

File No. 100233

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee PUBLIC SAFETY

Date 5/10/10

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

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Completed by: Gail Johnson

Date 5/7/10

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Prohibition on sitting or lying on public sidewalks.]

2
3 Ordinance amending San Francisco Police Code by adding Section 168 to prohibit
4 sitting or lying down upon a public sidewalk during specified hours and with
5 exceptions for the disabled and others.

6 NOTE: Additions are single-underline italics Times New Roman;
7 deletions are ~~strike-through italics Times New Roman~~.
8 Board amendment additions are double-underlined;
9 Board amendment deletions are ~~strikethrough-normal~~.

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

10 Section 1. The San Francisco Police Code is hereby amended by adding Section 168
11 to read as follows:

12 **SEC 168: PROHIBITION ON SITTING OR LYING ON PUBLIC SIDEWALKS.**

13 (a) Findings. The people of the City and County of San Francisco find that maintaining
14 pedestrian and commercial traffic on public sidewalks is essential to public safety and the
15 encouragement of a vital economy and neighborhoods in the City. This need is greatest during the
16 hours of operation of businesses, shops, restaurants, and other City commercial enterprises when
17 public sidewalks are congested, and when City residents are most likely to use their neighborhood
18 sidewalks. Persons who sit or lie down on public sidewalks during business hours threaten the safety
19 of pedestrians, especially the elderly, disabled, vision-impaired, and children. Persons who sit or lie
20 down also deter residents and visitors from patronizing local shops, restaurants and businesses, and
21 deter residents from using the sidewalks in their neighborhoods. Business areas and neighborhoods
22 become dangerous to pedestrian safety and economic vitality when individuals block the public
23 sidewalks. This behavior causes a cycle of decline as residents and tourists go elsewhere to meet, shop
24 and dine, and residents become intimidated from using the public sidewalks in their own
25 neighborhoods. The prohibition applies Citywide in order to prevent displacement of violators from

1 one district or neighborhood to another.

2 The prohibition against sitting or lying on sidewalks leaves intact the individual's right to speak,
3 protest or engage in other lawful activity on any sidewalk consistent with any City permitting
4 requirements. The prohibition applies only to sidewalks. There are a number of places where the
5 restrictions of this ordinance do not apply, including plazas, public parks, public benches, and other
6 common areas open to the public. The prohibition contains exceptions for medical emergencies, those
7 in wheelchairs, and permitted activities, among others.

8 Present laws that prohibit the intentional, willful or malicious obstruction of pedestrians do not
9 adequately address the safety hazards, disruption and deterrence to pedestrian traffic caused by
10 persons sitting or lying on sidewalks.

11 (b) Prohibition. In the City and County of San Francisco, during the hours between seven
12 (7:00) a.m. and eleven (11:00) p.m., it is unlawful to sit or lie down upon a public sidewalk, or upon a
13 blanket, chair, stool, or any other object placed upon a public sidewalk.

14 (c) Exceptions. The prohibitions in Subsection (b) shall not apply to any person:

15 1. Sitting or lying down on a public sidewalk due to a medical emergency;

16 2. Utilizing a wheelchair, walker, or similar device as the result of a disability;

17 3. Operating or patronizing a commercial establishment conducted on the public sidewalk
18 pursuant to a sidewalk use permit;

19 4. Participating in or attending a parade, festival, performance, rally, demonstration, meeting,
20 or similar event conducted on the public sidewalk pursuant to and in compliance with a street use or
21 other applicable permit;

22 5. Sitting on a fixed chair or bench located on the public sidewalk supplied by a public agency
23 or by the abutting private property owner;

1 6. Sitting in line for goods or services unless the person or person's possessions impede the
2 ability of pedestrians to travel along the length of the sidewalk or enter a doorway or other entrance
3 alongside the sidewalk; or

4 7. Who is a child seated in a stroller.

5 (d) Warning. No person shall be cited under this Section unless the person engages in conduct
6 prohibited by this Section after having been notified by a peace officer that the conduct violates this
7 Section.

8 (e) Other laws and orders. Nothing in any of the exceptions listed in Subsection (c) shall be
9 construed to permit any conduct which is prohibited by Police Code Sections 22-24, which prohibit
10 willfully and substantially obstructing the free passage of any person.

11 (f) Penalties

12 1. First Offense. Any person violating any provision of this Section shall be guilty of an
13 infraction. Upon conviction, the violator shall be punished by a fine of not less than \$50 or more than
14 \$100 and/or community service, for each provision violated.

15 2. Subsequent Offenses. Any person violating any provision of this Section within 24 hours
16 after violating and being cited for a violation of this Section shall be guilty of a misdemeanor and shall
17 be punished by a fine of not less than \$300 and not more than \$500, and/or community service, for each
18 provision violated, or by imprisonment in the County Jail for a period of not more than ten (10) days,
19 or by both such fine and imprisonment. Any person violating any provision of this Section within 120
20 days after the date of conviction of a violation this Section shall be guilty of a misdemeanor, and shall
21 be punished by a fine of not less than \$400 and not more than \$500, and/or community service, for each
22 provision violated, or by imprisonment in the County Jail for a period of not more than thirty (30) days,
23 or by both such fine and imprisonment.

1 (g) Reporting. One year after the effective date of this ordinance, and every two years
2 thereafter, the Police Department shall make a written report to the Mayor and the Board of
3 Supervisors that evaluates the effect of enforcement of this ordinance on the City's neighborhoods.

4
5 (h) Severability. If any subsection, sentence, clause, phrase, or word of this Section be for any
6 reason declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such
7 decision shall not affect the validity or the effectiveness of the remaining portions of this Section or any
8 part thereof.

9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12
13 By: 

Linda M. Ross
Deputy City Attorney

LEGISLATIVE DIGEST

[Prohibition on Sitting or Lying on City Sidewalks.]

Ordinance amending San Francisco Police Code by adding Section 168 to prohibit sitting or lying down upon a public sidewalk during specified hours and with exceptions for the disabled and others.

Existing Law

There is no current law prohibiting sitting or lying on public sidewalks in San Francisco.

Amendments to Current Law

The proposed ordinance would make it unlawful to sit or lie upon a public sidewalk, or upon a blanket, chair, stool, or any other object placed upon a public sidewalk, during the hours between 7 a.m. and 11 p.m. at night.

