



PRESIDIO TRUST

4310-4R-P

36 CFR Part 1002

Public Use Limit on Commercial Dog Walking

AGENCY: The Presidio Trust.

ACTION: Proposed interim 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 would require any such Commercial Dog Walker in Area B to possess a valid commercial dog walking permit obtained from the National Park Service (NPS), Golden Gate National Recreation Area (GGNRA).

Commercial Dog Walkers would be required to comply with the terms and conditions of the GGNRA permit as well as those rules and regulations otherwise applicable to Area B of the Presidio. The permit would allow a maximum of six dogs per Commercial Dog Walker at any one time. The GGNRA commercial dog walking permit requirement is a compendium amendment being proposed for all GGNRA sites in San Francisco and Marin County that allow dog walking, and would be implemented concurrently with the Trust's proposed rule. Both are interim actions and would remain in effect until the final special regulation for dog walking in the GGNRA is promulgated as anticipated in late 2015, at which time the Trust expects that it will adopt a final rule following public input and comment.

DATES: Public comment on this proposal will be accepted through May 5, 2014.

ADDRESSES: Electronic comments may be sent to commercialdogwalking@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 this proposed interim rule 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: Presidio Trust Office of External Affairs, 415.561.5300 or commercialdogwalking@presidiotrust.gov.

SUPPLEMENTARY INFORMATION: The 1,491-acre former U.S. Army base known as the Presidio is part of and is at the center of the GGNRA. Administrative jurisdiction over the Presidio is divided between the Trust and the NPS. The Trust oversees the interior 1,100 acres, Area B, and the NPS oversees approximately 300 acres along the waterfront, Area A, of the national park site. Commercial Dog Walkers have been regularly using the Presidio for at least ten years. According to the most recent estimates by the San Francisco Professional Dog Walkers Association, the City and County of San Francisco (City) has roughly 300 Commercial Dog Walkers. Trust staff estimates that between ten and twenty of these Commercial Dog Walkers walk their dogs within Area B during any given time of day, typically bringing between four and ten dogs or more at a time. Most often-used areas include 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.

To ensure that Commercial Dog Walkers act responsibly, effective July 1, 2013, the City passed legislation that requires Commercial Dog Walkers with four or more dogs, limited to eight dogs total, to carry a valid annually renewed dog walking permit issued by the San Francisco Department of Animal Care & Control (see <http://www.sfgov2.org/index.aspx?page=3857>). The law is enforced on all City property under the San Francisco Department of Recreation and Parks, the Port of San Francisco, and the San Francisco Public Utilities Commission, but does not apply to federal property within the geographic limits of the City, including Area B. Currently, the Trust does not impose restrictions specific to Commercial Dog Walkers in Area B. Since last year, the Trust has witnessed a number of Commercial Dog Walkers who would otherwise fall under the City's legislation, walking 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 City law.

Under 36 CFR 1001.5, the Trust 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. On November 21, 2012, in direct response to the City's Commercial Dog Walker regulations, the Trust requested public comment on a proposed public use limit on Commercial Dog Walkers (77 FR 69785). The limit would have required Commercial Dog Walkers in Area B to possess a valid dog walking permit obtained from the City. Commercial Dog Walkers would have needed to comply with the terms and conditions

of the City permit as well as those rules and regulations otherwise applicable to Area B. In proposing the public use limit, the Trust felt that 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, would have assisted in implementing its responsibilities, including the avoidance of conflicts among the many different users of the Presidio, equitable allocation and use of facilities, ensuring public safety, and protecting resources.

