

September 13, 2022

The Honorable Cindy Elias
Acting-President, Police Commission Office
San Francisco Police Headquarters
1245 3rd Street
San Francisco, CA 94158



Submitted via electronic mail

Re: Supplemental Briefing for October 6 DGO 9.01 Working Group

Dear Acting-President Cindy Elias, Comm. Max Carter-Oberstone, Comm. Kevin Benedicto, and Working Group Members:

As written, the DGO 9.01 policy suggests, parenthetically, that the list of banned offenses is non-exhaustive and merely a suggestion—“the offenses enumerated in this section constitute a non-exhaustive list of violations that the Working Group might wish to consider for possible inclusion.” For the reasons set forth below, the Working Group should not only include the proposed list but should also expand it.

Let’s start with what is not up for debate: since 2018, SFPD officers have stopped Black people at least 6x as often as white people, searched Black people at 10x as often as white people, and used force on Black people at least 12x as often as white people.¹ This data has remained consistent since 2016 when former Chief Greg Suhr resigned in the wake of a racist text message scandal² that later prompted the US Department of Justice (and then the California Department of Justice) to implement long overdue reforms. Instead of abating, the scandals have proliferated *despite* the Collaborative Reform Initiative and the resources the City, Department, the Commission, and the Department of Police Accountability have invested: destroying evidence,³ misusing rape kit evidence,⁴ settling excessive force lawsuits,⁵ using force questionably,⁶ engaging in racial profiling,⁷ lying under oath,⁸ and failing to train officers.⁹

¹ <https://sf.gov/sites/default/files/2022-08/PoliceCommission090722-QADR%20Q1%2022%20CMSN%20FINAL.pdf>.

² <https://www.nytimes.com/2016/07/12/us/san-francisco-police-disproportionately-search-african-americans-report-says.html>.

³ <https://www.latimes.com/california/story/2022-04-20/san-francisco-das-office-charge-police-officers-with-destroying-evidence>.

⁴ <https://www.ktvu.com/news/sf-rape-survivor-whose-dna-was-used-against-her-by-sfpd-says-i-feel-violated-again>;
<https://www.nytimes.com/2022/09/13/us/rape-kit-dna-san-francisco.html>.

⁵ <https://sfstandard.com/criminal-justice/sf-police-beat-man-traffic-reforms-pretexual-stops/>;

<https://sfist.com/2022/02/09/supervisors-ok-700k-settlement-for-police-beating-victim-in-case-where-sfpd-is-basically-at-war-with-boudin/>;

<https://www.sfoxaminer.com/news/landmark-sfpd-shooting-settlement-city-proposes-3-25-million-for-family-of-man-shot-by-police/>.

⁶ <https://sfstandard.com/criminal-justice/police-id-four-officers-who-opened-fire-in-fatal-shooting-beneath-sf-freeway/>;

<https://www.sfoxaminer.com/news/man-injured-in-sf-police-shooting-didnt-deserve-to-be-shot-attorney-says/>;

<https://www.sfoxaminer.com/news/video-surfaces-amid-george-floyd-death-fallout-showing-sf-police-kneeling-on-mans-neck/>;

⁷ <https://www.ktvu.com/news/attorney-alleges-13-year-old-black-student-was-rationally-profiled-unlawfully-detained-by-police>;

<https://www.ktvu.com/news/three-black-men-accuse-sfpd-of-racial-profiling-while-shopping-at-union-square>.

⁸ <https://missionlocal.org/2019/10/sfpd-officer-lied-under-oath-after-severely-beating-bicyclist-in-sfs-mission/>.

⁹ <https://www.mercurynews.com/2020/08/06/feds-toss-gun-case-after-judge-rules-sfpd-violated-mans-constitutional-rights/>;
<https://www.mercurynews.com/2021/02/11/federal-judge-rules-sfpd-conducted-illegal-search-in-gun-case-third-such-ruling-since-last-june/>.

In order to be effective, this policy must remove all incentives for officers to disproportionately stop, search, and use force on Black people specifically, and people of color more broadly. And while limiting what an officer can do following *any stop* is one crucial prong, this policy must also ban enforcement of specific traffic infractions that too easily become pretextual.

