



File #: 2018-815, Version: 1

Report to Mayor and City Council

Wednesday, November 07, 2018

Consent

SUBJECT:

CONSIDER APPROVING ORDINANCE NO. 18-1812 THAT WOULD AMEND SECTION 3301 (ADDITION TO ANIMAL CONTROL ORDINANCE) OF CHAPTER 3 (POUND REGULATIONS) OF ARTICLE III (PUBLIC SAFETY) OF THE CARSON MUNICIPAL CODE (CITY COUNCIL)

I. SUMMARY

The City of Carson has always permitted service animals in its public parks pursuant to its policy against discrimination and harassment codified in Carson Municipal Code (CMC) Sections 21100-21101 (Exhibit No. 1). Title II and III of the Americans With Disabilities Act (ADA) generally states that entities must permit service animals that accompany individuals with disabilities to enter all areas where the public is permitted to go (Exhibit No. 2). State law provides a similar requirement (Exhibit No. 3). However, Section 3301 of the CMC prohibits the owner or person having custody of any dog to allow said animal to enter any public park, except for teaching uses when approved by the Director of Parks and Recreation {now Community Services Director} (Exhibit No. 4). In an effort to clarify, restate, and reaffirm the City's policy against discrimination and harassment, and to ensure public awareness of the City's compliance with the ADA and State law, staff is requesting that the City Council approve Ordinance No. 18-1812 (Exhibit No. 5).

II. RECOMMENDATION

APPROVE Ordinance No. 18-1812 that would amend Section 3301 (Addition to Animal Control Ordinance) of Chapter 3 (Pound Regulations) of Article III (Public Safety) of the Carson Municipal Code, by expressly permitting service animals accompanying individuals with disabilities to enter all areas of the City's parks where the public is permitted to go, subject to certain requirements and exceptions.

III. ALTERNATIVES

1. DO NOT APPROVE the recommendation.
 2. TAKE another action the City Council deems appropriate
- IV. BACKGROUND**

The ADA requires state and local governments that serve the public generally to allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go. Specifically, the regulations implementing the ADA, 28 CFR Part 35 (Nondiscrimination on the Basis of Disability in State and Local Government Services), provides that “[g]enerally, a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.” State law similarly provides that “[e]very individual with a disability has the right to be accompanied by a guide dog, signal dog, or service dog” in “places to which the general public is invited”. (Civil Code Sections 54.1, 54.2).

Sections 21100 and 21101 of the CMC provides the City’s explicit policy regarding discrimination of non-employees by City employees, including for disability status. Section 3301 of the City of Carson’s Municipal Code (CMC) currently prohibits either the owner or the person accompanying an animal to enter park property. However, the City has incorporated into its park policy and procedures provisions for permitting the use of service animals by individuals with disabilities. However, Staff feels the need to amend CMC Section 3301 to explicitly exempt service animals, which are permitted to accompany a disabled individual in the City’s parks.

Under the ADA, the individual must maintain control of the animal through physical restraint or other effective controls. This requirement may be enforced by Park staff should an individual assert service animal status. Furthermore, Staff may inquire into the asserted service animal status by asking ONLY two questions: (1) is the service animal required because of a disability, and (2) what work or task has the animal been trained to perform. Staff cannot ask about the person’s disability, require medical documentation, require a special identification card or training documentation for the animal, or ask that the animal demonstrate its ability to perform the work or task.

A person with a disability cannot be asked to remove their service animal unless: (1) the animal is out of control and the handler does not take effective action to control it or (2) the animal is not housebroken. When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal’s presence.

Adopting a provision exempting service animals from Section 3301 would work to reaffirm the City’s policy against discrimination and harassment, and provide clarity to the public in regards to the City’s policy against discrimination and harassment with respect to the use service animals in City parks, without restricting the City’s ability to properly regulate its public parks. Therefore, Staff is requesting that the City Council approve Ordinance No. 18-1812