The ordinance contains exceptions for a person: with a medical emergency, using a wheel chair or similar device due to disability, operating or patronizing a commercial establishment with a sidewalk use permit, participating in a parade, demonstration or similar event in compliance with a permit, sitting in a fixed chair or bench provided by a public agency or an abutting private property owner, sitting in line for goods or services so long as pedestrians are not impeded, or who is a child seated in a stroller.

No person may be cited under this section unless the person continues to engage in prohibited conduct after having been warned by a peace officer.

A first offense is an infraction punishable by a fine of not less than \$50 or more than \$100, and/or community service, for each provision violated.

A second offense within 24 hours of being cited for a first offense is a misdemeanor punishable by a fine of not less than \$300 and not more than \$500, and/or community service, for each provision violated, or by imprisonment in the County Jail for not more than 10 days, or by both fine and imprisonment.

A second offense within 120 days after being convicted of an offense is a misdemeanor punishable by a fine of not less than \$400 and not more than \$500, and/or community service, for each provision violated, or by imprisonment in the County Jail for not more than 30 days, or by fine and imprisonment.

The Police Department must make a written report to the mayor and the Board of Supervisors, evaluating the effect of the ordinance on the City's neighborhoods, one year from the effective date of the ordinance and every two years after that.

Background Information

The proposed ordinance contains findings that persons who sit or lie on public sidewalks cause neighborhood residents, business patrons and tourists to avoid public streets, leading to neighborhood decline and decay. The proposed ordinance applies citywide so that enforcement of the law in one neighborhood or district will not permit individuals breaking the law to move to another neighborhood or district.

There is currently no City ordinance that prohibits sitting or lying on the public sidewalks. Police Code 22 prohibits willfully and substantially blocking a pedestrian. The proposed ordinance does not require the intent to block or the actual blocking of a particular pedestrian. The proposed ordinance is an attempt to address the deterrent effect on pedestrians who may not enter a neighborhood if they see individuals sitting or lying on the sidewalks.

Other cities around the country have enacted ordinances prohibiting sitting or lying on public sidewalks.

Youth Commission
City Hall ~ Room 345
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4532



(415) 554-6446
(415) 554-6140 FAX
www.sfgov.org/youth_commission

YOUTH COMMISSION
MEMORANDUM

TO: Honorable Members, Public Safety Committee, Board of Supervisors
CC: Gail Johnson, Clerk, Public Safety Committee, Board of Supervisors
FROM: Mario Yedidia, Policy Coordinator, Youth Commission
DATE: May 6, 2010
RE: Youth Commission opposition to proposed ordinance file no. 100233 [Prohibition on sitting or lying on public sidewalks].

At its regular meeting of Monday, March 15, 2010, the Youth Commission voted to oppose proposed ordinance file no. 100233 [Prohibition on sitting or lying on public sidewalks] sponsored by Mayor Newsom and Supervisor Alioto-Pier.

BY _____
AK

2010 MAY -6 PM 12: 00

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO



TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: *PA* Mayor Gavin Newsom *GF*
RE: Ordinance amending San Francisco Police Code to Prohibit Sitting or Lying Down Upon a Public Sidewalk
DATE: March 2, 2010

Dear Madame Clerk:

Attached for introduction to the Board of Supervisors is an ordinance amending San Francisco Police Code by adding Section 168 to prohibit sitting or lying down upon a public sidewalk during specified hours and with exceptions for the disabled and others.

Please note that Supervisor Michela Alioto-Pier is a co-sponsor of this legislation.

I request that this item be scheduled in Public Safety Committee.

Should you have any questions, please contact Starr Terrell (415) 554-5262.

cc: Supervisor Michela Alioto-Pier



SAN FRANCISCO PLANNING DEPARTMENT

April 6, 2010

Ms. Angela Calvillo, Clerk
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Re: Transmittal of Planning Case Number 2010.0200U to the Board of Supervisors File No. 10-0233: Prohibition on Sitting or Lying on City Sidewalks

Recommendation: The Commission is not recommending approval or disapproval of the proposed Ordinance. Instead, the Commission recommends that the City maintain the streets and sidewalks as a vital component of the City's open space system. The Commission further urges that extra consideration be given for 1) those who live in Single Room Occupancy Hotels or areas where the Planning Code requires less private open space per unit and 2) day laborers who may sit on the sidewalk while waiting for employment.

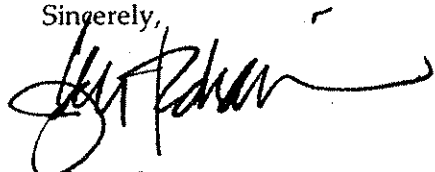
Dear Ms. Calvillo,

On April 1, 2010, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance. The proposed ordinance concerns a prohibition on sitting or lying on City sidewalks.

At the April 1st hearing, the Commission voted 6-1 to recommend that the City maintain the streets and sidewalks as a vital component of the City's open space system. The Commission further urges that extra consideration be given for 1) those who live in Single Room Occupancy Hotels or areas where the Planning Code requires less private open space per unit and 2) day laborers who may sit on the sidewalk while waiting for employment.

Please find attached documents relating to the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John Rahaim", with a long horizontal flourish extending to the right.

John Rahaim
Director of Planning

Attachments (one copy of the following):

Planning Commission Resolution No. 18069

Planning Commission Executive Summary for Case No. 2010.0200U



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18069 Police Code Text Change HEARING DATE: APRIL 1, 2010

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

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Planning
Information:
415.558.6377

Project Name: Prohibition on Sitting or Lying on City Sidewalks
Case Number: 2010.0200U [Board File No. 10-0233]
Initiated by: Mayor Newsom/ Supervisor Alioto-Pier
Introduced: March 2, 2010
Staff Contact: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
Reviewed by: David Alumbaugh, Director Citywide Policy Planning
David.Alumbaugh@sfgov.org, 415-558-6601

RECOMMENDING THAT THE BOARD OF SUPERVISORS MAINTAIN THE STREETS AND SIDEWALKS AS A VITAL COMPONENT OF THE CITY'S OPEN SPACE SYSTEM WHEN CONSIDERING A PROPOSED ORDINANCE THAT WOULD AMEND THE POLICE CODE TO MAKE IT UNLAWFUL TO SIT OR LIE UPON A PUBLIC SIDEWALK, OR UPON A BLANKET, CHAIR, STOOL, OR ANY OTHER OBJECT PLACED UPON A PUBLIC SIDEWALK, DURING THE HOURS BETWEEN 7 A.M. AND 11 P.M. AT NIGHT. THE COMMISSION FURTHER URGES THAT EXTRA CONSIDERATION BE GIVEN FOR 1) THOSE WHO LIVE IN SINGLE ROOM OCCUPANCY HOTELS OR AREAS WHERE THE PLANNING CODE REQUIRES LESS PRIVATE OPEN SPACE PER UNIT AND 2) DAY LABORERS WHO MAY SIT ON THE SIDEWALK WHILE WAITING FOR EMPLOYMENT.