Beyond reducing the incentives for officers to “gin up” reasonable suspicion to detain and search, significant economic justice issues undergird banning officers from making certain traffic stops. In San Francisco, almost 60 percent of vehicles towed for expired registration were sold by tow companies, compounding the harm experienced by economically marginalized people.¹⁰ And when a car is not sold after being towed for expired registration, getting a car back can be prohibitively expensive for many: the average price to recover a car after a debt-collection tow is over \$1,100.¹¹ A driver whose car was towed, stored for thirty days, and then sold at auction would owe at least \$2,600 in fees — and be left without a car.¹² This is particularly important for a City that has historically underinvested in communities like the Bayview.¹³

Attempting to end racial discrepancy in enforcement is not a uniquely San Francisco value; nor is the solution this proposal offers unique to San Francisco. As communities around the country address the historical and ongoing racial bias in policing, other jurisdictions have adopted robust policies curtailing pretextual stops. For example, Philadelphia enacted a policy that keeps officers from initiating a traffic stop for *eight* sections of its vehicle code including prohibiting stops for items hanging from the rearview mirror.¹⁴ Similarly, Virginia enacted a policy that bans officers from stopping drivers or pedestrians for *fifteen* different violations, including expired registration stickers, jaywalking, a malfunctioning brake light, noisy exhaust, tinted windows, or a substantial obstruction of the windshield by items hanging from the rear view mirror.¹⁵ The president of the Virginia Association of Chiefs of Police fought the bill this way, seemingly indifferent to the racial disparities:

“We are eliminating more and more interactions with criminals by not allowing us to enforce the laws that are on the books...A lot of times you stop a vehicle, you have no idea the race, color, creed, religion of the person you’re stopping. You see a violation, you stop the car. And at night, you definitely don’t know who you’re stopping. So it is not about targeting.”

This argument sounds all too familiar. Six months in, the new policy has shown no apparent side effects or unintended consequences.¹⁶ Most importantly, the number of Black drivers who were searched fell by *40 percent*.¹⁷

¹⁰ Lawyers Committee for Civil Rights, Towed Into Debt: How Towing Practices in California Punish Poor People (Mar. 18, 2019) at 4, <https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf>.

¹¹ Ibid.

¹² Id. at 14; <https://sfgov.org/policecommission/towed-vehicle-information>.

¹³ <https://sf.curbed.com/2020/2/18/21142590/bayview-black-population-sf-mta-transit-report>.

¹⁴ See certified copy of Philadelphia Bill No. 210636-A,

<https://phila.legistar.com/LegislationDetail.aspx?ID=5007830&GUID=065348E0-F4F6-4B6A-A088-DFE5358E73CD&Options=ID|Text|&Search=210636>.

¹⁵ <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=hb5058>.

¹⁶ <https://www.nbcnews.com/news/us-news/traffic-stops-are-flashpoint-policing-america-reformers-are-winning-big-n1280594>.

¹⁷ Ibid.

While Philadelphia and Virginia took important steps toward reform, other jurisdictions, like Los Angeles, took half measures that appear unlikely to change the racial disparities. The LAPD policy purportedly limits the use of pretext stops but allows officers to act on “articulable information” “which may or *may not* amount to reasonable suspicion.” Effectively, the policy lowers the standard for a stop while seeking plaudits for addressing the harms caused by pretextual stops.

It is, therefore, little wonder why SFPD prefers the LAPD model, which does little to limit officer discretion. SFPD opposes creating a list of banned stops because it will excessively limit its officers’ discretion or, in the alternative, that banning these stops will not reduce the racial disparities that have existed since SFPD began collecting data. Both arguments are misguided and misread what the purpose and scope of this policy seeks to do. The Commissioners should not be distracted by them. To start, officers retain their discretion and have ready alternatives to detaining someone for the infraction: (1) officers can mail the ticket, (2) attach the ticket to the car, (3) cite the infraction when detaining a person for violations not banned, (4) or simply not detain the person as officers often do. Nothing in this policy prevents officers from acting on **existing** probable cause or reasonable suspicion for other offenses. Further, in 2019 before the COVID-19 pandemic, of the top 15 most common stops conducted on Black people in San Francisco, **nearly half** of those stops were for equipment violations - including license plate violations or expired or no registration.¹⁸ By contrast, **not even 15 percent** of the 15 most common stops conducted on white people in San Francisco were for equipment violations.¹⁹

In the previous Working Group meeting, some argued that asking officers to remember a long list of which offenses are banned would be too onerous, that it would be too difficult, with all the codes to remember, to also know which ones should not prompt a stop. As mentioned above, every officer, deputy, and trooper in the state of Virginia makes these decisions and judgements every day—and has done so for nearly two years. Similarly the officers of Philadelphia’s police department—a city about twice the population of San Francisco—have been enforcing similar limitations for six months. If those officers can learn what not to enforce, then certainly SFPD officers can do so as well.

What follows below provides specific, concrete policy reasons why the Commission should not only include a list of banned infractions but also expand that list.

