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Cc:	SFPD, Commission (POL); SFPD, Chief (POL); Henderson, Paul (DPA); David Rizk
Subject:	Meet & Confer issues -- Item #7.a., Meeting of July 8th
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Dear Commissioners:

A few nights ago I wrote to encourage you to systematically and publicly address the dysfunctional, confounding, unnecessarily lengthy, overly secretive, often legally unjustified and reform-hostile habits that have developed with respect to meet and confer sessions with the SFPOA regarding your DGO policy choices. The last section of that email suggested six goals I believe you should prioritize as you consider your meet and confer practices to ensure the Police Commission's interests as the policy-making body for the SFPD and the interests of the public you represent are fully reflected in each and every decision made about meet and confer.

For years now, the Commission, SPFD, DPA, Mayor and Board of Supervisors have all said they are trying to prioritize the USDOJ COPS reforms. All of you say you want to move far more quickly to adopt and implement those and other reforms while valuing collaboration, transparency and effective policy-making along the way. Yet, none of those things are being served by how the Commission is currently handling (or being handled by) the DGO meet and confer "process." I was struck that when Commissioners asked simple, direct questions Wednesday night about the current "process," you and the public watching or listening in were provided incomplete and, in my view, deeply misleading information. I was particularly struck by (and appreciative for) the candor of your Vice President who expressed utter bafflement at the current meet and confer decisions someone else is apparently making about the Commission's own DGOs -- who exactly is making them, why and on what basis.

These questions commissioners asked Wednesday night involved very basic issues that the Commission needs to understand if it hopes to responsibly and more effectively manage its own policy-setting process. Vice President Taylor's exasperation two nights ago was an all too familiar replay of the same confusion and frustration then Commission President Suzy Loftus was expressing four very long years ago about the meet and confer process inexplicably swallowing up the first version of the body camera DGO she and others had pushed through a long collaborative process to adoption. Isn't it time to actually fix this problem?

I don't have all the answers. I don't know what you are being told in closed session or in legal advice memos. I do know that some of what you were told publicly Wednesday night does not add up. I do know there are other lawyers -- not retired ones like me, lawyers with deep labor law expertise -- who are ready, willing and able to help you make better sense of the scope of your authority, the nature of your meet and confer obligations and how you might better design and use a process that serves the City's goals rather than just continuing to indulge and (unintentionally) encourage the SFPOA's entitled resistance to speedier, more impactful reforms. I do know, from Joe Eskenazi's reporting in Mission Local, that it took the assistance of experienced, outside lawyers for Board of Supervisors President Norman Yee to understand that incomplete advice from the City Attorney's Office had recently left him with the deeply mistaken impression that merely placing a measure on the ballot that would not directly change SFPD staffing levels might somehow be legally risky when the SFPOA was (is?) obviously hoping to stall the proposed measure with meet and confer claims and frivolous arbitration threats so that it could not be voted upon until 2022.

I am sure you would benefit greatly from hearing soon from outside experts in a structured public discussion about these issues. As much as you might prefer to focus on the substance of DGO reforms over this sort of process problem, the reality is that this meet and confer "process" problem -- with all its confusion, contradictions and extreme delays -- is a big part of what is holding you back and has long needed to be addressed in a systematic fashion.

Meanwhile, you are currently poised to discuss four policy items in closed session next week that have seemingly already been sent to some form of meet and confer -- at least one of which, (the Bias-Free Policing DGO), apparently with no Commission discussion or understanding of why it was sent there. It will be impossible for you to make smart, strategic decisions about those items without a more full and accurate understanding of your policy-setting-authority and the limits to the SFPOA's alleged meet and confer and arbitration rights on those subjects.

Accordingly, I hope the following is of some assistance --

WHO DECIDES IF D.G.O. POLICY LANGUAGE MUST BE SENT TO MEET AND CONFER

As a threshold matteer, there seems to be confusion about who makes the decision on whether the DGO policy language you adopt triggers mandatory meet and confer obligations under state labor law. I was stunned to hear the Deputy City Attorney make this claim on Wednesday --

"The last thing I want to point out is that this falls within DHR... (U)ltimately, whether decisions go to meet and confer are done by DHR. I wanted to make sure that that was clear."

