Better Parks Through Law and Policy: A Legal Analysis of Authorities Governing Public Parks and Open Spaces

Ana Henderson and Christine R. Fry

Background: Improving parks in low income and minority neighborhoods may be a key way to increase physical activity and decrease overweight and obesity prevalence among children at the greatest risk. To advocate effectively for improved recreation infrastructure, public health advocates must understand the legal and policy landscape in which public recreation decisions are made. Methods: In this descriptive legal analysis, we reviewed federal, state, and local laws to determine the authority of each level of government over parks. We then examined current practices and state laws regarding park administration in urban California and rural Texas. Results: We identified several themes through the analysis: (1) multiple levels of governments are often involved in parks offerings in a municipality, (2) state laws governing parks vary, (3) local authority may vary substantially within a state, and (4) state law may offer greater authority than local jurisdictions use. Conclusions: Public health advocates who want to improve parks need to (1) think strategically about which levels of government to engage; (2) identify parks law and funding from all levels of government, including those not typically associated with local parks; and (3) partner with advocates with similar interests, including those from active living and school communities.

Keywords: government, regulation, public health, obesity, collaboration

The childhood obesity epidemic is one of the most significant public health challenges of modern times. Experts predict that the current generation of children in the United States will live shorter lives than their parents and that the nation’s healthcare costs will rise as today’s overweight children become tomorrow’s overweight adults. A growing body of evidence suggests that environment is a major determinant of health outcomes, including weight status. Respected public health institutions, such as the Institute of Medicine (IOM), recommend that public health officials across the country focus on environmental policy change to create community environments that promote, not hinder, healthy behaviors.

Physical activity offers many health benefits, including weight maintenance. Children who have greater access to recreational facilities are more likely to be physically active. Public facilities are especially important for low-income families who may not be able to afford private recreational facilities. Moreover, there is some evidence that low-income children and children of color, 2 populations at greatest risk for overweight and obesity, may have limited access to public recreational facilities. Improving public parks in low-income and minority neighborhoods may be a key way to decrease the prevalence of overweight and obesity among these children.

Acknowledging the critical role of public parks in the facilitation of regular physical activity, in 2009 the IOM recommended that local governments build and maintain parks in residential areas and improve access to parks in underserved communities. While this charge came at a time when park agencies were struggling to maintain even basic service levels, the need for parks does not disappear during an economic crisis. If anything, public parks are even more critical, providing free or low-cost opportunities for recreation. Local public health leaders can collaborate with parks agencies to identify creative funding and policy opportunities that improve public parks and promote more physical activity. Public health advocates and policymakers must understand what laws govern parks systems to identify new opportunities for creating or improving parks.

The larger descriptive legal research study summarized in this paper identifies the legal structure governing public parks in the United States and explores how it manifests in 4 different communities around the country. This information can help the public health community collaborate with the parks community, as well as elected officials, on parks issues in an informed way, with an ultimate goal of increasing access to parks for underserved populations.
This article reviews the legal framework for parks and then presents 2 case studies of public parks law, 1 in rural Texas and 1 in urban California. Finally, it discusses several examples of policy levers that public health advocates can pull to improve access to safe public parks and identifies areas for further policy research and analysis.

Overview of Legal Framework for Public Parks in the United States

Consistent with the United States’ federal form of government, multiple levels of government have authority over public parks and open spaces. Laws and funding at the federal, state, and local levels affect public parks. In some parks, more than 1 level of government is directly involved in ownership or administration. For example, Addicks Dam in Houston, Texas, is a federal site with recreational offerings administered by the federal and local governments. The Army Corps of Engineers administers the undeveloped portions with open space, fishing, and hunting opportunities. Harris County administers developed recreation venues in Bear Creek Park inside the open space preserve; and both the City of Houston and Fort Bend County administer day-use recreational facilities on the reservoirs associated with the dam. In other cases, various governments’ involvement may be less overt or only local or state law may be involved. It is important to understand the potential ways that each level of government may be involved in providing parks opportunities to the public.

Federal Government Involvement

The federal government provides parks and recreational opportunities in several ways. First, it provides parks and recreation venues directly to the public. This includes establishing, managing, and maintaining public venues across the nation, such as National Parks, Historic Sites, Forests, Rivers, Lakes, Shorelines, Wildlife Preserves, and more, that offer opportunities for physical activity. The principle federal agencies operating such venues include the Department of the Interior, Department of Agriculture, and Department of the Army. Table 1 sets forth the major offices within these agencies that administer public parks and recreation, the kinds of venues they administer, and the acreage they oversee.