The Commission Should Keep the Existing List of Banned Offenses

Failure to display both license plates (Cal. Veh. Code § 5200(a))

- The failure to display a license plate properly is not, *per se*, a public safety issue: a license plate primary purpose is to identify the car. It is only the advent of new forms of technology that has made the license plate a tool of police surveillance. Officers need not stop a car to run a license plate, so the belief that officers will be unable to determine if a car is stolen is incredulous as officers can run the remaining license plate.
- Nearly 20 states require *one license plate*, justifying one plate as a tool to reduce fraud.²⁰
- The process to replace a license plate can be byzantine for many but can be almost impossible for those who are unhoused or displaced as replacement plates are shipped to the same address that appears on the DMV record.

¹⁸ San Francisco Public Defender analysis of SFPD stop data.

¹⁹ San Francisco Public Defender analysis of SFPD stop data.

²⁰ <https://static.tti.tamu.edu/tti.tamu.edu/documents/TTI-2012-7.pdf>

Failure to display registration tags or driving with expired registration (Cal. Veh. Code § 4000)

- Similar to failing to display two license plates, failing to display registration tags or driving with an expired registration is, at its core, not a public safety issue. There is little to no connection between whether a car has a current registration and whether the driver is a danger on the road or an otherwise dangerous person. This view is unsupported by evidence and misguided.
- Registration fees can be expensive, particularly if they have not been paid recently. Criminalizing poverty by adding on additional fees and tickets only exacerbates these dynamics.
- More than 35 percent of those stopped for expired registration or failure to display registration were Black—the most of any racial/ethnic group.²¹

Failure to illuminate license plate (Cal. Veh. Code § 24601)

- Failure to illuminate a license plate is not a safety issue nor should an officer presume criminal activity because it is not illuminated; oftentimes people are unaware this has occurred.
- License plates are for identification of the vehicle.
- A ready alternative exists: if an officer cannot see a license plate, then an officer can use their lights or a flashlight to illuminate the license plate should they feel the need to run a license plate.
- We should oppose the expansion of the surveillance state via automatic license plate readers or other technology we know will be used to target people of color and others traditionally targeted by police.

Driving without functioning or illuminated headlights, unless no headlights are functioning or illuminated and the sun has set (Cal. Veh. Code § 24400(a)-(b))

- Driving without both functioning headlights at night can be dangerous, but driving with one headlight can be done safely—motorcyclists often do so when they have their low beams activated.
- In 2021, more than 50 percent of those pulled over for a malfunctioning headlight were Black or Latinx.²²
- When there is sufficient ambient light before the sun has set, the safety concern is largely minimized. Barely more than a third of states require headlights during inclement weather, including states with worse weather than San Francisco such as Massachusetts, Maine, and Illinois).²³

Driving without functioning or illuminated tail lights, unless no tail lights are functioning or illuminated and the sun has set (Cal. Veh. Code § 24600)

- One tail light can serve the exact same warning function as others. People are used to seeing one tail light.
- This practice is not illegal in all states. For example, Oregon does not permit officers to pull a driver over for a missing head/break/tail light.²⁴
- While repairing a tail light is an easy task for many, finding the time to leave work and the money to fix this—on top of the other expenses a car can present—can lead many to delay replacing the light.

²¹ San Francisco Public Defender analysis of SFPD stop data.

²² San Francisco Public Defender analysis of SFPD stop data.

²³

<https://www.wkyc.com/article/weather/headlights-on-with-windshield-wipers-state-by-state-laws/95-6be91cb9-5384-4f26-8eb5-8dfa0546eb1e>.

²⁴ <https://olis.oregonlegislature.gov/liz/2022R1/Downloads/MeasureDocument/SB1510/Enrolled>.

Driving without functioning or illuminated brake lights, unless no brake lights are functioning or illuminated and the sun has set (Cal. Veh. Code § 24603)

- One broken tail light serves largely the same function as two.
- Other jurisdictions recognize that driving with one functioning tail light is not a safety hazard. For example, North Carolina law only requires one functioning brake light.²⁵
- While repairing a brake light is an easy task for many, finding the time to leave work and the money to fix this—on top of the other expenses a car can present—can lead many to delay replacing the light.

Tinted windows (Cal. Veh. Code § 26708.5)

- Tinted window monitoring / citing is a discretionary and arbitrary practice—front windows must allow 70 percent of light to pass through,²⁶ but how are officers to differentiate a window with 65 percent light passing through from one that has 75 percent?
- Observation bias may create a belief that tinted windows is a precursor of criminality but no documented correlation exists. Window tint cools cars and can improve their gas mileage.²⁷
- Most new cars come standard with tinted windows,²⁸ so enforcement of this code inevitably targets drivers with older, more affordable vehicles.

