July 29, 2011

Barry Behr
[redacted]
Moraga CA 94556

Jay Ingram
Recreation Director
Moraga CA

Dear Jay:

I want to clarify a statement I made at the last Park and Recreation Committee meeting in with regard to the cities liability at Rancho Laguna and to the off leash policy. I stated that on the cities web site the document from Municipal Pooling Authority (MPA) stated that the city would be liable if a dog was to bit someone at the park. I also stated that a letter was submitted a year ago to the city attorney which stated very clearly that this is not the case. The city would be responsible if the dog had been indentified prior to the incident as a problem. I did miss state the facts as to what the letter from Municipal Pooling Authority (MPA) states on the web site.

The letter states: "We would not recommend a general, unfenced off-leash area even if the playgrounds are secured in a fenced area because the children still need to get to and from the playground.

Protection of the children and all park users are a high priority while they are in the park"

Even thought it does not state the City would be legally responsible as I stated at the meeting I feel it leaves that impression. I would ask that the letter which was given to the city attorney last year stating that would not be the case is posted on the web site along with the MPA document. If you unable to locate it I can get a copy to you for posting.

Please have this letter read into the minutes of the next meeting.

Thank you.

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 spectulated 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.

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