

07 SEP 13 AM 11:21

CITY OF OAKLAND
AGENDA REPORT

TO: Life Enrichment Committee
FROM: Councilmember Jean Quan
DATE: September 25, 2007

RE: RESOLUTION APPROVING THE NAMING OF A NEW TRAIL THE "MONTCLAIR RAILROAD TRAIL" IN ASSESSOR PARCELS 048E-7348-28-02, 048E-7348-67-00, 048E-7349-32-00, 048E-7350-1000, 048F-7355-19-00 AND 048F-7366-21-02 THAT ARE INCLUDED IN THE RESOLUTION "EXCHANGE WITH EAST BAY REGIONAL PARKS DISTRICT" TO BE PRESENTED TO CITY COUNCIL ON SEPTEMBER 18, 2007.

ORDINANCES CHANGING OAKLAND MUNICIPAL CODE TITLE 6, CHAPTER 6.04 SECTION 6.04.070 *DOGS AT LARGE* TO REQUIRE DOG GUARDIANS TO PICK UP AFTER THEIR DOGS, AND THAT THEY RESTRAIN THEIR DOGS APPROPRIATELY ON PUBLIC AND PRIVATE PROPERTY AND IN CARS, AND OAKLAND MUNICIPAL CODE TITLE 6, CHAPTER 6.04 SECTION 6.04.080 *DOGS AT LARGE AND IN PARKS*, TO ALLOW DOGS ON THE MONTCLAIR RAILROAD TRAIL

SUMMARY

The resolution approves the recommendation of the Parks & Recreation Advisory Commission to name a new trail the "Montclair Railroad Trail" that will be created by the exchange of property with East Bay Regional Parks, as part of a real estate exchange that will be presented to City Council on September 18, 2007. These ordinances implement changes to the Oakland Municipal Code concerning *Dogs at Large* and *Dogs at Large in Parks* in order to protect public health and safety of dogs, Oakland residents and visitors to Oakland, and to permit dogs on the new Montclair Railroad Trail. These changes also update the existing Code to comply with new State laws.

The proposed changes clarify and add the following to OMC 6.04.070:

- Prohibits the use of chain leashes or tethers
- Dogs left unattended and/or tethered to a dog house, tree, fence or any other stationary object on public property for more than 15 minutes are subject to impound
- Dogs left unattended in vehicles without adequate ventilation or in conditions that are considered dangerous to the dog's health and safety are subject to impound in compliance with the new State law that went into effect January 1, 2007.
- Requires the appropriate disposal of dog feces on any public or private property other than the dog owner's or private property.

- Adds the new Montclair Railroad Trail (as a result of the recent property trade between the City of Oakland and East Bay Regional Park) to section 6.04.080a so that residents may continue to walk dogs on leash on this trail which has been traditionally open to dogs while under the jurisdiction of the East Bay Regional Park District.

FISCAL IMPACT

No discernable fiscal impact.

BACKGROUND

Recent changes to the Municipal Code creating dog parks revealed that the current wording of Oakland Municipal Code Title 6, Chapter 6.04, Article 6.04.070 *Dogs At Large* and Article 6.04.080 *Dogs At Large In Parks* was unclear and confusing to the public. Furthermore, Animal Services staff had requested that the City update its municipal code to reflect changes to the California Penal Code 597.7(a) concerning dogs. Additionally, while responsible dog owners are taught to pick up after their pets, the City currently does not require dog owner, dog caretakers or dog walkers to pick up after their dogs, despite the known health and safety hazards of feces on the ground.

A public meeting was held at the Dimond Library on August 29 before approximately 30 people where the proposed changes were discussed in detail. Questions were answered and suggestions for improvements to the wording of the proposed new ordinance were taken into consideration. The proposed changes clarify what is expected and required of dog owners when their dogs are on public and private property within the City of Oakland.

KEY ISSUES AND IMPACTS

6.04:070 Dogs at Large

- a. LEASHED. The current municipal code requires that dogs be securely leashed or tethered when on public property, and that leashes should no longer than six feet long at all times when on sidewalks, streets, alleys, parks or other public property. Proposed changes prohibit chain leashes or tethers and require that dogs be continuously held on a leash no longer than six feet away from a responsible dog guardian; that the leash be attached to a collar or harness; and clarify that dogs left unattended and/or tethered to a dog house, tree, fence or any other stationary object on public property for more than 15 minutes will be considered at large dogs and are subject to impound, according to OMC 6.04.210. The 15 minute limit is a grace period, in recognition of Oaklander's wanting to take their dogs on short trips or errands for exercise and companionship while preventing tethered dogs from doing harm to themselves or to persons, property or other animals. The current Code technically restricts dog guardians from tethering their dogs on public property, based on the requirement that they must have their dog on leash and in their control at all times when on public property. The Nuisance section also requires that dog guardians ensure that their dogs do not block sidewalks or otherwise create a nuisance.