Objects affixed to windows or hanging from the rearview mirror (Cal. Veh. Code § 26708(a)(1)-(2))

- The law takes a categorical approach by providing no qualification for “reducing the driver’s view.”
- Other jurisdictions are replacing this rule with others that allow officers to pull someone over if the windshield is “substantially” obscured.²⁹
- Enforcing this code leads to members of the Muslim community being unfairly targeted.³⁰ Concerns surrounding fuzzy dice, rosaries or other large objects, while understandable, do not properly balance the harm caused by overenforcement on communities of color.
- The Vermont Supreme Court noted the absurdity that all hanging items violate the law: people could be pulled over for “spherical crystals, parking placards, medical-alert cards, dog tags, beads, crosses, crucifixes, and, of course, fuzzy dice. ... [T]he statute would subject a vast swath of the driving population to police stops without any safety rationale.”³¹ The Wisconsin Court of Appeals in 2015 also reached a similar conclusion.³²

Improperly mounted license plate (Cal. Veh. Code § 5201(a))

- Improperly mounted license plates do not necessarily signal an intent to evade police detection. A license plate may be displayed in a window or other area of the car in the front or rear due to damage to the vehicle.
- Nothing prohibits an officer from determining if a car has been reported stolen or otherwise involved with criminal activity by focusing on the one available license plate.

²⁵ <https://www.wcnc.com/article/news/nc-law-only-requires-one-working-taillight/275-213230024>.

²⁶ Cal. Veh. Code § 26708(d)(2).

²⁷ <https://www.zimbrick.com/blogs/2460/helpful-tips/the-benefits-of-car-window-tinting/>.

²⁸ <https://www.kbb.com/car-advice/car-window-tinting/>.

²⁹ <https://www.nytimes.com/2021/04/17/us/police-air-fresheners.html>.

³⁰ <https://www.edweek.org/leadership/discussing-the-derek-chauvin-trial-in-class-how-teachers-are-doing-it-and-why/2021/04>.

³¹ *State v. Hurley* (2015) 117 A.3d 433, 439.

³² <https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=144444>.

- Legitimate reasons exist to obscure a license plate (even if temporarily), particularly for those concerned about the ever-expanding police surveillance state and those who receive abortion or other sensitive medical services.³³
- Other jurisdictions recognize the harms enforcing a law like this impose: the New Jersey Supreme Court held that officers can no longer stop motorists for driving cars with partially obscured license plates if the plate markings are still recognizable.³⁴

Failure to signal while turning or changing lanes, unless the failure creates a condition that substantially increases the likelihood of injury or death (Cal. Veh. Code §§ 22107, 22108)

- The same justification (and limitation) that supports including § 22108 also supports including § 22107 without signaling. The law itself contemplates a driver switching lanes only when it is safe to do so and establishes that safe conditions are more important than signaling. The limitation currently used in § 22108 can apply here and preserve the intent of § 22107.
- Violating this provision is too common to be enforceable and can be too subjective to be enforced. The real purpose of the law is to give other drivers notice that a driver is changing lanes. There is no risk when other drivers are not near.
- Because failing to signal is so common, enforcement is left to police presence and discretion, two factors that contribute to racial bias through deployment strategies in “high crime neighborhoods” and unconscious biases.

Littering, unless an object is thrown from a vehicle in a manner that creates a condition that substantially increases the likelihood of injury or death (Cal. Veh. Code § 23112)

- By its very terms, this provision would not cover dumping that creates a hazard but covers small discarded items an officer could use to detain a person for unrelated reasons.
- For small items, the harm caused by littering small objects can be mitigated by officers—or city ambassadors, for example—picking the items up and disposing of them.

Making a U-turn from the far left-hand lane where the driver can see clearly for 200 feet in either direction, and the maneuver is executed in a manner that does not substantially increase the likelihood of injury or death (Cal. Veh. Code § 22100.5)

- The purpose of the law is to reduce the possibility of an accident. When no danger exists, the reasons to enforce this law go away.
- The same admonition to legal u-turns should apply: do so when it’s safe and legal.³⁵
- The DMV points out where a driver may safely make an illegal u-turn: when you can see clearly 200ft in each and when no other vehicles may hit you and when you will not hit a pedestrian

Sleeping in a car (S.F. Trans. Code § 97)

- In 2019, 35 percent of San Francisco’s unhoused population sleeps in their vehicle.³⁶ A separate estimate from the National Homelessness Law Center found similar numbers.³⁷

³³ <https://www.eff.org/deeplinks/2015/01/what-we-learned-oakland-raw-alpr-data>.

