

Paul A. Allen



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San Francisco Police Commission

Cindy Elias cindy.elias@sfgov.org

Larry Yee lawrence.yee1@sfgov.org

Jim Byrne jim.byrne@sfgov.org

Max Carter-Oberstone max.carter-orberstone@sfgov.org

Jesus Yanez jesus.g.yanez@sfgov.org

Kevin Benedicto kevin.benedicto@sfgov.org

Debra Walker debra.walker@sfgov.org

Stacy Youngblood stacy.a.youngblood@sfgov.org

Copy: Supervisor Rafael Mandelman rafael.Mandelman@sfgov.org

Re: Draft Traffic Enforcement General Order 9.01.01

Dear Commissioners:

I write as a 30 year resident of the city and a retired lawyer. I attempted to make a two minute summary of these comments at yesterday's Commission hearing but somehow did not get into the telephonic queue. Herein, I make two points:

First, I urge the Police Commission to enhance and disclose its procedures for taking public comment on this matter because, as it now stands, the only vehicles for public input are the Commission's Working Group and the San Francisco Human Rights Commission, neither of which are sufficient and appropriate venues for the receipt of broad, city-wide comment on important matters of public safety, health, and welfare; this is particularly true given that there is no final draft on which to comment.

Second, the Police Commission itself, not a proxy, must be the public forum to take public comments after a final draft has been prepared; and in doing so, the Commission must provide ample advance public notice and the opportunity for written and oral submissions.

The Working Group and the SFHRC are Insufficient Fora to Receive Public Input on the Important Issues Implicated in a “Final Draft” Traffic Enforcement Order (DTEO)

There is no doubt that the issues raised in the DTEO are complex, controversial, and weighted with racial history. But they also implicate important public policy and safety questions, particularly when San Francisco has fallen woefully behind its Vision Zero goals. And, this at a time when any sentient City dweller can see daily evidence of the casual disregard of motor vehicle laws, among many others. While serious debate on the issue of biased policing and pre-textual stops is surely appropriate, equally so are the effects on public safety and behavior of a policy that would bar officers from enforcing some state motor vehicle codes and city ordinances. And all this in the context of a city whose local and national reputation continues to tarnish.

I acknowledge the struggles of the Working Group, most of whose transcripts I have read; and I acknowledge as well the role of the San Francisco Human Rights Commission and its “listening” sessions. *But neither the Working Group nor the HRC is a substitute for the Police Commission, meeting en banc, receiving broad, city wide public input on a draft DTEO whenever that occurs.* Why is that? As to the former, surely the Commission knows that the public at large is not normally involved in the “sausage making” of law; lobbyists are, the public is not. Second, the SFHRC should not be the sole government instrumentality to receive public comment on this matter partly because it has neither the legal nor moral authority to debate and consider the Policy and the manifold public policy issues thereby implicated; and partly because there is no public “final draft” on which to seek public comment. Yet the chair at the August 6 Working Group meeting seemed to acknowledge that it is sloughing off to the HRC the obligation to entertain broad city input.

But, tellingly, the HRC sessions are taking input on the speaker’s personal experiences with biased policing, not on the terms of the proposed Order, whose terms are not final and that, in any event, implicate pretext and bias *but also public safety generally.* And, of course, it is the Police Commission, not the HRC, that has the authority to issue the order and the responsibility to consider all of its implications. And on this latter point, let us pause for a moment to consider less than a handful of proposed “prohibited stops” in the current draft: failure to signal while turning or changing lanes unless there is a substantial increase in the likelihood of injury or death, otherwise illegal U turns, and any parking infraction unless the vehicle is unoccupied (this one, apparently, would permit someone to park in front of a fire hydrant, at an emergency MUNI or BART exit, or in front of a business loading dock). By what contortion of logic is the SFHRC the appropriate forum to take comments on the public health and safety implications of these deliverances from citation? Is it not the responsibility of every Commissioner to hear the public’s views on these important policy questions?

In short, the Commission’s current “public input” procedure for the DTEO is inadequate and insufficient. It may well be that the Commission has in mind a broader, more appropriate set of fora and sessions once a final draft has been prepared. If so, it

should declare that now; if not, it should develop one and immediately announce it. The public would benefit immeasurably from such reassurance.

In the Interest of Transparency, Fair Play, and the Development of Sound Public Policy the Commission Should Immediately Announce a Plan to Receive Broad Public Input on a Final Draft Order, Whenever That Might Be.

It seems to this aging lawyer that the Commission should immediately assuage public concerns by developing and announcing a protocol, a briefing schedule if you will, at such time as a final Draft Order is ripe for broad public consideration and comment. This would include:

- Provide no less than 45 days advance public notice of its intent to consider this General Order at a designated hearing day and time.
- Provide a sign-up email list for those interested in receiving such notice.
- At such time as this notice is provided, post the final draft Order as well as all memoranda and documents considered in proposing the Order. A supporting memorandum would immeasurably help the public in considering the pros and cons.
- Allow ample opportunity for written submissions, as well as verbal comments at the commission meeting, which should be available for attendance in person and remotely.

In short, the Commission seems to have established no venue for public comment on the proposal writ large, other than involvement with the Working Group and the SFHRC, neither of which is sufficient for such a significant change in public policy. One assumes you have in mind an opportunity, with adequate prior notice, for the public to appear before this *en banc* Commission in order to offer written and verbal comment on a final draft order; this would be a good time to reassure us.

Thank you for considering my suggestions.

Sincerely,

Paul A. Allen