

November 16, 2020

Hon. Damali Taylor, Vice-President
Members, San Francisco Police Commission

**Re: Department of Police Accountability's 3rd Quarter 2020 Policy
Work – Sparks Report**

Dear President Taylor and Commissioners:

This letter provides an overview of the Department of Police Accountability's 3rd Quarter 2020 policy work.

3rd Quarter 2020 Policy Work

During the 3rd Quarter 2020, DPA submitted to SFPD suggested revisions to sixteen SFPD Department General Orders and made over sixty-one policy recommendations. DPA presented a protocol for police interactions with Deaf and Hard of Hearing individuals which the Police Commission unanimously adopted on July 15, 2020. DPA also collaborated with SFPD on two significant Use of Force Department Bulletins that expanded reporting and review requirement on force incidents and addressed appropriate control techniques in light of George Floyd's death.

Highlights of DPA's 3rd Quarter 2020 policy work include:

A. Seventeen Recommendations to Enhance Officer Involved Shooting Protocols (Wood's Officer Involved Shooting Policy Report)

DPA made seventeen policy recommendations to enhance officer-involved shooting protocols based on its investigation of the officer-involved shooting of Mario Woods. DPA concluded that due to SFPD's use of force policy in effect at the time, the shooting of Mario Woods was the result of a policy failure. DPA provided Chief Scott its policy recommendations in May 2020. SFPD provided DPA its written response in July. The entire Woods investigative file and policy recommendations were publicly released pursuant to

state law (SB 1421) on September 10, 2020. DPA's recommendations in the Woods' officer-involved shooting include:

1. SFPD should revise its investigative protocols for deadly force incidents to ensure – through a canvass – or other measures – that all witness officers are identified for prompt interviews.
2. SFPD should revise its investigative protocols so that all witness officers to a deadly force incident and all officers involved in the incident prior to or immediately after the shooting are interviewed prior to being excused from their shift.
3. SFPD should devise General Orders that instruct witness officers to cooperate with any deadly force investigation conducted by a government agency, and that provide administrative sanctions for non-compliance.
4. SFPD protocols should be modified to ensure that involved and witness officers are fully interviewed prior to exposure to video evidence of the event.
5. SFPD should conduct a thorough and wide-ranging administrative review of officer decision-making in deadly force incidents, so that the involved officers and the Department itself are better equipped to address future tactical challenges.
6. Whenever there is any indication that contagious fire might have been the cause of the use of deadly force, SFPD should carefully and objectively analyze the evidence.
7. SFPD should promulgate a training bulletin that updates officer understanding and disavowal of a per se “21- Foot Rule”.
8. When less lethal force is used in conjunction with a deadly force incident, SFPD must conduct a detailed analysis of whether its use is consistent with policy and training.
9. When other force is used in conjunction with a deadly force incident, SFPD should opine about the advisability of each option used.
10. SFPD should automatically incorporate supervisory decision-making where relevant in any review of deadly force.
11. SFPD should evaluate the post-incident actions of its personnel as part of its standard review process and should remediate as needed.
12. In the officer-involved shooting context, SFPD should consider assigning notification of next of kin responsibilities to personnel better equipped to handle such tasks.

13. Department of Police Accountability should be authorized to participate in an advisory role in the decision as to whether and when an officer involved in a deadly force incident should be returned to the field.
14. SFPD Department training experts should refrain from rendering opinions about officer performance in critical incidents unless provided with the complete investigative file.
15. In deadly force incidents, SFPD should refrain from premature and selective release of information intended to justify an involved officer's actions.
16. SFPD should not expound about the legitimacy of any deadly force incident until the investigation is completed.
17. In cases in which inaccurate or misleading information about an officer-involved shooting is released, SFPD should promptly correct the information.

