



**CITY AND COUNTY OF SAN FRANCISCO
2018-2019 CIVIL GRAND JURY**

**Joint Terrorism Task Force:
Balancing Public Safety with Civil Rights**



CITY AND COUNTY OF SAN FRANCISCO 2018-2019 CIVIL GRAND JURY

THE CIVIL GRAND JURY AND ITS OPERATIONS

California state law requires that all 58 counties impanel a Grand Jury to serve during each fiscal year. *California Penal Code Section 905; California Constitution, Article I, Section 23*

The Civil Grand Jury investigates and reports on one or more aspects of the County's departments, operations, or functions. *California Penal Code Sections 925, 933(a)*

Reports of the Civil Grand Jury do not identify individuals interviewed by name. *California Penal Code Section 929*

The Civil Grand Jury issues reports with findings and recommendations resulting from its investigations to the Presiding Judge of the Superior Court. *California Penal Code Section 933(a)*

Each published report includes a list of those elected officials or departments that are required to respond to the Presiding Judge of the Superior Court within 60 or 90 days as specified. *California Penal Code Section 933*

California Penal Code Section 933.05 is very specific with respect to the content of the required responses. Under Section 933.05(a), for each finding, the response must:

- 1) Agree with the finding, or
- 2) Disagree with it, wholly or partially, and explain why.

Similarly, under Penal Code Section 933.05(b), for each recommendation, the responding party must report that:

- 1) The recommendation has been implemented, with a summary of the implemented action; or
- 2) The recommendation has not been implemented but will be within a set timeframe; or
- 3) The recommendation requires further analysis, with an explanation of what additional study is needed, and the timeframe for conducting that additional study and the preparation of suitable material for discussion. This timeframe may not exceed six months from the date of publication of the Civil Grand Jury's report; or
- 4) The recommendation will not be implemented because it is not warranted or reasonable, with an explanation.

Any San Francisco resident who is a U.S. citizen and is interested in volunteering to serve on the Civil Grand Jury for the City and County of San Francisco is urged to apply. Additional information about the San Francisco Civil Grand Jury, including past reports, can be found online at <http://civilgrandjury.sfgov.org/index.html>.



CITY AND COUNTY OF SAN FRANCISCO 2018-2019 CIVIL GRAND JURY

MEMBERSHIP ROSTER

RASHA HARVEY (Foreperson)

JANET ANDREWS HOWES (Parliamentarian)

LINDA BADGER

ANDREW BENJAMIN

GORDON CRESPO

KRISTINE EQUIHUA (Technology Secretary)

STEPHEN GARBER

JONATHAN HILL

LEONARD KULLY (Correspondence Secretary)

WILLIAM LEE (Foreperson Pro Tem)

FRANK NETTLETON

NONA RUSSELL

RANDALL SMITH (Recording Secretary)

KAAREN STRAUCH BROWN

RUSH STURGES

MARTHA SUTHERLIN

JASON TAM

MICHAEL WIXTED

Executive Summary

The Joint Terrorism Task Force was pioneered in New York City in 1980. The concept was to create a partnership of local, state and federal law enforcement agencies that could more effectively and efficiently communicate and work on matters of common interest. The first JTTF was established in 1980 when 10 NYPD detectives and 10 FBI agents partnered to work on terrorism matters within the New York metropolitan area. There are now 175 JTTFs nationwide with at least one at each of the 56 FBI Field Offices.

San Francisco, with its iconic landmarks and its reputation as a bastion of civil liberties, is an appealing target to both domestic and international terrorists. The majority of witnesses interviewed agreed. Currently, San Francisco Police Department (SFPD) is not a participant in the Northern California Joint Terrorism Task Force (JTTF). Civil rights groups criticized the way SFPD participated in the JTTF. The Chief of Police suspended the Department's participation in the JTTF on February 1, 2017. This was a result of the expiration of the ten-year Memorandum of Understanding (MOU) between the SFPD and the Federal Bureau of Investigation (FBI) as well as the concern of the civil rights groups. The Chief of Police stated that as he was newly appointed, there had not been adequate time for a review of the JTTF matter before the MOU was set to expire.

The JTTF still is operational today but without the participation of SFPD officers. Their lack of participation results in a reduction of information sharing between federal and local public safety and city governing officials. SFPD is unaware of the daily activities and many of the investigations within the JTTF. The FBI does not have the benefit of SFPD officers on the task force with local contacts and knowledge.

More than two years after the suspension of SFPD's participation in the JTTF, no significant progress has been made toward addressing the issues that led to it and reaching a clear determination as to whether or not participation should be re-established. The San Francisco Civil Grand Jury (SFCGJ) prepared this report to stimulate discussion and action by those in charge.

It is the responsibility of the Mayor and Chief of Police to make the decision as to whether SFPD should re-join the JTTF. These officials should address whether the SFPD should re-join the JTTF immediately and make their decision by the date set forth in recommendations below. The SFCGJ is not making a recommendation on whether they should re-join the JTTF.

However, the Civil Grand Jury is recommending the following:

- The Mayor and the Chief of Police should decide whether it is in the best interest of the City to re-join the JTTF by Feb 3, 2020.
- If the decision is made to re-join the JTTF, the Chief of Police should negotiate a revised

MOU with the FBI and submit it to the Police Commission for a discussion and public comment at an open meeting by July 1, 2020.

- The Police Commission shall designate a Commissioner as a point of contact for all matters related to the JTTF by April 3, 2020.
- The Chief of Police should instruct the SFPD's Written Directives Unit (WDU) to expedite the revision of the Department General Order 8.10 presently in progress. In addition to completing the above revisions, the WDU should review and address recommendations R4a- R4f listed in Appendix A and incorporate into their report by July 1, 2020.

TABLE OF CONTENTS

Section	Page No.
Executive Summary	1
Table of Contents	3
Background and Problem Statement	4
Methodology	6
Discussion	
A. Evolution of the JTTF	8
B. JTTF and Immigration	8
C. JTTF and the Police Commission (PC)	11
D. Civil Liberty and Advocacy Groups	12
Conclusion	14
Findings	
A. JTTF Findings	15
B. PC Findings	15
C. DGO 8.10 Findings	15
Recommendations	17
Required Responses	18
Glossary	19
Appendices	20
Appendix A: Table of Findings and Recommendations	21
Appendix B: Table of Findings with Required Respondents	25
Appendix C: Table of Recommendations with Required Respondents	28
SFPD Department General Order 5.15	(enclosed)
SFPD Department General Order 8.10	(enclosed)
SFPD Department General Order 3.01	(enclosed)

BACKGROUND AND PROBLEM STATEMENT

Background

During its term, the 2018-2019 San Francisco Civil Grand Jury (SFCGJ) became aware the San Francisco Police Department (SFPD) no longer participated in the Joint Terrorism Task Force. Furthermore, the jury recognized the ordinary San Franciscan was unaware of the city's non-participation. Previously, the City had been a member acting under the terms of two successive Memorandums of Understanding (MOU).

A 2002 MOU with the FBI formalized the participation of SFPD members on the JTTF. In 2007, a superseding MOU was signed which by the SF Charter had a ten-year expiration.

SFPD officers selected to join the JTTF were required to undergo a federal background investigation and obtain an FBI top-secret security clearance. While participating on the JTTF, SFPD officers were allowed access to classified information along with federal databases and information systems. Being federally deputized allowed SFPD officers to perform activities throughout the Bay Area and if necessary, the entire United States.

After the 2007 MOU was signed, a number of civil rights advocates and organizations began to criticize the SFPD participation on the JTTF.¹ The primary concern was that SFPD members participating on the JTTF did not comply with all SFPD Department General Orders (DGOs), specifically DGO 8.10, and possibly engaged in immigration enforcement matters, which is a federal matter not local responsibility.

In 2012, the San Francisco Board of Supervisors responded to those concerns by passing Ordinance 83-12,² amending the San Francisco Administrative Code. The amendment added Section 2A.74,³ which is entitled Police Department Participation in Federal Counterterrorism Activities and is known as the Safe San Francisco Civil Rights Ordinance. The ordinance permits SFPD to participate in the JTTF, but 2A.74(c) requires that:

“Before the execution of any Memorandum of Understanding or other written agreement, contract or arrangement (collectively, “MOU”) between the San Francisco Police and the FBI regarding the JTTF, the Chief of Police shall submit

¹ The Bar Association of San Francisco, Letter of March 1, 2012 to the Board of Supervisors
<http://www.sfbare.org/forms/newsroom/basf-safe-sf-ordinance.pdf>

² Ordinance 83-12 (File No. 120351), App. BOS on 5/8/2012 and signed by Mayor Lee on 5/9/2012, Eff. 6/8/2012
<https://static1.squarespace.com/static/588295b1579fb38c0503cca7/t/588d46d2a5790aa54e5b85a8/1485654318197/Safe+SF+Civil+Rights+Ordinance.pdf>

³ Administrative Code Section 2A.74 – Police Department Participation in Federal Counterterrorism Activities, was added by Ordinance 83-12, File No. 120351, App. 5/9/2012, Eff. 6/8/2012 :
[http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)

the proposed MOU and any related Department General Orders or Bureau Orders for discussion and public comment at an open meeting of the Police Commission.” Further, 2A.74(d) requires: “By January 31 of each year, the Chief of Police shall provide the Police Commission a public report with appropriate public information on the Police Department’s work with the JTTF in the prior calendar year, including any issues related to compliance with this Section.”

On February 1, 2017, the Chief of Police announced the suspension of SFPD’s participation on the JTTF.⁴ The suspension was in anticipation of the approach of the mandated expiration of the MOU and the impossibility of fulfilling the public discussion and comment requirement of Ordinance 83-12 in the remaining short span of time. Since February of 2017, SFPD has not been a member of the JTTF and instead must rely upon the FBI and other law enforcement agencies to conduct JTTF activities within San Francisco. The task force continues its collaborative work and presently has other local law enforcement officers working in positions once filled by SFPD. A small number of SFPD members retain federal security clearances and in emergency instances may be authorized by the FBI to receive classified information, but they do not participate in JTTF matters.

Problem Statement

Every public safety and government official interviewed agreed that cooperation, coordination and communication between state, local and federal law enforcement was desirable. The Chief of Police has not proposed a new MOU regarding JTTF participation to the Police Commission, and therefore the Police Commission has not scheduled any hearing. Also, the proposed revision of DGO 8.10 has not been completed. It would be in the public’s best interest to have these matters addressed.

⁴ Press Release of SFPD, Media Relations Unit 02/01/2017

METHODOLOGY

The San Francisco Civil Grand Jury (SFCGJ) identified the agencies, organizations and individuals deemed to be involved or having substantial knowledge or involvement with the JTTF. Once identified, jurors requested information and/or documents and sought to arrange in-person meetings whenever possible.

In-person meetings were conducted as formal interviews by the SFCGJ, with either notes or an audio recording. In all instances where the interview was recorded, the SFCGJ advised parties of the recording device and obtained consent to the recording of the interview. Persons interviewed acknowledged and executed an admonition regarding confidentiality in civil grand jury proceedings. Interviews with federal officials took place in compliance with the applicable “Touhy” regulations⁵ and with the approval of the United States Attorney’s Office for the District of Northern California.

The SFCGJ interviewed relevant stakeholders, reviewed volumes of printed materials and consulted with senior officials within the City and County of San Francisco government (CCSF) and the federal government.