After some pushback from Commissioners DeJesus and Elias, she continued --

"Again, just to stress, under the charter, those decisions fall within DHR. DHR will always come and discuss and meet with the Commission as they did back in 2016 and '15 to get direction, to talk to the Commission. But those decisions rest with DHR. I just want to make sure that that's clear."

(https://sanfrancisco.granicus.com/MediaPlayer.php?view_id=21&clip_id=36072 at 4:30:15.)

Huh? I'd recommend you ask the City Attorney's Office for a charter citation supporting that conclusion because in my experience with the San Francisco Police Commission policy-setting authority and process dating back (off and on) to 1985, I recall no one ever making that sort of claim before. Here's the relevant section of the charter -- "The Human Resources Director shall: (1) Represent the City and County and/or its departments in the implementation of (the state Meyers-Milias-Brown Act)." (Section 11.101 -- https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_charter/0-0-0-1103#JD_11.100 .) DHR works for the Police Commission in this context. DHR has no authority over the Police Commission or the power to order them to delay its final approval of policy language it reasonably believes is not a mandatory subject of bargaining. "Representation" empowers one to act on behalf of someone else -- under their approval and direction -- not the other way around. What am I missing?

So, if the policy language of a DGO is clearly a managerial prerogative under MMBA (like with the use of force policy) or extremely likely would be considered to be that by any court (like with the Bias-Free Policing DGO), it is within the Commission's discretionary authority -- not DHR's -- to decide whether or not to voluntarily send its own policy language to permissive "meet and confer" talks. To conclude otherwise would be to make the Police Commission's independent charter authority to set policy for the SFPD dependent on the discretionary decisions of DHR. Is that really DHR's position -- that all of the City's commissions and departments, in effect, work for them on these policy issues and must follow their orders?

If not -- and if the Deputy City Attorney misspoke on this point -- it means the Police Commission, at bare minimum, needs an answer (which it did not get Wednesday night) to its Vice President's very reasonable question -- "why on earth did the Bias DGO, for example, need to go to meet and confer?" More importantly, if it's the Police

Commission's (not DHR's) decision to make about whether to send the policy language of its DGO to meet and confer -- (even when the topic, like Bias-Free Policing, seems to fit squarely within the line of cases holding that various similar police policies that so directly impact police-community relations are, in fact, managerial prerogatives that are not mandatory subjects of bargaining under MMBA) -- why was the Commission seemingly not even consulted about this beforehand much less clearly provided the opportunity to exercise its discretion to not engage in permissive discussions with the SFPOA this topic (or to, at least, strictly narrow the scope of any talks to "effects" rather than disputes about policy language and to set some reasonable target deadlines for the process to be completed)?

MANAGERIAL PREROGATIVES ARE NOT MANDATORY SUBJECTS OF BARGAINING

When called upon to briefly describe the Commission's meet and confer obligations, DHR's (currently assigned to SFPD) LaWanna Preston said --

"What needs to go to meet and confer are items, are policy decisions that fall within the scope of representation. Pursuant to the Meyers-Milias-Brown-Act, if there are changes in working conditions that fall within scope they are required -- the City is required to provide an opportunity to the union to meet and confer over those impacts.... So there are things that we are legally required to meet and confer about when it comes to changing working conditions or if the union can identify impacts of those working conditions."

(https://sanfrancisco.granicus.com/MediaPlayer.php?view_id=21&clip_id=36072 at 4:23:20.)

Of course, what's missing entirely from this summary is any acknowledgment or description of the Police Commission's authority under MMBA to not meet and confer -- at all -- over new or amended policy language in DGOs on topics that are managerial prerogatives... even when they do impact officer safety or other working conditions (like with the use of force policy changes). How can the Police Commission possibly understand and responsibly, efficiently and effectively exercise its policy-setting discretion and manage the DGO process if the entities charged with advising you describe the issues entirely from the SFPOA's alleged labor rights perspective while failing to even mention the Commission's clear managerial prerogative to set policies on certain topics?