PREAMBLE

Whereas, on March 2, 2010, Mayor Newsom and Supervisor Alioto-Pier introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 10-0233 which would amend the Police Code to make it unlawful to sit or lie upon a public sidewalk, or upon a blanket, chair, stool, or any other object placed upon a public sidewalk, during the hours between 7 a.m. and 11 p.m. at night; and

Whereas, on April 1, 2010, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented; and

Whereas, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Whereas, the Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommends that the Board of Supervisors that *the City should maintain its streets and sidewalks as a vital component of the City's open space system. The Commission further urges that extra consideration be given for 1) those who live in Single Room Occupancy Hotels or areas where the Planning Code requires less private open space per unit and 2) day laborers who may sit on the sidewalk while waiting for employment* and adopts the attached Draft Resolution to that effect.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The proposed Ordinance seeks to make it unlawful to sit or lie upon a public sidewalk, or upon a blanket, chair, stool, or any other object placed upon a public sidewalk, during the hours between 7 a.m. and 11 p.m. at night;
2. **General Plan Compliance.** The proposed Ordinance should maintain the streets and sidewalks as a vital component of the City's open space system in order to remain consistent with the following Objectives and Policies of the General Plan:

I. HOUSING ELEMENT

POLICY 8.6 Increase the availability of units suitable for users with supportive housing needs.

General Plan Text under Policy 8.6: Shelters and transitional housing facilities are not available in sufficient numbers to meet the needs of the city's homeless population. The mentally disabled also need housing with additional support services.

OBJECTIVE 10 REDUCE HOMELESSNESS AND THE RISK OF HOMELESSNESS IN COORDINATION WITH RELEVANT AGENCIES AND SERVICE PROVIDERS.

General Plan Text under Objective 10: Homelessness has grown to a scale unprecedented in the United States since the 1930s. The legacy of the 1980s that has regarded temporary shelter as an adequate response to homelessness should be overcome. Shelters are not an acceptable alternative to decent, affordable housing. While the City should not relax its commitment to offering shelter to anyone who would otherwise be forced to live in streets, parks and doorways, the vision and the overall

direction should remain fixed on the goal of creating and preserving low-cost housing, jobs and job training programs, and the necessary health and social support services that enable people to live with the greatest degree of independence possible. Such services for the homeless should be provided in a multi-lingual and multicultural context where needed. It is critical that San Francisco and other cities begin to develop a regional approach to homelessness in the Bay Area. Increased state and federal support is needed for regional efforts to succeed.

II. COMMERCE & INDUSTRY ELEMENT

POLICY 4.8 Provide for the adequate security of employees and property.

General Plan Text under Objective 10.3: Vandalism, in certain of the city's industrial areas, causes large losses for firms and threatens employee security. In some instances, firms in areas where fear of crime is a particular problem have difficulties attracting a qualified work force. Concern about security of employers and employees can affect plans for expansion and may cause relocation. It also affects employee turnover. Measures such as increased police presence and surveillance of industrial areas and improved lighting are important in providing a sense of security for employers and employees.

III. URBAN DESIGN ELEMENT

POLICY 4.8 Provide convenient access to a variety of recreation opportunities.

General Plan Text under Policy 4.8: As many types of recreation space as possible should be provided in the city, in order to serve all age groups and interests. Some recreation space should be within walking distance of every dwelling, and in more densely developed areas some sitting and play space should be available in nearly every block. The more visible the recreation space is in each neighborhood, the more it will be appreciated and used.

POLICY 4.11 Make use of street space and other unused public areas for recreation, particularly in dense neighborhoods, such as those close to downtown, where land for traditional open spaces is more difficult to assemble.

General Plan Text under Policy 4.11: Walking along neighborhood streets is the common form of recreation. The usefulness of streets for this purpose can in many cases be improved by widening sidewalks and installing simple improvements such as benches and landscaping. Such improvements can often be put in place without narrowing traffic lanes by use of parking bays with widened sidewalks at intersections and at other points unsuitable for parking.

Streets that have roadways wider than necessary, and streets that are not developed for traffic because of their steepness, provide exceptional opportunities for recreation. This is particularly applicable in new neighborhoods like Transbay and Rincon Hill, where traditional open spaces are more difficult to assemble because of higher densities and lack of available sites to acquire for parks. This excess street space can be developed with playgrounds, sitting areas, viewpoints and landscaping that make them neighborhood assets and increase the opportunities for recreation close to the residents' homes.

IV. RECREATION AND OPEN SPACE ELEMENT

POLICY 4.2 Maximize joint use of other properties and facilities.

General Plan Text under Policy 4.2: Streets, alleys and undeveloped rights-of-way throughout San Francisco should be looked to for development of small outdoor open spaces for the elderly and for young children. These kinds of spaces are an important resource common to all high need neighborhoods. Streets and alleys should be considered as opportunities for providing useful recreation space which, with the installation of sitting areas and planting, can significantly improve a neighborhood at little cost to the City. Unused rights-of-way and other unused public land can be used as community gardens, providing recreation and amenities for the surrounding neighborhood.

V. TRANSPORTATION ELEMENT

OBJECTIVE 26 CONSIDER THE SIDEWALK AREA AS AN IMPORTANT ELEMENT IN THE CITYWIDE OPEN SPACE SYSTEM.

POLICY 26.1 Retain streets and alleys not required for traffic, or portions thereof, for through pedestrian circulation and open space use.

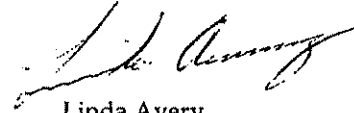
POLICY 26.2 Partially or wholly close certain streets not required as traffic carriers for pedestrian use or open space.

