

Dog Park Liability and Insurance

Report prepared by Friends of the Aliso Viejo Dog Park – July 2005

Pages 4 and 6 amended to include Ladera Ranch information – August 5, 2005

Summary of Statements

In November 2004, Director Adamich expressed her assumption that liability insurance for a dog park would be more expensive than for a restroom due to potential dog bites. (See Exhibit A1)

In January 2005, Director Adamich noted that AVCA's current insurance carrier, Lloyds of London, stated that the dog park was not insurable. (See Exhibit A2)

In February 2005, attendees of the Parks and Recreation committee meeting (Chaired by Director Adamich) were told that two other insurance companies had declined coverage of a dog park. (See Exhibit A3)

In March 2005, Director Elnaccash was quoted as saying "There's no limit to the liability for an HOA, because it's a private corporation. We are hoping that someone else will be able to insure it [the dog park]". (See Exhibit A3)

In June 2005, Director Adamich told attendees of the Parks and Recreation committee meeting that the dog park was not insurable, and that no other homeowner associations operated dog parks. [Source: Attendee testimony]. She also cited the risk of major lawsuits, and concerns of neighbors next door to the site under consideration. (See Exhibit A4)

In June 2005, Mr. Tom Adamich wrote in a letter to the Editor of the Aliso Viejo News, "Insurability against injuries and lawsuits, which will surely arise from an AVCA dog park, will unlikely be covered by insurance as the AVCA insurance broker has not been able to secure insurance from any company to date." (See Exhibit A5)

Summary of Findings

Dog Park owners/operators are not liable for dog bites – Page 2

California Civil Code section 3342 states that "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". (See Exhibits B1-B3)

General Liability coverage, along with signage, is sufficient for a dog park – Page 3

Other cities, homeowner associations, and non-profit organizations in California operate dog parks under their General Liability insurance. (See Exhibit A3)

A dog park operated by a homeowner association is no more a risk than one operated by a city – Page 4

According to Jim Agostini, Risk Manager for California Association of Community Managers, homeowner associations are no more liable for dog bites than any city would be. (See Exhibit A3)

The Sea Ranch Association, a non-profit homeowner association in Sonoma County, operates a dog park under their General Liability insurance. (See Exhibits C1-C4)

A dog park operated by a non-profit corporation is no more a risk than one operated by a city – Page 5

Rancho Coastal Humane Society, a 501(c)3 corporation, operates a privately owned, open to the public, off-leash dog park in Encinitas, CA . The park is covered under their General Liability insurance. (See Exhibits D1-D3)

Dog Park Liability and Insurance

Dog Park owners/operators are not liable for Dog Bites.

California Civil Code section 3342 imposes strict liability on the owner of a dog when the dog bites a person. (See Exhibit B1)

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, including the property of the owner of the dog, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness. A person is lawfully upon the private property of such owner within the meaning of this section when he is on such property in the performance of any duty imposed upon him by the laws of this state or by the laws or postal regulations of the United States, or when he is on such property upon the invitation, express or implied, of the owner.

NOLO, a company that provides do-it-yourself legal solutions for consumers and small businesses, published an article titled, *How Dog Owners Can Avoid Being Bitten by a Lawsuit*. (See Exhibit B2)

...most states now make owners liable for any harm their dog causes, whether or not the owner had reason to suspect that the dog was dangerous. Dog owners can find themselves on the hook for an injured person's medical expenses and lost wages, or even the therapy bills of a traumatized child. The dog owner may not be liable if the dog was provoked, or if the injured person was trespassing, but claims like these are often very hard to prove after the fact.

American Association of Insurance Services published an article titled, *Man's best friends? Not for insurers*, which appeared in the 1999, Vol. 24, No. 3 issue of Viewpoint. (See Exhibit B3)

"Dog owners are now held strictly liable in most states," says Lynn Knauf, [policy manager for the Alliance of American Insurers], meaning that the owner of a dog is automatically deemed to be responsible if the dog bites someone, regardless of the circumstances.

In addition, a dog owner may be presumed to be negligent if he or she fails to adhere to leash laws or other animal control ordinances and the dog attacks someone, runs into them, or runs out in traffic and causes an accident.

Kenneth Morgan Phillips, author of *Dog Bite Law*, wrote:

Basically, "negligence" is the doing of something that was unreasonable, or the unreasonable failure to do something that should have been done. In a leash-optional dog park, the dog owner still must do what is reasonable, such as keep his or her dog on a short leash if the dog is unruly, easily scared, not socialized, unneutered, has provoked fights with other dogs, or has any known dangerous propensity, such as the habit of jumping on people.

If the owner of such a dog fails to keep it on a leash in a leash-optional park, or allows it to cause injury to person or dog in a manner that could have been prevented, the victim should still prevail on a claim that the conduct of the dog owner was unreasonable, and therefore negligent.