³⁴ <https://newjerseymonitor.com/2021/08/02/police-cannot-always-stop-drivers-for-obscured-license-plates-n-j-supreme-court-rules/>.

³⁵ <https://www.dmv.ca.gov/portal/handbook/california-driver-handbook/turns/#:~:text=Legal%20U%2DTurns&text=To%20make%20a%20U%2Dturn,it%20is%20safe%20and%20legal>.

³⁶ https://hsh.sfgov.org/wp-content/uploads/2020/01/2019HIRDReport_SanFrancisco_FinalDraft-1.pdf.

³⁷ <https://www.thenation.com/article/society/homelessness-vehicle-residency-housing/>.

- Individuals are being criminalized because of the City’s lack of affordable housing. Homelessness rises faster where rent affordability exceeds 32 percent, San Francisco’s rent affordability was at 39 percent in 2018.³⁸ Additionally, while New York City’s rate of homelessness is higher than SF’s, only five percent of homeless individuals are unsheltered compared to over 50 percent of homeless individuals in SF.³⁹ Until more affordable housing⁴⁰ is available, the levels of homelessness will only continue to increase.

Any parking infraction, unless the car is unoccupied

- A parking infraction, if the car is occupied, is only a temporary issue. The driver is stopped - either talking on the phone, looking up directions, or waiting for a passenger - and will remedy the issue soon. There is no need for police interaction to stop the behavior.

*Crossing the street outside of the crosswalk, unless ~~it~~ **doing so** creates a condition that substantially increases the likelihood of injury or death (Cal. Veh. Code § 21955)*

- The concept of jaywalking was invented by car companies to avoid government scrutiny and restrictions to automobiles to avoid traffic fatalities.⁴¹
- This is largely not a safety issue. In the Netherlands, as an example, jaywalking is not illegal, while the US has more than three times as many traffic deaths⁴² *per capita* compared to the Netherlands.
- Jaywalking enforcement disproportionately impacts overpoliced areas and allows for wide application of police discretion. Black Californians are 4 to 5 times more likely to be stopped by police for jaywalking than white Californians.⁴³

Riding a bicycle on a sidewalk (S.F. Trans. Code Art. 7, § 7.2.12)

- Instead of penalizing cyclists for riding on the sidewalk, the City should build more bike lanes. Police are not the solution to government failure or inaction.
- Those learning to ride—particular children, teens, and transitional aged youth - often do not feel comfortable riding on the, whether there are clear bike lanes or not. Thus, riding on the sidewalk may be the safest course of action in many circumstances. This is particularly true in neighborhoods that have a history of underinvestment and underdevelopment.

Riding a non-motorized scooter on a sidewalk (S.F. Trans. Code Art. 7, § 7.2.13)

- This does not cover motorized scooters on a sidewalk, an issue SFMTA is addressing via technology and *not* via police.⁴⁴
- Often, it is safer for scooters to ride on the sidewalk to avoid being hit by a car.

Failure to ride a bicycle as close as practicable to the right-hand curb or edge of the roadway (Cal. Veh. Code § 21202(a))

- “As close as practicable” is a subjective standard officers can use to detain the cyclists they want and not engage others.

³⁸ https://www.zillow.com/research/homelessness-rent-affordability-22247/?orgid=305&utm_att1=money.

³⁹ <https://www.sfchronicle.com/projects/2022/fixing-san-francisco-problems/sf-homelessness-data>.

⁴⁰

<https://www.npr.org/sections/money/2021/06/08/1003982733/squalor-behind-the-golden-gate-confronting-californias-homelessness-crisis>.

⁴¹ <https://www.vox.com/2015/1/15/7551873/jaywalking-history>.

⁴² <https://usa.streetsblog.org/2017/09/11/where-jaywalking-is-not-a-crime/>.

⁴³ <https://www.sfgate.com/california-politics/article/Gavin-Newsom-veto-jaywalking-bill-California-Ting-16545646.php>.

⁴⁴ <https://www.sfchronicle.com/tech/article/sf-scooters-17172295.php>.

- Bike riders are advised to avoid getting hit by car doors by staying far enough away from parked cars to be safe.⁴⁵
- Finding the perfect position between driving cars and parked cars is not always easy. Instead of penalizing cyclists, the City should build more bike lanes. Police are not the solution to government failure or inaction.

The Commission Should Expand the List of Banned Offenses

Without a comprehensive list, officers may continue to overpolice and abuse similar infractions. For example, banning jaywalking (CVC § 21955) means little if an officer can continue to detain a person for walking in a bike path (CVC § 21966), as often happens before a person does jaywalk. And to further reduce the racial disparities in stops, searches, and uses of force and to limit the harm wrought by police interactions, the policy should include the following additional violations.

