



Office of the City Manager

ACTION CALENDAR

December 13, 2005

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Marc Seleznow, Director, Parks Recreation & Waterfront

Subject: Berkeley Skate Park Rule Enforcement

RECOMMENDATION

Take no action on the Parks & Recreation Commission's Council Report recommending that the City Manager reconsider enforcement of the helmet/pads rule at the City's skateboard park.

FISCAL IMPACTS OF RECOMMENDATION

An unknown savings of funds by avoiding potential liability for certain skate park accidents.

CURRENT SITUATION AND ITS EFFECTS

The Parks & Recreation Commission's Council Report on this agenda states that the City's skateboard park users want the City to stop enforcing the City ordinance requiring the skateboard park users to wear a helmet, kneepads, and elbow pads. The skateboard park users claim that the City is immune from liability from accidents at the City's skateboard park, and therefore, the Commission recommends that staff discuss alternatives to enforcing the current helmet/pad rule with the skateboard park users.

The skateboard park users' assumptions about potential City liability for accidents at the skateboard park are not correct for the reasons explained in the City Attorney's confidential memorandum. In fact, state law *requires* the City to institute a helmet/pads rule at the skateboard park. Therefore, the City cannot repeal the ordinance and should not expressly or implicitly agree not to enforce it.

BACKGROUND

California Health and Safety section 115800(a) requires all skateboard park operators to require all persons riding a skateboard in the skateboard park to wear a helmet, elbow pads, and kneepads. Section 115800(a) provides as follows:

- (a) No operator of a skateboard park shall permit any person to ride a skateboard therein, unless that person is wearing a **helmet, elbow pads, and knee pads.**

Under California Health and Safety section 115800 (b) this requirement may be satisfied by compliance with the following:

(1) Adoption by the local public agency of an ordinance requiring any person riding a skateboard at the facility to wear a helmet, elbow pads, and knee pads.

(2) The posting of signs at the facility affording reasonable notice that any person riding a skateboard in the facility must wear a helmet, elbow pads, and knee pads, and that any person failing to do so will be subject to citation under the ordinance required by paragraph (1).

Pursuant to this section the City adopted an ordinance that contains the obligations set forth in subdivision (b) subsection (1) that any person using the skateboard facility must wear a helmet, elbow pads and kneepads. Thus, the City has no discretion to permit rules that are more relaxed than the ones mandated by state law.

Also, since the City's skateboard park is also supervised regularly by staff, the supervisory staff must enforce this requirement when they are on site. In no event may the City send a message to the skate park users that the City sanctions violations of these state imposed safety standards. Thus, when supervisors are on site, the City has been enforcing these state-imposed safety requirements.

RATIONALE FOR RECOMMENDATION

State law mandates that the City implement the helmet/pads rule at the City's skate park. Therefore, as explained in greater detail in the City's Attorney's confidential memorandum on this subject, the City cannot repeal the helmet/pads ordinance or expressly or implicitly agree not to enforce the rule. The City can best avoid liability for injuries by enforcing the helmet/pads rule. Such equipment will also likely prevent some serious injuries.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Manuela Albuquerque, City Attorney	981-6950
Matthew Orebic, Deputy City Attorney	981-6950