The initial 65-day comment period for the proposed use limit was extended by 30 days to February 25, 2013 at the request of the public. By the close of the public comment period, the Trust had received 257 individual comments, including nine oral comments provided at a public Trust Board of Directors meeting on November 29, 2012. Roughly one-half (51 percent) of the comments received expressed support for the public use limit, and roughly one-half (49 percent) were opposed. Commenters who opposed the proposed use limit, including four conservation organizations, were largely “dissatisfied with the status quo” of the presence of Commercial Dog Walkers in the Presidio and wished to see the activity prohibited. They recommended that the Trust should not adopt the proposed use limit until such time as GGNRA published its own policies and requirements on Commercial Dog Walkers. They further requested the Trust to work in partnership with GGNRA and “come out together with one system clearly defined.” They urged that “a single, clear rule for federal park properties that can be widely broadcast to dog walkers in the area will allow for more efficient administration, greater compliance, and reduced impacts to Trust resources.” One dog owner group also supported deferring implementation of the proposed rule until such time as GGNRA adopted its rule.

In its February 25, 2013 letter to the Trust, the GGNRA stated its support for the Trust's public use limit. The GGNRA disagreed, however, with the number of dogs allowed under the City permit (up to eight), and argued that a limit of six dogs is more reasonable, and is consistent with the NPS's understanding of the standard practice for the majority of local land management agencies that regulate commercial dog walking. In reaction to the City's program and the Trust's proposal, the GGNRA stated it would consider enacting an interim commercial dog walking permit system this year, before completing its dog management planning process and rulemaking. Given the Trust's and the GGNRA's shared management responsibilities within the Presidio, the GGNRA asked the Trust to consider adopting its interim permit system rather than that being implemented by the City.

On May 30, 2013, the Trust announced on its website that it supported the GGNRA's proposed intention to move forward at this time to create and implement an interim permit system to regulate commercial dog walking within the park. After having examined all public comments and considered the new information provided by the GGNRA, the Trust agreed to suspend its own decisions regarding the regulation of commercial dog walking. Before taking any action, the Trust also offered to provide the public with an additional opportunity to comment.

On March 14, 2014, the GGNRA provided 30-day public notice of its intended interim change to its compendium requiring that Commercial Dog Walkers in all San Francisco and Marin County sites of the GGNRA where dog walking is allowed, including Area A, obtain a permit from the park (see <https://parkplanning.nps.gov/commercialdogwalking>). Permits would allow a maximum of six dogs per Commercial Dog Walker, and require a business license and proof of liability insurance and dog-handling training through existing training

courses, such as those offered by Marin Humane or San Francisco SPCA. Permit holders must also abide by all NPS regulations. The GGNRA action is an interim compendium amendment (2014 Superintendent's Compendium of Designations, Closures, Permit Requirements, and Other Restrictions Imposed under Discretionary Authority) and would remain in effect until late 2015, at which time the final special regulation for dog walking in the GGNRA, which will address commercial dog walking, is promulgated. The GGNRA involved the Trust throughout the development of the interim commercial permit requirement.

Aligning with the City's rather than the GGNRA permit system could be considered a less restrictive measure reasonably available to the Trust due to the City's higher limit on the maximum number of dogs allowed (eight), which poses less of a financial burden on Commercial Dog Walkers. In a local newspaper article on the subject, the author of the City's legislation and City supervisor said that it was preferable to be less restrictive in light of the City's "huge population of dog owners" and the fact that "many of them don't have yards" (see <http://www.sfchronicle.com/bayarea/article/Commercial-dog-walkers-must-follow-new-law-4665243.php>). However, the NPS has expressed concern that Commercial Dog Walkers could not consistently control more than six dogs under voice and sight control. And while the City's Department of Animal Care & Control enforces eight dogs as the limit for one Commercial Dog Walker, in its Commercial Dog Walker Informational Pamphlet, it recommends six as a maximum number (see <http://www.sfgov2.org/Modules/ShowDocument.aspx?documentid=1419>). GGNRA research on the maximum number reveals that the City's regulation allowing up to eight dogs is an outlier among jurisdictions around the country. As caretaker of the national park site and

