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Subject: SFPOA Contract, Meet & Confer Abuses, Community Policing & BWC DGOs (Items #2 & #3, Mtg. of Oct. 7)
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Commissioners,

The Commission is poised tonight to formally adopt changes to the Body Worn Cameras DGO that the Department of Human Resources (DHR) have inexplicably allowed to be delayed in meet and confer with the SFPOA more than two and one-half *years* (!). During the same meeting, DHR apparently expects you to send the painstakingly-crafted Community Policing DGO into the black hole of yet another set of legally unnecessary meet and confer talks with the SFPOA.

At your last meeting, it was announced that -- notwithstanding specific representations to the contrary made a few weeks prior -- DHR was now *refusing* to brief the Commission on a contract extension for the SFPOA that would inexplicably lock-in through June 30, **2023** (!) provisions that have enabled the extreme meet and confer delays in the reform process. Two days later, DHR's out-going director informed city officials of a "Corruption at DHR" scandal that, at first, seemed to involve a single employee but has since expanded to include allegations from the Black Employees Alliance representing hundreds of City workers of broader mismanagement at DHR involving other examples of DHR staff taking questionable actions that impact departments without the knowledge and consent of those departments. Multiple investigations are pending.

That scandal at DHR may be unrelated to the long-standing problem of DHR seemingly working against -- rather than in support of -- the Commission's and SFPD's reform goals. But the last few months have been marked by the Commission's open frustration with DHR and with the inadequate and often contradictory explanations it and the public have received for their on-going practice of allowing the SFPOA to abuse meet and confer talks to slow walk, undermine and ultimately make a mockery of the reform process.

The Commission is *not* powerless in this situation. Expressing frustration without taking the action steps available to you is to become complicit in the undermining of the very reform process you are trying to lead and expedite. As detailed below, the Commission should --

- Consider and pass a resolution at its next meeting calling on the Board of Supervisors to not approve the proposed contract extension for the SFPOA negotiated by the DHR without the input or involvement of the SFPD or the Commission unless and until convincing public explanations are made for how and why the contract terms will not continue to undermine reform;
- Enforce the Commission's prior agreement with DHR that *only* mandatory subjects of bargaining be subjected to meet and confer talks with SFPOA by refusing to adopt the Community Policing DGO as a mere "meet and confer draft" and, instead, calendar full and final adoption of the DGO for your next meeting; and,
- Insist that credible, detailed, public explanations are provided for why simple, clarifying revisions in the Body Worn Camera DGO crafted by the Commission on January 10, **2018** -- a policy previously touted as an important example of the alleged success of collaborative reform -- was allowed to remain stuck seemingly in secret meet and confer talks with the SFPOA for 31 months. Who exactly made that decision? Why?

S.F.P.O.A. CONTRACT EXTENSION -- MORE PAY, NO REFORM CONCESSIONS

On August 12th, the Commission reacted with uniform surprise when I shared the breaking news from the *Examiner* that DHR had been engaged in secret talks with the SFPOA on a two-year extension of its current contract that does not expire until June 30, 2021 and that a tentative agreement had already been struck that would lock-in status quo non-economic terms that the City opposed in 2018 and that have been consistently undermining the reform process since 2016.

On August 19th, Chief Scott told you with regard to this development --

"DHR is in charge and that's about as much as I know.... Just like everyone else, the Department is waiting to hear the results. What I was advised (by the DHR Director) was that they'd be more than happy to come in and at least explain what's going on."

Commission Vice President Taylor immediately replied, "I will take them up on that."

But on September 16th, Vice President Taylor revealed that she'd been told the exact opposite of what the Chief had been told --

"I spoke with DHR. They are *not* comfortable reporting to the Commission during the course of negotiations... which is unfortunate for us."

And that same night Chief Scott again took pains to point out --

"The Department was not involved in those negotiations.... I wasn't involved in it and neither was anybody else from the Department.... I wasn't part of those conversations."

(All quotes from public meetings and hearings transcribed verbatim from www.sfgovtv.org.)

