

animal is “legally allowed as personal property” can be a complex issue of law and fact. For example, the test claim statute mandates the claimant to hold rabbits. Rabbits may be classified as livestock,¹⁷³ pets,¹⁷⁴ or wild animals¹⁷⁵ depending on the breed and the owner. The test claim statute also protects and mandates the local agency to hold guinea pigs and hamsters, which are classified as “rodents,” which the Controller’s audit report states were excluded. Additionally, the test claim statute expressly requires local agencies to hold stray or abandoned “birds...legally allowed as personal property” pending adoption or redemption. The statute does not distinguish between types of birds required to be held, some of which may be poultry (e.g. chickens and ducks), pets,¹⁷⁶ or wild animals,¹⁷⁷ depending on the breed and owner. However, the Controller’s audit report excluded “birds, such as pigeons, doves, ducks, chickens, owls, pheasants, mallards, and gamefowls,” without identifying any law rendering these birds illegal to possess as pets or specifying the birds actually held by the claimant.

Therefore, the Draft Proposed Decision found that the Controller’s reduction of costs for care and maintenance (Finding 3) and necessary and prompt veterinary care (Finding 7) associated with the exclusion of “[i]neligible other animals such as rodents, livestock, or wild animals;” and “[i]neligible birds, such as pigeons, doves, ducks, chickens, owls, pheasants, mallards, and gamefowls,” was incorrect as a matter of law, and arbitrary, capricious, or entirely lacking in evidentiary support.

On September 15, 2016, the Controller filed comments on the Draft Proposed Decision arguing that the exclusion of these other animals was correct as a matter of law and not arbitrary or capricious or without evidentiary support. The Controller states that it analyzed 351,221 animal records kept by the claimant on its Chameleon Database system for the audit period.¹⁷⁸ During the audit, the claimant provided a listing of all animals from the Database, which included the following fields: animal ID number, intake date, intake type (primarily stray, owner surrendered,

¹⁷³ “Livestock” is undefined in California law, but rabbits are listed as “specialty livestock” by the United States Department of Agriculture, See <https://www.nal.usda.gov/afsic/specialty-livestock>.

¹⁷⁴ See California Penal Code section 597l(c)(1): (“Pet animals” means dogs, cats, monkeys and other primates, *rabbits*, birds, guinea pigs, hamsters, mice, snakes, iguanas, turtles, and any other species of animal sold or retained for the purpose of being kept as a household pet.) (Emphasis added.)

¹⁷⁵ See, e.g. 50 Code of Federal Regulations Part 17, listing the riparian brush rabbit as an endangered species.

¹⁷⁶ See California Penal Code section 597l(c)(1): “‘Pet animals’ means dogs, cats, monkeys and other primates, rabbits, *birds*, guinea pigs, hamsters, mice, snakes, iguanas, turtles, and any other species of animal sold or retained for the purpose of being kept as a household pet.” (Emphasis added.)

¹⁷⁷ Title 50 Code of Federal Regulations, section 21.13.

¹⁷⁸ Exhibit F, Controller’s Comments on the Draft Proposed Decision, pages 1448-1449.

wildlife, foster, evidence, etc.), primary breed, and outcome date and type.¹⁷⁹ The Controller analyzed the data by sorting various fields and grouping the population into subgroups, from which the Controller determined which animals met the requirements of the mandated program.¹⁸⁰ Any animal record excluded from reimbursement “potentially contained multiple fields with non-reimbursable components.”¹⁸¹ From this review, the Controller made the following findings:

- The Controller excluded animals (including rodents and pigeons) categorized by the claimant as “wildlife” (as distinguished from the claimant’s other intake type of stray or owner surrendered) since these animals do not meet the definition of “stray or abandoned.”
- The Controller excluded gamefowls that were impounded under intake type “evidence” (as distinguished from the claimant’s other intake type of stray or owner surrendered). These birds predominately included fighting birds that were confiscated for humane reasons and were euthanized because of their injuries or aggressive behavior. These birds were not stray or abandoned.
- The Controller allowed all “stray and abandoned” animals, including rabbits, guinea pigs, and hamsters, if the animal died during the increased holding period or was ultimately euthanized.¹⁸²

The claimant has not responded to the Controller’s comments or sought to further clarify this issue.

The Commission finds, absent evidence to the contrary, that the Controller’s exclusion of animals based on the claimant’s categorization as non-adoptable at intake was correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The Legislature enacted the test claim statute (Senate Bill 1785) in an attempt to end the euthanasia of adoptable and treatable stray animals by the year 2010. In this respect, the test claim statute expressly identifies the state policy that “no adoptable animal should be euthanized if it can be adopted into a suitable home” and that “no treatable animal should be euthanized.”¹⁸³ Civil Code section 1834.4(a) states that:

It is the policy of the state that no adoptable animal should be euthanized if it can be adopted into a suitable home. Adoptable animals include only those animals eight weeks of age or older that, at or subsequent to the time the animal is impounded or otherwise taken into possession, have manifested no sign of behavioral or temperamental defect that could pose a health or safety risk or

¹⁷⁹ Exhibit F, Controller’s Comments on the Draft Proposed Decision, page 1448.

¹⁸⁰ Exhibit F, Controller’s Comments on the Draft Proposed Decision, page 1448.

¹⁸¹ Exhibit F, Controller’s Comments on the Draft Proposed Decision, page 1448.

¹⁸² Exhibit F, Controller’s Comments on the Draft Proposed Decision, pages 1449-1450.

¹⁸³ See, Civil Code section 1834.4; Food and Agriculture Code section 17005; and Penal Code section 599d.

otherwise make the animal unsuitable for placement as a pet, and have manifested no sign of disease, injury, or congenital or hereditary condition that adversely affects the health of the animal that is likely to adversely affect the animal's health in the future.

Consistent with this purpose, the Parameters and Guidelines authorize reimbursement for the "Care and Maintenance for Impounded *Stray or Abandoned* Animals Specified in Food and Agriculture Code Section 31753."

Here, based on the Controller's comments, the claimant identified animals that were wildlife or evidence, based on its determination that these animals were not stray or abandoned as pets and, thus, not suitable for adoption. This exclusion is correct as a matter of law. In addition, there is no evidence in the record that the Controller's interpretation of the claimant's records is wrong and claimant has not submitted any comments contradicting the Controller's comments on the Draft Proposed Decision.

Accordingly, the exclusion of animals based on the claimant's categorization of wildlife, evidence, or otherwise non-adoptable animals at intake was correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

2. The exclusion of animals deemed treatable upon arrival at the shelter and later euthanized during the increased holding period because they became non-rehabilitatable, is incorrect as a matter of law. Any reduction of costs on this basis should be reinstated to the extent the claimant can provide source documents that shows the evidence of the validity of such costs and their relationship to the mandate.

The Controller excludes from reimbursement all costs incurred for the care and maintenance and prompt and necessary veterinary care of dogs, cats, and other animals that were euthanized *during* the increased holding period. The Controller states "agencies are eligible to receive reimbursement to care for dogs and cats and other animals that were *euthanized after the holding period*."¹⁸⁴ The Controller bases its finding to exclude these animals on the plain language of the Parameters and Guidelines, which provides that local agencies are eligible to receive reimbursement for care and maintenance costs and for necessary and prompt veterinary costs only for those animals "that die during the increased holding period or are ultimately euthanized." The Controller maintains that these costs are only eligible for reimbursement for those animals that die of natural causes during the increased holding period or are euthanized *after* the increased holding period. Thus, the Controller argues, if an animal is euthanized during the increased holding period, then no costs for that animal are eligible for reimbursement.

The Commission finds that the Controller's interpretation of the Parameters and Guidelines is not correct. The Parameters and Guidelines provide that local agencies are eligible to receive reimbursement for care and maintenance and prompt and necessary veterinary costs only for those animals "that die during the increased holding period or are ultimately euthanized." The plain language of the phrase "animals that die during the increased holding period or are ultimately euthanized" is vague and ambiguous because the word "die" can include both death by natural causes and death by euthanasia. Since the plain language is not clear, it is necessary

¹⁸⁴ Exhibit A, IRC, page 689.

to review the decisions adopted by the Commission on this issue and the statutory scheme of the test claim statutes.¹⁸⁵

The phrase “ultimately euthanized” was used in the Test Claim Statement of Decision only to identify those animals whose owners are unknown or are not adopted, meaning that the costs for care, treatment, and veterinary services during the holding period for this group of animals could not be recovered by fee revenue. The Statement of Decision states in relevant part:

Fee Authority – Government Code Section 17556, Subdivision (d). Government Code section 17556, subdivision (d), provides that there shall be no costs mandated by the state if the local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program.

In the present case, local agencies do have the authority, under certain circumstances, to assess fees upon the owner of an impounded animal for the care and maintenance of the animal. For example, pursuant to Civil Code section 2080, any public agency that takes possession of an animal has the authority to charge the owner, *if known*, a reasonable charge for saving and taking care of the animal.

Similarly, Penal Code sections 597f and 597.1 also allow local agencies to pass on the costs of caring for abandoned or seized animals to their owners by providing that “the cost of caring for the animal shall be a lien on the animal until the charges are paid.”

Moreover, Penal Code section 597f allows the cost of hospital and emergency veterinary services provided for impounded animals to be passed on to the owner, if known. [Footnote omitted.]

The fee authority granted under the foregoing authorities applies only if the owner is known. Thus, local agencies have the authority to assess a fee to care and provide treatment for animals relinquished by their owners pursuant to Food and Agriculture Code section 31754. Local agencies also have the authority to assess a fee for the care and treatment of impounded animals that are ultimately redeemed by their owners. Under such circumstances, the Commission finds that the fee authority is sufficient to cover the increased costs to care, maintain, and provide necessary veterinary treatment for the animal during the required holding period since the “cost of caring” for the animal can be passed on to the owner.

Accordingly, pursuant to Government Code section 17556, subdivision (d), the Commission finds that there are no costs mandated by the state for the care, maintenance and necessary veterinary treatment of animals relinquished by their owners or redeemed by their owners during the required holding period.

¹⁸⁵ The Parameters and Guidelines are regulatory in nature (*Clovis Unified School Dist. v. Chiang* (2010) 188 Cal. App. 4th 794, 799), and, thus, must be construed in accordance with the rules of statutory and regulatory construction.

The Commission further finds that there are no costs mandated by the state under Government Code section 17556, subdivision (d), for the care, maintenance, and treatment of impounded animals that are ultimately adopted by a new owner; for the care, maintenance, and treatment of impounded animals that are requested by a nonprofit animal rescue or adoption organization; or for the administrative activities associated with releasing the animal to such organizations.

The test claim legislation gives local agencies the authority to assess a standard adoption fee, in addition to any spay or neuter deposit, upon nonprofit animal rescue or adoption organizations that request the impounded animal prior to the scheduled euthanization of the animal. [Footnote omitted.]

