



## MEMORANDUM

**TO:** CITY COUNCIL

**FROM:** JOHN ROGERS, RECREATION SERVICES DIRECTOR  
HEATHER WHITHAM, CITY ATTORNEY  
DAVID HIRSCH, ASSISTANT CITY ATTORNEY

**SUBJECT:** CONSIDERATION OF AN ORDINANCE ADDING SECTION 12.20.080 TO THE ARROYO GRANDE MUNICIPAL CODE RELATING TO DOG PARK RULES AND EXCLUSION POLICY

**DATE:** SEPTEMBER 22, 2015

### **RECOMMENDATION:**

It is recommended that the City Council introduce an Ordinance adding Section 12.20.080 to Chapter 12.20 of the Arroyo Grande Municipal Code relating to Dog Park Rules and Exclusion Policy

### **IMPACT TO FINANCIAL AND PERSONNEL RESOURCES:**

No financial impact has been identified related to adding Dog Park rules and an exclusion policy to the Arroyo Grande Municipal Code. This item is not included in the Critical Needs Action Plan.

### **BACKGROUND**

The City provides for the operation and maintenance of a Dog Park at the Elm Street Park. Discussions have been ongoing with a new volunteer organization, the Elm Street Dog Park Association (ESDPA), which is being organized to provide for the day-to-day operation and maintenance of the Dog Park. The ESDPA will be operating under the umbrella of San Luis Obispo Parks, Open Space & Trails (SLOPOST), which is a 501(c)(3) nonprofit organization, which can provide insurance for the ESDPA operations and activities. A draft agreement is being developed that would include both ESDPA and SLOPOST as parties.

Based upon direction from the City Council, the approach in the draft agreement with ESDPA and SLOPOST is to provide that they will operate and maintain the Dog Park with minimal involvement by City Staff. Recent concerns, however, have developed regarding enforcement of the rules that govern the Dog Park, especially as they relate to aggressive dogs. While the vast majority of Dog Park

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users voluntarily comply with the Dog Park rules, there are on occasion instances that require enforcement of the rules. The proposed Ordinance would provide a legally enforceable mechanism for the enforcement of the Dog Park rules. Staff also believes it is important to avoid having volunteers engaging in confrontations with Dog Park users and believes that having legally enforceable rules will mitigate those concerns. A key component of the Ordinance is to create procedures to provide for excluding aggressive dogs, and users who repeatedly violate the Dog Park Rules. Accordingly, the attached Ordinance has been drafted which will add the Dog Park rules to the Arroyo Grande Municipal Code, create an exclusion policy and procedure, and provide for penalties in the event they become necessary.

**ANALYSIS OF ISSUES:**

The proposed Ordinance would add the following Dog Park rules, which will be posted at the Dog Park and have been approved by the ESDPA, to the Arroyo Grande Municipal Code:

1. Dog owners and handlers are legally responsible for their dogs and any injuries or related medical costs caused by them or their dogs.
2. Users of the Dog Park assume the risk of injury or damage to themselves, their dogs and their property.
3. If a dog bites another dog or human, contact information must be exchanged.
4. Aggressive dogs are not allowed in the Dog Park. Owners/handlers must remain with their dogs at all times. Any dog exhibiting aggressive behavior must be removed from the park immediately.
5. Dogs shall not dig or engage in excessive barking.
6. No food or dog treats may be brought into the Dog Park.
7. All dogs must be collared, licensed, vaccinated and wear I.D. tags.
8. No dogs in heat or puppies under 4 months of age are permitted in the Dog Park.
9. Owners/handlers must pick up all pet waste.
10. Children under 12 years of age must be supervised by an adult at all times.

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11. Use of the Dog Park is limited to use by handlers/owners and domesticated dogs only.

The Ordinance includes a definition of aggressive dogs, which was drafted in such a manner that an actual bite is not necessary for a dog to be deemed aggressive, since recent incidents included several reports of a dog acting aggressively, but not actually biting a person or other dog. The definition states as follows:

“Aggressive Dog” means any dog that engages in aggressive behavior and poses a threat to dogs or people by virtue of a single incident or history of unprovoked acts of aggression against people or animals. Aggressive behavior includes, but is not limited to, unprovoked snapping, biting, lunging or otherwise threatening other dogs or people that causes a person observing or subject to that behavior to be in a reasonable fear for his or her safety or the safety of his or her dog.

As noted, staff also believes an enforceable process needs to be in place that clearly provides for the exclusion of users or dogs that violate the Dog Park rules. Therefore, the Ordinance provides for the issuance of verbal warnings and written warning notices. Receipt of a written warning notice can include requiring the recipient and his or her dog to leave the Dog Park for the remainder of the day the written warning is issued. For violations other than aggressive dogs, Dog Park users who have received a written warning notice and again violate the Dog Park rules within ninety (90) days are subject to being issued an exclusion notice for a period of at least one month, and up to a year. Aggressive dogs do not require warning notices and are subject to being issued a written exclusion notice providing for the immediate exclusion of the dog. The notice may also provide for the permanent exclusion of the dog from the Dog Park.