In addition, the federal government plays a coordinating role in open space and recreational venues. Most significantly, the federal government coordinates federal, state, local, and private trails under the National Trails System Act. The federal agencies involved work with states and political subdivisions, as well as nonprofit organizations and private landowners, to promote the development of a National Trails system, which are to be reasonably accessible to urban areas.

Finally, the federal government affects parks availability by providing funding that state, local, and Tribal governments may use to install and maintain recreational venues within their jurisdictions. Federal laws establish funding streams for parks and direct how various federal agencies should administer and award funds, including specific eligibility requirements and limits on how the funds may be used. Some major federal funding programs for state and local parks include (1) the Land and Water Conservation Fund, administered by the DOI National Park Service, which provides funds for parks to state and local governments in the form of matching grants to assist in acquiring, developing, and preserving outdoor recreation areas, such as parks, trails, and open spaces; (2) the Environmental Protection Agency’s Brownfields Program, which funds local and state governments to encourage redevelopment of previous industrial land that may need to be decontaminated; and (3) the Community Development Block Grant program, administered by the Department of Housing and Urban Development, which,

<table>
<thead>
<tr>
<th>Agency</th>
<th>Office/subunit</th>
<th>Types of venues</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Interior (“DOI”)</td>
<td>National Parks Service</td>
<td>391 National Parks, Monuments, Seashores, Battlefields, Historic Sites, etc.</td>
<td>84.6 million acres</td>
</tr>
<tr>
<td>DOI</td>
<td>US Fish &amp; Wildlife Service</td>
<td>Wildlife refuges, 98% open to public</td>
<td>Over 95 million acres (in 2003)</td>
</tr>
<tr>
<td>DOI</td>
<td>Bureau of Land Management</td>
<td>National System of Public Land; Recreation Sites</td>
<td>256 million acres, mostly in Western States</td>
</tr>
<tr>
<td>Department of Agriculture</td>
<td>US Forest Service</td>
<td>National forests, grasslands</td>
<td>193 Million Acres</td>
</tr>
<tr>
<td>Department of Army</td>
<td>US Army Corps of Engineers</td>
<td>2,500 recreation areas at Corps project-related lakes and rivers</td>
<td>12 million acres</td>
</tr>
</tbody>
</table>
among other things, may fund acquisition and construction of public facilities improvements in cities and urban counties with large populations.18

State and Local Government Involvement

State governments’ involvement in establishing parks is three-fold. First, pursuant to their police power to regulate in the interests of public health, safety, and general welfare, states can establish and run state parks. State laws often assign the administration of state parks to a state agency or department.

Second, states may choose to delegate the authority to establish and regulate public parks to political subdivisions, such as a county or city governments. Pursuant to this state-delegated authority, local governments usually can obtain land for public parks, through purchase, lease, gift or taking (through condemnation or eminent domain), and administer public parks within their borders.

Some states permit the creation of special districts dedicated to parks and recreation. Sometimes called parks (or recreation) districts, these are often separate political entities with the authority to acquire, regulate, maintain, fund, and oversee public parks within their defined boundaries. While some states limit the physical space and authority of such special parks districts to the boundaries of a particular city, town, or county in which the a district is located, other states allow regional or metropolitan parks districts that cross city, town, or county lines.

Finally, states can affect parks at both the state and local level through funding policies. They generally fund state parks as well as state park departments or agencies through the state annual budgets. States can raise revenues for state parks through taxes, use fees, bonds, and federal grants, among other methods. States may make funds available to political subdivisions for parks. Such funding legislation may be drafted to target communities in need of parks. For example, California’s Statewide Park Redevelopment and Community Revitalization Act of 2008, authorizes the issuing of general obligation bonds to fund parks and land conservation, including a local assistance funding stream that targets grants for parkland acquisition or development of park and recreational opportunities in “critically underserved communities.”19

