



THE PRESIDIO TRUST

4310-4R-P

36 CFR Part 1002

Public Use Limit on Commercial Dog Walking; Revised Disposal Conditions

AGENCY: The Presidio Trust.

ACTION: Proposed rule and request for comments.

SUMMARY: The Presidio Trust (Trust) is proposing a public use limit on persons who are walking four or more dogs at one time in Area B of the Presidio of San Francisco (Presidio) for consideration (Commercial Dog Walkers). The limit will require any person walking four or more dogs at one time for consideration in Area B to possess a valid Commercial Dog Walking permit obtained from the City and County of San Francisco (City). Commercial Dog Walkers with four or more dogs at one time in Area B will be required to comply with the terms and conditions of the City permit as well as those rules and regulations otherwise applicable to Area B of the Presidio. The Trust is also proposing that throughout Area B, all pet walkers, whether or not for consideration, shall remove pet excrement and deposit it in refuse containers. The Trust invites comments on the proposals.

DATES: Public comment will be accepted through January 25, 2013.

ADDRESSES: Electronic comments may be sent to jpelka@presidiotrust.gov. Written comments may be mailed or hand delivered to John Pelka, The Presidio Trust, 103 Montgomery Street, P.O. Box 29052, San Francisco, CA 94129. All written comments submitted to the Trust

will be considered, and these proposals may be modified accordingly. The final decision of the Trust will be published in the Federal Register.

Public Availability of Comments: If individuals submitting comments request that their address or other contact information be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently at the beginning of the comments. The Trust will make available for public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses.

Anonymous comments may not be considered.

FOR FURTHER INFORMATION CONTACT: Joshua Steinberger, 415.561.5300.

SUPPLEMENTARY INFORMATION: In addition to a community of 8,000 people who live, work, or attend school in the Presidio, many visitors use the park daily for an array of recreational, educational, cultural and stewardship activities. The Trust's responsibilities for Area B include the avoidance of conflicts among the many different users of the Presidio, equitable allocation and use of facilities, ensuring public safety, and protecting resources. A public use limit in Area B that is based upon the possession of a valid City permit, which sets basic insurance, training, and safety standards and limits the number of dogs a Commercial Dog Walker may walk at once in City parks and other designated areas, will assist in implementing these responsibilities, as will a requirement throughout Area B that pet excrement be removed and deposited in refuse containers.

1. Limitation on walking dogs for consideration.

Administrative jurisdiction over the former U.S. Army base known as the Presidio of San Francisco is divided between the Trust and the National Park Service (NPS). The Trust oversees the interior 1100 acres, Area B, and the NPS oversees 300 acres along the waterfront, Area A, of the national park site. Under 36 CFR 1001.5, the Presidio Trust Board of Directors (Board) may impose reasonable public use limits in Area B, given a determination that such action is necessary to maintain public health and safety, to protect environmental or scenic values, to protect natural or cultural resources, or to avoid conflict among visitor use activities.

According to the City, approximately 110,000 households in San Francisco own dogs, and an estimated one-third of these households employ the services of dog walkers to care for and exercise their dogs. There are 70 dog walkers or dog walking services on the City Animal Care and Control Department's dog walking and professional services referral list, and there also may be dog walkers who provide their services for consideration but do not have a business license and are unlisted. Although the Trust does not maintain official statistics on the use of the Presidio by dog walking businesses, Trust staff frequently observe and receive reports of dog walkers with four or more dogs in a number of areas in Area B, in particular along the corridor adjoining West Pacific Avenue from the Broadway Gate to the 14th Avenue Gate, as well as the areas east of the Ecology Trail in the Tennessee Hollow Watershed. By both direct observation and through reports from the public, the Trust is aware that dogs brought into the Presidio in these numbers have been responsible for damage to resources, threats to public safety, and visitor conflict.

