

FEBRUARY 9, 2022

REMOTE MEETING VIA VIDEOCONFERENCE

The Police Commission of the City and County of San Francisco met via videoconference at 5:53 p.m.

PRESENT: Commissioners Cohen, Elias, Byrne, Yee, Carter-Oberstone, Yanez, Hamasaki

GENERAL PUBLIC COMMENT

Francisco Dacosta spoke that after the access code, there is no ## for people calling in.

Victoria, Wealth & Disparities, read a quote from Phelicia Jones in regard to bias by SFPD.

Cynthia called to support Chief Scott and the SFPD.

Wesley Savers uplift quote read from Phelicia Jones and spoke of the RIPA report and taking proactive steps to address pretext stops.

Tara Lee urged the Commission to endorse CART.

Susan Buckman, Wealth & Disparities, read a quote from Phelicia Jones in regard to bias by SFPD.

David Aaronson, Wealth & Disparities, read a quote from Phelicia Jones in regard to bias by SFPD.

Jean Bridges, Wealth & Disparities, read a quote from Phelicia Jones in regard to bias by SFPD.

Unidentified spoke of frustration against the police force and stated he doesn't trust the police use of force in society and spoke of police brutality throughout the country.

Unidentified called to support Chief Scott and spoke of issues in terms of shoplifting and criminal activities and thanked Chief Scott for his leadership and that more police officers are needed.

Magick Altman stated that CART should be activated. She complained of the lack of technology of not seeing the public on the screen.

Marie called to support SFPD that protects the public every day. She spoke of how some people in the commission are vocally anti-police and stated how police are important for the city. She spoke of disappointment of attitude of some members of the commission. She stated that police are needed and that peace keeping forces are needed in society.

Ms. Paulette Brown called about her son Aubrey Abrakasa and how his case is still not solved. She asked to hear back from her investigator just to let her know what is happening with the case.

Yulanda Williams, OFJ, asked to recognize that this month is Black History Month.

Unidentified called to recognize Chief Scott and thanked the Chief for his work and leadership.

Chuck Obermeyer supports Chief Scott and stated that we have a tough challenge and that we are losing a lot of police officers. He stated that good police officers are needed to keep San Franciscans safe and to ensure policing with respect.

Nana Louie called to support the Police Department and spoke of how her mother was mugged and stated that if there are more police, her mother would not have been mugged.

Unidentified called to recognize Chief Scott.

Monica spoke of surge in crime and spoke of concerns of Chesa Boudin and spoke of supporting Chief Scott for breaking away from the MOU and stated that Asian hate needs to be addressed.

Unidentified spoke of where the urgency are in the homicides in the San Francisco and spoke of how disingenuous reading a script is and spoke of supporting Chief Scott.

Chief's Report

- **Weekly crime trends**
- **Major/Significant Incidents**

Chief Scott reported on crime trends YTD: Violent Crime down 16 percent; homicide down 20 percent; rape down 24 percent; robbery down 21 percent; assault up 9 percent; human trafficking 83 percent. Property Crimes down 6 percent; burglary down 45 percent; motor vehicle theft down 6 percent; arson down 8 percent; larceny theft up 13 percent. Gun violence is down 56 percent compared to 2021; 4 shooting incidents for the week ending on 2/6/22; total 14 incidents resulting in 15 victims YTD. One homicide for the week ending 2/6/22; there was a total of 4 homicides YTD.

Significant Incidents: 4 non-fatal shootings; threat to Burton High School and Mission High School about shooting up the school, no arrest is made; investigation is ongoing.

PUBLIC COMMENT

Francisco Dacosta stated that the commission have to come up with a plan because San Franciscans are suffering and that commission should talk of a plan on how to help the Chief.

Magick Altman spoke of too few police and that they made a point to defund the police and to implement CART and spoke of four police just standing around for four hours and stated that we do not have too many police officers and what is needed is more social services in the Haight.

Ms. Paulette Brown spoke of the Chief's report on how gun violence is down and congratulates the Chief for that. She would like to hear how the Department is solving unsolved homicides.

Unidentified spoke of how heart-breaking to hear from the mother with unsolved homicide case.

Susan Buckman, Wealth & Disparities, spoke of people calling to promote their message for more police.

DPA Director's Report

- **Report on recent DPA activities, and announcement**
- **Presentation of the December 2021 Monthly Statistical Report**

Director Henderson reported: In the year 2022: 54 cases opened; 57 closed; 267 pending; 3 cases sustained; 32 cases past 270-day; 1 case mediated. Cases received in the past week: 10 new cases; 40 percent failed to prepare an incident report; 27 percent failed to take required action; 20 percent behave or spoke inappropriately; 7 percent outside of DPA's jurisdiction; 7 percent displayed threatening, intimidating, or harassing behavior.

Outreach: Can be found on community calendar on the DPA's website and posted on Tweeter, Facebook, Instagram and on DHR's website: Feb 4th presented at UC Hastings with a focus on DPA's mission and internship awareness.

PUBLIC COMMENT

None

Commission Reports

- **Commission President's Report**
- **Commissioners' Reports**
- **Commission announcements and scheduling of items identified for consideration at future Commission Meetings.**

Commissioner Yanez spoke of conversations he had about pretext stops and explained that the Commission is prioritizing and addressing the disparities. He asked the Chief about limited resources with a shortage of officers, if not tracking pretext stops what will it take to track detailed data to track a pattern in behavior. Chief Scott responded by explaining what a pretext stop is and stated that the backend of stops also need to be tracked and the total transaction needs to be looked at in order to understand what needs to be changed.

Commissioner Carter-Oberstone stated that the Department does collect data and the bad news is that it shows the same racial disparities.

PUBLIC COMMENT

Unidentified spoke of the right for public comment.

STATUS UPDATE REGARDING STRATEGIES ON OPEN AIR DRUG DEALING IN THE TENDERLOIN

Deputy Chief David Lazar introduced Captain Chris Canning who provided the update on strategies on open air drug dealing in the Tenderloin.