V. FISCAL IMPACT

None.**VI. EXHIBITS**

1. Sections 21100 (Purpose and Scope), and 21101 (Discrimination and Harassment) of Chapter 11 (Discrimination and Harassment Prevention Policy) of Article II (Administration) of the Carson Municipal Code. (pgs. 4-7)
2. 2010 ADA Revised Requirements, Service Animals. 28 C.F.R. Sections 35.104, and 35.136. (pgs. 8-14)
3. California Civil Code Sections 54.1, and 54.2. (pgs. 15-19)
4. Section 3301 (Addition to Animal Control Ordinance) of Chapter 3 (Pound Regulations) of Article III (Public Safety) of the Carson Municipal Code. (pg. 20)
5. Ordinance No. 18-1812. (pgs. 21-23)

Prepared by: Faye Moseley, ADA Compliance Officer/Director of Human Resources & Risk Management

**CHAPTER 11
DISCRIMINATION AND HARASSMENT PREVENTION POLICY**

Sections:

- § 21100 Purpose and Scope
- § 21101 Discrimination and Harassment
- § 21102 Sexual Harassment
- § 21103 Procedure
- § 21104 Exceptions

21100 Purpose and Scope.

- A. To reinforce the City of Carson's commitment to equal employment opportunity and a work environment free of discrimination and harassment, including sexual harassment. This policy is designed to attempt to prevent discrimination or harassment from occurring, and if it does occur, to stop any further discrimination or harassment and correct any effects of discrimination or harassment.
- B. This policy and procedure will apply to all personnel that are employed by the City of Carson, those persons who volunteer or serve as unpaid interns for the City of Carson, any "special employees" as defined by law, any elected or appointed officials, and any persons providing services pursuant to a contract as described in Government Code Section 12940(j)(1).
- C. This policy is also intended to apply to non-employees to the extent that they are discriminated against or harassed by City of Carson employees, any persons serving on the City Council, a City board or a commission, special employees, or any persons providing services pursuant to a contract with the City as described in Government Code Section 12940(j)(1).
- D. It shall be deemed a violation of this policy to engage in the conduct described herein even if it does not rise to the level of legally actionable harassment or discrimination. (Ord. 16-1581, § 2)

21101 Discrimination and Harassment.

- A. Under this policy, "discrimination" includes, but is not limited to:

1. Any practice, process or action in the workplace which works against equality of opportunity and against the ability of each person to be employed and to advance on the basis of merit without regard to the following protected categories/status:

- a. Age (forty (40) and over);
- b. Ancestry;
- c. Color;
- d. Religious creed (including religious dress and grooming practices);
- e. Denial of family and medical care leave;
- f. Disability (mental and physical) including HIV and AIDS;
- g. Marital status;
- h. Medical condition (cancer and genetic characteristics);
- i. Genetic information;
- j. Military and veteran status;
- k. National origin (including language use restrictions);
- l. Race;
- m. Sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding);
- n. Gender, gender identity, and gender expression;
- o. Sexual orientation;
- p. Any other basis protected by Federal and/or State law.

2. Basing an employment decision affecting a job applicant or employee (e.g., decision to hire, promote, transfer, terminate, etc.) on one's protected status.

3. Treating an applicant or employee differently with regard to any aspect of employment because of his or her protected status.

4. Taking adverse employment action (e.g., demotion, transfer, discipline, termination) against an employee based on the employee opposing discrimination and/or harassment in the workplace, assisting, supporting, or associating with a member of a protected category/status who complains about discrimination and/or harassment, or assisting in an investigation of discrimination and/or harassment.

- B. Under this policy, "harassment" is defined by the existence of the following elements:

1. Conduct that is based on a protected category/status:

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2. Conduct that is unwelcome;
3. Workplace harm that creates a hostile work environment or results in a tangible employment action (quid pro quo).

C. Even if conduct does not constitute a hostile work environment, it still may be misconduct that is cause for discipline. Examples of actions that may lead to workplace harassment complaints based on a hostile work environment and which are prohibited include, but are not limited to, the following:

1. Visual harassment, such as posters, photographs, letters, notes, email, cartoons, or drawings related to the person's protected category/status.
2. Verbal harassment, such as epithets, derogatory comments/statements, vulgar, racist or other discriminatory jokes, or slurs based upon a person's protected category/status.
3. Physical harassment, such as assault, blocking or impeding access or other physical interference, sabotaging work or imposing demeaning work tasks based upon a person's protected category/status. (Ord. 16-1581, § 2)

21102 Sexual Harassment.

A. Sexual harassment includes harassment based on sex or of a sexual nature, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

B. The definition of sexual harassment includes many forms of offensive behavior, including harassment of a person of the same gender as the harasser.

