



PARKS AND RECREATION COMMISSION AGENDA REPORT

MEETING DATE: MARCH 24, 2004

ITEM NUMBER:

SUBJECT: REQUEST OF RESIDENTS FOR DOG EXERCISE AREA AT BALEARIC CENTER**DATE: MARCH 16, 2004****FROM: ADMINISTRATIVE SERVICES DEPARTMENT – RECREATION DIVISION****PRESENTATION BY: JANA M. RANSOM, RECREATION MANAGER****FOR FURTHER INFORMATION CONTACT: MARK TAYLOR, 714-754-5636**

RECOMMENDATION

It is recommended the Commission take no further action on this item. Should City Council agendaize this request for discussion, it is recommended that the Parks and Recreation Commission not recommend an off leash area for Balearic Community Center/Estancia Park.

BACKGROUND

At the January 28, 2004, Parks and Recreation Commission meeting, residents from the Mesa Verde West area requested a portion of the Balearic Community Center turf area be set aside for use as an “off leash” dog area for resident use only. In the proposal, residents stated the area would be used from dawn until 8:30am and would not use the area if there were scheduled activities. The proposal states the residents are not comfortable with the existing dog park and the establishment of this area would improve neighborhood social interaction. The proposal implies this would be an area for the exclusive use of Mesa Verde residents, although during one subsequent conversation, it was mentioned that others would be allowed, but the use as an off leash area should not be advertised. Staff provided an Information Item to Commission at the February meeting. Commissioner Leece requested the item be agendaized for discussion at the March meeting.

ANALYSIS

Staff has researched the existing City Municipal Code for off leash dog parks and leash laws in general. The City’s code is specific when dealing with dogs, leashes, and off leash dog parks, referred to as dog exercise areas. All dogs must be on a secure leash of not more than six feet that is continuously in the hands of the person controlling the dog, unless the dog is in an enclosed dog exercise area.

Sec 3-112 states, “*No person having the care, charge or control of any dog shall permit or allow the dog to be present upon any street, alley, park or public place in the City unless such dog is securely restrained by a leash or chain not exceeding six (6) feet in length and to be held by that person*”

Under Section 12-42, a dog exercise area is defined as “*any fenced area or other enclosed area of a City park designated by the City Council by resolution or ordinance as an area where dogs may be off a leash*”.

The only exception to the leash requirement is Sec 12-42 (b) which allows dogs off leash when a permit is issued to conduct obedience classes and other types of trials or shows in a public place.

The Balearic Community Center (building and turf area) is a site leased by the City from the Newport Mesa Unified School District. Under the terms of the lease, the City agrees the Balearic site will be used for community service, educational purposes, recreation and related services. The lease states, “City recognizes the desire of the District to continue the use of Balearic Elementary School as a community center and, therefore, will establish appropriate usage policies under the auspices of those California Education Code sections commonly referred to as the Civic Center Act”. Research of the Civic Center Act (Sec’s 38130 - 38139) shows there are several intended uses of school sites including public meetings, discussions of general or public interest, child care or day care programs, supervised recreational activities, youth center and mass care and welfare shelters. It appears the intent of the Civic Center Act is to promote and encourage public meetings, activities and other opportunities for the benefit of the entire community.

Staff met with Costa Mesa Animal Control, a division within the Police Department, and discussed, in general, the issue of off leash dogs in City parks. Animal Control indicated there were several locations around the City where residents release their dogs to run on park and school grounds without leashes. Animal Control stated it is difficult to both inform and enforce leash laws because dogs and owners generally run away when approached. In addition, Animal Control indicated that because the dog is not under control, it will enter areas not intended for dogs. Under both the City code (Sec 12-43) and the County of Orange code (4-1-46), dogs are excluded from children’s play areas.

There are several issues associated with this request that require additional discussion. First, the nature of government is to provide services for the greater good of the community and society and, as such, does not generally grant exclusive use of public land to users. The City does, through fee-based permits, allow users to use a specific element, such as a picnic table, shelter, or athletic field for their event. The City has an existing off leash dog exercise area in TeWinkle Park and a Letter of Understanding with the Costa Mesa Bark Park Volunteer Foundation established by a non-profit volunteer organization to raise and administer funds to preserve and improve the Bark Park. In that Letter of Understanding, both the City and Foundation acknowledge that the City owns and operates the Bark Park for the benefit of the general public and the Foundation does not have a possessory interest in the land.

Second, the establishment of a “community off leash area” in one part of the City may establish precedent for other “community off leash areas”. As mentioned earlier, there are several areas in Costa Mesa where individuals allow their dogs to be off leash including Harper Park, Fairview Park, Canyon Park and Kaiser School. It is foreseeable that if an off leash area were established in one part of Costa Mesa, residents in other parts would request a similar area in their neighborhood. Furthermore, restricting the use of such an area to only residents of a particular neighborhood presents enforcement issues.