The Tenderloin Emergency Initiative by Mayor Breed made on December 17, 2021 is not a police-run deployment. The DEM is head of this deployment. SFPD's role is to support their efforts by coordinating ongoing deployment and emergency responses within the Tenderloin.

Three focus areas:

- Visibility – visible deployment throughout the district; continuing to plan and support safe passage on sidewalks throughout the neighborhood; motorcycles officers deployed to provide visibility.
- Engagement – with partnership with city departments, non-profits and other practitioners that work to address underlying issues with community members suffering from mental health challenges; Coordinated Efforts, partner with all different groups and practitioners; participate in daily briefings and strategy sessions led by DEM to address issues in the neighborhood;
- Enforcement – identify the greatest challenges impacting the neighborhood. Drug sales are having a significant impact on the neighborhood; partnered with Narcotics Detail from the Investigations Bureau; working with other law enforcement partners including the Sheriff's Department, Adult Probation, District Attorney's Office to coordinate efforts to be most impactful in the neighborhood: 3 main focuses: narcotics activities; fugitive recovery operations; focus on sale of stolen properties. Top 3 main areas where arrests are made revolved around narcotics sale, outstanding warrant arrests, and arrest related to assault and battery. In November there were 20 arrests for narcotic sales and possession for sales; 21 arrests for outstanding warrants; 9 arrests and 7 citations issued for assault and battery related cases. In December, 71 arrests for outstanding warrants; 45 arrests for narcotic sales and possession for sales; 11 arrests for assault and battery related cases and 14 citations issued. In January, 59 arrests for narcotic sales and possession for sales; 33 arrests for outstanding warrants; 15 arrests for assault and battery related cases and 5 citations related to assault and battery related cases.

Captain Canning stated that in regard to questions about sit/lie arrests and stated that he looked back a year since he was assigned to Tenderloin and did not find any arrests related to sit/lie violations. Captain Canning also reported that in 2021, 500 total arrests for drug sales and possession for sales; 48.4 kilos of narcotics seized, of those 48.4 kilos, 28.6 kilos were Fentanyl; 79 Narcan deployments. YTD January 2022 to February 1, 2022, 57 arrests for drug sales and possession for sales; 6.3 kilos of narcotics seized of those 6.3 kilos, 3.4 kilos where Fentanyl; 5 Narcan deployments.

Commissioner Byrne were there any arrest for under the influence of narcotics? None

Commissioner Byrne asked what areas are there still open-air drug dealing going on? Area shifts from where enforcement is focused. High challenge areas are Hyde Street corridor to Turk and Larkin Street Corridor to Golden Gate. The strategy is to maintain Narcotics enforcement; increase visibility through focused operations specific to folks with outstanding arrests warrants. Commissioner Byrne showed slides about repeat offenders. Commissioner Byrne stated that Tenderloin has gotten better and encouraged more foot patrol.

Commissioner Cohen stated that the Department has a lot of data but the data is not going through a thorough analysis to be applied to a specific strategy. Commissioner Cohen recommended that there should be a team of analysts to take the data and apply it in a very meaningful way.

Commissioner Elias asked questions about buy/bust operations. Captain Canning stated that majority of the arrests made in the Tenderloin were made by uniformed officers. She asked what statistics are there that showed that buy/bust strategy is effective at deterring drug sales in the Tenderloin and stated that would it be wise to reallocate the undercover buy/bust officers to patrol. Captain Canning explained that deploying officers for foot patrols with strategic enforcement has been impactful.

Deputy Chief Lazar stated that data is important and will drive strategies on what is needed to be done. Deputy Chief Lazar stated that the Department has a plan and talks about the plan everyday as it is collaborative. He stated that the plan is prevention, intervention, and enforcement.

PUBLIC COMMENT

Francisco Dacosta spoke of drug dealers who come from the East Bay. He expressed frustration with the Mayor and the DEM director.

Wesley requested that the Commission endorse CART, a community-driven initiative.

Unidentified talked of what the Commission President is looking for and read a tweet by Commissioner Hamasaki and read several comments by Commissioner Hamasaki.

Unidentified spoke of 298 page report that says more police is needed in the Tenderloin and in the city and the need to create foot beats and how the commission has chosen to ignore the recommendation.

Unidentified spoke of data and asked that the captain share more crucial data about arrests.

Unidentified stated that no more data is needed and that what is needed is CART and compassionate treatment.

Thomas Osley commented on buy-bust and how many officers are needed. He stated that 8 or 9 officers are making arrests and that SFPD is arresting people over and over and are doing a fantastic job and thanked Captain Canning and DC Lazar for their hard work.

Unidentified spoke of not having a plan might be wrong strategy and spoke of how police drain the city's resources and spoke of concerns of militaristic presence.

Unidentified stated that the Commission is asking too much of the police and if the commission is not going to spend money on analysts, then don't ask the police for it.

Unidentified thanked DC Lazar for asking how people feel because that is one variable and she stated that mental health is another variable and to show compassion to people with mental health issues and third she spoke of drugs brought into the city.

Phelicia Jones, founder of Wealth & Disparities, and spoke analyzing the data and recommended working together and to begin true community policing and spoke of most people arrested in the Tenderloin are Black and stated that SFPD need to do a better job with working with people in San Francisco.

Marie stated that we all need to do better and spoke of demanding more from the police at the same time demanding to defund the police, that is what is being felt in San Francisco and it is declining. She stated that police are needed for safety, to make arrests. She recommended to fully fund the police for training.

Unidentified spoke of what is being done in San Francisco is not working and it is not acceptable for people who work very hard in the city and spoke of more support for the police and to do something about the district attorney.

Unidentified commend Chief Scott and the department for their efforts to keep the city safe and for their efforts in the Tenderloin. He suggested doing data in the court system , increase funding in the Department for training and for more police.

(The Commission recessed at 8:40 p.m. and reconvened at 8:47 p.m.)