To be specific, the Civil Grand Jury interviewed government officials in senior management of the FBI’s San Francisco Field Office, the SFPD, the Northern California Regional Intelligence Center, and the Mayor’s Office. Interviews were also held with members of the SFPD previously assigned to the JTTF, a Commissioner of the San Francisco Police Commission and a former member of the Board of Supervisors.

The Civil Grand Jury also interviewed non-governmental affiliated persons who represented a wide range of entities interested in this matter. Interviews conducted include a community member very familiar with the Safe San Francisco Civil Rights Ordinance; a fellow with the Brennan Center for Justice; an attorney who works for a local civil rights advocacy group and a representative of the San Francisco Police Officers Association.

The Civil Grand Jury reviewed thousands of pages of written documents. These include the following:

- Ordinance 83-12 (Safe San Francisco Civil Rights Ordinance);
- San Francisco JTTF MOU (2002);
- San Francisco JTTF MOU (2007);

⁵ Subpart B of Part 16 of Title 28, Code of Federal Regulations, sometimes referred to as the Department’s Touhy regulations, named after *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), provide that no present or former employee of the Department of Justice may testify or produce Departmental records in response to subpoenas or demands of courts or other authorities issued in any state or federal proceeding without obtaining prior approval by an appropriate Department official. <https://www.justice.gov/jm/jm-1-6000-doj-personnel-witnesses>

- United States Department of Justice - Office of Inspector General Reports;
- United States Department of Justice Attorney General Guidelines;
- SFPD Department General Orders;
- Testimony, complaints and correspondence of local organizations of the American Civil Liberties Union, Asian Law Caucus and the Council on American - Islamic Relations;
- Orders and Decisions of the United States Court of Appeals for the 9th Circuit;
- Numerous media articles and stories.

DISCUSSION

Evolution of the JTTF

In 1979, in response to an increase in bank robberies, New York Police Department (NYPD) formed investigative partnerships with a number of federal law enforcement agencies, including the FBI. By the 1990's, the concept that joint investigations were more efficient and effective lead to the formation of the NYPD - FBI Joint Terrorism⁶ Task Force (JTTF). NYPD's contribution was their expert knowledge of the City of New York and its residents. That combined with FBI's vast investigative resources and sophisticated analysis capabilities produced a group more proficient and effective than any other acting on its own.⁷

After the tragic bombing of the World Trade Center in 1993, the JTTF's investigation of the calamity led to the identification and arrest of the bombers within a month. Equally important, during this investigation, the JTTF discovered and disrupted plans for additional bombings in New York City resulting in fifteen additional arrests. After the disastrous events of September 11, 2001, it became clear that terrorism was not just limited to New York City. JTTFs were established in most metropolitan areas of the United States,⁸ including the SFPD officially joining in 2002.

San Francisco and the Bay Area are high priority targets of terroristic groups. The numerous iconic landmarks and the diverse culture and population of San Francisco represent high visibility targets for numerous hate groups. The majority of witnesses interviewed by the SFCGJ agreed San Francisco Bay Area is a potential target of terrorism.

JTTF and Immigration Enforcement

The JTTF concept pioneered in New York City intended to create a cooperative approach between local, state and federal officials to detect, investigate, and ideally prevent terrorism. The Federal Government Agencies possess superior intelligence gathering and international reach that local agencies do not have. State and City agencies possess an understanding of regional matters and people known to local authorities, but most importantly, they have contacts and relationships of local agencies needed in time of an important investigation or incident.

⁶ The U.S. Code of Federal Regulations defines terrorism as "the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives" 28 CFR 0.85(i).
https://www.ecfr.gov/cgi-bin/textidx?SID=ce2da141510b794b4383c9c7a6a4b435&mc=true&node=se28.1.0_185&rgn=div8

⁷ The Joint Terrorism Task Force: a concept that works, NYPD Deputy Inspector Robert A. Martin; The FBI Law Enforcement Bulletin; March 1, 1999
<https://www.thefreelibrary.com/The+Joint+Terrorism+Task+Force%3a+a+concept+that+works.-a054376710>

⁸ FBI.GOV/investigate/terrorism/joint-terrorism-taskforces:
<https://www.fbi.gov/investigate/terrorism/joint-terrorism-task-forces>

In San Francisco's FBI Field Office, the JTTF is comprised of a number of different squads working either domestic or international investigations. Assignments to the various squads are made by an FBI supervisor, based on the needs of the unit. SFPD Officers assigned to the JTTF in the past were expected to be experienced and skilled investigators. Past assigned officers had worked in homicide, narcotics undercover, etc. and were the rank of at least inspector or sergeant prior to their placement on the JTTF. On JTTF duty, the officers served on various squads with some working both international and domestic matters. Additionally, they assisted and coordinated security matters related to local events of significance such as the America's Cup and Super Bowl 50.

From 2002 to 2017, SFPD had on average two officers on the JTTF. Under the terms of the MOUs, the Police Department continued paying the officers regular salaries, while the FBI provided vehicles, office space, and reimbursed SFPD for overtime associated with JTTF activities.⁹

Every public safety and government official interviewed agreed that cooperation, coordination and communication between state, local and federal law enforcement was desirable. Civil liberties group representatives interviewed generally supported cooperation and communication between various public safety entities. However, they wanted this cooperation to be transparent with adequate oversight to ensure local officers continued to follow California law and local San Francisco ordinances and Department General Orders (DGO), specifically DGO 8.10.¹⁰ The civil liberties groups also had concerns about privacy issues related to SFPD officers cooperating in federal immigration matters.

Whereas terrorism related activities are shared responsibilities, the Government of the United States is solely responsible for immigration regulation. This is an area of contention between the federal government, the State of California and the CCSF. The federal government enforces immigration, nationality, and deportation laws and regulations for which California and San Francisco neither possesses nor exercises any enforcement powers. Instead, both California and San Francisco have enacted laws and ordinances¹¹ that generally define the limits of cooperation

⁹ Standard Memorandum of Understanding Between the Federal Bureau of Investigation and The San Francisco Police Department, 3/1/2007 and San Francisco Joint Terrorism Task Force Memorandum of Agreement, 12/5/2002, <https://sfgov.legistar.com/View.ashx?M=F&ID=4143125&GUID=575EF8B3-1EA4-444D-9E85-20C09351B4BF>, Memorandum of Understanding 2007, <https://sfgov.legistar.com/View.ashx?M=F&ID=4143124&GUID=C04B25AE-3531-487F-BF0A-97C897FB97C3>

¹⁰ San Francisco Police Department General Order 8.10, Rev. 10/01/08, Guidelines For First Amendment Activities <https://www.sanfranciscopolice.org/sites/default/files/2018-11/DGO8.10%20Guidelines%20for%20First%20Amendment%20Activities.pdf>

¹¹ Senate Bill 54 https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB54

with federal immigration authorities.¹² Additionally, SFPD members are restricted by DGO 5.15¹³ to provide only limited cooperation and assistance to federal authorities enforcing immigration laws.

The SFCGJ investigation did not identify any support of officers assigned to the JTTF engaging in immigration enforcement activities. Interviews with officers revealed they were aware of the DGO 5.15 and were emphatic they did not engage in any immigration enforcement activities while assigned to the JTTF. Senior FBI officials stressed in their interview that JTTF's mission did not involve immigration enforcement efforts. Additionally, FBI officials indicated they were aware of the prohibition against immigration enforcement and expected SFPD officers to adhere to the San Francisco rules and ordinances.

Representatives of advocacy groups interviewed also expressed concern SFPD officers might be violating the civil rights of persons engaged in First Amendment Activities while performing JTTF duties.¹⁴ JTTF members are required to act in accordance with the law. The 2007 MOU specifically noted,

“Liability for violations of federal constitutional law may rest with the individual federal agent or officer pursuant to Bivens v. Six Unknown Names of Agents of the Federal Bureau of Narcotics. . . . Federal, state, local, and tribal officers enjoy qualified immunity from suit for constitutional torts, insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”¹⁵

SFPD members are subject to DGO 8.10 - Guidelines for First Amendment Activities. JTTF officers indicated they were aware of these guidelines and perceived that no conflict had existed

¹² San Francisco Administrative Code Sections 12H.1, City and County of Refuge, (Ordinance 375-89 App. 10/24/89) and 12I.3, Restrictions on Law Enforcement Officials, (Ordinance 204-13 App. 10/8/13 and as Amended by Ordinance 96-16 App. 6/17/16) <https://sfgov.org/ocea/sites/default/files/Documents/SF%20Admin%20Code%2012H-12I.pdf>

¹³ San Francisco Police Department General Order 5.15, Rev 7/5/16, Enforcement of Immigration Laws https://www.sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/sfpd-DGO5.15%20Enforcement%20of%20Immigration%20Laws%20%28Rev.%2007-05-17%29_0.pdf

¹⁴ Joint Letter from Christina Sinha of the Asian Americans Advancing Justice – Asian Law Caucus; Brittney Rezaei of the Council on American – Islamic Relation of the San Francisco Bay Area; Alan Schlosser of the American Civil Liberties Union of Northern California dated 1/8/18 to The Honorable London Breed. <https://www.sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/Letter%20to%20Police%20Commission%20Regarding%20Joint%20Terrorism%20Task%20Force.pdf>

¹⁵ Standard Memorandum of Understanding Between the Federal Bureau of Investigation and the San Francisco Police Department, March 1, 2007 <https://sfgov.legistar.com/View.ashx?M=F&ID=4143124&GUID=C04B25AE-3531-487F-BF0A-97C897FB97C3>

between their duties and the DGO. SFPD officers are trained in all DGOs as part of their basic training and every officer is responsible for following the DGOs. SFPD members on the JTTF were administratively assigned to Special Investigative Division (SID) and received an additional briefing on DGO 8.10.

Several law enforcement witnesses interviewed stated DGO 8.10 as written was unclear. Civil Grand Jury's own review of DGO 8.10 presented the reader with a number of potentially confusing and conflicting provisions, undefined terms, and at least one legally incorrect citation.

After a thorough review of DGO 8.10, it was found to be vague and extremely broad that allowed conflicting interpretations. In addition, key terms were not adequately defined such as "criminal investigations."¹⁶

The DGO 8.10 was last revised in 2008. The Department plans to update General Order 8.10, Guidelines for First Amendment Activities, in the near future and will seek clarification from the Police Commission as to the application of General Order 8.10 to JTTF investigations.¹⁷ The Written Directive Unit¹⁸ (WDU) confirmed that the DGO 8.10 is currently under revision but at the time of this report a draft was not available. Once complete, the SFPD will need to submit the revised DGO 8.10 to the Police Commission for approval.

JTTF and the Police Commission

The civilian Police Commission (PC) consists of seven members, four appointed by the Mayor and three by the Board of Supervisors (BOS). SFPD operates at all times under the oversight of the PC and the Chief of Police reports to them. The PC has the authority to adopt and amend the Police Department's General Orders and the power to discipline members for violating them.¹⁹ With respect to the JTTF, Admin Code 2A.74 requires the Chief of Police to submit any

¹⁶ See Appendices B and C

¹⁷ Press Release of SFPD, Media Relations Unit 02/01/2017

¹⁸ San Francisco Police Department General Order 3.01 – Written Communication System, Rev. 2/7/2018 provides that the "Written Directives Unit shall manage the preparation and amendment of current General Orders."
<https://www.sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/police-commission-dgo-301-020718.pdf>

¹⁹ Under the Charter, Article IV: Executive Branch – Boards, Commissions and Departments, Section 4.109 Police Commission, seven members are authorized, four appointed by the Mayor of which, at least one shall be a retired judge or attorney with trial experience and three appointed by the Board of Supervisors
[http://library.amlegal.com/nxt/gateway.dll/California/charter_sf/articleivexecutivebranch-boardscommissio?f=templates\\$fn=altmain-nf.htm\\$q=%5bfield%20folio-destination-name:%274.135%27%5d\\$x=Advanced#JD_4.135](http://library.amlegal.com/nxt/gateway.dll/California/charter_sf/articleivexecutivebranch-boardscommissio?f=templates$fn=altmain-nf.htm$q=%5bfield%20folio-destination-name:%274.135%27%5d$x=Advanced#JD_4.135)

proposed MOU and any related DGO to the Police Commission for discussion and public comment at an open meeting. It also requires the Chief of Police to provide the PC a public report every year with appropriate public information on the Police Department's work with the JTTF. Under DGO 8.10, the Department of Police Accountability (DPA) is required to conduct an audit and submit an annual report to the PC regarding compliance to these guidelines, which includes the officers in the JTTF.