I have already provided you with a copy of the SFPOA vs. San Francisco Police Commission decision. But for an excellent, easy-to-read, quick primer on your (and the Chief's) managerial prerogative to set various police policies without needing to meet and confer about their contents under MMBA, I highly recommend the League of California Cities amicus brief in the SFPOA case -- https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Request-Amicus-Support/Recent-Filings/Briefs-(1)/San-Francisco-POA-v-San-Francisco-Police-Commi-(1) . The League of California Cities is an association of city officials who share resources and expertise on policy issues that can impact cities. Dozens of San Francisco officials -- including the City Attorney, Mayor, Chief Scott and President of the Board of Supervisors -- are members.

They filed a brief in the SFPOA appeal specifically because they knew that, were the police unions to prevail in that case, it would chip away at the very long-standing managerial prerogative authority of cities to set their own police policies on key topics impacting police-community relations and would make it far more difficult to manage and, in this era, to reform their police departments. As the League put it (emphasis added) --

"Such policies are so fundamental to the proper operation of a law enforcement agency that they cannot be just another chip to be traded at the bargaining table.... In sum, California law does not require cities or counties to negotiate with labor unions over fundamental policy decisions. Such decisions include adoption of policies that foster greater public trust in law enforcement agencies by bringing their practices in line with accepted norms, such as eliminating racial profiling and ensuring the integrity of internal investigations into officer misconduct."

Is not your Bias-Free Policing policy exactly that sort of policy? (See especially the two-page Section B of the brief starting at page eight that describes several other types of police policies that California courts have held over the decades to be managerial prerogatives and, therefore, not mandatory subjects of bargaining under MMBA.)

The League of California Cities thought it was critical that the Court of Appeal understand the role, scope and importance of non-negotiable, managerial prerogative policies in modern American law enforcement management practices. Is it not just as important for the San Francisco Police Commission (and the public you represent) to have a working understanding of the same things? And, if the City Attorney's Office and DHR are -- for whatever reason -- unwilling or unable to openly acknowledge and freely explain to the Police Commission what the League of California Cities brief did for the Court, should you not (as soon as reasonably possible) receive that sort of briefing and information in public session from outside experts?

MEET AND CONFER OVER POLICY LANGUAGE VS. ONLY OVER EFFECTS

It's no surprise that in the absence of clear explanations and guidance, the Commission's discussion of this topic can seem confusing and end up using language that may not fully reflect the Commissioners' goals and intent. For example, when a DGO is put on your agenda for approval as a "draft for meet and confer" purposes the implication is that the Commission has made a choice to engage in meet and confer talks with the SFPOA about the provisions and the language of the policy still labeled a "draft" -- either because it thinks it is legally obligated to do so or is voluntarily choosing to do so. But it now seems clear that, at least with some recent DGOs, the Commission was not intending to make that choice at all and was not, in effect, inviting the SFPOA to re-examine language that had already been fully vetted and approved. By the same token, when the Commission votes to not "send a policy to meet and confer," the intent seems to be that it is choosing to make a final decision and the policy language (when it is legally entitled to do so, as with the Use of Force DGO amendments). That does not prohibit DHR from subsequently engaging in brief talks with the SFPOA solely about the effects and impacts of the policy decision the Commission has already made -- rather than engaging in the all-too-common extended talks that have too frequently veered into yet another discussion (albeit behind closed doors with DHR) about the underlying policy decisions themselves.

There is real value -- especially with clear managerial prerogatives -- in using and being clear about a chronological, two-step process with some DGOs. First, the Commission makes a final decision -- often after a long collaborative working group process involving SFPOA, always with a full public hearing in which the SFPOA is entitled to comment on an equal basis with everyone else. Then, after adoption of the DGO language, if the SFPOA has identified effects of those policy choices it wants to discuss, DHR can discuss and possibly address them with, for example, training on the new policy. That's exactly what I understand the Commission to have done Wednesday night with the Use of Force amendments -- namely, choose to make a final decision about the policy language (as it is entitled to do per the SFPOA decision) and not "send the policy to meet and confer." The SFPOA told their members yestereday that they had requested meet and confer on the substance of the "use of force" policy decision. (https://s3.amazonaws.com/missionloca/mission/wp-content/uploads/2020/07/Screen-Shot-2020-07-03-at-10.48.53-AM.png) Wednesday night the Commission said to SFPOA, in effect, "been there, done that, you sued us, we won, you lost -- we're not doing that again on this very same topic." However, the Commission's motion does not prohibit DHR and/or SFPD engaging in strictly "effects" talks with the POA.

