

The purpose of this letter is to voice the serious concerns I have related to the proposed Department General Order (DGO) 9.01.

The goals of the proposed DGO to reduce racial disparities in traffic enforcement are laudable. There are ways to attempt to address that issue through policy changes. Unfortunately, the extreme measures taken under this policy will endanger the public and preclude members from being able to respond to community concerns or develop information which can serve to assist in solving of crimes.

Specifically, 9.01.04(C) under exceptions, members can only stop or detain a person or motor vehicle that matches the description of a suspect or suspect vehicle for:

*a murder, attempted murder, manslaughter, armed robbery, kidnapping, forcible sex offense, a felony committed against a child, or any other felony where the risk of death or life-threatening injuries is imminent if the suspect is not immediately apprehended.*

It is important to highlight that this policy states “murder, or attempted murder” but does not to use the word “attempted” for any of the other offenses. This forces members and the Department of Police Accountability (DPA) to interpret the order which can lead to differing opinions and actions. Since “attempted murder” is specified, members could interpret that they are not permitted to stop/detain a person or vehicle matching the description for attempted kidnappings, attempted armed robberies, or attempted forcible sex offenses.

Extending the exception only for armed robberies could also be an issue. Victims can be and frequently are injured, sometimes severely, during “strongarm” (non-armed) robberies. This proposed policy does not allow officers to act on a robbery suspect or suspect vehicle even though the victim could have suffered injuries that may not be fatal or constitute the crime of attempted murder but are severe.

Communities throughout the City have voiced their concern over the crimes of residential and vehicle burglary. The crime of residential burglary is a first-degree burglary and is a “strike” under California law. The seriousness of this offense in the eyes of the State legislature is clear, and historically different District Attorney’s have used prior strike convictions in prosecutions of strike offenses because of their seriousness. This proposed DGO, requires members to have reasonable suspicion to stop or detain a person or vehicle matching the description even if there is an enforceable violation that allows a stop or detention to occur to further investigate.

Just a few months ago, the Police Commission questioned the clearance rates of the Department. This policy, as proposed, restricts the Department personnel’s ability to engage in lawful actions that could further the investigation of criminal offenses leading to the solving of more reported crimes.

The members of this Department are thoughtful, dedicated, committed to procedural justice and Safety with Respect for All. They understand the need and urgency of the change required, engaging in enforcement for non-safety related or equipment violations should be reduced.

The public and the Department can be served by such a policy, but one that strikes a careful balance. Members should not be stopping vehicles based purely on non-safety/mechanical violations. However, not permitting members to avail themselves of these legal avenues to further their investigations of criminal offenses (misdemeanors and felonies), is contrary to public safety.

When members have specific, articulable information as to why they engaged in enforcement for a non-safety related mechanical violation even though those facts may not rise to the level of reasonable suspicion, such a stop should be permitted. Policies could be implemented so the use of this tactic could be tracked and evaluated.

The phrase "*creates a condition that substantially increases the likelihood of injury or death*", which is used often in the proposed DGO is not defined. How are members and DPA supposed to interpret this language?

Another issue in this policy that could negatively impact trust in the communities we are sworn to serve is how members will be expected to handle instances where infractions that are seemingly unenforceable by this proposed policy are brought to their attention by the public. Is the expectation of the Police Commission that the members politely explain that the Police Department is precluded from taking enforcement action that is legal but prohibited by Department policy and leave? This would essentially provide no recourse to the member of the public who are affected by this infraction, escalating the incident to a confrontation between the two parties. These types of encounters are likely to result in DPA complaints against members by the public for not taking action.

For example, if an adult is parked in a red zone across the street from a school and a parent or school employee is concerned about that person who they have never seen before and to their knowledge is not a parent/guardian of any of the school children, reasonable suspicion to detain that person does not exist. As troubling as the concerns of the school employee or parent/guardian are, they do not supersede the legal requirements to stop and detain that individual. A legal basis to speak to that person does exist (the red zone parking infraction), but under this proposed policy, such a stop is not permitted.

Another example would be a person blocking an individual's driveway with their vehicle and are refusing to move. Since that is a parking infraction, under the proposed DGO members would be precluded from taking any action.

There is also the issue regarding the actions of suspects based as a result of this policy. For example, if suspects are aware that members will not engage in enforcement of non-safety related traffic offenses except in relation to serious crimes, if a member attempts a traffic stop on a suspect vehicle that has not committed a safety related traffic offense, the suspect will immediately know that law enforcement has connected them to a violent felony or felony against a child. It is quite likely that with that knowledge, the suspect will flee the attempted traffic stop which can put the public at-risk.

A good illustration of this is the issue of stunt driving. Current Department pursuit policy prohibits vehicle pursuits for non-violent felonies. The public is aware of this. The policy precludes members from engaging in pursuits of stunt driving participants, despite stunt driving events being dangerous and contrary to public safety. The Department has attempted mitigate this with robust follow-up investigation resulting in the towing of involved vehicle, however the fact that individuals knows the Department cannot pursue them has allowed for more of these instances to occur.

The policy as proposed is fraught with unintended consequences. Great care must be exercised in moving forward. The Police Commission and the Department must address this issue with determination, resolve, and a 360° perspective on the outcome of such a policy. I believe there is a way forward that balances the issues created from blindly allowing all low-level traffic stops while still providing circumstances where low-level traffic enforcement is permitted without placing the public in greater peril.