



NEW YORK
CITY BAR

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REPORT ON LEGISLATION BY THE CIVIL RIGHTS COMMITTEE

Int. No. 0672-2011

A Local Law to amend the administrative code of the city of New York, in relation to discrimination against persons accompanied by an on-duty police dog.

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The Civil Rights Committee of the New York City Bar Association urges the New York City Council to recast Int. No. 0672-2011 as a public safety measure to address the concern stated in the bill more effectively and to avoid confusion regarding the applicability of the City Human Rights Law.

The Human Rights Law is an appropriate vehicle to deter “groups prejudiced against one another and antagonistic to each other” from engaging in discrimination. N.Y.C. Admin. Code § 8-101. However, it is not the right vehicle for the problem identified by the present bill: that “some landlords and property owners discriminate against New York City police officers who are accompanied by their police work dogs by considering the dogs pets rather than working animals.” People with disabilities, some of whom use service animals, constitute a protected class under the City Human Rights Law because of demonstrable and persistent discrimination against them; efforts to exclude service animals used by some people with disabilities are prohibited as one aspect of such discrimination.¹ Police officers, by contrast, are not subject to persistent discrimination as such.

¹ Service animals for people with disabilities under the New York City Human Rights Law include, but are not limited to, dogs. See Tartaglia v. Jack LaLanne Fitness Ctrs., Inc., N.Y.C. Commission on Human Rights, Complaint No. 04153182-PA, Decision and Order (June 12, 1986), at pp. 18, 19, 21-22:

“Reasonable accommodation” requires places of public accommodation to recognize the unitary nature of a handicapped individual and the means s/he chooses to adapt to such handicap. Whenever possible, the place of public accommodation must make any and all such accommodations so as to allow the handicapped individual to function normally, unless the accommodation causes an undue burden or economic hardship. Philbrook v. Ansonia Board of Education, 757 F.2d 476 (2d Cir. 1985); Nelson v. Thornburgh, 567 F. Supp. 369 (E.D. Pa. 1983). . . . Especially where, as here, the means employed by the handicapped individual to overcome his/her handicap is commonly utilized and almost universally accepted [guide dog], it is not the prerogative of one who operates a place of public accommodation to substitute a means [sighted companion to be chosen by the prospective patron who is blind and to be admitted without charge] by which a handicapped person will compensate for his/her impairment. See Philbrook v. Ansonia Board of Education, *supra*. . . .

[I]n certain contexts, the means by which a handicapped person chooses to accommodate his handicap in order to perform “major life activities” becomes an extension of that person himself. . . .

At times, the assistance of wheelchairs, canes and artificial limbs are not required by their owners. In the same way, guide dogs may occasionally be of little use. However, when such means of accommodation are necessary

While the issue identified by the bill may deserve the City Council's attention, we recommend against using the City Human Rights Law where, as here, the underlying concern is not truly about prejudice or discrimination.

Moreover, if a police officer accompanied by a police dog is denied an apartment or access to a place of public accommodation (particularly while engaged in an active police investigation), the remedies available under the City Human Rights Law are both too distant in time and too broad-reaching to address the real public safety concern. Filing a complaint with the City Commission on Human Rights and going through its processes and judicial review will not provide an immediate remedy. At the same time, the available remedies - including not only declaratory and injunctive relief, but also penalties, compensatory and punitive damages, and attorneys fees² - are broader than needed to serve the public safety goal, and will also raise questions about the roles of both the individual police officer and the New York City Police Department (or of federal and state enforcement agencies) in such proceedings. Such questions are not addressed in the current bill.

As we understand it, a police officer to whom a police dog has been issued is required to keep the dog with him or herself at all times, even when neither is on duty, as part of the training for both human and canine to maximize their effectiveness as a team when they are on duty. Thus, the police dog's presence is a matter of public safety, rather than of human rights. To the extent the City Council is concerned about how landlords and property owners treat officers accompanied by police dogs, the issue should be addressed in a different bill that would explicitly state that a police officer in custody of a trained police dog issued to that officer by a law enforcement agency may not be denied access to any place where the officer seeks to go - whether on official or personal business - when the exclusion is based on the presence of the police dog. Such a bill should address a number of questions, including the nature of the violation, the ability of a directly impacted officer to address a violation (e.g., by writing a ticket either on the spot or subsequently), and the need for post-issuance review and a publically available record of each officer's issuance of such tickets (especially if impacted officers are permitted to issue tickets based on their own treatment).

Accordingly, we urge that Int. No. 0672-2011 be replaced by a bill that would both meet its objectives more directly and avoid confusion of myriad issues involving service animals used by people with disabilities.

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to overcome the handicap, it would be both unlawful and absurd to withhold such form of assistance from the individual person who wishes and needs to rely on it.

The City Human Rights Law no longer requires that an impairment interfere with "major life activities." N.Y.C. Admin. Code § 8-102(16).

² N.Y.C. Admin. Code § 8-502.