

Youth Commission
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November 25, 2020

As a chartered city body, the San Francisco Youth Commission has taken two formal stances this month on the Police Officers' Association Memorandum of Understanding,. These two stances are:

- 1) [A motion to support opposing the SF POA Contract](#) which was made on November 2, 2020
- 2) [A motion to oppose BOS File No. 201273](#) [Hearing - Meet and Confer Obligations with the Police Officers Association] that included comments, questions, and recommendations regarding this legislation

Due to these motions, the Youth Commission also signed the below letter.

Please do not hesitate to contact the San Francisco Youth Commission Director at kiely.hosmon@sfgov.org with any questions or concerns.



November 25, 2020

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

RE: Clearing up inaccuracies in the debate on San Francisco's proposed renegotiated contract with the Police Officers' Association

Dear Supervisors,

In light of the Board of Supervisors' vote to advance the City's renegotiated Memorandum of Understanding (MOU) with the San Francisco Police Officers' Association (POA) on November 17, 2020, we are concerned about a number of misconceptions and errors that were stated during discussion of the renegotiated MOU at full Board. We hope that setting the record straight will clarify why approving the renegotiated MOU as it stands remains problematic and damaging to the end goal of taking back control of policing in San Francisco.

1) Rejection of the renegotiated MOU would not result in arbitration

Contrary to what was stated at the meeting, **there is no cause for arbitration if the Board does not approve the renegotiated MOU**. Supervisor Walton stated that "if we do not approve this MOU and we have to go to arbitration, I'm afraid that the SFPD will receive bigger raises." This assumption is simply inaccurate: the decision before the Supervisors is whether to give their assent to a contract *renegotiation*, that is to an amendment to an *already existing contract* that does not expire until June 30, 2021. Should the renegotiated MOU *not* receive final approval by the Board, the terms of the existing agreement still cover the City's relationship with the POA through the middle of the next year.

2) Rejection of the renegotiated MOU does not necessarily entail layoffs of City workers

Several Supervisors raised the concern that should the contract amendment before the Board be rejected, the raises scheduled in the original MOU to go into effect on January 1, 2021 would create a budget deficit, resulting in layoffs of *other* (non-police) City workers. The Mayor may or may not intend to carry through with layoffs of non-police City workers if this MOU is rejected; there is simply no way to know, although the Mayor's Liaison to the Board Sophia Kittler stated on the record this is not the case. More importantly, this line of argument presupposes that the Board is powerless to fill this budget deficit. It is not.

First, although the cumulative cost of rejecting the renegotiated MOU amounts to approximately \$7.1 million through the end of this fiscal year, as the Controller testified, this is not a lump-sum expenditure. The Board could reasonably delay approval of the contract for a

month or two without incurring this entire expense, to allow for careful consideration of the proposed side letter to the MOU. At the very least, the Board can and should delay final approval of the contract until the December 8, 2020 full Board meeting to allow for proper consideration of the side letter, as the Controller has stated that a delay of this kind would not interfere with the ability to update the City's wages system.

Additionally, it is important to remember that, compared to the estimated \$120 million+ budget deficit already projected for the rest of this fiscal year, the approximately \$7.1 million gap created by the rejection of the renegotiated MOU is relatively small. **Whether or not layoffs will happen—an eventuality which we agree is unacceptable—is fundamentally not a question that will be decided by this renegotiated MOU.** To begin with, it is the responsibility of the San Francisco Police Department (SFPD) to balance *its own* budget, and it is entirely possible for the SFPD to fulfill its obligation to provide raises to its employees in the short-term by rearranging its \$667 million+ departmental budget. Furthermore, the Board of Supervisors ultimately has the authority to address budget shortfalls by reappropriating funds from other departments and programs that do not serve Black and Brown communities.

3) The City's position on Meet and Confer needs to be clarified

Director of the Department of Human Resources (DHR) Carol Isen stated in response to concerns about DHR's practices over meet and confer with the POA that "We [DHR] do not under that language [Article I Section 4.A of the MOU] engage in meet and confer over permissive subjects. In fact we have definitely done everything we can to avoid engaging in meeting and conferring over either permissive or non-mandatory subjects." Here is the language in the MOU:

Except in cases of emergency, the City/Department shall give reasonable written notice to the Association of any proposed change in general orders or other matters within the scope of representation as specified in Government Code Section 3504.5. The Association shall be provided with the opportunity **to meet and confer** with regard to any such proposed change should it desire to do so. (emphasis added)

There are two ways to read this situation. On the one hand, the language in the MOU seems to contradict Director Isen's claims that the City does not meet and confer with the POA beyond the scope provided for by state law. In fact, the MOU seems to give meet and confer rights to the POA on "any proposed change in general orders." This should be no surprise, as we know that DHR has historically engaged in meet and confer proceedings well beyond its obligation under state law. For over two years, DHR held meet and confer sessions with the POA on DGO 10.11 which restricted officers from reviewing Body Worn Camera footage before making a statement to investigators regarding a police shooting ("officer-involved shooting") or an in-custody death. This occurred despite case law unequivocally ruling that such restrictions are fundamental policy decisions excluded from mandatory bargaining (*Ass'n of Orange Cnty.*

Deputy Sheriffs v. Cnty. of Orange (2013) 217 Cal. App. 4th 29 and *Ass'n for Los Angeles Deputy Sheriffs v. Cnty. of Los Angeles* (2008) 166 Cal. App. 4th 1625).

On the other hand, we can take Director Isen's testimony at face value—that is, to accept that, as DHR claims, the language cited above is simply a noticing provision, and that there is nothing in the current MOU that requires a broader interpretation of the scope meet and confer than provided for by state law. If this is the case, there should be no objection from any side to spelling out where Meet and Confer should *not* take place in the side letter DHR has committed to entering into with the POA prior to the next scheduled Board vote on the renegotiated MOU, since these limits have been clearly delineated by state and case law. In any event, it is clear that regardless of what the current MOU is interpreted to mean, even supposedly *existing* limits on circumstances where DHR must meet and confer with the POA need to be spelled out for there to be any chance of holding DHR to account when they do exceed those limits.

Given the absence of transparency around the negotiation of this MOU amendment, and the numerous inaccuracies that have crept into the discussion around its approval, passing the MOU amendment presently before the Board is an abdication of the Board's responsibility to make sure that contracts negotiated by the City serve the public interest, when it is clear that a majority of Supervisors have issues with the City's current relationship with the POA. **We urge Supervisors to look at this situation with clear eyes and a proactive spirit, and to reverse course and reject this renegotiated MOU.**

Sincerely,

The Defund SFPD Now Campaign

*Calvin Quick, Youth Commission Legislative Affairs Officer
on behalf of the San Francisco Youth Commission*