

MEMORANDUM OF LAW

DATE: August 12, 1998

TO: Michael T. Uberuaga, City Manager

FROM: City Attorney

SUBJECT: Park and Recreation Director's Authority Under San Diego Municipal Code Section 63.0102

QUESTION PRESENTED

Does the Park and Recreation Director legally have the authority to designate and regulate dog exercise and training areas at City-owned parks?

SHORT ANSWER

Yes. The City Council [Council] established dog exercise and training areas at City-owned parks as a matter of policy. The Council delegated the authority to designate and regulate the use of these areas to the Park and Recreation Director [Director]. This delegation was proper because it merely authorized the Director to implement the policy.

BACKGROUND

You requested that our office prepare a memorandum of law regarding the Director's authority under San Diego Municipal Code section 63.0102. This request arose after a recent Council session. At that session, during public comment on "off-leash" areas, an interested citizen posed two questions. Specifically, the questions were: 1) Does the director for Park and Recreation have a legal right to change a municipal code? and, 2) Does the Council have a right to give a City employee the right to change a municipal code?

DISCUSSION

- I. **Pursuant to the Charter the Council Adopted Municipal Code Section 63.0102 Which Permits Unleashed Dogs in Dog Exercise and Training Areas.**

San Diego is a charter city. As such, the San Diego Charter [Charter] is the supreme law of the City. *Harman v. City and County of San Francisco*, 7 Cal. 3d 150, 161 (1972). The Charter requires the Council to adopt, by ordinance, regulations for the proper use of City-owned park property. San Diego Charter 55. Pursuant to the Charter's mandate, the Council adopted regulations prescribing proper use of park property. These regulations are codified in the San Diego Municipal Code, and include section 63.0102.

Among other things, section 63.0102 generally prohibits unleashed dogs on City-owned parks. It creates an exception, however, for dogs in areas designated as "dog exercise and training areas." Specifically, this section provides:

(a) It is the purpose and intent in enacting this Division to regulate and prohibit certain activities in public parks and beaches within the City of San Diego in the interests of protecting the enjoyment and safety of the public in the use of the facilities.

(b) It is unlawful for any person within any public park or plaza or public beach or beach areas within the City of San Diego to do any of the acts enumerated in section 63.0102(b).

...

(2) Loose Animals. It is unlawful to bring, leave, turn loose or allow to go free any animal, fowl, or bird of any kind in or upon any City-owned park or plaza; provided, however, that section 63.0102(b)(2) does not apply to:

...

(b) Dogs when fastened to and led by a chain or line not more than eight (8) feet in length of suitable strength;

(c) Dogs which are in special areas of parks designated and posted by the Park and Recreation Director as dog exercise and training areas and so long as the regulations of the Park and Recreation Director with respect to the use of such areas are followed.

...

San Diego Municipal Code 63.0102. Thus, in adopting this section, the Council authorized the Director to designate the areas and how they will be used.

II. The Council May Delegate the Designation and Regulation of Dog Exercise and Training Areas to the Director.

There is a well-established doctrine in California that the legislative power may not be delegated. The purpose behind the doctrine is that fundamental policy issues should be resolved by the legislative body. *Whitmire v. City of Eureka*, 29 Cal. App. 3d 28, 33-34 (1972). Thus, a City Council's power to amend or modify an ordinance may not be delegated. *Id.* at 34. When an ordinance has been adopted, however, a city council may delegate the implementation of that ordinance. *Kugler v. Yocum*, 69 Cal. 2d 371, 377 (1968). In other words, a council may give an administrative officer the "power to fill up the details." *Id.* at 376.¹ That officer can prescribe administrative rules and regulations to promote the purposes of the legislation and carry it into effect. *Id.*

Here, the Council's delegation to the Director² is valid. Using its legislative power, the Council adopted an ordinance which created San Diego Municipal Code section 63.0102. In that section, the Council made the policy decision to establish dog exercise and training areas. San Diego Municipal Code 63.0102(b)(2)(c). In addition, the Council specifically delegated the authority to designate and regulate the use of the areas to the Director. *Id.* This is not a delegation of legislative power. It does not authorize the Director to amend or change the actual code section. Rather, it merely authorizes the Director to implement the ordinance, or "fill in the details," by designating where the areas will be and how they will be used.

CONCLUSION

Pursuant to the Charter, the Council adopted, by ordinance, regulations for the proper use of City-owned park property. These regulations include San Diego Municipal Code section 63.0102. In part, this section regulates the presence of dogs in City-owned parks. Although unleashed dogs are generally prohibited, the Council created an exception for dogs in exercise and training areas. The Council properly delegated to the Director the authority to implement this

policy by designating where the areas will be and how they will be used.

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