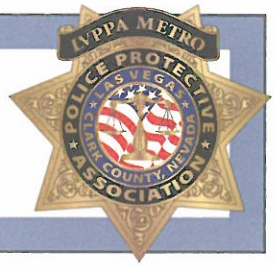




Las Vegas Police Protective Association Metro, Inc.



To: Officer Aaron Contreras
From: David Roger, General Counsel *DR*
Re: Service Animals
Date: February 3, 2014

You have asked how to determine whether a pet is a service animal. Unfortunately, our state statute and county ordinance do not provide much guidance.

ANIMALS ON THE STRIP

Clark County Code 10.39.010 provides:

1. Animals are not be allowed in the restricted area of as Vegas Boulevard South, except for exempted animals and as otherwise provided in this chapter.
2. "Restricted area" means the public right-of-way, including but not limited to the public sidewalks, pedestrian bridges, and pedestrian bridge landings, and privately owned sidewalks, pedestrian bridges, and pedestrian bridge landings on which an easement has been granted to pedestrian traffic, situated along Las Vegas Boulevard South, from Sahara Avenue in the north to Sunset Road in the south, and on either side of Las Vegas Boulevard South for a distance of two hundred yards.
3. "Exempted animals" shall include "service animals," as that term is defined by the federal Americans with Disabilities Act, working animals being utilized by law

enforcement officials in the course and scope of their official duties, and an animal whose possession in the restricted area is expressly or necessarily authorized by a parade permit, a special use permit, a business license, or other official written government action.

4. Household pets, as that term is defined in Title 30 of this code but excluding any snakes which exceed two feet in length, may be present in the restricted area between 5:00 a.m. and 12:00 noon each day. Such pets must be on a leash or other restraint not exceeding three feet in length.

The ordinance allows people to use service animals on the strip without restriction. The Americans with Disabilities Act, as enforced by the Department of Justice – Civil Rights division, limits service animals to dogs. DOJ explains:

Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

Revised ADA Requirements: Service Animals, U.S. Department of Justice, Civil Rights Division, Disability Rights Section, July 2011.

Implicit in the definition of Service Animal is that the owner suffers from a disability. It becomes more difficult to confirm a service dog's status when the

owner's disability is not readily apparent. Officers should tread lightly when making such inquiries.

SERVICE ANIMALS OUTSIDE OF THE STRIP

NRS 426.510 limits the use of service animals:

1. Except as otherwise provided in subsections 2, 3 and 4, a person shall not:

(a) Use a service animal; or

(b) Carry or use on any street or highway or in any other public place a cane or walking stick which is white or metallic in color, or white tipped with red.

2. A person who is blind may use a service animal and a cane or walking stick which is white or metallic in color, or white tipped with red.

3. A person who is deaf may use a service animal.

4. A person with a physical disability may use a service animal.

5. Any pedestrian who approaches or encounters a person who is blind using a service animal or carrying a cane or walking stick, white or metallic in color, or white tipped with red, shall immediately come to a full stop and take such precautions before proceeding as may be necessary to avoid accident or injury to the person who is blind.

6. Any person other than a person who is blind who:

(a) Uses a service animal or carries a cane or walking stick such as is described in this section, contrary to the provisions of this section;

(b) Fails to heed the approach of a person using a service animal or carrying such a cane as is described by this section;

(c) Fails to come to a stop upon approaching or coming in contact with a person so using a service animal or so carrying such a cane or walking stick; or

(d) Fails to take precaution against accident or injury to such a person after coming to a stop as provided for in this section,

is guilty of a misdemeanor.

A person who is blind; deaf or has a physical disability may utilize a service animal.¹ Except for extreme cases, it may be difficult to identify a person who is disabled.

Moreover, NRS 426.097, defines "Service Animal" as, "an animal that has been trained to assist or accommodate a person with a disability." Unlike the county ordinance, any animal can be considered a service animal. Additionally, the statute does not require the owner to provide certification. In fact, NRS 651.075 establishes significant restrictions on what proprietors may ask people with alleged service animals:

1. It is unlawful for a place of public accommodation to:

(a) Refuse admittance or service to a person with a disability because the person is accompanied by a service animal.

(b) Refuse admittance or service to a person training a service animal.

(c) Refuse to permit an employee of the place of public accommodation who is training a service animal to bring the service animal into:

(1) The place of public accommodation; or

(2) Any area within the place of public accommodation to which employees of the place of public accommodation have access, regardless of whether the area is open to the public.

¹ NRS 426.082 defines a person who is blind as, "any person whose visual acuity with correcting lenses does not exceed 20/200 in the better eye, or whose vision in the better eye is restricted to a field which subtends an angle of not greater than 20°."

NRS 426.084 defines Person who is deaf as, "any person who, by reason of the loss or impairment of hearing, has an aural disability which limits, contributes to limiting or which, if not corrected, will probably result in limiting the activities or functions of the person."

NRS 426.082: states:

Disability" means, with respect to a person:

1. A physical or mental impairment that substantially limits one or more of the major life activities of the person;
2. A record of such an impairment; or
3. Being regarded as having such an impairment.

(d) Refuse admittance or service to a person because the person is accompanied by a police dog.

(e) Charge an additional fee or deposit for a service animal, service animal in training or a police dog as a condition of access to the place of public accommodation.

(f) Require proof that an animal is a service animal or service animal in training.

2. A place of public accommodation may:

(a) Ask a person accompanied by an animal:

(1) If the animal is a service animal or service animal in training; and

(2) What tasks the animal is trained to perform or is being trained to perform.

(b) Ask a person to remove a service animal or service animal in training if the animal:

(1) Is out of control and the person accompanying the animal fails to take effective action to control it; or

(2) Poses a direct threat to the health or safety of others.

3. A service animal may not be presumed dangerous by reason of the fact it is not muzzled.

4. This section does not relieve:

(a) A person with a disability who is accompanied by a service animal or a person who trains a service animal from liability for damage caused by the service animal.

(b) A person who is accompanied by a police dog from liability for damage caused by the police dog.

5. Persons with disabilities who are accompanied by service animals are subject to the same conditions and limitations that apply to persons who are not so disabled and accompanied.

6. Persons who are accompanied by police dogs are subject to the same conditions and limitations that apply to persons who are not so accompanied.

7. A person who violates paragraph (e) of subsection 1 is civilly liable to the person against whom the violation was committed for:

- (a) Actual damages;
- (b) Such punitive damages as may be determined by a jury, or by a court sitting without a jury, which must not be more than three times the amount of actual damages, except that in no case may the punitive damages be less than \$750; and
- (c) Reasonable attorney's fees as determined by the court.

8. The remedies provided in this section are nonexclusive and are in addition to any other remedy provided by law, including, without limitation, any action for injunctive or other equitable relief available to the aggrieved person or brought in the name of the people of this State or the United States.

In sum, officers should be very careful when confronting people with purported service animals. The above referenced statutes weigh in favor of people with disabilities.