- b. DOGS IN CARS. A new state law effective January 1, 2007 prohibits leaving dogs unattended in vehicles without adequate ventilation or in conditions that are dangerous to the health and safety of the dog. When the temperature is in the high 70's and 80's outside, a parked car quickly becomes unbearably hot inside within minutes, even in the shade and even with the windows left open a few inches. If the car is parked in the sun, the inside temperature can quickly reach 160 degrees. As humane societies, law enforcement agencies, and local media constantly warn pet owners, in just 5 minutes, the temperature inside a car even with the windows cracked can reach 100 degrees or more. In just 10 minutes, the temperature inside a car can reach 120 degrees or more. The dog has a fur coat designed to retain heat, and he cannot sweat when he is overheated. As the inside temperature rises, the dog's body temperature also rises, and he may have just minutes to live. If not rescued, he will suffer heatstroke, leading to collapse, brain damage, and an agonizing death. Incorporating the state requirement into the Oakland Municipal Code provides dog owners with a comprehensive list of requirements and responsibilities in one location, reducing confusing and improving compliance.
- c. NUISANCE. *This section retains the requirement that dogs must be under the control of the dog guardian at all times, whether on or off leash.*
- d. PICKING-UP. This is a new section, requiring that dog guardians immediately remove their dog's feces on any public or private property, other than the dog owner's or caretaker's private property, and then dispose of the waste matter in an appropriate trash receptacle. Dog waste can contain bacteria and parasites that severely sicken people, pets, and wildlife and can be washed into storm drains, which flow directly into streams or ponds and cause a host of water quality problems. Anyone having custody or control of a dog in a public place is encouraged to carry disposable bags, or a device for picking up and removing dog feces. In support of the City's Zero Waste efforts, we are encouraging the use of biodegradable disposable bags for this purpose.
- e. ENFORCEMENT. Again, to make it easy for dog guardians to know their responsibilities and the consequences of non-compliance, we are adding specific fines to section OMC 1.28.020A.2.d., which sets forth the discretionary fine schedule. For purposes of this ordinance the fine schedule is as follows:
- First offense— \$50
 - Second offense (within one year)— \$100
 - Third offense (within same year)— \$500

Any violation beyond the third conviction within a one-year period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six months or by both.

6.040.080 Dogs at Large in Parks

- a. Adds Montclair Railroad Trail to the list of parks allowing dogs on leash under 6.040.080a. In the first half of the 20th century, the main line of the Sacramento Northern Railroad ran through Montclair. Today, much of the old right-of-way above the village and in Shepherd Canyon is a pedestrian and bicycle path frequently used by dog owners and their dogs that has been under the jurisdiction of the East Bay Regional Parks District (EPRD) since the early 1970s. It is our intent to time the approval of this section with the City's approval of a real property trade agreement with the East Bay Regional Parks District so that dog guardians may continue to walk their dogs on leash along this trail. The new name—Montclair Railroad Trail—and its inclusion under OMC 6.054.080a as an area where dogs on leash are permitted was approved by the Parks & Recreation Advisory Commission on July 11, 2007, pending Council's approval of the trade with East Bay Regional Parks.

SUSTAINABLE OPPORTUNITIES

Economic: No discernable economic impact.

Environmental: Mandating that dog guardians pick up after their dogs is essential for both the health and beautification of the community. Canine diseases and parasites are often shed in feces, which puts other dogs and children at risk.

Social Equity: The ordinance applies to all dog owners in the city.

DISABILITY AND SENIOR CITIZEN ACCESS

Approval of these amendments to the ordinance has no impact for disabled and senior citizen access.

RECOMMENDATION AND RATIONALE

We recommend that Council Members approve the resolution naming the new trail the "Montclair Railroad Trail" and these changes and additions to Oakland Municipal Code Title 6, Chapter 6.04 Article 6.04.070 *Dogs at Large* to require that dog guardians pick up after their dogs, and that they restrain their dogs appropriately on public and private property and in cars, and Oakland Municipal Code Title 6, Chapter 6.04 Article 6.04.080 *Dogs at Large in Parks*, to allow dogs on the Montclair Railroad Trail.