The claimant contends that the “standard adoption fee” is not sufficient to cover the costs for animals adopted or released to nonprofit animal rescue or adoption organizations. However, based on the evidence presented to date, the Commission finds that local agencies are not prohibited by statute from including in their “standard adoption fee” the costs associated with caring for and treating impounded animals that are ultimately adopted by a new owner or released to nonprofit animal rescue or adoption organizations, and the associated administrative costs. Rather, local agencies are only prohibited from charging nonprofit animal rescue or adoption organizations a higher fee than the amount charged to individuals seeking to adopt an animal.

However, the fees recovered by local agencies under the foregoing authorities do *not* reimburse local agencies for the care and maintenance of stray or abandoned animals, or the veterinary treatment of stray or abandoned animals (other than cats and dogs) during the holding period required by the test claim legislation when:

- The owner is unknown;
- The animal is not adopted or redeemed; or
- The animal is not released to a nonprofit animal rescue or adoption organization.

Thus, the fee authority is not sufficient to cover the increased costs for care, maintenance, and treatment during the required holding period for those animals that are ultimately euthanized. Under such circumstances, the Commission finds that that Government Code section 17556, subdivision (d), does not apply to deny this claim. Rather, local agencies may incur increased costs mandated by the state to care for these animals during the required holding period.¹⁸⁶

There was no discussion of animals that die during the increased holding period in the Test Claim Statement of Decision.

¹⁸⁶ Exhibit G, Test Claim Statement of Decision, adopted January 25, 2001, pages 1574-1576. (Emphasis added.)

During the adoption of the Parameters and Guidelines, however, the County of Fresno requested reimbursement for animals that die during the increased holding period while being held pending adoption or euthanization as follows:

Fresno County recommends that reimbursements that apply to animals that are ultimately euthanized also apply to those animals that die while being held pending adoption or euthanization. If the animal dies pending adoption, obviously no adoption fees can be paid, and thus there is no revenue pertaining to that animal. If the animal dies pending euthanasia, the animal still had to be held until its untimely demise.¹⁸⁷

The staff analysis adopted for the Parameters and Guidelines agreed with the request as follows:

If a stray or abandoned animal dies during the time an agency is required to hold that animal, the agency would still be required by the state to incur costs to care and maintain the animal, and to provide “necessary and prompt veterinary care” for the animal before the animal died. The agency cannot recover those costs from the adoptive owner since the animal was never adopted or released to a nonprofit adoption organization. Thus, staff agrees with the County that these costs are eligible for reimbursement.¹⁸⁸

Thus, the Parameters and Guidelines define the mandated population of animals for purposes of calculating reimbursement for the care and maintenance, and necessary and prompt veterinary care, as those that “die during the holding period or are ultimately euthanized.”

However, neither the Parameters and Guidelines, nor the analyses adopted for the Parameters and Guidelines, define what it means to “die” during the holding period. And the decisions do *not* limit reimbursement to animals that die of natural causes during the increased holding period. Such a limitation would be contrary to the statutory scheme.

Food and Agriculture Code section 17006 provides that the holding period does not apply to animals that are irremediably suffering from a serious illness or severe injury or to newborn animals that need maternal care and have been impounded without their mothers. Such animals may be euthanized without being held for owner redemption or adoption. A related statute addresses the issue of a “treatable” animal’s health changing over the course of impoundment. Food and Agricultural Code section 17005 reads in its entirety:

(a) It is the policy of the state that no adoptable animal should be euthanized if it can be adopted into a suitable home. Adoptable animals include only those animals eight weeks of age or older that, at or subsequent to the time the animal is impounded or otherwise taken into possession, have manifested no sign of a behavioral or temperamental defect that could pose a health or safety risk or otherwise make the animal unsuitable for placement as a pet, and have manifested

¹⁸⁷ Exhibit G, Proposed Parameters and Guidelines and Analysis, Hearing Item 4, February 28, 2002, page 1590.

¹⁸⁸ Exhibit G, Proposed Parameters and Guidelines and Analysis, Hearing Item 4, February 28, 2002, page 1591.

no sign of disease, injury, or congenital or hereditary condition that adversely affects the health of the animal or that is likely to adversely affect the animal's health in the future.

(b) It is the policy of the state that no treatable animal should be euthanized. A treatable animal shall include any animal that is not adoptable but that could become adoptable with reasonable efforts. This subdivision, by itself, shall not be the basis of liability for damages regarding euthanasia.¹⁸⁹

Section 17005, thus, expressly contemplates an animal's health changing over the course of impoundment. Read together with section 17006, the two statutes require a shelter to hold an animal which is ill or injured— but not an animal which is irremediably suffering — for the relevant holding period on the ground that the animal's health may improve. The stated intent of the test claim statute was to require shelters to care for all pets and to shift the focus from euthanasia to owner redemption or adoption:

According to the author, the purpose of this bill is: (1) to make it clear that animal shelters and private individuals have the same responsibility to animals under their care; (2) to reduce the number of adoptable animals euthanized at shelters by shifting the focus of shelters from killing to owner redemption and adoption; (3) to give owner-relinquished pets the same chance to live as stray animals by providing for uniform holding periods; (4) to establish clearer guidelines for the care and treatment of animals in shelters; and (5) *to require shelters to care for all pets.*

The author argues that too many adoptable animals are euthanized by shelters and that the proposed changes will decrease the frequency of this tragedy.

Further, the author argues that taxpayers who own legally allowed pets other than cats and dogs should be treated the same as taxpayers who own cats and dogs.¹⁹⁰

Consistent with the statutory scheme, the Parameters and Guidelines expressly contemplate an animal's health changing over the course of impoundment from "treatable" to "adoptable." Section IV.(B)(8) of the Parameters and Guidelines allows reimbursement for the initial physical examination of a stray or abandoned animal to determine the animal's baseline health status and classification as "adoptable, treatable, or non-rehabilitatable." The Parameters and Guidelines further authorize reimbursement for the administration of a wellness vaccine to "treatable" or "adoptable" animals, veterinary care to stabilize and/or relieve the suffering of a "treatable" animal, and veterinary care intended to remedy any applicable disease, injury, or congenital or hereditary condition that adversely affects the health of a "treatable" animal until the animal becomes "adoptable."

Even with veterinary care, the condition of the animal can change during the increased holding period and the animal can become non-rehabilitatable. If that occurs, the animal is not "adoptable" or "treatable" and may be euthanized under the law. Therefore, to deny

¹⁸⁹ Emphasis added.

¹⁹⁰ Senate Judiciary Committee Analysis of S.B. 1785 (1997-1998 Regular Session) (Hearing Date: April 21, 1998), page 3-4. (Emphasis added.)

reimbursement for the costs incurred during the increased holding period for an animal that becomes non-rehabilitatable and that has to be euthanized during, but before the end of, the increased holding period conflicts with the test claim statute and the Parameters and Guidelines. The Commission finds that reimbursement is required under these circumstances.

However, in response to the Draft Proposed Decision, the Controller continues to contend that this audit exclusion is correct as a matter of law. The Controller further argues that “the level of detail necessary to review each individual animal’s health status and progression of their disease prior to euthanasia simply isn’t available from the animals data statistics maintained in the claimant’s Chameleon database.” Accordingly, the Controller maintains that “it is impossible to determine whether the animals euthanized for medical reasons would fit in the hypothetical scenario described [above].”¹⁹¹

As indicated above, the Commission finds the Controller’s interpretation of the mandate is incorrect as a matter of law and that claimants are eligible to receive reimbursement to provide care and maintenance to an animal during the increased holding period if the animal was deemed treatable and adoptable at intake, but became non-rehabilitatable and was euthanized *during* the increased holding period. *However*, to receive reimbursement, section VI. of the Parameters and Guidelines requires claimants to provide source documents that show the evidence of the validity of such costs and their relationship to the mandate. The supporting documentation must be kept on file by the agency during the audit period required by Government Code section 17558.5. In this respect, claimants are required by Food and Agriculture Code section 32003 to maintain records on animals that are taken up, euthanized, or impounded. Such records shall identify the date the animal was taken up, euthanized, or impounded; the circumstances surrounding these events; and the names of the personnel performing these activities.¹⁹² The Parameters and Guidelines are regulatory in nature and are binding on the parties.¹⁹³

The Controller’s comments on the Draft Proposed Decision suggest that the claimant’s database does not contain source documents that show the evidence of the validity of these costs. However, since the Controller took the position that reimbursement was not legally required for any animal euthanized during the increased holding period, it is unclear whether the Controller specifically requested documents to support the costs incurred for these animals. The claimant did not file comments on the Draft Proposed Decision and has not sought to further clarify this issue. Instead, the claimant’s IRC generally contends that it was denied the necessary time to submit additional material or else “it would have had enough time to address all of the Controller’s requests for additional information.”¹⁹⁴

Accordingly, any reduction of costs relating to the exclusion of animals deemed treatable upon arrival at the shelter and later euthanized during the increased holding period because they

¹⁹¹ Exhibit F, Controller’s Comments on the Draft Proposed Decision, page 1452.

¹⁹² It is not clear from the record whether the Controller actually requested these records from the claimant based on the Controller’s interpretation that such costs were not reimbursable.

¹⁹³ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

¹⁹⁴ Exhibit A, IRC, pages 16-18.

became non-rehabilitatable is incorrect as a matter of law. Such costs are reimbursable to the extent the claimant can provide source documents to prove the validity of such costs.

3. The Commission and the Controller are bound by the *Purifoy* decision and, thus, the Controller's exclusion of animals that were euthanized too early because Saturday was counted as a business day for the required holding period, is also correct as a matter of law. However, the Controller's recalculation of costs using an average number of reimbursable days is incorrect as a matter of law, and is arbitrary, capricious, and entirely lacking in evidentiary support to the extent it results in an exclusion of "eligible animals" held for the time required under *Purifoy*.

As indicated above, the Controller excluded "dogs, cats, and other animals that were euthanized during the holding period as per the requirements of the mandate. The agencies are eligible to receive reimbursement to care for dogs and cats and other animals that were *euthanized after the holding period* (day 7 of the holding period and beyond)."¹⁹⁵ Animals may have been euthanized during the holding period because of claimant's misinterpretation of the required holding period in conflict with the Court of Appeal's decision in *Purifoy*, which held that Saturday is not a "business day" for purposes of calculating the required holding period under the test claim statutes before a stray or abandoned dog can be adopted or euthanized.¹⁹⁶ Before the decision was issued, many local agencies were operating under the assumption that Saturday was a "business day" that could be counted as part of the holding period, which resulted in the disposal of some animals at least one day too early.¹⁹⁷ Pursuant to the *Purifoy* decision, the Controller excluded those animals from the number of "eligible animals that die during the holding period or are ultimately euthanized," because they were disposed of at least one day too early. Thus, no reimbursement for the costs for care and maintenance or necessary and prompt veterinary care was allowed for those animals that were euthanized during the increased holding period.

The Commission finds that the court's interpretation of "business day" in *Purifoy* is binding, and that the Controller's exclusion of Saturday as a business day when calculating the increased holding period is correct as a matter of law. Thus, except in the circumstances described below, the Controller's exclusion of animals that were euthanized too early because Saturday was counted as a business day for the required holding period, is also correct as a matter of law. However, the Controller's recalculation of care and maintenance costs using an average number of reimbursable days is incorrect as a matter of law, and is arbitrary, capricious, and entirely lacking in evidentiary support, to the extent it results in an exclusion of "eligible animals" held for the time required under *Purifoy*.