POLICY 26.3 Encourage pedestrian serving uses on the sidewalk.

Exhibit A: Resolution No. 18069
Hearing Date: April 1, 2010

CASE NO. 2010.0200U
Prohibition on Sitting or Lying on City Sidewalks

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on April 1, 2010.



Linda Avery
Commission Secretary

AYES: Miguel, Olague, Borden, Lee, Moore, and Sugaya

NAYS: Antonini

ABSENT:

ADOPTED: April 1, 2010



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Police Code Text Change HEARING DATE: APRIL 1, 2010

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

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Planning
Information:
415.558.6377

Project Name: Prohibition on Sitting or Lying on City Sidewalks
Case Number: 2010.0200U [Board File No. 10-0233]
Initiated by: Mayor Newsom/ Supervisor Alioto-Pier
Introduced: March 2, 2010
Staff Contact: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
Reviewed by: David Alumbaugh, Director Citywide Policy Planning
David.Alumbaugh@sfgov.org, 415-558-6601

Recommendation: The Department is not recommending approval or disapproval of the proposed Ordinance. Instead, the Department recommends that the City maintain the streets and sidewalks as a vital component of the City's open space system.

POLICE CODE AMENDMENT

The proposed Ordinance would make it unlawful to sit or lie upon a public sidewalk, or upon a blanket, chair, stool, or any other object placed upon a public sidewalk, during the hours between 7 a.m. and 11 p.m. at night.

The Way It Is Now:

The proposed Ordinance adds a new Section to the Police Code to address quality of life crimes. Quality of life crimes include graffiti writing, sleeping or sitting in public areas, public intoxication and panhandling. According to a 2002 report by San Francisco's Legislative Analyst, the District Attorney's and City Attorney's Offices reported that "several of San Francisco's quality of life laws are difficult to prosecute due to the evidence requirements"¹. San Francisco's existing quality of life laws include:

- Municipal Police Code Section 21- Drinking in Public
- Penal Code 647 (f)- Public Intoxication
- Municipal Police Code 97 (a) and (b)- Camping in House Car or Car
- Penal Code 647 (j) - Lodging in a Public or Private Place without Permission of Owner
- Municipal Police Code 153 – Urinating in Public

¹ Legislative Analyst Report - San Francisco's 'Quality of Life' Laws and Seattle's 'Civility' Laws (File No. 011704), Elaine Forbes. January 11, 2002.

- Municipal Police Code 22(a) 23(a) and Penal Code 647 – Obstructions of Streets and Sidewalks
- Municipal Police Code Section 120-2 (d) 1-4 – Aggressive Solicitation
- Municipal Police Code Section 25 – 26 Trespassing
- Police Code 372 Maintaining a Public Nuisance
- Penal Code 415 Disturbing the Peace
- 602.1 Penal Code Interfering with a Business
- 643.2 Loitering with Intent to Buy or Sell Drugs
- Associated Criminal Activity: Assault, battery malicious mischief, theft, robbery, threats, extortion, and public intoxications.

The Way It Would Be:

The proposed Ordinance would create the following new Section 168 of the Police Code:

- **New Section 168– Prohibition on Sitting or Lying on City Sidewalks**

The proposed Ordinance would make it unlawful to sit or lie upon a public sidewalk, or upon a blanket, chair, stool, or any other object placed upon a public sidewalk, during the hours between 7 a.m. and 11 p.m. at night.

The Ordinance contains exceptions for a person: with a medical emergency, using a wheel chair or similar device due to disability, operating or patronizing a commercial establishment with a sidewalk use permit, participating in a parade, demonstration or similar event in compliance with a permit, sitting in a fixed chair or bench provided by a public agency or an abutting private property owner, sitting in line for goods or services so long as pedestrians are not impeded, or who is a child seated in a stroller.

The prohibition applies only to sidewalks. There are a number of places where the restrictions of this ordinance do not apply, including plazas, public parks, public benches, and other common areas open to the public. It is unclear if the proposed Ordinance would apply to 'informal' seating, i.e., seating that is not a bench or chair in the public right-of-way. By the time of the hearing the Mayor's Office has offered to provide information clarifying if the prohibitions would apply to sidewalk bulbouts and planters or other objects serving as seating. Staff from the Mayor's Office has stated that the Ordinance intends to allow this behavior and has offered to add clarifying language that would exclude these informal areas from the prohibition.

No person may be cited under this section unless the person continues to engage in prohibited conduct after having been warned by a peace officer. A first offense is an infraction punishable by a fine of not less than \$50 or more than \$100, and/or community service, for each provision violated. A second offense within 24 hours of being cited for a first offense is a misdemeanor punishable by a fine of not less than \$300 and not more than \$500, and/or community service, for each provision violated, or by imprisonment in the County Jail for not more than 10 days, or by both fine and imprisonment. A second offense within 120 days after being convicted of an

offense is a misdemeanor punishable by a fine of not less than \$400 and not more than \$500, and/or community service, for each provision violated, or by imprisonment in the County Jail for not more than 30 days, or by fine and imprisonment.

The Police Department must make a written report to the mayor and the Board of Supervisors, evaluating the effect of the ordinance on the City's neighborhoods, one year from the effective date of the ordinance and every two years after that.

ISSUES FOR CONSIDERATION

The Planning Commission specifically requested:

1. Analysis of how the proposed law compares with adopted policy in San Francisco's General Plan
2. Analysis of how the proposed law would affect the City's Pavement to Parks program
3. Information on cities with similar laws nationwide.

1. Pertinent General Plan Policies

The Ordinance's prohibition on sitting or lying on the sidewalk is not directed against homeless persons, but rather concerns itself with conduct – sitting or lying down on the sidewalk. The findings state that persons who sit or lie on the sidewalk create a danger to pedestrians, particularly the elderly and infirm, that they discourage people from frequenting business areas, and that they contribute to the decline of commercial neighborhoods.

Similar ordinances exist in Seattle, Portland, Houston, Los Angeles, Palo Alto, Philadelphia, Reno, Tucson, and Berkeley (lying only). The leading case on the issue involved Seattle's ordinance and was decided by the Ninth Circuit Court of Appeals. The case of *Roulette v. Roulette v. City of Seattle*, 97 F.3d 300 (1996), upheld Seattle's ordinance. Some have contended that the ordinance will most directly affect the homeless. Therefore, for discussion purposes, we include the elements of the General Plan that relate to the homeless.