C. Sexual harassment can take the form of, but is not limited to:

1. Unwanted sexual advances.
2. Offering employment benefits in exchange for sexual favors.
3. Making or threatening reprisals after a negative response to sexual advances.
4. Visual conduct, including leering, making sexual gestures, displaying of suggestive objects or pictures, cartoons or posters.
5. Verbal conduct, including making or using derogatory comments, epithets, slurs, and jokes.
6. Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations.
7. Physical conduct, including touching, assault, impeding or blocking movements.

D. Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

1. The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
2. The harasser can be the victim's supervisor, a supervisor in another area, a manager, a co-worker, or a non-employee.
3. The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
4. Unlawful sexual harassment may occur without economic injury to or termination of the victim.

E. "Hostile work environment" cases are a type of sexual harassment that can result from various forms of conduct, including, but not limited to, the following:

1. Visual harassment: leering/staring, making sexual gestures, inappropriate gifts, and displaying suggestive or pornographic objects, pictures, magazines, cartoons, posters, letters, notes, or emails.
2. Verbal harassment: making or using derogatory comments, epithets, slurs and jokes. Comments about body parts or physical appearance, innuendo, unwanted sexual advances, unfulfilled threats of employment benefits/detriments in exchange for favors, pressure for dates, discussion of a sexual nature, questioning a person's sexual practice or history, and sexually degrading words used to describe an individual.
3. Physical conduct: touching, assault, impeding or blocking movements.

F. "Quid pro quo ('this for that') harassment" cases are another type of sexual harassment. "Quid pro quo" harassment can occur when submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual, such as a promotion, raise, hiring, or performance appraisal. This kind of sexual harassment can only be perpetrated by a supervisor, manager or other person who has the authority to affect the employee's terms and conditions of employment.

G. Examples of actions that may lead to sexual harassment complaints and which must be avoided include, but are not limited to, those listed below:

1. Unwanted sexual advances or pressure for dates or sexual favors.
2. Making implicit or explicit offers of employment benefits in exchange for sexual favors.
3. Making implicit or explicit threats of retaliation for negative responses to sexual advances.
4. Leering, sexual looks or sexual gestures with hands or through body movements.
5. Unwanted touching, including hugging, kissing, patting or stroking.
6. Pinching, grabbing, assaulting, impeding or blocking movements.

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7. Sexually suggestive objects or pictures, cartoons or posters in the workplace or on computer systems (including email and the Internet).
8. Graphic verbal commentaries about an individual's body.
9. Sexually degrading words used to describe an individual, including inappropriate sex oriented comments about appearance, including dress or physical features.
10. Lewd propositioning.
11. Unwanted written communications, telephone calls, or personal gifts.
12. Sexual teasing, jokes, remarks or questions.
13. Referring to an adult as a "girl," "hunk," "doll," "babe," or "honey" or whistling at someone.
14. Sexual innuendos or stories.
15. Asking about sexual fantasies, preferences or history.
16. Questions about sexual life.
17. Sexual comments about a person's clothing, anatomy or looks.
18. Telling lies or spreading rumors about a person's personal sex life.
19. Giving massages, touching a person's clothing, hair or body.

H. Even if conduct does not constitute sexual harassment, it may still be misconduct that is cause for discipline.

I. Employers must take all reasonable steps to prevent discrimination and harassment from occurring. To that end, the City has prepared this policy, distributed a brochure on sexual harassment, and posted in the workplace a poster made available by the Department of Fair Employment and Housing. The City further provides training and education to managers and supervisors regarding sexual harassment as required by law. (Ord. 16-1581, § 2)

21103 Procedure.

A. Complaints of Discrimination or Harassment.

1. If any City employee, volunteer, intern, or applicant believes that he or she has been subjected to discrimination or harassment, including sexual harassment, he or she has the right to report the incident to any manager or supervisor, and the right to file a complaint with the Department of Human Resources. The Director of Human Resources or his or her designee shall interview the individual filing a complaint and the individual may be accompanied by a person of his or her choice, as long as that person is not an involved party or a witness. Other individuals will be interviewed as necessary. If the complaint is against the Director of Human Resources, then the complaint should be filed with the City Attorney's office.
2. Complaints of acts of discrimination or harassment, including sexual harassment, that are in violation of the City's discrimination and harassment prevention policy will be accepted in writing or orally, and any anonymous complaint will be taken seriously and investigated. Anyone who has observed or been the target of discrimination or harassment, including sexual harassment, should report it to the Director of Human Resources.
3. Additionally, individuals can also file complaints with the Equal Employment Opportunity Commission within three hundred (300) days and with the Department of Fair Employment and Housing within three hundred sixty-five (365) days of the most recent alleged event of discrimination or harassment, including sexual harassment.

