

INDEX NO. 7888/06

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

IN THE MATTER OF THE
APPLICATION OF THE
JUNIPER PARK CIVIC ASSOCIATION, INC.

Petitioner,

- against -

THE CITY OF NEW YORK,
ADRIAN BENEPE, COMMISSIONER OF
THE NEW YORK CITY DEPARTMENT
OF PARKS AND RECREATION, AND
THE NEW YORK CITY DEPARTMENT
OF PARKS AND RECREATION,

Respondents.

NOTICE OF NYCDOG'S
CROSS-MOTION TO INTERVENE

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP
Attorneys for

INTERVENOR-RESPONDENT
NEW YORK COUNCIL OF DOG OWNER GROUPS
("NYCDOG")
101 PARK AVENUE, NEW YORK, N.Y. 10178

212-696-6000

Sir:

Please take notice that the within is a copy of
in the within entitled action duly entered and filed in the office of the Clerk of the within named
Court on the day of
Dated, New York,

CURTIS, MALLET-PREVOST, COLT & MOSLE, LLP,

Attorneys for

101 Park Avenue
New York, N.Y. 10178-0061

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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IN THE MATTER OF THE :
APPLICATION OF THE :
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**NOTICE OF NYCDOG'S
CROSS-MOTION
TO INTERVENE**

Hon. Peter J. Kelly

PLEASE TAKE NOTICE that upon the annexed Affidavit of Andrew D. Otis, sworn to on August 21, 2006, and the Proposed Verified Answer attached thereto; the Affidavit of Robert A. Marino, sworn to on August 18, 2006, and the exhibits annexed thereto; the Memorandum of Law In Support of NYCDOG's Cross-Motion To Intervene And In Opposition To The Petition, dated August 21, 2006; the Affidavit of Janet Hoffman, sworn to on August 18, 2006; the Affidavit of Meena Alagappan, sworn to on August 21, 2006; the Affidavit of Daisy L. Okas, sworn to on August 17, 2006; and the Affidavit of Claire Shulman, sworn to on August 21, 2006, the New York Council of Dog Owner Groups ("NYCDOG"), through its undersigned counsel, will cross-move this Court, before the Hon. Peter J. Kelley, at the Supreme Court of the State of New York, County of Queens, located at 88-11 Sutphin Boulevard, Jamaica, New York, at IAS Part 16, Courtroom 42, on the 29th day of August 2006, at 9:30 a.m. or as soon thereafter as counsel may be heard, for an order pursuant to CPLR §§ 401, 7802(d) permitting NYCDOG

to intervene as a party respondent in this Article 78 proceeding, directing that the Verified Petition in the above entitled proceeding be amended by adding NYCDOG thereto as a party respondent, and allowing NYCDOG to serve the Proposed Verified Answer within ten days after the entry of an order granting this motion, upon the ground that NYCDOG is an interested person and therefore permitted to intervene in this proceeding.

Dated: August 21, 2006
New York, New York

CURTIS, MALLET-PREVOST,
COLT & MOSLE LLP

By:  _____

Andrew Otis
Dora Straus
101 Park Avenue
New York, New York 10178
(212) 696-6000

*Attorneys for
Intervenor-Respondent
New York Council of Dog
Owner Groups ("NYCDOG")*

TO: Gabriel Tapalaga, Esq.
Tapalaga & Associates, P.C.
44 Wall Street, 10th Floor
New York, NY 10005
*Attorney for Petitioner
Juniper Park Civic Association, Inc.*

Paula Van Meter, Esq.
Corporation Counsel of the City of New York
100 Church Street – Room 5-171
New York, NY 10007
*Attorney for Respondents
The City of New York, Adrian Benepe,
Commissioner of the New York City
Department of Parks and Recreation,
and the New York City Department
of Parks and Recreation*

SUPREME COURT OF THE STATE OF NEW YORK
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THE NEW YORK CITY DEPARTMENT :
OF PARKS AND RECREATION, :

AFFIDAVIT OF :
ANDREW D. OTIS :
IN SUPPORT OF :
NYCDOG'S CROSS- :
MOTION TO INTERVENE :

Hon. Peter J. Kelly

Respondents. :
----- X

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

ANDREW D. OTIS, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and Counsel to Curtis, Mallet-
Prevost, Colt & Mosle LLP, attorneys for the New York Council of Dog Owner Groups
("NYCDOG"), proposed Intervenor-Respondent in this proceeding.

2. I submit this affidavit in support of NYCDOG's cross-motion to intervene.

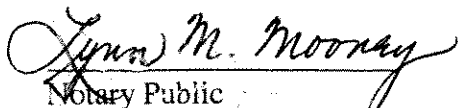
3. Attached hereto as Exhibit A is the Proposed Verified Answer of

NYCDOG.



ANDREW D. OTIS

Sworn before me this
21st day of August, 2006.