I cannot emphasize strongly enough that *DHR's position is: (a) contrary to their own past practice; (b) directly contrary to the position they and other City leaders took on the importance of the non-economic terms of the SFPOA contract in 2018; and, (c) contrary to the consensus recommendations of mayors, police executives, labor and civil rights experts nationwide for how police union contract negotiations should be handled in the post-George Floyd era.* To silently go along with the deal DHR secretly negotiated with the SFPOA -- without the involvement of the Chief and without even a courtesy notification to the Police Commission -- would be tantamount to a public admission that the much-touted USDOJ COPS collaborative reform process is simply no longer a priority for the City (contrary claims during the recent budget process notwithstanding).

By the time the Commission updated the public on DHR's reversal of its prior offer to the Chief to make a public presentation on the contract, active negotiations had concluded, the SFPOA membership had already voted to approve the tentative deal, and it had already been signed by both DHR and the SFPOA on September 11th.

The proposed DHR-SFPOA deal was and is awaiting consideration by the Board of Supervisors. Here's the proposed deal DHR doesn't want to talk to you or the public about --

- The SFPOA gets: (a) two *more* annual three percent pay raises; (b) favorable timing for the *next* contract negotiations (namely during the a mayoral campaign when SFPOA has always believed its political leverage is maximized); and, (c) status quo non-economic contract terms for two *more* years that have demonstrably undermined reform (as your agenda tonight demonstrates) -- and that the City tried to change in 2018 -- and which will continue to needlessly tie the Commission's and SFPD's hands through June 30, 2023.
- The City gets only an 18-month deferral of a 2% pay raise and a 24-month deferral of a 1% pay raise otherwise due in FY 2020-21 under the current contract. That's it.

In other words, the SFPOA gets two more years of pay increases while the City gets no more cooperation from SFPOA on reform than it's had all along. But the time this ridiculously bad deal expires, it will have been almost seven years since City officials promised to fully and expeditiously implement the USDOJ COPS reforms and, no doubt, the SFPOA's "delay, obstruct and threaten" strategy that they've consistently used (with DHR's cooperation) under the terms of the current contract will continue to pay off handsomely -- and literally -- for them. No wonder DHR changed its mind about publicly explaining and justifying its position to the body whose work will be most impacted by their proposed civic giveaway.

The City has been well aware of the problems related to unnecessary meet and confer delays for at least four years now. The July 2016 report from the Blue Ribbon Panel on Transparency, Accountability and Fairness in Law Enforcement noted --

"While the Commission has attempted to engage a variety of stakeholders, *the POA continues to have power in the policymaking process that is disproportionate to that of other stakeholders.* . . . If meet-and-confer efforts (on mandatory subjects of bargaining) fail to produce a negotiated resolution, the POA may pursue arbitration. Because the arbitration process is not time-limited and can take months to run its course,

these so called "impasse procedures" give the POA significant bargaining power, especially in circumstances where there is a sense of urgency around making policy revisions."

(Page 115.) A few months later, the USDOJ COPS report flagged the very same problem and called for a "review of the meet-and-confer process to identify ways to improve input and expedite the process in the future for other policy development." (Recommendation 3.2.)

So, with already widespread dissatisfaction in 2018 with the slow pace of reforms and the SFPOA's on-going resistance, ***Supervisor Malia Cohen called for a public hearing on the contract talks at the Board's Government Audit and Oversight Committee --***

"It is the right and authority of the San Francisco Board of Supervisors to provide consultation and input to the Mayor and to DHR on the successors (SFPOA) MOU.... It is the Board's job to approve the MOU. This is an important conversation that we need to have publicly to ensure there is transparency, openness and sunshine on a very critical issue that has an impact on everyday people's lives, particularly members of communities of color that are adversely affected by law enforcement....

The bottom line is that we must make every possible effort to improve the public safety and efficiency of our esteemed police department. And to the extent that the MOU negotiations may impact safety and efficiency, the City should seek to accomplish those goals through bargaining....

We are in the midst of a national conversation about police reform and public safety and I think it would be negligent to ignore that reality as we move through negotiations."