B. Adoption of SFPD Procedures for Interactions with Deaf and Hard of Hearing Individuals (DGO 5.23) (July 15, 2020).

DPA Convened A Deaf and Hard of Hearing Working Group to Create Written Procedures and Enhance Services

- In November 2017, DPA invited Deaf advocates and representatives from community organizations and city departments to draft a Department General Order (DGO) on police protocols for interacting with Deaf and hard of hearing individuals. DPA convened the working group because of community concerns that domestic violence survivors who are Deaf had not received adequate police services from SFPD and DPA complaints from Deaf and hard of hearing individuals.
- Working group attendees included Police Commissioner John Hamasaki, and representatives from Deaf Hope, Deaf Counseling Advocacy and Referral Agency (DCARA), Deaf Services Center (SF Public Library), the San Francisco Hearing and Speech Center, Mayor's Office of Disability (MOD), District Attorney's Office (Victim Witness), Domestic Violence Consortium, Safe and Sound, and the San Francisco Police Department and two community members.
- After conducting a best practice review, the working group drafted a proposed DGO, created an officer reference guide to use when interacting with Deaf and Hard of Hearing individuals, and identified different technologies to assist SFPD at the station and in the field to communicate with Deaf and hard of hearing individuals.

DPA Presented A Protocol for Police Interactions with Deaf and Hard of Hearing Individual for Police Commission Adoption.

On July 15, 2020 DPA presented a written protocol for police interactions with Deaf and hard of hearing individuals (Department General Order 5.23) that the Police Commission unanimously adopted. The Deaf and Hard of Hearing DGO:

- Requires SFPD officers to communicate effectively with people who are Deaf or hard of hearing and not subject them to unlawful discrimination, or exclude, segregate, or deny them SFPD services.
- Emphasizes that Deaf and hard of hearing individuals are entitled to the same level of services that are provided to hearing individuals.
- Outlines procedures for officers when they encounter a Deaf or hard of hearing individual, including identifying the individual's preferred method of communication using a Communication Card and appropriate tools for communicating.
- Restricts the use of family members, friends, and other unqualified third parties as interpreters absent emergency situations.
- Establishes procedures for interviewing reportees, witnesses, victims, and suspects who are Deaf or hard of hearing.
- Addresses procedures for detentions, pat downs, arrests, interrogations, search warrants, and consent to search of suspects who are Deaf or hard of hearing.
- Designates the Department's Language Access Liaison Officer's responsibilities to include services, training, data collection, reporting, and outreach concerning police interactions with Deaf and hard of hearing individuals.
- Requires scenario-based officer training every two years to commence within four months of the General Order's adoption.
- Includes a Guideline for Communicating Effectively with People Who are Deaf or Hard of Hearing.

C. DPA 2019 Annual Language Access Report (August 12, 2020)

On August 12, 2020, DPA presented its 2019 Annual Language Access Report to the Police Commission. This report addresses DPA language access complaints and key DPA language access projects and goals.

Language Access Complaints

During 2019, DPA received eleven complaints or completed investigations involving allegations that SFPD officers had not provided language access services required by Department General Order DGO 5.20.

- Three cases resulted in sustained findings of officer misconduct; two cases resulted in proper conduct findings and one resulted in unfounded findings.
- Three resulted in insufficient evidence; two cases were withdrawn by the complainants.

- Complaints involved allegations of language barriers concerning Spanish, Cantonese, Mandarin and Arabic.

Key DPA Language Access Projects

1. Obtained SFPD's compliance to release incident reports to domestic violence and sexual assault survivors within five days of requests as required by state law. SFPD request forms are now available in multiple languages on SFPD's website and at Police Headquarters.
2. Drafted a Domestic Violence and Stalking Manual for SFPD patrol officers. This proposed Manual addresses the critical role that patrol officers play as first responders to domestic violence and stalking calls for service. The manual addresses key topics such as on-scene preservation of evidence, dominant aggressor determinations, lethality assessment and language access tools for Limited English Proficient and Deaf and hard of hearing individuals.
3. Initiated by DPA, the Deaf and Hard of Hearing Working Group, drafted a comprehensive SFPD Department General Order for police interactions with individuals who are Deaf or hard of hearing.

Key DPA Goals for Upcoming Year

1. Increasing the pool of bilingual officers and expanding the number of languages for bilingual certification for officers.
2. Recertification for all bilingual officers.
3. Fulfill DGO 5.20's outstanding mandate since 2007 that all bilingual officers receive training.