In addition to obtaining funding through federal and state programs, local governments and special districts can raise funds for local public parks themselves. Local governments can dedicate tax (property, sales, income, etc.) revenue to parks and can also institute special assessments and use fees, for example.20 Parks districts often also constitute a special assessment district, which requires residents within district boundaries to pay property taxes or user fees to fund the district. County, municipal, and special district governments often may issue bonds, with voter approval, to raise funds, often for large-scale acquisition and development projects. Municipal governments may negotiate with developers about parks. For example, they may require an impact fee, a 1-time fee to offset costs of infrastructure caused by new development, that could be used to create parks, or impose an exaction, that requires the developer to provide land for public parks.20,21

The Law in Action: The Law and Parks in 2 Municipalities

This section examines the state and local laws governing parks as well as the recreational venues provided in 2 cities. We chose these cities to explore whether and how the location and size/population of a given municipality might affect parks offerings. Thus we selected cities in 2 different states, to explore differences in state laws, and 1 small, rural city and 1 large, urban city, to explore differences in municipal size. In addition, due to the racial and economic disparities identified in childhood obesity and overweight prevalence, we selected cities with significant populations of people of color.

Alpine, TX

The City of Alpine, Texas, is a small, rural West Texas community. According to 2000 Census data, Alpine had a total population of 5824, of which 51.2% was Latino and 46.3% was non-Hispanic white.22 In 1999, 20.9% of Alpine’s population was below the federal poverty level.23

Texas Law on Parks and Recreation. In Texas, 2 main laws govern public parks. First, the Texas Parks and Wildlife Code establishes the Texas Department of Parks and Wildlife, granting it authority to oversee and maintain all state parks and lands, to distribute grant money to smaller political subdivisions for parks and recreation purposes, and to work with local subdivisions and the federal government to develop parks.24 The Code also establishes the Parks and Wildlife Commission, which directs the Department’s policies through regulations governing the health, safety, and protection of persons and property in state parks and recreation areas.25 Funding for the Texas Department of Parks and Wildlife is derived mainly from the General Revenue Fund, as the state legislature has the power to levy taxes and make appropriations for the establishment and maintenance of public parks.26

Second, the Texas Local Government Law provides broad authority to political subdivisions, such as counties and municipalities, to acquire, maintain, and develop public parks, recreational areas, and trails.27 It allows political subdivisions to acquire and maintain parks jointly and to delegate authority to oversee their parks to boards of park commissioners or bureaus. Municipalities and counties may cooperate in the provision of parks by jointly owning or by collaborating in the administration of adjacent parkland where parks cross municipal or county boundaries.

In addition to this general grant of authority, Texas has several detailed laws dealing with political subdivisions’ authority to establish and maintain parks.
Municipalities’ authority depends on their form of government, their location, and/or their population. The Texas Local Government Law also establishes special rules for counties. For example, counties with a population more than 5,000 may legislate for the purpose of “acquiring, improving, equipping, maintaining, financing, and operating 1 or more public parks,” administered either directly by the County’s Commissioners Court directly or a Parks Board.28 Adjacent counties with populations more than 1 million may create an independent Joint Park Board to oversee parks.29

**Parks in and Around Alpine, Texas.** Reviewing the public parks available in and around Alpine shows not only what recreational venues area available to Alpine residents, but also the degree to which various levels of government provide public parks and how local government entities can use their authority under Texas law.

The City of Alpine, Texas, is an incorporated municipality.30 Alpine’s city charter lays out its power to acquire land for parks and playgrounds by purchase, gift, lease, devise, and condemnation.31 Pursuant to Texas law, Alpine has established a Parks and Recreation Board to advise the City Council on issues regarding parks and recreation.32 The Board consists of 5 members who are recommended by a City Council member, appointed by the mayor, confirmed by the City Council, and serve a 2-year term. The City Council ultimately has authority over park establishment and maintenance. The City of Alpine provides a variety of recreational venues to the public including several city parks and a trails system.33

Brewster County, in which Alpine is located, has no parks and recreation division although Texas law permits a county of its size to create one.34 This may be because Brewster County is the largest county in Texas, yet only has around 9,000 residents, two-thirds of whom live in Alpine.35

The Texas Department of Parks and Wildlife does not maintain any state parks or recreation areas in Alpine. The closest state parks—Indian Lodge State Park and Davis Mountains State Park—are about 30 miles outside Alpine, and Big Bend Ranch State Park is even farther.36 Without private transportation, these state parks are inaccessible.

There are no federal recreational offerings in Alpine. The closest National Park—Big Bend National Park—is located roughly 80 miles from Alpine.37 While Big Bend offers large areas of land for outdoor recreation, it is inaccessible without private transportation.