(Remarks of Supervisor Malia Cohen, GAO Committee, March 21, 2018. Per video, emphasis on "negligent" is original.)

Or, as ***Supervisor London Breed*** put it during that same hearing --

"I am committed to these reforms that Supervisor Cohen and I have worked tirelessly on. It is something we have to continue to work on and make sure is accomplished....

I am really grateful to the Chief for the work he has done to try to implement the reforms.... We have a long way to go. And the discussions around this contract that we have definitely had in closed session to talk about some of the concerns we have as members of the Board of Supervisors -- about our expectations that certain requirements are placed in the context of the contract. I am looking forward to making sure that it is a good contract....

I think that it is ***extremely important*** that there is accountability, that there is clarity around what is and is not appropriate as it relates to what officers do so that discipline and all the other things that come into play when something goes wrong -- that sort of thing -- has to be embedded also in the culture of the Department and in the contract we expect to sign....

I really appreciate the openness and willingness for the Chief and Ms. Isen (DHR's Employee Relations Director) to come up with the appropriate agreement as it relates to all of our concerns around the reforms. And we're committed to continuing to work to address these particular issues.... We are definitely committed to the reforms and committed to making sure that we will embed in the contract specifically what we can as it relates to how we can make this work to address many of the concerns that have been addressed here today."

(Supervisor London Breed, GAO Committee, March 21, 2018. Per video, emphasis is original.)

So, what has changed? Is the City ***less*** committed to police reform now? After the events of the last few months, would anyone seriously argue that there is ***less*** of a national emphasis on police reform in 2020 than in 2018 or that San Francisco should be ***less*** committed in 2020 using contract negotiations to address the long-standing, thoroughly-documented and quite obvious problems in the reform process? Is ***anyone*** -- other than SFPOA -- satisfied with the excruciatingly slow pace of SFPD reform? Why is DHR being far ***less*** transparent about its contract negotiations with the SFPOA now than they were in 2018? How does this sudden lack of transparency possibly serve the public's -- rather than the SFPOA's -- interests?

In stark contrast to DHR's posture towards the Commission now, Carol Isen -- soon to become DHR's interim

director -- patiently answered the Board members' questions during that 2018 GAO Committee public hearing about the contract negotiations, including several about the problems with the meet and confer process. In the wake of that hearing and based on the Board's and public input, the City proposed that, in exchange for pay raises, the SFPOA agree to shortened deadlines and a waiver of impasse arbitration on matters involving USDOJ COPS reforms. The SFPOA refused the City's demand and, while the independent arbitrator subsequently declined to impose it on the SFPOA, he nonetheless awarded lower pay raises than the SFPOA had sought commenting --

"The proposal (on USDOJ COPS reforms) represents *a very well-meaning attempt by the City to help promote the implementation of the DOJ report*. In addition, there was impassioned and persuasive testimony presented by the public, which the Panel took under consideration.... I encourage the parties to continue to discuss ways to mutually expedite the adoption of the DOJ proposals."

(Arbitration Award, *In the Matter of an Interest Arbitration Between CCSF and SFPOA*, page 19, emphasis added.)

Acting as the City's panel member, DHR's Carol Isen wrote in her dissent --

"Speedy implementation of the Department of Justice's recommendations is an *essential objective* of the City.... The City's proposal ... provides for an expedited meet and confer process without the delay caused by impasse resolution procedures."

(Award, page 23, emphasis added.) So, what's changed? Why would DHR now agree to two more years of pay raises for SFPOA without even *seeking* at least the same change in contractual terms they sought two years ago -- much less several other contractual changes that could, should and would be on the table in a City still serious about police reform -- (like a "loser pays" approach to arbitration costs to deter the SFPOA's on-going frivolous claims and threats about the alleged scope of their bargaining rights..., like stronger and more explicit protections against the SFPOA encouraging or supporting work slow downs like other police unions nationwide have been doing in this era of reforms they resist and demands for accountability and that the SFPOA has already openly threatened in retaliatory fashion with respect to calls for help from MUNI..., like provisions to facilitate the reimagining and civilianization of public safety services in San Francisco, etc.)? *If DHR consulted neither the Police Commission nor the Chief of Police, who decided that "speedy implementation" of USDOJ COPS reforms should no longer be an "essential objective" in the City's contract with the SFPOA through mid-2023?*