- a) The court's interpretation of "business day" in *Purifoy* is binding and, thus, the Controller's exclusion of Saturday as a business day when calculating the increased holding period is correct as a matter of law. Therefore, the exclusion of animals that

¹⁹⁵ Exhibit A, IRC, pages 688-689 (pages 21 and 22 of the Audit Report).

¹⁹⁶ *Purifoy v. Howell* (2010) 183 Cal.App.4th 166.

¹⁹⁷ Exhibit B, Controller's Late Comments on the IRC, page 1005.

were euthanized too early because Saturday was counted as a business day for the required holding period, is also correct as a matter of law.

The court in *Purifoy* held that Saturday is not a “business day” for purposes of calculating the required holding period. In that case, Plaintiff Veena Purifoy’s dog Duke was impounded on a Thursday, and adopted the following Wednesday by a new owner (Duke was returned to Purifoy). The shelter, Contra Costa County Animal Services, counted the required holding period for Duke under section 31108 beginning Friday (the day after impoundment), Saturday (day 2), Tuesday (day 3), and Wednesday (day 4). The shelter was closed on Sunday and Monday, and did not count those as business days, by its own admission.¹⁹⁸ The court examined the meaning of “business days” elsewhere in state law and in case law, and found that sometimes “business day” includes Saturdays, but sometimes it does not. The court reasoned that the purpose of the statute was to promote a longer holding period for animal adoption and redemption, and that excluding Saturday as a business day would generally mean extending the holding period by one day. Thus, the court held “in light of our obligation to choose a construction that most closely comports with the Legislature’s intent and promotes, rather than defeats, the statute’s general purposes, we conclude that ‘business days’ in section 31108(a) means Monday through Friday, the meaning most commonly used in ordinary discourse.”¹⁹⁹ The court applied this interpretation to the case of Duke, and concluded that the shelter in question had not held the animal for the required number of business days before permitting his adoption to a new owner.²⁰⁰

Here, applying the *Purifoy* decision, the Controller determined that the number of “eligible animals” was overstated, because the claimant incorrectly calculated the holding period to include Saturdays and thus euthanized at least some number of animals one day too early. For example, a dog impounded on a Thursday, in a shelter that stays open weekend hours, would be subject to a four day holding period beginning on Friday, excluding Saturday and Sunday, and through the close of business on Wednesday; if the shelter counted Saturday as a business day, the holding period for the same dog would end a day earlier. The Controller maintains that application of the *Purifoy* decision is appropriate because the decision clarified the legal definition of a business day “as of the date that the applicable statute was enacted in 1998.”²⁰¹ The Controller further explains:

We acknowledge that many animal shelters were operating under the assumption that they could count Saturday as a business day to calculate the holding period of an animal. However, the court’s decision declared that this assumption was incorrect.²⁰²

¹⁹⁸ *Purifoy v. Howell* (2010) 183 Cal.App.4th 166, 171-172.

¹⁹⁹ *Purifoy v. Howell* (2010) 183 Cal.App.4th 166, 182.

²⁰⁰ *Purifoy v. Howell* (2010) 183 Cal.App.4th 166.

²⁰¹ Exhibit B, Controller’s Late Comments on the IRC, page 1005.

²⁰² Exhibit B, Controller’s Late Comments on the IRC, page 1005.

The claimant strenuously protests the Controller's application of the *Purifoy* holding. The claimant maintains that its calculation of the holding period was based on a reasonable interpretation of the test claim statute and the Parameters and Guidelines, and that the Controller's application of the *Purifoy* holding to recalculate the increased holding period, and the resulting adjustment to the population of eligible animals, is an unfair and unreasonable retroactive application of the law. The claimant notes that "*Purifoy* is not a decision of the Commission nor is it a decision to which the Commission was a party."²⁰³ Additionally, the claimant notes that there has been no subsequent amendment to the Parameters and Guidelines, or request for a new test claim decision, and therefore the effect of the decision on the Parameters and Guidelines has not been analyzed by the Commission.²⁰⁴

The claimant argues that although judicial decisions are generally given retroactive effect because the court is said to interpret the law as it always was, rather than to alter it, there are several exceptions to the general rule which apply in this instance.²⁰⁵ Specifically, claimant asserts that the change is procedural, not substantive; that retroactive application of *Purifoy* would produce unjust results with respect to local governments that are subject to audit; and that retroactive application cannot achieve the goal of extending the holding period for animals long since retrieved, adopted, or euthanized.²⁰⁶ Furthermore, the claimant argues that the Legislature has, by enacting Statutes 2011, chapter 97, since clarified by subsequent statute that a "business day" for purposes of the relevant Food and Agriculture Code sections "includes any day that a public or private shelter is open to the public for at least four hours, excluding state holidays." The claimant asserts that this legislative change was an attempt to correct the interpretation of *Purifoy*.²⁰⁷ The claimant argues that these precedents provide "sufficient reason for the Commission to reverse the SCO as to the retroactive application of the *Purifoy* case to the instant audit and reimburse any and all attendant costs."²⁰⁸

It is undisputed that the Commission was not a party to the *Purifoy* matter, and that the court did not expressly address the effect of its decision on mandate reimbursement. And, as both the claimant and the Controller acknowledge, there has been no amendment to the Parameters and Guidelines, and no request for amendment.²⁰⁹ It is also undisputed that the Commission did not define "business day" as used in the plain language of the test claim statutes in either the Test Claim Statement of Decision or the Parameters and Guidelines.

However, the court's interpretation of "business day" is binding. The interpretation of a statute is an exercise of the judicial power the Constitution assigned to the courts, and constitutes the

²⁰³ Exhibit A, IRC, page 11.

²⁰⁴ Exhibit A, IRC, page 11.

²⁰⁵ Exhibit A, IRC, page 11.

²⁰⁶ Exhibit A, IRC, page 12 (citing *Camper v. Workers' Comp. Appeals Bd.* (1992) 3 Cal.4th 679).

²⁰⁷ Exhibit A, IRC, page 13.

²⁰⁸ Exhibit A, IRC, page 13.

²⁰⁹ Exhibit A, IRC, page 11; Exhibit B, Controller's Late Comments on the IRC, page 17.

authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.²¹⁰ This is why judicial decisions are normally said to have retroactive effect, because the court is interpreting the law, rather than making new law.²¹¹ Moreover, where a judicial decision is limited to prospective effect, the court will exercise equitable authority and, based on the facts of a particular case, will so state that its decision operates prospectively only. Indeed, in the principal case cited by the claimants discussing retroactivity, the court explains that “[a] court may decline to follow the standard rule when retroactive application of a decision would raise substantial concerns about the effects of the new rule on the general administration of justice, or would unfairly undermine the reasonable reliance of parties on the previously existing state of the law.”²¹² “In other words,” the Court continued, “courts have looked to the ‘hardships’ imposed on parties by full retroactivity, permitting an exception only when the circumstances of a case draw it apart from the usual run of cases.”²¹³ Unlike the courts, the Commission’s jurisdiction is limited, as a quasi-judicial agency created by statute, and the Commission has no authority to do equity.²¹⁴ Absent a statement by the court that *Purifoy* should be limited in its application, the Commission and the Controller are bound to apply the court’s definition of “business day” for purposes of the test claim statute particularly where, as here, it does not conflict with the Parameters and Guidelines. Under the doctrine of stare decisis, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction.²¹⁵

Furthermore, even though *Purifoy* only directly and expressly defines “business day” for purposes of section 31108 (the holding period for dogs), the court’s analysis and conclusion apply with equal force to sections 31752 and 31753 (holding periods for cats and for “other animals,” respectively). The California Supreme Court has declared that “[a] statute that is modeled on another, and that shares the same legislative purpose is in *pari materia* with the other, and should be interpreted consistently to effectuate congressional intent.”²¹⁶ Accordingly, Food and Agriculture sections 31752 and 31753 should be interpreted consistently with section 31108, because all three code sections provide for the same holding period for different animals, and all three were enacted within the test claim statute.

Moreover, even though the Legislature amended the code after the decision in *Purifoy* was issued to state that any day that a shelter is open for four or more hours is a “business day,” this later amendment by the Legislature cannot be interpreted as the Legislature’s declaration of the

²¹⁰ *McClung v. Employment Development Department* (2004) 34 Cal.4th 467, 473; *Carter v. California Department of Veteran Affairs* (2006) 38 Cal.4th 914, 922.

²¹¹ See *Newman v. Emerson Radio Corp.*, (1989) 48 Cal.3d 973, 978 (“The general rule that judicial decisions are given retroactive effect is basic in our legal tradition.”).

²¹² *Newman*, *supra*, 48, Cal.3d 973, 983 (emphasis added).

²¹³ *Ibid* (emphasis added).

²¹⁴ *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

²¹⁵ *Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d. 450, 454.

²¹⁶ *American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1129.

original existing law. When the court “‘finally and definitively’ interprets a statute, the Legislature does not have the power to then state that a later amendment merely declared existing law.”²¹⁷ The later amendment goes into effect only when the statute is operative and effective, in this case on January 1, 2012, many years after the fiscal years at issue in this IRC.

Accordingly, the Controller’s exclusion of Saturday as a business day when calculating the increased holding period is correct as a matter of law. Thus, the exclusion from the population of “eligible animals” those animals that were euthanized too early because Saturday was counted as a business day for the required holding period, is also correct as a matter of law.

b) However, the Controller’s recalculation of the increased holding period using an average number of reimbursable days is incorrect as a matter of law, and is arbitrary, capricious, and entirely lacking in evidentiary support, to the extent the recalculation results in an exclusion of “eligible animals” held for the duration required under Purifoy.

The Parameters and Guidelines provide for a formula for reimbursement of care and maintenance that requires multiplying the cost per animal per day by the number of “eligible animals,” and by “each reimbursable day” in the increased holding period. The Parameters and Guidelines further allow reimbursement for the necessary and prompt veterinary care for each “eligible animal” during the increased holding period. But the actual number of calendar days of the holding period is not a constant, as it depends on the day of impoundment. The Parameters and Guidelines state that for dogs and cats the reimbursable holding period “shall be measured by calculating the difference between three days from the day of capture, and four or six business days from the day after impoundment” (four business days for shelters that choose to make animals available for owner redemption on a weekend day or weekday evening). For “other animals,” the reimbursable holding period is four or six business days from the day after impoundment, because prior law did not define a specific holding period.²¹⁸

Assuming a local agency, like the claimant, makes dogs and cats available for owner redemption on a weekend day or weekday evening and is thus subject to only the four business day holding period for dogs and cats, the increased holding period operates as follows (the 72 hour holding period for dogs and cats under prior law is shaded in each case, and the day of impoundment is indicated by “Imp”):

Mon	Tues	Wed	Thurs	Fri	Sat	Sun	Mon	Tues	Wed	Thurs
Imp	One	Two	Three	Four						
	Imp	One	Two	Three			Four			
		Imp	One	Two			Three	Four		
			Imp	One			Two	Three	Four	

²¹⁷ *McClung v. Employment Development Department* (2004) 34 Cal.4th 467, 473; *Carter v. California Department of Veteran Affairs* (2006) 38 Cal.4th 914, 922.

