

Dear Captain Bailey,

Our office has completed its review of the materials supporting implementation of Recommendation 3.2 that have been submitted to us as part of the collaborative reform process. After reviewing the package and information provided by the Department, the California Department of Justice finds as follows:

Recommendation 3.2: The SFPD should work with the Police Commission to obtain input from the stakeholder groups and conduct an after-action review of the meet and confer process to identify ways to improve input and expedite the process in the future for other policy development.

Response to Recommendation 3.2: As background, under the Meyers-Milias-Brown Act (MMBA), the City Charter, and the Memorandum of Understanding between the City and the San Francisco's Police Officers' Association (POA), SFPD must meet and confer with the POA on matters that impact the terms and conditions of officers' employment.

The SFPD engaged in a months-long meet and confer process with the POA on revisions to Department General Order (DGO) 5.01 (Use of Force). The meet and confer process happened after the Police Commission discussed and approved of the draft DGO.

In response to the US DOJ's recommendation to improve and expedite the meet and confer process, SFPD worked with the Police Commission to develop and send out a survey to stakeholders seeking their input. Those stakeholders include members of the Department of Police Accountability, the POA President, members of the Department of Human Resources (DHR), and the Bar Association of San Francisco. SFPD and the Police Commission went over the survey responses together; at least one stakeholder noted the inefficiency of SFPD and POA engaging in the meet and confer process (1) after the Police Commission discussed and approved of a DGO and (2) on issues that do not squarely relate to the terms and conditions of employment. In addition to the survey, the Commission and SFPD had regular meetings with a few stakeholders. The Commission specifically met with members of DHR and the City Attorney's Office to discuss ways to expedite the meet and confer process, consistent with the MMBA, the City Charter, and the MOU. SFPD, the Commission, and DHR members also met to discuss ways to expedite the process. Finally, SFPD, DHR, and the POA held regular meetings where they negotiated meet and confer changes.

Based on the survey responses and meetings with stakeholders, SFPD and the Commission identified and implemented changes to expedite the meet and confer process. Among those changes, the Commission has directed DHR to meet and confer with the POA only on mandatory subjects for bargaining. Further, when the Police Commission Secretary receives a draft DGO from the Written Directives Unit, the Secretary will first email the draft to DHR, which will first determine whether the DGO is subject to the meet and confer process. If it is, then the Secretary posts the DGO for the public and places it on the Commission meeting agenda for the Commission's vote for the sole purpose of using the draft in the meet and confer process. If it is not subject to meet and confer, the Secretary will post the DGO for the public and place it on the agenda for the Commission's vote. Finally, SFPD, DHR, and POA will have monthly four-hour long meetings dedicated to meet and confer negotiations on DGOs.

Based upon all of the above, the Department of Justice finds that SFPD is in substantial compliance with this recommendation. Please let us know if you have any questions or would like to discuss these further. Thank you.

Tanya

Tanya S. Koshy
Deputy Attorney General

Hillard Heintze File Review Recommendation # 3.2

Finding # 3	The SFPD and the Police Commission collaboratively worked with community stakeholders to update Department General Order 5.01 - Use of Force policy.
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Recommendation # 3.2	The SFPD should work with the Police Commission to obtain input from the stakeholder groups and conduct an after-action review of the meet-and-confer process to identify ways to improve input and expedite the process in the future for other policy development.
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Recommendation Status	Complete	Partially Complete	In Progress
	Not Started	No Assessment	

Summary

The evidence supports that the SFPD committed to use lessons learned from the process of revising and implementing DGO 5.01 Use of Force, to guide their approach to steering the passage of DGOs in the future. The department issued surveys to involved groups seeking ways to improve the process and committed to regular meetings with city stakeholders in an effort to streamline the process. Understandably, the department's role in the DGO process is constrained as other city departments and the Police Officer Association have integral roles in the DGO approval process. To address this issue city partners have agreed to quickly process DGOs that are not subject to meet and confer; in addition, the department and the POA will have regular monthly meetings for DGOs subject to meet and confer. Although this recommendation can be designated as complete, the team will continue to monitor the department's role in the obtaining approval of DGOs, including examining the degree to which the department has included input of survey respondents and community partners into efforts to improve the process.

Compliance Measures		Status/Measure Met
1	Work with the Police Commission.	√ Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
2	Obtain input from all relevant stakeholder groups.	√ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3	Conduct an after-action review of the meet-and-confer process.	√ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
4	Identify ways to improve input and expedite the process in the future for other policy development and implementation.	√ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

Administrative Issues

DGOs 5.01 and 5.17 inclusion process should be included and used as evidence in the package submitted to Cal DOJ.

