



A
18-137
07/16/18

Legal Enforcement Options for Addressing Illegal Encampments (Supersedes DB 18-088)

Officers, while on patrol, may witness or be called by a member of the public or another City department to address an illegal encampment on City streets or sidewalks. An encampment is a “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.” (S.F. Police Code §169). This may be one tent or structure or multiple tents and structures.

Laws Governing Encampments on Streets or Sidewalks

There are four categories of laws that may be enforced to address encampments: 1) Proposition Q (“Prop Q”); 2) civil and criminal nuisance laws; 3) criminal laws prohibiting sitting, lying, and lodging; and 4) interfering with a public officer or peace officer in the performance of his or her employment or duty.

1. Prop Q

Police Code § 169 is a non-criminal prohibition on camping on City sidewalks that Department of Public Works (DPW), Department of Public Health (DPH), or Department of Homelessness and Supportive Housing (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 to support DPW, DPH, and DHS when they are enforcing Prop Q.

2. Civil and Criminal Laws – Nuisance

Public Health Nuisance – S.F. 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. DPH enforces this law and SFPD’s role is to provide support to DPH.

Public Nuisance – Cal. 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. (Penal Code § 370). The City may use this statute to address conduct that makes travel on a street or sidewalk unsafe or highly disagreeable, such as public urination, or leaving litter and personal belongings strewn about.

Obstructing streets or sidewalks - Cal. Penal Code § 370 prohibits obstructions of the free passage or use of streets. In addition Cal. Penal Code § 647c (misdemeanor) prohibits willfully or maliciously obstructing the free movement of any person on any street, sidewalk or public place. S.F. Police Code §§ 22-24 (1st offense infraction; 2nd offense misdemeanor) prohibits 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. For there to be a violation of these laws, the person or his/her belongings must be obstructing the passageway such that a person using a wheelchair would be unable to pass.

Private trespass - S.F. Police Code §§ 25 - 27 (1st offense infraction; 2nd offense misdemeanor) prohibits entering and remaining on private property if the owner, lessee, or other person in charge has given notice to leave or keep away. Notice may be oral or written, posted in a conspicuous place. 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.

3. Criminal Laws Prohibiting Sitting, Lying and Lodging

The City's "Sit/Lie" law, Police Code § 168, may apply to 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 DGO 6.11 – Obstruction of Streets and Sidewalks).

An encampment may violate Section 647(e) of the Penal Code, which prohibits lodging in a place where one has no right to be. Officers are reminded that 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.*" A reasonable interpretation of "lodging" is that it means establishing or settling into a place. Erecting a tent and sleeping in it is certainly lodging. Unrolling a sleeping bag, unpacking a backpack, and laying out gear, or otherwise indicating an intention to settle down in a specific location for an indefinite period of time (even if only for a day) may also constitute lodging. A person does not need to be observed inside of his/her tent or structure in order for there to be a violation of Section 647(e), so long as there are indicia of the person's intent to settle into that place, such as belongings, a sleeping bag, or other gear. This offense is a misdemeanor.

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

- A. Enforcement of this section can occur based on a complaint from a member of the community. A complaint may come from an individual regarding a specific location or generally from a member of the community regarding an on-going lodging situation. However, a community member's complaint is not needed if the conduct is observed by an officer.
- B. Officers may enforce this section between 0600 hours and 0100 hours (i.e. officers shall not cite or arrest for this violation between 0100 hours and 0600 hours).

- C. Officers must warn the individual and give the individual a reasonable opportunity to move prior to issuing the citation or making an arrest.
- D. Officers must identify and document the specific elements of "lodging" in the police report.

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

Section 148(a) of the Penal Code prohibits any person from willfully resisting, delaying, or obstructing DPW, DPH, and DSHS 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 and the individual refuses to vacate an encampment so that DPW may remove it.

Offers of Shelter

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

When enforcing criminal laws by ordering vacation of an *encampment consisting of multiple tents (more than 1 tent)*, SFPD should offer shelter to all of the residents before ordering that they decamp or risk criminal citation.

Officers who seek to *cite or arrest an individual camper* for violation of the criminal laws that prohibit public nuisances or the obstruction of sidewalks or for violation of Penal Code § 647(e), officers are not required to offer shelter prior to citation or arrest.

Officers Encountering Encampments

Officers encountering illegal encampments should:

1. Determine if anyone occupying the encampment is in need of medical attention.
2. Contact the Homeless Outreach Team (H.O.T.) at () and advise them of the illegal encampment and the number of homeless individuals. (Refer to DB 17-244)
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 17-065).

Enforcement Options Available to Officers

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 member 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. The City's enforcement of Section 647(e) (prohibiting illegal lodging) is complaint-based. Therefore, in assessing whether an individual has abated a violation of Section 647(e) by moving elsewhere, the officer must determine whether the camper's response addresses the condition animating the complaint or complaints.

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. Request the Department of Public Works to "bag and tag" the encampment. (Refer to DB 18-089 Bag and Tag).
3. Prepare an incident report that articulates the factual circumstances surrounding the encampment and attach the photograph of the encampment.

Reference:

DGO 10.11 Body Worn Cameras


WILLIAM SCOTT
Chief of Police

Per DB 17-080, sworn members are required to electronically acknowledge receipt and review of this Department Bulletin in HRMS.