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San Francisco Police Commission

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Re: Draft Traffic Enforcement Order 9.01 (“DTEO”)

This letter supplements my submissions of September 8 and September 19.¹ I am a 30 year resident of the city and a retired lawyer.

Note: As with my September submissions, the comments herein are based upon the *Draft General Order – Traffic Enforcement & Curtailing the Use of Pretext Stops*² dated May 6, 2022 that, as far as can be determined, has not been amended subsequent to initial publication, the numerous working group meetings, HRC “listening sessions,” and public comments. To the extent that there is an amended version of the order, it is not on the Police Commission’s website and is therefore unknown to the author.

I. The Commission’s Procedures for Entertaining Public Comment on this Matter are Flawed and Incomplete.

As I wrote previously in my September submissions, the general public cannot realistically be expected to attend the sausage making of the Working Group; and although the Human Rights Commission’s “listening sessions” are commendable, that agency is not accountable for public safety, law enforcement generally, or police department matters such as policy, morale, retention, and hiring. Surely a general police order that would have so many collateral effects deserves a better, more fulsome evidentiary process prior to serious consideration by the Police Commission.

¹ The latter was filed along with my colleagues on the Board of Directors of our Corona Heights neighborhood association.

² https://sf.gov/sites/default/files/2022-05/DGO_9.01_DRAFT_05.06.22_v2.pdf

Accordingly, should the Commission deem the DTEO ripe for adoption, due process and fair play demand that the Commission itself, not its proxies, hold its own “listening sessions” throughout the City for the purpose of obtaining public input. Further, these hearings should be preceded by adequate advance notice and publication of a memorandum that describes with particularity the reasons for the order, the evidence collected pro and con, the reasonably foreseeable collateral effects such as on public safety and police department morale, the less draconian remedies considered (such as more SFPD training and accountability), and why those remedies would be inappropriate. As I describe in more detail in II. below on page 3, it is these many collateral effects that have been missing from the discussion on the DTEO: what harm would it cause if adopted?

II. Preventing SFPD from Enforcing a Dozen State Traffic Laws Would be Detrimental to Public Safety and Police Department Morale.

I will not repeat at length the arguments set forth in my prior submissions, but a summary is appropriate.

While we all oppose biased policing, first principles would suggest that if there is bias in traffic enforcement, more training and accountability of SFPD officers would be the first logical remedy. If there was demonstrable racial bias in housing or fire code enforcement, one would hope that the remedy first proposed would not be disposal of those codes into the nearest Big Belly trash can.

Yet, figuratively speaking, the proponents of the DTEO seem poised to do precisely that. While commercial vehicles are exempted and while 9.01.04(C) has some other (one would think, difficult for an officer to interpret in the heat of the moment) exceptions, the gist of the order is that SFPD would be barred from enforcing a baker's dozen traffic laws:

- Failure to signal while turning unless there was *substantial risk of injury or death* (!). (Merely moderate risk of injury, apparently, would be citation-free.)
- Most otherwise illegal U-turns from the far left lane.
- Any parking infraction if the vehicle is occupied. (In front of fire hydrants? Emergency MUNI exits? Loading zones? Driveways? If the “occupant” is selling drugs from his parked vehicle, thankfully one of the (C) exceptions would permit an arrest. I suppose we should be grateful for that.)
- Malfunctioning vehicle lights except after dark. (But apparently not in dense fog, perhaps the thought being Karl will not visit after the DTEO is adopted.)
- Riding non-motorized scooters or bikes on sidewalks.
- And more...

While the terms and merits of this proposal are, in the end, all that matters, it is notable that some proponents' advocacy is disingenuous, other times apparently dismissive of

the public's reading skills. Thus, more than one proponent has misleadingly trivialized the DTEO as an order that just (or mostly) prohibits stops for objects that dangle from a rear view mirror (as it would); another, a Commissioner, wrote last week that "blowing through" a stop sign would still be a citable offense (as it would). Of course, these sorts of statements — no more than straw men — are rich in implication that there is nothing to see here, so we should all just calm down, move along, and let the Police Commission do its job. Even a cursory reading of the above list of non-citable offenses — yes, even with those 9.01.04(C) exceptions — belies the claim that the DTEO is much ado about nothing.

The stated purpose of the DTEO is "...to reduce racial bias in the enforcement of our traffic laws...." 9.01.01 Perhaps it would do that, perhaps not. But the elephant in the room, so far unacknowledged is: At what cost? What are the reasonably foreseeable, collateral effects of moving more than a dozen duly enacted statutes to the "never mind" list? The effects on public safety and the police department; the public's obligation to honor *other* state laws and local ordinances, the social compact if you will; and the attractiveness of the city to new residents and businesses at a time when tens of thousands of the former and hundreds of the latter have departed in the last two years. Public policy of the sort the Commission is gestating here is multi-dimensional, with profound implications well beyond those identified in 9.01.01's statement of purpose. They deserve to be honored and analyzed.

