

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**  
300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688

**OPERATIONS & SAFETY COMMITTEE**

March 14, 2017

3:00 p.m.

COMMITTEE MEMBERS: Directors Keller (Chairperson), Simon (Vice Chairperson), McPartland, and Saltzman

A regular meeting of the Operations and Safety Committee will be held at 3:00 p.m. on Tuesday, March 14, 2017, in the BART Board Room, Kaiser Center 20<sup>th</sup> Street Mall – Third Floor, 344 – 20<sup>th</sup> Street, Oakland, California.

Members of the public may address the committee regarding any matter on this agenda. Please complete a “Request to Address the Board” form (available at the entrance to the Board Room) and hand it to the Secretary before the item is considered by the committee. If you wish to discuss a matter that is not on the agenda during a regular meeting, you may do so under Public Comment.

**AGENDA**

1. Pledge of Allegiance.
2. Aggressive Panhandling Policy Revision. For information.
3. Sanctuary in Transit Policy. For discussion.
4. Public Comment.

Please refrain from wearing scented products (perfume, cologne, after-shave, etc.) to these meetings, as there may be people in attendance susceptible to environmental illnesses.

BART provides service/accommodations upon request to persons with disabilities and individuals who are limited English proficient who wish to address BART Board matters. A request must be made within one and five days in advance of Board meetings, depending on the service requested. Please contact the Office of the District Secretary at 510-464-6083 for information.

Kenneth A. Duron  
District Secretary

# SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

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## Memorandum

**TO:** Operations and Safety Committee **DATE:** March 10, 2017  
**FROM:** Independent Police Auditor  
**SUBJECT:** Informational Item - Aggressive Panhandling Policy Revision

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.

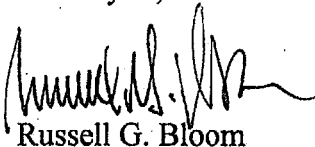
OIPA also consulted with a number of advocates and scholars including the San Francisco-based Coalition on Homelessness, and integrated suggestions regarding the elimination of existing policy language that was overly subjective, that limited personal expression, or was unnecessarily judgmental with 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 (BPCRB), 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 BPCRB voted unanimously to accept the revision to the policy. The proposed revisions were forwarded to BPD on February 22, 2017 for further action.

Please contact me at (510) 874-7477 or [oipa@bart.gov](mailto:oipa@bart.gov) at your convenience if you have any questions about this matter.

Thank you,

A handwritten signature in black ink, appearing to read "Russell G. Bloom", with a stylized flourish at the end.

*Attachments*

cc: Board of Directors  
Board Appointed Officers  
Deputy General Manager

# BART PD POLICY #453

## Aggressive Panhandling

BART OFFICE OF THE INDEPENDENT POLICE AUDITOR  
MARCH 14, 2017

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California Penal Code Section 647(c)

“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”

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### Current Policy

- In place to regulate **aggressive** panhandling and to ameliorate the negative impact surrounding aggressive panhandling activities
  - Lessen the negative impact on ridership
- BPD policy includes language that seeks to specify the meaning of "accost" as provided in PC647(c)
  - Lists "elements" which may be ambiguous or otherwise **unclear** or **confusing**
- Gray areas and ambiguities in policy language create potential for **negative results**

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### Practical Concerns

- Officers are **unclear** about the application of PC647(c)
- Officers **mistakenly believe** that panhandling is a penal code violation
- Officers initiate contacts for mere panhandling **without accosting or aggression**
- Officers are **not properly trained** in the application of PC647(c) or BPD Policy 453

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“...I was in full BART Police uniform...dispatch advised there was a male subject pan handling at the...19<sup>th</sup> Street station. **Pan handling is a violation for 647(C)PC.** ”  
“...I asked what he was doing and he said ‘I’m asking people for money so I can get on BART and go home’”

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### Practical Concerns

- Law abiding individuals may become **enmeshed in the criminal justice system** despite having broken no law
  - Limits opportunities for **access to social services**
- Officers may contact a panhandler without any reasonable suspicion of required aggressive conduct
  - This **contact may escalate** to a use of force
  - Any use of force has the potential to escalate and result in **serious injury** to:
    - **Subject**
    - **Officer(s)**
    - **Bystanders**

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### Practical Concerns

- Unjustified uses of force may lead to
  - **Diminished community trust**
  - **Complaints against officers**
  - **Complaints against BPD**
  - **Lawsuits against the District**

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### Recommended Revisions

- Require appropriate officer **training**
  - **Clarification** of law and policy
  - Reinforce understanding of illegal conduct vs. constitutionally protected conduct
  
