

# Review of Current Laws Regulating Public Safety on San Francisco Sidewalks

A report by:

Lawyers' Committee for Civil Rights  
of the San Francisco Bay Area

and

O'Melveny & Myers LLP

LAWYERS' COMMITTEE FOR  
**CIVIL RIGHTS**  
OF THE SAN FRANCISCO BAY AREA

  
O'MELVENY & MYERS LLP

## MEMORANDUM

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**TO:** Laura Hurtado, Lawyers' Committee for Civil Rights  
**FROM:** Lillian Marshall-Bass and Christina Brown, O'Melveny & Myers LLP  
**CC:** Randall Edwards, O'Melveny & Myers LLP  
**DATE:** May 7, 2010  
**SUBJECT:** **Review of Current Laws Regulating Public Safety on San Francisco's Sidewalks**

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In recent weeks, San Franciscans have heard a great deal about reports of unsafe and intimidating behavior on city sidewalks. Some residents have expressed feeling intimidated when sidewalks are obstructed by people, their pets, and their belongings.<sup>1</sup> Others worry that city businesses will suffer because of panhandlers they describe as "aggressive thugs."<sup>2</sup>

In this report, we review existing local and state laws that regulate conduct reportedly occurring on sidewalks and in public areas, such as aggressive solicitation, obstructing passage of pedestrians on the city's sidewalks, and loitering in certain areas. We analyze the scope and elements of such laws, as well as San Francisco Police Department policies relating to their enforcement. As this report makes clear, these laws can be enforced by police officers without requiring citizens to complain of violations prior to their enforcement. Attached hereto is an appendix containing the full text of each provision discussed.

### **I. Summary of Current Laws**

#### **A. Aggressive Panhandling: Police Code Section 120-2 & Penal Code Section 647(c)**

Section 647(c) of the California Penal Code makes it a misdemeanor to "accost[] other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms."<sup>3</sup> The corresponding local law, San Francisco Municipal Police Code section 120-2, bans aggressive solicitation in all public places, and bans all solicitation on some parts of the city's sidewalks, including near ATMs, check cashing businesses, and freeway on- and off-

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<sup>1</sup> Heather Knight, *Mayor to Introduce 2 Plans for Sit/Lie Law to Clear Sidewalks*, S.F. Chronicle, Mar. 2, 2010, at A1; Rebecca Rowe, *Meet the Proponents of Sit/Lie*, S.F. Bay Guardian, Apr. 29, 2010, available at <http://www.sfbg.com/politics/2010/04/29/meet-proponents-sit-lie>.

<sup>2</sup> Skyler Swezy, *Sit-Lie Gets Skeptical Reception*, S.F. Bay Guardian, Mar. 12, 2010, available at <http://www.sfbg.com/politics/2010/03/12/sit-lie-gets-skeptical-reception>.

<sup>3</sup> See *People v. Zimmerman*, 19 Cal. Rptr. 2d 486, 491 (Cal. App. Dep't Super. Ct. 1993).

ramps, as well as certain other public places.<sup>4</sup> Aggressive solicitation is defined as asking for money or anything of value coupled with any of the following:

- approaching, speaking to, or following a person in a manner likely to cause fear of bodily harm or property damage, or otherwise likely to intimidate a person into giving money;
- continuing to solicit after receiving a negative response;
- intentionally touching another person without consent;
- blocking or interfering with the free passage of a pedestrian or vehicle;
- using violent or threatening gestures; or
- following the person being solicited with the intent to ask for money.<sup>5</sup>

Law enforcement officers must warn individuals that they are in violation of the law prior to citing or arresting them and provide an opportunity to comply with the law.<sup>6</sup> The law also requires the Director of Public Health to establish a diversion program to identify candidates for substance abuse treatment and mental health services.<sup>7</sup> Violations can be charged as misdemeanors or infractions. For an infraction conviction, the penalty may be a fine of up to \$50 or attendance at a diversion program approved by the City’s Public Health Commission to identify candidates for substance abuse treatment and mental health services. For a misdemeanor conviction, the penalty may be a fine of \$50–100 and/or attendance at a diversion program like that just described.<sup>8</sup> The law contains no requirement that police officers wait to receive a citizen’s complaint before enforcing section 120-2. Likewise, we have found no case law or other legal authority requiring such a complaint.

#### **B. Obstruction of Sidewalks: Police Code Section 22 & Penal Code Section 647c**

California Penal Code section 647c makes it a misdemeanor to “willfully and maliciously obstruct[] the free movement of any person on any street, sidewalk, or other public place.” In substantially similar language, San Francisco Municipal Police Code section 22 provides for a \$50–500 fine for any person who “willfully and substantially obstruct[s] the free passage of any person or persons on any street, sidewalk . . . or other public place.” A violation of section 22 is

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<sup>4</sup> S.F. Municipal Police Code § 120-2(d).

<sup>5</sup> *Id.* at § 120-2(c).

<sup>6</sup> *Id.* at § 120-2(d).

<sup>7</sup> *Id.* at § 120-2(e)–(f).

<sup>8</sup> *Id.* at § 120-2(e). A person convicted of three or more violations of section 120-2 in a twelve-month period is guilty of a misdemeanor. The penalty for such subsequent violations can be a fine of \$300–500, and/or referral to a diversion program like that described above, and/or community service. Alternatively, the penalty for such subsequent violations can be imprisonment in the county jail for up to three months. *Id.*

an infraction; sections 23 and 24 provide that a subsequent violation may be punished as a misdemeanor.

San Francisco Police Department General Order 6.11 guides law enforcement officers in their interpretation and enforcement of these two code sections. General Order 6.11 instructs that the “obstruction” the law prohibits is measured by the impairment of a pedestrian’s free movement on the sidewalk. That is, the sidewalk itself cannot be obstructed; only a person on the sidewalk can be obstructed.<sup>9</sup> An obstruction is considered substantial when it is material and not just a petty annoyance or slight inconvenience.<sup>10</sup>

A person can create a substantial obstruction while standing, sitting, lying down, or otherwise, as long as the person acts willfully (under section 22) or willfully and maliciously (under section 647c). Under the Penal Code, an act is done willfully if it is done intentionally, even without an intent to break the law; an act is done with malice if the defendant acts with intent to annoy or injure, or with intent to do an act known to be wrongful.<sup>11</sup> General Order 6.11 establishes similar definitions of “willfulness” and “malice” with respect to sections 22 and 647c.<sup>12</sup> Even a defendant’s “good intentions” or “laudable motives” do not negate a finding of willfulness or malice if the defendant intentionally obstructs a street or sidewalk with a desire to annoy others or with knowledge that the act is wrongful.<sup>13</sup> Malice can be shown when, among other things, a defendant continues the obstruction after a request to stop or a warning that doing so violates the law, or when the defendant inserts him or herself in the normal path of a person’s approach.<sup>14</sup>

Neither section 22 nor section 647c discuss citizen complaints regarding obstruction of sidewalks or require that a person complain of such conduct before a police officer may issue citations to violators. Similarly, nothing in the relevant case law, the San Francisco Charter, or the General Orders of the San Francisco Police Department indicates that law enforcement must

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<sup>9</sup> S.F. Police Department General Order 6.11 § II.E.3 (1994) [hereinafter General Order 6.11].

<sup>10</sup> *Id.* at § II.E.4.

<sup>11</sup> Cal. Penal Code § 7.

<sup>12</sup> General Order 6.11 § II.E.1–2.

<sup>13</sup> *See People v. Man*, 114 Cal. Rptr. 237, 238–39 (Cal. App. Dep’t Super. Ct. 1974) (applying Penal Code section 647c and finding that despite defendants’ good intentions to stage a peaceful protest, they nevertheless acted with “malice” because they knew that their actions violated the law); *People v. Weber*, 208 Cal. Rptr. 719, 723 (Cal. App. Dep’t Super. Ct. 1984) (same).

<sup>14</sup> General Order 6.11 § II.E.2; *see also Man*, 114 Cal. Rptr. at 239. But mere presence on a sidewalk does not constitute an illegal obstruction within the meaning of the laws. General Order 6.11 § II.E.3.

wait to enforce these code sections until they have received a citizen complaint of illegal conduct.

### **C. Obstruction with Belongings: Police Code Section 63**

Although perhaps not as broadly applicable as other laws discussed herein, another law that bears on public safety on sidewalks is San Francisco Municipal Police Code section 63. Section 63 prohibits individuals or corporations from allowing their belongings or any other objects to obstruct passage of streets or sidewalks in front of premises they own or control.<sup>15</sup> Section 64 articulates a series of exceptions for certain structures erected or approved by the Director of Public Works, trees planted in the sidewalk, receipt and delivery of merchandise, and armed forces recruiting.<sup>16</sup> While the laws discussed in Part B of this report prohibit individuals from obstructing passage on streets and sidewalks with their own physical presence, section 63 focuses on obstruction of sidewalks with objects or possessions. But like the laws discussed above, section 63 also deters conditions that make it unsafe or difficult for individuals to enjoy free passage on city sidewalks, conditions that might deter residents and visitors from using the sidewalks. And as with the laws discussed above, there is no indication in sections 63 and 64, or anywhere else, that police cannot enforce these provisions without first receiving a citizen's complaint.

In addition to the criminal enforcement mechanisms generally associated with infractions under the Municipal Code, section 63 also makes available an alternative administrative enforcement procedure that is intended not to be punitive, but to “compensate the public for the injury and damage caused by the prohibited conduct.”<sup>17</sup> This administrative procedure empowers a variety of non-law enforcement city employees to issue administrative citations for violations of certain code sections, including section 63, assessing penalties of up to \$300 per violation.<sup>18</sup> If these administrative penalties go unpaid, the city can bring a civil action to enforce the penalty.<sup>19</sup> Although this alternative enforcement mechanism is not a criminal proceeding, the penalties it carries are not insignificant. An unpaid fine can incur late payment

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<sup>15</sup> S.F. Municipal Police Code § 63. Section 63 was amended in 1987 to remove the requirement that an obstruction be present “for more than one hour per day” in order to violate the law. Ordinance No. 169-87 (S.F. 1987). Under the current law, shorter-lived obstructions are also prohibited.

<sup>16</sup> *Id.* at § 64(a)–(i).

<sup>17</sup> *Id.* at § 39-1(b)(2).

<sup>18</sup> *Id.* at §§ 38, 39-1, 63.

<sup>19</sup> *Id.* at § 39-1(e)(3).

and interest charges, and the violator can be required to pay the costs incurred by the city in enforcing the administrative penalty.<sup>20</sup>

#### **D. Other Code Sections**

In addition to the code sections just discussed, other local laws also target specific acts reportedly occurring in particular neighborhoods. Loitering is prohibited in certain locations where it has been found to most imperil public safety and facilitate crime, including outside nightclubs and near automatic public toilets.<sup>21</sup> Another law prohibits “aggressive pursuit,” defined as “willful, malicious or repeated following or harassment of another person.”<sup>22</sup> This section has been used to target stalking, but its plain language also encompasses the kind of harassment pedestrians might face on city streets and sidewalks. Additionally, whenever a crowd obstructs free passage of any street or sidewalk, the crowd must disperse when a police officer so orders.<sup>23</sup>

## **II. Enforcement and Complaints**

Examination of the code provisions and other authority reveals that San Francisco police officers can enforce the laws set forth above without the need for a citizen complaint. We understand that some have expressed concern that the Police Department’s General Orders require a citizen complaint before officers may issue citations under these laws. Yet we have found nothing in the code sections themselves, in relevant case law, or in the San Francisco Charter or the Police Department General Orders that indicates that law enforcement must wait to enforce these code sections until they have received a citizen complaint of illegal conduct.

On the contrary, General Order 6.11 notes that police officers issuing citations for sidewalk obstruction violations should attempt to identify, but must at least describe, those persons who were obstructed by the defendant.<sup>24</sup> This implies that it is enough that a police officer simply observe the obstruction before citing the defendant; the police officer is not

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<sup>20</sup> *Id.*

<sup>21</sup> S.F. Municipal Police Code §§ 121 (prohibiting loitering for more than three minutes within ten feet of a nightclub between 9pm and 3am, with exceptions for certain lawful activities), 124.2 (prohibiting loitering near automatic public toilets). The findings sections associated with each provision indicate that these laws aim to reduce crime and ensure public safety and welfare.

<sup>22</sup> *Id.* at § 122.

<sup>23</sup> *Id.* at § 157 (with exception for public meetings).

<sup>24</sup> General Order 6.11 § II.E.3. This relates to the nature of “obstruction” under Police Code section 22 and Penal Code section 647c: only persons, and not the sidewalk itself, can be obstructed. Thus, officers must describe how persons were obstructed by the defendant’s conduct.

required to have any contact with the person obstructed, let alone receive a complaint of obstructing behavior.

Likewise, General Order 5.03, which supplies general guidelines for detaining persons in any investigation, merely states that police officers must have probable cause or reasonable suspicion of criminal activity before detaining individuals, ordering them to move on, or requesting identification.<sup>25</sup> It does not state that such suspicion must come from a citizen complaint rather than from the officer’s own observation. Conversely, the order states that general complaints from citizens *do not* justify detentions in the absence of reasonable suspicion on the part of the officer that a person’s behavior is related to criminal activity.<sup>26</sup> Even if Police Department policy did counsel in favor of requiring complaints prior to enforcement of laws regulating conduct on sidewalks—and there is nothing to indicate that it does—the Police Commission would have the power in any case to change such a policy.<sup>27</sup>

\* \* \* \*

As set forth above, current local and state laws provide the San Francisco Police Department with a framework for deterring specific behaviors reportedly occurring on public sidewalks and in public areas.

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<sup>25</sup> S.F. Police Department General Order 5.03 §§ I.A–E (2003).

<sup>26</sup> *Id.* at § I.A–B.

<sup>27</sup> S.F. Police Department General Order 1.01 § A (“The Commission has the authority to . . . set policy for the Police Department.”); S.F. City Charter § 4.102(1) (Each Commission shall “set policies consistent with the overall objectives of the City and County.”).

## APPENDIX

<b>Description</b>	<b>Tab No.</b>
San Francisco Municipal Police Code Section 120-2	1
California Penal Code Section 647(c)	2
San Francisco Municipal Police Code Section 22	3
San Francisco Municipal Police Code Section 23	4
San Francisco Municipal Police Code Section 24	5
California Penal Code Section 647c	6
California Penal Code Section 7	7
San Francisco Municipal Police Code Section 63	8
San Francisco Municipal Police Code Section 64	9
San Francisco Municipal Police Code Section 121	10
San Francisco Municipal Police Code Section 124.2	11
San Francisco Municipal Police Code Section 122	12
San Francisco Municipal Police Code Section 157	13
San Francisco Police Department General Order 6.11	14
San Francisco Police Department General Order 5.03	15
San Francisco Police Department General Order 1.01	16
San Francisco Charter Section 4.102	17

**TAB 1**

## SAN FRANCISCO MUNICIPAL POLICE CODE

### **SEC. 120-2. - AGGRESSIVE SOLICITATION BAN/ SUBSTANCE ABUSE AND MENTAL HEALTH DIVERSION PROGRAM.**

(a) **Findings.** The people of San Francisco find that the problems of aggressive and improper solicitation are among the most difficult and vexing faced by the City and that prior approaches mostly have failed.

The people of San Francisco find that aggressive solicitation for money in public and private places threatens residents' and visitors' safety, privacy and quality of life. San Franciscans seek policies that preserve citizens' right to enjoy public spaces free from fear and harassment while protecting the free speech rights of individuals and groups, permitting appropriate and safe commercial activities of street artisans, performers and merchants and providing for the basic needs of indigent and vulnerable populations. Where appropriate, San Franciscans also seek to establish policies and programs that limit the ability of indigent and homeless substance abusers to use cash contributions for the purchase of alcohol and illegal drugs.

The people of San Francisco find that the City's existing laws regulating panhandling and solicitation are outdated and unenforceable as a result of numerous court decisions and criminalize violators instead of diverting them to screening and assessment for eligibility in drug and alcohol dependency and mental health treatment programs.

The people of San Francisco find that people who aggressively or improperly solicit because of drug or alcohol dependency or mental illness should be diverted from the criminal court system to a program of screening, assessment and referral operated by the San Francisco Department of Public Health.

(b) **Goals.** This section: (1) replaces prior bans on panhandling, restrictions on aggressive solicitation, and solicitation near automatic teller machines (ATMs) rendered unenforceable by court rulings with a new aggressive solicitation prohibition; (2) establishes new specific prohibitions on solicitation near ATM machines, near residential property, in parking lots, on median strips and near freeway offramps and on the Municipal Railway and the BART system; (3) establishes a requirement that, as appropriate, violators of this ordinance be diverted from the criminal justice system to a screening and assessment program to identify candidates for alcohol and drug dependency treatment and mental health services administered by the Department of Public Health in order to clear their citations.

(c) **Definitions.** For purposes of this section:

1. "Aggressive manner" shall mean:

A. Approaching or speaking to a person, or following a person before, during or after soliciting if that conduct is intended or is likely to cause a reasonable person to fear bodily harm to oneself or to another, or damage to or loss of property or otherwise be intimidated into giving

money or other thing of value;

B. Continuing to solicit from a person after the person has given a negative response to such soliciting;

C. Intentionally touching or causing physical contact with another person without that person's consent in the course of soliciting;

D. Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact;

E. Using violent or threatening gestures toward a person solicited; or,

F. Following the person being solicited, with the intent of asking that person for money or other things of value.

2. "Soliciting" shall mean asking for money or objects of value, with the intention that the money or object be transferred at that time, and at that place. Soliciting shall include using the spoken, written, or printed word, bodily gestures, signs, or other means with the purpose of obtaining an immediate donation of money or other thing of value or soliciting the sale of goods or services.

3. "Public place" shall mean a place where a governmental entity has title, to which the public or a substantial group of persons has access, including but not limited to any street, highway, parking lot, plaza, transportation facility, school, place of amusement, park, or playground.

4. "Check cashing business" shall mean any person duly licensed by the Attorney General to engage in the business of cashing checks, drafts or money orders for consideration pursuant to Section 1789.31 of the California Civil Code.

5. "Automated teller machine" shall mean a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.

6. "Automated teller machine facility" shall mean the area comprised of one or more automatic teller machines, and any adjacent space that is made available to banking customers after regular banking hours.

**(d) Prohibited acts.**

1. No person shall solicit in an aggressive manner in any public place.

2. No person shall solicit within twenty feet of any entrance or exit of any check cashing business or within twenty feet of any automated teller machine without the consent of the owner of the property or another person legally in

possession of such facilities. Provided, however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the facility.

3. No person shall solicit an operator or other occupant of a motor vehicle while such vehicle is located on any street or highway on-ramp or off-ramp, for the purpose of performing or offering to perform a service in connection with such vehicle or otherwise soliciting donations or the sale of goods or services. Provided, however, that this paragraph shall not apply to services rendered in connection with emergency repairs requested by the operator or passenger of such vehicle.

4. No person shall solicit in any public transportation vehicle, or in any public or private parking lot or structure.

5. Before any law enforcement officer may cite or arrest a person under this ordinance, the officer must warn the person that his or her conduct is in violation of this ordinance and must give the person an opportunity to comply with the provisions of this ordinance.

(e) **Penalties.** Any person violating any provision of this section shall be guilty of a misdemeanor or an infraction. The complaint charging such violation shall specify whether the violation is a misdemeanor or infraction, which decision shall be that of the District Attorney. If charged as an infraction, upon conviction, the violator shall be punished by a fine not to exceed \$50, or by attending a screening, assessment and diversion program designed and administered by the Department of Public Health and approved by the San Francisco Public Health Commission to identify candidates for drug and alcohol dependency counseling and treatment and mental health services. If charged as a misdemeanor, upon conviction, the violator shall be punished by a fine of not less than \$50 or more than \$100, and/or by attending a screening, assessment and diversion program designed and administered by the Department of Public Health and approved by the San Francisco Public Health Commission to identify candidates for drug and alcohol dependency counseling and treatment and mental health services. Any person guilty of violating this ordinance three or more times in a twelve month period shall be guilty of a misdemeanor and shall be fined not less than \$300 or more than \$500, and/or referred to a screening, assessment and diversion program designed and administered by the Department of Public Health and approved by the San Francisco Public Health Commission to identify candidates for drug and alcohol dependency counseling and treatment and mental health services, and/or referred to a community service assignment, or imprisoned in the county jail for a period no longer than three months.

(f) **Diversion Program.** The Director of Public Health shall establish, administer and/or certify the assessment and screening programs set forth in subsection (e) of this section and shall establish guidelines for determining whether and under what circumstances violators may be eligible to participate in diversion programs. In addition, the Department of Public Health shall establish, administer and/or certify diversion programs appropriate for treatment of violators, and shall establish

guidelines for determining whether the conditions of diversion have been satisfied. All rules and guidelines governing the diversion program shall be established by the Director of Public Health subject to the approval of the San Francisco Health Commission not later than six months after the Board of Supervisors has declared the results of the election at which this measure is passed. Individuals who are referred for treatment but fail to participate in such treatment shall be subject to the other penalties set forth in subsection (e) of this section.

(g) **Effective Date.** This law shall become effective six months after the Board of Supervisors has declared the results of the election at which this measure is passed.

(h) **Severability.** If any section, sentence, clause, or phrase of this law is held invalid or unconstitutional by any court of competent jurisdiction, it shall in no way affect the validity of any remaining portions of this law.

*(Added by Proposition M, 11/4/2003)*

## **TAB 2**

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7, AND 8, AND URGENCY LEGISLATION THROUGH CH 17 OF THE 2010  
REGULAR SESSION

PENAL CODE  
Part 1. Of Crimes and Punishments  
Title 15. Miscellaneous Crimes  
Chapter 2. Of Other and Miscellaneous Offenses

*Cal Pen Code § 647 (2010)*

**§ 647. Disorderly conduct; Restrictions on probation**

Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

\* \* \*

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

**TAB 3**

SAN FRANCISCO MUNICIPAL POLICE CODE

**SEC. 22. - OBSTRUCTING ANY STREET, SIDEWALK, PASSAGEWAY OR OTHER PUBLIC WAY PROHIBITED; PENALTY; EXCEPTIONS.**

- (a) No person shall wilfully and substantially obstruct the free passage of any person or persons on any street, sidewalk, passageway or other public place.
- (b) **Penalty.** Any person who shall violate the provisions of this Section shall be guilty of an infraction, the penalty for which shall be a fine of not less than \$50 nor more than \$500.
- (c) **Exceptions.** (1) It is not intended that this Section shall apply where its application would result in an interference with or inhibition of any exercise of the constitutionally protected right of freedom of speech or assembly; and (2) nothing contained herein shall be deemed to prohibit persons from sitting on public benches or other public facilities provided for such purpose.

*(Added by Ord. 454-79, App. 9/7/79)*

**TAB 4**

SAN FRANCISCO MUNICIPAL POLICE CODE

**SEC. 23. - OBSTRUCTING ANY STREET, SIDEWALK, PASSAGEWAY OR OTHER PUBLIC WAY PROHIBITED, SECOND OFFENSE WITHIN 24 HOURS; PENALTY; EXCEPTIONS.**

(a) Any person who wilfully and substantially obstructs the free passage of any person or persons on any street, sidewalk, passageway or other public place within 24 hours after violating and being cited for said violation of Section 22 shall be in violation of this Section.

(b) **Penalty.** Any person who shall violate the provisions of this Section shall be guilty of a misdemeanor, the penalty for which shall be imprisonment in the County Jail for a period not exceeding six months or by a fine of not more than \$500, or by both such fine and imprisonment.

(c) **Exceptions.** (1) It is not intended that this Section shall apply where its application would result in an interference with or inhibition of any exercise of the constitutionally protected right of freedom of speech or assembly; and (2) nothing contained herein shall be deemed to prohibit persons from sitting on public benches or other public facilities provided for such purpose.

*(Added by Ord. 454-79, App. 9/7/79)*

**TAB 5**

SAN FRANCISCO MUNICIPAL POLICE CODE

**SEC. 24. - OBSTRUCTING ANY STREET, SIDEWALK, PASSAGEWAY OR OTHER PUBLIC WAY PROHIBITED: SECOND OFFENSE WITHIN 120 DAYS OF CONVICTION; PENALTY; EXCEPTIONS.**

(a) Any person who wilfully and substantially obstructs the free passage of any person or persons on any street, sidewalk, passageway or other public place within 120 days after the date of conviction of a violation of Section 22 shall be in violation of this Section.

(b) **Penalty.** Any person who shall violate the provisions of this Section shall be guilty of a misdemeanor, the penalty for which shall be imprisonment in the County Jail for a period not exceeding six months or by a fine of not more than \$500, or by both such fine and imprisonment.

(c) **Exceptions.** (1) It is not intended that this Section shall apply where its application would result in an interference with or inhibition of any exercise of the constitutionally protected right of freedom of speech or assembly; and (2) nothing contained herein shall be deemed to prohibit persons from sitting on public benches or other public facilities provided for such purpose.

*(Added by Ord. 454-79, App. 9/7/79)*

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PENAL CODE  
Part 1. Of Crimes and Punishments  
Title 15. Miscellaneous Crimes  
Chapter 2. Of Other and Miscellaneous Offenses

*Cal Pen Code § 647c (2009)*

**§ 647c. Wilful and malicious obstruction of thoroughfares and public places; Local regulations**

Every person who willfully and maliciously obstructs the free movement of any person on any street, sidewalk, or other public place or on or in any place open to the public is guilty of a misdemeanor.

Nothing in this section affects the power of a county or a city to regulate conduct upon a street, sidewalk, or other public place or on or in a place open to the public.

**TAB 7**

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REGULAR SESSION

PENAL CODE  
Preliminary Provisions

*Cal Pen Code § 7 (2010)*

**§ 7. Included meanings of words; Signification of certain words**

Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; the word "county" includes "city and county"; writing includes printing and typewriting; oath includes affirmation or declaration; and every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and every written one in the term "depose"; signature or subscription includes mark, when the person cannot write, his or her name being written near it, by a person who writes his or her own name as a witness; provided, that when a signature is made by mark it must, in order that the same may be acknowledged or serve as the signature to any sworn statement, be witnessed by two persons who must subscribe their own names as witnesses thereto.

The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

2. The words "neglect," "negligence," "negligent," and "negligently" import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

3. The word "corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

4. The words "malice" and "maliciously" import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

5. The word "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission.

6. The word "bribe" signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his or her action, vote, or opinion, in any public or official capacity.

7. The word "vessel," when used with reference to shipping, includes ships of all kinds, steamboats, canalboats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons, except that, as used in Sections 192.5 and 193.5, the word "vessel" means a vessel as defined in subdivision (c) of *Section 651 of the Harbors and Navigation Code*.

8. The words "peace officer" signify any one of the officers mentioned in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

9. The word "magistrate" signifies any one of the officers mentioned in Section 808.

10. The word "property" includes both real and personal property.

11. The words "real property" are coextensive with lands, tenements, and hereditaments.

12. The words "personal property" include money, goods, chattels, things in action, and evidences of debt.

13. The word "month" means a calendar month, unless otherwise expressed; the word "daytime" means the period between sunrise and sunset, and the word "nighttime" means the period between sunset and sunrise.

14. The word "will" includes codicil.

15. The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer, and the word "process" a writ or summons issued in the course of judicial proceedings.

16. Words and phrases must be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning.

17. Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

18. When the seal of a court or public officer is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, or by the scroll of a pen, or by writing the word "seal" against his or her name.

**19.** The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words "United States" may include the district and territories.

**20.** The word "section," whenever hereinafter employed, refers to a section of this code, unless some other code or statute is expressly mentioned.

**21.** To "book" signifies the recordation of an arrest in official police records, and the taking by the police of fingerprints and photographs of the person arrested, or any of these acts following an arrest.

**TAB 8**

SAN FRANCISCO MUNICIPAL POLICE CODE

**SEC. 63. - OBSTRUCTIONS ON STREETS AND SIDEWALKS.**

(a) It shall be unlawful for any person, firm or corporation, occupying or having charge or control of any premises, to place or cause to be placed, or suffer to remain upon the sidewalk, or upon the half of the street in front of such premises, any Article or substance which shall obstruct the passage of such street or sidewalk.

(b) It shall be unlawful for any person, firm or corporation to enter into a lease, rental agreement or contract of any kind, written or oral, with or without compensation, for the use of any street or sidewalk.

(c) As an alternative to any other fines or penalties applicable to a violation of this section, any person, firm or corporation who is in violation of this section shall be subject to an administrative penalty not to exceed \$300 for each violation. The administrative penalty shall be assessed, enforced and collected in accordance with Section 39-1 of this Code.

*(Amended by Ord. 169-87, App. 5/4/87; Ord. 87-03, File No. 030482, App. 5/9/2003)*

**TAB 9**

SAN FRANCISCO MUNICIPAL POLICE CODE

**SEC. 64. - EXCEPTIONS.**

The provisions of Section 63(a) of this Article shall not apply to:

- (a) Goods or merchandise in actual course of receipt, delivery or removal;
- (b) Lamp posts or hydrants, erected by permission of the Director of Public Works;
- (c) Any tree, plant or shrub planted in the sidewalk area, or any boxed or potted tree, plant or shrub set on the sidewalk area when the containers are not attached to the building;
- (d) Watering troughs placed by permission of the Director of Public Works upon sidewalks for the accommodation of the public;
- (e) Bicycle racks or motorcycle racks placed upon the sidewalks by permission of the Director of Public Works and of the adjoining property owners for the accommodation of persons using such bicycle or motorcycle, the same not to exceed three feet in width and three feet in height and to be entirely devoid of advertising matter; provided, that motorcycle racks shall be supplied with a metallic pan for the purpose of catching oil drippings;
- (f) Hitching posts placed by permission of the Director of Public Works upon sidewalks, in accordance with pattern indicated in the design approved by and on file in the office of said Director;
- (g) Sockets to be placed upon the outer line of the sidewalk within the curb line for the support of flagpoles to be used for the display of flags. The said sockets shall be approved by, and installed under the supervision and to the satisfaction of, the Director of Public Works;
- (h) "A" boards or advertising signs, placed and displayed by authorized representatives of the Armed Forces of the United States, in aid of their respective recruitment programs;
- (i) A display stand placed on the sidewalk, within a certain area as set forth in Sections 153 and 183-1 of Article 5.3 of the Public Works Code, for display of fruits and vegetables or nonfood merchandise. The display stand shall be approved by, placed under the supervision of, and maintained under conditions established by, the Director of Public Works.

*(Amended by Ord. 523-83, App. 11/4/83)*

**TAB 10**

SAN FRANCISCO MUNICIPAL POLICE CODE

**SEC. 121. - LOITERING OUTSIDE NIGHTCLUBS PROHIBITED.**

(a) **Findings.** The Board of Supervisors of the City and County of San Francisco finds that persons who loiter outside a nightclub when an event is in progress imperil the public's safety and welfare. The areas outside nightclubs have become the site of robberies, assaults, and battery. In addition, the Board finds that persons attending nightclubs have become intimidated and fearful for their safety because of the presence of persons loitering outside the clubs. Prohibiting loitering outside nightclubs will assist police and club security staff in protecting club patrons and may decrease the incidence of crimes of violence directed at club patrons by providing law enforcement officers with an additional crime-fighting tool that does not infringe on any person's basic rights.

(b) **Prohibition.** In the City and County of San Francisco, it shall be unlawful for any person to loiter outside any nightclub between the hours of 9 p.m. and 3 a.m. when the nightclub is open for business.

(c) **Definitions.**

(1) For the purpose of this ordinance, unless a person is engaged in an activity described in Subsection (d), a person loiters outside a nightclub when the person remains as a pedestrian for a period of over three (3) minutes within ten (10) feet from the entrance to the nightclub or within ten (10) feet from any point on any lines formed at the entrance to a nightclub.

(2) For the purposes of this ordinance, a nightclub is a Place of Entertainment as defined in Police Code Section 1060.

(d) **Application.** This ordinance is not intended to prohibit any person from engaging in any lawful activity that must be conducted within ten (10) feet from the entrance to a nightclub or ten (10) feet from any point at any lines formed at the entrance to a nightclub such as (1) waiting in line to enter a nightclub, (2) being present in a smoking area designated by the club outside the club for patrons, or (3) waiting for a bus at a bus stop or waiting in line to enter a theater or other business. Lawful activity does not include any activity that can be conducted more than ten (10) feet from the entrance to the nightclub or more than ten (10) feet from any point on any lines formed at the entrance to a nightclub.

(e) **Warning.** Before any law enforcement officer may cite or arrest a person under this ordinance, the law enforcement officer or personnel working for the nightclub must warn the person that his or her conduct is in violation of this ordinance and must give the person an opportunity to comply with the provisions of this ordinance.

(f) **Penalties.**

(1) **First Conviction.** 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 Convictions.** In any accusatory pleading charging a violation of this Section, if the defendant has been previously convicted of a violation of this Section, each such previous violation and conviction shall be charged in the accusatory pleading. Any person violating any provision of this Section a second time within a thirty (30)-day period shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$300 or 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 six (6) months, or by both such fine and imprisonment. Any person violating any provision of this Section a third time, and each subsequent time, within a thirty (30) day period 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 six (6) months, or by both such fine and imprisonment.

(g) **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.

*(Added by 86-09, File No. 080322, App. 5/20/2009)*

**TAB 11**

SAN FRANCISCO MUNICIPAL POLICE CODE

**SEC. 124.2. - LOITERING PROHIBITED.**

It shall be unlawful for any person to loiter or linger at or near any automatic public toilet in the City and County of San Francisco. This Section is not intended to prohibit any person from engaging in any lawful business that must be conducted within ten feet of an automatic public toilet, such as (1) using an automatic public toilet; (2) waiting in line to use an automatic public toilet; (3) accompanying or assisting another person who is using an automatic public toilet; or (4) activities such as waiting for a bus at a bus stop or waiting in line to enter a theater or other business where the bus stop or line is within 10 feet of an automatic public toilet. Lawful business does not include any activity that can be conducted more than 10 feet from a public toilet.

*(Added by Ord. 215, File No. 011410, App. 11/2/2001)*

**TAB 12**

SAN FRANCISCO MUNICIPAL POLICE CODE

**SEC. 122. - AGGRESSIVE PURSUIT PROHIBITED.**

(a) It shall be unlawful for any person to engage in aggressive pursuit of another.

(b) For purposes of this Section, "aggressive pursuit" shall mean the wilful, malicious or repeated following or harassment of another person, including, but not limited to, wilful or malicious communications by telephone, modem, facsimile or mail with the intent to cause annoyance, intimidation or fear on the part of the person being pursued.

*(Added by Ord. 90-94, App. 2/25/94)*

**TAB 13**

SAN FRANCISCO MUNICIPAL POLICE CODE

**SEC. 157. - CROWDS TO DISPERSE ON ORDER OF POLICE OFFICER.**

Whenever the free passage of any street or sidewalk shall be obstructed by a crowd, except on occasion of public meeting, the persons composing such crowd shall disperse or move on when directed so to do by any police officer.

*(Added by Ord. 1.075, App. 10/11/38)*

**TAB 14**

**OBSTRUCTION OF STREETS AND SIDEWALKS**

This order establishes policies regarding enforcement of Section 647c of the Penal Code and Section 22 of the Municipal Police Code and explains applicable guidelines and terms of each law.

**I. POLICY**

- A. ELEMENTS OF VIOLATION.** It is the policy of the San Francisco Police Department that officers be able to articulate specific facts that support every element of Penal Code Section 647c and Municipal Police Code Section 22 before taking enforcement action.
- B. CROWDS/DEMONSTRATIONS.** When obstructing offenses occur in lawful demonstrations or large public assemblies, officers shall warn persons to desist obstructing prior to enforcing Section 22 MPC (see DGO 8.03, Crowd Control and *Crowd Control Manual* ).
- C.** Both 647c PC and 22 MPC have been narrowly defined and must be narrowly enforced. Neither section shall be used for mass arrests or "street sweeps," except as provided above.
- D. CITE VS BOOKING.** See DGO 5.06, Citation Release.

**II. GUIDELINES**

- A.** Penal Code Section 647c is a misdemeanor and is intended to be used only when the normal access to public places is willfully and maliciously obstructed.
- B.** Municipal Police Code Section 22 is an infraction and is intended to be used when a person persists in willfully and substantially obstructing the free movement of another person in a public place.
- C.** When enforcing either law, the issue is the obstruction, not drunkenness, streetwalking, or any other suspicious or illegal activity; however, these and other disorderly conduct activities may also involve obstruction.

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07/27/94

- D. After issuing a citation for Section 22 MPC, the arresting officer should advise the arrested person that another violation of Section 22 MPC within 24 hours constitutes a misdemeanor pursuant to Section 23 MPC. See DGO 5.06, Citation Release.

**E. REQUIRED ELEMENTS/ DEFINITION OF TERMS**

1. "Willful" means a willingness to commit the act. It does not require any intent to violate the law. Confused or unintentional actions, or accidents are not willful actions.
  2. "Malice" means a wish to vex, annoy, or harass the person being obstructed. Examples of malice include, but are not limited, to:
    - a. Failure by the suspect to cease the obstructing after a repeated request.
    - b. Touching or grabbing the clothing of a person.
    - c. Intentionally placing or interposing one's body in the normal path of a person's approach.
  3. "Obstruction" means intentionally placing one's body in the normal path of a person's approach causing the person's "free movement" to be obstructed. Causing a slight deviation in a pedestrian's path does not necessarily constitute an illegal obstruction, nor does the mere presence of a person on a sidewalk. A street or sidewalk cannot be obstructed, only a person. When arrests are made for violation of either 647c PC or 22 MPC, officers shall make reasonable efforts to identify, but at least, must describe person(s) who were obstructed by the party to be arrested or cited.
  4. "Substantially" means materially as opposed to a petty annoyance or a slight inconvenience.
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**TAB 15**

## **INVESTIGATIVE DETENTIONS**

This order establishes policies and procedures regarding investigative detentions.

### **I. POLICY**

- A. DETENTIONS.** It is the policy of the San Francisco Police Department that every person has the right to use the public streets and public places so long as he/she does not engage in criminal activity. Factors such as the person's race, sex, sexual orientation, gender, gender identity, gender presentation, age, dress, unusual or disheveled or impoverished appearance do not alone justify even a brief detention, a request for identification, or an order to move on, nor do general complaints from residents, merchants or others.
- B. REASONABLE SUSPICION.** A police officer may briefly detain a person for questioning or request identification only if the officer has a reasonable suspicion that the person's behavior is related to criminal activity. The officer, however, must have specific and articulable facts to support his/her actions; a mere suspicion or "hunch" is not sufficient cause to detain a person or to request identification.
- C. LENGTH OF DETENTION.** A detention must be brief and limited to the amount of time reasonably necessary to conduct the investigation.
- D. REQUESTS FOR IDENTIFICATION.** The refusal or failure of a person to identify himself or herself or to produce identification upon request of a police officer cannot be the sole cause for arrest or detention, except where the driver of a motor vehicle refuses to produce a driver license upon the request of an officer enforcing the Vehicle Code or the Traffic Code. Except in the case of a driver of a motor vehicle, a person's refusal or failure to produce identification is not unlawful, and an officer may not threaten a person with arrest solely for his or her refusal to identify himself or herself.
- E. ORDERS TO MOVE ON.** Officers do not have the authority to order persons to "move on" absent probable cause to believe an offense has occurred, or absent articulable facts requiring movement for public safety. Also see DGO 5.07, Rights of Onlookers.
- F. WARRANT CHECKS (POLICY).** See DGO 6.18, Warrant Arrests.

## II. PROCEDURES

### A. CERTIFICATE OF RELEASE/INCIDENT REPORT/DUTIES OF DETAINING OFFICER

1. **BRIEF DETENTIONS.** If you briefly detain a person where you stop him/her, or move a person a short distance for safety, convenience, or privacy, the person is not considered arrested or taken into custody. When releasing the person, you need not issue a Certificate of Release or prepare an incident report.
2. **PROLONGED DETENTIONS.** If, however, you release a person after he/she has been moved a substantial distance or has been detained a significant length of time, you must issue the person a Certificate of Release and prepare an incident report justifying the movement or the length of detention. Title the incident report "Investigative Detention," list the person as "D" detained, and include the reasons the subject was detained such a long time or why he/she was moved.
3. **PHYSICAL RESTRAINT.** If you take the detained person to a police facility or physically restrained the person, issue a Certificate of Release.
4. **UNDER THE INFLUENCE.** If you arrest a person solely for being under the influence of a narcotic, drug or restricted dangerous drug and take him/her to a facility or hospital for treatment and no further proceedings are desirable, issue the person a Certificate of Release.
5. **QUESTIONABLE SITUATIONS.** If there is doubt as to whether you should issue a Certificate of Release, always resolve the doubt by issuing the form.
  - b. **FORM PREPARATION AND FILING.** Complete the Certificate of Release form in duplicate. Give the original to the person being released and forward a copy to the Records Section, Room 475, Hall of justice.

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#### References

Penal Code Section 849(b)

**TAB 16**

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**ORGANIZATIONAL STRUCTURE**

This order outlines the organizational structure of the San Francisco Police Department, including rank hierarchy and reporting responsibilities.

**POLICY**

**A. POLICE COMMISSION.** The Police Commission, pursuant to Charter Section 4.109, is composed of five members appointed by the Mayor. The Commission has the authority to organize, reorganize, manage and set policy for the Police Department. The Police Commission adopts rules and regulations to govern the Department, approves the annual Department budget, and performs other functions as required by law.

**B. ORDER OF RANK**

Chief of Police	Lieutenant
Assistant Chief	Sergeant
Deputy Chief	Inspector
Commander	Assistant Inspector
Captain	Police Officer

**C. ORGANIZATION**

**1. CHIEF OF POLICE.** The following organizational units shall report directly to the Chief of Police:

- Assistant Chief
- Deputy Chief, Administration Bureau
- Deputy Chief, Airport Bureau
- Deputy Chief, Inspectors Bureau
- Deputy Chief, Field Operations Bureau

**2. ASSISTANT CHIEF.** The following organizational units shall report directly to the Assistant Chief:

- Public Affairs Office
- Risk Management Office

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3. **ADMINISTRATION BUREAU.** The following organizational units shall report directly to the Deputy Chief of the Administration Bureau:

Communications Division	Fiscal Division
Planning Division	Staff Services Division
Support Services Division	Training & Education Division
Behavioral Science Unit	Property Control Unit
Consent Decree Division	Field Training Program

4. **AIRPORT BUREAU.** The following organizational units shall report directly to the Commander of the Airport Bureau:

Administrative Services  
Patrol Division  
Special Services

5. **INSPECTORS BUREAU.** The following organizational units shall report to the Deputy Chief of the Inspectors Bureau:

General Investigations Division	Major Investigations Division
Narcotics / Vice Division	Juvenile and Family Services Division
Forensic Services Division	

6. **FIELD OPERATIONS BUREAU.** The following organizational units shall report directly to the Deputy Chief of Field Operations Bureau:

Patrol Division                      Special Operations Division                      SEMPU

- a. The following commands report to the Commander of the Patrol Division:

Central Station	Southern Station	Potrero Station
Mission Station	Northern Station	Park Station
Richmond Station	Ingleside Station	Taraval Station
Tenderloin Task Force	Night Captains	Treasure Island/Marine

- b. The following commands and units report to the Commander of the Special Operations Division:

Traffic Company	Crime Prevention Company
Muni Transit Company	Air Support Unit
Fugitive Recovery Enforcement Team (FRET)	

**TAB 17**

## SAN FRANCISCO CHARTER

### **SEC. 4.102. - BOARDS AND COMMISSIONS—POWERS AND DUTIES.**

Unless otherwise provided in this Charter, each appointive board, commission or other unit of government of the executive branch of the City and County shall:

1. Formulate, evaluate and approve goals, objectives, plans and programs and set policies consistent with the overall objectives of the City and County, as established by the Mayor and the Board of Supervisors through the adoption of City legislation;
2. Develop and keep current an Annual Statement of Purpose outlining its areas of jurisdiction, authorities, purpose and goals, subject to review and approval by the Mayor and the Board of Supervisors;
3. After public hearing, approve applicable departmental budgets or any budget modifications or fund transfers requiring the approval of the Board of Supervisors, subject to the Mayor's final authority to initiate, prepare and submit the annual proposed budget on behalf of the executive branch and the Board of Supervisors' authority under Section 9.103;
4. Recommend to the Mayor for submission to the Board of Supervisors rates, fees and similar charges with respect to appropriate items coming within their respective jurisdictions;
5. Unless otherwise specifically provided, submit to the Mayor at least three qualified applicants, and if rejected, to make additional nominations in the same manner, for the position of department head, subject to appointment by the Mayor;
6. Remove a department head; the Mayor may recommend removal of a department head to the commission, and it shall be the commission's duty to act on the Mayor's recommendation by removing or retaining the department head within 30 days; failure to act on the Mayor's recommendation shall constitute official misconduct;
7. Conduct investigations into any aspect of governmental operations within its jurisdiction through the power of inquiry, and make recommendations to the Mayor or the Board of Supervisors;
8. Exercise such other powers and duties as shall be prescribed by the Board of Supervisors; and
9. Appoint an executive secretary to manage the affairs and operations of the board or commission.

In furtherance of the discharge of its responsibilities, an appointive board, commission or other unit of government may:

10. Hold hearings and take testimony; and

11. Retain temporary counsel for specific purposes, subject to the consent of the Mayor and the City Attorney.

Each board or commission, relative to the affairs of its own department, shall deal with administrative matters solely through the department head or his or her designees, and any dictation, suggestion or interference herein prohibited on the part of any member of a board or commission shall constitute official misconduct; provided, however, that nothing herein contained shall restrict the board or commission's powers of hearing and inquiry as provided in this Charter.