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Use of Service and Support Animals by Persons with Disabilities

(Re-Issue DB 16-060)

The Department often receives calls relating to service animals. Officers may be called upon to settle disputes, issue citations, or make arrests arising from incidents involving subjects with service animals. This bulletin provides legal background and procedures to follow when handling calls involving service animals.

Legal Background

Title II of the American with Disabilities Act (ADA) requires local and state governments ensure that people with disabilities have an equal opportunity to use and enjoy government services, benefits, facilities and activities. To provide an equal opportunity, a government agency may need to provide a reasonable modification of policies, practices and procedures, such as suspending a “no pets” rule to allow a person with a disability to be accompanied by their service animal.

Similarly, Title III of the ADA requires areas of public accommodation to make reasonable modifications of policies, practices and procedures to ensure equal opportunity to those with disabilities. Areas of public accommodation are businesses, buildings or places that are open or offer services to the general public.

In 2010, Congress passed the Americans with Disabilities Act Amendments Act, which amended the ADA. Regulations implementing those amendments went into effect in mid-2011. Under the amended ADA regulations, a “service animal” is defined as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. In addition, a miniature horse may be a service animal if it is individually trained to benefit an individual with a disability and can be reasonably accommodated by the facility or establishment in question. Other animals (e.g., cats, monkeys, birds, etc.), even if trained, are no longer considered service animals under the ADA. Likewise support animals (also called emotional therapy animals) are no longer considered service animals under the ADA. Support animals are animals whose mere presence offers companionship and general and emotional support, but which have not received individualized training to benefit the individual with a disability.

Officers should be aware of the following California Penal Code sections when responding to calls involving a service animal (an animal that meets the definition under the amended ADA regulations):

- PC 365.5 makes it a misdemeanor to prevent to interfere with a disabled person’s rights to use their service animal on a public conveyance or accommodation.
- PC 365.6 makes it a misdemeanor to, without legal justification, intentionally interfere with the use of a service animal.
- PC 365.7 makes it a misdemeanor to knowingly and fraudulently represent them self as the owner or trainer of a canine identified as a service animal.

These Penal Code sections do not affect any administrative or civil remedies available to the person using the service animal, such as filing complaints with the United States Department of Justice, California Department of Fair Employment and Housing or other regulatory agencies, or filing a civil suit.

Enforcement

(1) Areas of Public Accommodation

Under the recent changes in the law, areas of public accommodation must continue to permit the use of service animals, i.e., dogs (or miniature horses) individually trained to do work or perform tasks for the benefit of an individual with a disability. But these areas may restrict the use of animals that are not service animals, i.e., animals other than dogs or miniature horses, such as cats, birds, etc., even if individually trained to do work or perform tasks for the benefit of the person with a disability, as well as dogs that provide only emotional support or comfort.

Areas of public accommodation include, but are not limited to:

- Restaurants, cafeterias, and bars;
- Retailers and department stores;
- Hotels/motels, galleries, sporting facilities, health clubs, cinemas; and
- Private offices (e.g., doctors, lawyers) that are not contracted with the City.

(2) City and County of San Francisco Buildings, Programs, Services and Housing

The City and County of San Francisco (CCSF) has adopted a policy that is broader than the protections afforded under the ADA and its regulations. This policy protects individuals with a disability using ***any species of service or support animal and applies to all City and County buildings, programs, services and housing.*** As a result, individuals using a service or support animal of any species may bring that animal into:

- Any City or County building, agency, department, program or service (e.g., the County Clerk's office, public library branches, the Department of Public Health);
- Any contracted agency, program or service (e.g., public health clinics, case management clinics, mental health services);
- All public housing (e.g., SROs, homeless shelters and residential treatment programs funded by or contracted with the City).

For incidents involving City and County buildings, programs, services and housing, officers shall enforce the CCSF policy and may issue a citation under CA Penal Code sections 365.5 or 365.6 (if applicable and warranted) or refer the individual to the Mayor's Office on Disability:

Mayor's Office on Disability
1155 Market Street, 1st Floor
San Francisco, CA 94103
Tel: (415) 554-6789
TTY: (415) 554-6799
Email: mod@sfgov.org

(3) MUNI

MUNI's policy on service and support animals is not affected by the new ADA regulations; instead, it aligns with the CCSF policy and permits the use of animals of any species that are not pets and are used by persons with disabilities. This policy extends to the use of support animals as well.

In all instances involving MUNI and service/support animals, **officers shall request a MUNI Supervisor to the scene** to make a determination regarding MUNI policy.

Procedures

(1) Determine Applicable Protocol

When responding to a call involving a potential service/support animal, officers should first determine which protocol applies—the amended ADA regulations or the CCSF policy. This determination will depend solely on where the incident has occurred.

- If the incident occurred in an area of public accommodation, the amended ADA regulations will apply. (See “*Enforcement (1) Areas of Public Accommodation*”).
- If the incident occurred in a City and County affiliated building, program, service or housing, or MUNI, the CCSF policy applies. (See “*Enforcement (2) City and County of San Francisco Buildings, Programs, Services and Housing; (3) MUNI*”).

(2) Script Communication

When responding to a call involving a potential service/support animal, officers should take the individual using the animal aside to have a private conversation and should use the following script as guidance:


- Ask: “Is this your pet?” or, “Is this animal being used due to a disability?”
 - If the answer conveys that the animal is a pet, or not being used due to a disability or medical condition, then the ADA regulations and CCSF policy regarding service/support animals do not apply.
 - If the answer conveys that the animal is not a pet or is being used due to a disability or medical condition, then ask the following additional question:
- “What does your animal do for you?”
 - The answer should relate to the manner in which the animal assists the person with a disability.

(3) Documentation

Proof is not required. Service/support animal owners may have some sort of tag, harness, vest or paperwork but none of these documents or identifiers are required by law.

In all cases, when officers respond to calls involving a service/support animal, officers shall document the circumstances in CAD or an incident report, as necessary.

Any questions may be directed to the Department’s Americans with Disabilities Act Coordinator, Penny Si, at (415) 837-7221.


WILLIAM SCOTT
Chief of Police

Per DB 17-080, sworn members are required to electronically acknowledge receipt and review of this Department Bulletin in HRMS.