²¹⁸ Exhibit G, Proposed Parameters and Guidelines and Analysis, Hearing Item 4, February 28, 2002, page 1591.

				Imp			One	Two	Three	Four
					Imp		One	Two	Three	Four
						Imp	One	Two	Three	Four

The chart does not count Saturday as a business day, in accordance with *Purifoy*, or Sunday.²¹⁹ As it plainly appears, the *increased* holding period for dogs and cats ranges from two to four calendar days, depending on the day of the week that an animal is first impounded. An animal impounded on a Monday or Sunday would be subject to a two day increased holding period, while an animal impounded on a Thursday or a Friday would be subject to a four day increased holding period, because Saturday and Sunday cannot be counted.

For a local agency subject to the shortened four day holding period for “other animals,” the number of “reimbursable days” is as follows:

Mon	Tues	Wed	Thurs	Fri	Sat	Sun	Mon	Tues	Wed	Thurs
Imp	One	Two	Three	Four						
	Imp	One	Two	Three			Four			
		Imp	One	Two			Three	Four		
			Imp	One			Two	Three	Four	
				Imp			One	Two	Three	Four
					Imp		One	Two	Three	Four
						Imp	One	Two	Three	Four

Again, this chart does not count Saturday and Sunday as business days, consistently with *Purifoy*. If the animal is impounded on a Monday, the reimbursable increased holding period is four calendar days. If the animal is impounded on a Tuesday, the reimbursable increased holding period is seven calendar days because Saturday and Sunday cannot be counted.

When auditing and recalculating the number of reimbursable days pursuant to *Purifoy*, the Controller did not include either Saturday, Sunday, and additionally excluded days that the agency was closed as a business day. And, like the claimant,²²⁰ the Controller calculated an *average* increased holding period for all dogs and cats to be three days, and the average increased holding period for all other “eligible” animals to be six days, and did not calculate the total number of reimbursable days for each eligible animal based on the day the animal was impounded. The Controller’s audit report provides the following explanation:

²¹⁹ *Purifoy v. Howell* (2010) 183 Cal.App.4th 166. Note though that the shelter is open all day Saturday and for five hours on Sunday.

²²⁰ See, e.g., Exhibit A, IRC, pages 741-742. The reimbursement claims claimed two reimbursable days for all dogs and cats, and four reimbursable days for all “other animals,” and made no attempt to state the total number of reimbursable days for each eligible animal.

Determining the exact number of reimbursable days is often difficult. Depending on the impound day, each animal will have a different holding period requirement. For example, for a dog impounded at noon on Monday, the “old” law (prior to 1999) requires the city to hold the dog until noon on Thursday (72 hours); the current law requires the city to hold the dog until closing on Friday (which is 4 business days following impoundment). Under the current law, the holding period was increased by 1 day and 5 hours (or 29 hours). However, for the dog impounded at noon on Friday, the “old” law requires the city to hold the dog until noon on Monday (72 hours); and the current law requires the city to hold the dog until closing on Friday (which is 4 business days following impoundment). Under the current law, the holding period was increased by 4 days and 5 hours (or 101 hours).

This calculation takes into consideration that the required holding period does not include either Saturday or Sunday as a business day, which is consistent with the Appellate Court decision dated March 26, 2010, in the case of *Purifoy et al v. Howell*. We also took into consideration the operating schedules of the city’s shelters; some shelters are closed on Mondays. In such cases, we did not count Monday as a business day.

To determine the number of reimbursable days for all of the city’s shelters, we analyzed every possible impound option (e.g., Monday impound, Tuesday impound, Wednesday impound, etc.) and determined the average increased holding period for dogs and cats to be 3 days and the average increased holding period for other “eligible” animals to be 6 days.²²¹

Thus, in an attempt to simplify the calculation of the increased holding period, the Controller applied an average number of days, rather than the actual number of increased holding days required for each stray or abandoned animal. Even if the increased holding period averages three days for dogs and cats, or six days for other animals, the Parameters and Guidelines do not provide for reimbursement based on an average number of days. While the average number of days applied by the Controller results in an *increase* in the number of reimbursable days claimed by the claimant, the Controller’s recalculation also results in the exclusion of animals that are euthanized during the Controller’s defined “average” holding period but which have been held for the period of time required under *Purifoy* and, thus, no reimbursement would be allowed for the costs of care and maintenance and necessary and prompt veterinary care for the excluded animal. For example, if a stray or abandoned dog or cat is impounded on a Monday or Sunday, the actual increased holding period under the law is two calendar days, and not three days, and the dog or cat may be euthanized on day three (a day before the Controller’s average and, thus, as “during the holding period” as defined by the Controller). Similarly, for “other animals,” the Controller applied an increased holding period of six days. However, if a stray bird or rabbit is impounded on a Monday, the actual increased holding period under the law is four calendar days, and not six days, and the bird or rabbit may be euthanized on day five (a day before the Controller’s average and, thus, “during the holding period” as defined by the Controller).

²²¹ Exhibit A, IRC, page 690.

Therefore, without taking into account the day of the week a stray or abandoned animal is impounded and calculating the actual number of days in the increased holding period for that animal, the Controller's recalculation and use of the average number of reimbursable days results in an exclusion of "eligible animals" correctly held under the law.

In comments on the Draft Proposed Decision, the Controller agrees that its methodology excludes some eligible animals, but argues that a mathematical average provides the most reasonable and cost-effective way to analyze large quantities of data:

The Commission suggested that using an average reimbursable days potentially excludes a marginal amount of "eligible animals." We concur. However, we believe that it is equally possible that the use of this average also includes an equal number of non-eligible animals as well. The use of a mathematical average assumes some outliers. But in this case, it provides the most reasonable and cost-effective way to analyze unusually large quantities of animal data. In fact, the large size of the animal population (as noted above) makes the use of an average value statistically more accurate and decreases the probability of error.²²²

The Controller does not express how much more accurate the use of an average number of days might be, but does explain that "claimant's animal data averaged between 50,000 and 60,000 line items per year..." and "[i]n order to compute the actual increased holding period days for every animal on an individual basis, we would need to know what day of the week the animal was impounded...manually open each animal record...[and] evaluate, based on the calendar of the specific week and year, the actual number of days in the increased holding period." Then, "[o]nce the animal's eligibility was established, someone would need to compute each animal's allowable costs using reimbursable days." The Controller concludes that this "would be impractical and most likely would not produce results materially different from using an average calculation."²²³

The Commission disagrees with the Controller. The Parameters and Guidelines do not provide for reimbursement based on an average number of days in the increased holding period, but requires the determination of the actual increased holding period for each animal. And based on the *Purifoy* decision, the increased holding period must be calculated from the day of the week the animal was impounded in order to ensure that Saturday and Sunday are not counted as business days. As the Controller acknowledges, "[i]n order to compute the actual increased holding period days for every animal on an individual basis, we would need to know what day of the week the animal was impounded...manually open each animal record...[and] evaluate, based on the calendar of the specific week and year, the actual number of days in the increased holding period." As indicated above, the Controller's methodology results in an exclusion of any "eligible animal" properly held under the law, but euthanized during the Controller's average holding period. To the extent the Controller reduced costs for care and maintenance and necessary and prompt veterinary care because the Controller incorrectly excluded an animal under these circumstances, the reduction is incorrect as a matter of law.

²²² Exhibit F, Controller's Comments on the Draft Proposed Decision, page 1453.

²²³ Exhibit F, Controller's Comments on the Draft Proposed Decision, page 1453.

Moreover, the methodology is arbitrary, capricious, and without any evidentiary support. Although the Controller states that it is “equally *possible* that the use of this average also includes an equal number of non-eligible animals,” which makes the methodology “reasonable,” there is no evidence in the record that the Controller’s three or six day average number of reimbursable days accurately reflects or is representative of the actual increased holding period for all stray or abandoned animals held by the claimant during the audit period, or representative of the mandated costs incurred by the claimant. Government Code section 17559 and section 1187.5 of the Commission’s regulations require that all assertions of fact be based on substantial evidence in the record. Substantial evidence has been defined by the courts as follows:

“Substantial” is a term that clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with “any” evidence. It must be reasonable in nature, credible, and of solid value; it must actually be “substantial proof” of the essentials which the law requires in a particular case.²²⁴

And a “possibility” of a fact does not constitute substantial evidence in the record.

Accordingly, the Commission finds that the Controller’s recalculation of the increased holding period using an average number of reimbursable days is incorrect as a matter of law, and is arbitrary, capricious, and entirely lacking in evidentiary support, to the extent the recalculation results in an exclusion of “eligible animals” properly held for the duration required under *Purifoy*.

4. The remaining exclusions from the population of “eligible animals” are correct as a matter of law.

The Controller excludes from the population of “eligible animals” dogs, cats, and other animals that were owner-relinquished.²²⁵ The Commission found in the Test Claim Statement of Decision that although such animals are required to be held during the holding period if accepted, the test claim statute does not require local agencies to accept owner-relinquished animals.²²⁶ Accordingly, the Parameters and Guidelines provide for reimbursement only for stray or abandoned animals.²²⁷ This exclusion is consistent with the Parameters and Guidelines and the test claim statute, and is therefore correct as a matter of law.

The Controller also excludes dogs, cats, and other animals that were ultimately adopted, transferred, rescued, or redeemed.²²⁸ This is consistent with the Test Claim Statement of Decision finding that local agencies have fee authority to recoup costs of care and maintenance

²²⁴ *People v. Olmsted* (2000) 84 Cal.App.4th 270, 277.

²²⁵ Exhibit A, IRC, page 688.

²²⁶ Exhibit G, Test Claim Statement of Decision, adopted January 25, 2001, page 1564.

²²⁷ See, e.g., Exhibit A, IRC, page 70 [Parameters and Guidelines, page 6].

²²⁸ Exhibit A, IRC, page 688.

for animals that are adopted or redeemed, or released to a nonprofit animal rescue organization.²²⁹ This exclusion from “eligible animals” is therefore correct as a matter of law.

The Controller excludes from the population of eligible animals those dogs, cats, and other animals that went missing from their kennels, were stolen, or escaped.²³⁰ Reimbursement is required only when a stray or abandoned animal dies during the increased holding period or is ultimately euthanized after the increased holding period.²³¹ Moreover, costs for animals that went missing or escaped have not been substantiated with source documents in the record that show the validity of costs claimed and their relationship to the mandate.²³² Because claimants have provided no documentation of their costs for dogs, cats, and other animals that went missing from their kennels, were stolen, or escaped, this exclusion is consistent with the Parameters and Guidelines and is correct as a matter of law.

The Controller excludes dogs, cats, and other animals that were deceased on arrival at the shelter.²³³ Such animals are expressly excluded from reimbursement by the Parameters and Guidelines since these animals did not die *during* the increased holding period and were not ultimately euthanized.²³⁴ Moreover, no costs for care and maintenance are incurred. This exclusion is therefore consistent with the Parameters and Guidelines, and is correct as a matter of law.