Compliance Issues



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Finding # 3: The SFPD and the Police Commission collaboratively worked with community stakeholders to update Department General Order 5.01 - Use of Force policy.

Recommendation # 3.2 The SFPD should work with the Police Commission to obtain input from the stakeholder group and conduct an after-action review of the meet and confer process to identify ways to improve input and expedite the process in the future for other policy development.

Response Date: March 3, 2020

Executive Summary: Department General Order 5.01 had last been revised in 1995. In late 2015 the Police Commission ("Commission") directed the San Francisco Police Department ("Department") to present a revised Use of Force policy to the Commission for adoption no later than February 2016. The Commission convened a working group and identified various stakeholders that included Department members, members of community-based organizations, members of the community and members of other City agencies for the purpose of developing an updated Use of Force policy. The process to revise DGO 5.01 began on December 9, 2015. Members of the working group felt the February 2016 deadline was arbitrary and did not allow enough time to develop a Use of Force policy and requested that the meetings continue past the Commission's due date of February 2016. The Commission agreed to the request, and the working group completed the draft policy in June 2016. During the seven-month period the group developed two versions of a Use of Force policy that reflected policy enhancements, and included recommendations from the Final Report of the President's Task Force on 21st Century Policing, the Police Executive Research Forum, and the U.S. DOJ-COPs Office. On June 22, 2016 the Department presented the two policies to the Commission, at which time the Commission voted to approve one version of the Use of Force policy for the purposes of engaging in the "meet and confer" process with the San Francisco Police Officers' Association ("POA"), as required by California Government Code § 3500 et seq., also known as the Meyers-Milias-Brown Act ("MMBA").

The MMBA requires public agencies to provide notice to recognized employee organizations, and upon request, to meet with them over changes on matters within the scope of representation before implementing the changes. The MMBA excludes from the meet and confer obligation fundamental managerial decisions addressing the merits, necessity, or organization of any service or activity provided by law or executive order ("managerial decisions"). However, the MMBA does require the agency to meet and confer over the impact of managerial decision on employees ("effects bargaining") before implementing managerial decisions. The San Francisco Charter ("Charter") and the Memorandum of Understanding between the City and the POA ("MOU") impose equivalent meet and confer obligations.

The Charter authorizes the Commission to adopt rules and regulations, and other policies, procedures and Department General Orders (collectively, "DGOs"), governing the Department. (Charter § 4.104.) Managerial decisions are not subject to meet and



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confer. However, even in those instances where the decision is squarely a managerial prerogative, those decisions may have effects – for example on employee training and discipline – that are subject to meet and confer. Accordingly, under the MMBA, Charter and MOU, the City as the public employer must engage in effects bargaining with the POA before implementing a managerial decision. As the policy decision maker on all DGOs, the Commission has an essential role in that meet and confer process, working with the City's Department of Human Resources ("DHR") on the negotiations. That process cannot end until the City completes the effects bargaining. Placing arbitrary deadlines on the meet and confer process at the onset of negotiations would be viewed by the courts as bargaining in bad faith

Compliance Measures:

1) Work with the Police Commission.

The Department worked with members of the Commission staff to develop a survey (see exhibit 1 – survey to Use of Force stakeholders) to send to various members of the community, members of community-based organizations, and members of other City agencies to obtain input on ways to improve input into policy development and expedite the meet and confer process for future policy development. While the questions were about the process for the Use of Force policy, they were purposely broad so the answers could be used to improve the process for future policy development.

The following questions were developed by the Department and the Commission staff and were included in the survey:

- 1) What did you value about the re-engineering of [Use of Force] DGO 5.01 and what areas could be improved?
- 2) Re-engineering the Use of Force policy was a lengthy process. Can you suggest ways to expedite this process in the future?
- 3) In reference to DGO 5.01, the SFPD sought input via stakeholder and Police Commission meetings. How else can we encourage thoughtful input?
- 4) Any additional thoughts and comments as we continue to improve policies and related negotiations are conducted.

2) Obtain input from all relevant stakeholder groups.

On July 17, 2017, the above referenced survey was sent via email to approximately 20 members of the Use of Force working group (see exhibit 2 – list of working group members who received survey and July 17, 2017 email to working group members with survey attached). While these members worked on the Use of Force policy, many who received the survey have been members of other Department/Commission working groups that developed other Department General Orders – both before and after the Use of Force working group. The survey was sent to:

Director of the Department of Police Accountability
Policy Director at the Department of Police Accountability
President SFPOA
President Pride Alliance



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Latin Police Officers Association
President of the Officers for Justice
Asian Police Officers Association
Department of Human Resources
Department of Human Resources
Director of the Human Rights Commission
Director of the Coalition on Homelessness
Public Defender
Assistant Public Defender
Assistant District Attorney
Blue Ribbon Panel
Blue Ribbon Panel
CIT working group
Bar Association of San Francisco
ACLU
CIT working group

*in addition to working on the Use of Force policy, these individuals have worked on additional policy development working groups (either before or after the UOF working group, or both)

On July 31, 2017 the Department sent a reminder email (see exhibit 3 – follow up email to stakeholders) to the recipients asking for a response to the survey.