The confusing, prolonged, and ultimately counterproductive meet and confer process used in 2016 on the then-new use of force DGO, illustrates the importance of the Commission being clear with itself, with DHR, with the public and with the SFPOA about the scope of any meet and confer after it has already voted to approve a policy. The Deputy City Attorney correctly noted that it was important to recognize that part of that meet and confer process involved talks about "effects" resulting fairly easily in mutually agreeable decisions about necessary training. But, Commission DeJesus was also correct in emphasizing that the only reason those talks lasted nearly six months was because the SFPOA were allowed to continue revisiting substantive policy and wording choices that had already been made. That's because the Commission did not -- as they'd been urged to do -- make clear in their first vote that they were exercising their clear managerial prerogative to make final decisions about the policy language itself and would, therefore, limit and further talks to the effects of those decisions. The consequence was not only avoidable delay but a five-month period in which the POA engaged in an ugly and vicious campaign against the policy choices and against individual Commissioners -- a campaign featuring attack ads against the Commission president, slurs against the long-time President of the Police Executives Research Forum (whose organization had led the drive

nationally to reform use of force policies earning the ire of police unions nationwide), exploitation of the SFPD's avoidable killing of an innocent teen age car passenger many years prior bizarrely hoping the tragedy would convince the Commission to reverse itself on its ban on shooting at moving vehicles (retraumatizing her surviving friends and family members outraged by how her 1998 killing was being used by the police union all those years later) and the SFPOA's promotion of their alleged use of force "expert' on the subject, a former East Bay police officer who'd been run out of law enforcement for repeated use of the worst racial slur imaginable who opined about the Commission's reforms with the conclusion "it's time for political ideology to defer to common sense and reality." (Background materials on the 2016 extreme SFPOA ugliness available upon request.)

No, the important thing wasn't just that the "effects" bargaining that took place in 2016. That perspective seems to treat the underlying policy reform as though it's a purely legal document that can be sealed off like a delicate flower from the hostile cultural environment in which it must eventually be implemented. By not exercising its clear managerial prerogative to make the final use of force policy decisions from the start and limit any meet and confer to brief conversations only about implementing "effects," the Commission enabled five months of the SFPOA's anti-reform antics... that stiffened internal resistance to the reforms... encouraged contempt towards the Commission itself and its role...heightened internal skepticism of a Commission-recruited and hired outsider chief just as he was beginning his tenure... and eventually led to the SFPOA membership bankrolling their remarkable ballot measure attempting to strip the Commission and Chief of their power to limit how tasers might be used. DHR and the City Attorney's Office discuss meet and confer choices as though the consequences of those choices exist in some sort of a vacuum. As shown by the choices made in 2016, quite clearly they do not. The culture of SFPD will never change if the Commission continues to be timid about using its full legal authority to change it.

BIAS-FREE POLICING D.G.O. -- DELAYS, ARBITRATION & BROWN ACT VIOLATION

When the Commission Vice President pressed for an explanation for why this DGO was not considered a managerial prerogative beyond the scope of mandatory meet and confer, Ms. Preston's entire response was --

"A lot of changes have occurred in that policy. And we have sent that out to the POA and we have had one meeting and we'll be discussing that at your next Commission meeting in closed session...."

(https://sanfrancisco.granicus.com/MediaPlayer.php?view_id=21&clip_id=36072 at 4:25:25.) Of course, that is no explanation at all! The number of changes is of no consequences to the legal analysis. It's the nature of the changes and the underlying subject matter that counts... and whether or not those are, in fact, managerial prerogatives under MMBA... which, from all appearances, they appear to be.

And, of course, Ms. Preston's brief response sounds as if nothing at all of any practical or legal consequence happened before DHR sent the Commission-approved draft DGO to SFPOA. In fact, that DGO is the product of more than two years of painstakingly detailed, collaborative working group meetings that included the SFPOA prior to the Commission's approval of the draft in May. Given how long that part of the process took -- on a critically important, high priority subject -- if DHR thinks meet and confer is still necessary or useful for some unexplained reason, why have they held only one meeting with the SFPOA in the seven weeks since then?