D. DPA's Collaboration with SFPD on Expanded Use of Force Reporting and Appropriate Control Techniques in Light of George Floyd's Death.

1. *Reportable Use of Force Department Bulletin (20-010)*—DPA was a significant contributor to SFPD's Reportable Use of Force Department Bulletin which expands reporting requirements and increases internal review of force incidents. Adopted by the Police Commission on July 15, 2020, Department Bulletin 20-010 amends SFPD's Use of Force DGO 5.01. This Department Bulletin:
 - Expands reportable force to include physical controls that are used in any attempt to overcome any physical resistance, regardless of injury or complaint of pain.
 - Requires officers to report the pointing of firearms—including in low ready position—at or in the direction of a subject.

- Instructs officers to document their justification for drawing, exhibiting, or pointing of a firearm—including low ready position.
 - Directs supervisors to review immediately the officer's body worn camera footage and any other available evidence prior to completing and submitting the Supervisory Use of Force Evaluation form by the end of watch.
 - Increases internal evaluation of force incidents by requiring review by the Risk Management, the Training Division, the officer's Bureau Deputy Chief, and the Field Tactics and Force Options Unit.
2. *Control Techniques Use of Force Department Bulletin (20-010)*—DPA was a significant contributor to SFPD's Use of Force Department Bulletin which addresses appropriate police control techniques in light of George Floyd's death. Adopted by the Police Commission on July 1, 2020, Department Bulletin 20-010 amends SFPD's Use of Force DGO 5.01. This Department Bulletin incorporates DPA-suggested requirements when officers have contact with a person's head, neck or throat including immediately assess that the person is breathing normally, is appropriately responsive, and evaluate whether the person is injured, and immediately notify a supervisor.

E. DPA Suggested Revisions to SFPD's Department General Orders

In 2016, the United States Department of Justice found that SFPD's Department General Order are outdated (many from 1994), do not reflecting current policing practices, and need to align with current laws and statutes, community expectations, and national best practices every three years. DPA plays a vital role in suggesting revisions to SFPD's 119 Department General Orders to ensure that they reflect current law, best practices, and community values.

During the 3rd Quarter, DPA suggested revisions to the following Department General Orders:

1. *Department Weapon Return Panel* (DGO 3.05)—DPA suggested that the Police Commission and DPA be notified and be provided information concerning the Department Weapon Return Panel's decision to remove a weapon from an officer or return it to the officer.
2. *Alcohol Use by Department Members* (DGO 2.02)—DPA suggested revisions include:
 - Amend notification and investigation procedures to include reasonable suspicion that an employee has consumed alcohol and include common indicators of impairment.
 - Amend rules concerning off-duty officers who have consumed alcohol and are called back to duty to include any time off-duty officers place themselves on duty such as

verbally identifying themselves, displaying a department issued star, or department issued ID card or taking enforcement action as defined by DGO 2.04.

- Identify how officers will be tested when suspected of drinking alcohol or being under the influence.

3. *Drug Use by Members* (DGO 2.03)—DPA suggested revisions include:

- Do not delete DGO 2.03's original policy statement which emphasizes that police officers hold a position of public trust, are empowered to use lethal force and in light of that ultimate power, must live up to the highest standards of conduct, including not using drugs.
- Amend policy statement and procedures to prohibit using both prescription and non-prescription drugs that impair performance of duties, including notification to the supervisor by the member of their impairment, reassignment of member, discipline for being under the influence of legally obtained prescription drugs, and members' duty to report another member for being under the influence of any drug whether legal or illegal.
- Include as a procedure a member's duty to notify a supervisor if a member suspects an employee is possessing or under the influence of drugs.
- Do not delete original testing provisions that explained who may authorize a drug test, when a test may be order, the impact of a member's refusal to take a required test, the type of test that may be ordered (blood and urine), the conditions required for taking a blood and urine sample, and submission of samples for testing.
- Include illegal use of steroids and provide for testing when reasonable suspicion exists.