Driving with a cracked windshield unless there is no or substantially reduced visibility (Cal. Veh. Code §26710)

- Replacing a windshield can cost upwards of \$400.⁴⁶ One recent study found that 77 percent of Black respondents reported not having \$400 in savings—precisely what is required to pay to replace a windshield—in comparison to just 18 percent of white respondents.⁴⁷
- Costs such as these—and the collateral consequences of entanglement with the criminal legal system—create the systemic obstacles for Black households to build wealth.⁴⁸
- Little legitimate reason exists to issue a ticket and therefore the safety justification underlying the traffic stop where visibility has not been substantially reduced.

Driving without working windshield wipers (Cal. Veh. Code §§26706-26707)

- Enforcement of this law targets drivers of cars that appear rundown and adversely impacts economically marginalized communities.
- Pulling someone over for missing windshield wipers does not solve any safety issue—the driver already knows the windshield wipers are not functioning and a ticket while raining does not fix the issue. The police intervention creates an unnecessary avenue for officers to stop, detain, and harass the occupants of the car.
- Further, based on 2019 SFPD data, no officer conducted a traffic stop on this basis.

Failure to dim headlights (Cal. Veh. Code §§24401, 24409)

- Good reasons exist to use high-beams: when there is low visibility and when you are unable to see enough of the road ahead to drive safely.
- Whether a person forgets to dim their high beams is not necessarily tied to a specific criminal intent or an intent to evade detection. Quite the opposite is true, as failing to turn your high beams off makes you more visible to an officer.

⁴⁵ <https://sfbike.org/news/safety-tip-how-to-avoid-dooring-and-what-to-do-if-you-are-doored/>.

⁴⁶ <https://www.chase.com/personal/auto/education/maintenance/how-much-to-replace-a-windshield#:~:text=You%20might%20pay%20%24250%20to,the%20cost%20may%20be%20higher.>

⁴⁷ *New Study Reveals Stark Picture of Bay Area Poverty Leading up to COVID-19 Pandemic*, Tipping Point, May 14, 2020, <https://tippingpoint.org/press/new-study-reveals-stark-picture-of-bay-area-poverty-leading-up-to-covid-19-pandemic>.

⁴⁸ Christian Weller & Lily Roberts, *Eliminating the Black-White Wealth Gap Is a Generational Challenge*, Center for American Progress, Mar. 19, 2021, <https://www.americanprogress.org/article/eliminating-black-white-wealth-gap-generational-challenge/>.

- “Failure to dim” may also be a result of improperly installed headlights⁴⁹—often by people avoiding the cost of a professional installation.
- Instead of penalizing drivers for this behavior, an officer can flash their high beams at the person with the lights to alert the individual. Additionally, drivers often alert each other on the road and self-regulate the issue without police intervention.
- In 2019, SFPD officers issued a ticket less than twice per month.

A sound violation, including a loud muffler or loud music (while driving). (Cal. Veh. Code §§ 27007, 151, 27153).

- This law was adopted in 1989, when car stereo culture (and rap music) started to rise to prominence. *As such*, this law has historically been disproportionately applied to Black drivers.⁵⁰
- SFPD officers have a ready alternative at hand: tell the individual to turn the music down or cite individuals for offenses not banned. Penal Code § 415 (disturbing the peace) remains an enforcement option where the sound violation is willful *and* malicious.
- More broadly, the solution is to create space so that communities have safe, open areas for social gatherings. The issue goes beyond just a noise complaint; the issue also encompasses the real concern that police will continue to harass people of color and funnel more Black and brown people into the criminal legal system.
- Arguments that loud music or noise could distract drivers or prevent others from hearing an ambulance siren, for example, are without merit: the hearing impaired are allowed to drive and do so safely, in part, because flashing lights *always* accompany emergency vehicles’ sirens.

Crossing the street in a crosswalk when there is no walk sign, unless doing so creates a condition that substantially increases the likelihood of injury or death (Cal. Veh. Code §§ 21456, 21456.1)

- It is often safe to cross when there is a no walk sign, especially at low-traffic hours.
- Pedestrians commonly cross the crosswalk when there is a no walk sign, and so this can be an opportunity for disparate enforcement, particularly targeting communities of color or those for whom the officer has a “hunch” or a “feeling” that might be involved in criminal activity.
- A reasonable police response to this common occurrence would be to ask pedestrians to stay on the sidewalk, as they often do.
- A 2017 law abrogated part of this law, with SFPD admitting that it is infrequently enforced.⁵¹

Failing to come to a complete stop at a stop sign when no person is in or about to be in the intersection (Cal. Veh. Code § 22450)

- Failure to come to a complete stop at a stop sign when no person is in or about to be in the intersection is not a public safety issue.
- “A complete stop” can be up to interpretation and is open to selective enforcement based on where the officers are patrolling more frequently and the officer’s desire to speak with the driver about another matter.