Third, the existing City Municipal Code is quite clear with respect to dogs and leashes. The establishment of a second dog exercise area would, by definition, not require a change to

the code. By definition, a dog exercise area is any fenced or other enclosed area of a City park designated by Council. However, if an unfenced, unenclosed area of a park or other site were designated as an exercise area, the Code would require amendment to further define a "dog exercise area". The Council would give a first reading to the proposed change, a second reading and final adoption to the Code change and publication in the Municipal Code.

In January 2003, the City Council approved the Update to the Open Space Master Plan of Parks and Recreation, which describes the types of facilities and elements approved for each park. For the Balearic Community Center, the Master Plan calls for lighting of two utility fields and does not designate a dog park. There are no proposed elements to Estancia Park. If an off leash area is recommended for Balearic Community Center or Estancia Park, a Master Plan amendment would be required. An amendment to the Open Space Master Plan of Parks and Recreation would require staff to prepare a report detailing the proposed addition of the park to the Master Plan, site plans, design elements, a noticed public hearing, and Planning Commission approval, as the Planning Commission has final authority on master plans.

Finally, there are liability issues connected with the City designating an area as an off leash park. The existing dog park at TeWinkle Park is a fully fenced area with a double gate entry to prevent dogs from escaping while off leash. The park is posted with the rules of the dog park and the City Code Sec 12-42 (d) 9, states the users consent to a waiver of liability benefiting the City and users agree to protect, indemnify and hold the City harmless from injury or damage caused by dogs while in the dog exercise area. The addition of a second dog exercise area does not change these elements. There would simply be two enclosed dog exercise areas. However, if there were an "unenclosed off leash area" there would be both safety and liability issues.

There is an expectation of a user that a park has certain elements in it, such as athletic field, picnic areas, free play, tot lot, basketball etc. and anticipated uses of that area. A user can reasonably assume that they will be exposed to certain elements while in the park such as children, natural animals (birds), weather, etc. Signage at parks generally posts basic rules of park usage and refers to the Municipal Code for enforcement. However, designating an unenclosed off leash exercise area introduces a foreseeable element of risk to users and therefore liability on the City. When a person enters an enclosed dog exercise area, that individual "assumes the risk" as they are knowingly entering a known area where dogs will be off leash and are accepting the associated risks. With an unenclosed area, there is no "assumption of risk" as the general intended use of a park is not as an off leash area, and therefore users would not assume they would encounter off leash dogs. Because there is no restraint (leash), the owners or handlers are not able to control the dogs and should the dog run out of the designated area, the handler could not stop it. The City would be exposed to liability because it is foreseeable the dog could run out of the designated area, the intended use of the park is not as a off leash area, other users have no pre-knowledge of the off leash use, there is no mitigation procedure (such as an enclosure) to contain the dogs, and the City knowingly legitimized it through official action.

Unenclosed areas are uncommon but not unheard of. Two local cities, Huntington Beach and Long Beach, have designated areas where dogs may be off leash but not in a confined fenced area. Both locations are on the beach and specify the exact location of the "dog beach" including street names and distances and time of day allowed. Long Beach, whose

“dog beach” was approved by the City Council, limits the use to one dog per adult and also includes waiver and indemnity language similar to the Costa Mesa dog exercise area.

ALTERNATIVES

1. Recommend to City Council to designate a portion of Balearic Community Center athletic fields as an off leash dog exercise area and recommend to Planning Commission to amend the Open Space Master Plan of Parks and Recreation to allow a dog park element to be included at the Balearic Community Center.
2. Recommend to City Council the City establish a “by permit only” enclosed area where dog owners and handlers can allow their dog to be off leash. This would be a permit for a specific time and duration for a specified fee, similar to the permitting of fields for athletic use. Establishment of a rent-able dog park would require an amendment to the Open Space Master Plan as no City facility has this element as an approved use. The cost and revenue associated for this use has not been determined at this time.

CONCLUSION

The City code is clear and states all dogs must be restrained by a leash when in public, unless in a dog exercise area (dog park). The Council retains the authority to designate dog exercise areas, and therefore the Commission cannot designate a portion of Balearic, or any City park as an off leash area. In the current Master Plan, no City park or facility under joint use has an approved element of a dog park. Planning Commission retains the authority to approve master plan elements and designation of an off leash area would require a master plan amendment. In addition, there are liability issues connected with an unenclosed off leash dog area. It is therefore recommended the Parks and Recreation Commission take no further action on this item.

JANA M RANSOM
Recreation Manager

STEVEN E HAYMAN
Administrative Services Director

Mark Taylor
Management Analyst

C: Applicant

William J. Morris, Public Services Director
Animal Control