The Controller excludes dogs, cats, and other animals that were euthanized as requested by owners or if euthanasia was required.²³⁵ As noted, the Commission found in its Test Claim Statement of Decision that local agencies were not required to accept owner-relinquished animals.²³⁶ And, the Parameters and Guidelines expressly prohibit reimbursement for the activity of euthanizing an animal.²³⁷ Therefore, this population exclusion is consistent with the Test Claim Statement of Decision and Parameters and Guidelines, and is correct as a matter of law.

The Controller excludes “Dogs, cats, and other animals that were euthanized for humane reasons (usually on day 1)” and “Dogs, cats, and other animals that were suffering from a serious illness or severe injury (usually euthanized on day 1 or died on day 1). As noted above, Food and Agriculture Code section 17006 provides that the holding period does not apply to animals that are irremediably suffering from a serious illness or severe injury or to newborn animals that need

²²⁹ Exhibit G, Test Claim Statement of Decision, adopted January 25, 2001, page 1575.

²³⁰ Exhibit A, IRC, page 689.

²³¹ Exhibit A, IRC, page 70 [Parameters and Guidelines, page 6].

²³² Exhibit A, IRC, page 79 [Parameters and Guidelines, page 15].

²³³ Exhibit A, IRC, page 689.

²³⁴ Exhibit A, IRC, page 70; 72 [Parameters and Guidelines, page 6; 8].

²³⁵ Exhibit A, IRC, page 689.

²³⁶ Exhibit G, Test Claim Statement of Decision, adopted January 25, 2001, page 1564.

²³⁷ Exhibit A, IRC, page 77 [Parameters and Guidelines, page 13].

maternal care and have been impounded without their mothers. Such animals may be euthanized without being held for owner redemption or adoption. However, Food and Agricultural Code section 17005 provides, in pertinent part: “It is the policy of the state that no treatable animal should be euthanized. A treatable animal shall include any animal that is not adoptable but that could become adoptable with reasonable efforts.” And, as discussed above, the Parameters and Guidelines contemplate an animal’s treatable or adoptable status changing within the course of the holding period, even with veterinary care. Thus, to the extent an animal is initially deemed treatable but then later euthanized during the increased holding period, the law requires reimbursement for care and maintenance costs during the increased holding period. However, to the extent the exclusion includes animals euthanized prior to the increased holding period (or on day one for birds and other animals), these exclusions are consistent with the Parameters and Guidelines and therefore are correct as a matter of law.

The Controller excludes “Newborn animals that need maternal care and were impounded without their mothers (usually died or were euthanized within the first few days; the excluded categories included ‘Unweaned’ or ‘8 weeks unsustainable’).”²³⁸ The Parameters and Guidelines expressly exclude such animals from reimbursement, referencing Food and Agriculture Code section 17006.²³⁹ This exclusion is thus correct as a matter of law.

The Controller also excludes dogs and cats that died in the shelter’s kennels *outside the increased* holding period, meaning within the first few days of the holding period required under prior law, or *after* the required holding period; and “other animals” that died in the shelter’s kennels after the increased holding period.²⁴⁰ The Commission finds that the exclusion of stray or abandoned dogs and cats that die within the holding period *required by prior law* is correct as a matter of law, since that requirement was not new and determined to be reimbursable in the Test Claim Statement of Decision. No reimbursement for the care and maintenance of a stray or abandoned dog or cat is required until *after* the first three days from the day of capture as follows:

For stray and abandoned dogs and cats, the increased holding period is the difference between three days from the day of capture, and either four or six business days from the day after impoundment. Eligible claimants are not entitled to reimbursement for the first three days of that period.²⁴¹

Thus, if a stray or abandoned dog or cat dies before the increased holding period begins, reimbursement is not required.

The Commission also finds that the Controller’s exclusion of animals that died after the increased holding period is consistent with the Parameters and Guidelines and is correct as a matter of law. The Parameters and Guidelines provide for reimbursement for dogs and cats, and other animals, that died during the increased holding period or were ultimately euthanized after

²³⁸ Exhibit A, IRC, page 689.

²³⁹ Exhibit A, IRC, page 72 [Parameters and Guidelines, page 8].

²⁴⁰ Exhibit A, IRC, page 689.

²⁴¹ Exhibit A, IRC, page 71 [Parameters and Guidelines, page 7].

the increased holding period.²⁴² Reimbursement is limited to: stray or abandoned dogs and cats and other animals are subject to reimbursement because their owners are not known, and cannot have fees levied against them; animals that are not adopted during the holding period, but are “ultimately euthanized” when the holding period expires, are subject to reimbursement on the theory that there is no new owner or redeemed owner from whom fees could be exacted; both of these situations were contemplated in the Test Claim Statement of Decision and animals that die *during* the increased holding period.²⁴³ And with respect to animals that die during the increased holding period, this issue arose during the consideration of Parameters and Guidelines, when the County of Fresno filed comments requesting reimbursement for the care and maintenance of stray or abandoned animals that die while being held pending adoption or euthanasia. As discussed above, the County requested reimbursement for animals that “die while being held pending adoption or euthanization [sic].”²⁴⁴

The Commission approved the request, clarifying that increased costs for the care and maintenance of animals that die during the increased holding period are eligible for reimbursement as follows:

[S]taff has inserted language in Sections IV (B) (1), (2), (3), (4), and (9) of the proposed Parameters and Guidelines clarifying that increased costs for the care and maintenance of animals that die during the increased holding period, and for providing “necessary and prompt veterinary care” to animals that die during the holding period are eligible for reimbursement.²⁴⁵

The Parameters and Guidelines, however, do not authorize reimbursement for animals that continue to be held by the local agency for adoption longer than the holding period and die *thereafter*. The Parameters and Guidelines are binding, and no requests to amend the Parameters and Guidelines have been filed. Thus, the Controller’s interpretation is consistent with the plain language of the Parameters and Guidelines. Based on the foregoing, the Commission finds that this reduction of eligible animals on these grounds is correct as a matter of law.

B. Except as Determined in Section A. of This Decision, the Controller’s Remaining Findings That Result in a Reduction of Costs for Care and Maintenance Under Finding 3 Are Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Parameters and Guidelines provide for reimbursement of care and maintenance costs for impounded stray or abandoned animals that die during the increased holding period or are ultimately euthanized either by claiming actual costs or by performing a time study.²⁴⁶ The

²⁴² Exhibit A, IRC, page 70; 72 [Parameters and Guidelines, page 6; 8].

²⁴³ Exhibit G, Test Claim Statement of Decision, adopted January 25, 2001, pages 1564-1565; 1575-1576. (Emphasis added.)

²⁴⁴ Exhibit A, IRC, page 70 [Parameters and Guidelines, page 6].

²⁴⁵ Exhibit A, IRC, page 71-72 [Parameters and Guidelines, pages 7-8].

²⁴⁶ Exhibit G, Proposed Parameters and Guidelines and Analysis, Hearing Item 4, February 28, 2002, pages 7-10.

claimant used the actual cost method, which is a formula designed to reimburse a proportion of total care and maintenance costs based on the incremental increase in service (the increased holding period) and the animals for which no fees can be collected (animals that are not adopted, redeemed, or released to a nonprofit animal rescue organization). The Parameters and Guidelines provide that actual costs for dogs and cats shall be calculated as follows:

Actual Cost Method – Under the actual cost method, actual reimbursable care and maintenance costs per animal per day are computed for an annual claim period.

a) Determine the total annual cost of care and maintenance for all dogs and cats impounded at a facility. Total cost of care and maintenance includes labor, materials, supplies, indirect costs, and contract services.

b) Determine the average daily census of dogs and cats.²⁴⁷

c) Multiply the average daily census of dogs and cats by 365 = yearly census of dogs and cats.

d) Divide the total annual cost of care by the yearly census of dogs and cats = cost per animal per day.

e) Multiply the cost per animal per day, by the number of impounded stray or abandoned dogs and cats that die during the increased holding period or are ultimately euthanized, by each reimbursable day (the difference between three days from the day of capture, and four or six business days from the day after impoundment).²⁴⁸

For “other animals,” the actual cost formula is essentially the same, except that the number of reimbursable days is not counted as “the difference between three days...and four or six business days.” Because there was no 72 hour holding period required under prior law for “other animals,” the “reimbursable days” multiplier is simply “four or six business days.”²⁴⁹ Thus, as the Controller acknowledges, the actual cost formula requires the eligible annual cost of care to be divided by the yearly census of animals to arrive at an average cost per animal per day. The cost per animal per day is then multiplied by the eligible number of animals and the number of increased holding period days.²⁵⁰ The factors relating to the number of eligible animals was discussed under section A. of this Decision. This section addresses the remaining findings that resulted in a reduction of costs for care and maintenance.

²⁴⁷ The Final Staff Analysis and Proposed Parameters and Guidelines Amendment, January 26, 2006, states also: “For purposes of claiming reimbursement under IV.B.3, average daily census is defined as the average number of all dogs and cats at a facility housed on any given day, in a 365-day period.” This amendment is clarifying only, and has no substantive effect on the methodology used to calculate actual costs. (Exhibit G, Final Staff Analysis and Proposed Parameters and Guidelines Amendment, January 26, 2006, page 1635.)

²⁴⁸ Exhibit A, IRC, page 71 [Parameters and Guidelines, page 7].

²⁴⁹ Exhibit A, IRC, page 72-73 [Parameters and Guidelines, page 8-9]..

²⁵⁰ Exhibit A, IRC, page 688.

The Controller states, with respect to care and maintenance costs, that the claimant used budgeted expenditure amounts to estimate its total annual costs, rather than claiming actual costs supported by documentation; and used inaccurate yearly animal census information, resulting in an incorrect calculation of costs per animal per day.²⁵¹

Based on the analysis herein, the Commission finds that, except as determined in section A. of this Decision, the Controller's remaining findings that support the reductions in Finding 3 for care and maintenance costs are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

1. The Controller's reductions on the basis of estimated or otherwise unsupported costs claimed as part of the calculation of total annual costs for care and maintenance are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Parameters and Guidelines provide that the first step in calculating actual costs for care and maintenance is to identify the total annual cost of this component, including labor, materials, supplies, indirect costs, and contract services.²⁵² The Controller states that this claimant "used budgeted expenditure amounts that were not actual costs and were not pro-rated to the portion of costs relating to the care and maintenance functions."²⁵³ Specifically, the Controller states: "we requested that the city provide the actual salary amounts paid to those employee classifications directly involved with the care and maintenance function." The Controller continues: "We also requested the duty statements for such classifications to assist us in determining the percentage of daily workload that was devoted to caring and maintaining animals." Ultimately, the claimant and the Controller settled on including 80 percent of the salaries and benefits for Animal Care Technicians and 40 percent of Animal Care Technician Supervisor positions within the total annual costs for care and maintenance.²⁵⁴ Because payroll information was available only for the last three years of the audit period, the Controller states that it applied a deflator based on the consumer price index to estimate costs of labor for the earlier five years of the audit.²⁵⁵ In addition, the Controller states with respect to materials and supplies costs, that the claimant "[s]ubsequent to the issuance of the draft audit report...submitted summary reports containing year end expenditures by vendor..."²⁵⁶ The Controller explains that "[d]uring fieldwork, we discussed with department staff the reimbursable criteria for this cost component... staff agreed that allowable expenditures for this component would primarily include animal food and cleaning supplies."²⁵⁷ Accordingly, the Controller found that expenses such as "office supplies,"

²⁵¹ Exhibit A, IRC, page 683.