Summary Housing Element: The Element of the General Plan that most directly addresses issues of the City's homeless population is the Housing Element. Regarding homelessness, the Housing Element primarily promotes long-term housing for homeless individuals, and supports shelters for interim housing needs. The Housing Element does not speak to the street's physical space as a place for housing. It does, however, support street outreach efforts (Policy 10.3 below) "in a manner that gains their trust and with a goal of integrating them into the larger health care and services systems." The new Housing Element update to the General Plan proposes similar policies. Below are existing policies from the existing Housing Element.

Specific Housing Element Policies and Text (double underline added for emphasis):

POLICY 8.6 Increase the availability of units suitable for users with supportive housing needs.
General Plan Text under Policy 8.6: Shelters and transitional housing facilities are not available in sufficient numbers to meet the needs of the city's homeless population. The mentally disabled also need housing with additional support services.

**OBJECTIVE 10 REDUCE HOMELESSNESS AND THE RISK OF HOMELESSNESS IN
COORDINATION WITH RELEVANT AGENCIES AND SERVICE PROVIDERS.**

General Plan Text under Objective 10: Homelessness has grown to a scale unprecedented in the United States since the 1930s. The legacy of the 1980s that has regarded temporary shelter as an adequate response to homelessness should be overcome. Shelters are not an acceptable alternative to decent, affordable housing. While the City should not relax its commitment to offering shelter to anyone who would otherwise be forced to live in streets, parks and doorways, the vision and the overall direction should remain fixed on the goal of creating and preserving low-cost housing, jobs and job training programs, and the necessary health and social support services that enable people to live with the greatest degree of independence possible. Such services for the homeless should be provided in a multi-lingual and multicultural context where needed. It is critical that San Francisco and other cities begin to develop a regional approach to homelessness in the Bay Area. Increased state and federal support is needed for regional efforts to succeed.

POLICY 10.3 Improve coordination among emergency assistance efforts, existing shelter programs, and health care outreach services.

General Plan Text under Objective 10.3: While the emphasis should be on provision of permanent housing, the City should provide an emergency shelter program that provides temporary shelter and links homeless people to more comprehensive services. The City should also continue to support the Department of Public Health's Direct Access to Housing Program, which has helped households transition from shelters into permanent homes.

Homeless people often have difficulty gaining access to the health care system, whether it is because the multiplicity of problems they experience overwhelms health care providers, their behavior or appearance makes them unwelcome, or they themselves regard health care as low on the survival priority list. There is need for outreach services and multi-service centers that provide health care and other services to the homeless, in a manner that gains their trust and with a goal of integrating them into the larger health care and services systems.

Summary Commerce & Industry Element: This Element considers essential functions to maintaining the City's economic base. The Commerce & Industry Element sets forth objectives and policies that address the broad range of economic activities, facilities and support systems that constitute San Francisco's employment and service base. The plan serves as a comprehensive guide for both the public and private sectors when making decisions related to economic growth and change.

POLICY 4.8 Provide for the adequate security of employees and property.

General Plan Text under Objective 10.3: Vandalism, in certain of the city's industrial areas, causes large losses for firms and threatens employee security. In some instances, firms in areas where fear of crime is a particular problem have difficulties attracting a qualified work force. Concern about security of employers and employees can affect plans for

expansion and may cause relocation. It also affects employee turnover. Measures such as increased police presence and surveillance of industrial areas and improved lighting are important in providing a sense of security for employers and employees.

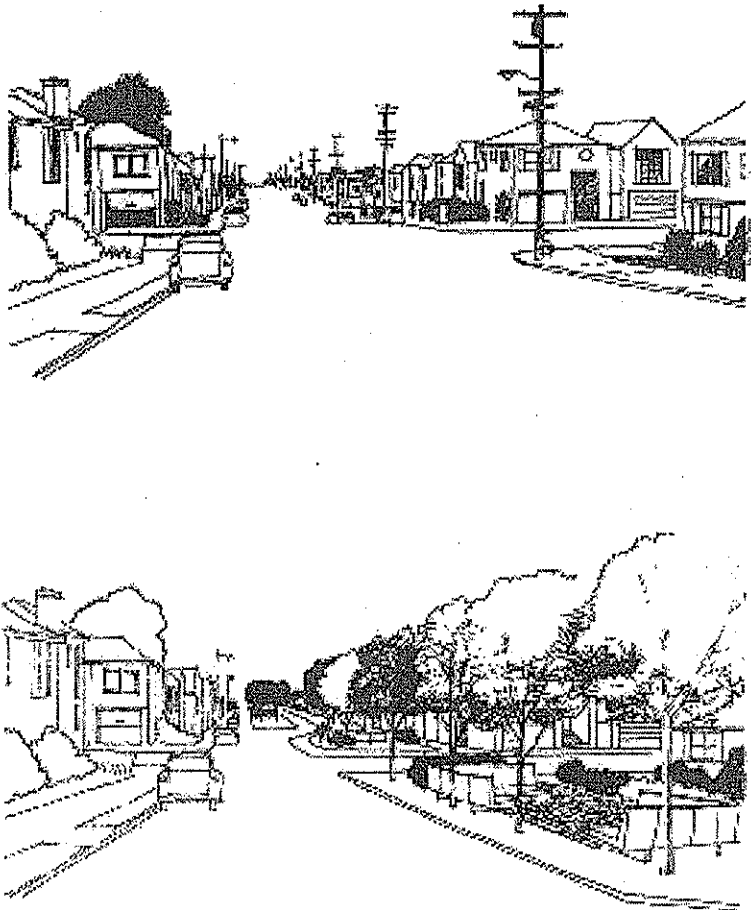
Urban Design Element Summary: This Element of the General Plan addresses the physical character and order of the city, and the relationship between people and their environment. The Urban Design Element repeatedly calls for transforming underused portions of the City's rights-of-way for open space, recreational, and social purposes and not just as a space for movement. Below are existing policies from the Urban Design Element.

