



The Police Commission
CITY AND COUNTY OF SAN FRANCISCO

CINDY ELIAS
President

MAX CARTER-OBERSTONE
Vice-President

LARRY YEE
Commissioner

JAMES BYRNE
Commissioner

JESUS YANEZ
Commissioner

KEVIN BENEDICTO
Commissioner

DEBRA WALKER
Commissioner

DATE

Dear Chief Scott:

At the meeting of the Police Commission on Wednesday, DATE, the following resolution was adopted:

RESOLUTION XX-X:

POLICE COMMISSION DIRECTS THE CHIEF OF POLICE TO RESCIND THE SOCIAL MEDIA AND PLAIN CLOTHES BUREAU ORDERS

WHEREAS, The San Francisco Charter vests the Police Commission with the authority to promulgate policies governing the Police Department. S.F. Charter § 4.109 (the Police Commission “is empowered to prescribe and enforce any reasonable rules and regulations that it deems necessary to provide for the efficiency of the Department”); and

WHEREAS, These Commission-issued policies—known as Department General Orders (DGOs)—are developed through a public process that solicits recommendations from the Police Department, the Department of Police Accountability, subject matter experts, and members of the public; and

WHEREAS, Conversely, Bureau Orders are issued by the Police Department (not the Commission). They are issued without any notice to or input from the public or the Commission, and do not require consultation with subject matter experts. Since the Commission is vested with policymaking powers for the Police Department (S.F. Charter § 4.109), Bureau Orders cannot conflict with any policies adopted by the Commission or other governing law and should not be used to create new policies.

WHEREAS, In response to a series of high profile incidents that damaged the public’s trust in the Police Department—including police killings of unarmed citizens and a bevy of racist and homophobic text messages exchanged between officers—the United States Department of Justice’s Community Oriented Policing Services division (US DOJ COPS) conducted an extensive investigation into the Police Department’s practices. The investigation culminated in a 413-page report published in 2016.¹ Among its many findings, the report criticized the Police Department’s inappropriate use of “Department Bulletins” to undercut public transparency and circumvent the Commission’s oversight and policy-making authority. The report, for example, concludes that “SFPD’s present use of Department Bulletins is inconsistent with the role and intent of the Police Commission regarding police policy and contributes to a lack of transparency regarding its policies and procedures.” U.S. DOJ COPS Report 149. There are striking and concerning similarities between the use of

¹ Available at: <<https://tinyurl.com/5es5xcfu>>



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Department Bulletins as criticized in the US DOJ COPS Report and the current use of Bureau Orders to promulgate policies in a similar fashion. These mechanisms – whether they are termed Department Bulletins, Bureau Orders or any other name – present serious concerns. Per the US DOJ, these mechanisms “are used as a workaround for the Department General Order [DGO] approval process.” *Id.* 167, 247; *see also id.* 151 (they “are used to avoid internal and external input from stakeholders”); *id.* at 169 (they were “repeatedly renewed ...in place of addressing the issue within the appropriate [DGO]”); and

WHEREAS, While the Police Department has implemented laudable reforms in the wake of the 2016 US DOJ COPS report, the Department’s use of Bureau Orders to undermine the Commission’s rulemaking and oversight authority persists to this day; and

WHEREAS, On April 4, 2023, the Police Department issued a series of identical Bureau Orders—affecting the Field Operations Bureau, Special Operations Bureau, and Investigations Bureau—entitled “Plain Clothes and Undercover Operations Policy” that set out a new policy governing plain clothes officers. Rather than implementing existing Commission policy on plain clothes officers (DGO 5.08), the Bureau Orders purport to create new policy. Certain provisions of the Bureau Orders conflict with DGO 5.08, while others purport to reach out and address issues beyond the scope of DGO 5.08. The timing of this Bureau Order is particularly troubling given that the Commission is nearing the conclusion of a multi-month process to revise DGO 5.08. Issuing a Bureau Order during the pendency of a DGO revision on the same subject is particularly inappropriate. It undermines the thorough, public DGO revision process and it creates confusion for officers who must follow a new Bureau Order that may differ markedly from both the DGO that will eventually replace it and the DGO that is currently on the books; and

WHEREAS, On April 6, 2023 the Department issued a series of identical Bureau Orders—affecting the Field Operations Bureau, Special Operations Bureau, Investigations Bureau, and Airport Bureau—entitled “Investigative Social Media Accounts” purporting to regulate the investigative use of social media. Like the Plain Clothes Bureau Orders, these orders were also issued during the pendency of a DGO revision process on the same subject. Here again, the timing of events is troubling. The working group on the social media DGO was set to begin on March 7, 2023. On February 24, the Department submitted a request for an extension to begin the working group, citing limited staffing resources. The Commission President approved the request. On March 23, the Department submitted a second request for an extension to commence the working group, again citing staffing issues. This second extension request was also approved by the Commission President. The Social Media Bureau Orders were issued during the pendency of the second extension period to begin the social media working group. Claiming a lack of resources to engage in the DGO process while simultaneously reallocating scarce Department resources to publish a series of Bureau Orders on the same topic is a particularly concerning usurpation of the Commission’s policymaking authority; now therefore be it

RESOLVED, The Social Media and Plain Clothes Bureau Orders impinge on the Commission’s authority to promulgate “rules and regulations” governing the Police Department.; and

FURTHER RESOLVED, The Chief of Police is directed to rescind the Plain Clothes and Undercover Operations Policy Bureau Orders on the date that the Commission enacts revisions to DGO 5.08; and



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FURTHER RESOLVED, The Chief of Police is directed to immediately commence the Expedited Development Process under DGO 3.01.04(H) for an Investigative Social Media Accounts DGO; and

FURTHER RESOLVED, The Chief of Police shall present the Investigative Social Media Accounts DGO within 35 days and the Commission shall vote on said DGO at its next meeting following the presentation; and

FURTHER RESOLVED, The Chief of Police is directed to rescind the Investigative Social Media Accounts bureau orders effective on the date the Commission fully enacts the Investigative Social Media Accounts DGO.

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JESUS YANEZ
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KEVIN BENEDICTO
Commissioner

DEBRA WALKER
Commissioner

AYES:

NAYS:

ABSENT:

Very truly yours,

Sergeant Stacy Youngblood
Secretary of the San Francisco Police Commission
[star number/initials]

Cc: Assistant Chief Denise Flaherty
Acting Deputy Chief Rachel Moran
Deputy Chief Daniel Perea
Deputy Chief Raj Vaswani
Deputy Chief Mikail Ali
Director Diana Oliva-Aroche
Director Asja Steeves