And the SFPOA's response to the City's "well-meaning" demand that, in exchange for pay raises, they become a bit more cooperative so the reform process could finally be expedited? They openly mocked the need for it, personally attacked the motivation of those who supported it, and questioned the very premise that the public's demand for serious change in SFPD -- even in exchange for pay raises -- should supersede the SFPOA's relentless defense of an intolerable status quo. In a blistering concurring, opinion their representative on the panel wrote --

"This was not a serious labor proposal -- it was *political farce*....

After all, *when the clamoring crowds move on to their next cause celebre*, our members' lives will be governed by changes to their working conditions emanating from these (USDOJ COPS) recommendations....

Alas, well-intentioned is not an adjective that can be applied to the actions of Supervisors Fewer, Cohen, Ronen, and Yee along with other supporters of... the City's proposal."

(Arbitration Award, emphasis added, page 21-22.)

Two years later, the SFPOA attitude and posture towards SFPD reform and the communities they serve has not changed one bit. For example, just in the last few months --

- Ignoring the fact that they'd already sued and lost at every level in their prior quixotic attempt to overturn well-settled law that police unions in California have no legal right to negotiate changes in use of force policies, the SFPOA blasted the "political theater and grandstanding" allegedly behind the Commission revision of the use of force DGO after the killing of George Floyd to explicitly ban kneeling on subjects' necks and threatened to "take the most aggressive legal position possible in response to the Police Commission's disrespectful treatment of... our members." (<https://missionlocal.org/2020/07/sf-police-union-threatens-aggressive-legal-action-against-police-commission/> .) The arrogant, entitled, anti-reform

SFPOA found it "*disrespectful*" (!) that the Commission would refuse to give them preferential treatment by indulging their views -- and their views only -- in legally unnecessary closed door negotiations with DHR over exactly when, how and for how long their members could *still* place their knees on the necks of members of the public without exposing themselves to any possibility of accountability. Their legally frivolous threat, to my knowledge, has not been carried out.

- Apparently with more funds than they know what to do with, the SFPOA paid their lawyers to phone and write a letter to DHR objecting to the Police Commission's decision to post signs in police stations expressing support for the idea that "black lives matter" because, according to the SFPOA, it would allegedly introduce a "political agenda" and a "wedge issue" into the "safe harbor of police stations." (<https://www.sfexaminer.com/news/sf-police-stations-ordered-to-hang-black-lives-matter-signs-over-union-objections/> .) This is the sign the SFPOA believes is somehow too controversial for display in police stations -- <https://www.sanfranciscopolice.org/sites/default/files/2020-09/SFPDBImBanner.20200904.pdf> . Per their letter, the SFPOA now apparently believes that DHR serves as their own personal "liaison" -- their private backchannel -- to the Commission even on matters wholly unrelated to their members' working conditions and where they might be able to make absurd claims like merely *saying* "black lives matter" somehow "places politics over reform." They want to say privately what they know most San Franciscans would reject if they said it publicly and they *definitely* want the culture, statements and actions of the SFPD to reflect their *own* views more than the views and priorities of the people they serve.
- In obvious defiance of long-standing SFPD policy on standard uniforms, the SFPOA produced and encouraged members to wear on duty SFPOA-branded "thin blue line" / "blue lives matter" flag face masks that Supervisor Walton observed "look like something you see below the Mason Dixon line." (<https://www.sfexaminer.com/news/sf-police-officers-respond-to-protest-wearing-controversial-face-masks/> .)