DISCUSSION AND POSSIBLE ACTION TO ADOPT REVISED DGO 3.01, “DEPARTMENT WRITTEN DIRECTIVES”

Commissioner Carter-Oberstone explained that this policy will control the procedure by which the Commission enact substantive policies going forward.

Commissioner Elias thanked her fellow commissioners and thanked Janelle Caywood, Diana Rosenstein, Diana Oliva-Aroche, and Sgt. Youngblood for their work on the policy. She went on to talk about the policy and how the document speaks for itself in allowing the community to bring input.

Commissioner Carter-Oberstone explained the postponement of this item from last week’s agenda. He explained that he did research and found that the Department have no legal basis to bring this policy into meet-and-confer.

PUBLIC COMMENT

Yulanda Williams, OFJ President, spoke of practicing inclusiveness and thanked the commissioners for their commitment to police reform. She went on to talk about not having police officers and how to utilize police.

Motion by Commissioner Elias adopt DGO 3.01, second by Commissioner Carter-Oberstone.

AYES: Commissioners Yanez, Carter-Oberstone, Byrne, Yee, Hamasaki, Elias, Cohen

RESOLUTION 22-25

ADOPTION OF REVISED DEPARTMENT GENERAL ORDER 3.01, "DEPARTMENT WRITTEN DIRECTIVES"

RESOLVED, that the Police Commission hereby adopts revised Department General Order 3.01, "Department Written Directives."

AYES: Commissioners Cohen, Elias, Hamasaki, Yee, Byrne, Carter-Oberstone, Yanez

DISCUSSION REGARDING THE CHIEF'S NOTICE OF INTENT TO TERMINATE THE MOU WITH THE DISTRICT ATTORNEY'S OFFICE TO INVESTIGATE INDEPENDENTLY OFFICER-INVOLVED SHOOTINGS, IN-CUSTODY DEATHS, AND USES OF FORCE INCIDENTS THAT RESULT IN SERIOUS BODILY INJURY

Commissioner Cohen explained that this item is on the agenda for discussion to allow the Commission to ask the Chief of his decision to pull out of the MOU.

Chief Scott stated: " On Wednesday, February 2nd, I notified the San Francisco District Attorney Chesa Boudin of my intention to terminate the memorandum of understanding between the San Francisco District Attorney's Office and the San Francisco Police Department regarding the investigation of officer involved shootings, in-custody deaths, and uses of force resulting in serious bodily injury. Immediately after notifying DA Boudin, both telephonically and in writing, my decision to terminate the MOU and in the spirit of full transparency, notified the San Francisco Police Commission, members of the San Francisco Police Department, the public and new media of my decision.

Before I go any further, I want to emphasize this to everyone, that I do and always have believe in my entire tenure as the Chief of Police of the San Francisco Police Department in independent criminal investigations of officer-involved shootings and certain other use of force incidents. For those that may not be aware, I personally had a direct and vital role in drafting and facilitating the implementation of the current MOU in question and the preceding MOU agreed upon in 2019. With that said, I'd like to thank the California Attorney General Ron Bonta and his team from the California Department of Justice Civil Rights section for their consideration of my request that the California Department of Justice expand its role beyond the scope of assembly bill 1506 provisions to include, at least temporarily, a formal MOU with the San Francisco Police Department to replace the SFDA as the lead investigative agency in criminal investigations of SFPD officers who are involved in OIS incidents, in-custody deaths, and certain specified uses of force. That conversation is ongoing and has not been resolved but I'd like to thank the Attorney General and his staff for at least answering my call and my letter and having a conversation about that to try to help us get to a better place. I also want to thank the Attorney General and his staff for their guidance involving potential acceptable options in conformance with the recommendations of our collaborative reform initiative which could include reciprocal agreements with the other counties to fulfil the premise of independent investigations of officer-involved shooting incidents and other applicable incidents involving SFPD officers.

Please note that there is nothing in my decision to initiate the termination of this MOU or nothing stated in my letter to the District Attorney nor my letter to the California Attorney General that calls for ending the practice of independent investigations, of criminal investigations of San Francisco police officers involved in incidents covered by the MOU. This is contrary to what some people have falsely claimed. After my discussions with the California Attorney General and his staff, I'm confident that we can forge a path that ensures independent investigations of covered incidents that will better

ensure fairness, impartiality, and accountability for all entities involved in the investigations of the covered incidents, as well as SFPD investigations of ancillary crimes and administrative investigations.

I want to talk a little about just my regular on reform and then I'll get to the crux of the matter because there is talk out there, by some, that I am not supportive of police reform by this decision. I just want to take a few moments to share a few things about my record on police reform during my tenure at the SFPD that includes working with women, men, and non-binary members of the SFPD and our collaborative partners to implement 245 of the 272 collaborative reform initiative recommendations and drastically reduced uses of force, pointing of firearm, and officer-involved shootings over the past five years. It also includes working with the members of SFPD and committing a new MOU to continue working on the CRI police reform through 2024 to finish the remaining CRI recommendations. In all, 21 of my 32+ year career has been involved in helping to successfully implement reforms. There's much more on my reform record to discuss, but in the interest of time, I'll move on.

Now, I'd like to take a moment to restate the basis for my quick and decisive action to initiate the termination of the MOU. The basis for my decision is evidenced of and corroboration of an ongoing pattern and practice of violations of the MOU that reached a breaking point upon the women, men, and non-binary members of the SFPD learning of sworn testimony by SFDA Investigator Meghan Hayashi which describes serious allegations of the MOU and a culture of one-way communications and coercive management tactics that, in her opinion, impact the investigations of covered incidents. Upon learning of Investigator Hayashi's testimony, I, as the Chief of Police and leader of the San Francisco Police Department, determined that as word of the testimony spread within the SFPD and among members of the public, confidence in the SFDA investigations of covered incidents reached a breaking point and this news caused an immediate collapse of trust in the MOU and the investigations derived from it.

