

August 29, 2006 Offleash Lawsuit Update. Judge Hears Arguments in State Supreme Court Today, Indicates A Judgment Will Be Forthcoming.

The lawsuit that threatens to end the 20-year policy of Offleash Courtesy Hours in NYC Parks from 9pm-9am resumed today in State Supreme Court, Queens County.

A contingent of about 25 members from the New York Council of Dog Owner Groups (NYCdog.org) attended the court hearing, including most of the board members of NYCdog.

Judge Peter J. Kelly called the case back into session at approximately 11:30am, immediately bringing attorneys from both sides into his chambers for discussions.

Also at 11:30am, NYCdog held a press conference on the steps of the courthouse. Camera crews and reporters from WNBC, WB 11, WABC, NY1, 1010 WINS, the Daily News, the New York Post, and several other smaller news organizations attended the press conference. As soon as NYCdog finds links to individual stories which spring from the news conference, the links will be posted on www.nycoffleash.com.

In general, the media seemed sympathetic to the side of the Parks Department and NYCdog. We'll see what happens following the editing process. Watch your local news tonight, or look on the Web for video of the press conference, and keep following events on NYCoffleash.com

Back upstairs in the courtroom, the Article 78 hearing of the Juniper Park Civic Association vs. the NYC Parks Department and Parks began at approximately 12:30pm. Lawyers from both side introduced themselves to the court. NYCdog's pro bono lawyers from the law firm of Curtis, Mallet-Prevost, Colt & Mosle, LLP announced that NYCdog intended to file a cross motion to intervene in this case as an interested party on behalf of its members, over 20,000 dog owners who use offleash park areas and dog parks. The NYCdog lawyers also presented the judge with a Memorandum of Law arguing that the JPCA lacked standing, and notwithstanding, the Offleash Courtesy Hours are legal under existing law. (To read these court documents, visit NYCoffleash.com)

The attorney for the JPCA began oral arguments contending that although the JPCA is a neighborhood community civic association they do have standing to bring does suit on a citywide basis. The JPCA attorney also argued the points outlined in the JPCA's memo of law, that the Parks commissioner is violating the Leash Law by allowing and encouraging parks users to break that law as well as "arbitrarily and capriciously" not enforcing the Leash Law. He pointed strongly to Paragraph A of the "Leash Law" contending that the law was mandatory at all times. Judge Kelly grilled the JPCA lawyer, who though flustered occasionally, presented a good argument for the JPCA's side.

Next, the attorney for the Parks Department (from the NYC Office of the Law) rose to present oral arguments. She focused on Paragraph B of the Leash Law, which she asserted stipulated that the Parks Commissioner has discretionary power of enforcement

of the law in the Parks. (For a detailed look at these arguments, visit NYCoffleash.com, click on the “Threat” link, and download the NYCdog Memorandum of Law.)

The judge grilled the City’s lawyer as hard as he had questioned the JPCA lawyer. The City lawyer, also at times appeared briefly flustered by the judge’s probing hypothetical and Socratic method of questioning, did a very good job presenting the legal arguments.

In addition to a presentation of the legal arguments, the City attorney also began to describe the Offleash Hours as a successful 20-year public policy that benefited both dog owners and dogs, as well as the public as a whole. The judge quickly shut down that line of oral arguments, mentioning that good or bad public policy wasn’t being debated in court today, only matters of whether the Offleash Policy is legal or not.

At the end of her arguments, the City attorney announced to the judge that whatever the ruling in this case, as of today, the City has decided to begin the 90-day process of amending the Leash Law to get it in synch with the Park’s Department’s 20-year offleash policy.

There is a procedure that can amend City law pertaining to certain city bureaucracies, such as the Health and Parks Department codes, rules and regulations that do not require going through the City Council legislative process. Instead, the City will begin a period where an amendment to the current Leash Law will be proposed, there will be a period for public comment, and then if both affected departments (Health & Parks) agree to the change (they have already indicated they would agree), the Leash Law will be amended in 90 days formally codifying the Offleash Hours (and dog parks). The judge seemed to take note of this with interest.