The Department received four responses – the POA, the DPA, the Coalition on Homelessness and the San Francisco Bar Association. In addition, although the ACLU – Northern California did not send in a response to the July 17, 2017 or the July 31, 2017 request to complete the survey, it had submitted a February 29, 2016 letter to the Police Commission during the Use of Force working group process that includes recommendations regarding the meet and confer process. The ACLU's letter is included in this response. (See exhibit 4 – responses from POA, DPA, Coalition on Homelessness, San Francisco Bar Association, and ACLU – Northern California)

3) Conduct an after-action review of the meet-and-confer process.

The Commission and the Department conducted an after-action review of the meet and confer process:

A. Both agencies reviewed the responses to the survey questions and the February 29, 2016 letter (see again exhibit 4 – responses from POA, DPA, Coalition on Homelessness, San Francisco Bar Association, and ACLU – Northern California) about the meet and confer process. The suggestions included:

- The POA recommended 1) the Department have a final decision maker with the authority to agree to proposals present during all negotiations, 2) the Department should engage with the POA on early drafts of policy revisions before presenting a draft of the policy to the working group, 3) the Department should revise its policies on a more



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frequent schedule and not wait two decades, and 4) the Police Commission should comply with MMBA by fulfilling its duty to meet and confer in good faith.

- The DPA recommended 1) that all meet and confer issues are identified before discussions begin, 2) reasonable timelines are adhered to, and 3) "more collaboration and strategy be committed to how the new policy and training are rolled out so that reasons for the changes and the officers' concerns are addressed in a manner that advances and not undermines reforms."
- The Coalition on Homelessness did not have any specific recommendations but stated that in their opinion the POA's decision to claim labor issues in meet and confer was an incorrect assessment.
- The San Francisco Bar Association recommended 1) that the POA not have such a large and prominent role in the policy drafting because it is unfair that they will have another opportunity during meet and confer, 2) the role of DHR needs to be revisited, and there needs to be a bright line between policy and working conditions, and not negotiate over non-work related conditions, and 3) there needs to be more clarity on the definition of "working conditions," which is too broadly defined.
- The ACLU recommended that the Commission clarify 1) whether fundamental policy decisions are a mandatory subject of bargaining under MMBA, and if not, clarify if the City voluntarily agrees to meet and confer under these circumstances, 2) the scope of the matters discussed in meet and confer and the procedures when there is an impasse, and 3) whether, through the meet and confer process, the policies approved by the Commission are subject to revision once in the meet and confer process.

- B. With the Use of Force process and the survey responses in mind, the Commission met with members of DHR and the City Attorney's Office ("CAO") on June 13, 2018 in a closed session meeting to discuss ways to expedite the meet and confer process within the provisions of the MMBA, the City Charter and the MOU. The Commission and the Department are not able to release the minutes or the audio recording from closed session item 7a as the Commission voted in item 8 not to disclose any portion of the closed session meeting pursuant to San Francisco Administrative Code section 67.12. (See exhibit 5 – agenda including closed session item 7a and open session item 8 from the June 13, 2018 Commission meeting, and language from San Francisco Administrative Code 67.12 (a)).
- C. On June 28, 2018 members of the SFPD, the Commission staff and a member of DHR met (see exhibit 6 – calendar invite to meeting and agenda to discuss ways to streamline the process of 1) providing draft DGOs to DHR, 2) DHR providing an opinion on whether the draft DGO is subject to meet and confer or whether the DGO can be placed on the Commission agenda for adoption without meet and confer, and 3) DHR conducting the meet and confer with the POA.
- D. In a series of emails from December 11, 2019 through January 2, 2020, members of the Department, DHR and the POA discussed scheduling regular meetings (see exhibit 7 – emails among SFPD, DHR and POA) to ensure meet and confer negotiations among the three parties are consistent and regularly scheduled.



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The Department and the Commission considered all the recommendations from the stakeholders and were able to implement many of them. Others recommendations not implemented. For example, not allowing the POA to have a "large and prominent role in the policy drafting because it is unfair that they will have another opportunity during meet and confer" was not implemented. The POA and other employee groups are welcome to attend any working group meeting, as are all members of the public.

4) Identify ways to improve input and expedite the process in the future for other policy development and implementation.

