

October 3, 2022

VIA ELECTRONIC MAIL [DARRYELLE.PRESTON@SFGOV.ORG] & FIRST CLASS MAIL

LaWanna Preston
Labor Relations Director
City and County of San Francisco
Police Department, Headquarters
1245 3rd Street
San Francisco, CA 94158

Re: Amendments to DGO 5.01 Use of Force Policy and Proper Control of a Person

Dear LaWanna:

Thank you once again for forwarding the draft version of DGO 5.01. In that regard the San Francisco Police Officers Association has had an opportunity to review the document and for the most part it is acceptable and does not warrant further meet and confer efforts. However, we do have a concern as it relates to Section 5.01.02, F. Specifically the language which triggers the obligation to intercede. The provision appropriately cites to Government Code section 7286 but identifies “unconstitutional or illegal conduct” as the applicable standard. The utilization of this language extends the scope of the obligation to intercede far beyond the use of force. More importantly, in the context of this policy, the language is vague and ambiguous. Therefore, we propose to modify the language in keeping with Section 7286 as follows:

F. DUTY TO INTERCEDE- When an officer recognizes that another officer is engaging in ~~unconstitutional or illegal conduct~~ **excessive use of force** and has opportunity to prevent it, the officer has a duty to intervene and prevent the harm from occurring. Members shall immediately report potential excessive force to a superior officer when present and observing another member using force that the member believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer. (See Section 7286 of the Government Code.)

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For your reference, Section 7286(a)(4) reads as follows:

(4) "Intercede" includes, but is not limited to, physically stopping the excessive use of force, recording the excessive force, if equipped with a body-worn camera, and documenting efforts to intervene, efforts to deescalate the offending officer's excessive use of force, and confronting the offending officer about the excessive force during the use of force and, if the officer continues, reporting to dispatch or the watch commander on duty and stating the offending officer's name, unit, location, time, and situation, in order to establish a duty for that officer to intervene.

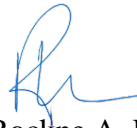
(Cal Gov. Code § 7286.)

I would appreciate your thoughts and perhaps clarification on next steps. At this juncture, we are reserving a right to have formal meet and confer sessions. We are however hoping that we can resolve this matter through correspondence.

Thank you very much for your time and consideration.

Sincerely,

RAINS LUCIA STERN
ST. PHALLE & SILVER, PC

A handwritten signature in blue ink, appearing to read 'Rockne A. Lucia, Jr.', is positioned above the printed name.

Rockne A. Lucia, Jr.

RAL:tw

cc: Tracy McCray, SFPOA President (via email only)