And, DHR's response to the SFPOA's on-going antics and open hostility to much-needed changes in SFPD is to seek *less*, reform-wise, in its 2020 contract negotiations than it did in 2018?! DHR's approach is to *reward* the SFPOA with two more years of 3% pay raises -- notwithstanding the City's now quite extreme fiscal challenges -- without seeking even a single reform concession in return?! Assuming police reform is a priority... assuming the many public statements of the Chief, various police commissioners, mayors and members of the Board of Supervisors in support of reform are to be taken seriously... and, assuming the role of DHR is to pursue the public interest and stated priorities of the various bodies, officials and departments it represents -- rather than merely trying to appease the SFPOA -- *the positions taken by DHR in the proposed contract extension seem to be a form of labor relations malpractice.*

As detailed in prior correspondence, *DHR's approach runs directly counter to the national consensus among police and municipal executives, civil rights groups and labor experts that serious progress on police reform and accountability now requires a careful re-examination and a recalibration of the non-economic terms of the contracts with police unions.* Chief Scott along with 64 of his fellow big city chiefs in the Major Cities Chiefs Association called for exactly that in the wake of the George Floyd killing.

(https://www.majorcitieschiefs.com/pdf/news/mcca_open_letter_update.pdf .) *Why would DHR ignore Chief Scott and his colleagues?* The United States Conference on Mayors recently issued a report calling on cities to "*not* bargain away management rights as a trade-off for raises sought by police unions."

(<https://www.usmayors.org/2020/08/13/nations-mayors-release-detailed-plan-for-police-reform-in-u-s-cities/> and <https://www.usmayors.org/issues/police-reform/> .) In growing recognition of the importance of the details in police union contracts, organizations like the NAACP Legal Defense and Education Fund and Campaign Zero have launched major campaigns in support of similar demands. (<https://www.naacpldf.org/press-release/ldf-launches-toolkit-for-community-oversight-of-police-union-contracts-to-support-advocates-in-efforts-to-hold-police-accountable-for-misconduct/> , <https://nixthe6.org/no-more> , https://www.latimes.com/california/story/2020-08-18/police-reform-advocates-scrutiny-police-unions?utm_source=The+Marshall+Project+Newsletter&utm_campaign=14bfb38e57-EMAIL_CAMPAIGN_2020_08_19_11_16&utm_medium=email&utm_term=0_5e02cdad9d-14bfb38e57-172128081 .) A group of very prominent retired judges, law professors and labor law experts -- including retired federal judge Thelton Henderson, retired California Supreme Court justice Joe Grodin, and long-time police union lawyer Ronald Yank -- recently published a piece calling for far greater transparency and public scrutiny of police union contract negotiations to "*aid the public in holding elected and appointed officials accountable for the police contracts they negotiate... (and) to ensure that the contracts serve the common good.*" (<http://www.californialawreview.org/reforming-law-enforcement-labor-relations/> .)

Other cities are heeding these calls. Chicago is seeking 40 specific reforms detailed over 17 pages in its

contract proposal to its police union with Mayor Lightfoot's negotiator explaining in a letter sent in response to the union's complaint that they preferred to retain status quo non-economic provisions (just like the SFPOA) --

"We remain committed to working together towards a fair contract, but will never retreat from the reforms that are essential to restoring legitimacy and accountability.... It is clear that you are totally misreading this moment... and the needs of the public."

(<https://chicago.suntimes.com/city-hall/2020/9/16/21439811/chicago-police-union-fop-contract-talks-raise-reform-budget-shortfall-city-council> .) *In contrast, why on earth would San Francisco* -- right now, after all the time, effort and money that has already been spent on reform over the last four years -- *retreat from its own commitment to police reform and fundamental transformation of public safety services? Why would DHR so fundamentally misread the moment and choose 2020 as the time to abandon its prior commitment to expediting the USDOJ COPS reforms as an explicit and "essential objective" of a contract with the SFPOA binding the City through mid-2023? Why would San Francisco now align itself with the police unions in contractually perpetuating the status quo when so many others are answering the various calls, paying attention to the experts and seeking to use police union contract negotiations to bring about change?*

More immediately, why would the Police Commission *not* register its objection to not being consulted *at all* on contract terms that, if allowed to stand, will undermine its efforts for two more years? If the Board of Supervisors doesn't hear from you, they will assume you are satisfied with the pace of meet and confer on DGOs and with how DHR and the SFPOA has been handling them. Your recent public comments suggest you are not satisfied and the contract extension provides an opportunity to finally fix these problems... an opportunity that will soon be gone for two more years if you don't act. A resolution expressing your views on this to the Board is both important and timely.

