

Dangerous Condition of Public Property Analysis

What is the definition of “dangerous property” in a legal context? If you represent a public entity, how do you advise them of the myriad of factors that must be analyzed? Here we discuss four main components: the property’s condition, creation of substantial risk, adjacent property exposure, and use with due care.

a. Condition of Property

First, the condition of the property must be reviewed. Condition of property has been defined as property that is in a dangerous condition because of its design or location of the improvement, the interrelationship of its structural or natural features, or the presence of latent hazards associated with its normal use. “Hazards present on adjoining property may create a dangerous condition of public property when users of the public property are necessarily exposed to those risks.” *Bonanno v. Central Contra Costa Transit Authority*, 30 Cal. 4th 139, 149 (Cal. 2003).

b. Substantial Risk of Injury Element

The next component requires an analysis of whether a substantial risk is created. A public entity’s property is in a dangerous condition only when it “creates a substantial risk of injury.” Government code section 830 (a) states a full assessment of all surrounding circumstances is necessary to determine whether the risk is substantial and thus whether the condition is dangerous. One relevant circumstance to consider is the manner in which the property condition caused the accident especially when it supports an inference that similar injuries are likely in the course of foreseeable careful use. *E.g. Branzel v. City of Concord* (1966) 247 Cal.App.2d 68. Please note, however, the mere happening of an accident is “not in and of itself evidence that public property was in a dangerous condition.” *Gov. Code § 830.5 (a)*. This issue is generally treated as a question of fact. *Fielder v. City of Glendale* (1977) 71 Cal.App.3d 719. Conversely, the assessment of whether a condition is too trivial to be a substantial risk may be decided as a matter of law. *Thimon v. City of Newark* (2020) 44 Cal.App.5th 745; *Sambrano v. City of San Diego* (2001) 94 Cal.App.4th 225.

c. Adjacent Property

Next, liability may arise “if a condition on the adjacent property exposes those in using the public property to a substantial risk of injury.” *Gov. Code § 835; Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal. 4th 139, 149.

d. Due Care Requirement

Lastly, the fourth component of the definition of “dangerous condition” is “used with due care”: “the manner in which it is foreseeable that the property will be used by persons exercising due care in recognition that any property can be dangerous if used in a sufficiently abnormal manner.” *Fuller v. State* (1975) 51 Cal.App.3d 926. The plaintiff is required to establish only “that the condition... creates a substantial risk of harm when used with due care by the public generally.” *Murell v. State ex rel Dep’t of Pub. Works* (1975) 47 Cal.App.3d 264.

The concept of due care incorporates accepted tort law. Thus, an entity must consider that the care required from young children is less than that required from adults. If it is reasonably foreseeable that children will use the property for any purpose, even an unintended one, reasonable precautions must be taken to avoid any substantial risk of injury in accordance with the standard of care applicable to children. *Davis v. Cordova Recreation and Park District* (1972) 24 Cal.App. 3d 789.

In conclusion, a condition of public property is dangerous only if it creates a substantial risk of injury when such property or adjacent property is used with due care “in a manner in which it is reasonably foreseeable that it will be used.” *Gov. Code § 830(a)*. Public entities are liable “for maintaining property in a condition that creates a hazard to foreseeable users even if those persons use the property for a purpose for which it is not designed to be used or for a purpose that is illegal.” *Davis v. Cordova Recreation and Park District, supra*, 24 Cal. App. at 789.

Should you have any questions or would like to learn more, please feel free to consult with one of our attorneys at McDowall Cotter by giving us a call at 650-572-7933. The accomplished attorneys of McDowall Cotter work in civil litigation, business services, and estate planning and are located in San Mateo. Our experienced and knowledgeable staff will be able to help you with any of your needs or concerns. Additionally, you can find McDowall Cotter on Facebook, Instagram, Twitter and LinkedIn @McDowallCotter.

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