...most states have laws imposing strict liability on dog owners whose dogs actually bite someone, irrespective of whether the dog previously bit anyone. These laws still apply, even though the bite occurs in a dog recreation area where leashes are optional.

[Source: www.dogbitelaw.com]

Dog Park Liability and Insurance

General Liability coverage, along with signage, is sufficient for a dog park.

Solveig Darner, Community Liaison for the City of Laguna Niguel, told our volunteer that the City's liability is limited to incidents arising from safety and maintenance issues (trip hazards, broken fixtures, etc). The City is not liable for someone being bitten or attacked by dogs while in the park. The Laguna Niguel Dog Park has signage to limit liability.

Lois Evezich interviewed several representatives of local dog parks for an article in the Aliso Viejo News. Her article reads:

In Laguna Niguel, where Pooch Park was opened in 1997, the risk is shared along with other regional cities in a insurance consortium. "As long as the dog park has been in existence, there have been no claims," City Manager Tim Casey said.

City Manager Ken Frank from Laguna Beach, which supports a large dog park on Laguna Canyon Road, said insurance on their dog park is included with the insurance they carry on the 20 or more parks in the city. "There is no increased premium to include it," he said.

Libby Cowan, with Animal Care Services in Irvine, said getting liability insurance for the city's Central Bark was not a problem. "Liability for dog parks is no more, and sometimes a lot less, than liability for swimming pools, water slides and public restrooms," Cowan said. (See Exhibit A3)

Representatives of other California dog parks have made similar statements. Our volunteers found their quotes published on the Ann Arbor Dog Park website.

Daryl Barnett, Venice Beach. He says their posted signs cover liability - "You are entering an off-leash dog park and you enter at your own liability." Also their rules say owners are responsible and liable for any damage their dog causes. Owners need to be ready to pay for damage or use their homeowner's insurance.

Bill Montgomery, Santa Rosa Park and Recr. Dept. No insurance required there. No incidents or lawsuits.

Mary Anne Morrison-Roberts, Vice-Chairman, Santa Barbara, DogPac. Their group has insurance for events only. Otherwise, adequate signage should be used - "off-leash dog area, enter at own risk." She also said her understanding is that the City already carries insurance for most activities held in the parks.

[Source: Ann Arbor Dog Park website]

Dog Park Liability and Insurance

A dog park operated by a homeowner association is no more a risk than one operated by a city.

According to Jim Agostini risk manager for the California Association of Community Managers (CACM), homeowner associations are no more liable for dog bites than any city would be.

"Owners are ultimately liable," he said. "A dog bite in an HOA dog park is no more a risk to any HOA than a dog bite on a city street is a risk to city government." (See Exhibit A3)

Glenn Robinson, President of Robco Insurance Services, recommended that Aliso Viejo Community Association's insurance consultant continue on a risk management approach to go ahead with the dog park. He believed that the dog park would have the possibility of reducing the potential for liability by cutting down on the number of dogs that might be exercised in the association's common area. [Source: discussion of document at AVCA Parks & Recreation Committee meetings, per attendee testimony]

Stephen S. Chang Esq., an attorney with Moore & Associates , wrote:

"Because dog parks are part of an association's common area when formed, liability for injuries in the park fall within an association's area of responsibility. As a result, an injury resulting from dangerous conditions or unruly behavior in a dog park could expose an association to significant liability. To limit this exposure, it is imperative that associations discuss potential liability and coverage issues with their legal counsel prior to creating dog parks. An association's counsel would be able to identify potential issues arising from creating and operating a dog park, and may further be able to discuss with the association's insurance carrier for appropriate coverage should be. However, associations need to be aware that, as with other recreation areas such as playgrounds and swimming pools, an association's exposure for operating a dog park can be reduced but may not be entirely eliminated. Thus, it is important that association's pay attention to safety issues relating to recreational use."

"Since dog parks allow dogs to run around without a leash, it is important that associations post conspicuous warnings in and around the park informing parties that they are entering an "off-leash area" and that they assume the risk of being bitten or injured while in the park. Such warnings would help associations limit liability related to injuries occurring within dog parks." (See Exhibit C1)

Mr. Chang suggested that we contact The Sea Ranch Association, a non-profit homeowner association in Sonoma County that had some challenges with insurance for their dog park. (See Exhibits C2 and C3)

Martha (Marti) Campbell, Chair of The Sea Ranch Association Board of Directors, shared the association's experience obtaining insurance for the dog park.

"We, too, initially had dire warnings about insurance--both its availability and its cost. For example, we had some initial estimates of \$10,000 a year for coverage. Our CFO did some analysis and found that carriers were concerned about dog parks both because of lack of experience, and also because of pit bull scares; we found that most dog parks are in cities, many of which are self-insured. In the end, our dog park was included in our policy at no additional cost through negotiation on the part of our broker. We haven't had any problems."