I suggest you use some of the same language Supervisors Cohen, Fewer, Yee and Ronen used in their resolution in support of the City's reform demand in the 2018 contract arbitration described above. The resolution failed to win quick and unanimous consent when Supervisor Safai sent it to committee which made it impossible to get the full board's approval prior to the arbitration ruling, but *the same arguments still apply more than two years later* --

"WHEREAS, During the aforementioned hearing, community members and members of the Board of Supervisors' Government Audit and Oversight committee emphasized their priorities for the successor MOU, including *uninhibited implementation* of the Department of Justice recommendations; and

WHEREAS, Public safety services secured with these considerable expenditures must be performed in as professional, effective, and high quality manner as possible; and

WHEREAS, *The successful implementation of the Department of Justice recommendations is critical to the quality and value of the services covered by the Memorandum of Understanding*; and

WHEREAS, *Successful and efficient implementation of the Department of Justice recommendations requires as much cooperation as possible from the SFPOA"*

(Full resolution, emphasis added -- <https://sfgov.legistar.com/View.ashx?M=F&ID=6216790&GUID=755716C9-713D-4EBA-BC6F-A27474A453D6> . The ACLU's letter in support of it -- <https://sfgov.legistar.com/View.ashx?M=F&ID=6221713&GUID=4EC72BD1-66EB-4199-A2F4-3D390E4B9D0F> .)

COMMUNITY POLICING D.G.O.

Even without a specific contract provision yet in place to prohibit this, *there is no plausible reason to think that the substance of the revised Community Policing DGO* (as opposed to its possible effects) *is within the MMBA scope of representation and, therefore, a mandatory subject of bargaining*. Yet, someone -- apparently DHR -- decided this DGO must nonetheless be adopted only as a "draft" for meet and confer purposes. If you don't stop the DHR practice of trying to send *all* DGOs -- regardless of subject matter -- to meet and confer whether or not they are mandatory subjects of bargaining, their unnecessary and corrosive practice of needlessly deferring to the SFPOA will continue.

By way of reminder, you asked repeatedly why the Bias Free Policing DGO was sent to meet and confer since it was not a mandatory subject of bargaining and could not get a straight answer from DHR or the City Attorney's Office. DHR recommended you send the "knee on the neck" revisions to the Use of Force DGO to meet and

confer even though you'd won the SFPOA's litigation just two years ago reaffirming decades of case law holding that such policies are *not* within police unions' scope of representation. Thankfully, you pushed back on and rejected their advice and implemented the policy change without meet and confer talks. Board President Norman Yee was absurdly advised that his proposed charter amendment on SFPD staffing levels -- Prop E -- would have to be subject to meet and confer talks and possibly impasse arbitration before it could eventually... someday in the future... be placed on the ballot. Thankfully, he sought outside legal advice and was convinced to ignore the legally-wrong deference to the SFPOA that was being suggested and San Francisco voters -- not the SFPOA -- will soon decide whether or not to amend our charter.

And, as you've since discovered and as records you've disclosed confirm, this problem is continuing even though the Commission has had a standing directive since 2018 for DHR to *not* meet and confer on the substance (as opposed to the effects) of any DGO unless it is a *mandatory* subject of bargaining under state law, the MMBA. That directive was memorialized by Commission President Hirsch in a June 19, 2019, letter that served as Exhibit 8 of the SFPD's Collaborative Reform Completion Memo on USDOJ COPS recommendation #3.2 calling for expedited policy development, approval and implementation. But *that agreement is not being adhered to by DHR*. To my knowledge, there has not been a single DGO that DHR has calendared for Commission approval that has *not* been labelled a mere "draft" for meet and confer purposes. Listing the Community Policing DGO as a mere meet and confer "draft" continues that outrageously unjustified practice.