²⁵² Exhibit A, IRC, page 71 [Parameters and Guidelines, page 7].

²⁵³ Exhibit A, IRC, page 684.

²⁵⁴ Exhibit A, IRC, page 684.

²⁵⁵ Exhibit A, IRC, pages 684-685.

²⁵⁶ Exhibit A, IRC, page 685.

²⁵⁷ Exhibit A, IRC, pages 685-686.

“printing supplies,” “cell phone expenses,” “expenses for animal traps,” and so forth, were not allowable under the care and maintenance component.

The claimant does not directly address these adjustments to the total annual costs of care and maintenance, but instead focuses its challenge to Finding 3 entirely on the application of the *Purifoy* decision.

While the Parameters and Guidelines use inclusive language to describe costs for this component (“total cost of care and maintenance includes labor, materials, supplies...”) the care and maintenance costs cannot be interpreted beyond the reasonable scope of the approved activity, which is to provide care and maintenance during the increased holding period for impounded stray or abandoned animals that die during the increased holding period or are ultimately euthanized.²⁵⁸ Office supplies and printing supplies are general expenses of the animal shelter, and are beyond the scope of the mandated activity, and therefore the reduction on this basis is correct as a matter of law. Moreover, the claimant agreed with the Controller that only a portion of salaries and benefits for Animal Care Technicians and Animal Care Technician Supervisor positions should be reimbursable, and the claimant proposed the proportional reimbursable share for these classifications, which the Controller accepted.²⁵⁹ The Controller’s reduction on this basis is therefore not arbitrary, capricious, or entirely lacking in evidentiary support.

And finally, the claimant filed the reimbursement claims using the actual cost method of claiming, but used “budgeted expenditure amounts,” which are not equivalent to actual costs incurred for the mandate. Article XIII B, section 6 and the implementing Government Code provisions require reimbursement of actual costs mandated by the state, and no provision of the Parameters and Guidelines authorizes the use of “budgeted expenditure amounts” to estimate mandated costs. Thus, the reduction on this basis is correct as a matter of law.

Based on the foregoing, the Commission finds that the Controller’s reductions on the basis of estimated or otherwise unsupported costs claimed as part of the calculation for total annual costs for care and maintenance are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

2. The Controller’s adjustment of the yearly animal census data did not result in a reduction of costs claimed and therefore the Commission has no jurisdiction to determine this issue.

The Parameters and Guidelines provide that the total annual cost of care shall be divided by the total annual census of *all* animals that come to the shelter to determine the cost per animal per day. The Controller found that the claimant misstated its yearly animal census data. Specifically, the Controller found that the claimant failed to exclude animals that were deceased upon arrival at the shelter, and animals that went missing. The Controller stated that “[w]e did not count DOA animals...because no costs were incurred to care for them” and “we did not count missing animals as part of the annual census because their holding period was unknown.”²⁶⁰ Additionally, the Controller found “some data input errors relating to dates.” The

²⁵⁸ Exhibit A, IRC, pages 70-71 [Parameters and Guidelines, page 6-7].

²⁵⁹ Exhibit A, IRC, page 684.

²⁶⁰ Exhibit A, IRC, page 687.

Controller noted that “[s]ome animal entries showed a negative holding period or extraordinarily long holding periods (e.g., exceeding ten years).” The Controller accordingly eliminated those animals from the census or changed the dates, where possible.²⁶¹

Based on the formula in the Parameters and Guidelines for determining the costs for care and maintenance during the increased holding period, in which total annual costs are divided by the yearly animal census to arrive at a cost per animal per day, which is in turn multiplied by the remaining factors of eligible animals and reimbursable days, it appears that the adjustments made to the annual animal census data that reduced the total number of animals did not in fact result in any reduction. Because total annual costs are *divided* by the yearly animal census, any decrease in the animal census data would result in a corresponding increase in the cost per animal per day, which would then be multiplied by the remaining factors. Thus, the adjustment to the yearly animal census factor is in the claimant’s favor.

Because there is no reduction of costs claimed on the basis of the adjustments to the animal census data, the Commission has no jurisdiction and need not make a finding on this point.

3. The Controller’s adjustment of reimbursable days *increases* the number of reimbursable days claimed by the claimant, thereby increasing reimbursement and, thus, the Commission does not have jurisdiction to determine this issue.

The last element of the calculation of actual costs for care and maintenance is to multiply the cost per animal per day times the number of eligible animals times the number of reimbursable days. The Parameters and Guidelines expressly require multiplying by “each reimbursable day” following the day of impoundment, and do not define reimbursable days based on an average number of days.²⁶²

However, the reimbursement claims at issue in this IRC, claimed two reimbursable days for all dogs and cats, and four reimbursable days for all “other animals,” and made no attempt to state the total number of reimbursable days for each eligible animal.²⁶³ And, as indicated in section A.3. of this Decision, the Controller, like the claimant, calculated an *average* increased holding period for all dogs and cats to be three days, and the average increased holding period for all other “eligible” animals to be six days, and did not state the total number of reimbursable days for each eligible animal.²⁶⁴

Nevertheless, because the Controller’s audit *increased* the number of reimbursable days claimed by the claimant, by which all other elements of the formula are multiplied, the Controller’s adjustment of reimbursable days results in increased reimbursement to the claimant and, thus, the Commission does not have jurisdiction to determine this issue.²⁶⁵

²⁶¹ Exhibit A, IRC, page 687.

²⁶² Exhibit A, IRC, page 73 [Parameters and Guidelines, page 9].

²⁶³ See, e.g., Exhibit A, IRC, pages 741-742.

²⁶⁴ Exhibit A, IRC, page 690.

²⁶⁵ See Exhibit A, IRC, pages 675-677.

C. The Controller's Reductions in Finding 4 Relating to Unallowable Employee Hours for Making Animals Available for Adoption or Owner Redemption Are Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Parameters and Guidelines provide that an agency desiring to apply the shortened holding period is eligible for reimbursement for making animals available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or, for local agencies with fewer than three full-time employees or that are not open during all regular weekday business hours, for establishing a procedure for owners to reclaim their animals by appointment.²⁶⁶ For dogs and cats, reimbursement for this activity begins July 1, 1999. For "other animals" specified in Food and Agriculture Code section 31753, reimbursement for this activity begins January 1, 1999.²⁶⁷

The Controller's audit determined that of \$3,886,965 claimed, \$2,045,732 was unallowable. The unallowable costs are the net result of "overstated allowable hours and the number of allowable positions (\$2,172,695) and understated productive hourly rates (\$126,963)."²⁶⁸ Specifically, the Controller states that the claimant "claimed hours for Animal Care Technicians, Animal Care Technician Supervisors, Animal Control Officers, and Clerk Typists for working on one of the weekend days." However, the Controller found that the claimant "did not take into account the difference between the regular staffing needs and the *increased* staffing needs to comply with the requirement of this component."²⁶⁹ The Controller further elaborates that its audit "inquired about the number of employees and classifications of staff members working when the shelter is closed to the public (Mondays) and the staffing needed to comply with the mandate and stay open during the increased hours (Saturdays)."²⁷⁰ The Controller was thus able to eliminate staffing and employee hours that were mainly dedicated to the general care and maintenance of the animals. Reviewing the claimant's working schedules for each shelter, the Controller determined that "the following additional employees were needed to comply with the mandate requirement and stay open during one weekend day."

- Animal Care Technicians (10 positions, 9 hours each)
- Animal Care Technician Supervisor (1 position, 9 hours)
- Front Counter Clerks (10 positions, 8 hours each)²⁷¹

Additionally, the Controller notes that for fiscal year 1998-1999 reimbursement began January 1, 1999, and therefore allowable hours were reduced by half for that fiscal year.²⁷²

²⁶⁶ Exhibit A, IRC, page 74 [Parameters and Guidelines, page 10].

²⁶⁷ Exhibit A, IRC, page 74 [Parameters and Guidelines, page 10].

²⁶⁸ Exhibit A, IRC, page 694.

²⁶⁹ Exhibit A, IRC, page 694 (emphasis added).

²⁷⁰ Exhibit A, IRC, page 694.

²⁷¹ Exhibit A, IRC, page 695.

²⁷² Exhibit A, IRC, page 695.

The claimant did not dispute the Controller's findings in the context of the audit, nor offer additional documentation or evidence in its IRC. However, the claimant argues in its IRC that the Controller "places too much emphasis on the choice of wording in the Ps &Gs concluding that the costs for only those staff members involved with making animals available for redemption should be reimbursable." The claimant argues "[t]he City should be allowed to staff its shelter as it sees fit to accomplish the goals set forth in statute."²⁷³

The Commission finds that the Parameters and Guidelines do not expressly limit the staff and employee classifications for which reimbursement is required. However, the Controller is correct that the reason to remain open on a Saturday, pursuant to the test claim statutes and the Commission's Decision, is to promote owner redemption. Indeed, the express language of the reimbursable component at issue in Finding 4 is "Making the animal available for owner redemption..."²⁷⁴ Therefore, the Controller's attempt to limit reimbursement on Saturdays to those employees that are necessary to make animals available for owner redemption is consistent with the Parameters and Guidelines and the purpose of the test claim statute. Thus, the adjustments are correct as a matter of law. In addition, there is no evidence in the record to support a finding that the Controller's decisions were arbitrary or capricious.

Based on the foregoing, the Controller's reductions in Finding 4 relating to unallowable employee costs to make the animal available for owner redemption is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

D. Except as Determined in Section A. of This Decision, the Controller's Remaining Findings Supporting the Reductions in Finding 7 for Overstated Necessary and Prompt Veterinary Care Costs Are Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Parameters and Guidelines permit reimbursement for necessary and prompt veterinary care for stray or abandoned animals, other than injured cats and dogs given emergency treatment that die during the increased holding period or are ultimately euthanized. Necessary and prompt veterinary care means all reasonably necessary medical procedures performed by a veterinarian or someone under their supervision, including an initial physical examination; a wellness vaccine administered to adoptable or treatable animals; care to stabilize or relieve the suffering of a treatable animal; and veterinary care intended to remedy an injury or disease of a treatable animal.²⁷⁵

The Controller's audit determined that \$1,827,843, of a total \$2,193,011 claimed, was unallowable. The Controller found that the claimant claimed estimated and unsupported materials and supplies costs, and misstated and unallowable employee hours.²⁷⁶ Specifically, the Controller found that the claimant's time study for veterinary procedures was "inadequate," because it focused on recording time increments to perform non-routine veterinary procedures

²⁷³ Exhibit A, IRC, page 14.

²⁷⁴ Exhibit A, IRC, page 74 [Parameters and Guidelines, page 10].

²⁷⁵ Exhibit A, IRC, page 76 [Parameters and Guidelines, page 12].

