
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 or across a seated BART customer to solicit.
- Intimidating or obstructing vehicular or pedestrian traffic to solicit.

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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.

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 detaining any individual suspected of aggressive panhandling.

Officers should 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 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.

453.5.2 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 Division.