



Memorandum

TO: MAYOR AND CITY COUNCIL**FROM:** Councilmember Sam Liccardo**SUBJECT:** POLICE PRACTICES AND
ARRESTS UNDER PENAL CODE
SECTION 647(f)**DATE:** November 17, 2008

APPROVED

11-17-08

RECOMMENDATION

1. Direct the City Manager and City Attorney to investigate and return to Council or to the appropriate Council committee with a set of recommendations for non-criminal sanctions and diversionary approaches that might apply to some persons who might otherwise face arrest under Penal Code §647(f). These alternatives should include, but not be limited to:
 - a. Sobering stations for intoxicated persons; and
 - b. Enforcement of Municipal Code provisions that entail non-criminal sanctions, particularly where police response costs can be recovered under M.C. § 10.16.100. Such provisions might include §10.12.010 (drinking in public); § 10.10.010 (sitting or lying down on downtown sidewalks); § 10.12.110 (public urination); § 10.16.010 (disturbing the peace), or others; and
 - c. Enforcement of any new or proposed Municipal Code provisions that Council might create to impose fines or other non-criminal penalties.
2. Direct the City Manager to return to Council or to the appropriate Council committee with additional procedures that an officer should satisfy to obtain objective evidence to support his or her findings to arrest under Penal Code §647(f). Such recommendations might include but are not limited to:
 - a. Requiring officers to offer PAS testing to arrestees, but ensuring that a suspect's refusals could be documented in the officer's report;
 - b. Requiring officers to offer blood or urine chemical testing at the option of the arrestee, but with the expense of such test incurred by the arrestee; and
 - c. Conducting coordination tests, such as line walking and standing balance tests, in all § 674(f) arrests in which a person appears to have sufficient control over their motor skills.
3. Direct the City Manager to expedite the implementation of Council's April 29, 2008 direction to form a "community-based advisory group to facilitate the action items recommended in the Hospitality Zone Assessment [HZA] report to ensure that new and existing policies are working to make downtown a vibrant, hospitable, and safe entertainment center."

4. Direct the City Manager to ascertain how and whether the City can accurately survey the demographic characteristics—including their race, ethnicity, gender, and approximate age—of the people in the downtown Entertainment Zone during key hours of heavy nightclub activity, preferably under the auspices of an unaffiliated third-party.
5. Direct the City Manager to present to Council--concurrent with this Council's consideration of any proposal for cost-sharing of police expenditures with nightclubs-- a presentation for public discussion of SJPD's nighttime Entertainment Zone personnel deployment strategy and costs.
6. Direct the City Manager to report the ongoing status of these efforts and any findings to the full Council and appropriate Committee within the first quarter of 2009, and again thereafter, if necessary.

BACKGROUND

Arrests under Penal Code § 647(f)

Recent reports in the *Mercury News* have spurred public scrutiny of arrests under California Penal Code §674 by the SJPD downtown and elsewhere. Public concern and questions appear to revolve around several axes, including whether the charges have been imposed in an unlawfully overbroad manner, whether the Latino community has suffered a disproportionate impact from these arrests, whether this represents an appropriate use of scarce SJPD resources, and whether this practice has unnecessarily created criminal "rap sheets" for thousands of residents and nearby college students.

With the recommendations detailed above, I seek to gather more information concerning the viability of alternatives to § 647 (f) arrests, in light of the constraints on police resources. These recommendations focus on non-criminal consequences, such as fines and sobering stations, and they seek to ensure that arrests will be made with sufficient evidentiary basis.

Arrests of Latinos

Widespread concern has arisen over whether Latinos appear to represent a disproportionately large number of arrestees for violations of Penal Code Section 647(f). This is not the first time we've seen issues of race arise from downtown policing practices; for example, a 2007 SJPD report showed uses of force by SJPD against African-American arrestees at a rate disproportionate to the percentage of African-Americans among all arrestees, as well as to their composition in San Jose's population as a whole. In each case, the SJPD countered that a substantial number of these arrests occurred in the downtown's entertainment zone, where the demographic of club-goers may differ substantially from that of San Jose as a whole.

Issues of race inevitably involve complex questions, and such debates often degenerate into a battle of untested assumptions. An accurate demographic survey of the club-going population might put those assumptions to a critical test. "Sunlight," as U.S. Supreme Court Justice Louis Brandeis famously noted, "is the best disinfectant," and this problem requires that light be brought to the realities of our downtown. Recommendation #4 reflects that policy direction.

Downtown Policing and Club Goers

Of course, resolving the "race issue" leaves unresolved other questions about downtown policing practices. In the past, the City has relied on police suppression of any unruly activity in the Entertainment Zone, but the large numbers of officers has created concerns about excessive police presence, police overtime costs to taxpayers, and a reduced response to crime suppression in other neighborhoods during closing time.

As the saying goes, if the only tool in our toolbox is a hammer, the whole world looks like a nail. In this case, we are fortunate to have policy tools at our disposal other than the "hammer" of police enforcement, if we choose to utilize them. In the past two years, the Council has passed a set of initiatives to achieve a downtown environment that visitors will find to be both safe and friendly.

Staff has toiled to work out the details of those initiatives, all directed toward reducing the tensions and police presence in the downtown core. In recent months, we've seen the implementation of several new policies, including club promoter licensing requirements, a "soft" closing pilot program, imposition of new conditions in CUP's and Entertainment Permits, and enhanced code education and enforcement at clubs. The recent hiring of a downtown coordinator, Lee Wilcox, will do much to accelerate the implementation of other policies, such as the contemplated zoning overlay to reduce the size of future clubs.

We can all agree on some common objectives: to inspire community trust and confidence in our Police Department, to encourage a diverse downtown social environment; to reduce tension between the police and bar patrons; to reduce the number of police officers and their costs; and to improve the cooperation between club owners and the City. I look forward to completing the work needed to accomplish these shared goals.