Either DHR is routinely ignoring the directive of the Commission or, contrary to case law, they somehow actually believe that *every* policy change the Police Commission ever adopts on any topic *is* within the scope of representation under MMBA and a mandatory subject of bargaining. Either way, the Commission should not send the Community Policing DGO to meet and confer. Furthermore, it is obviously inaccurate for SFPD to claim that it is in substantial compliance with USDOJ COPS recommendation #3.2. The Commission should immediately inform Cal DOJ that, contrary to the prior submission, the directive with DHR has *not* been followed and the Department is currently *not* in substantial compliance.

Beyond that, to send the *Community Policing* D.G.O. in particular into legally unnecessary meet and confer sessions with a reform-resistant, community-hostile police union, undermines both the extensive collaborative work done to develop the policy and is inconsistent with the very principles of the policy itself. As you're reviewing the slides you're presented tonight detailing the policy's development, ask yourself how you would feel if you were one of the dozens of community stakeholders that volunteered time in good faith to participate in this process only to learn at the very end -- years later -- that implementation of the policy would be held up by legally unnecessary negotiations with the SFPOA. (Slide #4, <https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/PoliceCommission100720-DGO1.08%20Presentation.pdf> .) The "Vision and Values" preamble to the policy itself claims SFPD wants empowered "partnerships" with the communities it serves featuring "honest and transparent communications." Don't undermine those important values or the very credibility of this policy by sending it into legally unnecessary, non-transparent, closed door talks with the SFPOA. Why would DHR think *that* would be in the best interest of the Commission, the SFPD or the public? (Ask yourself if *you'd* willingly enter into a partnership of any type with anyone if you were told from the get go that the final terms of the partnership would be subject to secret negotiations that would exclude your voice completely? That's not a "partnership." It's an abusive relationship.)

BODY WORN CAMERA D.G.O.

The long and sorry history of this DGO renders it the poster child for the on-going dysfunction of the meet and confer process in the absence of relevant contractual concessions from the SFPOA. In December 2015 -- coincidentally hours after Mario Woods was killed by SFPD -- the Police Commission first adopted a meet and confer draft of the DGO after months of working group meetings and three days after the President and Vice President of the Commission published an op-ed claiming the policy "stands as *an example of collaboration and public and police engagement* and that allows San Francisco to contribute to the national dialogue on how to use cameras as an effective tool for everyone in our community." (<https://www.sfchronicle.com/opinion/openforum/article/Police-Commission-vote-to-view-or-not-to-view-6668938.php> .) No such luck... thanks to DHR indulging the SFPOA in more than *three* years of two sets of meet and confer talks on the policy over the ensuing five years.

Per the Blue Ribbon Panel report's summary of the first six months of this fiasco --

"The body-worn camera policy adopted by the Police Commission on June 1, 2016, provides a recent example of *the POA's disproportionate bargaining power*. When the Police Commission began the process of drafting a new department policy on BWCs, it created a working group comprising stakeholders from the

District Attorneys' Office, the Public Defenders' Office, the OCC, the POA, the San Francisco Bar Association, and others, to draft the new policy and identify issues for the Police Commission to resolve. Once a draft was completed, the commissioners asked for additional input from the community. With extensive stakeholder and community member feedback in hand, the commissioners discussed and approved the draft policy. That policy reflected a compromise on a number of issues, the most heavily debated of which was the question of whether officers would have an opportunity to review footage from BWCs before writing their reports. The compromise adopted by the Commission was that, in cases of officer-involved shootings, in-custody deaths, or criminal matters, officers could preview such footage only at the discretion of the Police Chief.

After this compromise was reached, the Commission, through the city negotiator, then engaged in the required meet-and-confer process with the POA. The outcome of that process was a compromise different from the one struck by the various stakeholder groups: in cases of officer-involved shootings, in-custody deaths, or matters where an officer may be subject to criminal liability, the officer must provide an initial brief statement about the incident but then has an opportunity to review BWC footage with an attorney before being interviewed fully. The Police Commission approved this change to the policy, over dissent from two commissioners. The majority view, however, was that further delay to accommodate additional feedback or to arbitrate the issue, after over a year of negotiation, would be unacceptable."