Specific Urban Design Element Policies and Text (double underline added for emphasis):

Fundamental Principles for Neighborhood Environment

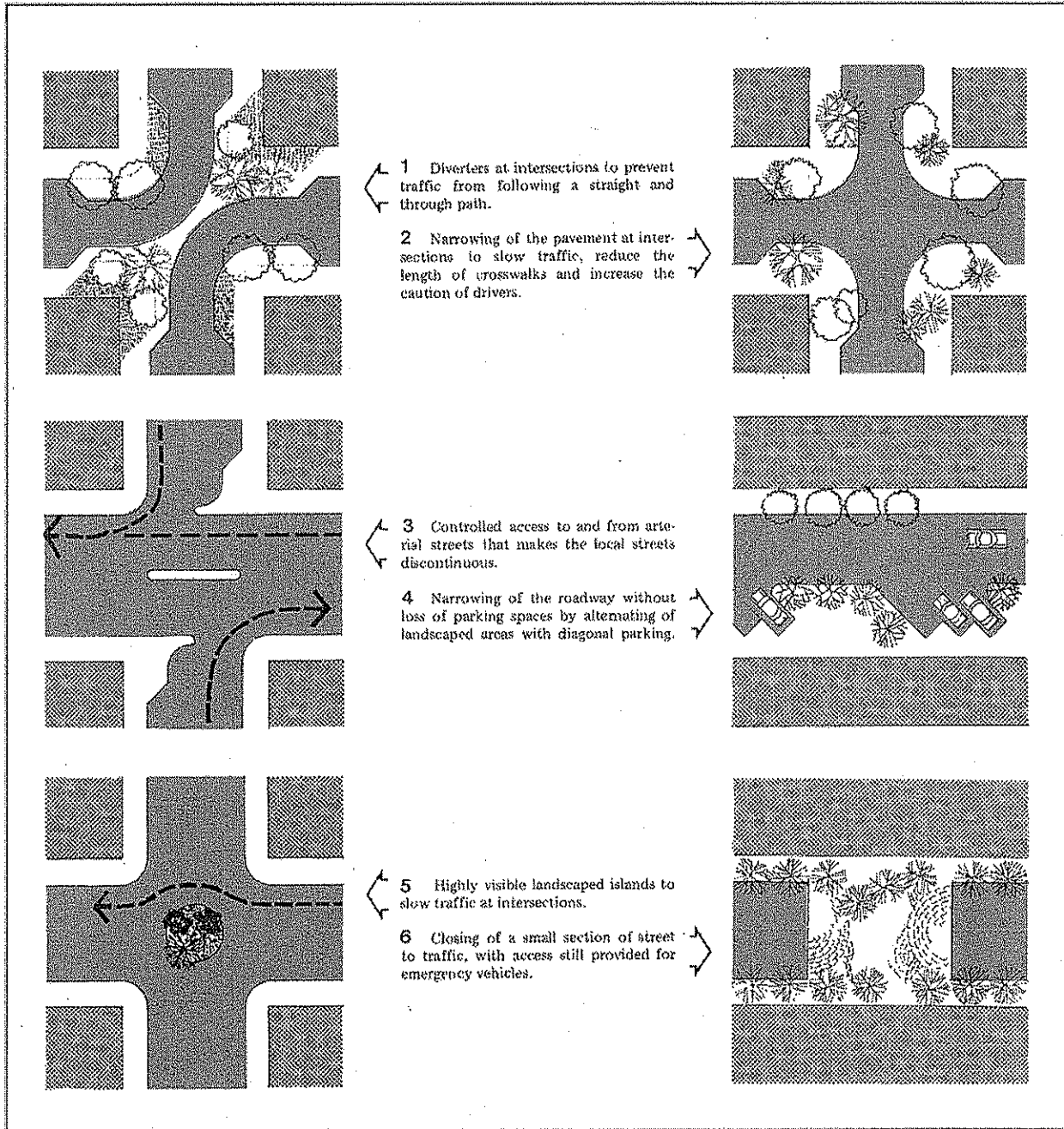
These fundamental principles and their illustrations reflect the needs and characteristics with which this Plan is concerned, and describe measurable and critical urban design relationships in the neighborhood environment.

6	<p>Wide, generous sidewalk areas provide opportunities for outdoor recreation and pedestrian amenities.</p> <p>A. <u>Portions of wide sidewalks can be turned into children's play areas, and sitting areas for adults.</u></p> <p>B. In intensive shopping areas, wide sidewalks allow free pedestrian movement, and provide room for <u>benches for resting</u> and shelters for transit patrons.</p>
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<p>8 Wide streets can be narrowed at the intersections and landscaped to <u>provide sitting areas and visual amenity.</u></p>	
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Plan for Protected Residential Areas

Illustrated below are some of the means by which the speed and volume of traffic can be reduced on residential streets. The designs shown are simple prototypes. When used in combination and adapted to specific streets, such methods can significantly discourage heavy, fast and through traffic and divert vehicles to arterial streets. In many cases, too, these designs can improve the visual quality of residential neighborhoods provide usable open space for landscaping, playgrounds and sitting areas.



POLICY 4.8 Provide convenient access to a variety of recreation opportunities.

General Plan Text under Policy 4.8: As many types of recreation space as possible should be provided in the city, in order to serve all age groups and interests. Some recreation space should be within walking distance of every dwelling, and in more densely developed areas some sitting and play space should be available in nearly every block.

The more visible the recreation space is in each neighborhood, the more it will be appreciated and used.

POLICY 4.11 Make use of street space and other unused public areas for recreation, particularly in dense neighborhoods, such as those close to downtown, where land for traditional open spaces is more difficult to assemble.

General Plan Text under Policy 4.11: Walking along neighborhood streets is the common form of recreation. The usefulness of streets for this purpose can in many cases be improved by widening sidewalks and installing simple improvements such as benches and landscaping. Such improvements can often be put in place without narrowing traffic lanes by use of parking bays with widened sidewalks at intersections and at other points unsuitable for parking.

Streets that have roadways wider than necessary, and streets that are not developed for traffic because of their steepness, provide exceptional opportunities for recreation. This is particularly applicable in new neighborhoods like Transbay and Rincon Hill, where traditional open spaces are more difficult to assemble because of higher densities and lack of available sites to acquire for parks. This excess street space can be developed with playgrounds, sitting areas, viewpoints and landscaping that make them neighborhood assets and increase the opportunities for recreation close to the residents' homes.