Civil Liberties and Advocacy Groups

A number of civil liberties group representatives interviewed believe local officers assigned to the JTTF operated under lower standards of civil rights or First Amendment protections. In their opinion, following federal standards is inconsistent with the California Constitution and/or San Francisco Ordinances and police policies. Some of those interviewed believe DGO 8.10 provided widespread protections preventing SFPD officers from making inquiries associated with a First Amendment Activity without first obtaining official approval as outlined in the order. Law enforcement officers believe that they may conduct a voluntary interview with a person at anytime whereas civil liberty groups believe these interviews are afforded the protection outlined in DGO 8.10.

The 2007 JTTF MOU specifically stated:

“Each JTTF member will be subject to the personnel rules, regulations, laws, and policies applicable to employees of his or her respective agency...”

At all times SFPD officers assigned to the JTTF had to obey and follow all DGOs, in addition to any applicable FBI or Department of Justice standards or guidance. All the officers interviewed stated this to be true. In fact, FBI supervisors expected them to stay in compliance with all State and City laws, ordinances and policies.

Interviews with some civil liberties representatives suggested that SFPD officers on the JTTF were engaged in abuse of SFPD DGOs and civil rights violations as part of their JTTF assignments. Civil Liberties Groups became concerned that SFPD participation on the JTTF might cause local law enforcement to become entangled with civil rights violations associated with the prosecution of the "war on terrorism".²⁰

²⁰ George Bush Use of the Term War on Terror; https://en.wikipedia.org/wiki/War_on_Terror; George Bush Address to Congress Sept, 20 2001: <https://www.theguardian.com/world/2001/sep/21/september11.usa13>

In 2011, local civil liberties groups organized as the Coalition for a Safe San Francisco (Coalition). This Coalition highlighted potential racial and religious profiling being used by law enforcement agencies outside of San Francisco and feared that SFPD participation on the JTTF could lead to similar problems within San Francisco.

In response to the concerns raised by the Coalition and by a 2010 San Francisco Human Rights Commission report, the BOS passed Resolution 160-11.²¹ Resolution 160-11 commended the Coalition and the Human Rights Commission for bringing the issue to the public forum and encouraged all parties to work together to address the expressed concerns. The BOS proposed, in File Number 120046,²² numerous changes that involved participation with federal counterterrorism activities. The legislation was passed by the BOS on a vote of 6 to 5 but was vetoed by former Mayor Edwin Lee. Subsequently, the BOS proposed amended legislation²³ known as the Safe San Francisco Civil Rights Ordinance. This ordinance was passed by the BOS in an 11 to 0 vote and was signed into law by former Mayor Edwin Lee on May 9, 2012.²⁴ The Safe San Francisco Civil Rights Ordinance amended the Administrative Code²⁵ and now governs SFPD participation in federal counterterrorism activities.

In an effort to learn more about possible violations by SFPD officers assigned to the JTTF, the SFCGJ requested documents from the SFPD Internal Affairs Division (IAD) and the DPA. IAD processed our request and found one formal complaint against a JTTF officer registered between 2002 and 2017 which was not sustained. DPA reported one complaint against JTTF officer from 2015-2017. DPA was unable to report an accurate number of complaints against JTTF officers from 2002-2015 without doing a physical paper review.

In an interview a SFPD member indicated they had been the subject of an un-sustained DPA complaint related to assignment on the JTTF. This is the only complaint this officer received while participating in the JTTF.

²¹ File No. 110255 App. 3/1/2011 – Unsigned by Mayor Lee, Eff. 4/15/11 by Section 3.103 of the Charter - <https://sfgov.legistar.com/LegislationDetail.aspx?ID=846706&GUID=CC34B41B-0AD5-41E9-88FB-894B48DDFC18&Options=ID|Text|&Search=110255>

²² File No. 120046 App. 4/3/2012 – Vetoed by Mayor Lee 4/10/2012, <https://sfgov.legistar.com/LegislationDetail.aspx?ID=1045933&GUID=C73F779D-57E5-48F3-B63A-05BCA281F50F&Options=ID|Text|&Search=120046>

²³ Board of Supervisors File No 120351 <https://sfgov.legistar.com/LegislationDetail.aspx?ID=1107458&GUID=CD92FD3C-5321-4BA2-ADEF-70F2FC7161EA&Options=ID|Text|&Search=120351>

²⁴ *Ibid.*

²⁵ Administrative Code Section 2A.74 – Police Department Participation in Federal Counterterrorism Activities, was added by Ordinance 83-12, File No. 120351, App. 5/9/2012, Eff. 6/8/2012 : [http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?&templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?&templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)

Public safety officials believe there is inefficient communications and coordination with federal law enforcement authorities since SFPD's withdrawal from JTTF. This is not to say that all communications and coordination have halted, but rather what previously had been effective is now described as being "clunky" and disjointed. Top Secret information that previously had been accessible to SFPD members assigned to the JTTF is no longer as easily available. In cases of emergency or urgent need, a small number of officers and managers within SFPD still hold federal security clearances and can be briefed by the FBI on imminent terroristic threats or when the immediate action is required by San Francisco authorities. However, those communications now take place in a less timely and efficient manner and only on an emergency basis.

Withdrawing from the JTTF means SFPD officers with local expertise and knowledge of the area no longer participate in the task force. In addition, SFPD has less immediate access, communication or knowledge of JTTF matters within its own city. While SFPD was participating on the JTTF, it was able to keep CCSF leaders, such as the Mayor, advised and informed of a wider array of potential public safety matters in a shorter time frame than today. Presently, the SFPD and the Mayor depend on learning of potential public safety issues related to terrorist activities when it is deemed appropriate, instead of at the earliest possible time.

Conclusion

Investigations of terrorist activities that need joint cooperation with local authorities may be more cumbersome or ineffective without a SFPD officer on the task force. It is not possible to state with any certainty that San Francisco was safer when participating on the JTTF, what can be said is the Mayor and SFPD now have access to less timely information about potential risks and dangers to San Francisco.

Since the suspension of SFPD participation in the JTTF as of February 1, 2017, little action has been undertaken to address the matter. The WDU has yet to submit a proposed revision of DGO 8.10 through the appropriate channels as required by DGO 3.01. The Chief of Police and the FBI have not publicly made known if progress is being made on an amended MOU. Finally, the PC has taken no action and has not put JTTF on its calendar for consideration or discussion.

FINDINGS

JTTF Findings

F1. The 2007 MOU providing for JTTF participation expired by operation of the CCSF Charter. The Chief of Police agreed the MOU must be revised for it to be approved by the PC. The Chief acknowledged the concern of civil liberties groups to include oversight that is more transparent.

F2. Communication and coordination between SFPD and federal authorities is less efficient and more cumbersome than when SFPD was part of the JTTF.

F3. In the period of 2002-2017 SFPD participated on the JTTF, few formal complaints were made against officers conducting JTTF activities.

F4. The Civil Grand Jury's investigation did not detect any instance of non-compliance with a DGO by SFPD officers that had been assigned to the JTTF. Likewise, this investigation did not find any evidence that SFPD officers assigned to the JTTF were engaged in any form of enforcement associated with federal immigration laws.

F5. The secrecy obligations of SFPD officers in the JTTF require officers not disclose the classified material to individuals without an appropriate level of clearance and a need to know. These secrecy obligations are necessary but allow or cause speculation and concern by parties without access to classified material.

Police Commission Findings

F6. The PC is an essential party to SFPD's future participation in the JTTF. The PC has the authority to bring any proposed MOU and any related DGO up for discussion and public comment at an open meeting. In addition, the Chief of Police is required to provide them a public report every year with appropriate public information on the Police Department's work with the JTTF.

F7. Presently, the PC does not have a representative for JTTF matters. It would be beneficial to have a designated commissioner as a point of contact for all parties interested in this issue.

DGO 8.10 Findings

F8. SFPD DGO 8.10 was described as confusing and ambiguous by several law enforcement witnesses. It does not contain clear and concise wording and references are inaccurate. In order for SFPD officers to comply with DGO 8.10, it needs to be revised and updated.

F8-a. General Order 8.10 does not contain clear and concise wording. Within Section I, the Statement of Principles, A. General Policy 8.10 indicates the First Amendment rights are

protected by the United States Constitution. However, in Section II, Definitions, references both United States and California Constitutions causing confusion.

F8-b. General Order 8.10 contains a factually incorrect legal reference. In Section II, A DEFINITION, the order incorrectly identifies the provision of the California Constitution that should be applicable to the rights associated with assembly and petitioning the government. The Order incorrectly associates “Article 3” of the California Constitution, which, is generally related to governmental processes and functions of the state. It is believed that General Order 8.10 suffers from a scribing error and that instead of “Article 3” it was intended for the definition to encompass First Amendment protections of the United States Constitution and the California Constitution Article I, Section 2 and Article I Section 3.

F8-c. General Order 8.10 fails to define the term “Criminal Investigation.” Failing to define this phrase, allows the readers of the document to apply their own meaning to the term. What might be considered a “criminal investigation” by a law enforcement officer might differ considerably from how a member of the public or an advocacy group would define that term.

F8-d. General Order 8.10 contains obsolete agency information. The Office of Citizen Complaints (OCC) no longer exists. The OCC has been replaced by the Department of Police Accountability (DPA).

F8-e. The use of Department or Department’s presently used in the DGO’s could cause confusion because both the SFPD and the DPA contain those terms.

F8-f. At present, DGO 8.10 contains extraneous material regarding duties required of other than SFPD officers.

RECOMMENDATIONS

R1. The Mayor and the Chief of Police should decide if rejoining the JTTF is in the best interest of the residents of our City and make this publicly known by February 3, 2020.

R2. In the event that the Mayor and Chief of Police decide to re-join the JTTF, the Chief of Police should negotiate a revised MOU with the FBI and submit this to the PC for discussion and public comment at an open meeting. This should be done no later than July 1, 2020.

R3. The President of the PC should designate a commissioner as a point of contact for all JTTF interested parties. This appointment should be completed by April 3, 2020

R4. The Chief of Police should instruct the WDU to expedite the revision process of DGO 8.10 immediately but no later than the first week of January 2020. The WDU in considering the revisions to DGO 8.10 should include a review of the R4a-f recommendations before submitting the revisions to the Chief of Police. The revised DGO should be forwarded to the PC for approval no later than July 1, 2020.

R4-a. DGO 8.10 should be revised to eliminate the conflict that exists between the statement of principles only referencing the First Amendment rights guaranteed by the United States Constitution, but the term First Amendment Activity being defined as rights guaranteed by both the Constitution of the United States and the Constitution of the State of California. It is recommended that the statement of principal incorporate wording to be reflective of the protections provided to First Amendment activities by both the state and federal constitutions.