(Emphasis added, page 115.) For what it's worth, here's my two-minutes of public testimony predicting way back ***then*** that DHR's meet and confer practices, if not addressed by the Commission (or eventually in the SFPOA contract), would continue to be an albatross around the neck of SFPD's attempts at collaborative reform - <https://www.facebook.com/jeremydpollock/posts/10158178442348536> . (I was raised to not say "I told you so" so I'll simply inquire if anyone seriously thinks I've been wrong about the DHR/SFPOA role in slowing the pace of reform to an laborious and ridiculous crawl.)

What happened after the policy was finally implemented in mid-2016? Massive non-compliance with officers simply not turning on their cameras... or not turning on their mics... or recording only the ends of incidents... or officers exploiting an arguable loophole to view other members' camera footage in situations the policy banned viewing their own before providing an initial statement... all with the SFPOA successfully arguing -- in bad faith -- that officers could not and should not be disciplined for these willful acts of insubordination.

So, the Commission adopted "draft for meet and confer" amendments to the policy in January **2018** to say what was already obviously-intended -- namely that "activating" the devices meant turning on the video **and** audio functions and to ban viewing **any** officers' camera footage when providing mandatory initial statements. And it's ***those*** simple amendments that have been stuck in meet and confer with the SFPOA ever since. Why? What possible reason exists for that? ***Who's forgetfulness or extreme indulgence of the SFPOA has led to the policy heavily touted by the Commission as its alleged collaborative reform success story five years ago to seemingly getting completely lost until the Commission began making inquiries a few months ago?***

In the meantime, ***there continues to be massive non-compliance with the Body Worn Compliance DGO and associated policy bulletins with exceedingly rare and exceedingly light disciplinary results meted out by SFPD.***

The 2019 DPA annual report details, by my count, 53 sustained cases involving a total of 100 different officers involving Body Worn Camera policy violations over a 31 month period. (Appendix, https://sfgov.org/dpa/sites/default/files/DPA_2019_%20Annual%20Report_Rev.pdf .) Given ***all*** of those cases involved the relatively infrequent circumstance where an encounter with SFPD led a member of the public to file a formal complaint with DPA where the Body Camera violation was eventually discovered, the actual rate of non-compliance is certainly much higher.

The USDOJ COPS report criticized SFPD four years ago for its failure to formally discipline officers for these sorts of violations noting, ***"The goal of discipline is correcting action, and regularly imposing discipline to misconduct undermines discipline's deterrent value."*** (USDOJ COPS report, pg. 140.) When the Commission recently discussed this, the Chief seemed to focus only the deterrent value of progressive discipline on particular involved officers. But the deterrent value of a reasonably functioning police discipline system should be on the department as a whole and on the culture of an agency. ***If officers understand that other officers have rarely been disciplined significantly for blatantly violating the Body Worn Camera policy -- and frequently not at all -- there is no larger deterrence ... at all.*** Indeed, in an agency with a deeply entrenched anti-accountability, "us vs. them" and police-union dominated internal culture, ***the absence of enforcement of policies*** like those on the Body Worn Cameras acts to ***encourage the violations*** in circumstances where officers hope to evade scrutiny and that reinforces the culture.

The same could be said for the City's obvious failure to adequately prioritize actual, meaningful implementation of the USDOJ COPS reforms and, now, for DHR's abandonment of its prior "essential objective" of speeding up those reforms through contract negotiations. At this point, to reward SFPOA with two more years of pay raises while continuing contract language that has facilitated their resistance to reform is tantamount to declaring "we just do not care anymore."

Actions speak louder than words. And, sometimes, inaction speaks more clearly and definitively than anything.

Given the confusing posture of DHR towards SFPOA and its now well-established track record, I hope the Commission acts and encourages the Board to act along the lines of my recommendations above. Please let me know if you have questions or if I can be of any assistance. Otherwise, thank you for considering my views.

Sincerely,

John Crew
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cc. San Francisco Police Commission Office
Members, Board of Supervisors
Mayor London Breed
William Scott, Chief of Police
Paul Henderson, DPA Director