The Sea Ranch Association's dog park was established in 2003. (See Exhibit C4)

Ladera Ranch Maintenance Corporation, (LARMAC), is a mutual benefit, non-profit, homeowner association. Ladera Ranch's exclusive "Wagsdale Park" is expected to open in Fall 2005. Todd Bebe, Executive Director for LARMAC, told our volunteer that the dog park is on private property and is owned by the association. Their insurance company is aware of the park, and they do not anticipate any problems. The park will be covered under the same policy as the rest of the community. According to Mr. Bebe, the insurance policy does not include coverage for dog bites or dog attacks as California law makes it unnecessary.

Dog Park Liability and Insurance

A dog park operated by a non-profit corporation is no more a risk than one operated by a city.

In their definition of a Non-profit corporation, LegalZoom authors wrote, "Non-profit corporations enjoy the same limited liability protection that regular corporations and limited liability companies enjoy".

(See Exhibit D1)

Stephanie Dufour, of Schweickert & Company, explained Commercial General Liability insurance for Non-profit corporations:

This is a "core" coverage for a nonprofit that provides protection against "liability you cause." These acts must include bodily injury, or property damage to a third party, and may include personal injury (libel or slander). Ex: A client slips and falls on your property. (See Exhibit D2)

As noted in the homeowner association examples, The Sea Ranch Association is a non-profit homeowner association in Sonoma County that operates their dog park under their General Liability insurance policy.

Rancho Coastal Humane Society, a 501(c)3 corporation, operates a privately owned, open to the public, off-leash dog park in Encinitas, CA. The dog park was established in 2003. Although a shelter and an education center are also located on the property, the dog park is not staffed and is self-monitored by users. They have had no animal related incidents to date. (See Exhibit D3)

Jim Silveira, President of the Rancho Coastal Humane Society, explained that their dog park is insured under their General Liability insurance. The corporation's liability is further limited by signage. Mr. Silveira concurred that insurance to cover dog related injuries is unnecessary due to California law; the dog owners are liable.

Mr. Silveira mentioned that one benefit of having a privately owned dog park is the ability to exercise owner discretion to remove trouble-makers (dog owners) from the park. He also cautioned about creating "member only" access requiring registration of the user's dog. By authorizing such restricted access, the owner of the dog park is vouching for the registered dog's behavior. If the registered dog turns out to be a problem, the registering entity could be found negligent, and liable if that registered dog causes an injury in the park.

Conclusion

Dog park owners and operators are not liable for dog-related injuries, such as dog bites, because the law imposes strict liability on dog owners; therefore, dog park owners and operators need only insure against "liability they cause", for example, maintenance neglect that might cause a safety hazard.

Dog park owners and operators, both City and private entities, further limit their liability by posting warnings in and around the park informing parties that they are entering an "off-leash area" and that visitors assume the risk of being bitten or injured while in the park.

Homeowner associations and non-profit corporations can, and do, operate dog parks under their General Liability insurance policies as they would other recreational areas, such as playgrounds.

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Dog Park Liability and Insurance

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Dog Bite Law - Kenneth Morgan Phillips
www.dogbitelaw.com

Ann Arbor Dog Park - Liability
www.ur-net.com/aadogs/liabilit.htm

LegalZoom Online Legal Services
www.legalzoom.com

Schweickert & Company Insurance
www.schweickert.com/non_profits.htm

Supporting Documents

Exhibit A1 - Board of Directors Regular Meeting minutes, November 8, 2004
A2 - Board of Directors Regular Meeting minutes, February 14, 2005
A3 - Article from Aliso Viejo News, March 3, 2005
A4 - Aliso Viejo News article, June 9, 2005
A5 - Aliso Viejo News Viewpoints, June 16, 2005

Exhibit B1 - California Civil Code section 3342
B2 - NOLO article, *How Dog Owners Can Avoid Being Bitten by a Lawsuit*.
B3 - ASSIS article, *Man's best friends? Not for insurers*

Exhibit C1 - Article "Avoid Getting Bitten While Creating a Dog Park"
C2 - The Sea Ranch *Soundings*, Winter 2002 – "Insurance Scuttles Dog Park"
C3 - The Sea Ranch *Soundings*, Fall 2003 – "Dog Park Revived"
C4 - The Sea Ranch Association Bulletin, November 2003 - Dog park rules

Exhibit D1 - LegalZoom Law Library's definition of a Non-profit corporation
D2 - Commercial General Liability insurance for Non-profits - explanation
D3 - Rancho Coastal Humane Society Dog Park web page - Dog park rules