**Oakland, CA**

Oakland, CA is located on the San Francisco Bay in Northern California. It is a large urban city located within an even larger urban area. According to 2000 Census data, Oakland proper had a total population of 399,477, of which 34.9% was non-Hispanic African American, 23.4% was non-Hispanic white, 21.9% was Latino, and 15% was non-Hispanic Asian American.38 In 1999 in Oakland, 19.4% of the population was below the federal poverty level.39

**California Law Regarding Parks and Recreation.** Most California state law on public parks and recreation is located in 2 codes: the Public Resources Code40 and the California Government Code.41 The Public Resources Code establishes the California Department of Parks and Recreation, which administers the state park system. It also establishes the State Parks and Recreation Commission, which sets the general policies that govern the Department’s efforts to develop, administer, and protect the state park system.42

Both the Public Resources Code and the California Government Code contain laws delegating authority over parks to political subdivisions.43,44 Both Codes confirm that counties may directly purchase, lease, hold, and maintain land for use as a public park, beach, or recreation area.45,46 In addition, the California Government Code permits counties, in certain situations, to cooperate in the provision of parks by creating a Joint County Park Board to improve, operate, and maintain 1 or more parks in more than 1 county.47

Cities also enjoy broad authority over public parks. They may take land through condemnation or eminent domain for the purpose of establishing public parks, recreation amenities, or urban open-space lands.48 Moreover, cities may establish fees for accessing public parks and recreation venues49 and may construct structures and improvements on public park land.50 Also, any incorporated municipality may create a municipal Park Improvement District to develop and oversee a city park.51

Finally, California law allows the creation of special parks districts. Regional Park, Park, or Open Space districts may be created by 3 or more cities, or 1 or more city if the area to be included has more than 50,000 residents.52 Recreation and Park Districts may be created by voter approval pursuant to (1) a petition signed by at least 25% of the voters residing within the area where the district is to be established or (2) resolution of the legislative body of any county or city that would be included.53 Both kinds of special districts may cross political subdivision boundaries and become independent bodies that govern themselves.52,53

**Parks in and Around Oakland, CA.** A review of public parks available to Oakland residents shows a wide variety of public recreation venues administered by several levels of government. It also shows how California law can be mobilized to provide numerous public park options.

Pursuant to California law, Oakland has established a system of city parks and government structures to administer them. The Oakland Municipal Code establishes the City Office of Parks and Recreation, which is responsible for more than 2500 acres of open space, including parks, swimming, and trails in Oakland.54,55 The City of Oakland’s General Plan includes the Open Space Conservation and Recreation Element, which
sets forth Oakland’s policy objectives regarding public recreation.\textsuperscript{56} Oakland’s Parks and Recreation Advisory Commission is charged with making recommendations to the City Council on the policies of the Office of Parks and Recreation.\textsuperscript{57}

Oakland has successfully generated funds for parks through bond measures. For example, in November 2002, Oakland voters overwhelmingly passed Bond Measure DD, a 198.5 million dollar measure to improve public parks in Oakland.\textsuperscript{58}

The Alameda County Administrative Code establishes a county Parks, Recreation, and Historical Commission to advise the Alameda County Board of Supervisors on issues involving parks, recreation, and historical matters. The commission’s duties largely focus on historical preservation, principally reviewing historical zoning requests.\textsuperscript{59} The Commission also coordinates the activities of the local and regional parks districts and departments within the county.

Oakland is located within the East Bay Regional Parks District (EBRPD)—the largest regional parks district in the United States, consisting of nearly 100,000 acres of land in Alameda and adjacent Contra Costa counties. EBRPD recreational opportunities include regional parks, recreation areas, and trails.\textsuperscript{60} EBRPD is funded principally through 2 bond measures passed by voters.