Based on the after-action review and discussions, DHR, the Department and the Commission have done the following in an attempt to expedite the meet and confer process for future DGOs:

1. The Commission has instructed DHR to meet and confer only over mandatory subjects of bargaining. (See exhibit 8 – letter from Commission President Hirsch to Commander Walsh).
2. The Commission staff, the Department and DHR developed a process in an attempt to streamline the meet and confer timeline: 1) The Commission staff providing DHR/CAO a copy of the draft DGO prior to the DGO being placed on the agenda so DHR/CAO can provide an opinion on whether the draft DGO is subject to meet and confer, 2) providing DHR with an "order of priority" list of DGOs when they are sent to DHR for meet and confer, and 3) providing the Department's training plan, if available, to DHR along with the DGO for inclusion in the discussions during meet and confer. The group developed the following protocols (see exhibit 9 - Police Commission Protocols for DGOs):
 - Once the Police Commission Secretary receives a draft DGO from Written Directives requesting it be calendared on the Commission agenda, the Police Commission Secretary emails the draft DGO to a designated DHR representative, with a courtesy copy to a designated Deputy City Attorney ("DCA"), asking for an opinion on whether the draft DGO as written is subject to meet and confer. The DHR representative or the DCA provides an opinion on whether the DGO is subject to meet and confer. These emails are subject to the attorney client privilege, and the official information privilege (California Evidence Code 1040) outlined in the MOU between the CAL DOJ, the Department, and the Commission will not protect the attorney client privilege, which would be waived upon the release of these emails. However, this procedure is outlined in step 4 of the Police Commission Protocols for DGOs. (see again exhibit 9 – Police Commission Protocols for DGOs, step #4)
 - If DHR/DCA opines that the DGO **is not subject** to meet and confer, the Police Commission Secretary posts the DGO for members of the public for at least 10 days prior to the Commission voting on the DGO, and places the DGO on the agenda as "Discussion and possible action for adoption of DGO XX.XX." (See exhibit 10 –



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- examples of agendas with DGOs with no need for meet and confer.) The DGO is effective the date of the Commission vote.
- If DHR/DCA opines that the DGO **is subject** to meet and confer, the Police Commission Secretary posts the DGO for members of the public for at least 10 days, and places the DGO on the agenda as "Discussion and possible action to approve revised Department General Order XX.XX for purposes of engaging in the meet-and-confer process with the Police Officers Association, as required by law." (See exhibit 11 – examples of agendas DGOs with a need for meet and confer.) The DGO is not effective until after meet and confer is finalized.
 - After the vote to approve a DGO for meet and confer, the Police Commission Secretary emails the draft DGO along with the training plan, if available, to a designated DHR representative, with a courtesy copy to a designated DCA, directing DHR to begin negotiations and notify the Police Commission staff when negotiations are complete, or in the alternative, advise if they need direction in a closed session meeting from the Commission during negotiations. (see exhibit 12 – samples of emails to DHR with the DGO for meet and confer.)
 - DHR has requested that the Commission prioritize the DGOs in order of importance.
 - The Commission staff requests quarterly status updates from DHR on the progress of the DGOs in the meet and confer process. (see exhibit 13 – samples of emails to DHR asking for status updates)
 - Once DHR notifies the Commission staff that the negotiations have concluded and provides the Office with the final version for the Commission to vote on, the Police Commission Secretary posts the DGO for members of the public for at least 10 days, and places the DGO on the agenda as "Discussion and possible action to adopt revised Department General Order XX.XX." (see exhibit 14 – examples of agendas with DGOs that had been subject to meet and confer being placed on the agenda for a vote to adopt.) The DGO is effective the date of the Commission vote.
3. The Department, DHR and the POA have a standing four-hour meeting each month (see exhibit 15 – Chief's calendar with scheduled meetings) dedicated to conducting negotiations on DGOs that are subject to meet and confer. The agendas for the February 2020 and the March 2020 meetings are attached. (see exhibit 16 – agendas for the February 25, 2020, March 11, 2020 and March 16, 2020 meetings and email from DHR regarding agenda setting). DRH has explained that the agendas for upcoming meetings are set at the end of each meeting. To date, the agenda has been set for the upcoming March 11, 2020 and March 16, 2020 meetings, and no agendas for meetings after that date have been set. There are no official minutes taken for meet and confer meetings. The Department does not maintain any notes from the meet and confer sessions. DHR does take bargaining notes which are privileged and not subject to release pursuant to Government Code 6254(p)(2). DHR holds the privilege and declines to release the bargaining notes to the Department or the Commission. (see exhibit 17 – language from Government Code 6254(p)(2)).