Following the City attorney’s oral arguments, NYCdog attorney Andrew Otis rose to begin arguments for a cross motion for NYCdog to intervene in this case on the side of the Parks Department. Mr. Otis laid out the arguments in the written Memo of Law pointing out that (a) the JPCA does not have standing to bring this lawsuit on a citywide basis and (b) notwithstanding, Paragraph B of the Leash Law clearly gives discretion to the NYC Parks Commissioner on enforcement of that law in the NYC Parks. The judge grilled the NYCdog attorney with hypotheticals of allowing an unelected City bureaucrat (the Parks Commissioner) to decide when and when not to enforce the law. The NYCdog attorney stayed on point, keeping the focus of the argument narrow to this particular case. Mr. Otis did an excellent job articulating the arguments in the NYCdog Memo of Law.

At the end of oral arguments, Judge Kelly gave a brief speech about how it’s possible to “lose the battle, but win the war.” Judge Kelly is known as a conservative judge and a strict constructionist of the law. This was on display today as he mentioned several times that it’s not up to him to decide if the Offleash Hours are good or successful public policy. He’s a judge and he decides matters of law, not of public policy.

The Judge did note that any ruling he might make could become moot with regard to the Offleash Hours policy if the City is successful in its plan to amend the Leash Law to get it in line with the Parks Offleash policy.

Judge Kelly is a dog owner, and he also seemed to acknowledge that offleash is a beneficial policy. But he also stressed numerous times that everyone was in court to decide a matter of law, not policy.

It's been clear from the beginning that the judge did not want to rule on this case. That's why he asked both parties to attempt a compromise two months ago. A compromise was not reached and the case moved forward today with oral arguments.

Judge Kelly ended the court session by stating that unless we hear otherwise from him, to expect a judgment in this case. The judge didn't give a timeframe; however, our attorneys tell us that judgments in Article 78 proceedings normally take 6-12 weeks to render.

That concludes the debrief about what happened inside and outside the courtroom today.

NYCdog's analysis about what this could mean for the dog owners of NYC that rely on Offleash Hours:

Several scenarios could occur at this point:

- 1) The judge could decide that the JPCA does not have standing and dismisses the case without a ruling. Our side strenuously argued that the JPCA does not have standing (see the NYCdog Memorandum of Law on www.nycoffleash.com).
- 2) If the judge decides that the JPCA does have standing, he could still rule in favor of the Parks Department, which would mean there would be no change in the Parks Offleash Policy.
- 3) If the judge decides that the JPCA does have standing, he could rule in favor of the JPCA.

If the judge rules in favor of the JPCA, there is a good chance that the Parks Department will automatically appeal the ruling. This would grant a stay to any decision Judge Kelly renders and the case goes to the Appellate Court. This could take from 1-2 years.

In the meantime, as stated openly in court by the City's Corporation Counsel, the City will immediately begin the 90-day process of attempting to append the Leash Law to accommodate Park Offleash Hours. If this process is successful, it would render any court decision, either in Supreme Court or Appellate Court moot with regard to the Offleash Policy, and Offleash in NYC Parks would continue and be even stronger than before, since it would then be codified into law. For the past 20 years, the Offleash Hours has been a discretionary accommodation from several different Parks commissioners. Codifying Offleash Hours into law would preserve the current policy and the NYC dog owner community would not have to worry about Offleash Hours continuing or disappearing with the arrival of each new Parks Commissioner.

So, it is possible that Parks could lose this case, yet Offleash Hours would survive stronger than ever because the City will attempt to change the law to specifically permit Offleash Hours and dog parks.

If you wish to support the Herculean efforts that the all-volunteer NYCdog members are making for the dog owners of NYC, please consider making a small donation. You can do so on the NYCoffleash.com website. NYCdog is a registered 501(c)(3) nonprofit organization. All contributions are tax deductible.

The dog owning community of New York City owes a big THANK YOU to the law firm of Curtis, Mallet-Prevost, Colt & Mosle, LLP, for devoting so much time and effort as NYCdog's pro bono lawyers. Matt Greller of Blank, Rome LLP got the ball rolling and kept things moving and went way beyond his allotted pro bono hours. Andrew D. Otis, Esq. and Dora Straus, Esq. are due special thanks and appreciation for taking the lead in the case and shepherding NYCdog's case through the legal labyrinth. Howard Wexler, Esq., from the law firm of Herzfeld-Rubin also contributed to the documentation effort. And thank you to Jena Tarlton who gathered all the affidavits that were included with the NYCdog Memorandum of Law.

For up-to-date information about this case and the New York City Offleash Movement, keep visiting www.nycoffleash.com. This is an official NYCdog Website.