

**MORAGA PARKS AND RECREATION COMMISSION
MEETING MINUTES
Regular Meeting
December 15, 2009 - 7:00 PM
Library Community Room – 1500 St. Mary’s Road**

- I. **CALL TO ORDER:** Chair Mallela called the meeting to order at 7:00pm
- II. **ROLL CALL:** Commissioners: Crouch, Faoro, Haffner, Khanna, Lucacher, Reed

Commissioners Absent:
Audience: approximately 17

III. **ADOPTION OF AGENDA**

Chair Mallela asked for a motion.

Commissioner Khanna moved and Commissioner Lucacher seconded, to adopt the agenda as presented. Motion carried unanimously.

IV. **PUBLIC COMMENT** – None

- V. **ANNOUNCEMENTS/CORRESPONDENCE** -
1) Upper Commons Playground and Holiday Tree
2) 12/10 Win-Win Solution, B. Symon, Municipal Liability Memo., Sub-Committee survey results, B. Reynolds – 12/14/09 memo./survey results

VI. **PARK FOUNDATION LIAISON REPORT** –
Pear pruning 2/6 all day, Life member reception 2/2010

VII. **HACIENDA FOUNDATION LIASON REPORT** -
Cinco de Mayo and Oktoberfest will happen in 2010. A few new board members have joined.

VIII. **MINUTES** - November 17, 2009

Chair Mallela asked for a motion.

Commissioner Lucacher moved and Commissioner Reed seconded, to adopt the November 17, 2009 minutes as drafted. Motion carried unanimously.

IX. **UNFINISHED BUSINESS**

A. Rancho Laguna Program Plan Sub-Committee recommendations –Staff provided a report.

Public Comments:

- M Simcoff (Orinda) – why was it concluded that anything was wrong
- J Dixon (Moraga) – why do anything with the park
- B Cosden (Orinda) – other parks have off-leash hours, liability not an issue
- B Symon (Lafayette) – Option B shape is too narrow, hazard to dogs
- D Dixon (Moraga) – where are the people opposed to off-leash dogs
- S Subow (Moraga) – keep park as is
- F Stevens (Moraga) – liability isn't an issue, don't need to do anything
- S Freeman (Moraga) – can't compare Moraga with other cities
- H Kantor (Moraga) – felt she was at a different meeting than on 11/17
- M Byner (Moraga) – better off-leash multi-use park
- D Snauw (Moraga) – leave park alone, Shop Moraga first
- L Salvado-Toledo (Moraga) – attachment C, comments most about poop only
- B Newel (Lafayette) – What was criteria in choosing an option
- B Carmen (Moraga) – how to profit with a dog park, 1 acre is offensive size
- R Vance (Moraga) – trees provide too many obstacles
- S Bowhay (Moraga) – concerned about TC mandate, sub-committee worked hard & Frank Stevens liability memorandum

Motion by Lucacher, second by Faoro to forward both options, A and B, to the Town Council, passed unanimously.

Commission then went one by one to discuss their first option. By a vote of 4-3, the commission favored option B.

X. NEW BUSINESS

- A. Urban Forest Sub-Committee** – Commissioner Khanna gave brief report stating that we need the commission to seek two members of the public to serve on this sub-committee.

XI. REPORTS

A. COMMISSION MEMBERS

- **Schools** – new superintendent, principal at JM
- **Tree Planting Committee** – Khanna provided an update.
- **Grant Funding** – None
- **Natural Resources/Environmental Sustainability** – Rheem Theatre
- **Sports Alliance** – none
- **Other Reports Comments** – **PEAR FESTIVAL 9/25/10, chaired by Haffner. LM wine growers want to make it a Pear and Wine festival.**

B. STAFF – none

XII. ITEMS FOR NEXT AGNEDA

- Testing use of park by schedule different evenings.

XIII. ADJOURNMENT

By order of Chair Mallela, the meeting adjourned at 10:18pm

MUNICIPAL LIABILITY FOR OFF-LEASH DOGS

INTRODUCTION

Founded in 1980, Stevens, Drummond & Gifford is a firm of eight attorneys, practicing in the San Francisco Bay Area with offices located in Walnut Creek. The firm specializes in defending a full range of products liability cases, including toxic and environmental torts, as well as the defense of public entities and of premises, construction and employment liability claims.

