

TO: James L. App, City Manager
FROM: Doug Monn, Interim Public Works Director
SUBJECT: City Park Merry Go Round
DATE: April 19, 2005

Needs: For the City Council to receive and file report regarding the City Park merry-go-round.

Facts:

1. On December 29, 2004, Public Works Staff removed the merry-go-round from the City Park as it was damaged and inoperable.
2. State Health and Safety Code Sections 115725 through 115750 pertain to playground equipment in Public Parks.
3. Health and Safety Code Section 115725, specifically requires that playground equipment in public parks shall be at least as protective as the guidelines and criteria continuing in the Handbook for Public Playground Safety published by the American Society for Testing and Materials (ASTM).
4. Specific improvements required by the Handbook for Public Safety applicable to reinstallation of the merry-go-round are:
 - A. Section 5.1.5 - Merry-go-rounds must have a fall zone that extends 6 feet beyond the perimeter of the platform.
 - B. Section 12.2
 - 1) Handgrips cannot extend beyond the perimeter of the merry-go-round platform
 - 2) The underside of the merry-go-round cannot be more than 9 inches above the protective (fall zone) surface.
 - 3) The rotating platform cannot have any sharp edges.
 - 4) The speed of rotation cannot exceed 13 feet per second (must be governed).
 - C. Section 10.1 – At least one route within each use zone shall be provided from the perimeter to the all accessible Play components.
1. Section 115730 of the Health and Safety code would prohibit reinstallation unless upgrades are made.
2. The American's with Disabilities Act requires that at least one of every type of equipment provided in a park be accessible to the disabled.

**Analysis
and**

Conclusion: As noted above, it may be possible to “modify” the merry-go-round to satisfy ADA and H&S Code but it would not be the same equipment. The required modifications would completely change the look and use of the merry-go-round.

There would be significant liability to reinstatement of the merry-go-round. The City has now moved beyond “constructive notice” and now has “active notice of inadequacies” which provides a much greater exposure to financial loss. In the case of constructive notice, the plaintiff must prove that the City should have known of the dangerous condition due to a reasonable inspection program. Active notice means that the City was clearly aware of the dangerous condition and failed to reasonably act to remedy said condition.

Policy

Reference: State Health and Safety Code Sections 115725 through 115750
ADA Title III

Fiscal Impact: It is estimated that it would cost \$10,000.00 to \$20,000.00 to refurbish the merry-go-round and surrounding playground area to address code requirements. However the City would still bear a significant liability as a refurbished merry-go-round would not have any safety certification from any testing body or insurance carrier. Thus, the City would be exposed to significant financial loss should there be an accident resulting in personal injury.

Options:

- A. Receive and file report.
- B. Amend, modify or reject the above option.

Attachments: Health and Safety Code Section 115725-115750

HEALTH AND SAFETY CODE
SECTION 115725-115750

115725. On or before January 1, 1992, the state department, in consultation with the office of the State Architect, the California Parks and Recreation Society, the League of California Cities, the Department of Parks and Recreation, the State Department of Education, and the California Council of the American Society of Landscape Architects, shall adopt regulations for the design, installation, inspection, maintenance, and supervision where appropriate, and training of personnel involved in the design, installation, and maintenance, of all playgrounds either operated by public agencies, including a state agency, city, county, city and county, school district, and any other district, or operated by any entity where the playground is open to the public. Those regulations shall meet the standard of care imposed by courts of law on playground operators, and shall, at a minimum, impose guidelines and criteria that shall be at least as protective as the guidelines in the Handbook for Public Playground Safety produced by the United States Consumer Products Safety Commission, shall give due consideration to any successor to the Handbook for Public Playground Safety that may be published, and shall include more protective requirements where the state department finds those guidelines will provide inadequate protection. The regulations shall include special provisions for playgrounds in day care settings, that shall be developed in consultation with the State Department of Social Services and the California Children's Lobby, and that shall be appropriate for children within the range of ages in day care settings. The state department shall not be responsible for enforcement of any regulations pursuant to this section.

115730. (a) All public agencies operating playgrounds, including a state agency, city, county, city and county, and district, shall upgrade their playgrounds by replacement or improvement as necessary to satisfy the regulations adopted pursuant to Section 115725 to the extent state funds are made available specifically for that purpose through state bonds or other means. All other entities operating playgrounds open to the public shall upgrade their playgrounds by replacement or improvement, as necessary to satisfy the regulations adopted pursuant to Section 115725, on or before January 1, 2003.

