

## **Memorandum:**

CPE feedback on proposed DGO 9.01

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**To:** Cameron McLay, Senior Director, C4J

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### **I. Summary:**

To align this draft with CPE's standing position on pretextual stops, there are four areas in which we would recommend SFPD make changes to their draft of proposed Department General Order 9.01. The first, and most important, is that the order should eliminate rather than reduce the use pretextual stops. This memo further provides feedback on the need to expand the scope of limitations on investigatory questions, and on the need for more specificity regarding monitoring and oversight. Finally, there is a suggestion that SFPD may wish to split the proposed DGO into multiple separate directives, since the current structure adds unnecessary confusion.

### **II. Eliminating rather than curtailing pretext stops**

Policies prohibiting the use of pretextual stops should be clear and unambiguous. If a policy includes exceptions or qualifying language, it sends officers a conflicting message about the department's intent to actually restrict the use of this practice. The exceptions in the draft order create ambiguity that invites officers to continue the practice of pretextual stops but provide no added public safety benefit, as stops based on a matching description of a suspect for a known crime (*Terry* Stops) are already permitted under the existing DGO 5.03.02(D).

The title and purpose (9.01.01) of the General Order should state that the goal of the policy is to eliminate, prohibit, or ban the use of pretextual stops. Use of the word "curtail" is vague and implies that some use of pretextual stops is still appropriate, and perhaps even encouraged.

Section 9.01.03 The General Order should not provide for any exceptions on the ban of pretextual stops. The enumerated exceptions in 9.01.04(C) create unnecessary ambiguity, weaken the intent and purpose of the General Order, and do not permit any conduct that is not already permitted under existing law and policy. Specifically, the exception in 9.01.04(C)(3) describes a stop that is already permitted by the extremely permissive reasonable suspicion standard. If officers have reason to believe that a violent crime has occurred, and come across an individual who matches the description of a suspect in that crime, such a stop would already be permitted so long as it was based on more than a mere hunch. From a racial justice perspective it is essential to eliminate purely pretextual stops, those based motivated solely by a hunch, because these are the kinds of interactions most likely to disproportionately impact Black citizens.

Similarly, the apparent exception for commercial vehicles also adds further ambiguity to the purpose of the general order since there is no explanation or justification as to why the prohibition on pretextual stops should not apply there.

### **III. Restrictions on investigatory questions are too limited**

The proposed order should be amended to expand the prohibition of investigatory questions and consent searches not supported by reasonable suspicion. As drafted, section 9.01.05 is limited to stops “made pursuant to the California Vehicle Code or San Francisco Transportation Code”. It should also apply to *Terry* stops of pedestrians.

### **IV. More specificity on documentation and oversight criteria**

Section 9.01.06(A) should clearly state that officers are required to document the basis for their reasonable suspicion for each additional investigative step, rather than just documenting the reason for the initial stop.

The language in 9.01.06(C) should more explicitly define what constitutes supervisory review. The policy should include specifics about what supervisors should be looking for when they approve a stop, and what metrics and thresholds supervisors should use when evaluating traffic stop data on a quarterly basis.

### **V. Breaking into multiple policies**

The proposed DGO 9.01 includes two seemingly distinct goals. First, the curtailing of pretext stops, and second, the elimination of traffic stops and citations for equipment or minor traffic violations. The combination and cross-referencing of these two elements may suggest to officers that the limitation on pretext stops only applies to stops for these specific infractions (and does not apply to stops for speeding, other moving violations, or minor offenses outside of the traffic code).

Including an enumerated list of specific offenses in a General Order may also prove to be problematic when there is a need to update that list by adding or removing infractions. Given the time consuming process required to approve changes to a General Order, the list of deprioritized offenses may be better suited for a department bulletin or policy memorandum.

For both of these reasons, the Department may wish to consider separating these pieces into separate policy documents.