

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: BART Police Department, Chief of Police DATE: February 22, 2017

FROM: Independent Police Auditor

SUBJECT: **Policy Recommendation – Aggressive Panhandling (BPD Policy #453)**

Chapter 1-04(G) of the Citizen Oversight Model (Model) states that the Office of the Independent Police Auditor (OIPA) shall develop recommendations concerning General Orders and Directives, procedures, practices, and training of the BART Police Department (BPD), with the goal of improving professionalism, safety, effectiveness, and accountability. In accordance with this section of the Model, OIPA has developed a recommendation with regard to *BPD Policy 453 – Aggressive Panhandling*.

California Penal Code (PC) section 647(c) provides that anyone who accosts others in any public place for the purpose of begging or soliciting alms is guilty of disorderly conduct, a misdemeanor. Notably, it is the required element of “accosting” that elevates the solicitation of alms from Constitutionally protected activity to criminal conduct. Existing BPD policy includes language intended to clarify the meaning of “accosting” to provide guidance to BPD officers in the enforcement of PC 647(c), but the examples provided are in some cases ambiguous, unclear, or confusing which creates the potential for negative results. Such negative results include, but are not limited to, the detention and citation of individuals on the basis of mere panhandling, which is a protected activity under the First Amendment to the US Constitution.

In an effort to provide a recommendation for policy revision that would eliminate unnecessarily ambiguous examples and misstatements of the elements required for violation of the Penal Code section, OIPA consulted with District Attorneys from San Francisco, Alameda, San Mateo, Santa Clara, and Contra Costa Counties, all of whom concurred that the existing policy included examples of conduct that could not reasonably be described as elements of the crime of aggressive panhandling.

Importantly, the recommended policy revision includes a requirement for associated training, which will provide a venue for clarification of the legal requirements for enforcement of PC 647(c), as well as an opportunity for officers to learn about and discuss the difficulties and nuances of appropriately enforcing the law while protecting BART ridership from harassment, intimidation, and threats.

OIPA also consulted with a number of advocates and scholars including the San Francisco-based Coalition on Homelessness, and integrated suggestions regarding the elimination of existing policy language that was overly subjective, that limited personal expression, or was unnecessarily judgmental with regard to the very activity of panhandling as a means of support.

Opportunities for review and comment were also provided to the BART Police Citizen Review Board, BPD command staff, the BART Police Officer's Association, and the BART Police Manager's Association. Suggestions for revisions submitted by the BPD Internal Affairs Division were also received by OIPA and integrated into the final recommendation.

On February 13, 2017 the BPCRБ voted unanimously to accept the attached version of the policy. The proposed revisions are hereby being forwarded to you for further action.



Russell G. Bloom

Aggressive Panhandling

453.1 PURPOSE AND SCOPE

The purpose of this policy is to regulate aggressive panhandling within the San Francisco Bay Area Rapid Transit District by protecting citizens from harassment without infringing upon the Constitutional protection of free speech under the First Amendment.

453.2 POLICY

The practice of aggressive panhandling has been identified as a significant social and safety concern. Departmental policies regulating aggressive panhandling are a necessary component of a coordinated approach to ameliorate the negative impact of aggressive panhandling activities on BART District property.

Panhandling for gratuitous donations is protected under the U.S. Constitution's First Amendment. However, aggressive panhandling is illegal under California law.

California Penal Code 647(c) provides that anyone who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms is guilty of disorderly conduct, a misdemeanor.

Merely requesting and/or receiving a gratuitous (free) donation is not a violation of law and cannot form the basis for a detention.

453.3 DEFINITIONS

Panhandling - The personal, spoken, written or gestural direct solicitation by a person of gratuitous donations of money, food or goods of any kind from any member of the public.

Accosting - Approaching and/or stopping somebody in order to speak to that person in an unreasonably insistent, threatening, intimidating, or intrusive manner.

Aggressive Panhandling - The solicitation of donations in an unreasonably insistent, threatening, intimidating, or intrusive manner.

453.4 EXAMPLES OF AGGRESSIVE PANHANDLING

Examples of aggressive panhandling include:

- The use of overt or veiled threats in an effort to solicit.
- The invasion of personal space by cornering, blocking, or following others in an effort to solicit.
- Touching others in an effort to solicit.
- Reaching or leaning into a car window to solicit
- Intimidating or obstructing vehicular traffic to solicit.

453.5 PROCEDURES

Although an officer may attempt a consensual contact in circumstances when reasonable suspicion of unlawful activity has not yet been established, an officer cannot detain a lawful panhandler unless and until the officer has established reasonable suspicion that an individual is being or has been accosted.

When encountering a person suspected of aggressive panhandling where the continued freedom of the individual would not result in a breach of the peace or a more serious crime, police officers are encouraged to utilize referrals to other appropriate social service providers in lieu of physical arrest. The discretion to make a physical arrest of a person suspected of aggressive panhandling shall be the responsibility of the individual officer.

When feasible, an officer shall collect evidence of aggressive panhandling prior to detaining or citing a person in connection with a violation of California Penal Code 647(c). Such evidence may be obtained by way of:

- Personal observation of aggressive behavior by an officer.
- A statement made to an officer by an individual claiming to have been accosted in any manner including but not limited to the examples provided herein.
- Witness statements made to an officer or dispatcher
- Video of aggressive conduct or accosting recorded using body-worn mobile video recorders, station video cameras, cell phone cameras, or any other video recording device.
- Audio recordings.

Note: An assertion by an officer that an individual was yelling or screaming in an effort to solicit should be supported by audio/video evidence when feasible, for evidentiary purposes.

Any evidence collected by an officer that generates reasonable suspicion or probable cause to cite or detain an individual for violation of California Penal Code 647(c) shall be documented and included in the narrative section of the officer's police report.

Officers shall be able to articulate the means by which reasonable suspicion or probable cause was developed prior to contacting any individual suspected of aggressive panhandling.

Officers shall rely on the elements listed in California Penal Code Section 647(c) as the basis for establishing reasonable suspicion of aggressive panhandling. Officers should be cautious in utilizing the elements listed in any local law or Municipal Code when assessing and establishing the existence of reasonable suspicion or probable cause to cite or detain because these laws may not apply to circumstances within the BART system and/or may not conform to the parameters set forth in this policy.

453.5.1 PERSONAL PROPERTY

The personal property of all people shall be respected. In no event shall any officer destroy any personal property known to belong to a suspected aggressive panhandler, or readily recognizable as property of a suspected aggressive panhandler unless it is contaminated or otherwise poses a health hazard to an officer or to members of the public.

All property of any arrestee should be turned over to detention personnel at the jail, stored for

safekeeping or released per the arrestee's request to a third party. An arrestee's property may be handled by utilizing any combination of the previously listed options. In the event the jail will not accept an arrestee's property, a property receipt should be issued by the arresting officer for the property that will be stored for safekeeping.

When possible, the officer should inform an arrestee of the procedure for retrieving stored property. The arrestee should call (510) 464-7037 to set a pick-up appointment with the evidence clerk. They will also need to bring their property receipt and identification to have the property released. All property kept for safe keeping will be destroyed after 60 days.

The officer shall document in the narrative of his or her report the disposition of the arrestee's property.

453.5.2 REPORTING

Officers having interactions and or contacts with persons suspected of aggressive panhandling as a result of self-initiated contact, a citizen complaint, or a BART employee complaint shall contact dispatch with the disposition of the incident.

453.5.3 TRAINING

Training on enforcement of California Penal Code section 647(c) and review of this Policy shall be conducted as directed by the Personnel and Training Section.

OIPA DRAFT Policy Recommendation for BPD Policy 453 - Aggressive Panhandling