

BOARD of SUPERVISORS



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MEMORANDUM

TO: Nicole Elliott, Mayor's Office
Jon Givner, Office of the City Attorney
John Arntz, Director, Department of Elections
Naomi Kelly, City Administrator
Trent Rhorer, Executive Director, Human Services Agency
Toney D. Chaplin, Acting Chief of Police
Barbara Garcia, Director, Department of Public Health
Muhammed Nuru, Director, Public Works

FROM: Derek Evans, Clerk, Rules Committee
Board of Supervisors

DATE: July 22, 2016

SUBJECT: INITIATIVE ORDINANCE - INTRODUCED
November 8, 2016 Election

The Board of Supervisors' Rules Committee has received the following hearing matter, introduced by Supervisor Peskin on June 28, 2016, and which is being heard at the July 28, 2016, Rules Committee meeting. This matter is being referred to you in accordance with Rules of Order 2.22.4.

File No. 160761 Initiative Ordinance - Police Code - Process for Removal of Encampments and Transition to Housing

Motion ordering submitted to the voters, at an election to be held on November 8, 2016, an Ordinance amending the Police Code to provide a process for the removal of encampments when housing or shelter is available for encampment residents.

Please review and submit any reports or comments to be included with the legislative file.

If you have any questions or concerns, please call me at (415) 554-7702 or email: derek.evans@sfbgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Krista Ballard, Human Services Agency
Louise Rainey, Human Services Agency
Christine Fountain, Police Department
Sergeant Rachael Kilshaw, Police Department
Greg Wagner, Department of Public Health
Colleen Chawla, Department of Public Health
Frank Lee, Public Works
Fuad Sweiss, Public Works

1 [Initiative Ordinance - Police Code - Process for Removal of Encampments and Transition to
2 Housing]

3 **Motion ordering submitted to the voters, at an election to be held on November 8, 2016,**
4 **an Ordinance amending the Police Code to provide a process for the removal of**
5 **encampments when housing or shelter is available for encampment residents.**

6
7 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
8 voters of the City and County of San Francisco, at an election to be held on November 8,
9 2016.

10
11 **Ordinance amending the Police Code to provide process for the removal of**
12 **encampments when housing or shelter is available for encampment residents.**

13 NOTE: **Unchanged Code text and uncodified text** are in plain font.
14 **Additions to Codes** are in *single-underline italics Times New Roman font*.
15 **Deletions to Codes** are in ~~strikethrough italics Times New Roman font~~.
16 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or
17 parts of tables.

18 Be it ordained by the People of the City and County of San Francisco:

19 Section 1. The Police Code is hereby amended by adding Section 170, to read as
20 follows:

21 **SEC. 170. PROCESS FOR REMOVAL OF ENCAMPMENTS AND TRANSITION TO**
22 **HOUSING.**

23 **(a) Findings.**

24 **(1) Homeless encampments, including clusters of tents, have highlighted the growing**
25 **housing and homeless crisis in San Francisco. These encampments are symptomatic of the lack of**
affordable housing and access to affordable public health services.

1 (2) The City already prohibits encampments in public parks, and Section 168 of the
2 Police Code prohibits individuals, with certain exceptions, from sitting or lying on the City's public
3 sidewalks between the hours of 7:00 a.m. and 11:00 p.m. Section 22 of the Police Code prohibits
4 willfully and substantially obstructing the free passage of any person or persons on any street,
5 sidewalk, passageway or other public place. Section 647(e) of the California Penal Code prohibits
6 individuals from lodging in any building, structure, vehicle, or place, whether public or private, without
7 the permission of the owner or person entitled to the possession or in control of it.

8 (3) The City's January 2015 Homeless Count revealed that 71% of homeless people
9 surveyed became housing-unstable or homeless while living in San Francisco, and that the top two
10 causes of homelessness were eviction and job loss. Furthermore, the Homeless Count identified just
11 under 7,000 homeless people in San Francisco. According to the Human Services Agency, San
12 Francisco has just under 1,300 shelter beds.