- Report Writing Requirements
  - Require **specific description** of aggressive conduct and source of description

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### Benefits of Policy Revision

- **Protect** vulnerable population from denial of constitutional protections
- **Prevent** unnecessary contact with law enforcement
  - Increase potential for availment of social services
- **Provide** officers with knowledge of law and tools to legally address activity that negatively impacts District and customer experience
- **Reduce** complaints against individual officers and BPD
- **Protect** subjects and officers from **physical and legal consequences** of an unjustified use of force resulting in serious injury.
- **Protect** District from **liability**
  - Unlawful detention, Unlawful Arrest, Civil Rights Violations, Unjustified Uses of Force



**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

**MEMORANDUM**

**TO:** Operations & Safety Committee

**DATE:** March 10, 2017

**FROM:** Deputy General Manager

**SUBJECT:** RCI#17-801 Sanctuary in Transit Policy

In response to Roll Call for Introduction (RCI)#17-801: Director Josefowitz request, "*the Operations & Safety Committee, in collaboration with BART staff and in consultation with the CRB and OIPA, investigate a Sanctuary in Transit policy for possible adoption by the Board...*"

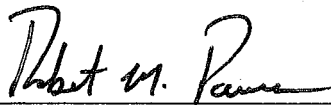
There are several elements that warrant consideration as the topic is discussed and addressed. Three of the elements are as follows:

1. Aligning BPD Policy with Procedure/Practice
2. BPD Interaction with County Detention Facilities
3. BPD Interaction with the Federal Government (mainly in the form of funding and interagency corporation)

Attached please find:

1. County Detention Facilities and details related to their sanctuary status and information on current Federal funding received by BART for security projects
2. Draft resolution in support of making BART a sanctuary jurisdiction

For any additional information or clarification, please contact Acting Chief Jeffrey Jennings at 510-464-7066.



Robert Powers

Attachments

cc: Board of Directors  
Board Appointed Officers  
Deputy General Manager  
Executive Staff

## **Jail Facilities Used by the BART Police Department**

All five of the county facilities utilized by BART PD and, as codified in Penal Code 849, have adopted policies which are consistent with the proposed changes to BART PD's Policy 428 - Immigration Violations, and are described as sanctuary facilities. The details related to the sanctuary status of the detention facilities are as follows:

### **Alameda County**

Date Enacted: May 2014

Policy: Sheriff's Office Decision

Criteria for Honoring Detainer: Will not honor ICE detainer at Santa Rita Jail (SRI) and Glenn Dyer Jail (GDJ) unless supported by a judge's order.

### **San Francisco County**

Date Enacted: May 2014

Policy: Sheriff's Office Decision

Criteria for Honoring Detainer: Will not honor ICE detainees unless they are supported by judicial determination of probable cause or with a warrant of arrest.

### **San Mateo County**

Date Enacted: May 2014

Policy: Sheriff's Office Decision

Criteria for Honoring Detainer: Will not honor ICE detainees within San Mateo County adult correctional system, unless a rare exception arises in cases of individuals who pose significant public safety concerns, which would require case-by-case approval from the Sheriff's Executive staff.

### **Contra Costa County**

Date Enacted: May 2014

Policy: Sheriff's Office Decision

Criteria for Honoring Detainer: Will not honor ICE detainees unless supported by a judge's order.

### **Santa Clara County**

Date Enacted: Oct 2011

Policy: Santa Clara County Board Policy

Criteria for Honoring Detainer: Require agreement from ICE, reimbursing costs in honoring

### TSA Explosive Detection Canines

Four of the BPD explosive detection canines are funded through the TSA. The BPD receives \$202,000 annually for this program. The District also benefits from ongoing training with TSA explosive detection experts who are available to assist with training on explosive scents with which the Department would not normally be able to train. This includes training compounds deemed too dangerous for BART to store. This relationship also provides a direct connection to explosive threat analysis immediately after any critical events at locations throughout the world. Subsequently, the Department remains up to date on what compounds are being used globally and how these compounds may be detected.

### Critical Asset Patrol (CAP) Team

The CAP Team is funded by the FEMA Transit Security Grant Program (TSGP) for seven officers and one sergeant. BART receives approximately \$1,600,000 annually from the TSGP. BART is also reimbursed for CAP Team vehicles and uniforms.

Since 9/11, the following funding, mostly for tunnel and station security hardening, has been received:

Department of Homeland Security (DHS) Grants which includes (UASI, Homeland Security Grant Program (HSGP), Buffer Zone Protection (BZP), TSA K9 and the Transit Security Grant Program): \$129,600,000

Federal Transit Administration Grants: \$35,600,000

**BEFORE THE BOARD OF DIRECTORS OF THE  
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

In The Matter of Adopting Factual Findings  
And Policies in Support of Making the  
BART Trains, Stations and Public Facilities  
of the San Francisco Bay Area Rapid Transit  
District a "Sanctuary Jurisdiction" in order to  
Not Cooperate with Federal Efforts to Deport  
Undocumented Immigrants.