B. Investigation.

1. When the Department of Human Resources receives a complaint, the allegations will be promptly investigated in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable, but confidentiality is neither guaranteed nor likely if discipline is ultimately determined necessary because any employee being so disciplined has the right to a full copy of the investigation report upon which the discipline is based.
2. If it is determined that a violation of this policy has occurred, the City will act promptly to correct the offending conduct, and where it is appropriate, disciplinary action will be imposed.

C. Disciplinary Action.

1. If it is determined that a violation of this policy has been committed by a City employee, the City will take such action as is appropriate under the circumstances. Such action may range from counseling to termination from employment, and may include such other forms of disciplinary action as is appropriate under the circumstances.
2. If it is determined that a violation of this policy has been committed by a non-City employee, the City will take such action as is appropriate under the circumstances. Such action may range from notifying the non-City employee's employer, filing a complaint with said employer, or other such reasonable action designed to stop the offending conduct.

D. Duties of Supervisors and Managers.

1. Inform all employees of City policy and their rights and recourse for activities which come under the discrimination and harassment prevention policy.
2. Immediately take action when informed of any alleged violations of the discrimination and harassment prevention policy by informing the Director of Human Resources and seek consultation regarding any remedial or investigative response needed to immediately stop continued alleged violations.

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3. Recognize that managers and supervisors should report to the Department of Human Resources any instances of discrimination or harassment, including sexual harassment, of which they are aware, and instances of discrimination or harassment, including sexual harassment, of which they should be aware in the normal course and scope of their management responsibility.

4. Recognize that managers and supervisors should report to the Department of Human Resources any instances of discrimination or harassment, including sexual harassment, of which they are aware, and instances of harassment of which they should be aware in the normal course and scope of their management responsibility even if the employee being subject to alleged discrimination or harassment, including sexual harassment, asks that it not be reported or that no action be taken. (Ord. 16-1581, § 2)

21104 Exceptions.

None. (Ord. 16-1581, § 2)

The Carson Municipal Code is current through Ordinance 18-1817, passed October 2, 2018.

Disclaimer: The City Clerk's Office has the official version of the Carson Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://ci.carson.ca.us/> (<http://ci.carson.ca.us/>)

City Telephone: (310) 830-7600

Code Publishing Company (<https://www.codepublishing.com/>)

Code of Federal Regulations Title 28. Judicial Administration Chapter I. Department of Justice Part 35. Nondiscrimination on the Basis of Disability in State and Local Government Services (Refs & Annos) Subpart A. General

28 C.F.R. § 35.104

§ 35.104 Definitions.

Effective: October 11, 2016

Currentness

For purposes of this part, the term—

1991 Standards means the requirements set forth in the ADA Standards for Accessible Design, originally published on July 26, 1991, and republished as Appendix D to 28 CFR part 36.

2004 ADAAG means the requirements set forth in appendices B and D to 36 CFR part 1191 (2009).

2010 Standards means the 2010 ADA Standards for Accessible Design, which consist of the 2004 ADAAG and the requirements contained in § 35.151.

Act means the Americans with Disabilities Act (Pub.L. 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611).

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids and services includes—

(1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

(2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

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Complete complaint means a written statement that contains the complainant's name and address and describes the public entity's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of this part. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Designated agency means the Federal agency designated under subpart G of this part to oversee compliance activities under this part for particular components of State and local governments.

Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services as provided in § 35.139.

Disability. The definition of disability can be found at § 35.108.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Existing facility means a facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under this part.

Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Historic preservation programs means programs conducted by a public entity that have preservation of historic properties as a primary purpose.

Historic Properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law.

