



LEGAL EQUESTRIAN™

EQUESTRIAN QUESTION FORUM by Lisa L. Lerch, Esq.

The city I live in is turning a blind eye and failing to enforce an ordinance regarding commercial use of a public use horse arena. Does the city have any liability exposure for failure to enforce a law?

In order to determine whether the city has any duty to enforce a law, it first must be determined what laws are in place that may address the issue of commercial use of public property. A review of the local ordinances can quickly determine whether there is a law in place that the city is required to enforce. Typically, commercial activities affect the type of insurance coverage available in the event of an injury or property damage. One of the purposes of city ordinances requiring a permit for commercial use is to ensure the proper insurance is in place often naming the city or county as an additional insured. If it appears that, the city is failing to enforce a law it *may* be subject to liability for its failure to act.

California Government Code section 818.2 states, “A public entity is not liable for an injury caused by adopting or failing to adopt an enactment *or by failing to enforce any law.*” [emphasis added] It would appear on its face that this code section would remove liability from a city if there were an injury while a trainer was conducting business on public property; however, Cal. Gov. Code section 815.6 imposes liability upon public entities for failure to exercise reasonable diligence to comply with a *mandatory* duty imposed by law. The court determined that Cal Gov. Code section 818.2, which provides immunity for damages caused by a public entity’s failure to enforce a law, did not prevent liability for breach of a mandatory law enforcement duty.¹

The next step is to determine whether the law in question is mandatory or discretionary. The term “mandatory” refers to an obligatory duty which a governmental entity is required to perform, as opposed to a permissive power which a governmental entity may exercise, or not as it chooses.²

A mandatory duty imposed by law is an action that is required versus authorized or permitted. The typical rule regarding language within California codes is that “shall” is mandatory and “may” is permissive; however, ultimately the determination of whether a law is mandatory or discretionary is a question of law to be determined by the court.³ Many local city ordinances are discretionary laws and a city’s failure to enforce would place no liability on the city.

Ultimately, three factors must be determined before a public entity is required to address the rebuttable presumption of negligence: (1) the law must be mandatory (2) the law must intend to protect against the type of risk of injury asserted and (3) the breach of the mandatory duty must be a proximate cause of the injury suffered.

If you would like more information on this or other topics, please feel free to visit our website www.legalequestrian.com or contact our office at (949) 264-1464.

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¹ *Roseville Community Hospital v. State of California* (1977) 74 Cal App 3d 583, 141 Cal Rptr 593, 1977 Cal App LEXIS 1948.

² *Fox v. County of Fresno* (1985) 170 Cal App 3d 1238, 216 Cal Rptr 879, 1985 Cal App LEXIS 2371.

³ *Walt Rankin & Associates, Inc. v. City of Murrieta* (2000) 80 Cal App 4th 1255, 95 Cal Rptr 2d 893.