How is the SFPOA using the delay? Once again, seemingly to spread propaganda in their desperate attempt to rehabilitate their image and try to more effectively resist serious SFPD defunding efforts that could significantly reduce the size of their dues-paying membership upon whose collective largesse all of their various political and legal gambits and lucrative fees for their various lawyers and consultants depend. In a June 30th op-ed in the San Francisco Chronicle headlined, "San Francisco is already at the forefront of police reform," the SFPOA claims, "the association is providing meaningful input into the implementation of San Francisco's new bias-free policy." (https://www.sfchronicle.com/opinion/openforum/article/San-Francisco-is-already-at-the-forefront-of-15375506.php .) Is it? Are they going to threaten to sue yet again if they don't get their way on this topic too? Have they conceded that the contents of the Bias-Free Policing policy are within the Commission's managerial prerogative authority to set without meet and confer and waived any claim they could or would take action should the Commission reject any of their preferred wording or content changes? If not, it's not mere "meaningful input" or, as they put it in their op-ed, "dealing with bias head on." If their input is not strictly limited to "effects" issues, it would be "same old, same old" SFPOA resistance to collaborative reform and a refusal to accept the Commission's

authority to make final policy decisions informed by a two-year long working group process. It would be yet another entitled, legally bogus claim that their voice in the process must be given preferential treatment over all others'.

Even if the SFPOA is still claiming (by not waiving) a legal MMBA right to meet and confer over this... and even if someone sincerely believes the courts would not recognize this to be a managerial prerogative policy the Commission can adopt without meet and confer at all... have your representatives informed you the SFPOA has no legal right under the charter to arbitrate any disagreement or impasse on this particular topic? If not, why not... since that information is key to understanding the full context and your considerable leverage that would inform your decision on whether to continue talks with the SFPOA beyond the seven weeks that have already passed?

When the SFPOA sought support for their interest arbitration ballot measure thirty years ago, they agreed to several carve out areas in order to win the support of progressive members of the Board of Supervisors -- chief among them, the late Harry Britt who at the time was the City's leading voice on police reform. (See Prop D starting at pg. 77 -- https://webbie1.sfpl.org/multimedia/pdf/elections/November6_1990short.pdf .) Mayor Art Agnos and Chief Frank Jordan still opposed the measure arguing it would inevitably be used by the SFPOA to try to get their way on policy issues -- like, say, a use of force policy -- that should be understood and treated as management prerogatives rather than appropriate subjects for bargaining and arbitration. They were worried that, notwithstanding the carve out topics, the arbitration right always looming in the background would weaken their and the Commission's ability to adopt and implement reasonable policy changes in a reasonably expeditious fashion. Unfortunately, a majority of the voters ignored their warnings and they've both been proven right in recent years. It was foolish to believe the SFPOA would not eventually try to abuse their arbitration rights by using the threat of it to stall reforms or as leverage to win policy concessions that are not in the public interest.

One of Harry Britt's police arbitration carve outs is for "any rule, policy, procedure, order or practice... which is necessary to ensure compliance with Federal, State or local anti-discrimination laws, ordinances or regulations." (Charter Section A.8.590-5(g)(3).) That clearly describes the Bias-Free Policing DGO with the constitutional right to equal protection under law cited prominently in its preamble. How did that fact -- that the SFPOA has no impasse arbitration right over a policy designed to protect the public from biased policing practices carried out by SFPOA members (and far too often in the past aggressively defended and enabled by the SFPOA) -- factor into the decision someone made to have the Commission timidly adopt this DGO as a mere "draft for meet and confer" discussion with SFPOA? How will it factor into your decision now about whether to cut off any further talks about the substance of the policy? Until the voters eventually decide to reverse their decision and strip from the charter the SFPOA's interest arbitration right that they have so clearly tried to abuse over and over again, the Police Commission -- with the full and active support of DHR and the City Attorney's Office -- should consistently and aggressively make use of all of the carve out concessions Harry Britt and others ensured thirty years ago would be in the charter as at least partial protection of your and chief's policy-making authority now. (Has this even been part of your various discussions with DHR and the City Attorney's Office? Why not?)