The City recently adopted an ordinance to license and to regulate dog walkers who conduct their business in a multitude of areas within the boundaries of the City and may begin enforcing the

ordinance as early as January 1, 2013. San Francisco Health Code Article 39: Commercial Dog Walking. The City permit requirement applies to any person walking four or more dogs at any one time, for some sort of payment on City park property (broadly defined to include, among other areas, all grounds and other property under the management of the Recreation and Park Commission) as well as certain open spaces, certain properties under the jurisdiction of the San Francisco Port Commission, and designated properties under control of the Public Utilities Commission (PUC). Under Article 39, among other requirements Commercial Dog Walkers must be trained or meet minimum experience requirements, be free of convictions related to animal cruelty within the previous five years, carry \$1 million in general liability insurance, provide sufficient drinking water for the dogs in their charge, transport dogs in a safe manner, and have proper dog walking safety equipment as specified by the City's Director of Public Works.

The Trust currently does not impose restrictions specific to Commercial Dog Walkers in Area B. Given the extremely broad geographical reach (parks, open spaces, Port lands, and PUC properties) of the City's ordinance, the Trust reasonably anticipates a certain number of Commercial Dog Walkers who would otherwise fall under the City's ordinance will walk their dogs in Area B in order to avoid the permit fees, requirements, and limit on the number of dogs they may walk on City lands covered by the ordinance. This is particularly to be expected because the NPS is also considering restrictions on commercial dog walking in Area A of the Presidio. This increase in dogs in Area B will inevitably affect the use and enjoyment of the Presidio by other users, will increase damages to resources, and will increase the cost of park maintenance and operations. The Trust must provide for the safe enjoyment of all park users,

protect resources, and control its operations and maintenance costs, and is therefore undertaking this public use limit in response to the changing circumstances in the surrounding area.

The Trust believes that no less restrictive measures are reasonably available to the Trust that would achieve the same results – that is, appropriate behavior to the benefit of other dog walkers and other park users, the protection of natural and cultural resources, and the reduction of expenditures for maintenance that would otherwise be necessitated by unlimited use by Commercial Dog Walkers. Nor could any such less restrictive measures, even if they were to exist, take advantage of the substantial amount of feedback from diverse constituencies that went into drafting and refining the City’s ordinance. Honoring the City’s existing permitting system is less restrictive than creating a new system because it avoids imposing additional administrative and financial burdens on Commercial Dog Walkers.

Commercial Dog Walkers with four or more dogs at one time in Area B will be subject to the terms and conditions of the City permits, including the maximum number of dogs allowed at one time. A Commercial Dog Walker will be obliged to carry his or her permit while walking four or more dogs at one time and to produce the permit for inspection upon request by an officer with law enforcement authority in Area B. Anyone violating the limitation could face punishment as provided by law.

The limitation would go into effect following the operative date of the City’s Commercial Dog Walking ordinance. Prior to implementation, the Trust will conduct a public outreach and education campaign to alert Commercial Dog Walkers and others about the use limitation. The Trust will also post signs and provide handouts to notify park users of the restriction in areas where dog walking is a high-use activity.

In its draft Dog Management Plan/Environmental Impact Statement (EIS), which is currently being supplemented, the NPS has proposed a permitting system for commercial and private dog walkers who walk four or more dogs at one time in the Golden Gate National Recreation Area (GGNRA). [Draft EIS Appendix F: Special Use Permit](#). The NPS permitting system will not be implemented until a rulemaking process is completed and a comprehensive special regulation for dog walking at GGNRA is adopted. Upon the completion of the NPS rulemaking, the Trust may amend its own use limitation for Commercial Dog Walkers to recognize GGNRA permits as valid within Area B among other permits, to accept GGNRA permits exclusively, or otherwise in response to new circumstances.

In fulfilling its responsibilities and exercising its independent jurisdiction under the Presidio Trust Act, 16 U.S.C. 460bb appendix, the Trust intends to monitor closely the City's implementation of its ordinance and permit system. The Trust intends to evaluate periodically whether honoring Commercial Dog Walker permits issued by the City continues to serve the purpose of avoiding conflict among visitor uses and enhancing health and safety and resource protection, and the Trust will take action to revise its regulations in this regard should changes be appropriate. Although the Trust will honor City-issued permits, the Trust retains its independent authority to define the requirements for Commercial Dog Walkers within Area B of the Presidio.

2. Requirement to remove pet excrement.

Under 36 CFR 1002.15(a)(5), the Board may establish pet excrement disposal conditions. The Trust is proposing a rule amendment that will require all persons controlling pets to remove pet excrement and deposit it in a refuse container. This rule will apply to all individuals whether or

not they are engaged in commercial activities or meet the definition of Commercial Dog Walker under the City ordinance and permit system.