Despite its numerous parks and recreational offerings, EBRPD has been criticized for inaccessibility to persons without private transportation. Critics argue the EBRPD should increase inner-city redevelopments and urban parks, rather than focusing on large scale preservation in the East Bay Hills.\textsuperscript{61}

The California Department of Parks and Recreation does not provide any state parks in Oakland. However, Angel Island State Park contains significant open space and some recreational facilities on an island in the San Francisco Bay and is accessible via ferry from Oakland.\textsuperscript{62} In the neighboring City of Alameda, state beaches are available.\textsuperscript{63}

While there are no federal recreation venues within Oakland proper, there are several national recreation offerings in the vicinity. In fact, Oakland is located relatively close to major open spaces administered by the National Park Service, such as Golden Gate National Recreation Area. These areas are easily accessible by private vehicle, and some are accessible via public transit, although it would entail a long trip.\textsuperscript{64}

Case Study Conclusions

Reviewing the law governing parks as well as the public recreation venues available in Alpine City, TX and Oakland, CA shows several themes: (1) there may be multiple levels governments and laws involved in parks offerings in and around a given city; (2) state laws governing parks vary; (3) local governments’ authority over parks may vary within a state, depending on the type of local government as well as its population and other characteristics; and (4) state law may offer greater authority than local jurisdictions elect to use.

Policy Implications

Local public health advocates should be cognizant of the overall legal system within which parks operate. This legal analysis illustrates that parks laws vary from state to state—both in how parks are created and managed by the state and in what types of possibilities are available at the local level. So it is especially important for advocates to understand their specific state laws to decide where to focus their efforts.

Advocates will want to think strategically about which level of government to engage, based on what authority and resources different agencies have. For instance, they might work with a city planning department to prioritize parks when determining community land use patterns through zoning policies or longer-term planning documents (i.e., comprehensive or general plans). A parks element of a comprehensive plan, like Oakland’s Open Space Conservation and Recreation element, or a park system master plan can institutionalize the community’s vision for the local park system by setting out goals for proximity of parks to underserved neighborhoods and acreage per resident.

If advocates have difficulty effecting change at the municipal level, the county might be able step in to fill unmet needs for public parks—so long as it has the authority to do so under state law. Counties have parks authority in California and Texas, but it is not currently used for park administration in the areas analyzed in this article. Or it might be possible for local governments to acquire and operate new parks jointly through the creation of a special district, as allowed by Texas (in some counties) and California law. Pooling resources through a special district may create recreational opportunities that individual municipalities could not offer alone. At the state level, advocates might petition lawmakers to earmark local park fund streams for critically underserved areas, as California has done through the Parks Redevelopment and Community Revitalization Act of 2008.

Since funding is a pressing issue for public agencies, local advocates can support the development of new parks by identifying potential funding streams from the federal down to the local levels. As discussed, federal and state governments administer grant programs, like the Land and Water Conservation Fund, that can fund public parks at the local level. State law determines if local entities may raise money for parks through taxes, fees, and bonds. As noted above, Oakland has taken advantage of provisions in California law that give cities the authority to issue bonds for parks.

Finally, local public health advocates can look for opportunities to influence government by partnering with advocates with overlapping interests. Strategic
partnerships offer political clout and the opportunity to pool resources for greater impact. For example, school advocates might be looking for ways to improve school recreational facilities. Parks agencies and schools can develop joint use agreements, which might allow school children to use park facilities during the school day and community members to use school facilities after school. Joint use agreements promote efficient use of public facilities, which ultimately means more recreational opportunities for less money. Advocates for parks may also find allies among active transportation advocates, who are working to make streets safer for pedestrians and bicyclists. A key tenet of active transportation planning is that people need nearby destinations, like parks, to access on foot. Parks and active transportation advocates can work together toward safer streets around parks, which may increase the number of pedestrians, bicyclists, and park users.

Although the legal landscape governing parks may be complex, it offers rich opportunities for advocates to improve park availability and quality. This, in turn, provides a venue for children to gain critical physical activity. The availability of quality public parks is particularly important for low-income and minority children, who suffer disproportionately from overweight and obesity and may not have access to more costly private recreational venues. The law provides not only the framework in which public health and other advocates can act, but also a responsibility on the part of government officials to protect residents’ health and welfare.

Acknowledgments

The authors would like to thank: Lane Polozola, JD student, Harvard Law School, for research assistance. Samantha Graff, JD, Public Health Law & Policy for comments on later drafts. Elizabeth Laposata, JD, MPH, Public Health Law & Policy for assistance with preparing the manuscript for submission. This research was funded by a grant from the Robert Wood Johnson Foundation.

Notes

1. For purposes of this article, “park” means any publicly owned or administered area of land that is open to the public and provides the opportunity for children to engage in physical activity. This includes: play grounds, open spaces, fields, hiking trails, swimming pools/lakes/seashores, etc.

References