R4-b. General Order 8.10 should be revised to correct the error in referencing “Article 3” of the Constitution of California within the definition section to Article I, Section 3.

R4-c. General Order 8.10 should be revised to define the term “Criminal Investigation”. The order should clearly define what is and what is not a criminal investigation.

R4-d. General Order 8.10 should be updated to incorporate changes that have occurred since 2008. Obsolete agency names and titles should be corrected. All references to the OCC should be changed to DPA and the Director of OCC should be corrected to the Executive Director of DPA.

R4-e. The use of ‘department’ should be specific to which one it is referencing (SFPD or DPA).

R4-f. DGO 8.10 should contain only material that is necessary and pertinent to the functions of SFPD. All material that is unrelated to the SFPD should be removed from DGO 8.10.

REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the Civil Grand Jury requests responses as follows:

From the following City and County agencies and departments within 60 days:

- Office of the Mayor
 - Findings 1, 2, 5, 6, and 7
 - Recommendations 1 and 2
- Chief, San Francisco Police Department
 - Findings 1, 2, 3, 4, 5, 6, 7, 8, and 8a-8f
 - Recommendations 1, 2, 4, and 4a-4f
- President, San Francisco Police Commission
 - Findings 1, 2, 3, 4, 5, 6, 7, 8, and 8a-8f
 - Recommendations 2, 3, 4, and 4a-4f

GLOSSARY OF ACRONYMS

BOS	Board of Supervisors
CCSF	City and County of San Francisco
DGO	Department General Order of the San Francisco Police Department
DPA	Department of Police Accountability including the predecessor Office of Citizens Complaints
FBI	Federal Bureau of Investigation
IAD	San Francisco Police Department Internal Affairs Division
JTTF	Joint Terrorism Task Force
MOU	Memorandum of Understanding
NYPD	Police Department of the City of New York
PC	San Francisco Police Commission
SFCGJ	San Francisco Civil Grand Jury
SFPD	San Francisco Police Department
SID	Special Investigation Division of the San Francisco Police Department
WDU	San Francisco Police Department Written Directives Unit

APPENDICES

- A. Table of Findings and Recommendations
- B. Table of Findings with Required Responses
- C. Table of Recommendations with Required Responses
- D. SFPD Department of General Orders 5.15 Enforcement of Immigration Laws
- E. SFPD Department of General Orders 8.10 Guidelines for First Amendment Activities
- F. SFPD Department of General Orders 3.01 Written Communication System

APPENDIX A

TABLE OF FINDINGS AND RECOMMENDATIONS

Findings	Recommendations
<p>F1. The 2007 MOU providing for JTTF participation expired by operation of the CCSF Charter. The Chief of Police agreed the MOU had to be revised in order for it to be approved by the PC. The Chief also acknowledged the concern of civil liberties groups to include more oversight that is transparent.</p> <p>F2. Communication and coordination between SFPD and federal authorities is less efficient and more cumbersome than when SFPD was part of the JTTF.</p> <p>F3. In the period of 2002-2017 SFPD participated on the JTTF; few formal complaints were made against officers conducting JTTF activities.</p> <p>F4. This investigation did not detect any instance of non-compliance with a DGO by SFPD officers that had been assigned to the JTTF. Likewise, this investigation did not find any evidence that SFPD officers assigned to the JTTF were surreptitiously engaged in any form of enforcement associated with federal immigration laws.</p> <p>F5. The secrecy obligations of SFPD officers in the JTTF require the said officers not disclose the classified material to individuals without an appropriate level of clearance on a need to know basis. These secrecy obligations are necessary but allow or cause speculation and concern by parties without access.</p>	<p>R1. The Mayor and the Chief of Police should decide if rejoining the JTTF is in the best interest of the residents of our City and make this publicly known by Feb 3, 2020.</p> <p>R2. In the event that the Mayor and Chief of Police decide to re-join the JTTF, the Chief of Police should negotiate a revised MOU with the FBI and submit this to the PC for discussion and public comment at an open meeting. This should be done no later than July 1, 2020.</p>

<p>F6. The PC is an essential party to SFPD’s future participation in the JTTF. The PC has the authority to bring any proposed MOU and any related DGO up for discussion and public comment at an open meeting. In addition, the Chief of Police is required to provide them a public report every year with appropriate public information on the Police Department’s work with the JTTF.</p> <p>F7. Presently, the PC does not have a representative for JTTF matters. It would be beneficial to have a designated commissioner as a point of contact for all parties interested in this issue.</p>	<p>R3. The President of the PC shall designate a commissioner as a point of contact for all JTTF interested parties. This appointment should be completed by April 3, 2020.</p>
<p>F8. SFPD DGO 8.10 is considered confusing and ambiguous by many witnesses. It does not contain clear and concise wording and references are inaccurate. In order for JTTF officers to comply with DGO 8.10 it needs to be revised and updated.</p>	<p>R4. The Chief of Police should instruct the WDU to expedite the revision process of DGO 8.10 immediately but no later than the first week of January 2020. The WDU in considering the revisions to DGO 8.10 should include a review of the R4a-R4f recommendations before submitting the revisions to the Chief of Police. The revised DGO should be forwarded to the PC for approval no later than July 1, 2020.</p>
<p>F8-a. General Order 8.10 does not contain clear and concise wording. Within Section I, the Statement of Principles, A. General Policy 8.10 indicates the First Amendment rights are protected by the United States Constitution. However, in Section II, Definitions, references both United States and California Constitutions causing confusion.</p>	<p>R4-a. General Order 8.10 should be revised to eliminate the conflict that exists between the statement of principles only referencing the First Amendment rights guaranteed by the United States Constitution, but the term First Amendment Activity being defined as rights guaranteed by both the Constitution of the United States and the Constitution of the State of California. It is recommended that the statement of principal incorporate wording to be reflective of the protections provided to First Amendment activities by both the state and federal constitutions.</p>

<p>F8-b. General Order 8.10 contains a factually incorrect legal reference. In Section II, DEFINITIONS, the order incorrectly identifies the provision of the California Constitution that should be applicable to the rights associated with assembly and petitioning the government. The Order incorrectly associates “Article 3” of the California Constitution, which, is generally related to governmental processes and functions of the state. It is believed that General Order 8.10 suffers from a scribing error and that instead of “Article 3” it was intended for the definition to encompass First Amendment protections of the United States Constitution and the California Constitution Article I, Section 2 and Article I Section 3.</p>	<p>R4-b. General Order 8.10 should be revised to correct the error in referencing “Article 3” of the Constitution of California within the definition section to Article I, Section 3.</p>
<p>F8-c. General Order 8.10 fails to define the term “Criminal Investigation.” Failing to define this phrase, allows the readers of the document to apply their own meaning to the term. What might be considered a “criminal investigation” by a law enforcement officer might differ considerably from how a member of the public or an advocacy group would define that term.</p>	<p>R4-c. General Order 8.10 should be revised to define the term “Criminal Investigation”. The order should clearly define what is and what is not a criminal investigation.</p>
<p>F8-d. General Order 8.10 contains obsolete agency information. The Office of Citizen Complaints (OCC) no longer exists. The OCC has been replaced by the DPA.</p>	<p>R4-d. General Order 8.10 should be updated to incorporate changes that have occurred since 2008. Obsolete agency names and titles should be corrected. All references to the OCC should be changed to DPA and the Director of OCC should be corrected to the Executive Director of DPA.</p>
<p>F8-e. The use of “department” or “department’s” presently used in the DGO’s could cause confusion because both the SFPD and the DPA contain those terms.</p>	<p>R4-e. The use of ‘department’ should be specific to which one it is referencing (SFPD or DPA).</p>

<p>F8-f. At present, DGO 8.10 contains extraneous material regarding duties required of other than SFPD officers.</p>	<p>R4-f. DGO 8.10 should contain only material that is necessary and pertinent to the functions of SFPD. All material that is unrelated to the SFPD should be removed from DGO 8.10.</p>
---	--

APPENDIX B

TABLE OF FINDINGS WITH REQUIRED RESPONDENTS

Findings	Respondents
F1. The 2007 MOU providing for JTTF participation expired by operation of the CCSF Charter. The Chief of Police agreed the MOU had to be revised in order for it to be approved by the PC. The Chief also acknowledged the concern of civil liberties groups to include more oversight that is transparent.	<input type="checkbox"/> Office of the Mayor <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
F2. Communication and coordination between SFPD and federal authorities is less efficient and more cumbersome than when SFPD was part of the JTTF.	<input type="checkbox"/> Office of the Mayor <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
F3. In the period of 2002-2017 SFPD participated on the JTTF, few formal complaints were made against officers conducting JTTF activities.	<input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
F4. This investigation did not detect any instance of non-compliance with a DGO by SFPD officers that had been assigned to the JTTF. Likewise, this investigation did not find any evidence that SFPD officers assigned to the JTTF were surreptitiously engaged in any form of enforcement associated with federal immigration laws.	<input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
F5. The secrecy obligations of SFPD officers in the JTTF require the said officers not disclose the classified material to individuals without an appropriate level of clearance on a need-to-know basis. These secrecy obligations are necessary but allow or cause speculation and concern by parties without access.	<input type="checkbox"/> Office of the Mayor <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission

<p>F6. The PC is an essential party to SFPD’s future participation in the JTTF. The PC has the authority to bring any proposed MOU and any related DGO up for discussion and public comment at an open meeting. In addition, the Chief of Police is required to provide them a public report every year with appropriate public information on the Police Department’s work with the JTTF.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Office of the Mayor <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
<p>F7. Presently, the PC does not have a representative for JTTF matters. It would be beneficial to have a designated commissioner as a point of contact for all parties interested in this issue.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Office of the Mayor <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
<p>F8. SFPD DGO 8.10 is considered confusing and ambiguous by many witnesses. It does not contain clear and concise wording and references are inaccurate. In order for JTTF officers to comply with DGO 8.10 it needs to be revised and updated.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
<p>F8-a. General Order 8.10 does not contain clear and concise wording. Within Section I, the Statement of Principles, A. General Policy 8.10 indicates the First Amendment rights are protected by the United States Constitution. However, in Section II, Definitions, references both United States and California Constitutions causing confusion.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission

<p>F8-b. General Order 8.10 contains a factually incorrect legal reference. In Section II, DEFINITIONS, the order incorrectly identifies the provision of the California Constitution that should be applicable to the rights associated with assembly and petitioning the government. The Order incorrectly associates “Article 3” of the California Constitution, which, is generally related to governmental processes and functions of the state. It is believed that General Order 8.10 suffers from a scribing error and that instead of “Article 3” it was intended for the definition to encompass First Amendment protections of the United States Constitution and the California Constitution Article I, Section 2 and Article I Section 3.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
<p>F8-c. General Order 8.10 fails to define the term “Criminal Investigation.” Failing to define this phrase, allows the readers of the document to apply their own meaning to the term. What might be considered a “criminal investigation” by a law enforcement officer might differ considerably from how a member of the public or an advocacy group would define that term.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
<p>F8-d. General Order 8.10 contains obsolete agency information. The OCC no longer exists. The OCC has been replaced by the DPA.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
<p>F8-e. The use of “department” or “departments” presently used in the DGO’s could cause confusion because both the SFPD and the DPA contain those terms.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
<p>F8-f. At present, DGO 8.10 contains extraneous material regarding duties required of other than SFPD officers.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission

APPENDIX C

TABLE OF RECOMMENDATIONS WITH REQUIRED RESPONDENTS

Recommendations	Respondents
R1. The Mayor and the Chief of Police should decide if rejoining the JTTF is in the best interest of the residents of our City and make this publicly known by Feb 3, 2020.	<input type="checkbox"/> Office of the Mayor <input type="checkbox"/> Chief, San Francisco Police Department
R2. In the event that the Mayor and Chief of Police decide to re-join the JTTF, the Chief of Police should negotiate a revised MOU with the FBI and submit this to the PC for discussion and public comment at an open meeting. This should be done no later than July 1, 2020	<input type="checkbox"/> Office of the Mayor <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
R3. The President of the PC shall designate a commissioner as a point of contact for all JTTF interested parties. This appointment should be completed by April 3, 2020.	<input type="checkbox"/> President, San Francisco Police Commission
R4. The Chief of Police should instruct the WDU to expedite the revision process of DGO 8.10 immediately but no later than the first week of January 2020. The WDU in considering the revisions to DGO 8.10 should include a review of the R4a-R4f recommendations before submitting the revisions to the Chief of Police. The revised DGO should be forwarded to the PC for approval no later than July 3, 2020.	<input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
R4-a. General Order 8.10 should be revised to eliminate the conflict that exists between the statement of principles only referencing the First Amendment rights guaranteed by the United States Constitution, but the term First Amendment Activity being defined as rights guaranteed by both	<input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission

<p>the Constitution of the United States and the Constitution of the State of California. It is recommended that the statement of principal incorporate wording to be reflective of the protections provided to First Amendment activities by both the state and federal constitutions.</p>	
<p>R4-b. General Order 8.10 should be revised to correct the error in referencing “Article 3” of the Constitution of California within the definition section to Article I, Section 3.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
<p>R4-c. General Order 8.10 should be revised to define the term “Criminal Investigation”. The order should clearly define what is and what is not a criminal investigation.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
<p>R4-d. General Order 8.10 should be updated to incorporate changes that have occurred since 2008. Obsolete agency names and titles should be corrected. All references to the OCC should be changed to DPA and the Director of OCC should be corrected to the Executive Director of DPA.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
<p>R4-e. The use of ‘department’ should be specific to which one it is referencing (SFPD or DPA).</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission
<p>R4-f. DGO 8.10 should contain only material that is necessary and pertinent to the functions of SFPD. All material that is unrelated to the SFPD should be removed from DGO 8.10.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Chief, San Francisco Police Department <input type="checkbox"/> President, San Francisco Police Commission

ENFORCEMENT OF IMMIGRATION LAWS

The purpose of this order is to establish policies regarding the San Francisco Police Department's role in the enforcement of immigration laws and cooperation with U.S. Immigration and Customs Enforcement ("ICE"), U.S. Customs and Border Protection ("CBP") or successor agencies whose role is to enforce immigration laws, in conformity with state and federal laws and San Francisco Administrative Code Chapters 12H and 12I.

I. POLICY.

It is the policy of the San Francisco Police Department to foster respect and trust between law enforcement and residents, to protect limited local resources, to encourage cooperation between residents, City officials, and law enforcement, and to ensure community security. It is also Department policy, consistent with its obligations under state and federal law, to adhere to San Francisco Administrative Code Chapters 12H and 12I. These Chapters generally prohibit the use of City resources to assist in the enforcement of federal immigration laws, except as required by federal or state law.

II. STATE AND LOCAL LAW.

In accordance with Chapter 12H and state law, members of the Department shall, in performing their official duties, adhere to all of the following:

- A. **DETENTION:** Members shall not stop, question, or detain any individual solely because of the individual's national origin, foreign appearance, inability to speak English, or immigration status (also see DGO 5.03, Investigative Detentions). Members shall not inquire into an individual's immigration status.
- B. **DOCUMENTS:** In the course and scope of their duties e.g., traffic enforcement, investigations, and taking reports, members shall not require individuals to produce any document to prove their immigration status.
- C. **ASSISTING ICE/CBP:** Members shall not cooperate with or assist ICE/CBP in any investigation, detention, or arrest procedures, public or clandestine, where in any such instance the purpose is enforcing federal immigration laws.

D. INFORMATION GATHERING/DISSEMINATION FOR IMMIGRATION ENFORCEMENT PURPOSES:

- 1) **Release Status/Confidential Information for immigration enforcement purposes.** Members shall not request information about, or disseminate information, regarding the release status of any individual or any other confidential, identifying information such as home, work, or family or emergency contact information, except as required by federal or state law.
- 2) **Services.** The Department shall not include on any application, questionnaire, or interview form it uses in relation to benefits, services, or opportunities provided by the City and County of San Francisco, any questions regarding immigration status other than those required by federal or state law.

E. ICE/CBP DETAINERS/ADMINISTRATIVE (CIVIL) WARRANTS:

Members shall not arrest or detain an individual, or provide any individual's personal information to a federal immigration officer, solely on the basis of an administrative (civil) warrant, prior deportation order, or other civil immigration document that only addresses alleged violations of the civil provisions of immigration laws. Members shall not place an administrative (civil) immigration hold or detainer on an individual who is in custody. National Crime Information Center ("NCIC") or California Law Enforcement Telecommunication System ("CLETS") warrant responses currently make clear whether the warrant is administrative (civil) or criminal.

Members shall adhere to all of the following when reviewing or examining outstanding warrants in the NCIC or CLETS system. Members:

- 1) Shall contact the Sheriff's Central Warrant Bureau ("CWB") to confirm any warrant before taking action on the warrant.
- 2) Shall not enforce federal administrative (civil) warrants for arrest (currently Department Homeland Security ("DHS") Form I-200) or for removal/deportation (currently DHS Form I-205).
- 3) Shall not enforce Administrative Immigration Detainer-Notice of Action (currently DHS Form I-247A).
- 4) May enforce criminal warrants after consulting with CWB and confirming the criminal warrant.
- 5) Shall record the name of the individual from CWB staff who confirmed the criminal warrant in the incident report. (See DGO 6.18, Warrant Arrests.)

III. PROVIDING EMERGENCY ASSISTANCE TO ICE/CBP.

- A. ICE/CBP REQUESTS FOR EMERGENCY ASSISTANCE:** Members may provide emergency assistance to ICE/CBP to the same extent members would respond to emergency assistance to any other law enforcement agency. For example, members may provide emergency assistance when the member determines there is an emergency posing a significant and immediate danger to public safety or to the ICE/CBP agents.
- B. DUTIES OF MEMBERS:** Members providing emergency assistance to ICE/CBP shall immediately notify their supervisor and complete an incident report describing the reasons for their assistance.
- C. DUTIES OF SUPERVISORS:** When notified that a member is providing emergency assistance to ICE/CBP, supervisors shall immediately respond to the location and ensure that such assistance is warranted.
- D. TRANSPORTATION:** Members shall not assist ICE/CBP in transporting individuals suspected solely of violating federal immigration laws.
- E. ASSISTANCE:** Members shall not provide assistance to ICE/CBP agents for routine ICE/CBP operations, investigations, or raids. If ICE/CBP requests assistance that does not amount to an emergency as outlined in this section, members shall follow the protocols listed for Interagency Operations. (See DGO 5.14, Interagency Operations.)

IV. ASSISTING OTHER LAW ENFORCEMENT AGENCIES AND FOREIGN GOVERNMENT.

- A. INTERAGENCY OPERATIONS:** If ICE/CBP requests assistance with a planned, unplanned, or spontaneous operation, members must obtain approval from the member's Assistant Chief. (See DGO 5.14, Interagency Operations.)
- B. JOINT CRIMINAL OPERATIONS:** Members may continue to collaborate with other law enforcement agencies, with approval of the member's Assistant Chief, to protect public safety and participate in joint criminal investigations that are permitted under Department policy or applicable city or state law. When a member becomes aware that the criminal investigation involves the enforcement of immigration laws, the member shall:

 - 1) Notify a Supervisor; and
 - 2) Cease operations if doing so would not pose a risk to the officers or the public; and
 - 3) Suspend Interagency Operations.

DGO 5.15
Rev. 07/05/17

C. ASSISTING FOREIGN GOVERNMENT: Members shall not assist or cooperate with any investigation, surveillance, or gathering of information conducted by foreign governments, except for cooperation related to an alleged violation of City and County, State, or Federal criminal laws. (See DGO 8.10, Guidelines for First Amendment Activities.) Any assistance or cooperation with a foreign government must be approved by the member's Assistant Chief. (See DGO 5.14, Interagency Operations.) Members requesting approval of the Interagency Operation shall notify the Officer-In-Charge ("OIC") of the Special Investigations Division ("SID") who will evaluate whether the U.S. State Department should be notified of the assistance or cooperation.

V. DEPARTMENT BULLETINS. Department Bulletins describing current versions or relevant examples of DHS forms and the most current samples of NCIC or CLETS print-outs of both administrative (civil) and criminal warrants will be issued as necessary.

VI. COMPLIANCE WITH OTHER STATE OR LOCAL LAWS. Nothing in this General Order prohibits members from performing their duties in enforcing state and local laws.

References

DGO 5.03, Investigative Detentions
DGO 5.14, Interagency Operations
DGO 6.18, Warrant Arrests
DGO 8.10, Guidelines for First Amendment Activities

GUIDELINES FOR FIRST AMENDMENT ACTIVITIES

I. STATEMENT OF PRINCIPLES

- A. **GENERAL POLICY.** It is the policy of the San Francisco Police Department to ensure that the First Amendment rights guaranteed by the United States Constitution are protected for all individuals and to permit police involvement in the exercise of those rights only to the extent necessary to provide for the legitimate needs of law enforcement in investigating criminal activity.
- B. **WHEN A CRIMINAL INVESTIGATION THAT INVOLVES FIRST AMENDMENT ACTIVITIES IS PERMITTED.** The Department may conduct a criminal investigation that involves the First Amendment activities of persons, groups or organizations when there is an articulable and reasonable suspicion to believe that:
1. They are planning or are engaged in criminal activity
 - a. which could reasonably be expected to result in bodily injury and/or property damage in excess of \$2500
 - b. or which constitutes a felony or misdemeanor hate crime, and
 2. The First Amendment activities are relevant to the criminal investigation.
- C. **WHEN THESE GUIDELINES APPLY**
1. The Department must follow these guidelines in every criminal investigation that involves the First Amendment activities of a person, group, or organization. These guidelines do not apply to criminal investigations that do not involve First Amendment activities.
 2. These guidelines are intended to regulate the conduct of criminal investigations that involve First Amendment activities by requiring (1) written justification for the investigation and (2) written approval by the Commanding Officer of the Special Investigations Division, Deputy Chief of Investigations, and the Chief of Police.
 3. These guidelines, however, are not intended to interfere with investigations into criminal activity. Investigations of criminal activities that involve First Amendment activities are permitted provided that the investigation is justified and documented as required by these guidelines.