4. *Peace Officers Rights in Disciplinary Investigations* (DGO 2.08)—DPA recommends the duty to record an officer interrogation be mandatory.

5. *Disciplinary Process for Sworn Officers* (DGO 2.07)—DPA suggested revisions include:

- Amend DGO 2.07's introduction to reference the City Charter, San Francisco Administrative Code and SFPD's DGOs.
- Use investigative dispositions and definitions as provided in DGO 2.04.
- Require SFPD to send copies to DPA of all disciplinary and procedural letters and notices related to DPA cases, including but not limited to: Chief's findings letters, notices of intended punitive action, hearing notices, final disciplinary orders, statements of suspension, final nondisciplinary orders, and appeal notices.

- Permit the Chief or DPA to provide an officer with a Letter of Intent to Discipline within one year of the discovery of misconduct. If an officer is off-duty, sick, or otherwise unavailable for service, permit the Chief or DPA to provide the notice to the officer's department e-mail address.
- Require SFPD to serve IAD and DPA charges on named officers and provide a copy of the proof of service to DPA.
- Require SFPD to provide DPA a copy of Notices of Appeal on DPA cases.

6. *Rules of Conduct* (DGO 2.01)—DPA suggested revisions include:

- Enhance the policy statement to emphasize officer's responsibility to report and prevent police misconduct
- Include discrimination, harassment, corruption, and dishonesty as officer misconduct.
- Require officers to intervene and report police misconduct.
- Prohibit an off-duty officer who is intoxicated from placing his/herself on duty.
- Include respect for constitutional rights as part of an officer's duty.
- Do not delete original requirement that while on duty, members shall make all required written reports of crimes or incidents requiring police attention.
- Prohibit officers from using their authority or position for financial gain, to obtain or grant privileges or favors, or to avoid the consequences of an illegal or prohibited act.
- Prohibit officers from using information gained through their position and not available to the public for their personal benefit or benefit of another.
- Do not delete original rules concerning off duty reporting, accepting fees, leaving one's assigned post, and loaning money to prisoners.

7. *Victim Notification* (DGO 6.19)—DPA suggested revisions include:

- Explain that the California Crime Victim Compensation forms are available in multiple languages and include the California Victims Compensation Board website address.
- Include SFPD's Victim of Crime Notification form (SFPD Form 369) as part of the DGO for reference.
- Translate the Victim of Crime Notification form into core languages and include a provision that instructs officers to provide Limited English Proficient victims the appropriate translated form.

8. *Duties of Commanding and Superior Officers* (DGOs 1.06 and 1.07)—DPA suggested revisions include:

- Delineate the duties of deputy chiefs, superior officers, commanders, and night captains, especially concerning key areas of reforms identified by US DOJ 2016

Assessment of SFPD such as investigating, reviewing and reporting on use of force, investigating, reviewing, and disciplining concerning complaints of police misconduct, reviewing and responding to officer conduct identified by the Department's early intervention system, and implementing SFPD's community policing goals.

- Include a policy statement about the critical role of deputy chiefs, superior officers, commanders, and captains to ensure that the Department's vision and goals, including procedural justice, bias-free and community policing principles are put into effect.
 - Provide the type of training deputy chiefs, superior officers, commanders and captains should be required to take as prerequisites to these positions such as the 40-hour Crisis Intervention Team training, Critical Mindset and Coordinated Response Training, and Supervisor Training on topics such as Bias-Free Policing, Early Intervention System, Monitoring and Investigating Use of Force.
9. *Critical Incidents* (DGO 8.01)—SFPD concurred with the majority of DPA initial eight suggested revisions submitted on April 27, 2020. However, defining which types of incidents are designated as critical incidents is an outstanding area of concern. DPA recommends that it include school lockdowns, terrorist threats, and incidents with significant public interest or media coverage (e.g. large police response at school, major pursuits, fatal traffic accidents).
10. *Hostage and Barricaded Suspects* (DGO 8.02): SFPD concurred with the majority of DPA's initial six suggested revisions submitted on May 7, 2020. Three outstanding areas concern supervisor's role, a disengagement policy, and a barricaded suspect definition.
- DPA recommends further discussion with SFPD's subject matter experts from both the Hostage Negotiation Team and Field Tactics Force Options to discuss DPA Recommendation #4 that "Supervisors shall maintain their role as incident leader and not assign themselves tactical responsibilities unless exigent circumstances (or no other capable personnel is available." DPA's suggestion is based in part on analysis and findings in an officer-involved shooting where the supervisor's role as an incident leader and incident outcome were negatively impacted by the supervisor assuming several active participatory duties.
 - To advance discussions concerning DPA's recommendation that this DGO include a disengagement provision, DPA recommends that SFPD provide DPA a copy of its draft disengagement policy.
 - Barricaded suspect definition should be updated.