Notary Public

LYNN M. MOONEY
Notary Public, State of New York
No. 41-4841073
Qualified in Queens County
Certificate Filed in New York County
Commission Expires June 30, 2007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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PROPOSED VERIFIED ANSWER OF NYCDOG

Hon. Peter J. Kelly

Intervenor-Respondent New York Council of Dog Owner Groups (“NYCDOG”),
by its attorneys, Curtis Mallet-Prevost, Colt & Mosle LLP, for its answer to the Verified Petition
 (“Petition”) states as follows:

1. Denies the allegations set forth in paragraph 1 of the Petition except admits that Petitioner purports to proceed as stated therein and respectfully refers the Court to the Rules of the City of New York, Vol. 9, Title 24, New York City Health Code (“Health Code”), §161.05, and Vol. 12, Title 56, Department of Parks and Recreation (“Parks Rules”), § 1-04, for their full content and meaning.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Petition, except denies the allegation that the rules and regulations referred to therein apply as alleged by Petitioner.
3. Denies the allegations set forth in paragraph 3 of the Petition.

4. States that the allegations contained in paragraph 4 of the Petition purport to state legal conclusions as to which no response is required, and denies that Respondents “fail to perform their duties required under the law.”

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Petition.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Petition.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Petition.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Petition.

9. Denies the allegations set forth in paragraph 9 of the Petition.

10. Denies the allegations set forth in paragraph 10 of the Petition.

11. Denies the allegations set forth in paragraph 11 of the Petition.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Petition.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Petition.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Petition.

15. In response to the allegations set forth in paragraph 15 of the Petition, repeats and re-states the responses to paragraphs 1 through 14 of the Petition.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Petition, except denies the allegation that the rules and regulations referred to therein apply as alleged by Petitioner.

17. Denies the allegations set forth in paragraph 17 of the Petition.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Petition.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Petition

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Petition.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Petition

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Petition.

23. Denies the allegations contained in paragraph 23 of the Petition.

24. Denies the allegations set forth in paragraph 24 of the Petition.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Petition, except denies the allegation that the laws referred to therein are enforceable and apply as alleged by Petitioner.

26. Denies the allegation set forth in paragraph 26 of the Petition.

27. States that the allegations contained in paragraph 27 of the Petition purport to state legal conclusions as to which no response is required. To the extent that an answer is required, denies the allegations set forth in paragraph 27 of the Petition and respectfully refers the Court to the entire text of Health Code §161.05 for its content and meaning.

28. States that the allegations contained in paragraph 28 of the Petition purport to state legal conclusions as to which no response is required. To the extent that an answer is required, denies the allegations set forth in paragraph 28 of the Petition and respectfully refers the Court to the entire text of Health Code §161.05 for its content and meaning.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 of the Petition.

30. Denies the allegations set forth in paragraph 30 of the Petition.

31. States that the allegations contained in paragraph 31 of the Petition purport to state legal conclusions as to which no response is required. To the extent that an answer is required, denies the allegations set forth in paragraph 31 of the Petition and respectfully refers the Court to the entire text of Parks Rules § 1-04 for its content and meaning.

32. States that the allegations contained in paragraph 32 of the Petition purport to state legal conclusions as to which no response is required. To the extent that an answer is required, denies the allegations set forth in paragraph 32 of the Petition and respectfully refers the Court to the entire text of Parks Rules § 1-05(s)(3) for its content and meaning.

33. Denies the allegations set forth in paragraph 33 of the Petition.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 of the Petition and respectfully refers the Court to Health Code § 161 and the Notice of Adoption of Amendments to Sections 161.03, 161.04 and 161.05 of the New York City Health Code for their content and meaning.

35. Denies the allegations set forth in paragraph 35 of the Petition and respectfully refers the Court to the web site referenced therein for its entire content and meaning.

36. Denies the allegations set forth in paragraph 36 of the Petition.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 of the Petition.

AS AND FOR A FIRST DEFENSE

38. Petitioner lacks standing to bring this proceeding.

AS AND FOR A SECOND DEFENSE


39. Petitioner is not entitled to the mandamus relief it seeks because the governmental action Petitioner seeks to compel, enforcement of New York City rules and policies governing the leashing of dogs, is discretionary, not mandatory or ministerial.

AS AND FOR A THIRD DEFENSE

40. Petitioner is not entitled to relief because the governmental action Petitioner seeks to compel is a reasonable exercise of Respondents' discretion. Respondents' rules and policies adequately protect public health and safety of the public and are beneficial to dogs and their human companions.

Dated: New York, New York
August 18, 2006

CURTIS, MALLET-PREVOST,
COLT & MOSLE LLP

By: 
Andrew D. Otis
Dora Straus
101 Park Avenue
New York, New York 10178-0061
(212) 696-6900

*Attorneys for Intervenor
Respondent New York Council
of Dog Owner Groups ("DOGNYC")*

VERIFICATION

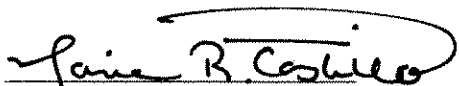
STATE OF NEW YORK)
).ss:
COUNTY OF NEW YORK)

I, Robert A. Marino, being duly sworn, depose and state:

1. I am an officer of the Intervenor-Respondent organization in the above entitled action holding the position of President.
2. I have read the forgoing PROPOSED VERIFIED ANSWER and know the contents thereof, the same are true to my knowledge except as to those matters therein stated to be alleged upon information and belief, as to those matters I believe them to be true.
3. I am authorized to file the PROPOSED VERIFIED ANSWER.


Robert A. Marino

Sworn to before me this
10th day of August, 2006


Notary Public

Maria R. Castillo
Notary Public, State of New York
No. 01CA5003091
Qualified in Bronx County
Commission Expires October 21, 2006