



Legal Enforcement Options for Addressing Lodging and Illegal Encampments
(Supersedes 18-137)

Officers, while on patrol, may witness or be called by a member of the public or another City department to address people who are lodging on City streets or sidewalks. Officers may encounter individuals who may be sleeping in a sleeping bag or blanket, or may be lodging in an encampment. An encampment is a tent or any structure consisting of any material with a roof or any other upper covering or that is enclosed by sides that is of sufficient size for a person to fit underneath or inside while sitting or lying down. This may be a tent, tarp, or other structure or shelter or may include multiple tents and structures. Depending on the circumstances, an individual lodging on City streets or sidewalks may have violated laws that officers have authority to enforce, such as criminal nuisance, the City’s sit-lie ordinance, laws regarding obstruction of the sidewalk, or Penal Code Section 647(e) prohibiting lodging in a place where one has no right to be.

A. LAWS GOVERNING LODGING AND ENCAMPMENTS ON STREETS OR SIDEWALKS

There are four categories of laws that various City personnel may enforce to address lodging or encampments: (1) civil and criminal nuisance laws; (2) criminal laws prohibiting sitting, lying, and lodging; (3) interfering with a public officer or peace officer in the performance of their employment or duty; and (4) Proposition Q (“Prop Q”). Below are the laws and the identities of the City personnel responsible for enforcement.

1. Civil and Criminal Laws – Nuisance

Public Health Nuisance – S.F. Municipal Health Code §§ 581, 596 prohibit a person from maintaining a “public nuisance” on any real property “owned, occupied, or controlled by him/her.” The conditions that are declared to be a public nuisance include, but are not limited to: the accumulation of filth, garbage, decayed or spoiled food, unsanitary debris or waste material; buildings, structures, or portion thereof found to be unsanitary; any matter or material that constitutes, or is contaminated by, animal or human excrement, urine or other biological fluids. Department of Public Health (“DPH”) personnel enforce this law and SFPD’s role is to provide support to DPH. However, if individuals willfully resist, delay, or obstruct DPH personnel or any other public officer who is implementing S.F. Health Code §§ 581, 596, the officers may cite an individual for violating Penal Code § 148(a). (See below).

Public Nuisance – Penal Code § 372 (misdemeanor) prohibits conduct that: 1) is injurious to health, indecent or offensive to the senses, and interferes with the comfortable enjoyment of life or property by any considerable number of persons; or 2) obstructs the free passage or use of any public park, square, or street.

Obstructing streets or sidewalks - Penal Code § 370, Penal Code § 647c, S.F. Police Code §§ 22-24. State and local law prohibit obstructing streets and sidewalks in certain circumstances. As mentioned above, Penal Code §§ 370 and 372 (misdemeanor) prohibit obstructions of the free passage

or use of any public park, square, or street. In addition Penal Code § 647c (misdemeanor) prohibits willfully or maliciously obstructing the free movement of any person on any street, sidewalk or public place. Finally, S.F. Police Code §§ 22-24 (1st offense infraction; 2nd offense misdemeanor) prohibit willfully and substantially obstructing the free passage of any person or persons on any street, sidewalk, passageway or other public place. The second offense within 24 hours of citation or 120 days of conviction is a misdemeanor. To constitute a violation of these laws, the person or their belongings must be obstructing the passageway such that a person using a wheelchair would be unable to pass. Officers may cite for violations of these laws.

Private trespass - S.F. Municipal Police Code §§ 25 - 27 (1st offense infraction; 2nd offense misdemeanor) prohibit entering and remaining on private property if the owner, lessee, or other person in charge has given notice to leave or keep away. Officers may cite for violation of these provisions. Notice may be oral or written, posted in a conspicuous place, describing the specific area and hours in which persons are to keep off or to keep away. The second offense within 24 hours of citation or 120 days of conviction is a misdemeanor. SFPD has made available to private property owners “PC 25” signs that advise persons that they have no permission to sleep, lie or remain within a doorway, and request the SFPD to enforce Police Code § 25 in their absence.

2. Criminal Laws Prohibiting Sitting, Lying and Lodging

Sit/Lie - S.F. Municipal Police Code § 168. The City’s “Sit/Lie” law, S.F. Municipal Police Code § 168, may apply to any persons, including individuals in an encampment, who are sitting or lying on the sidewalk between 0700 hours and 2300 hours in violation of that section. (Refer to D.G.O. 6.11 – Obstruction of Streets and Sidewalks).

Unauthorized Lodging - Penal Code Section 647(e). A person who erects an encampment may violate Section 647(e) of the Penal Code. Section 647(e) prohibits individuals from lodging “*in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.*” Lodging can include a wide range of conduct indicating an intention to settle down in a specific location for an indefinite period of time.