11. *Patrol Officers* (DGO 1.03): SFPD concurred with the majority of DPA's initial ten suggested revisions submitted on May 27, 2020. Two outstanding areas involve community policing and incident report writing duties of patrol officers.
- DPA recommends that this DGO be updated to include patrol officer's report writing duties as outlined in Department Bulletin 18-154.
 - DPA recommends that this DGO be updated to include patrol officer's duties concerning community policing as identified by US DOJ's assessment of SFPD.
12. *Arrests by Private Persons* (DGO 5.04)—DPA recommends that SFPD delete the outdated standard concerning certificates of release in light of the proposed Detention DGO 5.03 (from the Bias Working group) which requires a certificate of release for all detentions regardless of the length of the detention or distance an individual has been moved.
13. *Non-Uniform Officers* (DGO 5.08)—DPA recommends:
- Do not delete the original provision of DGO 5.08 that limits non-uniformed officers from conducting traffic enforcement to circumstances when they witness an "aggravated situation requiring immediate action to protect life or property, e.g. drunk driving" or ongoing criminal investigation or regulated vehicle enforcement. DPA has had sustained complaints involving non-uniformed officers taking traffic enforcement actions not consistent with this DGO and these actions have caused both officer and public safety risks.
 - Non-uniformed officers conducting traffic enforcement pursuant to this DGO be required to turn on their Body Worn Camera before initiating a stop and this requirement be explicitly stated in this DGO.
 - Requiring officers to immediately request a marked backup unit prior to initiating a traffic stop.
 - A mandatory rule that non-uniformed officers identify themselves when taking enforcement action pursuant to this DGO.
 - Delineating supervisor's duty when non-uniformed officers conduct traffic enforcement pursuant to this DGO.
 - Incorporating rules when non-uniformed officers respond to a scene during an emergency to address unique officer and public safety risks associated with taking police action while not in uniform.

14. *Station Personnel* (DGO 1.05)—SFPD concurred with the majority of DPA’s sixteen suggested revisions submitted on May 27, 2020. However, two outstanding DPA recommendations include:

- Providing a process for re-evaluating Station Investigation Team (SIT) cases when additional evidence indicates that a SIT investigation is appropriate. For example, DPA investigated a case where more egregious injuries were documented in a supplemental incident report yet there was no process that triggered a reconsideration of the case for SIT investigation.
- Develop a check-in system at district stations for individuals who seek assistance for services that includes their arrival time, the nature of their request, and the time they receive assistance.

For district stations with high call volumes, this documentation is important to assess the district station's customer service response—including the volume of requests, the district station's staffing needs and the availability of bilingual Police Service Aides and bilingual officers.

For several years at numerous Language Access Working Group meetings attended by SFPD Community Engagement Division (CED) staff, domestic violence and sexual assault service providers discussed lengthy waits for assistance at district stations with high service calls and particularly when bilingual officers were needed to take an incident report. (A police service aide cannot take an incident report concerning domestic violence and sexual assaults.)

SFPD CED staff agreed that a check-in system and triage assistance were needed and a variety of solutions were discussed (including a kiosk or computer) which would enable visitors to sign in and state the nature of their request, though no system has been yet implemented.

Thank you for your continued support in advancing the policy work of the Department of Police Accountability.

Sincerely,



Paul Henderson
Executive Director