Housing at a place of education means housing operated by or on behalf of an elementary, secondary, undergraduate, or postgraduate school, or other place of education, including dormitories, suites, apartments, or other places of residence.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term illegal use of drugs does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability means a person who has a disability. The term individual with a disability does not include an individual who is currently engaging in the illegal use of drugs, when the public entity acts on the basis of such use.

Other power-driven mobility device means any mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but

that is not a wheelchair within the meaning of this section. This definition does not apply to Federal wilderness areas; wheelchairs in such areas are defined in section 508(c)(2) of the ADA, 42 U.S.C. 12207(c)(2).

Public entity means—

- (1) Any State or local government;
- (2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and
- (3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Qualified interpreter means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

Qualified reader means a person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub.L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended.

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Video remote interpreting (VRI) service means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in § 35.160(d).

Wheelchair means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion. This definition does not apply to Federal wilderness areas; wheelchairs in such areas are defined in section 508(c)(2) of the ADA, 42 U.S.C. 12207(c)(2).

Credits

[Order No. 3180-2010, 75 FR 56177, Sept. 15, 2010; 76 FR 13285, March 11, 2011; Order No. 3702-2016, 81 FR 53223, Aug. 11, 2016]

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12134, 12131, and 12205a.

Notes of Decisions (579)

Current through October 25, 2018; 83 FR 53828.

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Code of Federal Regulations
Title 28. Judicial Administration
Chapter I. Department of Justice
Part 35. Nondiscrimination on the Basis of Disability in State and Local Government Services (Refs & Annos)
Subpart B. General Requirements

28 C.F.R. § 35.136

§ 35.136 Service animals.

Effective: March 15, 2011

Currentness

(a) General. Generally, a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(b) Exceptions. A public entity may ask an individual with a disability to remove a service animal from the premises if—

(1) The animal is out of control and the animal's handler does not take effective action to control it; or

(2) The animal is not housebroken.

(c) If an animal is properly excluded. If a public entity properly excludes a service animal under § 35.136(b), it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.

(d) Animal under handler's control. A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).

(e) Care or supervision. A public entity is not responsible for the care or supervision of a service animal.

(f) Inquiries. A public entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public entity may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public entity may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

(g) Access to areas of a public entity. Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.

(h) Surcharges. A public entity shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public entity normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

(i) Miniature horses.

(1) Reasonable modifications. A public entity shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

(2) Assessment factors. In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a public entity shall consider—

(i) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;

(ii) Whether the handler has sufficient control of the miniature horse;

(iii) Whether the miniature horse is housebroken; and

(iv) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

(3) Other requirements. Paragraphs 35.136(c) through (h) of this section, which apply to service animals, shall also apply to miniature horses.

Credits

[Order No. 3180–2010, 75 FR 56178, Sept. 15, 2010; 76 FR 13285, March 11, 2011]

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12134, 12131, and 12205a.

Notes of Decisions (3)

Current through October 25, 2018; 83 FR 53828.

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West's Annotated California Codes
 Civil Code (Refs & Annos)
 Division 1. Persons (Refs & Annos)
 Part 2.5. Blind and Other Physically Disabled Persons (Refs & Annos)

West's Ann.Cal.Civ.Code § 54.1

§ 54.1. Access to public conveyances, places of public
 accommodation, amusement or resort, and housing accommodations

Effective: January 1, 2017

Currentness

(a)(1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

(2) As used in this section, "telephone facilities" means tariff items and other equipment and services that have been approved by the Public Utilities Commission to be used by individuals with disabilities in a manner feasible and compatible with the existing telephone network provided by the telephone companies.

(3) "Full and equal access," for purposes of this section in its application to transportation, means access that meets the standards of Titles II and III of the Americans with Disabilities Act of 1990 (Public Law 101-336)¹ and federal regulations adopted pursuant thereto, except that, if the laws of this state prescribe higher standards, it shall mean access that meets those higher standards.

(b)(1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

(2) "Housing accommodations" means any real property, or portion of real property, that is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more human beings, but shall not include any accommodations included within subdivision (a) or any single-family residence the occupants of which rent, lease, or furnish for compensation not more than one room in the residence.