²⁷⁶ Exhibit A, IRC, page 702.

which must be examined on a case-by-case basis to determine eligibility. A new time study was conducted during the course of the audit, which the Controller found was allowable except for “[i]nputting animal medical statistics into the Chameleon database about animal’s baseline health.”²⁷⁷ In addition, the Controller found that the city claimed estimated and unsupported materials and supplies costs. During the first three years of the audit period, the claimant estimated that three percent of its operating costs were attributable to the mandate component of necessary and prompt veterinary care, and in the latter five years of the audit period, the claimant failed to support its materials and supplies costs.²⁷⁸ The Controller states that the claimant did not respond to this audit finding specifically, but during the audit “submitted summary reports containing year end expenditures by vendor for Account 3190 – Medical Supplies” totaling \$2,086,819. The Controller determined that “we are unable to consider the medical expenses submitted for reimbursement, because the city did not determine what portion of the costs actually related to eligible animals and allowable treatments that took place during the required holding period.”²⁷⁹

The claimant “objects to the SCO’s determination that it did not submit the proper documentation to support the Necessary and Prompt Veterinary Care material and supply cost.”²⁸⁰ The claimant states that during the audit, the Controller requested additional documentation “and the City submitted expenses within expenditure account 3190 medical supplies (\$2,086,819).”²⁸¹

The Commission finds that the claimant inappropriately claimed estimated costs, without any evidence or documentation to support the estimate, and that the claimant’s alleged expense documentation does not constitute evidence that those costs are related to the mandated activities. The Parameters and Guidelines provide reimbursement for necessary and prompt veterinary care, but with certain limitations. For example, as discussed in section A. above, animals irremediably suffering from serious illness or injury and euthanized on day one, or newborn animals that cannot survive without their mother, and the mother has not also been impounded, are not included in the population of “eligible animals” for which reimbursement is required. Likewise, emergency treatment is not eligible for reimbursement, due to the requirements of prior law, nor is the administration of a rabies vaccination, or microchip implantation, or spay or neuter surgery and treatment.²⁸² The exclusions are therefore substantial, and reimbursement is decidedly narrow. The claimant has the burden to show that costs claimed for materials and supplies and employee salary and benefits fall within the reimbursable higher levels of service and were provided to animals within the eligible

²⁷⁷ Exhibit A, IRC, page 703.

²⁷⁸ Exhibit A, IRC, page 704.

²⁷⁹ Exhibit A, IRC, page 705.

²⁸⁰ Exhibit A, IRC, page 14.

²⁸¹ Exhibit A, IRC, page 14.

²⁸² Exhibit A, IRC, pages 76-77 [Parameters and Guidelines, pages 12-13].

population, and therefore the summary expense reports for medical supplies are not sufficient in themselves to support the claim.

The claimant's time study suffers the same fault, because it included a number of non-routine veterinary procedures and costs that must be evaluated on a case-by-case basis. Absent some evidence that the procedures and costs within the time study were verified to be eligible for reimbursement, the Controller's rejection of the time study was correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. Ultimately, all parts of the claim must be supported by some documentation from the claimant, which, according to the Parameters and Guidelines, must "show evidence of the validity of such costs and their relationship to the mandate."²⁸³

Based on the foregoing, except as provided in section A. of this Decision relating to "eligible animals," the Commission finds that the Controller's remaining findings supporting the reductions in Finding 7 of necessary and prompt veterinary care costs are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

E. The Controller's Determination Not to Consider Claimant's Request, Made During the Audit, for Reimbursement for the Construction of New Facilities Is Correct as a Matter of Law.

The Parameters and Guidelines provide for reimbursement for the construction of new facilities or acquisition of additional space to comply with the mandate beginning January 1, 1999. However, the claimant did not include costs for this component in its annual reimbursement claims for any of the years subject to audit, nor specifically state in which years such costs might have been incurred. The claimant only alleged costs for construction of new facilities during the course of the audit, which began April 28, 2009.²⁸⁴ At that time, the annual claims for all fiscal years of the audit period had been filed, and only the fiscal year 2007-2008 claim could be subject to a revised claim, pursuant to the deadlines contained in Government Code section 17568.²⁸⁵ Moreover, the construction costs were funded by bonds issued pursuant to a ballot measure, Proposition F, passed by the voters in the November 2000 general election.²⁸⁶

The Controller determined that the claimant did not incur any increased costs to construct or remodel its shelters, within the meaning of Government Code section 17514, because the "the construction costs incurred were funded entirely by the city's taxpayers via property tax *assessments*."²⁸⁷

The claimant argues that the use of bond funds does not disqualify the claimant from mandate reimbursement. The claimant states that "[t]he City was free to use its general fund for

²⁸³ Exhibit A, IRC, page 79 [Parameters and Guidelines, page 15].

²⁸⁴ Exhibit A, IRC, page 709.

²⁸⁵ Government Code section 17568 provides: "In no case shall a reimbursement claim be paid that is submitted more than one year after the deadline specified in Section 17560."

²⁸⁶ Exhibit A, IRC, page 709.

²⁸⁷ Exhibit A, IRC, page 710 (emphasis added).

construction; but nothing in the Constitution, statutes or case law says that any local government must exhaust all its general fund monies before seeking funding elsewhere.” The claimant continues: “Moreover, the state legislature passed the unfunded mandate and the state should not be able to shirk its responsibility to reimburse the City simply because the City in its management of its financial obligations chose to have a bond initiative rather than empty its general fund.”²⁸⁸

The claimant is wrong, and the claim for reimbursement of construction costs is untimely. As the Controller points out, the claimant here never claimed the construction costs in its annual reimbursement claims.²⁸⁹ Government Code section 17560 permits a claimant by February 15 following a fiscal year, to “file an annual reimbursement claim that details the costs actually incurred for that fiscal year.”²⁹⁰ Section 17568 provides that if a local agency or school district submits an otherwise valid reimbursement claim to the Controller after the deadline specified in Section 17560, the Controller shall reduce the reimbursement claim in an amount equal to 10 percent of the amount that would have been allowed had the reimbursement claim been timely filed. In addition, section 17568 states that “[i]n no case shall a reimbursement claim be paid that is submitted more than one year after the deadline specified in Section 17560.”²⁹¹ These provisions of the Government Code clearly place the burden on the claimant to timely and completely claim its mandated costs. Here, the claimant did not claim construction expenditures that the Controller found were part of an “ongoing project for the City of Los Angeles that involved a ballot measure in the November 2000 general election.”²⁹² Instead, the claimant only “inquired about the eligibility of costs it incurred for the construction and renovation of animal shelters under the mandated program” during the course of audit fieldwork.²⁹³ The claimant’s plea for reimbursement for these costs is thus made far too late.

Moreover, where a local agency has raised revenues outside its appropriations limit to cover the cost of mandated activities, funds thus expended are not reimbursable, based on the history and purpose of article XIII B, section 6, and case law interpreting it. Article XIII B was adopted by the voters less than 18 months after the addition of article XIII A to the state Constitution, and was billed as “the next logical step to Proposition 13.”²⁹⁴ The California Supreme Court, in *County of Fresno* explained:

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out

²⁸⁸ Exhibit A, IRC, page 16.

²⁸⁹ Exhibit A, IRC, page 709.

²⁹⁰ California Government Code section 17560.

²⁹¹ California Government Code section 17568.

²⁹² Exhibit A, IRC, page 709.

²⁹³ Exhibit A, IRC, page 710.

²⁹⁴ *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446 (*County of Placer*).

governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.²⁹⁵

Because reimbursement is limited to costs that are recovered solely from tax revenues, not every local agency, and not every state mandate is subject to the restrictions of article XIII B, section 6. Redevelopment agencies, in particular, have been identified by the courts as being exempt from the restrictions of article XIII B, because they are funded by additional levies in excess of the base property tax. In *Bell Community Redevelopment Agency*, the court concluded that bonds issued by a redevelopment agency and repaid with tax increment revenues are not appropriations subject to limitation.²⁹⁶ The court reasoned that to construe tax increment payments as appropriations subject to limitation “would be directly contrary to the mandate of section 7,” which provides that “Nothing in this Article shall be construed to impair the ability of the state or of any local government to meet its obligations with respect to existing or future bonded indebtedness.”²⁹⁷

Here, the Proposition F funds are substantially similar to redevelopment bond funds, in that they were authorized by the voters and are paid by a special assessment in excess of the state and local property taxes collected by the City. And, just as in *Bell Community Redevelopment Agency*, to hold the funds collected under Proposition F to be subject to the appropriations limit of article XIII B would be wholly inconsistent with article XIII B, section 7, which states that “[n]othing in this Article shall be construed to impair the ability of...any local government to meet its obligations with respect to existing or future bonded indebtedness.”²⁹⁸ Put simply, *County of Fresno* and *Bell Community Redevelopment Agency* make clear that reimbursement is not required when a mandate is paid for with funds other than local tax revenues.

Based on the foregoing, the Commission finds that the Controller’s determination not to reimburse costs for construction of new facilities, which were not claimed in the claimant’s annual reimbursement claim filings and which were funded by a local bond measure repaid by an additional assessment on real property, is correct as a matter of law.

²⁹⁵ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487. (Emphasis in original.)

²⁹⁶ *Bell Community Redevelopment Agency v. Woolsey* (1985) 169 Cal.App.3d 24.

²⁹⁷ *Bell Community Redevelopment Agency v. Woolsey* (1985) 169 Cal.App.3d 24, 31 [quoting article XIII B, section 7].

²⁹⁸ California Constitution, article XIII B, section 7.

F. The Claimant's Allegation That the Controller Failed to Provide Adequate Time to Comply with the Requirements of the Audit Is Irrelevant, and Ignores the Claimant's Burden to Support Costs Claimed.

The Parameters and Guidelines provide that all costs must be traceable to source documents. Such documents, in turn, must “show evidence of the validity of such costs and their relationship to the mandate.” And, all documentation in support of claimed costs “shall be made available to the State Controller’s Office, as may be requested.” Such documents must be kept on file during the period subject to audit, in accordance with Government Code section 17558.5.²⁹⁹

With respect to this audit and IRC, it is undisputed that the claimant filed its initial reimbursement claims for fiscal years 1998-1999, 1999-2000, and 2000-2001 on September 4, 2002.³⁰⁰ Those claims were first paid in August 2006.³⁰¹ An entrance conference was held on April 28, 2009, and the Controller’s audit staff and the claimant’s staff worked closely until November 2009, when the audit was placed on hold due to staffing changes at the Controller’s audit bureau. It is also undisputed that on July 19, 2010, new auditing staff and a new auditor-in-charge held a new entrance conference, and requested additional documentation. An exit conference was held on January 12, 2011, at which time the Controller’s audit staff indicated that the final audit report would be issued in early April. The Controller issued the draft audit report on March 10, 2011, and issued the final audit report on April 6, 2011.³⁰²

The Controller disallowed costs claimed throughout the audit on the basis of missing or incomplete documentation, despite the Controller’s assertion that it “worked with the city’s staff to not only obtain proper supporting documentation, but also to arrange for alternative methods to support claimed costs.” The Controller argues that it attempted to provide the claimant with the opportunity to support claimed costs, but “[i]t is unreasonable for the city to state that it did not have enough time to provide supporting documentation, as the city is required to maintain supporting documentation for costs claimed.”³⁰³

The claimant argues that it was “denied necessary time to comply with the requirements of the audit due to the SCO’s placing the audit on hold for staffing changes for nine months which left the City having to assemble documentation for a huge operation with less time than was provided by law.”³⁰⁴ The claimant asserts that “[d]ue to the size of the City’s Animal Services Department, there were millions of line items to go through in order to locate some of the requested information that dated back as far as 12 years.” In addition, the claimant states that “some of the invoices had been destroyed as they exceeded the time limitation for record

²⁹⁹ Exhibit A, IRC, page 79 [Parameters and Guidelines, page 15].