Frank Stevens, the firm's co-founder has represented cities, counties, school districts, parks and recreational areas for over 30 years. His clients have included the cities of Berkeley, San Francisco, Oakland, Walnut Creek, PG&E, EBMUD, BART East Bay Regional Park District and county fairgrounds throughout Northern California.

Mr. Stevens has also handled a variety of dog-related cases both as an attorney and as a breeder, owner, and handler of champion Welsh Terriers and Airedales. He has been a resident of Moraga since 1983 and lives at 409 Chalda Way with his two Welsh terriers, Toffie and Dewey, who together, with their owner visit Rancho Laguna Park on a daily basis during off-leash hours.

ISSUE

The Town of Moraga has provided for off-leash hours at Rancho Laguna Park for over twenty years. Recently, the Town Council has expressed concern regarding potential liability related to off-leash hours at the Park. This memorandum addresses the concern for potential liability.

DISCUSSION

Primary Responsibility

As in all dog-related injuries and pursuant to Civil Code §3342(a) "The owner of any dog is liable for the damages suffered by any person who is bitten by the dog while in a public place or lawfully in a private place, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness." In short, the dog owner is strictly liable for injuries and damages caused by his/her dog. The issue under consideration is whether or not a municipality permitting an off-leash use by dog owners subjects the municipality to liability for permitting dog owners to exercise their dogs in public parks off leash.

Immunities, Defenses of Comparative Negligence, Assumption of Risk and Negligence of Others

First, it is noted that Government Code §831.7 provides that a public entity or public employee is not liable to any person who participates in "hazardous recreational activity" which has been broadly defined to include a multitude of activities from tree climbing to all kinds of body contact sports and would logically extend to the assumption of risk

when entering a park posted to include off-leash dog activities. Older adults and children who voluntarily enter a park during posted hours when non-leashed dogs are in obvious use with the park, assume the risk of injury from those dogs. Further, Under Government Code §818 all public entities are immune to punitive damages. This means that if it could be proved that a City or Town and its employees knowingly permitted dangerous or unruly animals to exercise off leash with resulting injuries, no punitive damages would follow.

In addition to posting notice of off-leash times, and assumption of risk during those periods, it is also recommended that dog owners be put on notice that they are primarily responsible for the control of their dogs, and, in the event of unlawful or unreasonable conduct by the owner, would not be shielded by the doctrine of assumption of risk.

It should also be noted that in California the owner or possessor of a dog having a dangerous propensity is strictly liable for the injuries that result from the dog's dangerous propensities. The owners of such designated dangerous dogs should be made aware that their dogs are not permitted in the park, and that the owner remains strictly liable even if an injury occurred in a leash-optional area.

Liability for Injuries

In addition to the dog owner being the primary responsible party, in any claim against a public entity, that entity has the normal defenses of comparative negligence, assumption of risk and the negligence of others; plus all the immunities set forth in the Government Code. Further, it should be noted that parents who bring children to dog parks have a duty to supervise and control their children, whether posted or not...Additionally seniors with physical disabilities are held responsible for knowing their limitations and governing their actions accordingly.

Suits against Local Governments

The victim of a personal injury or injury to a victim dog to date has not prevailed on a claim against any local entity that has established off-leash access to its property. Our research both in Westlaw and Lexis, and under the National and California Jury Verdict summaries and case reported database has found no cases where a public entity has been held liable for injuries resulting from dog bites or dog contact of any kind on its property (The only cases involving municipal or government parks and recreation areas relate to bites from police or narcotics dogs, wherein the public entity is protected by specific immunities.)

Additionally, my personal contact with the city attorneys from numerous public entities and municipalities in the East Bay, including Danville, San Ramon, Walnut Creek, Pleasant Hill, Richmond, East Bay Mud and the East Bay Regional Parks has confirmed that they have had no claims or lawsuits arising out of permitted off-leash dog activity in their jurisdictions.

Mixed Use, Including Off-leash Dogs in Public Parks, is Well Established in

the Bay Area

Below is a sampling of Bay Area Communities and Park Districts, which allow off-leash dogs in at least some of their mixed-use parks. For most of these Communities and Park Districts, off-leash is allowed during all hours of park operation, and not just restricted hours. The sampling includes:

1. Piedmont
2. Albany
3. Walnut Creek (San Miguel Park, during restricted hours)
4. East Bay Regional Park District
5. Golden Gate National Recreational Area
6. Carmel
7. City and County of San Francisco

Although it is conceivable that a public entity could fail to enforce its own rules and regulations concerning off-leash dog areas, to date that issue has not arisen. If, for instance, an irresponsible dog owner habitually ignored dog park rules, and local officials did nothing despite being informed of an ongoing hazard ... liability could follow. However, we're not aware of that potential scenario having occurred.