(b) (1) Subdivision (a) and the regulations adopted pursuant to Section 115725 shall not apply to playgrounds installed between January 1, 1994, and December 31, 1999. Those playgrounds shall be subject to the requirements to upgrade set forth in this subdivision until 15 years after the date those playgrounds were installed, at which time those playgrounds shall be subject to subdivision (a) and the regulations adopted pursuant to Section 115725.

(2) All public agencies operating playgrounds installed between January 1, 1994, and December 31, 1999, shall upgrade those playgrounds by replacement or improvement as necessary to satisfy criteria that are at least as protective as the guidelines in the Handbook for Public Playground Safety, Publication Number 325, United States Consumer Product Safety Commission, November 1994, to the extent that state funds are made available specifically for that purpose through state bonds or other means.

(3) All other entities operating playgrounds open to the public and installed between January 1, 1994, and December 31, 1999, shall upgrade those playgrounds by replacement or improvement as necessary to satisfy criteria that are at least as protective as the guidelines in the Handbook for Public Playground Safety, Publication Number 325, United States Consumer Product Safety Commission, November 1994, on or before January 1, 2003.

(c) Before October 1, 2000, all public agencies operating playgrounds and all other entities operating playgrounds open to the public shall have a playground safety inspector, certified by the National Playground Safety Institute, conduct an initial inspection for the purpose of aiding compliance with the requirements to upgrade set forth in subdivision (a) or (b), as applicable. Any inspection report may serve as a reference when the upgrades are made, but is not intended for any other use.

(d) This section shall not affect the liability or absence of liability of playground operators.

115735. For purposes of this article, all of the following shall apply:

(a) An "entity operating a playground open to the public" shall include, but not be limited to, a church, subdivision, hotel, motel, resort, camp, office, hospital, shopping center, day care setting, and restaurant. An "entity operating a playground open to the public" shall not include a foster family home, certified family home, small family home, group home, or family day care home, which is licensed and regulated to meet child safety requirements enforced by the State Department of Social Services.

(b) "Playground" shall refer to an improved outdoor area designed, equipped, and set aside for children's play that is not intended for use as an athletic playing field or athletic court, and shall include any play equipment, surfacing, fencing, signs, internal pathways, internal landforms, vegetation, and related structures.

(c) "Supervision" shall include all general and specific supervision necessary to protect children from unreasonable risk of harm from site hazards, the acts of other children, or the use of the playground in a way that was not intended by the designer or manager of the playground. The regulations required pursuant to this article shall not expand on the periods or circumstances when supervision shall be provided beyond the periods or circumstances already determined to be within the existing standard of care to which a playground operator is held.

115736. (a) The State Department of Social Services shall convene a working group to develop recommendations for minimum safety requirements for playgrounds at child care centers.

(b) The working group shall include, but not be limited to, child care center operators, including representatives of the Professional Association for Childhood Education, the California Child Care Health Program, the Children's Advocacy Institute, the State Department of Health Services, and certified playground inspectors.

(c) The working group shall use the national guidelines published by the United States Consumer Product Safety Commission and those regulations adopted pursuant to this article

as a reference in developing its recommendations. However, the Department of Social Services shall determine minimum safety requirements that are protective of child health on playgrounds at child care centers.

(d) The working group shall submit its playground safety recommendations to the State Department of Social Services by September 1, 2001.

(e) The working group shall submit its recommendations to the Legislature by November 1, 2001.

115740. Regulations adopted pursuant to this article shall include special provisions where appropriate, as determined by the state department, for the needs of the developmentally disabled in state institutions, pursuant to Division 4.1 (commencing with Section 4400) of, and Division 4.5 (commencing with Section 4500) of, the Welfare and Institutions Code, and in community care facilities, and other public and private institutions that provide residential or day care specifically for the developmentally disabled.

115745. (a) After the effective date of the regulations adopted pursuant to this article, no state funding shall be available for the planning, development, or redevelopment of any playground, unless the playground, after completion of the state-funded project, will conform to the applicable regulations adopted pursuant to this article. However, where state funds have been appropriated to, or allocated for, a playground project prior to the effective date of the regulations but the regulations become effective prior to the completion of the project, that funding shall be maintained, as long as the playground is altered to conform to the regulations to the extent the alterations can be made without adding significantly to the project cost.

(b) After the date by which an entity is required to conform its playground to satisfy regulations adopted pursuant to this article, no state funding shall be available for the operation, maintenance, or supervision of the playground unless the playground conforms to the applicable regulations adopted pursuant to this article.

115750. All new playgrounds open to the public built by a public agency or any other entity more than six months after the effective date of the regulations adopted pursuant to this article shall conform to the requirements of those regulations. Where the playground developer knows of the regulations before undertaking any expenses related to designing or building the playground, this six-month grace period shall not apply.