ACTION REQUESTED OF THE CITY COUNCIL

Council Member Quan requests that the City Council approve the naming of the new trail the Montclair Railroad Trail and these changes to the Oakland Municipal Code and approve the addition of the Montclair Railroad Trail as an on-leash area in a timely

fashion so that residents walking dogs on leash on the Montclair Railroad Trail may continue to do so once this area becomes officially City of Oakland property.

Respectfully submitted,

Jean Quan
Councilmember District 4

Prepared by
Sue Piper
Policy Analyst, District 4

Susan B. Mark
City Attorney

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

07 SEP 13 AM 11:21

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember Jean Quan

RESOLUTION APPROVING THE NAMING OF A NEW TRAIL THE "MONTCLAIR RAILROAD TRAIL" IN ASSESSOR PARCELS 048E-7348-28-02, 048E-7348-67-00, 048E-7349-32-00, 048E, 7350-10-00, 048F-7355-19-00 AND 048F-7366-21-02 THAT ARE INCLUDED IN THE RESOLUTION "EXCHANGE WITH EAST BAY REGIONAL PARKS DISTRICT" TO BE PRESENTED TO CITY COUNCIL ON SEPTEMBER 18, 2007.

WHEREAS, the City of Oakland and the East Bay Regional Parks District (EBRPD) have agreed to enter into a Real Property Exchange Agreement for the transfer of East Bay Regional Park-owned lands and City of Oakland-owned lands, as presented to the Oakland City Council on September 18, 2007; and

WHEREAS, six of the seven parcels in the exchange from EBRPD to the City of Oakland comprise a bicycle, hiking and dog walking trail along Shepherd Canyon Road that has been maintained by the City of Oakland, which parcels now have no proper name, (Parcels 048E-7348-28-02, 048E-7348-67-00, 048E-7349-32-00, 048E, 7350-10-00, 048F-7355-19-00 and 048F-7366-21-02); and

WHEREAS, a survey of the community this spring concerning the naming of those six parcels, resulted in favoring the name of "Montclair Railroad Trail" over other possible names; and

WHEREAS, the Parks & Recreation Advisory Commission, at its July 11, 2007 meeting, approved the naming of this trail (the six parcels) the "Montclair Railroad Trail", pending Council approval of the Resolution regarding the exchange with EBRPD; and

WHEREAS, naming the trail the "Montclair Railroad Trail" is a critical step in the process for adding this trail to the Oakland Municipal Code Title 6, Chapter 6.04 Section 6.04.080 *Dogs at large and In Parks*; now therefore be it

RESOLVED, that the City Council approves the naming of this trail, the six above-mentioned parcels, as the Montclair Railroad Trail.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

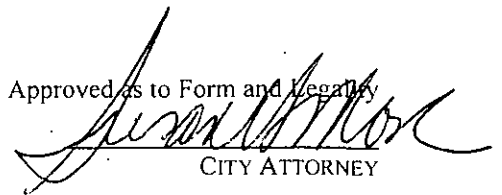
ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

INTRODUCED BY COUNCILMEMBER JEAN QUAN
OFFICE OF THE CITY CLERK
OAKLAND

Approved as to Form and Legality


CITY ATTORNEY

07 SEP 13 AM 11:21 **OAKLAND CITY COUNCIL**

ORDINANCE No. _____ C.M.S.

**ORDINANCES CHANGING OAKLAND MUNICIPAL CODE TITLE 6,
CHAPTER 6.04 SECTION 6.04.070 *DOGS AT LARGE* TO REQUIRE DOG
GUARDIANS TO PICK UP AFTER THEIR DOGS, AND THAT THEY
RESTRAIN THEIR DOGS APPROPRIATELY ON PUBLIC AND
PRIVATE PROPERTY AND IN CARS, AND OAKLAND MUNICIPAL
CODE TITLE 6, CHAPTER 6.04 SECTION 6.04.080 *DOGS AT LARGE
AND IN PARKS*, AND OAKLAND MUNICIPAL CODE SECTION
1.28.020.B.; AND TO ALLOW DOGS ON THE MONTCLAIR RAILROAD
TRAIL**

These ordinances implement changes to the Oakland Municipal Code concerning Dogs at Large and Dogs at Large in Parks in order to protect public health and safety of dogs, Oakland residents and visitors to Oakland, and to permit dogs on the new Montclair Railroad Trail. These changes also update the existing Code to comply with new State laws.

