



LONDON BREED  
MAYOR

CITY AND COUNTY OF SAN FRANCISCO  
**Department of Police Accountability**  
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President Cindy Elias  
Vice President Max Carter-Oberstone  
Commissioners  
San Francisco Police Commission

### **First Quarter 2023 Policy Work**

Highlights of the Department of Police Accountability's (DPA's) First Quarter 2023 policy recommendations are described below.

#### **I. DPA Recommendations for Department General Order (DGO) 5.08, SFPD's Policy for Non-Uniformed Officers**

Since 2020, DPA has recommended that plainclothes officers wear body worn cameras, like patrol officers, when taking enforcement action. In the first quarter of 2023, DPA made additional recommendations to revise Department General Order (DGO) 5.08, SFPD's policy governing non-uniformed officers, to increase transparency, accountability, and to improve the reliability of evidence in criminal cases. Specifically, DPA recommended:

- All undercover and plainclothes operations be audio and video recorded.
- If wearing a Body Worn Camera would compromise the operation or the safety of non-uniformed members, nearby officers should record the incident with a covert, concealed, camouflaged camera. (e.g., button, pen, eye-glasses, or pole cameras.)
- Supervisors seeking an exemption from the camera requirement should document in a written operations plan the reasons why activating a Body Worn Camera, or a covert, concealed, or camouflaged camera during an operation would create an imminent threat to life or property.

DPA anticipates that a draft of DGO 5.08 will be open for public comment in the second quarter of 2023.

#### **II. Bureau Orders and Department Notices that Lack Transparency, Community Input, and Usurp the Police Commission Policy-Making Authority**

In the first quarter of 2023, DPA recommended that SFPD refrain from issuing Bureau Orders and Department Notices (DNs) to make policy changes because doing so usurps the Police Commission's role as the policy-making body for SFPD, lacks transparency, and eliminates meaningful DPA and community input. (See DGO 1.01, SF City Charter §4.102, §4.109.) As background, the 2016 U.S. Department of Justice Collaborative Reform Initiative assessment of SFPD advised not to issue Department Bulletins that amend or change General Orders. They cautioned that using Department Bulletins as a workaround to the General Order development process is contrary to the Police

Commission's function as SFPD's policy-making body. Moreover, the U.S. DOJ said that issuing Department Bulletins for policy changes was problematic because they were not publicly posted and lacked transparency. (2016 CRI p.149, Rec. 72.)

Department Bulletins are now obsolete, yet the workaround continues under a different vehicle. In the first quarter of 2023, SFPD began issuing a series of identical Bureau Orders, covering all SFPD Operations, to make policy changes outside of the General Order revision process. Collaboration with the community and DPA, and approval by the Police Commission are necessary steps in the General Order development process, whereas Bureau Orders do not require them. Importantly, Bureau Orders are not publicly posted on the SFPD website nor readily accessible by the public.

In the first quarter of 2023, SFPD gave notice that it was issuing three series of Bureau Orders and one Department Notice describing major policy changes even though DGO revision process was already underway on three of the four topics.

- Non-Uniformed Officer "Operations" Order 23-01 as De Facto General Order 5.08. On October 5, 2022, Police Commission President, Cindy Elias, started the DGO development clock on DGO 5.08, SFPD's policy for non-uniformed officers. Three months later, on January 20, 2023, SFPD gave five-day notice to DPA that it was issuing an "Operations Order" for non-uniformed officers. An "Operations Order" is not a type of written directive that exists. This "Operations Order" amended DGO 5.08 and was developed behind closed doors without DPA or community input. When DPA objected, SFPD changed the "Operations Order" to a series of identical Bureau Orders which covered all Bureaus under the Operations division of SFPD. Notably, the Department delayed completing its draft of DGO 5.08 to create the series of Bureau Orders that amended DGO 5.08, before working on DGO 5.08 with external partners.
- Department Notice Amending DGO 10.11 on Body-Worn Cameras. On October 12, 2022, Commissioner Kevin Benedicto started the development clock for DGO 10.11, SFPD's Body-Worn Camera Policy. Five months later, on March 20, 2023, SFPD gave notice to DPA it was going to issue a lengthy Department Notice (DN) substantially amending DGO 10.11. The notice came a few weeks before the Community Working Group to revise DGO 10.11 was slated to begin. SFPD elected not to publish the DN when DPA objected to the process.
- Identical Bureau Orders on SFPD's Use of Social Media as an Investigative Tool as a De Facto General Order. On October 19, 2022, Commissioner Jesus Yañez started the DGO development clock on DGO 2.09, SFPD's social media policy. Five months later, on March 27, 2023, SFPD gave five-day notice to DPA that it was going to issue a lengthy policy on SFPD's Use of Social Media as an Investigative Tool. SFPD planned on rolling out this policy as a series of identical Bureau Orders issued to all of Operations on April 3, 2023. Notice was given to DPA the same week that SFPD asked the Police Commission for an extension of time to complete a draft of DGO 2.09. Previously, Commissioner Yañez, provided direction to expand DGO 2.09 to include a section on the use of social media as an investigative tool which was consistent with DPA's recommendation. DGO 2.09 was slated to begin a Community Working Group. Rather than wait for the Community Working Group to begin or start the development process for a stand-alone