(3)(A) A person renting, leasing, or otherwise providing real property for compensation shall not refuse to permit an individual with a disability, at that person's expense, to make reasonable modifications of the existing rented premises if the modifications are necessary to afford the person full enjoyment of the premises. However, any modifications under this paragraph may be conditioned on the disabled tenant entering into an agreement to restore the interior of the premises to the condition existing before the modifications. No additional security may be required on account of an

election to make modifications to the rented premises under this paragraph, but the lessor and tenant may negotiate, as part of the agreement to restore the premises, a provision requiring the disabled tenant to pay an amount into an escrow account, not to exceed a reasonable estimate of the cost of restoring the premises.

(B) A person renting, leasing, or otherwise providing real property for compensation shall not refuse to make reasonable accommodations in rules, policies, practices, or services, when those accommodations may be necessary to afford individuals with a disability equal opportunity to use and enjoy the premises.

(4) This subdivision does not require a person renting, leasing, or providing for compensation real property to modify his or her property in any way or provide a higher degree of care for an individual with a disability than for an individual who is not disabled.

(5) Except as provided in paragraph (6), this part does not require a person renting, leasing, or providing for compensation real property, if that person refuses to accept tenants who have dogs, to accept as a tenant an individual with a disability who has a dog.

(6)(A) It shall be deemed a denial of equal access to housing accommodations within the meaning of this subdivision for a person, firm, or corporation to refuse to lease or rent housing accommodations to an individual who is blind or visually impaired on the basis that the individual uses the services of a guide dog, an individual who is deaf or hard of hearing on the basis that the individual uses the services of a signal dog, or to an individual with any other disability on the basis that the individual uses the services of a service dog, or to refuse to permit such an individual who is blind or visually impaired to keep a guide dog, an individual who is deaf or hard of hearing to keep a signal dog, or an individual with any other disability to keep a service dog on the premises.

(B) Except in the normal performance of duty as a mobility or signal aid, this paragraph does not prevent the owner of a housing accommodation from establishing terms in a lease or rental agreement that reasonably regulate the presence of guide dogs, signal dogs, or service dogs on the premises of a housing accommodation, nor does this paragraph relieve a tenant from any liability otherwise imposed by law for real and personal property damages caused by such a dog when proof of the damage exists.

(C)(i) As used in this subdivision, "guide dog" means a guide dog that was trained by a person licensed under Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or as defined in the regulations implementing Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336).

(ii) As used in this subdivision, "signal dog" means a dog trained to alert an individual who is deaf or hard of hearing to intruders or sounds.

(iii) As used in this subdivision, "service dog" means a dog individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.

(7) It shall be deemed a denial of equal access to housing accommodations within the meaning of this subdivision for a person, firm, or corporation to refuse to lease or rent housing accommodations to an individual who is blind or visually

impaired, an individual who is deaf or hard of hearing, or other individual with a disability on the basis that the individual with a disability is partially or wholly dependent upon the income of his or her spouse, if the spouse is a party to the lease or rental agreement. This subdivision does not prohibit a lessor or landlord from considering the aggregate financial status of an individual with a disability and his or her spouse.

(c) Visually impaired or blind persons and persons licensed to train guide dogs for individuals who are visually impaired or blind pursuant to Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or guide dogs as defined in the regulations implementing Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336), and persons who are deaf or hard of hearing and persons authorized to train signal dogs for individuals who are deaf or hard of hearing, and other individuals with a disability and persons authorized to train service dogs for individuals with a disability, may take dogs, for the purpose of training them as guide dogs, signal dogs, or service dogs in any of the places specified in subdivisions (a) and (b). These persons shall ensure that the dog is on a leash and tagged as a guide dog, signal dog, or service dog by identification tag issued by the county clerk, animal control department, or other agency, as authorized by Chapter 3.5 (commencing with Section 30850) of Division 14 of the Food and Agricultural Code. In addition, the person shall be liable for any provable damage done to the premises or facilities by his or her dog.

(d) A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section, and this section does not limit the access of any person in violation of that act.

(e) This section does not preclude the requirement of the showing of a license plate or disabled placard when required by enforcement units enforcing disabled persons parking violations pursuant to Sections 22507.8 and 22511.8 of the Vehicle Code.