This impaired trust regarding the fairness and impartiality of the SFDA's IID investigations of covered incidents remained high throughout the SFPD and among many members of the public who depend on this process to insure that their investigation are investigated fairly and impartially if they are a victim of a crime that is classified as an ancillary crime and an SFPD investigation associated with the covered incident. The fairness and impartiality of the respective investigation governed by the MOU is what all San Franciscans demand and deserve and must be unimpeachable in order to inspire confidence in the MOU and maintain confidence at police and criminal justice reform.

To go into more detail, the SFDA's office Investigator Meghan Hayashi testified under oath that she misled police Sergeant Brendan O'Connor when she failed to inform him of an interview she conducted of the witness in an incident covered by the MOU and the ancillary domestic violence crime in the same incident. Furthermore, I learned that from court testimony that Investigator Hayashi failed to allow Sgt. O'Connor to participate in the interview as they had agreed and in doing so, she violated the spirit and letter of the MOU.

The current MOU and predecessor MOU that was agreed upon in 2019 as stated in paragraph B in the section titled SFDA Responsibilities "lead all interviews related to the criminal investigations of a covered incident and SFPD investigators shall participate in and ask questions related to any ancillary criminal investigations during such interviews." Sergeant O'Connor was acting in good faith and abiding by the terms of the MOU when he and Investigator Hayashi agreed to interview the witness together. The witness was important to the ancillary crime of domestic violence and the actions of the SFDA's office impeded Sgt. O'Connor's ability to do his job properly and conduct a thorough investigation. This is no small matter, and to make matters worse, Investigator Hayashi's sworn

testimony revealed that her decision to mislead Sgt. O'Connor regarding the interview and then to withdraw any and all information about the interview, or withhold any and all information about the interview, was, in her belief and her explanation, based on many conversations and meetings with her supervisor and managing attorney in IIB and she testified that quote "It was a general understanding that I had and was directed that we don't share our investigative steps" end quote. Hayashi further testified that quote "the understanding that I had in our unit was that our investigative steps, meaning the investigators, was not a two way street with the police department and that we – they were to give us information but we would not provide that fact to them" end quote. When questioned further about a specific conversation regarding sharing and not sharing information with the SFPD, Investigator Hayashi stated quote "Yes, so there was this discussion, came up often, because this was, I felt, a somewhat contentious point that Jeff, Lieutenant Dulay, felt that there should be a two way conversation and the direction that I was hearing and being told and listening to in meetings that the attorney did not feel it should be. So this was a point of discussion that came up at different times," end quote.

The current MOU and the predecessor MOU agreed upon in 2019 state in paragraph E, in the section titled SFDA Responsibilities to quote "consult with SFPD investigative personnel regarding the collection of evidence." This important MOU provision was not followed by the SFDA's office as evidence was intentionally withheld and is still, to my knowledge, being withheld.

Also, please note that my decision to terminate the MOU is also partially informed with the knowledge that former SFDA's office IIB Lieutenant Jeff Dulay, who was referred to in Investigator Hayashi's sworn testimony, has filed a civil lawsuit against the San Francisco District Attorney's Office regarding very similar serious allegations after Dulay was terminated by the SFDA's Office. In former Lieutenant Dulay's complaint filed in the San Francisco Superior Court, he alleges he was terminated after he disclosed very similar concerns and allegations that also amount to coercion by managing attorneys, unethical behavior, and included very similar allegations regarding the SFDA's (unintelligible) as it relates to the MOU. Also in Dulay's complaint, also, his complaint raised serious concerns regarding at least one other IIB investigation of a covered incident which charges were subsequently filed by the SFDA's office. The civil lawsuit have been brought to my attention prior to Investigator Hayashi's testimony and also provided additional information that raised concerns about violations of the MOU and doubts about the fairness and impartiality of the SFDA's Office IIB investigation of covered incidents.

More information informed of my decision to legally terminate the MOU: I have knowledge that some of the managing attorneys in both Investigator Hayashi's sworn testimony and former Lieutenant Dulay's complaint against the SFDA's Office are still currently assigned to IIB. Furthermore, a series of emails, communications, and chronological records of investigation, that have been brought to my attention, corroborate an ongoing pattern of withholding or delaying investigative reports that, per the MOU, the SFPD is entitle to have and entitle to consider in order to conduct its investigation under the MOU. The email communications also provide evidence to support that culture of one-way communication exists at it relates to MOU in the SFDA's Office.

This is consistent with the behavior and culture that Investigator Hayashi described in her sworn testimony. The emails between the SFPD and the SFDA's Office and the chronological records include numerous incidents of documentation of unresponsiveness to emails or telephonic requests, numerous instances of untimely and inadequate responses to emails and calls requesting investigative information

by SFPD investigators assigned to investigate the ancillary or administrative investigations of covered incidents.

In many of those instances, the SFPD, still to date, has not been provided reports that the MOU state that we are entitled to have and potentially the public is entitled to have pursuant to State police transparency laws regarding police uses of force and officer-involved shootings. The reports that have not been provided to the SFPD include final investigative report after the SFDA's declination to file charges in a covered incident. Documentations brought to my attention regarding non-responsive or inadequate responses by the SFDA's Office to the request of SFPD include the following: A series of written correspondence and emails from the Captain of Risk Management Division to supervisor attorneys and managing attorneys to SFDA's IIB beginning February 21, 2021 through October 22, 2021 requesting further MOU titled, Disclosure of SFDA Investigative Materials on ISD Investigations #200-251-504 and #200-612-194. Both investigations involved officer-involved shootings/covered incidents. The SFDA announced charging declination on January 13, 2021. Similar and separate written requests made by the SFPD ISD investigator on May 6, 2021, ISD Investigations # 190-845-617 and 190-845—that's a typo, I'll get the number – for covered use of force incidents –got a typo in here – in each instance the request for this material was declined by the SFDA's Office via written correspondent stating in summary quote "as it stands the District Attorney's Office is currently not in possession of any additional evidentiary materials. Therefore, the District Attorney's Office will not provide any documents in response to this request."