Recreation and Open Space Element (ROSE) Summary: This element seeks to convert underused public rights-of-way as a way of creating recreational space within neighborhoods. The proposed update to the ROSE Element would specifically call out San Francisco's street network as a part of the city's open space system (Obj 3), and would promote the use of public streets for passive recreational activities.

Specific Recreation and Open Space Element Policies and Text
(double-underline added for emphasis):

POLICY 4.2 Maximize joint use of other properties and facilities.

General Plan Text under Policy 4.2: Streets, alleys and undeveloped rights-of-way throughout San Francisco should be looked to for development of small outdoor open spaces for the elderly and for young children. These kinds of spaces are an important resource common to all high need neighborhoods. Streets and alleys should be considered as opportunities for providing useful recreation space which, with the installation of sitting areas and planting, can significantly improve a neighborhood at little cost to the City. Unused rights-of-way and other unused public land can be used as community gardens, providing recreation and amenities for the surrounding neighborhood.

Transportation Element Summary: The Transportation Element considers the sidewalk as an important element in the city's open space system (Obj 26) and has subsequent policies that encourage pedestrian serving uses on the sidewalk, etc (Policies 26.1-26.4).

Specific Transportation Element Policies and Text (double underline added for emphasis):

OBJECTIVE 26 CONSIDER THE SIDEWALK AREA AS AN IMPORTANT ELEMENT IN THE CITYWIDE OPEN SPACE SYSTEM.

POLICY 26.1 Retain streets and alleys not required for traffic, or portions thereof, for through pedestrian circulation and open space use.

POLICY 26.2 Partially or wholly close certain streets not required as traffic carriers for pedestrian use or open space.

POLICY 26.3 Encourage pedestrian serving uses on the sidewalk.

Summary of General Plan Policies and Proposed Sit/Lie Ordinance: In summary, the City's General Plan heralds the use of the public right-of-way as a part of the City's Open Space system whereas the proposed Ordinance allows sitting and lying in parks and plazas but prohibits the same relaxation on the City's sidewalks. The General Plan supports making the public rights-of-way (streets and sidewalks) more inviting for all people to use by adding benches and creating meeting spaces. Instead of making the public realm so bleak that only those with no choice use it, it should be a place of welcome. On our most successful sidewalks a critical density is achieved where positive behavior is the norm.

2. Analysis of Potential affect upon San Francisco's "Pavement to Parks" Program

Pavement to Parks Background: San Francisco's streets and public rights-of-way make up fully 25% of the city's land area, more space even than is found in all of the city's parks. Many of our streets are excessively wide and contain large zones of wasted space, especially at intersections. San Francisco's new "Pavement to Parks" projects seek to temporarily reclaim these unused swathes and quickly and



The temporary Guerrero Park uses non-traditional elements such as logs to both build a border and as informal seating.

inexpensively turn them into new public plazas and parks. During the temporary closure, the success of these plazas will be evaluated to understand what adjustments need to be made in the short term, and ultimately, whether the temporary closure should be a long term community investment. Each Pavement to Parks project is intended to be a public laboratory where the City can work with the

community to test the potential of the selected location to be permanently reclaimed as public open space. Materials and design interventions are meant to be temporary and easily moveable should design changes be desired during the trial-run. Seating (including informal seating on non-benches), landscaping, and treatment of the asphalt will be common features of all projects. One of the chief objectives of the Pavement to Parks projects is to demonstrate to the city's residents the opportunities for and the value in reclaiming public street space for civic use.

Summary of Potential Affect of Sit/Lie Ordinance on the Pavement to Parks Program:

The proposed Sit/Lie Ordinance proposes to allow sitting and lying in parks and plazas. By the time of the hearing, we will know from the Mayor's Office about the informal gathering places on the sidewalk. As discussed above, the City's policy and the Pavement to Parks program specifically seek to transform sidewalks and unused street space into areas for congregating and community building. If the proposed Sit/Lie Ordinance prohibits sitting on informal benches or relaxing on the public right of way, it would run counter to these efforts, even if it would serve to dampen these desirable activities.

It is unclear if this Ordinance would apply to the temporary plazas and informal seating created by Pavement to Parks. We understand from the Mayor's Office that the intent is to permit sitting on any surface provided for sitting by a public agency, which would include non-traditional seating such as the informal seating in the Pavement to Parks Program. The ordinance could be clarified to include this non-traditional seating. Even if the Ordinance is not applied to temporary and/or informal seating, the proposed Ordinance could have the unintended consequence of overburdening parks and plazas by exerting pressures that would concentrate homeless people in the City's open spaces.

3. Information on jurisdictions with similar laws nationwide.

Attached to this report is an excerpt from the report, "Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities". The section of the report reproduced for the Planning Commission provides data regarding quality of life laws in cities around the country. According to the attached report over 50 cities in the United States have a "Sit/Lie" law on the books.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission at the request of the Commission so that it may make recommendations to the Board of Supervisors.

RECOMMENDATION

Should the Planning Commission decide to make a recommendation regarding the Sit/Lie Ordinance, the Department has prepared a Draft Resolution recommending to Board of Supervisors *that the City maintain its streets and sidewalks as a vital component of the City's Open Space System.*

BASIS FOR RECOMMENDATION

Portland Oregon is currently in the process of re-examining use of its downtown sidewalks in light of the recent court decision on Portland's Sit/Lie Law². As part of their re-examination of sidewalk use, Portland cites, "three reasons [that] demand a thoughtful look at the issue of sidewalk management". Portland's stated reasons for reexamining use of the public domain are overlap with current issues for San Francisco including:

- Increasing media reports and community concerns about aggressive panhandling.
- Recent Court ruling that indicates cities must manage conflicting uses of the sidewalks rather than obstructive behavior if they wish to assert local control over sidewalks (Sit-lie law ruled unconstitutional: <http://oregonlive.twi.bz/a>).
- Significant budget cuts to government safety net and human service programs."

In addition to these considerations, in San Francisco we also have

- strong policy support for using sidewalks as a meeting place,
- a tradition of formal and informal embellishments to the public right-of-way as seen along Noe Street, and
- active programs such as Pavement to Parks that implement these policies.

