

**PROPOSED INITIATIVE ORDINANCE TO BE SUBMITTED
BY THE MAYOR TO THE VOTERS AT THE NOVEMBER 2, 2010 ELECTION.**

[Under Charter Sections 3.100(15) and 2.113(b), this measure must be submitted to the Board of Supervisors and filed with the Department of Elections no fewer than *45 days prior* to deadline for submission of such initiatives to the Department of Elections set in Municipal Elections Code Section 300(b).]

[Civil Sidewalks.]

Ordinance amending the San Francisco Police Code by adding Section 168 to promote civil sidewalks.

NOTE: Additions are *single-underline italics Times New Roman*;
deletions are ~~*strike-through italics Times New Roman*~~.

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

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

SEC 16.8. PROMOTION OF CIVIL SIDEWALKS.

(a) Findings. San Francisco is a dense, urban environment where everyone must use the public sidewalk for travel. The people of San Francisco find that maintaining pedestrian and authorized commercial activity on public sidewalks is essential to public safety, thriving neighborhoods and a vital economy in the City. The people of the City and County of San Francisco find that sitting or lying down is not the customary use of the public sidewalks. The need to maintain pedestrian and commercial traffic is greatest during the hours of operation of businesses, shops, restaurants, and other City commercial enterprises when public sidewalks are congested, and when City residents are most likely to use their neighborhood sidewalks. Persons who sit or lie down on public sidewalks during business hours threaten the safety of pedestrians, especially the elderly, disabled, vision-impaired, and

children. Persons who sit or lie down also deter residents and visitors from patronizing local shops, restaurants and businesses, and deter people from using the sidewalks in their neighborhoods. San Franciscans seek policies that preserve the right to enjoy public space and traverse freely, while protecting the free-speech rights of individuals and groups, as well as other safe activity consistent with City permitting requirements. Business areas and neighborhoods become dangerous to pedestrian safety and economic vitality when individuals block the public sidewalks. This behavior causes a cycle of decline as residents and tourists go elsewhere to walk, meet, shop and dine, and residents become intimidated from using the public sidewalks in their own neighborhoods. Because lying down or sitting is an incompatible use of the sidewalk in residential and commercial areas, and in order to prevent displacement of violators from one district or neighborhood to another, the prohibition applies Citywide.

The prohibition against sitting or lying down on sidewalks leaves intact the individual's right to speak, protest or engage in other lawful activity on any sidewalk consistent with any City permitting requirements.

The prohibition applies only to public sidewalks. There are a number of places where the restrictions of this ordinance do not apply, including private property, beaches, plazas, public parks, public benches, and other common areas open to the public. The prohibition contains exceptions for medical emergencies, those in wheelchairs, and permitted activities, among others.

The people of San Francisco acknowledge that there are myriad reasons why one might sit or lie down on a public sidewalk. The City has offered and offers services to those engaged in sitting or lying down on the sidewalk who appear to be in need, or to those who request service assistance, but the offers are refused in many cases or people continue the conduct despite the provision of services. The City will continue to invest in services for those in need and make efforts to maintain and improve safety on public sidewalks for everyone. In order to provide an opportunity for law enforcement officers to engage people, and to offer to refer to an appropriate entity if the person asks, or if the officer has

reason to believe that such a referral would be beneficial, a peace officer may not issue a citation without first warning a person that sitting or lying down is unlawful.

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

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

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

1. Sitting or lying down on a public sidewalk due to a medical emergency;
2. Using a wheelchair, walker, or similar device as the result of a disability;
3. Operating or patronizing a commercial establishment conducted on the public sidewalk pursuant to a sidewalk use permit;
4. Participating in or attending a parade, festival, performance, rally, demonstration, meeting, or similar event conducted on the public sidewalk pursuant to and in compliance with a street use or other applicable permit;
5. Sitting on a fixed chair or bench located on the public sidewalk supplied by a public agency or by the abutting private property owner;
6. Sitting in line for goods or services unless the person or person's possessions impede the ability of pedestrians to travel along the length of the sidewalk or enter a doorway or other entrance alongside the sidewalk;
7. Who is a child seated in a stroller; or
8. Who is in an area designated as a Pavement to Parks project.

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

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

(f) **Penalties**

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

2. **Subsequent Offenses.** Any person violating any provision of this Section within 24 hours after violating and being cited for a violation of this Section shall be guilty of a misdemeanor and shall be punished 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 a period of not more than ten (10) days, or by both such fine and imprisonment. Any person violating any provision of this Section within 120 days after the date of conviction of a violation this Section shall be guilty of a misdemeanor, and shall be punished 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 a period of not more than thirty (30) days, or by both such fine and imprisonment.

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

(h) **Outreach.** The City shall maintain a neighborhood outreach plan to provide the social services needed by those who chronically sit or lie down on a public sidewalk. The plan will include,

but not be limited to, health care and social service capacity, evaluation of service delivery and identification of areas for improved service delivery.

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

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SUBMITTED.

_____ Date: _____

Mayor, City and County of San Francisco