Under the disclosure of the SFDA investigative materials of the MOU it states, quote "Upon declination of criminal charges or upon completion of all prosecutions related to the investigation, SFDA shall review all of its investigative materials and provide all previously undisclosed evidentiary materials and ,at its discretion, any appropriate protected materials" end quote. And, it also states, quote "Upon declination of criminal charges or upon completion of all prosecutions related to the investigation, SFDA shall review all of its investigative materials and provide all previously undisclosed evidentiary materials and, at its discretion, any appropriate protected materials to SFPD within 30 days."

It is very hard to believe that the SFDA's Office can complete a covered incident without completing any investigative reports, investigative chronological records, or any other analysis outside of the report's chronological records of investigation, analysis, and evidence provided by the SFPD. After a declination, if those materials do exist, SFPD is entitled to have them unless there's a legal basis preventing disclosure. If those materials, in fact, do not exist, it raises serious concerns about the SFDA IIB investigative practices and one is left to assume that the SFDA's investigative practices in investigations solely rely on SFPD investigations and evidence derived from them. If that is the case, the SFDA IIB investigations are not at all independent nor are they in accordance with the vision and spirit of the MOU. And to cases referenced, there's been no legal basis preventing the (unintelligible) brought forth to my knowledge and the SFPD still does not have any of the SFDA reports.

Additional information: Email communications on May 6, 2020 from an SFPD Sergeant assigned to the investigative services detail, IIB managing attorney regarding quote "stalled" end quote, communications by SFDA IIB regarding investigation update on IDS investigation # 190-845-617. To date, this case which occurred in November 2019 remains open and SFDA's IIB use of force covered incident, and to date, SFPD has not been provided any case update from the SFDA's Office. This violates the investigative report section of the MOU which states in part "in any event the SFDA and SFPD shall endeavor to complete the criminal investigation within six months of the covered incident depending on the complexity of the investigation. SFDA will notify SFPD in writing when it is determined that the

investigation will take longer than six months to complete.” This MOU section has not been adhered to nor had courtesy emails from the SFPD asking for investigative status updates. SFPD investigators have been ignored.

These examples provide a sampling of documentation and evidence corroborating a pattern of non-compliance to the MOU and is evidence of the, quote “one-way communication” culture in the SFDA’s Office just as Investigator Hayashi testified under oath.

As a reminder, I was involved in the drafting of both the current MOU and its predecessor MOU and fully understand the compliance and the adherence to the MOU which was meant to foster cooperation and exchanges of information and evidence were permissible between the SFDA’s Office and the SFPD. Please note that the emails and examples that I mentioned corroborating the one-way culture as Investigator Hayashi testified are not all inclusive. There are other examples which are also supported by the SFPD email documentations, written correspondence, or investigative records. These revelations caused an immediate collapse in trust in the investigations of covered incidents by members of the San Francisco Police Department as well as members of the public regarding the ability of the SFDA’s Office to conduct fair and impartial criminal investigations of San Francisco Police Officers involved in covered incidents and have critically and severely undermined the letter and spirit of what the MOU and true police reforms stand for, thorough and credible investigations, fair and impartial police accountability, and transparency as the law allowed.

I will do anything within my authority to ensure the independent criminal investigations of the covered incidents are investigated in accordance with the MOU with fairness and impartiality.

Next, final actions section of the MOU which states in part that if the District Attorney decides to file criminal charges or grand jury returns an indictment, the SFDA shall, as promptly as circumstances reasonably permit and legally permissible, inform the Chief of Police of this decision. This section has also been violated. The following examples demonstrates serious violations of the MOU regarding this section that have occurred and appear to be intentional. The first instance occurred on December 7, 2020, which I was notified by the SFDA’s Office on my department cell phone at 10:41 p.m. and informed during the call that a San Francisco Grand Jury had returned an indictment against a SFPD officer, Christopher Flores, regarding an officer-involved shooting and that a press announcement will be made shortly regarding the indictment. During the call, I voiced my displeasure about the last minute notification without a reasonable explanation for the untimeliness. Twenty-four minutes after being informed at the last minute of Officer Flores, the SFPD Media Unit received an email from the SFDA’s Office with an SFDA’s Office press release. The press release was titled quote “DA Boudin Announces Grand Jury Indictment of Officer Christopher Flores and Jamaica Hampton and urges him to surrender.” In the body of the press release, District Attorney Boudin announced that on Friday, December 4, 2020, the Grand Jury returned indictments against Jamaica Hampton and San Francisco Police Department Officer Christopher Flores based on an incident from December 7, 2019. The fact that the Grand Jury returned indictment on Friday, December 4, 2020 and the District Attorney’s Office notified me three days later on Monday, December 7, 2020, is a clear and a very serious violation of the MOU. The MOU requires the District Attorney to promptly notify the Chief of Police of indictments or charges filed against SFPD officers. The actions by the SFDA’s Office that I just described gives that appearance that the timing of the press release was the priority over living up to the MOU and making prompt notifications to the Chief of Police. The press release is time stamped December 7 2020 at 11:05 a.m., through the email that was sent from the DA’s Office announcing DA Boudin’s announcement of Flores’s indictment by the Grand Jury, and there was also an SF Chronicle on-line article released on

December 7, 2020 at 11:05 a.m. These time-stamped records and SFPD cell phone records are documentation of this very very serious MOU violation.

