

[REDACTED]

### Recommendation 25.1

Tanya Koshy [REDACTED]

Sat 8/29/2020 3:26 PM

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Dear Acting Captain Altorfer,

Our office has completed its review of the materials related to Recommendation 25.1 that have been submitted to us as part of the collaborative reform process. After reviewing the package and information provided by SFPD, the California Department of Justice finds as follows:

Recommendation 25.1:

The SFPD should immediately update Department General Order 5.17 – Policy Prohibiting Biased Policing (effective May 4, 2011) and Department General Order 11.07 – Discrimination and Harassment (effective May 6, 2009) to reflect its current initiatives and align with best practices.

Response to 25.1:

Working with the Executive Staff Working Group on Bias and the California Department of Justice, SFPD updated both Department General Orders (DGOs) 5.17 and 11.07. On May 20, 2020, the Police Commission voted to approve DGO 5.17 for the purposes of meet and confer with the San Francisco Police Officers Association (POA). Following meet and confer discussions with the POA, the Police Commission unanimously adopted revised DGO 5.17 on August 12, 2020. The Police Commission voted to approve and adopt DGO 11.07 on May 20, 2020; the POA concluded that there was no need to meet and confer on this DGO.

Both policies are consistent with contemporary best practices. With respect to DGO 5.17, as far as the California Department of Justice is aware, SFPD is the first law enforcement agency nationwide that acknowledges bias-by-proxy in its bias policy. Bias-by-proxy occurs when a person “call[s] the police and make[s] false or ill-informed claims of misconduct about persons they dislike or are biased against based on explicit racial and identity profiling or implicit bias.”(DGO 5.17.) DGO 5.17 cautions officers that they risk “perpetuating the caller’s bias” if they act on a bias-by-proxy call and requires officers to use “their critical decision-making skills drawing upon their training to assess whether there is criminal conduct.” (Id.) SFPD’s policy in this regard is not just consistent with best practices, but is a model for other agencies. DGO 5.17 is also consistent with best practices identified by, among other sources, the Racial and Identity Profiling Advisory Board’s 2019 and 2020 annual reports.

DGO 11.07 is also consistent with policies identified by our office has having contemporary best practices, including policies from the Vermont Department of Labor, St. Paul, Minnesota, and Phoenix, Arizona. One notable exception is that DGO 11.07 does not reflect the California Department of Justice’s recommendation to extend the time to file an EEO complaint with the City and County of San Francisco to 180 days; that recommendation was rejected by the City’s Department of Human Resources. Because the decision not to extend the deadline to file an EEO complaint was outside of SFPD’s control, the California Department of Justice will not weigh this fact against SFPD in evaluating it for substantial compliance.

8/31/2020

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SFPD ensures that its policies will remain up-to-date through the revised DGO 3.01 (Written Communication System). DGO 3.01 directs the Written Directives Unit to review each DGO at least every five years. The Written Directives Unit is also tasked with shepherding the process of updating DGOs, including facilitating the revisions, submitting DGOs to concurrence, and then publishing and distributing the revised versions.

Based on the all of the above, the California Department of Justice finds SFPD in substantial compliance with this recommendation.

Please let us know if you have any questions or would like to discuss this further. Thank you.

Tanya

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<b>Finding # 25</b>	<b>The SFPD's General Orders prohibiting biased policing, discrimination, harassment, and retaliation are outdated and do not reflect current practices surrounding these key areas.</b>
<b>Recommendation # 25.1</b>	The SFPD should immediately update Department General Order 5.17 – Policy Prohibiting Biased Policing (effective May 4, 2011) and Department General Order 11.07 – Discrimination and Harassment (effective May 6, 2009) to reflect its current initiatives and align with best practices.

<b>Recommendation Status</b>	<b>Complete</b>	Partially Complete	In Progress
	Not Started	No Assessment	

**Summary**

Compliance Measures 1-5 have been met:

(1) DGO 5.17 Bias Free Policing Policy was approved by the San Francisco Police Commission on May 20, 2020 and forwarded to SFO Police Officers Association (POA) for Meet and Confer discussions. Following Meet and Confer, DGO 5.17 has been placed on the August 12, 2020 Police Commission agenda for discussion and possible action to adopt the policy.

(2) DGO 11.07 Prohibiting Discrimination Harassment and Retaliation was approved on January 15, 2020. The POA determined that Meet & Confer discussions were not necessary, paving the way for immediate implementation of the order.

(3) Both policies were guided by and aligned with content deemed essential according to contemporary standards in the profession; by scholarly works that address the subject matter; and by government agencies with authority for investigating bias complaints.

(5) To ensure DGOs are current and not dated, DGO 3.01 Written Communications tasks the Written Directives Unit to review DGOs on an ongoing basis and provide to the Police Commission, on an annual basis, a schedule of DGOs that require modification.

Compliance Measures		Status/Measure Met
1	Immediately update of DGO 5.17 - Prohibiting Biased Policing.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
2	Immediately update of DGO 11.07 – Discrimination and Harassment.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3	Aligned with best practices.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
4	Update reflected in current department initiatives.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
5	Evidence of supportive and remedial action if deficiencies are found.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

**Administrative Issues**

**Compliance Issues**

<b>Finding # 25</b>	<b>The SFPD's General Orders prohibiting biased policing, discrimination, harassment, and retaliation are outdated and do not reflect current practices surrounding these key areas.</b>
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<b>1</b>	Immediately update of DGO 5.17 - Prohibiting Biased Policing.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<b>2</b>	Immediately update of DGO 11.07 – Discrimination and Harassment.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<b>3</b>	Aligned with best practices.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<b>4</b>	Update reflected in current department initiatives.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<b>5</b>	Evidence of supportive and remedial action if deficiencies are found.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

**Administrative Issues**

**Compliance Issues**



## Collaborative Reform Completion Memorandum

**Finding # 25:** The SFPD's General Orders prohibiting biased policing, discrimination, harassment, and retaliation are outdated and do not reflect current practices surrounding these keys areas.

**Recommendation # 25.1 :** The SFPD should immediately update Department General Order 5.17 – Policy Prohibiting Biased Policing (effective May 4, 2011) and Department General Order 11.07-Discrimination and Harassment (effective May 6, 2009) to reflect its current initiatives and align with best practices.

**Response Date: 05/05/2020**

### Executive Summary:

The process to update Department General Orders (“DGO”) 5.17, Prohibiting Biased Policing, and 11.07, Discrimination and Harassment, began three years ago through the work of an established Bias Working group that met each month.

After the withdrawal of the U.S. Department of Justice, the California Department of Justice (“CAL DOJ”) began working with the San Francisco Police Department in 2017. There was a break in meetings in 2018 with a change in the Executive Sponsor, but the monthly meetings were re-established in January 2019 with the same members being invited to participate. Police Commissioners Cindy Elias and Damali Taylor also joined the group and played a pivotal role in ensuring the group completed its task and drafted a policy aligned with the law and best practices. This working group at times met twice a month to stay within a time frame that was agreed and set by the group to complete the DGOs.

### Compliance Measures:

#### **1) Immediately update of DGO 5.17-Prohibiting Biased Policing**

The San Francisco Police Department, in collaboration with the Bias Working group, updated Department General Order 5.17 (see Attachment #1 – DGO 5.17, draft dated 01/24/2020). DGO 5.17 was on the Police Commission's May 20, 2020 agenda for discussion and possible action to approve the policy for meet and confer. (see Attachment #2 – May 20, 2020 Police Commission agenda item 5) The Commission voted to approve DGO 5.17 for meet and confer.

#### **2) Immediately update of DGO 11.07-Discrimination and Harassment**

The San Francisco Police Department, in collaboration with the Bias Working group, updated Department General Order 11.07 (see Attachment #3 – DGO 11.07, draft dated 01/03/2020). DGO 11.07 was approved by the Police Commission on January 15, 2020 to begin the process of meet and confer (see Attachment #4 – January 15, 2020



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Police Commission agenda item 5 and Attachment #5 – January 24, 2020 email to DHR regarding meet and confer). On January 17, 2020, POA President Tony Montoya notified the Police Commission office there was no need for meet and confer regarding DGO 11.07. (see Attachment #6 – email from POA President Montoya). DGO 11.07 is on the Police Commission’s May 20, 2020 agenda for discussion and possible action to adopt the policy. (See again Attachment #2 – May 2020 Police Commission agenda item 6) The Commission voted to adopt DGO 11.07 for implementation.