Insurance Coverage

As a final item, it has been speculated that off-leash dog areas could not be insured, and that public entities would be at risk, without coverage. Our research has indicated that because of the doubtful liability and the pooling of risks by cities within regional proximity insurance coverage is readily available without the need of a specific rider. It is to be noted that such coverage also includes the duty to defend all claims and lawsuits however spurious and unfounded.

Frank M Stevens

Stevens, Drummond & Gifford,

1910 Olympic Blvd Ste 250

Walnut Creek, Ca 94596

Scott Bowhay

From: Mike Segrest [manager@moraga.ca.us]
Sent: Tuesday, December 08, 2009 2:52 PM
To: Bill Cosden; dtrotter@moraga.ca.us; kchew@moraga.ca.us; Howard Harpham; Karen Mendonca; Mike Metcalf
Cc: Jay Ingram; Frank Stevens; Scott Bowhay; alan.jewett@gmail.com; Bill Carman; Blair Newel; Bob Symon; Bob Latham; Christopher C Gerding; dravinsky@comcast.net; Debby Dixon; Doug Cole; jeanne Moreau; John Dixon; Laszlo G. Bonnyay; Isalvago@comcast.net; mweinberger4@comcast.net; M'Liss Greenlee; Phil Henningsen; Seth Freeman; Susan Truax; elaine.wheeler@gmail.com
Subject: RE: Dog Liability Memorandum

When Town Council considered this issue and gave direction to the Park and Recreation Commission to look at a separate space for dogs off leash they were aware that our insurance carrier still provided insurance under the current situation. They were also advised by our attorney that he did not believe our liability would be different even if the use was physically separated. The Town Council still voted to pursue separating the uses in order to lessen any conflicts of use. The opinion from Mr. Stevens is basically consistent with the information Town Council had when they made their decision. Thanks for the info.

From: Bill Cosden [mailto:bill@silveroakllc.com]
Sent: Monday, December 07, 2009 1:14 PM
To: dtrotter@moraga.ca.us; kchew@moraga.ca.us; Howard Harpham; Karen Mendonca; Mike Metcalf
Cc: Mike Segrest; Jay Ingram; Frank Stevens; 'Scott Bowhay'; alan.jewett@gmail.com; Bill Carman; Blair Newel; Bob Symon; Bob Latham; Christopher C Gerding; dravinsky@comcast.net; Debby Dixon; Doug Cole; jeanne Moreau; John Dixon; Laszlo G. Bonnyay; Isalvago@comcast.net; mweinberger4@comcast.net; M'Liss Greenlee; Phil Henningsen; Seth Freeman; Susan Truax; elaine.wheeler@gmail.com
Subject: Dog Liability Memorandum

Dear Mayor Trotter and Town Council Members:

Attached is a memorandum by Frank Stevens of the Walnut Creek Law Firm of Stevens, Drummond & Gifford, which addresses the question of potential liability regarding off-leash dog hours. For over 30 years, Mr. Stevens (and his firm) has specialized in representing public entities in tort matters. Clients include cities such as Berkeley, San Francisco, Oakland, and Walnut Creek, and other entities such as EBMUD, BART, East Bay Regional Park District and PG&E.

As the Town Council should have been aware, a number of public entities in the Bay Area, alone, have off-leash dog hours, as well as that Rancho Laguna Park, with its off-leash hours, has functioned well, and enriched the lives of the greater community for approximately 30 years. Nevertheless, without ever bothering to have the issue researched, or recognize the successful operation of off-leash hours at Rancho Laguna Park and various other Bay Area public entities, some, at least, on the Town Council, have made unwarranted assumptions about potential liability.

Hopefully, Mr. Stevens' memorandum addresses those concerns. Further, as a direct result of those unwarranted concerns, the subcommittee created to consider off-leash hours at the Park has been unfortunately misguided, and is at risk of needlessly undoing one of the most enriching and economical uses of any resource in the Town of Moraga.