WHEREAS, 40 percent of the households in the United States are home to one or more dogs, according to the American Veterinary Medical Association; and

WHEREAS, the City has the responsibility for ensuring the health, safety and well being of animals within the City of Oakland; and

WHEREAS, dog waste can contain bacteria and parasites that severely sicken people, pets, and wildlife and can be washed into storm drains, which flow directly into streams or ponds and cause a host of water quality problems; and

WHEREAS, Oakland currently does not have requirements that dog guardians pick up after their dogs on public and private property that is not the dog owner's or caretaker's private property; and

WHEREAS, assuring that pet owners comply with the new State laws regarding the health and safety of dogs, and to create a healthy and safe environment for Oakland residents and visitors to Oakland; and

WHEREAS, a parcel of property currently owned by East Bay Regional Parks above Shepherd Canyon Road which currently allows dogs on leash will become the property of the City of Oakland as a result of a proposed trade agreement between the City and East Bay Regional Parks; and

WHEREAS, this new property needs to be added to OMC Title 6, Chapter 6.04.080(a) Dogs At Large in Parks so that dog guardians may continue to walk dogs on this pathway without violating the City municipal code prohibiting dogs in parks; and

WHEREAS, on July 1, 2007, the Oakland Parks and Recreation Advisory Committee approved renaming this pathway the Montclair Railroad Trail and adding it to OMC Title 6, Chapter 6.04.080(a) Dogs at Large in Parks pending approval of the trade with East Bay Regional Parks, now therefore

THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1: The Oakland Municipal Code is hereby amended to add, delete, or modify sections as set forth below; additions are indicated by underscoring and deletions are indicated by ~~strike through type~~.

6.04.70 Dogs at large

Except in the case of a "Seeing Eye dog" actually being used by a blind person, a "signal dog" actually being used by a hearing impaired person, or a "service dog" actually being used by a handicapped person, or a police dog being used by any federal, state, county, city or city and county law enforcement agency for any law enforcement purpose, it is unlawful for any person owning or having in charge, care, control, or custody any dog, hereinafter referred to as "dog guardian", to cause, allow or permit such dog, whether licensed or unlicensed, on or upon any public street, alley or other public place, except as expressly set forth below in this Section. ~~unless such dog be kept securely confined by a rope, chain or other leash not over six feet in length securely and continuously held by a competent person, or to permit whether wilfully or through failure to exercise due care or control, any such dogs to commit any nuisance on any property other than the street gutters outside of pedestrian ways or on any improved private property other than that of the owner or persons having charge, care, control or custody of such dog. For purposes of this section any dog confined within a vehicle shall be deemed to be on the enclosed premises of the operator thereof and any dog securely tied or chained so as to be confined within any unenclosed lot or premises shall be deemed to be on an enclosed lot or premises. It is unlawful for any person owning or having in charge, care, control or custody any dog to suffer or permit any such dog to trespass on private property. Nothing contained in this section shall prevent a dog from being used without a leash to herd, guard, gather or otherwise work domestic animals or fowls in or upon a public place or unenclosed lot or premises or from participating at obedience trials or dog shows or from being without leash upon any public street, alley or way so long as such dog is at heel and so long as such dog is under the charge and control of a person competent to keep such dog under effective charge and control, and so long as such dog does not harm or damage, or threaten to harm or damage, any person on public or private property. (Prior code § 3-9.07)~~