Credits

(Added by Stats.1968, c. 461, p. 1092, § 1. Amended by Stats.1969, c. 832, p. 1664, § 1; Stats.1972, c. 819, p. 1465, § 1; Stats.1974, c. 108, p. 223, § 1; Stats.1976, c. 971, p. 2269, § 1; Stats.1976, c. 972, p. 2272, § 1.5; Stats.1977, c. 700, p. 2256, § 1; Stats.1978, c. 380, p. 1128, § 12; Stats.1979, c. 293, p. 1092, § 1; Stats.1980, c. 773, § 1; Stats.1988, c. 1595, § 2; Stats.1992, c. 913 (A.B.1077), § 5; Stats.1993, c. 1149 (A.B.1419), § 4; Stats.1993, c. 1214 (A.B.551), § 1.5; Stats.1994, c. 1257 (S.B.1240), § 2; Stats.1996, c. 498 (S.B.1687), § 1.5; Stats.2016, c. 94 (A.B.1709), § 1, eff. Jan. 1, 2017.)

Footnotes

¹ 42 U.S.C.A. § 12101 et seq.

West's Ann. Cal. Civ. Code § 54.1, CA CIVIL § 54.1

Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

West's Annotated California Codes
Civil Code (Refs & Annos)
Division 1. Persons (Refs & Annos)
Part 2.5. Blind and Other Physically Disabled Persons (Refs & Annos)

West's Ann.Cal.Civ.Code § 54.2

§ 54.2. Guide, signal or service dogs; right to accompany individuals with a disability and trainers; damages

Effective: January 1, 2017

Currentness

(a) Every individual with a disability has the right to be accompanied by a guide dog, signal dog, or service dog, especially trained for the purpose, in any of the places specified in Section 54.1 without being required to pay an extra charge or security deposit for the guide dog, signal dog, or service dog. However, the individual shall be liable for any damage done to the premises or facilities by his or her dog.

(b) Individuals who are blind or otherwise visually impaired and persons licensed to train guide dogs for individuals who are blind or visually impaired pursuant to Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or as defined in regulations implementing Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336),¹ and individuals who are deaf or hard of hearing and persons authorized to train signal dogs for individuals who are deaf or hard of hearing, and individuals with a disability and persons who are authorized to train service dogs for the individuals with a disability may take dogs, for the purpose of training them as guide dogs, signal dogs, or service dogs in any of the places specified in Section 54.1 without being required to pay an extra charge or security deposit for the guide dog, signal dog, or service dog. However, the person shall be liable for any damage done to the premises or facilities by his or her dog. These persons shall ensure the dog is on a leash and tagged as a guide dog, signal dog, or service dog by an identification tag issued by the county clerk, animal control department, or other agency, as authorized by Chapter 3.5 (commencing with Section 30850) of Title 14 of the Food and Agricultural Code.

(c) A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section, and this section does not limit the access of any person in violation of that act.

(d) As used in this section, the terms "guide dog," "signal dog," and "service dog" have the same meanings as defined in Section 54.1.

(e) This section does not preclude the requirement of the showing of a license plate or disabled placard when required by enforcement units enforcing disabled persons parking violations pursuant to Sections 22507.8 and 22511.8 of the Vehicle Code.

Credits

(Added by Stats.1968, c. 461, p. 1092, § 1. Amended by Stats.1972, c. 819, p. 1466, § 2; Stats.1979, c. 293, p. 1092, § 2; Stats.1980, c. 773, § 2; Stats.1988, c. 1595, § 3; Stats.1992, c. 913 (A.B.1077), § 6; Stats.1994, c. 1257 (S.B.1240), § 3; Stats.1996, c. 498 (S.B.1687), § 2; Stats.2016, c. 94 (A.B.1709), § 2, eff. Jan. 1, 2017.)

Footnotes

1 42 U.S.C.A. § 12101 et seq.