To put this into context as to why timely and professional notifications regarding indictments and arrests of SFPD officers are so important, I will describe the processes that must occur after the SFPD Chief of Police is notified of the indictment of criminal charges being filed against an SFPD officer. Charges filed against officers are sensitive, serious, and very important matters that must be handled with professionalism and urgency. SFPD has to undergo a series of administrative public safety and employee wellness measures after the SFPD is notified of a Grand Jury indictment against an officer or is notified of charges filed against an SFPD officer by the SFDA or any other charging entities. The measures include but are not limited to (1) immediate locating and notifying the officer of the charges filed or of the indictment. (2) Removing the officer from the field assignment or assignment requiring public contact if the officer is on duty. If the officer is off-duty, the officer had to be contacted, located, and arrangements made to take the officer into custody unless another law enforcement agency has that responsibility. (3) The officer, whether on duty or off duty, has to be given verbal and written notice that, at a minimum, they will be disarmed, be removed from their assignment, and prohibited from any public contact moving forward. (4) The officer is immediately offered support from the Department's Behavioral Services Unit to address officer's wellness issue and mental health need. (5) Notifications are made to the officer's peers to ensure that they have time to address their wellness needs and to ensure that the peers of the indicted charged officer have had time to properly mentally process the news of the arrest or indictment before they engage with members of the public as they discharge their duties and responsibilities. This measure is particularly important if the charged officer or indicted officer is on duty and in the field at the time the SFPD is notified of the indictment. These measures are absolutely necessary and vital to ensure proper and professional handling of the situation and to ensure the public is not exposed to an on-duty SFPD officer under Grand Jury indictment or an on-duty SFPD officer who the San Francisco District Attorney has filed charges against. I can only imagine the public's displeasure and unfavorable reaction if the officer had been involved in an officer-involved shooting or other serious incident that resulted in the loss of life within the three days between the DA's knowledge of the indictment and the untimely notification to the Chief of Police. This is no small matter. This is unprofessional and this is an unprofessional and untimely notification and a serious violation of the MOU that cannot be tolerated. And this instance, because of a lack of a prompt notification to the Chief of Police, the officer was not disarmed or removed from a patrol assignment until three days after the indictment.

Further evidence of the practice of an apparent intentional MOU violation occurred on December 14, 2020 at 3:19 p.m., exactly one week after the first untimely notification on December 7th. On the December 14, 2020 incident, I was notified by the District Attorney's Office that charges had been filed against Officer Terrence Stangel regarding a use of force incident covered by the MOU. Even after the SFDA's office has been asked by me a week prior to comply with the MOU and make prompt notifications to the SFPD Police Chief when an officer is arrested or indicted. The SFDA's Office has been provided an explanation and the reasoning why the prompt notifications to the Chief of Police is so important just one week prior.

Despite that, the SFPD received a news release from the SFDA's Office approximately 9 minutes after the notification that charges have been filed by the DA's office. The SFDA's press release appeared to be pre-arranged and coordinated and came along with a media news articles that were online at the same time. In the news articles, members of the public were quote which indicated that the articles had been written much earlier than the time of the untimely notification to me. Again, this notification was

unprofessional, untimely, and a serious violation of the MOU resulting in confusion and a lack of coordination with the SFDA's Office to deal with the situation in a proper manner. It appeared again that the timing and release of the press statement announcing the charges by the DA was the priority instead of timely notifications to the Chief of Police so that the officers could be professionally processed, treated with dignity and respect, and the appropriate SFPD administrative procedures, which are all designed in spirit of public safety, to be implemented.

In fairness and transparency, the notifications from the SFDA's Office have improved since the December 14th incident. I just want to note that.

These examples provide ample evidence corroborating and supporting my decision that the lack of MOU compliance over the last several years by the SFDA's Office combined with Investigator Hayashi's sworn testimony and combined with the similar allegations raised by the complaint filed by the former IIB lieutenant Jeff Dulay have catastrophically damaged the confidence among the women, men, and non-binary members of the San Francisco Police Department as well as members of the public regarding the fairness of this MOU and the resulting criminal investigations of SFPD members involved in incidents covered by the MOU. Immediate action was necessary to prevent this ongoing behavior by the SFDA's Office and a temporary alternative independent investigation solution, as well as a long-term solution, is needed to truly capture and live up to the spirit of what collaborative reform is all about: Fairness, accountability, and transparency for the public, victims, offenders, persons having force used against them and the involved officers.

Moving forward I like to emphasize that I am still committed to independent investigations of criminal investigations of SFPD officers involved in officer-involved shootings, in-custody deaths, and other specified use of force incidents. I have discussed this matter with the California Department of Justice, as I mentioned, and I have requested their technical assistance, guidance, and intervention. I'm also requesting intervention involvement and oversight of this process from the San Francisco Police Commission so that we can find a temporary and a permanent solution that includes a re-negotiated MOU and that features long-time accountability measures for all involved parties. Similarly, I've requested the California DOJ to assist with the process for independent arbitration and mediation, preferably with the DOJ, to settle, mediate, and make transparent to the public all MOU disputes and their resolutions including accountability measures employed.

I want to also thank our City Attorney David Chiu who also has offered his assistance in helping to resolve this matter and offering some possible solutions to mitigate what I just disclosed to you.

Thank you and now I am prepared to answer your questions."

Commissioner Cohen spoke thanked the Chief for his words. She went on to make the following statement:

"So the Chief's withdrawal from the MOU with the District Attorney is obviously an important matter affecting public safety. The Commission has heard the outpouring of concerns from all corners of the city and we intend to take up the issue tonight. But at the outset of this discussion, there's a couple of things I want to communicate.

First, I want to communicate very clearly that the MOU is still fully in effect. According to the Chief's letter this withdrawal will not become effective for roughly another two weeks. So I would like to remind the Department and the District Attorney that they are still bound by the MOU and must continue to meet their mutual obligations under it.

Second, even setting aside the MOU, both the District Attorney and the Department have free standing independent obligations to conduct investigations into officer-involved shootings and to share relevant evidence with outside agencies which may include the District Attorney's Office, the Police Department, the Department of Police Accountability, the Sheriff's Department, the City Attorney, or the Public Defender's Office. These obligations exist independently of the MOU and I expect they will be continued to be observed.

