



# Roll Call Training Bulletin

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## Sacramento City Code Section 9.04.030: General Loitering

### Issue:

The Constitutionality of General Loitering Ordinance.

The Sacramento Police Department has asked for an analysis about the enforceability of Sacramento City Code (SCC) section 9.04.030, an ordinance regarding general loitering.

### Background:

The leading case on point is the United States Supreme Court's plurality decision in *Chicago v. Morales* (U.S. 1999) 527 U.S. 41. Chicago had a city loitering ordinance that prohibited known gang members from loitering with even one additional person, whether that second person was a gang member or not. The court found that the ordinance was too broad and that the language within the ordinance gave too much unbridled discretion to police officers enforcing the statute. In addition, the court found that "The United States recognizes the freedom to loiter for innocent purposes. It is part of the liberty protected by the Due Process Clause of the Fourteenth Amendment."

The Supreme Court ruled that for a loitering statute to be constitutional, the "loitering" in question/observed must be criminal in nature. Examples of such illegal loitering would be loitering with intent to commit prostitution (653.22 PC) and loitering with intent to commit a narcotic offense (11532 HS).

Furthermore, in *Skilling v. United States* (2010, 561 US 358), a "void for vagueness" doctrine was applied which serves two purposes regarding loitering. First, all persons receive fair notice of what is punishable and what is not. Second, the vagueness doctrine helps prevent arbitrary enforcement of the laws and arbitrary prosecutions.

As a result of the two aforementioned cases, Sacramento City Code section 9.04.030 is rendered constitutionally impermissible and officers should *not* attempt to enforce it in any manner.

### What this means to you:

Essentially, if a subject(s) is observed loitering in a specific area (posted or not) and no other criminal activity is observed, officers cannot cite or detain individuals under SCC 9.04.030. This does not, however, prevent an officer from contacting loitering subjects consensually. In addition, if the loitering is coupled with additional suspicious or illegal activity, officers are not prohibited from making contact. Basically, develop your own probable cause to detain rather than solely detaining a subject based on "no loitering."

### What if a property owner/responsible party calls PD regarding loitering subjects?

When a property owner/responsible party calls PD regarding a loitering subject(s) and requests to have the subject(s) removed from the property, officers are to use the same procedures (if applicable) as defined in SPD General Order 538.02, Trespass Violations.