13 (4) San Francisco is a compassionate city and must do everything possible to transition
14 people experiencing homelessness to safe, stable, and successful permanent housing by providing
15 homeless and behavioral health services and low-barrier-to-entry shelters. By consistently
16 underfunding and failing to prioritize housing-first policies, we continue to exacerbate the housing
17 crisis and displacement of San Francisco residents. In one of the world's most prosperous countries
18 and one of its most affluent cities, no one should be forced by circumstances to seek shelter, and to
19 suffer, on the streets.

20 (5) Maintaining accessible sidewalks for everyone is also an important consideration
21 for reasons of both public safety and accessibility, particularly for those residents, whether housed or
22 not, who are living with disabilities or need full access to sidewalks to use wheelchairs or walkers, or
23 push strollers.

24 (6) San Francisco is committed to a housing-first model for addressing homelessness,
25 which has proven successful in numerous jurisdictions, including Salt Lake City, Utah.

1 (7) The United States Interagency Count on Homelessness 2015 report “Ending
2 Homelessness for People Living in Encampments,” requested by the Obama administration,
3 recommends an encampment clearance process that involves active participation and leadership of
4 homeless people living in such encampments and recommends that people be transitioned from
5 encampments into housing of greater stability.

6 (b) Definitions. For purposes of this Section 170:

7 (1) “Behavioral Health Services” shall mean any services provided that improve the
8 mental health of individuals or address alcohol dependency and/or drug abuse.

9 (2) “Encampment” shall mean a site where one or more tents, tarpaulins, or other non-
10 permanent structures are used as temporary quarters for sleeping and shelter.

11 (3) “Exit Housing” shall mean Permanent Supportive Housing or Transitional Housing.

12 (4) “Homeless Services” shall mean resources or services provided by or through the
13 Department of Homelessness and Supportive Housing, including case management, job training, health
14 services, and Behavioral Health Services.

15 (5) “Permanent Supportive Housing” shall mean housing units that include on-site
16 supportive services, including, without limitation, intake and assessment of residents' needs, outreach
17 to residents to assist them with health or social needs, management of the health or social needs of
18 residents, mediation of disputes with the property management, and referrals for services to the
19 residents. “Permanent Supportive Housing” shall not include any shelter that offers temporary
20 overnight sleeping space on a short-term basis provided by the City on City-owned or City-leased
21 property or through a contractual arrangement with the City.

22 (6) “Permanently Affordable Housing” shall mean “affordable unit” as defined in
23 Section 401 of the Planning Code.

1 (7) “Personal Property” shall mean any tangible property, and includes, but is not
2 limited to, goods, materials, merchandise, tents, tarpaulins, bedding, blankets, sleeping bags, personal
3 items such as household items, luggage, backpacks, clothing, food, documents, and medication.

4 (8) “Shelter” shall mean temporary shelter or another shelter option provided by the
5 City, including Navigation Centers.

6 (9) “Transitional Housing” shall mean a project which provides housing and supportive
7 services to homeless persons and families or low-income households at risk of becoming homeless
8 which has as its purpose facilitating the movement of homeless individuals or at-risk low-income
9 households to independent living within a reasonable amount of time.

10 (c) When the City issues an order requiring the relocation of occupants of an Encampment, the
11 City shall follow the following process:

12 (1) Offer of Shelter, Exit Housing, or Permanently Affordable Housing. Prior to
13 removing an Encampment, the City must identify specific Shelter, Exit Housing, or Permanently
14 Affordable Housing available for each occupant of the Encampment. At least 72 hours prior to
15 removing an Encampment, the City shall offer in writing the identified Shelter, Exit Housing, or
16 Permanently Affordable Housing to each occupant of the Encampment. The notice shall include the
17 address and phone number of the identified Shelter, Exit Housing, or Permanently Affordable Housing,
18 and shall provide notice that the identified housing option is guaranteed to that individual for 24 hours
19 following the removal of the Encampment. The City shall provide a copy of this notice to the Local
20 Homeless Coordinating Board. The City shall not offer Shelter space to residents of an Encampment in
21 a manner that would displace individuals waiting for Shelter space pursuant to the City’s system for
22 Shelter reservation.