### 3) Align with best practices

DGOs 5.17 and 11.7 align with best practices. When drafting the policies, the SFPD and the Bias Working group relied on source material deemed by the CAL DOJ to be consistent with state and federal law and contemporary policing best practices. In a July 30, 2018 letter the CAL DOJ provided recommendations (see Attachment #7 – CAL DOJ July 30, 2018 letter) for DGOs 5.17 and 11.07. The letter states, in part,

*“In formulating its recommendations here, we relied on the experience and expertise of our attorneys, staff, and expert consultants. The policies were reviewed to ensure they were consistent with applicable state and federal law, contemporary policing best practices, and the findings and recommendations outlined in the US DOJ report.”*

In a second letter dated September 20, 2018 Deputy Attorney General Nancy Beninati provided additional guidance by referencing the specific law enforcement agency policies that helped inform the CAL DOJ’s recommendations for DGOs 5.17 and 11.07. (see Attachment #8 – CAL DOJ September 20, 2018 letter) When providing the policies, CAL DOJ stated, in part,

*“...we believe [the policies] provide useful language and/or approaches. Several of these policies were created as a result of a U.S. Department of Justice engagement in the jurisdictions.”*

CAL DOJ provided the following polices that align with best practices:

DGO 5.17- Bias-Free Policing: (see again Attachment 8 – DGO 5.17 section, pages 3 and 4)

Orlando, Florida  
Seattle, Washington  
Maricopa County, Arizona  
Vermont Criminal Justice Training Council  
Albuquerque Police Department



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Charleston, SC Police  
Metropolitan Police Department  
Portland, Oregon Police Bureau

DGO 11.07-Prohibiting Discrimination, Harassment and Retaliation: (see again Attachment 8 – DGO 11.07 section, pages 4 and 5)

Vermont Department of Labor  
Charlotte-Mecklenberg, North Carolina  
St. Paul, Minnesota  
Maricopa County Sheriff, Arizona  
Albuquerque, New Mexico  
Phoenix, Arizona  
State of California, Department of Justice

The SFPD reviewed all the policies the CAL DOJ provided and implemented all CAL DOJ recommendations for DGO 5.17 and all but one of the recommendations for DGO 11.07. The City's Department of Human Resources rejected CAL DOJ's recommendation to extend the deadline for members to file an EEO complaint with the City and County of San Francisco.

The SFPD and Bias Working group also relied on material from other law enforcement professional organizations and subject matter experts to inform its drafting of the DGOs. The working group reviewed the following materials (see Attachment #9 – documents from law enforcement agencies and subject matter experts):

- Racial and Identity Profiling Act of 2015
- Racial and Identity Profiling Advisory Board 2019 Report – Best Practices
- Portions of the RIPA Board report: section on Calls for Service and Bias By Proxy
- Lorie A. Fridell, portions of Producing a Bias-Free Policing: A Science Based Approach
- California Commission on Peace Officer Standards and Training ("POST"), Learning Domain 15 – Laws of Arrest, chapter 1: Constitutional Protections and the Role of a Peace Officer
- POST Learning Domain 15 – Laws of Arrest, chapter 2: Consensual Encounters
- POST Learning Domain 15 – Laws of Arrest, chapter 3: Detentions
- POST Learning Domain 15 – Laws of Arrest, chapter 4: Arrests
- POST Learning Domain 16 – Search and Seizure, chapter 3: Warrantless Searches
- Alameda County District Attorney's Office. Point of View article, "Pat Searches"
- Senior Legal Instructor Steven Arigiriou article, "Terry Frisk Update"



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SFPD Chief William Scott established a best practice by including a definition of “Bias by Proxy” in DGO 5.17, Bias-Free Policing. (see again Attachment #1 – DGO 5.17, Bias-Free Policing, section II. D. page 2)

### Bias By Proxy

*“Bias by Proxy occurs when individuals call the police and make false or ill-informed claims of misconduct about persons they dislike or are biased against based on explicit racial and identity profiling or implicit bias. When the police act on a request for service rooted in implicit, explicit or unlawful bias, they risk perpetuating the caller’s bias. Members should use their critical decision-making skills drawing upon their training to assess whether there is criminal conduct.”*

CAL DOJ acknowledged SFPD’s leadership in adopting a best practice for Bias By Proxy. (see Attachment #10 – cover letter from CAL DOJ regarding Phase II Collaborative Reform Initiative, page 5.)

“...many of the policy reforms adopted by SFPD go above and beyond traditional policing standards...by setting higher standards for best practices. One such example is SFPD’s proposed revisions to its bias policy, which will include a provision cautioning officer to avoid bias by proxy. Cal DOJ is unaware of any other law enforcement agency in California that has adopted such a policy.”

#### **4) Evidence of supportive and remedial action if deficiencies are found**

A. During the review and ongoing discussions of DGO 5.17, Bias-Free Policing, the SFPD and working group identified several deficiencies in the policy:

- The group identified a deficiency in the current version of DGO 5.17 (dated 05/04/11), because the current version did not include a section for definitions. (see Attachment #11 – current version of DGO 5.17 dated 05/05/11). The group remediated this deficiency by adding a definition section with terms associated with biased policing. (see again Attachment #1 – DGO 5.17, Bias-Free Policing, section II, A-D, page 2):
  - Racial and Identify Profiling,
  - Biased Policing,
  - Implicit Bias, and
  - Bias by Proxy
- The SFPD and working group determined portions of the policy updates regarding laws of arrest initially placed in DGO 5.17 were more appropriate for another DGO, specifically, DGO 5.03, Investigative Detentions. After presenting the proposal to Chief Scott, the Chief agreed with the recommendation to place





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these definitions in DGO 5.03 (see Attachment #12 – DGO 5.03, Investigative Detentions dated 01/24/2020, section II. A-G):

- Consensual Encounter
  - Detention
  - Objective Reasonableness
  - Reasonable Suspicion to Detain
  - Reasonable Suspicion to Conduct a Pat Search
  - DeFacto Arrest
  - Probable Cause to Arrest
- After a thorough evaluation and discussion of DGO 5.03, the working group determined the SFPD should update all of DGO 5.03, because 1) the DGO was last updated in 2003 and 2) the principles in DGO 5.03 and DGO 5.17 are interrelated. (see again Attachment #12 – DGO 5.03, Investigative Detentions dated 01/24/2020.) The Department asked the Commission to place DGO 5.03 on the Police Commission's May 20, 2020 agenda for discussion and possible action to approve the policy for meet and confer. (see again Attachment #2 – May 20, 2020 Police Commission agenda item 4) One Commissioner raised a question about a provision in DGO 5.03 and asked for the item to be continued until a later date so the outstanding issue can be resolved.

B. The SFPD recognized that DGOs need to be updated more frequently and in a more consistent manner to avoid having out of date policies that do not align with best practices. The Police Commission adopted DGO 3.01, Written Communication, on 08/17/19 to provide clear guidance on 1) amending DGOs when deficiencies are identified, and 2) outlining the timelines for revising DGOs on a consistent basis. (see Attachment #13 – DGO 3.01, Written Communications)

- If deficiencies are identified in current DGOs, DGO 3.01.01. section E provides direction:

*"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...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*



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- 5) *At the direction of the Police Commission, based on a recommendation(s)*
  - 6) *At the direction of the Chief of Police*
- DGO 3.01.01 section G requires the SFPD to 1) update DGOs no later than every five years, and 2) to produce a DGO matrix at least once a year outlining which DGOs will be reviewed during the five-year rotation (see Attachment #14 – current DGO matrix, as of 05/11/2020)

*“The Written Directives Unit will provide an updated General Order review matrix to the President of the Police Commission, or designee, for approval as needed, but no less than once a year. 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 Orders and every five years thereafter.”*