Furthermore, discussing the Bias-Free Policing DGO in closed session puts the Police Commission at imminent risk of committing another violation of the Brown Open Meetings Act. Your agenda justifies your closed session discussion of this topic by citing Government Code Section 54957.6 but that section authorizes closed session discussions only on "matters within the statutorily prescribed scope of representation." But as discussed above, fundamental managerial policy decisions are outside the scope of representation -- and no one (including DHR and your Vice President) has publicly claimed, much less made a persuasive argument, that the contents of the Bias-Free Policing policy are anything but managerial prerogatives beyond the scope of MMBA representation.

If DHR plans to share with you any SFPOA "input" about the wording of the DGO you already adopted in draft form, it will be illegal for you to hear or discuss it in closed session. Public employers may engage in voluntary talks with their unions about anything they like and can refer to them as "permissive subjects of bargaining," "meet and confer" or "labor talks." But, public bodies covered by the Brown Act may not discuss those talks in closed session unless they are within the MMBA scope of representation... which fundamental, managerial prerogative policy decisions are not... which the contents of the Bias-Free Policing DGO is not. Fundamentally, the Brown Act exists to prevent policy matters from being discussed behind closed doors by public bodies. If that basic requirement could be evaded simply by the body labelling policy questions voluntary "labor talks," then the public body could avoid all public scrutiny of its policy discussions simply by choosing to discuss them with a labor union -- and, in turn, could shield its closed door special interest lobbying on non-MMBA policy issues from public

scrutiny. In short, the Police Commission may not, in effect (but not intent), conspire with the SFPOA to keep secret what they are saying to you (through DHR) about the Bias-Free Policing DGO and what you are saying to each other, to DHR and to SFPD management about that same policy.

By way of example, in the late 1990's local advocates convinced the Oakland City Council they should consider legislation to strengthen the Citizens Police Review Board. The OPOA claimed a right to meet and confer about the legislation. The City of Oakland engaged in those talks without conceding one way or another if they were mandatory subjects of bargaining within the MMBA scope of representation. The ACLU and a local organization objected to the Council discussing the results of those talks in closed session because, per Government Code Section 54957.6, the CPRB legislation was a managerial prerogative and not within the MMBA scope of representation. The ACLU eventually sued the Council for violating the Brown Act. The OPOA intervened and the litigation proceeded over the sole question of whether Oakland had the discretion to amend its CPRB ordinance without bargaining with OPOA. The Superior Court ruled that it did and that, therefore, it had violated the Brown Act by discussing that legislation in closed session by falsely claiming it was covered by the "labor talks" exemption. All parties agreed the practice of closed session discussion of CPRB legislation would end and no appeal was heard. (Materials available upon request.) The same situation exists here. If the Police Commission can finalize the wording of a policy without discussing it with SFPOA -- because it's a fundamental managerial policy decision -- it may not lawfully discuss that policy in closed session.

Accordingly, under Item #6 of your agenda and before you vote on whether or not to approve going into closed session on this particular item, you should publicly inquire of DHR whether any of the SFPOA input to be discussed involves any possible wording changes in the policy. If so, in order to avoid violating the Brown Act, you should either remain in open session for the Bias-Free Policing discussion or be presented with information and argument that persuades you that this is a mandatory subject bargaining within the MMBA scope of representation -- not a managerial prerogative -- so that you can make an informed vote justifying a closed session discussion on this topic. As of right now, you've been given no explanation at all for why anyone should believe the wording of the Bias-Free Policing DGO would legally require meet and confer.

Regardless, if you do go into closed session for whatever reason, I strongly encourage you, under Item #8 of the agenda, to vote to disclose at least the entirety of the SFPOA's "input" communicated to DHR. The POA often says one thing publicly and something else entirely behind closed doors. You have no obligation and no reason to keep their positions (effects or content) about the Bias-Free Policing policy secret from the public. You had community members work in good faith for more than two years on this policy. Respectfully, I believe the Commission owes them this degree of transparency over what the SFPOA is now claiming about the product of all their hard work. I also believe it is urgent that you publicly report on any decisions you make regarding further meet and confer on this topic -- any deadlines, any clarifications about scope, any information at all that will inform the public about how you plan to avoid the Bias-Free Policing DGO from being stuck indefinitely in a meet and. confer blackhole like so many DGOs before it.