23 (2) The City shall offer Homeless Services to any individual displaced from an
24 Encampment.

1 (3) Transition Plan for Individuals Placed in Shelter. If the City places an individual
2 displaced from an Encampment in Shelter, the City shall develop a plan to transition such individual to
3 Exit Housing or Permanently Affordable Housing within 30 days of displacing the individual from the
4 Encampment. During the 30-day period, and until the City secures Exit Housing or Permanently
5 Affordable Housing for the individual, the individual shall be guaranteed Shelter.

6 (4) Notices.

7 (A) Notice of Intent to Remove Encampment. The City shall provide residents of
8 the Encampment notice of the City's intent to remove the Encampment at least 72 hours in advance of
9 any action to remove the Encampment. Notice shall be in writing and shall be served personally on the
10 resident or residents of the Encampment present when the City official or employee attempts to serve
11 notice. In addition, the City official or employee shall post the notice on or near the Encampment, so
12 as reasonably to communicate the notice to persons living at the Encampment but not present during
13 the attempt to serve notice. The notice shall contain the following information:

14 (i) the location of the Encampment;

15 (ii) the date and time notice was served or posted;

16 (iii) a statement of the law violated by the Encampment;

17 (iv) an advisement that the City will remove the Encampment 72 hours
18 after the date and time of the notice;

19 (v) an advisement that there is Shelter, Exit Housing, or Permanently
20 Affordable Housing available for residents of the Encampment, as required by subsection (c)(1);

21 (vi) an advisement that any Personal Property remaining at the
22 Encampment site when the City returns to remove the Encampment will be stored by the City for no
23 fewer than 90 days and will be discarded thereafter if not claimed; and

1 (vii) the address, phone number, and operating hours of the location
2 where the Personal Property will be stored and may be retrieved, and that the City will charge no fee
3 for storage or retrieval.

4 (B) Notice Regarding Personal Property Seized When Encampment Removed.

5 When the City removes an Encampment, a written notice shall be given to any residents of the
6 Encampment present and conspicuously posted in the area from which the Encampment was removed.
7 The notice shall contain the following information:

8 (i) the location of the Encampment being removed;

9 (ii) a statement of the law violated by the Encampment;

10 (iii) a general description of any Personal Property removed;

11 (iv) the date and time the Personal Property was removed;

12 (v) an advisement that the Personal Property will be stored for at least 90
13 days, and the address, phone number, and operating hours of the location where the Personal Property
14 is being stored and may be retrieved, and that the City will charge no fee for storage or retrieval; and

15 (vi) an advisement that if the Personal Property is not retrieved within 90
16 days, it will be discarded.

17 (C) Retention of Personal Property by Resident of Encampment.

18 Notwithstanding subsection (c)(4)(B), a person residing in an Encampment who is present at the time
19 the City is removing the Encampment may retain his or her Personal Property, except that items
20 constituting an immediate threat to the health or safety of the public or items that constitute evidence of
21 a crime or contraband may be seized, as permissible by law.

22 (D) Storage of Seized Personal Property. Any Personal Property seized by the

23 City pursuant to any action to abate an Encampment shall be stored by the Department of Public
24 Works or another City entity for no less than 90 days, with the following exceptions:

1 (i) Items that present a health or safety risk if stored, such as items soiled
2 by bodily fluids, items that are moldy, items infested by insects or vermin, and food, need not be stored
3 and may be discarded; and

4 (ii) Items that constitute evidence of a crime or contraband may be
5 seized and discarded, as permissible by law.

6 (d) Enforcement Priority. Nothing in this Section 170 shall be interpreted to preclude the City
7 from enforcing state law. When the City relies on state law to order the removal of an Encampment,
8 such enforcement shall be the lowest law enforcement priority on a par with any other offense deemed
9 by City law to be the lowest law enforcement priority, unless the City has complied with subsection (c).