II. DEFINITIONS

- A. First Amendment Activity: All speech, associations and/or conduct protected by the First Amendment and/or California Constitution Article I, section 2 (Freedom of Speech) and/or Article 3 (Right to Assemble and Petition the Government, including but not limited to expression, advocacy, association or participation in expressive conduct to further any political or social opinion or religious belief.)
 - 1. Examples. First Amendment activity includes speaking, meeting, writing, marching, picketing or other expressive conduct protected by the First Amendment.
- B. Articulate and Reasonable Suspicion: The standard of reasonable suspicion is lower than probable cause. This standard requires members to be able to articulate specific facts or circumstances indicating a past, current, or impending violation, and there must be an objective basis for initiating the investigation. A mere hunch is insufficient.
 - 1. Demonstrations. The Department shall not conduct an investigation in connection with a planned political demonstration, march, rally or other public event, including an act of civil disobedience, unless the prerequisites of Section I.B, supra, are met. Nothing shall preclude the Department, however, from openly contacting organizations or persons knowledgeable about a public event to facilitate traffic control, crowd management, or other safety measures at the event.
- C. Infiltrator: An undercover officer or civilian acting under the direction of the Department who attends a meeting, joins an organization, develops a relationship with an individual or organization or eavesdrops for the purpose of obtaining information about an individual or organization for transmittal to the San Francisco Police Department.
- D. Informant: A person who provides information to the San Francisco Police Department motivated by the expectation of receiving compensation or benefit, but is not acting under the direction of the Department.
- E. Source: A person who provides information to the San Francisco Police Department with no expectation of compensation or benefit and is not acting under the direction of the Department.

III. AUTHORIZATION REQUIRED FOR AN INVESTIGATION

- A. A member of the Department may undertake an investigation that comes within these guidelines only after receiving prior written authorization by the Commanding Officer of the Special Investigations Division (SID), the Deputy Chief of the Investigations Bureau, and the Chief of Police. However, neither the Commanding Officer of SID, the Deputy Chief of the Investigations Bureau, nor the Chief of Police is authorized to approve an investigation and/or the gathering or maintenance of information in violation of the terms of this General Order.

- B. To obtain written authorization, a member must submit a memorandum through their chain of command to the Commanding Officer of the SID containing the following:
 - 1. The identity of the subject of the proposed investigation, if known.
 - 2. The facts and circumstances that create an articulable and reasonable suspicion of criminal activity as defined in Section I. B.
 - 3. The relevance of the First Amendment activities to the investigation.
- C. When an investigation is authorized by the Commanding Officer of SID and after review by the Deputy Chief of the Investigations Bureau, a copy of the memorandum shall be sent to the Chief of Police, who shall indicate his/her approval or disapproval.
- D. Time limits. Written approval of an investigation is in effect for 120 days. If the Department continues an investigation past 120 days, a new memorandum and approval must be obtained. The new memorandum must describe the information already collected and demonstrate, based on that information, that an extension is reasonably necessary to pursue the investigation.
- E. Emergencies. If there is an immediate threat of criminal activity, an investigation may begin before a memorandum is prepared and approved, but verbal permission must be received from the Commanding Officer of SID or designee. The required memorandum must be written and approved by the Commanding Officer of SID, reviewed by the Deputy Chief of the Investigations Bureau and Chief of Police within five days of the occurrence of the emergency.
- F. Although it is expected that most investigations conducted under these guidelines will be initiated by the SID, if any member of the Department becomes aware of a criminal investigation that involves First Amendment activities as defined in these guidelines, the member shall refer the case to SID for a determination as to how the investigation should be conducted. These guidelines do not preclude investigations that impact on First Amendment activities by divisions other than SID, but those investigations must be conducted in consultation with SID and must be conducted pursuant to these guidelines.

IV. USE OF INVESTIGATIVE TECHNIQUES

- A. Principles. The investigative techniques used in a particular case shall be dictated by the gravity of the crime under investigation, the evidence of criminal activity and the need for a particular investigative technique.
- B. The Department shall use techniques such as numbers 1-5 listed below before employing the more intrusive techniques listed in Section C.

DGO 8.10
Rev. 10/01/08

1. Examination of public records and other sources of information available to the general public.
 2. Examination of San Francisco Police Department files and records.
 3. Examination of records and files of the government or law enforcement agencies.
 4. Interviews with persons connected with the complaint or subject of the investigation, including information received from sources.
 5. Physical surveillance from places open to the public.
- C. If the techniques listed in Section B are inadequate or obviously would be futile under the circumstances, the Department may use techniques such as the following:
1. Electronic surveillance such as the use of videotape, body wire, or audiotape.
 2. The use of undercover officers, infiltrators, informants, or mail covers.
- D. A member may undertake use of techniques listed in Section C only after submission of a memorandum setting forth the justification for the request and receiving prior written authorization by the Commanding Officer of SID, the Deputy Chief of the Investigations Bureau, and the Chief of Police. If there is an immediate threat of criminal activity, verbal approval by the Commanding Officer of SID or designee is sufficient until a written memorandum can be prepared and approved by the Commanding Officer of SID, the Deputy Chief of the Investigations Bureau, and the Chief of Police. The required memorandum must be written and approved within five days of the occurrence of the emergency.

V. RULES OF CONDUCT FOR INFILTRATORS, INFORMANTS AND UNDERCOVER OFFICERS

- A. The officer-in-charge shall specifically direct the undercover officer, infiltrator, or informant:
1. Not to participate in unlawful acts of violence.
 2. Not to use unlawful techniques to obtain information.
 3. Not to initiate, propose, or suggest a plan to commit criminal acts.
 4. Not to be present during criminal activity unless it has been determined to be necessary for the prosecution.
 5. Not to live with or engage in sexual relations with members of the organization (unless a civilian infiltrator was so involved before becoming an infiltrator).

6. Not to assume a leadership position or intentionally cause dissention within the organization.
 7. Not to attend meetings or engage in other activities for the purpose of obtaining legally-privileged information, such as confidential sources of reporters, attorney-client communications, or physician-patient communications.
 8. Not to record or maintain a record concerning an individual who is not a target unless the information is relevant for the investigation or the information would itself justify an investigation under these guidelines.
- B. The Commanding Officer of the SID shall monitor the compliance of undercover officers and infiltrators with these guidelines.
- C. The policies and procedures set forth in the memorandum on Informant Management and Control shall apply; except those exclusively applicable to narcotics informants.

VI. POLICE COMMISSION REVIEW

- A. The President of the Police Commission shall designate a member of the Commission to be responsible for monitoring compliance with these guidelines.
- B. Every month, the designated Police Commission member shall review the written requests and authorizations for the initiation or continuance of an investigation that is required by these guidelines.
- C. On an annual basis, the Director of the Office of Citizen Complaints or his/her designee shall conduct an audit of the Department's files, records and documents and shall prepare a report to the Commission regarding the Department's compliance with the guidelines. In addition, the Police Commission may conduct or direct the OCC to conduct such an audit unannounced at any time.
1. In conducting the yearly audit, the Office of Citizen Complaints shall review the following:
 - a. All current guidelines, regulations, rules and memoranda interpreting the guidelines;
 - b. All documents relating to investigations subject to Section III. and undercover techniques subject to Section IV.C. of these guidelines.
 - c. All Agency Assisted Forms or other documentation relating to the transmittal of documents to other criminal justice agencies as described in Section IX. B.
 2. The Office of Citizen Complaints shall prepare a written report to the Police Commission concerning its annual audit, which shall include but not be limited to:

DGO 8.10
Rev. 10/01/08

- a. The number of investigations authorized during the prior year.
- b. The number of authorizations sought, but denied.
- c. The number of times that undercover officers or infiltrators were approved.
- d. The number and types of unlawful activities investigated.
- e. The number and types of arrests and prosecutions that were the direct and proximate cause of investigations conducted under the guidelines.
- f. The number of requests by members of the public made expressly pursuant to these guidelines for access to records, including:
 - (i) The number of such requests where documents or information was produced,
 - (ii) The number of such requests where the documents or information did not exist,
 - (iii) The number of requests denied.
- g. The number of requests from outside agencies, as documented by an Agency Assist Form, for access to records of investigations conducted pursuant to these guidelines, including:
 - (i) The number of such requests granted and
 - (ii) The number of such requests denied.
- h. A complete description of violations of the guidelines, including information about:
 - (i) The nature and causes of the violation and the sections of the guidelines that were violated.
 - (ii) Actions taken as a result of discovery of the violations, including whether any officer has been disciplined as a result of the violation.
 - (iii) Recommendations of how to prevent recurrence of violations of the guidelines that were discovered during the prior year.
 - (iv) The report shall not contain data or information regarding investigations that are on-going at the time of the report's creation. The data and information, however, shall be included in the first report submitted after the completion of the investigation.

- i. A complete description of violations of the guidelines, including information about:
 - (i) The nature and causes of the violation and the sections of the guidelines that were violated.
 - (ii) Actions taken as a result of discovery of the violations, including whether any officer has been disciplined as a result of the violation.
 - (iii) Recommendations of how to prevent recurrence of violations of the guidelines that were discovered during the prior year.
 - (iv) The report shall not contain data or information regarding investigations that are on-going at the time of the report's creation. The data and information, however, shall be included in the first report submitted after the completion of the investigation.

- D. By the end of each calendar year, the Director of the Office of Citizen Complaints shall deliver to the Police Commission a report containing the information in Section C(2) (a) through (g).

VII. VIOLATIONS OF THE GUIDELINES

- A. If the Chief of Police, the designated Commission member or any member of the Department becomes aware of information that a possible violation of these guidelines has occurred, the Chief or designated member shall immediately inform the Police Commission and the member shall immediately inform his/her commanding officer who shall inform the Chief.

- B. If the Police Commission, determines that a possible violation of these guidelines has occurred, it shall:
 1. Commence an immediate investigation of the possible violation.
 2. Ensure that any activities in violation of these guidelines immediately cease.

- C. If the Police Commission determines that an actual violation of these guidelines and/or the First Amendment (as defined in Section IIA above) has occurred, the Commission shall:
 1. Notify the parties about whom information was gathered or maintained in violation of the guidelines pursuant to the following:
 - a. When information is released to individuals or organizations, the names and identifying information concerning private citizens other than the individual notified shall be excised to preserve their privacy.

DGO 8.10
Rev. 10/01/08

- b. There shall be no disclosure if the disclosure of the information is reasonably likely to endanger the life, property or physical safety of any particular person. However, unless the San Francisco Police Commission reasonably concludes that notice itself would be reasonably likely to endanger the life or physical safety of any particular person, the party about whom information was gathered in violation of these guidelines and/or First Amendment (as defined above) shall be notified that information regarding such person or their protected activities, expressions, associations and/or beliefs has been obtained in violation of these guidelines or First Amendment and that the information is not being disclosed because the Police Commission has concluded that such disclosure is reasonably likely to endanger the life or physical safety of a person. Furthermore, if the information may be segregated, such that a portion of the information can be disclosed without endangering the life or physical safety of one particular person, that portion of the information that the Police Commission concludes can be disclosed without endangering the life or physical safety of any particular person will be disclosed.
 - c. There shall be no disclosure if disclosure is prohibited by local, state, or federal law.
 - d. The Commission may deny disclosure if disclosure is exempt under San Francisco's Sunshine Ordinance, Chapter 67 Admin. Code, Section 67.24(d) (Law Enforcement Information), with the following exceptions:
 - (i) The Sunshine Ordinance Exemption for personal and otherwise private information shall not be applied unless that information would reveal the identity of an individual other than the requesting party.
 - (ii) The Sunshine Ordinance provision that exempts disclosure of "secret investigative techniques or procedures" shall not be applied to the fact that a particular procedure occurred, but only to a description of how that procedure was executed and shall apply only if the information would jeopardize future law enforcement efforts by a local, state, or federal agency.
 - e. No disclosure is required if an investigation is ongoing, but disclosure may be made during an ongoing investigation within the discretion of the Commission.
2. Refer the violation to the Chief of Police for a recommendation concerning discipline of the members involved.
- D. The Commanding Officer of SID shall ensure that all members of the Department assigned to SID attend a training session of these guidelines before beginning work at SID. All members assigned to SID and members engaged in investigations involving the First Amendment activities of persons (as defined above) shall sign an acknowledgement that they have received, read, understand and will maintain a copy of these guidelines.
- E. All members of the Department shall be advised that a willful or negligent violation of these guidelines shall subject the offending member to disciplinary action which may include suspension or termination.