Walking in a bike lane where there is a pedestrian path (Cal. Veh. Code §21966)

⁴⁹ <https://blog.betterautomotivelighting.com/headlight-aim-is-important-and-very-easy-to-screw-up>

⁵⁰ Charles Crawford, *Car stereos, culture and criminalization*, Crime Media Culture, April 2006, https://www.researchgate.net/profile/Charles-Crawford-5/publication/240717470_Car_stereos_culture_and_criminalization/links/54262b710cf2e4ce9406fbd1/Car-stereos-culture-and-criminalization.pdf.

⁵¹ <https://www.sfgate.com/bayarea/article/Confusing-don-t-walk-crossing-law-may-soon-be-12198463.php>.

- The law here is too vague and provides too much discretion for officers to sweep in conduct that is not inherently dangerous. There is little logical connection to safety when bikers are not present or there is no present danger (from cars, for example).
- Often sidewalks are blocked, and therefore the only path is a street/bike lane. If the data showed that the racial distribution of those who get tickets reflected the population of San Francisco—or the population of pedestrians in San Francisco—and if a strong connection between issuing infractions and improved public safety outcomes were demonstrated, then enforcing this law could make sense; however, that is not the case.
- Insofar as Black pedestrians receive a disproportionate number of infractions, that is likely more reflective of decades of underinvestment to make those communities more pedestrian friendly. More policing and more infractions are not the solution. The solution, instead, is to build more crosswalks and reconfigure pedestrian pathways.

Riding a bike with faulty brakes, high handlebars, missing reflecting lights or pedal reflectors (Cal. Veh. Code § 21201)

- The more in disrepair a bicycle is, the more cause an officer has to stop the rider, further penalizing those already struggling financially.
- In 2021, 42 percent of people stopped for a quality of bike issue were Black and 31 percent were Latinx.⁵²
- Taxing already underserved communities is not the solution. Exacting onerous fines and fees—especially when they disproportionately impact those struggling to meet their own basic needs—further perpetuates cycles of poverty.
- The solution here is to help the people with bicycles that do not comport with the code to fix their bikes, not levy a hefty fine. Failure to appear at an infraction hearing or pay a fine can incur a separate \$300 fine under Penal Code § 1214.1.

Riding a bicycle with more than one person at a time (Cal. Veh. Code § 21204)

- This is largely an economic crime. The principal reason two people would ride on a bicycle at the same time is that they lack other means of transportation. Enforcing this traffic violation means that you give officers license to criminalize poverty.
- This is a racial justice issue. Black and Latinx residents make up 45 percent of very low-income families across the Bay Area⁵³ and are thus more likely to be targeted by this infraction.
- If children are sharing a bicycle, a warning—without an escalation to a detention and an infraction—is sufficient to address the potential harm.

Obstructing pedestrian traffic by not parking a bike upright (Cal. Veh. Code § 21210)

- The issue here is not riding the bicycle on the sidewalk. The issue here is leaving the bike on the sidewalk, and so there is very little direct harm posed by the bicycle.
- To the extent that bicycles can be stood upright, the Mayor’s community ambassadors in neighborhoods like the Tenderloin can stand them upright—and so can police without issuing an expensive infraction (up to \$250).⁵⁴

Riding a bike without a helmet (Cal. Veh. Code § 21212)

⁵² San Francisco Public Defender analysis of 2021 SFPD stop data.

⁵³ <https://bayareaequityatlas.org/node/60841>.

⁵⁴

<https://www.wklaw.com/practice-areas/fight-traffic-ticket-california/traffic-ticket-fines-penalties/#::~:~:text=According%20to%20California%20Vehicle%20Code,fine%20of%20up%20to%20%24200>.

- An infraction for violation § 21212 costs \$25. A helmet costs about the same.⁵⁵ Officers would be better served distributing helmets, instead of spending up to 30 minutes detaining and citing a child.
- Even at the lowest pay rate for an officer, the City saves money distributing helmets rather than to pay an officer for 0.5hrs of work (almost \$25 not including benefits) to cite a child. This cost also does not include the paperwork, potential court time, and other time wasted processing the citation/ticket.