10 (e) Public Health or Safety Emergency. The requirements of subsection (c) shall not apply if
11 the City finds that immediate relocation of residents of the Encampment is necessary due to an
12 immediate threat to public health or safety; provided, however, that the City shall give occupants of the
13 Encampment whatever notice is reasonable under the circumstances before the relocation occurs.

14 (f) Rules and Regulations. The Department of Homelessness and Supportive Housing may
15 issue regulations or guidelines necessary or appropriate to aid in the implementation of this Section
16 170 and may create any additional procedures consistent with this Section 170 necessary or
17 appropriate to protect the property rights of individuals whose property is seized pursuant to this
18 Section 170.

19 (g) Undertaking for the General Welfare. In enacting and implementing this Section 170, the
20 City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it
21 imposing on its officers and employees, an obligation for breach of which it is liable in money damages
22 to any person who claims that such breach proximately caused injury.

23 (h) Severability. If any subsection, sentence, clause, phrase, or word of this Section 170, or any
24 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
25 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining

1 portions or applications of this Section. The People of the City and County of San Francisco hereby
2 declare that they would have adopted this Section 170 and each and every subsection, sentence, clause,
3 phrase, and word not declared invalid or unconstitutional without regard to whether any other portion
4 of this Section or application thereof would be subsequently declared invalid or unconstitutional.

5 (i) Amendment or Repeal. This Section 170 may be amended or repealed by a vote of the
6 People at a City election. This Section may also be amended by ordinance passed by a two-thirds' vote
7 of the Board of Supervisors and signed by the Mayor so long as such amendments are consistent with
8 and further the intent of this Section.

9
10 Section 2. Conflicting Law. If this initiative measure and another measure addressing
11 Encampments appear on the same ballot, and a majority of the voters vote in favor of both
12 measures but this measure receives more votes than the other measure, this measure alone
13 shall become valid, binding, and adopted in its entirety, and the other measure shall be null
14 and void in its entirety. If a majority of the voters vote in favor of both measures but this
15 measure receives fewer votes than the other measure, only those provisions of the other
16 measure that are in direct and irreconcilable conflict with the provisions of this measure shall
17 control, and all other provisions of this measure shall become valid, binding, and adopted.
18 The voters expressly declare this to be their intent, regardless of any contrary language in any
19 other ballot measure.

20 APPROVED AS TO FORM:

21 DENNIS J. HERRERA, City Attorney

22
23 By:



24 BRADLEY A. RUSSI
25 Deputy City Attorney

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LEGISLATIVE DIGEST

[Initiative Ordinance - Police Code - Process for Removal of Encampments and Transition to Housing]

Ordinance amending the Police Code to provide process for the removal of encampments when housing or shelter is available for encampment residents.

Existing Law

City law does not provide a process governing the City's removal of tent encampments.

Amendments to Current Law

This ordinance will create a process the City must follow when the circumstances allow for removal of an encampment pursuant to the enforcement of existing law. Prior to ordering the removal of an encampment, the City must identify specific shelter, permanent supportive housing, transitional housing, or affordable housing for all occupants of the encampment. At least 72 hours prior to removing the encampment, the City must offer the identified housing or shelter option to encampment occupants and must guarantee that the space be available for at least 24 hours after removal of the encampment. The notice must be provided in writing and must also advise the residents of the encampment of (1) the City's intent to remove the encampment, (2) that any property remaining will be impounded and stored for 90 days and will be discarded if not retrieved by the owner, and (3) other similar issues. If encampment residents are placed in shelter, the City must develop a transition plan to move residents into more permanent housing. The City cannot offer residents of the encampment shelter space if it would displace individuals on the City's shelter bed waiting list. The ordinance also addresses the process for storage and retrieval of any personal property left behind or otherwise seized by the City.

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Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date _____

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor inquires"
- 5. City Attorney request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Subject:

The text is listed below or attached:

Signature of Sponsoring Supervisor: 

For Clerk's Use Only: