

CARLSBAD POLICE DEPARTMENT

Department Training Bulletin

#01-2007

Distribution: All Sworn Personnel

Date: July 1, 2007

Subject: Complaints Regarding Solicitors

A handwritten signature in cursive script, appearing to read "T. A. Zoll".

Thomas A. Zoll
Chief of Police

The following information is being provided regarding enforcement options for solicitors. The difficulties in enforcement of soliciting regulations usually fall into two issues. A lack of knowledge concerning these seldom used municipal codes, and difficulty in confirming a suspect's identity.

Carlsbad Municipal Codes

There are three sections of the Municipal Code an officer needs to know for enforcement.

- **8.32.040 C.M.C.** – Prohibits a solicitor from entering private property (including a posted home owners association or the porch to a private residence) for the purpose of a sale without permission.
No person shall go onto private property within the city for the purpose of selling, offering for sale or soliciting orders for the sale of any merchandise, product, service or thing whatsoever when the occupant of such property has given notice or warned such persons to keep away. A sign posted by the occupant on the property, with the words "no solicitors" or "no peddlers" or other similar words, at or near the front door or primary entrance to a residential structure on private property, shall constitute sufficient notice or warning pursuant to this section. For any property used for a purpose of other than a residential use such notice may be posted, at each public entrance to any structure on the property, in such a manner so as to provide reasonable notice of the restriction.
- **8.32.050 C.M.C.** – Restricts times when soliciting is permitted.
No person shall go onto private property for the purposes of commercial or noncommercial peddling, soliciting, vending or canvassing before the hour of eight a.m. or after the hour of eight p.m., except that while the United States is on federally mandated daylight savings time the hours shall be eight a.m. to nine p.m.
- **8.32.060 C.M.C.** – Requires everyone soliciting to have a City of Carlsbad Business license.
All persons engaged in the business of soliciting, peddling or vending subject to the provisions of this chapter shall obtain a business license pursuant to Chapters 5.04 and 5.08 of this code.

An additional section can help officers better understand the issue.

- **5.04.010 C.M.C.** – Requires non-profit organizations to obtain a Carlsbad business license.

Identification Issues

Once a violation has been established, identification of the violator can become difficult. If the violator has valid identification, a citation can be issued in the field. Frequently, however, violators have no legitimate identification (State issued identification or driver license). The violators will provide a name, are willing to sign the citation and even provide a thumb print, but all too often there is no match for the information provided by the violator.

Until recently, there has not been a consistent answer on how officers can dispose this situation. In an opinion issued by the Attorney General (05-206) law enforcement agencies taking enforcement action in this area would have qualified immunity if the violator fails to comply with one of the three requirements of P.C. § 853.5(a).

- Sign a promise to appear,
- Provide satisfactory identification or
- Provide a thumb or fingerprint

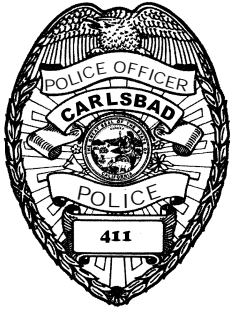
D.D.A. Bob Phillips and Carlsbad Deputy City Attorney Paul Edmonson are in agreement that taking the violator into custody, transporting the violator to CPD, obtaining an IDN and performing CAL ID to verify identification is reasonable. They also agree that this is basically *uncharted waters* and if any of our arrests were challenged, we would have qualified immunity in this unsettled area.

Application

After establishing the corpus of a soliciting case, issue a citation to suspects that are properly identified in the field. If a violator fails to produce satisfactory identification, refuses to sign the citation or refuses to provide a thumbprint, he or she may be taken into custody per 853.5(a) PC and transported to the station for identification. At the station, officers can complete a CAL ID check to determine the violator's identity. In the worst case, the suspect must be released with a citation without confirmation of identification, but a complete finger print record will have been obtained. In many situations the suspect will be identified and additional charges of 148 PC or 148.9 PC may apply. In other instances, the subject may be identified for outstanding warrants.

Other Codes

19.7 P.C. – Application of Misdemeanor Laws to Infractions. Except as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions including, but not limited to, powers of peace officers, jurisdiction of courts, periods for commencing action and for bringing a case to trial and burden of proof.



CARLSBAD POLICE DEPARTMENT

Department Training Bulletin

#02-2007

Distribution: All Sworn Personnel

Date: July 25, 2007

Subject: Detention of Motor Vehicle
Passengers

A handwritten signature in cursive script, appearing to read "T. A. Zoll".

Thomas A. Zoll
Chief of Police

Re: *Brendlin v California, 06-8120 (June 18, 2007)*

The United States Supreme Court has reversed the California Supreme Court and held that a passenger in a routine traffic stop is detained under the Fourth Amendment. The decision is significant in that passengers, therefore, are not free to leave the scene of a traffic stop without an officer releasing them from their detentions. Although this already may have been the practice in many jurisdictions, it is now approved by the Supreme Court.

It is important to note, however, that passengers as well as drivers can now challenge the reasonable suspicion supporting a traffic stop. The California Supreme Court in *People v Brendlin* (2006) 38 CAL.4th 1107 had ruled that passengers could not challenge the lawfulness of a routine traffic stop of the driver. Now that passengers are considered "seized" under the Fourth Amendment during a traffic stop, officers must be careful to detail the indicia of suspicion that (1) justified the initial traffic stop of the driver and (2) justified any "prolonged" detention of the passenger. This should be done whenever evidence against the passenger is discovered or the passenger is arrested on any ground.