



DEPARTMENT NOTICE

23-166

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Enforcement of Laws and Ordinances for Individuals Experiencing Homelessness Sitting, Lying, or Sleeping on Public Property (Supersedes DN 23-007)

Background

On December 23, 2022, the United States District Court, Northern District of California, partially granted a preliminary injunction ("injunction") regarding the City's enforcement of some City ordinances and other laws pertaining to homeless encampments, (Case No. 22-cv-05502-DMR).

The injunction remains in effect but has been further clarified through the litigation. The goal of this Department Notice is to provide guidance to members regarding the enforcement of City ordinances and other laws for homeless individuals sitting, lying, or sleeping on public property, subject to any future legal developments while this evolving issue navigates the court system.

Definitions

Threat of Enforcement: any statement of intention regarding the possibility of enforcement of the laws identified in the injunction; this should not rise to the level of a criminal threat under California Penal Code section 422.

Involuntarily Homeless: an individual who (1) does not have access to shelter that is specific to them, considering any special needs; or (2) the City has not made a specific offer of shelter to them.

Voluntarily Homeless: an individual who has (1) declined a specific offer of available shelter to them, when that specific offer remains open at the time of enforcement; (2) otherwise has access to such shelter; or (3) the means to obtain it.

Policy

Under the injunction, members **may not** enforce or threaten to enforce, and also may not rely on California Penal Code Section 148(a) to enforce or threaten to enforce, these five laws to prohibit **involuntarily homeless** individuals from sitting, lying, or sleeping on public property:

- Cal. Penal Code§ 647(e) (public lodging)
- Cal. Penal Code§ 370 (public nuisance)
- Cal. Penal Code§ 372 (public nuisance)
- San Francisco Police Code §168 (sit/lie)
- San Francisco Police Code § 169 (sidewalk encampments)

Members are reminded to activate their Body Worn Cameras (BWC) in accordance with DGO 10.11.

What Can Members Enforce Against Homeless Individuals?

Members may enforce all other applicable criminal laws, as appropriate, regardless of whether the individual is voluntarily or involuntarily homeless.

Under the injunction, members may still ask involuntarily homeless individuals to relocate voluntarily, so long as the City's request is not accompanied with a threat of enforcement of any of the five laws listed above. If members order involuntarily homeless individuals to move, that request must have a legal basis besides those laws listed above.

Members are reminded that they may enforce or threaten to enforce the following laws regardless of whether the individual is involuntarily or voluntarily homeless:

- Cal. Penal Code § 647c (prohibiting "willfully and *maliciously obstruct[ing]* the free movement of any person on any street, sidewalk, or other public place or on or in any place open to the public";)
- S.F. Police Code §§ 22-24 (prohibiting "willfully and *substantially obstruct[ing]* the free passage of any person or persons on any street, sidewalk, passageway or other public place")
- S.F. Police Code §§ 25-27 (prohibiting "willfully remain[ing] upon any private property or business premises after being notified by the owner, lessee, or other person in charge thereof to leave" or entering upon private property or business premises "without permission, expressed or implied, of the owner, lessee, or other person in charge of private property or business premises ... after having been notified by the owner, lessee, or other person in charge thereof to keep off or to keep away therefrom").

The injunction does not restrict enforcement for conduct other than sitting, lying, or sleeping. For example, if an individual is obstructing access to a public facility or not allowing a 48" wide path of travel on a public sidewalk, the injunction still allows members to require the individual remove the obstruction. Members should avoid requiring the individual to relocate any farther than is necessary and appropriate to remove the obstruction.

Members can also continue to enforce nuisance laws, as long as they are separate and distinct from sitting, lying, or sleeping on public property, such as when there is a need to clean accumulated trash and debris around an encampment that creates a health hazard. If the sole basis for asking individuals to move is for temporary cleaning of the public right of way, members should make it clear ahead of time to those individuals that once the cleaning is completed they may return to the same location. Members may ensure the safety of other City agencies while they engage in their official duties, such as street cleaning and rely on Cal. Penal Code 148(a) for enforcement.

The injunction does not limit members' enforcement of laws against people blocking or trespassing onto private property. If members enforce encampments blocking private entrances or fire routes/escapes, depending upon the situation (i.e. unoccupied building), members may consider obtaining a signed citizen's arrest form (SFPD 80).

If members take enforcement action against **involuntarily homeless** individuals for reasons other than sitting, lying, or sleeping on public property, members shall document the reasons in the incident report.

The below only applies to HSOC or “70 Unit” Homeless Outreach Officer Assignments.

Members **may** enforce or threaten to enforce the five enjoined laws listed above against an individual who is **voluntarily homeless**, subject to the enforcement procedure below.

Determining if an individual is voluntarily or involuntarily homeless:

Members **shall** assume all individuals are involuntarily homeless until the member has confirmation that the individual (1) declined a specific offer of available shelter and that offer remains open to the individual at the time of enforcement; (2) otherwise has access to such shelter; or (3) the means to obtain it.

- All offers of shelter shall come from Healthy Streets Operations Center Homeless Outreach workers or in coordination with them. [REDACTED]
[REDACTED] If during the call it is determined that the individual already has shelter, the member does not have to offer shelter and the individual can be deemed voluntarily homeless.
- If the member confirms a shelter space is available for the individual, the member should allow the individual a reasonable amount of time (at least 15 minutes) to accept or reject the offer of shelter, considering any special needs the individuals may have.
- If an individual accepts the shelter, members will refer the individual and provide the address and direction to the shelter. The shelter will allow the individual to bring the equivalent of two large trash bags and a backpack (or personal item in similar size) of belongings.
- The individual accepting shelter may ask members to request the Department of Public Works (DPW) to respond to the scene and bag and tag any remaining property. If DPW bag and tags any property, DPW will provide the individual a property receipt in duplicate.
- Members may request DPW to the scene to assist with cleanup of any remaining items.
- The member may treat that individual as voluntarily homeless if the individual fails to accept the offer in the allotted time frame.
- If the individual discloses to a member that the individual has shelter space or otherwise has access to shelter, the member may accept that assertion and deem the person as voluntarily homeless.

Enforcement Procedure

Prior to taking any enforcement action, members shall contact the lieutenant of HSOC and obtain approval.

If the member provides an admonishment, or issues an infraction citation the member should:

1. Document the admonishment or infraction citation in the CAD or
2. Prepare an incident report regarding the admonishment or citation and document how the individual was determined to be voluntarily homeless and attach photographs of the encampment.


If the member issues a misdemeanor citation or makes a custodial arrest, the member shall:

1. Take photographs of the encampment.
2. If the individual is cited for 647(e) (illegal lodging), members shall request DPW to respond and seize the tent as evidence. DPW will provide the individual a property receipt in duplicate.
3. If the individual is placed under custodial arrest, members shall request DPW to bag and tag the encampment. DPW will provide the individual a property receipt in duplicate. (Refer to DN 20-167 Bag and Tag and DGO 6.15 Property Processing).
4. Prepare an incident report that articulates how the individual was determined to be voluntarily homeless, the factual circumstances surrounding the enforcement action, the DEM/HSOC Dispatch Supervisor's name, and confirmation of approval from the HSOC lieutenant.
5. Document in the incident report any enforcement or threat of enforcement of the five enjoined laws.

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

Officers may only enforce Section 647(e) if the individual has erected a tent, tarp, or other structure. Officers must identify and document the specific elements of "lodging" in the incident report.

For contact information and additional resources, members should refer to the Homeless Resources Guide (SFPD 507).


WILLIAM SCOTT
Chief of Police

Per DN 23-152, all sworn & non-sworn members shall electronically acknowledge this department document in PowerDMS within (30) thirty calendar days of issuance. Members whose duties are relevant to this document shall be held responsible for compliance. Any questions regarding this policy should be sent to sfpd.writtendirectives@sfgov.org who will provide additional information.