DISCIPLINARY PENALTY AND REFERRAL GUIDELINES AND DISCIPLINARY HEARINGS

Have you been informed by the City Attorney's Office, DHR, or anyone else that the SFPOA has no charter right to arbitrate disputes on these particular topics either? If so, good. If not, why not? The Commission cannot make intelligent decisions about its posture and strategy in meet and confer if it has not been fully informed about all the relevant impasse arbitration carve outs. Meet and confer does not mean meet and agree. It's important that you understand what theoretically could happen and what clearly cannot happen when you say "no thanks -- we're done" and break off talks on these subjects. (See Charter Section A.8.590-5(g)(2).)

I encourage you to disclose what the SFPOA is seeking particularly in terms of suggested disciplinary penalties. I worked on the original discipline matrix and was not surprised back then when they sought lesser penalties for virtually every category of offense. You have no obligation and no reason to keep from the public the SFPOA's views on what are appropriate levels of accountability for proven acts of misconduct. This information is a window into their current values. They just published an op-ed claiming "SFPD can continue to stand as a national model for policing. But we must all come together now." With debates looming over what level of funding should continue for SFPD in the face of a $2 billion budget deficit and a pay and benefit package for SFPOA members that is one the most generous in the nation, I believe you should publicly share the specifics about what they feel are

reasonable levels of disciplinary accountability for their vision of a "national model of policing." Why not?

I also. encourage you to disclose specifics about how long these items have been in meet and confer, what happens next and what is the timeline and process for getting these issues finalized. You can choose to be far more transparent about the meet and confer process. Chief Scott recently told viewers who tuned in on-line to his joint interview with District Attorney Chesa Boudin at Manny's that "transparency is a huge step towards accountability." It's a necessary step too. Please choose to be far more transparent and accountable about what you learn, discuss and decide in closed sessions devoted to meet and confer topics -- (if and when they are legally permissible under the Brown Act).

BODY WORN CAMERA POLICY

On December 2, 2015, SFPD officers shot and killed Mario Woods. (After the bystander video was subsequently released, the SFPOA claimed that the officers had "acted with great restraint.") Coincidentally, that night and for the first time the Police Commission adopted a body worn camera policy after months of collaborative discussions and sent it to meet and confer. That same day -- prior to any discussion at all -- the SFPOA president immediately threatened to take the policy to arbitration and to encourage officers to withhold their cooperation during investigations if they did not get their way in meet and confer.

It's now been 55 months since this policy was first adopted. I encourage you to vote to disclose how many months during that four and a half year time-period has some version of the body cam policy or amendments to the policy been in the meet and confer process. I encourage you to be reflective and transparent about whether or not whatever negotiating strategy DHR and the Commission have pursued have been effective in achieving your objectives in a timely fashion. What has gone wrong? What's gone right? I assume there has been no policy that has been subject to more meet and confer over the last five years than the body cam DGO. Why? I assume it's because its potentially great impact on day-to-day officer accountability has incentivized the accountability-averse SFPOA to resist, delay and obstruct the policy for as long as it can and as vigorously as possible. Am I wrong? Do you have an alternative theory? If not, what has DHR, the Police Commission and SFPD management done to more aggressively and effectively confront this quite foreseeable dynamic on the part of SFPOA? Has it worked?

Has the Police Commission's and DHR's demonstrated willingness over many years now to indulge very prolonged meet and confer talks on this and other subjects just ended up encouraging -- and in some ways rewarding -- the SFPOA's on-going resistance to reform while drastically slowing the pace and weakening the impact of all of your various efforts? That's sure what it looks like from my vantage point. If DHR or the City Attorney's Office disagree and somehow believes whatever "strategy" they have been using to deal with the SFPOA in meet and confer is working better than it appears from the outside -- is as efficient, transparent and accountable of a process as it could and should be -- I very much encourage you to have them explain that publicly at some point while you also consider alternative ideas and proposals from outside experts on how to better achieve your goals while fully respecting the SFPOA's rights under MMBA.

Thank you.

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