

San Diego Police Department

TRAINING BULLETIN

A PUBLICATION OF THE SAN DIEGO POLICE DEPARTMENT

DAVID NISLEIT
CHIEF OF POLICE

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UNAUTHORIZED ENCROACHMENTS PROHIBITED - SDMC 54.0110

I. BACKGROUND

Unauthorized Encroachments Prohibited – San Diego Municipal Code section 54.0110 (hereafter “Encroachment”) states:

It is unlawful for any person to erect, place, allow to remain, construct, establish, plant, or maintain any vegetation or object on any public street, alley, sidewalk, highway, or other public property or public right-of-way, except as otherwise provided by this Code.

The police response to areas affected by Encroachment applies to everyone whose property is blocking the public right-of-way, with the goal of:

- Allowing equal, open, and unrestricted access to the public right-of-way.
- Maintaining safe and healthy public rights of way.

Officers may enforce Encroachment anywhere in the city, with or without a complaint, at any time.

II. PRIOR TO ANY ENCROACHMENT ENFORCEMENT ACTION THE FOLLOWING FACTORS SHOULD BE CONSIDERED:

- A. What is the size and type of property causing the obstruction? Note property type, size of physical area or square footage obstructed.
- B. Whether there have been citizen complaints? Note the frequency and type of citizen complaints.

- C. Impact of property causing obstruction (e.g., pedestrians walking in traffic lane, lack of wheelchair access). Is the property blocking the public right of way? Is the property interfering with the orderly passage of foot traffic?
- D. Does the placement of the property appear to be temporary versus indefinite?
- E. Inquire about how long was subject's property causing the obstruction? How often is the subject's property there?
- F. Prior contacts (for what, when and where?).
- G. Attempt to locate the reporting party and/or any witnesses to the Encroachment. Witness and reporting party statements and information must be included in the reports.

Officers shall consider the totality of the circumstances when determining whether enforcement action is necessary. There may be times when a verbal warning is sufficient to remedy the situation. If enforcement action is taken, officers should take photos of the property that is encroaching.

III. CITY-WIDE PROGRESSIVE ENFORCEMENT PROTOCOL

When a person is contacted for a potential Encroachment violation, officers shall first conduct a computer check for past Encroachment history. The following progressive enforcement protocol should generally be followed unless other factors exist.

The first time a person is contacted for an Encroachment violation, officers should explain the law and provide an opportunity for the person to remedy the situation (as long no other violations are being committed). Officers should explain the person is subject to a citation or arrest if the violation continues. Officers should then offer available storage and/or shelter bed space by contacting the Homeless Outreach Team (HOT). The contact, including details regarding the warning and offer of services, shall be documented on a field interview form.

The second time a person is contacted for an Encroachment violation, the officer should re-explain the law and offer storage space and/or shelter bed space. If services are refused, officers should issue an infraction citation.

The third time a person is contacted for an Encroachment violation, the officer should re-explain the law and offer storage space and/or shelter bed space. If services are refused, officers should issue a misdemeanor citation.

The fourth time a person is contacted for an Encroachment violation, the officer should re-explain the law and offer services and storage space and/or shelter bed. If services are refused, officers may make a custodial arrest for the violation.

If a person is contacted for further Encroachment violations, the officer should re-explain the law and offer services if appropriate. The officer may make a custodial arrest of the subject for each ensuing violation.

Officers have discretion when using progressive enforcement. There are factors that will dictate the level of enforcement officers take, such as: how many times the subject was contacted, how much time transpired between contacts, and where the subject was contacted in the past. If the person contacted is experiencing homelessness, each time officers contact someone, the law and its consequences are explained and services are offered during each encounter.

For questions, please contact Neighborhood Policing Division Sergeant Rich Hinzo at 619 446-1044 or email rhinzo@pd.sandiego.gov.