VIII. ACCESS BY CIVILIANS

- A. All requests for information by civilians shall specifically request information created pursuant to these guidelines and shall be governed by the criteria set forth in Section VII.C(1)(a) through (e) above, unless state or local law require greater disclosure. Any denial of access to information shall specifically state the reasons for the denial.
- B. If access is denied, an appeal may be made to the designated Police Commissioner (c/o Police Commission, Hall of Justice, Room 505, 850 Bryant St., San Francisco, CA 94103) and shall include copies of all written correspondence relating to the request.
- C. No right to a hearing on denial of access to information is created by these rules.

IX. FILES AND RECORDS

A. Information Quality Control

- 1. The collection, maintenance, and use of information pursuant to an authorization shall be limited to the scope stated in that investigative memorandum and authorization.
- 2. The Department shall not collect or maintain information of a personal nature that does not relate to a criminal investigation. In the absence of a specific investigation authorized under these guidelines, the Department shall not collect or maintain information such as names for political petitions, mailing lists, organizational memberships or writings espousing a particular view which is protected by the First Amendment.
- 3. Information to be retained in a criminal intelligence file shall be evaluated for source reliability and content validity prior to filing. The file shall state whether reliability or accuracy have been corroborated.

B. File Dissemination

- 1. Dissemination of intelligence information is limited to criminal justice agencies with a specific need-to-know as well as right to know.
- 2. All requests for information shall be evaluated and approved prior to dissemination by the Commanding Officer or designee for the Special Investigations Division. The commanding officer or designee shall determine whether the requesting agency is reliable in treating the information with the requisite care and sensitivity and shall deny the request if the requesting agency is not considered sufficiently reliable.
- 3. All dissemination of information shall be done by written transmittal or recorded on an Agency Assist Form that describes the documents or information transmitted. A copy of the transmittal letter or Agency Assist Form shall be kept in the file from which the information was disseminated.

DGO 8.10
Rev. 10/01/08

4. The first page of any information document transmitted to a recipient agency shall contain a notice limiting dissemination to the specific purpose for which the document was transmitted.
5. A master list of all written transmittals and Agency Assist Forms recording the dissemination of records governed by these guidelines to outside agencies shall be maintained in a binder by SID.

C. File Purge

1. Records shall be purged according to the current San Francisco Police Department Records Retention and Destruction Schedule which calls for destruction of intelligence files every two years from the last date of entry with the following exceptions:
 - a. Information may be maintained if it is part of an ongoing investigation.
 - b. All written memoranda requesting authorization to commence an investigation and subsequent authorizations shall be maintained for not less than five years after termination of the investigation.
 - c. Records showing violation of these guidelines shall not be destroyed or recollected for the purpose of avoiding disclosure.
2. The chain of custody for destroyed files shall be established and documented to provide a record establishing that the files have been destroyed.

D. File Security

1. A copy of the initiating memoranda and authorizations created pursuant to these guidelines shall be kept by the Commanding Officer of SID.
2. All documents created pursuant to these guidelines shall be locked and kept separate from other Department files. Access shall be limited to personnel working on an authorized investigation, command personnel, the Chief, the designated Commission member, and the OCC for the limited purpose of conducting the annual audit.
3. All files, whether kept in SID or another unit, shall be prominently marked with a notice that the material contained in the file is subject to these guidelines.

E. Use of Computers

The use of Department computers shall be governed by the San Francisco Police Department computer security policy.

X. FUNCTIONAL RESPONSIBILITY FOR EVENT PLANNING INVOLVING FIRST AMENDMENT ACTIVITIES

- A. Certain types of public gatherings require the Department to collect a limited amount of information in order to preserve the peace, assess the need to deploy members for crowd control purposes, facilitate traffic control, address public safety concerns at the event, and protect the rights of free expression and assembly. This information may only be collected openly and non-covertly as part of an Event Planning Inquiry.
- B. The responsibility for conducting Event Planning Inquiries shall rest solely with the Event Commander or his/her designee. The Permit Unit may collect information about public gatherings only to the extent legally required and necessary in processing permit applications designated by city ordinance.
- C. Unless invited, Departmental contacts with event organizers or participants should be made by telephone during normal business hours without officer(s) attending an organization's meetings. In the course of such contacts it should be made clear that communications are voluntary.
- D. See Field Operations Bureau General Order 91-01 for details.

XI. VIDEO OR PHOTOGRAPHIC RECORDING

- A. Authorization.

It is the policy of the Department to videotape and photograph in a manner that minimizes interference with people lawfully participating in First Amendment events. Video or photographic equipment shall not be brought or used without the written authorization of the Event Commander.

- B. Purpose

The Department shall videotape or photograph only for crowd control training or evidentiary purposes. Evidentiary purposes shall include only:

1. Evidence that is reasonably likely to be used in administrative, civil, or criminal proceeding or investigations.
2. Evidence related to allegations against members of the Department.

XII. GUIDELINES LIMITED TO PROMOTION OF GENERAL WELFARE

In undertaking the adoption and enforcement of these guidelines, the San Francisco Police Department is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on the City, Police Commission, Department officials, or employees, a duty or obligation to any person for equitable relief, money damages, or any other relief based on a claim that a breach will cause or has proximately caused injury.

WRITTEN COMMUNICATION SYSTEM

This General Order describes the written communication system and directives (general orders, manuals, bureau orders, unit orders, bulletins, notices) within the San Francisco Police Department. It describes the method these directives will be communicated to members, the roles, responsibilities and processes for initiating and/or amending Department directives.

Department General Orders are the Department's most authoritative and permanent directives, established, revised, and adopted by the Police Commission after a public hearing. General Orders remain in effect until amended, superseded or rescinded by the Police Commission. The Police Commission shall determine which General Order(s) will be required to undergo a public and/or stakeholder input process, and will outline the nature and scope of this process.

General Orders are initiated by the Police Commission or the Police Department.

3.01.01 DEPARTMENT GENERAL ORDERS

A. POLICE COMMISSION INITIATED

Police Commission initiated General Orders, pursuant to San Francisco City Charter Section 4.109, may be adopted after a public hearing. Prior to adoption, the following will be provided with an opportunity to review the proposed General Order and may provide comment to the Police Commission:

- 1) Chief of Police or designee
- 2) Assistant Chiefs and Deputy Chiefs
- 3) Police Department Directors and Deputy Directors
- 4) The Commanding Officer of any unit directly affected by the proposal
- 5) Department's legal staff and/or City Attorney
- 6) Department of Police Accountability
- 7) Any member of the Department
- 8) Members of the public and/or stakeholders

B. DEPARTMENT INITIATED

Department-initiated General Orders require review from the Chief of Police, each Assistant Chief and Deputy Chief and, as needed, department legal staff and/or the City Attorney prior to submission to the Police Commission for adoption.

C. INDEXING

General Orders are indexed by general subject category and numbered sequentially, e.g., 3.01. Each subsection of a General Order shall follow this numbering system. e.g., 3.01.01, 3.01.02, etc.

D. INITIATION OF A NEW GENERAL ORDER

The Written Directives Unit shall manage the initiation and concurrence process of new General Orders. A new General Order may be initiated under the following circumstances:

- 1) When the subject of a Department Bulletin creates the need for a new General Order.
- 2) When required based on changes in training, law, community expectation or law enforcement best practices.
- 3) When a member requests a new General Order and submits the recommendation on a memorandum to their Commanding Officer.
- 4) At the direction of the Police Commission.
- 5) At the direction of the Police Commission, based on a recommendation(s) of the Department of Police Accountability.
- 6) At the direction of the Chief of Police.

E. AMENDING A CURRENT GENERAL ORDER

The Written Directives Unit shall manage the preparation and amendment of current General Orders. Current General Orders may be amended under the following circumstances:

- 1) When incorporating the subject of a Department Bulletin into the relevant General Order as outlined in 3.01.06 (D).
- 2) Consistent with the review schedule (listed below) to ensure compliance with current laws, community expectations and law enforcement industry best practices.
- 3) When a member recognizes a directive requires amending based on changes in training, law, community expectation or law enforcement best practices. The member may request amendment of the General Order by submitting a memorandum to their Commanding Officer.
- 4) At the direction of the Police Commission.
- 5) At the direction of the Police Commission, based on a recommendation(s) of the Department of Police Accountability.
- 6) At the direction of the Chief of Police.

F. GENERAL ORDER DEVELOPMENT PROCESS

When a General Order requires initiation or amendment, the Written Directives Unit shall notify the Deputy Chief or Director of the bureau, division or unit most affected by the directive. The Deputy Chief or Director shall assign a member to review and amend the General Order. The assigned member shall, as appropriate:

- 1) Coordinate and provide the Written Directives Unit with the status update on proposed modifications to the General Order within 60 days of assignment and every 60 days thereafter until the review process is completed.
- 2) Solicit review by Commanding Officers, who shall seek input from their respective members, in units most affected by the proposed policy.
- 3) Integrate any relevant Bulletins into the General Order, if applicable.
- 4) Review stakeholder(s) recommendation(s) (e.g., Community, Police Commission, Firearm Discharge Review Board, Risk Management Office, City Attorney, Department of Police Accountability) on training, law, community expectation or law enforcement best practices.
- 5) Meet with a representative of the Department of Police Accountability to exchange views on the proposed order and attempt to resolve any differences, as outlined in Police Commission Resolution 27-06.
- 6) Submit the proposed General Order to the Written Directives Unit.

Upon receiving the proposed General Order revision, the Written Directives Unit shall submit the amended order through the concurrence process as outlined in 3.01.10.

G. GENERAL ORDER REVIEW

The Written Directives Unit shall be responsible for the ongoing review of all General Orders and maintain a General Order review matrix. A General Order assigned for review/amendment shall be submitted to the Police Commission for adoption no later than five years from the date listed on the General Order and every five years thereafter.

No proposed directive outlined in this order shall conflict with established approved policy unless the proposed directive is superseding or amending a directive and has been subjected to the approval process outlined in this General Order.

3.01.02 DEPARTMENT MANUALS

Manuals are publications containing policies, procedures and directives on a specific topic requiring approval of the Police Commission.

A. CONCURRENCE

The Written Directives Unit shall manage the concurrence process for Department Manuals, which shall be reviewed and approved by the Assistant Chief and the Deputy Chief of the bureau or unit affected.

B. RESPONSIBILITIES

The Written Directives Unit shall be responsible for publishing Manuals on the Intranet. The Deputy Chief of each bureau shall ensure members of his/her bureau comply with the directives contained in Manuals related to their bureau.

Manuals shall be subject to a mandatory (5) five year review from the date of issuance. The Written Directives Unit will manage a review matrix of all Manuals, assigning Manual reviews to the Deputy Chief of the appropriate bureau prior to the (5) five year review date.

3.01.03

DEPARTMENT OF POLICE ACCOUNTABILITY REVIEW

Upon approval by the Chief of Police, draft General Orders and Manuals will be forwarded to the Department of Police Accountability (DPA) for review. Prior to adoption by the Police Commission, the Department of Police Accountability will have (30) thirty calendar days to review a proposed General Order or Manual and submit recommendations to the Department. The Department will review any Department of Police Accountability recommendation to determine if they should be incorporated into the General Order or Manual. If no recommendations are received within (30) thirty days, the draft General Order or Manual will be submitted to the Police Commission for adoption.

When necessary, a meeting between the Police Department and the Department of Police Accountability will be held to exchange views on the proposed order and attempt to resolve any differences, as outlined in Police Commission Resolution 27-06.

In the event of an impasse between the Department and the Department of Police Accountability, the draft General Order or Manual along with Department of Police Accountability recommendations, will be submitted to the Police Commission for resolution.

3.01.04

BUREAU ORDERS

Bureau Orders contain directives issued by the Deputy Chief of the bureau affected. Bureau Orders are directives that apply to specific operations within their bureaus.

A. CONCURRENCE

The Written Directives Unit shall manage the concurrence process for Bureau Orders, which shall be reviewed and approved by the Assistant Chief and the Deputy Chief of the bureau affected.

B. RESPONSIBILITIES

The Written Directives Unit shall be responsible for publishing Bureau Orders on the department Intranet. The Deputy Chief of each bureau shall ensure members of his/her bureau comply with the provisions of all Bureau Orders.

Bureau Orders shall be reviewed annually by Written Directives. The Written Directives Unit will manage a review matrix of all Bureau Orders, assigning Bureau Order reviews to the Deputy Chief of the bureau prior to the review date.

**3.01.05
UNIT ORDERS**

Unit Orders contain directives issued by the Commanding Officer or Officer-in-Charge of the unit. Unit Orders are directives that apply to specific unit operations.

A. CONCURRENCE

The Written Directives Unit shall manage the concurrence process for Unit Orders, which shall be reviewed and approved by the Assistant Chief and the Deputy Chief of the unit affected.

B. RESPONSIBILITIES

The Written Directives Unit shall be responsible for publishing Unit Orders on the department Intranet. The Commanding Officer or Officer-in-Charge of each unit shall ensure members within the unit comply with the provision of the Unit Orders.

Unit Orders shall be reviewed annually by Written Directives. The Written Directives Unit will manage a review matrix of all Unit Orders, assigning Unit Order reviews to the Commanding Officer or Officer-in-Charge of the unit prior to the review date.

**3.01.06
DEPARTMENT BULLETINS & NOTICES**

Bulletins and Notices are issued by the Chief of Police. Bulletins and Notices shall be consistent with General Orders.

A. DEPARTMENT BULLETINS

Bulletins contain directives and legal updates and are issued Department wide. Bulletins may be submitted through the concurrence process as outlined in 3.01.10. Additional review may include the City Attorney or other stakeholders, at the direction of the Chief of Police. Bulletins must be approved by the Chief of Police.

B. DEPARTMENT NOTICES

Notices may include information on procedural changes, training, special events, deployments, general information, and messages from the Chief of Police. Notices must be approved by the Chief of Police.

C. INITIATING A NEW BULLETIN OR NOTICE

Any member may request the initiation of a Bulletin or Notice by submitting a memorandum through the chain of command to his/her Assistant Chief. Upon approval, the Assistant Chief shall submit the notice to Written Directives Unit for concurrence.

D. BULLETINS THAT AMEND A GENERAL ORDER

When a Bulletin substantially modifies a General Order, the Written Directives Unit will identify the specific section of the General Order that requires amendment. Within (15) fifteen calendar days, the Department will submit the amendment to the Police Commission through a General Order Change form (SFPD XXX) for concurrence, as outlined in 3.01.10, and final adoption. The General Order Change form will identify the specific section of the General Order the proposed Department Bulletin will amend. Before the Department calendars the amendment with the Police Commission, the Written Directives Unit will notify and provide the General Order Change form to the Department of Police Accountability. Draft bulletin(s) developed pursuant to this section shall not be issued by the Department until adopted by the Police Commission.

E. REVIEW/EXPIRATION SCHEDULE

The Written Directives Unit shall be responsible for the ongoing review of all bulletins and notices. Bulletins shall either expire after (2) two years or be incorporated into an existing or new General Order as outlined in 3.01.06(D).

- 1) Bulletins shall expire (2) two years after their date of issuance and will not be renewed.
- 2) Notices will be updated as needed.

F. INDEXING

Bulletins and Notices are indexed by the year of issuance and are sequentially numbered, e.g., DB 17-101, DN 17-201.

3.01.07

PERSONNEL ORDERS

Personnel Orders are issued by the Chief of Police to announce personnel changes (e.g., transfers, assignments, separations) in the Department.

3.01.08

DEPARTMENT MEMORANDA

A. NATURE OF MEMORANDA AND DISCLOSURE

- 1) Memoranda are internal written communication used to inform, inquire or direct.
- 2) The Legal Division is the Department's custodian of records and agent for the disclosure of the documents pursuant to criminal or civil discovery law and for the disclosure of documents under the California Public Records Act (Cal. Govt. Code § 6254, et seq.) and/or the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67, Section III). All requests for such documents shall be routed through the Legal Division.
- 3) Members shall not disclose Department Memoranda or notes, drafts or other source materials used to prepare Department Memoranda to members outside of their chain of command or to any person or organization outside of the Department unless authorized to do so.
- 4) Unauthorized disclosure of official Department information or information purported to be official Department information will subject any member involved in the disclosure to disciplinary action under this order and Department General Order 2.01.

B. MEMORANDUM ORDERS

Memoranda to subordinates written in directive terms have the effect of an order and shall be complied with as such.

C. FORMAT, APPROVAL AND ROUTING

Memoranda shall be submitted on form SFPD 68 and routed through the chain of command. Memoranda, except memorandum orders, shall be routed upward through the author's chain of command and shall be addressed to the Commanding Officer or Officer-in-Charge of the unit. Copies of Memoranda shall not be sent directly to members outside of the author's chain of command. The routing and forwarding of

Memoranda is a matter of command discretion. This section does not apply to Memoranda described in General Order 11.07.

3.01.09

DEPARTMENT LETTERHEAD STATIONARY

Department letterhead stationery is used for external communication. Only members authorized by the Chief of Police or their Assistant Chief shall correspond on Department letterhead stationery.

3.01.10

CONCURRENCE OF GENERAL ORDERS AND BULLETINS

The Written Directives Unit, upon receipt of a proposed General Order or Bulletin, shall process the draft and submit these for concurrence to the following:

- 1) Chief of Police
- 2) Assistant Chiefs and Deputy Chiefs
- 3) Affected Director(s)/Deputy Director(s)

The concurrence process is managed by the Written Directives Unit, using an electronic system that accounts for all edits and recommended changes. Members involved in the concurrence process shall utilize the designated electronic system for tracking and auditing purposes thereby maintaining accountability and integrity of the concurrence process.

Any proposed edits or recommended changes will be subject to final approval by the Chief of Police or his/her designee.

Members in the concurrence process have (30) thirty calendar days to review a proposed General Order. After (30) thirty calendar days, the draft will advance in the concurrence process.

Bulletins will advance in the concurrence process after (5) five calendar days.

During the concurrence process, if a substantive addition or amendment to the draft directive is recommended, the Commanding Officer of the Professional Standards and Principled Policing Bureau shall be notified. The Commanding Officer of Professional Standards and Principled Policing, shall review the proposed amendment, reconcile any changes with the initiating member and inform the Department of Police Accountability of any substantive addition or amendment. The Commanding Officer shall meet with the Department of Police Accountability to exchange views, as outlined in the Police Commission Resolution 27-06. Once discussions have occurred, the Commanding Officer shall advance the draft directive accordingly.

If consensus is not obtained, parties shall have an opportunity to discuss their recommendations with the Chief of Police and/or designee. Final approval for any changes shall be determined by the Chief of Police and/or designee.

3.01.11 PUBLISHING DIRECTIVES

The Written Directives Unit is responsible for electronically publishing and distributing directives on the Department network. The Department will provide members with electronic access to directives in a searchable database.

With exception of Law Enforcement sensitive materials, General Orders and Bulletins shall also be posted on the Department's website for public view upon adoption.

The Written Directives Unit will also notify the Department of Police Accountability of all published directives.

3.01.12 ACCOUNTABILITY

Members are expected to have a working knowledge of all directives as applicable through their respective assignment and comply with their provisions. Retention of paper copies of General Orders or any other directives (Manuals, Bureau Orders, Unit Orders, Bulletins, Notices) are no longer mandated.

- 1) Members shall utilize the Department's electronic system to acknowledge receipt and review of and electronically sign-off all directives within (30) thirty days of issuance.
- 2) The Commanding Officer or Officer-in-Charge (OIC) or designee of each unit shall conduct periodic audits to confirm that members of his/her unit reviews and acknowledges all directives by electronically signing for all directives within 30 days of the date of the directive.
- 3) No proposed policy (such as General Order, Bulletin, Unit Order, Bureau Order, Manual) or other directive outlined in this order shall conflict with approved established policy unless the proposed directive is superseding or amending an existing directive and the proposed policy will be subject to the approval process outlined in this General Order.
- 4) Commanding Officers of each unit shall ensure that new and amended General Orders and Bulletins that substantively amend a General Order are supplemented with appropriate training and supervision to ensure compliance with the new directive.

3.01.13

MEMORANDUM OF UNDERSTANDING (MOU's) AND OTHER AGENCY AGREEMENTS

Memorandum of Understanding is a formal agreement between two or more parties that outlines the terms and details.

A. FORMAT, APPROVAL AND ROUTING

Memorandums of Understanding shall be routed through the chain of command and reviewed by the Chief of Police, Assistant Chief and Deputy Chief who's unit or bureau is affected, and the City Attorney, at the direction of the Chief of Police or designee.

B. DISCLOSURE

The Legal Division is the Department's custodian of records and agent for the disclosure of the documents pursuant to criminal or civil discovery law and for the disclosure of documents under the California Public Records Act (Cal. Govt. Code § 6254, et seq.) and/or the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67, Section III). All requests for such documents shall be routed through the Legal Division.

3.01.14

ELECTRONIC COMMUNICATIONS

Members shall adhere to the guidelines set forth in General Order 10.08 regarding the use of email and other electronic communications.

References

SFPD Record Destruction Schedule
DGO 2.01, General Rules of Conduct California Government Code
DGO 10.08, Use of Computers and Peripheral Equipment
San Francisco Administrative Code



SAN FRANCISCO POLICE DEPARTMENT GENERAL ORDER CHANGE REQUEST

COMMISSION HEARING DATE:

DECEMBER 18, 2017

POLICE COMMISSION ACTION ITEM:

General Order Number: 3.01

Type of Order: - CHANGE

Proposed Effective Date of Order: Immediate

REMOVE FROM GENERAL ORDER

Section 3.01.01 (B)

Department-initiated General Orders require review from the Chief of Police, each Assistant Chief and Deputy Chief and, as needed, department legal staff and/or the City Attorney prior to submission to the Police Commission for adoption.

REPLACE GENERAL ORDER

Section 3.01.01 (B)

Department-initiated General Orders require review from the Chief of Police, each Assistant Chief and Deputy Chief and, as needed, department legal staff and/or the City Attorney prior to submission to the Police Commission for adoption.

RESCIND

Parts to be rescinded in accordance with the General Order Change



DEPARTMENT BULLETINS:

Department Bulletin 17-001 will need to be issued to modify this change pending Commission Approval.

NOTES:

Section for notes regarding this General Order Change

REVIEWED BY:

³⁵₁₇ Approved by SFPD Command Staff 12/18/17

³⁵₁₇ Reviewed by Department of Police Accountability 12/19/17

APPROVED BY:

DATE:

DATE:

William Scott, Chief of Police

L. Julius M. Turman, President Police Commission