The Commission Should Narrow the Exceptions Under 9.01.04(C)(3)

Under the policy, officers can conduct a prohibit stop when “a person or motor vehicle matches the description of a suspect or suspect vehicle in a murder [...] or any other felony where the risk of death or life-threatening injuries is imminent if the suspect is not immediately apprehended.” This exception can too easily be abused as little nexus need exist between the person stopped and the “suspect” other than that their descriptions must generally “match”—a term the policy leaves conspicuously undefined. Further, the potential for false identification exists—an issue exacerbated by cross cultural racial misidentification.⁵⁶ Further, cars can too easily be identified as matching a suspect vehicle, particularly if the suspect vehicle description is general (e.g., a silver Honda Accord). This can lead to violent outcomes given the underlying reasons for the exception are similar to the factors for evaluating the use of force, severity of the crime, and “imminent threat.”

Moreover, the fig leaf of a stop for a broken-tail light becomes unnecessary when an officer has independent reasonable suspicion or probable cause to detain an individual suspected of kidnapping, for example. Allowing stops based on imprecise descriptions allows for the same biased-fueled policing that has defined pretext stops for generations. Further, these exceptions function as a backup in case the officer’s “matching description” is incorrect and does not hold up to scrutiny. That level of scrutiny should be applied before the stop is initiated to prevent an officer from acting on implicit or explicit biases.

Because of the inherent problems with an undefined “matching description” standard, officers should rely on factors beyond race or gender, such as length and color of hair, height, build, age, and other physical characteristics but do so only after *confirming* the accuracy of the underlying information related to the description. Further, officers should seek approval from a supervisor and document the reasons justifying the stop in associated police records. SFPD itself has acknowledged the need to create specific objective standards related to detentions and investigations: “Objective standards reflect a *clearer and narrower* articulation of the circumstances in which enforcement actions may be taken and require personnel to apply the same standards to everyone they encounter or upon whom they take enforcement action.”⁵⁷

Sincerely,

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https://www.amazon.com/Exclusky-Helmets-Multi-Sport-Lightweight-Adjustable/dp/B07H1BXJ8Y/ref=pd_lpo_1?pd_rd_i=B07H1BXJ8Y&pvc=1.

⁵⁶ Taki V. Flevaris and Ellie F. Chapman, *Cross-Racial Misidentification: A Call to Action in Washington State and Beyond*, 38 Seattle U. L. Rev. 861 (2015).

⁵⁷ San Francisco Police Department Quarterly Activity and Data Report (4th Quarter 2021), p. 11, <https://www.sanfranciscopolice.org/sites/default/files/2022-03/SFPDQADR4thQuarterReport20220307.pdf>.

Accountability Associates
ACLU of Northern California
Advancing Justice - Asian Law Caucus
AIDS Legal Referral Panel
All of Us or None
Arab Resource and Organizing Center
Calle 24 Latino Cultural District
Causa Justa :: Just Cause
Chinatown Community Development Center
Clarence Dyer & Cohen
Coalition on Homelessness, San Francisco
Community Forward SF
Community Resource Initiative
Community United Against Violence (CUAV)
Council on American-Islamic Relations, San Francisco Bay Area Office
Critical Resistance Oakland
Curry Senior Center
Day Moon
DOPE Project
Ella Baker Center for Human Rights
End Poverty Tows Coalition
Episcopal Community Services
Eviction Defense Collaborative
Faith in Action Bay Area
GLIDE
Haight Ashbury Neighborhood Council
HealthRIGHT 360
Homeless Prenatal Program
HomeRise
Hospitality House
Housing Rights Committee of SF
Islamophobia Studies Center
Justice for Chinedu
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
League of Women Voters of San Francisco
Legal Aid at Work
Legal Services for Children
Legal Services for Prisoners with Children
No New SF Jail Coalition
PODER
San Francisco AIDS Foundation
San Francisco Bicycle Coalition
San Francisco Hepatitis C Task Force
San Francisco Lowrider Council
San Francisco Muslim Community Center
San Francisco Public Defender
San Francisco Pretrial Diversion Project
San Francisco Rising

San Francisco Taxpayers for Public Safety
San Francisco Transit Riders
Secure Justice
Silicon Valley De-Bug
Skywatchers
SPUR
Sunset Youth Services
Support Life Foundation
Tenderloin/SoMa/West SoMa Community Planners
Tenderloin Traffic Safety Task Force
The Gubbio Project
Transgender, Gender-Variant, & Intersex Justice Project
Walk San Francisco
Western Center on Law & Poverty
Western Regional Advocacy Project
Yemeni Alliance
Yemeni American Association
Young Women's Freedom Center