³⁰⁰ Exhibit A, IRC, pages 737, 763, 779.

³⁰¹ Exhibit D, Controller’s Response to the Request for Additional Information, pages 1350; 1352; 1356; 1359.

³⁰² Exhibit A, IRC, pages 16-18; 711-714; Exhibit B, Controller’s Late Comments on the IRC, pages 1016-1017.

³⁰³ Exhibit B, Controller’s Late Comments on the IRC, page 1013.

³⁰⁴ Exhibit A, IRC, page 16.

retention under the law.”³⁰⁵ The claimant argues that it “cannot be expected to have to hold on to records from 1998 for an indeterminate amount of time and be forced to retain all detailed expenditure records.” The claimant concludes that “[s]uch a record retention requirement would cause a burden that is both inefficient and unnecessary.”³⁰⁶

The claimant is wrong. The record retention requirements for mandated costs are stated in the Parameters and Guidelines, which are binding on the parties. The Parameters and Guidelines adopted February 28, 2002, state: “Pursuant to Government Code section 17558.5, these documents must be kept on file by the agency submitting the claim for a period of no less than two years after the later of (1) the end of the calendar year in which the reimbursement claim is filed or last amended, or (2) if no funds are appropriated for the fiscal year for which the claim is made, the date of initial payment of the claim.”³⁰⁷ The amended Parameters and Guidelines, adopted January 26, 2006, and applicable to fiscal years 2005-2006 and following, state as follows:

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.³⁰⁸

Thus, in accordance with Government Code section 17558.5 and the Parameters and Guidelines, when claims are not paid the record retention requirement is tolled indefinitely, until two-years after payment is made. Beginning July 2005, the Parameters and Guidelines expanded that requirement to three-years after payment is made and included a requirement to retain the documents until the ultimate resolution of the audit.

³⁰⁵ Exhibit A, IRC, page 17 (citing to Government Code section 34090, requiring record retention period of two years).

³⁰⁶ Exhibit A, IRC, page 17.

³⁰⁷ Exhibit A, IRC, page 79 [Parameters and Guidelines, page 15].

³⁰⁸ Exhibit G, Final Staff Analysis and Proposed Parameters and Guidelines Amendment, January 26, 2006, page 1649.

Here, the Controller has documented that claims for fiscal years 1998-1999, 1999-2000, and 2000-2001 were paid in part beginning in August 2006.³⁰⁹ The claimant states that claims for fiscal years 2001-2002 and 2002-2003 were not paid as of the time of filing this IRC.³¹⁰ Thus, in accordance with the 2002 Parameters and Guidelines, “documents must be kept on file by the agency submitting the claim for a period of no less than two years after...the date of initial payment of the claim.”³¹¹ That provision mirrored the requirement to initiate an audit under Government Code section 17558.5, as it read in February 2002, when the Parameters and Guidelines were adopted.³¹² Later that same year, and effective January 1, 2003, section 17558.5 was amended to provide that a reimbursement claim would be subject to audit for three years, beginning with either the date the claim was filed or last amended, or the date of the initial payment of the claim.³¹³ The claiming instructions revised in September 2003, reflect the change to section 17558.5, and thus provide as follows:

[A] reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.³¹⁴

In addition, the claiming instructions go on to directly link the document retention requirement to the audit period:

All documents used to support the reimbursable activities, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.³¹⁵

Then, in January 2006, nearly eight months before any fiscal year claims had been paid, the Parameters and Guidelines were amended consistently with Government Code section 17558.5, to reflect the three year period for the Controller to initiate and audit, and to expressly require that once an audit is initiated, “the retention period is extended until the ultimate resolution of

³⁰⁹ Exhibit D, Controller’s Response to the Request for Additional Information, pages 1350; 1352; 1356; 1359.

³¹⁰ Exhibit A, IRC, page 6.

³¹¹ Exhibit A, IRC, page 79 [Parameters and Guidelines, page 15].

³¹² See Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)).

³¹³ Statutes 2002, chapter 1128 (AB 2834).

³¹⁴ Exhibit A, IRC, page 108 (excerpt of claiming instructions, revised 09/03).

³¹⁵ Exhibit A, IRC, pages 108-109 (excerpt of claiming instructions, revised 09/03).

any audit findings.”³¹⁶ Thus, while the original Parameters and Guidelines and claiming instructions stated the document retention requirements based on the state of the law as it then existed, at the time the claims were paid, the document retention requirements had been extended by virtue of the amended provisions of Government Code section 17558.5, the updated claiming instructions, and the amendment of the Parameters and Guidelines on January 26, 2006.³¹⁷

The Commission has previously found, with respect to the 2002 amendments to Government Code section 17558.5, that to the extent the amended section promotes an expansion of the period of limitation for the Controller to initiate an audit, it applies to any pending claims or potential audits not yet time-barred.³¹⁸ As noted above, the claimant’s fiscal year 1998-1999, 1999-2000, and 2000-2001 claims were filed in September 2002. Thus, those years were subject to the two year period of limitation to initiate the audit at the time filed. But because section 17558.5 was amended, effective September 30, 2002 which is *before* the period expired with respect to those initial claims, to expand the limitation period applicable to the Controller’s audits to three years, the Controller receives the benefit of the extra time and claimant was required to retain its documentation for three years or until the audit and any challenges to the audit are completed.³¹⁹

Accordingly, because the document retention requirement of the Parameters and Guidelines is inextricably linked to the period of limitation for the Controller to initiate an audit, the amendment of the Parameters and Guidelines in January 2006, prior to the expiration of the audit period (and the expiration of the document retention period) applies. Moreover, the intervening update to the claiming instructions provides notice to the claimant of both the change in the Government Code, and its effect on the document retention period. To the extent the Controller’s authority to audit is expanded by extending the period of limitation, the Controller’s authority to compel the claimant to produce documentation when auditing must also be expanded.

The claimant argues that it “cannot be expected” to comply with burdensome document retention requirements that create “indeterminate” retention periods.³²⁰ To the contrary, the retention periods are no less determinate than the period that the claim is subject to audit. Government Code section 17558.5 provides the Controller three years to audit a reimbursement claim, and that period begins either when the claim is filed or last amended, or if no funds are appropriated, the period is tolled until the subject claim is paid, as here.³²¹ After that, the Controller has an additional two years, once initiated, to complete its audit, during which time the 2006 Parameters

³¹⁶ Exhibit G, Final Staff Analysis and Proposed Parameters and Guidelines Amendment, January 26, 2006, page 1649.

³¹⁷ Exhibit A, IRC, page 108; Exhibit G, Final Staff Analysis and Proposed Parameters and Guidelines Amendment, January 26, 2006, page 1649.

³¹⁸ *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, 465.

³¹⁹ *Douglas Aircraft Co. Cranston* (1962) 58 Cal.2d 462, 465.

³²⁰ Exhibit A, IRC, page 17.

³²¹ Statutes 2002, chapter 1128.

and Guidelines require retention of the supporting documents, consistently with the Controller's audit authority under the Government Code and the claimant's burden to support its costs claimed.

Based on the foregoing, even though the Parameters and Guidelines adopted February 28, 2002 and the initial claiming instructions revised September 2002 provided for a two-year period to initiate an audit, and required documentation to be retained for only that same period, the period was expanded to three years by amendment of the Government Code, revision of the claiming instructions, and amendment of the Parameters and Guidelines effective July 1, 2005, before the triggering event that began the running of the statutory period (i.e., the initial payment of the claim in August 2006). As noted, the claimant had ample notice of the change, via the revised claiming instructions, and all parties are deemed to know of changes to state statute.

More importantly, all versions of the Parameters and Guidelines place the burden on the claimant to support all costs claimed with source documentation, which must be retained during the period subject to audit. In other words, it is the claimant's burden to prove the claim, and based on the foregoing analysis, the claimant was on notice of the document retention requirements.

Furthermore, the claimant complains of being denied the time "provided by law" to respond to the requirements of the audit. Government Code section 17558.5 requires an audit to be completed "not later than two years after the date that the audit is commenced." This is a requirement on the Controller to complete its audits promptly; it is not intended to provide a claimant with up to two years to remedy a poorly-supported and insufficiently-documented reimbursement claim.

Moreover, the undisputed evidence in the record shows that the claimant had a period of seven months, and an additional period of nine months, in which the Controller's audit staff was actively working with the claimant to resolve the issues of the audit and to make clear the documentation necessary to support the claim.³²² And, the Controller asserts, "[t]hroughout the audit process, we worked with the city's staff to not only obtain proper supporting documentation, but also to arrange for alternative methods to support claimed costs."³²³

Based on the foregoing, the Commission finds that claimant's allegation that the Controller failed to provide adequate time to comply with the requirements of the audit is irrelevant, and ignores the claimant's burden to support costs claimed.

V. Conclusion

Based on the foregoing analysis, the Commission partially approves this IRC, and requests, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, that the Controller reinstate costs that relate to the following incorrect reductions *to the extent* the claimant can provide documentation to support the validity of the costs incurred. Section VI. of the Parameters and Guidelines require claimants to provide source documents that show the evidence of the validity of such costs and their relationship to the mandate. The

³²² Exhibit A, IRC, pages 16-18; 711-714; Exhibit B, Controller's Late Comments on the IRC, pages 24-26.

³²³ Exhibit B, Controller's Late Comments on the IRC, page 1013.

supporting documentation must be kept on file by the agency during the audit period required by Government Code section 17558.5. In this respect, claimants are required by Food and Agriculture Code section 32003 to maintain records on animals that are taken up, euthanized, or impounded. Such records shall identify the date the animal was taken up, euthanized, or impounded; the circumstances surrounding these events; and the names of the personnel performing these activities.³²⁴

- Any reduction of costs relating to the exclusion of animals deemed treatable upon arrival at the shelter and later euthanized during the increased holding period because they became non-rehabilitatable.
- Any reduction of costs relating to the Controller's recalculation of costs following the *Purifoy* decision and its use of an average number of reimbursable days, to the extent the recalculation resulted in an exclusion of "eligible animals" correctly held under the law.

The Commission further finds that all other reductions made by the Controller are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Finally, the Commission finds that the Controller's determination not to consider claimant's request, made during the audit, for reimbursement for the construction of new facilities is correct as a matter of law, and that the claimant's allegation that the Controller failed to provide adequate time to comply with the requirements of the audit is irrelevant.

³²⁴ It is not clear from the record whether the Controller actually requested these records from the claimant based on the Controller's interpretation that such costs were not reimbursable.