The Trust's Interim Compendium currently requires pet excrement to be removed only in areas designated by appropriate signage. Pet excrement is a recognized health hazard, may deface or damage cultural and natural resources, and is widely considered to be a deterrent to use of park facilities. The Trust sees no benefit in limiting the removal requirement to specific areas in which signs are posted and believes that its stewardship responsibilities would be best served by extending the removal requirement to the entirety of Area B. Accordingly, in order to avoid conflict among visitor uses, and enhance health and safety and resource protection, the Trust is proposing this rule.

Regulatory Impact: The proposed amendments will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, prices, the environment, public health or safety, or State or local governments. The proposed rule will not interfere with an action taken or planned by another agency or raise new legal or policy issues. In short, little or no effect on the national economy will result from adoption of the proposed rule. Because the proposed rule is not "economically significant," they are not subject to review by the Office of Management and Budget under Executive Order 12866 or Executive Order 13536. The proposed rule is not a "major rule" under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act, [5 U.S.C. 801](#) et seq.

The Trust has determined and certifies pursuant to the Regulatory Flexibility Act, [5 U.S.C. 601](#) et seq., that the proposed rule will not have a significant economic effect on a substantial number of small entities.

The Trust has determined and certifies pursuant to the Unfunded Mandates Reform Act, [2 U.S.C. 1502](#) et seq., that this rule will not impose a cost of \$100 million or more in any given year on local, State, or tribal governments or private entities.

Environmental Impact: The Trust's National Environmental Policy Act (NEPA) Regulations contain categories of actions that do not require an environmental assessment or environmental impact statement. [36 CFR part 1010](#). 36 CFR 1010.7(a)(31) provides that "minor changes in programs and regulations pertaining to visitor activities" may be categorically excluded under the NEPA. The proposed rule will improve visitor and dog safety and protect resources in Area B. However, dog walking use in Area A could slightly increase as those who walk dogs for consideration, despite the additional travel time and fees for parking, may take their dogs to walk in Crissy Field or other areas where permits are not currently required by the NPS. Any environmental impact will be short-term, however, until such time as the NPS permit provisions for dog walkers in Area A are in place. No extraordinary circumstances as listed in § 1010.7(b) are involved that may have a significant environmental effect. Therefore, the regulatory actions are categorically excluded from further NEPA review. The Trust has prepared a Project Screening Form to determine that the regulatory actions will have no significant effect on the environment, which is part of the administrative record on this matter. The Project Screening Form is available for public inspection at the offices of the Presidio Trust, 103 Montgomery Street, The Presidio, San Francisco, CA 94129, between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Other Authorities: The Trust has drafted and reviewed the proposed rule in light of [Executive Order 12988](#) and has determined that they meet the applicable standards provided in secs. 3(a) and (b) of that Order.

List of Subjects in 36 CFR Part 1002

National parks, Natural resources, Public lands, Recreation and recreation areas

For the reasons set forth in the preamble, part 1002 of Title 36 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 1002 – RESOURCE PROTECTION, PUBLIC USE AND RECREATION

1. The authority citation for part 1002 continues to read as follows:

Authority: Pub. L. 104-333, 110 Stat. 4097 (16 U.S.C. 460bb note).

2. In § 1002.15, revise paragraph (a)(5) and add paragraph (f) to read as follows:

§ 1002.15 Pets.

(a) * * *

(5) In all areas of the Presidio administered by the Presidio Trust, pet excrement shall be removed and deposited in a refuse container by the person(s) controlling the pet(s).

* * * * *

(f) The walking of four or more dogs at one time by any one person for consideration is prohibited within the area administered by the Presidio Trust unless:

(1) That person has been issued a currently valid permit under Article 39 of the San Francisco Health Code

(2) The walking of four or more dogs is done pursuant to the terms and conditions of that permit as well as in compliance with all laws and regulations in effect in the area administered by the Presidio Trust; and

(3) The permit is produced for inspection upon request by an officer with law enforcement authority in the area administered by the Presidio Trust.

Dated: November 13, 2012.

Karen A. Cook,
General Counsel

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