There are two significant restrictions on the Department’s enforcement of Section 647(e). First, officers may cite for violation of Section 647(e) only when the individual to be cited has erected a tent, tarp or other structure or shelter. Mere sleeping in a space does not constitute lodging for purposes of the City’s enforcement of Section 647(e). Therefore, officers shall not cite individuals for lodging where they have not erected a tent, tarp or other structure or shelter. A person does not need to be observed inside of their tent or structure in order for there to be a violation of Section 647(e), so long as the officer confirms that the person cited owns or is in possession and control of the structure. Second, **Officers must secure appropriate shelter before taking enforcement action under Penal Code Section 647(e)**. This offense is a misdemeanor.

IMPORTANT NOTES REGARDING THE ENFORCEMENT OF SECTION 647(e) – Illegal Lodging:

- A. Officers may only enforce Section 647(e) if the individual has erected a tent, tarp, or other structure. Officers must identify and document the specific elements of “lodging” in the incident report, which must describe the tent, tarp or other structure or shelter.
- B. Officers shall notify Healthy Streets Operations (“HSOC”) and secure shelter or a navigation center bed.

- C. If there is no shelter or navigation center bed available, officers may not issue a citation or seize the encampment/tent.
- D. If the person accepts shelter, officers must request that the person pack up their belongings. Officers may need Department of Public Works (“DPW”) assistance with the cleanup and to bag and tag property at the person’s request.
- E. If shelter is secured and offered to the person but the person refuses to go, officers may issue a citation and seize the tent as evidence. Officers should use their best efforts to convince the person to accept the offer of shelter. Officers must activate Body Worn Camera and prepare an incident report.

3. Resisting, Delaying, or Obstructing a Public Officer or Peace Officer

Penal Code Section 148(a) prohibits any person from willfully resisting, delaying, or obstructing DPW, DPH, and Department of Homelessness and Supportive Housing (DHS) personnel or any other public officer or peace officer who is discharging or attempting to discharge an official duty, including the enforcement of any of the above mentioned laws. For example, officers may cite an individual for violating Penal Code § 148(a), where the City has complied with the requirements of enforcing Prop Q (see below) and the individual refuses to vacate an encampment so that DPW may remove it.

4. Prop Q

S.F. Municipal Police Code § 169 is a non-criminal prohibition on encampments on City sidewalks that DPW, DPH, or DHS may enforce. DPW, DPH and the DHS must offer to provide residents of the encampment certain services and shelter prior to demanding that they vacate, and must provide at least 24-hour written notice to vacate. SFPD’s role in this process is limited to supporting DPW, DPH, and DHS when they are implementing Prop Q. However, if individuals willfully resist, delay, or obstruct DPW, DPH, DHS personnel or any other public officer who is implementing Prop Q, the officer may cite an individual for violating Penal Code § 148(a). (See above).

When enforcing Prop Q, DPW, DPH, and DHS must provide a written offer of shelter or housing at least 24 hours before ordering the removal of a tent or encampment.

B. OFFERS OF SERVICES

Officers encountering illegal encampments should offer the following services:

- 1. Determine if anyone occupying the encampment is in need of medical attention.
- 2. Between the hours of 0700 and 2300 hours, please phone the Healthy Streets Operations Center (HSOC) at 415-██████████ when encountering anyone in need of shelter. HSOC personnel will provide you with information as to shelter availability and where individuals may be transported. After hours, officers should call MSC South, 525 5th Street, at 415-597-7960 to arrange for shelter.
- 3. Provide information regarding shelter and other homeless resources (refer to Homeless Resource Sheet, SFPD Form 507 revised 04/18).
- 4. Offer the Homeward Bound Program (refer to DB 19-081).

C. ENFORCEMENT PROCEDURES

Officers may encourage individuals to abate the violation by voluntarily removing their encampment, without the need for an admonishment, citation, or arrest. Officers may encounter individuals who respond to the officer's request to abate the violation by merely dismantling the encampment and then reinstalling it as soon as the officer leaves, or by moving it across the street or around the corner. Officers shall exercise their judgment in determining whether an individual has fully abated the violation. For example, if the encampment was initially in violation of the criminal laws that prohibit obstructing sidewalks, and is moved across the street to a location where it continues to obstruct sidewalks, the violation has not been abated.

Regardless of whether there is or is not an enforcement action being taken, if there is a health and safety concern due to garbage, rubbish, waste or any other items that give rise to a public health concern or any other violation, officers may ask the individual to pack up the tent and facilitate having DPW clean up the area in order to abate the violation.

If the officer provides an admonishment, the officer should:

1. Document the admonishment in the CAD or
2. Take a photograph of the encampment and
3. Prepare an incident report regarding the admonishment and attach the photograph.

OR if the officer issues a citation or makes a custodial arrest, the officer shall:

1. Take a photograph of the encampment.
2. If the person is arrested, request the DPW to "bag and tag" the encampment as evidence of a crime and issue the individual a property receipt in duplicate. (Refer to DB 18-089 Bag and Tag and DGO 6.15 Property Processing).
3. Prepare an incident report that articulates the factual circumstances surrounding the encampment, including documenting the securing of shelter and attach the photograph of the encampment.

Reference:

DGO 10.11 Body Worn Cameras


WILLIAM SCOTT
Chief of Police

Per DB 19-070, sworn members are required to electronically acknowledge receipt and review of this Department Bulletin in HRMS.