

FILED

2011 FEB -8 AM 11:08

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

GREG SPENCER; RANDALL FRENCH;	)	Civil Case No.: 04 CV-2314 BEN (WMC)
MARGARET ARMSTRONG; JIMMY	)	
WARD; JEFFREY MILES; SYLVIA	)	
LIEVANOS; JUAN ALEJO; STEVEN	)	<b>SUPPLEMENT TO STIPULATION AND</b>
GREER; and ROBERT YBARRA,	)	<b>ORDER MODIFYING SETTLEMENT</b>
individually and on behalf of themselves	)	<b>AGREEMENT AND ORDER THEREON.</b>
and all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
The CITY OF SAN DIEGO; CITY OF SAN	)	
DIEGO POLICE DEPARTMENT; and	)	
CHIEF OF POLICE WILLIAM	)	
LANSDOWNE, in his official capacity only,	)	
	)	
Defendants.	)	

On October 10, 2010 this court entered its Order re: Stipulation Modifying Settlement Agreement which Order specified, among other things, that the parties to this action were to meet and confer and to agree upon "(t)he specifics of the modification of the existing order (that) will be incorporated into the SDPD Training Bulletin re: ILLEGAL LODGING – Penal Code 647(e) ..."

1 The parties to this action have met and conferred and agreed upon the modifications  
2 to SDPD Training Bulletin re: ILLEGAL LODGING – Penal Code 647(e) dated December 15,  
3 2010, as set forth at section III CENTRAL DIVISION DOWNTOWN ENFORCEMENT  
4 PROCEDURES of Exhibit A, attached hereto and incorporated by reference.

5 Based upon the discussions between the parties, the files, records and pleadings in  
6 this case, and for good cause appearing, the parties, by and through their attorneys, hereby  
7 stipulate and agree as follows:

8 1. The modifications set forth in SDPD Training Bulletin re: ILLEGAL LODGING –  
9 Penal Code 647(e) at section III CENTRAL DIVISION DOWNTOWN ENFORCEMENT  
10 PROCEDURES shall be included in and supplement the Order re: Stipulation Modifying  
11 Settlement Agreement issued by this Court on November 10, 2010.

12 2. The present terms of the 2007 Settlement and Order remain in effect  
13 throughout the City of San Diego, except to the extent it is hereby modified in the Downtown  
14 Area by section III CENTRAL DIVISION DOWNTOWN ENFORCEMENT PROCEDURES of  
15 SDPD Training Bulletin re: ILLEGAL LODGING – Penal Code 647(e).

16 3. The Court reserves jurisdiction to interpret and enforce this Order.

17 **IT IS SO STIPULATED:**

18 Dated: February 3, 2011

**SAN DIEGO VOLUNTEER LAWYER  
PROGRAM**

**COHELAN, KHOURY & SINGER**

21 By: s/Timothy Cohelan  
22 Attorneys for Plaintiff  
23 E-mail: tcohelan@ck-lawfirm.com

24 - and -

**DREHER LAW FIRM**

26 By: s/Robert Scott Dreher  
27 Attorneys for Plaintiffs  
28 E-mail: scott@dreherlawfirm.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**OFFICE OF THE CITY ATTORNEY  
OF THE CITY OF SAN DIEGO**

By: s/Daniel Bamberg  
Attorneys for Defendants  
E-mail: dbamberg@sandiego.gov

In accordance with the foregoing stipulation of the parties, the files, records and pleadings in this matter, and for good cause appearing,

**IT IS SO ORDERED:**

Dated: 2/8/11



HON. WILLIAM McCURINE, Jr.  
United States Magistrate Judge  
United States District Court

**EXHIBIT "A"**

**San Diego Police Department**

TRAINING BULLETIN

A PUBLICATION OF THE SAN DIEGO POLICE DEPARTMENT

WILLIAM M. LANSDOWNE  
CHIEF OF POLICE

06-03R

December 15, 2010

**CITYWIDE ILLEGAL LODGING - Penal Code 647 (e)**

*THIS TRAINING BULLETIN SUPERSEEDS THE TRAINING BULLETIN DATED MAY 7, 2007.*

**I. BACKGROUND**

Penal Code 647(e) prohibits lodging in any building, structure, vehicle, or place, PUBLIC or PRIVATE, without the permission of the owner or lawful possessor (i.e. tenant, manager). **The San Diego Police Department's enforcement of 647(e) P.C. is citizen complaint driven.**

Violations of illegal lodging, PC 647(e), may include individuals who also suffer from a wide range of health problems, including contagious diseases, mental illness, and substance abuse. They may also be involved in other criminal behaviors, including disorderly conduct offenses, such as public urination, and more serious crimes including drug dealing. These behaviors affect both the illegal lodger and the citizens who work and live in the area.

The police response to areas affected by illegal lodgers is threefold (presented in no significant sequence):

- To prevent crime;
- To enforce the law; and,
- To assist those who cannot assist themselves.

During enforcement action for illegal lodging officers must remember that part of the "police role" is to provide education on the whereabouts of social agencies and inform individuals they are breaking the law. Individuals thought to be in violation of PC 647(e) should be educated about illegal lodging laws and given handouts, such as the "Downtown Directory of Social Services" and "Homeless Outreach Team" business cards. Documentation of these contacts should be made on field interview forms.