To begin with the obvious, it seems unquestionable that to handcuff SFPD as contemplated in the DTEO would sacrifice public safety: (a) in a city already well known for lax traffic enforcement; (b) where we are on track to have 31 traffic fatalities this year despite the Vision Zero pledge to eliminate them by 2024; and (c) as written in my September 18 submission with citations to Vision Zero reports, where African-Americans, the elderly, and the homeless are disproportionately killed.³ Last year more than half of all city wide stops were for traffic enforcement, most for criminal activity, and only 12% yielded "no action."⁴ One racial bias complaint was filed in the first quarter.⁵ Surely, DTEO permission slips for scofflaw drivers would not only add to the injuries and deaths on our streets but would contribute to the public's, and the driver's, perception that adherence to any California traffic law in San Francisco is optional.

And beyond this, what sort of message would these exemptions send to the public about honoring *other* California and San Francisco laws? If traffic laws duly enacted to protect the health and welfare of citizens are optional, why not others? San Francisco

³ Vision Zero Traffic Fatalities 2021 End of Year Report, May 2022. <https://www.visionzerosf.org/wp-content/uploads/2022/06/Vision-Zero-2021-End-of-Year-Traffic-Fatality-Report-FINAL-PUBLIC-1.pdf> at p. 5.

⁴ San Francisco Police Department Quarterly Activity and Data Report Quarter I 2022, p. 82, accessible here: <https://www.sanfranciscopolice.org/your-sfpd/published-reports/quarterly-activity-data-report-qadr> Hereafter, Police Activity Report.

⁵ Police Activity Report, p. 105.

is already perceived as a place where the sale of lethal drugs goes largely unpunished, widespread aberrant street behavior is commonplace, and a host of crimes (shoplifting, catalytic converter theft, vehicle smash-and-grab, and even burglaries) are unchecked. One is hard pressed to avoid the conclusion that the DTEO would encourage this behavior and further erode the fraying social compact in the city.

Another, one would think obvious, collateral effect of this Order would be detriment to the police department directly, and therefore to the public *indirectly*. SFPD is already short 500 officers, potentially 800 by the end of the year. One need not be the SFPD's director of human resources to speculate that this Order would depress morale and make retention and recruitment more difficult. That would make the city *less* safe.

Finally, the occasional defense of the DTEO, in addition to reducing pre-textual stops,⁶ is that its adoption would free up officers to focus on more serious crimes. But this is a fatuous argument. If a routine, passing patrol car officer witnesses an infraction and is not racing to a 911 call, there is no opportunity cost in citing the miscreant. And on what rational basis is the remote Police Commission's written, *a priori*, DTEO superior to the judgement of the on-site officer who witnesses a crime in progress?

III. Adoption of the DTEO would be Contemptuous of San Francisco Voters and the Public at Large.

Perhaps the most shocking aspect of the DTEO and the Commission's gestating of it is the implicit contempt it manifests for public sentiment. In June, voters recalled the prior District Attorney by a margin of 55%:45%, essentially declaring they want *more* law enforcement, not less. The Chronicle's recent poll of 1653 residents confirmed the depth of community distress, with 65% saying life is worse now than when they moved here.⁷ And, the San Francisco Standard more recently published a poll whose findings were similar,⁸ with 64% feeling less safe than they did a year ago.⁹ Not a day goes by without the Chronicle, The Standard, The Examiner or other media reporting on the lack of accountability for a smorgasbord of crimes and mental health or drug induced transgressions; the City will soon face an unparalleled economic crisis, a consequence of a 25% office vacancy rate and the attendant plunge in commercial (and residential?) real estate values; and in June *The Atlantic* bestowed upon San Francisco the "failed

⁶ Incidentally, the District Attorney is on record opposing a ban on all pre-textual stops.

⁷ <https://www.sfchronicle.com/sf/article/sfnext-poll-sentiment-17435794.php> Note: Behind a paywall.

⁸ <https://sfstandard.com/politics/san-francisco-standard-voter-poll-fall-2022/>

⁹ <https://sfstandard.com/criminal-justice/pelosi-attack-highlights-san-francisco-feeling-unsafe/>

city” moniker.¹⁰ Merchants and residents throughout the city, most recently in Hayes Valley¹¹ and the Castro¹², are pleading for *more* law enforcement.

Yet into this tempest the Police Commission would toss a dozen motor vehicle statues?

The Police Commission is an unelected body that is not directly accountable to the voters of San Francisco yet it sets policy that affects our personal health and safety. In this setting, prudence and common sense demand that the Commission proceed with utmost caution in its consideration of this matter; that it honor an implicit obligation to take account of the views of the public at large; and that it put public safety first. Should there be a time when the DTEO is deemed ripe for Commission adoption, there must be a robust public hearing process; a well documented evidentiary record and memorandum on the reasonably foreseeable effects of the order; and humility for the context in which the matter arises.

Neither the Commission’s procedures for considering the DTEO nor the text itself yet measure up to these sensible principles.

Respectfully Submitted,

Paul Allen

¹⁰ <https://www.theatlantic.com/ideas/archive/2022/06/how-san-francisco-became-failed-city/661199/> Note: Behind a paywall.

¹¹ <https://www.sfchronicle.com/bayarea/article/In-S-F-s-Hayes-Valley-merchants-are-arming-17539892.php> Note: Behind a paywall.

¹² <https://www.sfchronicle.com/sf/article/Castro-merchants-threaten-to-stop-paying-taxes-if-17395928.php> Note: Behind a paywall.