Further, the current economic slow-down may also be increasing the ranks of homeless people nationally as recently reported by the Examiner:

"After years of reports claiming that homelessness had decreased across the country, the federal government released its quarterly homeless report that shows a 10 percent increase in the total number of families and an 8 percent increase in adults accessing shelters between June and September of 2009. The Third Quarter Report of the Department of Housing and Urban Development (HUD) acknowledges what shelter providers across the country have been claiming for years—more Americans are in need of homeless shelter services."³

Therefore, as the City struggles to address these problems it is important to remember that the public rights-of-way presents both challenges to and opportunities for community building. When turning our legislative 'eye' towards the use of the rights-of-way it is important that concerns over safety don't diminish our ability to use this resource as an important part of our open space system and as a needed compliment to established parks and plazas.

² The sit/lie ordinances have been upheld in other cities, specifically Seattle and most recently Palo Alto. Sit/lie ordinances have been upheld as constitutional, under both the federal and state constitutions, in the following cases: *Roulette v. City of Seattle*, 97 F.3d 300 (1996), and *City of Seattle v. McConahy*, 86 Wash. App. 557, 937 P.2d 1133 (1997).) Recently, a California court upheld Palo Alto's sit/lie ordinance in *People v. Victor Allen Frost*, Portland's ordinance was found to conflict with Oregon state statutory law.

³ The Examiner. "Federal Government Acknowledges that Homelessness is Increasing". <http://www.examiner.com/x-37705-LA-Homelessness-Examiner-y2010m3d18-Federal-government-acknowledges-homelessness-is-increasing>. March 18, 2010.

ENVIRONMENTAL REVIEW

The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, the Planning Department staff has received no comments in writing.

RECOMMENDATION: Maintain the City's streets and sidewalks as a vital component of the City's Open Space System
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 10-0233
- Exhibit C: Comparison of Quality of Life Laws, excerpt from the report, "Homes Not Handcuffs".



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM, MAYOR

May 6, 2010

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4694

RE: File No. 100233 [Prohibition on Sitting or Lying on City Sidewalks.]

Ordinance amending San Francisco Police Code by adding Section 168 to prohibit sitting or lying down upon a public sidewalk during specified hours and with exceptions for the disabled and others.

Small Business Commission Recommendation: **Approval with modifications**

Dear Ms. Calvillo:

On April 12, 2010, the Small Business Commission heard and recommended approval with modifications on File No. 100233.

The Commission found that sitting and lying on public sidewalks negatively impacts small businesses, particularly merchants in our busy commercial corridors, including Neighborhood Commercial Districts. For this reason, the Commission proposes modifying the ordinance to include only commercial corridors. This approach will direct attention to the areas where this ordinance is most needed. In addition to commercial corridors, the Commission also recommends applying this law to several commercial districts, including but not limited to Fisherman's Wharf, Showplace Square/Design District, and Union Square.

The Commission strongly supports the use of foot patrol beat officers to address crime in our merchant corridors. However, many alternatives to a Sit/Lie policy, including the enforcement of existing police code laws require a citizen's arrest before an officer can take action. In addition to the time commitment required to fill out paperwork and attend court if necessary, filling out a citizen's arrest can lead to retribution to the business or individuals who sign the arrest. Female business owners and employees in particular report that they have been subject to retribution when reporting crimes or asking the police for assistance while being harassed by persons sitting and lying on sidewalks. Furthermore, despite an increase in foot patrols along the busy Haight Street corridor, merchants report that individuals sitting or lying on the sidewalk have become increasingly troublesome, and are aware that they can harass and be vulgar without consequence.

Small Business merchants are subject to a number of City policies governing the maintenance of sidewalks, and the use of the sidewalk by their businesses is tightly regulated. Property owners own the sidewalks and the City requires that property owners to make this portion of their property available for public right away. For the majority of our small business, a condition of their lease is to maintain the sidewalk. Businesses and property owners must keep their sidewalks in a clean and well kept condition. Businesses are subject to citations and are fined for not keeping the sidewalk in front of their business clean and safe from any hazards. Businesses also must apply for permits for sidewalk seating, to sell merchandise outside their business and for A-frame advertising signs. Individuals sitting and lying on the sidewalks in front of these businesses need no permit, are

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SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM, MAYOR

not held accountable for their conduct and are not responsible for the blight they create. Here-in-lies a built in source of friction the City government has created.

Through public comment, the Commission heard feedback from dozens of merchants who have experienced harassment and intimidation by persons sitting and lying on public sidewalks. Groups of six or more persons sitting in front of businesses and vacant storefronts are not uncommon. The behavior exhibited by many of these persons, though often not criminal, also drives away patrons and discourages people from shopping in our vibrant neighborhoods and commercial areas. This reduces income to small business merchants, as well as revenue to the City in the form of sales taxes, payroll taxes that go to the general fund.

Because this legislation is being framed as targeting the homeless, the Small Business Commission wants to remind to the Board of Supervisors that the City is projected to receive \$128,853,000.00 in general fund revenue from sales tax and property tax in-lieu of sales tax for FY 09-10. Last year the Department of Public Health spent \$52,581,264.00 in general fund dollars on homeless related programs, 69% of its homeless service budget. The Department of Human Services Agency FY09-10 general fund budget for homeless-related service is \$62,465,119.00, 95% is allocated for to Community Based Organizations. These Community Based organizations not only rely on the general funds small business generates, many also rely on in-kind contributions for fundraisers and general support. There are many merchant areas in the City where homeless and merchant live copacetically and merchants provide support to these individuals.

The Small Business Commission requests that the Board of Supervisors give strong consideration to the fact that equally progressive Cities such as Santa Cruz, Berkeley and Seattle have enacted similar laws which, have been effective and have not been abused or resulted in gross violation of individual rights. The Small Business Commission also encourages the Public Safety Committee hold quarterly hearings on Sit/Lie prior to the 1 year report.

San Francisco's ground floor commercial business often have a high number of annual licenses and fees, are disproportionately impacted by the cost of graffiti, along with taking care of the City's public right-of-ways. We, the City ask a lot from these businesses. The Small Business Commission therefore, urges the Board of Supervisors to support these businesses, businesses which are so important to you and the vitality of your neighborhoods by voting to approve this legislation with the modification proposed by the Small Business Commission.

Sincerely,

Regina Dick-Endrizzi
Executive Director, Office of Small Business

cc. Supervisors David Chiu, Mirkairmi and Dufty
Starr Terrell
Gail Johnson, Clerk of the Public Safety Committee

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