In addition to enforcing the law, police also assist those who cannot assist themselves by putting them in contact with appropriate medical, social, psychiatric, and other services. This assistance can range from providing referral information on working with other professionals such as PERT, the Homeless Outreach Team or any San Diego County services. Additionally, the police have a responsibility to physically take a person into custody when they display an imminent threat either to themselves or others pursuant to W&I 5150.

## II. ILLEGAL LODGING ENFORCEMENT GUIDELINES

The following **guidelines** are to be followed with respect to illegal lodging enforcement:

1. Officers should only enforce illegal lodging in those areas where the City has received complaints.
2. Officers shall not in the ordinary course of duty issue citations between the hours of 2100 and 0530.
3. If an officer encounters an individual illegally lodging in an area where complaints have been received, prior to taking any enforcement action, the officer should first conduct computer checks for past illegal lodging history, warrants, criminal history, ARJIS for field interviews related to past illegal lodging warnings, and verification of status of any citizen complaints. Officers should inquire as to whether the individual sought shelter for the night before, and document what that individual did or did not do with respect to seeking shelter the night before the potential enforcement action.
4. Officers should then determine whether the individuals in violation of PC 647(e) desire assistance in the form of shelter or other social services. If services are requested, officers should direct or assist interested individuals to the appropriate service providers. Officers should educate individuals of applicable illegal lodging laws, explain how to obtain shelter beds and give "Homeless Outreach Team" contact information to the individual. If the individual refuses services, officers shall ask the individual to voluntarily move from the area.
5. If an individual refuses to voluntarily move from the area in question and rejects all offers for shelter and social services, officers may then consider citing for illegal lodging (PC 647(e)).
6. Officers should consider physical arrest for PC 647(e) only in those situations where an individual has either been repeatedly cited within a short period of time (30 days) or where an individual refuses to leave the area in question after being cited by an officer.

### III CENTRAL DIVISION DOWNTOWN ENFORCEMENT PROCEDURES

1. Officers may enforce illegal lodging PC 647(e) twenty four hours a day, 7 days a week in the "Downtown Area." The "Downtown Area" is the area bounded by Laurel Street to the north, I-5 to the east (eastern edge), San Diego Bay to the west, and Sigsbee Street to the south.
2. If an officer encounters an individual who is violating PC 647(e), the officer may take enforcement action if there is then a shelter bed available for that individual. Before commencing the enforcement action, the officer shall offer that bed to the individual violator.
3. If the individual accepts the shelter bed, the officer will contact the Watch Commander, ask for the 'On-Call' Homeless Outreach Team (HOT) phone number, and advise the HOT officer that an individual has accepted a shelter bed in lieu of enforcement.
4. The HOT officer will re-confirm an available shelter bed for the person within the "Downtown Area" or within a five mile radius of 25<sup>th</sup> Street and Market Street. The on call HOT officer will document the placement and arrange the shelter bed location.
5. The contact officer will transport the individual to the shelter bed and document the incident with a Field Interview.
6. In the event the individual refuses to accept the available shelter bed, the officer will take appropriate enforcement action which may include a citation or physical arrest as outlined in Section IV.
7. Prior to a physical arrest, the officer will request a Field Supervisor to the scene. The supervisor will make the final decision on the appropriate level of enforcement. The contact officer must document the offer and refusal of the available bed for the individual in the citation or arrest report, including the location of the bed.
8. If no shelter bed is available in the "Downtown Area" for the individual, or the individual is turned down by the service provider for an available bed, no enforcement action will be taken.

### IV. ILLEGAL LODGING ENFORCEMENT PROCEDURES

Prior to any arrest or citation the following **procedures** should be followed:

Illegal lodging arrests and citations must document the two ELEMENTS of "lodging and without permission":

1. Lodging

- a. What kind of place/structure is it? Address is not enough information. Note if regular encampment; type and frequency of citizen complaints.
- b. Bedding; blanket, tarp, box, sleeping bag, etc.
- c. Belongings-food, pets, clothing, shopping cart, utensils, and furniture?
- d. Prior Contacts-for what, when, where?
- e. Admissions-how long there, how often there, overnight?
- f. It is insufficient to support a charge of illegal lodging if a person is sleeping with no other evidence of lodging.

2. Without Permission

- a. Statement by owner/occupant
- b. Owner/occupant's name and address.
- c. Trespass letter/Letter of Authorization will be sufficient.

IV. ADDITIONAL INVESTIGATIVE CONSIDERATIONS

1. Photographs of suspect at encampment, with his/her belongings are very helpful.

2. Completely fill out form reports and individualize contact with a narrative. Attempt to locate the reporting party and/or any witnesses to the illegal lodging. Witness and reporting party statements/information must be included in the reports.

Officers should ask investigative type questions while speaking with suspects.

For example:

- How long have you been homeless?
- Have you had any contacts with social services agencies?
- Which ones and what happened?
- Are you currently receiving any type of income? (i.e. Social Security)
- Have you been warned about illegal lodging?
- Have you had contact with the SDPD Homeless Outreach Team?
- Have you attempted to locate housing or shelter?

3. Investigate for evidence of other crimes such as under the influence, warrants, and possession of paraphernalia or controlled substances.

Any questions or concerns regarding this Training Bulletin should be directed to Sergeant Rick Schnell, Homeless Outreach Team, 619-850-0655.