

27 PAGES (INCLUDING THIS PAGE)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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DENNIS C. DURING, MICHAEL S. FRISCIA and
MARC MALONE,

Plaintiffs,

- against -

THE CITY OF NEW ROCHELLE, NEW YORK

Defendant.

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Assigned Judge:
Hon. W. Denis Donovan

Index No. 6561-07

**AFFIDAVIT OF
CHARLES STROME**

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

CHARLES STROME, being duly sworn, deposes and says as follows:

1. I am the City Manager for the City of New Rochelle ("City") and have been employed in this capacity since 2002. Prior to that, I served as Deputy City Manager for approximately seven years. I submit this Affidavit in opposition to Plaintiffs' Motion for a Preliminary Injunction barring enforcement of a City of New Rochelle Ordinance (the "Ordinance"), which amended certain sections of the City Code to provide for the issuance of a Permit and related fee in connection with allowing dogs to be brought lawfully into the City's Ward Acres Park (the "Park" or "Ward Acres") during delineated leash and off-leash hours. A copy of the Ordinance is attached hereto as Exhibit "A."

2. I have been fully involved in the decisions leading up to adoption of the Ordinance, as well as in its implementation since April 1, 2007. For that reason, I can attest to the fact that the Ordinance was the result of careful study and analysis, with the goal of insuring public health and safety, while still providing a special amenity to the dog owners.

3. The culmination of that process was the adoption of the Ordinance -- a unique legislative enactment that creates the first public park anywhere in the County, of which we are aware, that allows dogs not just to enter, but to run free over 62 acres during specified hours and pursuant to regulatory requirements designed to protect not just man, but “man’s best friend” as well.

4. Ward Acres is a truly exceptional parcel of land within our City. It is essentially a 62 acre nature preserve with trails, meadows and forest. Although nestled within northern New Rochelle, it is easily accessible to all of our residents, and to residents of neighboring communities.

5. For many years, Ward Acres was not utilized to its maximum potential. Often, it was perceived as a “dog park” since the City did not strictly enforce its prohibition on allowing dogs into City parks. As a result, many people who did not own dogs did not use this resource.

6. The City Council recently decided to upgrade and improve Ward Acres, and to adopt measures that would, in effect, re-open the Park to all City residents, while simultaneously and quite carefully preserving and balancing the ability of the dog owning public to utilize this rare outdoor enclave.

History of the Ordinance

7. The first step leading to adoption of the Ordinance was preparation of the Ward Acres Master Plan (“Master Plan”). The details of this approximately year long process are discussed at length in the Affidavit of William V. Zimmermann, Commissioner of Parks and Recreation, submitted herewith. In sum, as Commissioner Zimmermann testifies, various legislators and other professionals employed by the City, an outside consulting firm, and a

Steering Committee made up of interested members of the community, came together to carefully study and present options for this long underutilized 62 acre natural resource. (See Zimmermann Aff., ¶ 8).

8. The Steering Committee for the Ward Acres Master Plan specifically included several dog owners. (See Master Plan annexed as Exhibit "C" to the Zimmermann Aff. at 5). This was done because the City recognized that the Park was considered a "dog park" for both residents and nonresidents of the City.

9. In studying Ward Acres as part of the Master Plan process, the City's goal was to accommodate the dog owners, but also to make the Park safe and comfortable for those who do not own dogs. I, and other City officials, had heard concerns expressed by City residents who had felt that the Park was inaccessible to them because many dog owners allowed their dogs to run free. We were also aware that despite the City's efforts to keep the Park clean -- and efforts by some dog owners -- having as many as 400 dogs in a 62 acre area on a weekly basis, particularly unleashed, it had become virtually impossible to keep the Park sanitary.

10. Various open meetings were held as part of the Ward Acres Master Plan process, and members of the public were given the opportunity to be heard. During these meetings, different options were considered for dog use within the Park.

11. As Commissioner Zimmermann discusses in detail in his Affidavit, the Master Plan recommended a fully enclosed, fenced-in area of approximately three acres where dogs could be permitted off-leash. (Zimmermann Aff., ¶ 12). Additional acreage up to six acres was also considered. (Id., ¶ 13). Had either of these options been deemed acceptable, unrestricted daylight hours of off-leash dog use would have been permitted within a confined area. Some type of administrative process and fee structure would likely have been required.

12. However, that option of a fenced in area for off-leash dog use was vehemently rejected by several individuals. These individuals explained that for years, if not decades, they and their pets had used all 62 acres freely, and they wanted to be able to continue to do so.

13. Many other dog owners expressed the fact that they wanted an opportunity to continue to enjoy the entire Park with their pets, but they hoped the City could accommodate some type of off-leash usage.

14. At the City Council hearings, it became apparent that certain individuals who had been using the Park might not comply with the Ordinance being considered by the City Council.

15. As explained below, the Ordinance, as passed, was the result of a careful and difficult balancing of all of the expressed opinions and concerns, with the City always keeping its responsibility to ensure the public's health, safety and welfare at the forefront.

The Ordinance

16. Every aspect of the Ordinance is directly related to the City Council's primary concern of protecting the health, safety and welfare of those who had been and would be using the Park. Secondly, we intended to promote the health and safety of the dogs themselves.

17. The Ordinance, which was adopted into law on January 16, 2007, amends Sections 89-1, 224-9 and 133-1 of the New Rochelle City Code. Its key provisions are as follows:

a. Except in Ward Acres in compliance with Section 224-9, no dogs are permitted to be unleashed in any public place in the City. (Section 89-1).

b. Except where allowed to be unleashed, dogs must be on leashes that are six feet or under in length. (Section 89-1).

c. Dogs are not permitted in Ward Acres unless a Ward Acres Dog Permit has been obtained. (Section 224-9(B)(2)).

d. Those in custody of dogs in Ward Acres must have on their person a copy of a current New York State Dog License and rabies vaccination, in addition to the Permit. (Section 224-9(B)(1,3)).

e. A person cannot be in Ward Acres with more than four dogs at a time within that person's custody and control. (Section 224-9(B)(5)).

f. Dogs are only permitted in the Park during daylight hours. (Section 224-9(B)(6)).

g. Dogs may only be unleashed in the Park during the following hours: before 10:00 am and after 5:00 pm Mondays through Fridays from April 1 through November 14; before 10:00 am on weekends and holidays between April 1 and November 14; before 10:00 am and after 4:00 pm on all days from November 15 through March 31 (subject to provision that dogs are only allowed in the Park, even leashed, between dawn and dusk). (Section 224-9(B)(7)).

h. The fees for a Permit are \$50 per year per dog for a resident and \$250 per year per dog for a non resident. (Section 133-1).

18. In order to obtain a Permit, one must actually come to City Hall with a current New York State Dog License and proof of rabies vaccination. (See March 9, 2007 document attached hereto as Exhibit "B").

19. These provisions are all related to the City's legitimate public safety concerns. Obviously, safety concerns were exacerbated because the City Council agreed to allow unprecedented, lawful, off-leash usage of a public park. In order to do so in an appropriate fashion, we had to have some knowledge about and control over what dogs are in the Park, and their corresponding medical/vaccination condition.

20. First, unleashed dog time is only allowed during certain hours to make the Park more accessible to all members of the general public. The Park provides a unique natural environment with significant walking trails which everyone should be able to enjoy. This is only possible now with the Ordinance restricting the times when dogs are allowed to run at large.

21. Secondly, the provision of unleashed dog time has required the other

aspects of the Ordinance. As we have learned, many people do not properly license or vaccinate their dogs. Indeed, as Commissioner Zimmermann attests, 85 percent of the people who applied for Permits had not previously taken this basic measure to ensure their dog's health and the safety of others coming into contact with the dog. (Zimmermann Aff., ¶ 22). Remarkably, some of the Plaintiffs are among those who first licensed their dogs because it was required for the Permit. (Id.). In this manner, the Ordinance has already advanced the public health, safety and welfare, as well as the well-being of the dogs themselves.

22. Unleashed dogs are also more likely to come into contact with other wildlife in the Park which may be rabid. Unless we know that those dogs are properly vaccinated, they can contract the disease and pass it on to other humans and animals. Requiring the current rabies vaccination certificate to be on the person in custody of the dog ensures that it is current since the annual Permit and vaccination schedule may not be the same. Also, even if the dog is wearing proof of vaccination, requiring that the certificate be on the owner's person makes it unnecessary for anyone checking to reach down to the dog.

23. The health and safety benefits of the requirement that dog leashes be no longer than six feet in length and that one person not be responsible for more than four dogs at a time are essentially self-explanatory. During times that leashes are required, the length requirement ensures that the person in charge have the ability to pull back and control the dog. The limit on the number of dogs that one person can be responsible for also ensures the ability of the person accompanying the dog to be in reasonable control.

24. Next, I understand that the Plaintiffs in this case are particularly concerned with the fees that must be paid in order to be issued a Permit. Commissioner Zimmermann's Affidavit explains in detail what the costs are related to the Ordinance including administration,

enforcement and maintenance of the Park. (See Zimmermann Aff., ¶ 24). It is worth repeating, however, that the fees collected have not, and will not, cover the actual costs to the City associated with administering and enforcing the Ordinance. In addition, a higher fee is required of non-residents, as is the case with other parks and beaches in the City, to account for the fact that residents already defray the cost of New Rochelle amenities through their property taxes.

25. Finally, with regard to Plaintiffs' query as to why we have chosen to use police for enforcement of the Ordinance, the answer is simply that New Rochelle does not employ park rangers or other personnel who could do so. As explained in the Affidavit of Deputy Police Commissioner, Anthony Murphy, those officers who patrol the Park are doing only what is necessary to make sure that all who use the Park with dogs obey the Ordinance. I am pleased to report that there have been no problems in enforcing the Permit requirements and that people have been generally cooperative when requested to show their Permits.

Conclusion

26. In sum, it is most unfortunate that a small handful of dog owners have chosen to attack the City over this Ordinance. It is often said, "No good deed goes unpunished." That is certainly true here since the City made significant efforts to balance all concerns and accommodate everyone as best as possible. If Plaintiffs do not want to use the Park with their dogs and pay the fee, they don't have to. If they want to avail themselves of the Park's benefits without their pets, they can do so free of charge.

27. What the Court might recognize is that the Ordinance affords Plaintiffs and other dog owners a truly unique amenity, at a considerable expense to the City. It could have banned dogs from the Park completely, and would have been entirely within its rights in doing so. It did not do that. Instead, it chose to accommodate various groups with competing

interests, while keeping the health, safety and welfare of its citizens as its paramount consideration. The Ordinance is specifically tailored to the real safety concerns facing the City in having the only on-leash and off-leash dog park of its size anywhere in the County.

28. For these and all of the reasons expressed in the other Affidavits and Memorandum of Law submitted herewith, Plaintiffs' Motion for a Preliminary Injunction should be denied and the Ordinance upheld.


CHARLES STROME

Sworn to by me this
24th day of May, 2007


Notary Public

02RH6136644
Notary Public State of New York
Kebra A. Rhedrick
Appointment expires 11-14-09

SUPREME COURT OF THE STATE OF NEW YORK
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DENNIS C. DURING, MICHAEL S. FRISCIA and
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Index No. 6561-07

**AFFIDAVIT OF
WILLIAM V. ZIMMERMANN**

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

WILLIAM V. ZIMMERMANN, being duly sworn, deposes and says as follows:

1. I am the Commissioner of Parks and Recreation for the City of New Rochelle ("City") and have been employed in this capacity since 2004. From July 2000 until I was appointed Commissioner, I was Director of Parks and Recreation for the City. I submit this Affidavit in opposition to Plaintiffs' Motion for a Preliminary Injunction barring enforcement of a City of New Rochelle Ordinance (the "Ordinance"), which amended certain sections of the City Code to provide for the issuance of a Permit and related fee in connection with allowing dogs to be brought lawfully into Ward Acres Park (the "Park") during delineated leash and off-leash hours.¹

2. The Ordinance was the culmination of a careful study of the Park after many years of its use almost exclusively by the dog owning public. It was adopted in an attempt

¹ The Ordinance went into effect on April 1, 2007 and amended Sections 89-1, 224-9 and 133-1 of the City Code. The Ordinance is annexed to the Affidavit of Charles Strome, submitted herewith, as Exhibit "A".

to achieve a compromise between the needs of dog owner and non-dog owner alike. Tremendous consideration was given to the costs associated with providing the amenities of dogs being able to use the Park and at designated times to run at large. The latter privilege is not comparably available elsewhere in the region. Under the Ordinance, New Rochelle residents, as well as non-residents, can simply choose whether to avail themselves of the Permit's special benefits, and pay a fee that does not even cover the costs of administering and enforcing the Permit. Since dogs are not allowed, even on a leash, in any other public park in the City, the Ordinance is responsive to the general public's health, safety and welfare, while still providing a benefit to those who choose to use it. It is entirely defensible on these and other grounds.

History of the Park

3. Ward Acres Park is not a "typical park" in any way. It consists of approximately 62 acres, is located in the City, bounded by Quaker Ridge Road, Pinebrook Boulevard and Broadfield Road. The Park property was purchased in 1962 from the Ward family. The Park contains 9,000 linear feet of trails, 7,500 linear feet of stone walls, a 15,000 square foot historic barn complex, a 2,000 square foot farmhouse, 27 acres of meadow and 35 acres of woodland.

4. Since the Park was purchased, it has essentially remained in the same natural state. The trails in the Park today are basically the same as the former horse farm's trails and drives, and one of the original farm buildings, as well as several stone walls, still exist.

5. Over the years, various proposals were made to develop the Park, but each was rejected due to the public's desire to maintain the Park in its natural setting. The ideas for the Park, none of which were implemented, included use by New Rochelle High School for an alternative learning program, a mini-bike track, a special event ampitheatre and a soccer field complex.

6. Various activities and events took place over the years in the Park including a New Rochelle Country Fair which drew thousands of visitors for its four days of activities each Fourth of July from 1978 through 1985, the Wildcliff Arts Center, which was located in the Farm House during the 1970s and 1980s, and the annual Haunted House, sponsored by the Chamber of Commerce and held in the Barn until 2001.

7. Other than these sporadic activities, and almost exclusively over the last number of years, the Park has been used for walking, hiking and jogging. Despite the fact that a leash law prevented dogs from running free anywhere in the City, and no dogs were allowed in any City parks, the Park was often used for off leash dog walking.

The Ward Acres Master Plan

8. In 2005, the City decided to examine the Park more carefully than had been done before to determine how it might be improved and made more attractive and accessible to the general public. On June 21, 2005, the City Council authorized a consultant agreement with Vollmer Associates, LLP to coordinate the Ward Acres Park Master Plan by transferring \$75,000.00 from the Park and Recreation Trust Fund. The Ward Acres Park master planning process began following the execution of a master plan services agreement on August 1, 2005 between the City and Vollmer Associates, LLP and was a combined effort of the citizens of the City, a steering committee, three members of the City Council whose district included this park and the consulting firm of Vollmer Associates.

9. The Ward Acres Park master planning process continued over an 11 month period and included site investigations and both steering committee and public meetings. It culminated in the Ward Acres Master Plan, dated July 18, 2006 (the "Master Plan")(a copy of which is annexed hereto as Exhibit "C").

10. As stated in the Master Plan, “[t]he overall consensus was to preserve, maintain, and improve the natural character of the environment.” “The final master plan affords the residents of New Rochelle with a preserved natural environment, interpretive trail system, a unique canine park, and the potential for the development of the Historic Barn Complex into a multifunctional community building as resources become available.” (Master Plan, Executive Summary; page 1).

11. Specific recommendations included in the Master Plan, which were presented to the City Council, included: improving park access points with new signage and eliminating one unsafe access point; clearing trails, meadows and trees of encroaching and invasive weeds and vines (including hiring a professional contractor); surveying problematic site drainage areas; rehabilitating the stone bridge and walls as needed; ensuring the integrity of the horse cemetery; restoring water service to the Park; removing septic tanks behind the Barn; strategically placing benches throughout the Park; improving signage within the Park, particularly to make the public aware of locations with historic and natural significance; undertaking a needs analysis of the first phase program of a community center; preserving and restoring the Horse Barn with a first phase Community/Environmental/Senior Center; rehabilitating the Farm House to include a caretaker’s apartment, classrooms and exhibit space; and rehabilitating the Forge as an operations, maintenance and storage facility. (See Master Plan Executive Summary).

12. Of significance here, the Master Plan also suggested that a three acre off-leash dog area be established and enclosed with a six foot high vinyl clad chain link fence in the meadow area of the Park. It was suggested that the off-leash area be given its own entrance and be equipped with water and shade. (Executive Summary; pages 48-49). This three acre fenced off leash dog park area was estimated to cost the City \$150,000.00. (page 50). In addition, the

Master Plan recommended that off leash dog access within the general Park be restricted to between dawn and 11am and from 5 pm until dusk on weekdays, and on weekends and holidays from dawn until 10 am only. However, off leash dog access would have been permitted from dawn until dusk in the off-leash fenced area. (page 57). A fee was also suggested for both residents and non-residents who wished to enjoy the Park with their dogs. (page 58).

13. Further, in October 2006, the City Council reviewed a summary of recommendations submitted by the Commissioner of Parks and Recreation for Ward Acres Improvements, focusing on the 2007 budget and estimated project costs. During that discussion, the Commissioner recommended that the Council consider expanding the proposed off-leash dog area from the three acres recommended in the Master Plan to six acres, which represented approximately ten percent of the entire Park, therefore doubling the acreage recommended by the consultants.

14. In short, had either of the Master Plan recommendations been adopted, dog owning members of the public could have enjoyed using the Park's trails with their dogs unleashed during certain restricted hours, but could have also have used a three or six acre fenced in area during the remaining daylight hours. This would have recognized the desires of the dog owning population, while also taking into account the fact that the Park had been underused over the years due to the hesitancy of many other people to use a Park where dogs could run free at all times.

15. During the hearings on the Master Plan, as well as throughout my tenure as Parks Commissioner/Director, I have heard people speak about being frightened or annoyed by unleashed dogs. Many of these people have been reluctant to use the Park over the years. Further, City staff who have been responsible for park maintenance have expressed their discomfort, especially as it applies to a safe work environment.

16. Despite the accommodations that the Master Plan recommended for the dog owning public, many people objected to the suggestion of the fenced off-leash area. Rather than accepting the delineated area for otherwise unrestricted unleashed dog time, they adhered to the notion that they were entitled to have their dogs run free at all times throughout the 62 acres.

17. After the fenced off-leash dog park, which had been suggested in the Master Plan, was declared unacceptable by some members of the dog-owning public, various public meetings were held in which members of the public were given the opportunity to be heard. Then, in January 2007, the City Council voted the Ordinance into law, effective April 1, 2007.

The Ordinance

18. The Ordinance is explained in detail in the Affidavit of City Manager, Charles Strome submitted herewith. In sum, it includes the following: (i) a prohibition against dogs being unleashed in any public place in the City other than in the Park in compliance with the Ordinance; (ii) the requirements for dogs to be in the Park, including that a State Dog License and proof of current rabies vaccination be on the person having custody or control of the dog; (iii) that the person have a Ward Acres Dog Permit (which is only issued after a fee of either \$50 per dog for residents or \$250 per dog for nonresidents is paid); (iv) that one person not be in charge of more than four dogs at a time; (v) that dog feces be cleaned up; (vi) that dogs may not be in the Park between dusk and dawn; (vii) that leashes be no more than six feet in length; and (viii) that dogs be leashed during certain hours (all but restricted off-leash hours).

19. In my professional opinion, each aspect of the Ordinance has a legitimate governmental purpose.

20. The restricted off-leash hours for dogs are necessitated by the fact that other members of the public have been reluctant to use the Park because they have not felt safe

knowing that an unfamiliar dog could approach them at any time. Prior to the Ordinance, approximately 400 dogs were estimated to use the Park on any given week.

21. With regard to public safety, the requirement that persons in the Park with dogs have a current state license and certificate of rabies vaccination, ensures that dogs that are in the Park are healthy. Dogs that are permitted to run unleashed can come into contact with the wildlife in the Park which may be rabid, and unless the dogs are properly vaccinated for rabies, they can themselves become sick. In the event that a rabid dog were to bite a person in the Park, the City could be held liable.

22. These requirements under the new Ordinance have already proven to be an extremely important and beneficial measure. Of the people who applied for the Ward Acres Dog Permits so far, more than 85 percent had not previously properly licensed and/or vaccinated their dogs. Somewhat ironically, this includes Plaintiffs Michael Friscia and Marci Malone who did not obtain a State license for her dogs until March 23, 2007, on the same date they obtained their Permits and only six days after vaccinating her dog for rabies. (See Exhibit "D" annexed hereto). Plaintiff Dennis During has not applied for a Permit, but has apparently also not licensed his dog in Mount Vernon, New York, where he resides. (See Exhibit "E" annexed hereto)

23. Particularly during the transition hours between leashing and unleashing,² it is absolutely crucial for the City to know that the dogs in the Park are properly accounted for. Enforcement during those times is also most important.

24. Next, with regard to the fees, it is important to note that admission to the Park without a dog is free to everyone. The fee relates to the special amenity of being able to

² The transition times are as follows: 10:00 am and 5:00 pm, Monday through Friday from April 1 through November 14; 10:00 am on Saturdays, Sundays and Holidays from April 1 through November 14; and 10:00 am and 4:00 pm all days from November 15 through March 31.

bring a dog into the Park and being allowed to let it run unleashed during specified times. It is not a Park admission fee. For those who choose to bring their dogs, the fee helps pay for the costs of administering the Permit and making sure that it is properly enforced. The costs related to the Permit include those for clerical staff overtime, design and production of vinyl imprinted Permit cards, the production and installation of Park signs, graffiti removal, printing of the Ordinance, Permit instructions and fee schedule for distribution, increased Park staffing hours for weekly/monthly Park maintenance and restoration work detail, and costs associated with computer software support to design and program permit for point of sale. In addition, there are costs of enforcement including having police officers in the Park with enforcement power to make sure that people have the Permit. Since the City does not have any park rangers or park police, the City has no alternative but to use police officers. Over-time must be paid to the police officers that are already on staff.

25. In addition, unleashed dogs are more likely to leave behind waste that is not picked up by their owners because these dogs are free to roam a distance from their owners. The City pays for assigned park staff to perform required maintenance and trash removal, which has increased since the Ordinance was enacted in January 2007. While I understand that the Plaintiffs have asserted that the dog owning community has been informally cleaning up the Park, this simply does not make a dent in what is needed. Routinely, people leave garbage and debris, including dog feces in a way that is neither healthy nor inviting.

26. So far 183 Ward Acres Dog Permits³ have been sold representing 214 dogs⁴ (123 resident Permits for 145 dogs and 60 non resident Permits for 71 dogs) and \$19,540.00 has been collected for those Permits. (See Exhibit "F" annexed hereto). In contrast,

³ The fact that the face of the Permit actually reads "License" is merely an oversight. The Ordinance states that this is a Ward Acres Dog Permit and that is what it is.

\$31,250.00 has been spent by the City on Permit related and Park maintenance costs. Clearly, the benefits being provided to the dog walking community are still at a significant financial deficit to the City. This does not even take into account the many years of free off-leash dog walking that many of the current beneficiaries enjoyed.

27. Further, the discrepancy between fees paid by residents and nonresidents is warranted and routine, and as counsel has explained to me, legal. For many years now, the City, and therefore the residents of New Rochelle, have borne the cost of maintaining the Park through their tax dollars. They will continue to pay for the difference between what it costs to run the Park and what is being collected in connection with the new Permits. It is, therefore, perfectly reasonable to expect nonresidents who are not contributing toward the Park through their tax dollars to pay more than residents who are doing so. Residents and nonresidents are routinely charged different rates, including for an Omnicard allowing use of several other City parks and beaches. (See Exhibit "G" annexed hereto).

28. Finally, I understand that the Plaintiffs are also complaining about the burden attached to some of the administrative requirements of the Ordinance, including the requirement that persons with dogs in the Park carry the Permit and a current rabies vaccination certificate and that people actually come down to City Hall to have their pictures taken for the Permit.

29. The City opted to issue photo identification Permits to all dog owners and their household members, including contracted dog care providers, for their possession while using the Park, as a safe alternative to enforcement officers having to approach a dog with a collar identification tag during specified leashed and unleashed hours.

30. The requirement that a rabies certificate be carried on the person in

⁴ A person may acquire a permit for more than one dog that it owns.

custody of the dog recognizes the fact that the Permit may be in effect but the rabies certificate may have expired since the issuance of the Permit. As already explained, it is crucial that dogs in the Park, particularly those who run unleashed, be current in their rabies vaccinations in order to keep people and other animals safe.

31. The bottom line is that both residents and nonresidents have a terrific opportunity to use Ward Acres Park free of charge if unaccompanied by a dog. Even more unique is the fact that people who own dogs can choose whether or not to avail themselves of the benefit of one of the only public parks in the County where dogs can run unleashed. No fee is required unless they choose to bring their leashed or unleashed dog into the Park. Indeed, I am unaware of any 62 acre park anywhere in the County where dogs can run free at any time under any circumstances.

Other Parks Allowing Dogs In Westchester County

32. My research has revealed that there are presently only four other parks in Westchester County which allow unleashed dogs, and each is much more limited than Ward Acres under the Ordinance.

33. The Village of Pelham Manor allows unleashed hours daily until 9:00 am within Shore Park consisting of approximately 1.5 acres, at no charge for residents only. Although currently closed, the City of White Plains allows unleashed dogs in a fenced area of less than an acre, free of charge. The Village/Town of Ossining allows unleashed dogs in a fenced area on a quarter of an acre, with separate areas for small and large dogs. Fee contributions may be made to Friends of Cedar Lane Dog Park, which manages the facility for the community. The Village of Elmsford opened an enclosed dog park in 2006 on a quarter of an acre of land, which is free to residents only.

34. Clearly, by providing a very specialized, unique dog walking experience

in a 62 acre natural environment, with delineated off leash hours, the City of New Rochelle has provided an amenity that is unmatched anywhere within the County.

The Colonial Greenway

35. The Colonial Greenway is a proposed 15 mile loop of nature trails in seven municipalities/jurisdictions within Southern Westchester County including the Villages of Scarsdale, Mamaroneck and Larchmont, the Towns of Eastchester and Mamaroneck, the City of New Rochelle and the County itself. Ward Acres Park is part of the proposed Greenway and serves as the center core of this proposed trail system for approximately one mile.

36. The City's attorneys have advised me that one of the Plaintiffs' arguments against the Ordinance is that since the City has discussed a possible grant from the County so that the Greenway can be improved into a continuous hiking path, the Ordinance cannot impose additional restrictions upon use of dogs.

37. This is not true. First, the City has not accepted any funds from the County to date, and all discussions about a grant have been related to improving the pedestrian roads and pathways surrounding Ward Acres rather than the Park itself. To my knowledge, the County would not be able to impose its own rules upon the City with regard to the Park unless the City signed an inter-municipal or other agreement surrendering or limiting its right to regulate its own Park. This has not occurred here. Indeed, the plans for the Colonial Greenway are still in the planning stages.

38. Conversations between the City's attorneys and County officials have confirmed that the County has no regulatory control over the trail. In fact, County representatives have participated in all planning meetings with other municipal partners regarding the Colonial Greenway trail project since its inception and most recently acknowledged the City's regulatory powers with the introduction of our new Ward Acres Park

Dog Permit legislation. Neither the City, nor any of the other participating municipalities, ever agreed to limit their respective jurisdictions.

Conclusion

39. For these and all of the reasons expressed in the other Affidavits and Memorandum of Law submitted by Defendant in opposition to Plaintiffs' Motion for a Preliminary Injunction, I respectfully believe that the Ordinance should be upheld in all respects.


WILLIAM V. ZIMMERMANN

Sworn to by me this
24th day of May, 2007


Notary Public

02RH6136644
Notary Public State of New York
Kebra A. Rhedrick
Appointment expires 11-14-09

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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DENNIS C. DURING, MICHAEL S. FRISCIA and
MARCI MALONE,

Plaintiffs,

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THE CITY OF NEW ROCHELLE, NEW YORK

Defendant.

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: Assigned to Judge:
Hon. W. Denis Donovan
Index No. 6561-07

: **AFFIDAVIT OF**
: **DEPUTY POLICE**
: **COMMISSIONER**
: **ANTHONY MURPHY**

STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

ANTHONY MURPHY, being duly sworn, deposes and, says as follows:

1. I have been on the police force of the City of New Rochelle for more than thirty-two years, and have been the Deputy Police Commissioner since October of 2001. In this capacity, I am fully familiar with the proper police procedure for enforcing the City's various ordinances and laws.

2. I submit this Affidavit in opposition to Plaintiff's Motion for a Preliminary Injunction barring enforcement of City of New Rochelle Ordinance number 21-2007 (the "Ordinance"), which amended certain sections of the City Code to provide for the issuance of a permit and related fee in connection with bringing dogs into Ward Acres Park (the "Park").

**POLICE DUTIES INCLUDE EDUCATING
AND INFORMING THE PUBLIC**

3. On March 7, 2007, Mr. Charles Strome, the City Manager, provided me with notification that police officers would be needed to enforce the Ordinance. See, March 7, 2007 Notice attached as Exhibit "H."

4. Prior to that notification, I was involved in several preliminary meetings with Mr. Strome, where we discussed the identification requirements and off-leash hours created by the Ordinance. I later discussed this information with Patrol Captain Gazzola who would ensure that the police officers understand the requirements of the Ordinance.

5. Although Ward Acres Park is within a regularly patrolled sector (area), it became clear that our department would need to become familiar with the new Ordinance and determine how best to enforce its terms.

6. As the original leash ordinance had been violated for so long, we spent additional time and money to inform and educate the people in the Park about the new Ordinance. From March 25 through March 31 (the week prior to the Ordinance taking affect), we decided to assign five police officers to educate and inform the people in Ward Acres Park of the impending Ordinance, which would be enforced as of April 1st. The officers were instructed to dispense flyers that contained information as to where and how to obtain the requisite permit. (Exhibit "H").

7. The City also posted signs in the Park to inform the public of the Ordinance and how to obtain a permit. (Photograph of Sign attached as Exhibit "I").

IT IS NECESSARY THAT POLICE OFFICERS
PATROL WARD ACRES PARK

8. There was no reason for me to instruct the officers to enforce the Ordinance any differently from any other New Rochelle ordinances. Individuals who did not comply with its mandates, like any other violation of an ordinance, would receive a Summons from a police officer. With the exception of some fire and buildings ordinances, we have no other officials in the City with authority to issue a summons. It was necessary to employ police officers to enforce the Ordinance since violations would require a Summons.

9. For example, the City of New Rochelle does not employ park rangers in its parks. In instances such as this enforcement of an ordinance in the Park, it is necessary for police officers to attend to ensuring compliance in the Park.

10. The Ordinance is unique however in that, outside of the on-leash hours, compliance mainly requires that an individual possess certain information while in the Park with a dog. To enforce the Ordinance, police officers would only have to tell people to put dogs on a leash and ask to see an individual's Dog Permit. Under normal circumstances, it would not be necessary for an officer to physically or constructively detain an individual in order to achieve these tasks.

PROPER POLICE PROCEDURES WERE
USED IN ENFORCING THE ORDINANCE

11. April 1, 2007 was the first day that police were in Ward Acres Park to enforce the Ordinance. A Sergeant and four police officers were assigned to patrol the park for twelve hours. We chose to assign five members of the police force because the Park is more than sixty acres in size; it is wooded and has several points of ingress and egress. We determined this would be the appropriate number to initiate the new Ordinance and its proper enforcement.

12. Individuals with dogs would be asked to present a valid Ward Acres Dog Permit, to confirm that the people with dogs in the Park were all in compliance with the Ordinance.

13. The fact that an individual has chosen to bring a dog into the Park provides a sufficient basis for an officer to make a simple request to see the individual's Dog Permit given that the Ordinance seeks to regulate the entry of dogs in the Park.

SUCCESS IN ENFORCING THE ORDINANCE
IS ATTRIBUTABLE TO THE OFFICERS' CONDUCT

14. The officers chosen were regular beat officers with no regular patrol duties.

15. On April 1st sixteen Warning Summonses were issued and recorded without a fine or penalty attached for violation of the Ordinance. See, Summonses issued in Ward Acres Park on April 1, 2007 attached as Exhibit "J." Warning Summonses, which do not require a fine or penalty, were issued in an attempt to afford some consideration and leniency to the dog owners while continuing to honor the mandates of the Ordinance.

16. The police officers did not report any problems with enforcing the Ordinance. The individuals in the Park either had valid Permits or accepted the Warning Summons.

17. Also, I am not aware of any official complaints filed by citizens alleging police misconduct in the Park.

18. This is not surprising since all of the officers in our department are well-versed in issuing Summonses. This is an extremely common practice in New Rochelle for our police force. Last year alone more than 2,800 Summonses were issued.

19. While I was not personally in the Park on April 1st, having been involved with such details throughout my 32-year career in the police department, I know that the typical procedure for gaining the information required under the Ordinance would be for an officer to introduce themselves and ask the individual if they were aware of the Ordinance. The officer may then ask to see the individual's Permit. If the individual does not have a valid permit, the officer is instructed to issue a Summons, which is written on a form carried with the officer. This entire scenario would normally last only a few minutes.

20. An officer would not be aggressive in simply asking to see a Ward Acres Park Dog Permit. It also would not be necessary to restrain an individual in any way, or the dog.

21. Only if an individual becomes belligerent and refuses all requests for information would an officer, within his reasonable judgment, escalate the encounter to a stop.

22. Sergeant Johnson, who was in command in the Park, did not report that any of the officers deviated from the typical procedure for a simple request of information.

23. No arrests have been made in connection with enforcing the Ordinance.

24. I was not made aware of any encounter that an officer may have had with Matthew Wild. I was, however, briefed on the officers' activities in the Park and was told that there were no problems with enforcing the Ordinance.

25. After April 1st, enforcing the Ordinance in Ward Acres Park became a regular part of the police patrol. This has necessitated overtime hours for the officers making the patrol. See, Exhibit "K" correspondence regarding staffing.

26. There have been no reported problems with enforcing the Ordinance at this time. See, correspondence of May 17, 2007 reporting no violations of the Ordinance attached as Exhibit "L."



ANTHONY MURPHY

Sworn to by me this
24th day of May, 2007



Notary Public

02RH6136644
Notary Public State of New York
Kebra A. Rhedrick
Appointment expires 1-14-09