- The Director of Recreation Services is empowered by the Ordinance to designate City employees and volunteers who can issue warning and exclusion notices. The draft agreement with ESDPA and SLOPOST includes a provision that ESDPA will be involved in initial enforcement of all Dog Park rules, however, they are not to engage in confrontations with members of the public if users do not voluntarily comply. Instead, they are to contact City staff and/or the Police Department.

The proposed Ordinance also provides for an appeal process for any person issued an exclusion notice. Appeals are to the Director of Recreation Services, whose written decision is final.

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Finally, violations of Dog Park rules are punishable as infractions, with the exception that remaining in the Dog Park after having been issued an exclusion notice is punishable as a misdemeanor. The misdemeanor provision will allow the Police, in an extreme situation, to arrest and remove the person remaining in the Dog Park despite the exclusion order.

**ALTERNATIVES:**

The following alternatives are provided for the Council's consideration:

- Introduce an Ordinance adding Section 12.20.080 to the Arroyo Grande Municipal Code;
- Modify and introduce the Ordinance;
- Do not introduce the Ordinance; or
- Provide direction to staff.

**ADVANTAGES:**

Adding Section 12.20.080 to the Municipal Code will provide for enforceable rules at the Dog Park in those rare instances that users repeatedly violate rules, or when aggressive dogs are at the Dog Park. It includes an exclusion policy that provides for warnings related to rule violations prior to any exclusion notice being issued, and also provides a mechanism for the immediate exclusion of aggressive dogs.

**DISADVANTAGES:**

No disadvantages with the recommended action are identified.

**ENVIRONMENTAL REVIEW:**

No environmental review is required for this item.

**PUBLIC NOTIFICATION AND COMMENTS:**

The Agenda was posted in front of City Hall on Thursday, September 17, 2015 and the agenda and staff report were posted on the City's website on Friday, September 18, 2015.

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE ADDING SECTION 12.20.080 TO CHAPTER 12.20 OF THE ARROYO GRANDE MUNICIPAL CODE RELATING TO DOG PARK RULES AND EXCLUSION POLICY**

**WHEREAS**, the City of Arroyo Grande provides for the maintenance and operation of a Dog Park at the Elm Street Park; and

**WHEREAS**, the City Council has determined that it is appropriate to provide for enforceable rules and regulations for the Dog Park and a procedure for excluding aggressive dogs and persons who violate the rules and regulations.

**NOW, THEREFORE BE IT ORDAINED** by the City Council of the City of Arroyo Grande as follows:

**SECTION 1.** Section 12.20.80 is hereby added to Chapter 12.20 of the Arroyo Grande Municipal Code to read as follows:

**"12.20.080 - Dog Park Rules.**

A. Definitions. For purposes of this Section the words and phrases set forth below shall mean the following:

1. "Dog Park" means the City of Arroyo Grande Dog Park located at the Elm Street Park.
2. "Handler" means the dog owner's friend, relative, agent, or employee having custody or control over the dog while at the Dog Park.
3. "Aggressive Dog" means any dog that engages in aggressive behavior and poses a threat to dogs or people by virtue of a single incident or history of unprovoked acts of aggression against people or animals. Aggressive behavior includes, but is not limited to, unprovoked snapping, biting, lunging or otherwise threatening other dogs or people that causes a person observing or subject to that behavior to be in a reasonable fear for his or her safety or the safety of his or her dog.

B. Rules and Prohibited Activities at Dog Park. The following rules and prohibited activities shall apply at the Dog Park:

1. Dog owners and handlers are legally responsible for their dogs and any injuries or related medical costs caused by them or their dogs.