DGO on the topic, SFPD created a comprehensive policy on using social media for investigation, using identical Bureau Orders as the vehicle. This cut out public input, DPA input, or Police Commission approval.

- Bureau Orders 23-01 for SFPD’ Field Operations Bureau, Community Engagement Division, and the Investigations Bureau on the Use of Non-Surveillance Cameras – Live Monitoring Requests as a De Facto General Order. On February 28, 2023, SFPD issued a series of identical Bureau Orders implementing SFPD’s surveillance policy under SF Administrative Code 19B rather than issuing a DGO with community input and Police Commission approval.

SFPD issuing important policies without community input or Police Commission approval is contrary 21<sup>st</sup> Century Policing Principles which emphasize the importance of transparency and community input. It also circumvents Police Commission’s authority to create policy for SFPD. To remedy these issues, DPA recommends the following:

- 1.) All Bureau Orders be publicly posted on SFPD website.
- 2.) That SFPD not undermine or delay the Working Group process by issuing important policies right before the Working Group is slated to begin.
- 3.) That SFPD begin the DGO revision process for a stand-alone policy on the use of social media as an investigative tool or fold it into DGO 2.09, SFPD’s policy on the personal use of social media.
- 4.) That DGO 3.01, SFPD’s Written Directive be amended to prohibit Department Notices and Bureau Orders being used as a workaround to the General Order development process. If SFPD wishes to expedite the DGO development process, it can do so under DGO 3.01.04.H.

### **III. DPA Recommendations on DGO 2.07 - Disciplinary Process for Sworn Officers**

In the first quarter, DPA recommended that SFPD make changes to DGO 2.07, which codifies the disciplinary process for sworn members, to remedy the backlog of disciplinary cases that are awaiting a Chief’s Hearing. A Chief’s Hearing occurs when an officer wants to appeal discipline of a ten (10) days suspension or less. Presently, there are approximately 47 cases (65 officers) awaiting some type of Chief’s Hearing from 2014 to 2022. (See DPA, Appendix 1.) Currently, there are 92 cases pending with the Chief at some phase of the disciplinary process. (See DPA Appendix 2.) To rectify this problem, DPA recommended the following language be added to DGO 2.07:

- 1.) That all Chief’s Hearings must be held within 180 days of a written notice of appeal.
- 2.) That the Hearing Officer render a decision within 90 days of the Chief’s Hearing.
- 3.) That continuances only be granted based on good cause and that no more than one continuance per side be granted absent an emergency.

DGO 2.07 is slated to be presented to the Police Commission during the second quarter of 2023.

**IV. SFPD General Order Revisions**

During the first quarter of 2023, DPA provided SFPD a total of 39 policy recommendations on 8 existing DGO's, as delineated in the below table:

	<b>DGO</b>	<b>No. of DPA Recommendations</b>	<b>Date of Submission to SFPD or Police Commission</b>
1.	1.06 Duties of Superior Officers	2	2/21/23
2.	2.07 Disciplinary Process for Sworn Officers	2	2/21/23
3.	3.19 Early Intervention System	2	2/8/23
4.	5.06 Citation Release	3	2/1/23, 3/6/23
5.	5.08 Non-Uniformed Officers	16	3/8/23
6.	5.16 Search Warrants	2	2/13/23
7.	6.18 Warrant Arrests	1	2/7/23
8.	6.20 Member Involved Domestic Violence	11	3/21/23

Total: 39

Q1 2023

DPA also participated in Community Working Group to update DGO 7.01, SFPD's policy on detaining, arresting, and questioning juveniles.

Sincerely,



Paul Henderson  
Executive Director