

Working Group Recommendation and Department Response

#	DPA Recommendations for DGO 5.07 (Rights of Onlookers)	Date recommendation received	SFPD response	SFPD explanation	Open/Closed
R1	<p>Update DGO to include First Amendment protections that protect individuals' rights to observe, photograph and record the police and the Fourth Amendment right to retain the recorded material free from government intrusion. During the past 20 years, federal courts, including the Ninth Circuit, have recognized that the First Amendment protects an individual's right to observe, photograph and record matters of public interest including activities of police officers. (See, e.g., <u>Askins v. U.S. Dep't of Homeland Sec.</u> (9th Cir. 2018) 899 F.3d 1035, 1044; <u>Fordyce v. City of Seattle</u> (9th Cir. 1995) 55 F.3d 436, 439.) "Filming the police contributes to the public's ability to hold the police accountable, ensure that police officers are not abusing their power, and make informed decisions about police policy." (<u>Turner v. Lieutenant Driver</u> (5th Cir. 2017) 848 F.3d 678, 689) Like) Similar to all First Amendment claims, observing, photographing, and recording the police is subject to reasonable time, place, and manner restrictions. (<u>Id.</u> at p.690.) As the <u>Turner</u> court stated, those restrictions must be "narrowly tailored to serve a significant governmental interest." (<u>Ibid.</u>) DPA suggests that DGO 5.07 be updated to address the public's right to observe, photograph and record officers, include reference to the First and Fourth Amendments, and provide examples of appropriate time, place, and manner restrictions.</p>	5/18/20	Recommendation has been included in draft DGO	Approved	
R2	<p>Update section "Bystander Filming of Officer-Suspect Contacts" to address the right of all persons to observe, photograph, and record the actions of officers during the discharge of their duties in public as well as other areas (such as a person's home, business or common areas of public and private buildings) where an individual has the right to be present, so long as the observation, photography, or recording does not threaten officer safety and does not interfere with the performance of the officer's duties.</p>	5/18/20	Recommendation has been included in draft DGO	Approved	
R3	<p>Update the DGO to state that officers shall allow a person to record their own actions with the police. Include a provision that states that when an officer is placing a person under lawful arrest and that individual is recording their own interaction with police, the officer may instruct the person to cease recording and put away the recording device. (See e.g. Baltimore Police Department's "Public Observation/Recording of Officers." September 2018, Policy 1016.</p>	5/18/20	Recommendation has been included in draft DGO	Approved	

Working Group Recommendation and Department Response

#	DPA Recommendations for DGO 5.07 (Rights of Onlookers)	Date recommendation received	SFPD response	SFPD explanation	Open/Closed
R4	Require the officer to document through their Body Worn Camera recording and incident report any instance in which they order a person to stop recording police activity and the reason for this order.	5/18/20	Recommendation has been included in draft DGO	Approved	
R5	Include a provision that states officers shall not block, obstruct, or interfere with cameras and other recording devices.	5/18/20	Recommendation has been included in draft DGO	Ok if adding '..not intentionally block..' - DPA agrees insertion.	
R6	Include a provision that states officers shall not demand that a person state a reason why the person is observing, photographing or recording police activity.	5/18/20	Recommendation has been included in draft DGO	Ok to add w/ modification. May not demand, but may for investigative purposes inquire - DPA/PD agreement SPARKS I 10/22	
R7	Include a provision that states officers shall not retaliate against any person who lawfully exercises the lawful rights to witness, observe, record, comment on, criticize, or peacefully protest police activity and shall not take any other type of police action in retaliation for the exercise of any of those rights.	5/18/20	Recommendation will not be included in draft DGO because not warranted or reasonable	Will not add - DPA/PD agreement SPARKS I 10/22	
R8	Include a provision that states that In the event that an officer determines that a person should be arrested solely for obstructing or hindering law enforcement while recording police activity, the officer shall request a supervisor's approval for the arrest and/or request the supervisor to come to the scene. Supervisor's consultation and presence can assist in a more successful outcome. See Baltimore Police Department's Policy on Public Observation/Recording of Officers.	5/18/20	Recommendation has been included in draft DGO	Modified version agreed to SPARKS I 10/22 (see cell b9)	
R9	Update the Violation/Compliance section to state that "[p]ersons who believe that an officer did not comply with the provisions of this order shall be referred to an appropriate supervisor or and to the Office of Citizen Complaints also senior ranking officer shall provide an informational brochure about the Department of Police Accountability and complaint form to the person.	5/18/20	Recommendation has been included in draft DGO	Modified version agreed to SPARKS I 10/22 (removing brochure section) DPA/PD	