Third, is an interesting point that I want to bring out. The third point really is that we need to find a way to come back to the table. It's been a week. I'm hopeful that cooler heads will prevail. If you have not seen the letter from the Attorney General Ron Bonta, I'll ask that Stacy Youngblood post that to our website so that members of the public can follow this conversation. But we have to remember that the San Francisco Police Department needs to maintain some kind of independence for investigations in order to remain in compliance with the United States Department of Justice recommendations. A process similar to an MOU must remain in place so that we, again, stay in compliance. And, I am hopeful that we will be able to call a meeting to bring the parties involved together, perhaps it's a mediation, perhaps we're bringing in a retired judge, perhaps we're bringing in a professional from the Department of Justice. I'm not quite sure what that pathway forward is, but we do need to bring people back into the table. I do believe an MOU needs to be in place.

On other concern that I have is that the Chief has made several allegations, as the District Attorney through his press events, press announcements, also have allegations out there. There needs to be certain due diligence conducted to see where the truth lies. And I'm concerned that we're not hearing the full picture. We're not getting the full truth to what is going on.

Chief, let me just ask you a question, the documents that you have asked for from the District Attorney, have you yet to receive them?"

The Chief stated that he has not received them.

Commissioner Cohen continued, "... information that is needed will be shared and the resolution of these differences will allow us to continue to have independent investigations of officer misconduct. From my perspective as president of this Commission and as a former president and member of the San Francisco Board of Supervisors, independent investigations are absolutely critical and in my own conversations with the Chief, I know that he shares that value too about independent investigations. I don't want to put words in his mouth, I'll let him state it for himself on the record. But I'm looking at this from a policy perspective. High level ... when the Chief is transitioned on, when the District Attorney is transitioned on, we need to make sure that we have a body, an MOU, a document that lives forever, that will be dynamic, that will be able to ebb and flow and stand the test time.

I want to also note that we have many jurisdictions paying attention and watching how we handle this important policy discussion because for many years, being progressive leaders in oversight, and I don't want to see this MOU buckle under the first challenge. So if this MOU, this

particular one that we're talking about is dissolved, then we need to starting thinking about some of our other options of creating other vehicles, other MOUs that need to be put in place and learn from some of the mis-steps from this MOU that we're discussing tonight and add a few more safeguards. Person that come to mind is perhaps we need to build in an independent third party should there be a disagreement between the two parties, in this case the Chief and the District Attorney. We need to build a mediation. We need to build some kind of safeguard so that we're not in this space again because this conversation unfortunate but I am hopeful that this will be an opportunity for us grow and hopefully all the parties will be able to come to the table and be honest, be professional, so that we can hammer out another Memorandum of Understanding."

Further questions and statements by the other Commissioners followed.

Commissioner Elias asked that this be agendized next week for a resolution and direction on what to do next to ensure that conversations are happening and that there's a pathway forward on how the Department and DA can fix this without lapsing.

PUBLIC COMMENT

Paulina thanked Chief Scott for standing his ground on behalf of the officers who serve the city and spoke of DA Boudin's disregard for people's safety and applaud the Chief for his withdrawal with the MOU and thanked the Chief for his thorough explanation behind his decision. She then spoke of concerns about a conflict of interest with Latif Grey prosecuting officers despite John Burris admitting the conflict of interest and being married to Cindy Elias and asked that this conflict be addressed and resolved. She went on to express disappointment with Commissioner Hamasaki for unfairly attacking the Chief.

Cindy Elias asked to address one issue and stated that, "It is no secret that my husband is Latif Grey who is the managing attorney at the IIB Unit at the District Attorney's Office. His employment with that agency does not bear on any decisions that I make as a commissioner. I have a proven track record for being a hardworking, fair, and impartial commissioner. I have done a lot of work and I have been very vocal as to my beliefs that when officers do wrong, they need to be held accountable. And I have said that from the day that I started with this commission which also predates his employment. I have consulted with the City Attorney on this topic, and they have confirmed that his employment does not create a conflict of interest for me nor does it prohibit me from asking questions and participating in this important conversation. So I know my ethical obligations are and I have consulted the city attorney and I am in line with there advice. Thank you."

Magick Altman spoke of death of Alex Nieto, Mario Woods, Jessica Williams, and Luis Gongora Pat and demanded justice and spoke of the voice of the people and spoke of the POA and how the Chief has done their bidding.

Francisco Dacosta spoke of letting the Chief have a presentation and stated that the Commission does not know the difference between an MOU, an ordinance, and the law. He went on to talk about qualified immunity and stated that the Commission does not have control of the District Attorney who is not liked by the public.

Unidentified spoke of supporting Chief Scott and stated that Chesa Boudin is not to be trusted and that the Chief reaching out to the Attorney General shows that he does not want to end transparency or oversight.

Unidentified spoke of how the city is in complete turmoil and expressed support for the Chief and how the DA's office cannot be trusted.

Thomas Osley, former District Attorney, stated he worked under George Gascon for several years and had cases with DA Boudin and attorneys who are accused of misconduct. He thanked the Chief for taking decisive action. He stated that he doesn't see the MOU to be reparable when the same people committing the misconduct are still in their position and that there should be full transparency and everything should be turned over to the Department. He also stated that Commissioner Elias's husband is one of the people named in the lawsuit.

Taylor thanked the Commissioners for handling the meeting so well and spoke of ending the MOU is ending police accountability and that the police cannot police themselves.

Stephanie thanked Chief Scott for his commitment to the reforms and supports the Chief's decision to terminate the MOU. She went on to say that the Commission trusts everyone except its own police force.

Unidentified spoke how the Commissioners are governing the Department and asked why Chief Scott is being publicly prosecuted and stated that public safety is not negotiable.

Unidentified called to support Chief Scott cancelling the MOU and standing up to such unethical behavior by the District Attorney's Office.

Leanna Louie thanked Chief Scott for his leadership and for standing up to the Commissioners. This is not about race this is about doing the right thing. She spoke of the Commissioners being anti police and forgetting about the victims. She supports Chief Scott in terminating the MOU.

Unidentified stated he is appalled with the Commission and spoke of the DA's Office and stated that what Chief Scott has done is right.