Resolution No. \_\_\_\_\_

WHEREAS, the President of the United States seeks to coerce local authorities to follow his ideology and abandon "Sanctuary City" laws and policies; and

WHEREAS, to that end, on January 25, 2017, the President issued an Executive Order entitled: "Enhancing Public Safety in the Interior of the United States" Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017) (hereinafter "Executive Order"); and

WHEREAS, the Executive Order announced that it is the Executive Branch's policy to withhold Federal funds from "sanctuary jurisdictions," directs the Attorney General and Secretary of Homeland Security to ensure that sanctuary jurisdictions do not receive Federal grants, and directs the Attorney General to take enforcement action against any local entity that "hinders the enforcement of Federal Law"; and

WHEREAS, this Board has been made aware of the legal arguments against acquiescence to the Executive Order, including, but not limited to the perception that the Executive Order clearly undermines established principles of federalism and separation of powers, violates the United States Constitution, and impermissibly threatens local governments with catastrophic financial consequences; and

WHEREAS, this Board wishes to join the hundreds of Sanctuary Jurisdictions across this nation in resisting the apparent overreaching efforts of the Executive Order that undermines local governments in addressing uniquely local health, safety and welfare issues that should be left in the hands of local authorities; and

WHEREAS, this Board wishes to comply with the lawful orders of the Federal government in order for the San Francisco Bay Area Rapid Transit District ("BART") to continue receiving vital Federal funding from a variety of sources including the Department of Transportation and the Department of Homeland Security; and

WHEREAS, this Board has determined that, as a non-custodial law enforcement agency, very few of the existing Lexipol-inspired policies that address "Immigration Violations" in

the Bay Area Rapid Transit Police Department's Policy Manual are applicable to our existing practices;

**NOW, THEREFORE, BE IT RESOLVED** that the San Francisco Bay Area Rapid Transit District adopts the following Findings of Fact and Policies regulating the administration of the Executive Order within its jurisdiction:

The Board of Directors of the San Francisco Bay Area Rapid Transit District find that:

The San Francisco Bay Area Rapid Transit District does not prohibit or restrict its employees from sharing information about the citizenship or immigration status of any individual with Federal immigration officials consistent with Title 8, Section 1373 of the United States Code.

However, the BART Police Department, as a non-custodial law enforcement agency, is not called upon to commonly address immigration violations.

Fear of BART Police, based upon the mistaken view that it will cooperate with Federal Officials in deportations, may interfere with the ability of BART Police to expeditiously manage its core mission of maintaining the safety and security of BART facilities.

The BART Board of Directors believe that it is vital to defend state sovereignty and a local government's autonomy to devote resources to local priorities and to control the exercise of its own police powers, rather than being forced to carry out the agenda of the Federal government.

The current policies of the BART Police Department addressing "Immigration Violations" are actually those crafted by Lexipol as model law enforcement policies largely applicable to County Sheriff's Departments and cities operating municipal jails.

BART Police do not operate jails and normally transfer arrestees to appropriate Sheriff's Departments for immediate booking.

The current practices of the BART Police Department regarding Immigration Violations are inconsistent with the Lexipol model policies recited in the BART Police Policy Manual which are intended for and more appropriately applicable to County Sheriff's Departments and other custodial law enforcement agencies.

Based upon these findings set forth above,

**BE IT FURTHER RESOLVED** that the San Francisco Bay Area Rapid Transit District hereby joins the ranks of California local governments in following practices that will make it stand among "Sanctuary Jurisdictions" in opposition to the directives of the Executive Order referenced above while otherwise abiding by all other legitimate Federal laws including, but not limited to, Title 8, Section 1373 of the United States Code.



**BE IT FURTHER RESOLVED** that the San Francisco Bay Area Rapid Transit District Board directs the General Manager to work with the BART Chief of Police in the revision of the BART Police Policy Manual to reflect current BART Police immigration violation practices rather than those policies more appropriately adopted by custodial law enforcement agencies who are Lexipol model policy clients.

**BE IT FURTHER RESOLVED** that the San Francisco Bay Area Rapid Transit District intends that this resolution may be superseded by State legislation that promotes the objectives of this Resolution (such as the proposed Senate Bill 54 for the 2017 Legislative Session ) and that shall establish the State of California as a "Sanctuary State."

Adopted \_\_\_\_\_