while mindful of the importance of equitably allocating facilities within the park, the Trust must place a higher priority on avoiding conflict among visitor uses, protection of environmental values, natural resources, and cultural resources and maintaining health and safety over a minor difference (six dogs versus eight) in addressing City residents' particular needs in this area and affecting the individual earnings of Commercial Dog Walkers (or otherwise having them choose to go elsewhere to walk their dogs). In addition, adopting the City's less restrictive measure in lieu of the GGNRA interim permit system would engender public confusion given the Presidio's presence within the boundaries of the GGNRA, the similar visitor experience mandates of the Trust and the NPS, and the adjacent jurisdictions of the two land management agencies with an unmarked boundary within the Presidio. The Trust's limitation would go into effect on the operative date of the GGNRA's interim commercial dog walking permit requirement, and is anticipated to remain in effect until the GGNRA's interim action is supplanted by a special regulation for dog walking in the GGNRA, which will address commercial dog walking. Prior to implementation, the Trust would conduct a public outreach and education campaign to alert Commercial Dog Walkers and others about the use limitation. The Trust would also post signs and provide handouts to notify park users of the limitation in areas where dog walking is a particularly high-use activity.

Regulatory Impact: The proposed interim rule would not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local or tribal governments or communities. The proposed interim rule would 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 would result from adoption of the proposed interim rule. Because the rule is not “economically significant,” it is not subject to review by the Office of Management and Budget under Executive Order 12866 or Executive Order 13536. The proposed interim 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 interim rule would not have a significant economic effect on a substantial number of small entities. The economic effect of the rule is local in nature and negligible in scope, restricting only a single use (commercial dog walking) in a limited geographic area (Area B of the Presidio occupies less than four percent of the City and County of San Francisco’s total acreage) for purposes of protecting public health and safety and the natural environment. There would be no loss of significant numbers of jobs, as Commercial Dog Walkers would retain the flexibility to avoid the proposed restriction and permit fees by opting to use one or more of the available open space lands maintained by the San Francisco Park and Recreation Department, the Port of San Francisco, and the San Francisco Public Utilities Commission. Among these lands are 28 specifically designated off-leash park areas for dogs throughout the City, including the Mountain Lake Park Dog Play Area that is immediately adjacent to Area B (see <http://sfrecpark.org/parks-open-spaces/dog-play-areas-program/> for a location map for specified areas and for information on the process for establishment of additional off-leash areas within the City’s park system). The Trust has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that the proposed interim rule would 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 National Environmental Policy Act (NEPA) mandates that federal agencies responsible for preparing environmental analyses and documentation do so in cooperation with other governmental agencies. The Trust is a cooperating agency with special expertise for the GGNRA proposed interim commercial dog walking permit requirement (as well as the special regulation for dog walking) under the NEPA and the Council on Environmental Quality regulations (an agency is considered to have special expertise when it has a related “statutory responsibility, agency mission, or ... program experience” (40 CFR 1508.26)). The regulatory actions by GGNRA and the Trust regarding interim commercial dog management for Areas A and B are substantially the same. As a cooperating agency, the Trust will support the GGNRA in the development of information and the preparation of environmental analyses to determine whether the actions would have a significant effect on the environment.

Other Authorities: The Trust has drafted and reviewed the proposed rule in light of Executive Order 12988 and has determined that it meets 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 an interim action 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: 16 U.S.C. 460bb note.

2. Add § 1002.6 to read as follows:

§ 1002.6 Commercial Dog Walking.

(a) The walking of more than six dogs at one time by any one person for consideration (commercial dog walking) is prohibited within the area administered by the Presidio Trust.

(b) The walking of more than three dogs, with a limit of six dogs, at one time by any one person for consideration (commercial dog walking) within the area administered by the Presidio Trust, where dog walking is otherwise allowed, is hereby authorized provided that:

(1) That person has a valid commercial dog walking permit issued by Golden Gate National Recreation Area (GGNRA);

(2) The walking of more than three dogs, with a limit of six dogs, is done pursuant to the conditions of that permit; and

(3) The commercial dog walker badge issued to the permittee by the GGNRA shall be visibly displayed at all times as directed in the permit while the permittee is engaging in commercial dog walking activities, and shall be provided upon request to any person authorized to enforce this provision.

Dated: March 13, 2014.

Karen A. Cook,

General Counsel.