Unidentified spoke of not trusting either the Department or the DA's.

Unidentified supports Chief Scott in terminating the MOU.

Chesa Boudin called about the importance of protecting the MOU to ensure police accountability and promote public safety. He went on to state: "I would welcome the opportunity to have more than two minutes to dig in deeper with this commission on these critical issues. I want to make three brief points: (1) The first I've heard of most of the allegations against my office including many that occurred on your prior administration has been in the press and in this hearing tonight. That's frustrating because in response to the countless regular ongoing violations of the MOU and police DGOs, I don't pick up my ball, walk off the field, and go home. I don't go to the press. I call the Chief and try to work it out. And we had a really good open channel of communication until last

week. Or, in those cases when necessary, we go to court and we litigate when we disagree about what we need to share with each other. I cannot see how the decision made by an investigator in 2019 under a different district attorney and a different MOU can serve as the basis for unilateral withdrawal in 2022 with no notice or attempts for mediate. Second, the decision to withdraw is a massive violation of public trust and a huge step backwards in police reform and police accountability. Including the work necessary to publicly decline to file charges against officers who use force faster than ever before. I'm proud of that work just as I'm proud of our unprecedented prosecutions in those rare cases where we have enough evidence of crime to indict an on-duty officer. We all agree that police cannot police themselves. And, third, I want to say publicly what I said, during the productive meeting I had with Chief Scott earlier today behind closed doors, I agree the MOU needs clarification and I welcome that process."

Chuck Obermeyer supports Chief Scott to pull out of the MOU and talked about being a progressive and voted for Chesa and spoke of his disappointment. He went on to say that Chief Scott is the single biggest advocate for reform and accountability and that he pulled out of the MOU because of credible misconduct in the DA's Office.

Mary Vale thanked the Commissioners for asking the questions they did and spoke of concerns about Chief Scott's statement about the police union and the feelings of the workforce should be on the table and stated that the union does not support police reform and oversight and stated that she can't see any reason moving forward that the Chief cannot do an interim withdrawal with the MOU.

David Aaronson discussed concerns about Chief Scott's decision to pull out of the MOU and how it raises questions and that it sounds like SFPD has had issues for a while and why is this happening now three days before the trial of Officer Stangel and not earlier. He would like the MOU to stay in place until the MOU is revised.

Karen Fleshman stated that SFPD is undermining the rule of law in San Francisco by unilaterally pulling out of the MOU and spoke of the Mario Woods incident.

Matt Roy supports Chief Scott's withdrawal from the MOU and supports an investigation into the DA's office unethical behavior.

Unidentified spoke of concerns of the POA and concerns of Joshua Cabillo and no consequences for Cabillo's actions.

John Crew spoke of direct consequence of not working this out in a normal process behind closed doors. He went on to talk about the California DOJ and that this function has to be performed in a local level.

Susan Buckman, Wealth & Disparities, spoke of concerns of the POA and how racist the POA and the Department are.

Unidentified called to support Chief Scott's decision to terminate the MOU and to call out the DA's egregious conduct and how her confidence with the DA has been eroded.

Unidentified spoke of cops violating public trust and spoke of Kenneth Cha and charges against police for killing black men.

Unidentified spoke of trust and how the public lost trust in the Department and that this continues to prove that the police should not have it.

Unidentified unintelligible and spoke of how cops are not above the law.

Melissa Hernandez called to discuss concerns about the Chief withdrawing from the MOU and urged the Commission to have the MOU stay in place.

Malane spoke of police creating victims through acts of violence and spoke of how police cannot police themselves.

Marie thanked Chief Scott for actions he is taking and spoke of what is getting lost in the emotions of this event and stated that when evidence is withheld, that is a violation of the contract and stated that it is hard to move forward after a violation like that.

Gracie spoke of being a victim of multiple of violence and thanked Chesa Boudin.

Unidentified spoke of race issues and spoke of addressing Black on Asian crimes and what is going on with all the Blacks on Asian hate crimes and spoke of how Chesa Boudin should be investigated.

Unidentified thanked the Commission in addressing Chief Scott's decision in pulling out of the MOU and spoke of appreciating Chesa Boudin in trying to reform the system and the police.

Julie Traun, Bar Association, commended Chief Scott for his commitment to reform but spoke of how the withdrawal from the MOU undermines the public's trust and spoke of how cooler heads need to prevail and take this as an opportunity to move forward and work through whatever problems on both sides.

Unidentified stated he's calling on behalf of all the tech workers that have moved out of the city and spoke of the rise of crime in San Francisco and that it is tragic.

(The rest of the agenda items were taken off calendar and put over to a later date)

PRESENTATION OF DPA'S RACIAL EQUITY ACTION PLAN UPDATE: STRIVING FOR EQUITY AND TRANSPARENCY

PRESENTATION OF DPA'S ACCOUNTABILITY MATRIX

PUBLIC COMMENT

PUBLIC COMMENT ON ALL MATTERS PERTAINING TO CLOSED SESSION

None

VOTE ON WHETHER TO HOLD CLOSED SESSION

No vote

CLOSED SESSION

PERSONNEL EXCEPTION. Pursuant to Government Code Section 54957(b)(1) and SF Administrative Code Section 67.10(b) and Penal Code Section 832.7:

Discussion and possible action to adopt proposed Findings of Fact ON Penalty regarding the Commission's decision on January 12, 2022, in Disciplinary Case Nos. RMW C08-166 & RMW C08-167, or take other action if necessary

PERSONNEL EXCEPTION. Pursuant to Government Code Section 54957(b)(1) and SF Administrative Code Section 67.10(b) and Penal Code Section 832.7:

Status and calendaring of pending disciplinary cases

OPEN SESSION

VOTE TO ELECT WHETHER TO DISCLOSE ANY OR ALL DISCUSSION IN CLOSED SESSION

ADJOURNMENT

Thereafter, the meeting was adjourned at 10:54 p.m.