West's Ann. Cal. Civ. Code § 54.2, CA CIVIL § 54.2

Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

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ORDINANCE NO. 18-1812

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING SECTION 3301 (ADDITION TO ANIMAL CONTROL ORDINANCE) OF CHAPTER 3 (POUND REGULATIONS) OF ARTICLE III (PUBLIC SAFETY) OF THE CARSON MUNICIPAL CODE TO CLARIFY AND EXPRESSLY RESTATE AND REAFFIRM THE EXCEPTION FROM THE PROHIBITION OF DOGS IN PUBLIC PARKS FOR SERVICE DOGS PURSUANT TO THE AMERICANS WITH DISABILITIES ACT OF 1990 AND SERVICE, SIGNAL AND GUIDE DOGS PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 54.1 AND 54.2

WHEREAS, the City of Carson (City) has always permitted service animals in its public parks pursuant to the City's policy against discrimination and harassment codified in Carson Municipal Code ("CMC") Sections 21100, 21101(A)(1)(f), 21101(A)(1)(p), and 21101(B); and

WHEREAS, to clarify, restate, and reaffirm the City's existing local law and policy against discrimination and harassment, for the benefit of the public and City staff, the City Council sees fit to modify the exceptions to the general prohibition of CMC Section 3301 on dogs entering the City's public parks, to expressly state that service dogs, signal dogs and guide dogs may enter City parks, to the extent consistent with applicable state and federal law; and

WHEREAS, for the same purpose, and for the protection of public health, safety and welfare, the City Council sees fit to further amend CMC Section 3301 to clarify and expressly provide that service dogs, signal dogs and guide dogs in City parks must be under the control of their handler, but must be harnessed, leashed, or tethered only to the extent consistent with applicable federal regulations under the Americans with Disabilities Act of 1990, whereas other dogs must be leashed at all times while in City parks.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The forgoing recitals are true and correct and incorporated herein by this reference.

SECTION 2. Section 3301 of Chapter 3 of Article III of the Carson Municipal Code is hereby amended to read in its entirety as follows (new text is identified in *bold & italics*, deleted text in ~~strike-through~~):

"3301 Addition to Animal Control Ordinance

Notwithstanding the provisions of CMC 3300, the Animal Control Ordinance is amended by adding Section 10.40.110 to read as follows:

10.40.110 Dogs – Prohibited in Public Parks.

A. It shall be unlawful for the owner or person having custody of any dog to allow said animal to enter upon any public park, *except as otherwise provided in this Section.*

B. The provisions of this Section shall not prohibit the use of dogs on park property for teaching uses when approved by the ~~Director of Parks and Recreation~~ *Director of Community Services.*

C. The provisions of this Section do not prohibit the use of Service Dogs in any public park, to the extent such use is protected by applicable state and federal law. For purposes of this section, "Service Dog" means a dog that constitute a service animal, as defined in Section 35.104 of Title 28 of the Code of Federal Regulations, and as amended, or a dog trained as a guide dog, signal dog, or service dog, as such terms are defined in Section 54.1 of the California Civil Code, and as amended.

D. Dogs that constitute service animals, as defined in Section 35.104 of Title 28 of the Code of Federal Regulations, and as amended, shall not be excluded from public parks except to the extent consistent with 28 C.F.R. §35.136(b)-(c), and as amended.

E. Dogs that do not constitute service animals, as defined in Section 35.104 of Title 28 of the Code of Federal Regulations, and as amended, shall be leashed at all times while in public parks.

F. At all times while in public parks, dogs that constitute service animals, as defined in Section 35.104 of Title 28 of the Code of Federal Regulations, and as amended, shall be:

(1) under the control of their handler, and

(2) harnessed, leashed, or tethered, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).

G. Nothing in this Section shall be deemed to preclude the use of a miniature horse in a public park by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability, provided the City has made a determination, as a matter of policy, practice or procedure, that the miniature horse can be allowed in the subject public park facility, based on the assessment factors set forth in Section §35.136(i) of Title 28 of the Code of Federal Regulations, and as amended.

SECTION 3. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or circumstances, is, for any reason, held

invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or application, and to this end the provisions of this ordinance are declared to be severable. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

SECTION 4. This Ordinance shall be in full force and effect thirty (30) days after its second reading and adoption.

SECTION 5. The City Clerk shall certify to the adoption of this Ordinance, and shall cause the same to be posted and codified in the manner required by law.

PASSED, APPROVED and ADOPTED at a regular meeting of the City Council on this _____ day of November, 2018.

MAYOR ALBERT ROBLES

ATTEST:

CITY CLERK DONESIA GAUSE-ALDANA

APPROVED AS TO FORM:

CITY ATTORNEY SUNNY K. SOLTANI