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2. Users of the Dog Park assume the risk of injury or damage to themselves, their dogs and their property.
  3. If a dog bites another dog or human, contact information must be exchanged.
  4. Aggressive dogs are not allowed in the Dog Park. Owners/handlers must remain with their dogs at all times. Any dog exhibiting aggressive behavior must be removed from the park immediately.
  5. Dogs shall not dig or engage in excessive barking.
  6. No food or dog treats may be brought into the Dog Park.
  7. All dogs must be collared, licensed, vaccinated and wear I.D. tags.
  8. No dogs in heat or puppies under 4 months of age are permitted in the Dog Park.
  9. Owners/handlers must pick up all pet waste.
  10. Children under 12 years of age must be supervised by an adult at all times.
  11. Use of the Dog Park is limited to use by handlers/owners and domesticated dogs only.
- C. Exclusion from Dog Park. In addition to, or as an alternative to a criminal citation for a violation of this Section, a dog owner or handler and his or her dog is subject to the following Exclusion Process.
1. General Provision. A dog owner or handler and his or her dog is subject to exclusion from the Dog Park if he or she violates any of the Dog Park Rules contained in this Section.
  2. Persons Authorized to Issue Warning or Exclusion Notices. The Director of Recreation Services shall designate those City employees and Dog Park volunteers who are authorized to issue warning and exclusion notices.
  3. Violations - Issuance of Warning or Exclusion Notices.
    - a. Warning Notice. A designated employee or volunteer may give a dog owner or handler a verbal warning for a violation of the Dog Park rules set forth in this Section. A verbal warning is not required and is provided only as a courtesy. Whether or not a verbal warning is given, a written warning notice may be issued for a violation of the Dog Park rules. The written warning notice may specify that the recipient and his or her dog must leave the Dog Park for the remainder of the day, and that in the event that a second violation of the rules occurs within ninety (90) days of issuance of the warning

notice, that person may be subject to exclusion from the Dog Park for a period of time that the designated employee or volunteer may determine to be appropriate.

- b. **Exclusion Notice.** If a dog owner or handler has received a warning notice and again violates a Dog Park rule within ninety (90) days of the date of issuance of the warning notice, he or she may be issued a written exclusion notice excluding the person and his or her dog from the Dog Park for a period of time that the designated employee or volunteer may determine to be appropriate. Exclusion for violations other than aggressive dogs shall be for a period of no less than one month and no more than twelve months. The exclusion notice shall include information concerning the right to appeal the exclusion notice to the Recreation Services Director as provided in Subsection 4 herein.
  - c. **Exclusion of Aggressive Dogs.** A warning notice is not required for exclusion of an aggressive dog whose behavior creates a reasonable fear in any other person using the Dog Park for his or her safety, or the safety of his or her dog. In such case, the designated employee or volunteer shall issue a written exclusion notice providing for the immediate exclusion of the dog from the Dog Park. The exclusion notice may also provide for the permanent exclusion of the dog from the Dog Park. The exclusion notice shall also include information concerning the right to appeal the exclusion notice to the Recreation Services Director as provided in Subsection 4 herein.
4. **Appeals.** Any person issued an exclusion notice shall have the right to an appeal from the issuance of the notice. The following procedures shall apply to all appeals:
- a. A notice of appeal of an exclusion notice must be filed, in writing, with the Recreation Services Director within five (5) calendar days of the issuance of the exclusion notice. The notice of appeal shall state the following:
    - i. The appellant's name;
    - ii. The appellant's address and a telephone number where he or she can be reached;
    - iii. A concise statement as to why the appellant believes that the issuance of the exclusion notice was invalid or unjustified; and
    - iv. A copy of the exclusion notice shall be attached.
  - b. A hearing on the appeal shall be held no more than fifteen (15) calendar days after the filing of the appeal, except the Recreation Services Director may postpone the hearing date at the request of the appellant or City staff for good cause. The appellant shall be provided notice of the hearing date, time, and location at least five (5) calendar days prior to the hearing date. The hearing shall afford a reasonable opportunity for the

appellant to be present and present evidence that the exclusion notice is invalid or unjustified. The appellant shall have the right to cross-examine witnesses.

- c. At the hearing, the City shall have the burden to show by substantial evidence that the exclusion notice was based on and justified by violations of the Dog Park rules. The decision of the Recreation Services Director shall be final and in writing.

D. Penalty. Remaining in the Dog Park after having been issued an Exclusion Notice shall be punishable as a misdemeanor. All other violations of this section shall be punishable as infractions and otherwise as provided in AGMC Section 1.16.010 et. seq.”

**SECTION 2.** If any section, subsection, subdivision, paragraph, sentence, or clause of this Ordinance or any part thereof is for any reason held to be unlawful, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, or clause thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, or clause be declared unconstitutional.

**SECTION 3.** A summary of this Ordinance shall be published in a newspaper published and circulated in the City of Arroyo Grande at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted. A certified copy of the full text of the proposed Ordinance shall be posted in the office of the City Clerk. Within fifteen (15) days after adoption of the Ordinance, the summary with the names of those City Council Members voting for and against the Ordinance shall be published again, and the City Clerk shall post a certified copy of the full text of such adopted Ordinance.

**SECTION 4.** This Ordinance shall take effect thirty (30) days after its adoption.

On motion by Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, and by the following roll call vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

the foregoing Ordinance was adopted this \_\_\_\_ day of \_\_\_\_\_, 2015.



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JIM HILL, MAYOR

ATTEST:

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KELLY WETMORE, CITY CLERK

APPROVED AS TO CONTENT:

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DIANNE THOMPSON, CITY MANAGER

APPROVED AS TO FORM:

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HEATHER WHITHAM, CITY ATTORNEY

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