- a. LEASHED. All dogs shall be leashed and securely and continuously held by a responsible person when on public property. All dog guardians (owners, caretakers, dog walkers) must keep the dog securely on a leash, no further than six feet away from a responsible dog guardian, and the leash must be securely attached to a collar or harness at all times when on sidewalks, streets, alleys, parks or other public property. Chain leashes or tethers are prohibited. Dogs may only be off leash on private property where permission from the property owner permits the dog to be off-leash, or in designated off-leash areas (see Section 6.04.070). Dogs left unattended and attached to any stationary object on public property for more than 15 minutes are considered at large dogs and are subject to impound. (See Section 6.04.210)
- b. DOGS IN CARS. In accordance with California law (Penal Code 597.7(a)), dog guardians are prohibited from leaving dogs unattended in vehicles under conditions that endanger health or well being of the dog due to heat, cold, lack of adequate ventilation or lack of food or water, or other circumstances that could result in, or be expected to cause suffering, disability or death to the dog.
- c. NUISANCE. Dog guardians shall maintain control at all times in order to prevent the dog from trespassing onto private property, from obstructing access to any public or private area, from committing any nuisance on public or private property, or from threatening, harming or damaging any person or other animal on public or private property.
- d. PICKING-UP. All dog guardians shall pick up after their dogs. Dog guardians shall immediately remove their dog's feces on any public or private property, other than the dog guardian's private property, and then shall dispose of the waste matter in an appropriate trash receptacle. Any person who has custody or control of a dog in a public place is encouraged to carry disposable bags, or a device for picking up and removing dog feces. The City of Oakland encourages the use of biodegradable disposable bags for this purpose.
- e. ENFORCEMENT. A violation of the above (a-d) is an infraction as defined at Section 1.28.020B. This section (e) is enforceable by the Oakland Police Department or other authorized city of Oakland employee. See Section 1.24.020A. Offenders are subject to fines.
- f. FINE SCHEDULE. A first offense shall be punishable by a fine of fifty dollars (\$50), and a second offense within a period of one year, shall be punishable by a fine of one hundred dollars (\$100), and a third or subsequent offense within a one year period, and shall be punishable by a fine of five hundred dollars (\$500). As set forth at Section 1.28.020B, "any violation beyond the third conviction within a one-year period may

be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six months or by both.”

6.04.080 Dogs at large in parks

A. It is unlawful for any person owning or having in charge, care, control or custody any dog, except a “Seeing Eye dog” actually being used by a blind person, a “signal dog” actually being used by hearing impaired person, or a “service dog” actually being used by a handicapped person, or a police dog being used by any federal, state, county, city, city and county, city, or city and county enforcement agency for any law enforcement purpose, to permit or allow any such dog, whether leashed or unleashed, to be in a public park, school yard or public playground, or other place controlled by the Board of Education or the city Director of Parks and Recreation for special events or special occasions. ~~Except in posted landscaped areas, this section shall not apply to Joaquin Miller and Leona Parks east of Mountain Boulevard, Dimond Park east of El Centro Avenue, Knowland Park east of Golf Links Road, Hardy Park dog run facility and Glen Daniel/King Estate Park, north of Fontaine Street.~~

1. PERMITTED ON-LEASH AREAS. Dogs are only allowed on-leash in the following designated parks: Joaquin Miller and Leona Parks east of Mountain Boulevard, Dimond Park east of El Centro Avenue, Knowland Park east of Golf Links Road, Glen Daniel/King Estate Park, north of Fontaine Street, Mosswood Park and the Montclair Railroad Trail. Additional areas may be added as authorized in writing or resolution by the Parks and Recreation Advisory Commission and then as amended herein. Otherwise, dogs are not allowed in other Oakland parks at any time.

2. SERVICE AND LICENSED WORK DOGS. Service dogs and licensed work dogs authorized by city or other government personnel for special purposes are permitted in any City park when on official duty.

B. Nothing herein shall prevent or limit the duly authorized use of trained dogs for special purposes, by the city or other government personnel.

C. Dogs are permitted to be off-leash ~~in the Joaquin Miller dog play area, as when~~ authorized in a writing or resolution by the Parks and Recreation Advisory Commission and then as amended herein. Dogs are permitted to be off-leash in the areas set forth below.

1. PERMITTED OFF-LEASH AREAS. Dogs are permitted off-leash only in the following designated off-leash areas: Hardy Park, Mosswood Park and the Joaquin Miller Park dog play area. Additional areas may be added as authorized in writing or

resolution by the Parks and Recreation Advisory Commission and then as amended herein.

1.28.020 Violations as infraction.

B. Any person convicted of an infraction under the provision of the code shall be punishable upon a first conviction by a fine of not more than one hundred dollars (\$100.00) and, for a second conviction within a period of one year, by a fine of not more than two hundred dollars (\$200.00) and, for a third or any subsequent conviction within a one-year period, by a fine of not more than five hundred dollars (\$500.00). Any violation beyond the third conviction within a one-year period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six months or by both. Exceptions: See Section 6.04.345, Feeding of Feral Pigeons; See also Section 6.04.070f, Dogs At Large.

Section 2: Severability: If any article, section subsection, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions that shall remain in full force and effect.

Section 3: Effective Date: This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID and
 PRESIDENT DE LA FUENTE

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California